

# NORTHERN TERRITORY RACING COMMISSION

## Reasons for Decision

---

|                                      |   |
|--------------------------------------|---|
| <b>Complainant:</b>                  | Mr D  |
| <b>Licensee:</b>                     | PlayUp Interactive Pty Ltd  |
| <b>Proceedings:</b>                  | Gambling Dispute for determination by Racing Commission (pursuant to section 85(2) of the <i>Racing and Betting Act</i> ) |
| <b>Heard Before:<br/>(on papers)</b> | Mr Alastair Shields (Presiding Member)<br>Mr Kris Evans<br>Ms Amy Corcoran  |
| <b>Date of Decision:</b>             | 3 November 2023   |

---

### Background

1. On 11 March 2020, pursuant to section 85(2) of the *Racing and Betting Act 1983 (the Act)*, the Complainant lodged a gambling dispute with the Northern Territory Racing Commission (**the Commission**) against the licensed sports bookmaker, PlayUp Interactive Pty Ltd (**PlayUp**) who acquired and / or operated the betting platforms 'TopBetta', 'Draftstars' and 'ClassicBet'.
2. Draftstars and ClassicBet commenced operating under PlayUp's sports bookmaker's licence (**PlayUp Licence**) on 12 April 2018 and 31 May 2018 respectively when these brands were acquired by PlayUp. PlayUp also acquired the TopBetta brand however, it continued to operate TopBetta under the TopBetta Pty Ltd bookmaker's licence (**TopBetta Licence**) until 3 December 2019. This is when the TopBetta brand was subsequently decommissioned and its customers were transferred to the PlayUp brand under the PlayUp Licence.
3. The dispute is threefold with the Complainant submitting:
  - a. he closed his ClassicBet account "two years" earlier due to a gambling problem and notwithstanding this, TopBetta allowed him to open a TopBetta account (which was another PlayUp platform);
  - b. TopBetta ignored red flag behaviours he displayed including increased betting activity, spending long periods gambling and frequently cancelling withdrawals; and
  - c. after his TopBetta account was closed on 17 November 2019 due to a gambling problem, he continued to receive promotional material from another PlayUp company, Draftstars.
4. The Complainant is seeking a refund of all of his deposits, less withdrawals, made during the lifetime of his TopBetta account in the amount of \$43,926.66.
5. Information was gathered from both parties by a Licensing NT officer appointed as a betting inspector by the Commission and subsequently provided to the Commission that determined there was sufficient information before it to consider the gambling dispute on the papers.

6. The Commission notes that the Complainant had also lodged similar complaints with the Commission in relation to Hillside (Australia New Media) Pty Ltd which operates the betting platform bet365, and Sportsbet Pty Ltd. The findings of the Commission's investigations into those complaints were published by the Commission on 20 April 2022 (L v Hillside (Australia New Media) Pty Ltd - trading as bet365) and on 12 April 2023 (L v Sportsbet Pty Ltd), and can be found on the Commission's website.

#### ClassicBet Account

7. ClassicBet has operated under the PlayUp licence since 31 May 2018. The Complainant opened an account with ClassicBet on 16 July 2019 (**the ClassicBet Account**). During the life of the ClassicBet account, the Complainant made deposits of \$4,834 and withdrawals of \$500.
8. The Complainant submits that he had self-excluded from ClassicBet two years earlier due to a gambling problem, however, PlayUp has no record of any other previous account held by the Complainant.
9. The Complainant stated that he is "99 percent" sure he closed his ClassicBet account via online chat. The Complainant has no emails or any other evidence to support that he closed or self-excluded from ClassicBet prior to opening the ClassicBet Account in July 2019 stating:

*"I'm sorry I don't have the correspondence we had. After I closed it I thought that part of my life was over and deleted all my correspondence with the company."*

10. In further support of its case, PlayUp submitted the Complainant could not have closed his account with ClassicBet via live chat as it did not offer this service.

#### TopBetta Account

11. The Complainant opened an account with TopBetta on 25 September 2019 (**TopBetta Account**) and this account was ultimately closed two months later on 17 November 2019.
12. At that time, Draftstars operated under the PlayUp Interactive Pty Ltd licence and TopBetta operated under a separate licence held by TopBetta Pty Ltd. These licensees were ultimately owned by the same holding company being PlayUp Australia Pty Ltd.
13. During the life of the TopBetta Account, the Complainant made deposits of \$57,656.66 and withdrawals of \$13,730.
14. From a review of the Complainant's account statement, he appeared to start gambling with \$10 bets on 25 September 2019, gradually increasing to maximum bets of around \$1,000.00 on 7 October 2019. Also clear from that statement, he appeared to have gambled for very long periods of time. By way of example:
  - a. from 01:28 hours on 25 September 2019 to 22:52 hours on 27 September 2019 (with only one noticeable break of eight hours starting at 16:06 hours on 26 September 2019 in that three day period);
  - b. from 14:01 hours on 6 October 2019 to 13:42 hours on 8 October 2019 (noting he eventually had two breaks of three hours on 8 October 2019 at 02:49 hours and 08:01 hours); and
  - c. from 09:41 hours on 9 October 2019 to 00:19 hours on 10 October 2019.

15. The Complainant's highest value wagers were struck during long gambling periods being \$500 on 27 September 2019, \$1,010 on 7 October 2019 and \$1,000 on 9 October 2019.
16. Significantly, the Complainant's statement shows that he cancelled 107 withdrawal requests during the lifetime of his account.

| <b>Date</b>  | <b>Number of Cancelled Withdrawal requests</b> |
|--------------|--|
| 25 Sept 2019 | 5  |
| 27 Sept 2019 | 29   |
| 29 Sept 2019 | 8  |
| 6 Oct 2019   | 7  |
| 7 Oct 2019   | 14   |
| 8 Oct 2019   | 1  |
| 9 Oct 2019   | 4  |
| 10 Oct 2019  | 2  |
| 11 Oct 2019  | 1  |
| 15 Oct 2019  | 1  |
| 16 Oct 2019  | 3  |
| 4 Nov 2019   | 9  |
| 5 Nov 2019   | 3  |
| 14 Nov 2019  | 7  |
| 16 Nov 2019  | 4  |
| 17 Nov 2019  | 9  |
| <b>Total</b> | <b>107</b>                                     |

## Consideration of the Issues

17. The Northern Territory community expects gambling services to be provided in a responsible manner and in harmony with community expectations. All Northern Territory licensed sports bookmakers' licence conditions and the Act currently require licensees to comply with the *Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (the 2019 Code)*.

18. The 2019 Code came into effect on 26 May 2019, having replaced the *Northern Territory Code of Practice for Responsible Gambling 2016 (the 2016 Code)*, with both Codes providing guidance to online gambling providers on responsible gambling practices so as to minimise the harm that may be caused by online gambling.

Permitted self-excluded customer to open account

19. Both the 2016 Code and 2019 Code requires amongst other things, that a licensed sports bookmaker must provide self-exclusion features on its betting platforms to enable its customers the opportunity to exclude themselves from accessing the licensee's gambling products.
20. The Complainant submits that TopBetta should not have permitted him to open and operate the TopBetta Account after he allegedly self-excluded with ClassicBet two years prior.
21. There has been no evidence furnished to support the Complainant's assertion that he had a previous account with ClassicBet prior to 2019 nor that he had self-excluded with ClassicBet. In absence of such evidence, the Commission cannot determine any breach of the 2016 Code or 2019 Code by TopBetta (or in fact ClassicBet by virtue that he still had the ClassicBet Account).
22. It is also noted that ClassicBet and TopBetta operated under two different bookmakers' licenses until 3 December 2019. Therefore, even if there was evidence of the Complainant's self-exclusion, ClassicBet would not have been required under the Code to notify other brands operating under the same parent company (see Decision of *Mr B v PlayUp and TopBetta* dated 17 January 2020)<sup>1</sup>.

Red flag behaviours

23. In respect to the allegations that TopBetta failed to detect and act on red flag behaviours of the Complainant when using the TopBetta Account, the 2019 Code applies.
24. Clause 3.1 requires that all staff of an online gambling provider that are engaged in customer interaction must receive training that will enable them to identify problem gambling red flag behaviours. While not exhaustive, the 2019 Code details that red flag behaviours may include activities such as gambling for an extended period of time, changing gambling patterns, increases in deposit frequency and escalating sums of money deposited.
25. The 2019 Code further requires at clause 3.2 that online gambling providers are to have in place responsible gambling policies and procedures to allow staff to detect and assist customers who may be experiencing problems with their gambling. Where an online gambling operator's customer displays some, or a number, or a repetition of red flag behaviours, the 2019 Code requires that they should be monitored and that appropriate customer interaction should take place to assist or protect that customer.
26. In response to assertions by the Complainant that he had displayed red flag behaviours but they were ignored by TopBetta, PlayUp submitted:

---

<sup>1</sup> "Given that the ClassicBet betting platform was operating under the PlayUp Interactive licence at the time the complainant's betting activities were undertaken with it and that Mad Bookie was operating under the TopBetta licence, the Commission is of the view that the complainant's self-exclusion that was in place under the TopBetta licence was not required by the Act or the Code to be put in place against each of the betting platforms operating under other licences held by the parent company of PlayUp Australia."

- a. an increase in the value of wagers is a decision made by the account holder in accordance with their financial position, therefore the responsibility of the individual;
  - b. an increase in the size of bets as a result of gambling for long periods is the individual's decision. If an individual's larger bets appear to coincide with other wagers placed over a particular length of time, this is not in each and every instance a consistent red flag in regard to development of a gambling problem. The bookmaker offers responsible gambling tools for their customers to manage their gambling behaviours;
  - c. the option for an account holder to cancel a withdrawal is not prohibited or discouraged by the Commission; and
  - d. TopBetta offered a 24-hour service as approved by their licence, therefore the period gambled by an individual is a personal responsibility and is not a reflective of a red flag in all individuals.
27. The above submissions of PlayUp are surprising and indicate a disregard for their obligations as a licensed sports bookmaker under the Act and 2019 Code to monitor, detect and assist customers that may be experiencing harms from gambling. Specifically, gambling for an extended period and a change in gambling patterns is expressly set out in the 2019 Code as one of the many behaviours that could indicate someone may be experiencing problems with their gambling i.e., a red flag. The Commission notes that the PlayUp submissions are somewhat dated (23 September 2020), and the Commission's expectation is that, in common with other licensees, PlayUp has modified and strengthened its red flag monitoring and responses since then, in response to published decisions by the Commission and other guidance provided by the Commission on this important issue.
28. In regards to cancellation of withdrawals, it is noted although not expressly listed in the 2019 Code, the list is not exhaustive and in fact the Commission has determined previously that such activity can certainly raise a red flag and, subject to the individual circumstances, may require reasonable monitoring or interaction with the customer (see Decision of *M v Betfair* dated 2 November 2018; [https://industry.nt.gov.au/\\_data/assets/pdf\\_file/0010/591490/m-v-betfair-2-nov-2018.pdf](https://industry.nt.gov.au/_data/assets/pdf_file/0010/591490/m-v-betfair-2-nov-2018.pdf)).
29. Although it may be reasonable to accept that when an account holder displays a one-off red flag, further investigation may not be appropriate. It is the behaviour of individual customers as a whole that needs to be monitored and it is clear from the evidence before the Commission that the Complainant was displaying a number of red flag behaviours including:
- a. gambling for long periods of time without substantial breaks;
  - b. substantially increasing the value of his wagers; and
  - c. repeatedly and excessively cancelling his withdrawal requests.
30. The Commission is of the view that based on the Complainant's account activity during the lifetime of the TopBetta Account, TopBetta should have reasonably detected red flag behaviour and therefore monitored the Complainant and made reasonable contact with the Complainant in the circumstances. There has in fact been no evidence presented by TopBetta that it in fact had actively and monitored the Complainant's activity during the lifetime of the TopBetta Account, much less considered any appropriate interaction with the Complainant as a result. In fact, in response to questions asked to PlayUp as to whether the Complainant appears on any monitoring report or flagged for further investigation, it stated:

*“Mr L’s account had passed all KYC specifications according to verification and identification requirements. In the view of the bookmaker, the account activity did not warrant further investigation beyond those channels...”*

*The first instance that either TopBetta or ClassicBet became aware of Mr L’s gambling issues was on receipt of his email stating such to Customer Support on 17/11/2019. Following receipt of this information, a self-exclusion was manually applied to all accounts in Mr L’s name at the insistence of both TopBetta and ClassicBet.”*

31. It is concerning that TopBetta despite the incessant cancelled withdrawal requests, a clear increase in wagers and the very long periods of gambling activity without significant breaks on several occasions did not once result in the Complainant appearing in any monitoring report or being flagged for further investigation.
32. It is noted that the changes to the Complainant’s wagering and concerning betting behaviour did gradually build up over a short amount of time. The Commission has reviewed the account activity to determine at which point TopBetta should have reasonably been alerted to red flags and made attempts to interact with the Complainant. It is the view of the Commission that at some point during or immediately after his activity on 27 September, TopBetta should have had some interaction with the Complainant. The 27 September involved almost 24 hours of consistent wagering; an increase in wagering amounts and 29 cancelled withdrawal requests which occurred after an already significant period of gambling for the two days prior.
33. The difficulty is whether any interaction may have altered the outcome of his wagering behaviour however, there is no doubt that the activity between 6 to 8 October which included 36 hours non-stop wagering and a further 22 cancelled withdrawal requests should have certainly flagged to TopBetta that the Complainant may have been experiencing gambling-related problems and a significant interaction with the Complainant should have occurred including a potential suspension of his account while TopBetta made further enquiries with the Complainant.

#### Promotional Material

34. Clause 4.6 of the 2019 Code requires that online gambling providers are to ensure that they have in place, suitable procedures to ensure that correspondence or promotional material is not sent to persons who are excluded from their services.
35. The Complainant’s accounts with both ClassicBet and TopBetta were permanently closed by PlayUp on 18 November 2019 a day after the Complainant emailed TopBetta stating that he was experiencing problems with gambling.
36. The Complainant submits that notwithstanding that he was excluded from ClassicBet and TopBetta, he still received promotional material on 20 November 2019 from Draftstars to which he also held an account. This is not disputed by PlayUp and is evident in the information provided to the Commission. Upon the Complainant informing TopBetta of receipt of this promotional material, a staff member of TopBetta promptly responded by email apologising and advising they had “escalated your information to our Draftstars Marketing Team to remove your information from their marketing list.”
37. At that time, Draftstars operated under the PlayUp Interactive Pty Ltd licence and TopBetta operated under a separate licence held by TopBetta Pty Ltd. It wasn’t until 3 December 2019 when TopBetta was moved under the same licence.

38. Accordingly, the exclusion to TopBetta on 18 November did not strictly apply to the Draftstars or any other PlayUp betting platforms and therefore the Complainant was not required to be self-excluded under the 2019 Code.

## Decision

39. Based on the evidence before the Commission, it cannot be satisfied that the Complainant had previously self-excluded from ClassicBet prior to opening his account on 16 July 2019. Further and in the alternative, as ClassicBet operated under a separate bookmaker's licence to TopBetta at the time, clause 4 of the 2016 Code did not apply to any TopBetta customers that had previously self-excluded with ClassicBet.
40. In regards to the promotional material sent to the Complainant after he was excluded from TopBetta; the TopBetta platform operated under a separate bookmaker's licence to that of Draftstars at the time and clause 4.6 of the 2019 Code did not capture persons who were excluded from other bookmaker's services including TopBetta.
41. For the reasons set out above, the Commission is satisfied that PlayUp has:
- a. contravened condition 15 of its sports bookmaker licence by failing to comply with clause 3 of the 2019 Code by not having appropriate policies and procedures in place to detect red flag behaviours and monitor and assist customers who may be experiencing problems with gambling.
42. The Commission has determined that it is appropriate to take disciplinary action against PlayUp pursuant to section 80(1)(d) of the *Racing and Betting Act 1983 (the Act)* for its contravention of condition 15 of its licence, a fine of 75% of the maximum monetary penalty available, equating to \$20,096.
43. It follows that had TopBetta complied with the Code and monitored and detected the red flag behaviours, it should have contacted the Complainant after 27 September 2019 to query the large number of cancelled withdrawals, increasing bet size and long period of gambling without a break.
44. As a result and pursuant to section 85(1A) of the Act, the Commission declares that all the Complainant's bets struck after 27 September 2019 are not lawful and PlayUp is required to repay to the Complainant all of his deposits less any withdrawals made on and from 28 September 2019 until the account's closure, totalling an amount of \$39,662.00.

## Review of Decision

45. Section 85(6) of the Act provides that a determination by the Commission of a dispute referred to it pursuant to section 85 of the Act shall be final and conclusive as to the matter in dispute.



Alastair Shields  
Chairperson  
Northern Territory Racing Commission

On behalf of Commissioners Shields, Corcoran and Evans