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*Cardozo Arts & Entertainment Law Journal*

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# Update: What Will the Future Hold for Daily Fantasy Sports?

By [SAM DOBRE](#) / ON APRIL 5, 2016

At this given time, FanDuel and DraftKings are both legal in the state of New York. The fantasy sports industry allows people to create their own professional football, baseball, basketball, and hockey teams from the rosters of the real players and to accumulate points based on their performance in real games throughout the season. However, the daily version is a sped up version of fantasy sports, which allows participants to bid on a lineup they create based on real players playing actual games. The strongest argument for fantasy sports supporters is its comparison to a skill based game, and not gambling or wagering.

On November 17<sup>th</sup>, 2015, Attorney General Eric Schneiderman filed an enforcement action in New York State Supreme Court in the County of New York, seeking a preliminary injunction against DraftKings and FanDuel. The Attorney General's memorandum of law stated, "Under New York law, a wager constitutes gambling when it depends on either a (1) "future contingent event not under [the bettor's] control or influence" or (2) "contest of chance". According to the AG, the daily fantasy sports websites were plainly illegal and fit squarely into these two definitions.

However, DraftKings and FanDuel respond to such allegations by stating daily fantasy sports is a game of skill because a random assortment of lineups will not perform as well as lineups made with sports knowledge and choice of the user. In response to the action taken by the AG, FanDuel removed the New York market from having access to their services. However, just six hours after Justice Manuel Mendez granted New York Attorney General Schneiderman a temporary injunction that would stop DraftKings and FanDuel from doing business, an appellate court judge provided the two daily fantasy sports websites an emergency temporary stay, granting users in New York full access to play daily fantasy sports again.

On December 31<sup>st</sup>, Attorney General Schneiderman filed an amended lawsuit against the two companies, asking them to give back all the money they made in New York State, and then to give it back to those who lost money. Schneiderman also asked for a fine of up to \$5,000 per case. Schneiderman emailed a statement to Reuters explaining the filing as "which follows a determination by the State Supreme Court that DraftKings and FanDuel have been running illegal sports betting operations, seeks appropriate fines and restitution from the companies."

David Boies, counsel to DraftKings responded to these requests by stating the new filing "reveals that the Attorney General's office still does not understand fantasy sports." Last year, the two companies combined for nearly \$200 million in entry fees and almost 600,000 residents participated. In 2014, daily fantasy sports players in New York State wagered more

then \$25 million on DraftKings, according to the suit. The daily fantasy sports websites must convince the appellate panel they are most likely going to be successful on their appeal of the preliminary injunction and that they would suffer irreparable harm in not being able to operate business in New York.

FanDuel is going to fight all of the allegations from the Attorney General, and stated, "As one of New York's fastest growing startup companies we are thoroughly disappointed in the Attorney General's ongoing actions and will fight this meritless, amended suit until fantasy sports are safeguarded for all sports fans." There has been a lot of legal controversy over daily fantasy sports since the beginning of October. Illinois, New York and Nevada are three states that are currently determining whether companies offering these daily fantasy sports games should be considered gambling and illegal, or regulated and legal.

*Sources:*

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