

# **THE GEARHISER LAW FIRM, INC.**

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Playtronics Games, Inc.  
1100 Corby Drive  
Youngstown OH 44509

**RE: Ten Dollar Fruit**

Gentlemen:

I have reviewed the materials you have provided to me, observed the operation of the machines, Ten Dollar Fruit and Match Um Up, contacted the programmer/manufacturer of the Ten Dollar Fruit game and studied the applicable Ohio statutes and the developed case law.

## LEGAL DISCUSSION

The State of Ohio has generally prohibited gambling and the use of gambling devices pursuant to R C 2915, *et. seq.* "Scheme of chance", "game of chance", and "gambling device" are defined at R C 2915.01(C)(D) and (F) respectively. The use of schemes of chance, games of chance and gambling devices for the purpose of making a profit are generally prohibited by Ohio law.<sup>1</sup>

Slot machine is defined at R C 2915.01(VV) and means "any mechanical, electronic, video or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player who gives the thing of value in the hope of gain". The legislature recently removed the language "the outcome of which is largely or wholly by chance" from the statute. It is also defined as "any mechanical, electronic, video or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player to conduct or dispense bingo or a scheme or game of chance". However, the definition of slot machine specifically excludes skill based amusement machine, so therefore a machine must be one or the other.

The legislature has made substantive changes to R C 2915.01(AAA). (AAA)(1) limits the prize awarded for single play to a merchandise prize with a wholesale value of no

<sup>1</sup> R C 2915.02(D)(1) allows games of chance to be played by charitable organizations at festivals with certain other restrictions.

more than ten dollars. Wholesale value is not defined in the legislation and obviously when products are manufactured and go through two or three suppliers and/or distributors there could be an issue of what wholesale value means. (AAA)(1)(a), (b) and (c) are all aimed at the awarding of merchandise prizes for any single play of a machine, although it appears that multiple redeemable vouchers can be redeemed at one time. Section (AAA)(1) requires that the vouchers or prizes be distributed at the site of the skill based amusement machine.

(AAA)(2) again reaffirms that cash cannot be a prize. It also prohibits games where (a) the ability of the player is impacted by the ratio of prior wins to prior losses of players playing the game, (b) the reward of the voucher is awarded not based solely on the player achieving the object of the game, (c) the outcome of the game or value of the prize can be controlled by a source other than the player, (d) the success of the player is or may be determined by a chance event that cannot be altered by the player's actions, (e) the ability of the player to succeed at the game is determined by hidden game features and (f) the ability of the player to succeed at the game is impacted by the exercise of a skill that no reasonable player could exercise.

The legislation created two new definitions, merchandise prize and redeemable vouchers. Merchandise prizes can be any item of value except cash, gift cards, or cash equivalent, plays on games of chance, state lottery tickets, bingo or instant bingo, firearms, tobacco or alcoholic beverages. Redeemable voucher is defined at R C 2915.01(CCC) and means any ticket, token, coupon, receipt, or other non cash representation of value.

The terms cash, gift cards or any equivalent thereof are listed in (BBB)(1) as prizes that cannot be awarded. Gift card is not defined in the legislation so we have to look at the common meaning and use of gift cards to provide a definition. This section would seem to ban debit cards, credit cards, gift certificates, etc. wherein the person could buy undeclared merchandise or just return the card and receive cash back. However (BBB) and (CCC) do not seem to ban a voucher for tangible items such as a round of golf (if it is under ten dollars), three gallons of gas at a particular gas station, a half gallon of ice cream at the local ice cream store or a haircut at the neighborhood barbershop. As long as the voucher provides a merchandise prize with a wholesale value of ten dollars or less and the prize cannot be redeemed for cash I believe it is not prohibited by (AAA), (BBB) or (CCC). It is my understanding that the game Ten Dollar Fruit only awards vouchers for ten dollars or less.

Several other definitions are useful in this analysis. Scheme of chance is defined at R C 2915.01(C) which "means a slot machine, lottery, numbers game, pool conducted for profit, or other scheme in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo, skill based amusement machine or pool not conducted for profit". R C 2915.01(D) defines game of chance as "poker, craps, roulette or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely by chance and does not include bingo". Finally, a gambling device as defined at R C 2915.01(F) includes a deck of cards, dice, gaming

table, roulette wheel, slot machine or other apparatus designed for use in connection with a game of chance.

By reviewing all of these statutes it is evident that a skill based amusement machine is a game the outcome of which can only be controlled by the player, playing the game, is a game in which a reasonable player could succeed, and is a game which neither the machine nor an outside source can control the success of a player.

The definition of slot machine specifically excludes a skill based amusement machine. Therefore, it is impossible for one machine to be both a skill based amusement machine and a slot machine. A machine by definition must either be a slot machine and therefore illegal or a skill based amusement machine which is legal to operate. If the statutory requirements listed above for a skill based amusement machine are met then the machine is excluded from the statutory definition of slot machine, scheme of chance, and gambling device.

The current version of R C 2915.01(AAA) became effective in October, 2007. As of the date of this letter I am aware of only one judicial review of the new definitions or of any skill based amusement machines. The discussion of that case follows in the next paragraph. Ohio does not have a governmental agency where the machines can be taken for review to be licensed or approved as a skill based amusement machine. The issue of whether the machine is legal or illegal is a question of fact that must be determined on a case by case or machine by machine basis. To determine whether the operation of the game is legal is a question of fact that will ultimately be decided by a judge or a jury.

On January 15, 2008 the Franklin County Common Pleas Court held that the manufacturer Castle King's machine Match Um Up Version 1.0 met the legal requirement of a skill based amusement machine "so long as prizes are limited to merchandise prizes or redeemable vouchers whose value does not exceed ten dollars for a single play". I have reviewed the operation of its game Version 1.0 and it contains a hands played meter. The court therefore has seemingly authorized the use of the machine and others like it such as Ten Dollar Fruit so long as they follow R C2915.01(AAA).

Obviously we do not know what the court focused on for this decision. There have not been any interpretations on the statutory language of R C 2915.01(AAA) since its modification in October, 2007. The term "award" is used several times in Sections 2915.01(AAA)(1)(a) and (b), (2)(c) and 3(c). The term "award" may be considered the voucher distributed by the machine such as Ten Dollar Fruit. If the court used the same interpretation then that could be why the court found the game to be legal. The decision of this court is on appeal so hopefully we can have more useful information when the appellate decision is issued.

I have discussed with you my belief that several sections of R C 2915.01 and .06 are unconstitutional. I believe there will be challenges to the statute which may invalidate parts of the new law especially R C 2915.06. The statute was poorly written which may

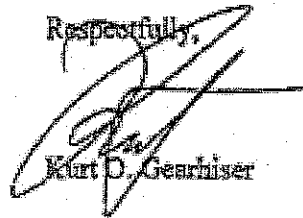
lead to sections being found to be vague or overbroad. However I do not believe the legislature will revisit this section this year.

### CONCLUSION

The analysis above is my opinion only. Unfortunately as of the date of this opinion there has been only one decision from the courts or administrative agencies on this or any other skill based amusement machine under the recently adopted statute. Ohio does not have an agency which will review the legality of these machines prior to their use. Obviously my opinion is not binding upon any administrative agencies or investigative agencies. Please understand that the opinion is based upon the accuracy and truthfulness of the information provided to me. It is possible that despite the legal compliance of certain machines they may be used in some illegal capacity.<sup>2</sup> As with all new statutes there are always individual cases which will determine how the law is interpreted which may provide guidance and definitions of currently undefined words.

If you have any questions concerning this issue please do not hesitate to give our office a call.

Respectfully,



Kurt D. Gearhiser

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<sup>2</sup> Ohio law prohibits alcoholic beverages being awarded as prizes, see Liquor Control Commission Regulations 4301:1-1-45 and 4301:1-1-46. Ohio law prohibits the payment of cash prizes.  
(2015.01(AAA)(2))