

IN THE MATTER OF:

Game of Skill

Announcement

Wednesday
November 20, 2019

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009, Chairperson Donovan W. Anderson, presiding.

PRESENT :

DONOVAN W. ANDERSON, Chairperson
BOBBY CATO, JR., Member
RAFI ALIYA CROCKETT, Member
JAMES SHORT, JR., Member
REMA WAHABZADAH, Member

P-R-O-C-E-E-D-I-N-G-S

11:47 a.m.

CHAIR ANDERSON: Our next case is -- we have a public hearing regarding the game of skill announcement. So, therefore, this is the announcement of the Board's decision on Penn Social's request to install the Dragon Ascent electronic game on its premises. This is as of November 20, 2019.

Good morning, everyone. The next item of business is an announcement of the Board's decision regarding Penn Social's request to install the Dragon Ascent electronic game on its licensed premises.

On or about September 6, 2019, Counsel for Penn Social, Mr. O'Brien, submitted a written request to the ABC Board. Specifically, Counsel asked the Board to approve Penn Social's request to install a new electronic game entitled Dragon Ascent on its licensed premises.

In reviewing Penn Social's request, the Board determined that it was necessary to convene a public fact-finding hearing to gather information that would assist them in addressing two concerns.

1 One, whether the Dragon Ascent
2 electronic game is a game of skill, and thus
3 permissible for installation in the District of
4 Columbia.

5 And two, whether the installation of
6 any electronic game at Penn Social would
7 constitute a substantial change in the nature of
8 the operations of the licensed establishment, as
9 defined by DC Official Code Section 25-
10 762(b)(14).

11 At the public hearing held on October
12 9, 2019, the Board heard from Mr. O'Brien and
13 representatives from Penn Social and Pace-O-
14 Matic, Inc., the distributor of Dragon Ascent.

15 In their support for electronic
16 gaming, the representatives submitted to the
17 Board that the Dragon Ascent game is 100 percent
18 game of skill.

19 They argued that unlike other types of
20 electronic games, Dragon Ascent is solely based
21 on the player's ability and skill. It is their
22 contention that a player's success at playing the
23 game, and thus winning a cash reward, is solely
24 based on their ability to play the game and that
25 there is no degree of chance involved.

1 The issue of electronic games of skill
2 in which a player can receive money when they win
3 the game is a relatively novel one in the
4 District of Columbia. Although these games are
5 present in other jurisdictions, including
6 Virginia, Pennsylvania, and Georgia, there are
7 any not currently in the District.

8 District and federal law has long
9 recognized that gambling is illegal.
10 Specifically, DC Official Code Section 22-1704
11 provides that whoever shall in the District set
12 up or keep any kind of gambling table or gambling
13 device, adapted device and designed for the
14 purpose of any game of chance for money or
15 property shall be punishable by imprisonment and
16 may be fined.

17 Similarly, the Johnson Act, a federal
18 law, provides that it shall be unlawful to
19 manufacture, recondition, repair, sell,
20 transport, possess, or use any gambling device in
21 the District.

22 The Act defines a gambling device as
23 any other machine or mechanical device designed
24 and manufactured primarily for the use in
25 connection with gambling and which when operated

1 may deliver as the result of the application of
2 an element of chance any money or property.

3 There are exceptions to the anti-
4 gambling laws in the District. For example,
5 sports wagering. No one contends, however, that
6 Dragon Ascent is a form of sports wagering.
7 Instead, Penn Social and Pace-O-Matic, Inc.
8 contend that Dragon Ascent is a game of skill and
9 not a game of chance, i.e., gambling, and
10 therefore should be permitted.

11 In an effort to comprehensively
12 address the first issue raised by Penn Social's
13 request, the Board contacted the Office of the
14 Attorney General for a legal opinion.
15 Specifically, the Board asked the OAG whether
16 Dragon Ascent is a gambling device under District
17 and federal law.

18 On October 25, 2019, the Board
19 received a legal opinion from the OAG, in which
20 it determined that the Dragon Ascent gaming
21 machine contains no element of chance and,
22 therefore, is not a gambling device.

23 OAG noted that the game appears to
24 make money by layering a complex series of
25 variables and requiring more patience than the

1 average game players is likely to demonstrate.
2 Still, it is possible for a player to win or make
3 money every single time, if the player is
4 dedicated and patient enough. And that no part
5 of the outcome is dependent on chance, but
6 rather, the player's reward for each shot is a
7 direct factor of their choices and the fixed game
8 algorithm.

9 As such, the OAG's opinion indicates
10 that the Dragon Ascent game is not a gambling
11 device.

12 As to the second issue regarding
13 whether the installation of Dragon Ascent may be
14 considered a substantial change, the Board finds
15 that, in this instance, that it is.

16 The Board recognizes that Penn Social
17 presently has over 20 electronic gaming devices
18 on its premises. The establishment's
19 representatives explained to the Board that these
20 devices are an intricate part of its business
21 operation.

22 The Board also acknowledges that the
23 installation of an additional electronic device,
24 where others already exist, does not necessarily
25 constitute a substantial change under DC Official

1 Code Section 25-762(b)(14).

2 However, in this instance, the Board
3 cannot ignore the unique aspect of Dragon Ascent,
4 i.e., players can win money, which makes it
5 distinguishable from Penn Social's other
6 electronic games.

7 Additionally, the Board cannot say
8 with certainty that adding Dragon Ascent gaming
9 devices would be a great concern to the
10 community.

11 The installation of an electronic
12 device could very well have an adverse impact on
13 the peace, order, and quiet of the community,
14 thereby weighing in favor of deeming Penn
15 Social's request as a substantial change
16 requiring proper notice be given to the
17 community.

18 Finally, should Penn Social decide to
19 install more than one Dragon Ascent game on its
20 premises, the Board is willing to consider an
21 amended request from the Applicant, as part of
22 the public hearing notice.

23 The Board thanks Mr. O'Brien and
24 representatives from Penn Social and Pace-O-
25 Matic, Inc. for appearing before the Board and

1 providing the additional information about the
2 Dragon Ascent game.

3 The information gathered at the
4 hearing was critical to the Board's decision
5 making and enabled the OAG to sufficiently review
6 the Board's request for a legal finding opinion.

7 Thank you.

8 We are now in recess until our 1:30
9 hearing.

10 (Whereupon, the above-entitled matter
11 went off the record at 11:55 a.m.)
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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Game of Skill

Before: DCABRA

Date: 11-20-19

Place: Washington, DC

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
true and accurate record of the proceedings.



Court Reporter

NEAL R. GROSS

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