

GETTING REAL: WHAT THE SKIN BETTING LAWSUITS COULD MEAN FOR SOCIAL GAMING

Faced with several lawsuits, *CS:GO* developer Valve has acted decisively to stop third-party sites offering skin betting, but if the courts now hold that skins have “real-world” value, the entire skins system—and all similar gaming—could be at risk, writes **Jessica A. Feil** of Iffrah Law.

eSports is the new, burgeoning, competitive video game industry. Starting with popular video games for home play, now there are international tournaments and professional leagues organized around the games. But with growth comes legal challenges. One major game creator, Valve Corporation, has been named as a defendant in three putative class action lawsuits. The crux of these cases is whether the “skins” that players win in their games are “things of value” as typically understood in the gambling context. The skins started as a fun add-on to the game experience, but have now become the basis for an online gambling industry run by third-party websites.

While there is no case law or legislation directly on point, similar issues have been addressed in the social gaming context. The social gaming cases were making progress with several rulings drawing the distinction between virtual currency and real-world currency. The courts had sided with the game operators and dismissed cases premised on illegal gambling laws. However, the Valve lawsuits threaten to unravel this progress.

The social gaming cases and virtual prizes

In four recent social gaming cases, plaintiffs sued various mobile social game creators for losses due to alleged illegal gambling. Yet, in all of these cases, the courts have sided with the game creators. The grounds for dismissal in these cases illuminate a similar theme: courts are reluctant to impose “real world” value on virtual winnings.

In *Mason v. Machine Zone*, the plaintiff sued Machine Zone, maker of *Game of War: Fire Age*, for violations of various state laws prohibiting gambling. *Game of War* is a mobile app that allows players to create a virtual empire. Within the game, players obtain virtual “gold” through completing tasks, and players can also purchase gold with real money if they so choose. The gold can be used at a variety of in-game activities, including a casino. The in-game casino offered virtual prizes that enhanced further gameplay. Although there was no real world monetary value on the virtual gold or casino prizes, an unauthorized secondary market had sprung up where some players sold their virtual tokens for real money.

The plaintiff claimed the casino element of *Game of War* was illegal gambling. The court disagreed and held that the game itself was not a gambling “machine” as defined in the state statutes. While the holding focused on the physical mechanics of the game, the tone of the opinion stressed the difference between real-world and virtual goods. According to the court, the virtual goods have no real value except to enhance gameplay. Further, the ability to sell the items on an unsanctioned secondary market did not establish a real-world value for the virtual items.

Another case, *Kater v. Churchill Downs*, reached the same result as *Machine Zone*. Churchill Downs operates Big Fish Casino, which is a free-to-play casino mobile app. Within the app, players can purchase extra chips with real money. However, using real money was not required, as players received new chips for free every day. Further, the chips could never be cashed in for real-world prizes. Nonetheless, an unauthorized secondary market had developed where players sold the virtual chips for real money. The court held that the chips the players won were not “things of value” because they were purely virtual prizes that only extended game play—there was never a chance for the player to cash out within the game. The court refused to consider the monetary value established on the secondary market because

doing so would reward plaintiffs for violating the game's terms of service.

Two other cases, *Soto v. Sky Union* and *Phillips v. Double Down Interactive*, have garnered similar results. The *Sky Union* case was very similar to *Machine Zone*, as players spent virtual currency at a slot machine contained within a game-of-skill mobile app. In holding that there was no illegal gambling, the court stated that the “players may be ecstatic when they win rare [virtual prizes], but these items have no measurable value. They are therefore not prizes under the statute.” In the *Double Down* case, which involved a free-to-play casino mobile app, the court noted that unlike a real world casino, there is no winner or loser when a player purchases tokens in a

When Valve began releasing skins for its games, their platform used an open API to allow players to trade skins among themselves as an enhancement to their personal gaming. With access to an open API, skin gambling websites quickly evolved. On these sites, players could wager their skins to win better ones on casino-style games and then cash out for real money on separate third-party marketplaces. Valve, although not expressly promoting or supporting the gambling, did nothing to stop the sites even though they ran afoul of Valve's terms of service.

The plaintiffs in the cases against Valve claim that the skins have a real-world value determined by the third-party marketplace.

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virtual game. The player loses the money at the time of purchase and can only win virtual prizes, not real money. Further, the game operator never has a stake in the outcome of the game, so they are never a “winner” like a real world casino.

Skin betting lawsuits threaten to upend social gaming’s progress

These four big victories for online gaming were almost for naught. Three different class action lawsuits were filed against Valve Corporation within a six-week period, and each of these lawsuits allege that Valve is supporting unlawful online gambling in the form of skin gambling. Skins are in-game tokens that give video game players the ability to move through games more efficiently. The skins can take the form of special weapons, potions, or strength enhancements, depending on the video game.

Further, because these sites could not exist without the open API and Valve (at least) looking the other way, Valve allegedly had implicitly sanctioned skin gambling. In contrast, the social gaming operators had actively enforced their terms of service and regularly sought to shut down unauthorized marketplaces.

While the courts were quick to turn a skeptical eye to the virtual prizes in the social gaming cases, there is no assurance the same would happen in Valve's case. In the social gaming cases, players lost relatively small amounts of money—typically in the hundreds of dollars. However, a single skin can sell for hundreds or thousands of dollars. Moreover, the gambling sites seemingly target an underage market. Some of the operators have millions of followers on YouTube or other social media outlets where they promote gambling to

an audience that often skews towards a very young demographic. In fact, two of the lawsuits against Valve specifically are brought by parents of minors who engaged in skin gambling. Given the larger potential monetary losses and perception of targeting of children, there has been a more significant public outcry over skin gambling.

In light of the lawsuits, Valve has begun to make changes. The company issued a cease-and-desist letter to 23 skin gambling sites, ordering them to shut down—most have complied. Valve has also closed their API. These remedial measures show that the company is serious about preserving their business and enforcing their terms of service.

Although Valve is reforming its operations, the lawsuits are still pending. Gamers love to extol the value of their skins, but legally, it is better if the courts continue with the skepticism demonstrated in the social gaming cases. If the courts hold that skins are things of value, the entire skins system—and all similar gaming—could be at risk. A case law conflict between social gaming and eSports would be daunting for future game creators and operators. Without clarity in the law, there is little guidance for developers to follow as they create new products. Fortunately, Valve appreciates the seriousness of this moment and has followed the lead of the social games by moving to actively enforce its terms of service.

Right now, the players and operators will have to wait out the lawsuits—and enjoy skins only within the video games.



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