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VIA EMAIL

March 31, 2023

Director
Rust Clash Holdings LLC
Rust Clash Entertainment Ltd.

Re: Legal Opinion

Dear Rust Clash Entertainment Ltd:

This legal opinion addresses the legality of the contests offered by Rust Clash Holdings LLC and Rust Clash Entertainment Ltd. (collectively, the "Company") via its website at clash.gg. We have reviewed the website and you have certified to us that there is a method of entry for users that is completely free, is available in unlimited quantities, and offers the same odds of winning games and prizes as other methods. Further, any available mobile app would be free. You have represented to us that the winners of the contests are determined by chance.

Our understanding is that you have requested this legal opinion as part of the Company's consideration whether to offer the contests and that it may be submitted as part of your application to participate in payment processing services or to other third parties. Third party providers associated with the payments process, including but not limited to MasterCard, Visa, Discover, are permitted to review this legal opinion in their evaluation of the legality of the contests.

In preparing this letter, we have reviewed the website and the contests, held phone conversations with the Company, reviewed written documentation, and have obtained an officer's certificate in regards to the operation of the website and the contests.

This letter is rendered solely on behalf of the Company in connection with its internal decision. We are not legal counsel for any other company on this matter and nothing in this letter should be deemed legal advice to any third party.

As an introductory note of caution, we note that this opinion letter reflects the contests as currently offered as of the date of this opinion. We conclude that, based on our review of relevant federal laws and in reliance on the information that the Company provided to us as of the date of this letter (including the officer's certificate you have provided), we believe it is



reasonable to conclude that the contests are permissible under federal law and nearly all state law.

Our opinion is based on and we have expressly relied upon the factual information provided by the Company and its representations and certifications.¹ This legal opinion is effective as of the date of this letter. Any future updates or changes to contests (*e.g.*, the addition of new features) may cause a change in our legal analysis and conclusions.

Please note that we are not admitted to practice law in any jurisdiction other than the States of Arizona, Delaware, District of Columbia, Maryland, Massachusetts, Missouri, New Jersey, New York, Ohio, Pennsylvania, and Virginia.

¹ As attorneys, we cannot make ultimate conclusions regarding questions of fact, because those are made by a fact finder (either judge or jury), at trial, and based specifically on all evidence presented at that trial. Therefore, for purposes of this legal opinion, we are basing our legal opinion and expressly relying on the Company's representations, information, and the certificate provided to us.



ABOUT IFRAH LAW

Ifrah Law has represented online gaming clients since the inception of the firm in 2009 and it now represents many of the largest iGaming companies and industry associations around the world. Ifrah Law has been at the center of most of the important prosecutions and lawsuits in the online gaming industry, and it was instrumental in the creation of the legislative and regulatory frameworks in three states which currently permit online gaming: Delaware, New Jersey and Nevada. Further, Ifrah Law was formally retained by the Delaware State Lottery to provide expert legal advice on its expansion to online gaming.

Nationally ranked by Chambers USA in Gaming & Licensing Law, Ifrah Law collectively brings decades of experience in betting and wagering law to advise companies on compliance with state and federal laws in the daily fantasy sports, online gaming, and eSports space, including both real money and skill-based peer-to-peer competition sites. Our clients in the online sports betting industry include Bet365, Fan Duel, Genius Sports, Kambi, SportRadar, USA Today, and WorldPay/FIS. Ifrah Law has also gained a strong reputation in other innovative internet-based industries such as payment processing and money transmission. For clients seeking advice regarding promotions, Ifrah Law attorneys have extensive experience with laws governing sweepstakes and contests, including registration and bonding requirements. Our attorneys regularly advise publicly-traded and other large companies on the roll-out of nationwide promotions.

Ifrah Law publishes a blog, *Ifrah on iGaming*, and it maintains a timely white paper entitled, *"The Definitive Guide to iGaming in the United States,"* which is a comprehensive overview of iGaming legislation and business opportunities in the U.S. The firm has been honored by industry associations such as eGaming Review for its innovation, excellence, and dedication to best practices. The firm's founder, Jeff Ifrah, frequently presents on issues pertaining to iGaming law for organizations like the American Bar Association (ABA), the International Masters of Gaming Law (IMGL) and the International Association of Gaming Advisors (IAGA).

Ifrah Law is a founding member of iDEA (iDevelopment and Economic Association), a trade association that seeks to grow jobs and expand online interactive entertainment business in the United States through advocacy and education. Its members include Gameen Nugget, 888, PaddyPower, Betfair, GVC, and Scientific Games, and many other companies. On behalf of iDEA, Ifrah Law submitted an amicus brief to the U.S. Supreme Court in the seminal sports betting case *Murphy v. NCAA*, which was decided in favor of iDEA's argument supporting the rights of states to direct their own economies.

Ifrah Law advises online casino operators, poker and fantasy sports sites, and payment processors on class action lawsuits, mergers and acquisitions, vendor and supplier issues, government investigations and criminal matters. The firm is recognized for representing clients in



cases involving progressive areas of the gaming industry, such as sports betting, social gaming, skins betting, iGaming, online sweepstakes, contests and lotteries, peer-to-peer betting and mobile gaming.

EXECUTIVE SUMMARY

Based on our review of the information provided to us by the Company, we believe the contests are permissible under the relevant federal gambling laws. Specifically, the federal gambling laws largely require a predicate state law violation and there should be no state law violation in the contests in most states. Therefore, there is equally no federal law violation in those states where the contests should be permissible. However, we have advised the Company to exclude players from certain states.

Generally, state gambling laws require three elements to be considered illegal gambling: consideration, chance, and prize. Although the contests contain both chance and a prize, they do not have “consideration” because users do not have to pay to enter or participate in the contests. Rather, entry to the contests can be via multiple free methods of entry. In the absence of consideration, the contests should not be considered illegal gambling under most states’ laws.²

Further, a user’s participation in contests does not require a substantial expenditure of time or effort. Users can participate with minimal effort. Based on precedent, we do not believe the effort involved would constitute consideration. Therefore, we believe that the Company should be able to operate contests in most states in the United States.³

² For example, there is concern in Nevada because of a Nevada Attorney General opinion, in Washington because of an older case, Seattle Times Co. v. Tielsch, 495 P.2d 1366 (Wash. 1972), in Idaho because of the broad language of their statute, ID ADC 04.02.01.080, and the Attorney General’s focus on incidental promotions, and in certain additional states as identified in the Appendix that you may consider excluding due to case law or other interpretations. In accordance with the recommendations later in this legal opinion, the Company has informed us that it currently blocks Washington and Nevada.

The Company will implement geo-blocking to ensure that users in an excluded state cannot participate and circumvent the excluded status. The Company will verify the user’s IP address to determine the user’s location based on their IP address. Any user in a restricted location (e.g. Washington, Nevada), will be blocked from accessing the contests.

The Company also implements a strict age requirement by (i) requiring users to verify they are at least eighteen (18) years of age, and (ii) prior to processing any redemption request, the user must further verify their age and location.

³ However, some states should be excluded as explained in the preceding footnote.

I. DESCRIPTION OF THE CONTESTS

The Company's platform offers a variety of contests on its Rust Clash website. The website offers both case and case battle features and there are a number of different game modes, as follows:

- Case opening: A user purchases the right to open a case for a set price and is thereby eligible to receive any of the items within the case. All of the prices and odds of winning any of the individual items within the case are displayed prior to entry into the contest. The individual item that is won is automatically credited to the user's account balance.
- Case Battles: This is a player vs player game mode, which involves between two and four players. A user pre-purchases several cases and another user "joins" the contest by purchasing the same number of cases. All players then open the boxes simultaneously. The user that unboxes the more valuable items from their cases gets to keep their case and all the other players' cases.
- Upgrader: This is a game mode where a user selects an item which they would like to obtain for an "upgrade"- this can be any of the virtual items offered by the Company. They also select how many credits they are willing to risk, and, the percentage chance (i.e. the odds) they will have to win the desired upgrade item is displayed. The odds selected determines the cost to enter the game. If they do win the item, then the value of the item is credited to their balance or they can have the item sent directly to their Steam account.
- Jackpot: This is a game where users can put credits into a pot, and, they receive a percentage of any winnings based on the proportionate value that they put into the pot. This is a player vs player game mode and the Company takes a small percentage of the pot.
- Roulette: The Company offers a simple and standard roulette game mode, where a user has the option to wager on either black or red.
- Mines: users can select the amount of credits they would like to wager and the amount of mines in a 5x5 grid. The user then selects tiles, and, if the tiles do not have a mine, then they receive a payout. If the user selects a tile that has a mine on it, they lose the game.
- Plinko: users have the option to purchase Plinko balls. The balls are then dropped down a column, where the balls fall and bounce through a board. Each ball can land on multipliers that range between 0.2x and 500x, which determines the payout. The user has the option to vary the amount wagered.

State laws prohibiting gambling usually require the presence of three elements for an activity to be illegal gambling: chance, prize, and consideration. Thus, the following sections describe each of these elements in the context of the Company's contests.



Chance

The contests are games of chance because the results are determined by a random number generator (“RNG”). The Company (or a third party) tests all the contests to ensure they provide a fair and random game performance.

There is minimal exercise of skill involved in participating in the contests and the results are largely determined by chance (*i.e.* whether the RNG yields a winning spin for the user’s current spin) and the odds of each particular contest. Thus, the contests would be considered a game of chance under state law.

Prize

Contest prizes may be offered in various forms, as per the official rules for each contest that contain the complete prize details and restrictions (e.g. minimum thresholds for redemptions) for each contest. The prizes won in the contests can be credits, loot boxes, or similar items that have set values. Thus, the contests would be considered to be awarding a prize to the winner.

In order to receive a prize, users may be required via e-mail or U.S. Mail to receive and return an executed affidavit of eligibility, a liability release and, where lawful, a publicity release and/or appropriate tax forms within seven (7) days of notification.

Consideration

The Company offers a free to play website and one does not need to deposit any funds to play any of the games. All the contests require credits in order to participate in the contest, however, credits can be obtained for free or purchased via any of the following ways: (i) claiming the daily bonus, (ii) receiving a rain bonus, or (iii) purchasing loot boxes. *See Officer’s Certificate attached as Exhibit A.*

In order to purchase credits, a user clicks the deposit button on the website and deposits funds. The Company accepts a variety of credit card, cryptocurrencies and alternative payment methods as methods of deposit. (We note that, for AML security reasons, the Company separates crypto and fiat balances to ensure that it is never possible for a user to withdraw cash from a cryptocurrency deposit).

Critically, users are also able to fully participate in all of the contests via one of the two free entry methods- *i.e.* the daily bonus, or, the “rain” bonus. Both the daily bonus and the rain bonus award free credits that are exactly similar to the purchased credits. *See Officer’s Certificate attached as Exhibit A.*

To play for free, one needs to first complete the KYC verification (to ensure the user is a real person and not a robot). This allows the user to join rain and/or open a free case every day to obtain free credits, open loot boxes, and play the contests (with the free credits) with the exact same odds and fairness as a player who chooses to purchase credits. See Officer's Certificate attached as Exhibit A.

The daily bonus offers each user the option to claim a free daily loot case. Rain is the Company's rewards program and it provides 0.33% of all user spend on the website during the stated time period (i.e. 30 minutes). Each rain period lasts for 30 minutes and there is a verification of a live participant within the last two minutes of the rain. At the end of this 30-minute period, an equal share of the total pot is given to any user who is either (i) over level five on the website can participate in the rain period or (ii) who has completed the KYC verification process. Once verified a single time by the third-party verification service, users are able to regularly and consistently claim the free credits from all rains and thereby play all of the contests.

As stated in the certificate, users can submit for a daily bonus every single day and participate in as many bonus rains as they desire- there is no maximum or limit on their participation and users will receive the same free loot case no matter how many times they submit via one of the free methods. The certificate also states a user can obtain an unlimited number of free lot cases to accumulate credits, and, that loot boxes obtained via free methods have the exact same chance of winning as paid entries.

All of the games fall within the scope of the free to play entry method because the credits received from the daily bonus loot case or rain can be used to play in any of the contests. For example, users can join a rain (every 30 minutes) or open a free case (once per day), open additional loot boxes, and play for free (with same odds and prizes) as those who paid for their credits. It generally takes approximately five rains to obtain the equivalent amount of credits to the most commonly wagered entry fee on the platform, however, users can immediately enter contests with the credits received from a single rain or daily bonus.

II. ANALYSIS OF FEDERAL GAMBLING LAWS

A. Application of UIGEA

The Unlawful Internet Gaming Enforcement Act of 2006 (“UIGEA”) created a new federal crime – knowing receipt by a person “in the business of betting or wagering” of monies in connection with the participation of another person in “unlawful Internet gambling.”⁴

UIGEA does not include a general “federal” definition of “unlawful internet gambling”; rather it is defined as a “bet or wager [that] is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.”⁵ Thus, the federal prohibitions under UIGEA are entirely dependent on the existence of an underlying federal or state law violation.

The statute defines “bet or wager” as “the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome.”⁶ UIGEA carves out an exception from the term “bet or wager” for “participation in any game or contest in which participants do not stake or risk anything of value other than (i) personal efforts of the participants in playing the game or contest or obtaining access to the Internet; or (ii) points or credits that the sponsor of the game or contest provides to participants free of charge and that can be used or redeemed only for participation in games or contests offered by the sponsor.”⁷

The contests should be exempt from UIGEA because users do not “stake or risk anything of value” because the credits can easily and consistently be obtained via promotional methods (*i.e.* free of charge) and users are not required, under any circumstances, to purchase credits to compete and participate in the contests.⁸ And, while users may lose credits in the game, the credits have no value outside of the platform.

Further, because there is no relevant federal law that is violated (as discussed further below), the legality of the contests under UIGEA will be entirely dependent on their legality under

⁴ 31 U.S.C. § 5363.

⁵ *Id.* at § 5362(10)(A).

⁶ 31 U.S.C. § 5362.

⁷ *Id.* at § 5362(1)(E)(viii).

⁸ See e.g. *State of California v. Lipay Nation of Santa Ysabel*, 898 F.3d 960, 966 (9th Cir. 2018) (explaining that a decision to wager money is within the “bet or wager” language of the UIGEA because patrons were staking something of value on the outcome of a game).

state law.⁹ In most states, illegal gambling has three elements: consideration, chance, and prize. The contests have two of the three elements (chance and prize), so the analysis of the legality of the contests under state law depends on whether there is consideration under the respective state law. The lack of consideration in the contests is analyzed below in Section III.

As discussed in Section III and summarized in the Appendix, in many states and assuming it is properly structured, it is reasonable to conclude there is no underlying state violation in offering the contests. Therefore, because UIGEA requires an underlying federal or state law violation to be considered “unlawful internet gambling,” we believe the contests should also be permissible under many states’ laws and consequently it would be exempt from UIGEA’s prohibition in those states.

B. Application of the Wire Act

The Wire Act¹⁰ was enacted to prohibit illegal sports books from accepting bets.¹¹ Specifically, the Wire Act targets gambling operators, but not the gamblers themselves. The law prohibits the use of a “wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers.”¹² The statutory language requires the activity to be both a “bet or wager” and on a “sporting event or contest” for it to be illegal.

i. Bet or Wager Analysis

The contests lack a “bet or wager” as required for a Wire Act violation because users need not submit any form of payment or consideration for entry into the contests.¹³ The Wire Act does

⁹ It is important to realize that any UIGEA prohibition would be predicated on a violation of a state law, because, as of the writing of this opinion, there are no federal law violations that would implicate UIGEA. Therefore, we concentrate our analysis on state laws because the contests would be permissible under both federal and state law in a state that permits the contests because they lack consideration under state law.

¹⁰ 18 U.S.C. § 1084.

¹¹ See New Hampshire Lottery Comm'n v. Barr, 386 F. Supp. 3d 132, 157 (D.N.H. 2019) (“NHLC”) (holding that prohibitions under the Wire Act apply only to bets or wagers on a sporting event or contest).

¹² 18 USCA § 1084(a).

¹³ See id.

not prohibit games that lack consideration because they are commonly understood not to be a bet or wager.¹⁴

Specifically, even though a bet or wager is not defined in the Wire Act, courts interpreting other federal statutes recognize that the “bet or wager” language includes: (1) the distribution of prizes; (2) determined on the basis of chance or a future contingent event not under the actor's control or influence; (3) for a consideration.¹⁵

Here, the contests allow users to compete for the opportunity to win cash prizes, which likely satisfy the elements of chance and prize. However, as explained below in Section III, there is no consideration present because the credits need not be purchased and can be obtained on an unlimited basis for free. Users need not purchase credits and they can be obtained with minimal effort. Therefore, the contests are lacking consideration and there is no bet or wager as those are commonly understood. Thus, the Wire Act should not prohibit the contests because there is no “bet or wager” present in the contests, which is required for any violation of the Wire Act.

ii. Sporting Event Analysis

In addition to the lack of consideration discussed above, the Wire Act has been held to only apply to betting on sporting events. As the contests do not involve betting on sporting events, the Wire Act should not be implicated. The legislative history of the Wire Act and its limited caselaw supports that it is only applicable to wagering on an actual sports game and not to games of chance like the contests.¹⁶

There are only two federal courts of appeal that have considered the scope of the Wire Act. Both understood the “sporting event or contest” covered by the Wire Act was limited to sports betting on actual physical contests (e.g. baseball, basketball). In 2002, the Court of Appeals for the Fifth Circuit concluded that the Wire Act “clearly requires that the object of the gambling be a sporting event or contest.”¹⁷ In 2014, the First Circuit noted that “The Wire Act applies only to ‘wagers on any sporting event or contest,’ that is, sports betting.”¹⁸ Thus, the relevant caselaw indicates the “sporting event” covered by the Wire Act is limited to traditional sports betting and not to the contests. Most recently, the Supreme Court in *Murphy v. National Collegiate Athletic*

¹⁴ See e.g. *United States v. Alpirn*, 307 F. Supp. 452, 455 (S.D.N.Y. 1969) (explaining that a mere wagering recommendation (and payment for successful recommendations) is not a prohibited bet or wager as that is normally understood and was not the type of activity Congress had in mind).

¹⁵ *F.C.C. v. American Broadcasting Company*, 347 U.S. 284, 290 (1954).

¹⁶ See e.g. *United States v. DiCristina*, 886 F. Supp. 2d 164, 215 (E.D.N.Y. 2012) (“The Act applies only to wagering on sporting events.”), rev'd on other grounds, 726 F.3d 92 (2d Cir. 2013).

¹⁷ *In re MasterCard Int'l Inc.*, 313 F.3d 257, 262 n.20 (5th Cir. 2002).

¹⁸ *United States v. Lyons*, 740 F.3d 702, 718 (1st Cir. 2014).

Association—in discussing the historical federal approach to gambling legislation—stated that the Wire Act only “outlaws the interstate transmission of information that assists in the placing of a bet on a sporting event.”¹⁹

Further, the Office of Legal Counsel for the Department of Justice in a Memorandum Opinion dated September 20, 2011 (the “DOJ Opinion”) discussed the legislative history of the Wire Act and concluded that it is limited to transmissions relating to wagers in sports betting: “More broadly, the Wire Act’s legislative history reveals that Congress’s overriding goal in the Act was to stop the use of wire communications for sports gambling in particular.”²⁰

Although no authority has directly addressed whether the Wire Act would apply to the contests, the persuasive caselaw and DOJ Opinion (cited above) supports that it is limited to traditional sports betting. Therefore, it is reasonable to conclude that the Wire Act does not prohibit the contests.

2018 DOJ Opinion

In 2018, the DOJ sought to expand the scope of the Wire Act beyond traditional sports wagering (“2018 Memorandum”).²¹ The attempt was unsuccessful as the Federal District Court for the District of New Hampshire, in New Hampshire Lottery Comm’n v. Barr (“NHLC”),²² set aside the DOJ’s efforts to expand the reach of the Wire Act to cover non-sports wagering or skill wagering such as the contests offered by the Company.²³

Although the DOJ appealed the NHLC decision, the First Circuit again held that the proper view of the Wire Act is to read it as being limited to sports wagering.²⁴ Thus, the holdings by courts limit the Wire Act to actual sporting events and leave little room for expansion to other wagering activities outside of sporting events.

¹⁹ 138 S. Ct. 1461, 1483 (2018) (emphasis added).

²⁰ <https://www.justice.gov/sites/default/files/olc/opinions/2011/09/31/state-lotteries-opinion.pdf> at 8.

²¹ Steven A. Engel, Reconsidering Whether the Wire Act Applies to Non-Sports Gambling, Memorandum Opinion for the Acting Assistant Attorney General, Criminal Division, U.S. Dept. Just. 23 (Nov. 2, 2018).

²² See *supra* fn 9.

²³ 386 F. Supp. 3d at 160 (“I hereby declare that § 1084(a) of the Wire Act, 18 U.S.C. § 1084(a), applies only to transmissions related to bets or wagers on a sporting event or contest.”).

²⁴ New Hampshire Lottery Comm’n v. Rosen, No. 19-1835, 2021 WL 191771, at *15 (1st Cir. Jan. 20, 2021) (“Like the Fifth Circuit, and the district court in this case, we therefore hold that the prohibitions of section 1084(a) apply only to the interstate transmission of wire communications related to any “sporting event or contest.”); See also IGT et al. v. Garland et al. No. CV 21-463 WES, 2022 WL 4245579, at *1 (D.R.I. Sept. 15, 2022) (“The substantive question of statutory interpretation at the center of this case – whether the Wire Act of 1961 reaches non-sports betting – has been definitively decided in the First Circuit.”).

Therefore, the proper view of the Wire Act is to read it as being limited to sports wagering as it has been consistently interpreted by the courts—most recently the First Circuit affirming the NHLC decision.²⁵

C. Application of IGBA and the Travel Act

For substantially the same reason that the contests do not violate UIGEA (*i.e.* UIGEA requires an underlying state law violation), they also do not violate other federal laws that criminalize gambling activity, such as the Illegal Gambling Business Act (“IGBA”)²⁶ and the Travel Act.²⁷

IGBA criminalizes those conducting, financing, managing, supervising, directing, or owning an “illegal gambling business.” Illegal gambling business is defined as “a gambling business which—(i) *is a violation of the law of a State* or political subdivision in which it is conducted; (ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and (iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.” (*emphasis added*). Therefore, the contests can only be in violation of IGBA if they violate a state law.

The Travel Act also requires a violation of a state or federal law as a predicate to a violation of federal law. The Travel Act prohibits any person from using any facility in interstate or foreign commerce, with the intent to promote, manage, establish, carry on or facilitate “unlawful activity.”²⁸ Unlawful activity is defined to include “any business enterprise involving gambling... *in violation of the laws of the State in which they are committed or of the United States.*” (*emphasis added*). Therefore, the contests can only be in violation of the Travel Act if it violates a predicate state or federal law.

Both IGBA and the Travel Act are dependent on an underlying state (or, for the Travel Act, also a federal) prohibited activity (*e.g.* sports betting). Therefore, we do not believe either of these statutes pose a concern to the contests because they are not sports betting or prohibited gambling activity under state law (as explained earlier in the UIGEA and Wire Act analysis and based on the factual information provided by the company and the exclusion of the game in certain states).

D. Indian Gaming Regulatory Act

²⁵ *Id.*

²⁶ 18 U.S.C. § 1955 *et seq.*

²⁷ 18 U.S.C. § 1952.

²⁸ 18 U.S.C. § 1952(a).

The Indian Gaming Regulatory Act²⁹ established the National Indian Gaming Commission to regulate the conduct of gaming on Indian Lands. IGRA provides the regulatory structure for gaming on Indian Lands in the United States. The Company has certified to us in its Officer's Certificate that it does not operate on Indian lands. Therefore, we do not believe this Act to be applicable.

E. Federal Lotteries Act

The Federal Lotteries Act prohibits importing or transporting lottery tickets: "Whoever brings into the United States for the purpose of disposing of the same, ... or carries in interstate or foreign commerce any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery..."³⁰ Here, the contests do not fall within the ambit of the federal prohibition because there is no lottery ticket, it is not being imported or transported across state lines, and, there is nothing being purchased by users because credits are freely given out as promotional items. Therefore, we do not believe this Act to be applicable.

²⁹ 25 U.S.C. §2701 *et seq.*

³⁰ 18 U.S.C. § 1301 *et seq.*

III. APPLICABLE STATE LAW ANALYSIS

As the federal law analysis is dependent upon the legality under state law, we look to state law treatment of gambling/lotteries and sweepstakes. Most states share some commonality in their general approach to gambling. They reserve the right to conduct lotteries³¹ and penalize nongovernmental entities for conducting games that feature all three elements of a lottery – 1) prize; 2) chance; and 3) consideration.³² States generally permit activities that lack one of these three elements, such as “sweepstakes” – which usually involve prize and chance but not consideration. States also generally allow contests, which involve prize, and may involve consideration, but require skill instead of chance.

In the contests, there are prizes – *i.e.*, the credits awarded to the winner of the game—and there is chance, as the games likely involve chance.³³ Thus, the remaining issue is one of consideration. Consideration is present when the participant gives something of value and receives an opportunity to play the game or to receive something of value.³⁴ However, in the contests, users need not pay for the credits because they can easily be obtained for free—*i.e.* without the payment of any funds or expenditure of material effort.

A. The Free, Alternative Method of Entry to Avoid Consideration.

To avoid the general prohibition against lotteries, many states allow an alternative method of entering the game for free (or free AMOE). As the name suggests, a free AMOE allows participants to enter a sweepstakes without purchasing a product, paying money, devoting a substantial amount of time and effort, or otherwise giving anything to the sweepstakes sponsor in exchange for the opportunity to participate. For example, completing and submitting an entry

³¹ A lottery is generally defined as any game in which the elements of prize, chance, and consideration are present. See, e.g., TEX. GOV'T CODE ANN. § 466.002(5) (“A lottery is “the procedures operated by the state under this chapter [466] through which prizes are awarded or distributed by chance amount persons who have paid, or unconditionally agreed to pay, for a chance or other opportunity to receive a prize.”); GA. CODE ANN. § 16-12-20(4) (A lottery is “any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win such prize, whether such scheme or procedure is called a pool, lottery, raffle, gift, gift enterprise, sale, policy game, or by some other name.”).

³² See, e.g., N.C. GEN. STAT. ANN. § 14-290; FLA. STAT. ANN. § 849.09(2).

³³ The element of “prize” is present in game play involving Promo Coins, because “prize” is anything of value which is awarded to a winner in a game or in a promotion and the Promo Coins that are won can be redeemed for cash prizes. And, regardless of the standard applied – *i.e.* the “predominance test” or the “dominant factor test,” the element of “chance” is likely present in the online games played with Promo Coins.

³⁴ See 1995 Fla. Op. Att’y Gen. No. 95-21 (March 21, 1995) (stating that consideration may exist where there is a benefit to the promoter).

form is now a commonly-used and widely-recognized free AMOE.³⁵ A free AMOE is permitted in most states even though most people receive their entries into the game through the purchase of a product being promoted. Flexible methods of entry, such as free AMOE, are distinguishable from the closed participation model. As the Kentucky Attorney General explained in the context of a beverage promotion:

[T]he mere fact that some of the participants in a promotional scheme in fact make purchases of the sponsor's products does not, in and of itself, constitute consideration supporting a lottery, where chances to participate in the scheme are also freely given away **on a reasonably equal basis** without respect to the purchase of merchandise. These schemes, known as "flexible participation" schemes, are not to be confused with "closed participation" gift enterprise schemes, which are open only to patrons purchasing goods, services, or whatever the promoter is trying to push by the scheme.

1981 Ky. AG LEXIS 285, 3-5 (Ky. AG 1981) (emphasis added).

Here, players can submit to receive free credits via the daily bonus or the rain bonus. Users can submit unlimited bonus entries, and, the bonus entries have the exact same chance of winning as entries obtained via the paid method. Therefore, the Company offers equal, unlimited entries to the bonus entrants.

B. The Majority of States Permit "No Purchase Necessary" Entries/Free AMOEs.

The attached **Appendix**³⁶ analyzes those states in which this style of "no purchase necessary" is permitted. When evaluating the element of consideration, the states fall into three general categories:

³⁵ At one time, the State of Florida took the position that entering a game via the Internet constituted consideration because of the cost associated with subscribing to an Internet service provider. BILL CARMODY, *ONLINE PROMOTIONS: WINNING STRATEGIES AND TACTICS 3* (2004). Florida has since changed its position, acknowledging that Internet access is commonplace and pervasive. Congress adopted this reasoning under IGBA, which expressly excludes Internet access from the definition of "consideration." 31 U.S.C. § 5362.

³⁶ The Appendix provides a summary of the prizes and promotions law of each state, to the extent available, as well as an overview of any relevant AG opinions and case law. To the extent a column is not

i. Pecuniary/Economic Value Jurisdictions

Federal regulators³⁷ and most states have adopted a pecuniary/economic value approach. Under this approach, consideration requires some measurable economic value flowing from the participant to the promoter. Consideration is usually in the form of the transfer of money. However, not all consideration involves the payment of money or the purchase of a product or service; consideration may also be found in nonmonetary methods of entry if a substantial degree of effort by the participant is required. For example, when a prospective contestant must complete lengthy surveys, make multiple trips to a store location, refer a friend, or devote a substantial amount of time in order to participate in a sweepstakes, consideration is likely present.³⁸ On the other hand, activities requiring minimal effort, such as listening to the radio, watching a television program, or visiting a single store on one occasion, without being required to make a purchase or pay a fee, likely are not consideration.³⁹

Incidental sums paid to third parties such as postage stamps do not constitute consideration.⁴⁰ Likewise, payments to providers of internet services are unlikely to invalidate a

filled for a particular state, that is an indication that our research did not reveal a relevant statute, case, or AG opinion.

³⁷ The Federal Government has also adopted the Economic Value test in the federal “Deceptive Mail Prevention and Enforcement Act.” 39 U.S.C. § 3001(k) (2009). This is the only federal law to directly regulate sweepstakes promotions. In particular, the Act states that “[E]ntry materials for a sweepstakes or a promotion that purports to be a sweepstakes; and ... does not contain a statement that discloses in the mailing, in the rules, and on the order or entry form, that no purchase is necessary to enter such sweepstakes [is nonmailable matter, shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs].” 39 U.S.C. § 3001(k)(2), (k)(3)(A)(i)-(ii) (2009).

³⁸ See State v. Reader’s Digest Ass’n, Inc., 501 P.2d 290, 297 (Wash. 1972) (holding that “the time, thought, attention and energy expended by members of the public in studying ... advertising” constitutes consideration); Seattle Times Co. v. Tielsch, 495 P.2d 1366, 1369 (Wash. 1972) (finding consideration where participants were required to spend hours following a football forecasting contest and the benefit flowed to the promoter).

³⁹ See Haskell v. Time, Inc., 857 F. Supp. 1392, 1404 (E.D. Cal. 1994) (requiring a sweepstakes participant to travel to the store to deposit entry form is not consideration); See also Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin, 770 F. Supp. 480, 486 (W.D. Wis. 1991) (listening to or watching a radio or television program or visiting a single store or other place on one occasion without being required to make a purchase or pay a fee is likely not consideration).

⁴⁰ See Haskell, 857 F. Supp. at 1404 (“Plaintiff concedes that no purchase is required to enter defendants’ sweepstakes, but instead asserts that the payment of twenty-nine cents postage is ‘valuable consideration.’ This assertion is untenable. The California Supreme Court has held that a requirement that a sweepstakes entrant deposit the entry form at the sponsor’s place of business is not ‘valuable consideration’ sufficient to state a cause of action under California law.”).

sweepstakes by an unrelated promoter where entry is available only online. Potential issues, however, face those who use text messages as a method of entry.⁴¹

ii. Traditional Contract Principal Jurisdictions

A few states may still follow traditional contract principals on consideration (which have not been overruled or statutorily abrogated) and have taken the view that any consideration sufficient to support a simple contract will be deemed the consideration necessary to find illegal gambling activity.

iii. Any Consideration Jurisdiction

A few courts have held that any economic consideration flowing to the sponsor, regardless of where it came from, is sufficient to meet the consideration element. For example, one court found that consideration existed in a grocery store's bonus bingo game, which required the patron to visit the store to get a prize slip, which was available without charge or purchase, and noting that "[t]he players ... wagered their time, attention, thought, energy, and money spent in transportation studying Safeway's advertising and in journeying at least once per game to a Safeway Store for a chance to win a prize – all of which, we think, amounted to a valuable consideration moving from the players to the promoter."⁴² These types of older decisions tend to be abrogated by statutes that specifically permit sweepstakes that are used solely to promote "services, goods, wares, and merchandise of a business."⁴³

C. It Must Be Incidental, Not the Predominant Purpose.

Various promoters have attempted to use the free entry exception to the prohibition against lotteries to devise schemes that prosecutors often describe as "a thinly veiled lottery."⁴⁴ The concept of a "thinly veiled lottery" is a simple one: offer a lottery-like product but offer a free method of entry to evade lottery prohibition. The most litigated scheme has been the "Lucky Shamrock." Several courts and attorney generals have addressed the "Lucky Shamrock" scheme. *See attached Appendix*. Typically, the Lucky Shamrock emergency phone card was a one-or-two minute long-distance phone card, which also had a sweepstakes entry attached to the card. The Lucky Shamrock emergency phone card machines dispensed cards with a pull-tab sweepstakes

⁴¹ See generally Kan. Op. Att'y Gen. 88-125 (Aug. 31, 1998) ("In addition to being able to obtain a coupon by purchasing a Lottery ticket, the private business may provide a toll-free number for persons to call to receive free coupons for similar food items and discounts. The number must be toll-free so that the people do not have to pay to get a coupon. This is so because consideration is defined as 'anything which is commercial or financial advantage to the promoter or a disadvantage to any participant.'").

⁴² Washington v. Safeway Stores, Inc., 450 P.2d 949 (Wash. 1969).

⁴³ WASH. R. CODE § 9.46.0356(3).

⁴⁴ See Bohrer v. City of Milwaukee, 635 N.W.2d 816, 819 (Wis. Ct. App. 2001).

entry and electronically displayed the sweepstakes results from that card. Although the purchase of a phone card from a dispenser was the primary method for participating in the sweepstakes, it was not the sole method, as the sweepstakes also offered a free AMOE by obtaining a free game piece from a participating retail store or through the mail from a Lucky Shamrock distributor.

Courts and attorney generals in several states looked at the Lucky Shamrock promotion and dispensers with regard to whether such sweepstakes and dispensers violated criminal gambling laws in their states. It appeared that only the Kansas Attorney General provided an opinion that the sweepstakes was likely to be legal because the contest would lack consideration if: the AMOE was free, not overly burdensome, and offered an equal chance of winning to non-paying contestants.⁴⁵ The Illinois Attorney General, on the other hand, found the free entry to be ineffective or likely to be ineffective, noting: “although the scheme has been carefully designed to appear to meet the criteria generally prescribe by the courts in approving giveaway schemes, a review of the underlying purpose of the scheme leads inexorably to the conclusion that the Lucky Shamrock sweepstakes is but a thinly veiled lottery.”⁴⁶

To that end, some courts and attorney generals have considered whether the sweepstakes was the promoter’s primary business or incidental to promoting another business. An example of this primary versus incidental analysis arises in the context of “pull-tab” or “ad-tab” games. The Alaska Attorney General undertook this analysis in the context of a company that was selling latex game tickets to retail stores in Alaska, which looked like and had prize structure features much like, traditional pull-tab games – i.e. players rub off latex coverings on a game piece, which results in the award of a prize if what is uncovered is one of the randomly distributed winning play symbols. Although the company asserted that no purchase was necessary to obtain a ticket, the AG concluded that “the game piece is the company’s product, rather than the incidental information card.”⁴⁷

Accordingly, interactive activities where the participants directly or indirectly pay fees to play a game tend to come under greater legal scrutiny. In these games, the promoters are

⁴⁵ See Kan. Op. Att’y Gen. No. 97-26 (Mar. 17, 1997).

⁴⁶ See Ill. P. Att’y Gen. 98-010 (July 13, 1998).

⁴⁷ See Alaska Op. Att’y Gen. (Inf.) 127 (1992); See also Sniezek v. Colorado Dep’t of Revenue, 113 P.3d 1280 (Colo. Ct. App. 2005) (concluding that plaintiffs’ machine was designed to promote the sale of the “win cash” feature of the Ad-Tab, not the coupon feature, and that the coupon feature was merely “incidental” to the game portion of the ticket); F.A.C.E. Trading, Inc. v. Dep’t of Consumer & Indus. Servs., 717 N.W.2d 377, 389 (Mich. Ct. App. 2006) (holding that the product discount participants purchase to enter the game was incidental to game itself, and the free AMOE did not legitimize the game); In Re Shorts Bar of Rochester Inc. v. State Liquor Auth., 794 N.Y.S.2d 266, 267 (N.Y. App. Div. 2005) (“Here, there is substantial evidence supporting the inference that purchases of the ‘Ad-Tab’ card sold by petitioners paid their consideration not for the discount coupons on the cards but rather for the opportunity to win prize money.”).

attempting to make money not from the sale of a product unrelated to the sweepstakes, but from paying customers desiring to win prizes in the sweepstakes.⁴⁸

Here, the bonus entry methods are offered as a completely free and equal alternative to the Company's existing platform that consists of a paid entry method. See Officer's Certificate attached as Exhibit A. This free entry promotion is incidental to the promoted product and was created in order to encourage play of the contests so that users will spend time on the platform and may purchase credits in the future to play in additional contests. See Officer's Certificate attached as Exhibit A.

D. The Same Opportunity Must be Offered to Both Paid and Free AMOE Players.

Even after a sweepstakes sponsor has offered a free AMOE, the sponsor could nevertheless violate state lottery laws if it does not give each method of entry **equal treatment**. In other words, a sponsor may not give better odds of winning to participants who enter a sweepstakes by purchasing a product than to those who enter by using a free AMOE. For example, a person that enters by paying cannot get a disproportionate number of entries compared to nonpaying entries, and deadline dates should be identical for paying and non-paying participants.

Occasionally, commentators refer to this concept as "equal dignity." In fact, no court has specifically recognized such rule by name, but instead, the concept has been created through a collection of cases, whereby courts and Attorney Generals have required equal treatment of paying and non-paying participants. The concept of "equal dignity" to validate a free method of entry in a sweepstakes promotion that offers opportunities to enter to both paying and non-paying participants has been shaped by case law in regard to (i) method of entry; (ii) opportunity to win; (iii) claiming prizes; and (iv) prizes awarded.

i. Method of Entry

Central to the concept of equal dignity is that the public knows and understands that no purchase is necessary and knows how to enter the sweepstakes. Thus, to take advantage of an AMOE, a company must include "clear and conspicuous" disclosures in its promotion of the

⁴⁸ "A distinction exists between promotion of a primary business of selling a meal or a drink for valuable consideration together with a chance to win a business-related prize, in kind or, albeit, as a sweepstakes prize which attracts sales, and promotion of a non-primary business related and incidental activity for valuable consideration together with a chance to win a prize unrelated to either the primary business activity or attraction of sales. The difference in the distinction is in the essence of the product: [t]he former promotes sales of the primary business product, e.g., food, while the latter promotes the prize and the product (coupon) is unrelated to either the primary business purpose of the promoter, of the distributor." F.A.C.E. Trading, Inc. v. Carter, 821 N.E.2d 38, 43 (Ind. Ct. App. 2005).

sweepstakes. This concept, while first introduced as a matter of common law,⁴⁹ has now been codified in many state statutes⁵⁰ governing sweepstakes.⁵¹ Therefore, the Company has the free methods of entry clearly stated in its rules and it is an easily accessible method of entry.

ii. Opportunity to Win

Another concept underlying equal dignity is that non-paying participants should not face greater odds or obstacles to winning the prizes than paying participants face. For example, a person that enters by paying cannot get a disproportionate number of entries compared to nonpaying entries, and, any deadline dates should be identical for paying and non-paying participants.⁵²

⁴⁹ See generally *F.A.C.E. Trading, Inc. v. Todd*, 903, a.2D 348, 353-54 (Md. 2006) (citing *Mid-Atl. Coca-Cola Bottling Co. v. Chen, Walsh, & Tecler*, 460 A.2d 44, 446 (Md. 1983)).

⁵⁰ See, e.g., CAL. BUS. & PROF. CODE § 17539.15(b) (See Appendix). See also 815 Ill. Comp. Stat. Ann. 525/25 (“Disclosures required. A written promotional prize offer must contain each of the following in a clear and conspicuous statement at the onset of the offer:

- (1) the true name or names of the sponsor and the address of the sponsor's actual principal place of business;
- (2) the retail value of each prize the person receiving the notice has been selected to receive or may be eligible to receive;
- (3) a disclosure that no purchase is necessary to enter such written promotional offer;
- (4) a disclosure that a purchase will not improve the person's chances of winning with an entry”).

⁵¹ As evinced by a NY AG Opinion, these types of statutes are being strictly enforced. In 2004, the New York State Attorney General announced a settlement with the maker of Tylenol in regards to its “Survivor All-Stars-Tylenol Push Through the Pain Game” sweepstakes promotion. According to the AG’s office, the advertisements for the sweepstakes made it appear that a purchase of Tylenol was required to enter. The printed advertisements, for example, contained: large bold print, indicating that to enter, consumers should “Buy Tylenol;” and, while there was a non-purchase entry, the statement “No Purchase Necessary” was disclosed in the disclaimer at the bottom of the print advertisements. The settlement resulted in Tylenol paying \$52,000 in civil penalties and costs. Its makers agreed to: (1) “not make any express or implied representation in its advertisements that a consumer must purchase a product in order to enter a sweepstakes [or that] a consumer will have a greater chance of winning a sweepstakes if they purchase a product;” (2) “clearly and conspicuously disclose in its advertisements that no purchase is necessary to enter a sweepstakes;” and (3) “clearly and conspicuously and with equal prominence to the language that refers to the product purchase, disclose the availability of” non-purchase entries “in any [ads] which refer to the purchase a product as a means of entering a sweepstakes.” See Press Release, N.Y. State Att’y Gen., Tylenol Manufacture to Amend Sweepstakes Ads (Sept. 10, 2004) available at http://www.oag.ny.us/media_center/2004/sept/sept10a_04.html.

⁵² See *Black N. Assocs., Inc. v. Kelly*, 722 N.Y.S.2d 666, 667-68 (N.Y. App. Div. 2001) (holding that a Lucky Shamrock Vending Machine that cost \$1 and dispensed a game piece for prizes between \$1 and \$500 was a gambling device even though free promotional game pieces were available upon request at the bar where machine was located or by mail, and sign indicated “no purchase necessary,” because free game piece was limited to one person per day, whereas “players ... could increase their chances by making

The free players can submit unlimited entries for free credits. And, the rewarding of the credits to the free entry players will be processed promptly (*i.e.*, without any delay). Finally, the Company offers proportionate chances of winning for the free entrants and the paid entrants- *i.e.* the paid entries do not have a greater chance of winning any prize.

iii. Claiming Prizes

A third concept of equal dignity is that non-paying customers cannot be disadvantaged in claiming their prizes. This is particularly acute where the opportunity to win the prize pools for free entries is more difficult.⁵³ The Company provides the same prize claiming processes for the paid winners and the free entry winners.

iv. Prizes Awarded

The final concept is that non-paying participants should have equal chances to win all prizes offered. For example, separate prize pools should not be offered to paying versus non-paying participants.⁵⁴ Thus, the Company offers equal chances of winning all the prizes for all entrants. The Company does not offer separate prize pools or set limitations in how the players obtain their credits, and, all players will have equal chances to win all prizes offered.

Finally, we note that the Nevada Attorney General opined that even where there is no initial consideration to play a game, it may nevertheless constitute consideration if players earn something of value while playing the game and risk such consideration in the hopes of greater

multiple purchases”); See also *Animal Prot. Soc’y of Durham, Inc. v. State*, 382 S.E.2d 801, 802-03 (N.C. Ct. App. 1989) (finding that scheme violated state lottery laws where provision for not having to buy the items to obtain some bingo cards “alone did not transform the bingo games offered by plaintiffs into “free bingo” since patrons who obtained the cards without making a purchase received fewer cards than patrons who did by the items”); *People v. Shira*, 133 Cal. Rptr. 94, 95 (Cal. Ct. App. 1976) (finding ring toss promotion in theater to be illegal because “[t]he chance to win the prize [was] not open to any person without the payment of consideration. The vast majority of players (88 percent) who [could not] successfully toss the small rings over the peg [had to pay] a valuable consideration (25 cents) for a chance to win the prize”).

⁵³ See *Commonwealth v. Wall*, 3 N.E.2d 28, 30 (Mass. 1936) (finding sweepstakes at movie theater to be an unlawful lottery, despite free entry to non-paying participants, because of disadvantage to non-paying participants in redeeming winning tickets, in that, unlike paying participants, they could not be present in the theater where the drawing was taking place and hear their names being read).

⁵⁴ See *Classic Oldsmobile-Cadillac-GMC Truck, Inc. v. State*, 704 A.2d 333 (Me. 1997) (invalidating sweepstakes offering two promotions to lessees of new vehicles – one for those who entered into a lease agreement and one for those who did not).

gain.⁵⁵ The Nevada AG specifically opined that, where completely free-play credits are risked “upon the chance or uncertain occurrence of a winning outcome ... a wager could exist.” Stated differently, a sweepstake or unlicensed game of chance may be illegal if its participants may lose play credits for the opportunity to win a prize. Therefore, we believe the Company faces significant issues in the state of Nevada.⁵⁶ *Thus, we would recommend that the Company exclude Nevada players.*

Similarly, in Washington state, there is also reason for concern because of negative case law. In Tielsch,⁵⁷ players purchased a newspaper that contained coupons used in a football prediction contest. Some contestants spent 15-20 hours each week in preparing their selections, which required 20 correct predictions. Some players submitted multiple entries each week. The Court concluded that players “are required to do something, and the thing which they are required to do involves many hours of a participant’s time if he is to have any hope of success.” That, combined with “a benefit flowing to the promoter which induces him to make the offer,” meant the requirement of consideration was satisfied.

Further, a recent Ninth Circuit opinion, applying Washington State law, concluded playing with virtual chips in an online casino constitutes illegal gambling because they were a “thing of value” since they could be used to pay for extra turns in the online casino.⁵⁸ Therefore, we recommend that the Company not offer the contests in Washington (and especially in light of the fact that Washington has historically been very restrictive in the gaming it allows, and is overly aggressive in enforcement against gaming operators).

E. The AMOE Must Account for the Practicalities of How Non-Paying Players Are Likely to Participate.

It is not enough to offer a free AMOE to avoid the general prohibitions against lotteries. Rather, the free AMOE must actually offer an alternative method by which players are likely to participate in the sweepstakes. For example, if players are unlikely to mail in entry forms, then offering this alternative method of entry to non-paid subscribers is not a true AMOE. The Texas Attorney General rejected a drive-in theater sweepstakes promotion as an illegal lottery, although the contest’s sponsors said that “free” entries were available on request, finding:

Human nature is such that a person is not likely to drive out to the Buckhorn Drive-In Theater, get in a line of cars entering the theater, ask

⁵⁵ See Nev. Att’y Gen. Op. No. 2000-38 (Dec. 29, 2000).

⁵⁶ It is not totally clear whether the purchase of additional play chips during any given tournament involving no purchase necessary customers is legal in the other 32 states included within the appendix.

⁵⁷ Seattle Times Co. v. Tielsch, 495 P.2d 1366 (1972).

⁵⁸ Kater v. Churchill Downs Inc., 886 F.3d 784, 788 (9th Cir. 2018).

at the Box Office for a free card or cards, and then drive away while the patrons are buying tickets, obtaining their registration cards and entering the theater. It is true that under the plan, the registration cards are free upon request, but unless requested no registration card is given or offered to anyone unless they purchase a ticket to the show. Certainly, the patron is favored over the non-patron since a registration card is given to the patron freely upon buying a theater ticket. However, the non-patron must go to the box office and request a registration card and suffer the embarrassment that naturally follows when he says he is not buying a ticket to the show.⁵⁹

Accordingly, if players are unlikely to take the time to complete the steps for a free AMOE (sending a stamped, return addressed envelope), then there is not true equal dignity between paid subscribers and “no purchase necessary” players. However, the Company’s free entry option is conducted via an easy to complete daily bonus or rain bonus, rather than the more complex instructions often imposed by other sweepstakes sponsors.⁶⁰ The Company has enabled an easily accessible and completely free method of entry, and, it does not include onerous requirements such as including self-addressed envelopes or other unreasonable requirements.

F. Two States Require Sweepstakes Registration

Although the contests may not require the payment of any consideration, it can still be considered a sweepstakes or other regulated promotion or game of chance (which only requires chance and a prize) and may be subject to sweepstakes/game promotion registration requirements in Florida and New York.⁶¹ Therefore, the prize amounts will be capped at \$5,000 for any winners from Florida or New York, in order to ensure the Company complies with the applicable sweepstakes registration requirements.

Florida lists a number of registration requirements that are applicable to game promotions offering prizes totaling over \$5,000.⁶² For example, if the Company will award a prize over \$5,000, it must file with the Florida Department of Agriculture and Consumer Services

⁵⁹ See Tex. Atty. Gen. Op. C-50 (1963). See also Pepsi Cola Bottling Co. of Luverne, Inc. v. Coca-Cola Bottling Co., Andalusia, 534 S.o.2d 295 (Ala. 1988) (finding that with regard to “alternative” entry, the contest’s sponsors must demonstrate that “free” entrants really do play and really do win and finding that promotion where 225 of the 25,000 of game cards were redeemed constituted illegal lottery).

⁶⁰ Similarly, an easy to complete Internet form would also satisfy this requirement.

⁶¹ Rhode Island also has sweepstakes registration requirements that are facially applicable, however, those requirements are limited to brick-and-mortar retail establishments – not Internet-based promotions. See 11 R.I. Gen. Laws Ann. § 11-50-1 (West) et. seq.

⁶² Fla. Stat. Ann. § 849.094 (West).

(FDACS) seven days prior to commencement of the game promotion, file the rules of the promotion (that cannot be changed after they are filed), and, either a surety bond or proof of a trust account⁶³ is required (with a balance sufficient to pay the total value of all prizes offered).⁶⁴ Florida also requires filing of a “Winner’s List” – a state provided form that is to be submitted within 60 days after winners are finally determined. The form requires the winner’s name, address, prize description, prize value, and award date.

Florida’s regulations also provide that the material terms of the rules must be published in all advertising copies.⁶⁵ Under Florida regulations, material terms include the name of operator and game promotion, that no purchase is necessary to enter or play the game promotion, the start and end dates for entering the game promotion, who is/is not eligible to participate (with respect to age or geographic location), and disclosure of where the game promotion is void.

Further, in Florida the promotion is supposed to be incidental to the sale of other products or services. The Company offers the Standard Coins platform, which is separate from the Promo Coins platform. Thus, there is a product that it promotes and it satisfies this requirement. Also, Florida states that the promotion is supposed to be “limited” and “occasional”: “A game promotion can only be operated by certain entities on a limited and occasional basis as an advertising or marketing tool in connection with and incidental to bona fide sales of consumer products or services, if no purchase is necessary to play.”⁶⁶ Therefore, the Company has specific terms for Florida residents that contain unique limits for the contests.

New York requires registration for any game of chance (e.g. a sweepstakes) that: promotes consumer products or services, has a total prize value in excess of \$5,000, determines a winner by chance, and requires no consideration for entering the game of chance.⁶⁷ The registration filing must be submitted at least 30 days before the start of the promotion, contain the rules and regulations pertaining to the promotion, and, either a certificate of deposit or prize monies in a trust account, or a surety bond, for the total prize amount.⁶⁸ New York also requires filing of a “Winner’s List” form within 90 days after completion of the game of chance- a listing of

⁶³ The moneys held in the trust account may be withdrawn in order to pay the prizes offered only upon certification to the Department of Agriculture and Consumer Services of the name of the winner or winners and the amount of the prize or prizes and the value thereof.

⁶⁴ This last requirement is inapplicable if the company has conducted game promotions in Florida for at least five consecutive years and has had no civil, criminal or administrative actions instituted against them for a violation of Section 849.094, Florida Statutes (F.S.), during that five-year period.

⁶⁵ Fla. Admin. Code Ann. r. 5J-14.003.

⁶⁶ <https://www.fdacs.gov/Business-Services/Game-Promotions-Sweepstakes>.

⁶⁷ N.Y. Gen. Bus. Law § 369-e (McKinney).

⁶⁸ Monies may be withdrawn from time to time to pay the prizes upon certification to the Secretary of State of the names and addresses of the winners and their respective prizes.



the names and addresses of each winner of every prize having a value of more than \$25, along with a description of the prize won and the date when the prize was delivered.

New York's registration form requires the name, address of corporation proposing to engage in the promotion, the geographic area (in New York) covered by the promotion, a description of the promotion, the time period covered (when it begins and ends), the proportionate opportunity of winning prizes, the number of "entry blanks" made available in New York, the number of prize-winning chances, and the retail value of prizes made available in New York.

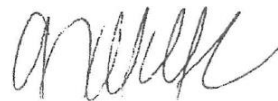
IV. CONCLUSION

The Company offers players to obtain free credits and one can submit an unlimited number of requests for free credits via the daily bonus and the rain bonus.

This letter is based, as to matters of law, solely upon the federal and state laws discussed herein as of the date of this letter. We express no opinion with respect to any other law, statute, rule, regulation, ordinance, decision, judgment, decree, legal requirement, or legal authority whatsoever, including, but not limited to, laws governing corporate organization, authority to transact business, or tax liability. Our analysis does not address the effect, if any, of pending legislation, pending rulemaking proceedings, or other pending proceedings or subsequent interpretations of any of the covered or other laws or regulations before any local, state, or federal governmental authority or the courts. While this letter addresses state and limited federal law, please note that we are not admitted to practice law in any jurisdiction other than Delaware, the District of Columbia, Maryland, Missouri, New Jersey, New York, Ohio, and Virginia.

This letter is rendered solely to you in connection with your consideration of offering a website and in accordance with the recommendations herein. This letter should not be considered legal advice to any third party. Third parties should seek independent legal counsel in this area. This letter may not be relied upon by you or any third party for any other purpose, or quoted to, or relied upon by, any other person or entity other than as described in this paragraph, without our prior written consent. This letter is rendered as of the date hereof, and we do not undertake to advise you of matters which occur or which come to our attention subsequent to the date hereof and which may affect the conclusions expressed herein.

Very truly yours,



Ifrah PLLC