

DISPUTE RESOLUTION SERVICE

D00020131

Decision of Independent Expert

Saudi Arabian Oil Co.

and

Identity Protect Limited

1. The Parties:

Lead Complainant: Saudi Arabian Oil Co.
1 Eastern Avenue
Dharan
31311
Saudi Arabia

Respondent: Identity Protect Limited
PO Box 786
Hayes
Middlesex
UB3 9TR
United Kingdom

2. The Domain Name(s):

aramcoshares.co.uk
saudiaramcoipo.co.uk
saudiaramcoshares.co.uk

3. Procedural History:

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as they might be of a such a nature as to call in to question my independence in the eyes of one or both of the parties.

24 April 2018 17:41 Dispute received

25 April 2018 17:30 Complaint validated

25 April 2018 17:43 Notification of complaint sent to parties

15 May 2018 02:30 Response reminder sent

18 May 2018 14:03 No Response Received

18 May 2018 14:03 Notification of no response sent to parties

21 May 2018 09:51 Expert decision payment received

4. Factual Background

4.1. The Complainant, Saudi Arabian Oil Co., based in Dahrán, Saudi Arabia, operates internationally and is, collectively with its subsidiaries and related entities, the world's largest oil company. It is widely known as Saudi Aramco.

4.2. The Complainant has been trading since 1933 and in 2018 is expected to launch an Initial Public Offering (IPO) which is reported to raise up to US\$100 billion and would be the world's biggest IPO.

4.3. It is the owner of the domain name aramco.com, which was registered on January 27 1994 and has since been used to link to the official website of the Complainant's business.

4.4. The Complainant also owns a significant portfolio of trade marks registered in numerous jurisdictions. These include European Union Registrations No. 012676045 for ARAMCO and No. 000918581 for SAUDI ARAMCO, which were registered on August 15 2014 and January 12 1999, respectively.

4.5. The Respondent, Identity Protect Limited, is a company incorporated in England and Wales, and which offers a service allowing the owners of domain names to keep their details private.

4.6. The Domain Names were all registered on 13 October 2017. At the same time the Respondent also registered another fifteen other domain names all of which include the names or marks ARAMCO and/or SAUDI ARAMCO.

4.7. The Domain Names are all linked to a 123 Reg Limited parking page which consists of an advertisement for 123 Reg's domain Name registration and web hosting services.

5. Parties' Contentions

The Complainant

The Complainant's submissions can be summarised as follows:

Rights

5.1. The Complainant submits that it has Rights in the names SAUDI ARAMCO and ARAMCO for two main reasons. Firstly, it is the owner of two European Union registered trade marks, as outlined at paragraph 4.4 above. Secondly, Saudi Aramco has made extensive use of these marks and has offered its services under ARAMCO and SAUDI ARAMCO since at least as early as 1944 and 1988, respectively. This has led to the development of significant goodwill and reputation worldwide.

Abusive Registration

5.2. The Complainant submits that the Domain Name(s) are Abusive Registrations as they were registered to: (1) disrupt the business of the Complainant; (2) confuse people or business into believing that the Domain Name(s) were registered to, operated or authorised by, or otherwise connected with the Complainant; (3) the Respondent is engaged in a pattern of registrations corresponding to well-known names or trade marks in which the Respondent has no apparent rights.

5.3. Specifically, the Complainant submits that as a result of its long historic and continued extensive use of the trade marks ARAMCO and SAUDI ARAMCO, coupled with the fact that it is the largest oil company in the world, it is "almost inconceivable" that the Respondent is unaware of the company or the trade marks that it owns. The Complainant further submits that the timing and number of the registrations confirms this assertion as each of the Domain Names is suffixed with a descriptive term such as "shares" or "IPO" with the registrations taking place a short time after news reporting the Complainant's IPO was published.

5.4. In addition, the Complainant submits that due to the distinctive nature of the marks which the Respondent has used in the Domain Names i.e. SAUDI ARAMCO and ARAMCO in combination with descriptive terms such as "IPO" and "shares", it is not plausible that the Domain Names refer to anything other than the Complainant. Consequently, there is a "real and tangible risk" that internet users searching for the Complainant's website will instead find themselves on websites which link to the Domain Names. Moreover, despite the fact that the Domain Names are not being actively used in the sense of not linking to active websites, damage would still be likely to occur as a result of the initial confusion caused by the Domain Names themselves.

5.5. The Complainant submits that due to the fact that the Respondent registered eighteen domain names incorporating the ARAMCO and/or SAUDI ARAMCO trade marks on the same day, it is engaged in a pattern of registering such domains.

The Response

The Respondent has not filed a Response.

6. Discussions and Findings

6.1 Paragraph 2.1 of the Policy requires that the Complainant must prove, on the balance of probabilities, that:

2.1.1 The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

2.2.2 The Domain Name, in the hands of the Respondent, is an Abusive Registration.

Rights

6.2. Therefore, as a first step, it is necessary to decide whether the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name.

6.3. The term Rights is defined in the Policy as follows:

Rights means rights enforceable by the Complainant, whether under English law or otherwise, that may include rights in descriptive terms which have acquired a secondary meaning.

6.4. This has always been treated in decisions under Nominet's DRS as a test with a low threshold to overcome and I think that must be the correct approach.

6.5 In the present complaint, the Complainant submits that it has rights in both ARAMCO and SAUDI ARAMCO for two reasons. Firstly, it points to an extensive international trade mark portfolio which includes two European trade marks for ARAMCO and SAUDI ARAMCO respectively and, secondly, it has been offering its services under the ARAMCO and SAUDI ARAMCO trademarks for considerable periods of time. In light of these submissions I conclude that the Complaint has Rights in the names or marks ARAMCO and SAUDI ARAMCO.

6.6. The names or marks in which the Complainant has rights, i.e. ARAMCO and SAUDI ARAMCO differ only from the Domain Names by the absence of IPO and SHARES and by the addition of the first and second level suffix .co.uk in the Domain Names.

6.7 I do not think that the addition of either IPO or SHARES does anything to distinguish the Domain Names from the mark or marks in which the Complainant has Rights. It seems to me that the dominant part of the Domain Name in a trade mark or distinctive sense is very clearly the words ARAMCO and SAUDI ARAMCO. IPO and SHARES are merely descriptive particularly in the context of the Complainant's forthcoming (and publicised IPO). I conclude that the Complainant has Rights in a name or mark which is similar to the Domain Names.

Abusive Registration

6.8. Abusive Registration is defined at Paragraph 1 of the Policy as a domain name which either:

i. was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; or

ii. is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.

6.9. This definition requires me to consider whether, at the time of registration/acquisition, or subsequently through the use that has been made of it, the Domain Name(s) is an Abusive Registration.

6.10. Paragraph 5 of the Policy provides a non-exhaustive list of the factors which may constitute evidence that the Domain Name(s) is an Abusive Registration and Paragraph 8 of the Policy provides a non-exhaustive list of the factors which may constitute evidence that the Domain Name(s) is not an Abusive Registration.

6.11. The Policy requires the Complainant to prove, on the balance of probabilities, that the Domain Name(s) is an Abusive Registration. The burden of proof is therefore firmly on the Complainant.

6.12. In order to make a finding of Abusive Registration it is reasonably common ground amongst Nominet Experts that, in all but a minority of cases, there must be an element of knowledge on the part of the Respondent in the sense that the Respondent must, on some level, be aware of the Complainant's rights. In some cases where the name in which the Complainant Rights are particularly well-known, it should be fairly obvious and straightforward, while in other cases where the name in which the Complainant has Rights is less well-known and/or where there are other meanings or uses which can be made of the name, this will require substantial evidence from the Complainant.

6.13 The approach that I intend to take in this case is to look at the overall question of whether the Respondent's registration or use of the Domain Names constitutes an Abusive Registration. Bound up with that, and indeed central to it, will necessarily be the question of the Respondent's knowledge of the Complainant's Rights.

- 6.14 In making this overall assessment the nature of the name or mark in which the Complainant has Rights is also clearly a factor here. The more descriptive or generic that name or mark is then the more likely it is that the Respondent simply happened upon the Domain Name as a “good domain name” without necessarily having any knowledge of the Complainant’s Rights. Obviously the more well-known and unique that name or mark is then the less likely it is that the Respondent did not register the Domain Name with the Complainant’s Rights in mind.
- 6.15 In this case the Domain Names all contain the names or mark in which the Complainant has Rights, i.e. either ARAMCO or SAUDI ARAMCO. It is doing so together with the modifying or descriptive terms IPO or SHARES. The real question therefore is whether the Respondent’s adoption and subsequent use of the Domain Name(s) amounts to taking unfair advantage of or being unfairly detrimental to the Complainant’s Rights.
- 6.16 I should say at this stage that the position here is slightly unsatisfactory because of the nature of the Respondent. The Respondent is an organisation called Identity Protect. It is simply an organisation that is offering a privacy service to the true registrant of the Domain Names and is keeping the true registrant’s identity secret. There is of course nothing wrong with the use of a service such as this and I do not infer anything from it. It does however give me a problem when it comes to deciding on the knowledge of the Respondent when it came to register (or use) the Domain Names. I think the only approach I can sensibly take is to impute to the Respondent the knowledge and actions of the substantive registrant of the Domain Names. Accordingly references to the knowledge and conduct of the Respondent in this decision should be understood as including the knowledge and conduct of the unknown substantive registrant of the Domain Names.
- 6.17 Here, the Complainant is the world’s biggest oil company and would unquestionably be well known to people in the oil industry. Further at the time the Domain Names were registered the Complainant’s proposed IPO was widely in the press. A combination of the timing of the registrations for the Domain Names and the fact that all three contain descriptive terms which obviously refer to the Complainant’s future IPO (IPO and SHARES) very strongly suggests that the Respondent not only had knowledge of the Rights of the Complainant but also of its upcoming IPO. I also take into account the fact that on the very same day as the Respondent registered the Domain Names it also registered a further 12 domains which all contain either ARAMCO and/or SAUDI ARAMCO.
- 6.18. It is therefore difficult to conceive that the Domain Names can have been registered other than with full knowledge of the Complainant’s Rights. The Respondent has not put in a Response and indeed it is difficult to think of a credible explanation for the Respondent’s conduct. I therefore have no hesitation in finding that on the balance of probabilities that each of the Domain Names is an Abusive Registration.

7. Decision

I find that the Complainant has Rights in the names and marks which are identical or similar to the Domain Names. Further, on the balance of probabilities, I find that the Complainant has established that the Domain Names in the hands of the Respondent are Abusive Registrations. I therefore direct that the Domain Names should be transferred to the Complainant.

Signed

Dated