

IN THE MISSOURI GAMING COMMISSION

In Re:)
) DC 18-056
HGI – Mark Twain, LLC)

PRELIMINARY ORDER FOR DISCIPLINARY ACTION

Comes now the Missouri Gaming Commission acting in its official capacity pursuant to 11 CSR 45-13.050, and states as follows:

1. The Missouri Gaming Commission (the “Commission” or “MGC”) is a state commission created under Chapter 313, RSMo 2000,¹ with jurisdiction over gaming activities, including riverboat gambling activities, in the State of Missouri.
2. The Commission issued Affinity Gaming, LLC, a Class A gaming license to develop and operate Class B gaming licenses in the State of Missouri.
3. Affinity Gaming, LLC, is the parent organization or controlling entity of HGI – Mark Twain, LLC (the “Company”).
4. The Commission issued a Class B riverboat gambling license to the Company to conduct games on and operate the excursion gambling boat known as *Mark Twain Casino* (the “Casino”).
5. As the holder of a Class B license, the Company is subject to the provisions of §§ 313.800 to 313.850, RSMo, and the regulations promulgated thereunder by the Commission.

STATEMENT OF FACTS²

6. On July 5, 2017, a Casino Marketing Manager contacted MGC stating she had concerns regarding a significant change in a patron's earned tier points , which she had discovered when a Casino Shift Manager asked her why that patron did not have GM tier status.
7. On June 14, 2017, corporate marketing ran a report and provided it to the Casino Marketing Manager which listed this patron as having earned 354,297 points, which meant this patron would continue to maintain his “Platinum” tier level. This patron had been reduced to the “Platinum” tier level from the “GM” tier level on January 1, 2017.
8. On June 18, 2017, the Casino Marketing Manager received an email from a Casino Shift Manager requesting that she review this patron’s tier points to see if his tier status was correct. The email questioned whether the patron had “enough base points (since Jan. 1,

¹ All statutory references are to RSMo 2000, unless otherwise specified.

² 20170924003

2017) to move into the GM club tier,” and indicated that his tier status was “not showing him as GM in CMS (Casino Management System).”

9. On June 20, 2017, the Casino Marketing Manager ran a report showing the patron’s tier points in CMS since January 1, 2017. The patron’s points had increased to 562,513, yet he never showed up on her report as being upgraded to the GM tier level, which is for patrons with over 500,000 tier points. She notified corporate marketing to determine why his name was not listed on one of their routine reports which should have flagged his change from “Platinum” to the “GM” tier level.
10. According to the promotional rules, table games players receive points based on the number of hours played, the average bet, and the house advantage. These points are awarded to the table game players within the next day.
11. Table game supervisors would “rate” players by recording the time the player started wagering, the time the player stopped wagering, the average bet, and the game played on a pit rating card. That information was used to calculate the points earned on each visit.
12. The investigation into the sudden change in the patron’s tier points revealed it was due to 22 manual adjustments to the patron’s rated play conducted on June 17, 2017, by the same Casino Shift Manager who asked the Casino Marketing Manager to conduct the review. Seventeen other manual adjustments were also made on February 17, 2017, to this patron’s account by another Casino Shift Manager.
13. When asked about the changes to the pit ratings, the Director of Casino Operations claimed that because that patron was a known player, and they were familiar with his average betting levels, Casino Shift Managers increased his average bet amount from previous visits, which in turn increased his point accumulations for those visits (awarding additional points to the patron’s account).
14. Casino personnel claimed that because the patron’s average bet was usually around \$500, the lowest average bet he should be given is \$500. That change in his betting average would result in that patron earning enough points to reach the “GM” tier.
15. Records indicated, however, that the patron never bet \$500, above \$500, or close to \$500. In fact, the original pit rating cards completed by the table game supervisors who witnessed his betting indicated his average bet to be approximately \$150.
16. The investigation revealed that the Director of Casino Operations provided direction to his subordinates to change existing pit ratings for that patron to increase the average bet amount or increase the hours played which manually added points to the player’s account, instead of following proper procedures and the Casino’s published rules for its player rewards program.
17. These adjustments were all made on February 17, 2017 and June 17, 2017. The adjustments made on February 17 were to patron visits that occurred between January 2 and January 16,

2017. The adjustments made on June 17 were to patron visits that occurred between January 5 and June 3, 2017.

18. Six of those changes, which increased the patron's average bet, were to pit ratings that had already been adjusted to increase the patron's average bet during the adjustments on February 17, 2017.
19. The Marketing Department responsible for this player reward program was not made aware of these adjustments.
20. No Point/Promotional Credit Adjustment Form was ever completed by casino staff to add points to the patron's account based on his "tier" status being "incorrect."
21. As such, Accounting was not aware of the changes to the ratings, since the required form was not used.
22. Therefore, the point adjustments to the patron's account were not audited for accuracy, in that the Casino staff failed to comply with the specific structure put in place to assure patrons earn and receive the proper points and ratings.

LAW

23. Under § 313.805(6), RSMo, the Commission may assess any appropriate administrative penalty against a licensee, including, but not limited to, suspension, revocation, or penalties in an amount determined by the Commission.
24. Section 313.812.14, RSMo, states, in pertinent part, as follows:

A holder of any license shall be subject to imposition of penalties, suspension or revocation of such license, or if the person is an applicant for licensure, the denial of the application, for any act or failure to act by himself or his agents or employees, that is injurious to the public health, safety, morals, good order and general welfare of the people of the state of Missouri, or that would discredit or tend to discredit the Missouri gaming industry or the state of Missouri unless the licensee proves by clear and convincing evidence that it is not guilty of such action. The commission shall take appropriate action against any licensee who violates the law or the rules and regulations of the commission. Without limiting other provisions of this subsection, the following acts or omissions may be grounds for such discipline.

- (1) Failing to comply with or make provision for compliance with sections 313.800 to 313.850, the rules and regulations of the commission or any federal, state or local law or regulations;
- (2) Failing to comply with any rule, order or ruling of the commission or its agents pertaining to gaming[.]

25. Title 11 CSR 45-5.181 states, in pertinent part, as follows:

(1) For the purposes of this rule, the following words are defined as:

* * *

(E) Player reward program—a promotional activity that provides redeemable player reward points to patrons as a result of wagering regardless of game outcome and based on predetermined formulas.

(2) Class B licensees may provide promotional activities such as promotional giveaways, promotional coupons, promotional games, player reward programs or similar activities for patrons without the prior approval of the commission, provided the promotional activity is not structured or conducted in a manner that reflects negatively on the licensee, the commission, or the integrity of gaming in Missouri and complies with the following:

* * *

B) The promotional activity shall comply with all applicable laws and regulations and shall not constitute illegal gambling under federal or state law. An affidavit of such compliance shall be signed by the legal counsel of the licensee and be maintained on file for two (2) years from the last day of the event;

(C) The Class B licensee shall create dated, written rules governing the promotional activity, which rules shall be immediately available to the public and the commission upon request. The licensee shall maintain the rules of the event and all amendments thereto, including criteria for entry and winning, prizes awarded, and prize winners, for a minimum of two (2) years from the last day of the event;

(D) All prizes offered in the promotional activity shall be awarded according to the Class B licensee’s rules governing the event[.]

* * *

(3) Documentation of any change or cancellation of a promotional activity shall be maintained on file for two (2) years with the legal counsel’s affidavit.

26. Title 11 CSR 45-9.060 states, in pertinent part, as follows:

(3) Violations of the minimum internal control standards [(“MICS”)] by a Class A licensee or an agent or employee of a Class A licensee are deemed to be unsuitable conduct for which the Class A licensee and/or its agent or

employee is subject to administrative penalty pursuant to Section 313.805(6), RSMo, and 11 CSR 45-1 et seq.

(4) Violations of the Class A licensee's internal control system [{"ICS"}] by the Class A licensee or an agent or employee of the Class A licensee shall be *prima facie* evidence of unsuitable conduct for which the Class A licensee and/or its agents or employees may be subject to discipline pursuant to Section 313.805(6), RSMo, and 11 CSR 45-1 et seq.

27. Both MICS Chapter I, § 1.04 and the Casino's ICS Chapter I, § 1.04 require Accounting to "immediately notify MGC when there are reasonable grounds to believe a violation of the rules or regulations has occurred that jeopardizes the protection of assets or the integrity of gaming.

28. With regard to weekly reviews of its gaming operations, both MICS Chapter I, § 7.04 and the Casino's ICS Chapter I, § 7.04 require, in pertinent part, the following:

(A) Accounting shall review the addition of points to patrons' accounts other than through actual EGD play to verify all additions were properly approved. Accounting shall document the review and any subsequent investigation.

29. The MICS Chapter I, § 13.07 requires the Casino's ICS to "list each position that has the ability to add points or perform point adjustments. These positions shall not also be able to redeem points or issue player cards."

30. The Casino's ICS Chapter I, § 13.07 states that "only MIS personnel have the ability to add points or perform point adjustments."

31. The MICS, Chapter, I § 13.08 require "additions of points to a player's account other than through actual EGD play [to] be documented." The documentation must include the following:

- (A) time;
- (B) date;
- (C) amount of the points added;
- (D) reason for the addition; and
- (E) name of the employee who requested the addition.

32. The Casino's ICS, Chapter I § 13.08 specify, in pertinent part, as follows:

Manual additions of points to a player's account other than through actual EGD play shall be documented on the Point/Promotional Credit Adjustment Form (Form 35). Documentation shall include:

- A. Time;
- B. Date;

- C. Amount of the points added;
- D. Reason for the addition; and
- E. Name of the employee who requested the addition[.]

VIOLATIONS

- 33. The acts or omissions of employees or agents of the Company, as described above, constitute a failure of the Company to follow following proper procedures and the Casino’s published rules for its player rewards program, thereby violating 11 CSR 45-5.181, 11 CSR 45-10.030(1), (4), and (7), and the Commission’s MICS, Chapter I, §§ 1.04, 7.04, and 13.08, and the Casino’s ICS, Chapter I, §§ 1.04, 7.04, 13.07, and 13.08.
- 34. The Company is therefore subject to discipline for such violations pursuant to §§ 313.805(6) and 313.812.14 (1) and (2), RSMo, and 11 CSR 45-9.060(3) and (4).

PENALTY PROPOSED

- 35. Under § 313.805(6), RSMo, the Commission has the power to assess any appropriate administrative penalty against the Company as the holder of a Class B license.
- 36. THEREFORE, it is proposed that the Commission fine HGI – Mark Twain, LLC, the amount of \$2,500 for the violations set forth herein.

Herbert M. Kohn
Chairman
Missouri Gaming Commission

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing to be mailed, postage prepaid, this 28th day of June, 2018, to:

Luke Keller, General Manager
Mark Twain Casino
104 Pierce Street
LaGrange, MO 63448

Herbert M. Kohn
Chairman
Missouri Gaming Commission