

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF HAMPTON

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CLUB HOUSE AMUSEMENTS,)
a. Virginia Sole Proprietorship,)
Plaintiff,)

Case No. 09-1123

v.)
THE CITY OF HAMPTON, VIRGINIA,)
Defendant)

SERVE:

Cynthia Hudson, Esquire
22 Lincoln Street
Hampton, Virginia 23669

COMPLAINT

COMES NOW your Plaintiff, Club House Amusements, a Virginia Sole Proprietorship, via its owners/employees/agents & assigns and by Counsel, Jason A. Atkins, Esquire, and in support of its Complaint and prayer for relief, shows as follows:

1. Your Plaintiff, Club House Amusements is a Virginia Sole Proprietorship which manufactures, distributes and maintains/services those machines, instrumentalities and necessities to its video game/amusements company throughout Virginia, North Carolina and other states/localities, with its principal place of business in Waynesboro, Virginia, from where Plaintiff has operated in this manner since 2004.

Prepared By:
BOWEN LAW
OFFICE, PLLC
P.O. Box 607
Gloucester, VA
23061
(804) 694-1171

2. The City of Hampton, Virginia, is one of the many localities where your Plaintiff's machines, et cetera, are distributed/maintained/serviced and in operation since, approximately May, 2008.

3. In January, 2008, your Plaintiff, by Counsel, sought an opinion regarding the legality of its machines, prior to their distribution/operation in the Hampton Roads area of Virginia, including Hampton, Virginia, and a Prospectus ("Exhibit A"), on Plaintiff's machines was prepared/submitted by Counsel, while employed at his former law firm, Olaf Gebhart & Associates, P.C., and meetings occurred thereon, with local Commonwealth Attorney's Offices, including Hampton and Newport News, Virginia, yielded correspondence from those offices which evidenced, in their opinions, the legality of your Plaintiff's machines.

4. After said prospectus, meetings and the Commonwealth Attorneys' positive and encouraging opinion on the legality of Plaintiff's machines, your Plaintiff's machines and instrumentalities were distributed, functioning and maintained in businesses in Hampton, Virginia, as well as in other localities in Virginia.

5. On or about the 3rd day of April, 2009, Plaintiff's machines and instrumentalities manufactured, distributed and maintained by your Plaintiff, were seized from those premises in Hampton, Virginia.

6. The machines/instrumentalities/necessaries to Plaintiff's operation and going-concern value were seized by the City of Hampton, Virginia, via its

agents/employees, et cetera, on the 3rd day of April, 2009, despite your Plaintiff's preemptive measures in determining their legality.

7. Where the machines/instrumentalities of your Plaintiff were seized and remain subject to seizure by the City of Hampton, Virginia and have, therefore, not been returned to your Plaintiff, Plaintiff is without the necessities to its business and going-concern and is, therefore, irreparably harmed each and every day that its property is not returned to/made available to your Plaintiff.

8. Although your Plaintiff sought to maintain preemptive approval of the legality of its machines/instrumentalities, Plaintiff remains without the use of/access to those necessities to its business/going-concern value where they have been seized and not released by the Defendant.

9. Where your Plaintiff has operated its video game/amusement/distribution company for some time, in this and other localities, your Plaintiff is irreparably harmed in its business purpose where its income, goodwill and going-concern value, et cetera, are derived, in significant part, from its machines, instrumentalities and their functioning.

10. The balancing of harms between the City of Hampton, Virginia, where its Commonwealth's Attorney's office has previously approved the legality of your Plaintiff's machines, yet where the City's seizure of those machines has, effectively, terminated Plaintiff's operation in this locality weighs heavily in Plaintiff's favor.

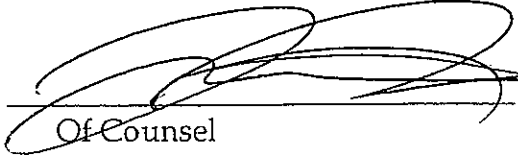
11. Whether or not Plaintiff's machines/instrumentalities are considered "legal," which Plaintiff and prior Commonwealth opinion asserts that they are, your Plaintiff is irreparably damaged where it cannot avail itself of the necessities to its business/going concern value.

12. The seizure of Plaintiff's property in/by Hampton, Virginia denies Plaintiff the bare operation of its long-standing business interest in other jurisdictions where their operation was also approved.

13. Where Plaintiff sought an opinion on the legality of its machines and received such, favorably, prior to their distribution/operation in the City of Hampton, Virginia and where Plaintiff remains dispossessed of its property, despite its legality in this and other jurisdictions, the likelihood of judgment on the merits bears in Plaintiff's favor.

WHEREFORE, for the reasons stated, your Plaintiff, Club House Amusements, by Counsel, Jason A. Atkins, Esquire, hereby moves that this Court Order the return of its property, (machines and instrumentalities), seized in Hampton, Virginia, on the 3rd day of April, 2009 and that the City of Hampton be enjoined and restrained from retaining such property and rendering Plaintiff in dispossession thereof and that this Court determine and confirm the legality of Plaintiff's machines and their operation in the City of Hampton, Virginia

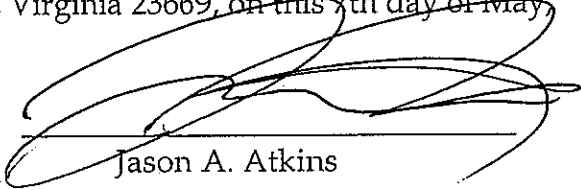
CLUB HOUSE AMUSEMENTS

By: 
Of Counsel

Jason A. Atkins, Esq., VSB# 67916
Bowen Law Office, PLLC
P.O. Box 607
Gloucester, VA 23061
(804) 694-1171
Fax: (804) 694-1172

CERTIFICATE

I hereby certify that a copy of the foregoing Complaint was mailed to Cynthia Hudson, Esquire, 22 Lincoln Street, Hampton, Virginia 23669, on this 7th day of May, 2009.


Jason A. Atkins

OLAF GEBHART & ASSOCIATES P.C.

ATTORNEYS AND COUNSELORS AT LAW

1915 Pocahontas Trail F-9 Williamsburg, VA 23185 Olaf Gebhart Jr., Attorney Telephone: (757) 259-2020 Facsimile: (757) 259-9111	739 Thimble Shoals Blvd, Ste 405 Newport News, VA 23606 Mike Thomas, Attorney Gordon Klugh, Attorney Telephone: (757) 596-0456 Facsimile: (757) 596-2999	6769 Main Street Gloucester, VA 23061 Jason Atkins, Attorney Telephone: (804) 693-2274 Facsimile: (804) 693-2424
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January 10, 2008

I submit this correspondence on behalf of my client David Shields, of Outer Banks Amusements, in an effort to gain your opinion and advice on the legality of the "Movie Play" movie rental kiosk, created and made available by the company.

It is my opinion that the elements of the machine render it free from illegality where legal precedent in the Commonwealth of Virginia, and the Virginia Code as well as in the accompanying jurisdiction of North Carolina, establish, clearly, that which is and is not "illegal gambling".

It is my impression that, upon your consideration, you will find that the "Movie Play" kiosk is a unique, entertaining and strategic marketing tool that falls clearly within well-founded elements of legality and is just as clearly distinguishable from those elements of "illegal gambling".

Well-founded elements distinguish the "Movie Play" kiosk from those machines which may be considered as involving "illegal gambling".

The Commonwealth of Virginia considers three elements necessary to "illegal gambling": The first element is one of "consideration" which, of course, involves one's payment, usually inserted into a machine, in order to play a game, et cetera, for a "prize". The second element is one of "chance" which involves a question whether skill is involved in a "game-machine". Thirdly, the "prize" is something that is "won", but not, necessarily purchased, where the "prize" is completely dependant upon chance and/or skill, via one's having "purchased" an opportunity to win said prize.

The Code of Virginia makes clear that, where all three of the aforementioned elements are present, (together), then such as nexus constitutes "illegal gambling".

If any one of these three elements is absent, then there is no "illegal gambling".

In essence, there is seemingly, no half-way, regarding illegal gambling in the Commonwealth of Virginia where it is, clearly, an all-or-nothing scenario as to the three necessary elements.

The "Movie Play" kiosk, offered by Outer Banks Amusements, is clearly distinguishable from an "illegal gambling" machine where the nexus of elements necessary thereto are not present. Clear distinctions to "illegal gambling" are present in the machine where there is, first, an absence of consideration, second, an avoidance of chance via an element of skill in the

promotional game associated with the kiosk and, thirdly, not a "prize", but, instead, a product, which is purchased by the consumer.

That which also avoids illegality for the "Movie Play" kiosk is its free, alternative method of entry applicable to the promotional game associated therewith.

The "Movie Play" kiosk, via its functionality, avoids any misinterpretation as any "illegal gambling" machine where it is not, in fact, a mere gaming machine/outlet, but is, instead, a strategic marketing measure which aims to add a new, anticipated and groundbreaking amenity to fraternal organizations and like-minded social and civic groups and organizations which seek not only amenities of membership, but also unique and marketable fund-raising for said organizations as well as for the community in which they thrive.

The "Movie Play" kiosk will install and manage an inventory of current and classic digital video disk (DVD) movies, from various suppliers, in those outlets where the kiosk appears.

Where the kiosk appears in social and civic organizations, a service agreement from said organization will be required so that Outer Banks Amusements, Inc. shall be the sole and exclusive supplier of the aforementioned movie catalog and for such services in each outlet.

Those who patronize the "Movie Play" kiosk will completely avoid membership fees, late fees and/or any other added/hidden fees involved in a traditional movie rental setting/environment.

As an added incentive for one to participate in the DVD rental program which the "Movie Play" kiosk provides, the "Movie Play" kiosk will also include and underwrite a video sweepstakes promotion which will aid in and encourage patronage of the "Movie Play" DVD rental business model, membership in the civic organization as well as the fund-raising efforts associated therewith.

The company's approach, via its "Movie Play" kiosk is to capitalize on the stability and frequency of patronage of civic and social organizations whose members, as a large but somewhat captive audience, provide a solid customer base, with a high frequency of repeat customers.

The addition of a video sweepstakes incentive serves to encourage patronage via a unique mechanism that is not readily available in competitive outlets.

It is the desire of Outer Banks Amusements, Inc., via its "Movie Play" kiosks, to be as popular as other outlets in a popular market, yet to eventually exceed the popularity of its competition in the business of DVD rentals via its groundbreaking promotional mechanism. Competition, after all, and a striking against monopolies in the industry is the "American Way".

The DVD rental kiosk "industry" is experiencing significant growth where, at the end of 2006, approximately three thousand (3,000) DVD rental kiosks were deployed throughout the

United States, the most popular of which seem to be the "Red Box" franchise, usually frequenting grocery stores such as Harris-Teeter, not to mention the popularity of late-fee-free DVD rentals via NetFlix and Block Buster. Such relevant estimates indicate that the total market for such DVD rental kiosks lies between 65,000 and 115,000 units in the United States during the relevant life-cycle of the DVD, which is projected to triple throughout latter 2007 and 2008, particularly where markets have attempted to minimize the number of one's "stops" while running errands, et cetera, by offering all inclusive outlets such as "super centers" and modern convenience stores. Where such a projection leaves room for at least 50,000 (Fifty Thousand) additional DVD rental Kiosks throughout the United States, Outer Banks Amusements, Inc., hopes to beat the "Red Box" via its grass roots and groundbreaking marketing in the industry which caters to an audience which the company considers an untapped resource.

"Uniqueness" arises in the "Movie Play" kiosk, via its sweepstakes mechanism which allows and encourages its DVD rental customers to engage in a chance to win a promotional video game, free from the elements of "illegal gambling".

The element of consideration is absent in the "Movie Play" kiosk where, simply put, the consumer is purchasing movie rentals, i.e., the "product", two DVD rentals, which are returnable to the outlet, without late fees for the price of five dollars (\$5.00) for two DVDs or ten dollars (\$10.00) for five DVDs, which is extremely reasonable and competitive in the marketplace. Finally, the consumer, therefore, purchases a valuable and useful product/service via the DVD rentals.

The patron is, also afforded an opportunity to take advantage of the promotional sweepstakes mechanism which is much like that offered by major outlets such as McDonalds restaurants, Krispy Kreme, Pizza Hut, Coca-Cola and Kellogg's, to name a few, as well as by popular television shows such as "The Apprentice", "Deal or No Deal" and most recently by that which is, arguably the most popular show of all time, "American Idol". The promotional sweepstakes mechanism offers multiple pay-platforms where the consumer may choose to vend, immediately, a free pull tab or phone-card containing unconditional domestic minutes, which evidences the sweepstakes' rules (as well as those evidenced at the kiosk), and which may be eligible for a promotional award in cash-prizes on an immediate play. The promotional sweepstakes mechanism is a "free" contest, incidental to the legitimate commercial transaction that is the DVD rental. The consumer pays a reasonable and competitive price for a legitimate "product" with the choice (not the requirement) to engage in the promotional game, which dispenses the aforementioned phone card. The defensible nature of the promotional sweepstakes mechanism involved in the "Movie Play" kiosk is enhanced, significantly by the fact that those who rent the DVDs may choose to engage in the promotional sweepstakes by taking an instant pull-tab as opposed to playing the promotional video game via his/her promotional points and via the clear evidencing of the odds of winning any promotional award.

The mechanism of the "Movie Play" pull-tab sweepstakes promotion is legitimized not only via its popularity among those aforementioned major outlets, but also via its phone cards on which the pull tables are offered, which, in and of themselves are a legitimate and popular product.

One cannot doubt the popularity of sweepstakes, as well as that of phone cards which arose in a two-fold manner, via the necessity of phone-contact and the convenience of gift-cards.

One need look no further than the recent popularity of gift-cards in the past holiday season, as well as the popular "Go-Phone" or "Trac Phone" franchises, as well as those phone cards which are marketed in convenience stores and dollar-value stores across the nation.

That which, perhaps, most significantly serves to avoid any illegality is the free alternate method of entry to the promotional sweepstakes game, which, again, likens the "Movie Play" kiosk and Outer Banks Amusements to those aforementioned national franchises which promote via sweepstakes.

The Supreme Court of Virginia has consistently concluded that any element of consideration is absent where no purchase is required for one's entry into the promotional game/sweepstakes, so that eligibility to receive any promotional award is, in no way, limited to those who make a purchase.

The Attorney General of Virginia has issued several opinions regarding the type of promotional game associated with the "Movie Play" kiosk. In 1997, Va. Op. Attorney General 97, the Attorney General in reliance on rulings from the Supreme Court of Virginia makes clear that although the court and the Attorney General's prior opinions construe the element of consideration liberally for the purpose of defining an activity which constitutes illegal gambling, despite liberal construction the element of consideration is absent when no purchase is required.

The element of consideration is absent where no purchase is required to enter into a drawing or other game of chance via the "Movie Play" kiosk.

The "Movie Play" kiosk provides said alternate method of entry, at no charge, via its phone card/pull-tab game piece which is available, upon request, via a mere request and/or mailing, at no charge to the requested individual whatsoever.

Notice of the availability of the free alternate method of entry is posted, permanently at every "Movie Play" kiosk, as well as on each sweepstakes phone card. The mode of entry is, therefore, obvious and is in fact easier than that used by DVD renters, which means that if the consumer does not wish to rent any DVDs which the company offers in order to enter the promotional sweepstakes then, he/she is not required to do so.

The "Movie Play" kiosk takes advantage, yet again, of a well-founded promotional sweepstakes aspect offered via the telephone card.

The legality of telephone cards dispensed with a sweepstakes component has been settled for some time in the state of North Carolina via American Treasures and Treasured Arts, Inc., State of North Carolina et al. 173 N.C. App. 170, 2005, where, attached to each telephone card sold by a particular company was a free-promotional sweepstakes game-prize, which may allow the consumer to win a prize revealed via a scratch-off area. The sweepstakes feature was part

and parcel to a telephone card, as a market-promotion.

Similar to the movie play kiosk, offered by Outer Banks Amusements, consumers could participate in the sweepstakes without making a "purchase," (i.e., without renting the DVDs).

In Treasured Arts, the State of North Carolina asserted that the sweepstakes aspect of the telephone card was an illegal form of gambling via its agreement that the sweepstakes feature was simply a scheme where one paid for another opportunity to obtain something of larger value, via some formula of chance.

The state of North Carolina, therefore, claimed that such a method of promotion was illegal. The appeals court, however, concluded that the accompanying sweepstakes promotion was merely a strategic marketing mechanism which promoted and encouraged the sale of the greater product (in that instance, phone cards), and was commonly used to encourage the sale of numerous consumer items.

The promotional sweepstakes mechanism involved in the "Movie Play" kiosk is substantially similar to that legitimized by the Appellate Court in the Treasured Arts case, yet such is further legitimized via the DVD rentals which the kiosk provides.

The "Movie Play" business model/strategy allows civic and fraternal organizations to capitalize on the DVD rental industry which, at present, exceeds \$20 billion via a network of modern DVD rental kiosks in as many locations as necessary, as such will benefit not only said organizations, but also their communities at large, via fundraising mechanisms which are so intimately involved therein.

Via its "Movie Play" kiosks, Outer Banks Amusements combines the popularity of arcade video-gaming, console video gaming, such as that which the Sony Play Station and Microsoft X-Box have to offer, the excitement of the DVD rental community, the lottery, the midway and that of phone/gift cards, in a unique business model/strategy.

These billion-dollar industries are combined in a marketable and promotional manner, consistent with those employed by national conglomerates, in an effort to break and succeed in the billion dollar industry that is DVD rentals.

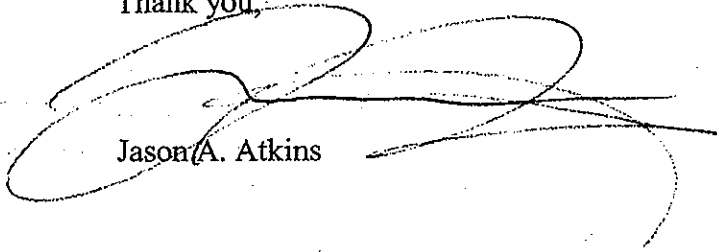
Outer Banks Amusements has worked tirelessly to distinguish itself not only from its competition but, also, and most importantly, from any illegal operation which plagues a legitimate entertainment industry.

We would appreciate any input which you could provide regarding the "Movie Play" kiosk and its associated business plan.

David Shields and Outer Banks Amusements seek your counsel where he wishes not to run afoot of the law in this matter.

Please do not hesitate to contact me should you have any questions or concerns in this regard.

Thank you,

A large, stylized handwritten signature in black ink, appearing to read "Jason A. Atkins". The signature is written over the printed name.

Jason A. Atkins

JAA/ds



Office of the Commonwealth's Attorney
Hampton, Virginia



LINDA D. CURTIS
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ASSISTANTS

May 1, 2008

Jason A. Atkins, Esq.
Olaf Gebhart & Associates, P.C.
6769 Main Street
Gloucester, Virginia 23061

Dear Mr. Atkins:

You asked our office to opine as to the legality of your client operating "Movie Play" kiosks. Based on your client's statements, the primary purpose of the "Movie Play" kiosks is to offer customers the opportunity to rent DVD movies. Those customers that do pay for movie rentals are given, at no additional cost, a prepaid phone card containing pull tabs, which enable the customer to potentially win cash prizes.

Individuals who do not rent any movies may also receive, at no cost to them, a phone card containing the pull tabs by submitting a request to the operator of the "Movie Play" kiosks.

Therefore, after relying on the correspondence you provided and the representations made by you and your client at our April 11th meeting, I do not believe that the "Movie Play" kiosks or its use/operation constitute gambling as defined in Virginia Code Section 18.2-325.

Should you have any questions concerning this response, please do not hesitate to call.

Sincerely,

Romeo G. Lumaban
Deputy Commonwealth's Attorney

cc: Richard Blackwell, Esq.

COMMONWEALTH OF VIRGINIA



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COMMONWEALTH ATTORNEY

VALERIE S. MUTH
CLERK DEPUTY
COMMONWEALTH ATTORNEY

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ASSISTANT
COMMONWEALTH ATTORNEY

June 17, 2008

Richard Blackwell, Esq.
2210 Executive Drive
Suite A
Hampton, VA 23666

Re: "Movie Play Kiosks"

Dear Richard:

Thank you for meeting with me concerning the above referenced product. You asked this office to offer an opinion as to the legality of the "Movie Play Kiosks" and if the use and operation of the kiosks constitutes illegal gambling. Based upon the statements of your client and the examples presented during your presentation it is my opinion that the use or operation of the kiosk(s) does not constitute gambling as defined in Section 18.2-325 of the Code of Virginia, 1950, as amended. Because the kiosks do not appear to be illegal gambling or lottery devices then it would not be inherently illegal to possess or sell any such device as long as it is used as your client described. see Section 18.2-331 of the Code of Virginia, 1950, as amended.

Should you have any questions or comment please feel free to contact me.

Sincerely,

Charles E. Powell
926-7225

cc: by fax to 259-3838

BOWEN LAW OFFICE, PLLC



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T. C. BOWEN, III
JASON A. ATKINS

May 7, 2009

Ms. Smith, Clerk
Hampton Circuit Court Clerk
PO Box 40
Hampton, VA 23669

Re: Club House Amusements v. The City of Hampton

Dear Ms. Smith:

Please file the enclosed Complaint with attachments, regarding the above-styled matter. I am enclosing two additional copies of the Complaint, and I would ask that you prepare a Summons - one copy to be served on the defendant and one copy to be filed with the return of service. Please have the defendant served and return to us the proof of service after defendant is served. An envelope is enclosed for your convenience.

I include payment in the amount of \$96.00, which includes \$84.00 for the requisite filing fee, and an additional \$12.00 for the service fee.

If you have any questions, do not hesitate to contact me. Thanking you for your assistance in this matter, I remain

Sincerely,

Jason A. Atkins

JAA:llh
cc: Club House Amusements

BOOKED
CITY OF HAMPTON, VA.
2009 MAY -7 PM 3:49
LINDA BATCHELOR SMITH
CLERK OF CIRCUIT COURT

Gloucester
804-694-1171

COMPLETED
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