

STATE OF NORTH CAROLINA
WAKE COUNTY

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
2009 JUL -2 FILE NO. 09 CVS 5719
WAKE COUNTY, C.S.C.

SANDHILL AMUSEMENTS, et al
Plaintiffs

BY _____

ORDER FOR
PRELIMINARY INJUNCTION

vs.

STATE OF NORTH CAROLINA;
GOVERNOR BEVERLY PERDUE, in her
official capacity; NORTH CAROLINA
DEPARTMENT OF CRIME CONTROL
AND PUBLIC SAFETY; BRYAN E.
BEATTY, in his official capacity;
ALCOHOL LAW ENFORCEMENT
DIVISION; DIRECTOR OF ALCOHOL
ENFORCEMENT DIVISION WILLIAM
CHANDLER, in his official capacity.
Defendants.

THIS CAUSE coming on for hearing during the June 8, 2009 Civil Superior Session in Wake County before the undersigned Superior Court Judge presiding on Plaintiffs' Motion for Preliminary Injunction against the Defendants and the Court having examined the pleadings and other testimony and documentary evidence, and having heard oral arguments by Counsel, the court determines:

I. Findings of Fact. For the purposes of this hearing, the Plaintiffs have made a preliminary showing as follows:

1. The named Plaintiffs are distributors of a product the purpose of which is to allow a consumer to purchase time on a telephone (telephone time) in the State of North Carolina.
2. The Plaintiffs' telephone time is marketed through agreements with retail outlets in North Carolina.

3. Plaintiffs market their product using a sweepstakes system. The sweepstakes system is solely used for the purpose of marketing and promoting the sale of telephone time.

4. The sweepstakes system is not a server-based electronic game promotion.

5. The telephone time sales unit consists of two metal boxes that are bolted together. The customer does not and cannot insert any piece of money, coin, card or other object into either of the boxes. The black box is not connected to the terminal where the sweepstake results are revealed.

6. A customer who wants to play the sweepstakes game, indicates that to the employee/operator of the retail establishment who then activates the sweepstakes terminal.

7. Different games can be played on the terminals to include card games such as pot of gold types as well as keno and 8 liner games.

8. The simulated game terminal is not and cannot be operated by the insertion of any piece of money, coin or other object.

9. An individual can enter the promotional game without purchasing the phone time by mailing off a form provided by the Plaintiffs, requesting a "free-play". This information should be clearly posted along with the game rules at each location.

10. State and local law enforcement officials have and continue to take the position that the Plaintiffs' promotion system violates North Carolina laws (specifically N.C.G.S. 14-306 et. Seq) which prohibits the use of certain video gaming machines. This action is having a chilling effect on the ability of the Plaintiffs to sell and operate their telephone

time using the promotional system in retail establishments in North Carolina and to generate revenue from the operation thereof.

11. Plaintiffs contend that the promotional system is lawful in all respects.

12. Plaintiffs will suffer irreparable harm if a preliminary injunction is not entered, in that Plaintiffs' damages are not subject to calculation because no adequate remedy at law exists for Plaintiffs given the doctrine of sovereign immunity.

CONCLUSIONS OF LAW

1. Plaintiffs have satisfactorily demonstrated that if a preliminary injunction is not entered as to Plaintiffs' promotional and marketing system, Plaintiffs will suffer irreparable harm;

2. Plaintiffs have shown the likelihood of success on the merits of these claims at the trial of this matter; and

3. Given that the Defendants are governmental entities there is no need for the posting of more than a *de minimus* bond.

WHEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. The Defendants shall be restrained from taking any administrative or other enforcement action against Plaintiffs or other third parties for the possession, use or operation of the promotional and marketing system as described in the Amended Complaint.

2. The service of this Order on the North Carolina Attorney General and/or Hal F. Askins, Special Deputy Attorney General, State of North Carolina Department of Justice, Post Office Box 629, Raleigh, NC 27602 shall constitute service upon all the

Defendants as prescribed by Rule 4 of the NC Rules of Civil Procedure; and

3. The parties agree that:

a) Each retail outlet shall have no more than four sweepstakes machines in the outlet.


b) Each retail outlet shall prominently post the rules of the sweepstakes promotion.

c) Each retail outlet shall have available and prominently displayed "free play" applications.

d) No retail outlet may utilize any sweepstakes game without an accompanying sale of a legitimate telephone time ticket or a free play coupon.

4. As security for the granting of this Preliminary Injunction, Plaintiffs shall post a bond with the Clerk of Court in the amount of one hundred dollars (\$100.00).

EXECUTED AND ENTERED this 26th day of June, 2009.


THE HON. PAUL C. RIDGEWAY