

July 11, 2018

Via Email - rules.coordinator@wsgc.wa.gov and brian.considine@wsgc.wa.gov

Commissioner Bud Sizemore, Chair
Commissioner Julia Patterson, Vice-Chair
Commissioner Chris Stearns
Commissioner Ed Troyer
Commissioner Alicia Levy
Brian Considine, Esq., Legal and Legislative Manager
Washington State Gambling Commission
4565 7th Avenue S.E.
Lacey, WA 98503

Re: Notice -- Big Fish Games, Inc. Petition for Declaratory Order

Dear Mr. Chairman, Commissioners, and Mr. Considine:

This firm represents Huuuge, Inc. and its subsidiaries (collectively, “HI”), which produce and distribute video games available to download in the State of Washington. We write on their behalf in support of the Petition by Big Fish Games, Inc. (“Petitioner”) for a declaratory order confirming that the Big Fish Casino online video games—and similar video games—do not constitute gambling within the meaning of the Washington Gambling Act, RCW 9.46.0237, and therefore are not subject to the Commission’s regulatory or enforcement jurisdiction. HI also supports broader proceedings to determine whether any of the games that have been challenged in federal cases following the federal court decision in *Kater v. Churchill Downs*¹ constitute gambling under the Gambling Act.

The Petition provides compelling support for such a declaratory order. As in many video games, including games distributed by HI, players can play Petitioner’s games for free with virtual tokens (“chips”) that they receive for free at the start of play and at regular intervals, or with tokens that can be purchased for more play. Petitioner’s chips, like HI’s chips, exist and can be used only within the online suite of games for which they were designed. They cannot be redeemed for money and have no real-world value. That is why Petitioner, HI, the public, Commission guidance, and judicial precedent all agree that such games do not constitute gambling, and the new uncertainty introduced by the *Kater* decision establishes a matter of significant public importance.

¹ 886 F.3d 784, 787 (9th Cir. 2018).

Like Petitioner, HI develops a suite of online, casino-themed video games that players realistically and regularly play for free. HI offers free chips at the start of play, daily allotments of chips for logging into the game and accepting free chips, and frequently distributes additional free chips on a promotional basis. HI offers free entertainment to the overwhelming majority of players who choose to play for free, and offers the same entertainment to players who choose to buy chips when they prefer not to wait a short period for more free chips. The games offer a social form of entertainment for amusement only, and they bring joy to thousands of players in Washington. According to Petitioner's terms—and HI's terms²—and as a practical matter, nobody can legitimately play HI's games professionally or for profit.

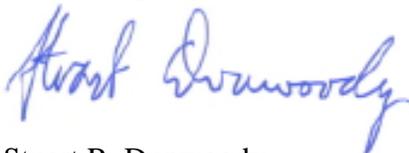
As a matter of federalism, the Washington State Gambling Commission is better situated to interpret Washington state law than a federal appellate court interpreting Washington law on the basis of a complaint's untested allegations on a motion to dismiss. For related reasons, the United States Supreme Court recently affirmed that the federal government cannot commandeer a state's right to regulate gambling in its jurisdiction. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1475 (2018) (“[B]oth the Federal Government and the States wield sovereign powers, and that is why our system of government is said to be one of ‘dual sovereignty.’”). HI supports the Commission asserting its expertise and authority to interpret the Gambling Act.

For the reasons given above and offered in the Petition, HI respectfully requests that the Commission enter a declaratory order confirming online video games like those described in the Petition do not constitute gambling within the meaning of the Washington Gambling Act, RCW 9.46.0237.³ HI also supports broader proceedings, including a hearing with the opportunity to submit substantive comment or amicus briefing, should the Commission find further proceedings necessary. At the Commission's request, HI would demonstrate HI's games before the Commission and answer any questions the Commission may have.

HI thanks the Commission and looks forward to the Commission's action in this matter. If the Commission would like any additional information, please do not hesitate to contact this firm. HI is willing to cooperate fully to help the Commission reach the right determination.

Very truly yours,

Davis Wright Tremaine LLP



Stuart R. Dunwoody

cc: Ms. Audrey Kravets, Esq., General Counsel and Head of Legal for Huuuge Group

² <http://www.huuugegames.com/terms-of-use/>

³ HI reserves its rights, including the right to submit a petition before this Commission.