

Northern Territory Racing Commission

Reason for Decision

Applicant:	Mr J
Respondent:	Betstar
Proceedings:	Dispute Relating to Betting – Section 85 of the <i>Racing and Betting Act</i>
Heard Before:	Mr Philip Timney (Presiding Member) Mr Walter Grimshaw Mr David Brooker

Introduction

1. A complaint was lodged by Mr J on 25 March 2011 with the Northern Territory Racing Commission against Bookmaker Betstar. This complaint has been determined and Mr J has been notified of the decision of the Manager of Racing. For the purposes of what follows, and for the sake of context, there is a need to state the particulars of the initial complaint lodged by Mr J within the body of this decision.
2. It is only via this initial complaint that the apparent breach of Licence Condition 20 by Betstar was discovered. While the interpretation of Betstar's Rules by Mr J has been found to be in error, this has no import on the deliberations of the Racing Commission into the apparent breach of Licence Condition 20 by Betstar. Further, the findings of the Commission in relation to the apparent breach of Licence Condition 20 by Betstar should in no way be construed as enlivening a subsequent claim by Mr J, or be seen as having any capacity to substantiate a request to the Manager of Racing that he revisit the initial decision.

Background facts and relevant considerations

3. In the first instance Mr J sought to have various wagers placed by him with Betstar cancelled. He sought this course of action after a period of gambling where he sustained substantial losses. A brief chronology, with accompanying narrative, of the material facts in relation to the account operation of Mr J follows:
 - **November 2010** (exact date not provided – for the purposes of this decision 15 November 2010 is the assumed date of account opening)
Account Opened: Basic identification obtained; customer permitted to use account to wager; 90 Day Rule period of confirmation of identity commences; customer not permitted to make withdrawals until full confirmation of identity received by Betstar.
 - **15 November 2010 – 13 February 2011**
Account Operational: Wagers placed on account; no attempt by Betstar to obtain further information or verify identity (it is the view of the Racing Commission that during this period the Bookmaker should take steps to ensure that the 90 Day Rule is not ultimately breached).

- **14 February 2011**
Account Operational but in Breach: 90 Day Rule period for formal confirmation of identity expires; account must be frozen with no further wagering permitted until compliance procedures have been met.
 - **15 February 2011**
Account Operational in Ongoing Breach: All wagers placed from this time breach account identification requirements and offend the 90 Day Rule.
 - **23 March 2011**
Account Closed: No further wagers can be placed; before funds can be distributed to the customer formal identification procedures must be complied with.
4. Upon the opening of the account by Mr J certain Federal and Territory obligations accrued to Betstar in relation to account opening and customer identity confirmation under the *Anti Money Laundering and Counter Terrorism Financing Act*. Under Federal legislation certain service providers (including Bookmakers) have special dispensation to undertake the customer identification procedures required under the Act. Part 10.4 of the Rules pertaining to accounts for online gambling services details the special circumstances that justify carrying out the applicable identification procedures after commencement of the provision of a designated service.
 5. The Act states at Section 34, that after the designated dispensation period (that is 90 Days), the reporting entity must not continue to provide, and must not commence to provide, any designated services to the customer until the reporting entity carries out the applicable customer identification procedure.
 6. Betstar is a reporting entity as defined under the Act. Further, Betstar is bound under the *Racing and Betting Act*, the Rules of the Northern Territory Racing Commission and by its Licence conditions.
 7. All bookmakers operating in the Northern Territory are bound by the terms of their Licence. The specific provision alleged to have been offended in this instance is Licence Condition 20. Licence Condition 20 directs that:
'The Sports Bookmaker shall not allow any customer to withdraw monies from their nominated account until satisfactory proof of age and identity is provided. In circumstances where the betting client has failed to provide sufficient proof of age or identity within 90 days of placing a bet or funding an account, the Sports Bookmaker shall immediately freeze the account until sufficient proof of age and identity is obtained.'
 8. During the course of making investigations into the complaint lodged by Mr J the Racing Commission determined that the apparent breach of the 90 Day Rule, as alleged, was found worthy of further investigation.

Racing commission expectations

9. The Racing Commission considers that it is reasonable to expect that:
 - All Bookmakers regulated and operational within the Northern Territory are aware of and comply with all applicable Territory and Commonwealth legislation. Of particular relevance within the ambit of this decision are the 'Know Your Customer' requirements of the *Anti Money Laundering and Counter Terrorism Financing Act*. Further, there are 'On-Going Customer Due-

Diligence' obligations that must be fulfilled under the Act. Also, Bookmakers specifically are required to comply with Licence conditions that call for proof of client identity be obtained within 90 days of an account being opened.

- Where a Bookmaker has not properly confirmed the identity of a customer as required, the corresponding account will be immediately frozen with no further transactions permitted until full compliance under the Act and Licence Condition have been achieved.
- Bookmakers should have in place appropriate Information Technology Systems and Procedures to ensure that customers are fully aware prior to the expiration of the 90 Day Rule period that an account is liable to suspension if full confirmation of identity has not been received.
- Bookmakers need to be aware that the Racing Commission, as a Statutory Regulatory Body, has its own obligations to report apparent breaches or suspicious activity under the Act to Austrac in its pursuit of prosecuting money laundering and counter terrorism financing activities. To be clear, where the Racing Commission evidences an apparent breach or suspicious activity under the Act, such observations will be reported to the appropriate body including Austrac.

Further and subsidiary considerations

10. When alerted to the possibility of a potential breach of the 90 Day Rule the Racing Commission directed the Manager of Racing to issue Betstar with a Show Cause Notice why the Racing Commission should not take action against Betstar for the apparent breach of Licence Condition 20. Further, the Manager of Racing was asked to afford Betstar with the opportunity of providing further information and making a submission on penalty should Betstar choose to make an admission in relation to the breach.
11. The correspondence from Betstar in response to the Show Cause Notice can be summarized in two parts as follows:
 - The Breach of Licence Condition 20 (The 90 Day Rule): Betstar acknowledged that their Information Technology System had, 'not been automatically suspending accounts after 90 days.' Betstar further admitted that the company was, 'aware of its obligations to verify the identity of its clients within 90 days of account opening or prior to them making a withdrawal.'
 - Submission on Penalty: Betstar suggested that, 'it would be appropriate to make a cash donation to either Gambler's Help (a responsible gambling organization) or Lifeline Australia (a crisis support organisation) of \$2500.'
12. The response to the Show Cause Notice by Betstar raises two further issues of relevance that the Racing Commission has turned its mind to when considering the factual matrix of this matter. They can be summarised as follows:
 - It is of concern to the Racing Commission that Betstar had identified that, 'its wagering system had not been automatically suspending accounts after 90 days', prior to the complaint lodged by Mr J which subsequently brought the matter before the Racing Commission.
 - The Racing Commission is buoyed by the fact that Betstar anticipate that full 90 Day Rule compliance functionality was to have been completed by 30 June.

- It is clear from the response to the Show Cause Notice that Betstar are committed to ensuring that they are fully compliant with Licence Condition 20 and that they take seriously their obligations under the suite of legislation that regulate their operations. The Racing Commission does, however, note that it is apparent that Betstar continued to operate its business for some time while in the position of being fully aware that some or many of its customers may have been operating accounts in breach of the 90 Day Rule. This amounts to a Licenced Bookmaker knowingly breaching Licence conditions for an extended period. The Racing Commission has no evidence that Betstar took any steps to inform the Manager of Licensing of this situation.

Decision

13. On the facts before the Racing Commission there is no dispute that during the period 15 February 2011 and 23 March 2011 Betstar permitted an account that should have been 'frozen' to continue to operate. Betstar admitted this breach in response to a Show Cause Notice issued under the direction of the Racing Commission. That is, Betstar admitted that it had failed to identify Mr J as required under the Act and Licence Condition 20.
14. It can further be established on the facts and by admissions that Betstar knowingly violated Licence Condition 20 for a considerable period of time, and that at no point was the Manager of Racing or the Racing Commission informed of this situation. It can be assumed that had the breach of Licence Condition 20 not been brought to the attention of the Racing Commission that it is unlikely that Betstar would have volunteered the information.
15. At Section 80(1) of the *Racing and Betting Act* the Racing Commission may discipline a Bookmaker by reprimanding him, imposing a fine in the case of a Sports Bookmaker not exceeding \$20,000, or suspending or cancelling a Licence or permit. Section 83(1) of *the Racing and Betting Act* establishes that the Racing Commission may make rules for the control and regulation of betting by Bookmakers.
16. The Racing Commission thus finds that Betstar, having failed to properly identify customer J under the requirements of the Act and Licence Condition 20 has breached Section 83(2) of the *Racing and Betting Act*. The Racing Commission further finds that the failure to more expeditiously deal with the system deficiencies once discovered (prior to the reporting of the breach by Mr J) compounds the issues before it and, as such, places this breach at the more serious end of the spectrum.
17. The Racing Commission also takes the view that breaches of Federal Legislation combined with breaches of Territory legislation, through noncompliance of its Licence conditions, are at the serious end of the spectrum.
18. In determining penalty the Racing Commission is mindful of the frank admissions made by Betstar and of the offer of cash donations to charitable organizations (It is not the role of the Racing Commission to direct funds be paid to third parties). Further, it is acknowledged that this is the first such breach of the rule by Betstar.
19. Penalty: \$5,000 payable to the Receiver of Territory Monies, within twenty eight days of this decision.

Philip Timney
Presiding Member

15 September 2011