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STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

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DIVISION OF ADMINISTRATIVE HEARINGS

IGT, INC., BALLY TECHNOLOGIES,  
INC., SHUFFLE MASTER, INC., and  
GULF STREAM PARK RACING  
ASSOCIATION, INC.

Petitioners,

vs.

CASE NO. \_\_\_\_\_

THE DEPARTMENT OF BUSINESS  
AND PROFESSIONAL REGULATION,  
DIVISION OF PARI-MUTUEL  
WAGERING

Respondent.

\_\_\_\_\_ /

**PETITION TO DETERMINE THE  
INVALIDITY OF AN EXISTING RULE**

Petitioners, IGT, Inc., Bally Technologies, Shuffle Master, Inc., and Gulfstream Park Racing Association, Inc., file this Petition to Determine the Invalidity of an Existing Rule of the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (the "Division") and state as follows:

1. The affected agency is the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering located at 1940 North Monroe Street, Tallahassee, FL 32399.

2. Petitioner, IGT, Inc., a subsidiary of International Game Technology, Inc., is a slot machine manufacturer licensed pursuant to Chapter 551, Florida Statutes. Its address is 9295 Prototype Drive, Reno, Nevada, 89521. It has standing to initiate this proceeding by virtue of its licensure as a slot machine manufacturer and its interest in

selling slot machines to slot machine licensees who are also licensed under Chapter 551, Florida Statutes. For purposes of this proceeding, its address is that of the undersigned counsel.

3. Petitioner, Bally Technologies, Inc. is a slot machine manufacturer licensed pursuant to Chapter 551, Florida Statutes. Its address is 6601 S. Bermuda Road, Las Vegas, NV 89119. It has standing to initiate this proceeding by virtue of its licensure as a slot machine manufacturer and its interest in selling slot machines to slot machine licensees who are also licensed under Chapter 551, Florida Statutes. For purposes of this proceeding, its address is that of the undersigned counsel.

4. Petitioner, Shuffle Master, Inc. is a slot machine manufacturer licensed pursuant to Chapter 551, Florida Statutes. Its address is 1106 Palms Airport Drive, Las Vegas, NV 89119. It has standing to initiate this proceeding by virtue of its licensure as a slot machine manufacturer and its interest in selling slot machines to slot machine licensees who are also licensed under Chapter 551, Florida Statutes. For purposes of this proceeding, its address is that of the undersigned counsel.

5. Petitioner, Gulfstream Park Racing Association, Inc. d/b/a Gulfstream Park Racing and Casino. It has standing to initiate this proceeding because it is a pari-mutuel permit holder and is also licensed to conduct slot machine gaming pursuant to chapter 551. Its address is 901 South Federal Highway, Hallandale, FL 33009. For purposes of this proceeding, its address is that of the undersigned counsel.

### Invalidity of the Rule

6. Rule 61D-14.022(2) (Slot Machine Requirements) purports to establish parameters for the certification of slot machines by independent test laboratories. The Rule is invalid because it restricts slot machines from replicating certain other games prohibited by Section 849.08, Florida Statute, which is the general prohibition against gambling. The Rule provides as follows:

No slot machine game shall be certified for play in this state by a licensed independent test laboratory if it operates a program of play that replicates a game that is prohibited under Section 849.08, F.S., unless the slot machine game contains a player skill component and is not based on a banking game.

7. Section 849.08, Florida Statutes provides:

Whoever plays or engages in any game at cards, keno, roulette, faro or other game of chance, at any place, by any device whatever, for money or other thing of value, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 849.08, (last amended in 1971), is not a limitation on slot machine gaming in this state. Section 551.101, Florida Statutes (enacted in 2005) provides that “[n]otwithstanding any other provision of law, it is not a crime for a person to participate in slot machine gaming at a pari-mutuel facility licensed to possess slot machines and conduct slot machine gaming...” Accordingly, the Division has no authority to limit slot machine gaming by application of Section 849.08, Florida Statutes. Any such limitation squarely conflicts with Section 551.101 which authorizes slot machine gaming conducted in accordance with Chapter 551, “notwithstanding any other provision of law.”

8. Slot machines are broadly defined in Section 551.102(8), Florida Statutes.

This definition does not prohibit slot machines that replicate card games such as poker or black jack; or games of chance such as roulette or keno. Section 551.102(8) states that:

“Slot machine” means any mechanical or electrical contrivance, terminal that may or may not be capable of downloading slot games from a central server system, machine, or other device that, upon insertion of a coin, bill, ticket, token, or similar object or upon payment of any consideration whatsoever, including the use of any electronic payment system except a credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance or both, may deliver or entitle the person or persons playing or operating the contrivance, terminal, machine, or other device to receive cash, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether the payoff is made automatically from the machine or manually. The term includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine, or other device. Slot machines may use spinning reels, video displays, or both. A slot machine is not a “coin-operated amusement machine” as defined in s. 212.02(24) or an amusement game or machine as described in s. 849.161, and slot machines are not subject to the tax imposed by s. 212.05(1)(h).

9. The Division’s rulemaking authority in this context is limited to rules regulating the scientific testing and evaluation of slot machines by independent testing laboratories. The Law Implemented cited by the Division as support for the Rule is Section 551.103(1)(c), Florida Statutes.<sup>1</sup> Section 551.103(1)(c) provides in pertinent part that:

(1) The Division shall adopt, pursuant to the provisions of ss. 120.536(1) and 120.54, all rules necessary to implement, administer, and regulate slot machine gaming as authorized in this chapter. Such rules must include:

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<sup>1</sup> The other statutory provisions cited by the Division as the Law Implemented for Rule 61D-14.022 (Sections 551.103(1)(d), (h), and (i)) do not relate to the portion of the rule challenged in this proceeding.

\* \* \*

(c) Procedures to scientifically test and technically evaluate slot machines for compliance with this chapter. The division may contract with an independent testing laboratory to conduct any necessary testing under this section. The independent testing laboratory must have a national reputation which is demonstrably competent and qualified to scientifically test and evaluate slot machines for compliance with this chapter and to otherwise perform the functions assigned to it in this chapter. An independent testing laboratory shall not be owned or controlled by a licensee. The use of an independent testing laboratory for any purpose related to the conduct of slot machine gaming by a licensee under this chapter shall be made from a list of one or more laboratories approved by the division.

§ 551.103(1)(c) (emphasis added).

10. As set forth above, the purpose of the independent testing laboratory is to determine a slot machine's compliance with the provisions of Chapter 551, not Chapter 849. As such, the Division's rulemaking authority for rules relating to the scientific testing and evaluation of slot machines extends no further than the provisions found within Chapter 551, and the Division cannot rely upon Section 849.08 or any other provision of Chapter 849 as statutory authority for the Rule.

11. Further, the Division has not cited Section 849.08 as the Law Implemented by the Rule and therefore cannot cite this provision as the enabling statute being carried out or interpreted by the Rule. See, §§120.52(9) and 120.54(3)(a)1., Fla. Stat..

12. Even if the Division was authorized to limit slot machine gaming to prevent the replication of Section 849.08 games, it cannot arbitrarily prohibit the replication of only some of these games. The Rule allows for the replication of a Section

849.08 game if it “contains a player skill component and is not based on a banking game.” This exception is intended to allow the replication of poker because video poker was a widely deployed slot machine in this state when the rule was adopted. However, the rule has been interpreted by the Division as prohibiting the replication of other card games, such as black jack.

13. There is no authority for the Division to pick and choose which Section 894.08 games can be replicated by slot machines. The definition of slot machine includes games that operate “by reason of skill or application of the element of chance...” § 551.102(8), Fla. Stat. Similarly, there is no prohibition of slot machine gaming based upon “banking games” found in Chapter 551, Florida Statutes. Accordingly, there is no authority for the Division to arbitrarily restrict slot machine gaming operated by reason of chance or that are based upon banking games.

14. The Rule is an invalid exercise of delegated legislative authority under Section 120.52(8), Florida Statutes, because the Division has exceeded its grant of rulemaking authority; the Rule enlarges, modifies, or contravenes the specific provisions of the laws implemented; the Rule is vague, fails to establish adequate standards for agency decisions or vests unbridled discretion in the agency and the Rule is arbitrary and capricious.

#### Disputed Issues of Material Fact

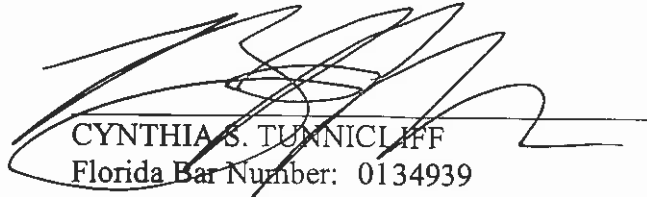
15. The disputed issues of material fact include, but are not limited to, whether the Rule constitutes an invalid exercise of delegated legislative authority for the reasons cited herein.

Ultimate Facts on which Petitioner Relies

16. The ultimate facts on which Petitioners rely are as follows:
- a. The Rule is invalid because the Division has exceeded its grant of rulemaking authority.
  - b. The Rule is invalid because it enlarges, modifies, or contravenes the specific provisions of the Laws Implemented.
  - c. The Rule is invalid because it is vague, fails to establish adequate standards for agency decisions or vests unbridled discretion in the agency.
  - d. The Rule is invalid because it is arbitrary and capricious.
  - e. The Rule does not implement or interpret the specific powers and duties granted by the enabling statutes.
  - f. The actions of the Division are not substantially justified. There is no reasonable basis in law and fact for the Rule's prohibition on certain types of slot machine gaming in this state. There are no special circumstances that would make an award of attorney's fees against the Division in this proceeding unjust.

WHEREFORE, Petitioners respectfully requests that the Rule be declared invalid and that it be granted such other and further relief deemed appropriate, including an award of attorney fees and costs not to exceed \$200,000, pursuant to Section 120.595(3), Florida Statutes.

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of August, 2009.



CYNTHIA S. TUNNICLIFF  
Florida Bar Number: 0134939

BRIAN A. NEWMAN

Florida Bar Number: 0004758

MARC W. DUNBAR

Florida Bar Number: 0008397

PENNINGTON, MOORE, WILKINSON,  
BELL & DUNBAR, P.A.

215 South Monroe Street, 2nd Floor (32301)

Post Office Box 10095

Tallahassee, Florida 32302-2095

Telephone: 850/222-3533

Facsimile: 850/222-2126

and

DAVID S. ROMANIK

Florida Bar Number 212199

David S. Romanik, P.A.

215 N. Monroe Street, Second Floor

Tallahassee, Florida 32301

Telephone: 954/610-4441