

ADMINISTRATIVE PANEL DECISION

Kallpa Generación S.A. v. Guillermo Prieto / Kallpa Gas Ingeniería Y Servicios S.A.C.

Case No. D2023-2387

1. The Parties

The Complainant is Kallpa Generación S.A., Peru, represented by BARLAW - Barrera & Asociados S. Civil de R.L., Peru.

The Respondent is Guillermo Prieto, Peru and Kallpa Gas Ingeniería Y Servicios S.A.C., Peru, represented by Yataco Arias Abogados.

2. The Domain Name and Registrar

The disputed domain name <kallpagas.com> (“Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint in the Spanish language was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 2, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. Also on June 2, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant (GUILLERMO PRIETO) and contact information for the Domain Name which differed from the named Respondent (KALLPA GAS INGENIERIA Y SERVICIOS S.A.C.) and contact information in the Complaint. In addition according to information the Center has received from the Registrar, the language of the registration agreement for the Domain Name is English.

The Center sent an email communication to the Complainant on June 5, 2023 providing the registrant and contact information disclosed by the Registrar. The Center also invited on June 5, 2023 the Complainant to submit an amendment to the Complaint in English, or a reasoned Request for Spanish to be the language of the proceeding, or an agreement of both parties to proceed in Spanish. The Complainant filed an amended Complaint on June 9, 2023 in English.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint and the Registrant, and the proceedings commenced on June 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 3, 2023.

On June 21, 2023, the Respondent Kallpa Gas Ingeniería Y Servicios S.A.C. submitted a response in Spanish. The Center sent an email communication on June 22, 2023, stating that the language of the present proceeding is English, requesting also the Response to be submitted in English. The Respondent did not reply to the aforementioned communication. Accordingly, the Center notified the Commencement of Panel Appointment Process on July 4, 2023.

On July 4, 2023, the Respondent Guillermo Prieto submitted a communication in English.

The Center appointed Ana María Pacón as the sole panelist in this matter on July 11, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant, Kallpa Generación S.A., is a company incorporated in Peru. The Complainant is a company dedicated to the generation, transmission, and distribution of electric energy, as well as the production of hydrocarbons from natural gas. The Complainant operates in Peru since 1997.

The Complainant is the owner of the trademark KALLPA registered in Peru in classes 4, 9, 11, 39 and 42 (Certificate Multiclass No. 25426) since November 15, 2019. The Complainant was owner of the trademark CENTRAL KALLPA and logo (Certificate No. S00043597) registered in the class 40 from October 3, 2006 to October 2, 2016 (when it expired).

The Domain Name <kallpagas.com> was registered on January 10, 2013.

The record shows that the Domain Name resolves to a website of a company named Kallpa Gas Ingeniería y Servicios SAC, and this entity was incorporated in 2012.

5. Respondent's identity

Paragraph 1 of the Rules defines the respondent as “the holder of a domain name registration against which a complaint is initiated”. In many cases however, the named respondent listed in the Whois register is not a person or corporation, but a “privacy” or “proxy” registration service. Regarding the latter, paragraph 4(b) of the Rules provides that:

“Any updates to the Respondent's data, such as through the result of a request by a privacy or proxy provider to reveal the underlying customer data, must be made before the two (2) business day period concludes or before the Registrar verifies the information requested and confirms the Lock to the UDRP Provider, whichever occurs first. Any modification(s) of the Respondent's data following the two (2) business day period may be addressed by the Panel in its decision.”

At the time of the Complaint's submission on June 2, 2023, the Whois register indicated a "privacy" registration for the Domain Name. This circumstance may have prompted the Complainant to file the Complaint against the entity Kallpa Gas Ingeniería y Servicios SAC.

On the Verification sent to the Center, the Registrar confirmed the registrant of the disputed domain name as Guillermo Prieto. The Center in turn, disclosed this information to the Complainant, inviting it to add the newly identified registrant as a respondent. The Complainant submitted an amended Complaint, but did not indicate Guillermo Prieto as a respondent, rather, the respondent was kept as Kallpa Gas Ingeniería Y Servicios S.A.C.

The Panel notes that the registrant of the disputed domain name is, as confirmed by the Registrar, Guillermo Prieto. For this reason, Guillermo Prieto should be treated as the Respondent. The fact that the Complainant did not choose to amend the Complaint does not affect the Panel's ability to recognize this. Nevertheless, the Panel will also treat Kallpa Gas Ingeniería Y Servicios S.A.C. as a Respondent, since it is clear that there are many factors that link this entity with both, Guillermo Prieto and the disputed domain name, including the fact that the response was filed on behalf of Kallpa Gas Ingeniería Y Servicios S.A.C., and the fact that the website associated with the disputed domain name makes direct reference to this entity.

Accordingly, unless otherwise indicated, the Panel will use the term "the Respondent" to refer to the Guillermo Prieto and Kallpa Gas Ingeniería Y Servicios S.A.C., indistinctly.

6. Language of the proceeding

According to the Rules, paragraph 11 (a), the proceeding shall be conducted in the language of the Registration agreement, unless the Panel determines otherwise, depending on the circumstances of the administrative proceeding.

In this case, the Language of the Registration agreement is English. After being informed of this fact, the Complainant submitted a Complaint translated into English. In light of the above, the Panel comes to the conclusion that the present proceeding should be continued in English, but accepts the Response submitted in Spanish.

7. Registrant's Supplemental Filing

On July 4, 2023, after the Commencement of Panel Appointment Process communication sent by the Center, the co-Respondent submitted an unsolicited supplemental filing in English.

Paragraph 10 of the Rules provides panels with the authority to determine the admissibility, relevance, materiality, and weight of the evidence, and also to conduct the proceedings with due expedition.

Unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel, pursuant to its general powers under paragraph 12 of the Rules. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.6.

UDRP panels generally accept supplemental filings only when they provide material new evidence or a fair opportunity to respond to arguments that could not reasonably have been anticipated. See, along these lines, *Welcomemat Services, Inc. v. Michael Plummer Jr., MLP Enterprises Inc.*, WIPO Case No. [D2017-0481](#).

In this case, the Supplemental Filing submitted by the co-Respondent does not provide new evidence or represents a fair opportunity to respond to arguments that could not reasonably have been anticipated. Accordingly, the Panel will not consider the previously referred Supplemental Filing in reaching this Decision.

8. Parties' Contentions

A. Complainant

(i) Identical or confusingly similar

The Complainant states that it has trademark rights in the name KALLPA in the classes 4, 9, 11, 39 and 42.

The Domain Name <kallpagas.com> totally includes its trademark. The word "gas" is descriptive since it refers to the gas related services offered by the Respondent. In this sense, it should not be analyzed.

The Domain Name is used for a website that advertises commercial activities closely related to the products and services that are covered by its registered trademark.

In addition, on February 5, 2020, the Respondent requested the registration of the trademark KALLPA GAS and logo for services of the class 35. The Peruvian Distinctive Signs Commission (First Administrative Instance) determined that the trademark KALLPA GAS and logo and the registered trademark KALLPA were confusingly similar, and denied the application.

(ii) Rights or legitimate interests

The Complainant contends that the Respondent has no rights or legitimate interests concerning the name "Kallpa Gas". The Respondent does not possess any trademark rights for KALLPA.

Moreover, in two recent cases, the Respondent applied to INDECOPI (Peruvian Intellectual Property Office) for the registration of the trademark KALLPA GAS and logo in classes 7 and 35. In one case (class 7, File No. 830417-2019) the proceeding concluded because the Respondent failed to pay the respective official fee. In the other case (class 35, File No. 836364-2020) the application was denied, and the Respondent did not file an appeal.

(iii) Registered and used in bad faith

The Complainant argues that it began its production, processing, and fractionation activities in Peru in 1997 and has since become a well-established company in its industry.

Considering the Complainant's date of commencing activities, it is evident that this occurred two years before the registration of the Domain Name, referring to a screen capture that shows that Complainant started its activities on December 1, 2011. Therefore, the Respondent could have been aware that the name KALLPA belonged to the Complainant when it registered the Domain Name with the Registrar.

Additionally, the Respondent could have been aware that the Complainant was the owner of the trademark KALLPA CENTRAL and logo in class 40 (Reg. No. S00043597) registered with INDECOPI on October 3, 2006. Although this trademark is no longer in force due to the Complainant's rebranding, it still demonstrates the Respondent's bad faith.

Furthermore, the Complainant contends that the Respondent has failed to provide any evidence or reasons to justify the legitimate use of the name KALLPA in the Domain Name.

B. Respondent

Even though Respondent did not submit a Response in English, the Language of Proceeding, the Panel will, for the sake of completeness, and in line with paragraph 10 (a) of the Rules, consider the Response on this case.

The Respondent mainly argues that the goods and services covered by the Complainant's mark are not identical, nor related to the goods and services offered through the website related to the Domain Name.

The Respondent also claims that the Complaint is an attempt in bad faith from the Complainant, to unduly hinder the Respondent's commercial activities. The type of consumer that Complainant targets is very different from the type of consumer that the Respondent targets through the website at the Domain Name.

The Respondent claims that the KALLPA trademark is a term commonly used in "Quechua" meaning "effort, energetic use of physical force, vigor or activity of the mind".

Finally, the Respondent claims that the Domain Name corresponds to its trade name, noting that its company has been operating under such name since 2012.

9. Discussion and Findings

Paragraph 4(a) of the Policy provides that to obtain the transfer of the Domain Name, the Complainant must prove the following three elements:

- the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- the Domain Name has been registered and is being used in bad faith.

Paragraph 15(a) of the Rules provides that the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Furthermore, paragraphs 10(b) and 10(d) of the Rules provide that the Panel shall ensure that the parties are treated with equality and shall determine the admissibility, relevance, materiality, and weight of the evidence.

In addition, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, the Rules, the Panel shall draw such inferences therefrom as it considers appropriate.

Taking the aforementioned provisions into consideration, the Panel finds as follows:

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Panel to consider first whether the Complainant has established relevant trademark rights. The Complainant has supplied evidence that shows that the Complainant has registered the trademark KALLPA for products and services of the classes 4, 11, 39 and 42. The Panel is therefore satisfied that the Complainant has established relevant trademark rights.

The Panel is also required under paragraph 4(a)(i) of the Policy to examine whether the Domain Name is identical or confusingly similar to the Complainant's trademark. In this regard, the Panel notes that the Domain Name incorporates the Complainant's KALLPA trademark in its entirety with the addition of the term "gas". The Panel finds that this addition is insufficient to avoid the confusing similarity with the Complainant's

trademarks. See section 1.8 of the [WIPO Overview 3.0](#): “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements.”

Furthermore, it is widely accepted that the “.com” generic top-level domain is generally irrelevant for the purpose of assessing identity or confusing similarity between a trademark and a domain name. See section 1.11 of the [WIPO Overview 3.0](#).

The Panel therefore finds that the Domain Name is confusingly similar to the Complainant’s trademark.

The Complainant has therefore satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to demonstrate that the Respondent has no rights or legitimate interests in the Domain Name. Paragraph 4(c) of the Policy sets out a list of non-exhaustive circumstances that may suggest that a respondent has rights or legitimate interests in a domain name, including but not limited to:

“(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.”

A complainant is required to make a *prima facie* case that the respondent does not have rights or legitimate interests in the disputed domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name in question. If, however, the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP. See section 2.1 of the [WIPO Overview 3.0](#).

First of all, the Panel agrees to emphasize that the Rules in principle provide only for a single round of pleadings, and do not contemplate discovery as such. Accordingly, a panel’s assessment will normally be made on the basis of the evidence presented in the complaint and any filed response. The panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence irrespective of whether a response is filed. See section 2.1 of the [WIPO Overview 3.0](#).

The Panel has considered the evidence put forward by the Complainant, but the Panel also notes the broader circumstances of the case.

The Complaint was filed against KALLPA GAS INGENIERIA Y SERVICIOS S.A.C., which seems to be the operator of the website at the Domain Name. This name partially (but significantly) matches the Domain Name, and raises a question as to whether the Respondent genuinely adopted “KALLPA GAS” as part of its business name (and then registered the Domain Name to match at a later date) independently of the Complainant’s rights, or if there was an intention to unfairly take advantage of the Complainant’s trademark. The record addresses this question in a variety of ways, setting out the Parties’ contrary positions on a range of topics, and in particular the Respondent claiming the selection of “KALLPA GAS” noting that “KALLPA” is a term in Quechua language meaning “strength”, “effort”.

The Panel notes that the burden to prove the three elements of paragraph 4(a) of the Policy falls upon the Complainant.

On the one hand, the Panel notes the coincidence of the term “KALLPA” in the Complainant’s CENTRAL KALLPA trademark (in force at the time of registration of the Domain Name) and the Respondent’s business name “KALLPA GAS”. On the other hand, the Panel also recognizes that it is plausible that the Respondent could have selected it due to its meaning being a term in the Quechua language.

In addition, the Respondent appears on the balance of probabilities to be operating a business of some substance, which existence predates the registration of the Domain Name.

Furthermore, there is not sufficient evidence on the Complainant’s reputation as to conclude that it had any impact on the Respondent when choosing their business name, and subsequently registering it as a domain name, especially considering that they operate in different businesses, providing different type of services.

The nature of the dispute gets closer (if any) to a trademark infringement matter or unfair competition, and cannot reasonably be considered as a “clear case of cybersquatting” of the kind which the Policy was intended to address. See section 4.14.6 of the [WIPO Overview 3.0](#).

The Complainant has therefore failed to establish paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the Complainant to demonstrate that the Domain Name was registered and is being used in bad faith. Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances that may indicate bad faith, including but not limited to:

- “(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

In light of the above finding, it is not strictly necessary for the Panel to consider the third element of paragraph 4(a) of the Policy. However, the Panel notes that in the circumstances of this case this element of the analysis is aligned to that of the second element, in particular regarding the reasons for the registration of the Domain Name, and the nature of the dispute exceeding the scope of the UDRP.

Here, the Panel finds that although the registration of the Complainant’s trademark CENTRAL KALLPA for “the production and transformation of energy” predates the registration date of the Domain Name by years, the record does not support a finding of bad faith.

The Panel notes that the term “KALLPA” is a Quechua language term that means “strength”, “effort” and is used in Peru and other countries where Quechua is spoken (Argentina, Colombia), and the Panel does not have sufficient evidence to conclude under the Policy that the Respondent registered the Domain Name in bad faith (e.g. to unfairly take advantage of the Complainant’s trademark) and not for its dictionary meaning.

Further, there is no case established that the Respondent, at the time of registration, registered the Domain Name with intent to sell it to the Complainant, to disrupt Complainant’s business, or to prevent the Complainant from registering its name or trademark in a domain name. On the contrary, the Domain Name was registered after the incorporation of the Respondent’s business, with the Respondent providing evidence of the Respondent’s activity under such name.

The Panel also notes that the Respondent is not using the website associated with the disputed domain name to create the impression that it is in some way connected to or associated with the Complainant and its products and services.

In addition, while the Panel notes the fact that the Respondent’s application for a KALLPA GAS trademark was denied by INDECOPI, the Panel does not consider it sufficient in the circumstances of the case as to conclude under the Policy that there was bad faith.

Furthermore, the Panel points out that the (Certificate Multiclass No. 25426) KALLPA trademark registered in favor of the Complainant in class, 9 was recently partially canceled by INDECOPI (Resolution No. 1108-2023/CSD-INDECOPI) on May 15, 2023, since the denomination KALLPA was already registered by a third party in class 16. This information was obtained by the Panel in line with the general powers of a panel articulated *inter alia* in paragraphs 10 and 12 of the UDRP Rules, as it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision (see section 4.8 of the [WIPO Overview 3.0](#)). Accordingly, the Panel notes that the previously referred resolution aims to establish that the term “kallpa” is used in Peru, where both the Complainant and the Respondent operate, by different parties, in distinct sectors, and offering varying products and services.

Finally, considering the circumstances of this case, the Panel notes that the Policy was not designed to adjudicate all type of disputes related to domain names, but only cases of “abusive cybersquatting”. The Panel finds this matter would be better suited for the administrative authorities and/or courts of competent jurisdiction, or perhaps for mediation.

Accordingly, the Complainant has not satisfied paragraph 4(a)(iii) of the Policy.

10. Decision

For the foregoing reasons, the Complaint is denied.

/Ana María Pacón/

Ana María Pacón

Sole Panelist

Date: July 25, 2023