Non-Prosecution Agreement with Digital Reveal LLC

This agreement is between the United States Attorney's Office for the Eastern District of North Carolina (USAO-EDNC) and Digital Reveal LLC and the principal of Digital Reveal, Daniel Fioramonti (collectively Digital Reveal parties). By signing this letter, the Digital Reveal parties are agreeing that that they will comply with all conditions set forth below, in exchange for USAO-EDNC’s agreement not to criminally prosecute the Digital Reveal parties for any gambling offense (or other offense that relies upon a gambling offense as a predicate), relating to their “pre-reveal” sweepstakes software. This agreement is limited to USAO-EDNC and cannot bind other federal, state, or local prosecuting authorities. This agreement expires on July 1, 2020.

1. For purposes of this agreement, the following definitions apply:

a. The term “entertaining display” has the meaning given in N.C. Gen Stat. 14-306.4(a)(3).

b. The terms “game play” or “simulated game play” includes all visual information other than words describing whether the entrant won the sweepstakes and how much the entrant won. The terms include any images, animation, movement, sound effects, flashing, and backgrounds other than a solid neutral background.

c. The term “sweepstakes” refers to all sweepstakes included in the definition in N.C. Gen Stat. 14-306.4(a)(5) and includes anything within that definition where chance, as opposed to skill, predominates, including “nudge” games. See, e.g., Joker Club, LLC v. Hardin, 643 S.E.2d 626, 629 (N.C. App. 2007); Collins Coin Music Co. v. NC ABC Comm’n, 451 S.E.2d 306 (N.C. App. 1994).

2. The Digital Reveal parties have dealt in licensing of sweepstakes software, namely Gold Fusion Sweepstakes System, to at least 25 locations in North Carolina since at least January 2013.


6. As of July 1, 2015, the Digital Reveal parties agree to take no part in any activities in North Carolina relating to any sweepstakes conducted through, connected with, associated with, or otherwise related to in any way the use of an entertaining display, as defined in N.C. Stat. §14-306.4. This includes, but is not limited to, any game play or simulated game play that displays, shows, exhibits, or correlates with any aspect of the sweepstakes, including the number of points won, the total number of points, or the amount of points that could be won or used. The Digital Reveal parties agree not to knowingly provide computers, software, services, or anything else or to assist anyone else in doing so through time, money, facilities, services, equipment, parts, or in any other capacity with respect with the activities described in this paragraph. This includes any related or successor business entity to the Digital Reveal parties. USAO-EDNC does not express any opinion whether conduct not covered by this paragraph is lawful.

7. The Digital Reveal parties do not admit that their conduct violated federal or North Carolina law.

8. The Digital Reveal parties further agree that before taking any part in any activities relating to sweepstakes or gambling in North Carolina not covered under the ban set forth above in ¶ 6, including anything that the Digital Reveal parties believe does not constitute sweepstakes because skill predominates, the Digital Reveal parties will provide written notice to the United States Attorney and Chief of the Criminal Division of the USAO-EDNC of: (1) the nature of the sweepstakes; (2) the official rules; (3) any associated literature, promotional, or marketing materials; (4) a demonstration if requested; (5) if requested, a list of locations where the activities will occur, and (6) any other materials relating to the sweepstakes requested by the USAO-EDNC, at least fourteen days before they take part in any activities relating to any sweepstakes. No response is required from USAO-EDNC, and the lack of any response does not condone or otherwise imply the lawfulness of the proposed activity. USAO-EDNC is free to use the materials provided pursuant to this paragraph in whatever manner it deems appropriate, including supplying them to other state or federal law enforcement entities. The Digital Reveal parties further agree to inform the USAO-EDNC of any changes or modifications to the activities referenced in this paragraph, including any changes in the way the sweepstakes are conducted.

9. If the Digital Reveal parties breach this agreement in any way, the Digital Reveal parties will be subject to prosecution by USAO-EDNC. This agreement does not limit in any way the right or ability of the USAO-EDNC to investigate or prosecute conduct occurring after the date of this agreement.

10. The duties of Digital Reveal under this agreement shall terminate if (1) the North Carolina General Assembly passes legislation that legalizes internet sweepstakes; (2) the change in law makes it clear that the Digital Reveal parties' software is legal under North Carolina law; and (3) the Digital Reveal parties provide written notice to the United
States Attorney and Chief of the Criminal Division of USAO-EDNC of the change in law and their intent to resume business, as well as a copy of this agreement, and the materials specified in paragraph 8, at least fourteen days before they resume any activities covered by this agreement.

11. The parties agree that this agreement and its contents are not secret and may be disclosed by the Digital Reveal parties or USAO-EDNC to whomever it desires.

12. There are no promises, agreements, or understandings between the USAO-EDNC and the Digital Reveal parties other than those set forth herein. Future modifications of this agreement, if any, shall be executed in writing and with the same formalities as in this agreement.

AGREED TO BY:

THOMAS G. WALKER
United States Attorney

DAVID A. BRAGDON
AUSA, Criminal Division

DANIEL FIORAMONTI, Authorized representative for DIGITAL REVEAL LLC

DANIEL FIORAMONTI, MEMBER/ MANAGER

JOCKEY T. CLIFFORD
The Clifford Division of Clifford, Clendenin & O'Hale, LLP Counsel for Digital Reveal LLC

5/5/15

DATE

4/30/15

DATE

4/30/15

DATE

4/30/2015

DATE