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Skill Tech Gaming LLC
899 Moe Dr., Suite 22
Akron, OH 44310

Re: Nudgemaster 5000

Gentlemen:

Pursuant to your request, I have examined the above-referenced video amusement device for the purpose of forming an opinion regarding its legality for operation in Ohio as a “skill based amusement machine” as that term is defined by the Ohio Revised Code. After reviewing the game and discussing it with the manufacturer, as well as studying provided materials and all relevant Ohio statutes and applicable case law, it is my opinion that, in its current configuration, the Nudgemaster 5000 is a “skill based amusement machine” as that term is defined by Ohio Revised Code section 2915.01(AAA). Therefore, it should not be considered either a gambling device or a slot machine under Ohio law.

I. THE NUDGEMASTER 5000

The Nudgemaster 5000 is a touchscreen video amusement device manufactured by World Touch Gaming, Inc. (“WTG”) based in Cumming, GA and distributed in Ohio by Skill Tech Gaming LLC of Akron. As reviewed, the game consists of either an upright or sit-down cabinet that is black with chrome accents. The top half of the cabinet features a touchscreen area for the actual playing of the game, along with a United States Currency acceptor. There is also a lock in this area which allows restricted administrative access to both the touchscreen and the bill acceptor. Immediately below the touchscreen area is a control panel fitted with two buttons marked “Collect” and “Start/All Stop,” along with another lock which allows restricted administrative access to the interior of the machine. Below this control panel area, the bottom part of the cabinet features a printer, along with a lock which allows restricted administrative access to the printer and the logic control and power components of the machine.

It is my understanding that future production runs may feature different types of cabinetry (e.g., table-top units) but that all Nudgemaster 5000 machines will feature all of the aforementioned components.

As presented for review, the Nudgemaster 5000 is a multi-game apparatus allowing the player to choose from a selection of four different games. Those games are Splash Blast, Triple Joker, Golden Sand-Dollar and Clover Charm. For purposes of this discussion, Splash Blast and Triple Joker are interchangeable in that they are three-column games featuring similar underlying game elements, with differing graphics. Likewise, Golden Sand-Dollar and Clover Charm are interchangeable in that they are five-column games with similar underlying game elements, with differing graphics. For statutory analysis purposes, the prominent features and underlying characteristics are identical for all four games. It is anticipated that new games featuring different graphics will ultimately be added to the potential library of games available for play on the Nudgemaster 5000. Provided that these new games consist of the same underlying game characteristics, presenting only graphical and perhaps award schedule changes, this opinion letter would be pertinent to those games as well.

To play any of these games, the player must first insert money into the United States Currency acceptor. The cash value is then converted into units, ranging from a 1 cent unit for the Golden Sand-Dollar game, to 5 cent units for the Clover Charm game and 25 cent units for the Splash Blast and Triple Joker games. For each of the games, the player must spend a minimum of one unit, plus one additional unit which goes toward the “bonus” feature of the game. For each of the games, the player may also choose to spend multiple units. When playing Golden Sand-Dollar and Clover Charm, the player may also choose to spend one or more units on multiple playlines.

An important feature that is applicable to all of the games is the “Next Play” feature. Designed specifically for the Ohio market, the “Next Play” feature is a display that appears on the screen *prior to the insertion of money and/or prior to play* to inform the player of the amount of the prize units available during the next play of that particular game at each and every spending level. Before deciding to begin or continue play, a player so inclined has the ability to analyze the “Next Play” feature for every level of every game in order to make a skilled decision regarding not only what game to play, but at what unit spending level to find the best available win. After examining the “Next Play” information, the player may also choose to not play at all, instead opting to redeem the remaining units by hitting either the “Collect” button on the control panel or the “Redeem” button on the default menu of the touchscreen. The “Next Play” feature allows the player to make an informed, skillful decision regarding *when* to play and *what* to play, in addition to the inherent skill process required to achieve success in the actual playing of any of the games.

After analyzing the “Next Play” feature, deciding which game to play and selecting how many units to spend on a given play, the player must activate the game by hitting either the “Play” button on the touchscreen or the “Start” button on the control panel. Upon doing so, the playing screen will begin to depict the animated symbols for the selected game moving in a downward direction in each playing column. These columns will continue to move in a downward direction until such time as the player chooses to stop either each column individually – by touching each column on the touchscreen – or all at once by hitting the “All Stop” button on the control panel or the appropriate button on the

touchscreen. Although it does not ultimately affect the legal analysis of the game under Ohio law, it should be noted that regardless of when or how the player chooses to stop the downward animation, the player will be presented with a pattern of symbols pre-determined by the Nudgemaster 5000. Unlike a slot machine, however, at this point in the game there will *never* be a winning combination on any of the playlines. The Nudgemaster 5000 is not a “skill stop” game and there is no claim made that the player’s timing in stopping the animation somehow affects the potential units to be awarded or the ultimate outcome of the game.

Regardless of the potential units to be awarded, the ultimate object of all of the games is to analyze the game screen within a limited amount of time and, based on knowledge of each game’s award schedule, alter the game screen within the allotted amount of time to achieve the optimum winning configuration. This is done by “nudging” one of the game columns either up/down (in the case of Splash Blast and Triple Joker) or left/right (in the case of Golden Sand-Dollar and Clover Charm). For every game played, there are a minimum of two and up to six possible “nudge” choices, but in all cases there will be only one “nudge” option available to provide the maximum number of potential prize units as revealed to the player by the “Next Play” display prior to the insertion of money and/or game activation.

In some instances, the player may also be awarded additional game screens by virtue of “Re-spins” or “Bonus” features. These screens do not require the player to provide additional consideration and the totality of all prizes awarded is always equal to the amount previously disclosed to the player by the “Next Play” feature. *The player CAN NOT WIN absent successful interaction with the game by taking the affirmative step of hitting the proper “nudge” button to properly alter the playing screen within the allotted time-frame.* The player will never be able to access the “bonus” or “Re-spin” screens without first having achieved a successful “nudge” on the initial game screen.

If the player is unable to achieve a winning configuration during the allotted time period, the Nudgemaster 5000 will inform the player of the unsuccessful outcome, immediately provide “Next Play” information for every game and spending level, and the player will be again be faced with a strategic decision regarding whether or not to continue play and, if so, on what game and at what spending level. If the player is successful in choosing the proper “nudge” option, the previously disclosed number of available units will be awarded to the player and “Next Play” information will become immediately available to start the game selection process anew.

When the player chooses to quit playing the game, the player hits either the “Collect” or “Redeem” buttons and the machine will generate a ticket voucher that can be redeemed for prizes.

II. OHIO LAW

The Ohio Revised Code sections dealing with gambling are found at ORC 2915.01 et seq. As a general rule, gambling is against the public policy of the State of Ohio. With certain exceptions, ORC section 2915.02 specifically prohibits the use of schemes of chance (specifically including slot machines), games of chance and gambling devices for the purposes of making a profit.

With regard to the Nudgemaster 5000, the ultimate question to be answered is whether the game is a “Slot Machine” as defined by ORC 2915.01(VV) and thus an illegal scheme of chance under ORC 2915.02? Or alternatively, is the Nudgemaster 5000 a “Skill-based amusement machine” pursuant to ORC 2915.01(AAA) and thus exempt from the criminal prohibition of ORC 2915.02? ORC 2915.01(VV)(2) specifically exempts from the definition of “slot machine” all “Skill based amusement machines” as that term is defined at ORC 2915.01(AAA).

ORC 2915.01(VV), in pertinent part, defines a “slot machine” as:

- Any mechanical, electronic, video or digital device
- That is capable of accepting anything of value given in the hope of gain
- Where the outcome is determined largely or wholly by chance

The Nudgemaster 5000 is clearly a video device that accepts money from players who hope to ultimately gain from their play, with the only real issue being whether the outcome of the Nudgemaster 5000 is determined largely or wholly by chance.

ORC 2915.01(AAA) describes in great detail those attributes which comprise a “Skill based amusement machine.” Distilled to its essence, a “Skill based amusement machine” has the following attributes:

- It must be a mechanical, electronic, *video* or digital device, or machine. See ORC 2915.01(AAA)(1).
- Requires payment of consideration or value, and *it may require use of a coin or bill validator*. See ORC 2915.01(AAA)(1)
- Involves a task, game or play in which the *player actively participates*. See ORC 2915.01(AAA)(1)(a).
- The *outcome of an individual’s play is not determined largely or wholly by chance*. See ORC 2915.01(AAA)(1)(b)
- The *outcome of play during a game is not controlled by a person not actively participating in the game*. See ORC 2915.01(AAA)(1)(c)
- The task, game or play must involve *one act from the initial activation until the results are determined with payment of additional consideration by the player*. See ORC 2915.02(AAA)(2)(a).
- The player *may be awarded prizes* as a result of their play. See ORC 2915.01(AAA)(2)(a).

There is not a lot of case law on record interpreting these provisions, but there have been a couple of decisions of note, as well as an Ohio Attorney General's opinion. These opinions, while helpful, are of no real precedential value even though they deal with games similar in some respects to the Nudgemaster 5000. In enacting the provisions of ORC 2915.01(AAA), the legislature failed to provide any sort of process or agency for determining whether an individual game is compliant with state law. Therefore, each new alleged skill game entering the Ohio market, including the Nudgemaster 5000, will be subject to review by regulators and law enforcement officials at the local, county and state levels.

The most notable case in the skill-games area is *Fraternal Order of Eagles Aerie #2171, et al., v. Village of Pomeroy, et al.*, Meigs County Court of Common Pleas Case No. 05-CV-024. In that case, the court found that a game similar in many respects to the Nudgemaster 5000 was indeed a "Skill based amusement machine" and enjoined law enforcement officials, including the State Department of Liquor Control, from taking enforcement action against the game. That decision is currently on appeal and was recently argued before the Ohio 4th District Court of Appeals.

This same Pomeroy-based Eagles Aerie was also the subject of an administrative hearing before the Ohio Liquor Control Commission, which ruled in April 2006 that the game in question constituted an illegal electronic gambling device. Again, it is important to note that this decision, like the Meigs County case, is of no real precedential value. The Nudgemaster 5000 must undergo independent review and stand or fall on its own merits. Interestingly, the OLCC found the games in question to be gambling devices, but issued a finding of guilty with *no punishment to the club*. There have been other courts that have heard or are currently hearing cases involving alleged skill games, but again none of them are of any precedential value because none involve the Nudgemaster 5000.

In Ohio Attorney General Opinion No. 2004-029 (August 6, 2004), Ohio Attorney General Jim Petro examined the provisions of ORC 2915.01(AAA) and found that, based on common word usage and prior Ohio court decisions, that *if the outcome of the play of a game is determined more than fifty percent by chance, the outcome is determined "largely or wholly by chance"* for purposes of ORC 2915.01(AAA)(1)(b). The Attorney General further opined that, for purposes of ORC 2915.01(AAA)(2)(c), *the term "prize" would include anything of value*. On May 18, 2006, the Attorney General issued a press release that summarized some of the information contained above and reminded citizens and law enforcement officials that the Attorney General is without jurisdiction with regard to alleged "skill games."

III. ANALYSIS

Given the lack of a formal process or agency for certifying any game as a "skill based amusement machine," every game – including the Nudgemaster 5000 -- is subject to de novo review on an ad hoc basis by each law enforcement jurisdiction within the State of Ohio. The purpose of this section will be to specifically examine the Nudgemaster 5000

and render an opinion regarding its status as a “skill based amusement machine” under ORC 2915.01(AAA).

After analyzing the Nudgemaster 5000 in the context of the pertinent ORC provisions, I have reached the following conclusions:

- *It is a video device which requires payment (consideration) through use of a bill validator;*
- *It involves a task, game or play in which the player actively participates.* The player must choose which game to play, activate the game, stop the downward animation of the graphics, and take the proper, affirmative action to alter the playing screen within the allotted time in order to collect the maximum number of credits available for that individual play.
- *The outcome of the game is NOT determined largely or wholly by chance.* Neither ORC 2915.01(AAA) nor the Attorney General’s opinion interpreting its language require that a game be totally devoid of all elements of chance in order to qualify as a “skill based amusement machine.” Chance does play a role in the operation of Nudgemaster 5000 by selecting the number of prize units to potentially be awarded for each individual play. But there is no “hoping” or “wishing” by the player with regard to the potential prize for each individual play, as the maximum number of available prize units is disclosed to the player *prior to the insertion of money and/or prior to play*. By virtue of this “Next Play” feature, the manufacturer of the Nudgemaster 5000 has, in essence, taken the “gamble” out of the game. Before the player spends any units, the choice can be made to not play at all. Regardless of the number of units spent or available, the player’s task always remains the same – to analyze the playing screen and take the appropriate “nudge” action within the allotted time-frame.
- Unlike a slot machine, there is NEVER a winning combination automatically provided to the player. The player must *always* use his knowledge of the game’s award schedule, as well as his ability to quickly analyze the game screen, to make an educated decision regarding which button to “nudge” to achieve the most valuable winning combination. The player could be presented with a succession of game screens featuring the maximum potential unit award for that game, but would receive nothing absent the requisite skill level to analyze the provided data and take appropriate action in a timely manner. *The player absolutely can not win “but for” the appropriate use of skill.* There is potential skill involved in knowing not only *how* to play the Nudgemaster 5000 to achieve a winning result, but also *when* to play the game and in choosing *which* game to play and at what spending level. The “Next Play” feature allows the player to make an informed decision regarding which games to play and at what spending levels. A skilled player will examine the available options and choose accordingly, sometimes voluntarily choosing to play a game screen that will pay back less units than the cost of playing that screen, in order to keep playing to ultimately find more lucrative playing options on subsequent screens.
- *The outcome of play is not controlled by a person not actively participating in the game.*

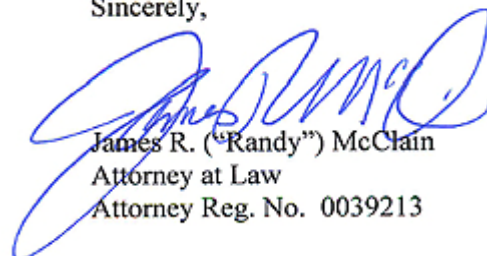
- A skilled player can successfully achieve the maximum number of prize units available for each and every play.
- Speaking anecdotally and from personal experience, there is a definite learning curve to the game. A more experienced, educated player will have a real advantage over a novice.
- *The player may engage in all aspects of a single successful playing of the game without need for the payment of additional consideration.* Occasionally, the player will be presented with “bonus” icons or “re-spin” screens. However, the player does not need to provide additional consideration to derive the benefit of these features. Furthermore, the totality of prize units awarded, including those from any “bonus” or re-spins, will always equal the amount of units previously disclosed to the player by the “Next Play” feature. The player will never be awarded with “bonus” or “re-spin” screens without first achieving a successful “nudge.”
- A successful participant may be awarded prizes, including cash or anything of value. Please be aware that certain restrictions outside of the gambling code may apply. For instance, Ohio Liquor Commission regulations 4301:1-1-45 and 4301:1-1-46 prohibit the awarding of alcoholic beverages as prizes.

Based on my examination of the Nudgemaster 5000 and all of the aforementioned items, it is therefore my opinion that, as presented for review, the Nudgemaster 5000 is a “Skill based amusement machine” and not subject to the criminal prohibitions found in ORC 2915.01 et seq.

Please be advised, however, that this opinion is not binding on any law enforcement agency or jurisdiction. The law in this area is far from settled and it is possible that, given the lack of an agency to review alleged skill games prior to use, individual law enforcement agencies might disagree with this opinion and seek to take some sort of enforcement action. Ultimately, the legality of the Nudgemaster 5000 will have to be determined on a jurisdiction-by-jurisdiction basis.

Finally, please remember that this opinion is rendered only with regard to the game as submitted for review. Any substantial change in the nature of the game or its software could potentially result in a different legal opinion. If you wish to submit future versions of the game for review, please feel free to contact me.

Sincerely,



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