

FILED

SEP 18 2008

FRANKLIN CIRCUIT COURT
SALLY JUMP, CLERK

**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.

141 INTERNET DOMAIN NAMES:**DEFENDANTS**

123bingo.com
777dragon.com
7sultans.com
absolutepoker.com
aceshighcasino.com
Alljackpots.com
allslots.com
arthuriancasino.com
atriumcasino.com
aztecrichescasino.com
bellavegas.com
bet21.com
betroyalcasino.com
bigtimebingo.com
bingoknights.com
bingoville.com
bingoworkz.com
blackjackballroom.com
bodoglfe.com
bonuslevelslots.com
bookmaker.com
bugsysclub.com
cakepoker.com
capitalcasino.com
captaincookscasino.com
caribbeangold.com
casinobar.com
casinoclassic.com
casinoextreme.com
casinofortune.com
casinograndbay.com
casinokingdom.com
casinoshare.com
casinous.com
cirruscasino.com

ukcasinoclub.com
clubusacasino.com
cocoacasino.com
coolcatcasino.com
countycasino.com
crazypoker.com
crazyvegascasino.com
desperatehousewivesbingo.com
doylesroom.com
dsipoker.com
englishharbour.com
ezbets.com
firstwebcasino.com
fortunejunction.com
fortuneroom.com
fulltiltpoker.com
galaxiworld.com
gamblingboard.com
goldencasino.com
goldgatecasino.com
goldenpalace.com
grandmondial.com
highrollerslounge.com
indiancasino.com
inetbet.com
itsrealpoker.com
ivegas.com
jackpotcapital.com
jackpotcity.com
jackpotkingscasino.com
jackpotwheel.com
jupiterclub.com
kingneptunescasino.com
lakepalace.com
lasvegasusacasino.com

linesmaker.com
luckycoincasino.com
luckynugget.com
luckypyramidcasino.com
magicislandcasino.com
mapau.com
maplecasino.com
miamiparadisecasino.com
mightyslots.com
millionairecasino.com
musichallcasino.com
mysportsbook.com
oneclubcasino.com
orbitalcasino.com
orchidcasino.com
paradise8.com
phoeniciancasino.com
pitbullpoker.com
platinumplay.com
playeronly.com
pokerhost.com
pokerroyaleonline.com
pokerstars.com
pokertime.com
powerbet.com
redflush.com
redstarpoker.com
reeferpoker.com
riopartycasino.com
riverbelle.com
rivernilecasino.com
roadhouse reels.com
royalbetcasino.com
royalvegas.com
rushmanecasinoo.com

sbgglobal.com
showdowncasino.com
simonsayscasino.com
slotfever.com
slotocash.com
slotsoffortune.com
slotsplus.com
sportsbetting.com
sportsbook.com
sportsinteraction.com
sunpalacecasino.com
sunvegas.com

superslots.com
thisisvegas.com
thunderluckcasino.com
tridentlounge.com
truepoker.com
ultimatebet.com
usabingo.com
vegascasinoonline.com
vegaslucky.com
vegasmagic.com
vegaspalms.com
vegasusacasino.com

vegasvilla.com
vicsbingo.com
viploungecasino.com
virtualcitycasino.com
wildjack.com
win4real.com
winabingo.com
worldwidevegas.com
wsex.com
yukongoldcasino.com
valueactive.com
microgaming.com

SECOND AMENDED COMPLAINT

Comes the Plaintiff, Commonwealth of Kentucky *ex rel.* J. Michael Brown, Secretary, Justice and Public Safety Cabinet (“Commonwealth”), by and through counsel, and for his First Amended Complaint in his civil *in rem* action against certain registered domain property Defendants (collectively referred to herein as “Domain Defendants”) seeking forfeiture to the Commonwealth, states as follows:

INTRODUCTION AND NATURE OF THE CLAIMS

1. This *in rem* forfeiture action is brought by the Commonwealth exercising its police powers and pursuant to KRS § 528.100 and common law against the Domain Defendants to stop illegal internet gambling that is occurring within the Commonwealth, in blatant disregard for and violation of Kentucky anti-gambling law and public nuisance law.

2. Gambling in Kentucky is legal only as specifically allowed by the Constitution, statutes and regulations, and in all such instances it is strictly regulated.

3. Internet gambling, the promotion and operation thereof, is illegal in Kentucky. 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.

4. Illegal internet gambling represents a significant danger to youth, because in contrast to heavily regulated land-based gambling operations, internet gambling is unregulated and can occur from literally anywhere that an internet connection is available.

5. The Commonwealth recognizes the grave threat to itself and its citizens of allowing illegal and unregulated internet gambling to continue within the Commonwealth.

6. The Commonwealth brings this action to protect itself and its citizens from the ongoing and illegal proliferation of illegal internet gambling and wagering operations occurring within the Commonwealth.

7. Illegal internet gambling by Kentucky citizens causes losses to be incurred by the Commonwealth. Illegal operations evade regulation, operational transparency, and taxation, while the Commonwealth loses money, business transparency, accountability and compliance, tax revenue, and the ability to hold all individuals and entities accountable for their conduct occurring within the Commonwealth.

8. Domain Defendants are the integral devices that are being used, within the Commonwealth, to target Kentucky citizens through the conduct, promotion, effectuation, and other facilitation of illegal internet gambling on a twenty-four hour, seven day per week basis, in violation of Kentucky statutory and common law, as well as longstanding public policy.

9. The Commonwealth seeks forfeiture of each registered domain that is identified herein as a Domain Defendant. Forfeiture of the illegal gambling devices is necessary to prevent the continued operation of such domains to the detriment of Kentucky and Kentucky citizens. Despite ongoing efforts by law enforcement agencies to control the means of operating predatory and unregulated internet gambling operations in the United States, gambling operations are growing dramatically as the illegal operations willfully and defiantly continue solicitation and exploitation of United States and Kentucky citizens in direct and knowing violation of Kentucky

law. 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 and its citizens.

JURISDICTION AND VENUE

10. 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, exclusively alleging Kentucky statutory and common law claims.

11. *In rem* jurisdiction over the property named herein is proper in the Circuit Court pursuant to KRS § 23A.010, KRS § 528.100 and KRS § 500.060 as said property was used in the commission of multiple crimes and statutory violations within Kentucky and the use of said property constitutes a public nuisance and otherwise violates Kentucky law.

12. Venue is proper in the Franklin County Circuit Court, as the Domain Defendants are domiciled outside the Commonwealth and Plaintiff resides in Franklin County. Furthermore, the property herein has been used in this county in violation of the laws and public policy of the Commonwealth.

THE PARTIES

A. Plaintiff

13. 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.

B. Domain Defendants

14. Each Domain Defendant is a “domain name” – an internet identifying device that helps users interact with an internet web site. Each domain was registered through a Registrar authorized by the Internet Corporation for Assigned Names and Numbers (ICANN).

15. 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.

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 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. Each Domain Defendant is property and therefore subject to action *in rem*.

GENERAL ALLEGATIONS –UNLAWFUL ONLINE GAMBLING

A. Illegal Internet Gambling Operations

18. Since in or around 1995, international gambling syndicates have capitalized on the rapid modernization, and the concomitant internet proficiency, of the Kentucky population, through development and marketing of online gambling operations that actively promote to, solicit, and otherwise engage Kentucky based gamblers in illegal and unregulated gambling.

19. In 1996, there were only approximately 30 Illegal internet gambling sites that generated an estimated \$30 million in annual revenue. Since that time the Illegal internet

gambling industry has undergone explosive growth, with more than 2,500 internet casinos actively soliciting the estimated 230 million U.S. internet users.

20. On-line 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 against each other (*e.g.*, games like poker).

21. Recently, Illegal internet gambling services have introduced mobile internet gambling applications – inviting users to gamble on mobile phones, PDAs, and other portable devices. These mobile gambling schemes invite further growth of illicit gambling. Defendant Domains are used to promote, identify, and transport mobile users to lucrative mobile gaming services that target, promote, and effectuate illegal internet gambling by Kentucky mobile users.

22. The estimated 2,500 online gambling operations consist of at least 1,083 online casinos, 592 sports and race-books, 532 poker rooms, 224 online bingos, 49 skill game sites, 30 betting exchanges, 25 lottery sites, and 17 backgammon sites.

23. The actual revenue generated by Illegal internet gambling operations can only be estimated because of the lack of regulation, lack of taxation, and lack of industry transparency. 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.

24. Revenue from Illegal internet gambling operations in the Commonwealth is estimated to be in excess of forty million dollars (\$40,000,000.00) per year.

B. Unique Harm Associated With Illegal Internet Gambling

25. Unlawful internet gambling is pernicious in ways that regulated land based gambling is not, because of the convenience, speed and privacy that it provides gamblers.

Internet gambling occurs in secrecy, and wagers are accepted without effective age verification, identification, validation of payment sources or financial accountability.

26. Illegal and unregulated gambling is a growing problem, in general, among U.S. youth. Studies have indicated that 80 percent of adolescents between the ages of 12 and 17 wager money in a given year, and 35 percent in a given week.

C. Costs to the Commonwealth and Its Citizens

27. 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.

28. Unregulated internet gambling also impacts legitimate and regulated gambling operations in the Commonwealth by unregulated and untaxed competition with legitimate betting on horse racing, charitable gaming and the state lottery. Some domains maintain entire sections dedicated to betting on “horses,” particularly the Kentucky Derby.

D. Domain Defendants

29. 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.

30. 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.

31. Each Domain Defendant has been used to construct or promote the construction of one or more virtual casinos on desktops, laptops and/or mobile devices within the Commonwealth. Through these branch offices, the owners of the Domain Defendants run their

illegal gambling operation in Kentucky—taking bets, paying winnings and transferring losses to foreign locations. The Domain Defendants allow the virtual casinos to operate in Kentucky. 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.

32. 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.

33. 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.

34. Each domain name is registered by the execution of an agreement between the prospective owner of the domain name and the Registrar. *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.

35. 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 transfer the domain name registration to the court, or at its direction. UDRP ¶3.

E. Public Policy And Law

36. Promotion of illegal 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 mutual 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.

37. Each domain name has been used to knowingly and intentionally violated KRS §§ 528.020 and/or 528.030.

38. KRS 528.010 applies the following definitions:

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.

39. 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).

40. The Commonwealth has a legitimate interest in protecting itself, its citizens, and its property, and enforcing its long-standing public policy and well-established laws. The Commonwealth was harmed in its interests and in the interests of its citizens by the intentional and knowing violations of KRS 528.020 and/or 528.030.

41. As each Domain Defendant has been used on multiple and continued occasions to promote and effect illegal internet gambling within the Commonwealth, forfeiture of Domain Defendants is proper under Kentucky law to remediate prior violations. Furthermore, such forfeiture will further prevent illegal gambling operations from using said domain devices in the future, thereby preventing the commission of further gambling-related crimes within the Commonwealth.

COUNT I
FORFEITURE UNDER KRS § 528.100

42. Commonwealth repeats and re-alleges, as if fully set forth herein, the allegations set forth above in paragraphs 1 through 41.

43. Commonwealth brings this claim, *in rem*, against all Domain Defendants, named herein.

44. 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.

45. KRS § 528.100 provides for forfeiture of any gambling devices or records that were used, or intended to be used to effect illegal gambling.

46. 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).

47. Each Domain Name has been used in the commission of one or more overt acts in violation of KRS Chapter 528, 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 Domain as a redirect or vehicle to transport Kentucky internet users and traffic to other Illegal 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;
- g. Using the Domain to transact in money derived from illegal gambling activities;
- h. Using the Domain to make false, misleading, or deceptive representations, or omissions, of the validity and legality of internet gambling;
- i. Using the Domain to facilitate and advise Kentucky and United States users how to violate applicable state and federal laws.

48. As a direct and proximate result, the Commonwealth was harmed in its interests and in the interests of its citizens. The Commonwealth is therefore entitled to seizure and civil

forfeiture to the Commonwealth of the Domain Defendants in accordance with KRS § 528.100 and KRS § 500.090.

COUNT II
PUBLIC NUISANCE

49. Commonwealth repeats and re-alleges, as if fully set forth herein, the allegations set forth in all preceding paragraphs.

50. Commonwealth brings this claim, *in rem*, against all Domain Defendants, named herein.

51. By virtue of the actions as more specifically alleged above, the Domain Domains have been used as a gambling device in the Commonwealth.

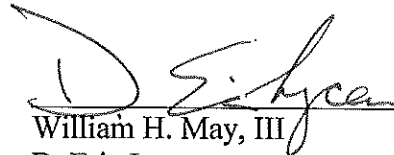
52. Domain Defendants are integral and necessary devices that are used on an ongoing basis to identify, redirect, create, maintain, promote, advise, assist, finance, participate, and /or engage in illegal online gambling operations and transactions with persons within the Commonwealth of Kentucky.

53. The illegal gambling operations constitute a public nuisance to 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.

54. As a direct and proximate result of the actions set forth herein the Commonwealth and its residents have been harmed and the Commonwealth is entitled to temporary and permanent injunctive relief to abate the nuisance and prevent illegal internet gambling transactions with persons within the Commonwealth of Kentucky by prohibiting the use of and/or seizing the Domains named herein. Without the relief requested herein, the public nuisance of illegal online internet gambling will continue to the detriment of the Commonwealth and its citizens.

WHEREFORE, Plaintiff, Commonwealth of Kentucky *ex. rel* J. Michael Brown,
Secretary, Cabinet for Justice and Public Safety, respectfully requests the following relief:

- A. Forfeiture to the Commonwealth of Domain Defendants;
- B. Declaratory, equitable and injunctive relief;
- C. Attorneys' fees and costs of suit incurred herein; and
- D. Such further relief as the Court deems just and proper.



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