

**STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

IN RE: PETITION FOR DECLARATORY
STATEMENT

CASE NO.: 1011-44182
AGENCY CLERK NO.: A70878

CALDER RACE COURSE, INC.
TROPICAL PARK, INC.,

Petitioners,

DECLARATORY STATEMENT

THIS CAUSE came before the Commissioner of Agriculture, Department of Agriculture and Consumer Services, on November 16, 2010, pursuant to s. 120.565, Florida Statutes, for consideration of the referenced Petition for Declaratory Statement. The Notice of Petition was published on December 3, 2010, in the Florida Administrative Weekly, Vol. 36, No. 48.

The petition requested a determination that the provisions of s. 849.094, Florida Statutes, do not apply to the marketing promotions offered by Petitioners in the conduct of their pari-mutuel wagering operations.

FINDINGS OF FACT

1. Calder Race Course, Inc. and Tropical Park, Inc. ("Petitioners") are pari-mutuel wagering facilities licensed by the Florida Department of Business and Professional Regulation.
2. According to Exhibit B attached to the petition, Petitioners conduct marketing promotions which offer a free entry to any patron who signs up for a Player's card, or a TwinSpires Club card, or who patronizes the facilities during Thoroughbred racing season, including the Card Rooms or Slot Machines. Entries are also awarded on amount of pari-mutuel, slot machine, or card room play.

3. Petitioners' marketing promotions give away (a) cars, trucks, boats, motorcycles and jet skis; (b) home makeovers, food purchases, mortgage payments, and other similar prizes; (c) vacations, cruises, travel gift certificates and packages, and other similar prizes; (d) tickets to major sporting events such as the Kentucky Derby and the Super Bowl; (e) hunting and fishing trips and tournaments, and other similar activities, and (f) private club memberships, celebrity dinners, and similar promotions.

4. Cash prizes given away pursuant to Petitioners' marketing promotions range from \$5,000 to \$25,000, although it is anticipated that larger cash amounts will be given away in future promotions.

CONCLUSIONS OF LAW

5. The Department has authority to issue a Declaratory Statement in this matter pursuant to s. 120.565, Florida Statutes, and Florida Administrative Code Chapter 28-105.

6. The petition filed in this cause is in substantial compliance with the provisions of s. 120.565, Florida Statutes and Florida Administrative Code Rule 28-105.002.

7. Petitioners seek the Department's opinion as to whether s. 849.094, Florida Statutes, applies to Petitioners' marketing activities.

8. Section 849.094, Florida Statutes, regulates the operation of game promotions in the State of Florida. Section 849.094(1)(a) defines a "game promotion" as follows: "Game Promotion" means, but is not limited to, a contest, game of chance, or gift enterprise, conducted within or throughout the state and other states in connection with the sale of consumer products or services, and in which the elements of chance and prize are present."

9. The term "consumer products or services" is not defined by statute, however the term has been subject to judicial interpretation in Beasley Broadcasting, Inc. v. State, 693 So. 2d

668 (Fla. 2nd DCA 1977), wherein the court stated, "...Most definitions of consumer products or consumer services, however, limit this concept to property or services which are normally used for personal, family, or household purposes."

10. Section 849.094(10), Florida Statutes, specifically excludes "actions or transactions regulated by the Department of Business and Professional Regulation..."

11. The activities specifically outlined by Petitioners in the petition do not appear to meet the definition of a game promotion as defined in s. 849.094, Florida Statutes. Petitioners are not in the business of selling consumer products and services to the general public, and their marketing activities are restricted to patrons of their pari-mutuel facilities. Therefore, Petitioners' activities as stated in the petition would not come within the provisions of s. 849.094, Florida Statutes.

12. This Declaratory Statement answers only the question posed. The conclusion by the Department that the activities outlined in the petition do not fall within s. 849.094, Florida Statutes is not a comment on additional activities by the Petitioners which were not included in the petition.

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to Section 120.68, Florida Statutes, and Florida Rule of Appellate Procedure 9.110. Review proceedings must be instituted by filing a Petition or Notice of Appeal with the Clerk, Room 509 Mayo Building, Tallahassee, Florida 32399-0800, and a copy of the same with the appropriate District Court of Appeal within thirty (30) days of rendition of this Declaratory Statement.


DONE AND ORDERED this 21st day of December, 2010.

**CHARLES H. BRONSON
COMMISSIONER OF AGRICULTURE**



**JAY LEVENSTEIN
ACTING ASSISTANT COMMISSIONER**

Filed with the Clerk, this 21st day of December, 2010.



Agency Clerk

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