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N.Y. shouldn't treat DraftKings, FanDuel like the Mafia



AP FILE/2014

Attorney General Eric Schneiderman is treating fantasy sports like the mob.



By **Shirley Leung** | GLOBE STAFF NOVEMBER 13, 2015

Who does he think he is?

I'm talking about New York Attorney General Eric Schneiderman, who is trying to shut down daily fantasy sites DraftKings and FanDuel in his state. I get it. It's his job to protect consumers, but it's an attention-grabbing move by a swashbuckling office that likes to bill itself the "sheriff of Wall Street."

Schneiderman ^{Comments} blasts off cease-and-desist letters Tuesday afternoon to Draft-Kings and FanDuel, and by Wednesday morning he is tweeting: “Tune into @GMA and @CBSThisMorning, where I’ll be talking about our office’s crackdown on illegal gambling.”

It’s no secret that being New York AG is a golden ticket to higher office. The last two elected governors of New York were former AGs — Eliot Spitzer and Andrew Cuomo. Schneiderman, a Democrat in his second term, almost certainly will consider a run for governor.

What better way for voters to remember your name than by declaring DraftKings and FanDuel illegal and threatening the CEOs with criminal prosecution?



Vennochi: Why won't Maura Healey go after DraftKings?

The AG insists she is about the facts and the law — not the powers behind Boston’s own fantasy sports company.

Horowitz: Is time running out

“The motivation is partly political, but not exclusively political,” said Gerald Benjamin, a political science professor at State University of New York at New Paltz. “As long as you are not ignored, you are doing your job.”

I have a problem with this New Yorker like I have a problem with the Yankees.

Comments

Here's why: Schneiderman is going straight to the nuclear option. New York has a notorious history of illegal gambling, and this AG is treating DraftKings and FanDuel like the Mafia. Next thing you know Schneiderman is going to start comparing DraftKings CEO Jason Robins to John Gotti.

Federal law doesn't prohibit online fantasy sports, but it may be illegal under individual state laws. Most states have allowed fantasy sports sites to operate, but last month Nevada required them to get a gambling license if they wanted to do business there. New York became the first state where DraftKings and FanDuel were targeted for shutdown because they were deemed to be violating gambling laws. Both companies are fighting the decision.

Think about it. If Draft-Kings and FanDuel were running illegal sports-betting rings, why would they go an advertising blitz on national TV to promote their contests? If they were mobsters, they would stay out of sight.

So what should Schneiderman have done? I'm not asking him to ignore the law, but he should have spent more time understanding daily fantasy sports. He just started investigating these companies five weeks ago — not out of concern that they constituted illegal gambling but after allegations of employee misconduct and unfair play.

Schneiderman acted fast as if the companies sprouted up overnight and posed an immediate threat. FanDuel, which is headquartered in New York, has been around since 2009, and DraftKings, which is based in Boston, started in 2012.

What he should have done is what



AP FILE

DraftKings CEO Jason Robins has been under siege, most oppressively by New York regulators.

Massachusetts Attorney General Maura Healey and a handful of other states are doing: study the companies and think of ways to work with them. Healey's argument has been that current statutes were never designed with daily fantasy sports in mind and she is not going to apply an ancient set of laws to an emerging industry. Instead she's coming up with consumer protection guidelines or recommending regulations, perhaps by the end of November.

Both companies were talking with Schneiderman's office and say they were willing to be regulated. DraftKings adviser and former Massachusetts attorney general Martha Coakley said the company was "surprised and dismayed" by Schneiderman's sudden action.

"You can't use your authority particularly to close down a business before you have taken the time to understand the business model, do the inquiry you need to do, and figure out what, if any, remedy is due here," said Coakley, who is now an attorney at Foley Hoag and who has been working with DraftKings since August.

And here's where politics comes into play. No politician wants to appear soft on gambling. But it's OK for ride-sharing platforms like Uber and Lyft, or room-renting startups like Airbnb to push the letter of the law and continue to operate. Lawmakers are willing to work with these businesses to come up with regulations — and daily fantasy sports sites should get the same opportunity.

What worries me now is that Schneiderman may prompt other states to have the same knee-jerk reaction — which could prove financial devastating to the nascent \$4 billion online sports fantasy industry.

This is the new economy, and it deserves a fair hearing. DraftKings and FanDuel need to find a way to make daily fantasy sports work in New York — and if they can, it will go a long way to figuring out how to make it anywhere.

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