

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

MASSACHUSETTS GAMING  
COMMISSION

*In the Matter of:*

Penn Sports Interactive, LLC d/b/a ESPNBet  
Noncompliance Incident

**DECISION**

This matter came before the Massachusetts Gaming Commission (hereinafter “Commission”) for a determination as to whether Category 3 Sports Wagering Operator <sup>1</sup> Penn Sports Interactive, LLC (hereinafter “PSI”) d/b/a ESPNBet’s actions violated 205 CMR 256.01(1), 205 CMR 256.02(1), 205 CMR 256.04(1), 205 CMR 256.04(6)(a), 205 CMR 256.04(6)(c) and 205 CMR 256.04(6)(d). This decision results from the adjudicatory proceeding conducted by the Commission on April 17, 2025, via remote collaboration technology. PSI was represented by PENN Vice President and Chief Compliance Officer, Chris Soriano (hereinafter “Attorney Soriano”) and the Investigations and Enforcement Bureau (hereinafter “IEB”) was represented by Senior Enforcement Counsel Zachary Mercer. The Director of the IEB, Caitlin Monahan and IEB Chief Enforcement Counsel Kathleen Kramer were also present.

The adjudicatory proceeding was conducted in accordance with 205 CMR 101.01; Massachusetts General Law chapter 30A, sections 10 and 11; and 801 CMR 1.02: *Informal/Fair Hearing Rules*. This matter involved an incident on March 24, 2024, during an airing of the ESPN College Game Day program, when ESPN employee Rece Davis (hereinafter “Mr. Davis”) referred to a sports wager offered by PSI d/b/a ESPNBet as a “risk free investment.”

At the direction of the Chair, the entire Commission presided over the matter. For the reasons set forth below, the Commission finds that PSI d/b/a ESPNBet violated 205 CMR 256.01(1), 205 CMR 256.02(1), 205 CMR 256.04(1), 205 CMR 256.04(6)(a), 205 CMR 256.04(6)(c) and 205 CMR 256.04(6)(d) on March 24, 2024, when Mr. Davis used the prohibited language “risk free investment” after he referred to a sports wager. As a result of the aforementioned regulatory violations, the Commission hereby fines PSI d/b/a ESPNBet \$15,000.

**I. Factual and Procedural Background**

The Commission’s decision is based upon the information contained in the exhibits as well as the witness testimony presented at the April 17, 2025, adjudicatory hearing. All witnesses were duly sworn in, and the Commission finds that each testified credibly. Attorney Soriano represented PSI and agreed to stipulate to the admission of exhibits 1-12 and to the facts as written in the report filed by the IEB. The Commission adopts all factual findings

<sup>1</sup> PSI was operating on its Temporary Category 3 License at the time of the incident.

contained in the IEB's and PSI's submitted Exhibits 1-12. The Commission sets forth the relevant facts contained in those exhibits below.

PENN is the parent company of PSI (referred collectively to as "PSI") and entered into a new marketing relationship with ESPN, a sports media company, in August of 2023. As part of the Agreement, PSI's sportsbook platform would be re-branded as "ESPNBet," and PSI would oversee the daily operations of the sportsbook, ESPN would provide promotional services for the sportsbook, and PSI would serve as the official odds data supplier to ESPN. The policy that governs the appropriate content for PSI and ESPN is titled "ESPN BET Content Guidance." This policy, dated October 19, 2023, primarily addresses the areas of Responsible Gambling and Prohibited Content, and was in place at the time of the instant matter. The policy explicitly prohibits statements that "guarantee success" and directs employees to "[a]void using 'free' or 'risk-free' as this is generally prohibited terminology as is the term 'Can't Lose.'"<sup>2</sup> Attorney Soriano reported that the information in the "ESPN BET Content Guidance" document is discussed regularly within ESPN and was presented to content teams. Mr. Davis and the entire ESPN college basketball production team were given a presentation on the best practices and frequently asked questions involving sports wagering on October 30, 2023, ahead of the launch of ESPNBet.

On March 24, 2024, during "ESPN College Gameday," a sports program broadcast on the ESPN network, Mr. Davis hosted a segment featuring "ESPN Sports Betting Analyst" Erin Dolan ("Ms. Dolan"). In that segment, Ms. Dolan made wagering picks for NCAA Men's Basketball games. Following Ms. Dolan's picks presentation, Mr. Davis responded by saying "You know what? Some would call this wagering, gambling; I think the way you've sold this, I think what it is, is risk-free investment, that's the way to look at it." Attorney Soriano reported that immediately after the incident, ESPN producers spoke to Mr. Davis about why the term "risk-free" and similar statements are inconsistent with the content guidelines.

Later that day, Mr. Davis posted the following statement to X.com (formerly Twitter):

During a segment this morning on @CollegeGameDay, due to @ESPNBet picks hitting yesterday, I joked the advice was more like "risk free investing." As we all know, such a thing does not exist. Obviously, there are risks. Though I'm not a gambler, I strongly encourage those who do partake, do so with prudence, care, caution, fiscal and personal responsibility and never over-extend. Sports are unpredictable. Wagering is tricky. So let's agree to manage monetary risks appropriately. I'm sure most recognized my comment was tongue-in-cheek. Just to clarify.

Attorney Soriano stated that Mr. Davis' X.com post occurred soon after the incident, while PSI was still discussing next steps internally. On the following day, March 25, 2024, Attorney Soriano notified the Commission via email of this noncompliance incident.

On March 25, 2024, Mr. Davis' statement was further discussed on ESPN's "The Pat McAfee Show." In that segment, the hosts discussed the incident, including making mention of

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<sup>2</sup> PSI was previously subject to an Adjudicatory Hearing for using "Can't Lose" language in a promoted wager during its relationship with Barstool Sports. On August 27, 2024, following the hearing, the Commission found PSI in violation of 205 CMR 256.04(6)(c), and imposed a \$25,000 fine.

the heavily regulated sports wagering environment, before Mr. Davis joined the show. Mr. Davis began his statement by stating:

...The one thing I'll say, and I don't want to make this a big deal, it was just a small statement, it was a throwaway line, any reasonable person knew that I was being facetious, because there's nothing in life that comes without risk, especially gambling, that's obvious for anyone who knows anything. But I didn't apologize. . . I clarified, and you know, I don't think anybody thought that we were really handing out free money, but maybe it's a better course of action in the future I'll go with the old David Letterman line: this is an exhibition not a competition, so please no wagering. . ."

According to Attorney Soriano, Mr. Davis' appearance on The Pat McAfee Show and his statements on X.com were made by Mr. Davis' of his own volition and not at the request of PSI. Mr. Davis' conversation with ESPN producers, his statement on X.com, and his appearance on the Pat McAfee Show were the extent of action taken on this matter.

The evidence was presented to the Commission, in the form of the twelve (12) exhibits and two (2) witnesses as outlined below in Sections III and IV. There were no objections made by the IEB or PSI in regard to the twelve (12) exhibits or the witnesses. The Commission considered all of the exhibits, in conjunction with all witness testimony, in reaching the final decision. The Commission finds PSI d/b/a ESPNbet violated 205 CMR 256.01(1), 205 CMR 256.02(1), 205 CMR 256.04(1), 205 CMR 256.04(6)(a), 205 CMR 256.04(6)(c) and 205 CMR 256.04(6)(d), by the use of the prohibited phrase "risk free investment" by an ESPN Employee referring to a sports wager during an airing of the ESPN College Game Day program on March 24, 2024.

## **II. Standard of Review and Relevant Law**

1. In this matter, the Commission determined that the IEB would conduct an investigation and serve as a party to the Adjudicatory Hearing.
2. Pursuant to G. L. c. 23N § 16(i), "The commission may impose conditions on, suspend or revoke an operator's license or reprimand or assess a fine on an operator upon a finding that the operator: (i) has committed a criminal or civil offense under this chapter or under any other law; (ii) is not in compliance with sports wagering regulations promulgated pursuant to this chapter; (iii) is under criminal investigation in another jurisdiction; (iv) has breached a condition of licensure; (v) has affiliates, close associates or employees that are not qualified or licensed under this chapter with whom the operator continues to conduct business or employ; (vi) is no longer capable of maintaining operations as a sports wagering operator; or (vii) whose business practice, upon a determination by the commission, is injurious to the policy objectives of this chapter.
3. Where not prescribed by statute, the standard of proof in administrative proceedings is typically "preponderance of the evidence," meaning the evidence must show that it is more likely than not that the alleged violation occurred. This standard is constitutionally permissible for civil sanctions that do not implicate particularly important individual interests or rights. Medical Malpractice Joint Underwriting Ass'n of Mass. v. Commissioner of Ins., 395 Mass. 43, 46 (1985); Craven v. State Ethics Comm'n, 390

Mass. 191, 200, 454 N.E.2d 471, 476 (1983); see Lisbon v. Contributory Ret. Appeal Bd., 41 Mass. App. Ct. 246, 255 (1996) (party with burden of proof at administrative proceeding had “to establish his case by a preponderance of the evidence”).

4. An “Operator” or “Sports Wagering Operator” is defined as “any entity permitted under this chapter to offer sports wagering to persons in the commonwealth through a category 1 license, category 2, or category 3 license. G. L. c. 23N § 3.
5. A “category 3” license is “a license issued by the Commission that permits the operation of sports wagering through a mobile application and other digital platforms approved by the Commission. G. L. c. 23N § 3.
6. G.L. c. 23N § 4(c)(ii)(A): “The commission shall promulgate regulations to prohibit . . . the following advertising, marketing and branding activities: . . . advertisements, marketing and branding in such a manner that is deceptive, false, misleading, or untrue, or tends to deceive or create a misleading impression whether directly, or by ambiguity or omission.”
7. 205 CMR 256.01(1): “Each Sports Wagering Operator shall be responsible for the content and conduct of any and all Sports Wagering advertising, marketing, or branding done on its behalf or to its benefit whether conducted by the Sports Wagering Operator, an employee or agent of the Sports Wagering Operator, or an affiliated entity or a third party pursuant to contract or any other agreement for consideration or remuneration, regardless of whether such party is also required to be licensed or registered as a Sports Wagering Vendor or Non-Sports Wagering Vendor.”
8. 205 CMR 256.02(1): “The provisions of 205 CMR 256.02 shall apply to all advertising, marketing, and branding for Sports Wagering aimed at, published, aired, displayed, disseminated, or distributed in the Commonwealth. Nothing in 205 CMR 256.02 shall be construed as limiting a Person's obligations to comply with any other federal, state or local law applicable to advertising, marketing and branding, nor shall anything herein be construed as modifying or limiting in any way any more stringent or additional requirement applicable to advertising, marketing and branding.”
9. 205 CMR 256.04(1) states that “[n]o Sports Wagering Operator shall allow, conduct, or participate in any unfair or deceptive advertising, marketing, or branding for Sports Wagering.”
10. 205 CMR 256.04(6)(a)(c) and (d) state that “[n]o advertising, marketing, branding, and other promotional materials published, aired, displayed, disseminated, or distributed by or on behalf of any Sports Wagering Operator shall: . . . (a) Promote irresponsible or excessive participation in Sports Wagering; (c) Imply or promote Sports Wagering as free of risk in general or in connection with a particular promotion or Sports Wagering Offer; (d) Describe Sports Wagering as ‘free’, ‘cost free’ or ‘free of risk’ if the player needs to incur any loss or risk their own money to use or withdraw winnings from the Wager.”

### **III. Exhibits**

The following exhibits were introduced without objection at the hearing and reviewed and considered by the Commission. At the request of the Commission, PSI provided an additional response via an email from Attorney Soriano dated May 14, 2025.<sup>3</sup>

- Exhibit 1:** Video Clip from ESPN College Gameday, March 24, 2024
- Exhibit 2:** X.com Post by Rece Davis (@ReceDavis), March 24, 2024
- Exhibit 3:** Email Notification from Atty. Chris Soriano, March 25, 2024
- Exhibit 4:** Video Clips from ESPN's The Pat McAfee Show, March 25, 2024 (Parts 1 - 2)
- Exhibit 5:** IEB Interview of Atty. Chris Soriano, August 6, 2024
- Exhibit 6:** PENN/ESPN "Sportsbook Agreement", August 8, 2023
- Exhibit 7:** PENN "ESPN BET Content Guidance", October 19, 2023
- Exhibit 8:** PENN Correspondence with IEB, October 28, 2024
- Exhibit 9:** PENN Correspondence with IEB, March 17, 2025
- Exhibit 10:** ESPN Sports Betting Employee Policies, July, 2024
- Exhibit 11:** IEB Noncompliance Investigation Report, April 2, 2025
- Exhibit 12:** Notice of Hearing dated March 7, 2025

#### **IV. Witness List**

1. Kevin Murphy, Civilian Investigator, IEB
2. Chris Soriano, Attorney, PENN

#### **V. Analysis**

The Commission's authority under 23N § 4(c)(ii)(A) requires it to prohibit: ". . . advertisements, marketing and branding in such a manner that is deceptive, false, misleading, or untrue, or tends to deceive or create a misleading impression whether directly, or by ambiguity or omission." Sports wagering operators are explicitly responsible for third-party marketing and advertising under 205 CMR 256.01(1), regardless of whether such party is also required to be licensed or registered as a Sports Wagering Vendor or Non-Sports Wagering Vendor. The provisions shall apply to all advertising, marketing, and branding for Sports Wagering aimed at, published, aired, displayed, disseminated, or distributed in the Commonwealth. 205 CMR 256.02(1).

Any unfair, misleading or deceptive advertising is strictly prohibited by a sports wagering operator pursuant to 205 CMR 256.04(1). Sports Wagering Operators shall not promote irresponsible or excessive participation and advertising must not misrepresent risk by implying sports wagering is risk-free generally or in connection with a promotion, nor label it as "free" if players must risk or lose money to access winnings, pursuant to 205 CMR 256.04(6)(a)(c)-(d). These regulations aim to ensure truthful and transparent promotion of sports wagering services in Massachusetts.

In addition to the clear statutory and regulatory prohibitions and requirements, PSI and ESPN developed its own policy that governs content, titled "ESPN BET Content Guidance."

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<sup>3</sup> ". . . regarding training Mr. Davis was given, there were no formal training materials used such as a slide deck or the like. Production teams provide training and guidance. The structure and content for that training and guidance is in what was marked as IEB Exhibit 7, the Content Guidance dated October 19, 2023. . . ." Excerpt from Attorney Soriano's email, dated May 14, 2025.

This content guidance document clearly states to “avoid using ‘free’ or ‘risk-free’ as this is generally prohibited terminology as is the term ‘Can’t Lose.’”

PSI does not dispute any of the relevant facts addressed above or as contained in the twelve (12) exhibits introduced into evidence during the one-day adjudicatory hearing, and it is undisputed that PSI’s actions constitute regulatory violations of 256.01(1), 205 CMR 256.02(1), 205 CMR 256.04(1), 205 CMR 256.04(6)(a), 205 CMR 256.04(6)(c) and 205 CMR 256.04(6)(d). Furthermore, the Commission is particularly concerned with Mr. Davis’ public comments — both on X.com and during the Pat McAfee Show — which downplayed his prior statement referring to a wager as a “risk-free investment,” despite it being a clear violation of ESPNBet’s internal content guidance and state regulations. Despite the seriousness of the incident, neither Mr. Davis nor an appropriate representative of ESPNBet issued a sufficient corrective action to ensure a clear, compliant statement was made to the public that his remarks were inconsistent with ESPNBet’s content standards and in violation of the Commonwealth’s regulations.

The Commission further points out statements made on the Pat McAfee Show regarding the noncompliance incident, specifically the statement that ultimately “the bet won.” The Commission considers these remarks misleading, as they undermine the intent of the prohibition on “risk free” language, which is to discourage the enticement to wager beforehand and therefore the results of the wager would be irrelevant in this circumstance.

Pursuant to G. L. c. 23N § 16(i)(ii), the Commission may impose a wide variety of penalties, including assessment of a fine upon a finding that the operator is not in compliance with sports wagering regulations promulgated pursuant to this chapter. The Commission chose to hold an adjudicatory hearing on this matter. The standard of proof in administrative proceedings is typically “preponderance of the evidence,” meaning the evidence must show that it is more likely than not that the alleged violation occurred. Medical Malpractice Joint Underwriting Ass’n of Mass. v. Commissioner of Ins., 395 Mass. 43, 46 (1985); Craven v. State Ethics Comm’n, 390 Mass. 191, 200, 454 N.E.2d 471, 476 (1983); see Lisbon v. Contributory Ret. Appeal Bd., 41 Mass. App. Ct. 246, 255 (1996). The burden of evidence has been met in this matter as reflected by the record, including testimony, and through the fact that Attorney Soriano and the IEB stipulated to the facts of the IEB report, during the April 17, 2025 adjudicatory proceeding.

After consideration of the law and facts, the Commission has determined that PSI is to be assessed a fine of \$15,000. The Commission finds the imposed fine appropriate based on several factors: the “risk free” comment originated from an ESPN personality and was not language used on the ESPNBet App; it was made live on-air with limited opportunity for others to react in real time; and PSI self-reported the incident through legal counsel. However, the Commission views these violations as serious and was dissatisfied with the overall response by Mr. Davis and the lack of public response by any other representative of PSI d/b/a ESPNBet. There was no meaningful follow-up beyond internal discussions about the incident and Mr. Davis’ public remarks were made of his own volition, as characterized by Attorney Soriano. The Commission is particularly concerned by the lack of a prompt, clear public correction and expects that any future incidents will be met with a definitive public statement affirming that “risk-free” language is prohibited under both regulatory and internal content standards.

## **VI. Conclusion**

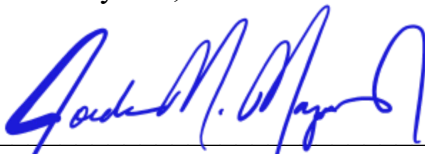
For the foregoing reasons, the Commission finds that PSI violated 205 CMR 256.01(1), 205 CMR 256.02(1), 205 CMR 256.04(1), 205 CMR 256.04(6)(a), 205 CMR 256.04(6)(c) and 205 CMR 256.04(6)(d) on March 24, 2024, based on the prohibited use of the language "risk free investment" by an ESPN employee when referring to a sports wager, that occurred during an airing of the ESPN College Game Day program. As a result of these regulatory violations, the Commission hereby fines PSI \$15,000.

**SO ORDERED.**

**MASSACHUSETTS GAMING COMMISSION**

By:

Jordan Maynard, Chair



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Eileen M. O'Brien, Commissioner



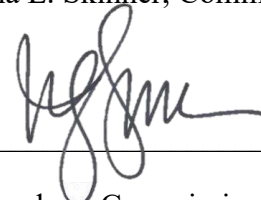
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Bradford R. Hill, Commissioner



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Nakisha L. Skinner, Commissioner



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Paul Brodeur, Commissioner



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DATED: October 8, 2025