# NATIONAL INDIAN GAMING COMMISSION

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| IN THE MATTER OF | |
| CHOCTAW NATION OF OKLAHOMA,<br>IOWA TRIBE OF OKLAHOMA,<br>KIOWA TRIBE OF OKLAHOMA,<br>PONCA TRIBE OF OKLAHOMA,<br>SEMINOLE NATION OF OKLAHOMA | NOV-98-09 & CO-98-09<br>NOV-98-08 & CO-98-08<br>NOV-98-06 & CO-98-06<br>NOV-98-07 & CO-98-07<br>NOV-98-01 & CO-98-01 |
| Respondents | |
| and | |
| BROWARD VENDING, INC., | |
| Intervenor | |

# NOTICE OF DECISION AND ORDER

## DECISION OF THE COMMISSION

A hearing on this appeal was held before Presiding Official M. Elena Gonzalez, the record of said hearing having closed on May 26, 1998. The Presiding Official issued following recommendation:

> In conclusion, I find that the NIGC Chairman has established by fact and law that the notices of Violation and the Orders of Temporary Closure at issue in these appeals were appropriately issued pursuant to the IGRA and its implementing regulations. The Chairman established that the "Reels of Skill" device is a gambling device under the Johnson Act, as required under 25 C.F.R. § 502.8 defining an electronic or

electromechanical facsimile, which falls within the definition of a Class III gaming activity under the IGRA. The evidence and case law support a finding that the "Reels of Skill" machine retained many of the characteristics and physical features of the original "Cherry Master" (which was modified through trial and error into the "Reels of Skill" in an attempt to design a game outside the scope of the Johnson Act and the IGRA) which are considered indicia of an intent to design and manufacture a machine primarily intended for use in connection with gambling. Moreover, an "anomaly" found to exist in the "Reels of Skill" machines operated in Oklahoma, further evidences a machine designed and manufactured primarily for use in connection with gambling, and further supports a finding that this machine is a game of chance. In addition, the evidence and case law support a conclusion that by operation of the "Reels of Skill" a person may become entitled to receive money or property, as a result of an application of an element of chance. Although the evidence also supports a finding that varying levels of skill may be used to operate the "Reels of Skill" machine, there is still a substantial element of chance involved in the operation of the game even when played by the most skilled and experienced players. For the reasons discussed herein, it is recommended that the Notices of Violation be upheld by the full Commission, and that the Respondents be ordered to cease and desist the operation of the "Reels of Skill" pursuant to 25 C.F.R. § 573.69(a)(11).

It is clear that the Presiding Official fully considered all of the material before her and that the evidence of record fully supports her recommended decision.

In determining that "Reels of Skill" was a gambling device, the Presiding Official made the

following key findings, upon which the Commission has placed particular reliance in affirming the decision of the Presiding Official:

--There is sufficient evidence in the record to indicate that although some skill can be developed and utilized by players, there is nevertheless an element of chance in the operation of the game sufficient to render it a gambling device (Record of Decision p.9).

--"Reels of Skill" electronic video machine can be played as a game of chance, either through ignorance or by design (Record of Decision p. 9).

--Given the difficulty of the game, even if only unskilled players were subjected to the application of the element of chance in the operation of the game, in such instances "Reels of Skill" is being operated as a gambling device (Record of Decision p. 9).

--While coaching and proper motivation could influence and to some extent improve a player's ability to operate the game, these factors do not overcome the element of chance in the operation of "Reels of Skill" (Record of Decision p. 10).

Except as provided below, based upon the Commission's review, including consideration of the objections filed with the Commission following the hearing, the Commission has voted to affirm and adopt the recommended decision of the Presiding Official for the reasons stated therein.

The Commission wishes to make clear that, while the presence of certain characteristics may be consistent with a determination that a machine is an electronic or electromechanical facsimile of a game of chance, the presence of those characteristics may also be consistent with class II technological aids or amusement games found in arcades. Features which the Commission believes have, at best, uncertain meaning as indicia that a game has been designed and manufactured primarily for use in connection with gambling include: a multiple coin feature, a knock off feature, a power interrupt protection feature, the brevity of play of each individual game, and the award of a number of free games. For that reason, to the extent that the Presiding Official's opinion indicates otherwise, it is partially disapproved.

## NOTICE AND ORDER

**Please take notice** that it is the decision of the National Indian Gaming Commission, by vote of both of its members currently serving, that the game known as "Reels of Skill" is an electronic or electromechanical facsimile within the meaning of 25 U.S.C. § 2703, and that operation of the game constitutes class III gaming activity. Class III gaming activity on Indian lands is not lawful under 25 U.S.C. § 2710(d) unless conducted in conformance with a Tribal-State compact. Inasmuch as none of the Respondent tribes have a compact with the State of Oklahoma which would permit operation of a class III electronic or electromechanical facsimile, operation of "Reels of Skill" on Respondents' Indian lands constitutes a violation of the Indian Gaming Regulatory Act.

**Now, therefore, the National Indian Gaming Commission orders**:

That Respondents shall cease and desist from operation of the game known as "Reels of

Skill"; and,

That the following orders of temporary closure issued by the Chairman of the National Indian Gaming Commission shall become permanent as of the date hereof:

CO 98-01 (SEMINOLE NATION OF OKLAHOMA)

CO 98-06 (KIOWA TRIBE OF OKLAHOMA)

CO 98-07 (PONCA TRIBE OF OKLAHOMA)

CO 98-08 (IOWA TRIBE OF OKLAHOMA)

CO 98-09 (CHOCTAW NATION OF OKLAHOMA)

FOR THE NATIONAL INDIAN GAMING COMMISSION:

Date: JUL 24 1998

Larry D. Rosenthal