

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
209 S. LaSalle Street
Suite 600
Chicago, IL 60604

Plaintiff,

v.

NATIONAL COUNCIL ON PROBLEM
GAMBLING, INC.,
208 G Street, NE
Washington, D.C. 20002

Defendant.

CIVIL ACTION NO. 1:03CV01278

JUDGE: Henry H. Kennedy

Entered: January 7, 2004

FINAL JUDGMENT

Plaintiff, United States of America, filed its Complaint on June 13, 2003. Plaintiff and defendant, National Council on Problem Gambling, Inc. ("NCPG"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not constitute any evidence against or an admission by any party with respect to any issue of fact or law herein.

Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

ORDERED, ADJUDGED, AND DECREED, as follows:

I.
Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the

defendant under Section 1 of the Sherman Act, 15 U.S.C. § 1. Venue is proper in the District Court for the District of Columbia.

II. **Definitions**

As used in this Final Judgment:

A. “Agreement” means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons, at least one of which is the NCPG or a member of the NCPG.

B. “And” means and/or.

C. “Any” means one or more. The term is mutually interchangeable with “all” and each term encompasses the other.

D. “Certification” means NCPG’s formal approval or endorsement of training programs for problem or compulsive gambling counselors.

E. “Communication” means any disclosure, transfer, or exchange of information or opinion, however made.

F. “Customer” means any person, whether governmental or private, including casinos, Indian tribes and other entities, who sponsors, funds, arranges, purchases, solicits, or facilitates the procurement of any problem gambling services.

G. “Including” means including, but not limited to.

H. “Member” means any person who is an organizational, individual, affiliate or any other type of member of the NCPG.

I. "NCPG" or "defendant" means the National Council on Problem Gambling, Inc.; any parent, predecessor, or successor of that organization; any joint venture to which such organization is or was a party; and each officer, director, employee, attorney, agent, representative, consultant, or other person acting on behalf of any of them.

J. "Person" means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

K. "Problem gambling services" means all services relating to the treatment or prevention of problem or compulsive gambling, including dissemination of information regarding problem gambling, telephonic hot-line or help-line services, training of problem gambling counselors, certification of various problem gambling training programs, and provision of any product or service aimed at assisting problem gamblers.

L. "Problem gambling services provider" ("PGSP") means any person involved in the provision of problem gambling services, including the NCPG and any NCPG member.

M. "Relating to" or "relate to" means containing, constituting, considering, comprising, concerning, discussing, regarding, describing, reflecting, studying, commenting or reporting on, mentioning, analyzing, or referring, alluding, or pertaining to, in whole or in part.

N. "Selling" means offering for sale or actual sales of any problem gambling services.

O. "Year" means calendar year or the twelve-month period on which business records are based.

III.

Applicability

A. Final Judgment applies to defendant and to those persons in active concert or participation with defendant who receive actual notice of this Final Judgment by personal service or otherwise, including each of defendant's officers, directors, agents, employees, successors, and assigns.

B. Defendant shall require, as a condition of any merger, reorganization, or acquisition by any other organization, that the organization to which defendant is to be merged or reorganized, or by which it is to be acquired, agree to be bound by the provisions of this Final Judgment.

C. Nothing contained in this Final Judgment is intended to suggest or imply that any provision herein is or has been created or intended for the benefit of any third party and nothing herein shall be construed to provide any right to any third party.

IV. Prohibited Conduct

Defendant is hereby enjoined from directly or indirectly:

A. Initiating, adopting, or pursuing any agreement, program, or policy that has the purpose or effect of prohibiting or restraining any PGSP from engaging in the following practices: (1) selling problem gambling services in any state or territory or to any customer; or (2) submitting competitive bids in any state or territory or to any customer.

B. Adopting, disseminating, publishing, seeking adherence to, facilitating, or enforcing any agreement, code of ethics, rule, bylaw, resolution, policy, guideline, standard, certification, or statement that has the purpose or effect of prohibiting or restraining any PGSP

from engaging in any of the practices identified in Section IV(A) above, or that states or implies that any of these practices are, in themselves, unethical, unprofessional, or contrary to the policy of the NCPG.

C. Adopting, disseminating, publishing, seeking adherence to, facilitating, or enforcing any standard or policy that has the purpose or effect of:

- (1) requiring that any PGSP obtain permission from, inform, or otherwise consult with any other PGSP before selling problem gambling services or submitting bids for the provision of problem gambling services in any state or territory or to any customer;
- (2) requiring that any PGSP contract with, provide a fee or a portion of revenues to, or otherwise remunerate any other PGSP as a result of selling problem gambling services in any state or territory or to any customer;
- (3) sanctioning, penalizing or otherwise retaliating against any PGSP for competing with any other PGSP; or
- (4) creating or facilitating an agreement not to compete between two or more PGSPs.

V. Permitted Conduct

A. Nothing in this Final Judgment shall prohibit any NCPG member, acting alone and not on behalf of or in common with defendant or any of defendant's officers, directors, agents, employees, successors, or assigns, from negotiating any lawful terms of its business relationship with any national, state, or local government entity, or any private entity.

B. Provided that such activities do not violate any provision contained in Section IV above, nothing in this Final Judgment shall prohibit any NCPG member from working with another person in a valid joint venture.

C. Provided that such activities do not violate any provision contained in Section IV above, nothing in this Final Judgment shall prohibit the NCPG from sanctioning or terminating a member according to a process described in the NCPG by-laws.

VI.
Notification Provisions

Defendant is ordered and directed to:

A. Publish the Final Judgment and a written notice, in the form attached as Appendix A to this Final Judgment, in Card Player magazine within 60 days of the entry of this Final Judgment.

B. Send a written notice, in the form attached as Appendix A to this Final Judgment, to each current member of NCPG within 30 days of the entry of this Final Judgment.

C. Send a written notice, in the form attached as Appendix A to this Final Judgment, to each person who becomes a member of NCPG within 10 years of entry of this Final Judgment. Such notice shall be sent within 30 days after the person becomes a member of NCPG.

VII.
Compliance Program

Defendant is ordered to establish and maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for implementing the antitrust compliance program and achieving full compliance with this Final Judgment. The Antitrust Compliance Officer shall not be an officer or

a director of an affiliate of the NCPG. The Antitrust Compliance Officer shall, on a continuing basis, be responsible for the following:

A. Furnishing a copy of this Final Judgment and the related Competitive Impact Statement within 30 days of entry of the Final Judgment to each of defendant's officers, directors, and employees, except for employees whose functions are purely clerical or manual and do not address issues related to the provision of problem gambling services.

B. Furnishing within 30 days a copy of this Final Judgment and the related Competitive Impact Statement to any person who succeeds to a position described in Section VII(A).

C. Arranging for an annual briefing to each person designated in Section VII(A) or VII(B) on the meaning and requirements of this Final Judgment and the antitrust laws.

D. Obtaining from each person designated in Section VII(A) or VII(B), certification that he or she: (1) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (2) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer; and (3) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against NCPG.

E. Maintaining: (1) a record of certifications received pursuant to this Section; (2) a file of all documents related to any alleged violation of this Final Judgment; and (3) a record of all communications related to any such violation, which shall identify the date and place of the communication, the persons involved, the subject matter of the communication, and the results of any related investigation.

F. Conducting a program at each annual meeting of the NCPG on this Final Judgment and the antitrust laws.

G. Reviewing codes of ethics, rules, bylaws, resolutions, guidelines, agreements, and policy statements to ensure adherence with this Final Judgment.

H. Reviewing the purpose for the formation or creation of each committee and sub-committee of the NCPG in order to ensure its adherence with this Final Judgment.

I. Attending all meetings of the NCPG's affiliate committee and reviewing the proceedings to ensure adherence with this Final Judgment.

VIII. **Certification**

A. Within 60 days after the entry of this Final Judgment, defendant shall certify to the plaintiff that they have designated an Antitrust Compliance Officer and have distributed the Final Judgment and related Competitive Impact Statement in accordance with Section VII above.

B. For 10 years after the entry of this Final Judgment, on or before its anniversary date, defendant shall file with plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Sections VI and VII, and of any potential violations of the terms and conditions contained in this Final Judgment.

C. If defendant's Antitrust Compliance Officer learns of any violations of any of the terms and conditions contained in this Final Judgment, defendant shall immediately take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

IX. **Plaintiff's Access**

A. For the purpose of determining or securing compliance with this Final Judgment or

determining whether this Final Judgment should be modified or terminated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the Antitrust Division of the United States Department of Justice, including consultants and other persons retained by the United States, shall upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant, be permitted:

1. access during defendant's office hours to inspect and copy, or at plaintiff's option, to require defendants to provide copies of all books, ledgers, accounts, records, and documents in the possession, custody, or control of defendant, relating to any matters contained in this Final Judgment; and
2. to interview, either informally or on the record, defendant's officers, directors, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendant.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the plaintiff to any person other than an authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States

is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies, in writing, the material in any such information or documents to which a claim of protection may be asserted under Rule 26 (c) (7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "subject to claim of protection under Rule 26 (c) (7) of the Federal Rules of Civil Procedure," then 10-days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which NCPG is not a party.

X.

Duration of the Final Judgment

This Final Judgment shall remain in effect for 10 years from the date of entry.

XI.

Construction, Enforcement, Modification, and Compliance

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

XII.
Public Interest

Entry of this Final Judgment is in the public interest.

DATED: January 7, 2004

Henry H. Kennedy, Jr.
UNITED STATES DISTRICT JUDGE

ECF
DOCUMENT

I hereby attest and certify that this is a printed copy of a document which was electronically filed with the United States District Court for the District of Columbia.
Date Filed: 1-7-04

NANCY MAYER-WHITTINGTON
BY: Jackie Francis

APPENDIX A

On June 13, 2003, the Antitrust Division of the United States Department of Justice filed a civil suit alleging that the National Council on Problem Gambling, Inc. ("NCPG") had engaged in certain practices that violated Section 1 of the Sherman Antitrust Act. NCPG has agreed to the entry of a civil consent order to settle this matter. The consent order does not constitute evidence or admission by any party with respect to any issue of fact or law. The consent order applies to NCPG and all of its officers, directors, employees, agents, and assigns.

Under the consent order, NCPG is prohibited from directly or indirectly initiating, adopting, or pursuing any agreement, program, or policy that has the purpose or effect of prohibiting or restraining any Problem Gambling Service Provider ("PGSP") from: (1) selling problem gambling services in any state or territory or to any customer; or (2) submitting competitive bids in any state or territory or to any customer. The NCPG is also prohibited from directly or indirectly adopting, disseminating, publishing, seeking adherence to or facilitating any agreement, code of ethics, rule, bylaw, resolution, policy, guideline, standard, certification, or statement made or ratified by an official that has the purpose or effect of prohibiting or restraining any PGSP from engaging in any of the above practices, or that states or implies that any of these practices are, in themselves, unethical, unprofessional, or contrary to the policy of the NCPG.

The consent order further provides that the NCPG is prohibited from adopting or enforcing any standard or policy that has the purpose or effect of: (1) requiring that any PGSP obtain permission from, inform, or otherwise consult with another PGSP before selling problem gambling services or submitting bids for the provision of problem gambling services in any state or territory or to any customer; or (2) requiring that any PGSP contract with, provide a fee or a

portion or revenues to, or otherwise remunerate any other PGSP as a result of selling problem gambling services in any state or territory or to any customer. Finally, the NCPG is prohibited from adopting or enforcing any standard or policy or taking any action that has the purpose or effect of: (1) sanctioning, penalizing or otherwise retaliating against any PGSP for competing with any other PGSP; or (2) creating or facilitating an agreement not to compete between two or more

PGSP.

The consent order does not prohibit the NCPG from negotiating any terms of its business relationship with any national, state, or local government entity, or any private entity. It also does not prohibit the NCPG member from working with another person in a valid joint venture to meet the needs of problem gamblers in ways that do not otherwise violate the consent order. Finally, it does not prohibit the NCPG from sanctioning or terminating a member pursuant to its by-laws, as long as such action does not otherwise violate the consent order.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, D.C. in Room 200, 325 Seventh Street, N.W., and at the Office of the Clerk of the United States District Court for the District of Columbia in Washington, D.C.