



Texas Lottery Commission

Commissioners:

Robert G. Rivera, Chairman

Cindy Fields • Mark A. Franz • Clark E. Smith • Jamey Steen



LaDonna Castañuela
Director

CERTIFIED MAIL NO. 9214 8901 9403 8340 0364 19
RETURN RECEIPT REQUESTED

November 30, 2023

Mr. Emile Bourgoyne
1296 Schexnayder Ln.
Melville, LA 71353

Re: Bingo Advisory Opinion Request No. 2024-1016-0001

Dear Mr. Bourgoyne:

This opinion responds to your request for a bingo advisory opinion received via email on October 16, 2023. Specifically, you asked the following question:

I am requesting an advisory opinion regarding rule 402.300(b)(5). “If the color artwork is approved and the pull-tab bingo tickets pass the Commission's testing, the manufacturer will be notified of the approval. This approval only extends to the specific pull-tab bingo game and the specific form number cited in the Commission's approval letter. If the pull-tab bingo ticket is modified in any way, with the exception of the serial number, index color, or trademark(s), it must be resubmitted to the Commission for approval. Changes to symbols require only an artwork approval from the Commission.”

Does trademark include the distributor logo on a pull-tab ticket if that logo is a registered trademark of the distributor?

On October 17, 2023, the Texas Lottery Commission (Commission) asked for more information, specifically “when you say ‘distributor’, do you mean a Texas Licensed Bingo Distributor, or something else?” You responded, “Yes, I mean a Texas Licensed Bingo Distributor!”

Below is our response:

Yes, the word “trademark” as used in 16 TEX. ADMIN. CODE §402.300(b)(5) (“Rule”) includes a Texas licensed bingo distributor’s logo if that logo is a trademark of the distributor. The Rule makes it unnecessary for a Texas licensed manufacturer to re-submit previously approved pull-tabs when they make a modification only to “the serial number, index color, or trademark(s).”

The word “trademark” is not defined in the Bingo Enabling Act (BEA) or the Charitable Bingo Administrative Rules. Under Texas rules of construction, when a word in a statute or rule is not defined, our task is to determine its common, ordinary meaning, and we may look to dictionary definitions as guidance.¹ Merriam-Webster defines “trademark” as “a device pointing distinctly to the origin or ownership of merchandise to which it is applied and legally reserved to the exclusive use of the owner as maker or seller.” Black’s Law Dictionary defines “trademark” as “a distinctive mark, motto, device, or emblem, which a manufacturer stamps, prints, or otherwise affixes to the goods he produces, so that they may be identified in the market, and their origin can be vouched for.” Although a distributor does not manufacture pull-tabs, the distributor owns them, and only a distributor may sell them to licensed organizations, so it is reasonable to interpret a distributor’s logo on a pull-tab as a device that points to its origin and identifies it in the market. As such, it is reasonable to interpret a Texas licensed distributor’s registered trademark logo on a pull-tab as a “trademark” for the purposes of the Rule.

Bingo Rule §402.300(b)(3)(D) only requires that the manufacturer’s name or trademark be placed on a pull-tab, but there is nothing prohibiting the additional placement of a distributor’s trademark. The exemption in the Rule is not specifically limited to the manufacturer’s trademark, and the Rule’s use of the plural “trademark(s)” clearly allows for the modification of multiple trademarks without resubmission. There is no reasonable basis to allow the exemption for a modification to a manufacturer’s trademark but not a distributor’s trademark. As such, it is reasonable to interpret the word “trademark” in the Rule to include both a Texas licensed manufacturer’s and a Texas licensed distributor’s trademark.

Because a Texas licensed distributor’s registered trademark logo is a “trademark” within the Rule, and because the exemption in the Rule is not clearly limited to a manufacturer’s trademark, the Rule allows for the modification of a distributor’s logo on a previously approved pull-tab without resubmission.

SUMMARY

A Texas licensed bingo manufacturer does not need to re-submit a previously approved pull-tab bingo ticket due to a modification to a Texas licensed distributor’s logo on the ticket if that logo is a trademark of the distributor.

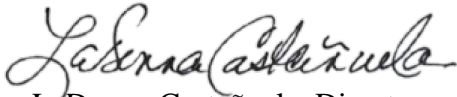
This advisory opinion cannot be construed as a tax ruling or otherwise interpretative of the Internal Revenue Code. The information provided is completely limited to the context of the BEA and the Charitable Bingo Administrative Rules.

This advisory opinion is based on the laws, rules, and regulations in effect at the time of issuance. All the information provided herein is subject to changes in law.

¹ *Jaster v. Comet II Constr., Inc.*, 438 S.W.3d 556, 563 (Tex. 2014).

This opinion is purely advisory in nature and is limited to the particular questions at issue at the time of the facts presented in the Request. Therefore, this opinion must not be relied upon as a pre-determination regarding any conduct which is not substantially consistent with the opinion and the facts stated in the Request.

Sincerely,

A handwritten signature in black ink, appearing to read "LaDonna Castañuela". The signature is fluid and cursive, with the first name "LaDonna" written in a larger, more prominent script than the last name "Castañuela".

LaDonna Castañuela, Director
Charitable Bingo Operations Division

cc: Robert G. Rivera, Chairman
Cindy Fields, Commissioner
Mark A. Franz, Commissioner
Clark E. Smith, Commissioner
Jamey Steen, Commissioner
Gary Grief, Executive Director
Bob Biard, General Counsel
Tyler Vance, Assistant General Counsel