Advertised Incentives for Participation in Daily Fantasy Sports: A Comparison of Television Commercials Airing in 2015 and 2016

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During the summer of 2015 daily fantasy sports (DFS) advertising became ubiquitous, with DraftKings, one of the two major industry players, spending close to $85 million on television commercials (Gouker, 2015). One year later those commercials have all but disappeared from television and radio. A report from online news magazine Think Progress noted that DFS appeared to have more in common with Las Vegas style sports betting than it did with traditional season long fantasy contests (Israel & Feinman, 2015). Despite the apparent similarities to forms of sports betting found in Nevada and overseas, fantasy operators touted their product as a legal product distinct from the seedy sports gambling world (Fantasy Sports Trade Association, 2015). Fantasy operators and the Fantasy Sports Trade Association (FSTA) argued that 2006 banking statute clarified the status of fantasy games as legally distinct from prohibited forms of sports gambling (see FSTA, 2015). While this presumption proved incorrect, as increasing numbers of states began to assert their Tenth Amendment right to classify and regulate gambling within their territory, DFS providers began to scale back their marketing efforts.

The determination of when an activity constitutes gambling is jurisdiction specific. For instance, in the United States there are no less than four different standards for that are used for assessing whether an activity is gambling. Reber (2012) observed that the U.S. lacks a uniform interpretation of which activities constitute gambling, but it is broadly accepted that there are three necessary elements: consideration, prize and chance. The predominance test also called, the dominant factor test is used most commonly (Cabot & Csoka, 2003). In the evaluation of activities under the dominant factor tests courts examine whether skill or chance are the factor that has the greatest impact on success in the game (Cabot & Csoka, 2003). Okerberg (2014) noted that the second most commonly applied test in the U.S. is referred to as the material element test. Okerberg (2014) observed that the material element test is subjective and requires a judge or jury to determine whether chance is a material element in determining the outcome of an activity. Pandorf (2015) noted that a small number of U.S. states employ the “any chance test,” which determines any activity containing a modicum of chance to be prohibited. Pandorf (2015) further observed that other jurisdictions employ what is referred to as the gambling instinct test whereby courts prohibit activities if the appeal to a “player’s gambling instinct” (p.523).

Despite the claim that financial incentives were not the primary motivation for DFS players, prior analysis of 2015 commercials (presented at NASSM 2016: Brandon-Lai & Holden, 2016) concluded that DFS companies predominantly emphasized cash prizes, and the ease with which individuals could play and win. While the FSTA, DraftKings and FanDuel have maintained they are not offering a gambling product, various state regulators took notice, highlighted by the New York Attorney General, Eric Schneiderman seeking a judicial order to prevent the offering of DFS contests in the state of New York (Blain, 2015). To ascertain the impact of the heightened scrutiny surrounding the legality of DFS following their prominence in 2015, we examined the content of television advertisements for DFS in the lead-up to the 2016 NFL season (mirroring our sample for the 2015 analysis). In doing so, we sought to determine whether the messages being advertised were consistent with the arguments that the companies advanced that these are legal based on the level of skill involved (Edelman, 2016).

Method

To this end, we analyzed television commercials aired by the two DFS market leaders in the U.S. (DraftKings and FanDuel) during the first two weeks of the 2016 NFL season. This was then compared to our results from our 2015 analysis in order to establish whether a substantive change in strategy had been employed. We utilized a directed content analysis (DCA) to identify incentives (themes), as there was an a priori hypothesis that we wanted to explore (Neuendorf, 2002): that the primary incentives advertised in DFS commercials related to consumer motives that
were more intrinsic (e.g., enjoyment) than in the previous sample, which were overwhelmingly extrinsic (e.g., financial). Furthermore, a qualitative approach to content analysis was preferred because emphasis in media is not necessarily achieved through repetition, which would otherwise point toward a quantitative approach (Newbold et al., 2002).

Per Potter and Levine-Donnerstein (1999), the a priori framing of the research context enabled us to identify some key concepts and variables that were used as coding categories. Examples of these were “financial incentive,” “sport interest,” and “competition,” which were identified based on the respective claims of anti-gambling legislators and the Daily Fantasy Trade Association. Operational definitions were assigned to each code to ensure a common understanding between coders. Upon analyzing the commercials, it became apparent that additional themes were present, as is common in DCA (Hsieh & Shannon, 2005); thus, additional codes were established. A total of 10 codes were established through the DCA.

Results & Discussion
The concerns that have centered around the legal cases against the two major DFS providers in a variety of states have centered on a number of issues including whether the activity should be classified as gambling, and whether the companies have violated consumer protection laws related to employee’s playing on rival sites and overselling the ease with which players can succeed. Based on our investigation, both DraftKings and FanDuel have altered their advertising campaigns (more detailed results of the directed content analysis will be provided during our presentation). This is likely in an effort to depict images more consistent with their stated positions including those made in legal filings that their contests are skill based and that they are dissimilar from sports gambling, something alluded to by FanDuel CEO Nigel Eccles (Knowlton, 2016).

In spite of these claims, there are growing numbers of reported concerns that some DFS players are beginning to exhibit many of the same negative externalities as those individuals who have problem gambling tendencies (Terlep, 2015). In this prospective presentation, we will present important discussion of the changing marketing strategies undertaken by FanDuel and DraftKings following state-level investigations. In addition, we will discuss the potential legal implications of DFS advertising, and the potential for a reexamination of the federal prohibition of sports gambling. Pressure is evidently being exerted on DFS providers, as the New York case involving FanDuel and DraftKings resulted in a $12 million settlement; however, the settlement has spurred speculation that the major companies may be running out of money (Drape, 2016).