

**FEB 29 2000**

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Re: Magical Irish Instant Bingo Dispenser and Verifier System

Dear Mr. Lenske:

This letter provides an advisory classification opinion for the Magic Irish Instant Bingo Dispenser and Verifier System (Magic Irish) demonstrated at the offices of the National Indian Gaming Commission (NIGC) on January 19, 2000. The written descriptions for the game contained in a letter report dated January 13, 2000, from Mr. James R. Maida of Gaming Laboratories International, Inc. (GMI) and in a document dated December 7, 1999, from Snyder and Associates are included by reference with this opinion. A video of the game was also provided. After considering these matters along with the summary of features and other comments presented in your letter of January 20, 2000, I conclude that Magic Irish is a class III game under the Indian Gaming Regulatory Act (IGRA) and the regulations of the NIGC.

#### Game Description

Magic Irish is a video pull-tab device comprised of three individual components: Base, Verifier, and Dispenser. These components work in conjunction to dispense a paper pull-tab and concurrently display symbols corresponding to the contents of the paper pull-tab on a video screen. The device is stand-alone and, in the configuration presented, not designed to be linked with other similar units.

The base portion of the system houses the main CPU board along with software that operates the device. The base also includes a power supply and power distribution box. A separate power supply for the Verifier was offered in the version presented for NIGC demonstration although the version examined by GMI did not contain this feature. The CPU board includes a surface-mounted Flash PROM that contains the software used to control game operation. Because this PROM is soldered to the CPU board, GMI could not evaluate the operational software. The materials from Snyder and Associates indicate that the device does not contain a random number generator.

The Verifier component houses a video monitor that can display the outcome of the paper pull-tab made available by the Dispenser. The exterior of the Verifier contains an identification plate, an award glass that provides details on which combinations from the pull-tabs are considered winners, and a push button identified as "VERIFY". When the "VERIFY" button is pressed, the monitor will display a visual representation of the outcome of a pull-tab at the time it is purchased.<sup>1</sup> This display will continue as to future pull-tab purchases until the player chooses to no longer employ the feature. The display feature can be disabled by again depressing the "VERIFY" button. In a sense, the button merely serves as an on/off switch for the display function. The player may choose not to use the video display as to any particular pull-tab sale and may simply read the pull-tab himself. However, the full operational capability contemplates display of the game symbols or numbers corresponding to those from the pull-tab onto the video screen. During the visual display process, the monitor shows a nine-position grid. The symbols within the grid graphically mimic rotation. When the movement stops, the symbols match the paper pull-tab. An audio feature accompanies the video display and provides distinctive sound if a winning combination is attained.

The Dispenser has exterior and internal components. Key exterior features include a LCD display that describes the credits available, a bill acceptor, a "DISPENSE" button, and a tray into which pull-tabs are dispensed. The interior is composed of two locked compartments. The bill validator occupies one compartment along with "IN" and "WON" meters. The Scanner compartment houses the scanner, a roll of pull-tabs and various other electrical components.

The scanner within the Dispenser unit reads a bar code on each pull-tab as it is dispensed on its way to the tray. The information obtained from the bar code is displayed on the video monitor if the display feature is in use, as determined by the player. The scanner is connected by cabling to the CPU board housed in the base of the device. The scanner communicates to the Verifier through the CPU board. The CPU board translates the information so that the Verifier may display the contents of the paper pull-tab.

The scanner does not convert pull-tabs with winning combinations into additional credit for future play. The winning pull-tabs must be presented to a cashier or an attendant for payment. Magic Irish does not dispense a cash payment.

The pull-tabs are manufactured in large rolls or spools. Each contains 7,500 pull-tabs. Each pull-tab is cut from the spool at time of purchase. Because of prize array, the pull-tab "deal" must contain more than one spool and the dispenser unit does not contain a full deal at any one time.

The pull-tabs are made of two-ply paper material. The upper ply is an opaque covering printed on one side with the name of the game. This ply may be peeled off, or

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<sup>1</sup> Perhaps the term "VERIFY" incorrectly describes the function of the button. Webster's says the term means "to determine or test the truth or accuracy of, as by comparison, investigation, or reference." Nothing is verified when the button is depressed. Rather, symbols corresponding to those on the pull-tab ticket are shown. "DISPLAY" could be a more accurate label.

to the side, to reveal the icons or symbols printed on the lower ply. A bar code, a sequential number, and other numbers said to be unrelated to any individual player are printed on the outer surface of the lower ply, the backside of the pull-tab.

### Pertinent Statutes and Regulations

IGRA divides gaming into three distinct categories. Class I gaming involves social games and traditional Indian games not applicable to this discussion. Class II gaming includes “the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic *aids* are used in connection therewith) ... in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull tabs, ... instant bingo, and other games similar to bingo.” The term “class II gaming” does not include “electronic or electromechanical *facsimiles* of any game of chance or slot machines of any kind.” Class III gaming means “all forms of gaming that are not class I gaming or class II gaming.” See 25 U.S.C. 2703 (6) – (8).

Regulations of the NIGC provide corresponding definitions for these terms at 25 C.F.R. part 502.

The purpose in drawing a distinction between class II and class III gaming is that, under IGRA, class III gaming may only be played in conformance with a tribal-state compact permitting such gaming. See 25 U.S.C. 2710(b)(1)(A).

### Discussion

A similar pull-tab device, Lucky Tab II, was considered in Diamond Gaming Enterprises, Inc. v. Reno, 9 F. Supp 2d.13 (D.D.C. 1998). Lucky Tab II closely parallels Magic Irish, also a product of Diamond Gaming Enterprises. The court opinion provides clear guidance to determine the classification for Magic Irish. Other important court decisions involving video pull-tabs also provide guidance, notably Cabazon Band of Mission Indians v. National Indian Gaming Commission, 14 F.3d 633 (D.C. Cir. 1994) (Cabazon II) and Sycuan Band of Mission Indians v. Roache, 54 F.3d 535 (9<sup>th</sup> Cir. 1994).

The controversy in Diamond Gaming centered on the nature of Lucky Tab II as either an electronic or computer *aid* to the traditional game of pull-tab, and thus class II, or an electronic *facsimile* of that game, which would exclude it from class II. As the court noted, an aid operates to broaden the participation levels in a common game, and is distinguishable from a facsimile in which a single participant plays with or against a machine rather than with or against other players.

Here, at any time a single participant plays a self-contained machine—not with other players. The participant plays the Lucky Tab II by inserting money into the machine. A single ticket is then dispensed from a large roll of pull-tabs inside the machine. As the ticket pull-tab is being dispensed, the scanner inside Lucky Tab II reads a bar code on the

back of the pull-tab ticket and provides a video display of the encoded symbols on the pull-tab. The Lucky Tab II also contains a variety of light and visual effects, not dissimilar to a slot machine. Distinctive audio sounds and visual signals inform the participant of a winning ticket which can be redeemed for a monetary prize. The Lucky Tab II has no other technological capability. Its current technological configuration does not permit multiple players to participate in the game at one time. When a participant plays a particular Lucky Tab II machine, others are precluded from using that machine until that person stops playing. The Lucky Tab II also lacks the technology that permits for the linking up with other participants from the same location or from other remote locations to play the basic game of pull-tabs. Accordingly, the Lucky Tab II is not an electronic aid as contemplated under the IGRA.

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When the participant plays the Lucky Tab II, she is not playing the pull-tabs inside the machine; she is engaging the machine that replicates the functions of the traditional pull-tab game. Indeed, the Lucky Tab II performs all the functions that a player of the traditional pull-tab game would have performed, including selecting a pull-tab ticket, disclosing the hidden symbols on the ticket and determining whether a particular pull-tab ticket is a “winner.” Thus the Lucky Tab II is a facsimile of the traditional pull-tab game. Furthermore, the participant plays with or against the machine and not with or against other players.

Diamond Gaming, 9 F.Supp. 2d, at 20.

In short, the court concluded that Lucky Tab II was a device that replicates the traditional pull-tab game—not an *aid* but a *facsimile*, and thus class III.

From a player’s perspective, other than graphics, the only important feature that makes Magic Irish different from Lucky Tab II is the option to display or not display on the video monitor the contents of the pull-tab as to any individual pull-tab that is dispensed. The manufacturer implements this player-option feature by use of the on/off “VERIFY” button and by the use of a separate power supply for the verifier.

The clear intent in playing the Magic Irish device, however, is to simulate a slot machine effect through the play of pull-tabs. In evaluating the game, it is reasonable to conclude that players will use all features and not forgo the enjoyment and excitement that the game wishes to foster. The features provided by the manufacturer that permit video display are integral to the game classification advisory. Consequently, for purposes of this opinion, Magic Irish is evaluated only in its full operation capability defined in the descriptive materials as “a video pull-tab device [which] dispenses paper pull-tabs while, at the players option, concurrently displaying the contents of the paper pull-tab on a video screen.”<sup>2</sup>

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<sup>2</sup> Support for evaluating the game only its full operational mode is also found in Diamond Gaming. The Court quickly dismissed an effort by the proponents suggesting that the Lucky Tab II pull tabs could be

Magic Irish also attempts to separate the pull-tab sale function from the video display function by compartmentalizing the equipment. This effort does not eliminate the basic technology: a scanner still reads the pull tab as it is dispensed and, through cabling linking the scanner, CPU and video monitor, displays symbols corresponding to the contents of the pull-tab on a video screen. Placing the scanner, the monitor, and the CPU in adjacent cabinets rather than in a single unit is unimportant to the play of the total system. This compartmentalization is not a factor that would cause the game to move to class II from class III on a theory that the single system is really two devices, one for the sale and one for the display, and that neither is a gambling device.<sup>3</sup>

Your letter of January 20, 2000, points out that in an advisory opinion dated June 8, 1998, the NIGC determined that devices known as the Tab Force Instant Pull-Tab Ticket Validation System and the Multi-Tab Pull-Tab Game System were class II. You assert that Magic Irish has similar features. In that opinion, we concluded that the systems did not appear to be Johnson Act gambling devices, but the same cannot be said of Magic Irish. The significant difference when comparing these systems to Magic Irish is that the Tab Force system and the Multi-Tab system do not dispense the pull-tab that is to be displayed on the video screen. The player obtains the pull-tab in a transaction separate and distinct from the "display" or "verify" function. In these systems, the pull-tab must be purchased separately and then inserted into the system, at the player's discretion. With either the Tab Force or Multi-Tab system, a player also must open the pull-tab to reveal the contents before inserting the pull-tab into the video display system. The elements of the consideration, chance and prize are complete before the player engages the machine.

In Magic Irish, the sale is accomplished by and within the system. A player may purchase a pull-tab by expending a credit. The scanner, connected to a video display monitor, reads the pull-tab as it is sold and shows the result. The player engages the machine for the entire sale-transaction and video-display and determines from the video display whether a monetary prize is won. Of course, the player may also make this determination from the paper pull-tab, but this seems impractical so long as the display feature is in use or even available for use. There is no ability to insert a pull-tab that may have been separately purchased into the system so that it simply may be read.

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sold separately and that this was of some consequence to the classification determination with the following: "The plaintiffs point out that the pull-tabs themselves can be sold and played apart from the Lucky Tab II. From these assertions, the plaintiffs conclude that Lucky Tab II retains the fundamental characteristics of the traditional game and is therefore only an aid to the playing of the game. This analysis fails to examine the device in its full operational context." See Diamond Gaming, 9 F. Supp. 2d at 18.

<sup>3</sup> The Johnson Act, codified at 15 U.S.C. 1171-1178, contains a definition for "gambling device" that includes "(2) any other machine or mechanical device ... designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as a result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property." Whether the Magic Irish dispensing unit would be a gambling device if it stood alone is not at issue in this opinion.

While you assert that Magic Irish has the same characteristics as Tab Force and Multi-Tab, in actuality the system features are almost entirely those of Lucky Tab II.

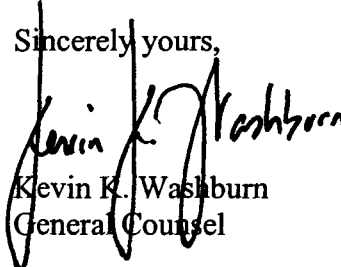
In Cabazon II, the court concluded “[t]he Act’s [IGRA] exclusion of electronic facsimiles removes games from the class II category when those games are wholly incorporated into an electronic or electromechanical version.” Cabazon II, 14 F.3d, at 636. If that analysis is used, the factual question becomes whether the features present in Magic Irish “wholly incorporate” the game. In Cabazon II, the pull tabs were not paper but were contained in a computerized deal. The computer randomly selected the pull-tab for the player and then displayed it on a video screen. In Magic Irish the technology is far more rudimentary—the pull-tabs are on a roll inside the device, rather than on chip or a cartridge, but the essential principle is the same: a player pays consideration for a chance to win a prize by engaging the machine and then the player learns of a possible winning combination through a computerized process and electronic display on the machine.

Under 25 C.F.R. 502.7, an electronic aid to a class II game is “a device such as a computer, telephone, cable, television, satellite or bingo blower and that when used--  
... (b) Is readily distinguishable from the playing of a game of chance on an electronic or electromechanical facsimile [.]” As with the Autotab Model 101<sup>4</sup> in Sycuan, the machine at issue here—the Magic Irish System—is not readily distinguishable from a game of chance or an electronic facsimile. It therefore falls outside the class II definition.

### Conclusion

Magic Irish is an electronic facsimile of the game of pull-tabs. The symbols that appear on its video display are computer-generated replicas of a paper pull-tab. The game is not an electronic or computer aid to the play of traditional paper pull-tabs. As in Lucky Tab II, when Magic Irish is played in its intended operational mode with the electronic display features utilized, the player engages a machine that replicates the functions of a traditional pull-tab game. Because in its full operational mode the game is an electronic facsimile, it cannot be class II and, therefore, under the IGRA definition can only be class III. The game may be played only under a tribal-state compact.

Sincerely yours,

  
Kevin K. Washburn  
General Counsel

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<sup>4</sup> “The ‘Autotab Model 101 electronic pull-tab dispenser’ is a self-contained unit containing a computer linked to a video monitor and a printer. The player electronically reveals concealed numbers to determine whether he or she is a winner.... The game retains the fundamental characteristics of the paper pull-tab version of pull-tab: the video pull tab machine is supplied with a computer chip cartridge that insures a predetermined and known number of winning tickets from a finite pool of tickets with known prizes...” Sycuan, 54 F.3d, at 541.