

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION

In the Matter of)
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Application of Crown MA Gaming, LLC d/b/a DraftKings)
for a Temporary Untethered Category 3 Sports Wagering)
Operator License)
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)

**DECISION DEEMING CROWN MA GAMING, LLC D/B/A DRAFTKINGS
ELIGIBLE TO REQUEST A TEMPORARY UNTETHERED
CATEGORY 3 SPORTS WAGERING OPERATOR LICENSE¹**

I. Introduction

Crown MA Gaming, LLC d/b/a DraftKings (“DraftKings”) applied to the Massachusetts Gaming Commission (“MGC” or “Commission”) for an Untethered Category 3 Sports Wagering License. Under G.L. c. 23N, the Commission may issue an Untethered Category 3 Sports Wagering License (“License”) to an entity that offers sports wagering through a mobile application or other digital platform that meets the requirements of c. 23N and the rules and regulations of the Commission. For the following reasons, the Commission hereby deems DraftKings eligible to request a License.

II. Procedural History

On November 21, 2022, the Commission received DraftKings’ Sports Wagering License Application (“Application”), including the \$200,000 application fee. *See* G.L. c. 23N, § 7(A) and 205 CMR 214.01. The MGC Division of Licensing reviewed the Application for administrative sufficiency and determined that the application was sufficient. *See* 205 CMR 218.03. On January 3, 2023, the Commission held a virtual public meeting to hear public comments on all Untethered Category 3 Sports Wagering applications, *see* 205 CMR 218.05 and 205 CMR 218.06, which are contained in the Commission’s public record. On January 11, 2023, the Commission held a virtual public meeting to determine whether to issue DraftKings a preliminary finding of suitability, which included hearing an informal presentation from DraftKings and the Commission’s consultants. *See* 205 CMR 218.04(1)(a)-(b), 218.05(1)(b), 218.06(1). On January 11, 2023, the Commission deliberated on the Application, *see* 205 CMR 218.06(4)-(5), and found DraftKings preliminarily suitable and eligible to request a Temporary License. *See* 205 CMR 215.01(2)(c)-(d), 218.07(1)(a).

¹ All facts referenced in this decision were current as of the date of the respective hearings referenced in the Procedural History for this applicant.

III. Findings and Evaluation

In evaluating whether to issue the Category 3 Sports Wagering License to DraftKings, the Commission considered all information in the application submitted by DraftKings; the public comments made on January 3, 2023; the presentations made by DraftKings and the Commission's external consultants² on January 11, 2023; and a written report prepared by the Investigations and Enforcement Bureau ("IEB" or "Bureau") in accordance with 205 CMR 215.01(2)(b).

In accordance with 205 CMR 218.06(5), in determining whether to deem DraftKings eligible to request a Temporary Untethered Category 3 Sports Wagering License, the Commission evaluated all materials and information in the record to determine whether a license award would benefit the Commonwealth, and considered the following factors:

- a) DraftKings' experience and expertise related to Sports Wagering, including:
 1. DraftKings' ability to offer Sports Wagering in the Commonwealth;
 2. A description of DraftKings' proposed Sports Wagering Platform;
 3. The technical features & operation of DraftKings' proposed Sports Wagering Platform;
- b) The economic impact and other benefits to the Commonwealth if DraftKings was awarded a License, including:
 1. Employment opportunities within the Commonwealth;
 2. Projected revenue;
 3. Community engagement;
- c) DraftKings' proposed measures related to responsible gaming, including:
 1. DraftKings' responsible gaming policies;
 2. DraftKings' advertising and promotional plans;
 3. DraftKings' history of demonstrated commitment to responsible gaming;
- d) A description of DraftKings' willingness to foster racial, ethnic, and gender diversity, equity, and inclusion, including:
 1. Within DraftKings' workforce;
 2. Through DraftKings' supplier spend;
 3. In DraftKings' corporate structure;
- e) The technology that DraftKings intended to use in its operation, including:

² The consultants include RSM US LLP ("RSM"), which presented on DraftKings' financial projections; Gaming Laboratories International LLC ("GLI"), which presented on technology considerations; and the Commission's Investigations and Enforcement Bureau ("IEB"), which presented on DraftKings' suitability.

1. Geofencing;
 2. Know your customer measures; and
 3. Technological expertise and reliability;
- f) The suitability of DraftKings and its qualifiers, including:
1. DraftKings' corporate integrity;
 2. The integrity of DraftKings' individual qualifiers;
 3. DraftKings' financial stability, integrity, and background;
 4. DraftKings' history of compliance with gaming or Sports Wagering licensing requirements in other jurisdictions; and
- g) Any other appropriate factor, in the Commission's discretion.

In each case, the Commission decided whether each section of DraftKings' application addressing these factors failed to meet, met, or exceeded expectations.

Ultimately, the Commission finds there is substantial evidence in the record to conclude that DraftKings' proposed Sports Wagering operation meets the requirements set forth in G.L. c.23N and 205 CMR 218. The Commission further finds there is substantial evidence to adopt the following specific findings of fact and conclusions of law related to DraftKings' Application.

A. Experience and Expertise Related to Sports Wagering

As reported during the January 11, 2023, hearing, DraftKings first launched in 2012 as a daily fantasy sports company. In 2018, DraftKings became the first company to launch a mobile sport wagering platform, doing so in New Jersey. As of January 11, 2023, DraftKings has launched its platform in over 20 states and the province of Ontario, giving it the leading market presence amongst sports wagering operators. DraftKings also reported that it has over 4,000 employees and sees traffic of over 2.7 million players per month.

During its presentation, DraftKings stated that customer service is its "number one value" and that DraftKings has over 1,000 customer service associates who are able to provide customer support 24/7, 365 days/year through email, webchat, phone, and social media.

Members of the Commission raised concerns about DraftKings use of the word "free" in its promotions (which the Commission noted resulted in a high retention rate), and asked DraftKings to address how it would comply with the Commission's regulation prohibiting the use of "free" in promotions and advertisements. DraftKings stated that while it has historically used "free" in its marketing efforts, DraftKings was consistently evaluating the language employed in its promotions and advertisements and would stop using "free" to comply with the Commission's regulations.

Members of the Commission also asked DraftKings to elaborate on its exclusive agreement with the Ultimate Fighting Championship and Conor McGregor. DraftKings responded it has an active relationship with the Ultimate Fighting Championship and various mixed martial arts

fighters, as well as other professional sports teams. DraftKings further explained that all these relationships are formed through partnerships with the governing body of the sport, and that the governing body approves any promotional messages that are advertised through the league, team, or athlete. In response to concerns raised by Commissioners, DraftKings clarified that it implements controls, such as prohibiting an athlete from betting on competitions in which they participate or at events in their sport, in order to ensure the integrity of sports betting. DraftKings further responded that it vets each celebrity or athlete before partnering with them, and if required under the relevant law, has that individual obtain a vendor or partner license.

In response to questions raised by Commissioners, DraftKings clarified that its existing Commonwealth customers are either customers who participate in daily fantasy sports or have created an account to engage in sports wagering in a nearby jurisdiction, such as New Hampshire. DraftKings further clarified that it has not engaged in any prelaunch marketing and would not do so until the Commission issues guidance permitting such marketing.

Commissioners also asked DraftKings to clarify its satisfaction rates, which it noted were low. DraftKings stated that when it first launched its sports wagering platform, its technology was still evolving. Since then, DraftKings has added additional identification verification measures, as well as multiple deposit and withdrawal options. DraftKings stated that if it were to survey its customers across all states in which it operates, it believes it would yield positive reactions.

The Commission went into executive session to discuss why DraftKings’ odds differ from those offered by other sports wagering operators and how DraftKings sets its odds in accordance with G.L. c. 30A, § 21(a)(7) and G.L. c. 23N, § 6(i). The Commission was ultimately satisfied that DraftKings’ odds setting practices did not negatively impact its ability to offer Sports Wagering in the Commonwealth.

Overall, there is substantial evidence that DraftKings has the experience and expertise required to develop and operate a Sports Wagering Platform. Therefore, DraftKings’ proposal in the experience and expertise category meets expectations.

SUMMARY OF EVALUATION BY CRITERIA	
Criteria	Finding
DraftKings’ ability to offer Sports Wagering in the Commonwealth	As of January 11, 2023, DraftKings operates in over 20 states and the province of Ontario. DraftKings has over 4,000 employees, with over 1,000 of those employees dedicated to customer service. For the reasons stated above, the Commission unanimously agreed that DraftKings has sufficient ability to offer Sports Wagering in the Commonwealth.
Description of DraftKings’ proposed Sports Wagering Platform	DraftKings stated that its sports wagering product is fully vertically integrated, meaning that DraftKings runs all the technology necessary to operate, from its online platform to its sports book.

	DraftKings further described its proposed Sports Wagering Platform on pages 55-78 of its Application and the Commission found it satisfactory.
Technical features and operation of DraftKings' proposed Sports Wagering Platform	DraftKings described the technical features and operation of its proposed Sports Wagering Platform on pages 80-317 of its Application and the Commission found it satisfactory.

B. Economic Impact

During its January 11, 2023, presentation, DraftKings stated that it has experienced “massive growth,” is “well capitalized,” and expects to be profitable “soon.” Based on its experiences in other states and trends in sports wagering, DraftKings stated it would be “positioned well” to operate a sportsbook in the Commonwealth.

DraftKings stated that as of January 11, 2023, it has 1,300 employees living in 150 cities and towns of the Commonwealth. It further stated that it anticipates hiring 75-85 new employees in the Commonwealth, 25 of whom it anticipates would be directly associated with offering sports wagering in the Commonwealth.

The Commission asked DraftKings to address its plans to partner with the Massachusetts Lottery. DraftKings stated it currently does not have any business agreements with the Lottery, but that it was open to having conversations with the Lottery about working together. Based on its experience in other jurisdictions, DraftKings stated it believed it would be able to develop a strong partnership with the Lottery.

Commissioners also asked DraftKings to describe its plans to partner with local restaurants and businesses. DraftKings stated it would seek to undertake the same partnerships DraftKings has established through daily fantasy sports for sports wagering. Such partnerships could include providing partners promotional codes and hosting launch parties once its sports wagering platform is live, as it has done in other states. The Commission encouraged DraftKings to consider developing such partnerships with minority and women-owned businesses, and that similar partnerships could be established with the Lottery.

The Commission went into executive session to further discuss DraftKings' plans to hold live events to promote its platform if awarded a license and the anticipated impact on daily fantasy sports if DraftKings was awarded a Sports Wagering license in accordance with G.L. c. 30A, § 21(a)(7) and G.L. c. 23N, § 6(i). The Commission was ultimately satisfied that DraftKings' proposed plans would further its community engagement efforts and would not have a negative effect on its economic impact.

Overall, there is substantial evidence that DraftKings' proposal in the economic impact category meets expectations.

SUMMARY OF EVALUATION BY CRITERIA	
Criteria	Finding
Employment opportunities within the Commonwealth	<p>During its January 11, 2023, presentation, DraftKings stated it currently has 1,300 employees in the Commonwealth and anticipates hiring an additional 75-85 employees in the Commonwealth, 25 of whom would be directly associated with sports wagering in the Commonwealth.</p> <p>The Commission was satisfied by this proposed employment plan.</p>
Projected revenue	DraftKings described its projected Sports Wagering revenue on pages 344-356 of its Application and the Commission found it satisfactory.
Community engagement	DraftKings described its plans for community engagement on pages 406-416 of its Application and the Commission found it satisfactory.

C. Responsible Gaming

DraftKings stated responsible gaming is its top priority. To that end, it utilizes a system-based public health approach and has partnered with the Cambridge Health Alliance. DraftKings reported that it employs a five-pillar approach to responsible gaming: (1) training and education; (2) detection and intervention; (3) external engagements and research; (4) marketing and advertising; and (5) platform tools and resources. This approach includes training all employees from their first day at DraftKings; maintaining responsible gaming resources for employees on DraftKings’ intranet; providing an education hub on the DraftKings platform that players can access even if they do not have a DraftKings account (dkplayforsafe.com); temporarily banning and permanently closing player account as appropriate; and providing players the contact information for problem gaming help lines.

With respect to its marketing efforts, DraftKings reported that it is a member of many responsible gaming groups, including the American Gaming Association. As a member of the American Gaming Association, DraftKings adheres to the American Gaming Association’s marketing code, so its marketing and advertising effort comport with responsible gaming principles. If any of its third-party marketing and advertising partners violate those principles, DraftKings takes action to enforce those principles, including terminating its relationships with those partners.

The Commission asked DraftKings to elaborate on disciplinary action it had faced because of responsible gaming violations. DraftKings explained that it was subject to enforcement actions in New Jersey on three separate occasions for: (1) sending direct mail to individuals on the voluntary self-exclusion list; (2) sending emails, text messages, and push notifications to individuals on the voluntary self-exclusion and “cooling-off” lists; and (3) an incident involving proxy wagering. In Indiana, DraftKings was subject to enforcement action for sending direct mail to customers on the voluntary self-exclusion list, as well as failing to timely submit the licensing paperwork for a new member of its Board of Directors and failing to disclose certain information regarding its licensed employees. In Illinois, DraftKings was subject to enforcement action for its failure to timely disclose a letter of intent to partner with a company affiliated with the Chicago Cubs. In Ontario, DraftKings was subject to enforcement action for promoting an odds offer on television and social media that the Alcohol and Gaming Commission of Ontario characterized as an inducement. The Commission went into executive session to discuss the remedial efforts taken in response to these matters, as well as to review two pending enforcement matters in Ohio involving the marketing of a promotion to individuals between the ages of 18 and 20 and the failure to include clear and conspicuous information about responsible gaming in certain advertisements in accordance with G.L. c. 30A, § 21(a)(7) and G.L. c. 23N, § 6(i). The Commission was ultimately satisfied that these matters did not negatively impact DraftKings’ ability to offer Sports Wagering in accordance with responsible gaming principles.

Overall, there is substantial evidence that DraftKings’ proposal in the responsible gaming category meets expectations.

SUMMARY OF EVALUATION BY CRITERIA	
Criteria	Finding
Responsible gaming policies	DraftKings described its responsible gaming policies on pages 443-459 of its Application and the Commission found it satisfactory.
Advertising and promotional plans	DraftKings abides by the American Gaming Association’s marketing code. DraftKings stated if any of its third-party marketing and advertising partners violated its marketing code, DraftKings would take enforcement action up to terminating its relationship with the third-party partner. The Commission was satisfied that DraftKings’ advertising and promotional plans would adhere to its responsible gaming policies.

History of demonstrated commitment to responsible gaming	DraftKings described its history of commitment to responsible gaming on pages 486-507 of its Application and the Commission found it satisfactory.
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D. Diversity, Equity, and Inclusion

The Commission included Diversity, Equity, and Inclusion as stand-alone considerations to demonstrate the value it places on this category of an applicant’s application.

As explained by DraftKings during the January 11, 2023, hearing, DraftKings approaches diversity, equity, and inclusion from a four-point framework: “hire, wire, empower, and sustain.” The philosophy behind its framework is to maintain parity and opportunity through the employee life cycle. To do so, DraftKings utilizes a data and partnership-oriented approach in its talent acquisition and management. Within DraftKings, the company offers business resource groups for diverse employees, and provides reproductive and gender affirmation care for employees and their families.

DraftKings’ diversity, equity, and inclusion focus began in 2019. Since then, DraftKings has doubled its number of black, indigenous and other people of color (“BIPOC”) employees and seen an increase in the number of women hired. At the January 11, 2023, hearing, DraftKings also reported that it had recently hired a Vice President of Diversity, Equity, and Inclusion and was investing \$1 million internally to support diversity, equity, and inclusion efforts at DraftKings.

DraftKings acknowledged during the January 11, 2023, hearing that its current supplier diversity has not met its supplier diversity goals. DraftKings stated that it is gathering data to assess its current supplier diversity so it can set realistic goals. Once its supplier diversity goals have been set, DraftKings will utilize the same approaches it uses to promote employee diversity to promote supplier diversity.

Members of the Commission raised concerns about the number of women in DraftKings’ workforce, noting that it seemed low. DraftKings acknowledged that it has not met its women in the workforce goals, but stated that it has made progress hiring women, despite the relative lack of women in the technology industry. To further improve its women in the workforce numbers, DraftKings stated it was working on internal supports and providing benefits that would attract women to the company. Commissioners suggested DraftKings could benefit from conducting outreach through various state resources that reach women in STEM fields.

There is therefore substantial evidence that DraftKings’ commitment to Diversity, Equity, and Inclusion meets expectations.

SUMMARY OF EVALUATION BY CRITERIA	
Criteria	Finding
Workforce	<p>As of January 11, 2023, 31% of DraftKings employees identified as BIPOC and 22% as women. Within managers and directors, 17% identified as BIPOC and 28% as women. Amongst employees at the Vice President level and above, 13% identified as BIPOC and 22% as women.</p> <p>DraftKings stated that by 2025, its goal is to have 40% of its US workforce identify as BIPOC, and 35% of its global workforce identify as women.</p> <p>The Commission was satisfied by DraftKings’ workforce composition and goals.</p>
Supplier spend	<p>DraftKings stated it is currently in the process of gathering data about its supplier spending in order to set goals and benchmarks for its diversity spending.</p> <p>DraftKings further described its supplier spend goals on pages 431-436 and the Commission found it satisfactory.</p>
Corporate structure	<p>As of January 11, 2023, out of the 11 members of DraftKings’ Board of Directors, 3 identified as BIPOC (2 identified as Black) and 3 identified as women.</p> <p>DraftKings further described its corporate structure on pages 438-440 of its Application and the Commission was satisfied by DraftKings’ corporate structure.</p>

E. Technology

As explained during the January 11, 2023, hearing, DraftKings’s platform is fully vertically integrated, meaning DraftKings owns the entirety of its sports betting platform, from the software to the sportsbook. DraftKings represented that its platform is GLI-certified and incorporates Know-Your-Customer and geofencing measures.

DraftKings demonstrated its product to the Commission, including account creation, log in, deposits, withdrawal, setting responsible gaming limits, accessing responsible gaming help resources, and placing a bet. DraftKings stated it would be able to customize its home page to highlight responsible gaming resources.

The Commission went into executive session to discuss a data breach incident involving the withdrawal of customer funds from their Sports Wagering Account to a threat actor’s bank account and how DraftKings manages high-risk financial transactions in accordance with G.L. c. 30A, § 21(a)(7) and G.L. c. 23N, § 6(i). The Commission was ultimately satisfied that DraftKing’s data breach and risk management practices did not negatively impact its technologic expertise and reliability.

Overall, there is substantial evidence that DraftKings’ proposal in the technology category meets expectations.

SUMMARY OF EVALUATION BY CRITERIA	
Criteria	Finding
Geofencing	DraftKings described its geofencing measures on pages 510-514 of its Application and the Commission found it satisfactory.
Know your customer	DraftKings described its know your customer measures on pages 516-519 of its Application and the Commission found it satisfactory.
Technological expertise and reliability	DraftKings described its technological expertise and reliability on pages 521-545 of its Application and the Commission found it satisfactory.

F. Suitability of DraftKings and Its Qualifiers

The Commission raised concerns about allegations made against DraftKings in a Hindenberg Research report and DraftKings’ relationship with Ingen Media. DraftKings stated that the publicly reported allegations in the Hindenberg Research report concerned SBTech, which DraftKings acquired in 2020. DraftKings stated that it terminated its relationship with SBTech as of July 2021, and is conducting an investigation in cooperation with the SEC regarding the allegations raised in the Hindenburg report. DraftKings stated that it is currently in active litigation with Ingen Media based on patent and trademark disputes.

The Commission also asked DraftKings to report on the status of a class action lawsuit against DraftKings regarding daily fantasy sports. DraftKings reported that the lawsuit was consolidated in Massachusetts and ultimately settled for an “immaterial” amount.

The Commission went into executive session to discuss DraftKings’ financial reporting system in accordance with G.L. c. 30A, § 21(a)(7) and G.L. c. 23N, § 6(i). The Commission was ultimately satisfied that DraftKings’ odds setting practices did not negatively impact its ability to offer Sports Wagering in the Commonwealth.

The Commission is satisfied with DraftKings’ suitability, and that of its qualifiers. It therefore found DraftKings preliminarily suitable, and concluded there is substantial evidence that DraftKings’ suitability meets expectations.

SUMMARY OF EVALUATION BY CRITERIA	
Criteria	Finding
Corporate integrity	DraftKings is suitable to hold a Sports Wagering license.
Individual qualifier integrity	The IEB’s investigative report prepared for the purposes of this License decision has not revealed any disqualifying information concerning DraftKings or its qualifiers’ integrity, honesty, good character, or reputation.
Financial stability, integrity, and background	DraftKings’ Independent Audit Report and Material Weakness Statement submitted pursuant to 205 CMR 139.07(1), and its quarterly spending reports, have not revealed any disqualifying information concerning DraftKings or its financial stability, integrity, or background.
History of compliance	See narrative description of Responsible Gaming, above.

IV. Award

THE COMMISSION FINDS THAT THERE IS SUBSTANTIAL EVIDENCE IN THE RECORD THAT DRAFTKINGS’ APPLICATION MEETS EXPECTATIONS IN ALL CATEGORIES AND THAT DRAFTKINGS IS ELIGIBLE FOR A TEMPORARY UNTETHERED CATEGORY 3 SPORTS WAGERING LICENSE

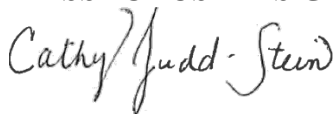
On November 21, 2022, the MGC received DraftKings’ request for a License, and an initial licensing fee of \$1,000,000 payable to the Commission. *See* 205 CMR 219.02(1). On December 20, 2022, the Commission voted to issue the requested License. *See* 205 CMR 219.02(3). On January 11, 2023, the Commission deemed DraftKings (“Licensee”) eligible to request a Temporary Untethered Category 3 Sports Wagering Operator License (“License”) pursuant to the terms and conditions of this Agreement (“Agreement”).

This License is subject to the following conditions:

1. Compliance with all of the requirements of G.L. c. 23N, as now in effect and as hereafter amended and 205 CMR, as now in effect and as hereafter amended.
2. Compliance with all applicable federal, state and local laws, rules and regulations, now in effect or as hereafter amended or promulgated.
3. Compliance with the license conditions required by 205 CMR 220, namely:

- a. That the Licensee obtain an Operation Certificate before conducting any Sports Wagering in the Commonwealth;
 - b. That the Licensee comply with all terms and conditions of its license and Operation Certificate;
 - c. That the Licensee comply with G.L. c. 23N and all rules and regulations of the Commission;
 - d. That the Licensee make all required payments to the Commission in a timely manner;
 - e. That the Licensee maintain its suitability to hold a Sports Wagering license; and
 - f. That the Licensee conduct Sports Wagering in accordance with its approved system of internal controls, and in accordance with its approved house rules, in accordance with G.L. c. 23N, § 10(a) and with 205 CMR.
4. The Licensee post the License, in a form prescribed by the Commission, in a location continuously conspicuous to the public on the Licensee's Sports Wagering Platform and website at all times.
 5. Payment of assessments made pursuant 205 CMR 221.00 in accordance with that regulation.
 6. The Sports Wagering Operation shall substantially conform to the information included in the application filed by the Licensee and abide by all affirmative statements made in the Licensee's application.
 7. The term of the License awarded to Licensee commences upon February 23, 2023, and shall expire as set out in 205 CMR 219.03.

SO ORDERED
MASSACHUSETTS GAMING COMMISSION



Cathy Judd-Stein, Chair



Eileen M. O'Brien, Commissioner



Bradford R. Hill, Commissioner



Nakisha L. Skinner, Commissioner



Jordan M. Maynard, Commissioner