

# HOLY MOLY: IT'S THE ASA!

It was another uncharacteristically scorching Sunday afternoon and I was shepherding my two sons across London when my eight year-old son asked why he, his brother and his cousin were all named after betting shops. I was stunned. Not only because this fact had never occurred to me – William, Paddy and Victor: how did I not spot that – but because, until then, I hadn't appreciated that a child's brand awareness could extend beyond the realms of the Premier League and Skylanders.

**The purpose** of this mini-anecdote is that it coincided, perhaps not coincidentally, with an ASA ruling in respect of a gambling advert appealing to children, which could have particularly far-reaching implications. Before one examines the rights and wrongs of this ruling, it is worth reminding ourselves what the relevant codes say. Advertising of gambling services are effectively governed by two codes – firstly, the CAP and BCAP Codes (the "Codes") which are regulated by the Advertising Standards Authority and, secondly, the voluntary and hastily drawn-up industry code for socially responsible advertising. It is a condition of the Gambling Commission's operating licence that its licensees comply with the Codes, the voluntary code and the Gambling Commission Licence Conditions and Codes of Practice (the "LCCP"). Together, these rules are designed to ensure that gambling advertising is conducted in a socially responsible manner. Rule 16.3.12 and 174.5 of the CAP and BCAP Codes respectively set out the underlying principle that gambling advertisements must not, "be likely to be of particular appeal to under-18s, especially by reflecting or being associated with youth culture". It is interesting to note that this wording is broader than section 10 of the voluntary code, which states that, "advertisements should not be specifically and intentionally targeted towards people under the age of 18...". There is a clear distinction here – whilst the voluntary code guards against clear intent to target children, the Codes are less forgiving and focus on effect rather than intent.

## ASA's extended remit

The powers of the ASA were broadened further in March 2011, when its remit was extended to include any advertising on a company's own website and on other non-paid-for space that a company may control, such as Facebook. In theory, this extension seemed like a sensible measure to ensure that customers enjoyed the same level of consumer protection against malpractice as was required in respect of paid-for advertising. The effect of this has been far-reaching and has resulted in a significant increase in the size of the ASA's caseload. Proponents of the extended remit would argue that this, in itself, justifies this move but it has inevitably created some uncertainty as to the blurred lines between editorial content, which is not covered by the Codes or its extended remit, and marketing copy.

## Spiderman and other rulings

The most recent ASA adjudication which posed some interesting questions was in respect of 888.com's promotion of its Spiderman online slot game. The game was promoted on 888's own website with images of Spiderman and text stating, "The Amazing Spiderman", which elicited a complaint on the basis that it was likely to be of particular appeal to children. 888 argued that the advertisement did not predominantly appeal to under-18s given that Spiderman is a character that spans the ages and has enjoyed a revival in the shape of several high-budget films which harness a strong adult market appeal. 888 also pointed out that it was not possible for under-18s to play the game for real money

as all customers have to complete stringent age verification checks to register and that the advert appeared on their website where it was clear that only players over the age of 18 could play for real money. The ASA acknowledged that 888 carried out age verification checks but were more concerned that the Spiderman advert appeared on the pre-registration side of their website, and so was accessible to visitors to their website, regardless of their age. In terms of Spiderman's demographic appeal, the ASA acknowledged that the character appeals to some adults but considered that its depiction on a gambling website "was likely to have particular appeal to children" and so breached rules 1.3 (social responsibility), 16.1, 16.3 and 16.3.12 (gambling) of the CAP Code. It was ruled that the advert should not appear again. 888 isn't the only one to have incurred the wrath of the ASA on account of its use of cartoon characters. Littlewoods was also required to remove banner adverts displaying Spiderman as part of a sign-up promotion on its website, that of its affiliate partners and in magazine print. In this instance, Littlewoods unsuccessfully argued that it had been running Marvel Hero campaigns since 2005 without receiving any complaints and believed that one complaint in three years underlined the fact that the complaint was not representative of public opinion. Similarly, in 2012, a complaint against Trinity Mirror was upheld against a promotion which included the Transformers character, Optimus Prime. The obvious distinction here was that the advert in question was printed in the Daily Mirror. Notwithstanding the fact that it appeared in the 'Money' section and so was less likely to have been directly targeted at children, the ASA ruled that the advert must not appear again. These rulings were distinguished by the ASA's adjudication in October 2012 in response to complaints against the imagery used in Profitable Play's marketing of its real-money Facebook game,

Bingo Friendly. The ASA acknowledged that the advert was likely to appeal to children “if children were exposed to it”, but the complaints were not upheld on the basis that the advert could only be accessed via the advertiser’s Facebook page, which was age-restricted to users who were over 18. In other words, any advert behind closed doors is effectively immune from the relevant section of the Codes that are designed to protect the young. The most obvious anomaly here is the ability of operators to advertise gambling products on television before the watershed provided that such adverts are scheduled around televised sporting events. There can be no question that, in an era where Premier League football ranks as one of the most powerful cross-generational brands, children are far more likely to see these adverts than those located on an operator’s website.

These decisions should act as a warning shot to all gambling operators with websites accessible to, and used by, UK customers. The difficulty here is that the vast majority of online casino slots are, by their very nature, designed to look fun and light-hearted and so generally adopt imagery or names that might be considered to be of appeal to children and young persons. Only a cursory look through some well-known websites reveal names such as “Party Pigs”, “Adventures in Wonderland” and “Harry Trotter”, many of which incorporate bespoke cartoon characters. In addition to this, branded games are more popular than ever and so the likes of Spiderman and his Marvel cohorts, not to mention board games such as Monopoly and Cluedo, have become staples of operators’ slot portfolios. It should also be noted that the majority of these games are available as pre-registration demos and so could, in theory, be caught by the ASA’s extended remit. It seems odd that 888 has been singled out on this occasion and one can only speculate as to whether it was politically awkward not to implement its extended remit to the letter, in response to a specific complaint. Time will tell as to whether the ASA will actively correspond with the gambling industry to delineate the boundaries.

### What does ‘particular appeal’ mean?

The ASA might argue that the key word is ‘particular’ when measuring the level of appeal of such games – are they likely to be “of *particular* appeal to children”? It is possible to argue the semantics of these words ad nauseam but there is no doubt that they are capable of clarification. Most of these cartoon characters and board games started out life aimed at children but have been sentimentally carried forward through the generations into adult life, which is exactly why they have been selected as popular brands by gaming operators. The fact that these brands have been passed down through the generations, or have enjoyed a comeback, creates a difficulty. Furthermore, there are now many brands that are held in equal high esteem by adults and children. As mentioned earlier, the English Premier League being one such example that inspires devotion regardless of age, yet it is littered with gambling advertisements, notably in the shape of shirt sponsors (which are disallowed on children’s replica kits) and official gaming partnerships that feature heavily on club websites. Taken to the letter, and given that football has an array of magazines and television shows specifically aimed at young audiences, the ASA could conclude that the presence of gambling advertising in sport could be of particular appeal to children even if the use of imagery is not as explicit as the aforementioned use of cartoon characters. It would seem wholly unreasonable to do so, but you understand the point. The most sensible approach may be to apply a different standard to advertising on one’s own website, with consumer protection remaining at the heart of it but with greater scope to advertise your wares on your own website.

Through all of this, it is worth reminding ourselves that the ASA is not suggesting that brands such as Spiderman become off-limits to the gambling industry. Its concern is purely limited to their promotion. The difficulty here is that any slots or scratch-cards that might be “of particular appeal” to children must now be kept behind

closed doors. They have, in effect, become gambling’s equivalent of the newsagents’ top-shelf or the supermarkets’ locked cigarette cupboard. This should not be problematic in itself, although it is arguable that a child’s presence on a gambling website is less incidental to their lives than a trip to a newsagent or to a supermarket, and there should be some recognition that parental controls are readily available to parents who wish to block their children from certain websites.

### Placement and timing

No-one can doubt the powerful effect that advertising has on people’s behaviour, particularly on impressionable children, and that the objective is to capture consumer attention, the combined effect of which could be to encourage children to gamble. An academic study into the impact of gambling advertisements pointed out that, “gambling products marketed using cartoons, popular children’s board games, children’s television shows or other motifs attractive and familiar to children may increase the allure of these products, thus prompting children to request or obtain these products themselves”<sup>1</sup>. Equally, it is clear that successful advertising is heavily dependent on placement and timing, which brings into question whether marketing on one’s own website should be subject to the same standard of scrutiny as paid-for advertising, which expressly targets our consumerist instincts. From a policy perspective, a relaxation on gambling advertising is unlikely, not least because gambling adverts are becoming to commercial breaks what mobile phone shops have become to our high street. Some thought may have to be given, however, as to whether the ASA’s extended remit was actually designed to catch Spiderman.



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<sup>1</sup>Sally Monaghan, Jeffrey Derevensky & Alyssa Sklar, Impact of gambling advertisements and marketing on children and adolescents