

# IN THE MISSOURI GAMING COMMISSION

In Re: )  
 ) DC-18-105  
BMM North America, Inc. )

## 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 (2016),<sup>1</sup> with jurisdiction over gaming activities, including riverboat gambling activities, in the State of Missouri.
2. BMM North America, Inc. (the "Company" or "BMM") is a supplier of testing laboratory services.
3. The Commission issued a Supplier license to the Company to provide testing services on gaming-related equipment, components, peripherals, or systems.
4. As the holder of a Supplier 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 FACTS<sup>2</sup>

5. On February 29 and March 1, 2016, MGC staff performed the biennial compliance audit of the BMM's Las Vegas, Nevada facility, which resulted in four audit findings. The MGC Compliance Assessment report for this audit was provided to BMM on August 22, 2016.
6. In the 2016 report, the MGC identified non-compliance with 11 CSR 45-4.230(4)(I)2, stating, "BMM could not identify a policy regarding storage and/or retention of digital documentation associated with 11 CSR 45-4.230."
7. The MGC also identified compliance concerns with BMM's fire safety procedures and safeguards, including evidence of improper waterproofing of data.
8. Additionally, the MGC identified non-compliance with 11 CSR 45-4.230(4)(V), requiring each test script to "have a unique version number," in that the assessment report noted BMM using the summarization of test scripts. The test scripts did not provide the level of detail required to determine the version utilized during the testing process.

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<sup>1</sup> All statutory references are to RSMo (2016), unless otherwise specified.

<sup>2</sup> 20180606002

9. On September 15, 2016, BMM acknowledged and responded with a proposal addressing the MGCs findings. In the proposal, BMM detailed a solution for data redundancy, which was anticipated to be operational in December 2016. BMM also stated, going forward, all checklists and methodology documents referenced will be identified both by name and by version, and any change to a checklist or methodology would require a revision.
10. On or about March 5 and 6, 2018, MGC staff completed its biennial audit of BMM and found repeat findings on two of the original four findings from its 2016 audit.
11. During the 2018 BMM audit, MGC staff identified continued non-compliance with 11 CSR 45-4.230(4)(I)2. BMMs protection and recovery of data techniques had been improved since the issuance of the 2016 report; however, implementation still did not meet the requirement of a “complete and prompt recovery of all information and documentation retained by the ITL in the event of any malfunction.”
12. Additionally, during the 2018 BMM audit, MGC staff identified continued non-compliance with 11 CSR 45-4.230(4)(V), in that the documents did not contain a unique version number for the test scripts as required by the rule. BMM has proposed to include the actual test scripts utilized on their certification letters.
13. BMM implemented corrections for both of the repeat findings, however it was not until after MGC noted the repeat failures and discussed them with BMM following the 2018 audit.

### LAW

14. 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 of an amount determined by the Commission.
15. 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[.]

16. Title 11 CSR 45-4.230 states, in pertinent part, as follows:

- (4) An independent testing laboratory (ITL) applying for or currently holding a supplier license is subject to compliance with all other requirements of this rule in addition to the following criteria:

\* \* \*

- (I) All reports, documentation, and material developed or acquired by the ITL while conducting work for or on behalf of the commission shall become the joint property of the commission and the ITL. Upon expiration or revocation of its license, certified copies of all documents, data, reports, and accomplishments prepared, furnished, or completed by the ITL for or on behalf of the commission shall be delivered to the commission within forty-five (45) calendar days and shall remain the joint property of the commission and the ITL. In addition, the ITL shall provide access to any equipment or materials used while conducting work for or on behalf of the commission for a period of one hundred twenty (120) days after the expiration or revocation of its license.

\* \* \*

- 2. The ITL shall employ data redundancy that permits a complete and prompt recovery of all information and documentation retained by the ITL in the event of any malfunction and shall utilize environmental controls such as uninterruptible power supplies, fireproofing materials, and waterproofing materials to protect critical hardware and software from natural disasters.

\* \* \*

- (V) The ITL shall draft and maintain gaming equipment test scripts to address Missouri statutes, regulations, minimum internal control standards, and adopted technical standards for testing a specific device. In addition, the ITL shall create specific testing procedures (test cases) that shall be used to assess compliance with the applicable test scripts. All gaming equipment shall be tested in accordance with said test scripts and test cases. Each test script shall have a unique version number. The ITL shall modify the test scripts and test cases to adapt to new technology, rule changes, or as directed by the commission. Anytime a Missouri test script is revised, a copy with the effective date shall be forwarded to the commission. The ITL and commission will conduct an annual review of the test scripts and the ITL shall modify them as necessary. All documents, procedures or other intellectual property employed by an ITL

in conjunction with the development of Missouri test case(s) shall be deemed to be proprietary information and a closed record under section 313.847, RSMo, unless otherwise determined by the commission[.]

**VIOLATIONS**

- 17. The actions or omissions of employees or agents of the Company as described above constitute the failure to correct audit findings as required by the MGC, which is a violation of 11 CSR 45-4.230.
- 18. The Company is therefore subject to discipline for such violations under §§ 313.805(6) and 313.812.14 (1) and (2), RSMo.

**PENALTY PROPOSED**

- 19. Under § 313.805(6), RSMo, the Commission has the power to assess any appropriate administrative penalty against the BMM North America, Inc., as the holder of a Supplier license.
- 20. THEREFORE, it is proposed that the Commission fine BMM North America, Inc., the amount of \$2,500 for the violations set forth herein.

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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 6<sup>th</sup> day of December, 2018, to:

Travis Foley  
BMM North America, Inc.  
815 Pilot Road, Suite G  
Las Vegas, NV 89119

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Herbert M. Kohn  
Chairman  
Missouri Gaming Commission