



**RACING NSW STEWARDS REASONS FOR DECISION IN RESPECT TO CHARGES ISSUED AGAINST
MR MARC LAMBOURNE AND MR GLENN POLLETT.**

Stewards: M F Van Gestel (Chairman)
W R Birch

Date of Hearing: 11 August 2020

Date of Reasons: 17 August 2020

Introduction

1. It is not the standard practice of the Stewards to provide detailed written reasons nor is there any requirement to do so. These written reasons outline the findings of the Stewards and are not intended to exhaustively detail all of the reasons for the findings of the Stewards.
2. On 30 April 2020, Racing NSW Stewards opened an inquiry in respect to comments made by Mr Marc Lambourne and Mr Glenn Pollett published on the Racing Rant program on 20 April 2020. On that day evidence was taken from Mr Lambourne, Mr Pollett and Mr Gordon Sutherland by video link who all appear on the program in question. The inquiry was adjourned at the request of Mr Lambourne.
3. On 7 May 2020, the inquiry resumed at which time further evidence was taken from Mr Lambourne, Mr Pollett and Mr Sutherland and licensed jockey James McDonald. Again, all appeared by video conference.
4. On 11 May 2020 Racing NSW Stewards issued the following charges against Mr Lambourne and Mr Pollett.

Mr Lambourne

- a. AR228(a) – Conduct prejudicial to the image of racing, by making and publishing comments in respect to licensed jockey James McDonald that would give rise to a particular suspicion in the mind of a reasonable person that jockey James McDonald was betting on thoroughbred racing in breach of the Australian Rules of Racing, when he had no such evidence to support those allegations.
- b. AR228(d) – Publishing defamatory comments about licensed jockey James McDonald.

Mr Pollett

- c. AR228(a) – Conduct prejudicial to the image of racing, by making comments in respect to licensed jockey James McDonald that would give rise to a particular suspicion in the mind of a reasonable person that jockey James McDonald was betting on thoroughbred racing in breach of the Australian Rules of Racing, when he had no such evidence to support those allegations.
5. On 19 May 2020 the following additional charge was issued against Mr Lambourne.

AR232(b) – Failing and/or refusing to comply with a direction of the Stewards in that on 16 May 2020 he posted on twitter a section of a video recording of the Stewards inquiry conducted on 30 April 2020, despite being provided with a direction not to provide the video recording to any third party other than his legal representative.

Hearing of the Charges

6. On 11 August 2020, the hearing of the charges was conducted by the Stewards. Mr Lambourne and Mr Pollett were assisted by Solicitor Mr Andrew Capelin, who was assisted by Ms Lily Brown. Mr Lambourne and Mr Pollett pleaded not guilty to the charges issued against them. Written submissions were provided by Mr Capelin that were supplemented by oral submissions.
7. Mr Lambourne maintained his application that Mr Van Gestel not hear the charges on the grounds of apprehended bias. Such application being previously denied by the Stewards and therefore Mr Van Gestel and Mr Birch proceeded to hear the charges.

AR228(a) – Conduct Prejudicial to the Image of Racing

8. It was submitted on behalf of Mr Lambourne and Mr Pollett that the following test applied to the establishment of the charge under AR228(a):
 - a. Public knowledge.
 - b. Tendency to prejudice the sport of horse racing rather than the individual.
 - c. The conduct can be labelled as blameworthy.
9. The Stewards confirm that this approach was determined in *Waterhouse v Racing Appeals Tribunal [2002] NSWSC 1143* and applied by the Racing NSW Appeal Panel in its decision in *Zerafa [Racing NSW Appeal Panel 2015]*. The Stewards also note the finding of the Racing NSW Appeal Panel in paragraph 25 of that decision that it is “a two-part test, with the second limb not requiring a finding of ‘wrong conduct’, but rather the raising of a relevant ‘suspicion’ in the mind of a reasonable person when that conduct was publicised”.
10. Firstly, in respect to public knowledge it was submitted that the charge lacked the necessary element of public knowledge, as:

- a. the Racing Rant program was only distributed to approximately 660 subscribers (who were provided with a link);
 - b. the Racing Rant program was distributed to its subscribers not published;
 - c. the video was private not published to the public and was not accessible directly by Google or YouTube;
 - d. the facts in this case were distinguishable from *Zerafa [Racing NSW Appeal Panel 2015]* and *Waterhouse/Bott [Racing NSW Appeal Panel 2017]*; and
 - e. The previous cases did not involve the issue of copyright being attached to the relevant conduct.
11. The Stewards find that by publishing RacingRant program on 20 April 2020, through a link distributed to its 660 subscribers, that such conduct alone would be sufficient to satisfy the first test of the comments having public knowledge. In this respect, the following finding of the Racing NSW Appeal Panel in *Zerafa* in respect of the issue of remoteness is relevant:
- “39. Objectively, the appellant sent his text messages to Mr Camilleri, which, having been sent, created a record of those messages in Mr Camilleri’s phone. The appellant was not in a position to control what happened to those messages having sent them”*
- Having regard to that decision and also taking into account the matters raised by Mr Capelin in respect to copyright, the Stewards are also satisfied that in addition to the subscribers having access to the comments, that having regard to the fact that Mr McDonald, Mr Guest and the Stewards were provided with access to the offending comments, that the element of public knowledge is established.
12. Secondly, in respect to the comments (and in Mr Lambourne’s case publishing the comments) having a tendency to prejudice the sport of horse racing rather than the individual, it was submitted that:
- a. the conduct did not damage the sport, but rather it could be said were prejudicial to James McDonald;
 - b. as jockeys were allowed to bet on their own mounts in other jurisdictions (such as New Zealand) there was no prejudice to the sport; and
 - c. 13 subscribers that corresponded to Racing NSW Stewards in support of Mr Lambourne and Mr Pollett did not form a view the image of racing had been prejudiced.
13. The Stewards find that the image of the sport of horse racing was prejudiced by the comments being made and published. James McDonald is one of the leading jockeys in Sydney having just won the 2019/20 Sydney Jockey’s premiership. The public must have confidence when a leading jockey rides in races to ensure that he is not breaching the Rules of Racing when he is riding in a race. By making such comments the Stewards find such comments are prejudicial to the integrity of thoroughbred racing as a whole not just jockey James McDonald.
14. Thirdly, it was submitted the conduct was not blameworthy or the conduct was not “wrong conduct” as:

- a. the Racing Rant program has a large comedic element and as its name suggests has a satirical purpose.
 - b. it was a joke being played on James McDonald in respect to his post-race reaction after winning on Kinane at Randwick 16 April 2020:
 - c. 13 subscribers that corresponded to Racing NSW Stewards in support of Mr Lambourne and Mr Pollett confirmed that they considered the comments to be a joke; and
 - d. in regard to Mr Lambourne’s comments, he used the words interest “in” as opposed to interest “on”.
15. The Stewards find that irrespective of whether Mr Lambourne and Mr Pollett felt they were joking when the relevant segment of the Racing Rant program commenced, the Stewards find that the third element of blameworthy conduct against both Mr Lambourne and Mr Pollett is established. As identified in the decision of the Racing NSW Appeal Panel in *Zerafa*, it is not necessary to identify ‘*wrong conduct*’ as such, but rather the raising of a relevant ‘suspicion’ in the mind of a reasonable person when that conduct was publicised. The Stewards are appropriately satisfied that this element is established.
16. Having regard to the reasons above the Stewards find Mr Lambourne and Mr Pollett guilty of the charges issued against them under AR228(a).

AR228(d) – Mr Lambourne Publishing defamatory content on any social media or channel

17. Mr Capelin submitted on behalf of Mr Lambourne that to establish the charge of publishing defamatory content, that the Stewards would need to establish the content was defamatory to jockey James McDonald as defined by the relevant legal principles. .
18. The Stewards are satisfied that the comments made by Mr Lambourne and Mr Pollett and, as found by the Stewards published by Mr Lambourne, are defamatory as they damage the reputation of Jockey James McDonald in that the contents published carries the imputation that he was betting on thoroughbred racing in contravention of the Australian Rules of Racing. Having regard to that finding the Stewards find Mr Lambourne guilty of the charge under AR228(d).

AR232(b) – Failure and/or refusal to comply with a Stewards direction

19. It was submitted on behalf of Mr Lambourne that he did not breach AR232(b) as:
- a. he was seeking legal advice when he published the Stewards inquiry video on the Racing Rant twitter page; and
 - b. he only posted an 18 second section of the Stewards inquiry video and not the full content.

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20. The Stewards do not accept these submissions and find Mr Lambourne provided the Stewards inquiry video to third parties in contravention of the Stewards direction issued on 20 April 2020 by publishing the video on the Racing Rant Twitter account.

21. The Stewards will now set a date for submissions on penalty.

Relevant Rules

AR 228 Conduct detrimental to the interests of racing

A person must not engage in:

- (a) conduct prejudicial to the image, interests, integrity, or welfare of racing, whether or not that conduct takes place within a racecourse or elsewhere;*
- (d) publishing or posting on any social media platform or channel any material, content or comment that is obscene, offensive, defamatory, racist, threatening, harassing,*

AR 232 Failure to observe processes and directions of PRAs or Stewards

A person must not:

- (b) fail or refuse to comply with an order, direction or requirement of the Stewards or an official;*

**M F VAN GESTEL
CHAIRMAN OF STEWARDS
GENERAL MANAGER - INTEGRITY**