

COMMONWEALTH OF KENTUCKY
KENTUCKY SUPREME COURT
NO. _____

INTERACTIVE MEDIA
ENTERTAINMENT AND GAMING
ASSOCIATION, INC.

PETITIONER

v. MOTION TO TRANSFER FROM COURT OF APPEALS TO SUPREME COURT

HONORABLE THOMAS D. WINGATE,
JUDGE, FRANKLIN CIRCUIT COURT

RESPONDENT

AND

COMMONWEALTH OF KENTUCKY, EX
REL. J. MICHAEL BROWN,
SECRETARY, JUSTICE AND PUBLIC
SAFETY CABINET

REAL PARTY IN INTEREST

Petitioner Interactive Media Entertainment and Gaming Association, Inc. (“iMEGA”), by counsel, hereby moves for transfer of its petition under CR 76.36 from the Kentucky Court of Appeals to the Kentucky Supreme Court pursuant to CR 74.02. iMEGA’s petition was filed on March 23, 2010, and a copy is attached. As grounds for this motion, iMEGA states as follows.

This Court appears to have already recognized the importance of this case, found the arguments presented by iMEGA in favor of issuing a writ “numerous [and] compelling,” and has contemplated this course of action as proper for the parties in the action. (Opinion, *Commonwealth ex rel. J. Michael Brown, Secretary, Justice and Public Safety Cabinet v. Interactive Media Entm’t & Gaming Assn. et al.*, 2009-SC-43, Mar. 18, 2010 at 3, 13). In its Opinion, dated March 18, 2010, this Court stated, “If a party that can properly establish standing comes forward, the writ petition

giving rise to these proceedings could be re-filed with the Court of Appeals. The Court of Appeals could then properly proceed to the merits of the issues raised, or upon a proper motion, this Court could accept transfer of the case, as the merits of the argument have already been briefed and argued before this Court.” (*Id.* at 13).

In accordance with this Court’s Opinion, iMEGA has re-filed its petition with the Court of Appeals, and has filed with it affidavits from Joe Brennan, Chairman of iMEGA, and Yatahay Limited (“Yatahay”). (*See* Affidavit of Joe Brennan, Jr., Chairman of Interactive Media Entertainment & Gaming, Inc., attached to iMEGA’s Petition as Exhibit B; Affidavit of Yatahay Limited, attached to iMEGA’s Petition as Exhibit C). In the affidavits, Brennan and Yatahay state that Yatahay is an iMEGA member and that Yatahay is the registrant/owner of truepoker.com, one of the 141 domain names the Commonwealth has attempted to seize and forfeit in this action. (Brennan Aff. at ¶¶ 3-5; Yatahay Aff. at ¶¶ 2-4). Additionally, Brennan and Yatahay state that iMEGA has represented Yatahay’s interests throughout this litigation. (Brennan Aff. at ¶ 6; Yatahay Aff. at ¶ 5). Finally, Brennan and Yatahay affirm that the Franklin Circuit Court’s September 18, 2008 and October 16, 2008 Orders for seizure of domain names are directed at truepoker.com. (Brennan Aff. at ¶ 7; Yatahay Aff. at ¶ 6). Because iMEGA has established associational standing in accordance with the Court’s Opinion by naming a member of its association that has shown a concrete injury in fact, the Court should now resolve the substantive and important issues this case presents.

Moreover, this Court will allow transfer of a case from the Court of Appeals if “the case is of great and immediate public importance.” CR 74.02(2); *Fischer v. State Bd. of Elections*, 879 S.W.2d 475 (Ky. 1994). As this Court is aware, this case presents numerous questions of great and immediate public importance. The Commonwealth’s actions in this case raise an unusual number of

issues with potentially worldwide effect. This case raises jurisdictional and constitutional issues that include, but are by no means limited to, the right of a state to shut down part of the Internet worldwide; the constitutionality of the Commonwealth's attempted forfeiture of Internet domain names without any process whatsoever; the constitutionality of the trial court's, secret, *ex parte* hearing and its sealing of court records; and the constitutionality of the trial court's seizure of Internet domain names in secret without statutory or jurisdictional basis. Such issues are of great and immediate public importance because the Commonwealth's attempted actions in this case threaten the rights of iMEGA members and their domain names, none of which are located in the Commonwealth. An action by the Commonwealth of Kentucky that threatens to cut off part of the Internet worldwide, and threatens constitutional freedoms on a global scale is of great and immediate public importance and should be immediately taken up by this Court. A case such as this one presents issues that would benefit from immediate resolution by this Court and is precisely what the standard for a motion to transfer contemplates.

Finally, as recognized by this Court, the substantive issues raised by iMEGA's petition have already been decided by the Court of Appeals, briefed and argued before this Court, and raise "numerous [and] compelling arguments." (Mar. 18, 2010 Opinion at 3). Since this action is a petition pursuant to CR 76.36, if the Court of Appeals decides this petition for a second time, the losing party will likely bring this case back before the Court. Judicial efficiency also weighs heavily in favor of granting transfer. Courts have the inherent authority "to manage their own affairs so as to achieve the orderly and expeditious, accurate and truthful disposition of causes and cases." *Potter v. Eli Lilly & Co.*, 926 S.W.2d 449, 453-54 (Ky. 1996), *overruled on other grounds*, *Hoskins v. Maricle*, 150 S.W.3d 1 (Ky. 2004). In addition, Section 110(2)(a) of the Kentucky Constitution provides that the Supreme Court "shall have the power to issue all writs necessary in aid of its

appellate jurisdiction, or the complete determination of any cause, or as may be required to exercise control of the Court of Justice.” Since the case has already been before this Court and the Court has expressed an interest in making a complete determination of this case, judicial efficiency would mandate that this Court resolve the case on its merits.

WHEREFORE, Petitioner Interactive Media Entertainment and Gaming Association requests that this Court grant its motion and transfer this case to the Court for immediate resolution on the merits.

Respectfully submitted,



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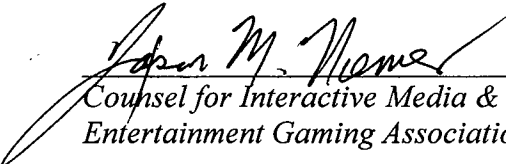
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*Counsel for Interactive Media Entertainment
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CERTIFICATE OF SERVICE

It is hereby certified that a true copy to the foregoing Motion to Transfer was served via U.S. Mail, postage prepaid, this 23rd day of March, 2010, upon the following:

Sam Givens, Clerk, Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601; Hon. Thomas Wingate, Judge, Franklin Circuit Court, P.O. Box 40601-0678, Frankfort, KY 40601-0678; D. Eric Lycan, William H. May, III, William C. Hurt, Jr., Aaron D. Reedy, Hurt, Crosbie & May, PLLC, 127 W. Main Street, Lexington, KY 40507, and Robert M. Foote, Foote, Meyers, Mielke & Flowers, LLC, 28 North First Street, Suite 2, Geneva, IL 60134, *Counsel for Appellant Commonwealth of Kentucky*; John L. Tate, Ian T. Ramsey, Joel T. Beres, Stites & Harbison, PLLC, 400 West Market Street, Suite 1800, Louisville, KY 40202, Bruce F. Clark, Stites & Harbison, PLLC, 421 West Main Street, Frankfort, KY 40601, and A. Jeff Ifrah, Jerry Stouck, Greenberg Traurig LLP, Suite 1000, 2101 L Street, N.W., Washington, DC 20037, *Counsel for Interactive Gaming Council and vicsbingo.com*; William E. Johnson, Johnson, True & Guarnieri, LLP, 326 West Main Street, Frankfort, KY 40601, Patrick T. O'Brien, Greenberg Traurig LLP, 401 East Las Olas Blvd., Suite 2000, Fort Lauderdale, FL 33301, and Kevin D. Finger, Paul D. McGrady, Greenberg Traurig LLP, 77 West Wacker Drive, Suite 2500, Chicago, IL 60601, *Counsel for playersonly.com, sportsbook.com, sportsinteractive.com, mysportsbook.com, and linesmaker.com*; P. Douglas Barr, Palmer G. Vance II, Alison Lundergan Grimes, Stoll Keenon Ogden PLLC, 300 West Vine Street, Suite 2100, Lexington, KY 40507, *Counsel for goldenpalace.com and goldencasino.com*; Lawrence G. Walters, Weston, Garrou, Walters & Mooney, 781 Douglas Avenue, Altamonte Springs, FL 32714, *Counsel for goldenpalace.com*; Charles M. Pritchett, Jr., Bart L. Greenwald, Joshua T. Rose, Frost Brown Todd LLC, 400 West Market Street, 32nd Floor, Louisville, KY 40202-3363, *Counsel for Amicus Curiae Poker Players Alliance*; Michael R. Mazzoli, Cox & Mazzoli PLLC, 600 West Main Street, Suite 300, Louisville, KY 40202, and Timothy B. Hyland, Jason M.A. Twining, Stein, Sperling, Bennett, De Jong, Driscoll & Greenfeig, PC, 25 West Middle Lane, Rockville, MD 20850, *Counsel for Amicus Curiae Network Solutions, LLC*; Laura D'Angelo, Wyatt, Tarrant & Combs, LLP, 250 West Main Street, Suite 1600, Lexington, KY 40507-1746, and Daniel G. Dougherty, eBay Inc., 2065 Hamilton Avenue, San Jose, CA 95125, *Counsel for Amicus Curiae eBay Inc.*; David A. Friedman, General Counsel, William E. Sharp, ACLU of Kentucky, 315 Guthrie Street, Suite 300, Louisville, KY 40202, Matthew Zimmerman, Senior Staff Attorney, Electronic Frontier Foundation, 454 Shotwell Street, San Francisco, CA 94110, and John B. Morris, Jr., General Counsel, Center for Democracy and Technology, 1634 I Street NW, Suite 1100, Washington, DC 20006, *Counsel for Amici Curiae The Electronic Frontier Foundation, The Center for Democracy and Technology, The American Civil Liberties Union of Kentucky, The Media Access Project, The United States Internet Industry Association, The Internet Commerce Coalition, and The Internet Commerce Association.*



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