

Court of Appeal in The Hague reinstates attachments by former Yukos shareholders on vodka brands

by *Practical Law Arbitration*, with *Van Oosten Schulz De Korte Advocaten*

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In *Hulley and others v FKP and others* (ECLI:NL:GHDHA:2022:977), the Court of Appeal in The Hague reinstated attachments on IP rights on vodka brands effected by former Yukos shareholders.

Geert Wilts, Van Oosten Schulz De Korte Advocaten

The Court of Appeal in The Hague (CA) has partially reinstated attachments effected by former Yukos shareholders on IP rights on two vodka brands, ruling that the arbitral awards in favour of the shareholders remained enforceable.

First, the CA ruled that the awards remained enforceable despite the Dutch Supreme Court (SC) reopening the debate on setting aside the awards (see [Legal update, Dutch Supreme Court reopens debate on setting aside of Yukos awards](#)). The CA considered that the first instance decision annulled the awards due to an invalid arbitration agreement. The SC, however, ruled that there was a valid arbitration agreement. The SC had reopened the setting aside debate on procedural grounds, but those set aside proceedings remained pending and therefore did not suspend enforcement of the awards.

The CA refused to suspend the enforcement of the awards pending the set aside proceedings, ruling that the shareholders' claim is unlikely to be satisfied other than through enforcement. Also, a final decision in the set aside proceedings is not expected shortly. The court also considered that the chances of success in the set aside proceedings were not promising, as the SC ruled earlier (see [Legal update, Dutch Supreme Court refuses to suspend enforcement of Yukos awards](#)). The fact that the SC reopened the setting aside debate on procedural grounds did not justify another outcome.

The CA ruled that the IP rights on the vodka brands were considered assets of Russia and not of FKP, a Russian Federal Treasury Enterprise, lifting the attachments insofar they were effected against FKP.

The CA also confirmed that the notices of attachment sufficiently described the copyrights on the visual elements of the vodka brands, but not on the design of the products under the vodka brands, so that the attachments were partially reinstated.

The CA also addressed if the IP rights were immune from enforcement pursuant to clause 19(c) of the United Nations Convention on Jurisdictional Immunities of States and their Property (that has not been ratified by the Netherlands, but should be considered customary international law). The court ruled that the IP rights were assets aimed at commercially operating alcohol brands. Also, FKP only contributed 25% of its annual turnover to Russia. Therefore, the IP rights were considered used for other than non-commercial government purposes.

Case: *Hulley and others v FKP and others* (ECLI:NL:GHDHA: 2022:1159) (28 June 2022) (Dutch language) (AD Kiers-Becking, MY Bonneur, BJ Lenselink).

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