



July 13, 2018

Adam Fritz, COO
Jackpot Digital
57 Granville Street, Suite 400
Vancouver, British Columbia
Canada V6C 3P1

Re: Jackpot Blitz Texas Hold 'Em Electronic Poker Game Classification Opinion

Dear Mr. Fritz,

You requested the National Indian Gaming Commission Office of General Counsel review the Jackpot Blitz Texas Hold 'Em game and determine its classification under the Indian Gaming Regulatory Act.¹ The rules for Jackpot Blitz Texas Hold 'Em are the same as for the traditional Texas Hold 'Em game, albeit here it is in an electronic format.

You have indicated that the first Indian gaming jurisdiction in which you hope to market the game is Wisconsin, followed likely by Florida, Louisiana, and California. You suggested, however, that a "general opinion would be helpful in our efforts to place our product with Indian [g]aming operators nationwide." This opinion is not state specific and contains no analysis of state gaming laws. It is confined to the question of whether Jackpot Blitz Texas Hold 'Em meets the non-banking and technologic aid requirements for Class II status.

I have reviewed the game description and marketing materials you submitted, as well as YouTube videos of the game and it is my opinion that Jackpot Blitz Texas Hold 'Em is a Class II game, so long as it is played in a state in which the requirements of 25 U.S.C. § 2703(7)(A)(ii) (I) or (II) of IGRA are satisfied and is not in violation of any federal communication laws.

Game Description

Jackpot Blitz Texas Hold 'Em is similar to the Texas Hold 'Em variant of the standard poker card game, though played on an electronic table game platform. The game is played on Jackpot Digital's 84-inch single panel touch screen surface rather than a traditional felt card table with cards. The electronic table is fully automated and accommodates ten players simultaneously.

As with traditional Texas Hold 'Em, wagers on Jackpot Blitz Texas Hold 'Em Poker are made against other players rather than a banker or the house. It is played live and in real time. Cash can be converted into credits on a patron card at a cashier or an automated payment kiosk. A player can join Jackpot Blitz Texas Hold 'Em by transferring money into their player bank from their patron card.

¹ 25 U.S.C. §§ 2701 *et seq.*

Jackpot Blitz Texas Hold ‘Em utilizes a rotating blind system² designed to encourage players to put money into the pot. One player is required to post a *small blind* and one is required to post a *big blind* prior to the deal. The blind amounts are pre-set before the table opens for play and do not change until play is completed. After the required blind bets are posted, players can bet any amount up to the amount of credits they have on the table.

To begin game play, one card is drawn from the deck per player. The highest-ranking card (ace-king-queen-jack-10-9-8-7-6-5-4-3-2) determines the placement of the dealer. The player on the dealer’s left puts the small blind into the pot and the player to the immediate left of the small blind puts the big blind into the pot. The big blind is equal to the minimum bet at the table. The small blind is half of the big blind. If the minimum bet at the table is \$2, the big blind would be \$2 and the small blind would be \$1. The dealer position, small blind, and big blind rotate to the left one seat at the table with each hand.

After the blinds are posted, the random number generator shuffles a standard fifty-two card deck and deals each player two electronic cards face down, known as “hole cards.” Players can look at the virtual cards on the table by placing their hands over the cards on the touchscreen and touching the glowing circle at the bottom of the cards. When the player touches the circle, just the corner of each card is revealed so that the player may see it, but there is little chance another player will also. After the deal, the first betting round begins with the player to the immediate left of the big blind. Players have the option to call, raise, or fold. Any raise must be at least double the previous bet unless a player does not have enough credits at the table, at which point the player can commit all credits and go “all in.”

After the initial round of betting is complete and each player has acted, the random number generator deals three cards to the center of the table, known as “the flop.” These three cards are communal cards that each player can use in combination with their two “hole cards.” The flop deal is followed by another round of betting. The random number generator deals a fourth communal card face up to the centre of the table, known as “the turn.” Another round of betting then takes place. A final and fifth face-up communal card the “river” is followed by a final round of betting. The players use their two holes cards and the five community cards to make the best five-card hand.

The players then show their hole cards face up. The player who can make the best five card poker hand combining their two hole cards with the five communal cards wins the pot.

Jackpot Blitz generates revenue for the gaming operation by taking a “rake.” The “rake” is taken from each hand only if:

- There are more than two players dealt into the hand;
- The pot size exceeds \$10; and

² A *rotating blind* is a required bet to begin the round of betting and initiate play that rotates around the table for each new game.

- The flop is dealt.³

The gaming operation sets the percentage of the rake. It may set a rake at a certain percentage up to a certain dollar amount of each pot, For example, if a gaming operation sets the rake at 10% up to \$10 then 10% of each pot will be taken as the “rake” but only to a maximum of \$10. The percentage and maximum are configurable by the casino to ensure Jackpot Blitz Texas Hold 'Em complies with the casino’s internal controls for non-banked games.

Law and Analysis

IGRA divides Indian gaming into three classes. Class I gaming, which is not at issue here, encompasses “social games” played “solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.”⁴ IGRA defines Class II gaming to include:

- (ii) [C]ard games that -
 - (I) are explicitly authorized by the laws of the State, or
 - (II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.⁵

Class II gaming means the game of chance commonly known as bingo, whether or not electronic, computer, or other technologic aids are used in connection therewith, including, if played in the same location, pull tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and various card games.⁶

IGRA further defines Class II gaming by stating what it is not. Banking card games are not Class II gaming.⁷ Nor are electronic or electromechanical facsimiles of any game of chance or slot machines of any kind considered Class II.⁸

Class III gaming is a catchall category that includes all forms of gaming that are not Class I gaming or Class II gaming.⁹

³ The flop would not be dealt if everyone folds (and/or blinds are chopped) prior to the flop being dealt. In that case, since no community cards were seen, no rake is taken. For example, if there are 3 players at the table and 1 folds before the first 3 cards (flop) are dealt, the other 2 players have the opportunity to chop blinds (get their blinds back when only 2 players posting blinds are left in the hand).

⁴ 25 U.S.C. § 2703(6).

⁵ 25 U.S.C. § 2703(7)(A)(ii); *See also*, 25 C.F.R. § 502.3.

⁶ 25 U.S.C. § 2703(7)(A).

⁷ 25 U.S.C. § 2703(7)(B)(i).

⁸ 25 U.S.C. § 2703(7)(B)(ii).

⁹ 25 U.S.C. § 2703(8); 25 C.F.R. § 502.4.

Determining Jackpot Blitz Texas Hold 'Em's classification requires analyzing whether the game is banked or non-banked and whether it is an electronic aid or an electromechanical facsimile. Banking games, as commonly understood and as defined in NIGC regulations, are games in which the banker (usually, but not necessarily, the house) is a participant in the game, takes on all players, collects from all losers, and pays all winners.¹⁰ Conversely, non-banking card games are games where players play against each other. The traditional game of poker is a typical example of a non-banking card game.

Jackpot Blitz Texas Hold 'Em is a non-banking poker card game. The players play one another rather than a banker or the house; taking wins and losses from each other. The house makes its money from the rake, described above, and not from the pot. As a non-banking card game, Jackpot Blitz Texas Hold 'Em constitutes a Class II game so long as it is not an electronic facsimile.¹¹

Thus, Jackpot Blitz Texas Hold 'Em must also be analyzed to determine whether it is an electronic facsimile or a technologic aid to a non-banking card game to determine if it is a Class II game.¹²

Although IGRA does not define "electronic, computer or other technologic aid," NIGC regulations define it as any machine or device that:

- (1) assists a player or the playing of a game;
- (2) is not an electronic or electromechanical facsimile; and
- (3) is operated in accordance with applicable Federal communications law.¹³

Further, NIGC regulations define "electronic or electromechanical facsimile," in relevant part, as "a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the characteristics of the game."¹⁴

In short, if a game contains the fundamental characteristics of a Class II game and is played using an electronic or other technologic device, the determining factor in its classification is whether the electronic device is an aid to the play of a game, in which case the game is Class II, or whether the electronic device is a facsimile of a game, in which case the game is a Class III game. A game's

¹⁰ 25 C.F.R. § 502.11.

¹¹ 25 U.S.C. § 2703(7)(B)(ii).

¹² On December 17, 2009, the OGC issued a game opinion for Digideal Digital Card System (*Digideal II*), revising and changing its position on a 2004 game opinion on the same card system. After thorough analysis the *Digideal II* opinion concluded that IGRA does not prohibit the use of technologic aids to card games. Memorandum to George Skibine, Acting Chairman and Norm DeRosier, Vice-Chairman, from Penny Coleman, Acting General Counsel, dated December 17, 2009, Re: Classification of card games played with technological aids, p. 11. The opinion may be found here: <https://www.nigc.gov/images/uploads/game-opinions/20091217MemoreClassificationofcardgamesplayedwithtechnologicaidstoNIGCActingChairmanGeorgeSkibine.pdf>; see also, NetPoker Gaming System Game Classification Decision, dated July 3, 2013. The decision may be found here: https://www.nigc.gov/images/uploads/game-opinions/2013.07.03_Ltr_to_Foley_fr_NIGC_re_NetPoker_Gaming.pdf.

¹³ 25 C.F.R. § 502.7(a).

¹⁴ 25 C.F.R. § 502.8.

classification matters in that, under IGRA, Class III games may be played only pursuant to a tribal-state compact.¹⁵

The Jackpot Blitz Texas Hold 'Em system satisfies the first element of a technologic aid. It assists play by electronically displaying each player's hand. On the table are displayed the hole cards and community cards, enabling the players to decide whether to continue or to fold. The electronic game also uses a random number generator to shuffle and deal the cards, which enables play and avoids any human error. In these ways it assists both the play and the players of the game.

The second element requires that, to be a technologic aid, Jackpot Blitz Texas Hold 'Em must not be an electronic or electromechanical facsimile of a game of chance.¹⁶ As noted above, NIGC regulations define electronic or electromechanical facsimile, in relevant part, as "a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the characteristics of the game"¹⁷ In the *Digideal II* opinion, in which the OGC evaluated a card game played on an electronic table, the OGC made the distinction between a technologic aid and a facsimile for an electronic game of cards. It found that the *Digideal* game machine was not a facsimile because it did not incorporate all of the characteristics of poker. *Digideal* incorporated some characteristics of poker; namely shuffling, dealing, and ranking winning and losing hands. Other aspects, though, such as deciding to play or fold, placing wagers, or putting in an ante were made by the player.¹⁸

In arriving at this opinion, the OGC relied on several court decisions that interpreted the difference between electronic facsimiles and technological aids. One such decision relied upon was *Sycuan Band of Mission Indians v. Roache*, in which the 9th Circuit Court of Appeals reviewed a wholly-electronic pull tab game in which the player bought and played pull tabs generated by computer and displayed on a video screen and concluded it was an exact, self-contained copy of paper pull tabs and thus an electronic facsimile.¹⁹ The court noted a wholly contained game was different from the same game in live form played with the aid of a computer or video.²⁰ Conversely, in *Diamond Game v. Reno*, the machine at issue sold and dispensed paper pull tabs from a roll, then read and displayed the results of each tab in a manner that resembled a three-reel slot machine.²¹ Nonetheless, the paper tabs could be played and redeemed manually.²² The D.C. Circuit Court of Appeals held that the machine was not an electronic facsimile containing all characteristics of pull tabs, and thus not a Class III game.

As with *Digideal*, the Jackpot Blitz Texas Hold 'Em system shuffles, deals, collects the pot, and displays the cards. But the player, not the system, makes the decision on when to call, when and

¹⁵ 25 U.S.C. § 2710(d)(1)(C).

¹⁶ 25 C.F.R. § 502.7(a)(2).

¹⁷ 25 C.F.R. § 502.8.

¹⁸ Memorandum to George Skibine, Acting Chairman and Norm DeRosier, Vice-Chairman, from Penny Coleman, Acting General Counsel, dated December 17, 2009, Re: Classification of card games played with technological aids, pps. 7-8.

¹⁹ 54 F.3d 535, 542-543 (9th Cir. 1994).

²⁰ *Id.* at 543.

²¹ 230 F.3d 365, 370 (D.C. Cir. 2000).

²² *Id.*

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how much to raise, and when to fold. Jackpot Blitz Texas Hold 'Em incorporates some aspects of poker, but is not a wholly contained copy of Texas Hold 'Em poker in a machine. It is a way to play the game – which assists a player in playing the game – and is not the game itself. As such, Jackpot Blitz Texas Hold 'Em is not an electronic facsimile.

The final requirement for use of a technological aid in connection with Class II gaming is that the aid must be operated according to applicable Federal communications law. It is Jackpot Digital's responsibility to ensure that it is so operated. I make no determination whether the game as described violates any Federal communications law.

In sum, Jackpot Blitz Texas Hold 'Em meets the first two criteria of a technologic aid. Thus, as long as it is not played in violation of any Federal communications law, and is played in a state in which the requirements of 25 U.S.C. § 2703(7)(A) (ii) (I) or (II) are satisfied, it is a Class II game.

This opinion is advisory in nature only, and may be superseded, reversed, revised, or reconsidered by a subsequent General Counsel, NIGC Chairman, or the NIGC Commission as a whole. Furthermore, if the game or play thereof fails to conform with, or differs from, the foregoing description, such differences might materially alter our conclusion.

If you should have any further questions, please contact NIGC Senior Attorney Maria Getoff at (202) 632-7003.

Sincerely,

A handwritten signature in blue ink that reads "Michael Hoenig". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Hoenig
General Counsel