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# TUG OF WAR FOR THE FUTURE OF FANTASY HORSE RACING: THE STRONACH GROUP V. HORSE RACING LABS

[Equine \(/full-blog/category/Equine\)](#)

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Since 2006, the total pari-mutuel handle within the horse industry has steadily declined.[i] In an effort to halt this decline, some in the equine industry have attempted to invent new ways to create interest in the sport by tapping into the growing daily fantasy sports industry. In the case Derby Wars, a fantasy horseracing website, the Central District of California put a halt to one of those efforts.[ii]



<https://www.paulickreport.com/news/the-biz/game-on-stonach-tracks-sue-tournament-operator-derby-wars/>

In 2011, Horse Racing Labs (“HRL”) created the daily horse racing website Derby Wars.[iii] This website offers several pay-to-play contests and explicitly states that it does not offer online gambling.[iv] The participants with the most points are awarded previously determined prize amounts based on entry fees.[v] In 2015, the Stronach Group, the owner and operator of several horse racing tracks, filed an action against HRL which claimed they violated the which claimed they violated the Interstate Horseracing Act (“IHA”) by accepting wagers.[vi] This which would mean it operated as an interstate off-track betting system.[vii] If the court was to determine that Derby Wars was an interstate off-track betting system, HRL would need to obtain approval from horse racing tracks and associations prior to accepting wagers.[viii]

In making its decision, the court determined that the main issue in the case was whether the transaction between Derby Wars and their customers constituted a wager.[ix] The court determined that the entry fees were like a “pot” seen in poker. Therefore, it was decided that entry fees constituted wagers, and the IHA was violated.[x] This decision means that hus, Derby Wars violated the IHA and the Stronach Group can now pursue damages against HRL and prevent them from accepting wagers for their races without theirtheir permission.



<http://www.benchwarmersports.com/horse-racing-packages>

In relation to the equine industry, this decision puts the future of the daily fantasy sports industry on uneven ground. Companies likes Derby Wars will need to gain approval to host events that utilize specific tracks. Some in the industry have accepted it, as seen through Derby Wars partnership with Kentucky Downs.[xi] In contrast, John Hindman, general counsel for Television Games Network, has argued that there is little correlation between fantasy horse racing generating pari-mutuel wagering.[xii] As wellMoreover, Scott Daruty, an executive with the Stronach Group, has labeled fantasy horse racing “as a very significant threat to the to our existing business model”. [xiii]

This case could also be a bad omen for the daily fantasy sports industry which is facing a large amount of litigation seeking to classify the industry as illegal gambling.[xiv] It will be interesting to see how this case continues to develop as Mark Midland, the CEO of Derby Wars, looks to appeal the decision.[xv]

[i] See *Pari-Mutuel Handle*, The Jockey Club (May 26, 2017), <http://www.jockeyclub.com/default.asp?section=FB&area=8>.

[ii] See Ray Paulick, *Federal Judge Rules Against Contest Operator Derby Wars in Stronach Group Lawsuit*, Paulick Report (May 17, 2017, 8:14 AM), <https://www.paulickreport.com/news/the-biz/federal-judge-rules-contest-operator-derby-wars-stronach-group-lawsuit/>.

[iii] T. D. Thornton, *The Murky Reality of Fantasy Racing*, Thoroughbred Daily News (Nov. 24, 2015), <http://www.thoroughbreddailynews.com/the-murky-reality-of-fantasy-racing/>.

[iv] *Id.*

[v] Paulick, *supra* note ii.

[vi] *Id.*

[vii] *Id.*

[viii] Thornton, *supra* note iii.

[ix] See Frank Angst, *U.S. Court Defines Contest Entry Fees as Wagers*, BloodHorse (May 17, 2017, 12:48 PM), <http://www.bloodhorse.com/horse-racing/articles/221613/u-s-court-defines-contest-entry-fees-as-wagers>

[x] *Id.*

[xi] Thornton, *supra* note iii.

[xii] *Id.*

[xiii] *Id.*

[xiv] See *In re Daily Fantasy Sports Mktg. & Sales Practices Litig.*, 158 F. Supp. 3d 1375, 2016 U.S. Dist. LEXIS 13292 (J.P.M.L. Feb. 4, 2016).

[xv] Joe Bianca, *Federal Judge Rules Against Derby Wars*, Thoroughbred Daily News (May 17, 2017), <http://www.thoroughbreddailynews.com/federal-judge-rules-against-derby-wars>.

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