Game over: AGCO sounds the buzzer on use of athletes and influencers in iGaming advertisements

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What you need to know

- On Aug. 29, 2023, the Alcohol and Gaming Commission of Ontario (AGCO) released amendments which will restrict the use of athletes (both active and retired) and social media influencers in advertisements, marketing materials and communications for internet gaming (iGaming) in Ontario.
- Specifically, the Amendments will (i) prohibit the use of active or retired athletes (except if advocating for responsible gaming practices); and (ii) further restrict the use of public figures/symbols, including social media influencers, by prohibiting those who are likely expected to appeal to minors.
- The Amendments have faced pushback from many Ontario iGaming operators. Industry stakeholders continue to seek clarity from the AGCO on the scope of their application before they come into effect on Feb. 28, 2024.

Background

Currently, section 2.03 of the Standards prohibits iGaming advertising and marketing materials/communications which "contain cartoon figures, symbols, role models, and/or celebrity/entertainer endorsers whose **primary appeal** is to minors." [emphasis added]

In April 2023, the AGCO announced its proposal to amend the Standards by: (i) introducing an absolute ban on the use of athletes in iGaming advertisements; (ii) including social media influencers in the list of public figures/symbols who use is restricted in iGaming advertisements; and (iii) broadening the scope of the restriction on the use of such public figures/symbols by prohibiting the use of those who **are reasonably expected to appeal to minors** (as opposed to having a **primary appeal to minors**). The motivation behind the proposal was to reduce a perceived risk of harm to those under the legal gaming age.

On Aug. 29, 2023, following a contentious consultation period, the AGCO released the final version of the Amendments, which deviate slightly from the AGCO's original

proposal in that: (i) they permit the use of athletes if advocating for responsible gaming practices; and (ii) only restrict the use of public figures/symbols who **would likely be expected to appeal to minors** (less restrictive than **reasonably expected to appeal to minors**).

Response from the industry

The Amendments have been met with disappointment and confusion by many Ontario iGaming operators who point to the strength of their existing know your client procedures in preventing underage access to iGaming products and submit that there have been no habitual violations of responsible gaming practices in Ontario's nascent iGaming market.

Industry stakeholders have also noted the Amendments as being a potential boon to unregistered offshore operators, who do not adhere to the Standards and who can therefore be expected to continue to advertise in Canada using athletes and social media influencers.

Nevertheless, operators and other industry stakeholders continue to wait for interpretive guidance from the AGCO on the scope of application of the Amendments prior to the new Standards coming into force in Feb. 2024. Outstanding questions include, among others, who qualifies as an athlete? What is the scope of permissibility in advertisements by athletes advocating for responsible gaming and what are the key characteristics of a public figure/symbol that contribute to a likely expectation of an appeal to minors?

National conversation on iGaming advertising

It is no secret that since the launch of Ontario's regulated iGaming market in April 2022, Canadians have noticed a wave of new iGaming advertisements across media platforms. However, it is important to note that the Amendments will only serve to further restrict the content of such advertisements, not the number of advertisements themselves, and will only have application in Ontario.

It is therefore worth noting that on June 20, 2023, Senator Marty Deacon introduced Bill S-269 (the Bill), a federal bill which proposes a national framework on sports betting ads. While it remains to be seen whether the Bill will survive parliamentary scrutiny, it does serve to illustrate the issue arising in the aftermath of the Amendments which only restrict advertisements in Ontario - thereby creating inconsistencies in how this issue is addressed across the rest of the country. The framework proposed under the Bill, if ever implemented, would draw inspiration from the same sources as the Amendments in that it would likely: (i) limit or ban celebrities and athletes from such advertisements; and (ii) limit the number of advertisements that can be played or shown in a particular location.

The Bill passed first reading upon its introduction on June 20, 2023, and its legislative process will be closely monitored.

Key takeaways

Given the traditional role of athlete and celebrity endorsements in iGaming media campaigns, the Amendments will force Ontario iGaming operators to completely revamp their advertising activities in Ontario in certain cases. This, of course, creates an inconvenient and awkward outcome for operators as it will require North American and international operators to create tailored advertising campaigns for just Ontario, thereby adding additional costs by exacerbating their ability to use uniform cross-jurisdictional media campaigns.

We encourage stakeholders to engage with legal counsel to assist with navigating the Amendments when tailoring their media campaigns in light thereof. We anticipate additional guidance from the AGCO in the near term which our team will actively monitor for and share once available.

For additional information on Ontario's iGaming market and recent developments, reach out to the key contacts below.

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