

## Online Gaming Litigation: Plaintiffs' Next Big Bet

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Online gaming has become one of the fastest-growing industries in the country, and now one of the most legally exposed. Plaintiffs are adapting strategies from tobacco and social media litigation to target gaming operators, focusing on platform marketing, design, and management.

This article provides an overview of the claims being filed, the legal and factual challenges plaintiffs are likely to face, and the steps companies can take to mitigate risk before becoming litigation targets.

Since 2018, 38 states have legalized online gaming in some form and that number continues to grow. This rapidly evolving legal landscape has fueled the rise of online gaming operators. In 2024, the industry generated nearly \$14 billion in revenue, and by Aug. 2025, sports gaming revenue was already up more than \$1 billion year-over-year.

A key driver of this growth has been mobile platforms and apps, which allow users to place bets from virtually anywhere with just a few taps. But that same convenience and scale have drawn increasing scrutiny from both regulators and the plaintiffs' bar. There are clear signs of a growing wave of litigation.

### Historical Landscape: From False Advertising to Addiction

The initial wave of lawsuits against online gaming operators focused on promotional practices and advertising claims. Over time, plaintiffs' theories of liability have broadened to include negligence, product defect, and failure to warn.



Plaintiffs' attorneys have borrowed from strategies used in other mass tort contexts, most notably tobacco and social media litigation. See, e.g., Maxwell Strachan, *The Lawyer Who Took on Big Tobacco is Now Fighting an Online Sports Betting Giant*, *Vice* (Dec. 11, 2023). While the industries differ, the tactics are familiar: emphasize youth exposure, frame products as addictive, and allege failure to act on known risks.

### Promotional Claims Rooted in Consumer Fraud

Early cases assert claims under state consumer protection statutes for unfair or deceptive practices, intentional misrepresentation, and fraud. Plaintiffs contend companies advertise "risk-free," "no sweat," or "bonus" bets while failing to disclose limitations, such as requiring a loss before a

bonus applies or restricting bonus use to high-risk bets that expire quickly.

These claims echo those brought decades ago in tobacco litigation, where plaintiffs challenged the marketing of “light” or “low-tar” cigarettes as misrepresenting safer alternatives. While the facts may be worlds apart, the theory is the same: allege that companies used language to understate the risk and attract new users, while burying the fine print.

### **Negligence and the Duty to Intervene**

Plaintiffs have begun asserting negligence claims against online gaming operators, alleging that companies failed to take reasonable steps to protect users exhibiting signs of compulsive gambling. Some complaints point to guidance from the National Council on Problem Gambling and other industry sources, which recommend interventions such as income verification, mandatory cooldown periods, and employee training to identify red flags. See *Macek v. DraftKings*, 5:25-cv-01995-JFL (E.D. Pa. July 15, 2025), ECF No. 31.

Here too, plaintiffs borrow from the tobacco playbook. Just as cigarette companies were accused of ignoring evidence about addictiveness, gaming operators are portrayed as aware of—and indifferent to—escalating user behavior. This framing shifts the narrative from personal responsibility toward corporate negligence.

### **Product-Based Theories**

Recent lawsuits have pushed into product liability territory. Design defect claims allege that platforms are engineered to encourage compulsive use, through features like variable reward schedules, microbetting mechanics, gamification, and rapid play cycles. Complaints describe a “gambling zone,” a hyper-focused, dopamine-driven state where users lose track of time and behavior.

Plaintiffs also assert failure-to-warn claims, alleging that operators knew or should have known that their platforms carried addiction risks, but failed to disclose those risks or implement adequate user safeguards. In some cases, plaintiffs allege that the platforms target underage users through fantasy sports contests and social

media campaigns, drawing a direct line to youth marketing strategies used in tobacco litigation.

These claims reflect lessons learned from social media lawsuits. In the Social Media MDL, the court rejected arguments that digital platforms are not “products” under state tort law and allowed product liability claims to proceed based on allegations of neurochemical manipulation and targeted youth marketing.

The core allegation underlying all of these claims is that online gaming operators are not passive service providers. Plaintiffs argue they are active designers of habit-forming systems and should be held accountable for the consequences.

### **Challenges Facing Plaintiffs in Personal Injury and Addiction-Based Litigation**

While the plaintiffs’ bar is rapidly expanding its theories against online gaming platforms, these cases are far from straightforward. Claims that sound compelling in headlines often falter once tested in litigation. From the vantage point of defense counsel, there are four core hurdles that plaintiffs must overcome and where companies have real opportunities to gain an early advantage.

#### **Proving a Duty and Breach**

Negligence claims rest on establishing a legal duty of care, and in this context, many courts are skeptical. Several jurisdictions have declined to impose a duty on casinos or online platforms to prevent gambling addiction, especially where state law is silent on affirmative obligations. Courts in Georgia, Indiana, Iowa, Missouri, New Jersey, and West Virginia have all declined to recognize a duty to intervene.

That skepticism has extended to online platforms. In *Antar v. BetMGM*, No. 24-1364, 2025 WL 1219316, at \*3–4 (3d Cir. Apr. 28, 2025), the Third Circuit dismissed a negligence claim against an online gaming company, holding that the operator did not owe a legal duty to prevent excessive gambling.

**Defense Strategy:** Use dispositive motions to test the existence of a legal duty early on, and be ready to point to all user-facing responsible gaming features.

## Establishing Addiction as a Compensable Injury

Gambling disorder is recognized in the DSM-5, but in the tort context, it raises challenging questions about injury and causation. Courts are still evaluating whether behavioral addiction—without accompanying financial loss or physical harm—constitutes a legally cognizable injury.

Even when plaintiffs allege emotional or reputational harm, defenses around foreseeability and proximate cause are often decisive. Because addiction is inherently individualized, plaintiffs face challenges establishing a generalized theory of harm.

**Defense Strategy:** Use experts to contextualize gambling behavior and show that addiction is not inevitable. Use discovery methods to identify other life stressors or behavioral factors contributing to the claimed injury.

## Proving Causation

Even if plaintiffs prove addiction and injury, they still must link that harm to the platform's design or conduct. This is often the most contested and vulnerable element. Plaintiffs must show that their injuries were caused by particular features (e.g., microbetting, push notifications, VIP outreach, bonus incentives) and not by independent factors like financial stress or preexisting mental health conditions.

Most courts apply a version of the *Daubert* standard, requiring expert opinions to rest on reliable methods and accepted science. This is a key gatekeeping opportunity. Many of the behavioral science theories underpinning these cases are novel and often fail to meet that threshold.

**Defense Strategy:** Push for early expert disclosures and *Daubert* hearings. Where possible, demand platform-specific evidence tying injury to your client's product.

## Comparative Fault and Assumption of the Risk

Even if Plaintiffs prove duty, breach, and causation, they face further obstacles under doctrines like comparative fault and assumption of risk. Courts have long acknowledged that gambling is a legal, voluntary activity, and that players assume known risks by participating. See, e.g., *Hannosh v. Segal*, 328 P.3d 1049 (Ariz. Ct. App. 2014).

Most operators include responsible gaming disclaimers, opt-out features, and terms of use that reinforce user responsibility.

These defenses are not just legal shields, they can also shape jury attitudes. If a plaintiff ignored warnings or bypassed exclusion tools, those facts may undercut his claims before a jury ever evaluates liability.

**Defense Strategy:** Conduct robust discovery of the plaintiffs, including evidence of other gaming and online activities or attempts to quit. Preserve all disclaimers, onboarding screens, opt-out records, and de-activations/pauses of accounts. Use this information to frame the plaintiffs' conduct as informed and voluntary.

## What Companies Can Do Now

The legal theories emerging against online gaming operators may still be developing, but companies do not need to wait for adverse rulings to prepare. Plaintiffs' attorneys are already identifying targets based on marketing language, platform design, and user demographics. That means risk mitigation should begin well before litigation arrives. Here are proactive steps that can help companies avoid becoming targets.

## Audit Marketing and Promotions for Clarity and Compliance

Plaintiffs have focused on promotions as the front line of their claims. Many of these lawsuits allege that key terms (such as re-wagering requirements or non-cashable credit restrictions) are buried or poorly explained.

Operators should review all promotional language for clarity and legal sufficiency. Disclaimers should be accurate, timely, and hard to miss.

**Best Practice:** Implement a pre-launch legal review process for all marketing materials and maintain internal documentation explaining the rationale for key disclosures, in case claims of deceptive intent arise. Consider reviewing statements made by trade associations to ensure they align with company messaging on gaming and addiction.

## Evaluate Youth Exposure and Targeting Risks

Claims that companies are targeting underage users even indirectly have featured prominently in

both the social media and tobacco litigation playbooks. Plaintiffs have already alleged that social media advertising and influencer partnerships are being used to reach younger audiences.

Operators should assess their branding, tone, and platform choices through the lens of how they might be perceived by plaintiffs' attorneys and jurors, not just regulators.

**Best Practice:** *Conduct a creative audit focused on "youth appeal," and incorporate brand guardrails into campaign planning to mitigate future exposure.*

### **Monitor Behavioral Research and Regulatory Trends**

As in the social media litigation, plaintiffs are supplementing anecdotal claims with behavioral studies. The litigation narrative will increasingly be shaped by how companies are seen to engage with—or ignore—this evolving research.

Companies should designate leads to monitor studies related to compulsive use, reward systems, and screen-based addiction. Regulatory developments should also be tracked with an eye toward future disclosure or design mandates. Those developments may foreshadow new compliance obligations.

**Best Practice:** *Identify internal stakeholders responsible for monitoring academic and regulatory developments, and ensure that findings are being appropriately flagged to legal and risk teams.*

### **Train Teams on Responsible Communications**

Some of the most damaging evidence in litigation comes from informal internal communications about product testing or user behavior. Offhand comments about user behavior, monetization strategies, or promotional language can be taken out of context and used against the company. Operators should provide regular training on litigation-aware communication practices.

Working with counsel to review and tailor training to internal communication norms can help reduce risk. This is critical in fast-paced environments

where informality is common and scrutiny is increasing.

**Best Practice:** *Schedule periodic privileged training sessions led by counsel to reinforce communication standards and reduce risk exposure across teams.*

### **Preserve and Document Risk Management Measures**

In litigation, companies that show they took user safety seriously tend to fare better with judges, juries and regulators. Plaintiffs' attorneys often focus their discovery on internal documents that show what the company knew and when it acted.

Operators should maintain thorough documentation of their responsible gaming features, self-exclusion tools, and user education initiatives. Beyond implementation, it's important to demonstrate that those tools taken seriously at the organizational level.

**Best Practice:** *Conduct an internal audit of responsible gaming policies and procedures and retain records showing how those safeguards are deployed, tracked, and updated.*

The plaintiffs' bar has clearly set its sights on online gaming—recycling playbooks from tobacco and social media litigation, and adapting them to a fast-growing and increasingly regulated industry. While many of the legal theories being advanced are untested, they are being packaged in emotionally charged narratives that are designed to attract media attention, sway juries, and survive early motions.

Even if these claims ultimately fail, litigation can be costly, invasive, and reputation-sensitive. Companies that evaluate promotions, monitor regulatory signals, and strengthen internal documentation now will be best positioned to respond strategically when—not if—the challenge comes.

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