

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Ms F
Licensee:	TopBetta Pty Ltd
Proceedings:	Gambling Dispute for determination by Racing Commission (pursuant to section 85(2) of the <i>Racing and Betting Act</i>)
Heard Before: (on papers)	Mr Alastair Shields (Presiding Member) Ms Cindy Bravos Ms Amy Corcoran
Date of Decision:	25 March 2020

Background

1. On 25 July 2018 pursuant to section 85(2) of the *Racing and Betting Act* (the Act), the complainant lodged a gambling dispute with the Northern Territory Racing Commission (the Commission) relating to the actions of the Northern Territory licensed sports bookmaker, TopBetta Pty Ltd (TopBetta) in voiding bets that had been struck using bonus bets.
2. At the time of this decision notice, while TopBetta still remains licensed in the Northern Territory there are no betting platforms currently authorised to be operated under the TopBetta licence.
3. The complainant opened a betting account through the TopBetta betting platform on 28 October 2017 using a promotional offer referral link advertised on the Racenet website. The complainant deposited \$888 into her TopBetta betting account and as a result of the Racenet promotional offer, TopBetta also placed \$888 worth of bonus bets into the complainant's account.
4. On the same day, the complainant used the bonus bet funds to place four separate bets, one of which resulted in a winning bet with a payout of \$2,125.00. The following day, the complainant then used these winnings plus the \$888 that she had originally deposited into her betting account to place two bets in the amount of \$2,000 and \$1,013 on the outcome of the Rugby League World Cup game between France and Lebanon with a price of \$1.82. Both of these bets were successful and resulted in a total payout of \$5,483.66.
5. On the same day, TopBetta locked the complainant's betting account while it conducted an investigation into whether the complainant's betting account was being operated by the complainant or another person; or on behalf of another person.
6. The complainant has submitted to the Commission that during the course of the TopBetta investigation, she felt intimidated and was requested to sign a statutory declaration that stated that she was a subscriber to Racenet even though she was not a subscriber. TopBetta had requested that the complainant sign the statutory declaration to confirm that the complainant was using the betting account for her

sole use and that she was a subscriber to Racenet. Upon becoming aware that the complainant was not a Racenet subscriber, the complainant was provided with the opportunity to sign the statutory declaration omitting that she was a Racenet subscriber.

7. The complainant further submitted that she was not aware that TopBetta was able to request a statutory declaration should it be of the view that its terms and conditions have been breached and has suggested to the Commission that TopBetta's terms and conditions were updated during the course of the investigation so as to allow this to occur.
8. When TopBetta became aware that the complainant was not a Racenet subscriber, TopBetta determined that the complainant was not entitled to the bonus bet funds of \$888 that had been placed into her betting account as a result of the promotional offer advertised on the Racenet website. As a result of this determination, TopBetta voided all bets that had been struck using the bonus bet funds.
9. The complainant considers that as the link she used through the Racenet website was publicly available, that she is entitled to the \$888 of bonus bets and given this, is also entitled to the full amount of the winnings on bets made with the bonus bet funds.
10. 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

11. Section 85 of the Act provides the Commission with the jurisdiction to determine disputes between a sports bookmaker and its customer regarding lawful betting. In this respect, section 85 sets out the decision making regime for the making of a determination by the Commission as to whether the disputed bet is lawful and provides that a person may take legal proceedings to recover monies payable on a winning lawful bet or for the recovery of monies owed by a bettor on account of a lawful bet made and accepted.
12. The clear purpose of section 85 is to authorise the Commission following an investigation, to determine whether or not the impugned bet or bets were lawful. As such, the issue before the Commission in this matter is whether the bets struck on 28 and 29 October 2017 were lawful.
13. It is also relevant to note that all sports bookmakers licensed in the Northern Territory are required by the Commission to promulgate a detailed set of terms and conditions for wagering which both parties are bound by when an account is opened and each time a wager is struck. By opening an account with a sports bookmaker, the person opening the account is accepting the sports bookmaker's terms and conditions as particularised on its betting platform website.

14. At the time the complainant's bets were struck, the following terms formed part of TopBetta's terms and conditions:

1.4 TopBetta - Your Conduct

1. Undertakings

...

- e) Your account is for your own personal use. You must not permit another person to access your account and you must not use your account on behalf or for the benefit of another person.
- f) If we have reason to believe that you have breached the Terms and Conditions, or there has been unusual activity on your account, we may in our absolute discretion, do one or a combination of the following:
 - Suspend or terminate your account
 - Restrict you from withdrawing funds from your account
 - Prevent you from accessing your account and our betting platforms
 - Require you to go through an account reactivation process
 - Require you to provide any additional information that is necessary for us to conduct an investigation and/or verify your compliance with the terms and conditions (including a statutory declaration, identification documentation or authority to verify information with your financial institution) even if you have provided this previously.
 - Cancel, void or reverse any bets whether they are pending or resulted. Winning funds will be forfeited and obtained without any liability on our part.

15. There is no evidence before the Commission that TopBetta's terms and conditions were amended during the course of its investigation into the complainant's betting activity as the complainant claims.

16. Terms and conditions such as the one detailed at paragraph 14 above, operate to ensure legislative compliance and the commercial efficacy of the business model of a sports bookmaker.

Account For Own Personal Use

17. As detailed above, Topbetta requires that a TopBetta customer may only use their betting account for their own personal use (Terms and Condition 1.4 (1)(e)).

18. TopBetta correspondence to the complainant and to the Commission indicates that due to the activity on the complainant's account, TopBetta commenced an investigation into whether the complainant's betting account was being operated by the complainant or another person; or on behalf of another person.

19. As part of that investigation, a member of TopBetta's Fraud Department made contact with the complainant on 1 November 2017 for the purposes of verification.
20. Following that telephone conversation, the TopBetta representative emailed the complainant a statutory declaration and requested that the complainant complete the statutory declaration and return it to TopBetta.
21. It is clear from the TopBetta terms and conditions which were in place at the time, specifically 1.4.1(f) that TopBetta is entitled to request the complainant to provide any additional information that it considers necessary to conduct an investigation to ensure compliance with its terms and conditions, with this information including the provision of a statutory declaration.
22. As detailed at paragraph 13, by opening an account with TopBetta, the complainant is accepting the sports bookmaker's terms and conditions as particularised on its betting platform website. While the complainant states she was not aware that TopBetta was able to request a statutory declaration, the complainant agreed to the TopBetta terms and conditions when she opened her betting account and as such, this aspect of the complainant's grievance cannot be sustained.
23. While Topbetta through its terms and conditions is entitled to request that the complainant provide it with a statutory declaration which in this case was to seek confirmation that the complainant was the true account holder and had not operated the account on behalf of another person or allowed anyone else to use her account, it is completely up to the complainant as to whether she wished to sign the statutory declaration or not.
24. By not doing so however, TopBetta has not been able to satisfy itself that the complainant is not in breach of clause 1.4.1(e) of its terms and conditions in that the account is for the complainant's personal use, and as a result is entitled as per its terms and conditions to suspend or terminate the account and to cancel, void or reverse any bets whether they are pending or have been resulted.

Bonus Bets

25. As part of the TopBetta investigation into whether the complainant's betting account was for her own personal use, it became evident through the complainant's own admissions that she was not a Racenet subscriber at the time she opened her TopBetta betting account.
26. The Racenet website is a publicly available website which offers articles and information on the racing industry and it also has a page where bookmakers can advertise their promotions.
27. The complainant stated that she signed up to Topbetta through a referral link on Racenet.com.au, and deposited \$888 to get an additional \$888 in bonus bets. Further, that at the time she was never asked to become a Racenet subscriber nor does she recall that in order to receive the bonus bets that she was required to be a Racenet subscriber.
28. The complainant has provided a screenshot from the Racenet website which she states showed the promotion that the complainant signed up with. In this screenshot, there is several matched first deposit promotions offered by TopBetta including one which states that it is a 'Racenet Exclusive'.

29. The Commission notes that this screenshot has been cropped and in doing so, it is not possible to read the full terms and conditions detailed on the offer. Having said that, it does appear that the conditions are the same conditions offered in the Crownbet advertisement above which state that, *“State exclusions apply to some offers. Please check T&Cs of each offer with the bookmaker.”*
30. The Commission is of the view that on the balance of probabilities, the bonus bets offered by TopBetta under the Racenet Exclusive offer were subject to terms and conditions, as was detailed against the Crownbet promotional offers.
31. TopBetta has advised the Commission that the offer for \$888 bonus bets was not an offer open to the public at large but was available only to Racenet subscribers and as the complainant is not a Racenet subscriber nor was she at the time of opening the account, she was not entitled to receive the \$888 in bonus bets and as such any winning funds from that bonus are forfeited under clause 1.4.1(f) of its terms and conditions.
32. It is clear to the Commission that given that TopBetta has advised that the bonus bets were only available to Racenet subscribers, yet the complainant who was not a Racenet subscriber was able to open a new account with TopBetta and receive the bonus bets available under the Racenet promotion, that the checks and balances that TopBetta had in place at the time were not sufficient to ensure that only new account holders who were Racenet subscribers received the bonus bets.
33. The Commission is of the view that while there is no breach of a licence condition in this respect, TopBetta should have had a system in place to verify that new customers were entitled to claim the bonus bets. Had they done so, this aspect of the complainant's grievance would never have arisen.

Decision

34. The Commission is authorised following an investigation, to declare that a disputed bet is lawful or not lawful so far as the requirements of the Act are concerned.
35. The Commission is satisfied that each of the bets struck through the life of the complainant's betting account with TopBetta were lawful bets pursuant to section 85(1A) of the Act.
36. However, the Commission is also satisfied that the actions of TopBetta to request a statutory declaration from the complainant detailing that she was using the TopBetta account for her personal use only was in accordance with its terms and conditions to which the complainant agreed to at the time of opening her betting account.
37. The Commission is further satisfied that as the complainant did not provide information to the satisfaction of TopBetta that the account was being used for the complainant's personal use, that TopBetta is also entitled to suspend or terminate the complainant's betting account and cancel, void or reverse any bets that have resulted in their discretion in accordance with its terms and conditions to which the complainant agreed to at the time of opening her betting account.
38. The Commission is also satisfied that the offer for \$888 in bonus bets was an offer available to Racenet subscribers only and as the complainant is not a Racenet subscriber nor was she at the time of opening the account, she was not entitled to

receive the \$888 in bonus bets and as such TopBetta is entitled to forfeit any winning funds in accordance with its terms and conditions.

39. The Commission takes the opportunity however, to remind TopBetta, should it be authorised to operate another betting platform under its licence in the future, that it must make certain that sufficient checks and balances are in place to ensure that any promotional offers made by it, are only able to be claimed by those customers who are entitled to do so under the terms and conditions of the offer.

Review of Decision

40. 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

25 March 2020