

**NATIONAL  
INDIAN  
GAMING  
COMMISSION**

NOV - 2 1999

Larry Montgomery, Vice Chairman of the Board  
Multimedia Games, Inc.  
8900 Shoal Creek, Blvd.  
Suite 300  
Austin, TX 78757

Dear Mr. Montgomery:

This letter is in response to your request of December 22, 1998, for a National Indian Gaming Commission (NIGC) determination on whether Evergreen Bingo is a Class II or a Class III game. After review of your written submission, a field test by a staff member of the NIGC, and conversations with you and your staff, we have concluded that Evergreen Bingo is a Class III game.

Evergreen Bingo contains several features that are the subject of pending litigation in federal courts in Oklahoma and California. See United States v. 162 Megamania Gambling Devices, et al., D.C. No. 97-CV-1140-K(J) (N.D. Okla. 1999) (currently under appeal to the Court of Appeals for the Tenth Circuit); United States v. 103 Electronic Gambling Devices, etc., et al., D.C. No. 98-CV-1984-CW (N.D. Cal. 1999) (currently under appeal to the Court of Appeals for the Ninth Circuit). At issue are the concepts of electronic bingo machines as Class II gaming, interim games and the continuous win feature. Because of this litigation, we defer analysis of these concepts and features in the litigation until they are resolved. Evergreen Bingo contains other features, however, that are not at issue in the litigation and that, even assuming that the litigation is decided completely in Multimedia's favor, these features would result in the classification of this machine as Class III gaming. Further, given the widespread offering of Evergreen Bingo, the NIGC believes it necessary to issue this opinion to provide guidance to the regulated community.

Description

Evergreen is a game which links machines called electronic player stations (EPS) at several Indian gaming facilities to a central computer system to play a game that depicts an electronic bingo card, or at the player's election, which spin when the "Daub/Spin" button is pushed. Players are playing the same game whether they choose to play the screen which displays a card or the screen which displays reels.

The displayed cards are look like standard bingo cards with five rows and five columns; with each column designated as "B," "I," "N," "G," or "O"; and the twenty-five boxes are filled with numbers from 1 to 75. The players may change their cards before the next game begins. The object of the game is to be the first person to cover one of the four corners of the card.

Thus, only the "B" and "O" balls are relevant to this game.

A bingo blower draws balls from a standard bingo population of 75 balls. Balls are drawn for each game until a total of at least four "B" or "O" balls are drawn. Drawn numbers are displayed on the screens of the machines. Players have three seconds following the display to press the "Daub/Spin" button or the player loses the opportunity to win (i.e., the player "sleeps" the bingo). According to Larry Montgomery's letter to Mai Dinh dated July 8, 1999, "it is physically possible to direct the EPS to daub an instant before [the] ball sequence appears."

According to Mutimedia's literature, if the player is the first to cover a corner, he or she wins the game. There may be multiple winners. Those players who are the first to cover a corner in the first ball drawn may participate in a bonus game which awards additional prizes depending on the numbers of corners that are covered in relation to the number of balls drawn. Players may also participate in a different bonus game which also awards prizes depending on the number of corners covered in connection with the number of "B" or "O" balls drawn. After the player initially daubs, the EPS automatically updates the daubs to determine if any bonus prizes are won. See Larry Montgomery's letter to Mai Dinh dated July 8, 1999 at page 2. Evergreen Bingo also contains a progressive prize for players who cover all four corners in the first four balls drawn.

Players may choose the spinning reel graphics rather than a bingo card. The players press the "Daub/Spin" button to start the reels spinning when the machine lets them know that a new game has started. This event will correspond in time to the rapid display of the drawn balls in the bingo card display. The three columns of reels will stop in approximately 3.5 seconds. Every bingo game result corresponds to a reel graphic display. The graphics will display a certain combination of symbols depending on whether the player lost, won the first corner game, or won the first corner game and any additional bonus games. The graphic display encompasses both the first corner game as well as the bonus games.<sup>1</sup> In both the electronic bingo card display and the reel display the game is played quickly and players rely on the machine to inform them whether they have won and the amounts of their winnings.

### Analysis

The definition of Class II bingo games under the Indian Gaming Regulatory Act requires players to cover a "previously designated arrangement of *numbers* or *designations* . . . ." 25 U.S.C. § 2703(7)(A)(I)(III) (emphasis added). The NIGC's regulations require players to "*cover* a designated *pattern* . . . ." 25 C.F.R. § 502.3(a)(3) (emphasis added). A pattern is a "design composed of *elements* in a regular arrangement." Random House Webster's Dictionary 485 (1993). Both definitions use the plural form to describe what needs to be covered in order to win a game. Thus, under the plain language of both IGRA and the NIGC regulations, a game is not bingo or a game similar to bingo unless players are required to cover more than one number or designation before they can win. They must also cover numbers or designations that are in a

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<sup>1</sup>For example, if the reels display three white "7"s, it means that the player was the first person (or among the first persons) to cover a corner and the player also won a bonus because he or she covered three corners in the first three balls drawn.

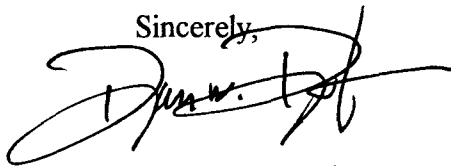
regular arrangement. In Evergreen Bingo, players need to cover only one number, a corner, in order to win. Therefore, Evergreen Bingo fails to meet this element of the Class II bingo definition.

IGRA also requires that "the holder of the card *covers* such numbers or designations *when* objects, similarly numbered or designated, are drawn . . ." 25 U.S.C. § 2703(7)(A)(I)(II) (emphasis added). Because it is possible to daub before the numbers are displayed, the players are pressing the "Daub/Spin" button in response to the EPS' prompting rather than when they see the drawn numbers and realize that the numbers correspond to their electronic bingo cards. Thus, players do not cover, as required by IGRA, when they push the "Daub/Spin" button nor are they covering when the balls are drawn and displayed. Evergreen also fails to meet this requirement when the EPS displays reels rather than the electronic bingo card. When players push the "Daub/Spin" button to start the reels spinning, they are not covering any card. The display of a miniature card in the bottom left-hand corner does not negate the fact the players push the button to begin spinning the reel, not to cover the card. If the player's focus is on covering the card, he or she would be playing the game using the bingo card graphics. Finally, the players are not required to push the "Daub/Spin" button to cover in the bonus games. Rather, the EPS covers for the players. Thus, players are not covering as required by IGRA and the NIGC regulations.

In summary, Evergreen Bingo fails to meet the statutory definition of Class II bingo for several reasons. First, the object of the game is to be the first person to cover one corner. The law requires that players cover more than one number or designation. Second, players cover in response to the EPS prompting rather than matching the drawn numbers against their electronic bingo card because they can cover before the numbers are displayed on the EPS. Third, when players use the spinning reels graphics, they are not covering when they press the "Daub/Spin" button. Finally, the EPS covers for players when they play the bonus games regardless of whether they press the "Daub/Spin" button. Therefore, Evergreen Bingo is not bingo as defined in 25 U.S.C. § 2703(7)(A)(I).

Because Evergreen Bingo is not a Class I or a Class II game, it is a Class III game under IGRA. Tribes must have an approved Tribal-State compact for this game before they can conduct this game on Indian lands. If you have any questions concerning this letter, please contact Penny Coleman at 202-632-7003.

Sincerely,



Barry W. Brandon  
General Counsel/Chief of Staff