

ASA HUTCHINSON
GOVERNOR

ERIC MUNSON
COMMISSIONER



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ARKANSAS SECURITIES DEPARTMENT

VIA REGULAR U.S. MAIL

June 22, 2020

Mythical, Inc.
c/o Carol R. Van Cleef
1615 L Street N.W.
Suite 1350
Washington, DC 20036

Karyn H. Tierney
Arkansas Bar No. 2003120
karyn.tierney@arkansas.gov

RE: Mythical Games, Inc.
20-NA-0005

Dear Ms. Van Cleef:

The Arkansas Securities Department ("Department") is in receipt of your letter and subsequent information provided thereafter, requesting that the Department issue a no-action letter concerning Mythical, Inc.'s ("Mythical") claim of exemption from the licensing requirements of the Arkansas Uniform Money Services Act ("UMSA") as codified at Ark. Code Ann. § 23-55-101 through 1006. A copy of the request letter is attached for reference.

Based upon the specific facts contained in your request the Staff will not recommend that the Arkansas Securities Commissioner take an enforcement against Mythical if it does not obtain a license from the Department prior to engaging in the activities detailed in your request letter.

Please note that the position of the Staff of the Department is based solely upon the representations made in your request letter and information provided and applies only to the facts as set out therein. Different facts or circumstances might and often would require a different response or opinion from the Staff of the Department. The position of the Staff of the Department expressed in this letter only deals with anticipated enforcement action by the Department. Further, the position of the Staff of the Department does not purport to be and should not be interpreted to be a legal opinion.

Sincerely,


Karyn H. Tierney
Arkansas Securities Department

Carol R. Van Cleef
Counsel
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202.719.8281 direct
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May 30, 2020

Eric Munson
Commissioner
Arkansas Securities Department
1 Commerce Way, Suite 402
Little Rock, Arkansas 72202

Re: Mythical Games/[REDACTED] Interactive Game

Dear Commissioner Munson:

We are writing on behalf of our client Mythical, Inc. (“Mythical” or the “Company”) to request the views of the Arkansas Securities Department regarding the applicability of the Arkansas Uniform Money Transmission Act¹ to a new interactive entertainment software product it is developing. Specifically, we request the Arkansas Securities Department confirm the company’s conclusion that Mythical is not engaged in the business of money transmission as a result of offering the software product and is not required to be licensed pursuant to the Arkansas Uniform Money Transmission Act.

Background. Mythical is a video gaming technology company headquartered in Los Angeles, California. It specializes in developing interactive entertainment software products and games. Its team of veteran game and platform developers is launching a new generation of interactive games using distributed ledger technology (“DLT”). The DLT developed by Mythical enables players of a game to acquire, own, and sell digital assets that they use in the game.

Interactive Game. The first interactive game Mythical is offering is “[REDACTED]” (“Game”).² As noted above, the Game is an interactive entertainment software product operating on Mythical’s proprietary DLT-architected platform. Specially developed computer programs referred to as “smart contracts” (“Smart Contract(s)”), enable the Game’s players (“Players”) to acquire, own, transfer, and generate unique digital characters and other digital assets.³

The original, first generation [REDACTED] characters (which are digital avatars used by Players to play the Game), purchased by Players, have been created by Mythical (“Original [REDACTED]”). Thereafter, Mythical may create and sell Players additional Original [REDACTED].

The Game also permits Players to combine or “blend” Original [REDACTED] characters they own to create new and unique [REDACTED] characters (“Blended [REDACTED]”), as well as customize their [REDACTED].

¹ Ark. Code Ann. §§ 23-55-101 to -1007.

² See Mythical, [REDACTED].

³ A smart contract is simply a computer program deployed on distributed ledger technology. Typically, smart contracts are used to track digital assets, to facilitate the purchase and sale of the digital asset including recording the change of ownership, and to enforce certain restrictions that may be defined by the creator of the smart contract.

characters with various assets, features, accessories, and/or attributes (such as [REDACTED] characters and customizations are collectively “[REDACTED] Assets”).

Players may acquire [REDACTED] Assets either by purchasing them from Mythical through its in-game store or earning them through playing the Game and/or completing certain tasks, levels, or achievements within the Game. To purchase [REDACTED] Assets, Players may use either of two “in-game” virtual currencies created by Mythical. The first, [REDACTED], is “grindable” in that Players may obtain the currency only by earning it through playing the Game. The second, [REDACTED], can be purchased with US dollars or other fiat.⁴

Like other virtual game currencies, both [REDACTED] and [REDACTED] can only be used in-game and only to purchase [REDACTED] Assets from Mythical. Neither virtual currency has any real-world monetary value, neither is transferable, and neither can be used in any way outside the game. In addition, neither virtual currency is convertible, i.e. Mythical will not redeem either currency for fiat or other virtual currency. This aspect of the Game is like those of other interactive video games.

The Game differs from earlier generations of video games in that it operates on a DLT-based platform that permits Players greater flexibility in owning, managing, and transferring their [REDACTED] Assets. Ownership, purchases, and sales of the [REDACTED] Assets are governed and mediated entirely by the terms of the Smart Contract. The Smart Contract, which also governs the functionality of the [REDACTED] Assets, contains the terms associated with purchases and sales of a [REDACTED] Asset, including commissions payable to Mythical on sales; fees payable to third-party platforms on which the Game is offered and played (e.g., PC, console, and mobile); and any specific restrictions or prohibitions that may be imposed on the sale or transfer of a [REDACTED] Asset.

Mythical has also created a Secondary Marketplace (“SM”) where Players can interact directly with other Players to sell and buy [REDACTED] Assets using US dollars or another fiat. Mythical’s role in the transaction differs depending on whether these secondary sales transactions occur in the marketplace hosted by Mythical (“Hosted SM”) or on a marketplace hosted by a third party (“TPSM”), such as [REDACTED]. Regardless of whether a Player decides to sell a [REDACTED] Asset in the Hosted SM or TPSM, the Player must open an account with [REDACTED], a third-party licensed money transmitter, to receive and hold the proceeds of the sale.

In the Hosted SM, Mythical provides the platform that facilitates the sale and transfer of ownership of the [REDACTED] Assets from the Seller to the Buyer but Mythical is not involved in the transaction. The Buyer buys the [REDACTED] Asset with a credit card, debit card, or funds in a [REDACTED] account. [REDACTED], a division of [REDACTED], processes the transaction and transfers the funds directly to the Seller’s [REDACTED] account. The [REDACTED] Asset itself is transferred automatically from the Seller to the Buyer in accordance with the instructions contained in the Smart Contract, which also provides for the automatic transfer of fees/commissions on the sale to Mythical.

In a TPSM, Mythical acts on behalf of the Seller as a reseller of the [REDACTED] Asset. The Buyer may use the forms of payment accepted in the TPSM. The TPSM’s processor settles the funds

⁴ Players may use credit cards, debit cards, or funds in their [REDACTED] accounts to purchase [REDACTED]. [REDACTED], a division of [REDACTED], is the payment processor for these transactions.

from these transaction into a separate Mythical [REDACTED] account. Mythical, then, as part of its sales efforts, pays the Seller the proceeds from the sale, net of Mythical's sales commission. Like a Hosted SM transaction, the [REDACTED] Asset itself is transferred automatically from the Seller to the Buyer based on the instructions contained in the Smart Contract.⁵

Regardless of whether the transaction occurs in the Hosted SM or the TPSM, once the Seller receives the fiat payment, the Seller has the option to retain the funds in the [REDACTED] account and use them to buy additional [REDACTED] to make in-game purchases of [REDACTED] Assets. Alternatively, the Seller may request a disbursement of the funds from the [REDACTED] account. [REDACTED] is responsible for transferring all funds out of the account.

Confirmation Request. As noted above, Mythical is requesting confirmation of its conclusion that it is not engaged in the business of money transmission as a result of offering the software product and ancillary services described in this letter and, as a result, it is not required to be licensed pursuant to the Arkansas Uniform Money Transmission Act. At all times, it is not engaged in the "business of money transmission" and it does not "advertise, solicit, or hold itself out as providing money transmission" in connection with any of the following:⁶

1. **Virtual Game Currency.** [REDACTED] and [REDACTED] are virtual currencies created by Mythical solely for use in an interactive video game created by Mythical. Players can only earn [REDACTED] by playing the Game. Players can obtain [REDACTED] only by purchasing it from Mythical. Players can only use [REDACTED] and [REDACTED] to buy digital assets from Mythical in the Game.⁷ Neither [REDACTED] nor [REDACTED] can be transferred to other Players, used outside the Game, or redeemed for fiat or other virtual currencies.
2. **Secondary Marketplace ("SM").** When a Player decides to sell a [REDACTED] Asset in the SM, the Player must first set up an account with [REDACTED], a licensed money transmitter. All proceeds of a sales transaction, less sales commissions, are paid into the Player's [REDACTED] account. Mythical does not hold the funds on behalf of the Seller after the transaction or facilitate any subsequent disbursement of funds from the Seller's [REDACTED] account.
 - a. **Hosted SM.** In a Hosted SM transaction, the Buyer uses a credit card, debit card, or funds in a [REDACTED] account to buy a [REDACTED] Asset, the transaction is processed by an unaffiliated third-party payment processor, and the resulting funds are settled into the Seller's [REDACTED] account. Mythical is not involved in the transfer of the funds from the Buyer to the Seller. Mythical's fee/commission on the sale of the [REDACTED] Asset is automatically sent to Mythical's [REDACTED] account once the

⁵ While all Sellers and Buyers in the Hosted SM are Players, the Buyer in the TPSM does not have to be a registered Player at the time the [REDACTED] Asset is acquired. However, ownership of the acquired [REDACTED] Asset will not transfer (and the [REDACTED] Asset cannot be claimed or otherwise used) until the Buyer sets up a Game account and registers with Mythical as a Player.

⁶ Ark. Code Ann. § 23-55-201(a).

⁷ As noted, Mythical uses a third-party payment service provider to process all fiat payments made by the Player to acquire [REDACTED].

transaction is finalized. Mythical does not otherwise touch the sales proceeds which go directly to the Seller's [REDACTED] account.

- b. **TPSM.** Mythical acts on behalf of the Seller as a reseller of the [REDACTED] Asset in the TPSM. When the [REDACTED] Asset is sold in the TPSM, the funds from the sale are paid by the operator of the TPSM to Mythical as the reseller and, in its role as the reseller, Mythical disburses the proceeds of the sale to the Seller. At all times, Mythical is acting pursuant to a written agreement on behalf of the Seller as part of the transaction to sell the [REDACTED] Asset. While Mythical retains a fee/commission for selling the [REDACTED] Asset on behalf of the Seller, Mythical is not engaged in the business of transmitting money and it is not advertising, soliciting, or otherwise holding itself out as providing money transmission. Mythical receives and disburses funds to the Seller only as an ancillary part of selling the asset on behalf of the Seller, and Mythical is not paid any commission for transferring the sales proceeds to the Seller.

- 3 **[REDACTED] Assets.** [REDACTED] Assets are not money and have no monetary value. They are created by Mythical to be used for playing the Game; they are unique, nonfungible assets; and they are not used as a medium of exchange. Moreover, the transfer of the digital asset—from the Seller to the Buyer in either the Hosted SM or TPSM—occurs on the DLT platform built by Mythical with the terms of the transfer entirely governed and processed by the Smart Contract. Thus, Mythical is not involved in the digital asset transfer.

We appreciate your review of these above facts and consideration of the Company's conclusion. In the event you do not agree with the Company's conclusion, please let us know at your early convenience to permit the Company to take appropriate action as it prepares to launch the Game by July 1, including not offering part or all of the Game to residents in your state.

Mythical requests that this letter be afforded confidential treatment as it contains proprietary business information the release of which to the public could be damaging to Mythical's competitive position. Should a request for such information be made, we request notice 10 days prior to the release of any of this information to afford us time to take action to protect the information.

If you require any additional information, please contact me at cvancleef@bradley.com or 571.643.1375.

Sincerely,

Carol R. Van Cleef

Carol R. Van Cleef
Counsel

cc: Karyn Tierney, Attorney, Arkansas Securities Department