



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF ECONOMIC JUSTICE
INTERNET BUREAU

November 10, 2015

**NOTICE TO CEASE AND DESIST AND
NOTICE OF PROPOSED LITIGATION PURSUANT TO
NEW YORK EXECUTIVE LAW § 63(12) AND GENERAL BUSINESS LAW § 349**

BY CERTIFIED AND EXPRESS MAIL

Mr. Nigel Eccles
Chief Executive Officer
FanDuel Inc.
19 Union Square West, 9th Floor
New York, NY 10003

Dear Mr. Eccles:

This letter constitutes a demand that FanDuel, Inc. ("FanDuel") cease and desist from illegally accepting wagers in New York State in connection with "Daily Fantasy Sports."

As you know, on October 6, 2015, the Office of the New York State Attorney General ("NYAG") commenced an investigation of FanDuel. Although this inquiry initially centered on allegations of employee misconduct and unfair use of proprietary information, FanDuel's operations and business model – known colloquially as Daily Fantasy Sports ("DFS") – necessarily came under review.

Our review concludes that FanDuel's operations constitute illegal gambling under New York law, according to which, "a person engages in gambling when he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence." FanDuel's customers are clearly placing bets on events outside of their control or influence, specifically on the real-game performance of professional athletes. Further, each FanDuel wager represents a wager on a "contest of chance" where winning or losing depends on numerous elements of chance to a "material degree."

FanDuel DFS contests are neither harmless nor victimless. Daily Fantasy Sports are creating the same public health and economic concerns as other forms of gambling, including addiction. Finally, FanDuel's advertisements seriously mislead New York citizens about their prospects of winning.

We believe there is a critical distinction between DFS and *traditional* fantasy sports, which, since their rise to popularity in the 1980s, have been enjoyed and legally played by millions of New York residents. Typically, participants in traditional fantasy sports conduct a competitive draft, compete over the course of a long season, and repeatedly adjust their teams. They play for bragging rights or side wagers, and the Internet sites that host traditional fantasy sports receive most of their revenue from administrative fees and advertising, rather than profiting principally from gambling. For those reasons among others, the legality of traditional fantasy sports has never been seriously questioned in New York.

Unlike traditional fantasy sports, the sites hosting DFS are in active and full control of the wagering: FanDuel and similar sites set the prizes, control relevant variables (such as athlete “salaries”), and profit directly from the wagering. FanDuel has clear knowledge and ongoing active supervision of the DFS wagering it offers. Moreover, unlike traditional fantasy sports, DFS is designed for instant gratification, stressing easy game play and no long-term strategy. For these and other reasons, DFS functions in significantly different ways from sites that host traditional fantasy sports.

Further, FanDuel has promoted, and continues to promote DFS like a lottery, representing the game to New Yorkers as a path to easy riches that anyone can win. The FanDuel ads promise: “anybody can play, anybody can succeed”; “Play for real money with immediate cash payouts ... the money is real!” and similar enticements. Like most gambling operations, FanDuel’s own numbers reveal a far different reality. In practice, DFS is far closer to poker in this respect: a small number of professional gamblers profit at the expense of casual players. To date, our investigation has shown that the top one percent of FanDuel’s winners receive the vast majority of the winnings.

Finally, during the course of our investigation, the New York Attorney General has been deeply concerned to learn from health and gambling experts that DFS appears to be creating the same public health and economic problems associated with gambling, particularly for populations prone to gambling addiction and individuals who are unprepared to sustain losses, lured by the promise of easy money. Certain structural aspects of DFS make it especially dangerous, including the quick rate of play, the large jackpots, and the false perception that it is eminently winnable. Ultimately, it is these types of harms that our Constitution and gambling laws were intended to prevent in New York.

The illegality of DFS is clear from any reasonable interpretation of our laws, beginning with the New York State Constitution. The Constitution prohibits gambling in all forms not specifically authorized:

[E]xcept as hereinafter provided, **no** lottery or the sale of lottery tickets, **pool-selling, book-making, or any other kind of gambling**, except lotteries operated by the state . . . , except pari-mutuel betting on horse races . . . , and except casino gambling at no more than seven facilities. . . **shall hereafter be authorized or allowed within this state; and the legislature shall pass appropriate laws to**

prevent offenses against any of the provisions of this section.

N.Y. Const. Art. I, § 9 (emphasis added).

To enforce this clause, the Legislature established a series of criminal offenses applying to businesses that promote gambling. *See, generally*, N.Y. Penal Law §§ 225.00-225.40. These provisions all apply the same statutory definition of gambling:

A person engages in gambling when he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome.

N.Y. Penal Law § 225.00(2). The penal law imposes no criminal liability on individual bettors, focusing instead on bookmakers and other operations that advance or profit from illegal gambling activity. *See, e.g.*, N.Y. Penal Law § 225.10 (Promoting Gambling in the first degree).

FanDuel wagers easily meet the definition of gambling. FanDuel bettors make bets (styled as “fees”) that necessarily depend on the real-world performance of athletes and on numerous elements of chance. The winning bettors receive large cash prizes – and the company takes a “rake” or a cut of from each wager.¹

Accordingly, we demand that FanDuel cease and desist from illegally accepting wagers in New York State as part of its DFS contests.

This letter also serves as formal pre-litigation notice pursuant to New York State General Business Law (“GBL”) §§ 349 and 350 and Executive Law § 63(12). These statutes direct the State to give notice prior to commencing a summary proceeding to enjoin repeated illegal and deceptive acts and practices, and to obtain additional injunctive relief, restitution, penalties, damages, and other relief that a court may deem just and proper.

The unlawful and illegal conduct under consideration by our Office includes, but is not limited to, the following:

- (a) Running a book-making or other kind of gambling business in violation of Article I, Section 9 of the New York State Constitution;
- (b) Knowingly advancing and profiting from unlawful gambling activity by receiving and accepting in any one day, more than five bets totaling more than five thousand dollars in violation of New York Penal Law § 225.10;
- (c) Knowingly advancing or profiting from unlawful gambling activity in violation of New York Penal Law § 225.05;

¹ Washington State, which has substantially the same statutory definition of gambling, has reached the same legal conclusions with respect to DFS.

- (d) With knowledge of the contents thereof, possessing any writing, paper, instrument or article of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise and constituting, reflecting or representing more than five bets totaling more than five thousand dollars in violation of New York Penal Law § 225.20;
- (e) With knowledge of the contents thereof, possessing any writing, paper, instrument or article of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise in violation of New York Penal Law § 225.15;
- (f) Misrepresenting that FanDuel complies with applicable laws; misrepresenting the likelihood that an ordinary player will win a jackpot; misrepresenting the degree of skill implicated in the games; and misrepresenting that FanDuel's games are not considered gambling, in violation of Executive Law § 63(12) and GBL §§ 349 and 350; and
- (g) Conducting or transacting its business in a persistently fraudulent and illegal manner in violation of BCL § 1303.

Pursuant to GBL §§ 349 and 350, FanDuel is afforded the opportunity to show orally or in writing to this Office, within five business days of receipt of this notice, why the Attorney General should not initiate any proceedings.

Sincerely,



Kathleen McGee
Chief, Internet Bureau

cc: Marc Zwillinger, Esq.