

BELGIAN CENTRE FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

Groupe Partouche/ Mr. Raymond Pousaz

**Case no. 44218: partouchebingo.be
partouche-bingo.be
partouchecasino.be
pokerpartouche.be
poker-partouche.be**

1. Parties

1.1. Complainant:

Groupe Partouche
141 bis, rue de Sassure
75017 Paris, France

Represented by:

Safenames Limited
Ms. Selina Chan
Legal department
Sunrise Parkway, Linford Wood
MK14 6LS Milton Keynes, United Kingdom
selina.chan@safenames.net

1.2. Domain names holder:

Mr. Raymond Pousaz
605, Crescent Executive CT
32746 Lake Mary, United States
john@casino770.com

Not represented

2. Domain names

Domain names: **partouchebingo.be
partouche-bingo.be
partouchecasino.be
pokerpartouche.be
poker-partouche.be**

Registered on: 27 February 2008

Hereafter referred to as "the domain names"

CEPANI – NON-PROFIT ASSOCIATION

Stuiversstraat 8, B-1000 Brussels ● Telephone: +32 2 515 08 35 ● Fax: +32 2 515 08 75
E-mail: cepina@vbo-feb.be ● Website: <http://www.cepani.be>
FORTIS BANK: 210-0076085-89 ● KBC: 430-0169391-20 ● BBL: 310-0720414-81

3. History of the Procedure

The Complainant has submitted a complaint dated November 24, 2010 with the Belgian Center for Arbitration and Mediation ("CEPANI") against the Domain names holder seeking the transfer of the domain names.

CEPANI has notified the Domain names holder of the complaint but the Domain names holder has not submitted any response within twenty-one (21) calendar days of the commencement of the proceeding.

The Third-party decider was appointed on December 22, 2010 after having communicated his declaration of independence to the CEPANI on December 21, 2010.

The deliberations were closed on January 3, 2011.

4. Factual information

The Complainant was founded in 1973 by Isidore Partouche and is an international provider of online gaming and entertainment services.

The Complainant has operated under the name "PARTOUCHE" since purchasing its first casino in 1973.

The Complainant operates a total of 55 casinos in France, Belgium, Spain, Switzerland and Turkey with 4 casinos being based in Belgium.

The group's business also includes the operation of 19 hotels and 130 restaurants in addition to running the Partouche Poker Tour.

The Complainant has registered numerous trademarks consisting of or containing the term "PARTOUCHE". In particular, the Complainant relies on three trademarks, namely:

- the French figurative trademark "GROUPE PARTOUCHE" n° 3263728, filed on December 18, 2003
- the French verbal trademark "PARTOUCHE" n° 3439797, filed on July 10, 2006
- the International figurative trademark designating the EC, "GROUPE PARTOUCHE" n° 0982668, filed on July 22, 2008

Furthermore, the Complainant has registered numerous domain names consisting of or containing the term "PARTOUCHE". In particular, the Complainant mentions in its complaint:

- partouche.com, registered on February 4, 1999
- partouche.fr, registered on December 18, 1998
- partouchebingo.ch, registered on February 27, 2008
- partouchecasino.fr, registered on September 2, 2008
- pokerpartouche.com, registered on March 16, 2005
- pokerpartouche.org, registered on February 13, 2008

The Complainant also uses the term "PARTOUCHE" as its tradename, social name, corporate name and its designation of source.

The Domain names holder registered the disputed domain names on February 27, 2008.

The disputed domain names point to web pages displaying links to websites of the Complainant's competitors or unrelated third parties.

5. Position of the parties

5.1. Position of the Complainant

The Complainant claims that:

- The domain names in dispute (namely, partouchebingo.be, partouche-bingo.be, partouchecasino.be, pokerpartouche.be, poker-partouche.be) are confusingly similar to its trademarks, tradename, social name, corporate name and its designation of source.
- The Domain names holder has no rights or legitimate interests in the domain names. (i) The Domain name holder did not use, prior to any notice of the dispute, the litigious domain names or names corresponding to the domain names in the conduct of his business. The domain names in dispute are all currently pointing to web pages displaying links to websites of the Complainant's competitors or third parties. (ii) The Domain names holder has never been commonly known by the domain names, particularly because there is no Community or Benelux trademarks with the term "PARTOUCHE" associated with the Domain names holder and this term is widely associated with the Complainant's goods and services. (iii) The Domain names holder is not making a legitimate and non-commercial or fair use of the domain names as his intention is to use the reputation of the term "PARTOUCHE" to make financial gain and profit as well as to tarnish the Complainant's mark.
- The domain names in dispute have been registered and are used in bad faith. (i) The Domain names holder could not ignore the brand "PARTOUCHE" when registering the disputed domain names. (ii) The Domain names holder and his corporate group have systematically tried to prevent the Complainant from developing and expanding its business by "stockpiling" domain names which contain the Complainant's mark "PARTOUCHE". (iii) There is no indication or evidence of the Domain names holder's genuine use for his own activities of the sites of the domain names in dispute, nor intention to use the disputed domain names. (iv) The current use of the domain names in dispute seek to drive web traffic away from the Complainant and to exploit the Complainant's brand for financial gain.

5.2. Position of the Domain names holder

The Domain names holder did not submit any response.

Consequently, the dispute shall be decided on the basis of the Complaint (art. 5.4 of the CEPANI Rules for Domain Name Dispute Resolution).

6. Discussion and findings

Pursuant to Article 15.1 of the CEPANI rules for Domain Name Dispute Resolution, the Third-Party decider shall decide on the Complaint in accordance with DNS BE Policy and these rules.

Pursuant to Article 10 b (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:

- (i) *" the Domain name holder'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 Domain name holder has no rights or legitimate interests in the domain name; and*
- (iii) *the Domain name holder's domain name has been registered or is being used in bad faith."*

6.1. Identical or confusingly similar to

The disputed domain names consist of the term "PARTOUCHE" associated with the terms "BINGO", "CASINO" and "POKER".

The documents submitted by the Complainant show that the Complainant has rights in the "PARTOUCHE" trade name, social name, corporation name and designation of source.

The disputed domain names are surely confusingly similar to the "PARTOUCHE" trade name, social name, corporation name and designation of source. Indeed, the addition of the terms "BINGO", "CASINO" and "POKER" is not sufficient to obviate or even reduce the likelihood of confusion. On the contrary, these terms are so closely associated with the Complainant's core area of business that this likelihood of confusion is only enhanced.

Pursuant to the jurisprudence of the Third-party decider no consideration needs to be given to the suffix ".be" while evaluating the issue of the identity or similarity (see among others, cases n° 44076, 44068, 44067, 44061, 44060 and 44059).

Therefore, the first condition stipulated under article 10 b (1) (i) of the terms and conditions of domain name registrations under the ".be" domain operated by DNS BE is fulfilled.

6.2. Rights and legitimate interests

Article 10 b (3) of the terms and conditions of domain name registrations under the ".be" domain operated by DNS BE stipulates that:

"If a complaint is filed, the domain name holder can demonstrate his rights or legitimate interests to the domain name by the following circumstances:

- *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 Domain names holder did not demonstrate his rights or legitimate interests to the domain names by any of the elements mentioned above.

There is no evidence that the Domain names holder is using the domain names or a name corresponding to the domain names in connection with a bona fide offering of goods or services or made demonstrable preparations for such use.

The disputed domain names are indeed only used to attract consumers to websites containing links to the Complainant's competitors and unrelated third parties. Therefore, the use of the domain names cannot be qualified as a bona fide offering of goods or services, but rather as a deceptive and unfair one (see among others, case n° 44140).

Furthermore, there is no evidence that the Domain names holder has been commonly known by the domain names.

There are no Community or Benelux trademarks containing the term "PARTOUCHE" which are associated to the Domain names holder and the Complainant has not authorized or otherwise permitted the Domain names holder to use the term "PARTOUCHE".

Finally, there is also no evidence that the Domain names holder is making a legitimate and non-commercial or fair use of the domain names.

It appears on the contrary that the Domain names holder has registered the disputed domain names for commercial gain, using the term "PARTOUCHE" to trade on its reputation.

The Third-party decider rules that the Domain names holder has no rights or legitimate interests in the domain names.

Therefore, the second condition stipulated under article 10 b (1) (ii) of the terms and conditions of domain name registrations under the ".be" domain operated by DNS BE is fulfilled.

6.3. Registration in bad faith

Article 10 b (2) of the terms and conditions of domain name registrations under the ".be" domain operated by DNS BE stipulates that:

"The evidence of such 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."*

The email address of the Domain names holder (john@casino770.com) shows that the Domain names holder is affiliated or at least has close links with casino 770, one of the Complainant's competitors.

It has been demonstrated that the Domain names holder is not using the disputed domain names for his own activities and he has not made demonstrable preparations to use them in relation to his own activities. This clearly suggests that the domain names were primarily registered by the Complainant's competitor, Casino 770, to disrupt the Complainant's business.

Moreover, the content of the websites to which the disputed domain names point (among others, links to websites offering gaming services of Complainant's competitors) further confirms the bad faith of the Domain names holder's registration of the domain names and is clear evidence of the disputed domain names being used in bad faith.

There is no doubt that the disputed domain names are in fact used intentionally to attract, for commercial gain, Internet users to the Domain names holder's websites or other on-line locations, by creating a confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Domain names holder's websites.

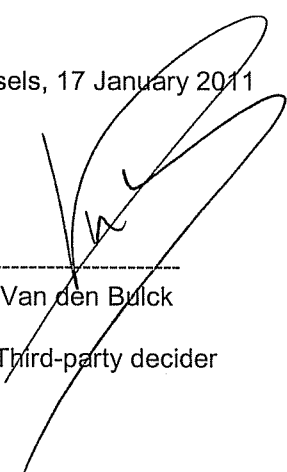
These arguments appear to be sufficient to demonstrate the Domain names holder's bad faith.

Therefore, the third condition stipulated under article 10 b (1) (iii) of the terms and conditions of domain name registrations under the ".be" domain operated by DNS BE is fulfilled.

7. Decision

The Third-party decider decides, pursuant to Article 10 e of the terms and conditions of domain name registrations under the ".be" domain operated by DNS BE, to transfer to the Complainant the registrations of the domain names partouchebingo.be, partouche-bingo.be, partouchecasino.be, pokerpartouche.be and poker-partouche.be.

Brussels, 17 January 2011



Paul Van den Bulck

The Third-party decider