



State of New Jersey

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Office of the Attorney General
Department of Law and Public Safety
Division of Gaming Enforcement
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June 17, 2024

Jacob List, Senior Director, Regulatory Operations
DraftKings, Inc.
221 River Street
Hoboken, NJ 07030

RE: Action in Lieu of Complaint

Dear Jacob List:

The Division of Gaming Enforcement (Division) brings this Action in Lieu of Complaint against Crown NJ Gaming, Inc. d/b/a DraftKings (DraftKings), an applicant for a casino service industry enterprise license and a sports pool operator of an online sportsbook pursuant to an agreement with Resorts Digital Gaming, LLC (Resorts Digital) which is a casino licensee and sports wagering licensee, concerning DraftKings' failure to comply with certain regulatory requirements set forth in the Casino Control Act (Act), *N.J.S.A. 5:12-1 et seq.*, the Sports Wagering Act, *N.J.S.A. 5:12A-10 et seq.*, and the regulations promulgated thereunder. In particular, DraftKings' failures and errors resulted in violations of the provisions of *N.J.A.C. 13:69D-1.6(e)1* by providing materially inaccurate sports wagering data to Resorts Digital, which in turn filed inaccurate Monthly Sports Wagering Tax Returns (DGE-107 form) for December 2023, January 2024, and February 2024. In addition, there were errors made by DraftKings related to the DGE-107 form for March 2024. DraftKings' conduct as set forth herein, which caused violations of several regulatory provisions through a casino licensee and sports wagering licensee, reflects negatively upon the State of New Jersey and the gaming industry, in violation of *N.J.A.C. 13:69C-1.3(a)*.

In particular, *N.J.A.C. 13:69C-1.3(a)* provides, in pertinent part, that "the failure to exercise discretion and sound judgment to prevent incidents which might reflect on the reputation of the State of New Jersey and act as a detriment to the industry" may be determined to be an unsuitable manner of operation, meriting discipline. Moreover, any person who "aids, abets, counsels, commands, induces or causes another to violate a provision of [the Act] is punishable as a principal and subject to all sanctions and penalties



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. . . provided by [the Act].” *N.J.S.A. 5:12-123b*. A violation of the Act, or of the regulations promulgated thereunder which govern its implementation, may be determined by the Division to be an unsuitable manner of operation, reflecting adversely and meriting discipline.

Resorts Digital filed the DGE-107 form for the month of December 2023 on January 9, 2024 in reliance on the inaccurate data provided by DraftKings as its partner. The DGE-107 form for the month of January 2024 was filed on February 9, 2024. In early March 2024, the Division’s Office of Financial Investigations (OFI) became aware of sports wagering statistic reporting issues by DraftKings in Illinois and Oregon and notified DraftKings that OFI suspected similar issues existed with DraftKings’ reported sports wagering statistical information in New Jersey for December 2023 and January 2024. In this regard, by email dated March 8, 2024, OFI provided statistical information to DraftKings and Resorts Digital indicating abnormal parlay handle relative to overall handle for those two months. In response, based on amendments by DraftKings, Resorts Digital provided revised DGE-107 forms, twice for the month of January 2024 on March 10, 2024 and again on March 11, 2024, and once for the month of December 2023 on March 11, 2024, confirming that issues experienced in other gaming jurisdictions also impacted upon the reporting of information in New Jersey. Moreover, despite the communication from the Division on March 8, 2024, the DGE-107 form for the month of February 2024 filed on March 10, 2024 contained similar errors.

In response to an OFI request for an explanation for the improper reporting of monthly sports wagering statistics, DraftKings advised that as a result of an internal update to a newly-created database utilized as a reference point to retrieve information for the DGE-107 form, there was a coding issue which resulted in the miscategorization of certain wagers. As a result, DraftKings provided inaccurate information to Resorts Digital, which resulted in the DGE-107 forms overstating parlay handle and correspondingly understating other categories of wagers. Resorts Digital, relying upon the data provided by DraftKings’ filed final, purportedly accurate amended forms for all three months of December 2023, January 2024, and February 2024 with OFI on March 13, 2024. By DraftKings’ failures to report accurate information, Resorts Digital was unable to comply with the provisions of *N.J.A.C. 13:69D-1.6(e)1*, requiring the filing of accurate Monthly Sports Wagering Tax Returns, for three months. *N.J.A.C. 13:69D-1.6(e)1* requires, in pertinent part, that monthly gaming gross revenue tax returns “shall be due not later than 9:00 a.m. on the 10th calendar day following the end of the month.” Additionally, the financial representative for the casino licensee must sign an attestation on the Sports Wagering Tax Return that “[u]nder penalties of perjury, I declare that I have examined this report, and to the best of my knowledge and belief, it is true and complete.”

DraftKings’ inaccuracies and failures were the direct cause of incorrect reporting to the Division and the subsequent publication of the erroneous information. As a result of the errors in reporting by DraftKings, the statistical data for the New Jersey sports wagering industry included in the Division’s Monthly Press Release was materially

misstated for both December 2023 and January 2024.¹ Due to the misstated statistical and financial information for those two months, the Division was placed in a difficult position of responding to inquiries regarding the industry data, with such inquiries focused on parlay handle. Moreover, given the magnitude of the errors and the impact upon the industry statistics as a whole, the Division was compelled to reissue the statistical data in its monthly Press Release for December 2023 and January 2024, which type of circumstance had never happened since at least 2011.

Of particular concern is that DraftKings did not inform the Division of this issue in statistical reporting, even though DraftKings was aware of a potential problem as early as January 16, 2024. DraftKings only corrected the error in reporting following inquiry and follow-up by OFI. In a writing submitted March 29, 2024, DraftKings advised that this issue was not given urgent prioritization and was not reported in a timely fashion because it was not understood internally that the discrepancy required notification to either the Division or Resorts Digital as it was believed that the errors did not impact taxable revenue. The Division rejects this position. While the Division recognizes that the changes to the statistical data did not impact gross revenue and gross revenue taxes, the statistical data is a critical component of the monthly tax return. In this regard, the industry statistical data has been made public by the Division and has been relied upon by the public and the press since the inception of sports wagering in 2018. That statistical data is scrutinized by media and industry analysts each month and the accuracy of that data is essential in the New Jersey regulatory process.

Notwithstanding the representations by DraftKings regarding the purported "accuracy" of its data and the subsequent public reposting of data by the Division which relied upon that representation, on April 9, 2024, DraftKings advised the Division of further issues with the data for all three months of December 2023, January 2024, and February 2024 and that amended DGE-107 forms would once again be filed for each of those months. Those filings were sent by Resorts Digital to the Division on April 10, 2024. Upon review by the Division, DraftKings had revised 52 of 60 individual data points regarding win and handle for those three months, reflecting errors in 87% of those categories on the form.

Lastly, on April 9, 2024, Resorts Digital filed the March 2024 DGE-107 form in the normal course. On April 15, 2024, Resorts Digital filed an amended DGE-107 form for March 2024. Upon review by the Division, DraftKings had revised all 20 of the individual data points regarding win and handle, or 100% of the categories on the form. The revised March 2024 submission was filed without prior notification to the Division by DraftKings that there were errors in its prior data. Instead, the Division was required to review the submission and identify all of the changes and that all of them were related to DraftKings data. Therefore, DraftKings within weeks had failed to abide by a remediation step which it had represented would be implemented, in particular a 24-hour notice as to any discrepancy.

¹ There is no similar misstatement in the Monthly Press Release for February 2024, as OFI was able to incorporate the revised data prior to issuance.

These types of gross errors and failures cannot be tolerated in the New Jersey gaming regulatory system. They evidenced weaknesses in DraftKings' business abilities and casino experience and unacceptable conduct in dealing with regulations and requisite reporting and financial systems.

In those respects, DraftKings has advised that it has deployed an update to correct the coding error, has discussed the significance of non-revenue reporting inaccuracies internally, has trained staff and heightened its understanding, has created additional monitoring to provide alerts as to unusual changes in sports and parlay percentages, has instituted quality assurance review procedures, and intends to inform the Division of any similar discrepancies that would impact upon public reporting within 24 hours of discovery.

Pursuant to Section 123a of the Act, a violation of any of the provisions of the Act which is an offense of a continuing nature "shall be deemed to be a separate offense on each day during which it occurs." Section 129 of the Act authorizes the Division to impose civil penalties of up to \$20,000 for each such violation of the Act. In assessing the circumstances here, the Division accepts DraftKings' offer to pay a civil monetary penalty pursuant to *N.J.S.A. 5:12-129* and -130 in the amount of \$100,000 under the Act in accordance with *N.J.S.A. 5:12-145a* and which DraftKings has agreed to pay in recognition of its actions resulting in violations of *N.J.A.C. 13:69D-1.6(e)1* by causing Resorts Digital to file inaccurate DGE-107 forms for December 2023, January 2024, February 2024, and March 2024 and for its failures to promptly notify both Resorts Digital and the Division of its reporting errors on its own in most instances. Moreover, DraftKings recognizes that this conduct demonstrates a failure to exercise discretion and sound judgment to prevent incidents which reflect negatively upon the State of New Jersey and the gaming industry pursuant to *N.J.A.C. 13:69C-1.3(a)*. To address these matters, DraftKings, as set forth above, has submitted to the Division a remediation plan that it believes will address the issues from recurring in the future. The Division's Revenue Unit will contact you regarding DraftKings' obligation to address the penalty imposed herein. Any subsequent reporting errors by DraftKings will result in further regulatory action by the Division as appropriate under the circumstances.

Sincerely,



Mary Jo Flaherty
Interim Director

MJF/jsfh

c: Pacifico S. Agnellini, Esq.
Brian Fogler, Director of Finance & Operations, Resorts Digital, LLC
Ed Sysol, Revenue Unit