

## LAW OFFICE OF MARK E. SOSTARICH

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July 31, 2014

Mr. Jeremy D. Hahn  
Quick Charge Kiosk, Inc.  
3035 Smith Lake Road  
West Bend, WI 53090

RE: Opinion Letter "Quick Charge Kiosk" Promotion

Dear Mr. Hahn:

You have requested an opinion from this office as to the legality under Wisconsin law of your company's "Quick Charge Kiosk" promotion. You have specifically requested an analysis of whether the company's promotion complies with the gambling exemption requirements of Wis. Stat. §100.16 and is therefore not an illegal lottery, nor illegal gambling under Wisconsin law. After thorough review of your promotion, and including my interview with you; examination of all promotional materials and your company's website; viewing of the video of actual use of the Quick Charge Kiosk and the playing of the promotional games, examination of your proposed written contracts and notification form for winners of prizes of \$100 or more, this office concludes that your promotion, when properly conducted by operators and location owners of the kiosks, complies with the exception provided by Wis. Stat. §100.16(2) as acknowledged by Wis. Stat. §945.01(5)(b)(2) and (g), and is therefore legal under Wisconsin law.

This opinion and conclusion are based upon the below identified facts of your promotion and applicable law. Should the provisions of your promotion substantially change, this office reserves the right to withdraw its opinion pending analysis of these changes.

### THE PROMOTION

In evaluating your proposed promotion the following items and equipment have been viewed, either directly or through an appropriate video:

1. A completed and fully functional "Quick Charge Kiosk" which has multiple charging cables which can be connected to most current cellular phones on the market. Upon paying the appropriate fee a user of the device is provided with a set amount of charging time for the individual's cellular phone or similar device.
2. Review of all proposed promotional materials, including adhesive stickers for posting on or near each kiosk location; the promotional handout to be provided to prospective location operators, and review of the "Quick Charge Kiosk \$100 or more winner form."

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3. Review of the company's website for Quick Charge Kiosk located at [www.quickchargekiosk.com](http://www.quickchargekiosk.com).
4. Review of the free entry protocol established for the use by individuals who do not want to pay for the charging service, but wish to play the promotional games.
5. Review of the video showing the charging kiosk in operation and the actual playing of the promotional games.
6. Review of the proposed written operator and location agreement.

Apart from the enjoyment of playing the promotional games, the Quick Charge Kiosk provides users with cellular telephone charging services for a set fee. During the promotional period, which is identified on adhesive stickers to the machine and on the company's website, users of the charging kiosk may also elect to play the machine's promotional games. Players of the promotional games have the opportunity to win monetary rewards which are identified in a tape printout which is received from the machine. The promotional game winner takes the receipt to the location operator to cash in the receipt for the identified monetary award. The location operator keeps a record of all winning amounts in excess of \$100 or more so that this information can be turned over to proper authorities upon request.

Prominently displayed through adhesive stickers, promotional materials, and the company's website is the fact that the promotional games can be played free of charge, and that no purchase of the charging service is necessary to play the promotional games. Also displayed is the termination date of the promotion being offered through the machine. The odds of winning a prize are the same whether a user pays for the charging service or elects to play the promotional game for free. The promotion at no time misrepresents a participant's chances of winning any prize.

The promotional games programming randomly distributes prizes as the promotional game is played. In the unlikely event all prizes are not awarded during the promotional period, the company guarantees that the remaining prizes will be randomly distributed.

The local operator of each kiosk is required by a written agreement to maintain a record of the names and addresses of all winners of prizes valued at \$100 or more. These records are maintained for at least one year after the termination of the promotion.

The company also requires each operator or owner of the location where the machine kiosk is located to enter into a "Location/Owner Agreement. These agreements require compliance with all applicable laws, collection of applicable sales tax, require the maintenance of necessary records of winners, the upkeep of signage, and the prompt notification of any equipment failures.

## LEGAL ANALYSIS

Games of chance and non-State sponsored lotteries are generally prohibited under Wisconsin law. Wis. Stat. §945.01. Wisconsin law further prohibits the selling of any product under the pretense of a possible prize or award being concealed or enclosed within the packaging of the item. Wis. Stat. §100.16. Wisconsin does provide, however, an exception to the general prohibition against non-State sponsored lotteries and gambling. Relevant to the company's Quick Charge Kiosk promotion is the "in-pack chance promotion exception" provided by Wis. Stat. §100.16(2).

Pursuant to Wis. Stat. §100.16(2), promotional games which award prizes are legal and allowable provided certain specific requirements are met. These requirements, as defined in the statute, are as follows:

- (a) Participation is available, free and without purchase of the package... [product or service] from the retailer or by mail or toll-free telephone request to the sponsor for entry or for a game piece.
- (b) The label of the promotional package and any related advertising clearly states any method of participation and the scheduled termination date of the promotion.
- (c) The sponsor on request provides a retailer with a supply of entry forms or game pieces adequate to permit free participation in the promotion by the retailer's customers.
- (d) The sponsor does not misrepresent a participant's chances of winning any prize.
- (e) The sponsor randomly distributes all game pieces and maintains records of random distribution for at least one year after the termination date of the promotion.
- (f) All prizes are randomly awarded if game pieces are not used in the promotion.
- (g) The sponsor provides on request of a state agency a record of the names and addresses of all winners of prizes valued at \$100 or more, if the request is made within one year after the termination date of the promotion.

While Quick Charge Kiosk's promotion is not a traditional promotional game contained within packaging of a product, the promotion was clearly crafted to comply with each of the requirements of Wis. Stat. §100.16(2). The offered games are aimed at increasing the use of the for-pay charging service that the kiosk provides. While the statutory exception does not call for the sale of an actual product or service of

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any particular value or description, the Quick Charge Kiosk promotion clearly promotes the sale of charging time for telephones at the kiosk.

Quick Charge Kiosk's promotional games are advertised through signage and on the company's website, which makes clear that participation in the promotion and playing the promotional games are available free of charge, without purchase of the charging service through the kiosk. Operators and location owners are required by agreement with the company to affix signage in and about the machines to clearly advise the availability of free play of the promotional game and to direct patrons to the company's website for further information.

The method of participation in the promotional games is clearly explained on the promotion's signage and company's website. A user of the charging kiosk can choose not to play the promotional games and simply receive the charging service. Signage is provided which describes how to play the promotional games without charge and without use of the specific kiosk device.

The company does not misrepresent a participant's chances of winning any promotional prize. Through programming it should be impossible for there not to be a full distribution of prizes through the term of the promotion. Quick Charge Kiosk guarantees that these distribution records of prizes of \$100 or more will be maintained for at least a year after termination of each promotion. In the very unlikely event that there has not been a full distribution of all possible prizes, the remaining prizes will be awarded in a random fashion.

The company requires each operator or location owner to enter into a written agreement. The agreement requires maintenance of a record of the names and addresses of all winners of promotional prizes valued at \$100 or more. The agreement requires the operators and location owners' compliance with the statute's requirement that records be maintained for at least one year after the termination of each promotion.

Since Quick Charge Kiosk's promotion meets each of the stated requirements of Wis. Stat. §100.16(2), it is a valid in-pack promotion subject to the exception provided by statute and does not constitute an illegal lottery or gambling under Wisconsin law.

In meeting the technical requirements of Wis. Stat. §100.16(2), the Quick Charge Kiosk promotion is consistent with the promotion upheld as legal in the reported Wisconsin Court of Appeals case of Walter G. Bohrer, Jr., et al. and Wisconsin Souvenir Milkcaps, Inc. v. The City of Milwaukee, City of Milwaukee Police Department, and State of Wisconsin, 2001 Wi. App. 237, 248 Wis. 2d 319, 635 N.W.2d 816. I personally served as trial and appellate counsel for Mr. Bohrer and Wisconsin Souvenir and Milkcaps in this case. I am therefore quite familiar with the facts and ruling of the case.

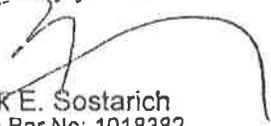
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Quick Charge Kiosk's promotion is, in fact, stronger in its compliance with the requirements of Wis. Stat. §100.16(2) than the plaintiffs in the reported *Bohrer* case. While the Wisconsin Appellate Court rejected the State of Wisconsin's argument in the *Bohrer* case, that the product promoted in that case was not a "genuine" product, ~~that~~ that argument be reasserted in any challenge to the Quick Charge Kiosk's promotion, and a reviewing court now accepts the argument, Quick Charge Kiosks clearly provides a service, specifically telephone recharging service for a fee. Quick Charge Kiosks promotion is also similar to promotions found to be legal under North Carolina law as a legitimate sales promotion of a valuable commodity in *American Treasures, Inc. v. State*, 617 S.E.2d 345 (Court of Appeals, 2005).

Quick Charge Kiosk's promotion is also similar to the promotion that has been offered by Nutell Communication, Inc., which sells long distance telephone time and promotes its sale of this time through promotional video games. While the commonwealth of Massachusetts does not have a law similar to Wis. Stat. 100.16(2) providing a clear exception to Massachusetts' gambling prohibitions, the Massachusetts Court of Appeals found Nutell Communication, Inc.'s promotion did not constitute illegal gambling in the commonwealth and was legal as reported in *Commonwealth v. Stanley Webb*, 68 Mass. App. 167 (2007).

Should you have further questions regarding the analysis or the factual basis for this opinion, please feel free to contact the undersigned. In the event that the company changes its promotion in any way, the undersigned would be happy to review these changes and issue a supplemental opinion.

Very truly yours,



Mark E. Sostarich  
State Bar No: 1018382

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