

Northern Territory Racing Commission

Reasons for Decision

Complainant:	Mr Steven Brunker
Respondent:	Hillside (Australia New Media) Pty Ltd trading as bet365
Proceedings:	Northern Territory Racing Commission Investigation
Heard Before:	Mr Richard O'Sullivan (Chairman) Mr Philip Timney Mr David Brooker Mr Walter Grimshaw
Dates:	11 to 13 March 2013

Part 1 - Background

Preamble

1. Under section 17(1) of the *Racing and Betting Act* the Northern Territory Racing Commission is empowered to determine disputes between aggrieved clients and bookmakers licensed in the Northern Territory. The present dispute between Mr Steven Brunker and licensed bookmaker bet365 falls within the scope of the above section.
2. Further, section 18(1) and section 18(2)(c) of the *Racing and Betting Act* provide the Racing Commission with a power to do all things necessary to perform its functions and exercise its powers; and do all such things as it considers necessary or desirable for the proper regulation and control, in the interests of the public, of betting by and with bookmakers. At section 18(2)(d) the Commission is additionally given a wide-ranging power to do all such acts and things as it considers necessary or desirable for the proper regulation and control, in the interests of the public, of bookmakers, horse-racing, trotting and greyhound racing. The Commission flags at the outset that it takes the public interest element referred to above most seriously and will turn its mind frequently to this in the decision that follows.
3. On July 27th 2012 the bet365 account of Mr Steven Brunker was used to place a series of complex First Four wagers. These wagers were placed on Ipswich Greyhounds race number two ('the Event'). One of the combinations placed on the account of Mr Brunker was successful and a significant profit should have been realized. After the event bet365 sought to rely on a limiting clause in their Terms and Conditions to reduce the amount payable to Mr Brunker. This action precipitated a complaint to the Racing Commission by Mr Brunker that is the subject matter of the decision that follows.
4. Subsequent to the initial complaint further information has emerged that brings the integrity of the Event into question. There is within the bet365 Terms and Conditions a series of rules that permit the bookmaker to refuse payment where there exist issues in relation to the integrity of an event. As such bet365

seek to ultimately rely on two discrete justifications for their conduct in not settling in full the wager placed on the account of Mr Brunner. In the first instance they rely on the questionable integrity of the Event; in the second they rely on the authority of the Terms and Conditions.

5. The decision that follows is structured in a manner that deals with the initial wager, the complex evolution and sequence of happenings that trailed the event, the arguments and positions put forward by both parties, and various other considerations the Racing Commission is obliged to turn its mind to that arise when the factual matrix is considered in totality. A unique characteristic of this dispute is that while the complaint is set, as it were, at a particular moment in time, the bet365 rebuttals to the complainant occurred simultaneous to and then evolved long after the Event.
6. That is, in the first instance bet365 sought to rely solely on the loss limiting clauses in their Terms and Conditions. Subsequent to the placement of the wager, when further information came to light and forensic analysis of the transactions and Event occurred, bet365 were then able to rely on a broader range of their Terms and Conditions and activate a response to the claim that focused on the integrity of the Event. The Racing Commission considers that it is only fair and reasonable that all avenues available to all parties should be considered when determining a betting dispute of this type.
7. Within the decision that follows where public interest components can be identified and articulated, and a genuine and relevant nexus to the evidence before the Racing Commission can be sustained, such instances will be highlighted. No less is required of the Commission under the *Racing and Betting Act*. Firstly, however, the Commission will turn its mind to the issue of Natural Justice and Procedural Fairness.

Natural Justice and Procedural Fairness Considerations

8. The complexity of the matters and the evolving nature of the investigation before the Racing Commission made it proper that at the first opportunity the Racing Commission adopted a conservative position and informed Mr Brunner that it was in his best interests to retain legal counsel. On multiple occasions in correspondence from the Commission Mr Brunner was reminded that he should take steps to be legally represented when the matter came to hearing. The basis for the Commission adopting such a posture will become evident as the facts of this matter are considered in the body of this decision.
9. On several occasions prior to the commencement of the hearing the Racing Commission was led to believe, by way of correspondence received from Mr Brunner, that he had engaged legal counsel. For example, in emails received by the Commission he writes of, 'talking to my lawyer' and 'getting legal advice'. Specifically, on the 14th of September Mr Brunner communicated to the Commission that, 'I have now sought legal advice made in relation to my complaint or application for dispute resolution against bet365'. In light of the preceding the Commission, therefore, holds the opinion that it had every right to assume that Mr Brunner would be legally represented at the hearing.
10. It was not until the day of the hearing that the Racing Commission finally became aware that Mr Brunner would not be represented. This was of great surprise to the Commission as it was in possession of correspondence from Mr Brunner to bet365 senior management in the UK that stated, 'I now find I am a

pawn in a bigger game and I have had offers from individuals and organizations to fund all of my legal costs (lawyers, barristers, etc.)'. It was legitimate for the Commission to infer from the correspondence that Mr Brunner had rallied much support, he wrote further; 'I have had to appoint a media manager to respond to the media inquiries I am receiving'.

11. While surprised that Mr Brunner had chosen to represent himself after adopting a reasonable assumption that counsel would be present and appearing for Mr Brunner, the hearing proceeded. At the commencement of proceedings the Chairman informed Mr Brunner that, 'it is normal Commission policy where a person is unrepresented, to give them some latitude and some explanation as to procedures'. He further went on to inform Mr Brunner that, 'The Commission will give as much forbearance as possible to you, as I realize you are not familiar with our proceedings'.
12. During the course of the hearing proper the issues of natural justice and procedural fairness were not mentioned nor raised by either bet365 or Mr Brunner.
13. At the conclusion of the hearing Commissioner Brooker sought assurances from Mr Brunner as to whether he had any issues with the conduct of the hearing from a natural justice and procedural fairness perspective. The relevant exchange follows:

I don't want to put words in your mouth so don't let me, but do you concede now that, on a number of occasions the Commission through its agents Mr Richardson and Mr Berry gave you the opportunity to get legal counsel and they did everything but insist that you get legal counsel and get yourself help to be represented in front of us? I think that it would be fair for us as a Commission to get that on the record that you at least acknowledge that we have done as much as we can to make sure that you were aware of the import of the situation from our perspective and that we wanted you to be in the best hands possible: is it fair to say that?

14. In response Mr Brunner replied, 'yeah I totally agree Mr Brooker', followed with the comment that, 'I did not believe that it was necessary to get counsel all along'. The Racing Commission notes that this final comment is not consistent with correspondence received from Mr Brunner during the investigative phase of the matter.
15. In light of the above the Racing Commission considers it perfectly reasonable to take the position that Mr Brunner was afforded full and complete natural justice and procedural fairness. Any claim that this was not the case is extinguished by the admissions of Mr Brunner at hearing and by his conduct and correspondence prior to that time. For the sake of adding emphasis, when asked by Commissioner Brooker if he believed that he had been given an opportunity to put his full case to the Commission, Mr Brunner responded that, 'I have had a very fair go from the Commission'.
16. Given the above, the criticisms of the Racing Commission by third parties unfamiliar with the full matrix of facts were unhelpful at best and disrespectful at worst. An email from Frank Pangello from 'A Current Affair' in Adelaide suggested that the process of the Commission in conducting its investigation in the way that it is required to under the *Racing and Betting Act* was somehow compromising the natural justice entitlements of Mr Brunner. Indeed Mr

Pangello informed the Racing Commission that, 'I've discussed this with Senator Nick Xenophon who believes it is tantamount to a denial of due process and natural justice'.

17. The Racing Commission refutes strenuously any suggestion that Mr Brunker has been hampered in presenting his case to the hearing panel and repeats that at all times the Commission has erred on the side of caution when investigating this matter. In an email to Mr Brunker on the 27th of September Mr Richardson reiterated that, 'The Racing Commission is anxious to ensure that, whatever the decision reached in this matter, all parties have had the utmost opportunity to express the particular merits or otherwise of their case'. The communication went on to seek any further information in the possession of Mr Brunker that he thought relevant to his cause.
18. The Racing Commission must conduct itself in a manner that is fair and equitable to those appearing before it. As the sole body responsible for the control of bookmaking activity in the Northern Territory it requires the respect and trust of those who fall within the ambit of its decision-making authority. Those who seek to undermine confidence in its processes not only harm the Commission specifically, but also damage the public perception of all statutory tribunals in general.

Part 2 – Pre-Hearing

The Wagers Placed on the Account of Mr Brunker

19. The Racing Commission considers that it is only sensible to deal with the background to the opening of Mr Brunker's bet365 wagering account and then the actual placement of the wagers the subject of this betting dispute before considering all else.
20. Mr Brunker opened an account with bet365 on Wednesday the 18th of July 2012 with an initial deposit of \$100. On Tuesday the 24th of July Mr Brunker deposited a further \$5,000. On Wednesday the 25th of July the account was used for the first occasion with a single \$5 wager placed on the greyhounds at Dapto in New South Wales.
21. On the 27th of July a series of wagers were placed on the account of Mr Brunker. The wagers in question were of the First Four bet type and involved multiple combinations covering all but two of the greyhounds in the eight participant field. When deconstructed, the wagers as placed result in 624 individual combinations. That is, there were 624 possible permutations covering the selected greyhounds that could ultimately yield a result for Mr Brunker.
22. The wagers were placed on Mr Brunker's account with 30 seconds remaining before the event was closed for betting by bet365. This had the effect of making it near impossible for bet365 operators to take steps to minimize exposure or lay off any of the risk, either with other bookmakers or the totalisator. As a result bet365 assumed all of the risk for any potential outcome of the wagers placed by Mr Brunker.
23. While having the hallmarks of an 'ambush' the Racing Commission takes this opportunity to make it absolutely clear that it has no intention of rectifying or correcting instances where a wager is placed on an account and the

bookmaker is unable to take steps to minimize exposure to the event in general or a specific wager or series of wagers. Determining risk management regimes and protocols is the domain of the licensee and the licensee only. It is the absolute prerogative of a customer to place a wager at any moment of time prior to the closure of wagering on any event.

24. The above said, the Racing Commission accepts that late placement of a wager or wagers may present as indicia that prompts a licensee to consider the overall context, conduct and outcome of the event from a risk management perspective.
25. As previously mentioned the wagers placed on the account of Mr Brunner omitted two greyhounds: the favourite for the race 'Finished Forcer', and another runner 'Octane Moment'. At the conclusion of race two Finished Forcer and Octane Moment ran last and second last respectively. The six other greyhounds that comprised the balance of the field were all covered in different permutations by the wagers placed by Mr Brunner.
26. The judge posted results in the race of Rose Portia (3) first; Golden Emperor (5) second; Four Way Mouse (4) third; and Jess a Kiwi (8) fourth. One of the wagers placed on the account of Mr Brunner had the combination as above. The wager would have returned Mr Brunner \$73,163 (the dividend was \$14,632.60 on which he had wagered \$5). The exact amount wagered in total by Mr Brunner on Ipswich race 2 was \$4992.
27. Subsequent to the event Mr Brunner was contacted by staff from bet365 who informed him that bet365 intended to enforce their rule of the Home TAB being the dividend. The Home TAB rule limits payouts on tote derivative products to the total amount for that bet type in the relative tote pool. Where there is more than one TAB pool relied upon to determine the dividend the pool size of the Home TAB is used.
28. A payment of \$4992 was paid to Mr Brunner which was in excess of the actual Home TAB pool holding (\$4720), but equal to the amount that he had wagered. The Racing Commission acknowledges the 'goodwill gesture' from bet365 in this instance and will comment further later in this decision on the merit of considering whether this should be a standard requirement for bookmakers that rely on this rule. That is, where the Home TAB rule is invoked it should not be the case that a winning wager becomes a losing wager in terms of overall payout.
29. Mr Brunner was then, later that evening, informed that his account would be closed. In a conversation with a bet365 representative Mr Brunner was informed that the trading department of the bookmaker decided to close the account due to the uneconomical characteristics of the betting activity. In response Mr Brunner replies to the operator, 'I've fluked a win and you're not going to pay'; and in an email later in the evening Mr Brunner asserts that, 'I placed the bet today'.
30. By way of postscript to the above details of the wagering activity on the account of Mr Brunner the Racing Commission, for the sake of completeness, must explore one further aspect. In the period between the opening of the account and the placement of the wagers the subject of this dispute Mr Brunner alleged that he had difficulty placing a wager on his account. Mr Brunner alleged that on the 25th of July he was denied a win of \$370.

31. The Racing Commission finds that there is no evidence whatsoever that affirms the particular sequence of events as alleged by Mr Brunker. Quite simply, Mr Brunker presented nothing to convince the Commission to believe that a system fault existed with bet365 as alleged. Prior to and during the hearing bet365 presented detailed evidence and information technology system reports that leave the Commission in no doubt that there was no system fault with either Mr Brunker's account specifically or bet365 operations in general.
32. Not intent to rely solely on the submissions of Mr Brunker and bet365 in this instance, the Commission undertook an investigation of the claim of its own volition. Audit Log sequencing and digital progression data analysis satisfied the Commission that the system fault allegation had no basis in fact. That Mr Brunker did not see fit to lodge a formal complaint in this instance is not lost on the Commission.

The Initial Conduct of bet365

33. Immediately following the Event bet365 asserts that their risk management department took notice of the high payout that was due to Mr Brunker. The Racing Commission is familiar with the operations and structural hierarchy of licensees that includes specialist teams and individuals who are tasked with determining what action (if any) to take where a loss that skews beyond the expected parameters occurs. Shortly after the event Mr Brunker was contacted and told that the Home TAB rule would be applied to his wager.
34. The bet365 operator referred Mr Brunker to the rule that limits payouts on tote derivative markets to the amount in the relative tote pool. The rule specifies that where there is more than one tote being used to determine the final dividend the pool size of the home tote would be used. Some time later Mr Brunker was again contacted and told that his account would be closed.
35. It is important to clarify at this point that the conduct of bet365 immediately following the event was founded on the use of the Home TAB rule and nothing further. It was not until later that the management of bet365, after forensic analysis of the construct of the wager, the actual placement of the wager, and the suspected links that were ultimately established, that they sought to rely on further of their clauses that can be invoked where the integrity of the Event is brought into question.
36. To be clear; it was a combination of things: the rule was invoked and then bet365 became aware of the suspected integrity breaches surrounding the Event thus enlivening their reliance on further of their Terms and Conditions. This sequence culminated in the eventual inclusion by bet365, in response to the complaint by Mr Brunker, that the wagers on the account be determined not lawful under section 85 of the *Racing and Betting Act*.

The Initial Conduct of Mr Brunker

37. As soon as Mr Brunker became aware that the wagers placed on his account were to be subject to a reduced payout he lodged a complaint with the Racing Commission. At this point the department launched an investigation and resources were deployed to ensure that an effort worthy of the large sum of money involved would occur. Mr Brunker made his sentiment clear, which was

his prerogative, by stating to bet 365; 'I don't want my money refunded ... I want to be paid my wager in full'.

38. It should be said that the above was a consistent stance of Mr Brunker for the duration of the investigation. He made it clear that his expectation was full payment for the winning wagers on his account and that nothing less would be satisfactory. It is also worth noting that at the time of the initial contact from Mr Brunker there was no possible way of construing any of his comments other than as a categorical statement that he had personally placed the wagers in question. There was never any mention of third party involvement in the placement of the wagers.
39. Mr Brunker in all of the earliest correspondence referred to himself in the first person as the individual who placed the bet. A direct quote serves as a good example, 'bet365 is not paying the winnings from the multiple wager I placed with them yesterday', additionally, he referred to the, 'the bet I placed', the biggest bet I have ever had', and 'because I placed the wager'. These statements are highlighted at this point as initial conduct of Mr Brunker, however, the currency of the comments will be more relevantly referred to below.

Post-Event Developments

40. Subsequent to the Event, within a relatively short space of time, concerns were raised from a variety of stakeholders that the integrity of the event was in doubt. As such bet365 determined to make more focused investigations into the wager, the parties, and the event. As stated above, other stakeholders including, Queensland greyhound racing stewards, the police, and this Commission echoed the interest of bet365 in the event.
41. The bookmaker was prompted to consider a further response when it discovered new evidence that evinced the possibility that the integrity of the Event may have been compromised. There was some confusion whether the offer of settlement to Mr Brunker of \$25,000 remained on the table when it became clear that there were potential integrity breaches associated with the Event. In communication with the Commission it is apparent that Mr Brunker operated under a misapprehension for some time that the offer made immediately following the Event (before the integrity issues surfaced) was still on the table. During the course of the Hearing Ms Truman suggested that, 'arguably, had Mr Brunker accepted the decision and moved on, bet365 would have also moved on and continued to conduct it's betting agency business. But he didn't! As a result bet365 took a much closer look at the bet'.
42. In discussions with counsel representing bet365 it was determined that the offer had been withdrawn and that no further offer would be likely as bet365 intended to fully defend the claim against them. At this time the Racing Commission sought assurances from bet365 that no offers of settlement of the dispute would be presented to Mr Brunker without at first consulting the Commission. On advice from counsel the Commission was thus assured.
43. It would be remiss of the Racing Commission to not make note for the record that the involvement of the media, and the warmth with which Mr Brunker engaged such involvement, complicated matters and made expeditious decision-making all but impossible. Entitled to do so, in the mind of the Commission, bet365 took an aggressive posture in response to the public

relations issues it faced, and consequently the matter escalated from betting dispute to full blown legal punch up, in a very short space of time. The Commission is most cognizant of its own determination to ensure that disputes are dealt with in a timely manner but must always defer to due process and the vicissitudes of adversarial procedure.

44. The involvement of the Queensland Racing Stewards and their investigations relating to the integrity of the Event also impacted on the time frame within which the Hearing was ultimately convened. The Racing Commission rightly deferred to the Stewards when requested to do so, to ensure that their inquiry was not compromised by the simultaneous investigations being conducted on behalf of the Racing Commission.

Part 3 – Hearing

The Submissions of Mr Brunker

45. As stated above Mr Brunker was an unrepresented complainant before the Racing Commission. At the outset he was informed that he would be given as much latitude as would be fair to opposing counsel in all of the circumstances. The Commission considers that the broad nature of the claims made by Mr Brunker can be compartmentalized into the two discrete themes that appear below.

The Wager

46. Mr Brunker maintained that the wagers placed on his account were at his sole instruction and that they were placed for his sole benefit and profit. As has been stated above he instructed his son, Mr Matthew Brunker, to place the wager ostensibly because he was concerned with problems he had previously had with the bet365 system (which the Racing Commission finds were no fault of, or attributable to bet365). Mr Brunker indicated that, 'I rang my son who was in Thailand asking him to put the bets on for me because he's pretty conversant with the betting operations, and he said he'd put the bets on for me'.
47. As it turned out the wagers were not placed from a computer in Thailand, they were placed via another individual operating a computer in Sydney. The evidence of Mr Brunker is that it was some, 'weeks and weeks' after the event that he found out that this son had not placed the wagers as instructed. Asked by Commissioner Brodie if he could now identify the individual who placed the wager at the direction of his son Mr Brunker responded, 'I've been told that a guy by the name of Brad Candy, or Canty, or Cantry or something'.
48. The precursor to the wager being placed on the account of Mr Brunker by Mr Canty on the direction of Matthew Brunker is of particular interest to the Racing Commission and will be considered in detail below. It suffices to say at this point that on the evidence presented to the Commission by Mr Brunker all three individuals can be linked, albeit in a step-by-step way, to the placement of the wager. The Commission is of the view that for the purposes of its deliberations in this matter the combined conduct can be termed a 'joint effort' or 'joint exercise': the parties are inextricably linked.

49. It is the evidence of Mr Brunker in relation to the wager that he selected the numbers, the combinations and the stake to be placed on the event. He told the Racing Commission that; 'there was two dogs that were very slow having their first race start. I was advised that a week or two earlier by my son who, on a regular basis gives me tips about dogs that are going fast or, in this case, dogs that weren't going real fast'.
50. Of further relevance in this context is an email sent to Malcolm Richardson (Deputy Director North – Gambling and Licensing Services) from Mr Brunker on the 28th of September 2012 where he revealed that, 'I was aware of the trial times of two dogs in the race concerned – I receive greyhound trial times on a regular basis'. He goes on to write that, 'some 3 to 4 weeks after the race I became aware of where these two slow dogs and a number of other dogs were trained from'.
51. In conclusion Mr Brunker asked of the Racing Commission what has to be done for a punter to be paid for a winning wager by bet365.

Terms and Conditions

52. Of substantial import and worthy of immediate highlight is the fact that Mr Brunker opened his submissions to the Racing Commission with the words, 'I had some bets placed on a race on 27th of July at Ipswich with bet365'. The logical binary to this statement is of immense relevance and weight for it verifies that Mr Brunker did not place the wagers on his account in person. This is in direct contrast to the position that he had adopted immediately following the event and in multiple communications with the Commission and various media outlets.
53. Shortly thereafter Mr Brunker presented an outline of the wagers that were placed on his account and indicated to the panel that he, 'gave to my son my account details and password'. Commissioners Brodie and Grimshaw asked whether he was aware the act of providing his son with his account and password details was in contravention of the rules. Mr Brunker replied that, 'I just discovered last week about 2.2 Sir, so I would suggest that the answer to your question is no'.
54. Previous to this statement the Racing Commission heard that Mr Brunker had printed out the Terms and Conditions of bet365 on the day he opened his account and then again on the day that the winning bet was placed on his account. He had offered that he had accounts with many of the large corporate bookmakers, stating that, 'I probably have accounts with them all'. Of interest when considering the preceding paragraph was his following statement that, 'part of having a contract with a bookmaker is you know your terms and conditions that you are punting under'. It is apparent at this point that while Mr Brunker may have downloaded and printed the Terms and Conditions he had clearly not read and understood them. This assumption is, however, inconsistent with the statement of Mr Brunker that, 'I had copies before I opened my account with bet365, I went through them. I also printed out a copy on the day of the race after the race was successful, and I then printed out another copy on the 7th of August and then I printed a copy out on the 10th of August'.
55. Despite the fact that Mr Brunker completed the online registration process with bet365, which involves verifying that the Terms and Conditions have been read

and understood, Mr Brunker articulated his claim thus; 'bet365 have advised me that they wouldn't pay because of a condition on their website and I am refuting that being a legitimate reason not to pay me'. Mr Brunker goes on to allege that the clause relied upon by bet365 was, 'hidden in such a way as a normal person would not be able to find it within a reasonable amount of time'.

56. Lest there be any doubt that Mr Brunker traversed the bet365 website prior to the placing of the wagers on his account he assists by chronicling his progress from interested party to client; 'I done what I thought was due diligence, looked for their website, loaded their terms and conditions. I opened an account. I placed some money in that account'. For emphasis of the point he adds, 'I was pretty attracted by their Terms and Conditions'. It is difficult to reconcile again how one can be attracted by Terms and Conditions that have not been read and understood.

The Submissions of bet365

57. Counsel for bet365 opened submissions by handing to the hearing panel a chronology of events that sought to sequence the main points of their defence to the claim. Ms Truman, for bet365, chose to address the complaint by focusing on two limbs. In the first instance Ms Truman asked the Racing Commission to determine the lawfulness of the wager; secondly there would be a focus on the rights of bet365 to enforce some of their Terms and Conditions.
58. Specifically, bet365 seek a determination from the Racing Commission that, pursuant to section 85 of the *Racing and Betting Act*, the wager placed on the account of Mr Brunker be declared not lawful. Were the Commission to find that the bet was lawful then Ms Truman submitted that a further defence to the claim of Mr Brunker was available under the Terms and Conditions of bet365.

The Lawfulness of the Wager

59. For the purposes of determining the lawfulness or otherwise of the wager the Racing Commission was taken by Ms Truman to section 85 of the *Racing and Betting Act*. Counsel asserted at the outset that:

The Commission should do what it is empowered to do pursuant to section 85(1A) of the Act and declare that the bet is not lawful. Now the Act does not define what lawful is. The legislature chose not to do that. And because it is not defined, and I submit also because of the very wide powers given to you pursuant to section 85(7) in relation to how you can conduct this matter, the information that you can take into account, this Commission and this Commission alone is the one to determine whether a bet is lawful or not. And I submit the Commission is empowered as a result to interpret that word 'lawful' broadly, and it should do so.

60. The Commission previously held the view that its power to determine lawfulness under section 85 was a broad head of power and, as such, concurs with the submission of counsel. Consequently the determination of the lawfulness of the wager is an issue that the Commission determined to entertain as a defence to the conduct of bet365 in this matter.
61. The thrust of the submission on lawfulness by Ms Truman goes to the nature and type of the wager when considered within the entire factual milieu of the

event. For the sake of clarity the Racing Commission considers there are three main elements to the arguments of Ms Truman in relation to the lawfulness of the wager. Firstly, there is the wager itself, secondly, there is the fact that the wager was placed on the computer of another individual who had previously been identified as a client with whom bet 365 had issues, and thirdly there are the associates and networks that ultimately impugn the Event itself.

62. Ms Truman articulated the concern with the wager thus: 'the volume and style of bet on the 27th of July 2012, we submit, is typically placed by a very experienced gambler and one who is especially familiar with greyhound racing. Placing large bets so soon before the race is going to be run is also normal practice for those attempting to manipulate the pool.' Counsel further stated that, 'It is the nature of the bets in terms of their amounts placed, their complexity and their timing that is most significant, but also more particularly, in terms of this scenario, that computer'.
63. The computer that Ms Truman refers to is the computer terminal from which the wagers on the race were actually placed via Mr Brunker's account. The terminal was not located in Darwin, nor was it located in Thailand, but was located in Sydney. Using IP matching analysis bet365 determined that, 'It was a computer that has been identified as having previously been used to open an account in the name of Mr Bradley Canty only on July 24th 2012'. Mr Canty had earlier had an account with bet365 that had been closed and there is record of him being dissatisfied with the decision.
64. Ms Truman makes the suggestion to the Racing Commission that, 'It is open for the Commission to find that Mr Brunker was in fact recruited by his son and Mr Canty'. The racing fraternity has a term of art for an individual who places bets on behalf of another who would in the normal course of events be unable to do so. The term is 'Bowler' and in this instance what Miss Truman suggests is that Mr Brunker was recruited by his son and Mr Canty to bowl for them.
65. Counsel for bet365 detailed some specific facts that, it was submitted, go to buttressing their claim that the wager should be declared not lawful. These facts included statistical analysis, forensic computer analysis, and transcripts of recorded telephone conversations relevant to the investigation of the Racing Commission. The thread of the argument of Ms Truman was that the parties to the wager, of which there is no doubt number at least three, operated in such a manner to give rise to the circumstances permitting a reasonable assumption that the Event was impugned.
66. As a consequence Ms Truman sums up that; 'we say there are significant question marks over all of the bets that were placed using the account in the name of Mr Brunker on the 27th of July last year. And in light of those questions, we submit that the Commission should declare that it cannot be satisfied, on balance, that this was a lawful bet'. The Racing Commission will turn its mind to the elements above when it considers the lawfulness of the wager within the construct of section 85 below.

The Terms and Conditions

67. The submissions of Ms Truman in relation to the capacity of bet365 to rely on their Terms and Conditions as justification for not paying the entire amount of the winning wager placed on the account of Mr Brunker focused on identifying why a specific clause was applicable; and then ultimately the contractual

lawfulness of applying the clause to the conduct of Mr Brunker. It was emphasized to the Racing Commission that it was imperative that the Terms and Conditions be read as a whole. Further, it was verified that the Department had approved the content of the Terms and Conditions prior to the commencement of the Australian business of the bookmaker.

68. The Home TAB Rule has been discussed above; however, for the sake of appropriate context and fullness the Racing Commission considers it worthwhile to list the relevant clauses as considered and discussed by counsel for bet365. The Home TAB Rule is found under Sports Rules – Australasian Racing; it holds that:

bet365 reserves the right to limit payouts on tote derivative markets to the amount in the relative tote pool. In the case of more than one TAB pool being used to determine the final dividend the pool size of the home tote will be used.

69. In the introduction to the Terms and Conditions at point 2 clients are informed that;

By using and/or visiting any section (including sub-domains) of the bet365.com websites that we own (the 'Website') and/or registering on the website, you agree to be bound by (i) these Terms and Conditions; (ii) our Privacy Policy; and (iii) the Rules applicable to our betting products as further referenced at paragraph 2 below (together the 'Terms'), and are deemed to have accepted and understood all terms.

70. Next, at point 3 clients are informed that;

Where you place a bet or wager using the website, you accept and agree to be bound by the Rules which apply to the applicable products available on the Website from time to time. The Rules can be found under the Help tab of the applicable section of the Website, or more specifically are available by clicking here.

71. Ms Truman highlighted for the Racing Commission the applicable clauses that bet365 sought to rely on to justify closing the account of Mr Brunker. At section 4.2 of the Suspension and Closure section;

bet365 reserves the right to close or suspend your account at any time and for any reason. Without limiting the preceding sentence, bet365 shall be entitled to close or suspend your account if, bet365 considers that you have used the Website in a fraudulent manner or for illegal and/or unlawful or improper purposes.

72. Further, at 4.2(d) accounts can be closed or suspended if;

'bet365 considers that you have used the Website in an unfair manner or have deliberately cheated or taken an unfair advantage of bet365 or any of its customers'.

73. At section 4.3 of the same section the Terms and Conditions state that:

'If bet365 closes or suspends your account for any of the reasons referred to in (a) to (e) above, you shall be liable for any and all claims, losses, liabilities, damages, costs and expenses incurred or suffered by bet365 (together 'Claims') arising therefrom and shall indemnify and hold bet365 harmless on

demand for such Claims. In the circumstances referred to in (a) to (e) above, bet365 shall also be entitled to withhold and/or retain any and all amounts which would otherwise have been paid or payable to you (including any winnings or bonus payments).'

74. Rule 4.6 states that;

bet365 reserves the right to withhold payment and (subject to the concurrence of the NT Commission) to declare bets on an event void if we have evidence that any of the following has occurred: (i) the integrity of the event has been called into question; (ii) the price(s) or pool has been manipulated; or (iii) match rigging has taken place. Evidence of the above may be based on the size, volume or pattern of bets placed with bet365 across any or all of our betting channels. A decision given by the relevant governing body of the sport in question (if any) will be conclusive. If any customer owes any money to bet365 for any reason, we have the right to take that into account before making any payments to customers.

75. The section on the use of the Website at 3.2 states that, you must not use the Website for any purpose which (in bet365's opinion) is illegal, defamatory, abusive or obscene, or which bet365 considers discriminatory, fraudulent, dishonest or inappropriate. Further at 3.3;

bet365 will seek criminal and contractual sanctions against any customer involved in fraudulent, dishonest or criminal acts via or in connection with the Website or bet365's products. bet365 will withhold payment to any customer where any of these are suspected. The customer shall indemnify and shall be liable to pay bet365 on demand, all claims (as defined in paragraph B.4.3 above) arising directly or indirectly from the customer's fraudulent, dishonest or criminal act.

76. The import and the relevance of each of the above sections will be considered in the latter part of this decision, however, it is prescient to flag at this point that two further Rules are of particular interest to the Racing Commission in this matter. The first being Rule 2.2 which states that;

The second is Rule 2.3 which is that,

if, at any time, you feel a third party is aware of your username and/or password you should change it immediately via the Website. Should you forget part or all of your combination, please Contact Us.

77. The Rules in the preceding paragraph when read in isolation are the source of confusion for some and the internal inconsistency of Rule 2.2 (as it relates to the claim of Mr Brunner) must be addressed. This is so because at first glance this Rule seems to contemplate the release of account access information that permits others to use one's account. Were this the case the conduct of Mr Brunner in giving his son his account details and password would not be sufficient reason to deny payment of the wager as placed.

78. It is, however, the sequence of the Rules when read as a whole that destroys such a claim. Rule 2.2 essentially establishes that all wagers will stand on all accounts where the password and account details are correctly entered. Consequently, by implication, the only time a wager will not stand on a particular account is when a system error permits a wager to be placed without the correct details being entered.

79. With the knowledge that all bets will stand in all eventualities save for system error when one reads Rule 2.3 it is a not too challenging an intellectual step to understand that an account holder is not to disclose their account access information to anyone (not only because bet365 resist this, but also because you will be liable for their wagers). It is obvious that should it become apparent that a third party has obtained account access details then such details should be changed immediately to deny access to that account. This avoids the possibility of section 2.2 being invoked whereby an account holder will be liable for all wagers placed on the account.
80. The simple logic of the above is transferable to the current matter. If it had been so that bet365 paid the full dividend into the account of Mr Brunner then it is highly plausible that the third party (either Mr Matthew Brunner, Mr Canty or whoever else had access to the Sydney computer terminal) may have chosen to continue to wager on his account. Such operation may have even ultimately indebted Mr Brunner to bet365. The purpose of the Rule is in part to avoid this eventuality. The account holder is protected in the sense that the only wagers on the account are the ones that he places. Bet365 is protected because they have certainty in knowing with whom they are transacting.
81. It was submitted by Ms Truman, in relation to the Terms and Conditions, that Mr Brunner must have agreed to the content because he completed the account opening process and it is a requirement of such process that a client acknowledges such by ticking a digital box. Ms Truman sought to counter the claim of Mr Brunner that the Terms and Conditions were difficult to navigate by suggesting that, 'bet365 in fact bends over backwards to try and help you find those items that are relevant'. She added that he should be determined to have agreed to the Terms and Conditions and, 'if Mr Brunner did not read them properly, that is a matter for Mr Brunner and not bet365'.

Ex turpi causa non oritur actio

82. Ms Truman for bet365 submitted that the Racing Commission should also consider the concept of *ex turpi causa non oritur*. Loosely translated as 'from a dishonourable action a cause does not arise', the equity based legal principle that flows is that those who come before a decision-maker or an adjudicator need to come to that venue with 'clean hands'. This principle, which is a total bar to recovery, where upheld, holds that no action may be founded on illegal or immoral conduct.
83. Within the context of this matter it is the argument of bet365 that Mr Brunner had not done the right thing, by being involved in an endeavour that was designed to achieve an improper outcome, and as such he should not be entitled to receive any relief from the Racing Commission.
84. The Racing Commission was referred to *Territory Sheet Metal Pty. Ltd. v ANZ*¹ as good authority in support of the argument that the panel should turn its mind to the principle of *ex turpi causa non oritur*. In this matter the judgment of Olssen J details the background of where the principle comes from and examples of its application. Ms Truman summarized the judgment thus; 'It is about conduct that is prohibited by the law; conduct that is in violation of the general law, whether civil or criminal or a relevant express statutory problem

¹[2010] NTSC 03

which is otherwise illegal as contrary to public policy, and it is the public policy link that we say is most relevant to the Commission here'. The Commission, as stated above, considers the public policy components of sections 17 and 18 of the *Racing and Betting Act*, of seminal importance when conducting its activities.

85. In support of the contention that the event was so impugned, and by extension the involvement of Mr Brunker was therefore also impugned, Ms Truman stepped through certain of the facts in this matter that evidenced improper conduct contrary to public policy. It was put to the Racing Commission that Mr Brunker was a most unreliable witness and that his conduct in 'fabricating his story', demonstrated that he would say anything to ensure that he received the proceeds of his wager. Counsel based these claims on the propensity for Mr Brunker to, 'avoid mentioning and revealing the names of the other parties to his wagering transaction with bet365, withholding information from the Racing Commission at multiple stages before attending at hearing; and a concerted effort to misrepresent the facts of the situation'.
86. For example, Ms Truman focused on a particular exchange between the Racing Commission and Mr Brunker in relation to the way in which Matthew Brunker was portrayed to the hearing panel. In an email sent to the Racing Commission Mr Brunker detailed the nature of the business and activity conducted at City Bound Lodge by his son. He stated that on the property;
- At least three different charities collect dogs from council dog pounds and deliver them to the property where he looks after them until loving homes can be found for these dogs. Some retired greyhounds are also kept at the property until they are adopted out and I recently discovered (some time after the race of July 27th) that some greyhound trainers new to the industry use the same property to train their dogs from.*
87. Evidence was led that the above email was misleading at best and designed to totally misrepresent the nature of the business at worst. In fact the business of City Bound Lodge is far from a philanthropic exercise and more accurately a commercial enterprise whose core business is greyhound rearing, training, and sales. It was suggested that this was another example of where Mr Brunker sought to provide as little information as possible and misrepresent the facts to the Racing Commission.
88. Another specific instance raised by counsel for bet365 was the fact that it was some seven weeks after the event that Mr Brunker first admitted that he had not personally placed the wager the subject of this dispute. It was submitted that he did not tell the truth for the reason that he wanted to, 'avoid identifying the relevant person or persons involved and that's a significant matter that should go against his credit'. Counsel went on to suggest that, 'he is not being full and frank; he is not reliable and he is not credible and that should impact significantly on this Commission's ability to find that it should declare his bet lawful'. Ms Truman asked rhetorically, 'why the secrecy, why the drip-feeding of information?'
89. It was finally put to the Racing Commission that Mr Brunker should be barred from recovering any funds from bet365 under the principle of *ex turpi* because the evidence and conduct of Mr Brunker was, 'simply not truthful'. He is not someone you can rely upon; he is not someone with any credibility

whatsoever. He has not been full and frank and he is attempting, we say, to portray a very different factual situation to this Commission’.

90. To find that an individual is barred from claiming under the principle of *ex turpi* or ‘clean hands’ the Racing Commission must be comfortable that the claim before it is so tainted by an improper or illegal act that it would offend public policy. This link will be considered below but it is sufficient to say at this point that should the Commission find that the wager was not lawful it will necessarily follow that the principle of *ex turpi* will be enlivened and vice versa.
91. In her conclusion Ms Truman was courteous enough to respond to the question left unanswered by Mr Bruncker at the completion of his submission by offering that the only thing a punter had to do to be paid a winning wager by bet365 was to play by the rules.

The Role of the Racing Commission in Ensuring Public Confidence in the Gambling Industry

92. There can be no doubt that Parliament passed to the Racing Commission a responsibility to ensure that public confidence in the industry that it regulates be of paramount importance. Within the context of the facts before the Commission in this matter multiple instances emerge where the general public could rightly infer that the sport of greyhound racing could be prone to integrity abuses. There is evidence in this matter of pool manipulation, deliberate attempts to rig the results of an event, and collusion between various individuals to achieve that end.
93. There is evidence that the integrity of the event was undermined by the placement of runners that it was known would deliberately under perform. The knowledge and reliance on such underperformance is a concern that is shared by the authors of the July report on the National Policy on Match Fixing in Sport.
94. It is imperative in the view of the Racing Commission that the full spectrum of facts in this matter that support a possible finding that the integrity of the Event was impugned be explored. It is given that integrity issues threaten the core fabric of the Australian wagering and racing industry. It is incumbent on all regulators, specialist panels of review, and the hierarchy of courts to take a hard line to uphold the expectations of the public.
95. The role of the Racing Commission in ensuring public confidence in the running of all manner of events within the ambit the *Racing and Betting Act* is clear. The prosecution of its duties involves ensuring that the integrity of these events is beyond reproach wherever a meaningful contribution can be made. It goes to upholding a core ethic of egalitarianism and fair play, and ethics rooted in stamping out corruption and empowering others to do so too.
96. So it is that bet365 appeared before the Racing Commission to answer a complaint levelled against the business where the running of the Event in question was of suspect integrity. As counsel for bet365 pointed out to the Commission;

It would have been far cheaper to pay out on this bet, but it is not just about that, but instead, we have taken this action in part to show that integrity in racing and integrity in betting associated with it is an important and significant

matter and one that should be upheld by those involved, such as betting agencies like bet365 and such as sport controlling bodies such as this Commission.

97. The Commission completely endorses the sentiments of bet365 in the statement above. There must be collaboration, cooperation, and alliance in efforts to prevent loss of public confidence in sporting events. As has been stated elsewhere by numerous authors on numerous occasions: fans must believe what they see on the field of play represents a true test of competitor's skills. If they cannot, there is a real risk that they will ignore sport and take sponsors and broadcasters with them.
98. The entire industry of racing depends upon a high and irrefutable perception of integrity: where a regulator is charged with defending that perception and is derelict or deficient in performing such duty that regulator not only lets down the industry and those who wager on or somehow other participate in it, it lets down the core fabric and culture that permits, countenances and sometimes underwrites it in the first place.
99. The Racing Commission of the Northern Territory considers it appropriate to defer to the authority of the National Integrity of Sport Unit for definitional advice when determining the appropriate level for upholding a finding concerning the integrity of an event. The Unit holds that fixing an event is where there is, 'irregular influencing of the course or result of a sports event in order to obtain advantage for oneself or others and to remove all or part of the uncertainty normally associated with sport'.
100. The considerations and decision that follow cannot be made in a complete vacuum and must reference the broader integrity issues facing Australian and global sport at present. This provides the cultural, political and social backdrop that references the objectives of Parliament as set out in sections 17 and 18 of the *Racing and Betting Act*.

Part 4 – Considerations

The Wager

101. Bet365 allege that the \$5 Dapto wager placed by Mr Brunker on the 25th of July resembled the one a normal punter would place. They further allege that the style, type and method of placing the bets placed on the 27th of July were that of a sophisticated gambler with particular knowledge of greyhound racing. The Racing Commission has little interest in the ability of clients to be able to morph from typical gambler A to atypical gambler B. That is the nature of the arrangement between gambler and bookmaker; it is a battle of wits, perceptions, abilities and ultimately one party considering that 'an edge' exists in his favour.
102. If Mr Brunker or any other client of any other licensee can gain 'an edge' against a licensed bookmaker then that is to their benefit and the Racing Commission sees no reason to intervene where that 'edge' has been successfully deployed and does not offend any law.
103. It is where the assertions of bet365 can be sustained that the wager placed on the account of Mr Brunker was one that was constructed in such a way and informed by methods acknowledged as unfair and unreasonable, that the

wager itself must come under scrutiny and categorized in a particular way. When 'the edge' is deployed in a way that is contrary to the rules of a particular operator or exceeds the normal public standards and notions of fair play then the Racing Commission becomes obliged to intervene.

104. Mr Brunker maintained throughout the investigation and at hearing that he was a simple 'mug punter'. On the other hand bet365 argued that the placing of wagers of the type executed by Mr Brunker is the usual conduct of persons attempting to manipulate the pool and was inconsistent with his previous wagers. When asked what his usual wager was Mr Brunker suggested that it was in the order of \$20 to \$30. He conceded on probing from the Commission that sometimes he had \$5,000 wagers.
105. The Racing Commission must turn its mind to the wager placed on the account of Mr Brunker for two reasons. Firstly, it must do so to assist in determining whether the wager was in reality one that Mr Brunker constructed. Was it really the wager of a self-declared mug punter, or was it the wager of a sophisticated individual who had vast knowledge of greyhound performances, former dealings with bet365, had threatened bet365 with retaliation, and had a network link to Mr Brunker via his son Matthew? The outcome of this determination goes to establishing whether the integrity of the Event is so impugned that the Commission can term the wager not lawful under section 85.
106. Secondly, the Racing Commission must turn its mind to the wager because it must determine whether, should the wager be deemed lawful, it avoids all of the Terms and Conditions of bet365. The matter before the Commission thus rises and falls on this point; simply, unless the Commission interprets the Terms and Conditions in a favourable way to Mr Brunker below his claim will fail because we are fully aware by his own admission that Mr Brunker did not place the wager.

The Terms and Conditions - 'The Rules' of bet365

107. The exercise of negotiating a website should not be torturous, complicated, or tricky. Where the Racing Commission is of the view that this is the case the benefit of doubt will always fall to the party in the lesser bargaining position. That said, it is of the view that the bet365 Website should have not posed any great difficulties for Mr Brunker to navigate. By his own admission he had downloaded the Terms and Conditions. Mr Brunker makes the point that there is some inconsistency between rule 2.2 and rule 2.3; the Commission does not share this view and will deal with it below.
108. The rule that states that clients will be liable for wagers placed on their account is a limiting clause that must be read in conjunction with the previous clause. The rule that holds that clients will be responsible for wagers placed on their account ensures that it is not a valid defence to seek a refund where another person has placed a wager on a particular account. That the rules work hand in hand is obvious; indeed the first rule that prohibits clients from passing on their details to other parties is reinforced by the import of the second rule. That is, it is at once obvious that should a person break the rule and disclose account details and security information to a third party then all risk associated with the use of the account should accrue to the account holder should the account sustain losses when used by that third party.

109. To suggest that because there is a rule that provides that if another person accessed my account I would not be responsible for any losses is to not read the rules in the spirit intended. In other words, they expressly contemplate the situation where somebody else may use the account. It is exactly the import of the rule that where an individual facilitates the use of their account (by providing account access and security details) then they should be obliged to cover any losses sustained by way of activity on that account in contravention of the rule that details are not to be revealed to third parties.
110. The final step in the account opening procedure is to tick a box with text that says: 'I am at least 18 years of age. I have read, accept and agree to the terms and conditions, rules, privacy policy, cookie policy and policies relating to age verification and KYC'. At this point one is not only accepting and agreeing to be bound by the Terms and Conditions, one also agrees to be bound by rules. When asked whether he recalled the simple task of ticking the box Mr Brunker was evasive and said he could not remember doing so. For the purposes of this matter the Commission deems that Mr Brunker must have ticked the box or his account would not have been opened by bet365.
111. In light of the above and for the purposes of the record the Racing Commission deems that Mr Brunker must have read the Terms and Conditions of bet365 and accepts the position of counsel for bet365 that, 'If Mr Brunker did not read them properly, that is a matter for Mr Brunker and not bet365.'

The Integrity of the Event

112. It is settled law that an agreement to do an act that is illegal or immoral or contrary to public policy or to do any act for consideration that is illegal, immoral, or contrary to public policy, is unlawful and therefore void. The Racing Commission will not lend any help to Mr Brunker to be unjustly enriched where an agreement has been made for the use of subject matter for an unlawful purpose and takes a principled stance that should this be found to be the case he should be precluded from benefiting from such a claim. The Commission offers the following in order to more fully contextualize its deliberations on the integrity of the Event in question and to further emphasize the soundness of making the link between the parties Steven Brunker, Matthew Brunker, and Brad Canty.
113. Prior to the event Mr Canty had opened and operated for a short time an account with bet365. The account was summarily closed after only a small amount of wagers. To say that this displeased Mr Canty greatly is an understatement. In a telephone exchange on the 24th of July 2012 Mr Canty was advised that his account had been closed by the bet365 trading department due to it being uneconomical. His reply included a threat to inform the Northern Territory government and the media of the practice of bet365 in closing accounts deemed uneconomical. He requested that a senior manager contact him to discuss the matter.
114. Later on the 26th of July 2012 Mr Canty initiated a telephone call with bet365 with an offer and asks the operator to, 'send this to your hierarchy there'. He says to the operator;

I wanna get on to win a 1000 fixed odds best of 2, otherwise I will continue jamming you and opening new accounts, I will go interstate if I have to, I don't give a fuck, doesn't bother me. You obviously link my account and this

is gonna keep on happening. I just wanna get on to win a 1000 fixed odds or best of 2, you can take the tip if you want, whatever you wanna do, this closing account shit is a joke mate.

When pressed for the meaning of jammed by the operator Mr Canty responds, 'you will get new accounts, you will get raped immediately'.

115. On the 27th of July Mr Canty in a discussion with a bet365 operator says somewhat prophetically; 'you want to keep your guards up that's all I am going to say'. Referring to the ability to isolate individual IP addresses Mr Canty then goes on to add, 'all your little IP addresses and all that sort of shit, don't worry about that you'll need to close every account that gets opened from everywhere from now on'. Ipswich greyhound's race 2 was run some 90 minutes later.
116. The Racing Commission includes the above content by way of back-story to its deliberations concerning the integrity of the Event. At the very least, should one disregard the obvious motive of profit, there is a plausible case to be made that Mr Canty had a personal axe to grind with bet365 and he intended to mete some revenge on the business. Indeed, as evidenced in the quotes above, he verbalized such a threat.
117. The Racing Commission must do much more, however, than merely identify and establish that Mr Canty was a disgruntled ex client of bet365 who was prone to threatening language (It is known to the Commission that on previous occasions and in similar forums such language has been used). It must be satisfied of the nexus between the individuals linked in this matter and their ability to alter the outcome of an event and seek to profit from that outcome.
118. Mr Matthew Brunker, who Mr Steve Brunker directed to place the wagers on his behalf while in Thailand on holiday, is the operator of premises known as City Bound Lodge. The owner of the freehold is Steven Brunker. The link between father and son is at once obvious and has been admitted. That the Racing Commission was misled as to the nature and operations of the business is immaterial to deliberations as to the integrity of the event, although it could be argued that in attempting to keep such information from the hearing panel Mr Brunker was concerned about revealing the link between the parties and their various capacities to influence the outcome of the race. What is material, from the perspective of the Commission is the network of relationships that radiate from Mr Matthew Brunker.
119. Of particular interest is the relationship between Mr Mathew Brunker and Mr Brad Canty. By any measure, and certainly on the evidence of Mr Brunker, the relationship must be close enough for Mr Matthew Brunker to entrust wagers totalling \$4992 to the care of Mr Canty.
120. The Racing Commission was presented with evidence that conclusively demonstrated that the wagers in question were placed using a different computer from the one that the account of Mr Brunker was opened on. The same computer and IP address had been used on five other occasions to open up five other accounts all using different names. One of the accounts opened previously via this computer was the aforementioned account of Mr Canty that had been closed by bet365.

121. The Racing Commission considers it prudent to not detail the specific analytic tools nor reveal any precise features of the methods deployed by bet365 to verify and substantiate the observations that IP addresses altered at crucial times in this matter. It is sufficient to say, and said with confidence, that the computer used to place the wagers was not located in Darwin and had been used by Mr Canty to open accounts and place wagers with bet365 on other occasions.
122. Again though, within the confines of determining the integrity of the Event, the Racing Commission must establish more than that Mr Canty, Mr Steve Brunker and Mr Mathew Brunker had dialogue with each other sufficient to impugn the race. The Commission considers that for an allegation of a fully-fledged integrity issue to have any real prospect of success that the involvement of those presenting the greyhounds to race is vital. The loop thus completes to establish an integrity issue when Mr Stephen Kutnjak is entered into the factual matrix of players in this event.
123. *Octane Moment* and *Finished Forcer* were both in the care of Mr Stephen Kutnjak. Each greyhound was subsequently charged with failing to pursue and suspended for 28 days and required to undergo a satisfactory steward's trial. The Queensland stewards refer to Mr Kutnjak as being the person who was responsible for the transport and handling of both greyhounds. That Mr Kutnjak and Mr Matthew Brunker are associates is founded on the knowledge that Mr Kutnjak had previously trained greyhounds for Mr Matthew Brunker, and that both the greyhounds mentioned above were kennelled at City Bound Lodge. The final link that needs to be established in order to comprehensively illustrate that all parties to this matter can be considered inextricably bonded is to record that Mr Matthew Brunker had previously bred and sold greyhounds to Mr Canty. To be absolutely clear, the Queensland Stewards consider Mr Matthew Brunker and Mr Canty to be associates.
124. The activity of each party when combined and considered in totality and the proximity of the parties to each other when considered sensibly have the hallmarks of a joint enterprise. The prism of integrity that envelops sport is a valuable commodity and one that the Racing Commission is determined to defend. There can be no doubt that the unique attributes of the individuals listed above could be combined to influence an event should they be disposed to do so.
125. In and of itself though, but for the wager, the Racing Commission would be hard pressed to conclude that nothing more than a form anomaly or statistical aberration had occurred. Up until this point the Commission is prepared to afford to the parties the benefit of the doubt. The placement of the wager, however, removes the hint of chance about the result and elevates it to the level of integrity breach and the Commission so finds.
126. At one point in the hearing Mr Brunker alleged that the conduct of bet365 in not paying his wager was, 'un-Australian'. This statement was made within the context of Mr Brunker asking the Racing Commission for a 'fair go' and implying he had not received that from bet365. The Commission is moved to borrow from Mr Brunker that sentiment and suggests that the term un-Australian is better deployed to describe those individuals who would conspire with no conscience to seek profit from fixing a simple greyhound race. Oblivious, ignorant and arrogant of the cost to other owners, trainers, punters,

and worst of all the industry at large, it is these individuals and their associates that the Commission considers are un-Australian.

Anson v Sportingbet²

127. It was recommended to the Racing Commission that it follow the decision held in *Anson v Sportingbet*. The operative components of that decision that the Commission concurs are of assistance in the current dispute relate to the interpretation of the rules of licensees and the autonomy of licensees to determine their own risk management practices.
128. In *Anson* the Racing Commission held that where a client chooses to have a dividend paid that corresponds to a specific totalisator pool the bookmaker is at once on notice that it may face a potential payout that it has no capacity whatsoever to calculate in advance. The bookmaker may then be exposed to a payout that could exceed its ability to commercially offer that bet type.
129. As a result of the above, the Racing Commission found that, 'the commercial operations and risk management procedures as determined by the bookmaker need to operate with certainty and as such, the need to have a cap or limit on certain bet types and events is at once obvious'. Nothing has altered since the decision in *Anson* and the Commission maintains the position that limiting clauses are essential and desirable components of the bookmaker business model.

The Sportingbet Account

130. During the course of investigations it is routine for the Racing Commission to contact other licensees seeking information that may assist with its enquiries. One of the responses received by the Commission was of particular interest. It was revealed to the Commission that Mr Brunker had previously had an account with Sportingbet. This account was closed in 2010 and Sportingbet informed the Commission that the account was closed on the basis that the, 'IP address used for placing bets on this account matched up with dog rorters out of Sydney that were rorting exotic pools'.
131. Sportingbet were unable to provide more information on the account in question save to say that, 'he never got us for much'. When asked whether he held an account with Sportingbet Mr Brunker acknowledged that he had, over a period of some years, operated multiple betting accounts with many of the corporate bookmakers licensed in the Northern Territory. The Racing Commission notes the above for the record only and states that the 'similar fact' conduct of Mr Brunker is of no utility in finding for or against his complaint in this matter.

Further Matters of Relevance Before the Racing Commission

Offer of Settlement

132. For commercial reasons known to bet365 alone an offer of settlement was made to Mr Brunker of \$25,000. The Racing Commission infers nothing from this beyond the fact that bet365, in a similar manner to all commercial business

² Decision of the NT Racing Commission dated 15 February 2013

operators, had a threshold level at which point it was prepared to make a payment to avoid brand and reputational damage. A further contemplated offer was not communicated to Mr Brunner.

133. While not of specific relevance to this decision the Racing Commission takes the opportunity to remind Licensees that while it has absolutely no interest in agreements that are reached between parties to a dispute and will not interfere in those negotiations, where a compliance element attaches an agreed settlement will not extinguish that element. To be clear, where the Commission becomes seized of an issue and a compliance component is identified no commercial agreement arrived at will deny the Commission the right to investigate the compliance issue.

The Queensland Stewards Inquiry

134. The concurrent Queensland Stewards' inquiry and its investigatory focus had no bearing whatsoever on the deliberations of the Racing Commission in this matter.

The Conduct of Mr Brunner

135. The unique role of the Racing Commission, which resembles that of racing stewards, being investigating body, hearing panel, and ultimately adjudicator requires that at various times Commissioners must straddle multiple roles. The process is complicated where information does not flow freely from complainants to the Commission and where information provided to the Commission directly contradicts details and evidence on file.
136. Mr Brunner made a conscious decision to reveal the details of his claim and supporting evidence in an incremental fashion that not only complicated the investigatory process, but also resulted in the Racing Commission being unable to expedite the process of hearing as each 'new release' of information had to be investigated, disgorged to bet365 and distilled for evidentiary weight and admissibility by the Commission. This resulted in the Commission anticipating at different occasions setting an early hearing date, perhaps having no hearing at all, and ultimately deciding to set a long end date that would enable and ensure a hard close of the matter.
137. The Racing Commission raises the above in light of the large amount of, at times vitriolic, communication received from Mr Brunner questioning the delays into having his matter resolved. On one hand Mr Brunner was doing everything he possibly could to complicate the orderly conduct of what was, on the face of it, a very straightforward complaint, while on the other hand he was seeking almost instantaneous resolution to the issue.
138. It must be stated that the Racing Commission was anything but indifferent to the complaint of Mr Brunner even when considered within the context of his conduct as discussed immediately above. It investigated the matter to the fullness of its ability. With this in mind, the multiple apologies given by Mr Brunner to the Commission via counsel prior to the hearing and personally during the course of the hearing proper are acknowledged by the Commission.

Ex turpi causa non oritur actio

139. The principle of *ex turpi* acts as a complete bar on recovery when it is founded and is based on the principle that; illegal or immoral conduct should not be rewarded by a decision-maker. In the current matter the Racing Commission is inclined to consider that the conduct of Mr Brunker, when considered within the context of a 'joint enterprise' or 'joint effort' with his son and Mr Canty, was such that it could be reasonably assumed to be an affront to the fair-minded conscience of the general public. To expand, it is very difficult to come to the position that Mr Brunker presented to the Commission with the requisite 'clean hands' as required under the principle of *ex turpi*. To be clear, he has offended the principle and as such cannot recover on the basis of his impugned conduct.
140. While there is an arguable element as to the quality and quantum of the information that Mr Brunker had in relation to the impugned greyhound race there is no doubt that he provided the vessel by which a party or parties could benefit from an act that was clearly contrary to public policy. Mr Brunker could not fully refute the point raised during the course of the hearing that he enabled the conduct of his son and Mr Canty that sought to exploit the knowledge regarding Octane Moment and Finished Forcer as greyhounds of little or no competitive ability.
141. The finding that the principle of *ex turpi* is upheld thus bars the recovery of any claim being contemplated by the Racing Commission and, if it were required, enables bet365 to rely on certain of their other Terms and Conditions regarding the integrity of the Event. For clarity, the Commission finds that the integrity of the Event was so impugned that bet365 are within their rights to avoid any payment to Mr Brunker under their Terms and Conditions. Further, the Commission considers that Mr Steven Brunker, Mr Matthew Brunker, and Mr Brad Canty are so inextricably linked in the process of placing the wager, such that mere coincidence cannot be entertained as a defence, and as such their collective conduct makes the wager not lawful in the mind of the Commission.

Concluding Remarks

142. There can be no doubt that Mr Brunker was not at all times completely frank or truthful with the Racing Commission and its agents. From the outset he perpetrated the line that he had personally placed the wager on his account only to change this after realizing that his untruth had been revealed. Often his language was vague at best and frequently the hearing panel was required to ask for further explanation to even the most non-contentious of statements.
143. After some months of investigation and dialogue it was only at the hearing that the Racing Commission discovered that he would not be legally represented. It further only emerged at hearing for the first time that Mr Brunker named the individual who placed the wager on his account. Mr Brunker continually referred to himself as a 'mug punter' and intimated that he was a lone and sole operator in this matter. He alluded to the Commission that the involvement of others was incidental, subsidiary, and serendipitous. This is absurd: the portrayal of events that the above facts and sequence of events articulate simply do not support any other conclusion other than that the wager was purposefully placed and that it was so placed with certainty. It had nothing to do with luck.

144. The Racing Commission has no intention of being the enabler of an injustice; consequently, the moral hazard that must be traversed is whether it is appropriate in all of the circumstances to reward Mr Brunker for breaching the rules and for participating in an exercise that compromised the integrity of the Event. The version of events put forward by Mr Brunker simply does not sustain rigorous analysis and the Commission will not accommodate him in such an endeavour.
145. To borrow again the words of Mr Brunker, 'we as a community have the obligation to let people know what's happened here'. The Racing Commission is of the view that the above decision has delivered on this obligation in a far more fulsome sense than Mr Brunker did prior to or at the hearing.

Decision

146. The Racing Commission is of the view that Bookmakers have a duty to be honest and transparent in their dealings with clients. Terms and Conditions should be clear, concise and capable of decipher by all those who wager with their business. Concomitantly, where an individual wagers with a particular licensee there is a simultaneous duty to ensure that a level of familiarity with the Terms and Conditions exists. This goes a long way to ensuring that disputes similar in construct to the current matter before the Commission are avoided
147. It is similarly the view of the Racing Commission that complainants must be equally honest and transparent when they seek relief. The Commission must be able to rely on individuals to reveal all facts relevant to the dispute in a timely and truthful manner. It needs to be able to trust the authenticity of the evidence provided to it and conduct investigations on behalf of complainants confident that its resources are being deployed efficiently and effectively. The visibility required of licensees and the attentiveness required of clients by the Commission seeks, at its core, to smooth the conduct of business between the two. That is all.
148. In the detail of the decision above it is clear that bet365 conducted themselves in a manner consistent with the expectations of the Racing Commission and within their Terms and Conditions as approved by the Commission. The Licensee presented to answer the claim against them in a sophisticated manner and demonstrated to the Racing Commission, while of course it is in their interests to do so, it takes a very serious view of integrity in sport and has a position based on principle and core ethics.
149. As far as Mr Brunker is concerned the Racing Commission takes the view that he provided defective and piecemeal information, shielded third parties to his own detriment, and regularly changed his version of events. As the details of the event in question became apparent he altered his story and ultimately retreated from and recanted many of his earlier statements. The attempts of Mr Brunker to finesse his version of events were not founded in a wish to enlighten the Racing Commission, but more to distance himself from the conduct of others and clumsily attempt to secure financial gain.
150. The Racing Commission feels it inappropriate in this instance to use words such as deceitful, liar and dishonest, as favoured by counsel for bet365, to describe the conduct, evidence and character of Mr Brunker, however, it can live with devious, extremely unreliable, insincere, careless, fake, and prone to

fabricate. Mr Bruner is unable to convince the Racing Commission that it would be fair for him to be treated in a manner that disregards the Terms and Conditions of bet365 that he agreed to upon digitally signing his contract with the bookmaker. He further is unable to distance himself, not that he is obligated to do so for the import of bet365 Terms and Conditions, from the questionable integrity of the race in question.

151. For the reasons detailed above the Racing Commission of the Northern Territory finds that the claim of Mr Bruner must fail. In summary and to be clear, the Commission is of the view that the conduct of bet365 in relation to invoking the use of clauses that limit their losses in certain circumstances was valid and reasonable. Further, there is before the Commission enough evidence to suggest that the Event upon which the wagers were placed was impugned to the point where the integrity of the Event is clearly in question. This further enlivens grounds for bet365 to limit their payout to Mr Bruner under their Terms and Conditions.
152. Finally, the Racing Commission as permitted under the Racing and Betting Act deems the wager placed on the account of Mr Bruner to be not lawful.

David Brooker
Racing Commissioner

12 June 2013

I have read and agree with the reasons and decision of Racing Commissioner David Brooker.

Richard O'Sullivan, Chairman, NT Racing Commission:

Philip Timney, Racing Commissioner

Walter Grimshaw, Racing Commissioner
