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Chris Anderson, President  
Sharp Image Gaming, Inc.  
9164 Jordan Avenue  
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Re: Advisory Opinion - 1) Tab Force Instant Pull-Tab Ticket Validation System  
2) Multi-Tab Pull-Tab Game System

Dear Messrs. Straus and Anderson:

This letter is in response to your separate inquiries as to whether the Tab Force Instant Pull-Tab Ticket Validation System (Tab Force Validation System) and the Multi-Tab Pull-Tab Game System (Multi-Tab System) are Class II or Class III games pursuant to the Indian Gaming Regulatory Act (IGRA). We viewed live demonstrations of both games at our office and have reviewed the materials submitted. Because the games are similar, and we viewed them together, we issue this one opinion for both games. We conclude that the Tab Force Validation System and the Multi-Tab System are Class II games.

#### GAME DESCRIPTIONS

1. Tab Force and Multi-Tab Pull-Tabs.

Tab Force and Multi-Tab pull-tabs are similar to each other. Both are paper pull-tabs. They are constructed of two pieces of paper with concealed numbers. Certain number combinations are winning combinations entitling the player to a prize. The pull-tabs are sold to gaming facility operators in "deals" or "draws" containing a predetermined number of winning and losing tickets. The pull-tabs, when opened, reveal the number combinations and whether the

player has won or lost the game. Printed on the outside of the Tab Force pull-tabs are the winning combinations and how much each pays. With Multi-Tab the information is either on the outside of the pull-tabs, or disseminated by way of a separate card, depending on the laws of the State in which the game is offered. Each pull-tab includes multiple separate plays for one price.

The player purchases the pull-tab from either a cashier or a floor seller. The player can determine whether he or she has won in a number of ways. First, the player can open or remove the pull-tab window to reveal the numbers. If the pull-tab contains winning combinations, the player may take the pull-tab to an attendant for payment. The player may also have the attendant determine if the pull-tab has winning patterns. Either way, the attendant validates the pull-tab. With the Tab Force pull tabs the attendant does so either by the use of a bar-code scanner or by manually inputting the bar-code into a computer which verifies whether the paper pull-tab is a winner. With the Multi-Tab pull tabs, the attendant swipes the pull-tab past a laser scanner which verifies whether the paper pull-tab is a winner.

## 2. Tab Force Validation System and Multi-Tab System.

Both companies offer machines designed to read the pull-tabs. If a Tab Force pull-tab player chooses, he may determine whether his pull-tab is a winner by using what is called a "Validation System." A Multi-Tab pull-tab player may also have his pull-tab read by using the "Multi-Tab System." With both pull-tab games, it is entirely up to the player whether to read his pull-tab himself or use the respective System ("System" hereinafter used to refer to both Systems). With either of the Systems, a player first opens or uncovers the pull-tab to reveal the plays and then inserts it into the System. The Tab Force Validation System then reads the bar-code on the pull-tab and validates it. With the Multi-Tab System, the system reads the pull-tab, and returns the original pull-tab to the player who then takes the pull-tab to an attendant who validates the pull-tab. Both Systems present a graphic display of each of the number combinations on the pull-tab one at a time as the player presses a button to prompt each display.

After the player has determined whether the pull-tab is a winner, he may insert another pull-tab if he wishes. When a Tab Force player is done validating his pull-tab(s), the Validation System retains the pull-tab(s) and prints a voucher which the player may present to a cashier for payment. At any time, the player may obtain a voucher by pressing the "PRINT VOUCHER" button. If he does, the Validation System will more rapidly display the remaining winning and losing patterns on the pull-tab and print the voucher. When a Multi-Tab System player is finished reading the pull-tab, the original pull-tab is returned to the player, who must then redeem it with a cashier.

In both cases, the System does not accept cash, nor does it dispense cash. The Systems do not contain random number generators. In addition, they do not dispense pull-tabs. The Systems simply read the pull-tabs and display whether or not they are winners. The Systems cannot change the outcome of the game. The outcome is determined by the pre-printed numbers on the pull-tab. A player cannot accumulate credits for more plays. If a Tab Force player wants

to play more games using his winnings, he must redeem his voucher and purchase additional pull-tabs. If a Multi-Tab player wants to play more games, he must redeem his pull-tab and purchase additional pull-tabs.

### ANALYSIS

The IGRA defines Class II gaming as:

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)-

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards

including (if played at the same location) pull-tabs, lotto, punch cards, tip jars, instant bingo, and other games similar to bingo. . . .

25 U.S.C. § 2703(7)(A) (Emphasis added). A pull-tab is commonly known to be a paper or plastic ticket containing hidden winning or losing combinations of symbols that are revealed to the player when opened. As described above, the Tab Force and Multi-Tab pull-tabs meet this definition.

Pull-tabs are considered a sub-game of bingo. Furthermore, it has been held that technological aids may be used not only with bingo, but also with sub-games of bingo. Cabazon Band of Mission Indians v. National Indian Gaming Commission, 827 F. Supp. 26, 30 (D.D.C. 1993), *aff'd*, 14 F.3d 633 (D.C. Cir. 1994) (“[U]nder the Commission’s rules, technological aids may be used with the sub-games”; emphasis in original).

While the IGRA defines what games are Class II games, it also defines the types of games that do not fall within the definition of Class II gaming, and this includes “electronic or electromechanical facsimiles of any game of chance...” 25 U.S.C. § 2703(7)(B)(ii). Thus, to properly classify the game of pull-tabs played using the Tab Force Validation System or the Multi-Tab System, it is necessary to determine whether either System is an “electronic or

electromechanical facsimile of any game of chance,” or merely a “technological aid”.

NIGC regulations provide:

Electronic or electromechanical facsimile means any gambling device as defined in 15 U.S.C. 1171(a)(2) or (3) [The Johnson Act].

25 C.F.R. § 502.8. Thus, the question of whether either System is a facsimile, as opposed to a technological aid, depends on whether it is a “gambling device” within the meaning of the Johnson Act, 15. U.S.C. § 1171.

The Johnson Act defines “gambling device” as:

[A]ny other machine [other than a slot machine] or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of an application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property. . . .

15 U.S.C. § 1171 (a)(2). Therefore, to constitute a Johnson Act device, a device must be designed primarily for gambling, and must meet the elements of either (A) or (B). These elements are commonly referred to as consideration, chance, and reward. Neither the Tab Force Validation System nor the Multi-Tab System meet any of these elements, and therefore neither is a gambling device prohibited by the Johnson Act.

For a device to fall within the Johnson Act definition, it must first contain the element of consideration. This element is not present in either the Tab Force Validation System or the Multi-Tab System. No money is inserted into either System. Consideration is paid for the pull-tab, which is purchased separately and may be read, and a prize claimed without use of the System. The player has the option of inserting it in to the machine if he so desires. Although with the Tab Force game, a pull-tab which may have value is inserted, and the machine will print a voucher in exchange for the pull-tab if it is a winning pull-tab, the voucher is of equal value to the pull-tab winnings. The Multi-Tab System reads the pre-purchased pull-tab and returns the original pull-tab to the player.

Secondly, the “application of an element of chance” must exist for a device to be a Johnson Act device. Such an element does not exist in either System itself. The element of

chance occurs when the player purchases the pull-tab separately from the machine. Whether a pull-tab contains any winning combinations is pre-determined at the time the pull-tab is printed; the use of either System leaves nothing to chance.

Finally, the Johnson Act definition of a gambling device includes the element of "reward", which is not present with either System. This element, also called the "prize" element, exists separate from the System. It is the pull-tab itself, purchased separately from the system, that entitles the player to a reward. The System does not deliver a reward, nor does it entitle a person to receive a reward. The Tab Force Validation System delivers a voucher, which is identical to the voucher which the player could receive by turning the pull-tab in to an attendant. The voucher is of equal value to the pull-tab that is inserted in to the Tab Force Validation System. The Multi-Tab System returns the original pull-tab to the player, which then must be redeemed with an attendant.

Having found that neither System is a Johnson Act gambling device, and consequently not an "electronic or electromechanical facsimile" under IGRA, we turn to whether either System is an "electronic, computer or other technological aid" under IGRA. NIGC regulations define technological aid as:

[a] device such as a computer, telephone, cable, television, satellite or bingo blower that when used--

(a) Is not a game of chance but merely assists a player or the playing of a game;

(b) Is readily distinguishable from the playing of a game of chance on an electronic or electromechanical facsimile; and

(c) Is operated according to applicable Federal communications law.

25 C.F.R. § 502.7. Both Systems fit the definition of a technological aid. First, they are not games of chance. The chance inherent in the game is contained within the paper pull-tab itself, and is not at all impacted by the System. As indicated above, whether a pull-tab contains any winning combinations is pre-determined at the time the pull-tab is printed; the use of either System does not add the element of chance. Both Systems assist the player in the play of the game by offering the player technological assistance as an optional alternative to visually or manually reading the numbers printed on the paper pull-tab. This feature may add an additional element of excitement to the game. Therefore, the System functions as a "technological aid" to assist the player in reading the pull-tab.

Further, each System is readily distinguishable from the playing of a game of chance on an

electronic or electromechanical facsimile. The paper pull-tab itself is the game. The pull-tab game is purchased separately and may be played separately without the aid of the System. There is, therefore, no element of chance inherent in either System. As discussed above, NIGC regulations define "electronic or electromechanical facsimile" to mean any gambling device as defined in the Johnson Act. The Johnson Act requires that, for a device to be a gambling device, it must contain an element of chance. Because neither System contains any element of chance, they are not gambling devices, and therefore are not "electronic or electromechanical facsimiles."

The Systems at issue here are distinguishable from those pull-tab machines which courts have deemed to be Class III. In Cabazon, the court held that electronic pull-tab machines which "wholly incorporate" the game of pull-tabs are facsimiles. Cabazon at 636. Neither System here "wholly incorporates" the game of pull-tabs. As described above, the paper pull-tabs constitute the game. The paper pull-tabs may be manually pulled apart to reveal the combinations of numbers; the player need not ever use either System. Therefore, neither System "wholly incorporates" the game of pull-tabs.

In addition, the court in Sycuan Band of Mission Indians v. Roache, 54 F.3d 535 (9th Cir. 1995) examined the "Autotab Model 101 electronic pull-tab dispenser" a self-contained unit operated by the insertion of money, whereby the player sees a video reproduction of a paper pull-tab ticket. Id. at 541. The court held that the "pull-tab machines present self-contained computer games copying the pull-tab principle, and they are played electronically." Id. at 542. The court found that the games were therefore facsimiles. Id. Important to the court was the fact that [the] "player is faced with a self-contained machine into which he or she places money and loses it or receives winning tickets after the electronic operations are conducted." Id. at 543. Again, the Systems at issue here are not "self-contained units." The paper pull-tab must be purchased separately, and then may or may not be inserted into system, at the discretion of the player.

Lastly, there is no Federal communications law that prohibits the use of this type of technological aid.

## CONCLUSION

In conclusion, we find that the Tab Force Validation System and the Multi-Tab System are Class II games. Further, they do not constitute gambling devices within the meaning of the Johnson Act, and therefore are not Class III games under IGRA. They are, rather, technological aids as that term is defined in the IGRA. Consequently both Systems, and other similar technological aids, may be used as technological aids to the game of pull-tabs as a Class II game, subject to both NIGC and tribal regulation.<sup>1</sup>

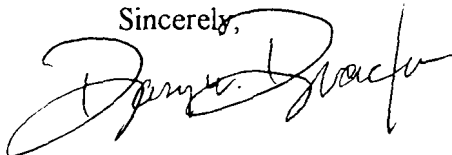
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<sup>1</sup> We note that other jurisdictions have analyzed the Tab Force Validation System and reached similar results. The Attorney General's Office of the State of Maryland issued an opinion letter, dated August 19, 1997, stating that under Maryland law the Validation System is not a slot

Please be advised that this legal opinion is advisory in nature only and that it may be superseded, reversed, revised or reconsidered by a subsequent General Counsel or Chairman of the NIGC. Furthermore, if there are any changes made to the game as described, such changes might materially alter our conclusion.

Finally, by issuing this opinion, we do not speak on behalf of the Department of Justice or the United States Attorneys who share enforcement responsibilities with the NIGC over gambling devices.

Sincerely,



Barry W. Brandon  
General Counsel

cc: Mark Nizdil, Triton Gaming, Inc.  
Michael Cox, Esq.  
Kevin DiGregory, U.S. Department of Justice  
Jim Simon, U.S. Department of Justice  
Leslie Singer, U.S. Department of Justice  
Doug Crow, U.S. Department of Justice

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machine or a gaming device. The Maryland definition of a "gaming device" is similar to the Johnson Act definition in that both require the three elements of consideration, chance and reward. In addition, the Colorado Department of State determined that the Validation System is not a gambling device under Colorado law, but is rather "an elaborate means for determining the winnings on a 'pickle' card [i.e. pull-tab]".