

Betting on New Rules: AGCO Limits Use of Athletes & Influencers in iGaming Advertising

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On August 29, 2023, the Alcohol and Gaming Commission of Ontario (AGCO) announced that it will amend the “Marketing and Advertising” section of its Standards for Internet Gaming to restrict the use of athletes and social media influencers in advertisements for Internet gaming (iGaming) in Ontario. The amendments come into effect on February 28, 2024 and are intended to address the risks that current iGaming advertising poses to minors as a vulnerable consumer segment identified in the 2023 AGCO marketing consultations.

Background

In April 2022, Ontario became the first province in Canada to launch an open, regulated iGaming market. Under Ontario’s new system, private iGaming operators who are registered with the AGCO and have executed an operating agreement with iGaming Ontario (a subsidiary of the AGCO) are entitled to operate gaming sites directed to the public.

The marketing of these gaming sites is primarily regulated by the “Marketing and Advertising” section of the AGCO’s Standards for Internet Gaming (the Standards). Among other things, the Standards require that advertising not target underage persons to encourage their participation in lottery schemes.¹ Specifically, the Standards provide in this regard that iGaming advertising not:

- be based on themes, or use language, intended to appeal primarily to minors;
- contain cartoon figures, symbols, role models, or celebrity/entertainer endorsers whose primary appeal is to minors; and
- appear in media and venues (including digital or online media) that is directed primarily to minors or where most of the audience is reasonably expected to comprise minors.

Despite these protections, the regulation of iGaming advertising in Ontario quickly attracted significant criticism from advocacy groups, industry experts, and parents. Most critics expressed concerns about the rapid rise in the number of iGaming advertisements throughout 2022 and 2023, particularly those that relied on endorsements from professional athletes or other prominent celebrity role models and aired during live sporting events.²

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In response to this criticism, the AGCO launched a public consultation process in April 2023 concerning proposed changes to the Standards that would restrict athlete and celebrity participation in iGaming advertising. The AGCO's proposals received widespread support, including from Toronto's Centre for Addiction and Mental Health (CAMH), which endorsed the AGCO's proposed restrictions and called for further restrictions, including a full ban on all gambling advertising during the broadcasts of sporting events.

The New Advertising Standards

Following the completion of its public consultation process, the AGCO announced updates to the Marketing and Advertising section of the Standards. The updates will come into effect on February 28, 2024.

The updates provide for two key additions to the existing general rule prohibiting advertising that targets minors:

1. "Social media influencers" who appeal to minors are now expressly listed as a category of persons that cannot be employed in advertising (the list was previously limited to "cartoon figures, symbols, role models, and/or celebrity/entertainer endorsers"). Further, while this category of persons previously could not be used in advertising if their "primary appeal is to minors", the language of this restriction has now been updated to prohibit the use of this category of persons if they "would likely be expected to appeal to minors."
2. The use of athletes, both active and retired, in iGaming advertising or marketing is now fully prohibited. A narrow exception exists where an iGaming operator or supplier uses the athlete for the exclusive purpose of advocating for responsible gambling practices.

Notably, the AGCO did not implement any of the more aggressive restrictions on iGaming advertising that were proposed during the public consultation process. While the category of persons who cannot be featured in an iGaming advertisement has been expanded, no changes have been made to any rules related to how often an iGaming operator or supplier can advertise or in what contexts the advertisements can appear. For example, the AGCO did not implement CAMH's proposal to prohibit or limit iGaming advertising during sports broadcasts.

Key Takeaways

Although the updates to the Marketing and Advertising section of the AGCO Standards do not come into effect until February 2024, relevant parties should take note of these changes and begin to plan for them. For many iGaming operators in Ontario, this may require significant changes to their advertising strategies, as iGaming advertising in Ontario has generally been heavily dependent on athlete and celebrity spokespersons. Social media influencers that are expected to appeal to minors, as well as athletes of all

kinds, should also begin to consider how these new amendments will affect both their current brand partnerships and any future or contemplated partnerships or alliances.

Further, while the AGCO stopped short of implementing some of the more aggressive advertising restrictions proposed during the public consultation process, the debate over iGaming advertising is far from over. For example, some federal politicians have called for the AGCO's new restrictions to apply across Canada, while various advocacy groups and experts continue to advocate for an outright ban on all advertising of iGaming and online sports betting.³

The Cassels Entertainment & Sports Group will continue to monitor developments in this space. If you have any questions about iGaming advertising or how the AGCO's amendments may impact your business, please contact any member of our Entertainment & Sports team.

¹ Rule 2.03, Marketing and Advertising, Registrar's Standards for Internet Gaming

² Katherine DeClerq & Siobhan Morris, "Ontario banning online gambling commercials featuring athletes and celebrities." CTV News Toronto, online: <https://toronto.ctvnews.ca/ontario-banning-online-gambling-commercials-featuring-athletes-and-celebrities-1.6539181>

³ CBC News, "Ontario bans use of pro athletes to advertise, market online sports betting." Online: <https://www.cbc.ca/news/canada/toronto/sports-betting-athlete-ban-advertising-ontario-1.6950541>