

FEB 02 2017

DIRECTOR'S OFFICE

BEFORE THE DEPARTMENT OF INSPECTIONS AND APPEALS

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PETITION BY  
BIG DADDY GAMES, LLC  
FOR A DECLARATORY ORDER ON  
IOWA CODE §§ 99B.52, 99B.53 &  
725.9



PETITION FOR  
DECLARATORY ORDER

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NOW COMES Petitioner, Big Daddy Games, LLC, by and through its undersigned counsel, and pursuant to Iowa Code § 17A.9 and 481 Iowa Administrative Code, Chapter 3, to hereby respectfully submit and request as follows:

I. RELEVANT FACTS

1. Big Daddy Games, LLC (“Petitioner”) is a Wisconsin limited liability company located in Menasha, Wisconsin.
2. Petitioner manufactures and sells electronic game devices in several jurisdictions, including Iowa.
3. Petitioner has designed and developed two new electronic skill game devices entitled “*Big Daddy’s Nudge Skill Plus*” and “*Spooky Nudge Skill Plus*” (“Skill Plus”).
4. Each Skill Plus device is a single machine that offers three different game themes that a player may select to play.
5. Each Skill Plus device includes a touch screen display and tactile buttons that collectively provide a user interface to the device.
6. Each Skill Plus device includes a bill acceptor that receives and accepts U.S. dollar bills of varying denominations. The devices do not accept or dispense coins or tokens, and they do not award cash.

7. On each Skill Plus device, after a game theme is selected, the touch screen display features visual meters indicating a player's credits (indicated as "Credit"); the number of credits assigned by the previous game play (indicated as "Prize"); "Help" and "Reveal" virtual pushbuttons; a puzzle solution table; and credit play level selector virtual pushbuttons, each featuring a plus ("+"), a minus sign ("-"), or a "MAX PLAY" indication.

8. The Skill Plus devices do not award any prize of merchandise.

9. Each Skill Plus device includes a printer configured to print a slip of paper with a number of credits redeemed by a player through at least two stages of selective interaction with the device.

10. The Skill Plus devices do not possess a "knock-off" switch, or any other means to allow the release of free games.

11. The Skill Plus devices do not allow a player to ever "double-up" or "raise" at any time.

12. On each of the Skill Plus devices, there is no meter to record the number of free games awarded.

13. The Skill Plus devices do not allow for the playing of any of the following games: poker, baccarat, chemin de fer, blackjack, pai gow, roulette, craps, or keno.

14. The Skill Plus devices are not designed, and cannot be adapted, to enable a person to increase the chances of winning free games, or portions of the games, or anything else, by paying more than ordinarily required to play the game.

15. In every game theme on each of the Skill Plus devices, the outcome of each game play is primarily determined by the skill and/or knowledge of the player.

16. In each Skill Plus device, player success requires only reasonable skill, but practice playing a Skill Plus devices increases a player's skill.

17. Each type of Skill Plus device has been reviewed by Nick Farley and Associates ("NFA").

18. Based upon NFA's review, NFA plans to issue two reports in the coming days, each related to one of Big Daddy Games' *Spooky Nudge Skill Plus System version 16.0.0.0* and *Big Daddy's Nudge Skill Plus System version 16.0.0.0*.

19. In its analysis, NFA has been requested to indicate whether the outcome of each and every game play of a Skill Plus system is primarily determined by the skill or knowledge of the player. On each play of each game, a player must rearrange a column of images to align a row of matching images on a prize line. Alternatively, a column of images may be rearranged to result in a particular image to be situated on the prize line, in the case of a win-every-spin-programmed device.

20. A copy of each identified NFA report will be submitted with a supplemental petition upon receipt of same from NFA.

## II. RELEVANT LAW

Iowa Code § 99B.52 provides:

### **99B.52 Electrical or mechanical amusement devices.**

1. A person may own, possess, and offer for use at any location an electrical or mechanical amusement device, except for an amusement device required to be registered pursuant to section 99B.53. If the provisions of this section and other applicable provisions of this subchapter are complied with, the use of an electrical or mechanical amusement device shall not be deemed gambling. All electrical or mechanical amusement devices shall comply with this section.

2. A prize of merchandise not exceeding fifty dollars in value shall be awarded for use of an electrical or mechanical amusement device. An electrical or mechanical amusement device may be designed or adapted to award a prize of one

or more free games or portions of games without payment of additional consideration by the participant.

3. A prize of cash shall not be awarded for use of an electrical or mechanical amusement device.

4. An amusement device shall not be designed or adapted to cause or to enable a person to cause the release of free games or portions of games when designated as a potential award for use of the device, and shall not contain any meter or other measurement device for recording the number of free games or portions of games which are awarded.

5. An amusement device shall not be designed or adapted to enable a person using the device to increase the chances of winning free games or portions of games by paying more than is ordinarily required to play the game.

6. An award given for the use of an amusement device shall only be redeemed on the premises where the device is located and only for merchandise sold in the normal course of business for the premises.

7. The department may determine any other requirements by rule. Rules adopted pursuant to this section shall be formulated in consultation with affected state agencies and industry and consumer groups.

The relevant portion of Iowa Code § 99B.53 provides:

**99B.53 Electrical or mechanical amusement devices — registration required.**

1. In addition to the requirements of section 99B.52, an electrical or mechanical amusement device in operation or distributed in this state that awards a prize where the outcome is not primarily determined by skill or knowledge of the operator shall be registered by the department as provided in this section.

Pursuant to Iowa Admin. Code r. 481-104.1, a “prize” is “a ticket(s) or token(s) that is dispensed by an amusement device as an award for use and that is worth up to \$50 in merchandise.”

Iowa Code § 725.9 defines a “gambling device” as:

a device used or adapted or designed to be used for gambling and includes, but is not limited to, roulette wheels, klondike tables, punchboards, faro layouts, keno layouts, numbers tickets, slot machines, pachislo skill-stop machine or any other similar machine or device, push cards, jar tickets and pull-tabs. However, “gambling device” does not include an antique slot machine, or any device regularly manufactured and offered for sale and sold as a toy, except that any use of such a toy or antique slot machine for gambling purposes constitutes unlawful gambling.

A device is not a gambling device under Iowa law if such device complies with Iowa Code § 99B.52. *See, e.g., H & Z Vending v. Iowa Dep't of Inspections & Appeals*, 511 N.W.2d 397 (1994); *see also*, Iowa Code § 99B.52(1).

### **III. GAMES AND PLAY**

The following three game themes are accessible on a Big Daddy's Nudge Skill Plus system:

1. Reef Reels
2. Duck Empire
3. Bier Frau

The following three game themes are accessible on a Spooky Nudge Skill Plus system:

1. Spooky Cash
2. Spooky Spin2 (the final "S" being a Latin minuscule)
3. Spooky 2

A game play on any Skill Plus device begins with a player selecting, through the use of the user interface, first an available game theme and then a credit play level. A player may select a different credit play level at any time prior to initiating a play of a game. All game themes have the same available credit play levels, ranging from 25 credits to 500 credits. The Skill Plus devices permit a player to insert money into a bill acceptor located on the front of the game terminal. The bill acceptor accepts U.S. dollar bills of varying denominations. When bills are inserted into the bill acceptor, credits are allotted for play of the game, where one hundred credits are allotted for every dollar inserted.

However, prior to depositing any money into a Skill Plus device, a player has the ability to view image orientations that will conditionally assign a particular number of credits (one and up) to the player if the player successfully organizes images in respective orientations. This feature is known as a "Reveal" feature, which is activated by the user through the user interface. The Reveal feature will display a randomly selected number of credits to be assigned on the next

play in the particular game theme and at the particular credit play level. A player may change the credit play level and/or game theme and re-execute the Reveal to see what the next credit assignments will be for the respective credit play level and game theme. A credit assignment that may correspond to a row of images provided in the puzzle solution table or a single image. Accordingly, prior to depositing money into a Skill Plus device, a player is completely informed as to the credit assignment that is possible (if images are aligned correctly) as a result of the very next game play with the selected game theme and selected credit play level. If the player does not activate the Reveal feature, then the player will not be informed as to the credit assignment for the next game play, and the player may play the game without knowing the conditional game play outcome in advance. If the Reveal informs the player that fewer credits will be assigned to the player on the next game play than would be required to play at the selected credit play level, and the player then inserts money to play after being so informed, then it is presumed that the player is engaging in game play for subjective entertainment value.

Once a player has a sufficient number of credits to engage in the game, the player can touch the "PLAY" image on the touch screen or press the tactile "PLAY" button on the cabinet's exterior to cause an initial arrangement of images on the screen. The primary game play of all game themes includes nine electronic images arranged in a 3x3 grid. When the "Play" button is pressed, the images are rearranged on the screen and come to a resting position. The player may then elect to rearrange a single column of images on the screen, by shifting the column up or down, thereby changing an image in the row of images displayed along the prize line.

At the end of a game play, after a player has rearranged a column of images, credits will be assigned to the player as a result of the images arranged along the prize line. If the player was successful in arranging images in a particular order, the number of credits assigned is the number

of credits that were or would have been displayed to the player had the player Revealed prior to the game play. After credit assignment, a player may elect to continue to play further game plays and may preview (Reveal) game play credit assignments on each subsequent game play, as described above.

After credits have been assigned, a player may elect to continue play or, alternatively, to exit the game theme. After exiting the game theme, the player may select a different game theme, or may elect to attempt to collect the credits that have been assigned to the player, for printing on a slip of paper. If the player elects to try to collect the assigned credits, a Skill Prize Wheel feature is presented to the player. The Skill Prize Wheel feature is a task that requires a player to stop an image of a spinning wheel on amounts that are displayed on the wheel for an opportunity to redeem their credits. As used herein, “redeem” does not indicate any sort of value. Redeem extends only to the skillful interaction of a player through the Skill Prize Wheel feature and printing of a number of credits on a slip of paper.

Only after a player has successfully navigated a Skill Plus game by solving image alignment puzzles and getting assigned credits is it possible for the player to attempt to receive a slip of paper with a printed number of credits on it.

#### **IV. QUESTIONS PRESENTED AND PROPOSED ANSWERS**

Petitioner respectfully requests that the Department answer the following questions and respectfully submits the following proposed answers:

1. Do the Skill Plus devices, per se, “award a prize” as that phrase is used in Iowa Code § 99B.53?

Proposed Answer: No. During use of the Skill Plus devices, a player accumulates, or is assigned, credits. The electronic assignment of credits for each game play is not an award of a prize, as that term is defined by the Rules, but rather is a representation of accumulated points. Assigned credits may be used by a player for additional amusement in continuing to play the game or the player may elect to try skillfully to “collect” credits through use of the Skill Prize Wheel Feature. The Skill Prize Wheel feature requires player hand-eye coordination and timing to redeem such credits as a number printed on a slip of paper. However, the slip of paper, in and of itself is not known to Petitioner to be worth anything, nor do the Skill Plus devices in any way assign any worth or value to the slip of paper, as it is merely an indication of credits assigned to and collected by a player through use of some level of skill.

2. Are the Skill Plus devices required to be registered pursuant to Iowa Code § 99B.53?

Proposed Answer: No. The Skill Plus devices are not required to be registered because (1) the Skill Plus devices do not award a prize (as described above); and/or (2) every outcome for every game play on a Skill Plus device is at least primarily determined by skill or knowledge of the user. See proposed answer to Question 1 for discussion related to no prize being awarded by the Skill Plus devices. Regarding skill, Iowa law requires registration of only electrical or mechanical amusement devices “where the *outcome* is not primarily determined by skill or knowledge of the operator[.]” Iowa Code § 99B.53(1) (emphasis added). Conversely, where the outcome *is* primarily determined by skill or knowledge of the operator, the device is not required to be registered. *See id.* Critically, Iowa law requires that operator skill or knowledge primarily determine only the outcome of a use of an electrical or mechanical amusement device. *Id.* Accordingly, operator skill or knowledge is not required to determine such things as the



geographic location of an amusement device, the cost or number of credits demanded by such device per play, the number or types of prizes, if awarded, the programming of such devices, the game setup presented for play, etc. The Skill Plus devices require that operator skill be utilized on every game play to assign, or prevent assignment of, credits to the player. That is, the number of credits assigned to a player on each and every play of a Skill Plus device is a choice (between at least two options) made by the player during play. Ultimately, after one or more game plays, a player must exercise skill to redeem assigned credits as a printed slip of paper. The Skill Prize Wheel feature requires player hand-eye coordination and timing to redeem such credits.

Furthermore, although skill or knowledge must primarily determine an outcome for certain amusement devices to fall outside of registration requirements, Iowa law does not require any minimum *level* of skill to be employed. That is, the difficulty of any task to be completed using skill or knowledge is not specified in the Code or Rules.

Because every electronic credit assignment through game play (outcome of game play) and every credit redemption on a slip of paper is determined exclusively by operator choice and skill, the outcome of the use of the Skill Plus devices is at least primarily determined by skill or knowledge of the operator.

3. Is it lawful for a person to own, possess, and offer for use at any location a Skill Plus device pursuant to Iowa Code § 99B.52?

Proposed Answer: Yes. As described below, the Skill Plus devices are not required to be registered pursuant to section 99B.53, so the Skill Plus devices are compliant with paragraph 1 of § 99B.52. The Skill Plus devices comply with paragraph 2 of § 99B.52 because they do not award any prize of merchandise. The Skill Plus devices do not award any prize of

cash, thereby complying with paragraph 3 of § 99B.52. The Skill Plus devices comply with paragraph 4 of § 99B.52 because they are not designed or adapted to cause or to enable a person to cause the release of free games or portions of games when designated as a potential award for use of the device, and they do not contain any meter or other measurement device for recording the number of free games or portions of games which are awarded. The Skill Plus devices are not designed or adapted to enable a person using the device to increase the chances of winning free games or portions of games by paying more than is ordinarily required to play the game, so they comply with paragraph 5 of § 99B.52. Finally, the Skill Plus devices do not give awards or dictate any awards to be given for the use of them. The requirements of paragraph 6 of § 99B.52 are met by the Skill Plus devices because the most that is provided by such devices is a slip of paper indicating the player's level of success at skillfully redeeming assigned credits. Skill Plus devices are not involved in any award redemption in exchange for such slip of paper on any premises.

4. Do the Skill Plus devices meet the definition of "Gambling device" under Iowa Code § 725.9?

Proposed Answer: No. The Skill Plus devices comply with Iowa Code § 99B.52 and are therefore not gambling devices.

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## **PRAYER FOR RELIEF**

To preserve Petitioner's property rights under U.S. and Iowa law, Petitioner respectfully requests that the Department:

1. Schedule a meeting between Petitioner, the Department, and any/all relevant parties to discuss the questions presented herein; and

2. Issue an Order declaring that:

a. Petitioner's Skill Plus devices do not, per se, "award a prize" as that phrase is used in Iowa Code § 99B.53 and, therefore, these devices are not required to be registered pursuant to that Section;

b. The outcome of each game play on Petitioner's Skill Plus devices is primarily determined by the skill or knowledge of the operator and, therefore, these devices are not required to be registered pursuant to Iowa Code section 99B.53;

c. Petitioner's Skill Plus devices are electrical and mechanical amusement devices that comply with the provisions set forth in Iowa Code section 99B.52, and it is therefore lawful for a person to own, possess, and offer for use at any location such devices; and

d. Petitioner's Skill Plus devices are not gambling devices under Iowa Code Section 725.9.

Petitioner is not currently a party to another proceeding involving the questions at issue and, to Petitioner's knowledge, these same questions, regarding the Skill Plus devices, have not been decided by, are not pending determination by, and are not under investigation by, any governmental entity.

Petitioner respectfully requests that all communications related to this petition be directed to the undersigned.

Respectfully submitted,

Date: 30 January 2017



SMITH KEANE LLP

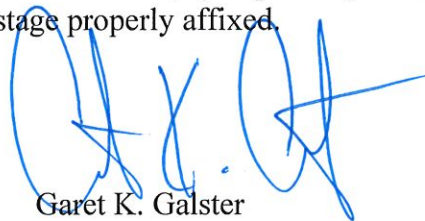
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Attorneys for Big Daddy Games, LLC

### **Certification of Mailing**

I certify under penalty of perjury and pursuant to the laws of Iowa that, on 30 January 2017, I mailed copies of the foregoing Petition for Declaratory Order by Big Daddy Games addressed to the Director's Office, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083, by depositing the same in a United States post office mailbox with correct postage properly affixed.

30 January 2017

A handwritten signature in blue ink, appearing to read 'G.K. Galster', is written over the printed name. The signature is stylized with large loops and a long horizontal stroke extending to the right.

Garet K. Galster

BEFORE THE DEPARTMENT OF INSPECTIONS AND APPEALS

PETITION BY  
BIG DADDY GAMES, LLC  
FOR A DECLARATORY ORDER ON  
IOWA CODE §§ 99B.52, 99B.53 &  
725.9



SUPPLEMENT TO  
PETITION FOR  
DECLARATORY ORDER

NOW COMES Petitioner, Big Daddy Games, LLC, by and through its undersigned counsel, and pursuant to Iowa Code § 17A.9 and 481 Iowa Administrative Code, Chapter 3, to hereby respectfully supplement its petition for declaratory order, filed on 30 January 2017 (the “Jan 30 Petition”) as follows:

I. RELEVANT FACTS

Please add the following relevant facts to the Jan 30 Petition:

21. Based upon NFA’s review, NFA issued the following two reports, submitted herewith and which are incorporated herein by reference:

a. Report on the review and analysis of the *Spooky Nudge Skill Plus System version 16.0.0.0* developed by Big Daddy Games, LLC; and

b. Report on the review and analysis of the *Big Daddy’s Nudge Skill Plus System version 16.0.0.0* developed by Big Daddy Games, LLC.

22. In each of the above-named reports, NFA concluded that the outcome of each and every game play of a Skill Plus system is primarily determined by the skill or knowledge of the player. NFA determined that “[e]ach of the game themes . . . requires the patron to . . . align a winning image or combination of images on the prize line before any credits are earned for normal game play.” A ticket with a number of points or credits printed on it may be received

only after a patron interacts with a Skill Prize Wheel feature. As stated by NFA, “[t]he Skill Prize Wheel feature requires the patron to stop a spinning wheel on credit amounts that are displayed on the wheel for an opportunity to redeem their credits” on a printed ticket.

Respectfully submitted,

Date: 1 February 2017



SMITH KEANE LLP

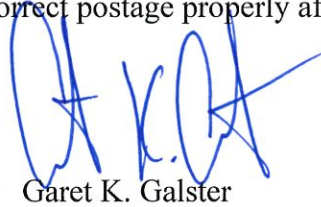
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Attorneys for Big Daddy Games, LLC

### **Certification of Mailing**

I certify under penalty of perjury and pursuant to the laws of Iowa that, on 1 February 2017, I mailed copies of the foregoing Supplement to Petition for Declaratory Order by Big Daddy Games addressed to the Director's Office, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, IA 50319-0083, by depositing the same in a United States post office mailbox with correct postage properly affixed.

1 February 2017



Garet K. Galster