

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr B
Licensees:	PlayUp Interactive Pty Ltd; and TopBetta Pty Ltd
Proceedings:	Gambling Dispute for determination by Racing Commission pursuant to section 85(2) of the <i>Racing and Betting Act</i>
Heard Before: (on papers)	Ms Cindy Bravos (Presiding Member) Ms Amy Corcoran Mr James Pratt
Date of Decision:	17 January 2020

Background

1. PlayUp Interactive Pty Ltd (PlayUp Interactive) is licensed as a sports bookmaker by the Northern Territory Racing Commission (the Commission) and previously had approval to operate a number of individual betting platforms under its licence being BestBet, ClassicBet, Mad Bookie, Betting Club, PlayUp and Draftstars. In December 2019, PlayUp Interactive decommissioned a number of the betting platforms with the result that it is now authorised to operate the Draftstars and PlayUp betting platforms under its licence only.
2. PlayUp Interactive's parent company is PlayUp Australia Ltd (PlayUp Australia) which is also the parent company of a further sports bookmaker licence granted by the Commission, being TopBetta Pty Ltd which previously operated the TopBetta betting platform. The TopBetta betting platform was also decommissioned in December 2019, however the TopBetta Pty Ltd sports bookmaker licence remains current.
3. While various betting platforms under both licences have now been decommissioned, this was not the case at the time the complainant lodged his gambling dispute and it remains appropriate that this matter be heard by the Commission.
4. On 17 October 2018, pursuant to section 85(2) of the *Racing and Betting Act* (the Act), the complainant lodged a gambling dispute with the Commission against PlayUp Interactive.
5. The complainant initially submitted to the Commission that he had banned himself from gambling with all PlayUp Australia brands through a process known as self-exclusion. The complainant submitted however, that despite having done this he was able to deposit monies and place large bets with the betting platform ClassicBet for months; and that it was only after he had a number of winning bets that his ClassicBet betting account was deactivated.
6. Information was gathered from both parties by a Licensing NT officer appointed as a betting inspector by the Commission and provided to the Commission which

determined there was sufficient information before it, to consider the gambling dispute on the papers.

7. While the complainant lodged the gambling dispute against the licensed sports bookmaker PlayUp Interactive, the gambling dispute actually involves two licensees and as the issues involved are inextricably linked, the Commission has determined to issue one decision notice only in order to avoid unnecessary duplication.

Consideration of the Issues

The Gambling Dispute

8. In response to a request to the complainant to provide evidence of his self-exclusion from all PlayUp Interactive brands, the complainant advised that he could not locate any documentation however, he believed that he completed the request for self-exclusion on the betting platform's web page. The complaint further submitted that following the self-exclusion, his ClassicBet betting account was locked however, sometime later he was again able to make deposits to the ClassicBet betting account and the account was not blocked again until he had made many multiple large deposits.
9. During further inquiries, the complainant submitted that he self-excluded through the TopBetta betting platform on 13 November 2017 and that as a result he was also excluded from the Mad Bookie and ClassicBet betting platforms.
10. Upon being advised by the Commission's betting inspector that ClassicBet were not affiliated with TopBetta or MadBookie in 2017 and that it was not until 2018 that PlayUp Australia acquired the betting platforms, the complainant then submitted that his gambling dispute was actually focused on the period after PlayUp Australia acquired TopBetta and MadBookie.
11. The complainant then provided evidence of permanently self-excluding from TopBetta on 14 June 2018 and submitted that after this date he made deposits of over \$30,000 into his ClassicBet account. The complainant submitted that he was of the view that, *"PlayUp Interactive had a responsibility to maintain responsible gambling practices by keeping self exclusions during and after they (sic) merger of companies."*

Sports Bookmaker Response to the Gambling Dispute

12. The Commission affords all sports bookmakers licensed in the Northern Territory an opportunity to respond to each gambling dispute made against it. In response to this gambling dispute, PlayUp Australia on behalf of the licensee PlayUp Interactive submitted that:
 - it acquired ClassicBet on 22 May 2018 whilst TopBetta and Mad Bookie were acquired on 1 July 2018;
 - ClassicBet do not hold any records indicating that the complainant sought a self-exclusion from it;
 - on 24 March 2018 (prior to PlayUp Australia's acquisition), the complainant sought a 42 day self-exclusion through the TopBetta betting platform;

- on 14 June 2018 (prior to PlayUp Australia's acquisition), the complainant sought a permanent self-exclusion through the Mad Bookie betting platform;
- it refutes the complainant's claim that the complainant requested self-exclusion across all PlayUp Interactive brands, however after performing its own due diligence, it initiated self-exclusion for the complainant across the PlayUp Australia group once the complainant was found to hold multiple accounts.

ClassicBet Betting Account

11. The complainant opened his betting account with ClassicBet on 21 October 2016 however, no activity occurred on the betting account until 4 July 2018 when the complainant made his first deposit into the account.
12. Having reviewed the complainant's ClassicBet betting account records, the Commission notes that between 4 July 2018 and 15 October 2018, the complainant deposited a total of \$39,528 into his ClassicBet betting account.
13. The Commission also notes that throughout the lifetime of the complainant's ClassicBet betting account, the complainant placed numerous bets which had ultimately successfully resulted in the complainant receiving \$288,999.56 in winning payouts.
14. During that time, the complainant also made 14 withdrawal requests from his ClassicBet betting account, however cancelled each request before it was processed.
15. It is apparent to the Commission from viewing the complainant's ClassicBet betting account records, that the complainant is an experienced gambler who at times has won significant sums of money as a result of his betting activity and who has then subsequently chosen to bet those winnings on further betting outcomes.
16. The complainant's betting activity shortly before lodging his gambling dispute with the Commission is of interest in that on 5 October 2019 (12 days prior to the lodging of his gambling dispute), the complainant had a zero balance in his betting account. At the commencement of his betting activity for that day, the complainant deposited \$1,650 into his betting account and after making numerous bets, the complainant had an account balance of \$24,861.06. The complainant did make a withdrawal request of \$12,000 but cancelled that request before it was processed. The complainant then continued to place more bets and ultimately the complainant's betting account had a balance of just six cents. The complainant then went on to make a total of \$7,499 in deposits into the betting account and after numerous winning and losing bets, the betting account had just 66 cents as the account balance at the end of the day.
17. This pattern was repeated over 5 more betting days, with the complainant depositing a total of \$6,450 over this period and ultimately ending up with a betting account balance of four cents. It is clear to the Commission that the complainant after reaching an account balance of \$24,861.06 on 5 October 2018 and then ultimately losing it all, continued to gamble in the hope of recovering what he had lost. This type of betting activity is often referred to as 'chasing losses' and is often a sign that a person is losing control of their gambling activities. A person at this point will often bet frequently, with more money and take unnecessary risks despite the fact that

the losses keep on adding up and at some point, the person will naturally regret having done so.

Self-Exclusion

18. All Northern Territory licensed sports bookmakers' licence conditions and the Act currently require licensees to comply with the *Northern Territory Code of Practice for Responsible Service of Online Gambling 2019* (the 2019 Code).
19. The 2019 Code came into effect on 26 May 2019, having replaced the *Northern Territory Code of Practice for Responsible Gambling 2016* (the 2016 Code), with both Codes providing guidance to online gambling providers on responsible gambling practices so as to minimise the harm that may be caused by online gambling. Online gambling providers are also encouraged by the Commission to implement additional strategies to further minimise harm.
20. As the betting activity subject of this gambling dispute occurred between 4 July 2018 and 15 October 2018, the 2016 Code was in force at that time. The 2016 Code amongst other things, required a licensed sports bookmaker to provide self-exclusion features on its betting platforms to enable its customers the opportunity to exclude themselves from accessing the licensee's gambling products. The licensee was further required to have an option to exclude from all Northern Territory licensees and have processes in place that ensured that any request for self-exclusion was dealt with immediately. The licensee was further required to have procedures in place that would allow it to process a self-exclusion request lodged directly with Licensing NT.
21. There is no evidence before the Commission that the complainant lodged a self-exclusion request with ClassicBet at anytime between 21 October 2016 through to 15 October 2018.
22. The complainant however, did lodge a self-exclusion request on 14 June 2018 that resulted in the complainant being self-excluded from the TopBetta and Mad Bookie betting platforms.
23. It is important to note that PlayUp Australia did not acquire the TopBetta and the Mad Bookie betting platforms until 1 July 2018. Both of these platforms were approved to operate under the TopBetta sports bookmaker licence at that time and this remained the case until 25 October 2018 when the Commission approved for the Mad Bookie betting platform to operate under the PlayUp Interactive sports bookmaker licence. The TopBetta betting platform continued to operate under the TopBetta sports bookmaker licence at that time.
24. There is no suggestion that the complainant's self-exclusion for the TopBetta or Mad Bookie betting platforms did not remain in place when PlayUp Australia acquired these betting platforms nor at the time that the Mad Bookie betting platform was approved to operate under the PlayUp Interactive licence.
25. The complainant however, asserts that when PlayUp Australia acquired TopBetta and Mad Bookie on 1 July 2018, that PlayUp Australia should have ensured that the complainant's self-exclusion that is in place with TopBetta and Mad Bookie was extended to all betting platforms operating under any of the licences held by PlayUp Australia. Had this occurred, then the complainant's betting account with ClassicBet

would have had a self-exclusion applied to it and he would not have been able to utilise the ClassicBet betting account that he had opened in 2016.

26. The complainant has submitted to the Commission that he was able to deposit monies and place large bets with ClassicBet for months and that it was only after he had a number of winning bets that his ClassicBet betting account was deactivated.
27. In this respect, the Commission notes that the complainant's betting account records do not align with the complainant's submission as detailed in paragraph 26 above. The complainant's ClassicBet betting account was opened in 2016, however there was no activity on the account until the complainant deposited a sum of money on 4 July 2018. The complainant then utilised the betting account on a regular basis until 15 October 2018 at which time he ceased to use the account. There is no indication in the betting account records that the complainant's ClassicBet betting account was deactivated following a number of winning bets as submitted by the complainant. Rather, the complainant stopped utilising the betting account after a series of losing bets and then several days later, lodged his gambling dispute with the Commission.
28. The complainant's ClassicBet betting account was then closed on 31 October 2018 by PlayUp Interactive following a request from the Commission's betting inspector that had resulted from the complainant advising the betting inspector that he had received promotional material from ClassicBet despite believing that he was self-excluded from the betting platform. As noted above at paragraph 21, there is no evidence before the Commission that the complainant lodged a self-exclusion request with ClassicBet at anytime between 21 October 2016 through to 15 October 2018.
29. In responding to this gambling dispute, the sports bookmaker has advised the Commission that following the migration of the Mad Bookie betting platform to the PlayUp Interactive licence, the databases of the betting platforms operating under the licence were cross-referenced in late October 2018, early November 2018 so as to ensure that self-excluded customers from one betting platform licensed under PlayUp were not permitted to bet at another. In this respect, PlayUp Australia has advised the Commission that, "...after performing its own due diligence, initiated self exclusion for [the complainant] across the group once he was found to hold multiple accounts."
30. The Commission holds the view that whilst a number of betting platforms may be approved by the Commission to operate under a sports bookmaker licence as was the case with the ClassicBet, BestBet, Mad Bookie, Betting Club, PlayUp and Draftstars betting platforms all operating under the PlayUp Interactive licence, it is the licensee and not the individual betting platform that is responsible for ensuring compliance with the Act and any Codes issued by the Commission.
31. In this respect, Clause 4.2 of the 2016 Code required that:

Online gambling operators must provide self-exclusion features on their website to enable their clients the opportunity to exclude themselves from accessing the operator's gambling products.
32. As such, it is the view of the Commission that once the Mad Bookie betting platform was approved by the Commission to operate under the PlayUp Interactive licence

on 25 October 2018, any persons who were self-excluded from the Mad Bookie betting platform should also have been excluded from each of the betting platforms operating under the PlayUp Interactive sports bookmaker licence in order to comply with the 2016 Code in ensuring that a self-excluded person is unable to access the gambling operator's (ie the licensee's) products.

33. Of relevance to this gambling dispute however, is that the complainant's betting activities on the ClassicBet betting platform occurred between 4 July 2018 and 15 October 2018 and were therefore during the period where the Mad Bookie betting platform was operating under the TopBetta sports bookmaker licence and not the PlayUp Interactive licence. The complainant was self-excluded from both the Mad Bookie and TopBetta betting platforms at this time as per the requirements of the 2016 Code as they related to the TopBetta licence. Whilst the parent company PlayUp Australia may have acquired the betting platforms of ClassicBet, TopBetta and Mad Bookie prior to this time, the Commission did not and has not issued a sports bookmaker licence to PlayUp Australia. It remains the view of the Commission that it is the individual licensee who is responsible for compliance with the Act, licence conditions and any Codes issued by the Commission and as such, it is the licensee which falls under the Commission's regulatory jurisdiction and not the parent company.
34. Given that the ClassicBet betting platform was operating under the PlayUp Interactive licence at the time the complainant's betting activities were undertaken with it and that Mad Bookie was operating under the TopBetta licence, the Commission is of the view that the complainant's self-exclusion that was in place under the TopBetta licence was not required by the Act or the Code to be put in place against each of the betting platforms operating under other licences held by the parent company of PlayUp Australia.
35. The Commission is not of the view that each sports bookmaker customer should be intricately aware of the sometimes complex nature of the corporate structures of betting companies. However, the Commission is of the view that given that sports bookmakers licensed in the Northern Territory must not only provide a self-exclusion option for the gambling products offered under its licence, but in order to comply with both the 2016 Code and the 2019 Code must also provide the option for the customer to exclude themselves from all Northern Territory licensees, that a sports bookmaker customer who wishes to self-exclude from all Northern Territory licensees should avail themselves of this option. The Commission also notes that a person may also exclude themselves from all Northern Territory licensees by submitting a request to a Commission betting inspector through the Licensing NT website.
36. As identified in previous Commission decisions, the Courts have set a very high threshold of responsibility for the gambler as to their own actions. In this respect, the Courts have ruled that the duty to cease gambling remains with the individual gambler and not the gambling operator. It is apparent simply through the lodgement of this gambling dispute that the complainant did not avail himself of any of the options that were available to him to self-exclude himself from all Northern Territory licensees.
37. The Commission also notes as it has in previous decisions that it is well established that an inherent risk that cannot be avoided in the activity of gambling, is a loss of money. It is not the role of the Commission when dealing with gambling disputes to

simply rectify self-inflicted economic losses from gambling following the lodging of a gambling dispute with the Commission but rather, to make a finding as to whether the sports bookmaker acted in compliance with the Act, its licence conditions and the relevant Codes in place at the time.

Promotional Material

38. On 7 February 2019, the complainant sent email correspondence to the Commission's betting inspector attaching promotional material that had been sent to him by TopBetta via text message on 4 February 2019. The text message advised that Super Bowl LIII was to start soon and encouraged the complainant to place a bet on who would win the Super Bowl.
39. As detailed earlier in this decision notice, the complainant self-excluded from the TopBetta Pty Ltd licence on 14 June 2018 with this self-exclusion applying to both the TopBetta and Mad Bookie betting platforms.
40. Clause 4.6 of the 2016 Code requires that licensees are to ensure that they have in place, suitable procedures to ensure that correspondence or promotional material is not sent to persons who are excluded from their services. Should a licensee do so, the licensee will be in breach of its licence conditions as they contain a requirement to comply with any Codes issued by the Commission.
41. The licensee, TopBetta Pty Ltd was afforded an opportunity to respond to this aspect of the complainant's concerns and admitted that the complainant had received promotional material from TopBetta on 4 February 2019.
42. PlayUp Australia advised that its policies and procedures had been recently updated, however, a staff member who had been trained in the new procedure failed to follow it. PlayUp Australia advised that the staff member involved had subsequently been terminated (although it is unclear to the Commission if this was as a result of the staff member not following the procedure or for some other reason), and that further technological advancements were being undertaken to ensure that the sending of promotional material to self-excluded customers will not be repeated.

Decision

Licensee - PlayUp Interactive Pty Ltd

43. On the weight of evidence provided, the Commission is satisfied that PlayUp Interactive Pty Ltd is not in breach of the *Racing and Betting Act*, its licence conditions or the *Northern Territory Code of Practice for Responsible Gambling 2016*.
44. There is no evidence before the Commission that the complainant self-excluded from the ClassicBet betting platform at any time. Whilst the complainant had self-excluded on 14 June 2018 from the TopBetta Pty Ltd licence which at the time of the self-exclusion operated both the TopBetta and Mad Bookie betting platforms, it was not until 25 October 2018 that the Commission approved for the Mad Bookie betting platform to cease operating under the TopBetta Pty Ltd licence and to commence operating under the PlayUp Interactive Pty Ltd licence. It is from this time that the Commission would expect that any persons self-excluded from the

Mad Bookie betting platform would also be excluded from any other betting platforms operating under the PlayUp Interactive Pty Ltd licence.

45. The complainant's betting activity using the ClassicBet betting platform occurred between 4 July 2018 and 15 October 2018 which is well before the approval for Mad Bookie to commence operating under the PlayUp Interactive Pty Ltd and as such, PlayUp Interactive Pty Ltd were under no obligation to place a self-exclusion on the complainant's ClassicBet betting account.
46. The Commission is of the view that the complainant has suffered from a case of gambler's remorse following a period of betting activity during which he unsuccessfully chased his losses. It is the view of the Commission that the duty to cease gambling rested with the complainant and not PlayUp Interactive Pty Ltd, despite the fact that the complainant ultimately suffered economic loss.

Licensee - TopBetta Pty Ltd

47. On the weight of evidence provided, the Commission is satisfied that pursuant to section 80(1)(d) of the *Racing and Betting Act*, TopBetta Pty Ltd has failed to comply with a condition of its licence through the sending of promotional material to a person who had self-excluded from the licensee, which was in breach of the *Northern Territory Code of Practice for Responsible Gambling 2016*.
48. The Commission notes that TopBetta Pty Ltd admitted to its failure to comply with its licence condition and has undertaken to implement further technological advancements to ensure that that a similar breach will not occur in the future.
49. The Commission also notes that PlayUp Australia Pty Ltd has requested that the Commission afford the licensee, TopBetta Pty Ltd leniency in this matter as PlayUp Interactive Pty Ltd had only recently (at the time of the submission) pleaded guilty to proceedings in New South Wales initiated by Liquor and Gaming NSW which involved a matter where email correspondence had been sent to a person who had self-excluded from the ClassicBet betting platform
50. In this respect, the Commission notes that the proceedings mentioned above occurred on 30 April 2019 and resulted in PlayUp Interactive Pty Ltd being fined \$7,500 for committing an offence under section 33H(1) of the *Betting and Racing Act 1998 (NSW)*.
51. Whilst the Commission notes that PlayUp Australia is the parent company of both PlayUp Interactive Pty Ltd which operates the ClassicBet betting platform and TopBetta Pty Ltd which operates the TopBetta betting platform, the Commission reiterates that it did not and has not issued a sports bookmaker licence to PlayUp Australia. The Commission remains of the view that it is the individual licensee who is responsible for compliance with the Act, its licence conditions and any Codes issued by the Commission and as such, it is the licensee which falls under the Commission's regulatory jurisdiction and not the parent company.
52. Whilst TopBetta Pty Ltd and PlayUp Interactive Pty Ltd are linked through their parent company, it is that actions of the licensee TopBetta Pty Ltd in failing to comply with its licence condition that the Commission must determine what, if any disciplinary action is appropriate in the circumstances and as such, the Commission is not of the view that any disciplinary action imposed should be mitigated by the actions of another licensee.

53. Disciplinary action available to be taken by the Commission in these circumstances range from the issuing of a reprimand, imposing a fine not exceeding 170 penalty units or suspending or cancelling the sports bookmakers licence.
54. The Northern Territory community expects gambling services to be provided in a responsible manner and in harmony with community expectations. With that in mind, the Commission considers the sending of promotional material to a person who has self-excluded from a licensee as a serious breach of the *Northern Territory Code of Practice for Responsible Gambling 2016* which was approved by the Commission in part, so as to minimise the harm that may be caused by online gambling.
55. The Commission also notes that on 14 May 2018, the Commission imposed a fine on TopBetta Pty Ltd of 51 penalty units for a breach of its licence conditions which involved a breach of the *Northern Territory Code of Practice for Responsible Gambling 2016* in relation to its self-exclusion provisions.
56. Given the serious nature of this matter and that this is the second breach of the 2016 Code by TopBetta Pty Ltd, the Commission has determined to impose a fine equivalent to 70% of the maximum penalty of 170 penalty units, being a total of \$18,445.

Review of Decision

57. Section 85(6) of the Act provides that a determination by the Commission of a dispute referred to it pursuant to section 85 of the Act shall be final and conclusive as to the matter in dispute.



Cindy Bravos
Presiding Member
Northern Territory Racing Commission

17 January 2020