

**ORDER 2021-170  
IN RE SETTLEMENT AGREEMENT**

**BARSTOOL SPORTS, INC.  
21-BS-01**

After having reviewed the attached Settlement Agreement, the Indiana Gaming Commission hereby:

**APPROVED**

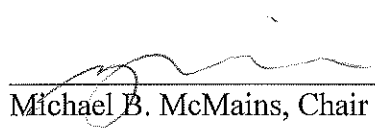
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APPROVES OR DISAPPROVES

the proposed terms of the Settlement Agreement.

**IT IS SO ORDERED THIS THE 29<sup>th</sup> DAY OF SEPTEMBER, 2021.**

**THE INDIANA GAMING COMMISSION:**

  
\_\_\_\_\_  
Michael B. McMains, Chair

ATTEST:

  
\_\_\_\_\_  
Jason D. Dudich, Secretary

**STATE OF INDIANA  
INDIANA GAMING COMMISSION**

**IN RE THE MATTER OF:** )  
 ) **SETTLEMENT**  
**BARSTOOL SPORTS, INC.** ) **21-BS-01**

**SETTLEMENT AGREEMENT**

The Indiana Gaming Commission (“Commission”) by and through its Executive Director Greg Small and Barstool Sports, Inc. (“Barstool”), (collectively, the “Parties”) desire to enter into this settlement agreement (“Agreement”) prior to the initiation of a disciplinary proceeding pursuant to 68 IAC 13-1-18(a). The Parties stipulate and agree that the following facts are true:

**FINDINGS OF FACT**

1. 68 IAC 27-2-11 provides (a) a certificate of authority holder, vendor licensee, sports wagering service provider licensee, and a registrant have a continuing duty to maintain suitability for licensure. A license issued under this rule does not create a property right, but is a revocable privilege granted by the state contingent upon continuing suitability for licensure. (b) The sports wagering operators, sports wagering service providers, and registrant applicants are responsible for the following: (1) Ensuring that all aspects of the sports wagering operation are conducted in accordance with IC 4-33, IC 4-35, IC 4-38, 68 IAC, directives of the commission, applicable internal controls of the sports wagering operator, and all other state, federal, and local laws. (2) The acts of its employees and agents in the course of their employment.
2. 68 IAC 27-7-17 provides (a) that no sports wagering operator shall allow, conduct, or participate in any false or misleading advertising concerning its sports wagering operations. (b) All advertising and marketing materials published, aired, displayed, or distributed by or on behalf of any sports wagering operator shall comply with the following: (1) Must not directly advertise or promote sports wagering to minors. (2) Shall conspicuously display a prominent message, which states: "If you or someone you know has a gambling problem and wants help, call 1-800-9-WITH-IT". (3) Shall state patrons must be at least twenty-one (21) years of age or older to wager. (4) Shall not imply greater chances of winning versus other sports wagering operators. (5) Shall not imply greater chances of winning based on wagering in greater quantity or amount. (6) All direct marketing shall allow the option to unsubscribe.
3. Barstool is a digital sports, entertainment, lifestyle, and media company. In February 2020, Penn National Gaming, Inc. (“Penn”), the ultimate parent company of Penn Sports Interactive, LLC (“PSI”), entered into a strategic relationship with Barstool whereby Barstool provides various marketing services relating to Penn’s nationwide gaming offerings and provides to Penn a license to utilize the Barstool brand for certain gaming offerings, e.g. the Barstool Sportsbook. PSI has exclusive control regarding the operations of the Barstool Sportsbook. Barstool is an independent entity of which neither Penn nor PSI are majority owners.

4. On March 30, 2021, the VP & Chief Compliance Officer of Penn National Gaming self-reported to the Commission that a junior member of Barstool's social media team posted a questionable video discussing gambling losses with a 12 second duration on a Barstool owned and controlled TikTok account. The video was deleted from the sole channel it ran (TikTok) as soon as the employee's supervisor, Barstool's Social Media Manager, became aware of the video. The video was live for twelve (12) hours. However, the video was clipped and reposted on Twitter by a third-party social media account that neither Barstool, Penn or PSI controlled or operated. As result, the remains viewable on Twitter.
4. On May 4, 2021, the VP of Compliance for PSI's parent entity Penn Interactive Ventures, LLC responded to the Commission's April 28, 2021 request for additional information. Therein, it was represented that the employee who posted this video on social media was suspended without pay for a month and the entire company received a refresher responsible gaming training the next day. The VP of Compliance also confirmed that the TikTok post was a selfie video and posted to a Barstool social media channel – not one related to or controlled by Penn, PSI, or the Barstool Sportsbook..
5. Barstool Sports, Inc. is a registrant with the Commission and provides marketing services to PSI's Barstool Sportsbook in Indiana by producing digital content like podcasts, blogs, videos, social media, etc. Penn also holds an intellectual property license from Barstool to utilize the Barstool brand for specified gaming offerings, including PSI's ability to brand its online sportsbook "The Barstool Sportsbook". The social media post was created and posted exclusively by Barstool on its own behalf and on its own social media channel, which was not associated with or disseminated for Penn, PSI or the Barstool Sportsbook.

### TERMS AND CONDITIONS

Commission staff alleges that the acts or omissions of Barstool Sports, Inc. by and through its agents as described herein constitute a breach of IC 4-38 and/or 68 IAC. The Commission and Barstool Sports, Inc. hereby agree to a monetary settlement of the alleged violations described herein in lieu of the Commission pursuing formal disciplinary action against Barstool. Sports, Inc.

Barstool Sports, Inc. shall pay to the Commission a total of \$10,000 in consideration for the Commission foregoing disciplinary action based on the facts specifically described in the Findings of Fact contained in this Agreement. This Agreement extends only to those violations and findings of fact specifically alleged in the findings above. If the Commission subsequently discovers facts that give rise to additional or separate violations, the Commission may pursue disciplinary action for such violations even if the subsequent violations are similar or related to an incident described in the findings above.

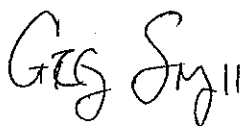
Upon execution and approval of this Agreement, Commission staff shall submit this Agreement to the Commission for review and final action. Upon approval of the Agreement by the Commission, Barstool Sports, Inc. agrees to promptly remit payment in the amount of \$10,000 and shall waive all rights to further administrative or judicial review.

This Agreement constitutes the entire agreement between the Parties. No prior or subsequent understandings, agreements, or representations, oral or written, not specified or referenced within this document will be valid provisions of this Agreement. This Agreement may not be modified, supplemented, or amended, in any manner, except by written agreement signed by all Parties.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original agreement and both of which shall constitute one and the same agreement. The counterparts of this Agreement may be executed and delivered by electronic mail, facsimile, or other electronic signature by either of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically as if the original had been received.

This Agreement shall be binding upon the Commission and Barstool Sports, Inc.

IN WITNESS WHEREOF, the Parties have signed this Agreement on the date and year as set forth below.



\_\_\_\_\_  
Greg Small, Executive Director  
Indiana Gaming Commission

9/28/21

\_\_\_\_\_  
Date



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Frank Donaghue  
Mcnees Wallace & Nurick LLC  
Counsel for Barstool Sports, Inc.

09/27/2021

\_\_\_\_\_  
Date