

### **Role of Skill in Sports Gambling**

1. Does DFS involve skill?
2. Assuming you answered yes to #2, do you believe the existence of skill implies that DFS is not gambling?
3. Are you aware that the U.S. Department of Justice already took the position that traditional sports betting involves skill?
4. Do you agree that traditional sports betting involves skill?
5. If traditional sports betting involves skill, would that mean it is not gambling?
6. If you answered yes to #4, and no to #5, explain why the existence of skill doesn't turn traditional sports betting into non-gambling, but does so for DFS?

### **What is DFS after all? A Game or a Market?**

1. Do you believe that DFS is a game?
2. Would you say traditional sports betting is a game?
3. If you answered no to #2, how would you characterize it? Would you agree it can be characterized as a market?
4. Are you aware that in 2015, the U.S. Securities and Exchange Commission ("SEC") shut down a fantasy offering, called Stock Battle, arguing it amounted to unregulated security-based swaps?
5. Are you aware that Stock Battle identified itself as the first fantasy gaming stock market competition?
6. Are you aware that Stock Battle relied on UIGEA as its legal basis?
7. Do you agree with the SEC decision?
8. If you answered yes to #7, how do you reconcile the fact that one fantasy offering amounted to unregulated swaps, and another fantasy offering, yours, is just a "game"?
9. Do you think it makes sense to subject some fantasy offerings to federal laws, and others to state laws?
10. (For FanDuel) In your IL brief, you said "...no one contends ... that a stock-picking contest is not a bona fide competition." With SEC "contending" that a stock-picking contest is in fact NOT a bona fide competition, and instead concluding that it is a market dealing unregulated swaps, explain how this impacts your overall position.

### **Analysis of DFS under State and Federal Laws**

1. Do you agree that the Unlawful Internet Gambling Enforcement Act of 2006 ("UIGEA"), by construction, does not preempt any state laws?
2. (for DraftKings) If you answered no to #1, why did your CEO, Jason Robins, say that "state law would supersede UIGEA"?
3. Do you agree that UIGEA does not make fantasy sports legal and is simply an enforcement act dealing with payment processing?
4. (for DraftKings) If you answered yes to #3, why did your CEO, Jason Robins, represent that "It's clearly legal."?
5. If you answered yes to #3, why did you take the opposite position in your New York legal briefs? You said:

DraftKings: "Congress ... specifically concluded that fantasy sports contests involving entry fees and prizes are not unlawful gambling."

FanDuel: "Congress specifically declared that fantasy sports contests did not involve gambling in UIGEA.

6. Are you aware that the author of the UIGEA said (about fantasy sports): "No one ever conceived if it becoming a large scale activity or that it could transition into one-day contests."?
7. Do you believe that DFS is 100% legal?
8. If you answered yes to #7, why did you take that statement away from your website?
9. If you answered no to #7, why did you make that representation in the past?
10. Do you agree that UIGEA does not preempt any federal laws?
11. Do you think daily fantasy sports runs afoul of any federal laws?
12. If you answered yes to #10 and #11, do you agree that nothing has changed from a federal law perspective and therefore DFS could have been offered lawfully prior to the UIGEA?
13. Are you aware that as early as 1999 Congress questioned the impact of short-term fantasy sports?
14. Are you aware that in the same 1999 Congressional hearings, MLBPA testimony supported potential exemption of fantasy sports but in doing so, pointed to a) small-stakes nature of fantasy sports and b) integrity?
15. Please explain your legal position with respect to DFS and the following federal laws.
  - a) Wire Act
  - b) Illegal Gambling Business Act
  - c) Professional and Amateur Sports Protection Act of 1992 ("PASPA")
  - d) Dodd-Frank Act Section 745
16. Do you believe potential state legislation would violate PASPA? If not, explain why not.
17. Why did you refuse to stop offering DFS on college games even after the NCAA sent you a letter, but changed your mind in March 2016?
18. Were you concerned that NCAA may bring a suit under PASPA as you continue to pursue state-level regulation?
19. (for DraftKings). Your CEO represented that state law supersedes UIGEA, and you have maintained that position even after the transcript came out and you disputed the accuracy of some of the minutes.

MLB Commissioner Rob Manfred. on the other hand, has represented that "Our research was focused on the federal law which differentiated gambling based on whether or not something was a game of skill or a game of chance...We did not expect individual states to intercede on this issue."

MLB has an equity stake in DraftKings. Can you explain how the investor and company can have two entirely different positions on something so critical to the business model?

## Purpose and People

1. Do you believe your customers risk money when they participate in a daily fantasy “contest”?
2. If you answered yes #1, why did you take a position in your New York court filings and elsewhere in the media that customers are not risking anything.
3. If you answered no to #1, explain why it wouldn't be in the best interest of anyone to put their entire life savings into DFS? If they are not risking anything, and there is a positive probability of winning something, it represents a risk-free return, doesn't it? If it doesn't, then how can it be true that they are not risking anything?
4. If your significant other, your children, or your parents came to you and announced that they will be “competing in a DFS game” where the “entry fee” is over \$5,000 or \$10,000, and ask you whether that's risky, what would you tell them? Would you tell them they should do it because they are not risking anything after all?
5. Are you aware that Adam Silver, NBA Commissioner, said regarding daily fantasy sports: “You are putting money at risk.”? How do you reconcile that with your position that DFS participants don't risk anything?
6. Do you think DFS serves any purpose other than entertainment?
7. If you answered yes #6, what is it?
8. If you answered yes to #6, why have we never heard about it?
9. Do you think gambling is a form of entertainment?
10. (for FanDuel) If you answered yes to #9, why did you answer the question “so you don't view what you do at FanDuel as gambling?” by saying “No, because ... we are an entertainment product”? clearly implying that entertainment and gambling are mutually exclusive?
11. With reportedly 70% of people losing money in DFS and addiction problems surfacing in the media including one person who lied to his parents to get daily fantasy money, do you believe that DFS is harmless to society?
12. Do you think daily fantasy sports should be regulated by some government agency?
13. (for FanDuel). If you answered yes to #12, why did you not say so when you were asked the question “So you no see no reason, then, for fantasy sports to be regulated by some government agency.”? Your response was “Our product is all about entertainment value.” implying that you don't want regulation.
14. (for FanDuel) Did you ever contact Bryce Mauro, an economics student at DePaul University and an avid DFS participant? If so, please explain the nature of that conversation.
15. (for Fanduel) Did you ask Bryce Mauro not to use the word “gambling” in his conversations with the reporters from the New York Times, or other individuals?