

March 17, 2022

By Electronic Mail to jsimonsson@evolution.com and First-Class Mail

Julia Simonsson, Esq.
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RE: SG Gaming, Inc. / Evolution Malta Limited

Dear Ms. Simonsson:

I write to briefly respond to the February 28, 2022 letter from your colleague, Jesper von Bahr, regarding the License Agreement relating to felt-based Lightning Roulette that is dated as of March 29, 2021 (“the Agreement”). Mr. von Bahr’s letter contends that SG Gaming, Inc. (“SG”) has materially breached the License Agreement to Evolution’s detriment, and that SG’s Roulette X product infringes one or more claims of Evolution’s U.S. Patent Nos. 10,629,024 and 11,011,014. Neither contention is correct.

As a threshold matter, Mr. von Bahr’s letter does not acknowledge the extensive discussions that occurred last year regarding SG’s decision not to deploy Evolution’s Lightning Roulette product. As you know, shortly after entering into the Agreement, SG decided not to deploy felt-based Lightning Roulette; we had conducted a review of our business and determined that Lightning Roulette no longer fit within our strategic plan. We promptly communicated that decision to Messrs. Martin Carlesund and Todd Haushalter of Evolution, so that Evolution would have ample opportunity to terminate the Agreement and partner with another licensee—which is precisely the remedy available to Evolution for SG’s change of position (see Section 2(e) of the Agreement). Mr. von Bahr’s letter even admits that various competitors of SG, including Galaxy Gaming, “were seriously interested in partnering with Evolution,” and that Evolution engaged in negotiations with those competitors, including Galaxy.

To that end, in early August 2021 and again in September and December 2021, we sent Evolution a proposed amendment to the Agreement, pursuant to which the parties would mutually terminate that Agreement. Curiously, Evolution has declined to agree to that amendment, even though it obviously makes commercial sense for Evolution to move on from a contract that will not be performed. We assume that Evolution is choosing not to formalize the termination of the Agreement because it plans to assert some sort of damages claim for SG’s decision not to deploy felt-based Lightning Roulette. Such a damages claim would be inherently speculative, and subject to challenge both under Section 8(f) of the Agreement and the Nevada law that governs the Agreement. Among other things, as we have said before, under Nevada

law, a party has a duty to mitigate damages, and cannot recover damages for losses it could have avoided by reasonable efforts. That means that Evolution cannot simply sit on its hands and collect a Minimum Royalty [REDACTED].

Next, Mr. von Bahr's letter contends that SG's own Roulette X product is a "copycat version" of Lightning Roulette, suggesting that "various elements of Roulette X were copied . . . in part or in whole from Evolution's Lightning Roulette." That is incorrect; SG independently developed Roulette X without the use of any Licensed Property, or indeed any confidential information from Evolution. (To the extent that Evolution contends that its patents are Licensed Property, they are invalid as discussed below.) Indeed, SG completed its development of Roulette X in all material respects before receiving any confidential information from Evolution, and so SG has not breached the non-disclosure agreement cited in Mr. von Bahr's letter. As for the trademark claims that are mentioned in passing in the letter, suffice it to say that the names Roulette X and Lightning Roulette are plainly dissimilar, and no likelihood of confusion exists.

Finally, Mr. von Bahr's letter contends that SG's Roulette X product infringes one or more claims of Evolution's U.S. Patent Nos. 10,629,024 and 11,011,014. Evolution has not provided any claim charts or other explanation for why it believes that Roulette X infringes those patents, either literally or under the doctrine of equivalents. However, please be advised that all of the claims of the two asserted patents are invalid under at least Sections 102 and 103 of the Patent Act, and are directed to patent-ineligible subject matter in violation of Section 101.

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In closing, SG has acted properly with regards to the License Agreement between the parties; in particular, SG gave early and more than ample notice to Evolution of its decision not to deploy Lightning Roulette. It would be best for all concerned if Evolution moved on and partnered with another licensee, as we have encouraged you to do. If Evolution opts instead to initiate arbitration or litigation against SG, then we will avail ourselves of all rights and remedies available to us. And, of course, all of SG's rights, remedies, claims, and defenses are expressly reserved and are not waived.

Sincerely yours,

Michael Blankstein
Senior Vice Presidents, Patents & Licensing

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