

205 CMR 256: SPORTS WAGERING ADVERTISING

Section

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256.01: Third Parties

- (1) Each Sports Wagering Operator shall be responsible for the content and conduct of any and all Sports Wagering advertising, marketing, or branding done on its behalf or to its benefit whether conducted by the Sports Wagering Operator, an employee or agent of the Sports Wagering Operator, or an affiliated entity or a third party pursuant to contract or any other agreement for consideration or remuneration, regardless of whether such party is also required to be licensed or registered as a Sports Wagering Vendor or Non-Sports Wagering Vendor.
- (2) Each Sports Wagering Operator shall provide a copy of the regulations contained herein to all advertising, marketing, branding and promotions personnel, contractors, agents, and agencies retained by the Sports Wagering Operator or its agents and shall ensure and require compliance herewith.
- (3) No Sports Wagering Operator may enter into an agreement with a third party to conduct advertising, marketing, or branding on behalf of, or to the benefit of, the licensee, in exchange for a percentage of net sports wagering revenue earned from users that the third party directs or causes to be directed to the Operator.
- (4) Any advertisement or promotion for Sports Wagering shall disclose the identity of the Sports Wagering Operator and whether a financial relationship exists between any Person providing an endorsement or promotion and the Sports Wagering Operator.

256.02: Application

- (1) The provisions of this section shall apply to all advertising, marketing, and branding for Sports Wagering aimed at, published, aired, displayed, disseminated, or distributed in the Commonwealth. Nothing herein shall be construed as limiting a Person's obligations to comply with any other federal, state or local law applicable

to advertising, marketing and branding, nor shall anything herein be construed as modifying or limiting in any way any more stringent or additional requirement applicable to advertising, marketing and branding.

- (2) Sports Wagering advertisements may only be published, aired, displayed, disseminated, or distributed in the Commonwealth by or on behalf of Sports Wagering Operators licensed to offer Sports Wagering in the Commonwealth, unless the advertisement clearly states that the offerings are not available in the Commonwealth or otherwise makes clear that the offerings are not intended for use in the Commonwealth. Sports Wagering Operators and their agents, employees, or any third party conducting advertising or marketing on their behalf shall not advertise forms of illegal gambling in the Commonwealth.
- (3) No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering on any billboard, or other public signage, which fails to comply with any federal, state or local law.

256.03: Internal Controls

Each Sports Wagering Operator shall include in its internal controls submitted pursuant to 205 CMR 138 and 238 provisions to ensure compliance with the requirements of 205 CMR 256.00.

256.04: False or Misleading Advertising

- (1) No Sports Wagering Operator shall allow, conduct, or participate in any unfair or deceptive advertising, marketing, or branding for Sports Wagering.
- (2) No Sports Wagering Operator shall obscure or fail to disclose any material fact in its advertising, marketing, or branding for sports wagering or use any type, size, location lighting, illustration, graphic, depiction or color resulting in the obscuring of or failure to disclose any material fact in any advertising, marketing, or branding.
- (3) All Sports Wagering advertisements must clearly convey the material conditions under which Sports Wagering is being offered, including information about the cost to participate and the nature of any promotions, to assist patrons in understanding the odds of winning. Any material conditions or limiting factors must be clearly and conspicuously specified in the advertisement. Additional, non-material terms and conditions may be otherwise made available on a website or application if an advertisement is not of sufficient size or duration to permit inclusion of the additional information.
- (4) No Sports Wagering Operator, Sports Wagering Vendor, or third party marketing or advertenting entity required to be licensed or registered pursuant to 205 CMR 234, nor any employee of any of the foregoing, may advise or encourage patrons to place a specific wager of any specific type, kind, subject, or amount. This restriction does not prohibit general advertising or promotional activities which may notify a patron

of the need to place a specific wager type, kind, subject, or amount in order for patron to receive a promotional benefit.

- (5) A Sports Wagering Operator that engages in any promotion related to Sports Wagering shall clearly and concisely explain the terms of the promotion and adhere to such terms. If a Sports Wagering Operator offers complimentary items or promotional credit that are subject to terms, conditions or limitations in order to claim the item or redeem the item or credit, the Operator shall fully disclose all material terms, conditions or limitations through the following methods, provided that additional, non-material terms and conditions, may be otherwise made available on a website or application if an advertisement is not of sufficient size or duration to permit inclusion of the non-material information.
 - (a) In all advertisements or inducements where the complimentary item or promotion are advertised;
 - (b) If being added to a Sports Wagering Account, through the use of a pop-up message either while the complimentary item or promotional credit is being added or when the patron next logs in to the Account, whichever is earlier; and
 - (c) If the offer requires the patron to Wager a specific dollar amount to receive the complimentary item or promotional credit, the amount that the patron is required to Wager of the patron's own funds shall be disclosed in the same size and style of font as the amount of the complimentary item or promotional credit, and the complimentary item or promotional credit shall not be described as free.
- (6) No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall:
 - (a) Promote irresponsible or excessive participation in Sports Wagering;
 - (b) Suggest that social, financial, or personal success is guaranteed by engaging in event wagering;
 - (c) Imply or promote Sports Wagering as free of risk in general or in connection with a particular promotion or Sports Wagering offer;
 - (d) Describe Sports Wagering as "free", "cost free" or "free of risk" if the player needs to incur any loss or risk their own money to use or withdraw winnings from the Wager;
 - (e) Encourage players to "chase" losses or re-invest winnings;
 - (f) Suggest that betting is a means of solving or escaping from financial, personal, or professional problems;

- (g) Portray, suggest, condone or encourage Sports Wagering behavior as a rite of passage or signifier of reaching adulthood or other milestones;
- (h) Portray, suggest, condone or encourage Sports Wagering behavior that is socially irresponsible or could lead to financial, social or emotional harm;
- (i) Imply that the chances of winning increase with increased time spent on Sports Wagering or increased money wagered;
- (j) Be placed on any website or printed page or medium devoted primarily to responsible gaming;
- (k) Offer a line of credit to any consumer; or
- (l) Use individuals to provide purported expertise or Sports Wagering advice who are employed by, contracted with, or otherwise compensated by a Sports Governing Body, team, club or athlete on which a wager may be placed.

256.05: Advertising to Youth

- (1) Advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall state that patrons must be twenty-one years of age or older to participate.
- (2) No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering that is aimed at individuals under twenty-one years of age.
- (3) No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator for Sports Wagering shall contain images, symbols, celebrity or entertainer endorsements or language designed to appeal primarily to individuals younger than twenty-one years of age.
- (4) No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator for Sports Wagering shall be published, aired, displayed, disseminated, or distributed:
 - (a) in media outlets, including social media, video and television platforms, where 25% of the audience is reasonably expected to be under twenty-one years of age, unless adequate controls are in place to prevent the display, dissemination or distribution of such advertising, marketing, branding or other promotional materials to individuals under twenty-one years of age including by use of age category exclusions and similar mechanisms;

- (b) in other media outlets, including social media, video and television platforms, unless the Operator utilizes all available targeted controls to exclude all individuals under twenty-one years of age from viewing such advertising, marketing, branding, and other promotional materials;
 - (c) at events aimed at minors or where 25% or more of the audience is reasonably expected to be under twenty-one years of age;
 - (d) at any elementary, middle, and high school, or at any sports venue exclusively used for such schools;
 - (e) on any college or university campus, or in college or university news outlets such as school newspapers and college or university radio or television broadcasts, except for advertising, including television, radio, and digital advertising that is generally available, and primarily directed at an audience, outside of college and university campuses as well; or
 - (f) to any other audience where 25% or more of the audience is presumed to be under twenty-one years of age.
- (5) No Sports Wagering advertisements, including logos, trademarks, or brands, shall be used, or licensed for use, on products, clothing, toys, games, or game equipment designed or intended for persons under twenty-one years of age.
- (6) No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator for Sports Wagering shall depict an individual who is, or appears to be, under twenty-one years of age, except live footage or images of professional athletes during sporting events on which sports wagering is permitted. Any individual under the age of twenty-one may not be depicted in any way that may be construed as the underage individual participating in or endorsing sports gaming.
- (7) No advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator for Sports Wagering shall depict students, schools or colleges, or school or college settings.

256.06: Advertising to Other Vulnerable Persons

- (1) No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering that is aimed exclusively or primarily at individuals or groups of people that are at moderate or high risk of gambling addiction. A Sports Wagering Operator shall not use characteristics of at-risk or problem bettors to target potentially at-risk or problem bettors with advertisements.

- (2) Advertising, marketing, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall include a link to and phone number for the Massachusetts Problem Gambling Helpline using language provided by the Department of Public Health or such other responsible gaming information required by the Commission (“Responsible Gaming Messaging”).
- (3) Such advertising, marketing, branding and other promotional materials shall not use a font, type size, location, lighting, illustration, graphic depiction or color obscuring or limiting the advertisement of such Problem Gambling Helpline Information.
- (4) Information regarding Responsible Gaming Messaging must also meet the following requirements:
 - (a) For signs, direct mail marketing materials, posters and other print advertisements, the height of the font used to advertise Responsible Gaming Messaging must be the greater of:
 - i. The same size as the majority of the text used in the sign, direct mail marketing material, poster or other print advertisement; or
 - ii. 2% of the height or width, whichever is greater, of the sign, direct mail marketing material, poster or other print advertisement.
 - (b) For billboards, the height of the font used for Responsible Gaming Messaging must be at least 5% of the height or width, whichever is greater, of the face of the billboard.
 - (c) For digital billboards, Responsible Gaming Messaging must be visible for the entire time the rest of the advertisement is displayed.
 - (d) For video and television, Responsible Gaming Messaging must be visible for either:
 - i. The entire time the video or television advertisement is displayed, in which case the height of the font used for Responsible Gaming Messaging must be at least 2% of the height or width, whichever is greater, of the image that will be displayed.
 - ii. From the first time Sports Wagering Equipment, a Sports Wagering Facility, a Sports Wagering Area or Sports Wagering is displayed or verbally referenced, and on a dedicated screen shot visible for at least the last three (3) seconds of the video or television advertisement. If the Operator elects to utilize this option, the height of the font used for Responsible Gaming Messaging:

1. During the advertisement must be at least 2% of the height or width, whichever is greater, of the image that will be displayed.
2. On the dedicated screen shot must be at least 8% of the height or width, whichever is greater, of the image that will be displayed.

(e) For web sites, including social media sites:

- i. Responsible Gaming Messaging must be posted in a conspicuous location on each website or profile page and on a gaming related advertisement posted on the webpage or profile page.
 - ii. The height of the font used for Responsible Gaming Messaging must be at least the same size as the majority of the text used in the webpage or profile page.
 - iii. For advertisements posted on the webpage or profile page, the height of the font used for Responsible Gaming Messaging must comply with the height required for signs, direct mail marketing materials, posters and other print advertisements.
- (5) All direct advertising, marketing, or promotional materials shall include a clear and conspicuous method allowing patrons to unsubscribe from future advertising, marketing, or promotional communications.

256.07: Self-Excluded Persons

- (1) No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for sports wagering that is aimed at persons who have enrolled in a Self-Exclusion Program pursuant to 205 CMR 233.
- (2) No Sports Wagering Operator shall direct text messages or unsolicited pop-up advertisements on the internet to an individual in the Self-Exclusion Program or shall allow any employee or agent of the Sports Wagering Operator, or affiliated entity or a third party pursuant to contract, to take such actions.

256.08: Disruption to Viewers

- (1) No Sports Wagering Operator shall allow, conduct, or participate in any advertising, marketing, or branding for Sports Wagering that obscures the game play area at a sporting event.
- (2) Advertisements for Sports Wagering may not be placed by a Sports Wagering Operator at a sports event with such intensity and frequency that they represent saturation of that medium or become excessive.

256.09: Endorsements

- (1) An advertisement for Sports Wagering shall not state or imply endorsement by minors, persons aged 18 to 20 (other than professional athletes), collegiate athletes, schools or colleges, or school or college athletic associations.
- (2) An individual who participates in Sports Wagering in the Commonwealth under an agreement with a Sports Wagering Operator for advertising, branding or promotional purposes must disclose the relationship and may not be compensated in promotional credits for additional wagers.
- (3) Endorsements must comply with the Federal Trade Commission's Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. Part 255.

256.10: Records

- (1) Each Sports Wagering Operator shall retain a copy of all advertising, marketing, branding and other promotional materials promoting or intended to promote any Sports Wagering within the Commonwealth, including a log of when, how, and with whom, those materials have been published, aired, displayed, or disseminated, for six (6) years. A Sports Wagering Operator shall also grant the Commission access to all social media platforms utilized by or on behalf of the licensee for such purposes, provided that an Operator shall not be required to permit the Commission to control or directly alter such content on such platforms. For all directed or targeted advertising and marketing, a Sports Wagering Operator shall maintain records sufficient to describe all targeting parameters used, as well as efforts undertaken to comply with 205 CMR 256.06(1).
- (2) All advertising, marketing, branding, and other promotional materials related to Sports Wagering and the log described in subsection (1) shall be made available to the Commission or its agents upon request.

256.11: Enforcement

- (1) A Sports Wagering Operator shall discontinue or modify as expeditiously as possible the use of a particular advertisement, marketing, or branding material in the Commonwealth or directed to residents in this state upon receipt of written notice that the Commission has determined that the advertisement, marketing, or branding material in question does not conform to the requirements of 205 CMR 256.00 or the discontinuance or modification of which is necessary for the immediate preservation of the public peace, health safety, and welfare of the Commonwealth.
- (2) A failure to adhere to the rules of 205 CMR 256.00 may be grounds for disciplinary action under any enforcement method available to the Commission, including emergency enforcement orders to immediately cease and desist such advertising pursuant to 205 CMR 109.

- (3) The Commission may, in addition to, or in lieu of, any other discipline, require an Operator that violates this section 205 CMR 256 to provide electronic copies of all advertising, marketing and promotional materials developed by or on behalf of the Operator to the Commission at least ten (10) business days prior to publication, distribution or airing to the public.