

COMMERCIAL SPEECH

What is "commercial speech?" (according to the USSC)

- "expression related solely to the economic interests of the speaker and its audience" – Central Hudson 447 U.S. 557

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COMMERCIAL SPEECH

What is the test for determining whether government prohibition or regulation is unwarranted?

- Part 1
 - Does the speech concern lawful conduct or is it misleading?
- Part 2
 - Does the restriction serve a legitimate government interest?
- Part 3
 - Does the restriction directly advance the government's stated interest?
- Part 4
 - Is the regulation or restriction no broader than necessary to serve the government's stated interest?

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POSADAS

Court willing to accept arguments of the state without requirement for evidence.

The power to prohibit gambling includes the lesser included power to allow gambling but limit speech about the activity.

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EDGE

Reaffirms the notion that deference is given to the state regarding a legitimate government interest and whether that interest is advanced by the speech limitation.

Whether the state's policy is actually advanced by the limitation on speech is viewed on the whole and not as it applies to a particular litigant.

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COMMERCIAL SPEECH

Postal lottery prohibitions were expanded by the 1934 Communications Act
18 U.S.C. §1304 Broadcasting lottery information

Whoever broadcasts by means of any radio or television station for which a license is required by any law of the United States, or whoever, operating any such station, knowingly permits the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be fined under this title or imprisoned not more than one year, or both.

Each day's broadcasting shall constitute a separate offense.

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COMMERCIAL SPEECH

FCC Regulations

47 CFR §73.1211 Broadcast of lottery information.

(a) No licensee of an AM, FM, television, or Class A television broadcast station, except as in paragraph (c) of this section, shall broadcast any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise or scheme, whether said list contains any part or all of such prizes...

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COMMERCIAL SPEECH

FCC Interpretations – The Exceptions

- **State run lotteries**
 - Broadcast within the state
 - Broadcast in an adjacent stat that also had a legal lottery
 - Any other state with a legal lottery
- **Non-profit games**
- **Horse Racing**
- **Poker Tournaments (based on skill)**
- **Native American Casinos as part of IGRA**

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COMMERCIAL SPEECH

POSADAS de PUERTO RICO

- **BASIC FACTS**
 - Casino in Puerto Rico challenges statute and regulations restricting advertisements to residents of Puerto Rico by filing a declaratory relief action
 - The enabling legislation also prohibited advertising gaming facilities to residents of Puerto Rico
 - Appellant was fined on several occasions and faced non-renewal of its gaming franchise
 - Ads reviewed by the Tourism Development Company

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COMMERCIAL SPEECH

POSADAS de PUERTO RICO

- **BASIC FACTS – How did the Tourism Development Company Interpret the Statute**
 - "This prohibition includes the use of the word 'casino' in matchbooks, lighters, envelopes, inter-office and/or external correspondence, invoices, napkins, brochures, menus, elevators, glasses, plates, lobbies, banners, flyers, paper holders, pencils, telephone books, directories, bulletin boards or in any hotel dependency or object which may be accessible to the public in Puerto Rico."

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COMMERCIAL SPEECH

POSADAS de PUERTO RICO

- Does the court analyze the matter using the Central Hudson Test?
 - Because this case involves the restriction of pure commercial speech which does "no more than propose a commercial transaction," our First Amendment analysis is guided by the general principles identified in *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York*

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COMMERCIAL SPEECH

POSADAS de PUERTO RICO

- Does the speech concern a legal activity, is it misleading?
 - The particular kind of commercial speech at issue here, namely, advertising of casino gambling aimed at the residents of Puerto Rico, concerns a lawful activity and is not] misleading or fraudulent, at least in the abstract. We must therefore proceed to the three remaining steps of the Central Hudson analysis in order to determine whether Puerto Rico's advertising restrictions run afoul of the First Amendment.

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COMMERCIAL SPEECH

POSADAS de PUERTO RICO

- Does the restriction serve a legitimate government interest?
 - The Tourism Company's brief before this Court explains the legislature's belief that "[e]xcessive casino gambling among local residents . . . would produce serious harmful effects on the health, safety and welfare of the Puerto Rican citizens, such as the disruption of moral and cultural patterns, the increase in local crime, the fostering of prostitution, the development of corruption, and the infiltration of organized crime." We have no difficulty in concluding that the Puerto Rico Legislature's interest in the health, safety, and welfare of its citizens constitutes a "substantial" governmental interest.

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COMMERCIAL SPEECH

POSADAS de PUERTO RICO

- Does the restriction serve a legitimate government interest? (what is the standard of proof for determining whether the interest is legitimate?)
- We have no difficulty in concluding that the Puerto Rico Legislature's interest in the health, safety, and welfare of its citizens constitutes a "substantial" governmental interest.

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COMMERCIAL SPEECH

POSADAS de PUERTO RICO

- Does the restriction directly advance the government's stated interest?
 - The last two steps of the Central Hudson analysis basically involve a consideration of the "fit" between the legislature's ends and the means chosen to accomplish those ends. Step three asks the question whether the challenged restrictions on commercial speech "directly advance" the government's asserted interest. In the instant case, the answer to this question is clearly "yes." The Puerto Rico Legislature obviously believed, when it enacted the advertising restrictions at issue here, that advertising of casino gambling aimed at the residents of Puerto Rico would serve to increase the demand for the product advertised. We think the legislature's belief is a reasonable one, and the fact that appellant has chosen to litigate this case all the way to this Court indicates that appellant shares the legislature's view.

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COMMERCIAL SPEECH

POSADAS de PUERTO RICO

- How does the regulation/restriction directly advance the government's asserted interest?
 - The court essentially defers to the legislature
 - The court ignores unregulated advertising for other forms of gambling
 - In other words, if the legislature says it advances the interest, then the court is willing to accept that since it is not manifestly unreasonable.

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COMMERCIAL SPEECH

POSADAS de PUERTO RICO

- Is the regulation or restriction no broader than necessary to serve the government's stated interest?
- We also think it clear beyond peradventure that the challenged statute and regulations satisfy the fourth and last step of the Central Hudson analysis, namely, whether the restrictions on commercial speech are no more extensive than necessary to serve the government's interest. The narrowing constructions of the advertising restrictions announced by the Superior Court ensure that the restrictions will not affect advertising of casino gambling aimed at tourists, but will apply only to such advertising when aimed at the residents of Puerto Rico.

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COMMERCIAL SPEECH

POSADAS de PUERTO RICO

- THE BRIGHT LINE RULE?
 - "In our view, the greater power to completely ban casino gambling necessarily includes the lesser power to ban advertising of casino gambling"
 - "it is precisely because the government could have enacted a wholesale prohibition of the underlying conduct that it is permissible for the government to take the less intrusive step of allowing the conduct, but reducing the demand through restrictions on advertising"

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COMMERCIAL SPEECH

POSADAS de PUERTO RICO

- Thoughts.

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COMMERCIAL SPEECH

Edge Broadcasting

- The Basic Facts
 - A North Carolina radio station with 92.2% of its audience in Virginia seeks declaratory relief that 18 USC § 1304,1307 and corresponding regulations violate the First Amendment.
 - The radio station wants to broadcast Virginia Lottery advertisements.
 - North Carolina has no lottery.
 - In contrast, Virginia stations could broadcast into North Carolina with lottery ads.
 - In that part of North Carolina, 38% of all radio listening was tuned to Virginia stations and 50-75% of television viewing tuned to Virginia stations.

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COMMERCIAL SPEECH

Edge Broadcasting

- How did the district court decide the matter?
 - Prong 1 – Illegal or misleading?
 - No
 - Prong 2 – Was there a legitimate government interest?
 - Yes
 - Prong 3 – Did the restriction advance the interest?
 - Not as applied to Edge
 - Prong 4 – Was it no more extensive than necessary?
 - Yes

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COMMERCIAL SPEECH

Edge Broadcasting

- Does the Court Apply The Central Hudson Test?
 - At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

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COMMERCIAL SPEECH

Edge Broadcasting

- Does the speech concern a lawful activity, or is it misleading?
 - Like the courts below, we assume that Edge, if allowed to, would air nonmisleading advertisements about the Virginia lottery, a legal activity.

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COMMERCIAL SPEECH

Edge Broadcasting

- Does the restriction serve a legitimate government interest?
 - As to the second Central Hudson factor, we are quite sure that the Government has a substantial interest in supporting the policy of nonlottery States, as well as not interfering with the policy of States that permit lotteries.

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COMMERCIAL SPEECH

Edge Broadcasting

- Is the regulation or restriction no broader than necessary to serve the government's stated interest?
 - we also agree that the statutes are no broader than necessary to advance the Government's interest and hence the fourth part of the Central Hudson test is satisfied

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COMMERCIAL SPEECH

Edge Broadcasting

- Does the restriction directly advance the government's stated interest?
 - The third Central Hudson factor asks whether the "regulation directly advances the governmental interest asserted." It is readily apparent that this question cannot be answered by limiting the inquiry to whether the governmental interest is directly advanced as applied to a single person or entity.

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COMMERCIAL SPEECH

Edge Broadcasting

- Does the restriction directly advance the government's stated interest?
 - The courts below thus asked the wrong question in ruling on the third Central Hudson factor. This is not to say that the validity of the statutes' application to Edge is an irrelevant inquiry, but that issue properly should be dealt with under the fourth factor of the Central Hudson test. As we have said, "[t]he last two steps of the Central Hudson analysis basically involve a consideration of the 'fit' between the legislature's ends and the means chosen to accomplish those ends." *Posadas, supra*.

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COMMERCIAL SPEECH

Edge Broadcasting

- What does the court think about the advancement of the interest and narrow focus "as applied"?
 - "This having been established, the State was entitled to protect its interest by applying a prophylactic rule to those circumstances generally; we declined to require the State to go further and to prove that the state interests supporting the rule actually were advanced by applying the rule in *Ohrlik's* particular case.

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COMMERCIAL SPEECH

- Edge Broadcasting
- Thoughts?

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COMMERCIAL SPEECH

- 44 Liquor Mart
- The Basic Facts:
 - Rhode Island prohibits advertisements of liquor prices
 - 2 Appellants – Peoples and 44 Liquormart
 - People's advertises in Mass, but not in Rhode Island
 - 44 Liquormart places an ad with no pricing, but the word WOW next to photos of liquor bottles
 - 44 Liquormart fined \$400 for violating RI prohibition on ads with liquor prices
 - 44 Liquormart and Peoples file a declaratory relief action

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COMMERCIAL SPEECH

- 44 Liquor Mart
- The Court's Opinion
 - JUSTICE STEVENS announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, VII, and VIII, an opinion with respect to Parts III and V, in which JUSTICE KENNEDY, JUSTICE SOUTER, and JUSTICE GINSBURG join, an opinion with respect to Part VI, in which JUSTICE KENNEDY, JUSTICE THOMAS, and JUSTICE GINSBURG join, and an opinion with respect to Part IV, in which JUSTICE KENNEDY and JUSTICE GINSBURG join.

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COMMERCIAL SPEECH

- 44 Liquor Mart
 - What are the state's arguments?

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COMMERCIAL SPEECH

- 44 Liquor Mart
 - What are the state's arguments?
 - Reliance on Posadas and Edge...

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COMMERCIAL SPEECH

- 44 Liquor Mart
 - How does the court address reliance on Posadas?
 - The reasoning in Posadas does support the State's argument, but, on reflection, we are now persuaded that Posadas erroneously performed the First Amendment analysis. The casino advertising ban was designed to keep truthful, nonmisleading speech from members of the public for fear that they would be more likely to gamble if they received it. As a result, the advertising ban served to shield the State's antigambling policy from the public scrutiny that more direct, nonspeech regulation would draw. See Posadas, 478 U. S., at 351 (Brennan, J., dissenting).

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COMMERCIAL SPEECH

- 44 Liquor Mart
 - How does the court address reliance on Posadas?
 - Given our longstanding hostility to commercial speech regulation of this type, Posadas clearly erred in concluding that it was "up to the legislature" to choose suppression over a less speech-restrictive policy.

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COMMERCIAL SPEECH

- 44 Liquor Mart
 - How does the court address reliance on Posadas?
 - We also cannot accept the State's second contention, which is premised entirely on the "greater-includes-the-lesser" reasoning endorsed toward the end of the majority's opinion in Posadas.
 - Further consideration persuades us that the "greater-includes-the-lesser" argument should be rejected for the additional and more important reason that it is inconsistent with both logic and well-settled doctrine.

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COMMERCIAL SPEECH

- 44 Liquor Mart
 - How does the court address reliance on Edge?
 - In Edge, we upheld a federal statute that permitted only those broadcasters located in States that had legalized lotteries to air lottery advertising. The statute was designed to regulate advertising about an activity that had been deemed illegal in the jurisdiction in which the broadcaster was located.

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COMMERCIAL SPEECH

44 Liquormart

- 3 Justices held that truthful non-misleading speech is entitled to greater protection
- 3 Justices suggested that no deference be given to the government's asserted interest and that strong evidentiary support must be present for the ban to be constitutional

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COMMERCIAL SPEECH

Greater New Orleans

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COMMERCIAL SPEECH

Greater New Orleans

The Facts - The Timeline

- On February 24, 1984 the Greater New Orleans Broadcasting Association, a trade association of New Orleans-based radio and television stations, challenged the constitutionality of a federal law banning radio and television advertisements of casino gaming.
- On November 20, 1985, the 5th U.S. Circuit Court of Appeals affirmed the federal district court decision, ruling that the federal ban on broadcast advertisements of casino gaming does not violate the First Amendment.
- On April 22, 1986 Greater New Orleans filed an appeal to the U.S. Supreme Court.
- On October 7, 1996 the U.S. Supreme Court vacated the 5th Circuit's decision. It ordered the 5th Circuit to apply the principles articulated by the high court in 44 Liquormart v. Rhode Island.
- On July 30, 1998 the 5th U.S. Circuit Court of Appeals ruled again that the federal ban on casino gaming advertisements does not violate the First Amendment.
- On September 2, 1998 Greater New Orleans Broadcasting Association, Inc. filed a petition for writ of certiorari to the U.S. Supreme Court, asking the high court to review the 5th Circuit's decision.
- On January 15, 1999, the U.S. Supreme Court agreed to hear the case.
- On April 27, 1999, the U.S. Supreme Court heard oral arguments in the case.

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COMMERCIAL SPEECH

Greater New Orleans

- The Facts
 - Plaintiff is an association of broadcasters in Louisiana that operate under FCC licenses
 - Exemptions exist for advertising for many types of gambling
 - Indian Gaming
 - State Lotteries
 - Horse Racing...etc.
 - Plaintiff wants to take ads for Louisiana and Mississippi private casinos
 - Some signals may travel to Texas and Arkansas that have no legal private casino gaming

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COMMERCIAL SPEECH

Greater New Orleans

- The Facts
 - "Petitioners brought this action against the United States and the FCC in the District Court for the Eastern District of Louisiana, praying for a declaration that § 1304 and the FCC's regulation violate the First Amendment as applied to them, and for an injunction preventing enforcement of the statute and the rule against them."

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COMMERCIAL SPEECH

Greater New Orleans

- Does the Court use Central Hudson?
 - "In this case, there is no need to break new ground. Central Hudson, as applied in our more recent commercial speech cases, provides an adequate basis for decision."

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COMMERCIAL SPEECH

Greater New Orleans

- Part 1 – Legal Subject Matter
 - "Their content is not misleading and concerns lawful activities"

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COMMERCIAL SPEECH

Greater New Orleans

- Part 2 – Whether the asserted governmental interest served by the restriction is substantial
 - (1) reducing the social costs associated with "gambling" or "casino gambling," and (2) assisting States that "restrict gambling" or "prohibit casino gambling" within their own borders.

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COMMERCIAL SPEECH

Greater New Orleans

- Part 2 – Whether the asserted governmental interest served by the restriction is substantial
 - "We can accept the characterization of these two interests as "substantial," but that conclusion is by no means self-evident."
 - "the judgment of both the Congress and many state legislatures, the social costs that support the suppression of gambling are offset, and sometimes outweighed, by countervailing policy considerations, primarily in the form of economic benefits"
 - "we cannot ignore Congress' unwillingness to adopt a single national policy that consistently endorses either interest asserted by the Solicitor General."

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COMMERCIAL SPEECH

Greater New Orleans

- Part 3 – whether the speech restriction directly and materially advances the asserted governmental interest
 - "This burden is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree."

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COMMERCIAL SPEECH

Greater New Orleans

- Part 4 – Whether the speech restriction is not more extensive than necessary to serve the interests that support
 - "The Government is not required to employ the least restrictive means conceivable, but it must demonstrate narrow tailoring of the challenged regulation to the asserted interest—"a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served."

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COMMERCIAL SPEECH

Greater New Orleans

- So what happens....

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COMMERCIAL SPEECH

Greater New Orleans

- As applied to petitioners' case, § 1304 cannot satisfy these standards.
- State Interest # 1 - reducing the social costs associated with "gambling" or "casino gambling,"
- "any measure of the effectiveness of the Government's attempt to minimize the social costs of gambling cannot ignore Congress' simultaneous encouragement of tribal casino gambling"
- "The operation of § 1304 and its attendant regulatory regime is so pierced by exemptions and inconsistencies that the Government cannot hope to exonerate it."

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COMMERCIAL SPEECH

Greater New Orleans

- "Accordingly, respondents cannot overcome the presumption that the speaker and the audience, not the Government, should be left to assess the value of accurate and non-misleading information about lawful conduct."

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SUMMARY

DOJ Response

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SUMMARY

[DOJ Response](#)

ENFORCEABILITY OF 18 U.S.C. § 1302

Application of 18 U.S.C. § 1302 to prohibit the mailing of truthful advertising concerning lawful gambling operations (except as to state-operated lotteries in some circumstances) would violate the First Amendment. Accordingly, the Department of Justice will refrain from enforcing the statute with respect to such mailings.

LETTER TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES September 25, 2000

This is to inform you of the Department of Justice's determination that, in light of governing Supreme Court precedent, the Department cannot constitutionally continue to apply 18 U.S.C. § 1302 to prohibit the mailing of truthful information or advertisements concerning certain lawful gambling operations.

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NEVADA

5.011 Grounds for disciplinary action. The board and the commission deem any activity on the part of any licensee, his agents or employees, that is inimical to the public health, safety, morals, good order and general welfare of the people of the State of Nevada, or that would reflect or tend to reflect discredit upon the State of Nevada or the gaming industry, to be an unsuitable method of operation and shall be grounds for disciplinary action by the board and the commission in accordance with the Nevada Gaming Control Act and the regulations of the board and the commission. Without limiting the generality of the foregoing, the following acts or omissions may be determined to be unsuitable methods of operation:

...A. Failure to conduct advertising and public relations activities in accordance with decency, dignity, good taste, honesty and offensiveness, including, but not limited to, advertising that is false or materially misleading.

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NEVADA

At the Hard Rock Hotel, we believe in your Monday Night Rights: Large quantities of prescription stimulants. Having wives in two states. The Big Score Football on Monday nights. . . . Tell your wives you are going; if they are hot, bring them along.

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NEVADA

The Hard Rock Story

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NGC REGULATION 5.011

Grounds for disciplinary action under 5.011 include:
5.011(1)

Failure to exercise discretion and sound judgment to prevent incidents which might reflect on the repute of the State of Nevada and act as a detriment to the development of the industry.

5.011(4)

Failure to conduct advertising and public relations activities in accordance with decency, dignity, good taste, honesty and inoffensiveness, including, but not limited to, advertising that is false or materially misleading.

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In 2004, the Gaming Control Board
tested that power when it filed a complaint against the Hard Rock Hotel.

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THE COMPLAINT: COUNT 1



Ad in Las Vegas Weekly:
"There's always a
temptation to cheat"

Board:
"This ad conveys that cheating
at gaming, and lounging on piles
of gaming cards and chips

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THE COMPLAINT: COUNT 2

Las Vegas Weekly magazine ad:

"At the Hard Rock Hotel, we believe in your Monday Night Rights: Large quantities of prescription stimulants. Having wives in two states. The Big Score Football on Monday nights. . . . Tell your wives you are going; if they are hot, bring them along."

The Board:

This ad conveys that possession of large quantities of prescription stimulants and having more wives than is legal is acceptable activity among Hard Rock's patrons in violation of NGC Reg. 5.011(1) and 5.011(4).

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THE COMPLAINT: COUNT 3

Board:

Following a 2002 disciplinary action, the Hard Rock represented it would take certain remedial actions...including review by its Compliance Officer and Committee of any "questionable elements" in its advertising. The ads described herein were not submitted to either. This failure demonstrates that the Hard Rock has "persistently failed to exercise discretion and sound judgment to prevent incidents which might reflect on the repute of the State of Nevada and act as a detriment to the development of the industry in violation of NGC Reg. 5.011(1).



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THE HARD ROCK'S COMMENTARY



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HARD ROCK

The Hard Rock found that this regulation was in violation of Its 1st Amendment rights...

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THE HARD ROCK'S RESPONSE...

"Regulation 5.011(4) is vague, ambiguous and overbroad, therefore unenforceable in the context for which enforcement is sought"
"The advertisements described in the Complaint are forms of commercial speech protected by the First Amendment"
The "Compliance Overview" cited by the Board did not address the type of advertising at issue here (it was meant to help employees deal with potentially objectionable 'contests and promotions') and was "not equivalent to a regulatory requirement."

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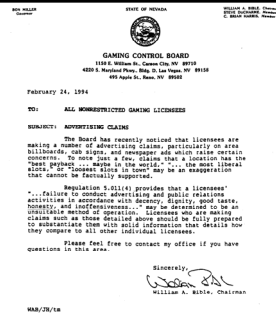
THE HARD ROCK'S RESPONSE

The matter was settled with a \$300,000 fine and changes to the compliance plan and procedures for approving advertising.

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NEVADA

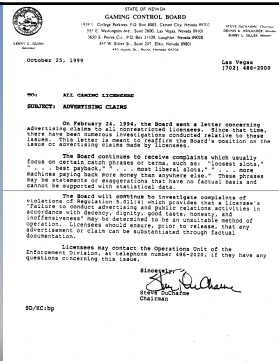
Letters



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NEVADA

Letters

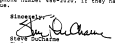


STATE OF NEVADA
GAMING CONTROL BOARD
 1001 E. Flamingo Avenue, Suite 200 Las Vegas, Nevada 89119
 702-462-2200
 FAX 702-462-2201

October 25, 1989

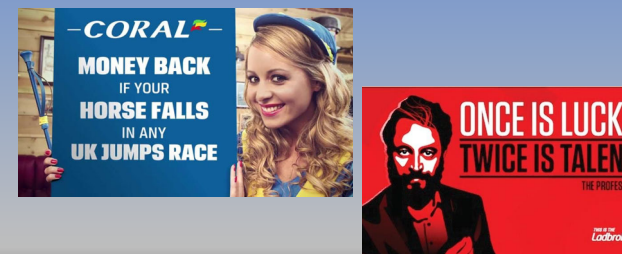
TO: ATE GAMING CORPORATION
FROM: GAMING CONTROL BOARD

On February 21, 1989, the Board sent a letter concerning advertising claims for slot machines. The Board's letter stated that the Board's investigations conducted relative to these claims had not yet been completed. The Board's letter also stated that the Board would continue to receive complaints which usually focus on certain slot machines which are labeled "loose" or "hot". The Board's letter also stated that the Board would continue to receive complaints which usually focus on certain slot machines which are labeled "loose" or "hot". The Board's letter also stated that the Board would continue to receive complaints which usually focus on certain slot machines which are labeled "loose" or "hot".

Sincerely,

 Board Chairman

RD/SC:lp

OTHER JURISDICTIONS



CORAL
MONEY BACK
 IF YOUR
HORSE FALLS
 IN ANY
UK JUMPS RACE

ONCE IS LUCKY
TWICE IS TALENT
 THE PROFESSOR

OTHER JURISDICTIONS



BOYLESPORTS GAMING
NAILED ON BONUS
 OPT-IN

BETWEEN 5-25 QUID

OTHER JURISDICTIONS

Let's make things more interesting. PaddyPower.com

Let's make things more interesting. PaddyPower.com

Let's make things more interesting. PaddyPower.com

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OTHER JURISDICTIONS

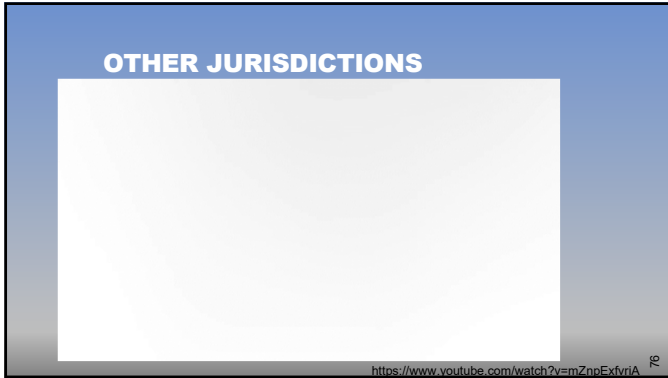
<https://www.youtube.com/watch?v=piruMbUhl>

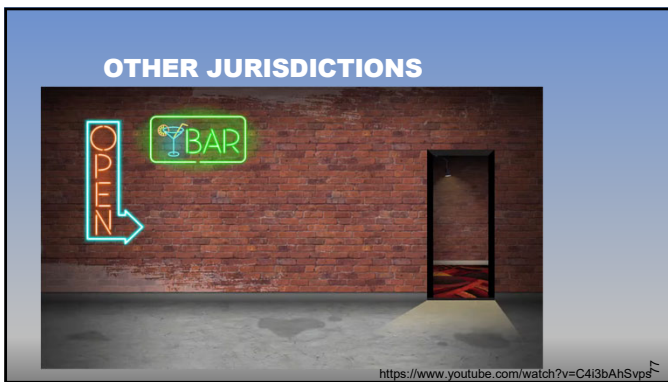
74

OTHER JURISDICTIONS

<https://www.adelaidenow.com.au/news/sportsbet-2019-ad/video/6ff5ac61199a9c84f2fcb3ced4eb71c>

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US SPORTS BETTING - AGA

- American Gaming Association - Responsible Marketing Code for Sports Wagering
 - Respecting the Legal Age for Sports Wagering
 - Supporting Responsible Gaming
 - Controlling Digital Media and Websites
 - Monitoring Code Compliance
 - Compliance Process

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US SPORTS BETTING - AGA

- Responsible Marketing Code for Sports Wagering
 - Respecting the Legal Age for Sports Wagering
 - No sports betting message should be designed to appeal primarily to those below the legal age for sports wagering by depicting cartoon characters or by featuring entertainers or music that appeal primarily to audiences below the legal age within the jurisdiction. Nor should any message suggest or imply that underage persons engage in sports wagering.
 - Sports wagering advertisements should not be placed in media outlets (including social media) that appeal primarily to those below the legal age for sports wagering, nor should they be displayed at an event venue where most of the audience at many of the events at the venue is reasonably expected to be below the legal age for sports wagering.
 - No sports wagering messages—including logos, trademarks, or brand names—should be used or licensed for use on clothing, toys, games, or game equipment intended primarily for persons below the legal age for sports wagering. To the extent that promotional products carry sports wagering messages or brand information, AGA members and their employees will use commercially reasonable efforts to distribute them only to those who have reached the legal age for sports wagering.
 - Sports wagering should not be promoted or advertised in college or university-owned news assets (e.g., school newspapers, radio or television broadcasts, etc.) or advertised on college or university campuses.

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US SPORTS BETTING - AGA

- American Gaming Association - Responsible Marketing Code for Sports Wagering
 - Respecting the Legal Age for Sports Wagering
 - Supporting Responsible Gaming
 - Controlling Digital Media and Websites
 - Monitoring Code Compliance
 - Compliance Process

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US SPORTS BETTING - AGA

- American Gaming Association - Responsible Marketing Code for Sports Wagering
- Supporting Responsible Gaming
 - Messages will not promote irresponsible or excessive participation in sports wagering.
 - Each message will contain a responsible gaming message, along with a toll-free help line number where practical.
 - No message should suggest that social, financial or personal success is guaranteed by engaging in sports wagering. Nor should any message imply or suggest any illegal activity of any kind.
 - Messages should adhere to contemporary standards of good taste that apply to all commercial messaging, as suits the medium or context of the message.

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US SPORTS BETTING - AGA

- American Gaming Association - Responsible Marketing Code for Sports Wagering
- Controlling Digital Media and Websites
 - Messages placed in digital media—including third party internet and mobile sites, commercial marketing emails or text messages, social media sites, and downloadable content—shall comply with all applicable provisions of this Code concerning the content of such messages.
 - Each website that includes advertising or marketing materials should include a responsible gaming message and a link to a site that provides information about responsible gaming and responsible gaming services.
 - Owned websites or profiles that include sports betting content, including social media pages and sites, shall include a reminder of the legal age for sports wagering. Age affirmation mechanisms, utilizing month, day, and year of birth, will apply before a user can gain access to any page where individuals can engage in gambling.

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US SPORTS BETTING - AGA

- American Gaming Association - Responsible Marketing Code for Sports Wagering
- Controlling Digital Media and Websites
 - Owned websites will include geolocation mechanisms on those pages where individuals can engage in gambling, in order to screen any individuals who reside in jurisdictions that have not legalized sports wagering.
 - User-generated content on an owned site or web page will be monitored and moderated on a regular basis for compliance with the provisions of this code.
 - Digital marketing communications will respect user privacy and comply with all applicable legal privacy requirements including those governing consent. All such messages targeting an individual recipient will be clearly identified as originating from the sports betting operator or otherwise attributable to the operator. In addition, each such message sent via email or text message will provide the option therein of opting out or unsubscribing.
 - Owned websites shall disclose to users—in their terms of use or other policy statements—any practices of the website that involve sharing user information with third parties unrelated to the operator sponsoring the site.

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US SPORTS BETTING - AGA

- American Gaming Association - Responsible Marketing Code for Sports Wagering
 - Respecting the Legal Age for Sports Wagering
 - Supporting Responsible Gaming
 - Controlling Digital Media and Websites
 - Monitoring Code Compliance
 - Compliance Process

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US SPORTS BETTING - AGA

- American Gaming Association - Responsible Marketing Code for Sports Wagering
 - Monitoring Code Compliance
 - The AGA will offer biannual training opportunities for members and employees of members involved in the advertising or marketing of sports wagering services.
 - AGA members will provide training on the provisions of this code, including periodic refreshers and updates, to all individuals involved in the advertising or marketing of sports wagering services.
 - AGA members will deliver a copy of this code to advertising agencies, media buyers, and other third parties involved in the member's advertising or marketing.
 - AGA members shall adopt an internal review process to evaluate whether promotional and marketing messages comply with this code, and will conduct periodic reviews of promotional and marketing messages to evaluate compliance with this code.
 - The commitments in this code apply to persons or entities operating in partnership with or as agents of AGA members in conducting advertising and marketing activity related to sports betting.

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US SPORTS BETTING - AGA

- American Gaming Association - [Compliance Review Board](#)
 - Upon request for further review by the Complainant, the AGA CCRB Liaison will send all materials to the CCRB members for their review.
 - The CCRB will meet, in person or virtually, to evaluate if the sports betting marketing or advertising activity at issue is in violation of the code.
 - The CCRB will endeavor to provide written notice of its decision to the Complainant and the Reported-Company within seven business days of receiving the appeal of the complaint. In order to find that a Reporting Company is in violation of the Code, there must be an affirmative vote from at least one Chair and a majority of the Member Delegates at the meeting.
 - At least one of the Chairs and three Member Delegates must be present for the CCRB to meet and decide on violations of the code. If a Member Delegate's company is the subject of a complaint or is the Complainant, such member shall be recused from the discussion and decision.
 - The CCRB's written decision will include if a violation of the code has occurred and if so, that the Reported Company is expected to promptly withdraw or revise the advertising and promotional material and/or placement at issue.
 - The CCRB decision, and initial complaint, will be summarized in a publicly available forum on the AGA website. The Complainant is provided the option to remain anonymous in such public reports; in such cases, only the substance of the complaint will be made public.

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US SPORTS BETTING - AGA

American Gaming Association - Responsible Marketing Code for Sports Wagering - Compliance Process

Responsible Marketing Code for Sports Wagering
Summary of Complaint and Subsequent Action
Final April 5, 2022

On February 22, 2022, Keith Whyte of the National Council on Problem Gambling ("Complainant") submitted a complaint to the American Gaming Association (AGA) under the AGA's [Responsible Marketing Code for Sports Wagering](#) ("the Code"). The complainant's submission concerned an online marketing strategy by Barstool Sportsbook on January 31, 2022, for the "Can't Lose Parlay." The complainant alleged that the promotional strategy for "Can't Lose" on the Barstool Sportsbook "directly violates" the language of the Code which states, "[t]o manage overall risk to social, financial or personal success is guaranteed by engaging in sports wagering."

As required by the Code, the AGA immediately forwarded the complaint to Barstool's parent company, Penn National Gaming Inc. ("reported company" or "company"). The reported company provided an initial response to the AGA on February 25, 2022, and then supplemented its response on March 9, 2022.

In its response, the company noted that it is "not currently offering the Can't Lose Parlay," stated it "disagrees" with the complainant's assertion that the wager violates the Code, and that the company believes both "[t]o the extent and in its proper context, the 'Can't Lose Parlay' does not guarantee any financial success."

The company wrote "[t]he bet has often been a longshot parlay and it loses far more often than it wins. The odds offered are not hidden, there is no promotion guaranteeing a win, and it is clearly housed in the sportsbook where it is patently obvious that it is a wager, not an opportunity for someone to win guaranteed money." Particularly when viewed in that context, Penn National Gaming Inc.'s response contended, "the Can't Lose Parlay does not carry any guaranteed social, financial or personal success and there is no violation of the Code." The company also stated it believes the "Can't Lose Parlay" is an "obviously satirical wager" and that an earlier marketing promotion for the parlay, on October 2, 2020, included responsible gaming messaging.

Further, the company noted that Barstool Sports' Responsible Gaming account had stated in March 2022, "When playing on the @BSportsbook know your odds, know your limits and play responsibly. Because how it goes the Can't lose Parlay can lose." For these reasons, the reported company believed that the "Can't Lose Parlay" was "not a guarantee of financial success" and thus, "does not violate the Code." The company also noted its commitment to responsible gaming, including on the Barstool Sportsbook Responsible Gaming social media platform (@BarstoolGG).

The responses from the reported company were forwarded to the complainant. No further action was requested, and the complaint process was closed on March 30, 2022.



US SPORTS BETTING - AGA



<https://www.youtube.com/watch?v=m6lUjaaEBe8>

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LEAGUES



LEAGUES



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QUESTIONS

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