

STATE OF NORTH CAROLINA

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IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
HIGH POINT DIVISION
08 CVS 457

GUILFORD COUNTY

GUILFORD COUNTY, C.S.C.

HEST TECHNOLOGIES, INC. and
INTERNATIONAL INTERNET
TECHNOLOGIES, LLC,
Plaintiffs,

BY kk

vs.

STATE OF NORTH CAROLINA ex rel.
MICHAEL EASLEY, GOVERNOR, in his
official capacity; NORTH CAROLINA
DEPARTMENT OF CRIME CONTROL
AND PUBLIC SAFETY; SECRETARY OF
CRIME CONTROL AND PUBLIC SAFETY
BRYAN E. BEATTY, in his official capacity;
ALCOHOL LAW ENFORCEMENT
DIVISION; DIRECTOR OF ALCOHOL
LAW ENFORCEMENT DIVISION DR.
WILLIAM CHANDLER, in his official
capacity.

PRELIMINARY INJUNCTION

Defendants.

This cause came on for hearing before the undersigned on the motion of Plaintiff's Hest Technologies, Inc. ("Hest Technologies") pursuant to N.C. Gen. Stat. § 1-485 and Rule 65 of the North Carolina Rules of Civil Procedure, and the Court having held two hearings relating to this action and having considered the evidence previously presented and this motion, the Court enters the following additional and supplemental FINDINGS OF FACT and CONCLUSIONS OF LAW, and the Court incorporates by reference all prior FINDINGS OF FACT and CONCLUSIONS OF LAW made by the Court in this matter not inconsistent with those matters set forth below:

FINDINGS OF FACT

1. Hest Technologies markets and sells prepaid products, primarily long-distance telephone and/or high-speed internet service. Hest Technologies' products have substantial inherent value and such products are priced commensurate with their fair market value for the products being sold.
2. In connection with the marketing of its products, Hest Technologies has developed a sweepstakes system which it refers to as the *Prepaid Planet Sweepstakes Management System* (hereinafter the "Hest System").
3. The Hest System does not simulate games ordinarily played on a slot machine regulated by G.S. 14-306 or a video gaming machine regulated under G.S. 14-306.1A.
4. The Hest System does not use a database that contains a pool of sweepstakes entries with each entry associated with a prize value. Rather, all pools of entries will contain entries that are not associated with a prize or anything of value.
5. The Hest System does not allow entries to be revealed at a point of sale terminal at the time of purchase or later.
6. The Hest System does not violate N.C. Gen. Stat. § 14-306.3, nor could any law enforcement official reasonably believe otherwise, as the Hest System does not simulate a game ordinarily played on a slot machine regulated under G.S. 14-306 or a video gaming machine regulated under G.S. 14-306.1A. Moreover, the Hest System does not use a database that contains a pool of sweepstakes entries with each entry associated with a prize value. Rather, all pools of entries will contain entries that are not associated with a prize or anything of value. In addition, the Hest System does not allow entries to be revealed at a point of sale terminal at the time of purchase or later.

7. Notwithstanding the foregoing, since December 1, 2008 several establishments that operate Hest Systems in Hoke and Montgomery Counties have been subject to enforcement efforts, including issuance and prosecution of criminal charges and seizure of equipment. Such enforcement efforts have been taken on behalf of the State of North Carolina.

8. Hest Technologies would suffer irreparable harm if the Court did not enjoin such enforcement efforts. Consistent with the Court's prior findings, the Court finds that the amount of lost revenue and the costs of reestablishing relationships with retail facilities in the State still would be incalculable. Also, regardless of the amount of damages assumed to be correct, Defendants most likely would not be subject to liability for Hest Technologies' losses based on a sovereign immunity defense. Consequently, absent an order of this Court enjoining Defendants, no adequate remedy at law by way of an award of monetary damages was available for the prevention of significant harm to Hest Technologies.

CONCLUSIONS OF LAW

Based on the forgoing FINDINGS OF FACTS, the Court makes the following

Conclusions of Law:

1. The Court concludes that Hest Technologies is likely to succeed on the merits of its claim seeking declaratory relief.
2. The Court also concludes that Hest Technologies is likely to succeed on its claim seeking a declaration that the simulated game terminals do not constitute illegal slot or video gaming machines.
3. The Hest System does not violate N.C. Gen. Stat. § 14-306.3 as it does not simulate a game ordinarily played on a slot machine regulated under G.S. 14-306 or a video gaming machine regulated under G.S. 14-306.1A. Moreover, the Hest System does not use a

database that contains a pool of sweepstakes entries with each entry associated with a prize value. Rather, all pools of entries will contain entries that are not associated with a prize or anything of value. In addition, the Hest System does not allow entries to be revealed at a point of sale terminal at the time of purchase or later.

4. The Court concludes that Hest Technologies will suffer irreparable harm by virtue of Defendants' action if such actions are not enjoined. The Court concludes that the amount of lost revenue and the costs of reestablishing relationships with retail facilities in the State would be incalculable. Also, even if the amount of damages could be calculated, the Court concludes that State most likely would not be subject to liability for Hest Technologies' losses based on a sovereign immunity defense. Consequently, the Court concludes that, absent an order of this Court enjoining the actions of the Defendants, Hest Technologies would have no adequate remedy at law by way of monetary damages to compensate Hest Technologies for the significant harm caused by Defendants' conduct if not enjoined.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants, their agents and representatives and all persons acting in concert with or on behalf of them, including any law enforcement or prosecutorial authority acting on behalf of the State of North Carolina, are enjoined from:

1. Compelling or attempting to compel, coerce or persuade any retail establishment in North Carolina to remove Hest Technologies' products and equipment associated with Hest Technologies' sweepstakes systems or to refrain from selling or operating them on the basis that such systems allegedly violate N.C. Gen. Stat. § 14-306.3;

2. Warning or threatening any retail establishment or other alcoholic beverage licensee in North Carolina that it may be subject to criminal or administrative sanctions, such as

the loss or suspension of an alcoholic beverage sales license, if it continues to display or sell Hest Technologies' products or operate equipment associated with Hest Technologies' sweepstakes on the basis that Hest Technologies' systems allegedly violate N.C. Gen. Stat. § 14-306.3;

3. Citing or maintaining the prosecution of any retail establishment or other alcoholic beverage licensee, or their agents or employees, for criminal or administrative offenses or violations, or initiating any action to seize equipment or property or suspend or revoke alcoholic beverage licenses by reason of such establishment's display or sale of Hest Technologies' products or operation of equipment associated with Hest Technologies' sweepstakes on the basis that Hest Technologies' systems allegedly violate N.C. Gen. Stat. § 14-306.3;

4. Making or issuing any statement outside of the proceedings in this case alleging or contending that Hest Technologies' products and equipment associated with Hest Technologies' sweepstakes systems constitute an illegal gambling arrangement, lottery, game of chance, slot machine or unlawful device on the basis that Hest Technologies' systems allegedly violate N.C. Gen. Stat. § 14-306.3; and

5. Plaintiffs shall be entitled to the return of any and all property or equipment that has been seized, with the exception that if a District Attorney for any County in which charges were pending prior to the entry of this Court's order wishes, such District Attorney may retain an exemplar of the seized equipment for purposes of forensic testing if and when the prosecution of such charges are permitted at the conclusion of this litigation.

IT IS FURTHER ORDERED THAT the protections afforded herein do not apply to the operation or possession of any game terminal with a display that simulates:

- I) A video poker game or any other kind of video playing card game,

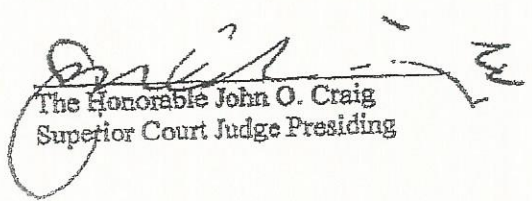
- (2) A video bingo game,
- (3) A video craps game,
- (4) A video keno game,
- (5) A video lotto game,
- (6) Eight liner,
- (7) Pot-of-gold,
- (8) A video game based on or involving the random or chance matching of different pictures, words, numbers, or symbols not dependent on the skill or dexterity of the player, or
- (9) A game ordinarily played on a slot machine regulated under N.C.G.S. 14-306.

IT IS FURTHER ORDERED THAT the relief provided herein is in addition and not in lieu of the prior injunctive relief provided by the Court.

IT IS FURTHER ORDERED THAT the bond previously posted by Hest Technologies shall remain in place and shall be sufficient for security for the injunctive relief provided herein.

SO ORDERED.

This the 30th day of December, 2008.


The Honorable John O. Craig
Superior Court Judge Presiding