

January 31, 2023

COURT UPHOLDS GRAC'S REFUSAL TO RATE SKYPEOPLE'S GAME "FIVE STARS FOR KLAYTN," EFFECTIVELY BANNING P2E GAMES

On January 13, 2023, the Seoul Administrative Court dismissed an appeal filed by SkyPeople Corporation ("**SkyPeople**"), which sought to cancel the Game Rating and Administration Committee's ("**GRAC**") decision not to rate its blockchain-based, play-to-earn (P2E) game entitled "Five Stars for Klaytn" (the "**Game**").

Under the Game Industry Promotion Act (the "**Game Act**"), every "game product" distributed or provided for use must be rated. As applied to P2E games, GRAC has consistently refused to rate P2E games, thereby effectively banning P2E games for distribution in Korea¹.

In other prior cases, the GRAC has based its refusal to rate P2E games on grounds of violation of the Game Act, which generally prohibit distribution of games which enable or promote, among others, speculation, giveaways, and/or conversion of in-game rewards (i.e., game points, free rewards, in-game currency, etc.) into real currency. Likewise, in the SkyPeople case, GRAC had refused to rate the Game on grounds of violation of the Game Act.

In its appeal to cancel GRAC's decision not to rate the Game, SkyPeople claimed that the allegedly speculative nature of the Game is not more extensive than in other games offering the so-called direct trading function. Specifically, SkyPeople argued that:

- (i) since the Game allows creating NFTs using only those in-game items provided free of charge to users and such NFTs may only be traded for in-game items, the NFTs so obtained should not be deemed a giveaway prohibited under the Game Act and, even if this practice were to be deemed provision of giveaways, such does not necessarily promote speculation; and
- (ii) other rated games provide trading exchanges for game users for trading of in-game items using in-game currency purchased with real currency, and there are also third-party brokerage websites in service which provide trading platforms for in-game items. However, the Court rejected all such claims by SkyPeople.

The SkyPeople decision has its significance in that it is the first court decision on the position held by GRAC and the Ministry of Culture, Sports and Tourism ("**MCST**"), which has oversight over GRAC, that games based on virtual assets, such as P2E games, violate the Game Act—making such games ineligible for rating and thus banned in Korea.

As published in the "Review of Rating for Blockchain Technology-based Game Products" (November 8, 2019) and

¹ The representative prior cases include GRAC's decisions with respect to such games as "Yuna's Wardrobe (Flero Games)," "Infinity Star (Nodebrick)," and "Infinite Breakthrough Three Kingdoms Reverse (Natris)"—which included trading of in-game items using NFTs or cryptocurrency—that have either been refused rating by GRAC or subjected to GRAC's *ex officio* cancellation of rating.

the "Guideline on Self-Rating of Speculative and Sexual Elements in Games" (January 28, 2022), GRAC has publicly expressed its position that games based on virtual assets may be in violation of the Game Act. In particular, considering that GRAC has been strengthening its efforts on the monitoring and regulation of game products which involve cryptocurrency in any manner or order and, especially, in the post-Luna/Terra incident of last year,² the outright ban on P2E games currently in effect by MCST and GRAC is only likely to continue in the near future.

With the present decision being from the level of a court of first instance, the ultimate outcome in the SkyPeople case should be followed closely on appeal. Moreover, as the decision in yet another case involving the legality of GRAC and MCST's cancellation of the rating for a similar P2E game entitled "Infinite Breakthrough Three Kingdoms Reverse" is expected to be issued on January 31, 2023, it remains to be seen as to whether the court decision in the SkyPeople case will be applied equally to other cases adjudicating on the legality of GRAC and MCST's current practice of outright ban on P2E games.

* * *

For any inquiry or questions regarding the content of this newsletter, please contact us.

² <https://www.forbes.com/sites/qai/2022/09/20/what-really-happened-to-luna-crypto/?sh=52830efc4ff1>

Related Professionals

Tae Uk Kang

Partner

T 82.2.3404.0485

E taeuk.kang@bkl.co.kr

Susan Park

Senior Foreign Attorney

T 82.2.3404.0274

E susan.park@bkl.co.kr

Joo Sung Park

Associate

T 82-2-3404-6953

E joosung.park@bkl.co.kr

Tae Yun Sun

Associate

T 82.2.3404.1973

E taeyun.sun@bkl.co.kr