

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 18-008
REGARDING FINDING OF SUITABILITY
AND LICENSURE OF FANDUEL INC.

February 28, 2018

WHEREAS, FanDuel Inc. (“Company”) has applied for a license to operate Fantasy Sports Contests pursuant to sections 313.900 RSMo, et seq., as amended from time to time, and 11 CSR 45-40.010 et seq., as amended from time to time (collectively the “Missouri Fantasy Sports Consumer Protection Act and Regulations”).

THEREFORE, BE IT RESOLVED, the Commission hereby makes a finding that FanDuel Inc. is suitable to obtain a license to conduct Fantasy Sports Contests pursuant to the Missouri Fantasy Sports Consumer Protection Act and Regulations; and

RESOLVED, the license issued to the Company as provided herein shall be subject to full and complete compliance by the Company with the Missouri Fantasy Sports Consumer Protection Act and Regulations; and

RESOLVED, the license issued to the Company as provided herein shall be subject to any penalty or to suspension or revocation based on any pending or subsequent investigating findings by the Commission with regard to the Company, its agents or employees; and

RESOLVED, the Commission hereby issues a Fantasy Sports Contest Operator license to FanDuel Inc. for a period of one year beginning on February 28, 2018.

SUMMARY REPORT

FanDuel, Inc.
New York, New York



MISSOURI GAMING COMMISSION

Herbert M. Kohn, Chairman
Brian Jamison, Vice Chairman
Thomas Neer
Richard F. Lombardo
Daniel P. Finney III

William K. Seibert, Jr., Executive Director

PREPARED BY:

Sergeant B. Holcomb, Missouri State Highway Patrol
Financial Investigator D. Lengyel, Missouri Gaming Commission

February 2018

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PURPOSE OF INVESTIGATION

On June 10, 2016, HB1941 was passed by the Missouri legislature. As a result, Sections 313.900 to 313.955 RSMo shall be known and may be cited as the "Missouri Fantasy Sports Consumer Protection Act". Section 313.910.1 states "A fantasy sports contest conducted under this chapter is exempt from chapter 572, and does not constitute gambling for any purpose".

Pursuant to Section 313.935.4, RSMo "Any fantasy sports contest operator already operating in the state prior to April 1, 2016, may operate until they have received or have been denied a license." Those operators were required to submit an application postmarked by October 1, 2016. As a result of this statutory requirement, FanDuel was one of the companies that submitted an application prior to the October 1, 2016 deadline and was grandfathered to continue operating while awaiting licensure.

The purpose of this investigation is to assist the Missouri Gaming Commission (hereinafter referred to as "the Commission" or "MGC") in determining FanDuel, Inc's. (hereinafter referred to as "FanDuel") compliance with the statutory requirements of the Missouri Fantasy Sports Consumer Protection Act (hereinafter referred to as "the Act").

The Commission received a Fantasy Sports Operator's License application from FanDuel on September 30, 2016. Revisions were requested, and the complete document was forwarded to the Investigative team on February 15, 2017. The point of contact for this investigation was Kandi Parsons, Outside Counsel for FanDuel.

COMPANY PROFILE

FanDuel operates an online fantasy sports platform offering both free and paid online fantasy sports contests in which players can select a roster of athletes in major league professional sports and contest winners are determined by the performance of these rosters. The FanDuel platform currently operates in the United States and Canada, and represents the principal business activity of the company.

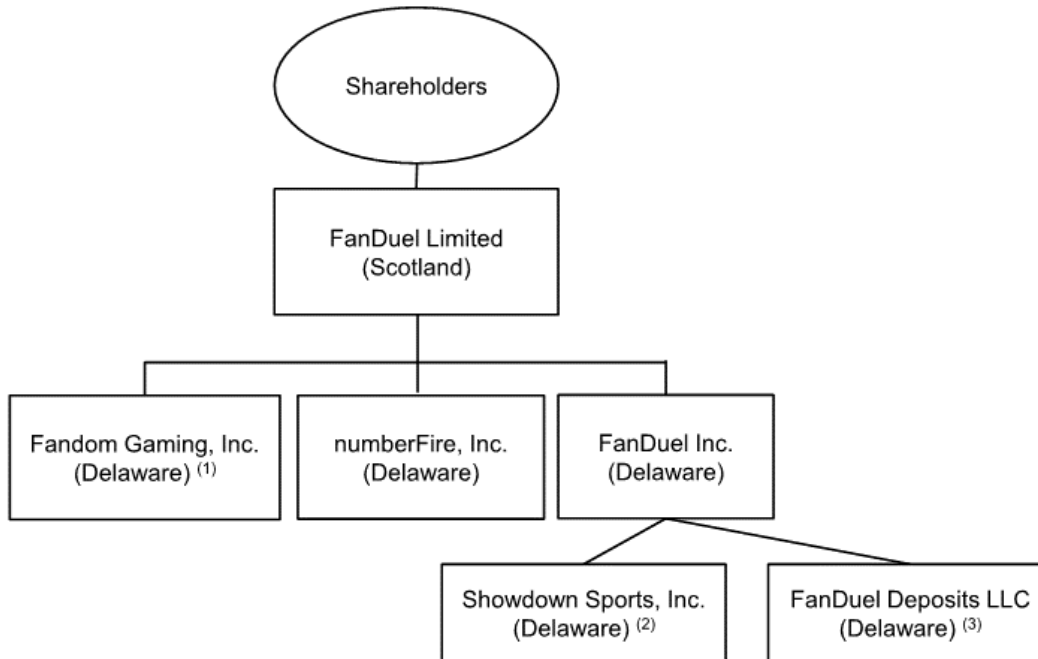
Corporate Overview

FanDuel was incorporated in the state of Delaware on March 4, 2011 and is headquartered at 300 Park Avenue South, 14th Floor, New York, New York. FanDuel was authorized to conduct business in the state of Missouri on July 19, 2016.

FanDuel is a wholly owned subsidiary of FanDuel Limited. FanDuel Limited was incorporated on November 11, 2007 under the laws of Scotland.

Corporate Structure

The organizational chart was supplied by FanDuel's Outside Counsel, Kandi Parsons.



1. Formal name for AlphaDraft, Esports business unit. Acquired in September 2015. No existing business operations.
2. Formal name for FanDuel entity set up for development of mobile games. No existing business operations.
3. Bankruptcy remote entity which holds player deposits.

PRODUCTS & SERVICES

FanDuel offers both free and paid online fantasy sports contests. Players have the opportunity to participate in daily and weekly fantasy sports leagues where players select a roster of athletes in major league professional sports, and contest winners are determined by the performance of these rosters.

STATUTORY COMPLIANCE

(Provided by MGC Fantasy Sports Contest Manager Barbara Whittle)

Procedures for approval, as outlined in Section 313.915.3, RSMo, and procedures for submission, as outlined in Section 313.920, RSMo, which were received from the Fantasy Sports Operator applicant with its application, have been reviewed and approved by Commission staff.

CONFIDENTIAL

Segregated Funds

(Provided by MGC Legal Counsel Ed Grewach)

FanDuel Deposits LLC has established a custodial account for cash reserve to be held in trust for the benefit and protection of Missouri players. The LLC has entered into a written agreement with MVB Bank, Inc. which complies with all the requirements of 11 CSR 45-40.060(2)(A).

LICENSED JURISDICTIONS

Unless otherwise prohibited, FanDuel allows individuals located in all states except the following to participate in FanDuel contests: Alabama, Arizona, Hawaii, Idaho, Iowa, Louisiana, Montana, Nevada, Texas or Washington. The following charts exhibit the state and international authorities from which FanDuel has been issued a fantasy contest license, permit or registration.

United States Jurisdictions

| STATE | ORGANIZATION |
|-------------|---|
| Colorado | Colorado Division of Professions and Occupations |
| Indiana | Indiana Gaming Commission |
| Mississippi | Mississippi Gaming Commission |
| New York | New York Gaming Commission |
| Tennessee | Tennessee Division of Charitable Solicitations, Fantasy Sports & Gaming |
| Virginia | Virginia Department of Agriculture and Consumer Services |

International Jurisdictions

| COUNTRY | ORGANIZATION |
|----------------|------------------------------------|
| United Kingdom | United Kingdom Gambling Commission |

DISCIPLINARY ACTIONS

FanDuel has had no reported disciplinary actions from regulated jurisdictions.

LITIGATION

FanDuel is currently party to sixty-seven pending cases in multiple jurisdictions.

FanDuel reported pending litigation in multiple jurisdictions. On June 30, 2016, sixty-two claims of plaintiffs from numerous states, including Missouri, have been consolidated into one federal case in Massachusetts. These cases allege various claims for negligence, fraud, misrepresentation, violation of consumer protection statutes and unjust enrichment. Two additional consumer protection/tort cases, which allege substantially the same claims as those made in the consolidated federal case, are pending in state courts in New Mexico and Arkansas.

One pending case concerns the legality of daily fantasy sports in Illinois. Illinois Attorney General Lisa Madigan issued a written opinion on December 23, 2015 declaring fantasy sports contests offered by FanDuel were not permissible under Illinois law. FanDuel filed a declaratory judgment action against Attorney General Madigan, seeking a declaration that its contests are legal under Illinois law.

One pending case alleges FanDuel infringed twelve patents in the state of Nevada, and one pending case alleges breach of contract in the state of Massachusetts.

According to FanDuel, the company “believes it has strong defenses to each claim asserted, but it is not possible to make a reasonable estimate of the possible loss (if any) at this time.”

FanDuel was a party to the following settlements:

Massachusetts

On September 7, 2017, the Massachusetts Attorney General’s Office reported FanDuel agreed to pay a \$1.3 million dollar settlement. This was a result of an investigation by Attorney General Maura Healey into alleged unfair and deceptive practices by the company prior to her office’s 2016 promulgation of regulations governing daily fantasy sports. Funds from the settlement will be used by the AG’s Office for grant programs to protect consumers and engage young people in technology.

New York

On October 25, 2016 FanDuel settled a lawsuit with the New York Attorney General’s Office that was centered on false advertisements. FanDuel paid a \$6 million civil penalty for the violation.

FINANCIAL SUITABILITY

(As Reported by MGC Financial Investigator Dennis Lengyel)

Scope of Financial Evaluation

Financial evaluation of FanDuel, Inc. included inspection of internal accounting records for 2013, 2014 and 2015, review of audited financial statements prepared by Deloitte & Touche LLP of New York, NY for 2014 and 2015, and a review of Federal and State income tax returns for 2013, 2014 and 2015. The independent auditor’s reports for the years ended December 31, 2015 and 2014 stated that the consolidated financial statements present fairly, in all material respects, the financial position, results of operations and cash flows in accordance with accounting principles generally accepted in the US. Further, the auditor’s opinion noted that the Company may not continue in business, due to operating losses and reduced cash balances, as a result of significant marketing spend and legal and development related costs. Adjustments were not made to the financial statements to reflect this uncertainty.

Business Overview

FanDuel, Inc. is a wholly owned subsidiary of FanDuel Limited of Edinburgh, Scotland. FanDuel offers both free and paid online fantasy sports contests. Players have the opportunity to participate in daily and weekly fantasy sports leagues. Players select a roster of athletes in major league professional sports and contest winners are determined by the performance of these rosters.

Selected Financial Information

| FanDuel, Inc. | | | |
|-------------------------------|----------------|----------------|-----------------|
| | 2013 | 2014 | 2015 |
| Gross Revenues | \$14,016,471 | \$56,679,808 | \$130,454,096 |
| Net Income (Loss) | (\$5,658,940) | (\$48,937,290) | (\$128,559,625) |
| Total Assets | \$11,808,858 | \$67,390,488 | \$147,178,767 |
| Total Liabilities | \$22,608,200 | \$126,583,755 | \$312,792,881 |
| Total Equity (Deficit) | (\$10,799,342) | (\$59,193,267) | (\$165,614,114) |

Financial Condition

FanDuel, Inc. files its taxes as a U.S. Corporation. Gross revenues have increased significantly during this three-year time period. Revenues, while increasing, are far short of the amounts necessary to break even financially. Information provided by the company did not indicate a time period when the breakeven point would be achieved. The losses have been funded by borrowing funds from the parent company, FanDuel Limited. During this time period, the company's advertising expenses increased dramatically in an effort to increase the player base and capture players from other competitors in the market.

Player Funds Protection

FanDuel, Inc. has created a separate, "bankruptcy-remote" subsidiary (FanDuel Deposits LLC) for the purpose to segregate and restrict access to players' accounts deposits and withdrawals. FanDuel Deposits LLC established a custodial account with MVB Bank, Inc. for a cash reserve to be held in trust for the benefit of Missouri players. On 2/8/18, the balance in the cash reserve account was \$650,000, which reflects the funds held on site of all users verified as Missouri residents. The player liability reported by FanDuel, Inc., as of 1/31/18, was \$581,368.53, which indicates this account has been adequately funded.

Financial Concerns

The viability of the company's long term survival is a concern. FanDuel, Inc. has not made a profit during its existence and must continue to rely on owner funds being injected on a regular basis to survive. The company has entered into practices of funds segregation. Should the company fail, the separate company and bank account created to segregate player funds should provide adequate protection to ensure funds are returned to Missouri players.

Business Credit Profile

An Experian Business Profile revealed no issues or concerns.

Taxes

FanDuel received a Tax Clearance from the Missouri Department of Revenue on November 6, 2017.

KEY PERSON(S)

Section 313.935.2, RSMo states: "As part of the commission's investigation and licensing process, the commission may conduct an investigation of the fantasy sports contest operator's employee's, officers, directors, trustees, and principal salaried executive staff officers...." See 11 CSR 45-40.010(6). The investigative checks of the employees listed below, included the following:

FBI Fingerprint check

MULES/NCIC Check

MGC Personal Disclosure Form

| NAME | POSITION |
|-----------------------|--|
| Matthew King | Chief Executive Officer |
| Andrew E. Giancamilli | Chief Financial Officer |
| Robin P. Spira | Chief Technology Officer |
| Thomas G. Griffiths | Chief Product Officer |
| Thomas J. Quinn | Vice President of Finance & Controller |
| Mark Irace | Chief Marketing Officer |
| Albert Fioravanti | Independent Director |

ASSOCIATED INVESTIGATIONS

On November 18, 2016 DraftKings, Inc. and FanDuel announced plans for the two companies to merge. The Federal Trade Commission, along with Attorneys General from California and The District of Columbia, opposed the merger claiming it would have created a company controlling more than 90% of the daily fantasy sports market in the United States. On July 13, 2017 the plan to merge was abandoned.

DISCREPANCIES & CONCERNS

There were no discrepancies discovered during the documentation of statutory compliance.