



Strategic Marketing Alliances are on the rise: Be Ready to Counsel Your Client

By Vernon A. Nelson, Jr.

The February 2012 announcement that MGM Resorts International and Ameristar Casinos were entering into a strategic marketing alliance agreement is prominent evidence of a growing industry trend. Every day casino operators in Nevada and across the country are exploring strategic marketing alliances. Such alliances can run the gamut from a simple agreement between two casinos to hold “joint marketing” events, to sophisticated agreements between regional operators and Las Vegas strip operators to integrate player reward systems.

This article will: (1) provide a brief overview of the most common strategic alliance arrangements; (2) identify certain contractual issues that should be addressed in strategic alliance arrangements; and (3) address some of the regulatory issues that a Nevada lawyer should consider in counseling clients with respect to such arrangements.

I. Overview.

A. Generally.

In general, strategic marketing alliance agreements (“Alliance Arrangements”) are beneficial to operators who do not have a presence on the Las Vegas Strip because they can reward their top players with a Las Vegas experience without having to make a significant capital investment in Las Vegas. On the other hand, a Las Vegas Strip operator can benefit by gaining access to new VIP Players and/or the other operator’s entire database.

Most Alliance Arrangements consist of one or more of the following components:

1. An agreement to conduct joint mailings or allow each party to mail offers to the other party’s customers. This can be as simple as a mailing announcing that each party agrees to recommend the other party to its customers. Alternatively, the parties can specify the content of mailers, the customer segments to which they will be mailed, and/or the number of mailings that will occur.

2. An agreement to conduct player trips and parties. This could be as simple as agreeing to provide complimentary benefits to another operator's VIP Customer if the customer plays to a certain level. Alternatively, Las Vegas executives may travel to a VIP Event at the off-strip operator's property. Finally, the off-strip operator may arrange for a group of VIP players to attend VIP Event to be held at the Las Vegas Strip operator's property.
3. An agreement to conduct joint promotions. This can be as simple as the Las Vegas operator providing free room nights for a drawing to be held at the other operator's property. Alternatively, the parties may choose to hold joint promotions where casino play at both operators' properties can earn entries into a promotion.
4. An agreement to share database information, with or without the ability to earn, use, or transfer points between operators.

B. Notable Alliance Arrangements.

Three of the most publicized Alliance Arrangements highlight these components and the mutual benefits provided to operators. In 2002, the Rio's agreement with Greektown Casino in Detroit was one of the first publicized Alliance Arrangements. It was reported, *"The alliance will enable Greektown Casino to provide its players with an opportunity to enjoy new experiences at one of Las Vegas' premier casino hotel resorts, as well as benefit to Rio players who live in the Detroit area."*¹

In 2011, Wynn Resorts and Pinnacle Entertainment took strategic marketing alliance relationships to a new level by reaching an exclusive deal that gives Pinnacle customers access to the Wynn and Encore resorts in Las Vegas, and allows select Pinnacle customers to qualify for the Wynn Resorts' reward program. The relationship benefits Wynn because "Pinnacle will send its very best customers for multi-day stays exclusively at Wynn Properties."²

The Wynn/Pinnacle Announcement was followed about a year later by the announcement of a strategic marketing alliance between MGM Resorts International and Ameristar Casinos. This arrangement allows Ameristar patrons to use points

earned at their local Ameristar Casino at MGM's Las Vegas Strip properties. On the other hand, the deal allows MGM to market directly to Ameristar's customers. Some industry observers believe this relationship allows Ameristar to compete more effectively with Caesars Entertainment by giving Ameristar an opportunity to leverage access to MGM's wide array of Las Vegas properties without having to expend capital to acquire a Las Vegas asset and then compete in Las Vegas.³



II. Legal Considerations for Alliance Alliance Agreements.

A. Advertising and Use of Intellectual Property.

The Alliance Agreement should have a clear description of any intellectual property rights that might be granted in connection with the Alliance Agreement. A simple Alliance Agreement may contain a *worldwide, royalty-free, non-exclusive limited right and license*, to use each other's logos, trade names, trademarks, and service marks solely in connection with the Alliance Agreement. Any other use of either party's intellectual property should require prior written approval in each instance.

B. Compliance with Laws/Privileged Licenses.

The Alliance Agreement should contain a provision that requires both parties to comply with applicable

laws, including the regulations of the gaming regulatory agencies that govern the parties. For example, if the Agreement is between a Las Vegas Strip operator and a Tribal casino, the Tribal casino should have to comply with applicable Nevada

regulations. Likewise, the Las Vegas Strip operator should comply with all applicable tribal ordinances. In this regard, it is also important to note that an Alliance Agreement with a Tribal casino may require the Tribal casino to agree to an express waiver of sovereign immunity from suit by the Las Vegas Strip operator.

Furthermore, the Alliance Agreement should contain a Privileged License provision that prohibits either party from engaging in any conduct that could jeopardize the other party's privileged licenses. The Alliance Agreement should also allow either party to terminate the agreement if the other party engages in any conduct that could adversely affect either party's privileged licenses.

C. Confidentiality.

Confidentiality provisions can vary depending on the overall scope of the Alliance Agreement. In the early stages of a strategic marketing alliance, the parties may be cautious. The parties may desire to limit the level of contact and the pool of customers that the other party may contact. In such cases, the parties may use a third-party mail house to protect the confidentiality of their customer information.

If the parties intend a more complicated relationship, then the parties need to pay close attention to the type of information that will be shared, how it will be shared, and what the parties' remedies will be for breach of their confidentiality obligations.

In addition, if the agreement provides for the exchange of personally identifiable information, the



parties should be careful to comply with all applicable privacy laws and obligations, including, for example, state privacy laws (including NRS 603A-Security of Personal Information) and the Personal Data Privacy and Security Act of 2009, S. 1490, 111th Cong. § 311(d) (2009).

D. Governing Law.

The Governing Law provision can be a material provision. It may be especially important with respect to enforcement of confidentiality provisions. A Strip casino operator will likely not want to be subject to Tribal jurisdiction, or another jurisdiction outside of Nevada. There are several ways to address this issue. Arbitration can be one solution. Parties can often agree to a neutral location for arbitration. Similarly, they can agree to a neutral governing law, such a New York law, to determine disputes.

III. Regulatory Concerns for Nevada Lawyer.

In addition to the Privileged License provisions of the Alliance Agreement, a Nevada lawyer must also be cognizant of Nevada Gaming Commission Regulations that may impact the relationship. The type of relationship will obviously determine the extent of such regulation, if any.

For example, if a regional operator simply arranges for a VIP player to visit a Strip operator's property, and the Strip operator maintains all discretion over complimentary and other incentives, then the arrangement is not likely to be subject to regulatory scrutiny.

On the other hand, if a regional operator: (1) has significant input on decisions such as complimentary and credit; or (2) the regional operator receives compensation based on the theoretical win generated by

its customers, the regional operator will qualify as an Independent Agent.

Pursuant to NRS 463.0164, an “Independent agent” is defined as:

...any person who:

(a) Approves or grants the extension of gaming credit on behalf of a state gaming licensee or collects a debt evidenced by a credit instrument; or

(b) Contracts with a state gaming licensee or its affiliate to provide services outside of Nevada consisting of arranging complimentary transportation, food, lodging or other services, or any combination thereof, whose combined retail price per person exceeds \$1,000 in any 7-day period for guests at a licensed gaming establishment.

If a regional casino operator qualifies as an Independent Agent, the relationship will be governed by Nevada Gaming Commission Regulation 25. An Independent Agent is subject to being called forward for a finding of

suitability. Further, the Strip operator cannot pay commission based on theoretical win until the regional casino operator has registered with the Nevada State Gaming Control Board.

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¹ Prnewswire.com/news-releases/rio-enters-marketing-alliance-with-greektown

² www.casinocitytimes.com/article/wynn-pinnacle-announce-marketing-alliance (quoting Michael Weaver, Sr. V.P. of Marketing Strategy.

³ www.dailyfinance.com/2012/02/17/on-ameristar-and-mgm-new-strategic-marketing