

Mexican panel rules in Hard Rock Café franchise dispute

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An ICC panel seated in Mexico City has ruled in favour of the owner of the Hard Rock Café brand in a long-running dispute with its Mexican franchisee over quality standards and defaulted payments.

Florida-based Hard Rock International announced on 9 December that it has terminated a master franchise agreement with Operadora DB Mexico, a subsidiary of Mexico's Grupo ECE, after an ICC panel found that termination was valid because of the respondent's repeated breaches of the agreement.

The all-Mexican tribunal was composed of **Alejandro Ogarrio** of Ogarrio Daguerre SC, **Rodrigo Zamora Etcharren** of Bufete Zamora Pierce and **Carlos Müggenburg** of Müggenburg Gorches Peñalosa y Sepúlveda SC. Their award was issued in September but has only just come to light.

Hard Rock International brought the case in 2011, seeking to terminate the master franchise agreement and ancillary agreements with Operadora DB Mexico, which operates Hard Rock Café restaurants in Cozumel, Cancun, Acapulco and Cabo San Lucas. The US company claimed that the franchisee failed to pay merchandise vendors and landlords, did not keep up the quality standards of the brand, and defaulted on obligations to pay the franchisor royalties.

"This case sets a landmark precedent for franchise operators and demonstrates that in Mexico legal certainty is available for investors and laws are enforced," says **Luis Rubio Bernetche**, partner at Greenberg Traurig in Mexico City and counsel to Hard Rock International.

He says the award “acknowledges that a defaulting party can be penalised with not only closure of specific venues, but also the termination of an entire franchise system and business model.”

This is not the first time Operadora DB Mexico has faced an adverse ICC ruling over its franchise rights. In 2011 a different tribunal ruled in favour of Hard Rock Limited, upholding its exclusive right to use the “Hard Rock” brand as it expanded into luxury hotels in Mexico. That tribunal also consisted of three Mexican arbitrators: **Fernando Estavillo Castro** of the Panamerican University, **Guillermo Díaz de Rivera** of Díaz de Rivera y Mangino and **Herfried Wöss** of Wöss & Partners SC.

The first case, filed in 2008, also saw Operadora DB Mexico pursue applications for discovery against Hard Rock affiliates in the US courts, leading to an early ruling on the use of section 1782 of the United States Code in support of private arbitral proceedings.

Greenberg Traurig represented the Hard Rock companies in both arbitrations.

Operadora DB Mexico instructed Mexican boutique García Alcocer Abogados in both cases, also retaining GAR 100 firm Von Wobeser y Sierra for the most recent case. However, both firms are understood to have withdrawn midway through the second case because of a dispute over payment of fees.

Hard Rock International says Operadora its subsidiaries continue to operate Hard Rock Café restaurants in several locations in Mexico. Hard Rock International has since commenced legal action in Mexico to enforce the tribunal’s award.

In the second arbitration

Tribunal

- Alejandro Ogarrio
- Rodrigo Zamora Etcharren
- Carlos Müggenburg

Counsel to Hard Rock International

- Greenberg Traurig
Managing shareholder **Luis Rubio Barnetche** and of counsel **José Antonio Vázquez Cobo** and **Octavio Lecona Morales** in Mexico City

Counsel to Operadora DB Mexico

- Von Wobeser y Sierra (withdrew from the case)
Marco Tulio Venegas in Mexico City
- García Alcocer Abogados (withdrew from the case)

In the first arbitration

Tribunal

- **Fernando Estavillo Castro**
- **Guillermo Díaz de Rivera**
- **Herfried Wöss**

Counsel to Hard Rock Limited

- Greenberg Traurig

Managing shareholder **Luis Rubio Barnetche** and of counsel **José Antonio Vázquez Cobo** and **Octavio Lecona Morales** in Mexico City

Counsel to Operadora DB Mexico

- García Alcocer Abogados