

**STATE OF ILLINOIS
ILLINOIS GAMING BOARD**

IN RE THE DISCIPLINARY ACTION OF:

**Accel Entertainment Gaming, LLC
d/b/a Accel Entertainment**

DC-V-20-008

Licensed Terminal Operator

COMPLAINT FOR DISCIPLINARY ACTION

The Illinois Gaming Board, for its Complaint against Accel Entertainment Gaming, LLC d/b/a Accel Entertainment states as follows:

NATURE OF ACTION

1. The Illinois Gaming Board (the “Board” or “IGB”) brings this action against licensed terminal operator Accel Entertainment Gaming, LLC d/b/a Accel Entertainment (“Accel”) for offering and providing payments and other things of value to licensed video gaming establishments as illegal inducements or incentives to locate, keep or maintain Accel’s video gaming terminals (“VGTs”) at the establishments in violation of the Video Gaming Act (the “VGA”) and the Board’s Adopted Rules for Video Gaming (the “Rules”).
2. Among other things, Accel’s conduct violates provisions of the VGA, the Illinois Gambling Act (the “IGA”) and the Rules that prohibit Board licensees from engaging in any conduct that would discredit, or tend to discredit, or reflect adversely on the integrity of the Illinois gaming industry, including but not limited to the failure to comply with the VGA, IGA, or the Rules.
3. The Board brings this action pursuant to VGA Sections 78(a)(2), 78(a)(3) and 80; IGA Sections 5(b)(2), 5(c)(5), 5(c)(11), and 5(c)(15); and Rule 310. 230 ILCS 40/78; 230 ILCS 40/80; 230 ILCS 10/5; 11 Ill. Adm. Code 1800.310.
4. Through this action, the Board seeks to fine Accel in the amount of \$5,000,000.

PARTIES AND RELEVANT ENTITIES

5. The Board is the Illinois regulatory agency charged with the responsibility of administering, regulating and enforcing the system of video gaming in Illinois. The Board’s jurisdiction extends to every person, association, corporation, partnership, and trust involved in Illinois video gaming operations.

6. Respondent Accel is a licensed terminal operator (License No. 100600345), and one of the largest slot machine operators in the United States. As a licensed terminal operator, Accel is required to comply with the VGA and the Rules at all times.
7. Crown Gaming, Inc. d/b/a DraftKings, through its subsidiary Crown IL Gaming LLC, (collectively “DraftKings”) conducts online and retail sports wagering operations in Illinois.

RELEVANT ILLINOIS VIDEO GAMING INDUSTRY BACKGROUND

8. On July 13, 2009, the General Assembly enacted the VGA, legalizing the operation of VGTs in certain locations across Illinois.
9. Among other things, the VGA created a tiered licensing system to prevent vertical integration within the video gaming industry. This system includes two distinct licensee categories: “Licensed Terminal Operator” and “Licensed Establishment.” Terminal operators are individuals or companies that own, place, operate, and maintain VGTs. In contrast, licensed establishments are the locations such as bars, restaurants, truck-stops, and fraternal organizations that host VGTs for patron play.
10. A use agreement is a contractual agreement between a licensed terminal operator and a licensed video gaming establishment setting the terms and conditions for placement and operation of VGTs by the licensed terminal operator within the premises of the licensed video gaming establishment.
11. Section 25(c) of the VGA prohibits terminal operators from giving anything of value to a video gaming establishment as an incentive or inducement to locate VGTs in that establishment.
12. Similarly, Board Rule 250(l) prohibits terminal operators from offering or providing anything of value to a video gaming establishment as an incentive or inducement to locate, keep or maintain VGTs in that establishment.

RELEVANT FACTUAL BACKGROUND

13. On or about August 28, 2020, Accel entered into a so-called Sportsbook Promotion Agreement with DraftKings (the “Agreement”). The Agreement became immediately effective by its express terms.
14. Under the Agreement, Accel would provide DraftKings advertising space on video display monitors it operates at various video gaming locations throughout Illinois, in return for a set fee.
15. Under the Agreement, DraftKings would pay Accel a \$200 payment for each qualified new patron Accel referred to DraftKings who created a sports wagering account and met certain requirements.

16. The Agreement allows Accel to use video gaming establishments as subcontractors for the referral program and gives Accel sole discretion to share payments with the establishments. Specifically, Clause (5)(e) of the Agreement provides as follows:

“Commission Payments received by Referrer [Accel] shall be shared by Referrer (in Referrer’s discretion) with such Subcontractors as compensation for their efforts to market and promote the Company [DraftKings] to their customers.”
17. On July 6, 2020, Accel’s Chief Commercial Officer emailed two Accel Board Members, discussing the Agreement under negotiation at that time with DraftKings:

“I do believe this deal will generate significant value for Accel through a more compelling value proposition to location owners and players, which has always been the primary objective. This partnership will allow Accel to co-brand with DK and utilize that relationship to drive new location sales and loyalty from location owners.”
18. On August 21, 2020, Accel’s Chief Commercial Officer emailed other Accel executives asking them to include a provision in the Agreement to make clear that Accel will make payments to the video gaming locations out of the funds Accel receives from DraftKings. As he explained, Accel sought to portray its payments to the establishments as mere pass through transfers from DraftKings. Specifically, he wrote:

“There is one clause we would like you to add which would make clear that the commission DK is paying will be shared with the location for their efforts. We don’t want to specify the exact amount because it will be fluid, but we want it in the agreement so the gaming board can see that we are operating as a pass through for the commissions.”
19. On August 27, 2020, Accel’s Chief Commercial Officer emailed DraftKings and copied Accel’s CEO and its General Counsel about Accel’s plan to make payments to licensed video gaming establishments in connection with the Agreement. Specifically, Accel explained to DraftKings:

“We’d like to use the language of “participating partner establishments” and clarify that we are passing these funds from DK to the PPE. This is essential as we are not allowed to provide compensation to the partner from our funds as it could violate the IGB inducement rules.”
20. An August 28, 2020, email exchange among senior Accel executives, including Accel’s CEO, Vice President, Chief Commercial Officer, Chief Marketing Officer, and Chief Revenue Officer, with the subject line “Competitor locations with DK” includes a discussion of how Accel intended to leverage the Agreement to encourage

video gaming locations to sign use agreements with Accel. In part, the Chief Commercial Officer wrote:

“. . . I think now we are all aligned on how we can use DK with competitor locations both short and long-term.

Through September 19th while mobile registration is available per JB's executive order, BDMs and RMs with relationships are able to provide locations with collateral to promote DK signups. We'll pay the location \$100 for every new player signup we track back to the location. . . . After the executive order expires, we'll only provide access to the DraftKings relationship to partners of Accel. . . . Ideally this could serve as an opening for us to have the longer term conversation with the location to convert them to Accel."

21. On August 31, 2020, Accel's Chief Commercial Officer notified all Accel staff of the Agreement, asking that the Accel staff wait until the following day to "start selling" to Accel partner locations. The referral program launched on or about September 1, 2020.
22. On or about September 1, 2020, and on information and belief, Accel sent an email to the more than 2,300 licensed video gaming establishments in Illinois that operated Accel VGTs on their premises at that time to announce the program with DraftKings. Included within the email was a section entitled "Incentives for Your Establishment," which specifically described how video gaming establishments would receive payments from Accel.
23. On September 8, 2020, Accel's CEO emailed the Accel Board of Directors about the Agreement. He stated, in part: "Through this partnership, we will utilize the DraftKings brand to strengthen Accel's value proposition." He further described the benefits Accel would provide to video gaming establishments under the Agreement, including "commissions from DraftKings" and "access through DraftKings to exclusive promotions and giveaways."
24. On September 9, 2020, Accel issued a press release to announce the Agreement. In the press release, Accel's CEO stated, "Our agreement with DraftKings enables Accel to significantly expand our reach, not only in the locations where we already operate, but also with potential partners as we look to continue driving growth." Additionally, Accel's Chief Commercial Officer commented, "We have two strategic objectives to strengthen our business: differentiate our offering for establishment owners and deepen our player relationships. Joining with DraftKings is a strong first step towards accomplishing both goals."

25. On November 5, 2020, Accel conducted its Third Quarter 2020 earnings call. During that call, the Accel CEO announced:

“In early September, we entered into an exclusive agreement with DraftKings to promote their content and programming across all of our marketing channels, including our in-location digital display screens. This first of its kind collaboration further differentiates our offering and deepens our player relationships. This partnership will help us retain and extend agreements with existing locations, attract new organic and competitor locations, and most importantly drive additional players to our locations. While we are still evaluating the benefits of this partnership, initial results have been positive.”

Accel Entertainment Q3 2020 Earnings Call, *available at*
<https://event.on24.com/wcc/r/2632592/CC0B265F246C370C6AE04E1AED1D3F>.

26. On information and belief, and since the execution of the Agreement, Accel sales agents visited numerous licensed retail establishments throughout Illinois that did not have use agreements with Accel. On information and belief, Accel sales agents variously offered the ability to participate in the DraftKings promotion as well as social media marketing as incentives or inducements to enter a future use agreement with Accel.
27. As of December 1, 2020, Accel made 211 payments to video gaming establishments in connection with the Agreement, for a total of more than \$21,000 in payments.
28. Board staff and Accel discussed Accel’s conduct in connection with the Agreement on or about December 11, 2010. On December 17, 2020, Accel advised Board staff that Accel and DraftKings mutually terminated the Agreement as of December 16, 2020.

COUNT I

Inducements in Violation of 230 ILCS 40/25(c) and 11 Adm. Code 1800.310(a)(1)

29. The Board re-alleges and incorporates Paragraphs 1 through 28 above as if fully alleged herein.
30. Section 25(c) of the VGA prohibits a terminal operator from giving anything of value to an establishment as an incentive or inducement to locate VGTs in that establishment. 230 ILCS 40/25(c).
31. A violation of Section 25(c) of the Video Gaming Act is a Class 4 felony and may subject a terminal operator to termination of its license. *Id.*
32. Accel, as a Board licensee, is subject to discipline for any act by itself or by its agents or employees that is injurious to the public health, safety, morals, good order and general welfare of the people of the State of Illinois, or that would discredit or tend to

discredit the Illinois video gaming industry or the State of Illinois, including but not limited to failing to comply with the Act, Rules, or any federal, State, or local law or regulation. 11 Ill. Adm. Code 1800.310(a)(1).

33. Accel entered into the Agreement with DraftKings, whereby Accel obtained the exclusive discretion to make payments to licensed video gaming establishments.
34. By providing the payments, marketing services, and promotional materials related to the Agreement to licensed video gaming establishments with the intent of incentivizing the establishments to place or maintain Accel's VGTs in those establishments, Accel committed illegal inducements in violation of Section 25(c) of the VGA.
35. By engaging in the conduct described above, Accel is subject to discipline pursuant to 11 Ill. Adm. Code 1800.310(a)(1).

COUNT II

Attempted Inducements in Violation of 230 ILCS 40/25(c), 720 ILCS 5/8-4(a) and 11 Adm. Code 1800.310(a)(1)

36. The Board re-alleges and incorporates Paragraphs 1 through 28 above as if fully alleged herein.
37. Section 25(c) of the VGA prohibits a terminal operator from giving anything of value to an establishment as an incentive or inducement to locate VGTs in that establishment. 230 ILCS 40/25(c).
38. A violation of Section 25(c) of the Video Gaming Act is a Class 4 felony and may subject a terminal operator to termination of its license. *Id.*
39. A person is guilty of an attempted offense when, with intent to commit a specific offense, he or she does any act that constitutes a substantial step toward the commission of that offense. 720 ILCS 5/8-4(a).
40. Accel, as a Board licensee, is subject to discipline for any act by itself or by its agents or employees that is injurious to the public health, safety, morals, good order and general welfare of the people of the State of Illinois, or that would discredit or tend to discredit the Illinois video gaming industry or the State of Illinois, including but not limited to failing to comply with the Act, Rules, or any federal, State, or local law or regulation. 11 Ill. Adm. Code 1800.310(a)(1).
41. Accel entered into the Agreement with DraftKings, whereby Accel obtained the exclusive discretion to make payments to licensed video gaming establishments
42. By offering the payments, marketing services, and promotional materials related to the Agreement to licensed video gaming establishments with the intent of

incentivizing the establishments to place or maintain Accel's VGTs in those establishments, Accel attempted illegal inducements in violation of Section 25(c) of the VGA and 720 ILCS 5/8-4(a).

43. By engaging in the conduct described above, Accel is subject to discipline pursuant to 11 Ill. Adm. Code 1800.310(a)(1).

COUNT III
Inducements in Violation of Board Rule 250(1)

44. The Board re-alleges and incorporates Paragraphs 1 through 28 above as if fully alleged herein.
45. Board Rule 250(1) [11 Ill. Adm. Code 1800.250(1)] requires that licensed terminal operators “[o]ffer or provide nothing of value to any licensed video gaming location or any agent or representative of any licensed video gaming location as an incentive or inducement to locate, keep or maintain video gaming terminals at the licensed video gaming location[.]”
46. Accel, as a Board licensee, is subject to discipline for any act by itself or by its agents or employees that is injurious to the public health, safety, morals, good order and general welfare of the people of the State of Illinois, or that would discredit or tend to discredit the Illinois video gaming industry or the State of Illinois, including but not limited to failing to comply with the Act, Rules, or any federal, State, or local law or regulation. 11 Ill. Adm. Code 1800.310(a)(1).
47. Accel entered into the Agreement with DraftKings, whereby Accel obtained the exclusive discretion to make payments to licensed video gaming establishments.
48. By offering and/or providing payments, marketing services, and promotional materials related to the Agreement to licensed video gaming establishments with the intent of incentivizing the establishments to place or maintain Accel's VGTs in those establishments, Accel violated Rule 250(1).
49. By engaging in the conduct described above, Accel is subject to discipline pursuant to 11 Ill. Adm. Code 1800.310(a)(1).

WHEREFORE, based on the foregoing, Accel should be fined \$5,000,000.

Dated: December 18, 2020

Respectfully submitted,

Marcus D. Fruchter
Administrator
Illinois Gaming Board

NOTIFICATION OF PROPOSED DISCIPLINARY ACTION

Pursuant to Rule 715 [11 Ill. Adm. Code 1800.715] the Administrator finds facts sufficient to authorize the issuance of a Disciplinary Complaint against Accel Entertainment Gaming, LLC d/b/a Accel Entertainment and to propose the following discipline:

The terminal operator license of Accel Entertainment Gaming, LLC d/b/a Accel Entertainment (License No. 100600345) shall be fined \$5,000,000 for violations of the Video Gaming Act and the Adopted Rules, as set forth in Disciplinary Complaint No. DC-V-20-008 unless it files an answer to the Disciplinary Complaint within 21 days from the date of service of the complaint.

If you choose to file an Answer, it will not be accepted unless it complies with every requirement listed in Section 720 of the Rules [11 Ill. Adm. Code 1800.720]. If you file an Answer that complies with all requirements under Rule 720, a hearing officer will be appointed to conduct a hearing. Failure to file an Answer within 21 days of receiving this Complaint will result in the proposed disciplinary action becoming effective and final. The Answer shall be mailed to:

Illinois Gaming Board
Attn: Legal Department
160 N. LaSalle St., Suite 300
Chicago, Illinois 60601

OR

IGB.LEGAL@igb.illinois.gov

Dated: December 18, 2020

Marcus D. Fruchter
Administrator
Illinois Gaming Board

CERTIFICATE OF SERVICE

I, Jared L. Smith, an attorney, certify that on Friday, December 18, 2020, I caused a copy of this disciplinary complaint to be transmitted by electronic mail pursuant to Illinois Gaming Board Video Gaming Rules 1800.140 and 1800.715 to the following addresses:

derekh@accelentertainment.com

dmore@foxrothschild.com

wbogat@foxrothschild.com



Jared L. Smith
Assistant General Counsel