

# FanDuel, DraftKings Preparing For New York Legal Battle

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DraftKings and FanDuel responded forcefully Wednesday to cease and desist letters from New York's attorney general by stating their willingness to prove the legality of daily fantasy sports (DFS) in state courts if a resolution cannot be found in the next five days.

The **letters** sent by the office of New York Attorney General Eric Schneiderman prompted an aggressive response from leading DFS companies Wednesday, who pledged to challenge Schneiderman's claim that their operations constitute "illegal gambling."

Speaking to reporters on a conference call, FanDuel CEO Nigel Eccles sharply criticized Schneiderman's "very extreme and very sudden decision" and said the company planned to remain in business in the Empire State.

Marc Zwillinger, FanDuel's outside counsel, said FanDuel would take "full advantage" of the five-day window offered by Schneiderman to respond before any formal legal proceedings might be initiated.

He said that FanDuel was optimistic the attorney general could be persuaded within that timeframe to reconsider his "flawed" analysis of the legality of daily fantasy sports, which the company insists are games of skill per state law.

If not, FanDuel would consider bringing a legal challenge.

"If the attorney general is interested in a regulatory model which isn't apparent in the letter, it is certainly a conversation that FanDuel and others in the industry would be willing to have with them," Zwillinger added.

Meanwhile, DraftKings said it had retained law firm Gibson, Dunn & Crutcher to review its own legal options and that it too plans to "pursue this fight to the fullest to ensure that New York fantasy sports fans do not need to stop playing the games they love."

"There is a process by which hasty and unformed opinions can be challenged in a court of law, which

would allow DraftKings to not have to cease operations in the state of New York," said a company spokesman in a statement.

The attorney general's letters Tuesday appeared to come as a surprise to the leading DFS operators, even though a source told GamblingCompliance that both companies have had meetings with the attorney general's office since Schneiderman first announced an investigation into their business practices last month.

In response to a question on potential parallels to the fallout of the U.S. Department of Justice's [2011 crackdown on online poker](#), Eccles said there is no reason for DFS players to be concerned about the security of their money even if FanDuel is forced to close its New York operations.

Still, the FanDuel boss deflected a question about another possible pressure point in payment processors who may be wary of the risks of remaining in New York's fantasy market.

Eccles said the situation with payment processing was "dynamic."

"We are working with all of our partners through this and we will continue to work with them," he said. "It's something that we will continue to engage them on."

The New York Times reported Wednesday that one leading processor, Vantiv, had emailed daily fantasy companies seeking their compliance with Schneiderman's cease and desist order.

Meanwhile, a PayPal spokesperson told GamblingCompliance that the leading e-wallet's established policies are to "adhere to applicable laws, regulations and compliance requirements in the markets in which we operate."

"Processing payments for fantasy sports providers is no different. We intend to continue to comply with the legal requirements that would apply to PayPal in this area and will work with our merchants and regulators to ensure we are in compliance," the spokesperson added.

Tuesday's action came just as state lawmakers in Albany had started to prepare for a debate on potential appropriate regulations for popular daily fantasy sports contests.

One pending bill in the New York Assembly would grant regulatory authority over fantasy sports to the state's gaming commission.

GamblingCompliance also understands that a hearing on fantasy sports has been scheduled for December 8 before the Assembly's Racing and Wagering Committee, although it is not clear if the recent developments might affect those plans.

Robert McLaughlin, head of the gaming practice at law firm Hodgson Russ in Albany, said there are two possible avenues for daily fantasy sports providers to ensure they can remain in New York — litigation or the state legislature.

"I'm not sure what the easy path for DraftKings and FanDuel is at this point," McLaughlin, a former New York Lottery director, told GamblingCompliance. "Regardless of what the companies say, I would think the attorney general would commence with litigation proceedings pretty rapidly after those five days."

Even if New York lawmakers are willing to clarify that daily fantasy sports are legal, McLaughlin said a constitutional amendment may be required to make a change to the state's gambling definitions.

That could not happen overnight.

"You need to get a bill passed in two successive sessions of the state legislature," he said. "You could, in theory, do a bill in 2016 and a second bill in 2017 and get a referendum in 2017, but it is still two years away."

However, another attorney familiar with New York gaming law told GamblingCompliance that a constitutional referendum may not be necessary.

For example, a pending New York measure to license online poker would classify the activity as a game of skill not subject to constitutional restrictions on expanded gambling.

Lawmakers could also seek to change a provision of New York's 2013 casino law, "to make daily fantasy sports fall under the new definition of an authorized game that would also allow that authorized game to be offered over the internet," said the attorney, who requested anonymity.

Other legal experts noted that the legal risks arising from Schneiderman's letter would be amplified by their potential federal implications.

Recent reports have suggested that daily fantasy sports are being subject to an **early-stage investigation** by the office of Preet Bharara, the formidable U.S. Attorney for the Southern District of New York.

"If these businesses are in violation of New York law, then they could be prosecuted under the federal Illegal Gambling Business Act, which references violations in state laws," said Keith Miller, a law professor at Drake University in Des Moines, Iowa.

"This is really a shot across the bow at DFS operators when you talk about it being a criminal violation of New York law because the New York attorney general knows exactly what the implications are," Miller told GamblingCompliance.

As of Wednesday evening, four smaller DFS operators had moved to pull out of the New York market.

But for the two industry giants, there is far more at stake in the Empire State than there was when Nevada's attorney general offered a **similar legal finding** last month.

Eccles said New York accounts for around 10 percent of FanDuel's total player base of around 600,000 customers.

"We are going to engage with the attorney general's office and look at other legal routes that we may want to take," he told reporters.

"It's our mission to make sports more exciting in the U.S. and we want to continue to offer our products to New York players."

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