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IP Arbitration in Chile: Aramco's Success in an Internet Domain Name Dispute

Mateo Verdias, Matias Gonzalez (Cuatrecasas) · Saturday, July 6th, 2024

In a recent [decision](#) dated April 8, 2024, a sole arbitrator seated in Santiago de Chile ruled in favor of Saudi Arabian Oil Company (“**Aramco**” or the “**Claimant**”) in an internet domain property dispute.

The dispute between Aramco and Mr. Joaquín Poblete (“**Mr. Poblete**” or the “**Respondent**”) arose when Mr. Poblete registered and obtained property rights to the website “aramco.cl” on September 15, 2023, immediately after the Claimant arrived in Chile by acquiring the Chilean entity Esmax Distribución (holder of an oil & gas distribution license of the Brazilian state-entity Petrobras). In the belief that it had implicit ownership of any Aramco-related internet domain (particularly, as it was the holder of “www.aramco.com” and several “Aramco” social media profiles), on October 2, 2023, the Claimant acted quickly and initiated a domain revocation arbitration proceeding as provided by the applicable Chilean law.

The sole arbitrator ultimately granted the revocation on the basis that the registration of the domain “aramco.cl” to the benefit of Mr. Poblete would otherwise “misleadingly” identify the Claimant (Award, p. 7).

Jurisdiction Under the NIC-Chile Rules and Policy for IP disputes

The dispute was decided by a sole arbitrator constituted under the auspices of the [NIC-Chile](#). This is an institution dependent of the University of Chile, responsible for the registration of “.cl” internet domains that identify Chilean websites in the global network. This institution has an arbitration center (“**Center**”) that runs under an interplay of both the [NIC-Chile Arbitration Rules](#) (“**Rules**”) and the [Policy for the Resolution of Disputes of Name Domain](#) (“**Policy**”), both granting arbitrators the jurisdiction to hear disputes related to the registration and revocation of these internet domains (Article 21, Rules, and Article 1.2, Policy).

Article 21 of Rules and Article 10.1 of the Policy provide that any such dispute is to be resolved by a sole arbitrator appointed by mutual agreement of the parties or that, absent such agreement, the Center will appoint from an exhaustive [list](#) of arbitrators published on its website.

Under the Rules, a claimant can pursue two different proceedings for the purpose of challenging

domain property rights.¹⁾

First, Article 19 of the Rules provides for an early domain revocation proceeding. This is a proceeding that must be initiated within 30 days from the moment the NIC-Chile authorities publish the granting of the internet domain to its new owner. Under this proceeding, the revoking party is subject to a “low” evidentiary standard: it must only prove that it has a “preferential interest” over the domain when compared to its holder.²⁾

Second, under Article 20 of the Rules the revoking party may initiate a non-early domain revocation proceeding even after the 30-day period. Yet, revocation under this proceeding requires the moving party to meet a “high” standard of proof: the existence of an “abusive” registration.³⁾

As explained in more detail below, Aramco promptly resorted to the early domain revocation proceeding and, therefore, had to prove only that its interest in the domain had preference over that of the Respondent. And yet, the Claimant also argued that, in any event, the standard of Article 20 would also be met, as the Respondent would have registered the domain in “bad faith.” The Respondent did not appear in the proceeding.

Relevant Law on the Merits for NIC-Chile IP Disputes

As provided by Article 21 of the Rules, the *ex aequo et bono* arbitrator (which rests upon the idea that it must decide the dispute applying principles of fundamental fairness), shall settle, in accordance with the Policy, all disputes relating to the revocation of a domain.

Considering that the merit to any domain revocation claim is the non-observance of the registry procedures and standards of the Rules (the Policy is essentially focused in regulating the procedure), the NIC-Chile dispute resolution system is arguably a self-contained one. This is, the relevant *lex causae* to observe and to determine the extent of any breach are the (substantive) Rules themselves, although not necessarily exclusively.

The Aramco Award

As advanced, the sole arbitrator decided to revoke the Respondent’s ownership of the domain name “aramco.cl,” while transferring it to the Claimant based on *two* main considerations.

First, and as a consequence of its worldwide commercial use of the term “Aramco,” the Claimant was successful in demonstrating its “preferential interest” over the domain. In doing so, the Claimant submitted evidence of its rights to the Aramco trademark in the European Union, the US, Chile, Brazil, Canada, Mexico, Monaco, Cambodia, the United Kingdom, Malaysia, and Indonesia. The sole arbitrator found that it was a public and notorious fact that the use of the term “Aramco” was a core element of the Claimant’s international trademarks.

And second, focusing on the Respondent’s conduct, the sole arbitrator also stated that anyone held to a standard of average intelligence could not plausibly claim ignorance regarding the ownership of the “Aramco” trademark by the Claimant (Award, p. 19).

All this considered, the sole arbitrator not only revoked the Respondent's name domain ownership but it outrightly transferred it to the Claimant.

Highlights of the Aramco case

While the dispute was not a complex one and the award was, therefore, straightforward, we believe that two final considerations are relevant.

In the first place, companies wishing to do business in Chile under their own trademark should be quick on their feet to monitor domain name registrations that could conflict with their own interests. This, because by doing so they could subject themselves to a low standard of proof, as Aramco did. Otherwise, the showing of an "abusive registration" could not necessarily be as straightforward.

Finally, given that NIC-Chile disputes are to be resolved by sole arbitrators applying principles of fairness, it is imperative that parties moving for the revocation of domain names ownership eloquently convey the commercial sense behind their position.

The views herein conveyed by the authors do not represent those of Cuatrecasas.

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References

Under the Policy, Articles 17 to 26, the procedural timetable of the Rules is the same for either procedure: the arbitration begins with the payment of the Center's fee, followed by the appointment of the sole arbitrator by the parties or the Center. The claimant has five (5) days to file its Statement of Claim since the fee receipt confirmation by the Center. The respondent has then ten (10) days to submit its Statement of Defense. Both submissions must include all and any evidence the parties wish to include, and not witness statements nor expert reports are allowed. The Rules do not allow for any joinder, rejoinder, counterclaim, document production nor deposition stage. There is no time-limit for the issuance of the award.

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?2 *See* NIC-Chile Arbitration Rules, Article 19 (“If the revocation request is submitted within the 30-day publication period referred to in the third paragraph of section 11 of these Rules, the requesting party may do so by invoking a preferential interest.”) (unofficial translation).

?3 *See* NIC-Chile Arbitration Rules, Article 20 (“If the revocation request is submitted after the expiration of the period referred to in the third paragraph of Article 11, the revoker must prove that it is an abusive registration (...).”) (unofficial translation).

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