



June 28, 2020

Via email (IGB.RuleComments@igb.illinois.gov)

Marcus Fruchter
Administrator
Illinois Gaming Board
160 North LaSalle Street, Suite 300
Chicago, Illinois 60601

Re: Objection to Proposed Emergency Rule 1900.1260, and Enforcement of Branding Requirements Under Sections 25-30(e) and 25-35(e) of the Sports Wagering Act

Dear Mr. Fruchter:

We write on behalf of Rivers Casino Des Plaines to object to Proposed Emergency Rule 1900.1260 and, more specifically, subsection 1900.1260(c), which purports to allow tracks and casinos to co-brand sports wagering offered over the internet or through a mobile application. The proposed rule is procedurally and substantively invalid and should immediately be withdrawn from consideration.

The Board must comply with the general rulemaking provisions of the Illinois Administrative Procedure Act and “give the public 45 days’ notice of its intended action and accept comments, [potentially] allow for [a] public hearing ... and give an additional 45-day notice period.” *Champaign-Urbana Pub. Health Dist. v. Ill. Labor Relations Bd.*, 354 Ill. App. 3d 482, 488 (2004) (citing 5 ILCS 100/5-40(b), (c)). But more important than being procedurally invalid, the proposed rule directly contravenes the explicit branding requirements for internet and mobile sports wagering in Sections 25-30(e) and 25-35(e) of the Sports Wagering Act (“Act”). Tracks and casinos “shall only” offer internet and mobile sports wagering under the track’s or casino’s brand or a brand owned by certain related entities with an 80% ownership interest when the Act was passed. Displaying multiple brands (including the brands of third-party service providers) is expressly prohibited. The Board must comply with the plain text of the Act and adhere to the General Assembly’s unambiguous intent. Whatever the Board’s opinion of the explicit branding requirements may be, it lacks the authority to end-run the legislative process and to adopt rules, emergency or otherwise, that contravene the Act’s language and are contrary to the documented legislative history and the General Assembly’s stated purpose for adopting the branding restrictions.

1. There Is No “Emergency” to Adopt Branding Rules

No current “threat to the public interest, safety, or welfare,” see 5 ILCS 100/5-45(a), justifies the Board’s attempt to pass emergency branding rules. While, in some cases, the Board “may” adopt emergency rules relating to the Act, see 230 ILCS 45/25-15(b), an actual emergency must exist. The Board must explain the nature of the emergency and present facts to show that -- without emergency rulemaking -- the public will be confronted with a threatening situation. See *Champaign-Urbana Pub. Health Dist.*, 354 Ill. App. 3d at 490.

The Board claimed at its June 11 meeting that the purpose of the proposed rule is to clarify alleged ambiguity in the Act’s branding requirements, so that the Board can consistently administer, implement, and enforce the Act. See Audio of 06/11/2020 Board Meeting, at 7:00-7:45, available at: www.igb.illinois.gov/MeetingsMinutes.aspx. As explained below, there is no ambiguity in the text of the Act. Even assuming there were, “the Board’s reason for implementing the [proposed emergency rule] can best be characterized as one for administrative convenience and not because of any stated public threat.” *Champaign-Urbana Pub. Health Dist.*, 354 Ill. App. 3d at 491; see also *Citizens for a Better Env’t v. Ill. Pollution Control Bd.*, 152 Ill. App. 3d 105, 109-110 (1987) (rejecting Pollution Control Board’s arguments that proposed emergency rule was valid because it would “clarify” provisions of the Environmental Protection Act and “reduce uncertainty within the regulated community”).

Any alleged ambiguity in the branding provisions of the Act does not support or constitute a public emergency. If the proposed rule is not adopted, there is no threat to the public interest, safety, or welfare, nor is there a risk that any of the Act’s provisions would be delayed or cannot be implemented without the rule.¹ Additionally, the Board already received public comment on the Act, through September 27, 2019, where the same branding provisions were discussed. If the Board truly and legitimately believed that, based on those comments, there was ambiguity in the branding provisions, it could have adhered to the general rulemaking process when the public comment period closed last September or, at a minimum, addressed that issue during the Phase 1 and Phase 2 rulemaking process. See *Senn Park Nursing Center. v. Miller*, 118 Ill. App. 3d 733, 745 (1983) *aff’d*, 104 Ill.2d 169 (1984) (“[I]t would defeat the purposes of the notice and comment procedures if an agency could dispense with such procedures by enacting an emergency rule where the ‘emergency’ was created by the agency’s failure to follow these procedures in the first place.”).

¹ The Board already has approved casinos to offer internet and mobile sports wagering in the State. And, because no sports facility has applied for a license, the Board cannot reasonably claim there is an emergency to adopt branding rules to clarify how those facilities may brand sports wagering.

2. The Branding Requirements for Tracks and Casinos are Clear and Unambiguous

More importantly, whether an emergency exists, the Board lacks authority, rulemaking or otherwise, to deviate from the express language of the Act to authorize tracks or casinos to co-brand internet and mobile sports wagering platforms. “The most reliable indicator of the legislature’s intent is the language of the statute, which is given its plain, ordinary and popularly understood meaning.” *See Ill. Dept. of Healthcare and Family Servs. v. Warner*, 227 Ill.2d 223, 229 (2008). Sections 25-30(e) and 25-35(e) of the Act unambiguously require that internet and mobile sports wagering “shall only” be offered under the “same brand” as an Illinois licensed track or casino (such as the Rivers brand), or a brand owned by certain related entities at the time the Act was passed:

The sports wagering offered over the Internet or through a mobile application **shall only be offered under either the same brand as the owners licensee is operating under** or a brand owned by a direct or indirect holding company that owns at least an 80% interest in that owners licensee on the effective date of this Act.

Section 25-35(e) (emphasis added); *see also* Section 25-30(e). The General Assembly’s intent is clear and unambiguous from the language of the Act: “shall only.” The word “shall” reflects “a clear expression of legislative intent to impose a mandatory obligation.” *People v. O’Brien*, 197 Ill.2d 88, 93 (2001). The plain and ordinary meaning of the term “only” is “solely” or “exclusively.” *See* www.merriam-webster.com/dictionary/only; *see also Murray v. Chicago Youth Center*, 224 Ill.2d 213, 235 (2007) (“Statutory language must be given its plain and ordinary meaning, and courts are not free to construe a statute in a manner that alters the plain meaning of the language adopted by the legislature.”). The Act thus explicitly and precisely defines the exclusive manner in which internet and mobile sports wagering must be branded; it restricts internet and mobile wagering branding to *only* the name of the track or casino (or to certain related entities at the time the Act was passed).²

The Board previously understood the Act’s plain language and the General Assembly’s intent. In December 2019, the Board published application forms that specifically track the language of the Act, including that internet and mobile sports betting “shall only” be offered under the track’s or casino’s brand or brands owned by related entities. *See* Long Form Application, p. 25; *see also* Short Form Application, § 4.³ Nothing has changed.

² “[T]he term ‘or’ is disjunctive and indicates that in a sentence the various words which it connects are to be taken separately.” *Hedrick v. Bathon*, 319 Ill. App. 3d 599, 605 (2001). Here, sports wagering can be offered under the track’s or casino’s brand or a brand owned by certain related entities, but not both.

³ Both forms are available on the Board’s website at: www.igb.illinois.gov/SportsForms.aspx.

Were there legitimate grounds for the Board’s change of course and claim that the Act’s branding requirements are ambiguous, the legislative history is definitive and confirms the General Assembly’s intention to restrict branding for internet and mobile wagering offered by tracks and casinos. *See People v. Collins*, 214 Ill.2d 206, 214 (2005) (“Where statutory language is ambiguous, however, we may consider other extrinsic aids for construction, such as legislative history and transcripts of legislative debates, to resolve the ambiguity.”). The sponsors of the bill leading to the Act, Representative Robert Rita and Senator Terry Link, unequivocally explained that tracks and casinos cannot co-brand with third-party service providers to offer internet and mobile sports wagering in the State. On May 31, 2019, Representative Rita’s office circulated a summary of House Amendment #2 to Senate Bill 690, explaining that third-party service providers, “could be an online vendor at a casino, [or] race track,” but “[t]hey *must conform* with the facilities’ brand.” Attachment A, Email from R. Keith (emphasis added). During committee debate, Representative Rita explained that third-party service providers could only operate under the brand of the casino or track unless and until they obtained their own online license under Section 25-45. Senator Link was specifically asked during the floor debate if third-party service providers could co-brand with tracks or casinos, and he answered “no”:

- Senator Curran: ...Is it true that this legislation prevents online companies, like FanDuel and DraftKings, from using their brands if they partner with a casino? And if so, what’s the rationale for that?
- Senator Link: For the first eighteen months, there will be no branding from any source whatsoever, not only just FanDuel and ... DraftKing[s], but all others will be prohibited from using branding.
- Senator Curran: ... **So, if FanDuel partners with Paradise [Casino], could the casino offer an app that says “Paradise powered by FanDuel”?**
- Senator Link: **No.**

Attachment B, 06/02/2020 Senate Trans., p. 21-22 (emphasis added). Both Representative Rita and Senator Link explained that the purpose of the co-branding restriction was to give Illinois-licensed tracks and casinos “a level playing field” and a chance to compete. *See id.*, p. 23.

Proposed Emergency Rule 1900.1260 circumvents the plain language of the Act and is drafted to allow that which the General Assembly explicitly sought to prevent. Subsection 1900.1260(c), in particular, authorizes casinos and tracks to use “multiple brands” including, “brands that are not a parent brand.” The term “brand” is broadly defined to mean “any identifying mark associated with any licensee, DBA, gambling operation, horseracing operation, or other entity, including but not limited to a name, DBA, logo, trademark, or color scheme.” Rule 1900.1260(a)(1). The rule will allow the brand of any “DBA, gambling operation ... or other entity,” including third-party service providers, to immediately be used in combination with

casinos or tracks for internet and mobile wagering platforms so long as the “parent brand” is also displayed.

The text of the proposed rule, *i.e.*, that “multiple brands” can be used but the brand of the track or casino must be “prominently displayed,” *see* 1900.1260(c)(1), (2), has no basis in the Act’s text or legislative history. It appears that the Board relied on comments previously submitted by certain third-party service providers (specifically, DraftKings and FanDuel) and co-branding models adopted in other states, like Pennsylvania. If desired, the General Assembly could have adopted a co-branding model or given discretion to the Board to have flexibility to decide how tracks and casinos may brand internet and mobile sports wagering, but instead, it purposefully chose not to.⁴

The Board has yet to articulate the alleged ambiguity in the Act’s branding provisions, however, from statements made at the June 11 meeting, it appears that the Board’s position is based on differences in the branding requirements for tracks and casino under Sections 25-30(e) and 25-35(e) of the Act, on the one hand, and sports facilities under Section 25-40(g), on the other hand. The proponents of co-branding made similarly misguided claims in comments they submitted last fall. Section 25-40(h) explicitly permits sports facilities to offer internet and mobile sports betting under the facility’s name, under the name of a third-party “designee” working with the facility, or a combination both:

The sports wagering offered by a sports facility or its designee over the Internet or through a mobile application **shall be offered under the same brand as the sports facility is operating under, the brand the designee is operating under, or a combination thereof.**

(Emphasis added). Conversely, the Act’s plain language limits tracks and casinos to the “same brand” they operate under or a brand owned by certain related entities at the time the Act was passed. If the General Assembly had intended to allow tracks and casinos to co-brand with third-party service providers (like sports facilities), it could and would have done so. *See People v. Hunter*, 2017 IL 121306, ¶ 48 (“[W]here the legislature includes particular language in one section of a statute but omits it in another section of the same statute, courts will presume that the legislature acted intentionally in the exclusion or inclusion and that the legislature intended

⁴ For reasons explained above, the co-branding models adopted by other states are irrelevant in Illinois based on the express language of the Act and clear legislative intent to restrict the branding of internet and mobile sports wagering to only the track’s or casino’s brand or certain related entities. Moreover, co-branding models, like Pennsylvania, have proven problematic and difficult to enforce. Third-party service providers have attempted to manipulate similarly worded rules by reducing the size of the casino’s name on the website or mobile application or simply using color-schemes distinctive to third-party service providers and different from the casino such providers are working with. The proposed rule, whether intended or not, suffers from the same loopholes, will invite the same gamesmanship from third-party service providers, and will lead to enforcement issues.

different results.” (citation omitted). Instead, the General Assembly intentionally restricted track and casino branding.

Moreover, the provisions of the Act must be read together “and construed so that no part is rendered meaningless or superfluous.” *People v. Lloyd*, 2013 IL 113510, ¶ 25. It is unreasonable to construe the Act’s branding provisions for tracks and casinos to allow co-branding, when the Act explicitly restricts (“shall only”) internet and mobile wagering to the track’s or casino’s brand, but affirmatively allows sports facilities to brand in “combination” with third-party designees. The Board seemingly is reading the terms “shall only” and “combination” in the Act to mean the same thing, which would lead to an absurd result. See *Collins*, 214 Ill.2d at 215 (“[I]n construing a statute, we presume that the legislature did not intend an absurd result.”).

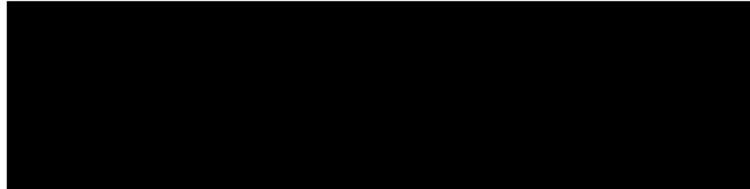
The General Assembly knew how to allow tracks and casinos to co-brand, and it knew how to leave the issue to the Board. It explicitly chose not to do either. The General Assembly clearly decided that internet and mobile wagering branding should unambiguously identify and inform consumers who is exclusively licensed and responsible for operations. Other companies may partner with tracks or casinos but must exclusively operate under the track’s or casino’s brand. The Board is simply not permitted to promulgate rules allowing any form of co-branding for internet and mobile sports-wagering products offered by tracks and casinos. See *R.L. Polk & Co. v. Ryan*, 296 Ill. App. 3d 132, 141 (1998) (“If an agency promulgates rules beyond the scope of the legislative grant of authority, the rules are invalid, as are any rules that conflict with the statutory language under which the rules are adopted.”). Therefore, the proposed rule -- or at least subsection 1900.1260(c) -- is invalid and should be withdrawn.

* * * * *

Because there is no emergency to adopt branding rules, the proposed rule is procedurally invalid. More importantly, whether an emergency exists, Sections 25-30(e) and 25-35(e) of the Act restrict internet and mobile sports wagering to the name of the track or casino (or to certain related entities with an 80% ownership interest when the Act was passed), and the Board lacks the authority to enact any rule that contravenes the unambiguous language of the Act and the General Assembly’s clear legislative intent. If the proposed rule is submitted to the Secretary of State Index Department, it is presumptively effective from that date, and third-party service providers will have the ability to co-brand with tracks and casinos to offer internet and mobile sports wagering until the Joint Committee on Administrative Rules or a court invalidates the proposed rule. Even when the proposed rule is later invalidated, the competitive imbalance and damage caused by allowing co-branding during the interim cannot be reversed. We respectfully request that the Board immediately withdraw the proposed rule.

Should you have any additional questions, please feel free to contact me.

Very truly yours,



Paul J. Gaynor



Attachment A

See the outline below for a new measure state Rep. Bob Rita and gaming negotiators are presenting today as a package for the Illinois Legislature to consider expanding gaming and legalizing sports betting ahead of the expected session adjournment tonight.

It's House Amendment 2 to Senate Bill 690. Scheduled to be heard at 1:30 p.m. this afternoon in House Executive Committee:

<http://www.ilga.gov/legislation/BillStatus.asp?DocNum=690&GAID=15&DocTypeID=SB&LegId=116627&SessionID=108&GA=101>

Ryan

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Ryan Keith

RK PR Solutions



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<http://www.rkprsolutions.com/>

Traditional/legacy gaming:

- Six casinos authorized
 - Chicago, Waukegan, South Suburbs, Williamson County (Walker's Bluff), Rockford, Danville
- All casinos (new and current) can have up to 2,000 positions immediately (now they're limited at 1,200), and can all be land-based;
- Chicago casino – up to 4,000 positions
 - Slots allowed at O'Hare and Midway Airports
 - Ownership and regulation same as all other Illinois casinos
 - Ownership: privately owned casino;
 - Regulation: Illinois Gaming Board has oversight;
 - A feasibility study is conducted – if this ownership/regulation structure is not feasible in the private market, Chicago can appeal to the Gaming Board;
- Horse tracks –can get 1,200 positions, Fairmount receives 900 positions;
- Supplier diversity requirements and minority participation goals for licensees;
- Taxes and fees
 - Chicago casino -- \$30,000 per position (\$120 million generated);
 - New privilege tax structure putting higher taxes on table games and lower on slot machines (expected to generate \$173 million when fully implemented);
 - Casinos are allowed to take comps of up to 20

percent off taxes to incentivize play/attendance

- Reconciliation fee of \$15 million for all new casinos;
- Video gaming taxes – increased from current 30 percent to 33 percent in first year, 34 percent in year 2 and beyond
 - Video gaming allowed to expand through increased maximum bet, 6th machine and progressive jackpots
 - Truck stops with at least 50,000 gallons or more sold can have up to 10 VGT machines
- Revenue
 - All state revenue from this bill goes to support vertical projects in a capital bill
 - Chicago casino – 1/3 to state, 1/3 to city, 1/3 to private operator;
 - Language included to protect revenues for current casinos and their communities:
 - 2-year hold harmless on all current casino revenue to minimize cannibalization (up to 3.5 percent a year)
 - 2-year hold harmless on municipal privilege tax
 - Local share of new racino revenues in Metro East split among communities;
- Misc
 - Horsemen/horse track agreements from previous expansion language included
 - Problem gaming – increased in the state budget to \$6.8 million (from \$800,000)

to \$6.8 million (from \$800,000)

Sports betting:

- Licensees – existing and new Illinois casinos, racetracks and sports venues
 - License fees range from \$3.2 million to \$10 million;
- All licensees can go online immediately upon being licensed by the Illinois Gaming Board
 - For the first 18 months after the first licensee is operating, all accounts must be set up at a licensed gaming facility. After that, deposits can be made online;
- 15 percent tax rate;
- 3 online licenses created 18 months after the first license is issued
 - \$20 million fee for each license;
 - Online licenses are open to qualifying vendors (do not have to be currently licensed under Illinois or in one of the initial three categories receiving sports betting licenses);
- Fantasy sports operators could be an online vendor at a casino, race track or sports venue
 - They must conform with the facilities' brand;
- Official league data allowed
 - No royalty fee for the sports leagues;

- An official league supplier license with fee created;
- Betting on Illinois college teams is banned;
- Lottery sports wagering pilot program created;

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Providing news and updates from the state Capitol.

Attachment B

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be reflected as a Yes on the previous bill.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Record will reflect. Senate Bill 690. Senator Link. Mr. Secretary, read the motion.

SECRETARY ANDERSON:

I move to concur with the House in the adoption of their Amendments 1, 2, and 3 to Senate Bill 690.

Signed by Senator Link.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Link.

SENATOR LINK:

Thank you, Mr. President. Senate Bill 690, as amended by the House, is the revenue package to support vertical capital bill. It is estimated that this package will generate approximately twelve billion dollars over a six-year period to support economic development projects throughout the State, which includes an increase in the cigarette tax; impose tax on electronic cigarettes; a data center exemption; removal of the sales tax exemption for trade-in vehicles valued over ten thousand; impose a parking excise tax; increase the documentary fees for auto dealers; Illinois Works Job Program; defines "remote retailer" under the Retailers' Occupation Tax Act instead of the Use Tax Act; and the gaming expansion, which includes the following: an added new -- six new casinos; allows racetracks to receive slots and table games; increase the video gaming tax from thirty percent to thirty-three percent July 1st, 2019 and thirty-four percent on July 1st, 2020; legalizes sports betting for casinos, racetracks, and sports facilities with a seating capacity of over seventeen thousand; requires all licensees for sports betting to actively seek and

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achieve racial, ethnic, and geographic diversity; imposes a twenty-five percent minority hiring goal for casinos, racetracks, and their suppliers and -- regards -- requires reporting and diversity study for sports betting; and requires minority outreach, including annual workshop, job fairs, and gaming instruction. Be more than happy to answer any questions.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Is there any discussion? Leader Brady, for what purpose you seek recognition?

SENATOR BRADY:

Thank you, Mr. President. Due to a conflict of interest with a portion of this bill, I will be voting Present on this measure. I'd like to also indicate that in any discussions I've had with the Leaders or others, I have recused myself from any negotiations.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Syverson, for what purpose do you seek recognition?

SENATOR SYVERSON:

Thank you, Mr. President. To the bill.

PRESIDING OFFICER: (SENATOR MUÑOZ)

To the bill, Senator.

SENATOR SYVERSON:

Senator Link went through all that's in this bill and he did it in a quick, two-minute review. But, Senator, I just want to say thank you for fifteen years of working on this legislation. We first started talking about this many years ago as -- as our communities were similar, struggling urban communities right on the Wisconsin borders, that we've -- we felt this was something that was important not only for our communities, but as a defense against what Wisconsin was doing to -- to Illinois. And getting

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it to this point, with all the moving parts, it -- it's been difficult and I know you have worked so hard on this for so many years, dealing with so many different entities. And -- and I know many of you, if you're tired of hearing from us, that's a reason why you want to vote Yes for this. So it's -- it's a good reason for that. But the new ones that are here don't remember how long you've been working on this, but I just wanted to make sure, for the record, that people realized how much we appreciate your -- your leadership in getting it to this point. I also would -- would be remiss if I also -- didn't thank the Governor. Couple of weeks ago, this thing was looking like it potentially could have -- get bogged down and the Governor and his staff really stepped up and helped shepherd this thing to where it is today, and so we appreciate the Governor's help on this. But this is a -- a vital tool. As we've talked before, last year over -- over 1.5 billion dollars left Illinois, just to go to our five surrounding states to game. This legislation is going to help us keep our dollars home and help us bring out-of-state dollars into Illinois. The states around us are continuing to build casinos on the borders to try to attract our individuals. This key piece of legislation really is going to make an economic difference of keeping our dollars home and it's going to create thousands of jobs and billions of dollars of construction across the whole State. And this is not benefiting just those communities that are getting a casino; every community that has video gaming is going to see increased revenues as well. And then the dollars that are generated from these new casinos, those dollars all going into capital projects that are going to benefit all of your communities as well. So, Senator, I thank you for, again, for your work on

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this and we look forward to finally getting it over the hurdle in the next few minutes.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Holmes, for what purpose you seek recognition?

SENATOR HOLMES:

Question of the sponsor.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Sponsor indicates he will yield.

SENATOR HOLMES:

Thank you. Just a quick question. Senator Link, would this legislation allow a casino, such as Hollywood Casino in Aurora, move within Aurora to a land-based location?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Link.

SENATOR LINK:

Yes.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Fowler, for what purpose you seek recognition?

SENATOR FOWLER:

Thank you, Mr. President. Will the sponsor yield, please?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Sponsor indicates he will yield.

SENATOR FOWLER:

Thank you, Mr. President. Senator Link, I just have one real quick question. The resort at Walker's Bluff in Williamson County, is it included within this bill of Senate Bill 690?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Link.

SENATOR LINK:

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Yes.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Fowler.

SENATOR FOWLER:

..Mr. President. Music to my ears, Senator. Thank you very much. Thank you for your hard work. Thank you to Senator Syverson for all that you've done on behalf of not only the State of Illinois, but especially my district to bring economic development to my district. Thank you very much.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator McConchie, for what purpose you seek recognition?

SENATOR McCONCHIE:

Question of the sponsor.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Sponsor indicates he will yield.

SENATOR McCONCHIE:

Thank you. Thank you, Senator Link, for your work on this. One question. There's been some -- some issue that's been raised in regards to purse money that will be going to the Horsemen's Association and some questions about transparency and accountability of those funds. Would you work to -- commit to working on a trailer bill to address the issues that have been raised since this became public?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Link.

SENATOR LINK:

Yes.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator McConchie.

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SENATOR McCONCHIE:

Thank you very much.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Rose, for what purpose you seek recognition?

SENATOR ROSE:

Thank you, Mr. President. Will the sponsor yield?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Sponsor indicates he will yield.

SENATOR ROSE:

Senator Link, I want to ask you for the -- Danville's included in this as well, correct?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Link.

SENATOR LINK:

I like these answers. Yes.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Rose.

SENATOR ROSE:

Thank you. I -- before I ask my final question, I do want to say thank you to Senator Link and also to Senator Syverson, on our side, for the time they've spent in. I first got to know you when I was in the House, and we were working on this same issue and passed it almost ten years ago, I guess, back then. But, in any event, for purposes of legislative intent, would you mind reading the locations into the record, please, Senator Link? Thank you, Mr. President. And I'll be finished when he concludes that question.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Link.

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SENATOR LINK:

Waukegan, Danville, Rockford, south suburbs, Walker's Bluff, and the City of Chicago.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Oberweis, for what purpose you seek recognition?

SENATOR OBERWEIS:

Thank you, Mr. President. A question of the sponsor.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Sponsor indicates he will yield.

SENATOR OBERWEIS:

Senator Link, I -- I believe you mentioned that doc fees are being increased, I think doubled to three hundred dollars from one fifty. Is that correct?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Link.

SENATOR LINK:

Yes.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Oberweis.

SENATOR OBERWEIS:

Senator, who benefits from that doubling in the doc fees?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Link.

SENATOR LINK:

The State of Illinois.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Oberweis.

SENATOR OBERWEIS:

So, I want to be clear, that doubling goes to the State of

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Illinois. It does not go to the automobile dealers. Is that correct?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Link.

SENATOR LINK:

I stand corrected. It goes to the auto dealers.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Oberweis.

SENATOR OBERWEIS:

So then, once again, we get back to special legislation helping certain groups, which is so typical here in Springfield. It -- it gets very frustrating. Yes, Rockford likes this - they get a casino. Danville likes it - they get a casino. Car dealers like it because they're going to get a doubling in their -- their fees and -- and have bigger profit margins. How is it that automobile dealers have that kind of political power not only to do this, but to prevent small, little used car dealers from being able to be open and sell cars on Sundays? I don't understand that pressure.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Oberweis, to close.

SENATOR OBERWEIS:

Senator Link, I hope that with this nice juicy morsel that you're handing to the automobile dealers, I hope that next Session you will come back and help do the right thing for those small, little car dealers who need your help. Thank you.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Curran, for what purpose do you seek recognition?

SENATOR CURRAN:

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Will the sponsor yield, Mr. President?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Sponsor indicates he will yield.

SENATOR CURRAN:

Thank you, Mr. President. Senator Link, drawing your attention specifically to -- page 606, line 12 through 607, line 11, there's a change in this bill regarding the independent outside testing laboratories that examine the electronic table games, slot machines, and will be examining the sports wagering system. This Section removes this process of accreditation and selection through the RFP process with the Gaming Board and instead it -- it gives that to an outside accreditation agency. Do you know the rationale or the reason behind that change?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Link.

SENATOR LINK:

No, I don't. That was an amendment added in the House without my -- concurring with me on that particular amendment.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Curran.

SENATOR CURRAN:

...Mr. President. Thank you, Senator. Moving on to the sports betting portion of the legislation. Is it true that this legislation prevents online companies, like FanDuel and DraftKings, from using their brand if they partner with a casino? And if so, what's the rationale for that?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Link.

SENATOR LINK:

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For the first eighteen months, there will be no branding from any source whatsoever, not only just FanDuel and sports -- whatever -- DraftKing, but all others will be prohibited from using branding.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Curran.

SENATOR CURRAN:

..Mr. President. Thank you, Senator. So, if FanDuel partners with Paradise, could the casino offer an app that says "Paradise, powered by FanDuel"?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Link.

SENATOR LINK:

No.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Curran.

SENATOR CURRAN:

Thank you, Mr. President. Senator, if Rivers has its own app, can it use its brand -- its own brand on that app?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Link.

SENATOR LINK:

Yes.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Curran.

SENATOR CURRAN:

Thank you, Mr. President. So, Senator, just to be clear, this gives Rivers a pretty big competitive advantage over online operators who don't own an Illinois casino or racetrack. Is the

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only way they can use their -- their own brand is by buying a casino or racetrack?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Link.

SENATOR LINK:

They -- they could, but what we're trying to do is help promote Illinois companies in what they're doing and that's why Rivers has got that. I don't think they have the distinct advantage over anybody. I think we carefully worked on that as well as we could to make sure that it's a level playing field for all legitimate companies in the State of Illinois.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Curran.

SENATOR CURRAN:

Thank you, Mr. President. Senator, one follow-up question. How long does it take to gain an -- do you -- if you know, take to gain -- gain approval process through the Illinois Gaming Board to purchase a casino or a racetrack?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Link.

SENATOR LINK:

I have no idea on that.

PRESIDING OFFICER: (SENATOR MUÑOZ)

To the bill, Senator.

SENATOR CURRAN:

Senator Link, thank you for the answers to those -- to those questions. Senator Link, Senator Syverson, I just want to congratulate you. This is -- this is an example of determination and perseverance that you've gotten this on the precipice of

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passage, so just congratulations. Thank you. Thank you, Mr. President.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Sandoval, for what purpose you seek recognition?

SENATOR SANDOVAL:

For purposes of the bill, Mr. President.

PRESIDING OFFICER: (SENATOR MUÑOZ)

To the bill, Senator.

SENATOR SANDOVAL:

Senator Link, I just want to confirm for the record that the Hawthorne Racetrack in the town of Cicero, located in the 11th Legislative District, may be allowed to be the first racino of its kind in the history of the State of Illinois?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Link.

SENATOR LINK:

If they beat the other two tracks to it, yes.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Sandoval.

SENATOR SANDOVAL:

Thank you, Senator Link.

PRESIDING OFFICER: (SENATOR MUÑOZ)

There being no further discussion, Senator Link, to close.

SENATOR LINK:

I -- I've only been doing this for twenty years, trying to get this done, and it's a little emotional. And I have to -- I have to say, this has been a job creation bill from day one. As I told somebody, if we were bringing in six new manufacturers to town, everybody would be on board. Well, guess what? We're

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putting six types of manufacturing on board. They're going to generate money for the State. They're going to generate employees. They're going to generate economic development - not only in those communities, but in the State of Illinois. This has been a work in progress. And I thank -- I -- there's so many people I want to thank, but I'm going to limit it because Senator -- President Cullerton told me I only have two minutes. But I want to -- say thank you to a number of people. First, I want to thank the Governor and his staff. I'll tell you, it's refreshing. I've been here for twenty-three years and it's refreshing to have a Governor that actively works with the General Assembly on getting something done. It's a pleasure and thank him. I want to thank President Cullerton for all of his involvement through the years. The one thing I will miss dearly about this is my January phone call from President Cullerton telling me what the bill number's going to be for the gaming bill. But I -- President, I'm glad I'll miss that call. I want to thank the staff -- or thank the sponsors. I have the House sponsor of this bill, Representative Rita. I want to thank Representative Zalewski in the House also. I want to thank my colleague, Senator Muñoz, for his active involvement and I also want to thank Senator Syverson. This was a team effort to get this done. But the most -- two -- two of the most important people that I want to thank is our Parliamentarian, Gio, who I think's been with me for all of these years doing this, and Ashley. God knows how she was able to pull all these things together plus do all the things that she did in this legislative Session. I thank them from the bottom of my heart. I got to catch myself on this. I want to thank one other person. I want to thank my wife. Senator Anderson, unlike you, I hoped to have been home

Comments of the iDevelopment and Economic Association on the Illinois Sports Wagering Branding Emergency Rule 1900.1260

The iDevelopment and Economic Association (iDEA Growth) is grateful for the opportunity to provide comments to the Illinois Gaming Board (“the Board”) as it pursues input on the *Sports Wagering Branding Emergency Rule 1900.1260* issued on May 28, 2020.

iDEA Growth is an association which seeks to grow jobs and expand the online interactive gaming business in the United States. The organization represents all sectors of the growing industry of internet gaming, sports betting and entertainment, including operations, development, technology, marketing, payment processing, and law. iDEA Growth’s members share the goal of expanding American consumers’ access to secure and regulated online gaming and sports wagering.

As of the date of this submission, iDEA Growth is comprised of twenty-five members: Bet365, Catena Media, Continent 8 Technologies, DraftKings, EML Payments, Evolution Gaming, Gamesys, GeoComply, Global Payments, Golden Nugget, GVC Holdings, Ifrah Law, Kambi, Kindred Group/Unibet, Net Entertainment, Pala Interactive, Paysafe, Resorts Interactive, Saiber, SB Tech, Sightline Payments, Sportradar, The Stars Group, Worldpay and 888.com.

iDEA Growth supports the guidance issued by the Board that expressly allows for co-branding of sports wagering products offered by online and mobile operators under a land-based partner’s master sports wagering license. The Illinois Sports Wagering Act (the “Act”) expressly provides for co-branding of mobile and online products offered by a sports facility or its designee¹, and even allows for such products to be offered solely under the operator’s brand. The analogous provisions applicable to horse racing organizations and riverboat and casino operations expressly require that such products be offered under the licensee’s brand, but are silent as to co-branding.² Although the provisions do not allow the licensee or its mobile or online partner to offer sports betting products exclusively under the operator’s brand, they do not preclude the licensee and operator from offering a co-branded product.

Not only is the Board’s co-branding rule consistent with the Act, it is critical to the success of Illinois’ sports wagering market. As the U.S. sports-betting industry expands in the wake the

¹ Sports Wagering Act § 25-40(h) (“The sports wagering offered by a sports facility or its designee over the Internet or through a mobile application shall be offered under the same brand as the sports facility is operating under, the brand the designee is operating under, or a combination thereof.”).

² *Id.* §§ 25-30(e) (horse racing organizations), § 25-35(e) (riverboat and casino operators).

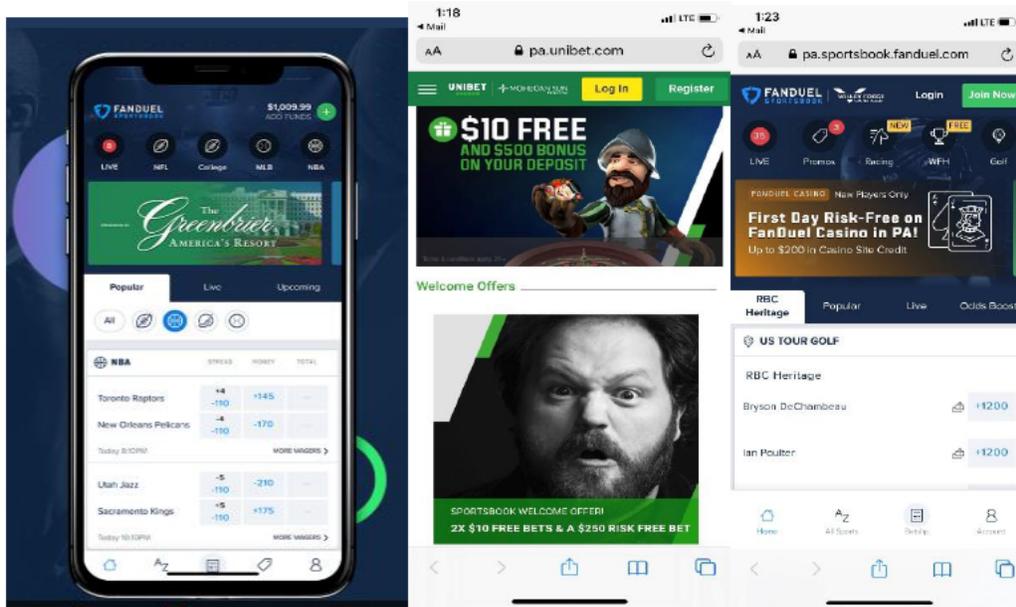
repeal of the Professional and Amateur Sports Protection Act (“PASPA”), sports bettors will continue to seek out products they like from operators they trust. Not surprisingly, customers looking for a regulated sportsbook often seek out operators with a national profile and well-known products. This is critical for customer acquisition and channelizing players away from the unregulated market, thereby increasing engagement on Illinois regulated platforms and providing significant protections for consumers and tax revenues for the state.

Moreover, when operators partner with land-based licensees to offer mobile and online gaming under the latter’s master sports wagering license, neither the licensee nor the operator should be prohibited from leveraging the operator’s good will. To the contrary, they should be permitted to inform customers that the operator is providing the services in partnership with the land-based entity. Rules expressly allowing for co-branding in such cases will give customers more complete information about the sports betting products offered. The Board’s rule supports transparency and allows the customer to fully understand their rights when they know who they are actually contracting and engaging with for sports betting.

The Board’s interpretation and guidance is also consistent with other regulated jurisdictions in the United States that allow for co-branding between a master license and its online betting platform. Co-branding rules as adopted in states such as West Virginia and Pennsylvania, has helped strengthen the sports wagering market by attracting customers to nationally known brands that customers have grown to know and trust, while making clear that there is a partnership and affiliation with a local facility.

iDEA Growth views the Board’s branding rule similarly to these jurisdictions and believes that Illinois-regulated operators, consumers and the state will benefit greatly from co-branding sports betting products. As examples of how co-branding should look like in Illinois, see the below screenshots of a co-branded sportsbooks in West Virginia and Pennsylvania³, prominently featuring the local facility while also using the mobile operator’s brand:

³ The Pennsylvania Gaming Control Board has allowed for the online operator to display a proprietary website and domain name (URL) with reference to the market access partner.



The Board's co-branding rule should also extend to the retail locations. While the current rule and the Act are silent on the question of branding a brick-and-mortar sportsbook, iDEA Growth believes that casinos, horse tracks and sports facility should be allowed to co-brand in a way that is consistent with their online sportsbook branding. This creates a consistent brand across all consumer-facing platforms that will help establish greater consumer awareness of the Illinois authorized operators. It will also significantly reduce costs for the casino and its online partner in terms of branding and marketing both the retail and online products. We urge the Board to allow for retail co-branding as well.

In conclusion, we applaud the Board for their thoughtful interpretation of the Act to allow for co-branding. We believe your guidance will enable Illinois to fulfill its goals to protect consumers, raise tax revenue and create new investment in the state to support the burgeoning sports betting industry.



June 29, 2020

VIA ELECTRONIC COPY

Mr. Marcus Fruchter, Administrator
Illinois Gaming Board
160 North LaSalle, Suite 300
Chicago, Illinois 60601

Dear Administrator Fruchter:

We appreciate the opportunity to provide comments regarding the proposed sports wagering branding rule that the Illinois Gaming Board (“IGB”) released on May 28, 2020. We are writing to you today in support of the proposed branding rule.

The rule is consistent with key public policy goals in that it requires transparency for consumers while providing brick-and-mortar licensees the flexibility to use brands that will resonate with sports fans. The requirements on branding in the Sports Wagering Act were intended to benefit and protect existing and longstanding Illinois operators. The IGB branding rule protects existing brick and mortar operators by providing further clarity that existing operators brands are required to be displayed on our online platforms.

For these reasons, as well as the changes to the in-person registration requirement, we believe that this rule will allow the Illinois sports wagering market to flourish while still providing consumers with clear information regarding which entities are associated with a particular online sports wagering platform.

We appreciate the ongoing efforts of the Illinois Gaming Board to implement the provisions of Sports Wagering Act and your careful consideration of our comments in support of the branding rule.

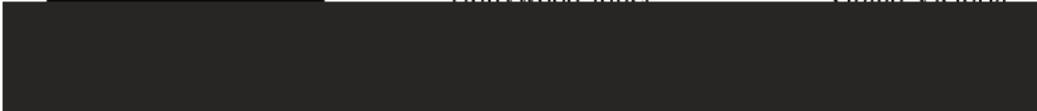
Sincerely,



Sherry Wessel
General Manager

Lydia Garvey
General Manager
Hollywood Joliet

Bill Gustafson
General Manager
Grand Victoria



Norris Hamilton
General Manager
Harrah’s Joliet

Gregory Moore
General Manager
Hollywood Aurora

Steve Peate
General Manager
Argosy Alton



Cori Rutherford
VP & General Manager
Para-A-Dice

Mitch Johnson
General Manager
Casino Queen

CC: Members of the Joint Committee on Administrative Rules

KIMBERLY M. COPP
312.836.4068
kcopp@taftlaw.com

June 29, 2020

VIA EMAIL (igb.rulecomments@igb.illinois.gov)

Mr. Marcus Fruchter
Administrator
Illinois Gaming Board
160 N. LaSalle Street, Suite 300
Chicago, IL 60601

Re: Comments to Proposed Emergency Sports Wagering Rule 1900.1260: Branding

Dear Administrator Fruchter:

On behalf of our client, TSG Interactive US Services Limited (“**TSG Interactive**”), please accept this correspondence as commentary on the IGB’s proposed emergency Rule 1900.1260: Branding (the “**Proposed Rule**”) recently published on the IGB’s website. In short, TSG Interactive applauds the IGB for explicitly addressing branding of online and mobile sports wagering applications offered under the master sports wagering licensee of an owners licensee or organizational licensee and unequivocally supports the Proposed Rule. TSG Interactive supports the Proposed Rule because:

- It defines “brand” to provide needed clarity to provisions of the Illinois Sports Wagering Act, 230 ILCS 25-1 et seq. (the “**SWA**”) and is supported by the plain meaning of the SWA;
- It permits disclosure of multiple brands providing transparency to Illinois sports wagering consumers;
- By permitting disclosure of multiple brands, it assists the success of Illinois’s sports wagering industry; and
- By interpreting the branding provisions of the SWA as provided in the Proposed Rule, the risk of a constitutional challenge to the SWA is mitigated.

A. The Proposed Rule, by defining brand, provides clarity to provisions of the SWA and is supported by the plain meaning of the SWA.

The SWA permits an “*organizational licensee*” (i.e., a horse race track owner) or an “*owners licensee*” (i.e., a casino owner) to apply to the Illinois Gaming Board (“**IGB**”) for a master sports wagering license authorizing it to conduct legalized sports wagering at (1) its physical

facility in Illinois (i.e., at the casino or at the horse racing track) and (2) over the Internet or through a mobile application (a “*Mobile Application*”). (See §§ 25-30(a) and (d) and 25-35(a) and (d) of the SWA, respectively). Section 25-55 of the SWA allows such master sports wagering licensees to contract with a management services provider (a “*MSP*”) to conduct sports wagering operations on behalf of such master sports wagering licensee. Many (if not most) of Illinois’s owners licensees and organizational licensees have (or are expected to) enter into contracts with nationally-recognized sports wagering operators licensed by the IGB as a MSP. Since passage of the SWA, there has been significant discussion concerning how Mobile Applications offered by owners licensees or organizational licensees must be branded.

Specifically, Sections 25-30(e) and 25-35(e) of the SWA (which provisions are sometimes referred to herein as the “branding provisions” of the SWA) provide, in relevant part, that sports wagering offered over a Mobile Application “. . . only be offered under either the same brand as the organizational licensee or the owners licensee (as applicable) is operating under or a brand owned by a direct or indirect holding company that owns at least 80% interest in that organizational licensee or owners licensee (as applicable).” A key term to interpreting these provisions of the SWA is the term “brand.” Because the SWA does not define such term nor is there a known legal definition, clarity is needed for the industry and is provided by the Proposed Rule.

The Proposed Rule defines brand broadly to mean any “identifying mark associated with any licensee.” (See paragraph (a)(1) of the Proposed Rule). We believe that the IGB’s definition of brand is legally permissible given that “[w]here a statute does not define the terms it uses, ‘the words used in a statute will [simply] be given their plain and ordinary meanings.’” *Apostolov*, 2018 IL App (1st) 173084, ¶ 27 (quoting *Holland*, 289 Ill. App. 3d at 686).

Merriam Webster’s Dictionary defines “brand” as “a public image, reputation, or identity conceived of *as something to be marketed or promoted.*”¹ Likewise, treatises have touted an expansive definition of “brand” as one which “takes on a much different and broader connotation than a trademark lawyer’s brand,” which is “synonymous with a legally protected trademark.” 1 McCarthy on Trademarks and Unfair Competition § 4:11 (5th ed.). “In a broad sense, branding describes a range of elements that form a complete service or product experience. The branding concept has traditionally focused on points of differentiation, i.e., unique benefits, which set a product or service apart from the competition.” Omari Scott Simmons, *Branding the Small Wonder: Delaware’s Dominance and Market for Corporate Law*, 42 U. Rich. L. Rev. 1129, 1145 (2008); see also Margaret Chon, *Trademark Goodwill as Public Good: Brands and Innovations in Corporate Social Responsibility*, 21 Lewis & Clark L. Rev. 277, 285 (2017) (“definition of brand -- an intangible asset that depends on an association made by consumers --and its more precise form, an asset that reflects customers’ implicit valuation of the revenue stream that accrues to a firm from its brand name(s).”); Erik J. Heels, *The Brand Wars are Coming! How to Defend Your Brands on the Internet*, 33 No. 5 Law Prac. 24 (2007) (“the definition of ‘brand’ has expanded to include things that aren’t necessarily trademarkable (such as the names of your key personnel)”); Jeremy N. Sheff, *Biasing Brands*, 32 Cardozo L. Rev. 1245, 1253, fn. 26 (2011) (“many marketing discussions of brands define the concept broadly to include consumers’ mental images and

¹ Definition of Brand, Merriam Webster’s Dictionary, available at <https://www.merriam-webster.com/dictionary/brand> (last visited March 26, 2020).

emotional associations with the identifier itself, the mix of marketing activities (including pricing) deployed to support the identifier, or other more nebulous concepts.”)

Thus, the plain and ordinary meaning of “brand” is expansive, encompassing not only legally protected trademarks or names, but also brands related to a company’s public image or identity that is used for marketing and promotional purposes. An owners (or organizational) licensee’s brand portfolio, therefore, necessarily includes any brand that such owners (or organizational) licensee owns, licenses or otherwise has the rights to use including rights gained through its joint ventures, partnerships, associations or other contractual relationships (including relationships with a licensee’s MSP). By broadly defining the term “brand”, an owners (or organizational) licensee could comply with the branding provisions of the SWA so long as its Mobile Application is offered with *any brand* associated with such licensee (including, for example, use of any identifying marks associated with such licensee’s MSP).

Despite this broad definition of the term “brand”, however, the IGB by paragraph (c) of the Proposed Rule determined to specify the *particular* brands of the licensee that *must* be used to identify a Mobile Application – (1) the “Parent brand” as defined in the Proposed Rule and (2) any other brand – provided that the brands are prominently displayed with one another as provided in paragraph (e) of the Proposed Rule. This multiple branding approach of the Proposed Rule is often colloquially referred to as “co-branding.” TSG Interactive is supportive of this “co-branding” effort as it provides transparency to Illinois sports wagering consumers (as more fully described below in paragraph B.), and it is the model implemented in other jurisdictions of the U.S. such as West Virginia, Nevada and Pennsylvania. We believe the co-branding approach suggested by the Proposed Rule is permissible under the SWA because the SWA does not limit the brands that may be used by a licensee to advertise, market or promote its Mobile Application. Specifically, the relevant branding provisions of the SWA only require that a Mobile Application be “*offered*” under the same brand as the owners (or organizational) license. Such branding provisions of the SWA do not, however, limit in any manner the licensee’s use other brands in any marketing, advertising or promotional material that accompanies the Mobile Application.

B. Proposed Rule provides transparency to Illinois sports wagering consumers.

The best interests of Illinois sports wagering consumers are served by authorizing owners (and organizational) licensees to disclose the multiple brands under which their Mobile Applications are operated. As most of Illinois’s owners and organizational licensees have (or will) enter into contracts with a MSP, many of whom have a national profile and reputation, Illinois sports wagering consumers are best served by complete and prominent disclosure of **both** the owners licensee and the MSP who are jointly providing the sports wagering products. Without such transparency, Illinois sports wagering consumers cannot be confident in the credibility and security of the Mobile Applications. By permitting disclosure of multiple brands associated with the owners (or organizational) licensee, Illinois benefits, as consumers are given more complete information concerning the sports wagering products on which they wager.

C. By permitting disclosure of multiple brands, the Proposed Rule assists the success of Illinois's sports wagering industry.

Not only do we believe disclosure of multiple brands is consistent with the SWA, but we believe it is important to the success of Illinois's sports wagering industry. As sports wagering has increased throughout the U.S., consumers seek sports wagering products they have come to know and trust. As such, sports wagering consumers often seek operators with a national profile and reputation. When these national operators become a MSP for an owners (or organizational) licensee to offer wagering via Mobile Applications, the owners (or organizational) licensee should not be prohibited from leveraging the MSP's goodwill. It has been consistently shown that national sports wagering operators have greater recognition and, when partnered (in this case as a MSP) with a local casino or race track, can drive additional revenue to the local casino or racetrack, benefitting the State and the local communities.

D. By interpreting the branding provisions of the SWA as provided in the Proposed Rule, the risk of a constitutional challenge to the SWA is mitigated.

Finally, we believe that the branding provisions of the SWA are highly suspect and unlikely to survive a constitutional challenge. If narrowly interpreted, such provisions discriminate against out-of-state online sports wagering operators by restricting their ability to use their own brand and, therefore, violate the Dormant Commerce Clause, the First Amendment and the Due Process Clause of the U.S. Constitution. By interpreting such branding provisions of the SWA in the manner provided in the Proposed Rule, we believe that the risk of a constitutional challenge being brought by an owners (or organizational) licensee, MSP or other player in the Illinois sports wagering industry is mitigated.

For the foregoing reasons, TSG Interactive supports the Proposed Rule. On behalf of TSG Interactive, we appreciate the opportunity to provide comments to the Proposed Rule. TSG Interactive reserves its right to offer additional comments in the future. Thank you for your consideration.

Regards,

TAFT STETTINIUS & HOLLISTER LLP



Kimberly M. Copp



June 29, 2020

Filed @ IGB.RuleComments@igb.illinois.gov

Administrator Marcus Fruchter
Illinois Gaming Board
160 North LaSalle Street
Suite 300
Chicago, Illinois 60601

RE: Public Comment on the Illinois Gaming Board's Draft Branding Rule-1900.1260.

Dear Administrator Fruchter,

Hawthorne Race Course, Inc., d/b/a Hawthorne Casino & Race Course ("Hawthorne") appreciates the opportunity to provide comment regarding the Illinois Gaming Board's ("IGB") proposed sports wagering branding rule (Proposed Rule") released on May 28, 2020.

As previously indicated Hawthorne has entered into a co-branding arrangement with PointsBet Illinois, LLC ("PointsBet"), to provide sports wagering to Illinois residents as permitted under the Illinois Sports Wagering Act, 230 ILCS 45/25-1 *et seq* ("SWA").

Hawthorne has submitted an application to the IGB to obtain a "Master Sports Wagering License" authorizing it to conduct legalized sports wagering at: (1) its facility (*i.e.*, racetrack) in Illinois; (2) at three inter-track wagering locations; and (3) over the Internet or through a mobile application. Further, PointsBet has filed a Management Services Provider License Application with the IGB both of which are currently pending before the IGB.

Upon licensure, Hawthorne and PointsBet will offer, market, advertise and promote sports wagering utilizing a collaborative branding relationship as allowed by the SWA, including through an internet/mobile sports wagering application utilizing PointsBet's name in conjunction with Hawthorne's name, logo or other indicia.

The Proposed Rule is consistent with key public policy goals in that it provides consumers with the much needed transparency regarding which entities are engaged in the operation of a particular sports wagering platform while recognizing the current market trend in other regulated markets whereby brick-and-mortar licensees such as race tracks have flexibility to develop and operate online sports wagering applications.

The requirements on branding in the SWA were intended to benefit and protect existing and longstanding Illinois operators. The Proposed Rule protects existing longstanding brick and mortar operators by providing further clarity that existing operators brands are required to be displayed on third party-wagering provider platforms. Lastly, the Proposed Rule protects and promotes the branding of existing Illinois gaming developments such as race tracks while



recognizing the commercial innovation of brands by license holders involved in online sports wagering.

Lastly, Hawthorne would like to mention that we support Governor Pritzker's health related efforts regarding COVID-19 and the related Executive Order temporarily removing the requirement of in-person account sign up. We further support the legislative intent establishing the in-person account signup requirement in the Gambling Act and believe that at the appropriate time when the Governor removes the COVID-19 emergency declaration, that the on-site registration requirement of the Gambling Act be reinstated.

Should you have any questions regarding this correspondence please feel free to contact me directly at your convenience. Thank you for your consideration.

Very truly yours,



Timothy S. Carey
President

Cc: Robert Burke, Deputy Administrator of Licensing



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IN REFERENCE TO:

June 29, 2020

VIA EMAIL AND FEDERAL EXPRESS

Mr. Marcus Fruchter
Administrator
Illinois Gaming Board
160 N. LaSalle Street, Suite 300
Chicago, IL 60601

Re: Letter in Support of the Illinois Gaming Board's Proposed Sports Wagering Branding Emergency Rule 1900.1260

Dear Administrator Fruchter:

On behalf of PointsBet Illinois, LLC (“PointsBet”), an applicant for a Management Services Provider License under Illinois’ Sports Wagering Act (the “Act”), the purpose of this correspondence is to express full support for the draft of Emergency Rule 1900.1260 (the “Rule”) likely to be proposed by the Illinois Gaming Board (the “IGB”). PointsBet has partnered with Hawthorne Race Course, Inc., d/b/a Hawthorne Casino & Race Course (“Hawthorne”), to provide to provide sports wagering services as permitted by the Act.

PointsBet and Hawthorne previously communicated to the IGB in separate but coordinated fashion regarding the topic of branding as contemplated by the Act. Our communication highlighted the importance of allowing for use of multiple brands in connection with the conduct of sports wagering in a manner consistent with the Act.

PointsBet believes the Rule, as drafted, promotes the public policy interests of transparency and economic growth, and enhances the overall integrity and credibility of Illinois’ sports wagering industry. The Rule is consistent with the plain language and intent of the Act as it relates to branding.

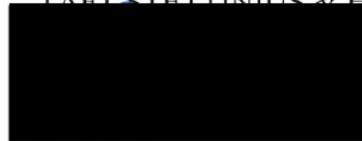
As always, we appreciate the IGB’s consideration of our previous communication, as well as its thoughtful interpretation and application of the relevant statutory language. The IGB acted as a responsible and respected regulator. It solicited the industry’s views of a particular issue, considered that communication in combination with its own analysis of the Act and applicable law, and drafted an administrative rule based on an educated and measured position.

PointsBet appreciates the opportunity to provide comments to the IGB on this important issue. We encourage the IGB to move forward with the Rule at its earliest convenience.

Please let us know if you have questions or would like additional information.

Regards,

TAFF STETTINIUS & HOLLISTER LLP



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