

<p style="text-align: center;">NATIONAL INDIAN GAMING COMMISSION BULLETIN</p>
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No. 94-1

February 4, 1994

Subject: Cabazon Band of Mission Indians v. National Indian Gaming Commission

On January 28, 1994, Judge Randolph, writing for the United States Court of Appeals for the District of Columbia, affirmed the ruling of the lower court that computerized or video pull-tab devices are class III games under the Indian Gaming Regulatory Act of 1988 (IGRA). The court also vacated its injunction enjoining the various defendants from interfering with the use of computerized pull-tab devices by tribal plaintiffs. A copy of the court's decision is enclosed for your information.

In affirming the June 28, 1993 ruling of the United States District Court for the District of Columbia, the court stated, "[a]lthough there may be some room for a broader interpretation of 'facsimile,' the video version of pull-tabs falls within the core meaning of electronic facsimile. It exactly replicates the paper version of the game." Slip Op. at 7.

The court of appeals rejected the Tribes' argument that only electronic versions that are different from the originals are exact duplicates and therefore electronic facsimiles. The court stated:

One might stretch "facsimiles" to cover inexact copies, but the possibility of such a construction does not assist the Tribes. Even if the stretch were justified, the consequence would be to expand the category of games defined as facsimiles, not to constrict it. Exact duplicates - such as the video pull-tabs games the Tribes wish to operate - would remain covered by § 2703(7)(B)(ii). In short, we agree with Judge Lamberth that, at the least, the [IGRA's] exclusion of electronic facsimiles removes games from the class II category when those games are wholly incorporated into an electronic or electromechanical version. Slip Op. at 8.

With this ruling of the court of appeals, it should now be crystal clear that the use of video pull-tab devices, or an other electronic facsimile of a game of chance, requires a tribal-state compact approved by the Secretary of the Interior. The continued use of electronic facsimiles without an approved tribal-state compact is a violation of both the IGRA and the Johnson Act (15 U.S.C. § 1175). Violations of the Johnson Act may result in fines of not more than \$5,000 or imprisonment of not more than two years, or both. Violations of the IGRA may result in civil fines, not to exceed \$25,000 per violation per day, and closure of the gaming operation.

For additional information, contact Michael Cox or Penny Coleman at (202) 632-7003.