

NATIONAL
INDIAN
GAMING
COMMISSION

JUN - 7 1994

I. Nelson Rose, Esquire
2075 Marlette Avenue
Reno, Nevada 89503

Dear Mr. Rose:

Thank you for your letter of April 1, 1994, on behalf of Sharp Image Electronics, requesting an advisory opinion on whether the "Wildfire Pulldisplay System" is a class II gaming device. For the reasons outlined below, the National Indian Gaming Commission (NIGC) is of the opinion that the Wildfire gaming device is a class III gaming device.

Although your letter did not include any printed materials describing the Wildfire gaming device, the NIGC has a copy of a promotional manual which explains the features and characteristics of the device. The Wildfire gaming device stores an electronic image of a deal of pull-tabs. Money is inserted into the machine and credits are displayed on a light emitting diode. As the play button is pressed, credits are decreased by one and the next electronic image of a pull-tab stored in the cartridge is displayed either on a video screen or spinning reels. Signals are sent to a printer in the gaming device which prints and dispenses a pull-tab ticket. Once the ticket is printed the electronic image of a pull-tab is erased from the cartridge.

It is your contention that because the Wildfire gaming device dispenses a pull-tab ticket, it is neither an electronic facsimile of the game of pull-tabs nor a gambling device within the meaning of the Johnson Act, 15 U.S.C. § 1171(a).

In Cabazon Band of Mission Indians v. National Indian Gaming Commission, 827 F. Supp. 26 (D. D.C. 1993), aff'd, 14 F.3d 633 (D.C. Cir. 1994), both the district court and the court of appeals held that video pull-tab games are class III electronic facsimiles. The Wildfire pull-tab gaming device has the same fundamental characteristics as the pull-tab devices described by the district court and the court of appeals.

There is now a computerized version of pull-tabs. The computer randomly selects a card for the gambler, pulls the tab at the gambler's direction, and displays the result on the screen. The computer version, like the

paper version, has a fixed number of winning cards in each deal.

14 F.3d at 635.

The fact that the Wildfire gaming device also dispenses a piece of paper with the identical symbols appearing on the video screen or spinning reels does not, in the view of the NIGC, convert the Wildfire pull-tab gaming device from an electronic facsimile to an electronic aid. The fact that it has the features described above makes it an electronic facsimile of the game of pull-tabs.

Furthermore, we are not convinced that the paper ticket that is dispensed by the Wildfire gaming device is in fact a pull-tab. A pull-tab is a paper or plastic ticket containing hidden winning or losing combinations of symbols that are revealed to the player when physically opened. The ticket dispensed by the Wildfire gaming device does not hide the winning or losing combinations of symbols and therefore is not physically opened by the player.

The Cabazon case also involved a challenge to NIGC regulations that adopted the Johnson Act definition of a gambling device to define electronic facsimile. 25 C.F.R. § 502.8. The district court rejected the tribal challenge to section 502.8 stating: "This definition is the only definition possible to implement Congress' explicit intent, as expressed in IGRA." 827 F. Supp. at 31. The tribal plaintiffs chose not to appeal the district court's rejection of their challenge to the NIGC's regulations and the court of appeals affirmed the judgment of the district court.

If Wildfire gaming devices are "gambling devices" within the meaning of the Johnson Act, then they fall within class III gaming. Under the Johnson Act, a "gambling device" means in pertinent part:

any other machine or mechanical device...designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property...

15 U.S.C. § 1171(a)(2). Federal courts have construed the definition of a "gambling device" to include electronic video gambling machines. United States v. 137 Draw Poker-Type Machines & Six Slot Machines, 606 F. Supp. 747, 754 (N.D. Ohio 1984), aff'd without op., 765 F.2d 147 (6th Cir. 1985) (electronic video draw poker machines held to be gambling devices within the meaning of 15 U.S.C. § 1171(a)(2)); United States v. Sixteen

Electronic Gambling Devices, 603 F. Supp. 32, 34 (D. Haw. 1984)
(electronic video games duplicating casino games such as draw
poker, blackjack, and keno held to be gambling devices).

In the view of the NIGC, the Wildfire pull-tab gaming device is a
gambling device within the meaning of 15 U.S.C. § 1171(a)(2).
The device is a machine or mechanical device designed and
manufactured primarily for gambling and that, when operated, may
entitle a player to receive money as the result of the
application of an element of chance. The fact that the device
also dispenses a paper ticket does not exclude the device from
the definition of a gambling device.

For all the foregoing reasons, the NIGC is of the opinion that
the "Wildfire Pulltab Dispenser System" is an electronic
facsimile and a gambling device and therefore falls within class
III gaming.

Please advise Sharp Image Electronics and its distributors to
cease supplying Wildfire gaming devices to Indian tribes in
states where there are no tribal-state compacts authorizing such
devices.

Again, thank you for your interest in this matter.

Sincerely,



for Anthony J. Hope
Chairman