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Southern District of New York rejects addiction and consumer fraud claims against DraftKings

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Takeaway: There are more and more cases being filed today that advance cutting-edge legal theories: cases seeking to hold energy companies liable for climate change; cases alleging that social media platforms are addictive; and so on. We have written about one such effort directed at ultra-processed foods. *See Eastern District of Pennsylvania rejects case alleging that ultra-processed foods are inherently dangerous and addictive* (October 31, 2025). These cutting-edge cases must satisfy a gauntlet of legal requirements, as demonstrated in a recent decision rejecting claims based on allegations that online sports gambling is addictive. *See De Leon v. DraftKings, Inc.*, No. 25cv644 (DLC), 2025 WL 3551627 (S.D.N.Y. Dec. 11, 2025). In that case, the Southern District of New York rejected putative class claims against DraftKings, observing that online sports gambling is legal and that plaintiffs could not advance claims based on the mental illness and distress suffered by individuals who allegedly became addicted to online gambling.

The story behind the *De Leon* case started in January, 2022, when the State of New York legalized online sports gambling.

Eric Mirsberger, a New York resident, set up a DraftKings account in October 2023 and, despite wagering many times his annual income, "VIP Hosts" deployed by DraftKings encouraged him to continue gambling. New York resident Joseph Mitchell opened a DraftKings account in January 2022; he became a gambling addict and lost over $70,000. New York resident Edward Mendez opened a DraftKings account in 2022, becoming severely addicted and suicidal, eventually losing his home and family.

These and another individual who engaged in online sports gambling filed a putative class action against DraftKings, asserting New York consumer fraud claims based on alleged misrepresentations and deceptive practices perpetrated by DraftKings. Three of them alleged products liability claims based on allegations that they became addicted to online gambling.

DraftKings moved to dismiss plaintiffs' operative complaint, essentially arguing that it did nothing to violate the law. District Judge Denise Cote of the Southern District of New York agreed, granting the motion and dismissing the case.

Regarding the New York consumer fraud claims (asserted under New York General Business Law §§ 349 and 350), Judge Cote concluded that DraftKings did not make any misrepresentations or engage in any deceptive practices. She determined that DraftKings's representations about the gambling promotions at

issue were accurate: "Accurate and complete terms of each promotion were fully disclosed to users of the app and the [complaint] does not assert that those disclosures of the terms were misleading." *Id*. at *5. She further concluded that a reasonable gambler would be expected to read DraftKings's disclosures about those gambling promotions (including promotion terms available through a hyperlink), stating: "A reasonable consumer of an online platform would be expected to look at the terms of promotion, which are readily accessible, before accessing the promotion." *Id*.

Regarding the product liability claims, Judge Cote found dispositive that none of the plaintiffs suffered an alleged physical harm supporting a product liability claim, stating: "Plaintiffs do not provide any legal authority for the proposition that mental illness and distress, although real and severe, is an injury protected by products liability or general tort law absent physical injury or property damage. Under New York tort law, a plaintiff may only recover for emotional suffering absent physical injury in three narrow circumstances, none of which are present here." *Id*. at *7.

She also reasoned, in dismissing a related claim for gross negligence, "[i]n essence, the plaintiffs' theory seeks to circumvent the decision made by New York State's legislature to legalize online gambling in New York State." *Id*. at *10.

Judge Cote further rejected intentional misrepresentation claims for the same reasons she rejected the consumer fraud claims; rejected unjust enrichment claims on the ground that they duplicated other claims she had dismissed; and rejected claims for breach of fiduciary duty (dismissing the notion that a relationship of "higher trust" applied as between DraftKings "VIP Hosts" and online gamblers).