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Loot Box Update: Northern District of California Dismisses with Prejudice 'Loot Box' Suit Against Supercell Oy

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Last week, a district court in the Northern District of California ended a suit alleging unlawful and unfair conduct by videogame developer Supercell Oy. Plaintiffs alleged that Supercell's use of loot boxes in its popular games Clash Royale and Brawl Stars constituted violations of California's Unfair Competition Law (Business & Professions Code § 17200) and Consumers Legal Remedies Act (Civil Code § 1750). At the crux of Plaintiffs' complaint were claims that loot boxes are illegal gambling games under California law and that loot boxes are inherently unfair because they exploit the same cognitive traps as gambling.

Ruling that Plaintiffs did not have standing to sue under section 17200 or section 1750, the court found that Plaintiffs suffered no economic injury because they received the in-game currency and loot boxes they paid for, and because loot boxes are not prohibited by law. The district court explicitly noted that its section 17200 analysis conforms with last year's dismissed loot box suits against Apple and Google.

The district court then rejected Plaintiffs' claims on the merits. First, it found that Supercell's loot boxes did not constitute unlawful gambling under the California Penal Code—a machine or game in which a "thing of value" may be won or lost by chance. While loot boxes have subjective, non-monetary value to gamers, the court held that this alone does not render a loot box a "thing of value" under California law. The Ninth Circuit has also held that a virtual item that can be sold for real currency is not a "thing of value" if its terms of service prohibit such sales.

Second, the district court found Supercell's conduct fair and not a violation of California's Unfair Competition Law or otherwise unjust enrichment. Plaintiffs alleged that Supercell engaged in unfair and immoral conduct contrary to public policy by promoting gambling as entertainment to vulnerable populations such as families and children. But because there was complete overlap between Supercell's allegedly unlawful and allegedly unfair conduct, the court ruled that Plaintiffs' unfairness claim must fail because Supercell's conduct was lawful.

Ruling that Supercell's loot boxes were neither illegal games nor caused unfair effects, the court concluded that amendment would be futile and dismissed Plaintiffs' action with prejudice.

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Recognizing that emerging industries require bespoke lawyering, David Enzminger formed Winston's Videogame, Gaming & Esports Group to provide comprehensive legal solutions to companies in these industries. This multidisciplinary group includes more than 60 lawyers across 10 practices working seamlessly to assist companies in these industries in all areas, including managing IP portfolios, assisting esports companies to establish global sports leagues, selling franchises, and developing proactive legal solutions for issues that arise from league operations. We represent videogame publishers in antitrust matters and represent both rights owners and gaming companies in licensing issues for game content. In addition, our team helps electronic game clients prepare for all types of regulatory and public scrutiny issues, such as corporate governance, data privacy, and harassment/discrimination claims that are sure to come as the industry continues to grow in both size and influence. Our offices in New York, Silicon Valley, Los Angeles, Shanghai, and Hong Kong provide gaming clients with a global platform for their complex and evolving legal needs.
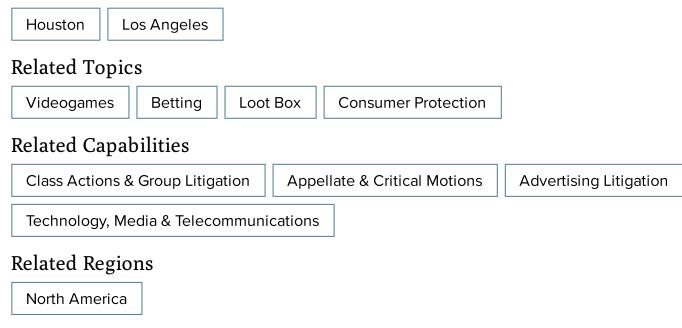
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