

**IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI**

**FILED** Jan 20, 2004

BRENDA A. UMSTATD  
CLERK CIRCUIT COURT  
COLE COUNTY, MISSOURI

Case No. 04CV323144

SIERRA DESIGN GROUP

and

ARCADE PLANET, INC.

Plaintiffs,

vs.

MISSOURI GAMING COMMISSION.

and

KEVIN MULLALL Y, Executive Director of the Missouri Gaming Commission

Defendants.

**VERIFIED PETITION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF, AND  
APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

**COME NOW** Plaintiffs, Sierra Design Group and Arcade Planet, Inc., by and through their attorney, and for their Petition for Declaratory Judgment and Injunctive Relief and Application for Temporary Restraining Order and Preliminary Injunction, state as follows:

**GENERAL ALLEGATIONS**

1. Sierra Design Group (Sierra Design) is a Nevada corporation, in good standing, with its principal office in Reno, Nevada, and registered to do business in Missouri.
2. Sierra Design is a manufacturer and supplier of slot machines, "tangible" prize slot machines and related equipment, technical service and support; gaming systems for cashless operation, merchandizing

redemption progressive systems operations; and lottery terminals for two state lottery systems.

3. Sierra Design is the holder of a temporary suppliers license issued by the Missouri Gaming Commission (Commission).

4. Sierra Design's application for a permanent license is still pending before the Commission.

5. Arcade Planet, Inc. (Arcade Planet) is a California corporation in good standing, with its principal place of business in Livermore, California. Arcade Planet does no business in Missouri and is not registered in Missouri to conduct business.

6. Arcade Planet hosted and operated for partners Internet games of skill through its web site Prizegames.com and its related prize redemption site, Prizenet.com. The pay for play games of skill provided on Prizegames.com consist of a derivative of solitaire or math-based games, the outcome of which vary according to the skill of the player and not by chance. Depending on a particular player's performance, credits or points are awarded, with those points redeemable on Prizenet.com. Prizegames.com operates no differently from the arcade games and redemption practices found at restaurants, carnivals, and arcades throughout the state. Arcade Planet only allowed games of skill to be played from those jurisdictions where such games were allowed or not prohibited by law. Arcade Planet blocks participation in the games of skill from persons located in jurisdictions where such activities are prohibited or not allowed by law.

7. Arcade Planet discontinued all operation of its games of skill on the Internet on January 20, 2004, because of the actions threatened by the Commission against its parent corporation, Sierra Design.

8. Arcade Planet voluntarily blocked persons in Missouri from participating in the pay for play games of skill operated on their web page from and since July 30, 2003, because of questions raised by the Commission staff to Sierra Design regarding those operations.

9. At the request of the Commission staff and, on information and belief, at the direction of the Missouri Attorney General's office, Arcade Planet complied with all measures specified by the

Commission to Sierra Design regarding persons in Missouri attempting to access the games of skill on the Arcade Planet site, including posting a notice on the home page that persons from Missouri were ineligible to participate; adopting a three-tiered measure for preventing persons from Missouri from accessing the games of skill or participating; and refunding past Missouri participants for activity on the site.

10. Arcade Planet has received advice of its Nevada gaming counsel that Missouri law does not prohibit the types of games of skill being operated on its web site and would, other than the concerns expressed by the Commission staff to Sierra Design, be accepting Missouri-based customers on that site.

11. Two other states which have reviewed Arcade Planet's operations have determined that its operation does not violate the laws of those states.

12. Arcade Planet is not licensed by the Missouri Gaming Commission in any capacity.

13. During the course of investigation of Sierra Design's application for a supplier's license, the Commission requested information concerning the officers and directors of Arcade Planet and was provided with that information. The Commission has, at no time, required that any of those officers licensed as key persons of Sierra Design nor has the Commission required that Arcade Planet be licensed as a business entity key person in connection with Sierra Design's temporary supplier's license or application for a permanent supplier's license.

14. Sierra Design does not participate in the offering of games of skill on the Internet by Arcade Planet, nor does it provide such games on its own.

15. The Missouri Gaming Commission is an agency of the state operating pursuant to and subject to the limitations of chapter 313, RSMo.

16. Kevin Mullally is the Executive Director of the Commission and performs such duties as set out in chapter 313, RSMo., and the regulations promulgated by the Commission.

17. On or about January 19, 2004, the Commission posted its agenda for its meeting to be held on January 21, 2004, on its web page. That agenda includes an item relating to the revocation of Sierra Design's temporary supplier's license.

18. Both Sierra Design and counsel for Sierra Design contacted the Commission concerning the agenda item, requested a copy of the proposed resolution relating to the revocation of its temporary license and were told that a copy would be provided. At the time of filing of this petition, the proposed resolution was not received, notwithstanding that in excess of two hours have elapsed since the Commission promised to provide a copy of the proposed resolution.

19. As a matter of general practice, the Commission provides such resolutions to the affected party prior to the meeting at which the matter will be presented.

20. On information and belief, the Commission's proposed action to revoke the temporary supplier's license of Sierra Design is based solely on the operations of Arcade Planet and not on any action by, or other licensing-relevant criteria relating to, Sierra Design.

21. There are no grounds for revocation of the temporary supplier's license as set out in 11 CSR 45-4.210(4).

22. Siena Design will suffer immediate and irreparable harm by the action of the Commission as set out in the affidavit of Craig Bullis, which is attached and incorporated by reference.

23. In addition, on December 15, 2003, well after having knowledge of the operations of Arcade Planet, the Commission approved Sierra Design's gaming device known as "Raining Diamonds." Based on that approval, Sierra Design has contracted with a gaming company in Missouri for delivery of those devices on or about March 1, 2004. The effect of the revocation of Arcade Planet's temporary supplier's license will result in the cancellation of that contract.

24. Arcade Planet and Sierra Design will suffer immediate and irreparable harm by the action of the Commission as Sierra Design is (and has been) in the process of divesting itself of Arcade Planet and has received three offers for the purchase of the company. Such offers and plans will be adversely affected by the actions of the Commission.

25. Neither Sierra Design nor Arcade Planet have an adequate remedy at law.

## COUNT I

### **Declaratory Relief**

COMES NOW, Plaintiffs Sierra Design Group and Arcade Planet, and for its first cause of action for declaratory relief against Defendants, states as follows:

26. Paragraphs 1 through 26 are incorporated by reference as though fully set out.

27. The games of skill provided by Arcade Planet are not subject to the jurisdiction of the Commission and are not prohibited Under the laws of the State.

28. Regulation of the activities of Arcade Planet by the Commission under the circumstances set out here violates the Commerce Clause of the United States Constitution and other federal laws, and the Due Process and Equal Protection clauses of the United States and Missouri Constitutions.

29. The Commission lacks the authority to regulate Arcade Planet or its activities, either directly or through its jurisdiction over the temporary supplier's license or application for a permanent supplier's license of Sierra Design.

30. Sierra Design and Arcade Planet are entitled to declaratory relief declaring that:

a. The activities of Arcade Planet currently and at all times relevant hereto are not subject to the jurisdiction of the Missouri Gaming Commission.

b. The games of skill provided by Arcade Planet on its Internet site do not violate any law in Missouri and Arcade Planet may lawfully provide such games to Missouri customers.

c. Regulation of the activities of Arcade Planet by the Commission are invalid under the Commerce Clause of the United States Constitution and other federal laws, and the Due Process and Equal Protection clauses of the United States and Missouri Constitutions.

d. Grounds do not exist for the Commission to revoke the temporary supplier's license of Sierra Design.

WHEREFORE, Sierra Design and Arcade Planet move the Court for declaratory relief as set out above and for such other and further relief as the Court deems just and proper.

## **COUNT II**

### **Injunctive Relief**

COMES NOW, Plaintiffs Sierra Design Group and Arcade Planet and for its first cause of action for injunctive relief against Defendants, states as follows:

31. Paragraphs 1 through 30 are incorporated by reference as though fully set out.

32. The threatened actions of the Commission are unlawful and invalid, if not restrained, as set out above.

33. Sierra Design Group and Arcade Planet are entitled to injunctive relief permanently enjoining the Commission and its executive director from revoking the temporary supplier's license of Sierra Design Group because of its ownership of Arcade Planet and the lawful activities of Arcade Planet.

WHEREFORE, Sierra Design and Arcade Planet move the Court for injunctive relief as set out above and for such other and further relief as the Court deems just and proper.

## **COUNT III**

### **Application for Temporary Restraining Order and Preliminary Injunction**

COMES NOW, Plaintiffs Sierra Design Group and Arcade Planet, and for its application for a temporary restraining order and preliminary injunction, states as follows:

34. Paragraphs 1 through 33 are incorporated by reference as though fully set out.

35. As stated above, all requisites for entry of a temporary restraining order and preliminary injunction exist, including, the likelihood of success on the merits by Plaintiffs, immediate and irreparable harm to them if the relief is not granted, the balancing of interests, including the public interest, being in favor of Plaintiffs, and the absence of an adequate remedy at law.

36. Sierra Design Group and Arcade Planet are entitled to a temporary restraining order enjoining the Commission and its executive director from taking action to revoke the temporary supplier's license of Sierra Design Group because of its ownership of Arcade Planet and the lawful activities of Arcade Planet pending a hearing on the merits of this case.

**WHEREFORE**, Sierra Design and Arcade Planet move the Court for its order granting it its application for a temporary restraining order and preliminary injunction as set out above and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

BLITZ, BARDGETT & DEUTSCH, L.C.

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Verification

STATE OF MISSOURI

COUNTY OF COLE

I, James B. Deutsch, hereby acknowledge that the statements and matters set forth herein are true and correct according to my personal information, knowledge, and belief.

Subscribed and sworn to before this 20th day of January, 2004.