

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x  
 :  
 UNITED STATES OF AMERICA,  
 :  
                     Plaintiff,  
 :  
                     - v. -  
 :  
 POKERSTARS, et al.  
 :  
                     Defendants;  
 :  
 ALL RIGHT, TITLE AND INTEREST IN THE :  
 ASSETS OF POKERSTARS, et al.;  
 :  
                     Defendants-in-rem.  
 :  
 - - - - - x

11 Civ. 2564 (LBS)

**MEMORANDUM OF LAW IN SUPPORT OF**  
**THE GOVERNMENT'S MOTION TO STRIKE THE CLAIM OF**  
**AVOINE - SERVICIO DE CONSULTADORIA E MARKETING, LDA**

PREET BHARARA,  
 United States Attorney for the  
 Southern District of New York

Sharon Cohen Levin  
 Jason H. Cowley  
 Michael D. Lockard  
 Assistant United States Attorneys

- of counsel -

**Table of Contents**

PRELIMINARY STATEMENT.. . . . . 1

BACKGROUND. . . . . 3

    A.    The Criminal Indictment of Isai Scheinberg and  
          Others for various gambling, fraud, and money  
          laundering offenses . . . . . 3

    B.    The In Rem Forfeiture and Civil Money Laundering  
          Complaint.. . . . . 5

ARGUMENT . . . . . 7

I.    AVOINE LACKS STANDING TO FILE A CLAIM. . . . . 7

    A.    Relevant Law. . . . . 7

    B.    Discussion. . . . . 10

CONCLUSION. . . . . 11

## PRELIMINARY STATEMENT

The Government respectfully submits this memorandum of law in support of its motion, pursuant to Rule 12(b) and (c) of the Federal Rules of Civil Procedure and Rule G(8)(c) of the Supplemental Rules for Admiralty and Maritime Claims, to strike the claim filed in this in rem forfeiture action by Avoine - Servicio De Consultadoria E Marketing, LDA ("Avoine" or "Claimant"). The defendants-in-rem in this matter include, among others, all right title and interest in the assets of several online gambling businesses (collectively, "the Defendant Property").

Avoine filed a claim on January 5, 2012, contesting the forfeiture of the following:

1. The domain name AbsolutePoker.com and any other domain names that include the word "absolutepoker" or any variation thereof (the "Domain Names") and
2. All property and other assets claimed to have been assigned to Avoine by SGS (BVI) Inc. ("SGS") in or about 2007, including without limitation: (a) all tangible and intangible property, including computer hardware and software, developed and/or used in the operation of the Absolute Poker online poker business as of the date of such assignment (the "AP Intellectual Property"); and (b) stock and/or other equity interests in (i) Fiducia Exchange Ltd.; (ii) Momentum Technologies, Inc.; and (iii) Panora Tech Belize Inc. (the "Subsidiaries").

In its answer, filed on March 9, 2012, Avoine asserts that:

In or about 2006 or early 2007, in a reorganization of its affairs, SGS assigned and transferred the AP Assets, along with all of SGS's equity in the Subsidiaries, to Avoine and, at substantially the same time SGS's shareholders became shareholders in Avoine's parent company, a Norwegian company called Madeira Fjord AS ("MFAS").

Avoine Answer ¶ 27(b).

Avoine then states that a subsequent retransfer of the AP Assets to Absolute Entertainment S.A. was voided. Avoine Answer ¶ 27(c)-(d). According to Avoine: "From and after the 2007 Avoine-Absolute Sale, all operation of the Absolute Poker online poker business has been carried out by employees and/or agents of Absolute Entertainment or its contractors and/or assignees (e.g., Blanca Games), as express or implied licensees, and not by Avoine." Avoine Answer ¶ 27(e). Avoine also pleads that: "During the period 2007 to the present, neither Avoine nor its management knew of the allegedly wrongful conduct upon which the plaintiff's forfeiture claim is predicated." Avoine Answer ¶ 27(f).

Avoine, by its own pleadings, has established itself as essentially a straw owner of the assets in question that exercised no dominion or control of the assets for which it now seeks to assert a claim. Accordingly, Avoine lacks standing and its claim should be dismissed.

## BACKGROUND

### **A. The Criminal Indictment of Isai Scheinberg and Others for various gambling, fraud, and money laundering offenses**

On or about March 10, 2011, a superseding indictment, S3 10 Cr. 336 (LAK) (the "Indictment") was filed under seal in the Southern District of New York, charging Isai Scheinberg, Raymond Bitar, Scott Tom, Brent Beckley, Nelson Burtnick, Paul Tate, Ryan Lang, Bradley Franzen, Ira Rubin, Chad Elie, and Jason Campos with conspiring to violate the Unlawful Internet Gambling Enforcement Act ("UIGEA"), 31 U.S.C. § 5363, in violation of Title 18, United States Code, 371; violating the UIGEA; operating illegal gambling businesses, in violation of Title 18, United States Code, Sections 1955 and 2; conspiring to commit wire fraud and bank fraud, in violation of Title 18, United States Code, Section 1349; and conspiring to launder money, in violation of Title 18, United States Code, Section 1956(h).

As set forth in the Indictment, from at least in or about November 2006, the three leading internet poker companies doing business in the United States were PokerStars, Full Tilt Poker, and Absolute Poker/Ultimate Bet (collectively, "the Poker Companies"). (Ind. ¶ 1). PokerStars, headquartered in the Isle of Man, provided real-money gambling through its website, pokerstars.com, to United States customers. PokerStars did business through several privately held corporations and other entities. (Ind. ¶ 4). Full Tilt Poker, headquartered in

Ireland, provided real-money gambling through its website, fulltiltpoker.com, to United States customers. Full Tilt Poker did business through several privately held corporations and other entities. (Ind. ¶ 5). Absolute Poker, headquartered in Costa Rica, provided real-money gambling through its websites, absolutepoker.com and ultimatebet.com, to United States customers. Absolute Poker did business through several privately held corporations and other entities. (Ind. ¶ 6).

As described in the Indictment, because internet gambling businesses such as those operated by the Poker Companies were illegal under United States law, internet gambling companies, including the Poker Companies, were not permitted by United States banks to open bank accounts in the United States to receive proceeds from United States gamblers. Instead, the principals of the Poker Companies operated through various deceptive means designed to trick United States banks and financial institutions into processing gambling transactions on the Poker Companies' behalf. (Ind. ¶ 16).

For example, as described more fully in the Indictment, the charged defendants and others worked with and directed others to deceive credit card issuers and to disguise poker payments made using credit cards so that the issuing banks would process the payments. (Ind. ¶¶ 17-18). These deceptive and fraudulent practices included, for example, creating phony non-gambling

companies that the Poker Companies used to initiate the credit card charges (Ind. ¶ 19), and creating pre-paid cards designed for United States gamblers to use to transfer funds to the Poker Companies and other gambling companies, with the purpose of the cards disguised by fake internet web sites and phony consumer "reviews" of the cards making it appear that the cards had some other, legitimate, purpose. (Ind. ¶ 20).

In addition, as described more fully in the Indictment, the charged defendants and others worked with and directed others to develop another method of deceiving United States banks and financial institutions into processing their respective Poker Companies' internet gambling transactions through fraudulent e-check processing. (Ind. ¶ 21). The Poker Companies used payment processors to establish payment processing accounts at various United States banks and disguised from the banks the fact that the accounts would be used to process payments for internet poker transactions by making the transactions appear to relate to phony internet merchants. (Ind. ¶¶ 22-26).

**B. The In Rem Forfeiture and Civil Money Laundering Complaint**

On or about April 14, 2011, this action was commenced by the filing of a sealed in rem forfeiture and civil money laundering complaint (the "Complaint"). The Complaint sought the forfeiture of all right, title and interest in the assets of the Poker Companies, including but not limited to certain specific

properties set forth in the Complaint. As alleged in the Complaint, the defendants-in-rem are subject to forfeiture (1) pursuant to Title 18, United States Code, Section 1955(d), as properties used in violation of the provisions of Section 1955; (2) pursuant to Title 18, United States Code, Section 981(a)(1)(C), as properties constituting or derived from proceeds traceable to violations of Section 1955; (3) pursuant to Title 18, United States Code, Section 981(a)(1)(C), as properties constituting or derived from proceeds traceable to a conspiracy to commit wire fraud and bank fraud; and (4) pursuant to Title 18, United States Code, Section 981(a)(1)(A), as properties involved in transactions and attempted transactions in violation of Sections 1956 and 1957, or property traceable to such property. The Complaint also sought civil monetary penalties for money laundering against the Poker Companies and the entities that operated those companies for the conduct laid out above.

On or about September 21, 2011, before Avoine filed their claim and answer, the United States filed an Amended Complaint in this action, adding additional fraud allegations against Full Tilt Poker and the members of its Board of Directors.



## ARGUMENT

### I. AVOINE LACKS STANDING TO FILE A CLAIM

#### A. The Law

“In order to contest a governmental forfeiture action, claimants must have both standing under the statute or statutes governing their claims and standing under Article III of the Constitution as required for any action brought in federal court.” United States v. Cambio Exacto, S.A., 166 F.3d 522, 526 (2d Cir. 1999). Standing is a threshold issue. If the claimant lacks standing, the court lacks jurisdiction to consider his challenge of the forfeiture. The burden of proof to establish sufficient standing rests with the claimant. Mercado v. U.S. Customs Service, 873 F.2d 641, 644 (2d Cir. 1989); United States v. One 1986 Volvo 750T, 765 F. Supp. 90, 91 (S.D.N.Y. 1991); United States v. One 1982 Porsche 928, 732 F. Supp. 447, 451 (S.D.N.Y. 1990) (abbreviated title). Where the claimant’s own allegations are insufficient to demonstrate standing, a motion to strike his claim should be granted. See United States v. \$38,570 U.S. Currency, 950 F.2d 1108, 1111-13 (5th Cir. 1992) (“Unless claimant can first establish his standing he has no right to put the government to its proof”).

To have statutory standing, a claimant in a civil forfeiture proceeding must comply with the procedures laid out in Supplemental Rule G. To have constitutional standing, however, a claimant must demonstrate an adequate “interest” in the forfeitable

property. "If the claimant cannot show a sufficient interest in the property to give him Article III standing there is no case or controversy, in the constitutional sense, capable of adjudication in the federal courts." United States v. New Silver Palace Restaurant, Inc., 810 F. Supp. 440, 442 (E.D.N.Y. 1992) (internal quotation marks, alterations, and citations omitted). See also United States v. U.S. Currency, \$81,000.00, 189 F.3d 28, 35 (1st Cir. 1999); United States v. \$9,041,598.68, 163 F.3d 238, 244-45 (5th Cir. 1998); United States v. Contents of Accounts (Friko Corporation), 971 F.2d 974, 985 (3d Cir. 1992).

Thus, "[t]o establish standing, 'the claimant must demonstrate that he has a colorable ownership, possessory or security interest in at least a portion of the defendant property.'" United States v. One Silicon Valley Bank Account, 05 Civ. 295, 2007 WL 1594484, at \*2 (W.D. Mich. June 1, 2007) (quoting United States v. \$38,852.00, 328 F. Supp. 2d 768, 769 (N.D. Ohio 2004)); see also United States v. Contents of Account Numbers 208-06070 and 208-06068-1-2, 847 F. Supp. 329, 333 (S.D.N.Y. 1994); One 1982 Porsche 928, 732 F. Supp. at 451.

Courts have refused to find standing in claims brought by owners with title but without actual dominion or control of the in rem property. "Possession of mere legal title by one who does not exercise dominion and control over the property is insufficient even to establish standing to challenge a forfeiture." United States v. Nava, 404 F.3d 1119, 1130 n.6 (9th Cir. 2005) See also

United States v. Premises and Real Property With Buildings, Appurtenance and Improvements at Delaware Street, Towanda, New York, 113 F.3d 310, 312 (2d Cir. 1997) (a father who acquired the title to real property from his son for \$1 in admitted attempt to avoid forfeiture was mere straw who exercised no dominion or control over the property and therefore lacked standing to assert an innocent owner defense); United States v. Contents of Accounts Nos. 3034504504 & 144-07143 at Merrill Lynch, Pierce, Fenner & Smith, Inc., 971 F.2d 974, 985 (3d Cir. 1992) ("Courts have uniformly rejected standing claims put forward by nominal or straw owners. Thus, even possession of legal title to the res may be insufficient to establish standing to contest the forfeiture."); United States v. Premises Known as 526 Liscum Drive, Dayton, Montgomery County, Ohio, 866 F.2d 213, 215 (6th Cir. 1989) (daughter who held title to house where parents trafficked drugs was merely straw who exercised no dominion or control and therefore lacked standing to challenge forfeiture) (citing United States v. Single Family Residence and Real Property Located at 900 Rio Vista Blvd., Ft. Lauderdale, 803 F.2d 625 (11th Cir. 1986)); United States v. One 1981 Datsun 280ZX, 563 F. Supp. 470, 476 (E.D. Pa. 1983) (father did not have standing to contest forfeiture of wrongdoer's car even though the father held legal title to the car and kept it at his house because the son was the only one who exercised dominion and control over the car).

## **B. Discussion**

Under these established legal principles, Avoine lacks standing in this matter. By its own pleadings, Avoine did not exercise dominion or control of the assets in question. Avoine expressly pleads that: "From and after the 2007 Avoine-Absolute Sale, all operation of the Absolute Poker online poker business has been carried out by employees and/or agents of Absolute Entertainment or its contractors and/or assignees (e.g., Blanca Games), as express or implied licensees, and not by Avoine." Avoine Answer ¶ 27(e). Avoine even pleads that, during that same time period, "neither Avoine nor its management knew of the allegedly wrongful conduct upon which the plaintiff's forfeiture claim is predicated." Avoine Answer ¶ 27(f). Although it appears unlikely that Avoine was in fact unaware that Absolute Poker was offering online poker in the United States appears highly dubious, Avoine's own verified assertion must be factored into a standing analysis. Based on the facts alleged by Avoine, that entity was nothing more than the titular owner of the assets in question and Absolute Poker continued to exercise all dominion and control over those assets from 2007 on to conduct illegal activity. This relationship to the assets in question is insufficient to confer standing.

**CONCLUSION**

For the foregoing reasons, the Government respectfully requests that the Court enter an order striking the claim of Avoine in this action.

Dated: New York, New York  
July 9, 2012

Respectfully submitted,

PREET BHARARA  
United States Attorney for the  
Southern District of New York

By: : \_\_\_\_\_/s/  
Sharon Cohen Levin  
Jason H. Cowley  
Michael D. Lockard  
Assistant United States Attorney  
(212) 637-1060/2479/2193