September 26, 2003

Robert A. Luciano
President, Sierra Design Group
300 Sierra Manor Drive
Reno, NV 89511

Re: Sierra Design Group "Mystery Bingo" Game Classification Opinion

Dear Mr. Luciano:

We respond to the letter of April 11, 2003, from Joseph Webster requesting an advisory opinion on whether "Mystery Bingo," developed by Sierra Design Group ("SDG"), may be played as a Class II gaming activity as that term is defined in the Indian Gaming Regulatory Act (IGRA) and in regulations of the National Indian Gaming Commission (NIGC).

Based on our review, we conclude that "Mystery Bingo" in the basic format, or with the addition of a multiple-buy in feature discussed below, qualifies as bingo as that term is used in IGRA and defined by Commission regulations, and is a Class II game. This opinion does not apply if the game is modified with additional features, some of which are discussed below, or if the game is played in manner different from the manner described in this opinion. The features discussed in this opinion, along with the manner and sequence of events in game play, are integral to our opinion. The prize structure of the game was revised during the course of discussions with SDG. While we agree to further discussions about the original prize structure proposal, the opinion relies on the prize structure discussed in the opinion.

SDG has agreed to provide a report from a testing laboratory acceptable to both parties within 90 days that evaluates game operating systems and software and confirms that the "Mystery Bingo" game operates in the manner described in this opinion. Descriptive materials provided by SDG regarding game characteristics and method of play are foundational to this advisory opinion. If the report indicates different characteristics or that the game does not operate in the manner described in this opinion, we will withdraw the opinion. The report will also contain a signature for the source code so that verification may be obtained that the game in play in a gaming facility is the game considered in this classification opinion.

In evaluating the "Mystery Bingo" game we considered the description of the game and the analysis provided with Mr. Webster's letter referred to above. The description of the game was updated at various times during the review. By letter dated May 29, 2003, SDG provided a revision to the bingo card size and appearance. Other minor changes to the game description were made and these revisions were incorporated into a version dated July 2, 2003. In response to questions, Mr. Webster also provided an explanation of specific features of the game in a letter dated August 12, 2003, which we include as part of the description. SDG provided a report by Gaming Laboratories International (GLI) dated July 7, 2003, which confirmed details of the game description and game play. SDG also provided a videotape of the game, as played at its basic level. We reviewed actual play of the game in two ways. SDG installed two units for basic game play in NIGC offices and these remained available for our use during the evaluation period. On July 23, 2003, SDG arranged for a demonstration of the game in a tribal gaming facility so that we could evaluate play with more than two player stations and with features not present on the two-unit system placed in our offices. We received additional clarification of game features in letters from SDG dated August 26, 2003, and September 3, 2003, in response to our questions. Finally, a significant change to the prize structure was presented in a letter dated September 22, 2003.

Description of the Mystery Bingo System

SDG offers "Mystery Bingo" as a linked bingo system using technological aids. The game can be provided to gaming facilities in various formats. The formats exist within common software and are distinguishable by the additional features programmed for the game. Use of specific features may be elected by the gaming facility and incorporated into game play. The format provided to the NIGC played the game at its most basic level. We observed other features in play at a tribal gaming facility that hosted a demonstration in connection with our review.

Mystery Bingo is played electronically on a networked system of components.

- Participation at the player level is accomplished through player terminals that can be physically configured in a wide range of appearances. Regardless of the packaging, the player terminal includes a computer element with processor memory and input-output capabilities, an electronic display of a bingo card along with other graphics that are billed as entertainment features by SDG, touch screen and/or buttons to enable selection of bingo cards and other game options, communication mechanisms to allow communication with a "Bingo Game Controller," and a printer to enable dispensing of bar-coded vouchers representing player funds at conclusion of bingo play or after a large prize win. The player terminal also contains a currency/bar code voucher acceptor that facilitates the purchase of game-play credits, and an audio system.

- The "Bingo Game Controller" is a computer that coordinates and connects participants in the bingo game. It communicates with player terminals and with a "Bingo Game Managers" on a network.

- The "Bingo Game Manager" is a computer that electronically determines numbers for use in the game. This device communicates with player terminals through the "Bingo Game Controller" via the network. It assigns bingo cards and enables the control of multiple simultaneous bingo games. The device acts primarily as a coordinator. It groups each game play request received from player terminals via the "Bingo Game Controller" with a matching request from other player terminals. When the "Bingo Game Manager" first receives a game play request, it categorizes the request based on the number of participants required before a game can take place, the game theme, the denomination and the buy in level.

The system contains two other components not directly related to game classification. The SDG Accounting systems contains multiple computers and network components that support the active game elements—the player terminals and "Bingo Game Controller." The SDG Cashless system allows the player terminals to issue voucher tickets. These tickets carry credits and can be re-inserted into other player terminals in the system or redeemed for cash at a cashier terminal.

According to SDG materials, the Mystery Bingo System requires competition between players in the game of bingo accomplished through the player terminals connected to the network. The system would also allow for connection to other gaming facilities in an effort to broaden competition. Mystery Bingo has two layers of network. Bingo player terminals are connected to one another by use of RS-485 serial connections, or by Ethernet connections. In the case of serial connections, terminals are connected in a daisy chain fashion from terminal to terminal. The ultimate terminal in a series is directly connected to the "Bingo Game Controller." Each "Bingo Game Controller" is then connected via Etherernet connections to the "Bingo Game Manager" and central server. According to representations by SDG on which we rely, no component of the network (i.e. player terminal or "Bingo Game Controller") will function without the physical and logical connection to the network.

Each "Bingo Game Controller" is connected to a sub-net of player terminals. Each "Bingo Game Controller" is connected to one or more "Bingo Game Managers." The "Bingo Game Manager" groups players into common games. Games may be played between player terminals on a single "Bingo Game Controller" or among player terminals connected to different "Bingo Game Controllers." The "Bingo Game Manager" will locate players for a game in the facility. The players are then combined into a single game across multiple "Bingo Game Controllers."

Game play for the player is on a video screen at the player terminal. The Mystery Bingo System uses a standard size video screen at the player terminal measuring 19 inches along the diagonal. The video screen contains the depiction of a bingo card—a

grid bearing numbers. The game card provided in this review contained a grid of five horizontal rows and five vertical columns of numbers. The center box is a free space. The bingo card is located near the top of the screen along a center vertical line. The exterior of the bingo card measured 2 inches by 2 inches. The interior measurement is 1 and 7/8 inches by 1 and 7/8 inches. When the game begins, the bingo card has a white background, red lines defining the grid, and black numbers in a 22-point font.

The video screen also displays a spinning reel graphic of icons. Each column of icons appears to rotate when the game is played. The graphic presented for this review carried a 5-reel 9-line theme entitled "Pocket Change" and the icons conveyed that theme. According to the GLI report, there are presently 17 available game themes.

The video screen also contained a box to display numbers that are drawn for game play, the total number of balls drawn for the game, the number of balls necessary to reach each space of the straight-line bingo pattern, the player's bingo score for the straight-line pattern covered, the value of the progressive prize, the game number, the credits available to the player, the number of credits to be bet in the game, the number of credits won if the player wins, and "buttons" to assist in play the game.

Game Play

Mystery Bingo games are played among players on a central system. They compete for prizes and for a progressive jackpot. A minimum of two players must request play for a game to begin. A new game will begin after a configurable period of time if the minimum number of players has requested admission. There is no maximum number of players in any game except as limited by the number of player terminals connected to the system. The players compete for a game-winning pattern that in Mystery Bingo is a straight-line bingo, obtained as a horizontal, vertical, or diagonal lineup of five numbers. The game is "won" when the first player obtains a winning bingo pattern defined as a straight line of five numbers on the bingo card and who then covers or "daubs" those numbers.[1]

A player may also win a progressive prize by obtaining a four-corner pattern with the first four balls drawn. The ball-draw display will pause for a "daub" opportunity after the first four balls are drawn for this purpose. Consolation prizes may also be awarded based on additional balls that are drawn after the first winning bingo pattern is obtained. A player must also obtain a straight-line bingo pattern to win a consolation prize. When a bingo tie occurs (two or more players achieve a bingo on the same number) each player will receive a portion of the prize they would have won if they had been a single winner.

[1] The term "daub," used in the description of game play for "Mystery Bingo" and other games, means to "cover, coat, or smear with an adhesive substance." Webster's II New College Dictionary (1995). In paper bingo, players may use a "dauber," a small plastic bottle containing various color inks with a sponge-like applicator top that allows easy marking of bingo numbers. See Snowden, Gambling Times Guide to Bingo (1986), p. 31.

A short description of the prize structure for the game was provided to NIGC in connection with its review of the game. The amount won is based on the number of bingo balls necessary to achieve the bingo. Each straight-line pattern consists of five spaces. The first player to cover a straight-line bingo pattern wins the game. To determine the prize that the player has won, the total number of balls drawn for each numbered space making up the straight-line bingo are counted and then multiplied together, producing a bingo score. The bingo score is compared to a fixed prize table with established ranges of prizes. Players receive the prize associated with the range their score falls into. A player can view the prize table on the monitor at the player station.

SDG offered an example of how this prize structure might operate. A game could have the first space covered on the second ball drawn, the second space covered on the third ball drawn, the third space covered on the seventh ball drawn, the fourth space covered on the eighth ball drawn, and the fifth space covered on the eleventh ball drawn. The winning player would obtain a bingo score of 3,696 (i.e., 2*3*7*8*11=3,696). A bingo score in the range between 3,600 and 3,700 might entitle the player to a prize of 100 credits. In this game, then, the winner could win 100 credits. In contrast, a score of 150 or less might entitle the player to highest prize awarded in the game for a straight-line bingo.

In the base version of the game provided to NIGC, there is one buy-in level for each game. In this version, a player plays against other players at the one-buy-in level. In the multiple buy-in versions, players at different buy-in levels compete against each other in the same game with the same ball draw, although there are different prize awards possible based on the level of buy-in. Some games may also offer different card types that relate to different game themes. However, these cards are understood to retain the same grid discussed above.

To begin play, a player inserts money or a ticket voucher at the player terminal and obtains game credits. The player then selects a buy-in amount. Different buy-in levels are selected by making a touch selection on the video screen. The players are given a bingo card, as described elsewhere in this opinion, on entry into the game. The player can use this card or change the card before entering a game. To select another card, the player touches the video screen at the card location and a new card with another grid of numbers will appear. Each card is different and duplicate cards will not be made available for play in any single game. The number of cards available is limited only by the mathematical possibilities in the distribution of numbers in the configuration described.

To enter a game, the player presses the "play" button. A message appears on the video screen at the player terminal indicating the player must wait for additional players if enough players are not enrolled in the game. Two players were required for play to begin in the configuration presented to NIGC. Entry of additional players continues for a configurable period of time, discussed elsewhere in this opinion. The game begins after

enrollment is complete. As play begins, bingo numbers are randomly drawn by the "Bingo Game Manager," meaning the computer electronically determines the numbers in a specific order. The "ball draw" of numbers continues until the first potential winning bingo pattern is achieved. The "Bingo Game Manager" makes this determination by comparing the bingo cards in play to the numbers as they are drawn and stops the draw after one or more cards are known to contain a straight-line pattern. SDG provided its assurance that the assignment of player cards and the "ball draw" or random selection of numbers are independent events and that the software for the "ball draw" does not allow a deviation in the sequence of numbers drawn in the "ball draw" so as to eliminate or minimize a prize payout.

Each player terminal will produce audible sound and a visual display on the screen when a potential bingo occurs. A visual display instructs each player to "daub" the bingo card. This is accomplished by the player touching either the on-screen card, an on-screen "button," or a button on the console prescribed for this purpose. A player need not wait for the visual instruction but may "daub" at any time after the game begins to "cover" the numbers drawn that appear on the player's card by touching the card, the on-screen "button," or the console button. A winning player has a pre-established time to hit the "daub" button or touch the screen to "daub" the card and claim the prize. All players must "daub" to complete the game, although a winning player will not need to wait for other players to "daub" before obtaining a game result.

A player who fails to "daub" a winning pattern within the time allotted will "sleep" the bingo, that is, forfeit the prize that was won. The "Bingo Game Manager" will draw additional balls until another winning straight-line pattern is obtained on a bingo card that is participating in the game. The player holding that card will win the same prize that was forfeited when the bingo was slept provided the player "daubs" within the time limit. The bingo score of the first winning player who slept the bingo will be used to determine the prize rather than the bingo score of a subsequent winner. If players again "sleep" a bingo, the game continues but the winning prize awarded will always be the prize that was forfeited when the first bingo was slept. A small "z" appears on the bingo card near the slept bingo as a sign to the player.

The game ends when the last straight line bingo prize for that game is awarded. The last prize cannot be slept. There is unlimited time to daub and claim a prize after the seventy-fifth ball is drawn for the player with a winning card for the game-winning prize or for a consolation prize if the game-winning prize has been awarded previously. For the final player to exit the game, and participate in another game, the player must claim the prize.

A player claims the credits won in a game at the same time the player daubs the winning bingo pattern. All players will have the opportunity to enter a new game after their "daub." A separate action is required to exit a game and request participation in a new game.

From a system perspective, if the minimum enrollment for a game to begin has been met, the ball draw begins when the last player is entered. The bingo numbers are determined by the "Bingo Game Manager" in randomly drawn sets from a pool of bingo numbers from 1-75. The initial set contains four numbers. The next set contains the bingo numbers necessary to allow a potential bingo in that game, based on the cards in play. Once determined, the initial set of numbers is transmitted instantly for display to the player stations in use for that game. The operation of the bingo system is configured to prompt all participating players to press the "daub" button after each set of bingo numbers is displayed. In addition, a player may not enter a new game until the player has daubed at the conclusion of the ball draw for the game in progress.

In the version presented to NIGC, once the bingo results are displayed, an animated presentation sequence begins. The animated sequence displays an array of spinning reels and symbols that stop on the appropriate pattern for the value of the prize won (if any) in the bingo game. In a version discussed with the NIGC, SDG proposes to modify the game such that the animated sequence begins at the same time that the bingo game begins. In either version, the animated sequence never shows the game outcome before the bingo game results are shown on the bingo card. The bingo results remain displayed on a bingo card in the upper middle of the screen until a player selects a new card for the next game or until the next game begins.

According to our best information, including a specific assurance from SDG and as indicated in the report from GLI, the animated sequence of spinning reels has no effect on the game of bingo and is there for player entertainment. The symbols on the reels are chosen from the pay table combination to correspond with the winning bingo previously determined from the bingo game. In other words, a prize is given for a winning straight-line bingo. The prize has a numeric value. Relying on that numeric value, a corresponding arrangement of icons is presented on the visual reel display as a winning combination.

The credits won by a player in the game are awarded and shown on the video screen by an increase in the total credits available to the player. The "total credits available amount" is updated when the player buys into another bingo game. A player with credits remaining may discontinue play at a player terminal by pressing the "Cash out" button. A printer within the player station will produce a ticket voucher for the remaining credits that is presented to the player. Ticket vouchers can be inserted into another player terminal for additional play or may be redeemed at the cashier's station for cash.

The bingo card remains visible to the player at all times during the game. The card is royal blue and is distinguishable from other surface areas on the screen. The bingo grid on the card contains a white background and a red grid outline with black numbers in each box. The background changes colors during game play for the numbers that are called. First the background color for the numbers selected changes from white to orange when the numbers are determined. After a player "daubs" the card by pressing

the daub button or touching the "daub screen now" message on the video screen, the numbers on the card matching the numbers drawn change colors from black on a white background to white on a red background. Finally, if the player successfully "covers" the numbers making up the winning pattern, the colors change from white on a red background to black on yellow background, flashing every .25 seconds to highlight a bingo win.

Following the "ball draw" and the appearance of the numbers on the video screen, as an alternative to the visual animation, a player may obtain the results of play by hitting the "print" button instead of the "daub" button or the on-screen "daub" message. The player receives a "bingo ticket" with a bar code and a listing of the numbers drawn. The player may redeem the ticket with a cashier or insert it into a player terminal for further play.

Changes made to the game

In our discussions with SDG, we asked that certain changes be made to the game. SDG agreed to the changes. The game as evaluated reflects these changes, summarized briefly, as follows:

- The bingo card was enlarged to its present "2 x 2" size. The font size for numbers on the card was also enlarged and is now a 22-point font.

- Although Mystery Bingo requires a minimum of two players for entry into a game, in the version presented to NIGC, the configurable time interval available to enter any particular game was limited from the time the second player obtained entry until the entry opportunity closed and the game began. In an effort to "broaden participation," we requested the configurable time interval available for player entry into any particular game be expanded. SDG responded by including a mathematical algorithm that varies the enrollment period based on the number of active terminals in play on the system. With fewer terminals active, the algorithm lengthens the enrollment period to accommodate more players and thus broaden the participation.

- SDG agreed to conduct at least two ball draws before the winning bingo pattern can be obtained. Only the first four balls will be selected in the initial ball draw. All players will have a "daub" opportunity at that point in the game. The remaining balls will be selected in a second or subsequent ball draw.

- An adjustment added a "daub" requirement for all players when a potential bingo occurs for any player. Following the change, each player now "daubs" the card to determine whether he or she is a winner.

- The free space on the bingo card was replaced with a number.

- The prize structure was revised, as described elsewhere in this opinion.

SDG indicates an intention to begin the animated sequence of spinning reels at the time the bingo game begins rather than at the time the bingo game ends. The animated sequence will not end until after the bingo game ends and a player has daubed the bingo card. The animated sequence will not show the game outcome before the bingo game results are shown on the bingo card.

Applicable Law and Regulation

IGRA defines Class II gaming in relevant part to include:

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) --

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations:

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and

(III) 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, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo[.]

25 U.S.C. §2703(7)(A). Games that are not within the definition of Class II are Class III. See 25 U.S.C. § 2703(8).[2]

NIGC regulations similarly define Class II gaming to include, in relevant part:

(a) Bingo or lotto (whether or not electronic, computer, or other technologic aids are used) when players:

(1) Play for prizes with cards bearing numbers or other designations:

(2) Cover numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and

(3) Win the game by being the first person to cover a designated pattern on such cards.

(b) If played in the same location as bingo or lotto, pull tabs, punch boards, tip jars, instant bingo, and other games similar to bingo.

25 C.F.R. § 502.3.

[2] A separate category of games known as class I, not at issue here, involve social games played for prizes of minimal value and traditional forms of Indian gaming at tribal ceremonies or celebrations. See 25 U.S.C. § 2703(6).

In addition, if technological aids are used, the following definition applies:

(a) Electronic, computer or other technologic aid means any machine or device that:
  (1) Assists a player or the playing of a game;
  (2) Is not an electronic or electromechanical facsimile; and
  (3) Is operated in accordance with applicable Federal communications law.
(b) Electronic, computer, or other technologic aids include, but are not limited to, machines or devices that:
  (1) Broaden the participation in a common game;
  (2) Facilitate communication between and among gaming sites; or
  (3) Allow a player to play a game with or against other players rather than with or against a machine.
(c) Examples of electronic, computer, or other technologic aids include pull-tab dispensers and/or readers, telephones, cables, televisions, screens, satellites, bingo blowers, electronic player stations, or electronic cards for participants in bingo games.

25 C.F.R. § 502.7.

Class II gaming specifically does not include "(ii) electronic or electromechanical facsimiles of any game of chance or slot machine of any kind." 25 U.S.C. § 2703(7)(B)(ii).

Commission regulations define the term "Electronic or electromechanical facsimile" as--

> a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the characteristics of the game, except when, for bingo, lotto, and other games similar to bingo, the electronic or electromechanical format broadens participation by allowing multiple players to play with or against each other rather than with or against a machine.

25 C.F.R. § 502.8.

Analysis

The requirements for Class II gaming are established by the IGRA. The game of bingo enjoys a favored status. While at its heart the bingo is a lottery,[3] IGRA places

[3] "Bingo as we know it today is a form of lottery and a direct descendant of *Lo Giuoco del Lotto d'Italia,*" the Italian national lottery first organized in 1530. Snowden, Gambling Times Guide to Bingo (1986), p. 7. See also Scarne, Scarne's New Complete Guide to Gambling (1986), p. 210.

the game squarely in Class II and provides further that the game may be played with computer, electronic or other technologic aids. 25 U.S.C. § 2703(7)(A). A game "similar to bingo" may also be Class II provided it is not an electronic facsimile of a game of chance and is not house-banked. 25 U.S.C. § 2703(7)(A)(III); 25 C.F.R. § 502.9.

The United States Court of Appeals for the Ninth Circuit examined the IGRA requirements for bingo in its consideration of an electronic bingo game known as "MegaMania." U.S. v. 103 Gambling Devices, 223 F. 3d 1091 (9th Cir, 2000). A similar case in the Tenth Circuit, U.S. v. 162 Gambling Devices, 231 F.3d 713 (10th Cir. 2000) also evaluated "MegaMania" under the relevant IGRA provisions. Both courts concluded that the MegaMania game could be offered as a Class II gaming activity, the Ninth Circuit holding "IGRA's three explicit criteria...constitute the *sole* legal requirements for a game to count as class II bingo." 103 Electronic Gambling Devices, 223 F.3d at 1096 (emphasis in original).[4] It is against the backdrop of IGRA, NIGC regulations, and these cases that we must evaluate the "Mystery Bingo" game.

Statutory Criteria

The first statutory criterion for bingo is that the game must be played for prizes on cards bearing numbers or other designations. There are two aspects to this: prizes and cards. "Mystery Bingo" is a game played for prizes on cards bearing numbers. The exact prize to be won with the first straight-line pattern, which becomes the winning prize in the game, is not known to the winning player until the balls required to obtain that pattern are drawn. Although this is unique prize structure, the prize is determined by play of the bingo game and not by another element of chance.

The "cards" in "Mystery Bingo" do not exist in a tangible medium but on a computer graphic at individual player stations. The electronic cards have the appearance of traditional bingo cards with 25 numbers in a 5 by 5 grid. The game does not require paper cards. IGRA specifically permits the use of "technologic aids" in the play of bingo but does not define the term. NIGC regulations fill the gap by providing a definition for the term, as noted above. Neither the Ninth nor the Tenth

[4]In the Ninth Circuit, MegaMania was found to be the game of bingo. See 103 Electronic Gambling Devices, 223 F.3d at 1102. However, in the Tenth Circuit, the Court did not reach that specific conclusion. "Having determined MegaMania is a Class II game, we see no reason to go any further, and leave the specific question whether MegaMania is bingo or a "game similar to bingo" for future resolution." 162 MegaMania Gambling Devices, 231 F.3d at 725, fn 10. Games similar to bingo may be class II only if played in locations where bingo games are played. 25 U.S.C. § 2703(a)(A)(i). With a recent change, "games similar to bingo" are now defined by Commission regulation as "any game played in the same location as bingo (as defined in 25 U.S.C. 2703(7)(A)(i)) constituting a variant on the game of bingo, provided such game is not house banked and permits players to compete against each other for a common prize or prizes." 25 C.F.R. § 502.8.

Circuit considered it necessary to disqualify the MegaMania game from Class II status because the game relied on a video screen representation of a bingo card rather than paper bingo cards.[5] The Commission's recent change to its definition of "technological aids" incorporated the results of the MegaMania cases and included "electronic cards for participants in bingo games" as an example of a permitted technologic aid. 25 C.F.R. § 502.7(c). We discuss the specifics of an electronic bingo card in a later section of this opinion.

It is important to note that the electronic cards in "Mystery Bingo" are provided to the player before actual game play begins. A player can change his card before entering a game. Card changes are not permitted once a game begins. Thus a player is actually playing the card and hoping to achieve a winning bingo pattern on the card when the numbers are drawn rather than buying a card with winning numbers pre-selected and hoping his purchase yielded a card containing that winning pattern.

The Mystery Bingo game, as presented to the NIGC, meets the second requirement in Section 2703(7)(A)(i). The Mystery Bingo player "daubs" or covers the numbers on the player's card when objects similarly numbered are drawn or electronically determined. As noted in the description, the bingo numbers for each game in Mystery Bingo are electronically determined in real time by a random number generator in the "Bingo Game Manager" from a pool of numbers, 1 through 75, and shown to the player in a graphic of "bingo balls." The numbers are drawn in sets. The first set contains four balls. The second set contains the remaining balls necessary to complete a winning bingo pattern.[6]

When selected, the set of numbers is instantly conveyed to the player station video screen. The selected numbers are highlighted on the player's bingo card and noted by a change in background color of the block containing that number and by change in print color of the number. After the numbers are presented to the player, the player interacts with the card on the video screen and "daubs" or "covers" the numbers that are called by touching the screen or pressing the "daub" button. The player is not relying on the machine itself to "daub" or cover the number. Rather, the player is actually performing some act to be involved in the play of the game of bingo.

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[5] "MegaMania is played with an electronic card that looks like a regular paper bingo card containing a grid of numbers...." 162 MegaMania Gambling Devices, 231 F.3d at 720.

[6] We are assured by SDG that numbers for future use—future sets--are not drawn and stored. Each set is determined only when a requirement exists for its use.

An aspect of play we consider important to the play of bingo or to a "game similar to bingo" is the ability of all players to "daub" or cover as they play the game.[7] Typically, in bingo, players cover individual numbers as they are called during the progress of a game and observe winning patterns as they are developed. Arguably, the IGRA statutory criteria could be interpreted to require a player to cover the card as each ball is drawn. We find that covering numbers as they are called is an essential ingredient to the play of the game of bingo or a variant of that game. We conclude that a game offered as class II bingo or a "game similar of bingo" must provide a "daub" or "cover" requirement for all players after the bingo numbers are announced and not just for winning players. If the player has no involvement in covering the numbers, then the player is not participating in the game. Following our discussions on this issue, SDG agreed to make a change to the game so that all players would be required to cover, not just winning players.[8]

There is an issue of whether a player actually "covers" a number when, in reality, the player is merely requesting the computer in the player station to perform that function electronically by touching the screen or pressing the "daub" button. Consistent with the view that the game may be played in electronic format on a video screen and that "bingo paper" is not required, the act of electronically daubing by touching the screen card is a logical substitute for marking a bingo paper card or covering the number with a marker as might occur in a paper bingo game.

The final element specified by Section 2703(7)(A)(i) requires that players who enter bingo cards for a game compete to win by being the first person to cover a previously designated arrangement of numbers or designations on the card. In "Mystery Bingo," this previously designated arrangement, or winning pattern, is a straight line of five numbers achieved in a horizontal, vertical, or diagonal line. The first person to achieve a straight line wins the largest prize for that game. Consolation prizes of lesser value may be awarded in a similar manner after the first prize is won.

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[7] According to Scarne's, in the play of bingo "An announcer...calls the letter and number of the released ball...[and] players whose cards bear...[the number]...place a cardboard or plastic marker over it. This is called *covering the number*." Scarne's New Complete Guide to Gambling (1986), p. 211.

[8] One of the features we observed during the demonstration of the game in a tribal gaming facility was referred to as "auto-daub." With this feature, the device is programmed to cover or "daub" the numbers constituting a winning bingo when those numbers are displayed, without a player intervention or action. The device can also be programmed to allow the player to request the machine "daub" at the time the player begins play of a particular game or a series of games. In our view, employment of this feature removes an important aspect of the game for the player and means that the player station terminal, or the machine, rather than player, is actually covering the number. In other words, the machine and not the player is playing the game. See 25 U.S.C. § 2703(7)(A)(i)(II) and (III) ["...holder of the card covers such numbers or designations" and "...game is won by first person covering a previously designated arrangement..."]. In our view, the presence of this feature would mean that the game no longer met the second and third requirements that constitute the definition of bingo in Section 2703(7)(A) that are also applicable to a "game similar to bingo."

Players who tie for a prize will share the prize. Thus, "Mystery Bingo" establishes a previously designated arrangement of numbers as a goal, and players cover the numbers when announced.

That said, the method of play by which players win is also an important aspect in the determination of whether the element is met. In evaluating the statutory criteria of Section 2703(7)(A)(i), we conclude that a basic premise of bingo is play and competition among others.[9] The language, "won by the first person," set forth in 25 U.S.C. § 2703(7)(A)(i)(III), describes a contest or race among players to be the first to win.[10] Numbers are drawn, players cover those numbers on their cards, more numbers are drawn, and so on until there is a winner. Central to "the game of chance commonly known as bingo" is the tension built up over the course of successive ball draws, as each player covers matching numbers or designations in an attempt to be the first to cover the winning pattern. No such challenge exists where all of the balls are revealed at once. Said differently, if all the balls necessary to produce a game-winning pattern are drawn and released at once, the game will likely end and someone will win with only one release of balls, thereby removing the contest element. We therefore conclude that the method of play of the game of "bingo," as defined in IGRA, requires that the game not be won in a single release of balls in the ball draw. There must be at least two ball draws or releases of electronically determined numbers before a player can win the game or any consolation or interim game. This requirement extends also to any variant of the game that might be offered as a "game similar to bingo" intended to come within class II under the pertinent NIGC regulations.[11]

Our interpretation is founded on the language of the statute and on Congressional intent that there be some distinction between class II and class III. The Committee Report on the bill that became IGRA noted that "both State and tribal governments have significant governmental interests in the conduct of class III gaming." S. Rep. 100-446, p. 13. However, the lines between what constitute class II and class III games are being blurred by technological advances that Congress could not have foreseen and did not explicitly address in 1988 when it enacted IGRA, with its three simple statutory criteria for what constituted bingo. Companies building and distributing devices for game play strive to use common features and common game themes in their class II and class III products. There is often little difference in appearance. We nonetheless must continue to

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[9] We are aware of the admonition by the United States Court of Appeals for the Ninth Circuit that a "nostalgic inquiry" into the vital characteristics of bingo is not the appropriate inquiry. See 103 Electronic Gambling Devices, 223 F.3d at 1096. We interpret the meaning of the statutory elements in this review.

[10] The contest described here does not mean we view bingo as a game of skill. Bingo is a gambling game containing the elements of consideration, prize, and chance. The winner is determined by chance and not by skill.

[11] We will make an exception in the play of the game for a progressive jackpot that is won in a minimal release of balls as a secondary game to the basic bingo game or variant game. One ball draw or release would be allowed for this jackpot.

distinguish class II from class III games because Congress distinguished between them. Having weighed the merits of different interpretations of the third statutory criterion, we find that requiring multiple ball releases to win the game helps alleviate our concern that play of class II must be distinguishable from the play of a slot machine, over which Congress intended tribes and states to compact.

Our interpretation of the statutory definition, requiring balls to be released in more than one ball draw during the course of the game before any player can win the game, is also supported by case law. In U.S. v. 162 MegaMania Gambling Devices, 231 F. 3d 713 (10th Cir. 2000), the Tenth Circuit ruled that MegaMania was a Class II game. The Court reached this decision after an analysis of the play of the game and whether it met the statutory criteria for bingo. The opinion was heavily dependent on the facts—the characteristics of the game and the manner in which it was played. ["Our holding in this case therefore is limited to the MegaMania form of bingo currently at issue." 231 F.3d at 725.]

According to the Tenth Circuit, in MegaMania, numbers are drawn by a bingo blower and released three balls at a time. If a player wants to continue playing the game after the first three balls are drawn, the player pays additional money to stay in the game for the release of the next three balls. Ball draws occur approximately every ten seconds. The game is won by the first person to cover a five-space straight line on an electronic bingo card.

Intrinsic to the play of MegaMania are the successive rounds that a player must engage in to win the game. The game cannot be won after a single ball release. The Court's ruling—limited as it was to the facts—recognizes an inherent character of bingo: that the game requires a player to participate in a process of numbers being revealed. MegaMania could be won by two successive ball draws, each draw providing three numbered balls and so, in theory, we do not require more than two ball releases of three balls. But we do interpret IGRA's definition of bingo, with the winner being the first to cover, as requiring more than one release. This interpretation is consistent both with case law and with the statutory definition, and honors what we understand "the game of chance commonly known as bingo" to be. This aspect is fundamental to the play of bingo and to any variation of the game.

We think that games in which there may be only one release of numbers following an electronic ball draw are not played like MegaMania and therefore do not qualify either as bingo or a "game similar to bingo" as those terms are used in the IGRA class II definition. However, a game with a least two releases of numbers following the electronic ball draw, could be considered bingo or "a game similar to bingo" and thus within the class II definition. The number of balls released in the first series must be some number less than the number of balls required for a player to achieve the winning bingo pattern.

"Mystery Bingo" satisfies the requirement by providing multiple ball draws (electronic determinations) and releasing numbers in at least two sets as players compete for the primary prize won by the first player to obtain a straight line bingo pattern. At least one additional set of numbers is released if secondary or consolation prizes are awarded in the game, based also on a straight-line bingo pattern. There are also corresponding daub opportunities or requirements following each set of balls released.

Because bingo is a game "won by being the first player to cover a previously designated arrangement of numbers" a player not attending to the game may "sleep" a bingo.[12] This is an important aspect of the "game of chance commonly known as bingo" and also to variations of that game. See 25 U.S.C. § 2703(7)(A)(i). "Mystery Bingo" provides this required feature. A player who fails to "daub" a winning card within a configurable time "sleeps" the bingo and forfeits the prize. All players continue in the game, and one or more additional bingo-numbers are drawn until a player obtains another straight-line bingo. A player who "slept" an earlier bingo remains eligible to win but must obtain another winning pattern. The prize that is won is based on the bingo score of the player who obtained but slept the first winning bingo pattern.

Consolation prizes and progressive prizes

We note that the federal Courts of Appeals considering the MegaMania game both agreed that neither IGRA or NIGC regulations prohibit multiple winners nor "interim" prizes. "Mystery Bingo" follows award of the top prize in certain games with the award of one or more consolation prizes based on continued bingo play. As the Ninth Circuit opinion notes, "[t]he sum of the matter is that the IGRA requirement that a bingo game be won by the first player covering a pre-designated pattern does not mean that the game must end when one player does so, so that everyone else wins nothing." 103 Electronic Gambling Devices, 223 F.3d at 1099. The Tenth Circuit concludes, "nothing in the Gaming Act or [NIGC] regulations prohibits more than one winner or 'interim prizes' during a game of bingo." 162 MegaMania Gambling Devices, 231 F.3d at 722. Following these rulings, we conclude the award of secondary or consolation prizes is not foreclosed by or inconsistent with the specific IGRA requirements for bingo. In "Mystery Bingo," the award of secondary prizes also helps show that there is an ongoing contest among players.

The award of the "Mystery Bingo" progressive prize is not precluded by the requirements for bingo play prescribed in IGRA. The prize is awarded in manner similar to the award of the regular game prize and is won based on a pre-designated, four-corner pattern achieved after the draw of the first four balls. The balls are drawn in real time and the player must daub the card in the same manner as the player would

[12] A "sleeper" is a bingo discovered after the caller has gone on to the next number. Snowden, Gambling Times Guide to Bingo (1986), p. 33.

for the regular game. It is an ancillary game and not the primary bingo game being played. Thus, the primary game is still being "won by the first player to cover a predetermined pattern." In the "Mystery Bingo" progressive prize arrangement, a small percentage of the buy-in amount paid by each player for each game is contributed to the prize pool. Progressive prizes are paid from this pool. We are assured that neither SDG nor the tribal gaming activity where the system may be placed will win or retain any portion of the progressive prize pool.

Video display graphics

A particular feature of "Mystery Bingo" is the use of spinning reel graphics in the video display of the game result. However, these graphics do not affect the outcome of the game and are important to the game only as entertainment. As the game description indicates, and the GLI report serves to confirm, in "Mystery Bingo" the bingo cards are known and accepted by the players who then take an affirmative step to enter the game; the "ball draw" of the numbers necessary for the first winning bingo takes place; the numbers are announced to the players and transmitted to the players' screen cards; winning patterns on cards are observed; and players "daub" or cover the drawn numbers that appear on their cards, all before the spinning reel graphics are put in play. The bingo card is always present and readily viewable. In "Mystery Bingo," the bingo game is readily available and distinguishable, and in some games complete, before the spinning reel graphics take over. While the time delay is very short, a player can know the result from the bingo card before the player knows the result from the spinning reel graphics. The spinning reel graphics are secondary to the bingo play in this game and sit dormant while bingo play occurs. This is a laudable feature and clearly helps delineate the bingo game from an alternative, post-game visual display.

A version of the game proposed by SDG would begin the spinning reel graphics at the time bingo game begins rather than at the time it ends. Our classification determination will not change with this modification. The value of delaying the start of the spinning reel graphic is that is helps delineate the bingo game from what is an entertainment feature. Starting the spinning reels sooner only means that the delineation is not as clear, but the bingo game still remains separate.

Card requirements

We expressed concern in our review of the game about the size and appearance of the electronic bingo card on the "Mystery Bingo" video screen. SDG readily agreed to make changes in card size and appearance to alleviate concerns that arose during the review. While technical standards for electronic Class II bingo games and devices may be developed in the future by the Commission, the goal at this point was to establish card size and visibility factors that made it apparent that a player was actually engaged in the play of bingo if the player relied only on the bingo card. The "Mystery

Bingo" card size, with exterior dimensions of 2 inches by 2 inches, and an interior playing surface of 1 and 7/8 inches by 1 and 7/8 inches, along with the bold color scheme, distinguish the card from other activity on the video screen. While not the dominate screen activity, a player can concentrate on the card and play the "Mystery Bingo" game without using other entertainment features being displayed.

Pending a formal rulemaking by the Commission that may establish technical standards for card size and graphics features different from those discussed here, we think the card size and visibility of the "Mystery Bingo" card are acceptable. As a further matter, this card size would not be subject to reduction on a smaller screen. In other words, if the screen size was reduced from 19 inches diagonal to 18 or 17 inches, the card size could not be scaled down. The playing surface of 1 and 7/8 by 1 and 7/8 is the minimum we would accept to make a card readily visible. The issue is not one of proportionality but of readability and functionality for the player in the game of bingo.

Because SDG uses a standard size video screen in the player stations that are placed in tribal gaming facilities, the relative size of the card compared to the video screen was not an issue. However, the card displayed on the screen, as described above, would be the minimum size that would make a card readily apparent even if the video screen were smaller. We note also that the bingo card in "Mystery Bingo" is favorably placed at the upper center point of the screen, helping the card to be easily located by a player.

Electronic Aid

We also evaluated whether the player station terminal components for "Mystery Bingo" can be considered an "electronic, computer, or other technologic aid" to the play of bingo, a term defined in NIGC regulations, 25 C.F.R. § 502.7. The player station assists a player in the play of the common game. The electronic format of the "Mystery Bingo" game broadens participation in a common game and allows players to compete against one another. As such, the electronic characteristics of "Mystery Bingo" offered through its player stations are those of an "electronic, computer or other technologic aid."

First, to meet the requirements of the Commission definitions, the electronic format of the game must contain sufficient parameters to "allow" multiple players into the game.[13] Conversely, we believe the format may not seek to limit player participation unnecessarily or in an overly restrictive manner. The fundamental idea is that the equipment and the electronic format "broaden" participation, not limit it. Second, in

[13] See 25 C.F.R. § 502.8. "Multiple" means "having, relating to, or consisting of more than one individual, element, component or part: manifold." Webster's II New College Dictionary (1995).

using the player terminal, the players must be playing with or against each other, in a contest of the game commonly known as bingo or a variant on that game

Participation in any particular "Mystery Bingo" game is limited, in theory, only by the number of player stations available on the network and on which another game is not already in play. Through its operating system, "Mystery Bingo" assembles players for individual games based on receipt of player requests for play. "Mystery Bingo" requires a minimum of two players for a game to begin. Additional players enter the game if they request participation within a set time period. The amount of time available for entry of additional players is a configurable aspect of the software. In the version presented to NIGC, the configurable time interval available was limited from the time the second player obtained entry until the entry opportunity closed and the game began.

In an effort to "broaden participation," we requested that a higher minimum number of players be established for the game to begin or that the configurable time interval available for player entry into any particular game be expanded in order to allow more player participation in any particular game.[14] This was also a condition to finding that the player station qualifies as a "technologic aid" because it meets the "broaden participation" requirement. SDG responded by including a mathematical algorithm that varies the enrollment period based on the number of active terminals in play on the system. With fewer terminals active, the algorithm lengthens the enrollment period to accommodate more players and thus broaden the participation.[15] There is no historical data available to support how this algorithm functions. Accordingly, we reserve the option to revisit this issue after this data becomes available through actual play of the game and review whether the "broaden participation" requirement is satisfied. We could then require a change to the algorithm. We may also review this requirement in the context of technical standards. At this time, however, it appears that Mystery Bingo's electronic format does in fact broaden participation among multiple players.

Participation among players is also encouraged by Mystery Bingo's successive ball releases. By requiring players to participate and actually play the game, rather than simply start the game and complete it in one ball release, Mystery Bingo broadens participation. It requires players to play against each other rather than just against the machine.

In short, Mystery Bingo's electronic format broadens the kind of participation that bingo requires. The format does not render the game an electronic facsimile under 25 C.F.R. § 502.8 because it affirmatively enhances the bingo-like characteristics of the game: interactive participation among players, not against the machine.

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[14] The MegaMania game referenced elsewhere in this opinion, and described as bingo or a game similar to bingo, required a minimum of twelve players. See 103 Electronic Gambling Devices, 223 F.3d. at 1093.

[15] A specific description of this algorithm is not included in this opinion because it is considered confidential proprietary information. The representations of SDG as to the operation of the algorithm are important to classification of the game.

Conclusion

Summarizing our analysis, we evaluated the "Mystery Bingo" game to determine if it meets the specific IGRA requirements that define the game of bingo. We evaluate "Mystery Bingo" and conclude that its game features and method of play as described in this opinion qualify as the game of bingo as defined by 25 U.S.C. § 2703(7)(A)(i). Crucial to its class II classification is that "Mystery Bingo" contains an aspect of the race or contest important to the game of bingo. The game provides for at least two electronic determinations of numbers (ball draws) before a player can win the primary bingo game. The game also requires all players to daub.

In analyzing the game, we have distilled following points that we believe portray the statutory requirements for an electronic bingo game:

- Electronic player stations must link players into a common game.
- System must allow for and encourage multiple players and require a minimum of two players.
- The winning pattern or arrangement must be known before the game begins.
- Players must obtain a card before numbers are drawn.
- Electronic Cards are permissible but must be readily visible on the screen
  - Prominently sized and displayed
  - Readable font
  - Contrasting colors
- The numbers are randomly drawn or determined electronically.
- Numbers drawn are used in real time and not stored for later use.
- Selected numbers are used in the sequence in which they are drawn.
- The game-winning pattern cannot be achieved in a single ball release, thus requiring that players participate in the contest to be the first to cover the winning pattern.
- All players must have the same opportunity to cover or daub to reflect their participation in a common game.
- Prizes must be determined by play of the bingo game, not by any other additional element of chance.

- The game must be won by the first player (or group of players) who obtains a pre-designated winning pattern and who "covers" or "daubs" the numbers yielding that pattern.

- Players who fail to daub sleep their winning bingo pattern – and the game continues.

- Consolation, secondary, or interim prizes and progressive prizes are permissible if the award of these prizes comports with the IGRA requirements for bingo including the requirement for obtaining and daubing a predetermined pattern.

"Mystery Bingo" in its basic form, with a readily visible bingo card as described in this opinion, with the prize structure describe in this opinion, and when played in the manner described in this opinion, satisfies these criteria and is a Class II game as that term is defined in IGRA and NIGC regulations. This opinion does not change with the added multiple-level buy-in feature specifically described in this opinion. This opinion would change with the addition of a feature (auto-daub) that removes the requirement for a player to cover or "daub" a potential winning bingo, after that pattern is displayed. With the addition of this feature, we would conclude that the game did not meet the definition of Class II bingo, or "a game similar to bingo," played with a technologic aid, as specified in IGRA and NIGC regulations. We further caution that this is an advisory opinion on the appropriate classification of the game under IGRA and NIGC regulations. Changes to the "Mystery Bingo" game, or to controlling law or regulation, may change this advisory opinion.[16]

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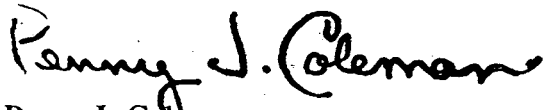
[16] The statutory definition of bingo in 25 U.S.C. § 2703(7)(A)(i) installs the three essential elements IGRA drafters considered important to "the game of chance commonly known as bingo." The United States Court of Appeals for the Ninth Circuit downplayed the significance of any common sense understanding of bingo, and a more deliberate manner of play, in its MegaMania decision. See 103 Electronic Gambling Devices, 223 F.3d 1091. We have made a sincere effort to distinguish this class II product from similarly appearing class III products by following the guidance provided by Congress, as limited by the federal court decisions. The graphic of a bingo card and a sequence of interactive events by the player described in "bingo" terminology may satisfy the statutory hurdles required to draw a distinction, as we observed. Any bright line between class II and class III that IGRA drafters intended, is being blurred with advances in game software technology. The result benefits the interests of many, but will be a disappointment to others. Depending on those interests, the IGRA bingo definition on which we must rely may not provide clear public policy for a proliferating class II gaming industry.

Please address any questions about this opinion to the undersigned or to William Grant in the NIGC Office of General Counsel.

Sincerely yours,



Penny J. Coleman
Acting General Counsel

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