

Ontario bans use of athletes in iGaming advertising and marketing materials

August 30, 2023

On August 29, 2023, the Alcohol and Gaming Commission of Ontario (the AGCO) published updates to the Registrar's Standards for Internet Gaming (the AGCO Standards), the primary set of regulations governing the provision and consumption of internet gaming (iGaming) in the Province of Ontario, to prohibit the use of athletes and other public figures in iGaming advertising and marketing in Ontario. The prohibition comes into effect on February 28, 2024.

The changes will have a significant impact, not only on how gaming operators market iGaming services and offerings to customers in the Province of Ontario, but also on the economics of the sports industry in Ontario, generally, since gaming-related revenue has come to represent an **increasing percentage** of the marketing dollars allocated towards sports media. Accordingly, these changes are likely to also have a material impact on advertising and marketing during live-game broadcasts and in other sports media such as news programs, sports radio and social media. Gaming operators and athletes will also need to revisit the terms of any existing agreements to ensure compliance with the amended rules.

The amendments to the AGCO Standards are scheduled to come into effect on a date which relative to the "big four" leagues in North America, follows the conclusion of the National Football League season but is in the middle of the National Hockey League and National Basketball Association seasons.

Key takeaways

- **The use of retired athletes is prohibited.** The amended regulations extend beyond athletes who are currently under contract or in competition. The use of either active and retired athletes is prohibited in iGaming marketing and advertising *except* for the exclusive purpose of advocating for responsible gambling practices.
- **Collaborations with sports leagues and franchises may still be possible.** The amended AGCO Standards prohibit the use of active or retired athletes who have an agreement or arrangement made directly or indirectly between an athlete and operator or gaming-related supplier. The amended AGCO Standards do not necessarily extend to the use of sports leagues or sports franchises in advertising or marketing campaigns or with respect to related sponsorship opportunities, provided that the themes or language used in such content or campaigns are not intended to appeal primarily to minors and the content otherwise comply with the requirements described above.
- **Athletes are not the only public figures impacted by the amended AGCO Standards.** The amended standards also apply to the use of celebrities, role models, social media influencers, entertainers, cartoon figures and symbols if they "would likely be expected to appeal to minors." These limitations could have an impact on the type and volume of sports media content that is funded and sponsored by gaming operators going forward since the prior prohibition applied only to use of such public figures (other than social media influencers, who were added as an express category in the amended AGCO Standards) that had a "primary appeal to minors."

- **Amendments to the AGCO Standards supplement existing regulations aimed at protecting minors.** The AGCO Standards already prohibited and continue to prohibit the use of themes or language that are *intended to appeal primarily* to minors. This rule has been supplemented by a prohibition on the use of certain strategies, such as the use of cartoon figures, symbols, role models, social media influencers, celebrities or entertainers who would *likely be expected to appeal* to minors. The amendments to the AGCO Standards leave unaffected existing prohibitions against targeting high-risk, underage or self-excluded persons and from restrictions on:
 - using individuals who are, or appear to be, minors to promote gaming;
 - advertising or marketing in media and venues, including on websites and in digital or online media, directed primarily to minors, or where most of the audience is reasonably expected to be minors;
 - exploiting the susceptibilities, aspirations, credulity, inexperience or lack of knowledge of all potentially high-risk persons, or otherwise extolling the virtues of gaming;
 - enticing or attracting potentially high-risk players;
 - basing advertising or marketing on themes or using language intended to appeal primarily to minors; and
 - advertising or marketing on billboards or other outdoor displays that are directly adjacent to schools or other primarily youth-oriented locations.
- **Consultation with stakeholders identified potential harm of advertising and marketing approaches using athletes and other celebrities.** The amendments to the AGCO Standards follow revision to gaming regulations in Ontario that came into effect in April 2022, pursuant to which a new regulation iGaming market was introduced in the province. In April 2023, the AGCO held consultations with mental health and public health organizations, responsible gaming experts, gaming operators, broadcast and marketing groups, as well as the public, and determined that amendments to the AGCO Standards prohibiting the use of athletes and restricting celebrity endorsements in advertising and marketing materials were required to safeguard children and youth who may be particularly susceptible to such content.

Next steps for iGaming stakeholders

Amendments to the AGCO Standards are scheduled to take effect February 28, 2024. It remains to be seen the impact these changes will have on the economics of sports as well as the production and consumption of sports media content in the Province of Ontario. These amendments follow consultation with key stakeholders in the Ontario iGaming market and are intended to prevent harm to minors and other high-risk individuals. Market participants and other stakeholders should carefully review existing arrangements to ensure compliance with the amended AGCO Standards and consider consulting with advisors to determine whether existing strategies are in compliance or require modification in light of these regulatory changes.

For more information about iGaming in the Province of Ontario, the amendments to the AGCO Standards or other related matters, please contact **Suraj Rammohan**.

Your Key Contacts



Suraj Rammohan

Senior Associate, Toronto

D +1 416 863 4695

M +1 437-774-5557

suraj.rammohan@dentons.com



Margot E. Patterson

Counsel, Ottawa

D +1 613 783 9693

margot.patterson@dentons.com