

NEVADA OPENS ITS DOORS

US state becomes more accessible for manufacturers of gaming devices and content with Assembly Bill 75

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MANUFACTURERS of traditional gaming devices and, more recently, skill-based content, have often been deterred from showcasing their products in the US state of Nevada because of the state's arduous barriers to entry.

Companies that seek a licence to manufacture and distribute gaming-related products in Nevada must undergo an extensive background investigation which can cost hundreds of thousands of dollars depending upon the complexity of the structure of their management and ownership.

While this rigorous process is intended to safeguard the integrity of Nevada's gaming industry, it has also served as an impediment to entry for companies that want to introduce their product in Nevada but cannot justify paying the hefty licensing fees and undergoing the lengthy investigation process.

As a result, manufacturers may turn to other jurisdictions in the US to premier their products. This is often disadvantageous to both the manufacturer and Nevada, because the manufacturer loses out on Nevada's prolific gaming market and Nevada on innovative products.

The Nevada Gaming Control Board introduced Assembly Bill 75 (AB 75) to provide alternatives to this barrier to entry during the 2017 legislative session, which was enacted and effective July 1, 2017.

AB 75 provides a means for unlicensed manufacturers to affiliate themselves with manufacturers that are licensed in Nevada and, subsequently, forego the licensing process so long as a licensed manufacturer "assumes responsibility" for the manufacture of the gaming device.

However, parties contemplating this alternate path to market must carefully consider the structure of the "assumes responsibility" relationship, as there are serious regulatory and business issues involved.

AB 75 allows international manufacturers to access the Nevada market in a more cost-effective manner. Generally speaking, prior to AB 75, any person who "manufactured" a gaming device for use or play in Nevada was required to obtain a licence. Under Nevada law, a "gaming device" is significantly broader than a fully assembled slot machine. Rather, the term applies to: two or more components comprising of (i) an assembled electronic circuit, (ii) cabinet with electrical wiring and coin, token or currency acceptor mounting or dispensers, and (iii) an assembled display unit intended for use in gambling; any object which alters random selection or affects the outcome of a game; or a control program (software) determining win or loss.

AB 75 amends the definition of "manufacture" to exclude persons from having to undergo the licensing process so long as a licensed manufacturer "assumes responsibility" for their gaming device. Specifically, AB 75 amends Nevada Revised Statute 463.01715, which defines the term "manufacture," as follows: (a) to manufacture, produce, program, design, control the design of or make modifications to a gaming device, associated equipment, cashless wagering system, mobile gaming system or interactive gaming system for use or play in Nevada; (b) to direct or control the methods and processes used to design, develop, program, assemble, produce, fabricate, compose and combine the components and other tangible objects of any gaming device, associated equipment, cashless wagering system, mobile gaming system or interactive gaming system for use or play in Nevada; (c) to assemble, or control the assembly of, a gaming device, associated equipment, cashless wagering system, mobile gaming system or interactive gaming system for use or play in Nevada; or (d) to assume responsibility for any action described in paragraph (a), (b) or (c).

Thus, the term "manufacture" includes assuming responsibility for the activities noted in subsections (a), (b), or (c) of NRS 463.01705. Under subsection 2(a) of NRS 463.01705 "assume responsibility" means: "(1) acquire complete control over, or ownership of, the applicable gaming device, associated equipment, cashless wagering system, mobile gaming system or interactive gaming system; and (2) accept continuing legal responsibility for the gaming device, associated equipment, cashless wagering system, mobile gaming system or interactive gaming system, including, without limitation, any form of manufacture performed by an affiliate or independent contractor."

Nevada Gaming Control Board chairman AG Burnett, testifying before the Assembly Judiciary Committee on the need for the bill, explained that the manufacturing community wanted to expand their use of outside sources to perform the activities described in paragraphs (a) and (c) of NRS 463.01705.

According to chairman Burnett, the most important part of the law was subparagraph (2), which provided that, at the end of the day, the

ultimate legal responsibility for the equipment rests with the licensed manufacturer. Also, the risk in expanding the "assume responsibility" language from a control program to hardware was minimal, as the control programs are really the brains of a device.

Additionally, the finished product will be subject to stringent testing by both the board and an independent lab. In other words, allowing a licensed manufacturer to assume responsibility for the manufacture of another person's product creates very little risk to the integrity of Nevada's gaming market.

There are two key considerations manufacturers must consider when drafting a contract that memorialises the "assumption of responsibility." First, any agreement must be clear and specific as to the scope of activity the licensed manufacturer assumes, so that the unlicensed party does not violate the Nevada Gaming Control Act by unknowingly exceeding the scope of the "assumed responsibility" provision.

Second, there are limitations on how an unlicensed party can be compensated. For instance, a person cannot share in

gaming revenue unless he/she is licensed to do so.

Although AB 75 made it easier for companies to enter the Nevada market, it is vital to do so in compliance with Nevada law. Any agreement intended to fall under the "assume responsibility" provision must be thoroughly considered, carefully drafted and outline a precise scope of responsibilities, obligations, rights and compensation structure.

At Lewis Roca Rothgerber Christie LLP we have experienced gaming, transactional and intellectual property attorneys who are instrumental in assisting clients with these complicated issues, in a cost-effective and comprehensive manner.

If your company has considered entering the Nevada gaming market, but was hesitant given the complex regulatory requirements and high costs, please contact us so we can further discuss how AB 75 may open new doors for your offerings. □



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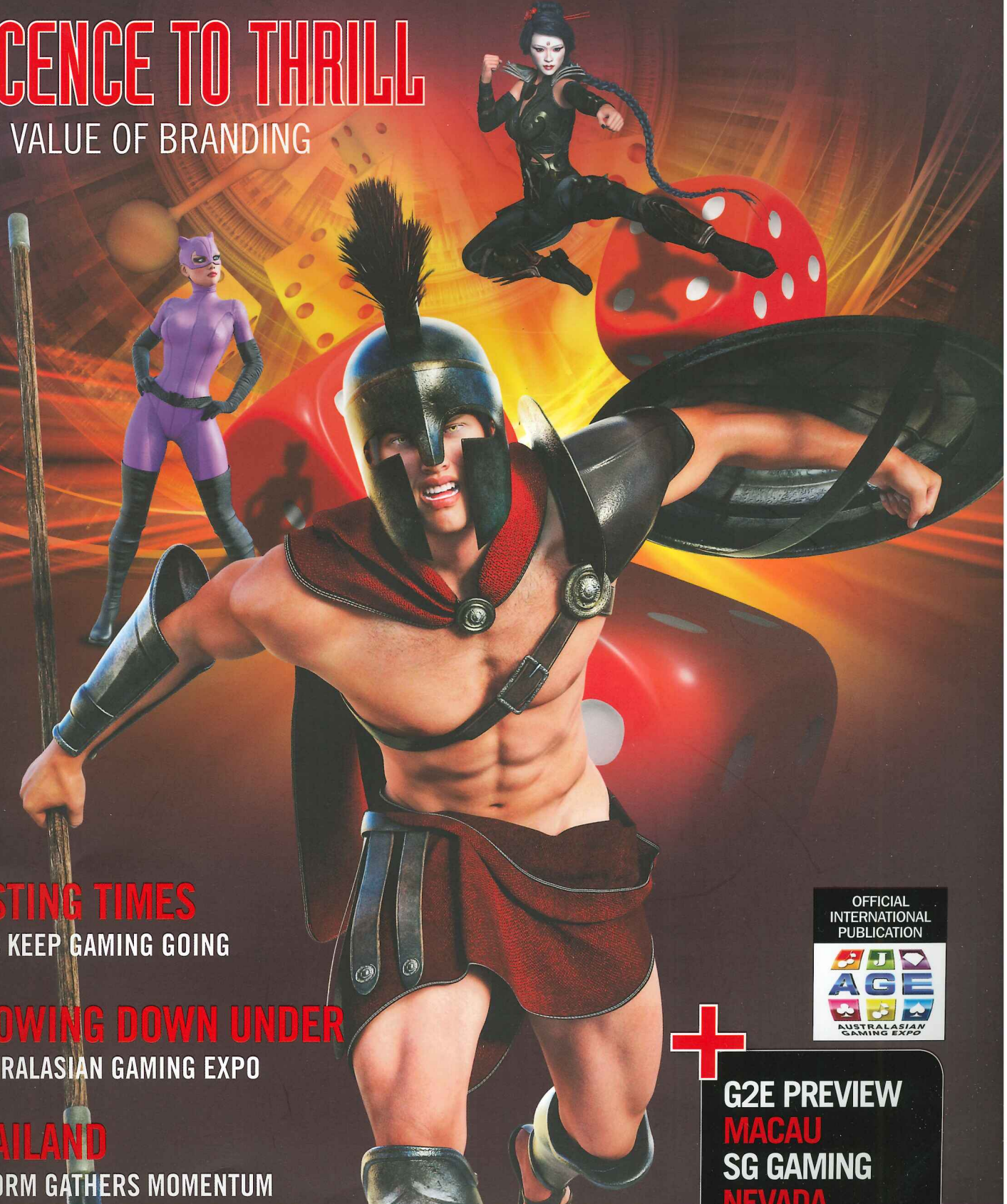
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