

ADMINISTRATIVE PANEL DECISION

Decathlon v. Salmanova Liliya Kurbangalievna
Case No. D2022-4916

1. The Parties

The Complainant is Decathlon, France, represented by AARPI Scan Avocats, France.

The Respondent is Salmanova Liliya Kurbangalievna, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <quechua-warm.store> (“Disputed Domain Name”) is registered with Beget LLC (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2022. On December 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On December 28, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on December 29, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on December 30, 2022.

On December 29, 2022, the Center sent an email in English and Russian to the Parties regarding the language of the proceeding. The Complainant requested that English be the language of the proceeding on December 30, 2022. The Respondent did not comment on the language of the proceeding.

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 proceedings commenced on January 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 8, 2023.

The Center appointed Pham Nghiem Xuan Bac as the sole panelist in this matter on February 16, 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, a French corporation established in 1980, is specialized in sporting and leisure goods. Over the years, it expanded its operations internationally, particularly in April 2022, the Complainant employs more than 100,000 employees worldwide, and operates 1,747 stores in 60 countries with annual sales of EUR 13.8 billion. The Complainant's QUECHUA trademark, created in 1997 in Haute-Savoie (France), is dedicated to camping and hiking.

The Complainant is the owner of some trademark registrations that consist of or contain the word "QUECHUA" (the "QUECHUA Trademark") for a variety of products and services in many countries, including but not limited to:

- French Trademark Registration No. 97702142, registered on April 10, 1998;
- International Trademark Registration No. 700271, registered on April 14, 1998;
- International Trademark Registration No. 917639, registered on September 14, 2006; and
- International Trademark Registration No. 1036641, registered on December 21, 2009.

In addition, the Complainant has registered certain domain names featuring its QUECHUA Trademark, among which: <quechua.com> registered on August 18, 1997; <quechua.biz> registered on October 12, 2001; <quechua.fr> registered on May 18, 2004; and <quechua.it> registered on April 28, 2008.

The Disputed Domain Name was registered on November 27, 2022. As of the date of this Decision, the Disputed Domain Name redirected users to a website at "https://quechua-shop.ru/" offering products related to camping and hiking. On this website, the Complainant's QUECHUA trademark and logo are prominently displayed at the top of the home page. Besides, as submitted by the Complainant, the Disputed Domain Name used to resolve to the website "https://quechua-warm.store".

5. Parties' Contentions

A. Complainant

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case, as follows:

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

First, the Complainant submits that the Complainant is the owner of several QUECHUA prior-registered trademarks and domain names. The Complainant also submits that its QUECHUA trademark is well-known as recognized in some earlier UDRP Panel decisions.

Second, the Complainant asserts that the Disputed Domain Name is confusingly similar to the QUECHUA trademark owned by the Complainant since the Disputed Domain Name incorporates the Complainant's QUECHUA trademark in its entirety. The mere addition of the generic word "warm", which indicates that QUECHUA branded equipment is related to insulation and heat, is insufficient to dispel the likelihood of confusion between the Disputed Domain Name and the Complainant's trademark.

Finally, the Complainant argues that the addition of the generic Top-Level Domain (“gTLD”) “.store” should not be taken into account under the first element.

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

First, the Complainant asserts that the Complainant has not given any authorization or permission to the Respondent to use any of its QUECHUA trademark or to apply for or use terms similar thereto in the Disputed Domain Name in any manner or form. Furthermore, the Complainant submits that the Respondent has not in any way related to the Complainant’s business, is not one of its distributors and does not carry out any activity for or has any business with it.

Second, the Complaint asserts that the Respondent is not commonly known under the Disputed Domain Name.

Finally, the Complainant contends that the Disputed Domain Name is neither used in connection with a *bona fide* offering of goods or/and services nor constitutes a legitimate noncommercial fair use.

(iii) The Disputed Domain Name was registered and is being used in bad faith.

First, the Complainant contends that the Complainant has demonstrated a strong reputation and the leading position of its trademark QUECHUA throughout the world in the field of selling goods and products related to sports. Hence, considering that the Disputed Domain Name is confusingly similar to the Complainant’s QUECHUA trademark, the Complainant argues that the Respondent necessarily had the Complainant’s name and its trademarks in mind when registering the Disputed Domain Name. Accordingly, the Complainant asserts that the Disputed Domain Name was registered in bad faith.

Second, the Complainant submits that the Disputed Domain Name redirects to the website “https://quechua-warm.store” displaying pictures of QUECHUA branded products and alleging to sell such products. Besides, this website reproduces the Complainant’s QUECHUA logo, without any authorization granted by the Complainant. Thus, the Complainant contends that the Respondent has used the Disputed Domain Name in an attempt intentionally to attract Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s mark as to source, sponsorship, affiliation or endorsement.

Moreover, the Complainant asserts that MX servers have been activated in relation with the Disputed Domain Name, indicating that the Respondent can use the Disputed Domain Name in a phishing campaign targeting the Complainant’s customers. Thus, the Complainant asserts that the Respondent has used the Disputed Domain Name in bad faith.

With said arguments, the Complainant requests that the Disputed Domain Name be transferred to the Complainant.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

A. Procedural issues

(i) The Respondent’s Identity

The Panel notes that at the time the Complaint was filed on December 21, 2022, the Respondent was identified as “Not Disclosed”. On December 28, 2022, the Registrar revealed the underlying registrant “Salmanova Liliya Kurrbangalievna”. The Center sent a Notice of Registrant Information to the Complainant

on December 29, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On December 30, 2022, the Complainant filed an amended Complaint, adding the underlying registrant disclosed by the Registrar.

(ii) Language of the Proceeding

The Complaint was filed in English on December 21, 2022. On December 28, 2022, the Registrar confirmed that the language of the Registration Agreement is Russian. As the Complaint was filed in English, the Center, in its notification dated December 29, 2022, invited the Complainant to submit either (i) satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceeding should be in English, or (ii) the Complaint translated into Russian, or (iii) a substantiated request for English to be the language of the proceeding by January 1, 2023.

On December 30, 2022, the Complainant sent an email to the Center requesting that English be the language of the proceeding. The Respondent did not give any comment on this issue.

According to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Similar to previous UDRP decisions, the Panel finds that the spirit of paragraph 11(a) is to ensure fairness in the selection of language by giving full consideration to the Parties' level of comfortability with each language, the expenses to be incurred, and the possibility of delay in the proceeding in the event translations are required and other relevant factors (see, e.g., *Deutsche Messe AG v. Kim Hyungho*, WIPO Case No. [D2003-0679](#)).

In the present case, the Panel takes into account the circumstances of the proceeding, including, but not limited to:

- (i) the fact that the Complainant, a French business entity, does not appear to be able to communicate in Russian, and therefore, if the Complainant was required to have the documents translated into Russian, the proceeding would be unduly delayed, and the Complainant would have to incur substantial expenses for translation;
- (ii) the Disputed Domain Name contains English words, *i.e.*, "warm", "store"; this suggests that the Respondent has knowledge of the English language and will be able to communicate in English.
- (iii) the Respondent did not object for English to be the language of the proceeding, and did not submit a Response in either English or Russian.

Therefore, for the purpose of easy comprehension of the Complainant (ultimately, the Party solely taking part in the proceeding) of the Panel's decision without any necessity of translations, and in the interest of fairness to both Parties as well as the Panel's obligation under paragraph 10(c) of the Rules, which provides that "the Panel shall ensure that the administrative proceeding take place with due expedition", the Panel hereby decides, under paragraph 11(a) of the Rules, that the language of the proceeding shall be English and shall render its decision in English.

(iii) The Respondent's Failure to Respond

The Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant (see, e.g., *Tradewind Media, LLC d/b/a Intopic Media v. Jayson Hahn*, WIPO Case No. [D2010-1413](#), and *M. Corentin Benoit Thiercelin v. CyberDeal, Inc.*, WIPO Case No. [D2010-0941](#)). However, the Panel may draw appropriate inferences from the Respondent's default.

B. Identical or Confusingly Similar

The Complainant is required to establish the two following elements: (1) that it has trademark rights, and, if so, (2) that the Disputed Domain Name is identical or confusingly similar to its trademark.

First, the Panel finds that the Complainant has evidenced that it has rights in and to the QUECHUA trademark, which was registered in a number of countries well before the registration of the Disputed Domain Name.

Second, the Panel finds that the Disputed Domain Name incorporates entirely the Complainant's QUECHUA trademark. The difference between the Disputed Domain Name and the trademark is the addition of the descriptive term "warm" and a hyphen in between. In this regard, the Panel finds that the said difference does not prevent a finding of confusing similarity between the Complainant's trademarks and Disputed Domain Name. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"); see also, e.g., *Guccio Gucci S.p.A. v. Organization shimici*, WIPO Case No. [D2013-1773](#); *Guccio Gucci S.p.A. v. Bo Zhou*, WIPO Case No. [D2013-1624](#); *K-Swiss Inc. v. Kuefer Bernd*, WIPO Case No. [D2021-0657](#).

Third, the Panel finds, similarly to the other UDRP panels, that the addition of the generic Top-Level Domain ("gTLD") ".store" to the Disputed Domain Name can be disregarded for the purposes of the Policy (see, e.g., *SRAM, LLC v. Whois Agent, Domain Protection Services, Inc. / Jgdg Ybdeg*, WIPO Case No. [D2022-2531](#); *UNISTELLAR v. Contact Privacy Inc. Customer 0164412292 / cc ww, Unistellar.Store*, WIPO Case No. [D2022-2258](#); *ANIMA Corp v. Gorbatova Olga*, WIPO Case No. [D2022-2707](#), *B&B Hotels v. Privacy Protect, LLC (PrivacyProtect.org) / Babich Aleksandra Olegovna*, WIPO Case No. [D2022-2297](#)).

On the basis of the foregoing findings, and according to paragraph 4(a)(i) of the Policy, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's QUECHUA trademark, and the first element of the Policy is established.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists circumstances, in particular but without limitation, which, if found by the Panel to be proved, demonstrate the Respondent's rights or legitimate interests in the Disputed Domain Names for the purposes of paragraph 4(a)(ii) of the Policy, including:

- "(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 trademark 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 trademark or service mark at issue."

Noting the facts and arguments set out above, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent did not reply to the Complainant's contentions and, therefore, did not refute the Complainant's contentions.

The consensus of previous UDRP panels is that while the overall burden of proof in UDRP proceedings is on the complainant, once a *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating his rights or legitimate interests in the disputed domain name (see e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#); *Julian Barnes v. Old Barn Studios Limited*, WIPO Case No. [D2001-0121](#)). In this instant case, the Panel finds that the Respondent has failed to meet that burden since no response was submitted with evidence to the contrary.

Regarding paragraph 4(c)(i) of the Policy, the Panel finds, in light of the Complainant's asserted facts, that no license, permission, or authorization of any kind to use the Complainant's trademarks has been granted to the Respondent. There is no evidence available that the Respondent holds any registered or unregistered trademark rights in any jurisdiction. Thus, the Panel finds that the Respondent has no rights in the QUECHUA trademark.

A reseller or distributor may be making a *bona fide* offering of goods or services and thus have rights or legitimate interests in a domain name if its use meets certain requirements, which are described in the decision *Oki Data Americas, Inc. v. ASD, Inc., supra* ("*Oki Data*"), including:

- the Respondent must actually be offering the goods or services at issue;
- the Respondent must use the site to sell only the trademarked goods or services (otherwise, there is the possibility that the Respondent is using the trademark in a domain name to bait consumers and then switch them to other goods or services);
- the site itself must accurately and prominently disclose the Respondent's relationship with the trademark owner; and
- the Respondent must not try to "corner the market" in domain names that reflect the trademark, thus depriving the trademark owner of the ability to reflect its own mark in a domain name.

In this particular case, at the time of this Decision, the Disputed Domain Name redirects users to a website at "https://quechua-shop.ru/ offering sporting" and leisure goods bearing the Complainant's QUECHUA trademark. The Panel finds that the website under the Disputed Domain Name is also presenting the Complainant's QUECHUA trademark and logo. The Panel further finds that the Respondent did not place any statement or disclaimer accurately and prominently disclosing its relationship with the Complainant. These indications may mislead consumers into believing in a connection or association between the Respondent and the Complainant, where such connection or association does not exist in reality.

With such a view, the Panel finds that the use of the Disputed Domain Name wholly incorporating the Complainant's QUECHUA trademark does not meet the *Oki Data* criteria and thus, does not constitute a *bona fide* use within paragraph 4(c)(i) of the Policy.

Regarding paragraphs 4(c)(ii) and 4(c)(iii) of the Policy, the Panel finds that there is no evidence that would suggest that the Respondent, as an individual, business, or other organization, has been commonly known by the Disputed Domain Name, or that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name. In fact, by incorporating the Complainant's distinctive trademark in its entirety within the Disputed Domain Name, the composition of the Disputed Domain Name is such to carry a risk of implied affiliation to the Complainant, contrary to the fact, which cannot constitute fair use.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, and the second element, paragraph 4(a)(ii) of the Policy is established.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy identifies, in particular but without limitation, four circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, including:

"(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 trademark 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."

The above four circumstances are not exhaustive and bad faith may be found by the Panel alternatively in other circumstances.

The Panel finds that the Complainant has put forth evidence that the Respondent has registered and used the Disputed Domain Name in bad faith. The Respondent did not reply to the Complainant's contentions and, therefore, did not refute the Complainant's contentions.

The Panel has considered the Complainant's assertions and evidence relating to the Respondent's registration and use of the Disputed Domain Name. In this regard, the Panel finds that the Complainant's QUECHUA trademark has been registered in a variety of jurisdictions around the world. These trademark registrations well predate the registration of the Disputed Domain Name.

The Disputed Domain Name comprises the QUECHUA trademark in its entirety, adding a hyphen and the descriptive term "warm" at the end. Given the extensive use of the QUECHUA trademark by the Complainant, which occurs in numerous countries, it is very unlikely that the Respondent registered the Disputed Domain Name in a fortuity. Also, in consideration of the use of the Disputed Domain Name and the contents of the website thereunder, the Panel is of the view that the Respondent obviously knew of the Complainant and its QUECHUA trademark when it registered the Disputed Domain Name, and the Panel considers the registration is an attempt by the Respondent as to take advantage of the reputation and goodwill of the Complainant's trademark.

On the date of this Decision, the Panel accesses the Disputed Domain Name and finds that it is resolving to a website that offers sporting and leisure goods. In addition to the adoption of the Complainant's QUECHUA trademark as a uniquely distinctive part of the Disputed Domain Name, the Respondent uses the Complainant's QUECHUA trademark and logo on the website.

The Panel takes the view that any Internet users seeking to purchase the Complainant's QUECHUA goods would very likely mistakenly believe that the Respondent is either the Complainant or associated with the Complainant, while no such connection exists in fact. Such misleading behavior is indicative of bad faith within the meaning of paragraph 4(b)(iv) of the Policy, on the part of the Respondent.

Taking into account all of the above and the available record, the Panel finds that the Disputed Domain Name was registered and is being used by the Respondent in bad faith and the third element under paragraph 4(a)(iii) of the Policy is established.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Name, <quechua-warm.store> be transferred to the Complainant.

/Pham Nghiem Xuan Bac/

Pham Nghiem Xuan Bac

Sole Panelist

Date: March 2, 2023