

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2010-CA-000553-OA

INTERACTIVE MEDIA  
ENTERTAINMENT  
AND GAMING ASSOCIATION, INC.

PETITIONER

v. AN ORIGINAL ACTION  
ARISING FROM FRANKLIN CIRCUIT COURT  
ACTION NO. 08-CI-01409

HONORABLE THOMAS D. WINGATE,  
JUDGE  
FRANKLIN CIRCUIT COURT

RESPONDENT

COMMONWEALTH OF KENTUCKY, EX  
REL  
J. MICHAEL BROWN, SECRETARY,  
JUSTICE AND PUBLIC SAFETY CABINET;  
AND JACK CONWAY, ATTORNEY  
GENERAL, CABINET OF KENTUCKY

REAL PARTIES IN INTEREST

ORDER  
RECOMMENDING TRANSFER

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Upon motion of the petitioner Interactive Media Entertainment and Gaming Association, Inc., the Court of Appeals respectfully RECOMMENDS TRANSFER of the above-styled original action to the Supreme Court of Kentucky on the basis that the matters asserted in the petition satisfy the criteria set out in CR 74.02(5).

In its very recent opinion in *Commonwealth, ex rel. Brown v. Interactive Media Entertainment and Gaming Ass'n, Inc.*, 2010 WL 997104, 2 (Ky. 2010),<sup>1</sup> the Supreme Court vacated this Court's decision on the merits in a virtually identical original action and remanded the matter to be dismissed for lack of standing. However, the *Brown* opinion clearly indicated the Supreme Court's view of the public importance of the matters asserted in that action:

**Numerous, compelling arguments endorsing the grant of the writ of prohibition have been presented throughout the Court of Appeals' opinion, Judge Taylor's separate concurrence, the Appellees' briefs, the amici briefs, and oral argument before this Court.** This plethora of arguments includes, among others, that (1) Kentucky law only mandates the seizure of tangible gambling devices, and not intangible things such as domain names; (2) the court's civil forfeiture was unauthorized because KRS 528.100 only contemplates criminal sanctions; and (3) Kentucky lacks *in rem* jurisdiction over the domain names because they are not located in Kentucky. [Emphasis added.]

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<sup>1</sup> The opinion rendered March 18, 2010, is not yet final.

Petitioner in the instant action alleges that the standing impediment identified by the Supreme Court has now been removed and that the substantial jurisdictional question is ripe for review in the underlying original action. Review of the Supreme Court opinion in *Brown* appears to offer guidance not only as to the issue of satisfaction of the CR 74.02(5) criteria, but also as to preservation of the interests of judicial economy:

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.** [Emphasis added.]

*Id.* at 7.

Accordingly, the Court of Appeals respectfully recommends that the Supreme Court consider transfer of this action for decision on the merits.

ENTERED:                     MAR 26 2010                    

                    *James Combs*                      
CHIEF JUDGE, COURT OF APPEALS