Panel Decision for dispute CAC-ADREU-005819

Case number	**CAC-ADREU-005819**
Time of filing	**2010-10-04 10:17:37**
Domain names	**pokerpartouche.eu, poker-partouche.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Groupe Partouche, Alexandra Deslierres**

Respondent

Organization / Name	**Pouzas Raymond**

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

To the Panelist best knowledge, there is no other pending or decided proceedings which relate to the domain names in issue.

FACTUAL BACKGROUND

The Complainant is an international provider of gaming, online gaming and entertainment services registered under the laws of France.

Casino gaming is the main activity of the Complainant, which operates nowadays 55 casinos, among which 47 in France. The Complainant also holds 19 hotels and 130 restaurants and it promotes Partouche Poker Tour, one of the largest poker events in the world.

The Complainant has numerous registered trademarks including its business name PARTOUCHE, notably:

A French figurative trademark GROUPE PARTOUCHE filed in June 16, 1993 and registered for services in classes 35, 36, 41 and 43 under No. 93 472 479 (dead – not renewed);

A French figurative trademark GROUPE PARTOUCHE filed in December 18, 2003 and registered for services in classes 35, 36, 41 and 43 under No. 03 3 263 728 (existing);

An international figurative trademark GROUPE PARTOUCHE filed in July 22, 2008 and registered for services in classes 35, 36, 41 and 43 under No. 982 668 (existing);

The Complainant has an extensive online presence through various websites like “www.partouche.com”, or “www.casinopartouche.com”.

The Complainant holds numerous domain names to support its online presence, among which:
- pokerpartouche.com
- pokerpartouche.fr
- poker-partouche.com
- poket-partouche.fr

The disputed domain names were registered respectively on February 27, 2008 for <poker-partouche.eu>, and on March 4, 2008 for <pokerpartouche.eu> and have been parked.

A. COMPLAINANT

The Complainant submits that it is a leading actor in the field of entertainment and casino services in Europe, and particularly in France.

It holds trademark rights including the word “partouche” and claims that the disputed domain names are confusingly similar to its trademark rights.

The Complainant claims that the domain names incorporate the trademark PARTOUCHE in its entirety, and that they are solely distinguidhed by the addition of the descriptive term “poker” which is highly descriptive of the goods and services provided by the Complainant.

The Complainant then asserts that “partouche” is not a common word but is related to the Complainant’s founder’s family name which has been turned into a distinctive identifier associated with the Complainant’s products and services.

The Complainant further contends that the Respondent has no rights or legitimate interests in the word “partouche”: on the one hand, all gaming related trademarks including the word “partouche” belong to the Complainant; on the other hand the Respondent is not licensed by the Complainant nor authorized in any way to use its trademark, particularly in the domain names <poker-partouche.eu> and <pokerpartouche.eu>.

According to the Complainant, the Respondent’s purpose in registering the disputed domain names was to trade on the reputation of the Partouche name and to make financial gain as well as tarnish the Complainant’s mark.

At last, the Complainant claims that the Respondent has registered and is using the domain names in bad faith: the domain names point to a parking page offering various hyperlinks to competitors of the Complainant.

The Complainant asserts that the Respondent could not ignore the reputation of the Complainant and its name at the time he registered the disputed domain names, and that he prevented the Complainant from registering some domain names that would naturally reflect its trademark.

The Complainant therefore requests that the domain names <poker-partouche.eu> and <pokerpartouche.eu> be transferred.

B. RESPONDENT

The Respondent did not reply to the Complainant's contentions.

DISCUSSION AND FINDINGS

Article 22 of the EC Regulation 874/2004 states that an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21.

Article 21 (1) provides that a registered domain name shall be subject to revocation where the name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, and where:

(a) it has been registered by its holder without rights or legitimate interests in the name; or

(b) it has been registered or is being used in bad faith.

With reference to the first element, the Panel finds that the Complainant has proved its rights on the name PARTOUCHE within the meaning of Article 10 (1) of the Regulation.

The Complainant has submitted substantial evidence of its rights and wide use of the marks GROUPE PARTOUCHE in France, where the Respondent is located, and in Europe.
In the present case, taking into account the long and wide use of the mark PARTOUCHE and combination of this mark, exclusively by the Complainant, to promote products and services in the field of gaming and casinos, in Europe, the Panel is of the opinion that the Complainant has acquired reputation and fame on that name prior to the registration of the disputed domain name.

As to the second part of the test under 4(i) of the Policy, the Panel notes that the trademark is however not strictly identical to the disputed domain names <poker-partouche.eu> and <pokerpartouche.eu>. The suffix “.eu” is to be disregarded for comparison purposes so the Panel has to determine whether the disputed domain name is confusingly similar to the trademarks PARTOUCHE and GROUPE PARTOUCHE without regards to the gTLD extension.

The domain name incorporates the Complainant's trademark or at least the distinctive part of the trademark and adds the word "poker", which refers directly to the main business of the Complainant.

The addition of generic words to trademarks has been considered in numerous ADR decisions not to avoid confusing similarity between a domain name and a trademark.

In the present case the Panel is of the opinion that there is a strong likelihood that an Internet user may believe that the disputed domain name is operated by the Complainant. Furthermore, the Complainant itself is promoting its activities, and especially its online gaming services on a website available at www.partouche.com.

Therefore the Panel is satisfied that the Complainant owns rights in the PARTOUCHE and GROUPE PARTOUCHE trademarks, and finds that the domain names are confusingly similar to the Complainant's trademarks.

With reference to the right or legitimate interest, Article 21 (2) of the Regulations states that "a legitimate interest may be demonstrated where:

(a) prior to any notice of an ADR procedure, the holder of the domain name has used the domain name or a name corresponding to it in connection with the offering of goods or services or has made demonstrable preparation to do so;

(b) it has been commonly known by the domain name;

(c) it is making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognised or established by national and/or community law."

As previously ruled by the Panel, the Respondent is in default and thus has not proved any right or legitimate interest.

There is no relation, disclosed to the Panel, between the Complainant and the Respondent who did not contest any claim by the Complainant, or provide any evidence of right or legitimate interest in the Domain Name in issue. (see the Panel's decision in similar case ADR 4049 BORMIOLI ROCCO).

Therefore, the Panel finds that the Respondent has no right or legitimate interests in the domain names <poker-partouche.eu> and <pokerpartouche.eu>.

The third requirement is that the domain name has been registered or is being used in bad faith.

As the Panel has already held that the Respondent has no right or legitimate interest in the disputed Domain Name there is no need to make a finding as to bad faith for the purposes of Article 21(1). However, as the issue has been argued by the Complainant the Panel finds it is relevant to provide its opinion.

The Panel regards the aforementioned as an indication of that the domain name was registered primarily for the purpose of selling, renting or otherwise transferring the domain name to the holder of a corresponding name, in respect of which a lawfully recognized right exists (see ADR 00982 SMARTMACHINE)

According to the contentions made by Complainant, Respondent has been engaged in a pattern of registering domain names in bad faith:

The Complainant indeed relies on previous UDRP cases WIPO D2010-0589 and WIPO D2010-0618 where the same Respondent was already found in bad faith in very similar circumstances.

This is a clear indication that the Respondent was aware of the trademarks PARTOUCHE and GROUPE PARTOUCHE when registering the domain names in issue.

Even though there is no direct proof of the Respondent's relationship to Casino770 the fact that the email address disclosed in both disputed domain names whois refer to someone @casino770.fr would tend to show that the Respondent has registered the domain name for the purpose of disrupting the business of a competitor which is evidence of bad faith in the sense of the Regulation.

The Panel considers that the Complainant has established a prima facie evidence of the Respondent's bad faith and the Respondent has failed to deny or contest the Complainant's claims as well as failed to present any evidence to the contrary. The Panel therefore concludes that the Respondent has registered the domain name in bad faith.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that:

the domain names <poker-partouche.eu> and <pokerpartouche.eu> be transferred to the Complainant.

PANELISTS

Name	**Alexandre Nappey**

DATE OF PANEL DECISION 2011-01-27

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is a leading actor in the field of gaming. It has been using the trademark PARTOUCHE since 1973 to promote its activities in France and Europe.

The domain names in issue have been registered in 2008 and parked.

The Panel finds for the Complainant and orders transfer of both disputed domain names considering that:

- the domain names are confusingly similar to the trademark PARTOUCHE, in which the Complainant shows exclusive rights. The combination of the trademark PARTOUCHE with the wording « poker » which describes one of the games provided by Complainant does not confer any self distinctiveness to the domain names in issue ;

- the Complainant has made a prima facie case of the absence of right or legitimitate interest, unchallenged by the Respondent who wzs found in default ;

- At last, and even if unecessary in the sense of the Regulation, the Panel finds for the Complainant with respect to the bad faith démonstration. The Respondent has been already involved in various cyberquatting cases concerning the Complainant trademarks. Furthermore, it seems that Respondent has relationships with one of the Complainant's competitor.

Therefore the Panel orders that the domain names in issue be transfered to the Complainant.