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March 20, 2024

*Via email and mail*Minnesota Racing Commission
c/o Kyle Gustafson, Executive Director
1100 Canterbury Road, Suite 100
Shakopee, MN 55379
kyle.gustafson@state.mn.us**Re: Response to Alcohol and Gambling Enforcement's March 1, 2024 letter regarding the Racetracks proposal for On-Track ADW on HHR**

Dear Commissioners:

I have been asked by Running Aces Casino, Hotel & Racetrack to respond to a letter from Carla Cincotta, Director of the Alcohol and Gambling Enforcement ("AGE") to the Minnesota Racing Commission ("MRC"), dated March 1, 2024 (the "AGE Letter"). As the MRC is aware, Running Aces and Canterbury Park (the "Racetracks") submitted a January 4, 2014 application for approval of up to 500 terminals at each location of On-Track Advance Deposit Wagering ("ADW") on Historical Horse Racing ("HHR") (the "Application"). The AGE inaccurately concluded that the physical characteristics of the terminals would determine their legality under Minnesota law.

1. Response to AGE's Conclusion that On-Track ADW on HHR is a Gambling Device

As described fully in the Application, the On-Track ADW on HHR devices being proposed by the Racetracks are not "gambling devices," and thus they are legal under Minnesota law. On-Track ADW on HHR machines are not gambling devices under Minnesota Stat. § 609.75, subd. 4, because they are not "determined principally by chance." Instead, as all pari-mutuel wagering in the state of Minnesota, the outcome of the patron's wagers is determined by the patron's skill. Because patrons may access and analyze handicapping information before placing wagers, patrons with more skill are able to make better wagers and, over time, outperform similarly situated patrons with less skill. As the AGE concedes, "[t]he player who understands handicapping may then make choices to impact their rate of return." (AGE Letter at 1.)

Despite this, the AGE concluded that the "technical aspects" of the terminals "match the elements of [Minn. Stat. § 609.75, subs. 4 and 8], making HHR a gambling device under [Minnesota] law." (*Id.*) The AGE, however, did not review the technical aspects of the terminals and games submitted with the Racetracks' Application. Instead, the AGE considered several irrelevant factors that ultimately lead to their inaccurate, arbitrary conclusion.

First, AGE "reviewed multiple patents describing interactive gaming among a plurality of players ...; patents owned by PariMAX, and its affiliates, BetMix and RaceTech LLC ...; and the AmTote

International, Inc. patent method for parimutuel wagering.” (AGE Letter at 1.) The only relevant patent to the Application would be the PariMAX patent. BetMix is a handicapping service used by PariMAX, while RaceTech was a company that produced a product that was retired in 2016 and replaced by PariMAX. Reviewing those irrelevant patents contributed to AGE’s inaccurate understanding of the Application. For instance, AGE uses terms such as “parimutuel historical gaming,” and “the combination wager and user interface for parimutuel sports wagering devices” (AGE Letter at 1.) These are all irrelevant terms not used by PariMAX. All wagering on PariMAX devices is calculated in defined, live pools with all winning wagers distributed from the AmTote Spectrum totalizator, the same system and method as used for live, simulcast and ADW wagers at Canterbury Park and numerous other racing facilities and operations worldwide.

Second, AGE considered the “physical aspects of the game” and the “physical appearance of the machine as provided by BetMix” (*Id.*) Setting aside that AGE should not have based its analysis on anything produced by BetMix, the appearance of the game is entirely irrelevant to whether the game is legal. Minn. Stat. § 609.75, subd. 4 defines a “gambling device” as a “contrivance the purpose of which is that for a consideration a player is afforded an opportunity to obtain something of value, other than free plays, automatically from the machine or otherwise, the award of which is determined **principally by chance**, whether or not the contrivance is actually played.” (Emphasis added). There is no language in the statute that says how a contrivance can and cannot look to be considered a gambling device. Minn. Stat. § 609.75, subd. 8 defines a “video game of chance” as a

game or device that simulates one or more games commonly referred to as poker, blackjack, craps, hi-lo, roulette, or other common gambling forms, though not offering any type of pecuniary award or gain to players. The term also includes any video game having one or more of the following characteristics:

- (1) it is primarily a game of chance, and has no substantial elements of skill involved;
- (2) it awards game credits or replays and contains a meter or device that records unplayed credits or replays. A video game that simulates horse racing that does not involve a prize payout is not a video game of chance.

There is no language in this statute that says how a video game of chance can and cannot look. Further, there is no law cited in the AGE Letter, nor any law of which the Racetracks are aware, that suggests these statutes apply based on a superficial, subjective interpretation of a viewer. Unlike beauty, legal conclusions of what is and is not a gambling device are not in the eye of the beholder.

Third, the AGE considered “the play of the game” (AGE Letter at 1.) I note that AGE claims there is a “Banked Seed Pool Reserve.” (*Id.*) That is inaccurate. That was a term originally in RaceTech’s now-retired product. Further, as discussed in the Application, the “Seed Pool” is available to cover negative pools only. The most important consideration with the “play of the game” is that the outcome of wagers are not determined “principally by chance,” but instead by the patrons’ relative skill compared to other patrons. Again, the AGE concedes that “[t]he player who understands handicapping may then make choices to impact their rate of return.” (*Id.*)

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Finally, the AGE inaccurately stated that an HHR machine “determines the initial offerings of historical horseraces for the player to choose from a random number generator.” (*Id.*) As a preliminary matter, this is an inaccurate statement of fact about the devices. To be clear, **there is no “random number generator”** with the machines proposed by the Racetracks. Second, a device does not need to be free of randomness or chance for it not to be a gambling device. For a device to be an illegal “gambling device,” the device must be “determined principally by chance.” Minn. Stat. § 609.75, subd. 4. The fact that a patron is presented with several different races is no different that a typical day at the tracks.

For at least these reasons, The AGE’s conclusion that the HHR machines are illegal is incorrect and arbitrary and does not support the MRC’s denial of the Application.

2. Conclusion.

As fully explained in the Application, the Racetracks’ proposal to offer On-Track ADW on HHR and the AmTote System in Minnesota was specifically tailored to comply with Minnesota law. The MRC has the authority to approve the Application. And because doing so will benefit the horse racing industry, racing fans, horsepersons, and the agriculture sector of our state, the MRC should approve the Application.

Sincerely,



Evan A. Nelson

he/him/his

EAN

cc: Client (via separate email)