

State of South Carolina )  
County of Greenville )  
STATE OF SOUTH CAROLINA )  
v. )  
PLAY 4 FUN, INC. (Sweepstakes )  
Terminal No. 0399) )

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IN THE MAGISTRATE'S COURT

ORDER

**BACKGROUND**

This machine was seized pursuant to S.C. Code Section 12-21-2712 and brought before this Court for a determination of whether it violates Section 12-21-2710 or any other law of the State. A hearing was held on March 30, 2011 and the parties submitted written submissions and exhibits.

Play 4 Fun, Inc. is the owner of the sweepstakes terminal no. 0399. Play 4 Fun placed the terminal in a retail establishment in Greenville County, SC for the purpose of conducting a sweepstakes promotion with Products Direct, LLC. Products Direct sells a variety of consumer products via its website at [www.redeemsite.com](http://www.redeemsite.com). In order to jump start sales and increase awareness of its website, Products Direct is running a sweepstakes promotion involving the sale of discount coupons. The sweepstakes promotion uses a video terminal that dispenses the coupons and contains the sweepstakes games. The sweepstakes promotion operates as follows:

- a. The sweepstakes terminal describes the promotion and the sweepstakes rules on the screen.
- b. The customer walks up to the terminal, which is located in an establishment that has a beer or wine permit, and inserts paper money into the bill acceptor.
- c. The terminal prints out a discount coupon that is worth twice the value of the amount of money inserted into the terminal subject to a cap of 30% off of the consumer product(s) to be purchased from Products Direct.
- d. The customer can go online and redeem the coupon at [www.redeemsite.com](http://www.redeemsite.com) in connection with the purchase of consumer product(s) offered by Products Direct.
- e. In connection with the purchase of the discount coupon, the customer receives free entries into the sweepstakes. The customer can play one of eight games to reveal whether he has won anything or he can instantly find out by selecting the "Reveal Instant Winners" button. Thus, the customer is not required to play the games to see if he has won.

- f. Instead of purchasing a discount coupon, a customer can enter the sweepstakes without a purchase. A customer can follow the instructions on the terminal screen (or the posted written rules) and write in for a free entry code. Upon receipt of the free entry code, the customer may return to that terminal and enter the code. Upon entering the code, the customer receives 100 free entries to play the sweepstakes.
- g. The games contained in the terminal include poker, keno, and bingo.
- h. If a customer wins cash in the sweepstakes, he may receive that cash from the store clerk.
- i. The terminal will not permit the customer to replay his winnings (i.e., there is no "free play feature"). The only way to obtain additional entries is to purchase additional discount coupons.

In 1999, the South Carolina legislature implemented a ban on video gambling devices and authorized the seizure of certain categories of machines. The crux of the ban is contained in Section 12-21-2710 of the South Carolina tax code and reads as follows:

SECTION 12-21-2710. Types of machines and devices prohibited by law; penalties.

It is unlawful for any person to keep on his premises or operate or permit to be kept on his premises or operated within this State any vending or slot machine, or any video game machine with a free play feature operated by a slot in which is deposited a coin or thing of value, or other device operated by a slot in which is deposited a coin or thing of value for the play of poker, blackjack, keno, lotto, bingo, or craps, or any machine or device licensed pursuant to Section 12-21-2720 and used for gambling or any punch board, pull board, or other device pertaining to games of chance of whatever name or kind, including those machines, boards, or other devices that display different pictures, words, or symbols, at different plays or different numbers, whether in words or figures or, which deposit tokens or coins at regular intervals or in varying numbers to the player or in the machine, but the provisions of this section do not extend to coin-operated nonpayout pin tables, in-line pin games, or to automatic weighing, measuring, musical, and vending machines which are constructed as to give a certain uniform and fair return in value for each coin deposited and in which there is no element of chance.

Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for a period of not more than one year, or both.

Since the games contained in the sweepstakes terminal are games of chance, Section 12-21-2710 would likely prohibit those games absent an exception. Play 4 Fun / Products Direct argue that there is an exception to Section 12-21-2710 that is found in S.C. Code Section 61-4-580(3). That section reads in part as follows:

SECTION 61-4-580. Prohibited acts.

No holder of a permit authorizing the sale of beer or wine or a servant, agent, or employee of the permittee may knowingly commit any of the following acts upon the licensed premises covered by the holder's permit:

□

(3) permit gambling or games of chance **except** game promotions including contests, games of chance, or sweepstakes in which the elements of chance and prize are present and which comply with the following:

(a) the game promotion is conducted or offered in connection with the sale, promotion, or advertisement of a consumer product or service, or to enhance the brand or image of a supplier of consumer products or services;

(b) no purchase payment, entry fee, or proof of purchase is required as a condition of entering the game promotion or receiving a prize; and

(c) all materials advertising the game promotion clearly disclose that no purchase or payment is necessary to enter and provide details on the free method of participation.

(underline and bold added).

4) permit lewd, immoral, or improper entertainment, conduct, or practices. This includes, but is not limited to, entertainment, conduct, or practices where a person is in a state of undress so as to expose the human male or female genitals, pubic area, or buttocks cavity with less than a full opaque covering;

(5) permit any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of this State; or

(6) sell, offer for sale, or possess any beverage or alcoholic liquors the sale or possession of which is prohibited on the licensed premises under the law of this State; or

(7) conduct, operate, organize, promote, advertise, run, or participate in a "drinking contest" or "drinking game". For purposes of this item, "drinking contest" or "drinking game" includes, but is not limited to, a contest, game, event, or other endeavor which encourages or promotes the consumption of beer or wine by participants at extraordinary speed or in increased quantities or in more potent form. "Drinking contest" or "drinking game" does not include a contest, game, event, or endeavor in which beer or wine is not used or consumed by participants as part of the contest, game, event, or endeavor, but instead is used solely as a reward or prize. Selling beer or wine in the regular course of business is not considered a violation of this section.

A violation of any provision of this section is a ground for the revocation or suspension of the holder's permit.

The State argues that Section 61-4-580(3) does not provide an exception and that Sections 12-21-2710 and 61-4-580(5) authorize the State to seize and destroy the terminal.

### FINDINGS OF FACT

I find that the Play 4 Fun / Products Direct Sweepstakes promotion and the specific terminal used in the promotion comply with the requirements of Section 61-4-580(3) for the following reasons:

1. The location at which the seized sweepstakes terminal was placed has a permit authorizing the sale of beer or wine.
2. The promotion is conducted or offered in connection with the sale of discount coupons for the purchase of consumer products and to enhance the brand or image of Products Direct.
3. No purchase payment, entry fee, or proof of purchase is required as a condition of entering the game promotion or receiving a prize. As set forth in the sweepstakes rules which are on the terminal screen and in writing posted on the terminal, a customer may enter the sweepstakes without a purchase by sending a written request to Products Direct at the mailing address provided for free entries.
4. All materials advertising the Products Direct promotion clearly disclose that no purchase or payment is necessary to enter and provide details about the free method of participation.

#### FINDINGS OF LAW

The Court holds that Section 61-4-580(3) is an exception to 12-21-2710. The Court also holds that the operation of this particular sweepstakes promotion under the particular circumstances described above is legal under South Carolina law:

1. It is well settled that statutes dealing with the same subject matter must be construed together and if possible produce harmonious result. Joiner ex rel. Rivas v. Rivas. Reading both statutes side by side leads me to the conclusion that 61-4-580(3) is an exception to 12-21-2710.
2. In Denman v. Columbia, the S.C. Supreme Court said that a more specific statute like 61-4-580(3) should be considered an exception to a more general statute like 12-21-2710.
3. Section 61-4-580(3) became law in 1999. Section 12-21-2710 became law in 2000. This later statute does not contain a direct reference to the earlier one. There is nothing to suggest that the later statute repealed the earlier one.
4. In the Sun Light Prepaid Phonecard Co. case, Justice Pleicones, in his dissenting opinion, specifically referred to Section 61-4-580(3) as an "exception" to Section 12-21-2710. Justice Pieper, in his dissenting opinion, agreed with Justice Pleicones' interpretation of the two statutes. The majority opinion did not specifically refer to 61-4-580(3) as an

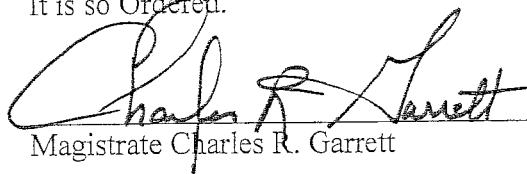
“exception”, but it did so by implication by finding that this code section did not apply to the facts of the case on appeal. Later in 2010, the S.C. Supreme Court in Ward v. West Oil Co. discussed the Sun Light case and stated that the “...phone cards were not exempt under section 61-4-580 of the South Carolina Code.” (underline added). It did not say that subsection (3) was not an exception.

5. Finally, based upon the exhibits provided by Play 4 Fun from the Products Direct website, it appears that the purchaser of the discount coupon receives real value for it. For example, if a customer inserts a \$10.00 bill, the customer receives a discount coupon worth \$20.00 which can be used toward the purchase of an item sold on [www.redeemsite.com](http://www.redeemsite.com).

Conclusion: The Court finds that (i) all of the requirements of Section 61-4-580(3) have been met in this case, and (ii) the operation of this one specific sweepstakes promotion, under the limited circumstances described above, is legal under South Carolina law. Thus, seizure and destruction of this terminal is not authorized.

This decision is not an endorsement of video poker. This decision should not be interpreted as allowing games of chance to be played in general. This decision should not be interpreted as allowing sweepstakes rooms to operate, i.e. it does not allow sweepstakes promotions to operate as the primary business of an establishment. To the contrary, this decision is specifically limited to the operations of the particular sweepstakes terminal in question in conjunction with Play 4 Fun / Products Direct.

It is so Ordered.

  
Magistrate Charles R. Garrett

April 7, 2011