

Northern Territory Racing Commission

Reasons for Decision

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| Applicant: | Mr M |
| Respondent: | Betstar |
| Proceedings: | Dispute Relating to Betting – Section 85 of the <i>Racing and Betting Act</i> |
| Heard Before: | Mr Richard O’Sullivan (Chairman) Mr Walter Grimshaw Mr David Brooker |
| Appearances: | Mr Malcolm Richardson, Manager Racing Mr Eddie Berry, Racing Inspector |

Background

1. The complaint before the Commission arises as a result of correspondence received from Mr M. Mr M seeks responses from the Commission in relation to the opening and operation of an online gambling account by his fifteen year old son. The account was opened by his son with Eskander’s Betstar on 30 October 2010.
2. Submissions in reply to the concerns raised by Mr M and in turn communicated to Eskander have been received from Neil May (the Financial Controller of Eskander’s Betstar).

Material Facts

3. For the purposes of determining the matter before the Commission the following material facts are relevant:
 - The account was opened in the name of Mr K M on 30 October 2010. As required under governing legislation and the betting rules of Betstar, basic account opening procedure were completed, following which, under normal circumstances, formal identification would proceed within ninety days..
 - Betstar is obliged to more fully identify all new clients within ninety days of account opening. This is a condition of its Northern Territory Bookmaker’s Licence.
 - Once operational, Mr M’s son made multiple deposits over a three day period in November 2010 using a National Australia Bank QANTAS Platinum One Credit Card (there were forty-two deposits of differing amounts). The legal and sole operator of this credit card facility was Mr M.
 - Upon discovery of the use of his credit card with Betstar in February 2011, Mr M contacted the bookmaker to seek a refund. He was informed that there would be no refund and that a more appropriate avenue for redress would be for Mr M to contact his bank. It is unclear at this point whether Mr M informed Betstar that the account had been opened and operated by his son.

- Mr M lodged a complaint with Licensing, Regulation and Alcohol Strategy (“LRAS”) on 8 February 2011 which was referred to Betstar for response. Betstar declined to refund the amount of \$2,255 citing the following reasons:
 - They had complied with obligations as prescribed under the Northern Territory Bookmaker Licence;
 - They had broken no law under any governing legislation;
 - Under their own rules and regulations they were unable to action a refund;
 - It appeared that Mr M had been the victim of “identity theft”; and
 - That the appropriate avenue for dealing with “identity theft” was via the bank and reporting the matter to Police.
- For obvious reasons, in the first instance, it seems that (from the correspondence of Mr M) Mr M was reluctant to involve any party other than Betstar.
- Subsequent to Mr M’s email of 8 February 2011 it is now apparent that the National Australia Bank was alerted to the improper transactions. Chargeback letters (where a merchant is required to make a refund to a merchant provider) have been received by Betstar. This full amount has been reported and Betstar have reserved their common law rights.
- For the sake of clarity in regard to the refund process, by which Mr M was refunded the amounts taken from Mr M’s credit card by his fifteen year old son, the Commission provides the following:
 - Amounts debited from Mr M’s credit card via National Australia Bank (19 / 20 / 21 November 2010 \$2,255);
 - Amount credited to Betstar via Westpac Bank (Betstar’s Merchant Provider) (20 and 23 November 2010);
 - Amount debited to Betstar via Westpac Bank; and
 - Amount credited to Mr M via National Australia Bank.
- In this instance Betstar have received a gambling business loss of \$2,255 as a result of Mr M being reimbursed monies his son withdrew for wagering purposes.
- Betstar have acknowledged that the high level of deposits was above average but add further that in isolation such repetition does not necessarily indicate fraud intent or improper activity. They do not regard the amount of deposits as exceptional.

Relevant Considerations

Responsible Gambling in the Northern Territory

1. Gambling services in the Northern Territory are regulated by LRAS for the Department of Justice which is the authority charged with enforcing wagering

standards. The Department, in partnership with gambling providers, regulators, and counselling services has a 'whole-of-industry' commitment to best practice in the provision of responsible gambling. This is manifest in the 'Code of Practice for Responsible Gambling'.

2. All Northern Territory gambling providers are expected to adhere to the practices set out in the Code. The intent of the Code is to maintain a Responsible Gambling structure whereby any harm to problem gamblers is minimized at the earliest opportunity. The Code respects the autonomy of individuals to make their own gambling decisions, while acknowledging that gambling service providers need to take some responsibility for those that can be identified as problem gamblers. The Code seeks to ensure that gambling-related harm is of minimal impact to individuals and the broader community.
3. The Northern Territory Licensing Commission (a number of its members [5] comprise the Northern Territory Racing Commission) is a member of the Responsible Gambling Advisory Committee, which was the author of the Code. One of the methods to ensure that the thrust of the Code of Practice is respected and enforced is for the Licensing Commission to conduct hearings where there is reason to believe that a gambling service provider has acted contrary to an individual's welfare, the public interest, or the enabling legislation. This ensures that gambling services are provided in accord with community standards and expectations, and that the integrity of the gambling sector is not compromised.
4. Of particular relevance in the current matter are the Responsible Gambling Practices in relation to minors. The Code clearly directs all gambling providers to adopt 'appropriate strategies to ensure minors are prohibited from gambling and not induced to gamble.' Further, it is an offence under the *Racing and Betting Act* for bookmakers to lay bets with a person under the age of eighteen years of age.
5. The *Racing and Betting Act*, at Section 133, contemplates an analogous factual scenario to the one at hand, and thus makes provision for a party who is the victim of theft, where the stolen funds were used to gamble, entitlements for repayment from the bookmaker recipient of those funds. The complicating factor which compromises the utility of Section 133 in the matter of *Mr M v Betstar* is that of the father and son relationship.

Responsible Gambling and Corporate Bookmakers in the Northern Territory

1. All Northern Territory online bookmakers are required to meet the Responsible Gambling Practices of the Code. Betstar meet their obligations to the individual and the community by devoting a section of their welcome page to their Responsible Gambling Policy and detailing their commitment to the provision of responsible gambling. They have a 'Mission Statement' that goes beyond the requirements of the Code. Betstar takes a proactive stance on referring problem gamblers to the appropriate support services. Further, there is a dedicated Section to gambling by minors where it is clearly stated that an account holder must be over eighteen years of age.
2. There are multiple programs and internet filtering devices that can be activated by parents and guardians that limit the prospect of underage access to gambling websites or online. Several online bookmakers prominently display such services on their home page.

3. The account opening procedure generally adopted by Betstar complies with all Commonwealth and Northern Territory legislation. It is worthy of mention in the current matter that had the minor who placed the bets been successful with the wagers there was no prospect of the funds being paid, other than with the knowledge and agreement of the lawful owner of the credit card. Failure to provide the information necessary to continue the deception would or should have resulted in the account being suspended.
4. By any measure, only a sophisticated and multi-party fraud could have further circumvented the account opening and operating procedures of Betstar. That is, the account would likely have been suspended and the deception discovered after the 90 day period, or at the first request for an account withdrawal, whatever was the earlier.
5. The appropriateness, or otherwise of the ninety day account verification requirement is beyond the ambit of this decision and vests within the jurisdiction of the Commonwealth.

Conclusion

4. It is reasonable for the bookmaker to assume that accounts are opened and operated in good faith and that a reasonable amount of time be permitted to establish the identify of new clients. This is what is required under governing legislation, enabling regulations and Northern Territory issued Bookmaker's Licences.
5. It is reasonable that the Racing Commission expects that in instances where unusual account operation occurs, or where patterns of gambling demonstrate a marked deviation from general historical practice, bookmakers take special effort to validate "know your client" obligations under various government Acts.
6. The Racing Commission cautions bookmakers that failure to properly identify instances of underage and problem gambling via the use of appropriate forensic and data matching technology, may lead to a revision of account opening and operating procedures.
7. The Racing Commission notes the valid concerns raised by Mr M in relation to the ease with which an account can be opened and operated by a minor. The important caveat being that full operational status (including account withdrawals) does not occur until more exhaustive identity requirements are met. Betstar have suffered a loss through no apparent breach of any requirements under governing legislation on their Northern Territory Bookmaker's Licence.

Decision

8. The dispute lodged with the Racing Commission has been resolved with Mr M being reimbursed in full all funds withdrawn from his credit card accessed by a minor (his son), who established an account with Betstar. Betstar have lost the equivalent amount reimbursed to Mr M. No further action by the Racing Commission or other parties is required.

Richard O'Sullivan
Chairman

22 June 2011