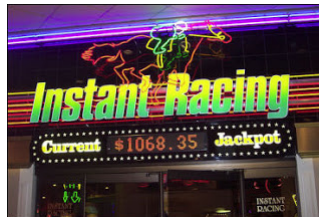


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## Update on Instant Racing (/full-blog/2012/09/update-on-instant-racing.html)

"Family Foundation" (/full-blog?category=%22Family+Foundation%22), "Franklin Circuit Court" (/full-blog?category=%22Franklin+Circuit+Court%22), "Kentucky Downs" (/full-blog?category=%22Kentucky+Downs%22), "Kentucky Horse Racing Commission" (/full-blog?category=%22Kentucky+Horse+Racing+Commission%22), "instant racing" (/full-blog?category=%22instant+racing%22)



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Image Source (<http://www.standardbreedersusa.ca/file/imagecache/%252FInstant-Racing-01.jpg>)

By: Matt Hassen, Staff Member

Last year, Taryn DeVeau blogged about a decision out of the Franklin Circuit Court that held instant racing to be a pari-mutuel form of wagering and thus within the authority of the Kentucky Horse Racing Commission.[1] Since that decision, instant racing has taken off at Kentucky Downs, the subject of the original suit. In eleven months, \$130 million was bet on instant racing; average daily purses jumped from \$179k to \$409k; and handle increased from \$4.3 million last September

to \$17 million in August.[2] The Kentucky Court of Appeals, however, vacated the Franklin Circuit Court's decision.

Instant Racing consists of a video of a race that was run in the past. Bettors are allowed to wager on the outcome based on a provided data set, but the race does not occur at the moment a patron observes it; rather, they wager on the result of a race that already happened.[3] Several horse racing organizations originally filed a petition for a declaration of rights following instant racing regulations adopted by the Racing Commission.[4] Subsequently, the Family Foundation intervened, arguing that the regulations violated Kentucky's gambling laws.[5] After Family Foundation intervened, the circuit court denied its request for discovery.[6]

That denial of discovery proved fatal for the circuit court's decision. According to the Kentucky Court of Appeals, "the parties had a right to develop proof and to present evidence to establish that the wagers made by patrons at electronic gaming machines do or do not meet the definition of pari-mutuel wagering on a horse race." [7] Because of the lack of evidentiary support for its decision, the appellate court found (http://www.blogger.com/blogger.g?blogID=8202935745006855383) review of the circuit court's decision "impossible" and ordered further proceedings in order to determine such factual issues as the precise manner in which wagers are pooled and how the odds are calculated for instant racing wagering.[8]

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[1] Taryn DeVaux, *Instant Racing: A Possible Tiffeta for Kentucky*, KY. J. EQ. AG. & NAT'L RES. L. BLOG., (Oct. 21, 2011) <http://www.kjcaandl.com/2011/10/instant-racing-possible-tiffeta-for.html>.

[2] Janet Patton, *With instant racing, Kentucky Downs goes from sleepy track to very much alive*, LEXINGTON HERALD-LEADER, (Sept. 2, 2012) <http://www.kentucky.com/2012/09/02/2320364/with-instant-racing-kentucky-downs.html>.

[3] *Family Trust Found., of Ky., Inc. v. Ky. Horse Racing Comm'n.*, No. 2011-CA-000164-MR, 2012 WL 2160190, 3, (Ky. Ct. App. 2012).

[4] *Id.* at 4.

[5] *Id.*

[6] *Id.* at 8.

[7] *Id.* at 9.

[8] *Id.* at 9-10.

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