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FRANKLIN CIRCUIT COURT
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**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II
CIVIL ACTION NO.: 08-CI-1409**

**COMMONWEALTH OF KENTUCKY
ex rel. J. Michael Brown, Secretary,
Justice And Public Safety Cabinet,**

PLAINTIFF

vs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

140 INTERNET DOMAIN NAMES

DEFENDANTS

This matter having come before the Court on motion of the Plaintiff, Commonwealth of Kentucky ex rel. J. Michael Brown, Secretary of the Justice and Public Safety Cabinet, for an order pursuant to KRS 528.100 for seizure and forfeiture of internet domain names used to promote, conduct and/or advance illegal gambling within the Commonwealth of Kentucky; the Commonwealth having presented evidence and argument; and the Court being sufficiently advised;

The Court now finds that probable cause did and does exist under KRS 528.100 to believe that these domain names were and are being used in connection with illegal gambling activity in violation of KRS Chapter 528, and that a sufficient basis did and does exist for the seizure and forfeiture of the Domain Defendants by the Commonwealth. In support of its finding of probable cause, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. With the exception of certain highly regulated statutory exceptions, gambling is illegal in the Commonwealth of Kentucky.

2. Promotion of gambling is a criminal offense under KRS §§ 528.020 and 528.030, which respectively provide:

KRS § 528.020 Promoting gambling in the first degree

- (1) A person is guilty of promoting gambling in the first degree when he knowingly advances or profits from unlawful gambling activity by:
 - (a) Engaging in bookmaking to the extent that he employs or utilizes three or more persons in a bookmaking activity and receives or accepts in any one day bets totaling more than \$500; or
 - (b) Receiving in connection with a lottery or mutuel scheme or enterprise:
 - (i) Money or written records from a person other than a player whose chances or plays are represented by such money or records; or
 - (ii) More than \$500 in any one day of money played in the scheme or enterprise; or
 - (iii) Setting up and operating a gambling device.
- (2) Promoting gambling in the first degree is a Class D felony.

KRS § 528.030 Promoting gambling in the second degree

- (1) A person is guilty of promoting gambling in the second degree when he knowingly advances or profits from unlawful gambling activity.
- (2) Promoting gambling in the second degree is a Class A misdemeanor.

3. KRS 528.010 applies the following definitions to KRS Chapter 528.010 to Chapter 528:

KRS § 528.010 Definitions for Chapter

The following definitions apply in this chapter unless the context otherwise requires:

(1) "Advancing gambling activity"--A person "advances gambling activity" when, acting other than as a player, he engages in conduct that materially aids any form of gambling activity. The conduct shall include, but is not limited to, conduct directed toward the establishment of the particular game, contest, scheme, device, or activity involved; toward the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor; toward the solicitation or inducement of persons to participate therein; toward the actual conduct of the playing phases thereof; toward the arrangement of any of its financial or recording phases or toward any other phase of its operation. A person who gambles at a social game of chance on equal terms with other participants does not otherwise advance gambling activity by performing acts, without remuneration or fee, directed toward the arrangement or facilitation of the game as inviting persons to play, permitting the use of premises therefor and supplying equipment used therein.

* * *

(3) (a) "Gambling" means staking or risking something of value upon the outcome of a contest, game, gaming scheme, or gaming device which is based upon an element of chance, in accord with an agreement or understanding that someone will receive something of value in the event of a certain outcome. A contest or game in which eligibility to participate is determined by chance and the ultimate winner is determined by skill shall not be considered to be gambling.

* * *

(4) "Gambling device" means: . . .

(b) Any other machine or any mechanical or other device, including but not limited to roulette wheels, gambling tables and similar devices, designed and manufactured primarily for use in connection with gambling and which when operated may deliver, as the result of the application of an element of chance, any money or property, or by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property;

* * *

(8) "Profiting from gambling activity"--A person "profits from gambling activity" when, other than as a player, he accepts or receives or agrees to accept or receive money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity.

4. KRS 528.100 allows for forfeiture of illegal gambling devices, as follows:

KRS 528.100 Forfeiture

Any gambling device or gambling record possessed or used in violation of this chapter is forfeited to the state, and shall be disposed of in accordance with KRS 500.090, except that the provisions of this section shall not apply to charitable gaming activity as defined by KRS 528.010(10).

5. Illegal online gambling operations offer a full array of gaming and wagering options and profit in a number of ways, such as earnings from wagers made against the house (*e.g.*, sports betting, blackjack, slots, and other casino games) or from a rake of the total amount wagered by players playing not against the house but against each other (*e.g.*, games like poker). Illegal online gambling operations include online casinos, sports and race books, poker rooms, online bingos, betting exchanges, lottery sites, and backgammon sites.

6. Illegal internet gambling is pernicious in ways that regulated land-based gambling is not because of the greater convenience, speed and privacy that it provides gamblers. Illegal internet gambling occurs in an invisible unregulated manner without effective age verification, identification, validation of payment sources and/or financial accountability. Unlike land-based operations, illegal internet gamblers can gamble in relative isolation, from the privacy of their homes and offices or from literally anywhere that an internet connection is available.

7. Illegal internet gambling is subject to abuse and represents a significantly increased danger to the citizens of the Commonwealth, especially to the most vulnerable – youth, substance abusers, and problem pathological and compulsive gamblers.

8. Illegal internet gamblers, relative to other gamblers, are much more likely to be problem or pathological gamblers.

9. Illegal internet gambling represents a particularly pernicious threat to Kentucky youth, for reasons including but not limited to its accessibility and lack of oversight.

10. Illegal internet gambling operations are actively engaging in operations within the Commonwealth through the domain names, with no transparency, regulation, taxation or accountability for their conduct occurring within the Commonwealth.

11. Because of the lack of regulation, lack of taxation, and lack of industry transparency, the actual revenue generated by internet gambling operations can only be estimated. In 2006, internet gaming companies were estimated to make over \$10 billion in profit, with as much as 80 percent of their traffic – and profit – coming from the United States.

12. Illegal internet gambling, the promotion, advertising and operation thereof, and any and all financial transactions related to internet gambling are illegal in Kentucky. KRS Chapter 528. Possession and/or use of gambling contrivances, implements, records, and/or devices that are, or could be, used to effectuate internet gambling is illegal in Kentucky. *Id.*

13. Each Domain Defendant is a “domain name,” with an associated IP address, that was delegated through the Internet Corporation for Assigned Names and Numbers (“ICANN”), registered through an ICANN authorized Registrar.

14. Domain Defendants are actual registered domains that have been used in the promotion and effectuation of illegal gambling operations within the Commonwealth on an ongoing and repeated basis through the present day. Each Domain Defendant was used to commit one or more illegal gambling acts within the Commonwealth.

15. The Domain Defendants and the associated websites are used to actively solicit Kentucky customers and conduct commerce within the Commonwealth, receiving payment from

within the Commonwealth and delivering software, services, opportunities, wagering information, sums from winning wagers, to persons within the Commonwealth.

16. Each Domain Defendant is a gambling device such as is ordinarily used for gambling for money or property, and has been used from and within Kentucky on multiple occasions to promote, facilitate and effectuate illegal internet gambling, and otherwise violate Kentucky law and public policy, including but not limited to KRS Chapter 528. Each Domain Defendant is a device designed primarily for use in connection with gambling, and by the operation of which a person may become entitled to receive, as the result of the operation of an element of chance, any money or property, as defined in KRS 528.010(4).

17. The Domain Defendants and their owners and operators have knowledge, by virtue of the IP address from which the domain is accessed and from additional information gathered from the computer, that a particular gambler is attempting to gamble from within Kentucky. They have the ability to easily block access to their domains and web sites through widely available technology; in fact, much of the software currently used in conjunction with the Domain Defendants for illegal gambling has the capability to quickly and easily block access from Kentucky. Blocking is not only technologically possible, it is commercially reasonable. In fact, a number of gaming websites currently use this technology to block Kentucky users.

18. Instead of blocking Kentucky, certain illegal internet gambling operations purposefully target and profit from Kentucky internet users by use of internet domain names, particularly the Domain Defendants.

19. Each domain name is registered by the execution of an agreement between the prospective owner of the domain name and the Registrar. *See ICANN Uniform Domain Name Dispute Resolution Policy* (the "UDRP" or the "Agreement"). As a condition of registration, the

owner of each Domain Defendant consented and agreed to the terms and conditions of the UDRP.

20. In the Agreement, the owner of the domain name agrees, represents and warrants that the domain name shall not be used for an illegal purpose. Additionally, the owner agrees to be bound by the agreement's dispute resolution terms and conditions. In pertinent part, the owner consents and agrees that any dispute about its use of the domain name may be resolved "through any court ... that may be available." UDRP ¶5. The owner agrees that the Registrar shall not be made a party to the action. Instead, the owner consents and agrees that the Registrar shall simply comply with the orders of any court that has jurisdiction over the use, or misuse, of the domain name. In particular, the domain-name holder consents and agrees that, upon receiving a court's order, the registrar will cancel, transfer or otherwise make changes to the domain name registration as required by the Court. UDRP ¶3.

21. Each Domain Name has been used in the commission of overt acts in violation of Kentucky law, including but not limited to:

- a. Promoting, advertising and encouraging illegal internet gambling by, among other things, displaying internet gambling advertisements, hypertext links, and other such promotions to internet users within the Commonwealth of Kentucky;
- b. Using the Domain to conduct illegal internet gambling operations, or promote, advertise and facilitate illegal internet gambling;
- c. Using the Domains as a redirect or vehicle to transport Kentucky internet users and traffic to other internet gambling sites;
- d. Using the Domain to facilitate the download of gambling software;
- e. Using the Domain to enter into illegal gambling contracts with Kentucky internet users;
- f. Using the Domain to transact in money derived from illegal gambling activities;

- g. Using the Domain to make false, misleading, or deceptive representations, or omissions, of the validity and legality of internet gambling; and/or
- h. Using the Domain to facilitate and advise Kentucky and United States users how to violate applicable state and federal laws.

22. The Domain Defendants are often advertised in a misleading manner to mislead potential gamblers that the activity conducted through the Domain Defendants is legal and safe in Kentucky.

23. By virtue of the actions as more specifically described above, the Domain Domains have been used as a gambling device in the Commonwealth in violation of KRS Chapter 528.

24. This Court has exclusive jurisdiction over this action because it is brought by the Commonwealth, in its Sovereign capacity and pursuant to its police powers, alleging exclusively Kentucky statutory and common law claims.

25. The Commonwealth of Kentucky is a sovereign state established as a Commonwealth by its Constitution. J. Michael Brown is the Secretary of the Justice and Public Safety Cabinet, a state agency and subdivision of the Commonwealth of Kentucky established pursuant to Kentucky law. The Commonwealth brings this claim in its own right and on behalf of its citizens.

26. Each Domain Defendant is a registered internet domain and is a gambling device, and as such, is subject to this *in rem* action under KRS 528.100.

27. *In rem* jurisdiction over the domain names named herein is proper in the Circuit Court pursuant to KRS § 23A.010, as said property was used in the commission of multiple crimes and statutory violations within Kentucky, the use of said property constitutes a public nuisance, and otherwise violated Kentucky law.

28. Venue is proper in the Franklin County Circuit Court, as the Plaintiff resides in this County, the Domain Defendants have been used in Franklin County in violation of the laws and public policy of the Commonwealth, have been used to cause injury within Franklin County, have been transported within Franklin County, and have been used to transport and conduct gambling operations within Franklin County.

29. The illegal gambling operations constitute a public nuisance to the health and welfare, and economic vitality, of the Commonwealth and its citizens, and to the administration of the laws of the Commonwealth. The Commonwealth has an interest and a duty pursuant to its police powers to abate this nuisance for its own sake and for that of its citizens.

30. The Commonwealth continues to be harmed in its interests and in the interests of its citizens by the intentional and knowing violations of KRS Chapter 528.

31. KRS § 528.100 provides for forfeiture of any gambling devices or records that were used, or intended to be used to effect illegal gambling. Forfeiture of property, devices, records and/or other such contrivances used or intended to be used for the purpose of gaming, is proper, whether or not actually set up, operated, or otherwise used.

32. Forfeiture of the Domain Defendants is necessary and justified as a result of the violations of KRS Chapter 528 and the efforts of the owners and operators to conceal their identities and avoid prosecution. Without this action by the Commonwealth, the public nuisance of unlawful online gambling will continue to violate important Kentucky laws and public policy to the detriment of the Commonwealth.

33. As a direct and proximate result of the use of these domain names in violation of KRS Chapter 528, the Commonwealth was harmed in its interests and in the interests of its citizens, and is entitled in accordance with KRS § 528.100 and KRS § 500.090 to seizure and

civil forfeiture to the Commonwealth of all property, devices, records, and contrivances that were used in commission of said offenses, including but not limited to the Domains listed on Exhibit A hereto.

34. This Court has jurisdiction over the criminal use of the Domain Defendants in Kentucky. KRS 528.100, KRS 500.060. Accordingly, it is a court of competent jurisdiction for purposes of the UDRP.

35. In agreeing to be bound by the UDRP, the owners and operators of the Domain Defendants consented and agreed for the Registrar to cancel, transfer or otherwise make changes to the domain name registrations of the Domain Defendants on adjudication by this Court. The Domain Defendants are constructively within the possession of the Commonwealth and this Court and are properly seized by the Commonwealth as provided in the Court's Order issued in connection herewith.

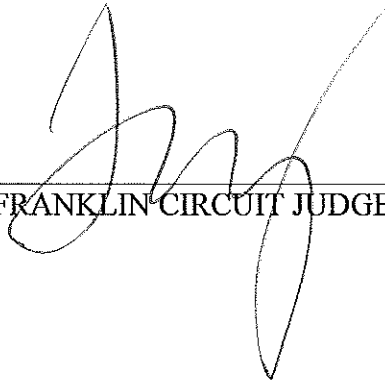
36. Immediate seizure of the Domain Defendants is necessary to adequately protect the Commonwealth's legitimate governmental interests. The Domain Names are readily transferrable. Given the nature of the internet, there exists probable cause that, if Domain Defendants are not immediately seized, the Domain Defendants would be removed, transferred, and otherwise concealed. Moreover, probable cause exists to show that, if Domain Defendants are not immediately seized, the Domain Defendants would continue to be used in furtherance of these criminal gambling enterprises. Likewise, considering the ease with which the operators could frustrate the Commonwealth's legitimate governmental interests there is a special need for very prompt action. Additionally, immediate seizure is necessary to establish the Court's jurisdiction over Domain Defendants. The Domain Defendants have no use or value other than as a conduit for illegal gambling activity. Given the technological ability to transfer the Domain

Defendants, immediate seizure is the only practical mechanism available to the Commonwealth in its efforts to enforce its laws and prevent the continued operation of these criminal enterprises.

37. The Commonwealth has met its burden of proof of probable cause necessary for seizure under KRS 528.100.

38. Probable cause exists to believe that the Domain Defendants are devices used in connection with illegal gambling activity in violation of KRS Chapter 528, and that a sufficient basis has existed and does exist for the seizure and forfeiture of the Domain Defendants by the Commonwealth.

ORDERED AND ADJUDGED this 18 day of September, 2008.


FRANKLIN CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been sent by U.S. Mail, postage prepaid, to the following this _____ day of September, 2008:

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