

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI AT
KANSAS CITY**

**STATE OF MISSOURI, ex rel. JEREMIAH W.
(JAY) NIXON, Attorney General,
Plaintiff,**

vs.

**INTERACTIVE GAMING & COMMUNICATIONS CORP.,
a Delaware corporation,
Defendant.**

Case No. CV97-7808

**ORDER GRANTING PERMANENT INJUNCTION
AND FINAL JUDGMENT**

Now on this 22nd day of May, 1997, the Court takes up for hearing Plaintiff's cause of action **entitled State of Missouri. ex rel. Jeremiah W. (Jay) Nixon, Attorney General v. Interactive Gaming & Communications Corp.,** Case No. CV97-7808, for hearing. Plaintiff appears by Assistant Attorneys General J. Dale Youngs and Sue A. Sperry. Defendant Interactive Gaming & Communications Corp. ("IGC") does not appear either by representative or by counsel. Upon Defendant's failure to appear, failure to file an answer or otherwise respond to Plaintiff's petition, hearing the evidence presented, the argument of counsel, being otherwise duly advised in the premises and pursuant to Rule 74.05 of the Missouri Rules of Civil Procedure, the Court finds that an Order Granting a Permanent Injunction and Final Judgment should be **GRANTED**. Specifically, the Court finds that:

1. On April 7, 1997, Plaintiff, pursuant to Section 407.100 RSMo 1994, filed a Petition for Injunction, Restitution, Penalties and Other Relief in the above styled action alleging that certain violations of the Missouri Merchandising Practices Act, Chapter 407, RSMo 1994, had been committed by Defendant IGC. Defendant IGC was served with summons and that petition on April 14, 1997. A First Amended Petition was filed on April 10, 1997 and was served on April 11, 1997;
2. A hearing on Plaintiff's motion for preliminary injunction was scheduled for 9 a.m., May 22, 1997 in Division 7 of the Jackson County Circuit Court in Kansas City, MO. Prior to that time, Defendant IGC had failed answer or otherwise respond to Plaintiffs petition, despite being served with same on April 14 at the latest. No one appeared for Defendant IGC at the above hearing, and Plaintiff introduced into evidence a letter (Exhibit 28) dated May 22, 1997 from Lawrence Hirsch, an attorney and officer of IGC, which indicated IGC's intention not to appear at the hearing;
3. Plaintiff produced and examined four witnesses and offered 26 exhibits which were admitted into evidence;

4. Plaintiffs evidence showed and the Court finds that:

(a) Jeremiah W. (Jay) Nixon is the duly elected and acting Attorney General of the State of Missouri and that he brought this suit in his official capacity pursuant to Sections 407.020 and .100, RSMo 1994.

(b) IGC is a Delaware Corporation with its principal place of business in Blue Bell, PA, that Global Casino Ltd., a corporation organized under the laws of Granada, is a wholly owned subsidiary of IGC;

(c) IGC so controls the operation, funding, management and business practices of Global Casino, Ltd., that the subsidiary is merely the "alter ego" of IGC and that this control has been used by IGC to commit wrongs and violations of Missouri as more specifically set forth below;

(d) IGC markets, advertises, offers, promotes and sells casino gambling services such as slots, blackjack and roulette through its alter ego Global Casino, Ltd. All of these services are accessed by consumers, including Missouri residents, through IGC's Internet website at "www.gamblenet.com."

(e) Beginning on February 10, 1997, Plaintiff, pursuant to Sections 407.020, .040 and .100 RSMo 1994, conducted an investigation of the marketing, advertising, promotion, offering and sale by Defendant IGC of casino gambling global communications network called the Interact to determine services over the if certain violations of the Missouri Merchandising Practices Act, Chapter 407, RSMo 1994, had been committed by Defendant;

(f) During that investigation, an investigator for the Missouri Attorney General's Office accessed IGC's website from a computer located at 3100 Broadway, Kansas City, Jackson County, MO 64111;

(g) On or about February 14, 1997, an investigator for the Consumer Protection Division of the Missouri Attorney General's Office accessed IGC's website from a computer terminal located at 3100 Broadway, Kansas City, Jackson County, Missouri. At that time the website was advertising to Internet consumers, including those located in Missouri, the opportunity to participate in gambling activities called "slot tournaments" to be held on the Internet by IGC. IGC promoted its website, including these slot tournaments, to Missouri consumers by, other among methods, maintaining its website promoting its website, in consumers through its is answered at the company's offices in Pennsylvania, and which consumers could call for more information about the gambling services offered by its wholly owned Subsidiary. In response to consumers' calls to the toll free number advertised by IGC, IGC sends brochures to consumers describing and promoting its gambling services. IGC also transmits press releases and other information about Global Casino and its gambling services into the State of Missouri by e-mail;

(h) According to IGC, Internet users could register to participate in its gambling activities by completing an "Account Application" and mailing it to Global Casino in care of IGC at 595 Skippack Pike, Suite 100, Blue Bell, PA 19422 or faxing it to (215) 540-8176. In addition, participants were required to pay fees of \$100, \$200 or \$500, depending upon which tournament they entered. Methods of payment included sending a bank wire to Madison Bank, Blue Bell, PA or by sending a money order to Global Casino, in care of IGC at the above address. The above referenced "application" in fact constitutes an acceptance by consumers in MISSOURI OF IGC's offer to provide access to these gambling activities in exchange for payment of the fees set forth above;

(i) On February 25, 1997, the investigator contacted Global Casino in care of IGC at the telephone number advertised on the website: 1888-BET-NETT. The telephone call was placed from a telephone located at 3100 Broadway, Kansas City, Jackson County, Missouri. The telephone call was answered "Good Afternoon. Global Casino" by a woman named Marjorie who represented that she was speaking on behalf of Global Casino and who indicated in response to questions that she was located in Pennsylvania. Upon being informed that the caller lived in Kansas City, Missouri, and being asked if he would "get in trouble" for participating in the slot tournaments offered by Global Casino, Marjorie said "No." When asked if the gambling services offered by Global Casino and his participation in them were legal, Marjorie said "Yes;"

(j) On March 12, 1997, as instructed by Marjorie, the investigator completed and faxed his acceptance of the offer to participate in the slot tournament to Global Casino in care of IGC. Also pursuant to Marjorie's instructions, a money order for \$100 in the name of Global Casino was sent from Missouri to Global Casino in care of IGC at the above address in Blue Bell, PA. In addition, Marjorie sent the investigator a brochure regarding the sports book operated by IGC through Sports International, as well as an application to become a member. The investigator also received press releases and other information about Global Casino transmitted to his e-mail box located in Kansas City, Jackson County, Missouri;

(k) On March 17, 1997, the investigator received his login name and password from Global Casino and began gambling in the slot tournament operated by Global Casino on behalf of IGC, utilizing a computer with access to the Internet located 3100 Broadway, Kansas City, Jackson County, Missouri. IGC's offer to provide the above described gambling services in exchange for payment of the registration fee was accepted in the State of Missouri, causing a contract to be made within the state, and constituting the further transaction of business within the state pursuant to Section 506.500, RMSMo 1994;

(l) On April 24, 1997, Plaintiff and IGC entered into an agreement whereby IGC agreed not to accept any applications from Missouri residents for casino gambling services and agreed not to open any gambling accounts for Missouri residents until May 22, 1997, the date of the preliminary injunction hearing;

(m) From May 9, to May 20, 1997, IGC accepted the application and opened a gambling account for another investigator for the Attorney General's Office, accepted a \$200 deposit into that account and allowed the investigator to participate in IGC's casino gambling services;

(n) "Gambling" is defined by Section 572.010(4) as the staking or risking of something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome ... Gambling does not include any bona fide business transactions valid under the law of contracts ... any licensed activity, or persons participating in such games which are covered by Sections 313.800 to 313.840, RSMo." Participation by Missouri consumers in the slot tournaments marketed, advertised, offered, sold and promoted by IGC and its subsidiary constitutes "gambling" under Section 572.010(4), RSMo 1994. Such gambling activities are declared unlawful by Section 572.020, RSMo 1994;

(o) Under Section 572.010(1), a person "'advances gambling activity' if, acting other than as a player, he engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes but is not limited to conduct directed toward the creation of establishment of the particular game, lottery, contest, scheme, device or activity involved ... ;"

(p) IGC's conduct in advertising, promoting and selling to Missouri consumers access to its gambling services as described above constitutes the "advancement" and/or "promotion;" of gambling under Section 572.010(1). Such activities on the part of IGC and consumers participating in the services promoted, advertised and sold by IGC are declared illegal in the State of Missouri by Sections 572.030 and 572.040, RSMo 1994;

(q) Nowhere in the information provided by IGC either on the Internet, by telephone or through E-mail is there any notice that the gambling services promoted and sold by IGC through its wholly-owned and controlled subsidiary, as well as a consumer's participation therein, are illegal;.

(r) On February 25, 1997, a designated representative of Global Casino which is controlled by IGC, affirmatively stated that the gambling services advertised and sold by IGC, and the investigator's participation in those activities were legal in the State of Missouri;

(s) Section 4097.020, RSMo 1994 provides, in pertinent part:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in Section 497.453, in or from the State of Missouri, is declared to be an unlawful practice.

Section 497.100, RSMo 1994, provides:

1. Whenever it appears to the Attorney General that a person has engaged in, is engaging in or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitations, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

2. In any action under subsection of this section, and pursuant to the provisions of the Missouri Rules of Civil Procedure, the attorney general may seek and obtain temporary restraining orders, preliminary injunction, temporary receivers, and the sequestering of any funds or accounts if the court finds that funds or property may be hidden or removed from the state or that such orders or injunctions are otherwise necessary.

3. If court finds that the person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ, or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter.

4. The court in its discretion, may enter an order of restitution, payable to the state, as may be necessary to restore to any person who has suffered any ascertainable loss, including but not limited to, any moneys or property, real or personal which may have been acquired by means of any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter. It shall be the duty of the attorney general to distribute such funds to those persons injured.

5. The court, in its discretion, may appoint a receiver to insure the conformance to any orders issued under subsection 3 of this section or to insure the payment of any damages ordered under subsection 4 of this section.

6. The court may award to the state a civil penalty of not more than one thousand dollars per violation; except that, if the person who would be liable for such penalty shows, by a preponderance of the evidence that a violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no civil penalties shall be imposed.

7. Any action under this section may be brought in the county in which the defendant resides where the violation alleged to have been committed occurred, or where the defendant has his principal place of business.

(t) 15 CSR Section 60-8.020 defines "unfair practice" as follows:

(1) An unfair practice is any practice which

(A) Either --

1. Offends any public policy as it has been established by the Constitution, statutes or common law of this state, or by the Federal Trade Commission, or its interpretive decisions; or

2. Is unethical, oppressive or unscrupulous; and

(B) Presents a risk of, or causes, substantial injury to consumers; and

(u) By the acts, practices and conduct of Defendant IGC described above it has engaged in the use of misrepresentation, unfair practices and concealment, suppression and omission of material fact in the marketing, advertising, promotion, offering and sale of merchandise, to wit: casino gambling services, in trade or commerce in the State of Missouri. The Court finds that Plaintiff has established 22 separate and distinct violations of the Act.

(v) Through the acts, practices and conduct described above, Defendant IGC has been and continues to be in violation of Section 407.020, RSMo 1994, and therefore this Permanent Injunction and Final Judgment is warranted and justified pursuant to Section 407.100, RSMo 1994.

Based on the above evidence and findings IT IS THEREFORE ORDERED ADJUDGED AND DECREED as follows:

I. General

1. **Jurisdiction.** The Court has subject matter jurisdiction over this action and this action and has personal jurisdiction over the parties hereto. The Court is empowered to enter this Permanent Injunction and Final Judgment pursuant to Section 407.100, RSMo 1994.

2. **Jurisdiction Retained** Jurisdiction is retained for the purpose of enabling any party to this Injunction to apply to the Court at any time for purpose of enforcement of the provisions herein or for the punishment of a violation of this order pursuant to the provisions of ?407.110, RSMo 1994 and to fully adjudicate the merits of this cause of action.

3. **Severability.** If any provision or provisions of this Permanent Injunction is or are declared invalid by a court of competent jurisdiction, the remainder of this Permanent Injunction shall remain in full force and effect and shall not be affected by such declaration.

II. Notice to Employees

Notice. Immediately upon the entry of this Permanent Injunction, Defendant IGC shall provide a copy of this Permanent Injunction to all present and future officers, directors,

employees attorneys, representatives, agents, assigns and persons or entities who are acting on behalf of or in concert with the Defendant IGC or any and all of its subsidiaries, including but not limited to Intersphere Communications, Ltd. (Grenada), Intersphere Communications, Ltd., and Global Casinos, Ltd.

III. Injunctive Relief

IT IS THEREFORE ORDERED that Defendant IGC, its successors or assigns, agents, subsidiaries, officers, directors, attorneys, servants and employees, and all those persons and/or entities in active concert or participation with it and all persons or entities having actual notice of this Injunction are hereby enjoined and prohibited from:

1. Marketing, advertising, offering, and/or promoting by any oral, graphic or pictorial statement, including e-mail, notices, direct mail, brochures, pamphlets, handbills, letters, in or into the State of Missouri and through any conversations with Missouri residents, the opportunity for Missouri residents to participate in any form of casino gambling as that term is defined by Section 572.010(4), RSMo 1994;
2. Representing in any way by any means that the casino gambling services marketed, advertised, offered, sold and/or promoted by IGC and consumers' participation therein are legal in the State of Missouri; and
3. Concealing, suppressing and omitting the fact that the casino gambling services marketed, advertised, offered, sold and/or promoted by IGC and consumers' participation therein are illegal in the State of Missouri.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant IGC, its successors or assigns, agents, subsidiaries, officers, directors, attorneys, servants and employees, and all those persons and/or entities in active concert or participation with it in order to accomplish the provisions of paragraph III. 1. above are required and ordered to take actions including but not limited to the following:

A. Immediately reject and refuse all applications from residents of the State of Missouri to participate in online casino gambling through its Global Casino or any other entity by whatever means necessary including, but not limited to, programming its software to perform a validity check for the state of residence of each applicant such that, immediately upon receipt of an online application from a Missouri resident, Defendant IGC will automatically and electronically transmit a message to that resident to be received on the resident's computer and viewable on his or her computer screen notifying that resident of the rejection of his or her application. Said computer or "online" notice shall followed in no more than 2 working days by written notice mailed from Defendant IGC to the Missouri resident notifying the resident of the rejection of his or her application. The written notice shall state without elaboration that the resident's application was rejected pursuant to a Permanent Injunction entered on May 22, 1997, by the Jackson County Circuit Court in Kansas City, MO which prohibits IGC from accepting applications for casino gambling from Missouri residents. A copy of the

written notice shall be mailed to the Missouri Attorney General's Office, 3100 Broadway, Kansas City, MO 64111 on the same day it is mailed to the Missouri resident. A copy of the written notice shall be maintained by Defendant IGC at all times. Evidence of the computerized application and rejection transaction shall also be maintained by Defendant IGC at all times in original electronic form. If applications are received by IGC or subsidiaries from Missouri residents by some means other than computer transmission, the written notice identified above shall be sent by Defendant IGC to the Missouri resident by express mail on the day the application is received, along with the original application. A copy of said written notice and the application shall be sent by regular mail on that day to the Missouri Attorney General's Office at the above address. Defendant IGC shall maintain copies of all such application and notices at all times.

B. Electronically record and correlate by whatever means necessary, including but not limited to reprogramming its software, the Internet Protocol ("IP") address of each user who applies to the Global Casino by online application and the application.

C. Reject and refuse to open any accounts for residents of the State of Missouri and reject and refuse any funds in any form sent to and received by Defendant IGC or any of its subsidiaries from Missouri residents for the purpose of participating in online casino gambling through IGC's Global Casino or any other entity. Upon receipt of any funds from a Missouri resident, Defendant IGC and its subsidiaries shall return said funds to the resident with a copy of the written notice identified in paragraph A. Above. A copy of the written notice shall be sent to the Missouri Attorney General's Office as provided above and a copy shall be maintained by Defendant IGC as provided above. All funds sent to IGC or subsidiaries by Missouri residents currently in the possession of IGC or its subsidiaries are to be returned immediately to the Missouri residents.

D. Post a prominent notice on the homepage, as well as all pages pertaining to or referencing the application and/or process for applying to Defendant IGC's casino gambling services at <http://www.gamblenet.com/main.html> (or any other domain name identifying IGC's website,) stating, without elaboration, that IGC and Global Casino are prohibited by a Permanent Injunction entered on May 22, 1997, by the Jackson county Circuit Court in Kansas City, MO, from accepting applications or funds from any Missouri resident to participate in any of the casino gambling activities offered by IGC and that all applications received from Missouri residents will be immediately rejected and any funds received will be immediately returned.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant IGC, its successor or assigns, agents, subsidiaries, officers, directors, attorneys, servants and employees, and all those person and/or entities in active concert or participation with it in order to ensure compliance by Defendant IGC with the provisions of this injunction, are required and ordered to:

Provide complete access to all records, documents, files, folders, user files and/or any information whatsoever, whether maintained in hard copy form; by computer through software, program, direct access storage device or any other means; or by any means

whatsoever, in any geographic location, belonging to or in the control of Defendant IGC or its subsidiaries, to an independent entity chosen by the Missouri Attorney General's Office to enable that entity to perform periodic audits of Defendant IGC's compliance with the provisions of this Injunction. No advance notice of such audits will be given to Defendant IGC or its subsidiaries. The nature and amount of information necessary to perform these audits to which Defendant IGC shall provide access shall be at the sole designation and discretion of the independent entity. All costs and expenses associated with these audits incurred by the entity shall be borne by and shall be the sole responsibility of Defendant IGC. The entity chosen by the Missouri Attorney General's Office shall prepare a written report memorializing the findings of each audit and shall provide said report to the Missouri Attorney General's Office and to Defendant IGC within 3 working days of the completion of the audit. The Missouri Attorney General's Office may obtain an oral report of the entity's findings by telephoning the entity upon completion of the audit. Any failure to comply with any provision of this Injunction found by the independent entity shall be **prima facie** evidence of a violation of this Injunction.

IV. Other Relief

The Court finds from the evidence presented by Plaintiff that, in addition to the other relief granted by the Court in Section III., above, plaintiff has shown its entitlement to other relief under Chapter 407, RSMo 1994. Accordingly, FINAL JUDGMENT IS HEREBY ENTERED IN FAVOR OF PLAINTIFF AND AGAINST DEFENDANT IN THE FOLLOWING FURTHER RESPECTS:

1. Pursuant to Section 407.100.6, the Court awards plaintiff the sum of \$1,000.00 per violation by defendant of the Missouri Merchandising Practices Act as shown by Plaintiff for a total of \$22,000.00 in civil penalties to be paid by Defendant pursuant to that section.
2. The Court further orders Defendant to make payment to the state in the amount of \$10,000.00 for credit to the Merchandising Practices Revolving Fund pursuant to Section 407.140, RSMo 1994.
3. The Court further orders Defendant to make payment to the State of its costs of investigation and prosecution of this action to enforce the provisions of Chapter 407 in the amount of \$34,050.00

Upon proof by Plaintiff of a violation by Defendant IGC of any of the terms or conditions of this Permanent Injunction, the Court shall assess civil penalties of not more than Five Thousand Dollars (\$5,000) per violation pursuant to Section 407.110, RSMo 1994; and/or shall enter an order finding Defendant IGC in civil or criminal contempt, and/or shall enter an order awarding Plaintiff appropriate costs including reasonable attorneys' fees, and/or shall order such other relief as the Court deems appropriate. Furthermore, if Plaintiff believes Defendant IGC has violated any provision of this Permanent Injunction, the Attorney General is not constrained from initiating any further investigations for legal

proceedings against Defendant, including those procedures set out in Section 407.020 **et seq.**, RSMo 1994.

SO ORDERED.