



Please allow me to introduce myself. My name is Lou Miele and I am a third generation operator from Williamsport, PA. My family has been in this business for the past 81 years, servicing accounts all over central Pennsylvania.

We have seen products come and go, some being lucrative and others being a waste of time. As an operator that has been able to survive this ever-changing industry I know that you must always be looking for the “next best thing”. That “thing” just hasn’t been available for us since digital music came into our routes back in 1998. Between the smartphones and internet our counter-top staple has all but lost its positions in our taverns. It’s because of this that I want to bring your attention to a new skill machine designed by Michael Pace of Pace-O-Matic. Michael Pace was the creator of the Pot-O-Gold machine but is more recently noted for creating legal games that can revive struggling locations and even save operators from going under.

Five years ago Michael Pace and his staff at Pace-O-Matic received some interest from PA operators to develop a skill game that would not only be legal in PA, but defensible in the court of law. After several years of design and testing they presented the game to Wayne Deluca (Pittsburgh Attorney) who submitted the game to The Pennsylvania Liquor Control Board for examination. They reviewed the machine for about eight months and their opinion was off the record that the game could, in fact, be a legal skill game, but they preferred that a judge make the final determination. Arrangements were made between Pace-O-Matic and the PLCB to have a machine placed on location and to be picked up in order to get the machine into court. On December 23, 2014 the game was ruled to be a true game of skill and the Judge ordered the machine to be returned to Pace-O-Matic.

In 2015, my company, Miele Manufacturing, started manufacturing and distributing the PA Skill game to operators all over the state. This machine has performed well and has led to many re-orders. With a favorable ruling from a Pennsylvania court, I believe this machine is not only the “next best thing”, but indeed, the best thing we can operate in today’s market. I have provided you the brochures on the machines, as well as, the ruling from the Pennsylvania court. I would also like to warn you that there are multiple “out of state/country” manufacturers in the market trying to say that their machine is the same as the PA Skill game and therefore it can run under the same ruling. These manufacturers are also working directly with locations to provide a larger percentage. These products are illegal. The manufacturers are putting their customers at risk of prosecution. I would like to have a conversation with you on how the PA Skill game could help your company today. I am available by phone or I could arrange to visit you for a demo of the PA Skill game. Thank you for your time.

Lou Miele
570-447-2145
www.MIELEMFG.com



IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY

PENNSYLVANIA

CRIMINAL DIVISION

12/23/14

PACE-O-MATIC, INC. EQUIPMENT

M.D.965-2013

TERMINAL I.D. 142613

ORDER

AND NOW, this 23rd of December, 2014, it is hereby ORDERED and DECREED that Petitioner's Motion of Return of Property pursuant to Pennsylvania Rule of Criminal Procedure 588 is GRANTED. The Commonwealth is ORDERED to return the Pennsylvania Skill game to Pace-O-Matic, Inc.

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IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY
 PENNSYLVANIA
 CRIMINAL DIVISION
 In re:
 PACE-O-MATIC, INC. EQUIPMENT : M.D. 965-2013
 TERMINAL I.D. NO. 142613

MEMORANDUM OPINION AND ORDER

H. KNAPEL, J. December 23rd, 2014

I. PROCEDURAL HISTORY

On November 19, 2013, agents of the Pennsylvania Bureau of Liquor Control Enforcement seized a Pace-O-Matic, Inc. video game device from the American-Italian Club located in Aliquippa, Beaver County. The manufacturer of the device filed a timely Petition for Return of Seized Property and requested a post-seizure hearing pursuant to Pennsylvania Rule of Criminal Procedure 588. This Court held a hearing on the matter on September 26, 2014. The sole purpose of that hearing was to gather evidence as to whether the confiscated property constituted a gambling device per se. The evidence fails to demonstrate that the machine is a gambling device per se, and Petitioner's motion for its return is GRANTED.

During the hearing, this Court heard testimony on the operation of the confiscated device. The Court heard testimony on two issues: first, whether Petitioner was entitled to lawful possession of the res; and second, whether the games installed on the device were games of

If, during the Tic-Tac-Toe game, the player wins an amount that is less than 104% of the purchase price to play the game, the player is afforded the option of selecting the "Follow-Me" mini-game. A player who chooses to proceed with the Follow-Me feature is presented with a three-by-three grid of colored dots. Essentially, the Follow-Me feature is a memory game. The dots flash in a random sequence which the player must repeat. Starting with one circle flashing, the player will need to follow the correct sequence for a total of forty rounds of play, with each sequence adding another circle. If a player successfully follows the pattern each time, the player is awarded with 104% of his or her original wager. For example, if the player had wagered 40 credits, successful completion of the Follow-Me mini-game would result in a payout of 42 credits.

III. LEGAL BACKGROUND AND ANALYSIS

A motion for return of property pursuant to Rule 588 is intended to return goods to a person aggrieved by a search and seizure based upon the right to lawful possession and the non-contraband status of the goods. Pa. R. Crim. P. 588; *Com. v. Pomerantz*, 573 A.2d 1149, 1150 (Pa. Super. Ct. 1989). Rule 588 provides, in pertinent part, the following:

Rule 588. Motion for Return of Property

- (A) A person aggrieved by a search and seizure, whether or not executed pursuant to a warrant, may move for the return of the property on the ground that he or she is entitled to lawful possession thereof. Such motion shall be filed in the court of common pleas for the judicial district in which the property was seized.
- (B) The judge hearing such motion shall receive evidence on any issue of fact necessary to the decision thereon. If the motion is granted, the property shall be restored unless the court determines that such property is contraband, in which case the court may order the property to be forfeited.

A petitioner's motion for return of property must, at a minimum, allege that the petitioner is entitled to lawful possession of the property at issue. *Pomerantz*, 573 A.2d at 1150. The

petitioner must prove that he is entitled to possession by a preponderance of the evidence.

Beason v. Ebersole, 986 A.2d 876, 881 (Pa. Super. Ct. 2009). A preponderance of evidence standard is tantamount to a "more likely than not" standard. *Com. v. \$6,425.00 Seized From Esquilin*, 880 A.2d 523 (Pa. 2005).

Where a petitioner meets the minimal burden of establishing entitlement to lawful possession, unless there is countervailing evidence to defeat the claim, the moving party is entitled to the return of the identified property. *Ibid.* The Commonwealth must prove the per se nature of machines seized as gambling devices by a preponderance of the evidence. *Com. v. Irwin*, 636 A.2d 1106, 1107 (Pa. 1993).

A machine is a gambling device per se if three elements are present: (1) consideration, (2) result determined by chance rather than skill, and (3) reward. Because both the Petitioner and the Commonwealth have stipulated that the machine meets the consideration and reward elements, only the second element—whether the result is determined predominantly by chance or skill—will be addressed in depth.

That successful play is determined by chance rather than skill is an element essential to a finding that a machine is a gambling device per se. *Com. v. Two Elec. Video Poker Game*

Machs., 465 A.2d 973, 977 (Pa. 1983). Courts must determine in each case the relative amounts of skill and chance present in the play of each machine and the extent to which skill or chance determines the outcome. *Ibid.* In order for a game to constitute gambling, it must be a game where chance predominates rather than skill. *Ibid.* A showing of a large element of chance, without more, is not sufficient, and the outcome need not be wholly determined by skill in order for a machine to fall outside the gambling per se category. *Ibid.* The mere fact that a machine