

Sports & Entertainment Beat

## **New York Attorney General Says Daily Fantasy Sports Contests Are Illegal**

Foster Garvey on 11.19.15 | Posted in Sports, Web/Media

*Benjamin Riesenber*g is a former Garvey Schubert Barer legal extern who worked out of the firm's New York office. He was a law student at Brooklyn Law School.

As the popularity of fantasy sports grows, so do the legal issues surrounding the industry. The main legal challenges facing fantasy sports have been centered on the issue of whether pay-to-play fantasy sports contests constitute illegal gambling. In 2006, Congress passed The Unlawful Internet Gambling Enforcement Act ("UIGEA"), which created certain guidelines for fantasy sports. For a pay-to-play fantasy sports contest to be legal under the UIGEA, the fantasy sports game must have a result that is predominantly based on the knowledge of participants as opposed to mere chance.

Season-long fantasy contests have gone unchallenged based on this criterion. However, short term fantasy sports contests, in which participants compete in contests usually lasting for one week and sometimes as short as one day, have come under scrutiny. While not initially popular, daily fantasy sports (DFS) have exploded into a multi-billion dollar business headlined by the two industry leaders: DraftKings Inc. and FanDuel Inc., both of which have undergone rapid growth. [Investors have sunk over \\$575 million into the two platforms](#), and last year DraftKings reported it earned over \$300 million in entry fees and expected that number to increase significantly this year. Both companies hope to expand their business outside of North America in the near future. However, those plans may have to be put on hold for the time being.

On October 6, 2015, the New York attorney general, Eric T. Schneiderman, [began an investigation](#) into both DraftKings and FanDuel to determine the legality of the two companies' businesses. The investigation was prompted by an incident at DraftKings that received national attention, in which a DraftKings employee, Ethan Haskell, accidentally posted internal betting data to his Twitter account, and that same week, won \$350,000 on rival site FanDuel. The investigation was completed on November 10, 2015. While no wrongdoing was discovered on the part of Haskell, the investigation still delivered a big blow to daily fantasy sports contest platforms.

The attorney general determined that the daily competitions run by both DraftKings and FanDuel are games that primarily involved chance and thus are considered illegal gambling. Schneiderman released a statement, concluding that "it is clear that DraftKings and FanDuel

are the leaders of a massive, multibillion-dollar scheme intended to evade the law and fleece sports fans across the country.” Schneiderman ordered that the two websites [stop accepting bets from New York residents immediately](#). The attorney general did not end his investigation with DraftKings and FanDuel. On November 18, 2015, Schneiderman expanded his investigation to include the online media company Yahoo, the clear third choice of daily fantasy sports fans after FanDuel and DraftKings.

DraftKings and FanDuel responded by filing separate state-court lawsuits in New York in which they will each challenge the attorney general’s ruling by arguing that daily fantasy sports are games that primarily involve skill, not chance. The daily fantasy sports giants subsequently asked the court for temporary restraining orders to prevent the attorney general from shutting down the websites and have also asked the court to expedite their lawsuit. Yahoo has not yet responded, but it seems likely they will follow the lead of DraftKings and FanDuel.

It’s possible the legislature will step in and solve this problem for the courts. Six days after the attorney general ordered DraftKings and FanDuel to stop taking wagers in New York, a state senator from western New York, Sen. Michael Ranzenhofer, [introduced a bill](#) that would carve out fantasy sports from the state’s prohibition on gambling. Similarly, about a dozen other states are considering legislation aimed at fantasy sports, according to GamblingCompliance, an independent firm that monitors legislation related to gambling.

To complicate matters further, many major brands and sports powerhouses have invested in DraftKings or FanDuel. Major League Baseball, the National Hockey League and the National Basketball Association each hold stakes in one of the platforms. Additionally, nearly every team in the National Football League has a sponsorship deal with DraftKings, and the owners of two major NFL franchises, Jerry Jones and Robert Kraft, hold personal equity stakes in DraftKings. If a court rules that daily fantasy sports contests constitute illegal gambling, it is likely that the major sports leagues will have to disassociate with the fantasy sports industry in order to avoid an implied endorsement of illegal gambling.

In time, a New York court will rule whether daily fantasy sports contests are games that primarily involve chance or skill. With billions of dollars at stake, DraftKings and FanDuel will likely exercise every legal avenue available to them. The [burden will be on the state](#) to prove that chance is a material factor in fantasy sports. The lack of precedent on this issue makes the outcome uncertain in what is a multi-billion dollar industry.

**Tags:** attorney general, DraftKings, FanDuel, fantasy sports, gambling, NBA, NFL, NHL, Sponsorship, Unlawful Internet Gambling Enforcement Act (UIGEA)