

CUSTOMER LISTS, SENSITIVE INFORMATION & HIRING PRACTICES BY NEVADA GAMING LICENSEES

DATE: NOVEMBER 20, 2009

AUTHORS: GREG GEMIGNANI, GAMING & REGULATORY LAW DEPARTMENT AND
LAURA THALACKER, LITIGATION DEPARTMENT LABOR & EMPLOYMENT PRACTICE GROUP

Recently, the Nevada Gaming Control Board (the "GCB") conducted an informational seminar to identify current issues of concern for the GCB. At this seminar, Board Member Sayre expressed particular concern with the misappropriation of customer lists and sensitive information and the hiring practices of Nevada gaming licensees.

The Current Issue

The gaming industry has always been competitive. In the current economic climate, this competition has become even fiercer. Licensees are competing for talent to protect their existing market share, as well as to increase their market share at the expense of their competitors.

This competitive environment has caused many licensees to increase their reliance on technology and information systems to maximize their effectiveness in a shrinking market. While technology and information systems can maximize competitive efficiency, they also provide a ripe target for information acquisition by employees and other agents looking to move to a competitor.

Recently, the GCB has noticed that the flow of employees and sensitive information has been increasing and that some of this information acquisition and transfer has been accomplished in violation of Nevada statutes and contractual obligations of employees and agents.

Nevada Statutes

Nevada statutes specifically identify customer lists as intangible property. Additionally, Nevada statutes also identify trade secrets, copyright material and confidential information as intangible property.

Nevada criminal statutes specifically prohibit the theft or misappropriation of intangible property. This includes the following:

- Converting an unauthorized interest in intangible property or the use of misappropriated intangible property; and
- Controlling intangible property that was stolen or misappropriated.

GCB Response

The GCB has made it clear that if it learns of anyone engaging in the misappropriation of intangible property, that it will likely refer the matter to the appropriate law enforcement officials.

The GCB has also indicated that any person or entity holding a gaming license that engages in such activity, encourages such activity or promotes such activity will likely face significant disciplinary action.

Obligations of Licensees

Protection of Personal Information

All businesses in Nevada that collect personal information are statutorily required to maintain reasonable security measures to protect personal information from unauthorized access, acquisition, destruction, use, modification or disclosure. In other words, personal information (often information found in customer lists) should be encrypted and protected.

Hiring Practices and Information Acquisition

Given the current focus of the GCB, gaming licensees should implement compliance measures to ensure that they are not promoting, aiding, or encouraging the misappropriation of intangible property through hiring. Measures should, at a minimum, include the following:

- Clearly explaining policies regarding information acquisition with prospective employees during the hiring process;
- Obtaining a clear understanding of a prospective employee's confidentiality or other contractual obligations (for example, a non-compete) with a prior employer;
- Assessing whether a prospective employee can fulfill his or her expected post-hiring applications without violating obligations to a former employer;
- At the time of hire, having new employees make written representations regarding their understanding of the licensee's policies and a written disclosure regarding any confidentiality obligations (or lack of such obligations) to prior employers; and
- At the time of hire, having new employees confirm in writing that they have legal rights to any information they are entering into the licensee's electronic systems.

- Timely taking corrective or remedial measures if there is a breach of non-disclosure or confidentiality obligations.

If your company would like assistance with its compliance plan, hiring practices, non-disclosure or non-competition agreements, employee handbooks or other representation related to this memo, please call our Firm.

If you have questions about this Client Alert, you may contact Greg Gemignani at 702-383-8989 or Laura Thalacker at 702-383-8947.

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Prudent Measures to Protect Confidential Information

Like all businesses with confidential and sensitive information, it is prudent to take reasonable efforts to protect valuable confidential information. Additionally, Nevada statutes provide substantial benefits to preserving such information when reasonable and prudent measures are taken to protect valuable confidential information.

Such reasonable steps can include, but are not limited to, the following:

- Entering into written non-disclosure agreements with employees (including defining or identifying with particularity examples of confidential information pertinent to specific employees' job duties);
- Including confidentiality and non-disclosure policies in employee handbooks;
- Using non-disclosure agreements with vendors, independent contractors, suppliers and agents;
- Implementing and enforcing policies to protect access to sensitive information;
- Conducting exit interviews with departing employees to remind them of their confidentiality and non-disclosure obligations and to reaffirm the licensee's intent to enforce such obligations; and

About the Authors



Greg Gemignani is a shareholder at Lionel Sawyer & Collins with a practice focus primarily on intellectual property law, gaming law, technology law, internet law, online gaming law, and online promotions law. He has represented clients ranging from the largest casino companies to start-up internet ventures, and has published numerous articles on intellectual property, information technology, and internet gaming issues.



Laura J. Thalacker is a shareholder with Lionel Sawyer & Collins. A litigator in Nevada since 1994, Ms. Thalacker's practice focuses on representing employers in a wide range of employment and labor law matters before state and federal courts and administrative agencies. Ms. Thalacker also assists employers with a variety of day-to-day employment issues, such as drafting employment contracts, handbooks and policies, and providing advice and training on workplace matters such as employee discipline, termination, harassment and discrimination.