



BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

Groupe Partouche / Mandarin Data Processing, Eric Richard

Case no. 44217: casinopartouche.be

1. The parties

- 1.1. Complainant: Groupe Partouche, a French company with registered office at 141 bis, rue de la Sassure, 75017 Paris, France.

Represented by:

Selina CHAN,
Safenames Limited, Legal Representative,
with office at Safenames House, Sunrise Parkway, Linford
Wood, Milton Keynes, MK14 6LS, United Kingdom.

- 1.2. Domain Name Holder:

MANDARIN DATA PROCESSING, Eric Richard;
residing 35, Barrack Road, 1074, Belize City, Belize.

Not represented.

2. Domain name

Domain name: casinopartouche.be
Registered on: 23 April 2007

hereafter referred to as "the Domain Name".

3. Background to the case

On November 23rd, 2010, the Complainant filed a complaint with CEPANI according to the CEPANI rules for domain name dispute resolution and the dispute resolution policy of DNS, incorporated in the General Conditions, concerning the Domain Name.

The Complainant requested that the Domain Name be transferred over to the

CEPANI – NON-PROFIT ASSOCIATION

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Complainant.

On November 25th, 2010, CEPANI communicated the Complaint to the Domain Name Holder.

No Response was submitted by the Domain Name Holder.

The undersigned was appointed by CEPANI as third-party decider on December 22nd, 2010. On the same day, CEPANI informed the Complainant and the Domain Name Holder that the undersigned was appointed as Third-Party Decider.

The deliberations were closed on January 3rd, 2011.

4. Factual information

The Complainant in this matter, Groupe Partouche, was founded in 1973 by Isidore Partouche and his family and is a leading international provider of online gaming and entertainment services. It has operated under the name PARTOUCHE since 1973. The Complainant operates 55 casinos in France, Belgium, Spain, Switzerland and Turkey.

The Complainant has numerous registered trademarks containing "PARTOUCHE", amongst which the following can be singled out:

Trademark	Registration No.	Class	Filing Date/ Registration Date	Country of TM
GROUPE PARTOUCHE	3263728	35; 36; 41; 43	18/12/2003	FR
GROUPE PARTOUCHE	982668	35; 36; 41; 43	22/07/2008	EU
PARTOUCHE	3439797	16; 28; 35; 36; 38; 41; 42; 43	10/07/2006	FR

Groupe Partouche has expanded to include interactive operations, such as online poker and mobile games and as a result, the Complainant has registered many domain names which consists of, or contains "PARTOUCHE", amongst which the following can be singled out:

Domain Name	Registration Date	Expiration Date
PARTOUCHE.COM	04/02/1999	04/02/2012
PARTOUCHE.FR	18/12/1998	17/05/2010
CASINOPARTOUCHE.COM	09/02/2004	09/02/2012

Apart from its trademark use, the Complainant also utilises the mark "PARTOUCHE" as its tradename, social name, and as a designation of source.

The Complainant acquired its first casino in Belgium in 1995 and since then, this portfolio has increased to a total of four casinos in different areas of Belgium, namely Knokke-le-Zoute, Ostend, Chaudfontaine, and Dinant.

The Complainant has made continuous and consistent use of the term "PARTOUCHE" within Belgium for over 15 years through the marketing and provision of its branded gaming services.

No information is provided about the domain name holder, except that he has already been involved in a previous domain name dispute against Compliant (WIPO Case n° D2010-1618). In that case, the domain names at stake were “bingo-partouche.com”, “bingopartouche.com” and “partouche-pokertour.com”, and the WIPO Panel withheld that these domain names were confusingly similar to the complainant’s trademarks, that the Domain Name Holder registered them with no legitimate interest, and that he registered and used them with bad faith. The WIPO panel therefore decided to transfer the said domain names over to the Complainant.

The Domain Name currently resolves to a “parking” web page displaying pay-per-click links and acting as a portal to websites of the Complainant’s competitors as well as unrelated third parties.

5. Position of the parties

5.1. Position of the Complainant

The Complainant states that the Domain Name is confusingly similar to its abovementioned trademarks as well as to its trade name “PARTOUCHE”.

As regards the latter, Complainant refers to Article 8 of the Paris Convention, which prohibits the requirement of registration of a trade name as a condition precedent for protection. Trade name rights subsist through use and protection is granted in the places and countries in which they are effectively used and as such. The Complainant asserts it should be granted such protection.

The Complainant puts forward that the existence of registered trademarks corresponding to “PARTOUCHE” supports any contentions of having rights in the mark “PARTOUCHE” as the key distinctive element of the trademarks is in the term “PARTOUCHE”. Additionally, the Complainant’s corporate name, Groupe Partouche, is identifiable and uniquely associated with the Complainant on the basis of the word “PARTOUCHE”.

Complainant states that the Domain Name Holder has no right or legitimate interest in respect of the Domain Name since it has not been authorized by the Complainant to register and use the domain name and is not making a legitimate non-commercial or fair use of the Domain Name. The Domain Name Holder is not affiliated with the Complainant in anyway and could not make any legitimate use of the domain name given the fame, reputation and goodwill associated with Groupe Partouche.

Complainant submits that the Domain Name Holder has registered, used and continues to use the disputed domain names in bad faith. Complainant asserts that its trademark enjoys an international reputation and that the Domain Name Holder is trying to use that reputation.

5.2. Position of the Domain Name Holder

The position of the Domain Name Holder is unknown as he did not reply to Complainant’s contentions.

6. Discussion and findings

Pursuant to Article 15.1 of the *CEPANI rules for domain name dispute resolution*, the Third-Party Decider shall rule on domain name disputes with due regard for the Policy and the CEPANI rules for domain name dispute resolution.

Pursuant to Article 10b(1) of the Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE, the Complainant must provide evidence of the following:

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- I) *the licensee's domain name is identical or confusingly similar to a trademark, a trade name, a social name or corporation name, a geographical designation, a name of origin, a designation of source, a personal name or name of a geographical entity in which the Complainant has rights; and*
- II) *the licensee has no rights or legitimate interests in the domain name; and*
- III) *the licensee's domain name has been registered or is being used in bad faith.”*

6.1. The Domain Name is identical or confusingly similar to a trademark, a trade name, a social name or corporation name, a geographical designation, a name of origin, a designation of source, a personal name or name of a geographical entity in which the Complainant has rights

The Complainant has provided enough evidences in support of the abovementioned trademarks and domain names registrations.

It has also provided enough evidences proving the facts that lead to the conclusion of the protection of its trade name “PARTOUCHE” conforming to art. 8 of the Paris Convention.

The suffix “.be” is generally accepted as being irrelevant for determining the similarity between the disputed domain name and the name on which the Complainant claims a right (CEPINA cases n°44021 (“napster.be”), 44025 (“allienz.be”), 44030 (“chopard.be”), 44034 (“monsanto.be”)).

The Domain Name “casinopartouche.be” contains the Complainant’s distinctive mark “PARTOUCHE” in full.

The risk that the public might believe that the domain name is linked to the trademarks or trade name of the Complainant or to the Complainant, and may therefore mislead, is real. This risk is enforced by the fact that the added generic term “casino” refers to the main activity of the Complainant.

The Third-Party Decider therefore holds that the disputed Domain Name is confusingly similar to the Complainant’s registered trademarks and trade name, and that the condition stated in Article 10, b), 1, I) of the Terms and conditions of domain name registrations under the ".be" domain is fulfilled.

6.2. The Domain Name Holder has no rights or legitimate interests in the domain name

It is generally accepted that the Complainant cannot be imposed the burden of proof of a negative fact, namely the absence of right or legitimate interest (CEPANI cases n°44020 (politiciens francophones), n°44067 (“rembostyling.be”), 44167 (“present.be”)).

Pursuant to article 10, b), 3 of the Terms and conditions of domain name registrations under the “.be” domain, the domain name holder can demonstrate his rights or legitimate interests to the domain name by the following circumstances:

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- *prior to any notice of the dispute, the domain name holder used the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services or made demonstrable preparations for such use; or*
- *the domain name holder (as an individual, business, or other organization) has been commonly known by the domain name, even if he has acquired no trademark; or*
- *the domain name holder is making a legitimate and non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark, trade name, social name or corporation name, geographical designation, name of origin, designation of source, personal name or name of the geographical entity at issue. “*

The Complainant alleges that none of these circumstances are applicable to the Domain Name Holder, given that he has not been authorized by the Complainant to register and use the domain name, that he is not making a legitimate non-commercial or fair use of the Domain Name, that he is not affiliated with the Complainant in anyway.

The CEPANI case law has already established that, given the circumstances of a case (generally the absence of response from the Domain Name Holder), such statements are sufficient to argue that the Domain Name Holder has no rights or interests in the Domain Name (CEPANI case n° 44067 (“rembostyling.be”)).

The Complainant further refers to the CEPANI case n° 44067 (“rembostyling.be”) and concludes that the fact that the Domain Name in dispute currently resolves to third party parking page cannot give rise to legitimate rights and interests in the domain name.

A licensee is expected to cooperate and produce evidence of the existence of a right or a legitimate interest (CEPANI cases n°44056 (“idealstandard.be”), n°44067 (“rembostyling.be”)). In the present case, the Domain Name Holder has not challenged any of the Complainant’s contentions.

The Third-Party Decider therefore holds that the Domain Name Holder has no right or legitimate interest in the Domain Name, and that the condition stated in Article 10, b), 1, II) of the Terms and conditions of domain name registrations under the “.be” domain is fulfilled.

6.3. The Domain Name has been registered or is being used in bad faith

Pursuant to article 10, b), 2 of the Terms and conditions of domain name registrations under the ".be" domain, the evidence of in bad faith registration or use of a domain name can *inter alia* be demonstrated by the following circumstances:

- *circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the Complainant who is the owner of the trademark, trade name, social name or corporation name, geographical designation, name of origin, designation of source, personal name or name of the geographical entity, or to a competitor of that Complainant, for valuable consideration in excess of the costs directly related to the domain name; or*
- *the domain name was registered in order to prevent the owner of a trademark, a trade name, a social name or corporation name, a geographical designation, a name of origin, a designation of source, a personal name or a name of a geographical entity from reflecting this name in a corresponding domain name, provided that the domain name holder has engaged in a pattern of such conduct; or*
- *the domain name was registered primarily for the purpose of disrupting the business of a competitor; or*
- *the domain name was intentionally used to attract, for commercial gain, Internet users to the domain name holder's web site or other on-line location, by creating a likelihood of confusion with the Complainant's trademark, trade name, social name or corporation name, geographical designation, name of origin, designation of source, personal name or name of a geographical entity as to the source, sponsorship, affiliation, or endorsement of the domain name holder's web site or location or of a product or service on his web site or location.*
- *the domain name holder registers one or more personal names without the existence of a demonstrable link between the domain name holder and the registered domain names.*

Bad faith must be reasonably proven, and may be proved by any means, including presumptions and circumstances that indicate with a reasonable degree of certainty the existence of bad faith. It can be inferred from the circumstances of the case, e.g. when the domain name at stake is a well-known trademark or a trademark so arbitrarily chosen that it is impossible or extremely unlikely that a third party would have selected this word (CEPANI cases n°44014 ("fa.be"), n°44068 ("vueling.be")).

In the present case, the mark "PARTOUCHE" refers to the family name of the founder of the Claimant, Mr. Isidore Partouche. There is no other conceptual link between the mark "PARTOUCHE" and the casino business, in which the Complainant is strongly active since decades. It is therefore extremely unlikely that a third party would have randomly selected this name and combined it with the word "casino" to create a domain name, without knowing the Groupe Partouche and its casinos.

An Internet user entering the Domain Name in dispute ("casinopartouche.be") into a web browser is, on a balance of probabilities, more likely than not, expecting to arrive at a web site hosted by Complainant.

The Third-Party Decider concurs with the Complainant in, considering that given the Complainant's numerous trademark registrations in France and internationally and its wide reputation in the name PARTOUCHE, in addition to the Complainant's notoriety in the poker industry, it is not possible to conceive of a plausible circumstance in which the Licensee would have not been aware of this fact at the time of registration.

Furthermore, the Domain Name Holder has engaged in a pattern consisting of registering many other domain names combining "PARTOUCHE" with words describing other activities of the Complainant, such as "bingo-partouche.com", "bingopartouche.com" and "partouche-pokertour.com" (the transfer of which have been ordered by the WIPO Panels, as they were confusingly similar to the complainant's trademarks, registered with no right or legitimate interest, and registered and used with bad faith by the Domain Name Holder).

The parking page use of the Domain Name also demonstrates the Domain Name Holder's motives as he most probably profits from the referral revenue generated by the sponsored links. It is very likely that the Domain Name Holder is paid for redirecting web traffic by creating a likelihood of confusion with the Complainant's mark. The links on the parking page refer indeed to the gaming and gambling industry, i.e. to products which are identical or highly similar to those provided by the Complainant.

The Third-Party Decider is therefore of the opinion that the Domain Name was registered in order to prevent the Claimant from reflecting his name in a corresponding domain name or for the purpose of disrupting the business of the Claimant, or, at least, that the Domain Name has been used to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's trademarks and trade name.

The Third-Party Decider therefore holds that the Domain Name has been registered or is being used in bad faith, and that the condition stated in Article 10, b), 1, III) of the Terms and conditions of domain name registrations under the ".be" domain is fulfilled.

7. Decision

Consequently, pursuant to Article 10(e) of the *Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE*, the Third-Party Decider hereby rules that the domain name registration for the "**casinopartouche.be**" Domain Name is to be transferred to the Complainant.

Brussels, January, 11th, 2011.

Philippe LAURENT
The Third-Party Decider
(signature)