



AUG - 6 2012

Mr. Donald Hohman, President  
WhoopAss Poker, Inc.  
1472 N. San Antonio Ave.  
Upland, CA 91786

Re: WhoopAss Poker Game Classification Decision

Dear Mr. Hohman:

This is in response to your request for our review of the card game, WhoopAss Poker, and to determine its classification under the Indian Gaming Regulatory Act ("IGRA"). Your request asked for decisions on two different versions of the game; one played similarly to a traditional game of poker against other players ("poker version") and the other in which the player "plays against the house" ("table game version").

Pursuant to the IGRA, class II gaming includes non-banking card games if such card games:

(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 wages or pot sizes in such card games.

25 U.S.C. § 2703(7)(A)(ii). Your request did not identify any particular state in which the game would be played. Therefore, this decision is not state specific and contains no analysis of state gaming laws. This determination is confined to the question of whether WhoopAss Poker meets the non-banking requirement for class II status.

I have reviewed the game descriptions you submitted with your request and conclude that the poker version of WhoopAss Poker meets the non-banking requirement for Class II and the table game version is Class III.

## Game Play

WhoopAss Poker is a card game played with a standard deck of 52 playing cards. The game can be played two ways, with the ultimate objective under either version of the game to make the best five card poker hand using a combination of cards dealt specifically to one player and community cards available to all players. Although the objective of the two versions is the same, the rules of play are not.

### Poker Version

The poker version of WhoopAss Poker is similar to the game of Texas hold'em. There is no bank, meaning wagers are made against other players rather than a banker (usually the house). Unlike Texas hold'em, though, WhoopAss poker gives players the option to buy an additional card to use as either a hole<sup>1</sup> or community card.<sup>2</sup>

The poker version of the game begins with the player to the left of the dealer making a required bet called the "small blind." This is usually about half the minimum bet for a game. Next, the player to the left of the small blind makes a second required bet called the "big blind." The big blind is typically the same amount as the minimum bet. So, for example, if the minimum bet in a game is five dollars, the small blind will be two dollars and the big blind five dollars. Next, each player is dealt two cards face down. These are called the "hole cards." After the hole cards are dealt each player may call the big blind, raise, call any raise, or fold.

After the first round of betting, the dealer discards a card from the deck and places two cards face up in the middle of the game table. This is called "the flop" and these cards are the first of six community cards that will be dealt throughout the game. The flop is followed by second round of betting, which in turn is followed by another flop.

At this point in the game, the dealer collects the rake and the players are given the option to purchase a "WhoopAss card." Each player will notify the dealer as to whether he or she wants a WhoopAss card by placing the buy amount, usually the amount of the largest bet allowed, in a designated place on the game table. Depending on where the money is placed, the card can be dealt either face up or face down. If the WhoopAss card is dealt face up, it becomes one of the player's community cards. If it is dealt face down, it becomes a hole card.

After all of the players have indicated whether they want a WhoopAss card, the dealer discards another card and deals the WhoopAss cards to the appropriate players. Following the WhoopAss card deal, the third and final flop is dealt. There is no discard

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<sup>1</sup> A "hole card" is a Card dealt to a player face down, hidden to everyone at the table except for the player to which it was dealt.

<sup>2</sup> Community cards are shared cards that can be used by all players in a poker game and give partial information about an opponent's hand

between the deal of the WhoopAss card and the final flop. This concludes the deal, and all players will hold two hole cards and six community cards. Those players that bought a WhoopAss card will also have an extra hole card or community card, depending on their purchase option.

Now that the deal is complete, the final round of betting occurs. After all bets are in, the remaining players turn over their cards. The winning hand is determined by looking at two of each player's hole cards and three of the community cards. The best hand based on regulation poker rankings is the winner.

### Table Version

The table version of WhoopAss poker is similar to the poker version. The objective of the game is the same, but unlike the poker version, the table version is played against a banker rather than other players. It also gives players additional betting options. Ultimately, though, the players are still trying to make the best five card hand using a combination of hole and community cards.

The table for this version of WhoopAss poker also bears describing. Each player has several designated spaces in front of him, including three numbered betting spaces and a *Play* space. Above that are three spaces marked *Ante*, *Straight or Better*, and *Blind*. Finally, there is a space for the WhoopAss card with *down* and *up* designations. In front of the dealer are spaces for the flop and the dealer's hole cards.

The game begins with the player placing his bet in the *Blind* and *Ante* spaces. The player must bet in both spaces to start the game and the bets must be the same. The size of the bet is determined by the player, subject to house limits. At the same time as the player makes the *Blind* and *Ante* bets, he may choose to make a *Straight or Better* bet, which must be the same amount as the ante. The *Straight or Better* bet, as its name suggests, is a wager that regardless of the ultimate outcome of the game, the player will at least be able to make a straight or better hand.

After the player makes the initial bets, the dealer gives each player and himself two cards face down. The player then decides if he wants to bet or check. If betting, the player places his bet in the *First Bet* space on the table. The first bet may be up to four times the ante. Dealer then deals the first flop. The player may then check or bet by placing a wager of up to double the ante in the space marked *Second Bet*. The second flop is dealt next and the player once again may check or bet by placing a wager, which must be the same amount as the ante, in the space marked *Third Bet*.

At this point in the game, the player is given the opportunity to purchase a WhoopAss card by placing the same amount as the initial ante in the appropriate space on the *down* or *up* space on the table. As with the poker version, the player may purchase

the card as a hole or community card. The dealer will also deal himself a WhoopAss card face down. The dealer will decide how the card should be used at the end of the game.<sup>3</sup>

After the WhoopAss card is dealt, the dealer turns the third and final flop. The player may then choose to fold or stay in the game by betting. If the player decides to keep playing, he must place his final bet, which must be the same amount as the ante, in the *Play* space. If the player folds, he loses his ante, blind bet, first, second, and third bet, and the money used to purchase the WhoopAss card. If the player opted to make a *Straight or Better* bet and folds with a straight or better, the player wins the *Straight or Better* wager and is paid upon folding his hand.

After all bets are made, the dealer turns over his two hole cards and his WhoopAss card. He may use the option card as either a community card or hole card. The player then turns over his hole cards. Like the poker version of the game, the winning hand is determined using two of the player's hole cards and three of the community cards.

If the player wins, and no *Straight or Better* bet was made, the dealer will return and match the player's ante, first, second, third, and *Play* bets. The dealer will also return and match the player's *Blind* bet, but only if the player has a flush or better. If the player does not have a flush or better, the blind bet goes to the dealer. If the player elected to purchase a Whoop-ass card and the player wins the hand, the purchase money for the card is returned to the player, but not matched.

If the player loses the hand, the ante, the blind, all bets, and the WhoopAss card purchase money go to the dealer. Finally, regardless of whether the player won or lost the hand, if the player made a *Straight or Better* bet, and the player's hand is a straight or better, the dealer will return and match the wager amount. If the player's hand fails to reach that threshold, the dealer collects the wager.

In the event of a tie, the player loses the *Ante* bet and bets 1, 2, and 3. The player must beat the dealer to win these bets. Regardless of a tie, if the player has made a *Straight or Better* bet, he or she will win or lose the bet according to whether the player makes a straight. For the player to win the *Blind* bet, he or she must have a flush or better. If the player beats the dealer with less than a flush, the blind bet is won by the dealer. The player with a flush or better can not win the *Blind* bet on a tie. He or she must still beat the dealer to be paid on the *Blind* bet.

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<sup>3</sup> The WhoopAss buy card money may also be used as a jackpot for players only. In this version of the game, each player that buys a WhoopAss card is eligible to win the jackpot. After all of the WhoopAss cards have been purchased, the dealer will rake all of the buy card money to the center of the table. The player with the highest hand wins the jackpot. The dealer may not participate in this aspect of the game.

## Analysis

The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701, *et seq.* divides the world of 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." 25 U.S.C. § 2703(6).

IGRA defines Class II gaming to include:

(ii) card 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 wages or pot sizes in such card games.

25 U.S.C. § 2703(7)(A)(i) - (ii); 25 C.F.R. § 502.3. IGRA expressly states that banking card games are not class II gaming. 25 U.S.C. § 2703(7)(B)(i).

Finally, Class III is a catchall category and includes "all forms of gaming that are not Class I gaming or Class II gaming." 25 U.S.C. § 2703(8); 25 C.F.R. § 502.4.

Given these definitions, the classification of both versions of WhoopAss Poker turns on whether the game is banked or non-banked. Banking games, as commonly understood and as defined in NIGC regulations, are games in which the banker (usually the house) competes against all players, collecting from losers and paying winners. *See* 25 C.F.R. § 502.11. Conversely, non-banking card games are games where players play against each other. Poker is a typical example of a non-banking card game.

The poker version of WhoopAss Poker is a non-banked card game. The players play one another rather than a banker or the house. It is therefore not categorically excluded from the definition of Class II gaming. So long as the poker version of WhoopAss Poker is played in a state in which the requirements in 25 U.S.C. § 2703(7)(A)(ii) (I) or (II) are satisfied, it is Class II.<sup>4</sup>

The table version of the game, though, is a different matter. The table version of WhoopAss Poker is a banked card game – the house acts as a banker and takes on all comers and pays all winners. IGRA explicitly excludes banked card games from the

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<sup>4</sup> The request did not identify any particular state in which the game would be played. Therefore, this decision does not analyze state gaming laws against the requirements of 2703(7)(A)(ii).

definition of Class II games. Because it is not a Class II game, and any game that is not Class I or Class II is Class III, the table version of WhoopAss Poker is Class III.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "T Stevens".

Tracie L. Stevens  
Chairwoman