

# GAMING LEGALNEWS

## DEPARTMENT OF JUSTICE FILES SUIT AGAINST SANTA YSABEL TRIBE'S "DESERT ROSE BINGO" SITE

by Patrick Sullivan

On December 3, United States Department of Justice attorneys filed a complaint in federal court seeking to prevent the Iipay Nation of Santa Ysabel, a federally recognized Indian tribe near San Diego, from continuing to operate an online bingo site by enjoining its acceptance of any electronic payments under the Unlawful Internet Gambling Enforcement Act ("UIGEA"). California Attorney General Kamala Harris had filed a similar suit in late November alleging that operation of the site violated the Tribe's gaming compact with the State.

The site simulates a traditional bingo game by displaying virtual bingo cards with a 5 by 5 grid. When five players have purchased cards in a particular game, numbers are randomly drawn in the usual manner until a winning bingo pattern appears on a card. That player wins a prize based on the total pay-in for the game minus a percentage retained by the tribal operator, and then the next game begins.

UIGEA prohibits electronic financial transactions in connection with "unlawful Internet gambling." UIGEA's definition of "unlawful Internet gambling" includes any wager placed using the Internet when that wager would be unlawful on the federal, state or tribal lands where the wager is initiated or received. The Department alleges that, because California law prohibits non-charitable bingo off tribal land, Desert Rose Bingo equates to unlawful Internet gambling and UIGEA prohibits any electronic financial transactions made in connection with the site.

Desert Rose Bingo is limited to California residents. Those visiting the site from outside California are greeted with a message inviting them to register for the future but that non-residents "will not be able to participate in our games until further notice." This geo-location technology, ensuring players are within California, is meant to avoid the application of federal law prohibiting online gaming across state borders such as the Interstate Wire Act of 1961. The Wire Act imposes criminal penalties for the interstate and foreign transmission of wagers and wagering information using a "wire communication facility."

In December 2011, the Department of Justice issued an opinion letter days before Christmas indicating its interpretation that the scope of the Interstate Wire Act is limited to sports betting. Many gaming industry analysts expected that this opinion would open the door to online poker and other types of Internet gaming, but almost three years later, there has been no substantial emergence of Internet gaming based in the United States.

Nevertheless, Indian tribes have been diligently preparing for this perceived threat to their brick-and-mortar casinos. Santa Ysabel's



December 11, 2014 • Volume 7, Number 12

### GAMING LEGAL NEWS EDITORIAL BOARD

**Robert W. Stocker II**, Gaming Law  
517.487.4715 • rstocker@dickinsonwright.com

**Dennis J. Whittlesey**, Gaming Law/Indian Law  
202.659.6928 • dwhittlesey@dickinsonwright.com

**Michael D. Lipton, Q.C.**, Gaming Law  
416.866.2929 • mdliptonqc@dickinsonwright.com

**Peter H. Ellsworth**, Gaming Law  
517.487.4710 • pellsworth@dickinsonwright.com

**Glenn M. Feldman**, Gaming Law/Indian Law  
602.285.5138 • gfeldman@dickinsonwright.com

**Peter J. Kulick**, Gaming Law/Taxation  
517.487.4729 • pkulick@dickinsonwright.com

**Kevin J. Weber**, Gaming Law  
416.367.0899 • kweber@dickinsonwright.com

### DW COOPERATION AGREEMENT FIRMS

MdME, Macau ([www.mdme.com.mo](http://www.mdme.com.mo))  
Varela & Fonseca Abogados, Peru ([www.varelafonseca.com](http://www.varelafonseca.com))  
Velchev & Co., Bulgaria ([www.vlaw.bg](http://www.vlaw.bg))  
WH Partners, Malta ([www.whpartners.eu](http://www.whpartners.eu))

### GAMING WEB SITES OF INTEREST

[www.indianz.com](http://www.indianz.com)                      [www.pechanga.net](http://www.pechanga.net)  
[www.indiangaming.org](http://www.indiangaming.org)           [www.nigc.gov](http://www.nigc.gov)  
[www.michigan.gov/mgcb](http://www.michigan.gov/mgcb)        [www.gaminglawmasters.com](http://www.gaminglawmasters.com)  
[www.ggbmagazine.com](http://www.ggbmagazine.com)  
[www.casinoenterprisemanagement.com](http://www.casinoenterprisemanagement.com)

*Disclaimer: Gaming Legal News is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the fields of gaming law and federal Indian law. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered in Gaming Legal News.*

Desert Rose Bingo demonstrates the tribal determination to be at the forefront of Internet gaming and maintain a seat at the table.

The Santa Ysabel Tribe rejects the allegations of the state and federal officials, and even launched an online poker site, privatetable.com, this week, which, according to the site, allows “real money games and poker tournaments.” The Santa Ysabel Gaming Commission website states that by offering online poker and bingo, “the Tribe is exerting its sovereign right under the Indian Gaming Regulatory Act (IGRA) to regulate and conduct Class II gaming from the tribe’s reservation.”

The Tribe’s position that it retains the sovereign right to conduct online poker and bingo echoes the opinion of many Indian tribes, and even some gaming regulators, that such “Class II” Internet gaming may be operated by Indian tribes free of state regulation under the Indian Gaming Regulatory Act of 1988. Clearly the Department of Justice does not agree.

*Patrick Sullivan is an associate in Dickinson Wright’s Washington, D.C., office. He can be reached at 202.659.6936 or [psullivan@dickinsonwright.com](mailto:psullivan@dickinsonwright.com).*