

**BRAZIL ADOPTS ADMINISTRATIVE DISPUTE RESOLUTION PROCESS  
FOR NEW DOMAIN NAMES**

On September 30, 2010, NIC.br, the entity which oversees the registration of domain names in Brazil, adopted a mandatory administrative dispute resolution process for all “.br” domain names registered from that date forward.

A new clause added to NIC.br’s standard-form registration contract on September 30, 2010, obligates domain name registrants to consent to the process, which is called “SACI-Adm.” The process is not available for domain names registered prior to September 30, 2010.

The two available remedies are transfer and cancellation of domain name registrations.

Any third party can initiate a proceeding against an eligible “.br” domain name by filing a complaint with an approved dispute resolution organization (at this time, the Brazil-Canada Chamber of Commerce’s Arbitration Center is the only approved organization, although the list is expected to grow).

The proceeding is decided by a panel of 1 to 3 arbitrators, and is conducted in Portuguese.

In its complaint, the claimant must show that the domain name either was registered, or is being used, in bad faith, in a manner that will cause it harm. The claimant must also show that it has priority based on: (1) an application or registration, filed with the Brazilian PTO prior to the date the domain name was registered, for a trademark which is identical or confusingly similar to the domain name; (2) a trademark which has neither been registered nor applied for in Brazil, but is “well-known” in its “field of activity” as defined by the Brazilian Industrial Property law, and is identical or confusingly similar to the domain name; and/or (3) a commercial name, given name, family name, pseudonym, well-known nickname, individual or collective stage name, or other domain name, which is identical or confusingly similar to the domain name, over which it has priority. SACI-Adm rules state that evidence of bad faith includes, but is not limited to: (a) the registrant’s attempt to sell, rent, or transfer the domain name to the claimant or a third party; (b) registration of the domain name to prevent the claimant from using it; (c) registration of the domain name to harm the claimant’s commercial activity; and (d) intentional use of the domain name to attract Internet users to the registrant’s site or a third party’s site, creating a likelihood of confusion with the claimant’s trademark or eligible name.

The domain name registrant is given an opportunity to answer the complaint, after which the panel decides whether further evidence is needed. If none is, the panel decides the

dispute, issuing a written opinion, which is promptly sent to the parties and NIC.br. In cases where the panel rules that the domain name should be transferred or cancelled, NIC.br implements the decision within 15 business days of receipt, so long as neither the claimant nor the registrant has filed a lawsuit or an arbitration proceeding in the meantime.

In most situations, the claimant is responsible for all of the costs of the proceeding.

SACI-Adm rules require that the proceeding be concluded within 90 days from the date of filing of the complaint, although the panel can extend this period up to a total of 12 months.

### **Commentary**

SACI-Adm is an important and long-awaited advance in the resolution of domain name disputes in Brazil. Before this, a trademark or commercial name owner's only recourse was to file a civil action in court, which was both expensive and time-consuming. Now, disputes can be decided relatively inexpensively within 12 months by panelists who have expertise in domain name disputes.

If you have any questions or need additional information, please contact us.

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