

California Gambling Lawsuits Against Apple

By Glenn Light, Karl Rutledge, and Mary Tran

On June 12, 2020, a California mother and her son filed a class action lawsuit, *Taylor et al. v. Apple, Inc.*, against Apple in the U.S. District Court for the Northern District of California, in San Jose. The complaint claimed that Apple is complicit in promoting illegal gambling by permitting app developers to offer games with loot boxes in the App Store. Plaintiffs argued that Apple promotes addictive behavior and claims that loot boxes, when played on an iPhone or iPad or similar devices, constitute illegal slot machines or devices as defined by California Penal Code § 330b(d).

Game developers offer loot boxes to generate more revenue. These loot boxes are available as in-app purchases that randomly award players with virtual prizes for use within the game. Typically, a user will use real money to purchase virtual currency and use virtual currency to purchase loot boxes. Users attempt to win rare virtual items that are difficult to obtain with loot boxes as most awarded items tend to be common.





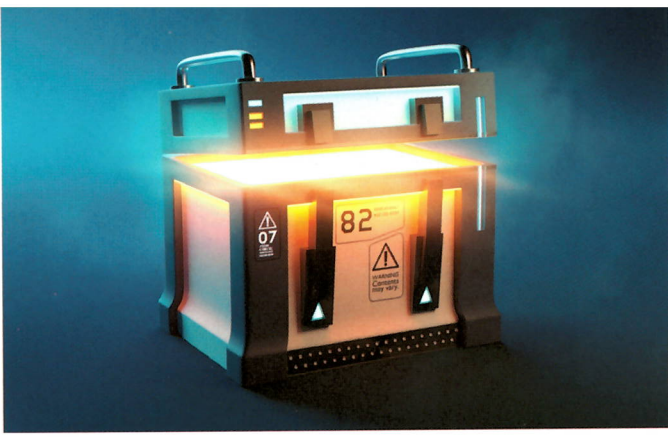
Accordingly, the complaint claimed that Apple profited from games with loot boxes by marketing the games to children, acting as an agent for the game developers, and managing the monetary transactions. Apple does not explicitly provide notice that a loot box game feature exists and instead provides disclosures of “Offers In-App Purchases.” The complaint also alleged that Apple had engaged in unlawful and unfair business practices in violation of California’s Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*). In particular, the complaint stated:

Apple has violated the UCL’s proscription against engaging in “unlawful” business practices by virtue of its conduct in violation of California Penal Code §§ 330, *et seq.*, the Illegal Gambling Business Act (18 U.S.C. § 1955), and the Unlawful Internet Gambling Enforcement Act of 2006 (31 U.S.C. §§ 5361-5367).

The underlying issue as to legality of loot boxes is whether a prize is actually being awarded. Typically, a prize requires the awarding of something of value. State gambling statutes, for example, often define gambling as risking something of value upon the outcome of a contest of chance or a future contingent event not under



the person’s control, with the goal of winning *something of value*. The phrase “something of value” is often defined to mean any money or property, any token, object or article exchangeable for money or property or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein. Thus, the question with regard to in-game items awarded in loot boxes is whether they actually have value? Often this depends on specific factual questions as to whether the items have a marketable value or can be exchanged for money or items of value.



In the case at hand, Judge Richard Seeborg of the U.S. District Court for the Northern District of California ruled that the plaintiffs not only failed to show sufficient economic harm but also failed to demonstrate how the loot boxes are illegal under California law. With regard to this latter point, it was noted that the lack of any real-world transferable value to the items takes them outside the meaning of the California statute.¹

This class action lawsuit is one of many recent lawsuits to have been filed against Apple for their alleged facilitation of illegal gambling through the Apple App Store. Rather than targeting the popular loot box system, many of these lawsuits primarily take issue with Apple for benefitting from and allowing freemium casino-style games to operate on their platform. These casino-style games use in-game currency systems that allow players to gamble in a virtual environment. Although these games do not offer real-life rewards, players often use actual money to purchase in-game currency for the chance at winning virtual rewards, including additional virtual currency used to keep playing, which the plaintiffs allege constitutes illegal gambling. Since these games operate through Apple's platform and Apple profits off the casino-style games' transactions, the different plaintiffs are collectively pursuing Apple for violating multiple state gambling laws, racketeering, collection of unlawful debts, refunds on in-app purchases, an injunction prohibiting Apple from allowing these games to operate, and statutory damages.

The issue underlying all of these lawsuits is whether a prize has been awarded. Such an issue is rarely problematic in the physical realm. For instance, cash or merchandise are clearly items that are something of value. However, in the online world, what constitutes something of value is far murkier. This is particularly evident in the State of Washington where the delivery of additional entertainment has been under scrutiny as to whether it constitutes a prize.

In Washington, gambling is "staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome."² Importantly, a "thing of value," is defined as "any money or property, any

token, object or article exchangeable for money or property, or any form of credit or promise, directly or indirectly, contemplating transfer of money or property or any interest therein, or *involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.*"³

Accordingly, in a recent case, the Washington court held that the virtual currency used in the game extended the privilege of playing the game for free, and therefore, falls within the definition of gambling under Washington law. The fact that users could not redeem the virtual currency for money or merchandise did not change the court's decision that virtual currency extending gameplay falls within Washington's definition of a "thing of value."⁴ As a result the parties entered into a \$155 million dollar settlement and the operators further agreed to modify game mechanics to allow users who run out of virtual currency to keep playing without purchasing additional virtual currency.

To conclude, these lawsuits in California and Washington raise critical questions as to what constitutes a "prize" and will be monitored closely by all stakeholders in the social gaming arena, including the game developers, online stores, state regulators and players.



Glenn Light is a partner in the Commercial Gaming Group at Lewis Roca.



Karl Rutledge is a partner and Chair of the Commercial Gaming Group at Lewis Roca.



Mary Tran is an associate in the Commercial Gaming Group at Lewis Roca.

¹ *Taylor et al. v. Apple, Inc.*, Case 3:20-cv-03906-RS, Order Granting Mot. to Dismiss, March 19, 2021.

² Wash. Rev. Code § 9.46.0237.

³ Wash. Rev. Code § 9.46.0285 (*emphasis added*).

⁴ *Id.*