

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr L
Licensee:	Sportsbetting.com.au Pty Ltd
Proceedings:	Pursuant to section 85(2) of the <i>Racing and Betting Act 1983</i> – Referral of dispute to Racing Commission for determination
Heard Before: (on papers)	Mr Alastair Shields (Presiding Member) Ms Amy Corcoran Ms Susan Kirkman
Date of Decision:	6 December 2022

Background

1. On 6 January 2021, 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 Northern Territory licensed sports bookmaker, Sportsbetting.com.au Pty Ltd. For ease of reference, the licensee will be referred to as Sportsbetting throughout this decision notice. It is noted that in August 2021 Sportsbetting was rebranded and relaunched as BoomBet Pty Ltd (BoomBet).
2. The substance of the gambling dispute is that the Complainant alleges that, after having self-excluded on a permanent basis from using the services of the bookmaker, he was sent marketing material and was able to open an account.
3. The Complainant's dispute can be summed up as follows:
 - a. the Complainant requested he be permanently excluded due to problem gambling on 17 September 2020. He further requested no marketing communications be sent;
 - b. the Complainant subsequently opened an account with Sportsbetting on 5 January 2021;
 - c. the Complainant alleges he received marketing communication, including bonus bet promotions, prior to opening the account on 5 January 2021; and
 - d. the Complainant is seeking a refund of all deposits made on 5 - 6 January 2021 in the amount of \$6000.00.
4. Sportsbetting's response to the Complaint can be summarised as follows:
 - a. Sportsbetting did not add the Complainant to their self-exclusion register upon receipt of a request to permanently self-exclude on 17 September 2020 as the Complainant did not disclose sufficient information;
 - b. The Complainant did not reply to a request from the bookmaker to provide additional information in order to process his self-exclusion request;
 - c. As the Complainant was not a client of the bookmaker he could not be included in the self-exclusion register or receive marketing communication; and
 - d. The Complainant did open an account on 5 January 2021 and over the course of two days did deposit \$6000.00. A total of three wagers were placed incurring losses of \$5999.24.

5. Information was gathered from the parties involved by Licensing NT officers appointed as betting inspectors by the Commission and provided to the Commission, which determined that there was sufficient information before it to consider the gambling dispute on the papers.

Consideration of the Issues

6. The Commission notes that while for many people gambling is a harmless entertainment, this is not the case for all people who engage in gambling activity and that in some circumstances, some people are unable to control the urge to gamble despite knowing that it is having a negative impact on their lives.
7. With this in mind and in order to minimise the harm that may be caused by online gambling, the Commission introduced the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (the 2019 Code) which came into effect on 26 May 2019, having replaced the Northern Territory Code of Practice for Responsible Gambling 2016.

Self-exclusion Facilities and New Account

8. Part 4 of the 2019 Code deals with the regulatory requirements in relation to persons being able to exclude themselves from using the gambling services of an online gambling operator. The 2019 Code details at Clause 4.2(a) that online gambling providers must provide self-exclusion features on their betting platforms.
9. The 2019 Code further requires at Clause 4.2(e) that where a person requests that they be permanently self-excluded for any reason or is permanently excluded by the online gambling provider due to problem-gambling concerns, the online gambling provider must not knowingly permit that person to reopen or open a new account.
10. The Complainant contacted the bookmaker via email on 17 September 2020 stating "*I am writing to be permanently self-excluded and any accounts closed due to problem gambling.*" The only personal information the Complainant provided in that email was his name and email address.
11. The issue for consideration is whether Sportsbetting had appropriate self-exclusion facilities and procedures to allow the Complainant to self-exclude so that he could not open an account in the future.
12. Sportsbetting accepts that an email was received from the Complainant on 17 September 2020 and submits the provision of an email address and name was insufficient information to enable an account to be identified for closure. Sportsbetting acknowledges that having failed to identify an account for the Complainant, an email was sent on 17 September 2020 seeking clarification as to whether the Complainant held an account with the bookmaker. The Complainant did not respond to this request.
13. Sportsbetting submits that due to the lack of information provided from the Complainant there was no way to identify him as being self-excluded and therefore knowingly prevent him from opening an account in the future.
14. During the course of inquiries undertaken by a Licensing NT officer appointed as a betting inspector by the Commission, the Complainant was asked on several occasions why he had not responded to the bookmaker's request for further information in regard to his true identity. He initially responded that he did send information however provided no evidence to support the claim. The Complainant subsequently advised "*I didn't want to*

give out additional personal information due to privacy and security concerns. As you know there has been a lot of ID fraud and internet security concerns recently and I didn't wish to disclose more information than was absolutely necessary. The details I gave for the self-exclusion should have been sufficient. My full name and email for example."

15. Sportsbetting submits that their existing system controls prevent individuals from opening a second account where some or all the details match an existing account - including email, phone number, name and date of birth. At the time of opening the Complainant's account there was no record of a self-excluded account for the Complainant because he had not provided enough information at the time of requesting the self-exclusion (despite being asked to do so) for Sportsbetting to properly open an account and close it as 'self-excluded' for this purpose.
16. The Commission is cognisant that it is the responsibility of the online gambling provider to put procedures in place to prevent a self-excluded customer from using its services however, there will be occasions where customers who have self-excluded will be able to gamble without being identified as a self-excluded customer due to a technical or human error or due to that person deliberately (or unintentionally) circumventing online gambling operators' systems by providing differing or insufficient identification details.
17. It is the view of the Commission that, given the Complainant provided insufficient identification to self-exclude, it is reasonable to expect that Sportsbetting could not have identified the Complainant as a problem gambler and knowingly permitted an account to be opened.
18. It is also the responsibility of the person who has sought to be self-excluded from an online gambling operator to not attempt to gamble with that operator again. Of interest to the Commission in this regard is that the Complainant requested to close a betting account with Sportsbetting on 17 September 2020 and subsequently opened a betting account on 5 January 2021.
19. The Commission, through administrative support provided to it by officers from Licensing NT, provides a service which allows a person wishing to self-exclude from one or more NT sports bookmakers to submit a self-exclusion form directly to Licensing NT rather than making direct contact with the sports bookmakers themselves. Officers from Licensing NT then facilitate the self-exclusion request by distributing the form directly to all sports bookmakers licensed in the Northern Territory.
20. Licensing NT had not received a self-exclusion request from the Complainant in or prior to September 2020.
21. In February 2021 following receipt of the Complainant's dispute, Licensing NT provided the Complainant with the self-exclusion form for his attention, along with an offer to progress the form on his behalf following an instruction from him to do so. Information on the Gambling Helpline was also provided. Licensing NT also advised that as the Complainant had provided sufficient personal details within his dispute, Sportsbetting had permanently excluded him from opening a Sportsbetting account.
22. The Commission notes that on 30 July 2021 the Complainant forwarded a completed self-exclusion form to the Licensing NT by email and Licensing NT facilitated that form on 30 July 2021.

Marketing and Promotional Material

23. The Commission is cognisant of the right of sports bookmakers to create effective marketing programs that promote their services to their customers however, it also considers that it is important for these marketing messages to get the right message to the right person at the right time. As such the 2019 Code requires at clause 4.6 that online gambling providers have in place suitable procedures to ensure correspondence or promotional material is not sent to any persons who are either excluded from their services, or who request that this information not be sent to them.
24. In contacting Sportsbetting on 17 September 2020 the Complainant stated "*I would also like to request all marketing be stopped in the future*". The Complainant alleges that he received marketing materials including numerous telemarketing calls, text promotions and emails after his self-exclusion email was sent and prior to opening an account on 5 January 2021. The Commission was not able to sight any evidence to support this claim.
25. Sportsbetting submits that account holder details are held in a database that is accessed for marketing purposes and in the absence of an account it is not possible for the Complainant to have received any marketing communications. In the absence of any supporting evidence, and on the basis that the Complainant could not be identified in the Sportsbetting database, the Commission dismisses the claim that the Complainant received marketing material from the bookmaker prior to opening an account in January 2021.

Decision

26. The Commission has often stated when determining gambling disputes that an inherent risk that cannot be avoided in the activity of gambling, is a loss of money. The Commission's role in dealing with this gambling dispute is not to simply rectify self-inflicted economic losses from gambling following the lodging of a gambling dispute with the Commission but rather, to make a finding as to whether the sports bookmaker has acted in compliance with the Act, its licence conditions and the relevant Code in place at the time.
27. On the weight of the evidence before it, the Commission is satisfied that there has been no breach of the Act, licence conditions or of the 2019 Code by Sportsbetting in relation to the Complainant. Given this, the Commission is not of the view that any monies deposited by the Complainant into the betting account should be returned to him.

Review of Decision

28. 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
Presiding Member
Northern Territory Racing Commission
6 December 2022