



## Social Casino Sweepstakes Model is Under Fire – What Game Companies, Payment Processors and App Stores Need to Know

By: James Gatto and Brittany Walter

Social casino games remain incredibly popular and profitable. This success has drawn attacks from plaintiffs' class action lawyers in the form of gambling loss recovery lawsuits and other consumer-based actions. Some have been successful, mostly in Washington state, netting plaintiffs hundreds of millions of dollars. This has created an incentive for more lawsuits. Some social casino game companies have evolved their business model to include a dual currency, sweepstakes model. This model has also drawn a substantial number of lawsuits and a call to action by the American Gaming Association (AGA). Last August, the AGA published a position paper imploring gaming regulators and state Attorneys General to investigate companies or platforms that offer games under the "sweepstakes" model to determine whether or not these operators are in compliance with their respective laws and regulations, and to take appropriate action if not. Some regulators have responded by initiating actions against both the game companies and payment processors. Numerous private lawsuits have also been filed against game companies, and some have even included payment processors and app stores. In response, some social casino game operators have ceased operations in certain states. As many legal misconceptions exist with this model, game companies, payment processors and app store operators need to understand the evolving legal risks associated with this social casino sweepstakes model, and the steps they can take to mitigate such risks. This paper addresses those issues.

### The Sweepstakes Model

The facts of each offering may vary, but the sweepstakes model typically includes two types of virtual currencies: i) "Gold Coins" which are used for free-to-play games and cannot be redeemed for cash; and ii) "Sweeps Coins" (or Sweepstakes Coins) which can be acquired as a reward for purchases of Gold Coins, via promotions, or as bonuses, and can potentially be redeemed for cash or prizes.

The legal theory is two-fold. First, because the Gold Coins cannot be cashed out, they are not a "thing of value" so playing winning them is not gambling as they are not a prize. Second, the Sweeps Coins cannot be purchased, so using them to enter sweepstakes involves no risk of loss and thus also is not gambling as there is no consideration. To the extent the Sweep Coins are obtained as a reward for buying Gold Coins, the game operator typically offers an alternative means of entry (AMOE) by writing in or otherwise requesting free Sweep Coins without the need to purchase Gold Coins. This is intended to align with the "no purchase necessary" requirement for most sweepstakes.

It is a creative model and seems to thread the needle on the legal issues. However, not everyone agrees.

## The AGA Paper

Last August, the AGA published a position paper entitled [“Regulatory Vigilance Critical to Ensure ‘Sweepstakes’ Don’t Threaten Consumers and Undermine Gaming Regulation.”](#) The paper makes clear that the regulated gambling industry (e.g., licensed operators and tribal gaming operators) perceives the swift growth of the social casino sweepstakes model as a threat to its business model.<sup>1</sup> It claims that there are an increasing number of entities that have intentionally designed business models to circumvent or exploit ambiguity in state gambling laws and the regulatory frameworks within which the legal gaming industry operates. It asserts some companies are using a “sweepstakes-based” model to potentially skirt gaming laws and regulations. It asserts that, as a result, consumers are being deprived of protections and that states are foregoing significant tax and revenue opportunities, as this alleged gambling replaces that conducted through regulated channels. It seeks gaming regulators and states to investigate the business model.

## State Actions

At least in part due to the AGA paper, a number of states have taken action. The following is a list of some of the states, of which we are aware, that have taken a variety of enforcement actions.

- i. *Michigan* – The Michigan Gaming Control Board [announced](#) that it sent cease-and-desist letters to three online gaming companies, including social casino sweepstakes operators. These entities have each taken steps to prevent Michigan residents from participating on their websites.

The Board has previously [noted](#) the state’s penal code prohibits any kind of gambling containing elements of consideration, prize and chance, with a limited exception for some promotional activity. It clarified that there is no exception for so-called internet café sweepstakes (or the like).<sup>2</sup>

- ii. *Maryland* – The Maryland Lottery and Gaming Control Agency [revealed](#) in January it sent cease-and-desist letters to 11 “illegal online gaming” operators (see Slide 26). The Agency reportedly has sent follow up letters along with letters to *payment processors* demanding that they block access to the sites.
- iii. *Delaware* – The Delaware Division of Gaming Enforcement [reportedly](#) ordered a sweepstakes operator to cease their gaming operations in the state.
- iv. *Connecticut* – The Connecticut Department of Consumer Protection [reportedly](#) sent a cease and desist letter to a social casino sweepstakes operator which, in response, decided to [cease operating in Connecticut](#).
- v. *West Virginia* – West Virginia’s Attorney General [reportedly](#) served subpoenas on sweepstakes casinos operating in-state.

## Pending Legislation

At least four states have pending legislation related to social casino sweepstakes. Below, are summaries of such states. If passed, three would prohibit social casino sweepstakes. One would legalize but regulate it.

- i. *Mississippi* – Mississippi’s Senate passed a bill ([SB 2501](#)), which would include sweepstakes casinos within the activities prohibited by the state’s online gambling laws. SB 2501 is currently awaiting a vote in the House.
- ii. *Connecticut* – The Connecticut General Law Committee introduced a bill ([SB 12535](#)) limiting sweepstakes that involve real or simulated online casino or sports wagering.
- iii. *Maryland* – The state legislature has introduced a bill ([SB 860](#)) to prohibit online sweepstakes casinos.

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<sup>1</sup> In its latest State of the Industry webinar, the AGA asserted that illegal betting amounted to \$109 billion in 2024, resulting in a loss of \$17.3 billion in potential revenue for the legal industry.

<sup>2</sup> See below for more on internet sweepstakes café models and prior enforcements against that model.

- iv. *New Jersey* – New Jersey State Assembly bill ([AB 5196](#)) would designate sweepstakes casinos as a form of internet gaming, subjecting them to the existing regulatory framework requiring licensing, oversight and taxation.

## Recent Lawsuits

Many lawsuits have been recently filed against social casino sweepstakes operators. Some have also dragged payment processors into the suits. None have had any substantive rulings. Certain procedural issues have been decided in some of these cases relating to whether they should be in federal or state court. There are some strategic issues for these motions, in part due to the *CLASS ACTION FAIRNESS ACT OF 2005* discussed below.

Some of these lawsuits have compared the social casino sweepstakes model to the Internet café sweepstakes model which have previously been deemed illegal, at least in some states. See, e.g., *People ex rel. Green v. Grewal*, 61 Cal. 4th 544 (2015). Others allege that the social casino sweepstakes model conflicts with the legal positions in prior state AG opinions. In response to these lawsuits, some operators have since ceased operating their social casino sweepstakes model in the states in which they were sued.

## Analogy to Internet Café Sweepstakes and Telephone Card Cases

Going back over a decade or so, many operators of internet café and telephone card sweepstakes models were sued over those business models. Many were found guilty of illegal gambling. Some of the currently pending lawsuits allege that the social casino sweepstakes model is analogous to the models in those prior cases and that the social casino sweepstakes model should be deemed illegal gambling. Some of the oft-cited cases include *U.S. v. Davis*, 690 F.3d 330 (5th Cir. 2012); *Jester v. State*, 64 S.W.3d 553 and *People ex rel. Lockyer v. Pac. Gaming Techs.*, 82 Cal. App. 4th 699.

Some of the key takeaways from these (and other) cases are as follows:

**AMOE is Not a Panacea** – some of these cases found illegal gambling *despite* a free AMOE for the sweepstakes entries, even where “sweepstakes” entries could not be purchased.

**Is the Sweepstakes a Subterfuge for Illegal Activity?** - some of the courts assessed whether the function of the sweepstakes was intended to promote the sale of a product or service or whether it was an attempt to legitimize illegal gambling or an illegal lottery. The cases above found the latter holding that, based on the facts of those cases, there was an illegal gambling/lottery.

## Risk Mitigation

Social casino sweepstakes operators and payment processors can mitigate risks in a variety of ways. The following are just some issues to consider.

**Learn from the Past:** The oft-cited general test for gambling/lotteries is prize, chance, consideration. While this is the core of the test, at least in some states, the test is more nuanced. It is important to consider prior precedent to assess whether they are applicable to your model (at least in certain states) and design your model to avoid models and features that have previously been found illegal.

**Business Model:** While many companies operate social casino sweepstakes models, each one is a bit different. There are a number of variables with these models. It is important to understand the business model factors that have been addressed in prior decisions to understand some of the ways the variables can be selected to mitigate the legal risk.

**Effective AMOE:** As noted above, some courts have found sweepstakes models illegal despite the existence of a free AMOE. Some cases have found that the availability of free entries is a necessary but not a sufficient condition to remove consideration from the sweepstakes and that the existence of free entries alone does not negate consideration. If you are relying, in part, on an AMOE, it is important to structure it to maximize its effectiveness. Not every AMOE is effective. Merely saying “No Purchase Necessary” will not necessarily save a flawed model. Any AMOE needs to be structured properly and it is important to provide clear notice of the AMOE as well.

**Consideration Can Exist Without an Explicit Exchange of Money:** Lotteries and gambling typically require some form of consideration. Payment of money often qualifies. But even if there is no explicit exchange of money for the opportunity to participate in a sweepstakes consideration may still exist based on the cases above.

**Avoid High Risk States:** The gambling laws differ by state. So too does the regulatory proclivity. And as noted above, certain states have proposed legislation to address social casino sweepstakes. Moreover, plaintiff class action attorneys have targeted their suits to certain states. It is particularly important to understand all of these factors to help decide in which states, if any, a particular business model should be excluded to mitigate risk.

**Mitigate Risk Through Effective Terms of Service:** Lawyers can write anything they want in a Terms of Service (TOS). The problem is many courts have refused to enforce certain TOS or specific provisions contained therein. In some cases, modifications to a TOS are not done in an enforceable manner. It is important to draft TOS with enforceability in mind and ensure there is a process to ensure the TOS and any modifications are enforceable. Some of the TOS provisions that can enhance a legal strategy include the following. While TOS often cover these issues, in some cases they are not drafted as effectively as they can be.

**Avoiding Class Actions** – many of the plaintiff cases filed under gambling loss recovery statutes or other consumer protection strategies are class actions. Often, it is not cost effective for single plaintiffs to bring a lawsuit. In some cases, drafting a TOS with an effective waiver of class action can minimize the risk of such suits. However, some plaintiffs’ attorneys abuse the class action process. This led to the *CLASS ACTION FAIRNESS ACT OF 2005*, which expanded the federal diversity jurisdiction over most class actions and mass actions. It provides a process for parties to remove a case from state court to federal court. In some cases, federal jurisdiction can minimize the plaintiffs’ attorneys’ efforts to “forum shop” for favorable state courts historically inclined to approve large damage awards in class action cases. A number of pending lawsuits against social casino sweepstakes companies and payment processors have sought removal to federal court, with mixed success. Other considerations under the *CLASS ACTION FAIRNESS ACT OF 2005* should be considered but are beyond the scope of this paper.

**Mutual Arbitration Agreement** – not all arbitration provisions in TOS are effective. As the caselaw on the enforceability of arbitration provisions evolve, it is important to ensure the arbitration provisions in your TOS are updated to avoid loopholes that render these provisions unenforceable. Again, while many TOS include arbitration provisions, many have been found unenforceable.

**Mass Arbitration** – Plaintiffs’ attorneys are increasingly filing mass arbitrations—the filing of numerous identical or exceedingly similar claims against a single defendant. Often, the fees associated with even the initial defense of such claims are so burdensome that the plaintiffs’ attorneys can extract an early settlement. Your TOS should be updated to include provisions that deter such mass arbitration filings. Careful drafting is important to render these effective.

**Consider State-Specific Issues** – Consider state-specific laws that may impact the enforceability of arbitration clauses and class action waivers. Carefully consider choice-of-law provisions specifying which state’s laws will govern the agreement.

**Consider the Impact of Multiple Agreements** – Often a company will have a TOS and one or more other agreements (e.g., Official Sweepstakes Rules). It is important to ensure that the agreements work together and do not undermine each other. In at least one case that went all the way to the Supreme Court, a company had a TOS that clearly provided that an arbitrator must decide all disputes, but its Official Sweepstakes Rules included a state specific forum selection clause. When the company was sued in a class action alleging that the sweepstakes violated various state laws, the company sought to compel arbitration based on the TOS’s arbitration provision. The Court held that the Official Sweepstakes Rules’ forum selection clause controlled the dispute, and the case was not subject to arbitration. Issues like this can be avoided with careful drafting of the set of relevant documents.

**App Store Guidelines:** Each of the major app stores has their own set of rules that apply to social casino apps. These rules focus on the legality of the apps but often go further to protect users. Even an app that is legal under gambling laws may be rejected for other reasons that make them inconsistent with the rules. It is important to assess the app store guidelines as part of your business model to maximize the reach of your apps.

**Consider Consumer Protection Laws:** In addition to ensuring compliance with gambling and lottery laws, it is important to consider consumer protection laws with sweepstakes, virtual currency issues and other aspects of your business model. Even if an app is legal under the gambling and lottery laws, the app may violate other laws, particularly consumer protection laws.

**Sweepstakes Rules:** It is important to provide clear sweepstakes rules and transparency regarding the sweepstakes parameters, including terms and conditions for prize redemptions, overall odds, and gameplay details, among other things.

**Eligibility Requirements:** Carefully consider player eligibility requirements. Various enforcement actions have targeted game companies that target people under 21. Some social game lawsuits have been filed, even where no gambling exists, arguing the game mechanics groom kids for gambling. Suits based on grooming, addiction and other claims have been filed, even where the suit does not allege illegal gambling.

**Marketing Practices:** Ensure your marketing is clear, accurate and not misleading. Marketing practices that could mislead players about winning real money can create legal issues.

**Responsible Gaming Practices:** Many companies offer tools and resources to help players manage their game play responsibly. Some common tools promote healthy gaming habits and prevent potential problems. These can include limits on dollars spent and/or playtime, self-exclusion options and resources to avoid potential addiction.

## Conclusion

Nothing in this article should be construed to be legal advice that any category of business model is or is not legal. Each model must be considered based on the totality of facts and circumstances with that business model. And this analysis must be conducted on a state by state basis.

Rather, the intent of this article is to highlight the complex and evolving legal issues with social casino sweepstakes models and some of the overlooked or misperceived legal issues. Given the rapidly evolving legal issues, pending legislation, state enforcement actions and lawsuits, it is important for social game companies, payment processors and app store operators to work with competent legal counsel who are knowledgeable of the legal issues. It is also important to stay informed as things continue to evolve and to update and revise your legal strategy as appropriate. This business model is being targeted for enforcement, but game operators can take various steps to help mitigate legal risk.

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## For More Information, Please Contact:



**James Gatto**  
Partner  
202.747.1945  
jgatto@sheppardmullin.com



**Brittany Walter**  
Associate  
858.876.3525  
bwalter@sheppardmullin.com

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