



BELGIAN CENTER FOR ARBITRATION AND MEDIATION

DECISION OF THE THIRD-PARTY DECIDER

Pocket Kings Limited / Ms. Yulia Navrotskaya

N° 44171 : fulltiltpoker.be

1. Parties

- 1.1. Complainant: **Pocket Kings Limited**, having its registered offices at 3rd floor, Block AD, Cherrywood Science and Technology Park, Loughlinstown, Dublin 18, Ireland,

Represented by:

Ms. Prudence Maliki, with offices at Safenames Ltd, Sunrise Parkway, Linford Wood, Milton Keynes, Bucks, MK14 6LS, United Kingdom.

- 1.2. Licensee: **Ms. Yulia Navrotskaya**, residing at Polikarpow Street 19-2-175, 125284 Moscow, Russian Federation.

2. Domain Name

Domain Name: fulltiltpoker.be, hereafter referred to as the "Domain Name".

Date of registration: 12 November 2007 (transferred to the Licensee on 16 April 2008).

3. The procedure

On 22 July 2009 the Complainant filed a complaint (hereafter the "Complaint") with the Belgian Center for Arbitration and Mediation (hereafter "CEPINA"), requesting the transfer of the Domain Name.

The Licensee was notified of the Complaint and was invited to reply by 12 August 2009. The Licensee filed a reply by e-mail on 12 August 2009.

By e-mail and by letter dated 19 August 2009, CEPINA informed the Complainant and the Licensee of the appointment of the Third-Party Decider.

CEPANI – ASSOCIATION SANS BUT LUCRATIF

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The deliberations were closed on 26 August 2009.

The Parties declared that the dispute has not been submitted to the ordinary courts.

4. Facts

- 4.1.** The Complainant is one of the largest online poker gaming website providers, with a presence in many Western countries. It provides technology and marketing consulting services to the online poker industry and to one of the fastest growing poker sites, Fulltiltpoker.com and Fulltiltpoker.net (which can also be accessed through various national country level domains).

The Complainant has registered several trademarks solely consisting of, or incorporating, the element “Full Tilt Poker”, including the following:

- a word Community trademark Full Tilt Poker n° 6335327 filed on 4 October 2007 and registered in relation to goods and services of the classes 9, 28, 38, 41;
- a figurative Community trademark Full Tilt Poker n°6322127, filed on 1 October 2007 and registered in relation to goods and services of the classes 9, 28, 38, 41;
- a figurative Benelux trademark Full Tilt Poker n° 845254, filed on 23 May 2008 and registered in relation to goods and services of the classes 9, 28, 38, 41.

The Complainant considers that its figurative trademarks are also relevant and sufficient to demonstrate their rights in the mark “Full Tilt Poker”.

The Complainant registered several similar domain names, such as www.fulltiltpoker.com, www.fulltiltpoker.net, and www.fulltiltpoker.org.

The Complainant uses the “Full Tilt Poker” signs or indications in relation with its online poker gaming business operations in various countries.

- 4.2.** The name “Full Tilt Poker” has become well known internationally, in the online gaming world. Although the offering of online poker games for real money stakes remains subject to statutory restrictions in Belgium, it cannot be excluded that the Complainant would be authorized in the future to offer such services.
- 4.3.** It was brought to the attention of the Complainant that Mr Henning Rehder had registered the Domain Name on 12 November 2007 without its prior consent. On 7 March 2008, Mr Rehder, who took part in the affiliate programme of the Complainant (set up to attract players for the Full Tilt Poker websites), was sent a cease and desist e-mail notifying him of the Complainant’s purported rights in the trademark “Full tilt Poker” and its

interest in the acquisition of the Domain Name. Mr Rehder, then, confirmed his interest in the sale.

On 11 March 2008 Mr Rehder mentioned a “*Russian bidder*” who would have made a “*slightly larger offer*” for the Domain Name. Mr Rehder subsequently made a counteroffer of \$25,000 to the Complainant for the immediate sale of the domain name. This amount is significantly exceeding the costs related to registering a .be domain name. The Complainant did not want to proceed with the payment of this amount for an overtly trademarked name. On April 4th 2008 Mr Rehder sent an email notifying the Complainant that he was intending to sell the domain name to a third party if the Complainant would not react to his offer.

The Complainant contacted the new Licensee by means of a cease and desist e-mail on 21 July 2008. The new Licensee, acting under the name of Ms Yulia Navrotskaya, responded and invited the Complainant to make an offer for the domain name: “*Please could you make me an offer for the website.*” On 24 July 2008 the Licensee contacted the Complainant again with the message “*still awaiting your offer*”. The Complainant did not hold further negotiations for the Domain Name.

- 4.4. Under the Domain Name the Licensee currently contains a direct link to another website promoting products and services of PartyPoker.com operated by PartyGaming Plc, a direct competitor of the Complainant in the field of online poker gaming.

5. **Position of the Parties**

5.1. **Position of the Complainant**

The Complainant considers that all conditions provided for in Article 10 of the Terms and Conditions for Domain Name Registration under the “.be” domain operated by DNS BE, are fulfilled and requests the transfer of the Domain Name to the Complainant. In summary, the Complainant invokes the following:

5.1.1. **Licensee’s Domain Name is identical or confusingly similar to the trademarks of the Complainant**

Firstly, according to the Complainant, the Domain Name is identical to the Complainant’s registered Community word trademark of “Full Tilt Poker”, without the addition of the .be suffix. The Complainant also invokes that the Domain Name is confusingly similar to its figurative trademarks of “Full Tilt Poker” which are used by the Complainant for the offering of online poker games or rooms.

According to the Complainant, the most distinctive element of these trademarks consists of “Full Tilt Poker” and the Domain Name consists of this most distinctive element. To assess whether the Domain Name and the

trademarks of the Complainant are identical or confusingly similar, the suffix “.be” does not have to be taken into account. The Complainant considers that the public may erroneously believe that the Domain Name is related to the Licensee or Partypoker.com, directly or indirectly.

5.1.2. Licensee has no rights or legitimate interests in the Domain Name

(i) no bona fide use of the Domain Name

According to the Complainant, the Licensee does not use the trademarks of the Complainant in good faith. By registering the Domain Name, the Licensee would have decided to use the well-known “Full Tilt Poker” trademarks of the Complainant to take advantage of their fame. Such use, intentionally trading on the brand of another, cannot constitute a “bone fide” offering of goods or services. The utilisation of the notoriety of the Complainant’s trademarks to promote another website cannot constitute a legitimate or bone fide use of the Domain Name.

The Complainant invokes that using the Domain Name to redirect to a “Party Poker website” does not constitute a legitimate use and does not convey a legitimate interest on the Licensee.

(ii) Licensee is not well-known for its activity under the Domain Name

The Complainant submits that it has no knowledge or a right of legitimate interest of the Licensee in the Domain Name. The Complainant considers that the Licensee appears to be an individual whose name is not “Full Tilt Poker” and who has omitted its registrant details from the Whois database. This person is not associated or related to the Complainant nor permitted by the Complainant to use the Complainant’s trademark in the registration of the Domain Name. This individual is not employed nor is he/she an agent of the Complainant. According to the Complainant, the Licensee does not possess any conceivable legitimate interest in the Domain Name. The registration of the Domain Name was unauthorised and unapproved by the Complainant.

The Complainant argues that searches of the OHIM European Community trademark database and the BOIP Benelux trademark database do not provide results that correspond to the Licensee, Yulia Navratskaya; the Complainant is the sole proprietor of the trademarks “Full Tilt Poker”. Moreover, the Complainant contends that a search of the Google.be search engine for “Full Tilt Poker” yields no results that are correlated with the Licensee.

(iii) No legitimate, non-commercial or honest use of the Domain Name

According to the Complainant, the Licensee does not make a legitimate, non-commercial or honest use of the Domain Name.

The Complainant contends that the website connected to the Domain Name is active and resolving to a home webpage for a company known as PartyPoker.com, which is wholly unrelated to the Complainant. The Licensee

is an unaffiliated, unrelated third party who has no legitimate, conceivable reason to utilise the Complainant's trademarks to offer competing poker gambling services. The Licensee is purposefully and intentionally utilising the Complainant's trademarks and reputation to promote the brand of a direct competitor.

The Complainant asserts that the Domain Name is currently being used to mislead internet users and damage the reputation of the Complainant's established brand.

5.1.3. Licensee's Domain Name has been registered or is being used in bad faith

The Complainant considers that the Licensee has both registered (on the moment of the transfer of the Domain Name) and used the Domain Name in bad faith.

According to the Complainant, it cannot be reasonably contested that the Licensee is/was acting in bad faith, taking into account the continued retention of the Domain Name by the Licensee, its purported knowledge of the Complainant's registered trademarks and its request for financial remuneration in exchange for the Domain Name.

With reference to the UDRP case law, the Complainant considers that the fact of registering domain names in view of selling them afterwards does not constitute per se a bad faith activity. It, however, becomes a bad faith activity when it is likely that the domain name owner knows he is registering a trademark of a third party. The Complainant argues that his brandname is well-known as one of the world's leading Poker gaming websites with a popular downloadable Poker application. The Complainant asserts that the Licensee was fully aware of the Complainant's brand at the time of registration and acquisition. The Licensee was (made) aware of the Complainant's intellectual property rights at the time it offered the Domain name for sale to the Complainant, which would fall within the scope of bad faith.

The Complainant refers to UDRP case law which defines a "competitor" as "one who acts in opposition to another and the context does not imply or demand any restricted meaning such as a commercial or business competitor". The Licensee's utilisation and promotion of a competitor's site on the Domain Name is sufficient for the Licensee to fall within the concerned bad faith-concept. Any internet user attempting to locate the Belgian website of the Complainant will be confronted with the Complainant's direct competitor PartyPoker.com within the same market and realm of gambling. The Licensee is effectively promoting the competitor of the Complainant and is effectively misleading the internet users.

The Domain Name was intentionally used to attract, for commercial gain, internet users to the Licensee's website or other on-line locations, creating a likelihood of confusion with the Complainant's trademark or trade name as to the source, sponsorship, affiliation, or endorsement of the Licensee's website

of location or of a product or service on his website or location. Any internet user who comes across the Domain Name will assume that there is an affiliation, relation or endorsement in some way between Full Tilt Poker and Party Poker, where this is not the case, and may consequently utilise their competing gambling services and tools.

5.2. Position of the Licensee

It is not clear whether the identity of the Licensee or the person using this name is fully known. An excerpt of a search within the DNS BE Whois database conducted by the Complainant on 10 June 2009 provides no registrant details per se but identifies the Licensee's email address as navrotskaya@gmail.com. Correspondence received from the Registrant reveals that the name corresponding with its email address is Yulia Navratskaya.

The Licensee only submitted its viewpoint by means of a reply e-mail on 12 August 2009. The Licensee therein considers that it does have rights, or at least legitimate interests, in the Domain Name as follows:

"(...) Dear all,

as you can see from the email traffic, I tried to contact the owners of this domain several times and was never replied to. This was the same for the previous owner, who was willing to sell (after offer from Full Tilt of \$16k) but was then not replied to.

I have owned this domain and so has the previous owner way before the brand "Full Tilt Poker" was ever established or registered in Belgium, so I believe you do not have an automatic right to this domain!

So lets not be difficult, I asked you many times to make me an offer (we are not talking BIG money) and get it over and done with within a matter of days - as I have offered before. (...)"

6. Discussion and conclusions

According to Article 10, b) 1 of the Terms and Conditions for Domain Name Registrations under the ".be" domain operated by DNS BE, the Complainant must evidence that:

- 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; and
- the Licensee has no rights or legitimate interests in the Domain Name; and
- the Domain Name has been registered or is being used in bad faith.

The Complainant has submitted a substantiated complaint and evidence. The Licensee did not file a formal defence other than by its e-mail of 12 August 2009 nor any evidence of rights or legitimate interest.

6.1. The Domain Name is identical or confusingly similar to trademarks in which the Complainant has rights

i) The trademarks "Full Tilt Poker"

As it appears from exhibits n^{os} 2 and 5 of the Complainant, it has registered three different Community and Benelux word and figurative trademarks, containing the element "*Full Tilt Poker*", and it has apparently been using these to identify and market its products and/or services in various countries throughout the world.

The Licensee objects the priority of these rights vis-à-vis the initial registration date of the Domain Name, i.e. 12 November 2007, according to which it has registered the Domain Name "*way before the brand "Full Tilt Poker" was ever established or registered in Belgium*", but does not dispute that the trademark rights of Complainant validly exist.

It is not the task of the Third-Party Decider to determine whether the trademark(s) as invoked by a complaining party is/are per se validly registered (see also CEPINA case nr. 44050, Startpagina B.V./ Take B.V.B.A. and CEPINA case nr. 44054, The European Omnibus Survey Scrl / Magyar Gallup Intezet). It is accepted for Benelux and Community Trademarks that they are enforceable vis-à-vis third parties as from their initial application or filing date insofar they survive the opposition period. The effective transcription dates in the Community and Benelux trademark registers are not relevant. From the evidence brought by the Complainant it appears that a figurative Community trademark Full Tilt Poker n^o6322127 was filed on 1 October 2007 and a word Community trademark Full Tilt Poker n^o 6335327 was filed on 4 October 2007, both for classes 9, 28, 38, 41. Both application dates precede the initial registration date of the Domain Name, i.e. 12 November 2007 and a fortiori, 16 April 2008, the date on which the current Licensee became the beneficiary of a Domain Name transfer.

The Third-Party Decider is of the opinion that the Domain Name and the trademarks invoked by the Complainant are identical or at least confusingly similar.

The invoked word and figurative trademarks registered by the Complainant consist of the word element "*Full Tilt Poker*", which is also found in the Domain Name. Additionally, the presence of the suffix ".be" can be considered as irrelevant for determining the similarity between the Domain Name and the trade name/trademark(s) on which the complainant claims a right (cf. e.g. CEPINA case nr. 44018, JT International Company Netherlands B.V./ Amstel Meer Land B.V.).

ii) trade names, trademarks and company names

In view of the above, the trademark rights of the Complainant are sufficiently established. There is thus no need to examine any other possible rights of the Complainant (such as trade names) into further detail.

iii) Conclusion

The Third-Party Decider therefore holds that the Complainant rightfully invokes that the Domain Name is identical to or is confusingly similar to its Community and Benelux trademarks. The first condition under Article 10, b), 1, i) of the Terms and Conditions for Domain Name Registration under the “.be” domain, is thus fulfilled.

6.2. The Licensee has no right or legitimate interests in the Domain Name

Pursuant to Article 10 b) 3 of the Terms and Conditions for Domain Name Registration under the “.be” domain, the Licensee’s rights or legitimate interest to the Domain Name can be evidenced by circumstances as indicated in said Article.

Although this condition does not require the Licensee to be the direct owner of any trade name or trademark rights, it requires the Licensee to have a legitimate interest in the Domain Name. Article 10 b) 3 indicates the following circumstances:

- *prior to any notice of the dispute, the licensee 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 licensee (as an individual, business or other organization) has been commonly known by the domain name, even if he has acquired no trademark; or*
- *the licensee 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.*

(i) *The invoked rights*

To its defence, the Licensee only refers to the non-enforceable character of the intellectual property rights invoked by the Complainant (see above), not to any interest it would itself have in the use of the Domain Name. The Licensee’s simple statement in its e-mail of 12 August 2009 according to which it has registered the Domain Name “*way before the brand "Full Tilt Poker" was ever established or registered in Belgium*” cannot be accepted as sufficient proof of the existence of rights or legitimate interest as referred to in Article 10,1, (ii)

of the Terms and Conditions for Domain Name Registrations under the “.be” domain.

The Licensee does not contest that it has never received an authorization or approval from the Complainants to use the “*Full Tilt Poker*” marks or names.

The Licensee does not evidence in any way whatsoever that it has any rights on the Domain Name. The contrary can be deduced from the file as submitted by the Complainant.

(ii) *The Licensee is not known under the Domain Name as a person, a company or another organisation*

The Licensee does not contest that it is not or it has never been, commonly known as an individual or company by the name “*Full Tilt Poker*” and does not provide any evidence to the contrary.

The only reason for the Licensee to use the name “Full Tilt Poker” seems to be because it has been used as a trademark for successful gaming services by the Complainant in many countries, so that the Licensee takes advantage of its reputation to present third party services in direct competition with those of the Complainant.

(iii) *No legitimate, non-commercial or honest use of the Domain Name*

It appears that the use of the Domain Name is not legitimate, since the Licensee does not have the right to choose a Domain Name, identical or similar to the trademarks of the Complainant and may not prevent the Complainant from registering this Domain Name. By doing so, the Licensee is likely creating the impression that the redirected PartyPoker.com website is in one way or another connected with the Complainant.

The Licensee certainly makes a commercial use of the Domain Name since the website redirected and hosted under the Domain Name is created to advertise competing gambling services. It is not unlikely that the use of the Domain Name attracted/could attract possible monetary or similar profits for the Licensee because of the reputation of the Complainant, and thus allowed/could allow the Licensee to take advantage thereof. Although no conclusive evidence has been submitted in this sense, the Complainant rightfully can ask the question whether the Licensee has subscribed to an affiliate advertisement scheme of PartyPoker.com, whereby the Licensee gets paid or otherwise compensated for the number of (real money) players that the Licensee attracts to the website www.partypoker.com. From the e-mail correspondence between the Complainant and Mr Rehder, former registrant of the Domain Name, it appears that the latter had installed a publicly invisible “tracker” on the website under the Domain Name (at least until March 2008, before the Domain Name transfer took place) to obtain benefits under an affiliate scheme from the Complainant (before the Domain Name was redirected to PartyPoker.com).

It appears that there is no honest use, rather that the Licensee can take advantage of the known trademarks of the Complainant, whereas its own (individual) name or contact details are missing on the redirected PartyPoker website.

Finally, the Licensee does not invoke other circumstances that could substantiate a right or a legitimate interest in the Domain Name.

(iv) Conclusion

The Licensee does not show a right or legitimate interest to register the Domain Name or use the respective trade names and trademarks of the Complainant under the Domain Name, whereas this creates the false impression that there is an officially approved link or tolerated link with the business of the Complainant – which is not the case, according to the Complainant.

In view of the above, the Third-Party Decider finds that the Licensee has no rights or legitimate interests in the Domain Name. Consequently, the second condition under Article 10, b), 1, ii) of the Terms and Conditions for Domain Name Registration under the “.be” domain is fulfilled.

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

Article 10, b), 2 of the Terms and Conditions for Domain Name Registrations under the “.be” domain enumerates in a non-exhaustive way a number of circumstances, by which the complainants can demonstrate that the licensees registered or use the Domain Name in bad faith.

Bad faith can indeed be evidenced by any means including presumptions and other evidence showing, with a reasonable degree of certainty, the existence thereof (see e.g. CEPANI case nr. 44019, Verfaillie Bauwens BVBA / Stichting Juridisch Eigendom Domeinen). The registration of a well-known brand could be indicative of bad faith.

The Domain Name chosen by the Licensee has a relatively high degree of distinctiveness. It is unlikely that the Licensee would have independently, without deliberately seeking a business opportunity, chosen and registered the name “*Full Tilt Poker*”(cf. CEPINA case nr. 44013, Guinness UDV North America Inc/ Mr. O. Noël).

It appears from the file that it is likely that the Licensee is using the Domain Name to take commercial advantage out of it, namely attracting, for commercial gain, more customers/players for a competing poker gaming provider, and thus attracting internet users by the reputation of the Domain Name to the Licensee’s website or other online locations by creating a likelihood or confusion between the Domain Name and the Complainant’s trademarks. Without the use of the trademark “*Full Tilt Poker*”, it is very likely that the PartyPoker.com website would attract significantly less visitors.

Furthermore by registering the Domain Name, the Licensee (both Mr Rehder and its current successor) had to know that it would prevent the Complainant from registering the same whereas business that would normally go to the Complainant, to its fulltiltpoker.com or fulltiltpoker.net websites, would be attracted to the Licensee's website pointing to PartyPoker.com and where the Licensee's own (personal or trade) name is even not mentioned.

At no point the use of the Domain Name by the Licensee which purposefully promotes and diverts traffic from internet users who are looking for services from the Complainant, has been authorised by the Complainant.

From the above, it appears to the Third-Party Decider that the Domain Name has been registered in bad faith by the Licensee, and also seems to be used in bad faith, and that the condition under Article 10, b), 1, iii) of the Terms and Conditions for Domain Name Registrations under the ".be" domain is fulfilled.

7. Decision

The Third-Party Decider decides, according to Article 10, e) of the Terms and Conditions for Domain Name Registrations under the ".be" domain operated by DNS BE, to order the transfer to the Complainant of the registration of the Domain Name "fulltiltpoker.be".

Brussels, 9 September 2009.

Catherine ERKELENS

The Third-Party Decider