

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

BRENNA KELLY-STARKEBAUM,  
individually and on behalf of all others  
similarly situated;

Plaintiff,

vs.

PAPAYA GAMING LTD. and PAPAYA  
GAMING, INC.;

Defendants.

Case No. 1:24-cv-2310

CLASS ACTION COMPLAINT &  
DEMAND FOR JURY TRIAL

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Plaintiff Brenna Kelly-Starkebaum (“Plaintiff”) brings this action on behalf of herself and all others similarly situated against Papaya Gaming Ltd. and Papaya Gaming, Inc. (together, “Papaya” or “Defendants”) upon personal knowledge of the facts pertaining to herself, upon information and belief as to all others, and upon the investigation conducted by her counsel, and allege:

## I. INTRODUCTION

1. Papaya is a leading provider of online games where users purportedly compete in games of skill against other real people for money. Papaya claims to have no vested interest in who wins or loses.<sup>1</sup> Papaya users collectively have wagered hundreds of millions of dollars to compete in these games of “skill” against what Papaya misleadingly advertises are other actual human users. However, as detailed below, Papaya controls the outcome of games and uses its own bots to play against players and win, after which Papaya can keep the prize money for itself.<sup>2</sup>

2. After losing money purportedly playing against live, human competition, Papaya users often complain that the games are rigged, populated with bots, or that users generally do not play against other people. To dispel those concerns, Papaya insists that the outcome of the tournament is based on the skill of the players, rather than luck or chance. Papaya claims to “have no vested interest in who wins or loses,” and says that it does not “profit on the outcome of the Tournament” it provides.<sup>3</sup> It adds that “[i]t’s not about chance, it’s about skills.” Papaya says that, “[u]sing the smartest tech,” its platform “analyzes the skill level of player and matches them with

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<sup>1</sup> <https://support.papaya.com/hc/en-us/articles/15893852279825-Are-Papaya-Gaming-s-Games-legal-> [last accessed 03-21-2024]

<sup>2</sup> Throughout this Complaint, Plaintiff uses the term “bot” to designate a “computer program that operates as an agent for a user or other program or to simulate human activity.” See <https://www.techtarget.com/whatis/definition/bot-robot> [last accessed 03-13-2024]

<sup>3</sup> <https://support.papaya.com/hc/en-us/articles/15893852279825-Are-Papaya-Gaming-s-Games-legal-> [last accessed 03-21-2024]

others of similar abilities in each game,” thereby “ensuring competitiveness and a fair game for everyone.”<sup>4</sup> Rather than providing casino-style games of chance, Papaya claims that its “primary focus is transforming single-player games into rewarding, multi-player skill-based tournaments.”<sup>5</sup>

3. The general public—and Papaya’s user base—understood Papaya was “Skill-Based Gaming.” A Forbes article titled “Exploring the Untapped Potential of Skill-Based Gaming,” published on January 18, 2023, explains that “[i]n skill-based gaming, there is no element of chance or luck. It is a way to showcase real talent with the added adrenaline that comes with the potential to reap rewards for top performers.”<sup>6</sup> In other words, “[s]uccess in skill-based gaming is determined by a player’s physical skills, such as reaction or dexterity, or mental skills, like logic and knowledge.”<sup>7</sup> “Playing against other gamers raises the stakes and makes gameplay more exciting.”<sup>8</sup> That article refers to Papaya’s games Solitaire Cash and Bubble Cash as examples of skill-based games.<sup>9</sup> The article states that Bubble Cash “mixes the classic bubble shooter game with contemporary matchups and tournaments.”<sup>10</sup>

4. The evidence suggests, however, that none of that is true. Papaya’s games are not skill-based and users are often not playing against live, actual opponents, but against Papaya’s own

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<sup>4</sup> <https://www.papaya.com/about-us> [last accessed 03-21-2024]

<sup>5</sup> <https://www.papaya.com/about-us> [last accessed 03-21-2024]

<sup>6</sup> <https://www.forbes.com/sites/forbestechcouncil/2023/01/18/exploring-the-untapped-potential-of-skill-based-gaming/?sh=214b4ddf63ea> [last accessed 03-21-2024]

<sup>7</sup> <https://www.forbes.com/sites/forbestechcouncil/2023/01/18/exploring-the-untapped-potential-of-skill-based-gaming/?sh=214b4ddf63ea> [last accessed 03-21-2024]

<sup>8</sup> <https://www.forbes.com/sites/forbestechcouncil/2023/01/18/exploring-the-untapped-potential-of-skill-based-gaming/?sh=214b4ddf63ea> [last accessed 03-21-2024]

<sup>9</sup> <https://www.forbes.com/sites/forbestechcouncil/2023/01/18/exploring-the-untapped-potential-of-skill-based-gaming/?sh=214b4ddf63ea> [last accessed 03-21-2024]

<sup>10</sup> <https://www.forbes.com/sites/forbestechcouncil/2023/01/18/exploring-the-untapped-potential-of-skill-based-gaming/?sh=214b4ddf63ea> [last accessed 03-21-2024]

bots that direct and rig the game so that Papaya itself wins its users' money while leading them to believe that they lost to a live human opponent.

5. One tech-savvy user reported online that he created his own "bot" to compete on Papaya's platform and was still unable to beat the Papaya bots regularly, winning only 8.2% of the time (35 out of 427 games) despite running a macro that should have easily beaten any human competitor.<sup>11</sup>

6. There are other, less immediately obvious hints as well. The profile pictures in purportedly human avatars often don't match the username listed. Usernames are often nonsensical. And players face unrealistic winning scores that often only appear at the end and after the losing player has finished his or her game.

7. Papaya has even been accused by its competitor of using bots instead of live, actual players.<sup>12</sup>

8. Papaya's offerings parallel those of another industry participant: AviaGames, Inc. ("Avia"). Indeed, Avia and Papaya vie for top spots in the Apple App Store and Google Play Store charts. Further, they both claim to provide games of "skill" against other real players for money, without bearing any interest in the result of the games. But a recent patent trial brought to light documents and testimony conclusively demonstrating that the premise of Avia's platform is false: Instead of competing against live, actual players, Avia's computers populate and/or control the games with computer "bots" that can impact or control the outcome of the games. Instead of being games of skill as advertised, Avia's games are manipulated games of chance.<sup>13</sup>

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<sup>11</sup> Post by Traditional\_West\_514 of July 27, 2023 on Reddit, [https://www.reddit.com/r/videos/comments/pjtfup/why\\_solitaire\\_cash\\_app\\_is\\_a\\_scam\\_beware/](https://www.reddit.com/r/videos/comments/pjtfup/why_solitaire_cash_app_is_a_scam_beware/) [last accessed 03-21-2024]

<sup>12</sup> *Skillz Platform Inc. v. Papaya Gaming, Ltd*, No. 1:24-cv-01646-DLC (S.D.N.Y), Dkt. 1.

<sup>13</sup> *See Skillz Platform, Inc. v. AviaGames, Inc.*, No. 5:21-cv-02436-BLF (N.D. Cal.).

9. Notably, Papaya’s games and their mechanics are conspicuously similar to Avia’s games. Papaya uses the same language to advertise its games as does Avia, emphasizing the “skill-based” nature of those games, and independent matchmaking to find the players at the similar skill-level. The actual games follow a similar sequence, *i.e.*, matching with opponents, displaying a scorecard with the scores, awarding cash or “tickets” or “gems” if a player is successful, and inundating the player with pop-ups to incentivize them to play the game again. Both companies affirmatively dispel any concerns that the games are unfair or populated with bots. And, like Avia, discovery and further investigation will show that Papaya controls the outcome of its games via bots, and then keeps the money its bots wins for itself.

10. This Complaint asserts consumer protection claims under New York law to hold Papaya accountable for its deception.

## **II. PARTIES**

### **A. Plaintiff**

11. Plaintiff Brenna Kelly-Starkebaum is a citizen and resident of Minnesota. Ms. Kelly-Starkebaum played Papaya’s Solitaire Cash, 21 Cash, and Bubble Cash apps on a mobile phone. Ms. Kelly-Starkebaum estimates that she lost thousands of dollars playing those games.

12. Ms. Kelly-Starkebaum was attracted to Papaya’s games because she believed she was playing against real people in real time. The ability to compete against human players based on skills was the reason why she decided to play them, and she would not have continued to spend money on Papaya’s platform had she known that its games were populated or controlled with bots instead of live, actual competitors. Ms. Kelly-Starkebaum incurred harm as a result of Papaya’s misleading statements and fraudulent scheme.

**B. Defendants**

13. **Defendant Papaya Gaming Ltd.** is a foreign limited liability company with its principal place of business in Tel Aviv-Yafo, Israel.

14. **Defendant Papaya Gaming, Inc.** is a Delaware corporation and a U.S.-based subsidiary of Papaya Gaming Ltd. (Papaya Gaming, Inc. and Papaya Gaming Ltd., collectively “Papaya”).

15. On information and belief, Papaya has a regular and established place of business in this District located at 106 West 32nd Street, New York, NY 10001 and may also conduct business at 22 Isserles Street, Tel Aviv-Yafo, Israel.<sup>14</sup> Papaya was founded in 2016 and develops mobile games for real money tournaments.<sup>15</sup> Since 2019, it has been “committed to shaping the future of gaming through innovative and forward-thinking approach to game development.”<sup>16</sup> Papaya markets, offers, and distributes applications and services throughout the United States, including in this District.

**III. JURISDICTION AND VENUE**

16. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because (a) at least one member of the class is a citizen of a state different from Defendants, (b) the amount in controversy exceeds \$5,000,000, exclusive of interests and costs, and (c) none of the exceptions under that subsection apply to this action.

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<sup>14</sup> <https://www.linkedin.com/company/papayaltd>; <https://m.facebook.com/solitairecash/about/> [last accessed 03-21-2024]

<sup>15</sup> <https://pitchbook.com/profiles/company/265581-73#overview> [last accessed 03-21-2024]

<sup>16</sup> <https://www.papaya.com/about-us#our-story-section> [last accessed 03-21-2024]

17. This Court has personal jurisdiction over Papaya because Papaya conducts significant business transactions in this District, and because the wrongful conduct occurred in and emanated from this District.

18. Papaya does continuous and systematic business in this District, including by providing products and services to the residents of this District that it knew would be used within this District, and by soliciting business from the residents of this District.<sup>17</sup> Papaya claims that 95% of Papaya's users are based in the U.S., including many who are based in this District.<sup>18</sup>

19. Papaya directly and through agents regularly does, solicits, and transacts business in the Southern District of New York and elsewhere in the State of New York, including through its website at [www.papaya.com](http://www.papaya.com), as well as its standalone game applications, all of which are marketed, offered, distributed to, and utilized by users of mobile devices in this District and throughout the State of New York.

20. Venue is proper in this District under the provision of 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this judicial District; each Defendant is subject to personal jurisdiction in this District; and Defendants transact business in this District.

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<sup>17</sup> Papaya states that it operates its cash tournaments in selected US states, including New York. *See, e.g.*, <https://support.solitairecash.com/hc/en-us/articles/360017634778-Is-my-area-supported> [last accessed 03-21-2024]

<sup>18</sup> <https://www.calalitech.com/ctech/articles/0,7340,L-3914721,00.html> [last accessed 03-21-2024]



#### IV. FACTUAL ALLEGATIONS

**A. Papaya advertises itself to the public as a legitimate gaming company that matches customers with live, actual gamers.**

21. Papaya describes itself as a company “committed to shaping the future of gaming through an innovative and forward-thinking approach to game development.”<sup>19</sup> Its primary focus allegedly is “transforming single-player games into rewarding, multi-player skill-based tournaments.”<sup>20</sup>

22. Papaya makes mobile games playable through standalone applications, with each application dedicated to one game. The games offered include Solitaire Cash, Bubble Cash, Bingo Cash, 21 Cash, and Cookie Cash. These standalone applications are available for download through Apple’s App Store, Android’s Google Play (Android App), and/or Samsung’s Galaxy Store.<sup>21</sup>

23. Papaya’s offerings are among the most popular apps in Apple’s App Store and Android’s Google Play. For example, as of March 20, 2024, Solitaire Cash is the #2 game in the Casino category,<sup>22</sup> Bingo Cash is the #3 in the Casino Category,<sup>23</sup> Bubble Cash is the #5 in the Casino Category,<sup>24</sup> Cookie Cash is the #33 in the Casino Category,<sup>25</sup> and 21 Cash is the #160 in the Casino Category.<sup>26</sup>

24. All of these games are advertised as “Skill-based.”

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<sup>19</sup> <https://www.papaya.com/about-us#our-story-section> [last accessed 03-21-2024]

<sup>20</sup> <https://www.papaya.com/about-us#our-story-section> [last accessed 03-21-2024]

<sup>21</sup> <https://www.papaya.com/games> [last accessed 03-21-2024]


<sup>22</sup> <https://apps.apple.com/us/app/solitaire-cash/id1446254576> [last accessed 03-21-2024]


<sup>23</sup> <https://apps.apple.com/us/app/bingo-cash/id1522266397> [last accessed 03-21-2024]

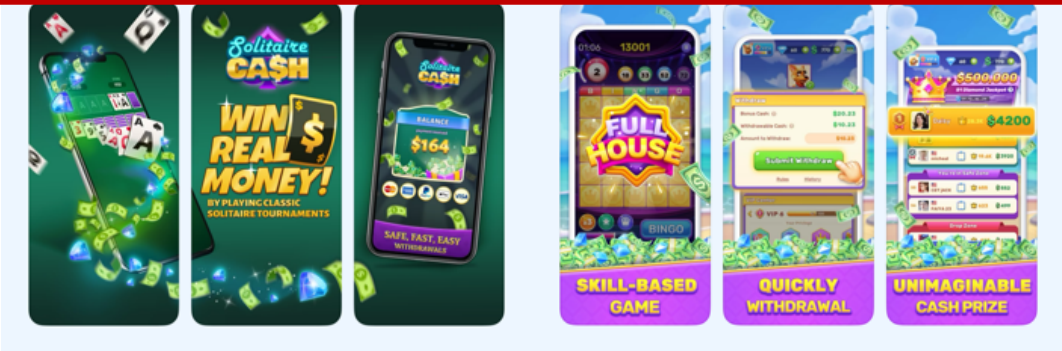
<sup>24</sup> <https://apps.apple.com/us/app/bubble-cash/id1475514684> [last accessed 03-21-2024]


<sup>25</sup> <https://apps.apple.com/us/app/cookie-cash/id6448677330> [last accessed 03-21-2024]



<sup>26</sup> <https://apps.apple.com/us/app/21-cash/id1562569259> [last accessed 03-21-2024]

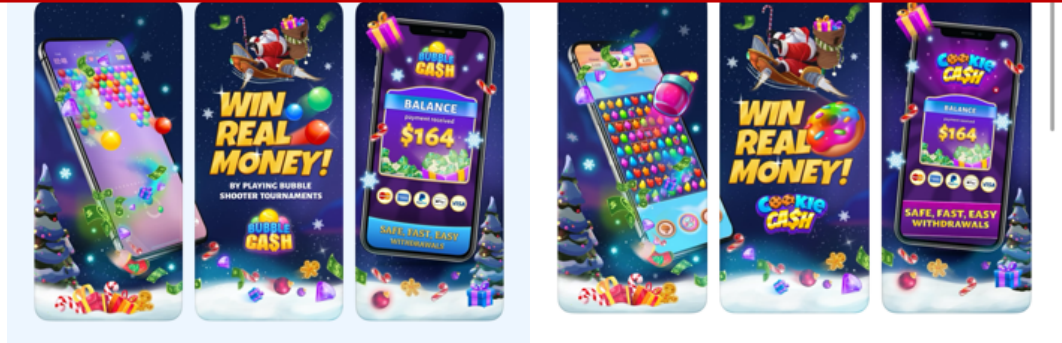
 **Solitaire Cash**  
Skill-based Real Money Games [Open](#)  
Ad  
★★★★★ 281K Papaya Gaming #7 Casino

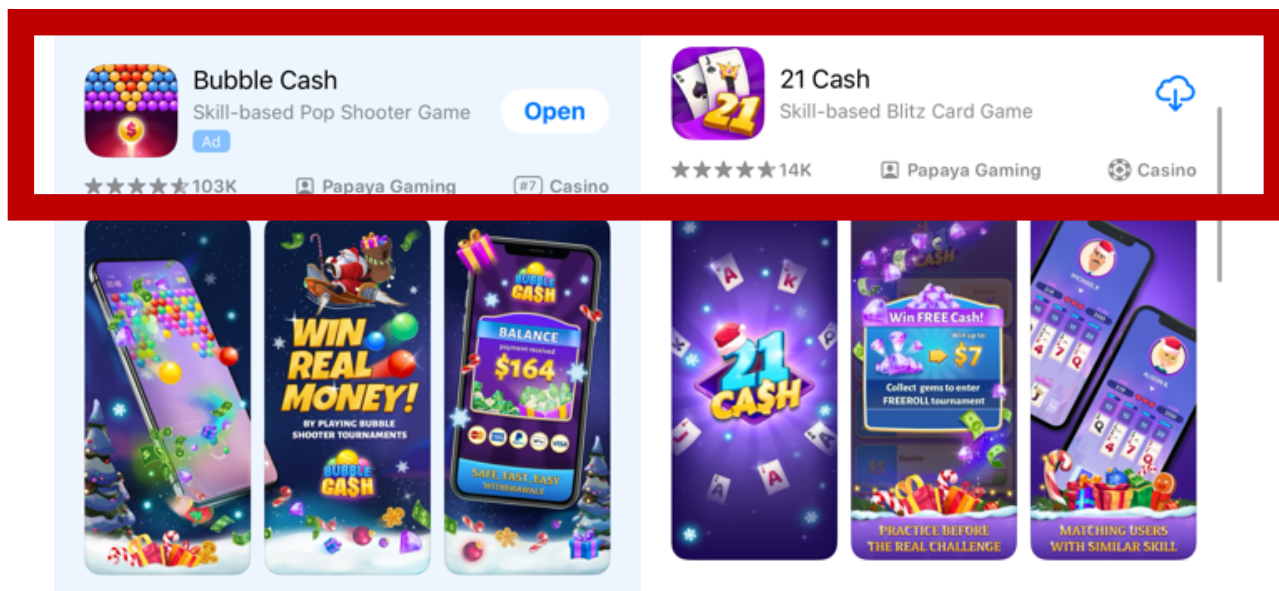
 **Bingo Winner - Win Rea...**  
Real Cash Skill-Based Game [Get](#)  
Ad  
★★★★★ 43K JoyBox Studio Limi... #30 Casual



 **Bubble Cash**  
Skill-based Pop Shooter Game [Open](#)  
Ad  
★★★★★ 103K Papaya Gaming #7 Casino

 **Cookie Cash**  
Match 3 Puzzle Skill Game   
★★★★★ 1.7K Papaya Gaming #41 Casino





25. Papaya claims that it matches players against others “with a similar skill level to ensure a fun and fair experience for everyone.”<sup>27</sup> Papaya asserts that such “matchmaking becomes more accurate” the more the players play, as “the algorithm learns [their] skill better.”<sup>28</sup> It warns that it “cannot actively alter or manage the matchmaking manually.” That is because “the algorithm is completely automated.”<sup>29</sup> This also means that Papaya “cannot reduce a player’s skill level manually upon request.” It explains that “[i]f it were possible to control it manually, it would not be fair to everyone.”<sup>30</sup>

26. Papaya further creates the impression that players compete against other live, actual players by describing what a “Result Pending” means. It explains that some players may start their games at different times; but all of the users are other real “players.” Allegedly, the “[t]ournaments

<sup>27</sup> [https://support.papaya.com/hc/en-us/articles/15894159123601-How-does-the-matchmaking-work-;](https://support.papaya.com/hc/en-us/articles/15894159123601-How-does-the-matchmaking-work-)  
<https://support.papaya.com/hc/en-us/articles/15894114230289-Am-I-playing-against-opponents-with-the-same-skill-level-as-myself-> [last accessed 03-21-2024]

<sup>28</sup> <https://support.papaya.com/hc/en-us/articles/15894159123601-How-does-the-matchmaking-work-> [last accessed 03-21-2024]

<sup>29</sup> <https://support.papaya.com/hc/en-us/articles/15894159123601-How-does-the-matchmaking-work-> [last accessed 03-21-2024]

<sup>30</sup> <https://support.papaya.com/hc/en-us/articles/15894159123601-How-does-the-matchmaking-work-> [last accessed 03-21-2024]

will close after enough players have joined and finished playing,” and the players will “only see the final results once everyone is done.” It concludes that “[u]ntil then, the leaderboard will say “Result Pending,”” which allegedly lets the players know that “some players still did not compete their game.”<sup>31</sup>

27. It further promises players that “[a]s soon as the tournament is complete,” the players will see their “final placement” and collect what they “may have won.”<sup>32</sup> It also warns players to “keep in mind that some tournaments may take longer to complete,” as “it will always depend on the number of players.”<sup>33</sup>

28. The semblance of playing against live, actual players is buttressed by Papaya’s references to players’ “community.” For example, in an article of June 8, 2021, on the Pocketgamer.biz portal, a section titled “Creating a Community” describes Papaya’s focus on “community” as follows:<sup>34</sup>

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<sup>31</sup> <https://support.papaya.com/hc/en-us/articles/15894035371025-What-does-Results-Pending-mean-> [last accessed 03-21-2024]

<sup>32</sup> <https://support.papaya.com/hc/en-us/articles/15894183062929-How-long-does-it-take-to-see-the-results-of-the-tournament-> [last accessed 03-21-2024]

<sup>33</sup> <https://support.papaya.com/hc/en-us/articles/15894183062929-How-long-does-it-take-to-see-the-results-of-the-tournament-> [last accessed 03-21-2024]

<sup>34</sup> <https://www.pocketgamer.biz/profile/76684/creativity-community-and-cash/> [last accessed 03-21-2024]

### **Creating A Community**

Alongside the creation of familiar and accessible games, a major part of Papaya's approach to creating successful skill-based games is the company's focus on its community. For many casual players, the game is only one part of the larger meta experience, which enables them to connect with other players on a social level and spend time with them outside the core game.

Papaya has spent a great deal of time ensuring that not only do its games offer social elements, player matching, collectables and friends, but that all of these aspects are reflected within the wider community. Spread across several key social channels, the company provides a range of meta-features (such as weekly raffles), while encouraging and supporting the community to post and participate in activities unrelated to the core games - such as favourite recipes, jokes, crosswords, etcetera.

By providing a welcoming environment and a wider, more engaging experience for players, the company has found that they can increase the 'long tail' for their games and keep consumers active on an ongoing basis.

29. In the Frequently Asked Questions section of its website, Papaya claims that its games are legal: "Our games aren't considered gambling as the outcome of our Tournaments is based on the skill of the players, rather than luck or chance."<sup>35</sup> Papaya claims to have "no vested interest in who wins or loses," nor does it "profit on the outcome of a Tournament" that it provides.<sup>36</sup> Papaya is allegedly "solely in the business of creating and managing Tournaments."<sup>37</sup>

30. Misleading statements were also put forward in articles directly citing some of Papaya's co-founders. An article on Walla, which also cites Papaya's CEO Oriel Bachar, describes Papaya as a "high-tech company that develops a platform of skill-based mobile games."<sup>38</sup> Similarly, a Calcalist article describing Calcalist's Tech TLV conference held in collaboration with

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<sup>35</sup> <https://support.papaya.com/hc/en-us/articles/15893852279825-Are-Papaya-Gaming-s-Games-legal-> [last accessed 03-21-2024]

<sup>36</sup> <https://support.papaya.com/hc/en-us/articles/15893852279825-Are-Papaya-Gaming-s-Games-legal-> [last accessed 03-21-2024]

<sup>37</sup> <https://support.papaya.com/hc/en-us/articles/15893852279825-Are-Papaya-Gaming-s-Games-legal-> [last accessed 03-21-2024]

<sup>38</sup> <https://finance.walla.co.il/item/3561769> [own translation from Hebrew] [last accessed 03-21-2024]

Bank Leumi and Papaya describes Papaya as a company that “connects players around the world according to their ability level.” It quotes Mr. Bachar as follows: “The core of our product is matchmaking, that is, the modern matchmaking between players. The common denominator for all player competitions is the game, which itself is a common challenge.”<sup>39</sup>

31. An article by CTech featuring snippets of an interview with Papaya’s Vice President of Product Yonatan Zvik paraphrases Zvik as follows (emphasis added): “Zvik confirmed that 95% of its players are American, with the remaining 5% from Australia. For now, he is helping the other co-founders Oriel Bachar (CEO), Alex Liakhovetsky (VP R&D), and Andrey Birman (CTO) with their plan to reinvent the **skill-based** mobile industry.”<sup>40</sup> Mr. Zvik’s recent LinkedIn post also refers to Papaya’s games as “skill-based” games (emphasis added): “Clubs, the first-ever group-based feature in **skills-based** games, has officially been implemented today. I’m so proud of our team [...]”<sup>41</sup>

32. In May 2023, Mr. Zvik talked about Papaya’s success at the time when many other companies are struggling to survive.<sup>42</sup> Mr. Zvik explained that Papaya’s (emphasis added) “secret success lies in its ability to transform single-player games into multiplayer, **skill-based**, real-money tournaments.”<sup>43</sup>

33. Finally, the description of Papaya in the media shows that the general public perceives Papaya as a representative of “Skill-Based Gaming.” A Forbes article titled “Exploring the Untapped Potential of Skill-Based Gaming,” published on January 18, 2023, refers to Papaya’s

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<sup>39</sup> <https://www.calcalistech.com/ctechnews/article/g42bhpr4t> [last accessed 03-21-2024]

<sup>40</sup> <https://www.calcalistech.com/ctech/articles/0,7340,L-3914721,00.html> [last accessed 03-21-2024]

<sup>41</sup> <https://www.linkedin.com/in/yonatanzvik/recent-activity/all/> [last accessed 03-21-2024]

<sup>42</sup> <https://www.papaya.com/blog-post/despite-the-crisis> [last accessed 03-21-2024]

<sup>43</sup> <https://www.papaya.com/blog-post/despite-the-crisis> [last accessed 03-21-2024]



games Solitaire Cash and Bubble Cash as examples of skill-based games.<sup>44</sup> The article states that Bubble Cash “mixes the classic bubble shooter game with contemporary matchups and tournaments.”<sup>45</sup> The article explains that “[i]n skill-based gaming, there is no element of chance or luck. It is a way to showcase real talent with the added adrenaline that comes with the potential to reap rewards for top performers.”<sup>46</sup> In other words, “[s]uccess in skill-based gaming is determined by a player’s physical skills, such as reaction or dexterity, or mental skills, like logic and knowledge.”<sup>47</sup> “Playing against other gamers raises the stakes and makes gameplay more exciting.”<sup>48</sup>

**B. Papaya purports to fill its games with other live, actual users through a matching process in a fair gaming environment.**

34. Papaya represents that its games are filled with live, actual opponents, which guarantees a fair gaming environment. Papaya claims to be “on a mission to bring more fun challenges into this world” and its “game-changing, skill-based tournaments are just the start.”<sup>49</sup> Its primary focus is “transforming single-player games into rewarding, multi-player skill-based tournaments.”<sup>50</sup>

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<sup>44</sup> <https://www.forbes.com/sites/forbestechcouncil/2023/01/18/exploring-the-untapped-potential-of-skill-based-gaming/?sh=214b4ddf63ea> [last accessed 03-21-2024]

<sup>45</sup> <https://www.forbes.com/sites/forbestechcouncil/2023/01/18/exploring-the-untapped-potential-of-skill-based-gaming/?sh=214b4ddf63ea> [last accessed 03-21-2024]

<sup>46</sup> <https://www.forbes.com/sites/forbestechcouncil/2023/01/18/exploring-the-untapped-potential-of-skill-based-gaming/?sh=214b4ddf63ea> [last accessed 03-21-2024]

<sup>47</sup> <https://www.forbes.com/sites/forbestechcouncil/2023/01/18/exploring-the-untapped-potential-of-skill-based-gaming/?sh=214b4ddf63ea> [last accessed 03-21-2024]

<sup>48</sup> <https://www.forbes.com/sites/forbestechcouncil/2023/01/18/exploring-the-untapped-potential-of-skill-based-gaming/?sh=214b4ddf63ea> [last accessed 03-21-2024]

<sup>49</sup> <https://www.papaya.com/> [last accessed 03-21-2024]

<sup>50</sup> <https://www.papaya.com/about-us> [last accessed 03-21-2024]

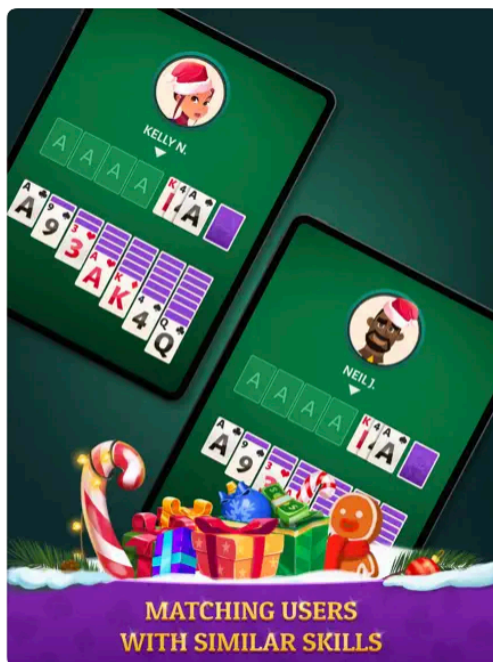
35. Upon launching a Papaya game, a player is not required to wait to be matched with an opponent. Rather, the opponent-matching takes place only after a player finishes their game. Depending on the alleged availability of “comparable” results at the time the player finishes her match, the app will either show a player a scoreboard showing her score compared to other players that participated in the game, or will inform the player that her results are pending because the opponent is still playing, or that a suitable opponent has not been found yet at all. In the latter case, a player can exit the game and will receive a notification of the result once the alleged suitable “opponent” finishes their game. Depending on the player’s position in relation to others, the player receives “cash”, if she is playing a cash game, or “gems” to play other game(s). The “cash” can either be withdrawn or used to play other game(s). “Gems” cannot be exchanged for money immediately but can be used to participate in cash games.

36. The skill-based nature of the games is separately highlighted in relation to specific games. Thus, the players of Solitaire Cash are promised to be “matched with other players within the same skill level,” and to “get the same deck – so the game is totally fair and skill-based.”<sup>51</sup>

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<sup>51</sup> <https://apps.apple.com/us/app/solitaire-cash/id1446254576> [last accessed 03-21-2024]





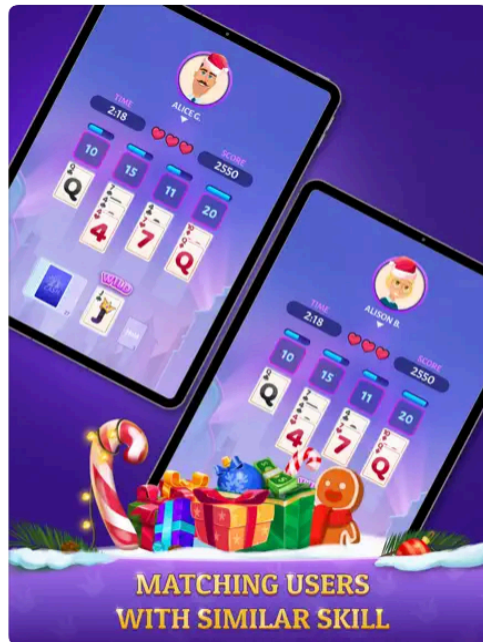
37. The Cookie Cash players are also invited to “[c]ompete against other players” and to believe that their skills are the only relevant determinant of the result of the game: “The more skill you have, the higher the level, and the bigger the payout!”<sup>52</sup>

38. Advertising for 21 Cash on App Store promises “MATCHING USERS WITH SIMILAR SKILL.”<sup>53</sup>

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<sup>52</sup> <https://apps.apple.com/us/app/cookie-cash/id6448677330?platform=ipad> [last accessed 03-21-2024]

<sup>53</sup> <https://apps.apple.com/us/app/21-cash/id1562569259> [last accessed 03-21-2024]



39. Bubble shooting games enthusiasts are invited to “put [their] bubble shooting skills to the test while competing with others against the clock in order to maximize [their] score.”<sup>54</sup> Competing with “others” is advertised as one of the exciting features of the game: “Are you a puzzle enthusiast? Do you have a competitive spirit? If so, then Bubble Cash is the perfect game for you. In this fun bubble game, players compete against each other in popping and blasting all the bubbles on the board.”<sup>55</sup> Afterall, Bubble Cash is supposedly “an exciting multiplayer game that brings out everyone’s skills.”<sup>56</sup> The advertising claims that “[a]ll users receive the same layout, and it’s up to the players to figure out how to pop all their bubbles in the quickest time.”<sup>57</sup>

<sup>54</sup> <https://apps.apple.com/us/app/bubble-cash/id1475514684> [last accessed 03-21-2024]

<sup>55</sup> <https://apps.apple.com/us/app/bubble-cash/id1475514684> [last accessed 03-21-2024]

<sup>56</sup> <https://apps.apple.com/us/app/bubble-cash/id1475514684> [last accessed 03-21-2024]

<sup>57</sup> <https://apps.apple.com/us/app/bubble-cash/id1475514684> [last accessed 03-21-2024]

**C. Papaya fills its games with computer robots for its own advantage and profits, in contravention of how it markets its games.**

40. Papaya’s representations described above are false. Instead of competing with live, actual players, Papaya’s game applications are regularly filled with—or controlled by—non-human, computer robots (“bots”).

41. Multiple players have reported losing to unrealistic winning scores. One tech-savvy user reported online that he created his own “bot” to compete on Papaya’s platform and was still unable to beat the Papaya bots regularly, winning only 8.2% of the time (35 out of 427 games) despite running a macro that should have easily beaten any human competitor.<sup>58</sup> That player let the bot “play” 427 games. The bot was ranked first 35 times, second 57 times, third 22 times and fourth or lower a remarkable 313 times.

42. There are mismatches between the usernames and profile pictures or “avatars.” The usernames are often very strange, or “so absurd that no one would be using them.”

43. The user interface and user experience for Papaya games is almost identical as the one for Avia’s games:

- a. There are striking similarities in the language used to advertise Papaya’s and Avia’s games, respectively. Both Papaya and Avia describe their games as “skill-based,”<sup>59</sup> where players compete using only their strategy and skill.<sup>60</sup> Both companies explain a complicated algorithm that allegedly helps to find match players at the similar skill-level.<sup>61</sup> Both companies promise

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<sup>58</sup> Post by Traditional\_West\_514 of July 27, 2023 on Reddit, [https://www.reddit.com/r/videos/comments/pjtfup/why\\_solitaire\\_cash\\_app\\_is\\_a\\_scam\\_beware/](https://www.reddit.com/r/videos/comments/pjtfup/why_solitaire_cash_app_is_a_scam_beware/) [last accessed 03-21-2024]

<sup>59</sup> [https://www.pocket7games.com/about-us](https://www.pocket7games.com/about-us;); or [https://www.pocket7games.com/support-faq](https://www.pocket7games.com/support-faq;); <https://www.papaya.com/about-us> [last accessed 03-21-2024]

<sup>60</sup> See, e.g., <https://apps.apple.com/us/app/8-ball-strike-cash-pool/id6448969628> in relation to 8 Ball Strike [last accessed 10-05-2023]; <https://www.papaya.com/about-us> [last accessed 03-21-2024]

<sup>61</sup> <https://www.pocket7games.com/support-faq>; <https://www.papaya.com/about-us> [last accessed 03-21-2024]; <https://support.papaya.com/hc/en-us/articles/15894159123601-How-does-the-matchmaking-work->; <https://support.papaya.com/hc/en-us/articles/15894114230289-Am-I-playing-against-opponents-with-the-same-skill-level-as-myself-> [last accessed 03-21-2024]

attractive cash winnings.<sup>62</sup> Both companies felt the need to explain that their games are legal and not illegal “gambling.”<sup>63</sup> Both companies explain that they have no financial or other interest in the outcome of cash games, and no stakes in who wins or loses.<sup>64</sup>

- b. Both companies allow players to compete for real money. Avia promises its users “the chance to win real money.”<sup>65</sup> Avia’s slogan “Use your skills to pay the bills” is strikingly similar to Papaya’s slogan “TURN YOUR SKILLS INTO DOLLAR BILLS.”<sup>66</sup> Both companies guarantee their players an “easy withdrawal system.”<sup>67</sup> Money for the tournaments in the case of both companies allegedly comes from the shared cash pool, which arguably means that the companies have no financial interest in the outcome of the games.<sup>68</sup>
- c. The registration for the games, rules of the game, and the final scoreboard follow the same patterns. The players are allegedly “matched” with their opponents. At the end of both Papaya and Avia games, the players are directed to a scoreboard with their score ranked among the scores of other “players” that supposedly played the same game. Depending on the player’s position in relation to other players, the player receives “cash,” if they are playing a cash game, or “tickets” or “Gems”, in case of Avia or Papaya, respectively, which allow them to play other games. The “cash” can either be withdrawn or used to play other game(s).
- d. Both Papaya and Avia affirmatively dispel any potential concerns expressed by the players that the games are not fair and/or are populated with bots. For example, a player of Avia’s Solitaire Clash voiced similar concerns as

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<sup>62</sup> <https://www.papaya.com/about-us> [last accessed 03-21-2024]; <https://www.pocket7games.com/support-faq> [last accessed 03-21-2024]

<sup>63</sup> <https://www.pocket7games.com/support-faq>; <https://support.papaya.com/hc/en-us/articles/15893852279825-Are-Papaya-Gaming-s-Games-legal-> [last accessed 03-21-2024]

<sup>64</sup> <https://www.pocket7games.com/support-faq> [last accessed 03-21-2024]; <https://support.papaya.com/hc/en-us/articles/15893852279825-Are-Papaya-Gaming-s-Games-legal-> [last accessed 03-21-2024]

<sup>65</sup> <https://www.pocket7games.com/support-faq> [last accessed 03-21-2024]

<sup>66</sup> <https://apps.apple.com/US/app/id1523820531?mt=8;> <https://apps.apple.com/us/app/solitaire-cash/id1446254576> [last accessed 03-21-2024]

<sup>67</sup> [https://www.pocket7games.com/about-us;](https://www.pocket7games.com/about-us) <https://support.papaya.com/hc/en-us/articles/15893758020753-Do-I-need-to-pay-to-play-> [last accessed 03-21-2024]

<sup>68</sup> <https://www.pocket7games.com/support-faq> [last accessed 03-21-2024]; <https://support.papaya.com/hc/en-us/articles/15894075771281-What-s-the-prize-pool-of-a-tournament-> [last accessed 03-21-2024]

a player of Papaya’s Solitaire Cash,<sup>69</sup> while those concerns were met with almost identical response from both Avia and Papaya, i.e., denial of any involvement of bots and reiteration on the skill-based nature of the games.<sup>70</sup>

- e. As a side note, the names of various Papaya games and their interfaces mirror those of Avia’s games. For example, Papaya’s Bingo Cash is easy to be mistaken for Avia’s Bingo Clash and Papaya’s Solitaire Cash can be mistaken for Avia’s Solitaire Clash. The game boards, leaderboards, or profile set-up pop-ups use very similar design:

Table 1: Examples of Avia & Papaya Game Interfaces

Avia	Papaya
 <p style="text-align: center;">Avia’s Bingo Clash</p>	 <p style="text-align: center;">Papaya’s Bingo Cash</p>

<sup>69</sup> Complaint by ‘Casino Rat 954’ of August 7, 2022, <https://apps.apple.com/us/app/solitaire-clash-win-real-cash/id1589643727?see-all=reviews>; Complaint by “Neidhoeffler” of September 9, 2023, <https://apps.apple.com/us/app/solitaire-cash/id1446254576?see-all=reviews> [last accessed 03-21-2024]

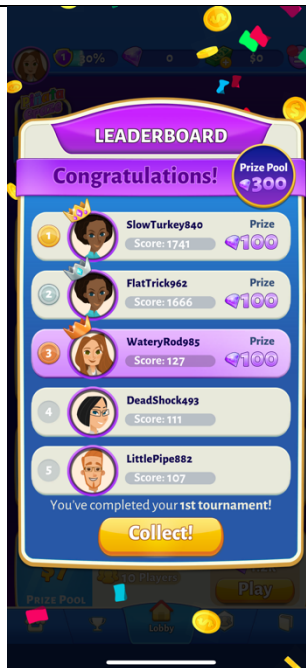
<sup>70</sup> Complaint by ‘Casino Rat 954’ of August 7, 2022, <https://apps.apple.com/us/app/solitaire-clash-win-real-cash/id1589643727?see-all=reviews>; Complaint by “Neidhoeffler” of September 9, 2023, <https://apps.apple.com/us/app/solitaire-cash/id1446254576?see-all=reviews> [last accessed 03-21-2024]

Avia

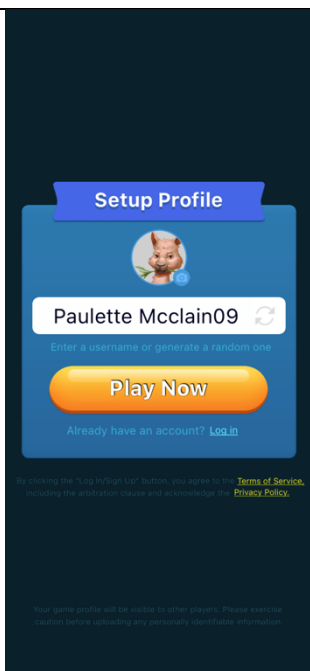


Avia's Bingo Flash

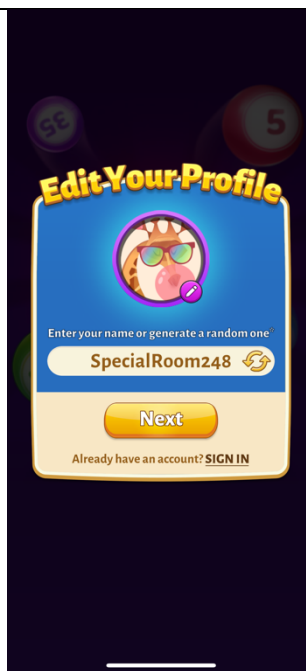
Papaya



Papaya's Bingo Cash



Avia's Bingo Clash



Papaya's Bingo Cash

44. Recent evidence introduced in a trial regarding Avia corroborates the concerns expressed by users and sheds further doubts on the legitimacy of Papaya's business, as both companies seem to follow the same business model.<sup>71</sup> That evidence shows that Avia tried to hide the fact that the players are playing against computer programs, or "bots", rather than live, actual players, as publicly advertised.<sup>72</sup> The pervasive nature of this scheme triggered the interest of the U.S. Department of Justice, which is investigating Avia.<sup>73</sup>

45. The reason why Papaya resorts to the use of bots is simple: it helps them maintain player liquidity. Papaya needs opponents for the live, actual players to play against. If there are not enough live, actual players and the players need to wait longer to get the results of their match, they are less likely to keep playing. The incentives to secure such player liquidity are thus very strong.

46. As detailed in a related competitor complaint, a comparison with other companies in the skill-based gaming industry suggest that Papaya relies on bots rather than live, actual players.<sup>74</sup> The competitor complaint further notes that Papaya's use of bots is confirmed by former Papaya employees.<sup>75</sup>

47. The fact that Papaya's games are populated and/or controlled with bots also challenges assertions that the games are fair and skill-based. If the players compete against robots,

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<sup>71</sup> <https://www.law360.com/articles/1710520/mobile-game-maker-skillz-claims-rival-hid-crucial-ip-evidence> [last accessed 03-21-2024]; *Skillz Platform, Inc. v. AviaGames, Inc.*, No. 5:21-cv-02436-BLF (N.D. Cal.).

<sup>72</sup> See, e.g., *Skillz Platform, Inc. v. AviaGames, Inc.*, No. 5:21-cv-02436-BLF (N.D. Cal.), Dkt. 645-29, including a chat involving both Ms. Wang and Ms. Chen discussing compliance issues around Avia's use of bots; or Dkt. 645-25; Dkt. 645-26 showing Avia's concerted efforts to hide its bot use through the use of the code names "cucumbers and guides."

<sup>73</sup> *Skillz Platform, Inc. v. AviaGames, Inc.*, No. 5:21-cv-02436-BLF (N.D. Cal.), Dkt. 475, p. 1.

<sup>74</sup> *Skillz Platform Inc. v. Papaya Gaming, Ltd*, No. 1:24-cv-01646-DLC (S.D.N.Y), Dkt. 1, ¶ 36-39.

<sup>75</sup> *Skillz Platform Inc. v. Papaya Gaming, Ltd*, No. 1:24-cv-01646-DLC (S.D.N.Y), Dkt. 1, ¶ 6.



whose scores are predetermined to be higher, the game cannot be called fair and skill-based. When the game is not based on the skills of the player, and the result is simply determined by random events, or otherwise controlled by Papaya, the game becomes a game of chance because the player's skill level does not impact the game's outcome. That is in stark contrast to how Papaya markets its games.

48. Numerous player reviews confirm that Papaya players play Papaya's games with the assumption and expectation that they are playing against live, actual players, not bots.

**D. Papaya's apps allow users to compete for real money.**

49. Papaya promises its players the chance to win real money. It states that "[w]hile other games are solitary and self-contained," Papaya's games are "social and truly rewarding." That is because the "[w]inners can gain either game currency – virtual gems, or real money." According to Papaya, its games are "not just about experiencing a moment of fleeting pleasure. Players can actually benefit in the long run."<sup>76</sup>

50. Similar statements promising financial gains are made in relation to specific games.<sup>77</sup>

51. Winning cash prizes requires a deposit. A player can play without a deposit, but only for "Gems". Those "Gems" can be used to win "Bonus Cash", which can be used to

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<sup>76</sup> <https://www.papaya.com/about-us> [last accessed 03-21-2024]

<sup>77</sup> See, e.g., <https://apps.apple.com/us/app/solitaire-cash/id1446254576> [last accessed 03-21-2024] in relation to Solitaire Cash; <https://apps.apple.com/us/app/cookie-cash/id6448677330?platform=ipad> [last accessed 03-21-2024] in relation to Cookie Cash; <https://apps.apple.com/us/app/21-cash/id1562569259?platform=ipad> [last accessed 03-21-2024] in relation to 21 Cash; <https://apps.apple.com/us/app/bingo-cash/id1522266397?platform=ipad> [last accessed 03-21-2024] in relation to Bingo Cash; or <https://apps.apple.com/us/app/bubble-cash/id1475514684> [last accessed 03-21-2024] in relation to Bubble Cash.



participate in tournaments, but cannot be withdrawn. “However, winnings gained by using Bonus Cash can be withdrawn.”<sup>78</sup>

52. Yet, even playing for “Gems” is considered a real-money tournament – in explaining what a “Freeroll tournament” is, Papaya notes that despite being a tournament where players “compete for Gems and win Bonus Cash” it is still “considered a real-money tournament.”<sup>79</sup>

53. Players are often given wagering money for free to start—just for playing the game. Thus, a player can spend time earning “real money” without making a deposit. Alternatively, players can deposit their own money to wager. In all events, the player is putting money in their account at risk.

54. Papaya represents that the money that is at stake in the tournaments comes from the cash prize pool: “Each tournament has a different prize pool made out of the total possible winning amounts in that specific tournament.”<sup>80</sup>

55. Papaya claims to have “no vested interest in who wins or loses,” nor does it “profit on the outcome of a Tournament” that it provides.<sup>81</sup> Papaya is allegedly “solely in the business of creating and managing Tournaments.”<sup>82</sup>

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<sup>78</sup> <https://support.papaya.com/hc/en-us/articles/15893758020753-Do-I-need-to-pay-to-play-> [last accessed 03-21-2024]

<sup>79</sup> <https://support.papaya.com/hc/en-us/articles/15894171134993-What-is-the-Freeroll-tournament-> [last accessed 03-21-2024]

<sup>80</sup> <https://support.papaya.com/hc/en-us/articles/15894075771281-What-s-the-prize-pool-of-a-tournament-> [last accessed 03-21-2024]

<sup>81</sup> <https://support.papaya.com/hc/en-us/articles/15893852279825-Are-Papaya-Gaming-s-Games-legal-> [last accessed 03-21-2024]

<sup>82</sup> <https://support.papaya.com/hc/en-us/articles/15893852279825-Are-Papaya-Gaming-s-Games-legal-> [last accessed 03-21-2024]

56. Those statements are false. Because Papaya uses bots that participate in its tournaments for in-game cash or otherwise control the outcome, Papaya misrepresents that it does not have any financial interest in the game. Papaya collects all prize money “won” by the Papaya’s bots.<sup>83</sup> Such financial interest also means that Papaya is, in fact, operating a gambling scheme. Players are not competing against other players, but against Papaya as the “house.” The games are based purely on chance rather than skills. Papaya can skillfully match “players” both real time or ex post, or otherwise control the results. Papaya can decide how much money each player—and it—wins.

57. Yet, Papaya advertises its blackjack-inspired game called 21 Cash as a game of skill: “Are you looking for a game that combines the elements of card games, 2048, and sliding tile puzzles? If so, then look no further – 21 Cash™ is here to satisfy all your gaming needs! We’ve carefully designed this game to have a smooth and intuitive feel to it, and thrown in some Blackjack and “2048” game elements we all love. So if you enjoy playing Twenty-One, Vingt-Un, Pontoon or any other card game, this one is definitely for you!”<sup>84</sup> It adds: “For those who want an exciting new twist on classic card games like Blackjack and Twenty-One, look no further than 21 Cash™! This unique game combines elements from both Blackjack and 2048 for an entertaining experience that anyone can enjoy – regardless of skill level or experience.”<sup>85</sup>

58. In sum, Papaya promises users skill-based games against live, actual players but delivers chance-based games populated and/or controlled by its bots.

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<sup>83</sup> See also *Skillz Platform, Inc. v. AviaGames, Inc.*, No. 5:21-cv-02436-BLF (N.D. Cal.), Dkt. 463, pp. 1-2, cited above: “Avia’s counsel admitted that when Avia’s bots play and win games, Avia keeps the prize money.,” or Dkt. 664, ¶ 15: “during AviaGames’ corporate deposition, Mr. Zhang informed AviaGames’ corporate representative that AviaGames keeps the money.”

<sup>84</sup> <https://apps.apple.com/us/app/21-cash/id1562569259> [last accessed 03-21-2024]

<sup>85</sup> <https://apps.apple.com/us/app/21-cash/id1562569259>. See also <https://www.pocketgamer.biz/profile/76684/creativity-community-and-cash/> [last accessed 03-21-2024]

## V. FRAUDULENT CONCEALMENT AND TOLLING

59. Plaintiff and the other members of the Class had neither actual nor constructive knowledge of the facts constituting their claim for relief. They did not discover, nor could have discovered through the exercise of reasonable diligence, the existence of Papaya's illegal actions until shortly before filing this Complaint.

60. Papaya failed to reveal facts sufficient to put Plaintiff and the other Class members on inquiry notice. Papaya does not inform players that they are matched with computer robots or otherwise impact the outcome of games. Rather, it gives players the false and misleading impression that they are playing against other users by claiming that it matches players against others "with a similar skill level to ensure a fun and fair experience for everyone."<sup>86</sup> "Transforming single-player games into rewarding, multi-player skill-based tournaments" has allegedly been a primary focus of its business.<sup>87</sup> Allegedly, "[u]sing the smartest tech," Papaya platform "analyzes the skill level of player and matches them with others of similar abilities in each game," thereby "ensuring competitiveness and a fair game for everyone."<sup>88</sup>

61. Papaya affirmatively misrepresented to players, through omissions, half-truths, and misrepresentations, how it connects the players. It intentionally hid from Plaintiff and the other Class members that it utilizes bots for its own advantage and profits. Indeed, Papaya explicitly denies that bots are involved, and affirmatively misleads the users as to the rules of the game and nature of their opponents.

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<sup>86</sup> [https://support.papaya.com/hc/en-us/articles/15894159123601-How-does-the-matchmaking-work-;](https://support.papaya.com/hc/en-us/articles/15894159123601-How-does-the-matchmaking-work-) <https://support.papaya.com/hc/en-us/articles/15894114230289-Am-I-playing-against-opponents-with-the-same-skill-level-as-myself-> [last accessed 03-21-2024]

<sup>87</sup> <https://www.papaya.com/about-us#our-story-section> [last accessed 03-21-2024]

<sup>88</sup> <https://www.papaya.com/about-us> [last accessed 03-21-2024]

62. Whenever a player had concerns about the nature of the game, Papaya responded to dispel those concerns by affirming that only live, actual players compete. For example, a player of the Solitaire Cash game expressed concerns regarding whether real players are involved.<sup>89</sup> In a response to this comment, Papaya maintained that they “match players against others with a similar skill level to ensure a fun and fair experience for everyone.”<sup>90</sup> It gave the player the following advice: “Keep in mind that in each tournament, all players receive exactly the same deck, and on occasion, your opponents’ scores may seem to be different from yours, as they might have used a different strategy than you or possibly used their moves more efficiently to get a different outcome to yours.”<sup>91</sup> Papaya’s reactions to the similar complaints on other platforms contained boiler plate language that they “match players against others with a similar skill level to ensure a fun and fair experience for everyone.”<sup>92</sup>

63. This information corresponded to the statements Papaya communicated through other channels, including Papaya’s own website, advertisements on various app marketplaces, or public comments of its co-founders. Given such consistency, the players had no reason to question those affirmations and continued to play in the belief that they compete with live, actual players.

64. Through Papaya’s knowing and active concealment of Papaya’s misconduct and fraudulent behavior from the users, Plaintiff and the other Class members did not receive

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<sup>89</sup> Complaint by “Neidhoeffter” of September 9, 2023, <https://apps.apple.com/us/app/solitaire-cash/id1446254576?see-all=reviews> [last accessed 03-21-2024]

<sup>90</sup> Complaint by “Neidhoeffter” of September 9, 2023, <https://apps.apple.com/us/app/solitaire-cash/id1446254576?see-all=reviews> [last accessed 03-21-2024]

<sup>91</sup> Complaint by “Neidhoeffter” of September 9, 2023, <https://apps.apple.com/us/app/solitaire-cash/id1446254576?see-all=reviews> [last accessed 03-21-2024]

<sup>92</sup> See, e.g., Papaya’s response to D. Baumbach’s, E. Parker’s, M. Orn’s, or O. Hettinger’s complaint, <https://www.complaintsboard.com/solitaire-cash-b150095/page/2> [last accessed 03-21-2024]

information that should have put them, or any reasonable consumer standing in their shoes, on sufficient notice that the games are not as advertised.

65. An ordinary person acting reasonably diligently would not have had the time, resources, or specialized training to uncover the misconduct that plaintiff in that case, through experienced counsel, have alleged in that case.

66. Plaintiff exercised reasonable diligence. As illustrated above, some of the players even voiced their concerns with Papaya, which vehemently dispelled them by affirming that no bots are used. Plaintiff and the other members of the Class could not have discovered Papaya's alleged misconduct at an earlier date by the exercise of reasonable diligence because of the deceptive and secretive conduct taken by Papaya to conceal Papaya's misconduct. Only through the disclosure of confidential documents in the Avia case and related media coverage could Plaintiff learn of potential misconduct by Papaya.

67. Due to Papaya's fraudulent concealment of their wrongful conduct, the running of the statute of limitations has been tolled and suspended with respect to the claims and rights of action of Plaintiff and the other Class members as a result of the illegal conduct, including all parts of the class earlier in time than the four years immediately preceding the date of this Complaint.

## **VI. CLASS ACTION ALLEGATIONS**

68. Plaintiff brings this action on behalf of herself and the following class ("Class") of all others similarly situated under Federal Rules of Civil Procedure 23(a) and 23(b)(3):

All U.S. persons who have lost money playing any Papaya game from 2016 until Defendants' unlawful conduct and its harmful effects stop. Excluded from the class are federal and state governmental entities and judicial officers presiding over this case.

69. The Class is so numerous that a joinder of all members in this action is impracticable. There are hundreds of thousands, if not millions, of geographically dispersed Class members.

70. The Class members, moreover, can be readily identified and notified in an administratively feasible manner using, among other information, Defendants' own electronic transactional records.

71. Plaintiff's claims are typical of those of the Class. Plaintiff and all members of the Class claim that Defendants' alleged misconduct violates New York Deceptive Practices Act, N.Y. Gen. Bus. Law § 349, and New York False Advertising Act, N.Y. Gen. Bus. Law § 350. Plaintiff and all Class members also allege and will show that they were injured by the same conduct that misled Plaintiff and the Class into spending money to enter tournaments and games that Papaya had filled and/or controlled with bots rather than live, actual players.

72. Plaintiff will protect and represent the interests of Class members fairly and adequately. The interests of Plaintiff and Plaintiff's counsel are fully aligned with, and not antagonistic to, the interests of the Class members. Plaintiff is willing and able to dispatch the duties incumbent upon a class representative to protect the interests of all Class members. In addition, Plaintiff's counsel has significant experience successfully prosecuting complex class actions and possesses the necessary resources to vigorously litigate the case to the greatest extent necessary for the Class.

73. There are multiple questions of law and fact that are common to the Class and that the Class can prove with evidence common to all Class members, including the following ones:

- a. Whether Papaya matches human players against bots or otherwise uses bots to impact outcomes;
- b. Whether Papaya's use of bots constitutes illegal gambling;

- c. Whether Papaya's misrepresentations and omissions are false, misleading, deceptive, or likely to deceive reasonable consumers;
- d. Whether Papaya's failure to disclose that it matches human players against bots is likely to deceive;
- e. Whether Papaya's operations, as described in this Complaint, violate New York law;
- f. Whether Plaintiff and the Class members were damaged by Papaya's conduct;
- g. Whether Papaya's actions or inactions violated the consumer protection statutes invoked herein; and
- h. Whether Plaintiff is entitled to a preliminary and permanent injunction enjoining Defendants' conduct.

74. Questions of law and fact common to the members of the Class will predominate over any individualized questions of law or fact. Defendants have acted and refused to act on grounds generally applicable to the Class.

75. Class treatment is the superior method for the fair and efficient adjudication of this controversy. It will allow for the scores of Class members to prosecute their common claims, and for Defendants to defend themselves against these claims, in front of a single court simultaneously and efficiently before ultimately reaching resolution without unnecessary duplication of effort and expense that separate actions would present. The benefits of proceeding with this procedural mechanism, including providing injured persons with a method of obtaining redress for claims that might not be practicable for them to pursue individually, substantially outweigh any difficulties that may arise in the management of this case as a class action.

## VII. CAUSES OF ACTION

### FIRST COUNT

Violation of New York Deceptive Practices Act  
N.Y. Gen. Bus. Law § 349

76. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

77. Plaintiff brings this cause of action on behalf of herself and on behalf of the other Class members, against Papaya for its deceptive business acts and practices pursuant to New York's Deceptive Practices Act (DPA), N.Y. Gen. Bus. Law § 349, which prohibits deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state. N.Y. Gen. Bus. Law § 349(a). A plaintiff bringing a claim under DPA must allege (1) that the defendant's deceptive acts were directed at consumers, (2) the acts are misleading in a material way, and (3) the plaintiff has been injured as a result. An act is materially misleading if it is likely to mislead a reasonable consumer acting reasonably under circumstances.

78. This claim is predicated on the duty to refrain from deceptive business practices. Plaintiff and the Class members hereby seek to enforce a general proscription of deceptive business practices and the requirement to refrain from deceptive conduct.

79. Plaintiff and the Class members were consumers and the end users of Papaya's games. As a provider of online games, Papaya was engaged in consumer-oriented conduct within the intended ambit of GBL § 349.

80. Papaya intentionally, willfully, and consciously acted to misrepresent and omit material information regarding its tournaments to Plaintiff and the Class, in order to deceive and illicit payment from them to enter its tournaments.

81. Papaya knowingly failed to disclose and continues to fail to disclose that it fills its tournaments with bots, which is information that is solely in Papaya's possession, and which is



material to consumers purchasing decisions. The ability to play against live, actual players is material in that a reasonable person would have considered it important in deciding whether to enter Defendants' tournaments. A reasonable customer would understand Papaya's assertions as affirmations that live, actual players, as opposed to bots, participate in the games. Papaya's concealment, omissions, misrepresentations, and deceptive practices, in violation of the GBL, were designed to induce and did induce Plaintiff and Class members to pay money to enter tournaments.

82. Due to the deployment of bots, the Papaya's games were games of chance rather than games of skill, Papaya effectively served as an illegal gambling platform.

83. Papaya's acts and practices, undertaken in transactions intended to result and which did result in consumers entering tournaments, violate GBL § 349 and caused harm to Plaintiff and Class members. Plaintiff and the Class have suffered injury-in-fact and lost money or property in the amounts paid to Papaya. By reason of the foregoing, Papaya is liable to Plaintiff and Members of the Class for actual damages they have suffered as a result of Papaya's actions, the amount of which will be determined at trial, statutory damages, treble damages, reasonable attorneys' fees and costs, and punitive damages, as well as any other remedies afforded at law or in equity.

SECOND COUNT

Violation of New York False Advertising Act

N.Y. Gen. Bus. Law § 350

84. Plaintiff incorporates by reference all of the above allegations as if fully set forth herein.

85. Plaintiff brings this cause of action on behalf of herself and on behalf of the other Class members, against Papaya for its false advertising acts and practices pursuant to New York's False Advertising Act (FAA), N.Y. Gen. Bus. Law § 350, which prohibits "[f]alse advertising in

the conduct of any business, trade or commerce.” N.Y. Gen. Bus. Law § 350. A plaintiff bringing a claim under FAA must allege that (1) the advertisement was consumer-oriented, (2) the advertisement was misleading in a material way, and that (3) the plaintiff was harmed and relied on the misleading advertisement.

86. Plaintiff and the Class members were consumers and the end users of Papaya’s games. As a provider of online games, Papaya was engaged in the “conduct of business, trade or commerce” within the intended ambit of GBL § 350.

87. Papaya knowingly advertised and advertises that its tournaments are games of skill played against live, actual players, whereas in actuality, Papaya fills its tournaments with bots. That information is solely in Papaya’s possession and is material to consumers purchasing decisions. The ability to play against live, actual players is material in that a reasonable person would have considered it important in deciding whether to enter Papaya’s tournaments. A reasonable customer would understand Papaya’s assertions as affirmations that live, actual players, as opposed to bots, participate in the games. Papaya’s concealment, omissions, misrepresentations, and deceptive practices, in violation of the GBL, were designed to induce and did induce Plaintiff and Class members to pay money to enter tournaments.

88. Papaya’s acts and practices, undertaken in transactions intended to result and which did result in consumers entering tournaments violate GBL § 350 and caused harm to Plaintiff and Class members. Through its advertising, Papaya caused to be made or disseminated throughout New York statements that were untrue or misleading, and that were known, or which should have been known to Papaya, to be untrue or misleading to consumers in New York.

89. Papaya’s acts, practices, representations, omissions, and courses of conduct with respect to the Class members that users could enter tournaments to play games of skill against live,

actual players violated GBL § 350 by advertising its tournaments as games of skill played against live, actual players, when in reality it filled or controlled its games with bots.

90. Plaintiff has standing to pursue these claims because they have suffered injury in fact and a loss of money and/or property as a result of the wrongful conduct alleged herein.

91. In accordance with GBL § 350, Papaya is liable to Plaintiff and the Class members for actual damages they have suffered as a result of Papaya's actions, the amount of which will be determined at trial, statutory damages in the amount of \$500 for each member of the Class, treble damages up to \$10,000 for each member of the Class, reasonable attorneys' fees and costs, injunctive relief to prevent Papaya from continuing to engage in the deceptive and illegal practices, and punitive damages, as well as any other remedies afforded at law or in equity.

#### **VIII. REQUEST FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of herself and the Class of all others similarly situated, respectfully requests judgment against Defendants as follows:

- A. The Court determine that this action may be maintained as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, appoint Plaintiff as Class Representatives and Plaintiff's counsel of record as a Class Counsel, and direct that notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to the Class once certified;
- B. The unlawful conduct alleged herein be adjudged and decreed to violate New York Deceptive Practices Act, N.Y. Gen. Bus. Law § 349; and New York False Advertising Act, N.Y. Gen. Bus. Law § 350, respectively;
- C. Plaintiff and the Class recover damages, including statutory damages, to the maximum extent allowed under the applicable laws, and that a joint and several

judgment in favor of Plaintiff and the members of the Class be entered against Defendants in an amount to be trebled under applicable law;

- D. Defendants, their affiliates, successors, transferees, assignees, officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf or in concert with them, be permanently enjoined and restrained from continuing, maintaining or renewing the conduct alleged herein, and from adopting or following any practice, plan, program, or device having a similar purpose or effect;
- E. Plaintiff and the members of the Class be awarded pre- and post-judgment interest in the maximum amount and to the maximum extent permitted by law;
- F. Plaintiff and the members of the Class recover their costs of suit and reasonable attorneys' fees to the maximum extent allowed by law; and
- G. Plaintiff and the members of the Class be awarded any other relief as the case may require and the Court may deem just and proper.

### **IX. JURY TRIAL DEMAND**

92. Plaintiff demands a jury trial under Federal Rule of Civil Procedure 38(b) on all triable issues.

Dated: March 27, 2024

Respectfully submitted,



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