Internet Gambling Domain Name Seizures Blocked by Kentucky Appeals Court

Contributed by Thomas Jensen
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The online gambling news website Gambling911.com broke news earlier today that the Kentucky Appeals Court ruled on behalf of online trade association iMEGA against the forfeiture action of 141 internet gambling domain names sought by Gov. Stephen Beshear to protect the state of Kentucky's gambling industry from online gambling websites. The Kentucky Court of Appeals issued a ruling today prohibiting the seizure of 141 Internet domain names by the state.

In a 2-to-1 majority opinion, the court ruled for the Interactive Media Entertainment and Gaming Association (iMEGA) in its suit against Judge Thomas D. Wingate (No. 2008-CA-002000-OA), by blocking the seizure orders issued by the Franklin (KY) circuit court judge for the domain names, all related to Internet gambling (Commonwealth of Kentucky, Franklin Circuit Court, Division II, 08-CI-1409).

Judge Michelle M. Keller, in her majority opinion, found that Internet domain names for online gambling Web sites were not illegal "gambling devices" by Kentucky law, as had been claimed by attorneys representing the Commonwealth, in their attempt to seize control of the names from their owners. Judge Keller stated that while the Kentucky legislature could have chosen to include Internet domain names in its gambling devices law, it had not, therefore the Commonwealth could not rightfully proceed with its forfeiture action.

"[I]t stretches credulity to conclude that a series of numbers, or Internet address, can be said to constitute a "machine or any mechanical or other device...designed and manufactured primarily for use in connection with gambling," Judge Keller wrote. "We are thus convinced that the trial court clearly erred in concluding that the domain names can be construed to be gambling devices."

Judge Jeff S. Taylor, also writing for the majority, added that the Commonwealth could not seek a civil forfeiture based on a criminal statute when there had been no criminal proceeding. Since there had been no criminal proceeding or conviction against any of the Internet domain name owners, the Commonwealth could not take control of their property.

Judge Micheal Caperton, in his dissenting opinion, wrote that the Internet domain names were one part of a larger mechanism for gambling, which included computers and Internet service, and thus, in his opinion, met the definition of a "gambling device" under Kentucky law.

"This decision confirms why we went the way we did with suit ," said Jon L. Fleischaker, attorney for iMEGA and managing partner at Dinsmore & Shohl in Louisville, KY. "We knew when we brought this to the Court of Appeals, that we would get justice for iMEGA and the domain names in Kentucky."

Fleischaker had argued in a December 12, 2008 hear before the Court of Appeals that the Internet domain names were no more than "billboards" for the Web sites, and not mechanisms for gambling. Fleischaker had also argued that the Commonwealth's attorneys could not try to fashion a civil law remedy with a criminal statue to justify the seizure of the domain names.

"We are very happy with the court's ruling today," said Joe Brennan Jr., chairman of iMEGA, an Internet trade association in Washington, DC. "The judges clearly agreed with our interpretation of the law, and thankfully, this reverses what would have been a terrible precedent for our country and the Internet."

The Court in its decision declined to review additional arguments submitted by the Interactive Gaming Council (IGC) and attorneys representing Sportsbook.com, also seeking to have the domain name seizures blocked.

The Interactive Media Entertainment & Gaming Association (iMEGA) is a not-for-profit corporation headquartered in Washington DC. iMEGA was founded in 2007 as an association dedicated to the continued growth and innovation of the Internet. iMEGA seeks constructive engagement with government at the Federal and State levels to ensure the challenges of this nascent medium are addressed with the full participation of people and companies that have built the Internet into a powerful influence on society.