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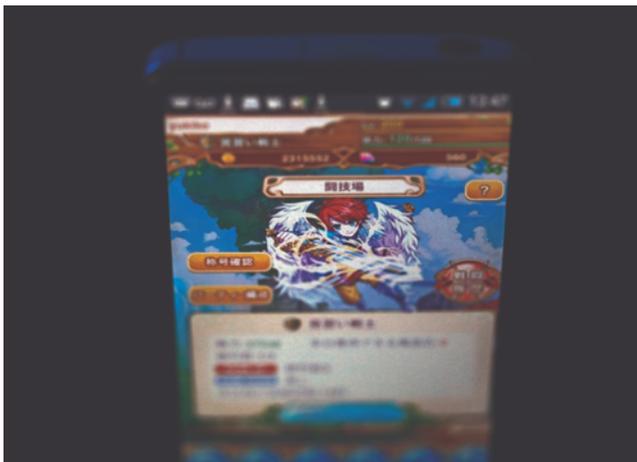
Gambling

Online Games of Chance Not Gambling, Virtual Prizes Not ‘Things of Value’: Courts

BY ALEXIS KRAMER

Mobile app developers can breathe easier that their games of chance don't run afoul of state gambling laws in light of a growing consensus among courts, so long as the prizes they offer are merely virtual, industry observers told Bloomberg BNA.

Three times federal courts have ruled that in-app games—which allow users to spend real money to play to win virtual prizes—aren't unlawful gambling devices.



Many mobile apps offer “free-to-play games,” games that are free of charge but offer users the opportunity to spend money at various stages of gameplay. Some games offer opportunities for users to purchase “rolls” or “spins” to win prizes such as virtual money, new characters or other elements that would advance gameplay.

App users have brought six separate complaints in the past year over these games of chance, alleging that they amount to illegal gambling under state law. Of these, three have been decided in favor of the developer. Two of those three are currently on appeal.

The latest ruling in favor of developers came recently in the U.S. District Court for the Northern District of Illinois (*Soto v. Sky Union, LLC*, N.D. Ill., No. 1:15-cv-04768, 1/29/16).

Morgan Reed, executive director of ACT | The App Association in Washington hailed the ruling. “It's good

for developers to have strong language clarifying that purchasing gems to win new characters isn't the same as going to Vegas,” he said.

Apps Prizes Cases

- App users appeal ruling that Big Fish Casino isn't gambling because prize of virtual chips has no value (*Kater v. Churchill Downs Inc.*, 9th Cir., No.16-35010, *notice of appeal filed*, 1/5/16).

- Game of War users appeal ruling that in-app casino isn't gambling because players don't lose real money (*Mason v. Machine Zone, Inc.*, 4th Cir., No. 15-02469, *notice of appeal filed*, 11/19/15).

- “Hero rolls” within Castle Clash that offer characters as prizes aren't gambling (*Soto, et al. v. Sky Union LLC*, N.D. Ill., No. 15-cv-4768, *motion to dismiss granted*, 1/29/16).

- App user alleges Game of War's virtual casino is unlawful gambling device (*Ristic v. Machine Zone Inc.*, N.D. Ill., No. 15-cv-8996, *complaint filed*, 10/9/15). Motion to dismiss due Feb. 12.

- Double Down Casino offering free replays as prizes isn't gambling, game maker argues (*Phillips v. Double Down Interactive LLC*, N.D. Ill., No. 15-cv-4301, *motion to dismiss filed*, 6/11/15).

- Slotomania isn't gambling because the prize of virtual coins has no value, developer argues (*Dupree v. Playtika Santa Monica LLC*, N.D. Ohio, No. 15-cv-4301, *motion to dismiss filed*, 7/13/15).

Mark Eisen, an associate at Sheppard Mullin Richter & Hampton LLP, told Bloomberg BNA that the ruling sends a strong signal that there's nothing wrong with these “free-to-play” games.

“In games like these, you can't cash out. You're playing for virtual elements, and these things aren't money,” Eisen, counsel for defendant Sky Union LLC in the case ruled on by the federal court in Illinois, said.

Reed added that users don't enter into the game with an expectation that they will win real money. “You're exchanging money for time,” he said.

But Benjamin Richman, counsel for plaintiffs in the six cases and a partner at Edelson PC in Chicago, said the virtual prizes, although not real money, do have value.

“The game is different than the brick and mortar casinos, but it doesn't change the fact that the prizes have real value within the game and to those that are playing,” he told Bloomberg BNA Feb. 1.

Ongoing Cases. Federal district courts in Maryland (20 ECLR 1508, 10/28/15), Washington and now Illinois have ruled that in-app games of chance using virtual currency—purchased with actual money—to win virtual prizes aren’t unlawful gambling devices. But two of those decisions are on appeal and three more cases have yet to be decided.

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MORGAN REED, EXECUTIVE DIRECTOR, ACT | THE APP ASSOCIATION

A ruling inconsistent with the previous three could lead to confusion among mobile app developers, Reed said. However, unless the game is offering a monetary payout at the end, it would be surprising that a court finds differently, he added.

These six cases were the first instances in which plaintiffs tried to bring mobile app games under statutes clearly designed for gambling, Eisen said.

Richman said he expected that introducing to the courts this new business model in the context of existing statutes would be difficult. “I believe that in five years we’re going to look back and say that of course this was gambling. It’s just going to take a while for us to get there,” he said.

‘Hero Rolls’ to Win Characters. In the *Sky Union* case, the court said that rare characters and other virtual prizes weren’t “things of value” under state gambling statutes.

Under California law, Cal. Penal Code § 330b(d) forbids the possession of “any slot machine or device.” A device is a slot machine if it presents users with the possibility of winning a thing of value, an additional chance to use the slot machine, or a token that may be exchanged for a thing of value.

Illinois’s and Michigan’s gambling loss recovery statutes, 720 Ill. Comp. Stat. 5/28-8(a) and Mich. Comp. Laws § 600.2939, allow persons who lost money or a thing of value to bring suit against the winner.

Three mobile app users brought claims against game developer Sky Union LLC, alleging that in-app games of

chance within Sky Union’s Castle Clash game constituted unlawful gambling under the laws of California, Illinois and Michigan. Castle Clash is an online combat game in which players collect, within the game, virtual currency called “shards” to purchase characters called “heroes” for their armies.

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BENJAMIN RICHMAN, EDELSON PC, CHICAGO

Players can also purchase “gems” for real money that can be used to buy in-game enhancements, speed up a player’s progress in the game or to enter into “hero rolls,” in which players spend 150 gems to win a randomly selected hero. SkyUnion offers other in-game events in which players can win large quantities of gems.

The court rejected the plaintiffs’ argument that the hero rolls have actual value based on the amount of money players must spend on gems to guarantee winning a particular hero.

Heroes don’t have monetary value and can’t be valued as such for purposes of the statute, the court said. “By the same logic, a game’s reward would be a ‘thing of value’ any time a player pays to play a game of chance,” it said.

The court also rejected the plaintiffs’ argument that because heroes advance gameplay, winning them is equivalent to winning an additional chance to play the game. Plaintiffs don’t allege that high quality heroes extend gameplay, but simply that they improve gameplay, the court said.

“Added enjoyment simply does not have measurable worth,” the court said.

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Full text of the Jan. 29 opinion at http://www.bloomberglaw.com/public/document/Soto_et_al_v_Sky_Union_LLC_Docket_No_115cv04768_ND_Ill_May_29_201.