

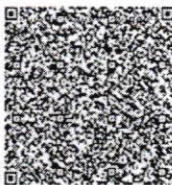


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ARBITRATION AWARD

.IN REGISTRY

(C/O NATIONAL INTERNET EXCHANGE OF India)

Before the Sole Arbitrator, Binny Kalra

Disputed domain name <www.saponlinetraining.in>

INDRP Case No: 1579

In the matter of:

SAP SE

Complainant

VS

Harnaaz Infotech

Respondent

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Binny Kalra

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Before the Sole Arbitrator, Binny Kalra

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In the matter of:

SAP SE

Dietmar-Hopp-Allee 16,
69190 Walldorf,
Germany

Complainant

VS

Harnaaz Infotech

Noida, Uttar Pradesh-203203
India
Registrant Phone: +91-98875564
Registrant Email: harnaazinfotech@gmail.com

Respondent

INDRP Case No: 1579

1. The Parties:

The Complainant is SAP SE, ("SAP"), who is represented in these proceedings by M/s RNA, Technology and IP Attorneys, Gurgaon. The Respondent is Harnaaz Infotech, Noida, UP, which has not made any representation by itself or through counsel during these proceedings.

2. The domain name, Registrar, and Policy:

The present proceedings pertain to a dispute regarding the domain name www.saponlinetraining.in (hereinafter referred to as the "**Disputed Domain Name**"). The Registrar for the Disputed Domain Name is GoDaddy.com LLC, Compliance Department, 14455 North Hayden Rd., Suite 219, Scottsdale, AZ 85260, USA. The present arbitration is being conducted in accordance with the Arbitration

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and Conciliation Act, 1996, the .IN Domain Name Dispute Resolution Policy ("**Policy**") and the INDRP Rules of Procedure ("**Rules**").

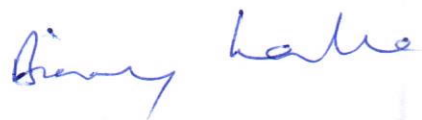
3. Procedural history:

- 6 July 2022: Consent of the arbitrator along with a declaration of impartiality and independence was given to the .IN Registry
- 9 July 2022: Notice of commencement of arbitration proceedings was sent to all parties by the arbitrator and a period of 15 days, until 25 July 2022, was given to the Respondent to submit a statement of defense.
- 26 July 2022: No communication was received from the Respondent by the stipulated date and a notice of forfeiture of the right to file a statement of defense by the Respondent was sent by email by the arbitrator to all concerned parties and the award was reserved.

4. The Complainant's case:

The complainant's introduction to its business is summarized below:


- (a) The Complainant company was founded in 1972 and from a small, regional enterprise it has grown to be the market leader in enterprise application software, business analytics and mobile solutions. The Complainant provides various end-to-end software application solutions to its customers. One such application solution is SAP Business Suite, which optimizes all business-critical processes.
- (b) The Complainant is the market leader in products for business analysis and a technology leader for real time analysis. It employs 100,000+ people of more than 155 nationalities as on March 31, 2022. It serves over 400,000 customers in more than 180 countries helping them to operate profitably, adapt continuously, and grow sustainably. The Complainant has over 3,000 customers in India, where it commenced its business in the year 1992. Its customers include 92% of the Forbes Global 2000 companies.



- (c) The Complainant coined, adopted and commenced use of the trademark 'SAP' in the year 1972. The Complainant has continuously and extensively used the trade mark 'SAP' and SAP formative marks for its products and services. The Complainant is the registered proprietor of the trademark 'SAP' and various SAP formative marks in over 75 countries. The Complainant's use of its name SAP can be seen on its website www.sap.com. The Complainant is listed on both the Frankfurt Stock Exchange and the New York Stock Exchange under the ticker symbol "SAP." Reliance is placed on **Exhibit 2** being a copy of SAP Global Corporate Fact Sheet and **Exhibit 4** being a list of registrations of the SAP marks internationally.
- (d) The Complainant's trusted SAP ERP software serves large, small and midsize enterprises in more than 25 different industrial sectors, and helps with cost cutting and extremely efficient utilization of available resources. The software products of the Complainant such as Business Suite are not available off-the-shelf, or through e-stores or through other general, commercial retail channels. These products are not available in India with any computer hardware vendors as an Original Equipment Manufacturer (OEM) product or as a gift.
- (e) Several software products of the Complainant require trained software professionals to load, execute, access, employ, utilize, store and display integrated end-to-end solutions derived from such software products at each stage of utilization. The Complainant has created education and training programs to meet these needs, and enters into contractual arrangements with third party software specialists ('Education Partners') the world over for this purpose. The Complainant maintains a detailed software license database that contains all relevant details of all SAP partners and the particular nature of license in its favour. In India, the Complainant has partnerships with specific entities to provide such training. Reliance is placed on **Exhibit 3** which is a list of authorized education training partners of the Complainant in India.
- (f) Any dealing in the Complainant's SAP software by a company/entity whether for providing training and education courses to third parties, or for utilization of SAP software, must be under a software license agreement in writing. A company or an individual end user intending to use the SAP software must agree to an "End User License Agreement" (EULA) with the Complainant. Without a valid License Agreement from the Complainant expressly authorizing the use of SAP software and documentation for education

Bijoy Kalra

and/or training or other specific purposes no individual/company can provide access to Complainant's software to third parties for any purpose, nor can it become eligible or authorised to act as 'Education Partner' of the Complainant. The Complainant's software products licensed for a particular purpose cannot be used for any other purpose. The objective of the Licensing policy is to reduce illegal and unauthorised use of the Complainant's software and to protect the reputation and goodwill attached to the Complainant's software products.

- (g) Due to the widespread use of Complainant's software, applications, solutions and platforms globally and long standing goodwill in the trade and business, the trade marks 'SAP' and SAP formative marks have become highly distinctive of Complainant's goods/ services and are exclusively associated with the products and services of the Complainant. The Complainant's sales and marketing expense on advertising and promotion was Euro 7,505 million in 2021. In the fiscal year 2021, the Complainant's total annual revenue was approximately Euro 27.84 billion.
- (h) The brand/ trade name 'SAP' was ranked 21st in Interbrand's list of Best Global brands (2018). Interbrand, a reputed agency specializing in brand valuation among other areas, has continuously ranked SAP as one of the top 50 most valued brands since 2001. As per Interbrand Best Global Brands, 2021, the brand/ trade name 'SAP' is valued at USD 30,090 Million. Hence, the brand/ trade name 'SAP' is an extremely valuable asset of the Complainant. Reliance is placed on **Exhibit 5** which comprises extracts downloaded from www.interbrand.com providing the list of world's top 100 most valuable brands in 2021 that ranks 'SAP' at 20th position.
- (i) On account of the combination of various factors, i.e., high degree of inherent distinctiveness of the trade mark SAP/ , continuous and extensive use, wide spread advertisement, promotional activities and global presence of the Complainant through its subsidiaries, the said mark has become well known worldwide including in India and deserves protection for good and services across the board against its misappropriation.
- (j) The Complainant is the registered proprietor of the trade mark 'SAP', inter alia registration nos. 989935, 576754, 576755 in class 9, registration nos. 890059, 578462 in class 16, and registration nos. 1238968, 1238969 in classes 41 and 42. The Complainant has also secured or applied for registration of trade mark SAP in several other classes. Reliance is placed

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on **Exhibit 6** being a list of trade mark registrations and applications filed by the Complainant for 'SAP' and SAP formative trademarks with the Indian Trade Mark Office along with copies of a few registration certificates.

- (k) The domain name www.sap.com was registered by the Complainant on January 18, 1995 and the India specific domain name www.sap.in was registered by the Complainant on February 16, 2005. Online searches for the name/mark 'SAP' on Google, Yahoo, Bing, etc. show products and services of the Complainant among the top most hits. The Complainant has an extensive presence on social media like Facebook and Twitter, and through various online public forums, blogs, discussions, reviews, etc. The public identifies the Complainant through its trade mark/ trade name 'SAP' on the internet. Reliance is placed on **Exhibit 7** being extracts from WHOIS Search database and **Exhibit 8** being extracts from the Complainant's website www.sap.com.
- (l) According to the information provided by the NIXI, the Respondent is the registrant of the domain www.saponlinetraining.in. The Disputed Domain Name was registered by the Registrant on February 8, 2022 which is subsequent to the adoption and use of the mark/name SAP by the Complainant. The Disputed Domain Name incorporates the Complainant's well-known, prior used trademark SAP in entirety.
- (m) The Complainant alleges that the domain name www.saponlinetraining.in has been registered in bad faith. The term SAP is the predominant feature of the domain name notwithstanding addition of the descriptive terms 'online' and 'training' to the domain name. These terms are commonly used for training and educational services and their use in conjunction with the Complainant's mark SAP suggest that the Respondent provides online training classes for SAP courses. The Respondent's website www.saponlinetraining.in until second week of June 2022, clearly mentioned various SAP courses such as SAP SD, SAP FICO, SAP ARIBA, SAP BASIS, SAP PP, etc. Reliance is placed on a screenshot of the Respondent's website filed as **Exhibit 9**. Evidently the Respondent was unauthorizedly offering SAP training courses by using unlicensed SAP software, other confidential or copyright-protected training materials, and misrepresenting a trade connection with the Complainant to lend legitimacy to its business operations.

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(n) Pursuant to the Complainant addressing a cease-and-desist letter/email dated May 11, 2022 and a reminder dated May 27, 2022, the Respondent made some changes to the website by removing references to SAP courses from the website, per a screenshot of the Respondent's website at **Exhibit 10**. However, the Respondent continues to retain, control and use the Disputed Domain Name which contains the Complainant's famous mark SAP in its entirety. Copies of the communications addressed to the Respondent are filed as **Exhibits 11** and **12**.

t) The Complainant has not authorized the Respondent to use the Disputed Domain Name or impart SAP training courses. The Respondent is not an Education Partner nor has it signed any license agreement with the Complainant thus its act of providing SAP courses and using SAP as a part of its domain name and on its website is *per se* illegal and in bad faith.

u) The Complainant submits that on account of its extensive use and popularity the domain name/trademarks/corporate name '**SAP**' across the world including in India, the same is well recognized. The Respondent can have no plausible explanation for adoption of a domain name phonetically, visually and conceptually identical to the Complainant's well-known and highly distinctive trademark SAP. The Respondent's intention is clearly to take advantage of the goodwill and reputation enjoyed by the Complainant's trademarks/domain name associated with SAP.

5. Legal grounds:

Under Paragraph 4 of the Policy, the Complainant must establish the following three elements to succeed:


- (a) the Disputed Domain Name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- (b) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (c) the Disputed Domain Name has been registered or is being used in bad faith.

6. Discussion and findings:

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The Respondent has chosen not to participate in the present proceedings and has not filed any statement of defense. Therefore, the claims of fact made by the Complainant as summarized in paragraph 4 of this decision, shall be accepted by the Panel if they are found to be *prima facie* valid. The following discussion therefore proceeds on this basis.

A. Whether the Disputed Domain Name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights

The Disputed Domain Name is <www.saponlinetraining.in>. The Complainant has claimed statutory and common law rights in the mark SAP / . The evaluation of Issue A shall therefore be twofold:

a. Whether the Complainant has rights in the mark SAP

The Panel notes the following factors that are most relevant to establish that the Complainant has rights in the trademark SAP:

- The Complainant owns Indian trademark registration Nos. 989935, 576754, 576755 in class 9, registration nos. 890059, 578462 in class 16, and registration nos. 1238968, 1238969 in classes 41 and 42. Section 28 of the Trademark Act 1999 confers on the registered proprietor the exclusive right to the use of the mark for the goods and services for which it is registered.
- The domain name www.sap.com was registered as far back as January 18, 1995 by the Complainant. The domain name www.sap.in was created on February 16, 2005. The Complainant owns and operates *inter alia* websites at the domains www.sap.com and www.sap.in.
- The Panel accepts the Complainant's submission that it commenced its business activities under the trademark SAP in 1972 and has carried out its activities in India since 1992. The Complainant has a significant market presence because a large number of organized businesses employ its software, applications, solutions and platforms. The Panel therefore accepts the Complainant's submission that the trade mark 'SAP' is distinctive of the Complainant's goods/services and is exclusively associated therewith.



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- The statistics of number of employees, industry sectors catered to, geographical spread in terms of countries of operation, volume of revenues and advertisement/promotion expenses, trademark registrations in different countries including subsisting registrations India, are all collectively indicators of the Complainant's goodwill and reputation under the trademark SAP. Validation from the industry with respect to the Complainant's brand and its rankings in Interbrand is also a factor attesting to the standards of quality and services and goodwill and reputation of the trademark SAP.

Based on the documents placed on record with the complaint, the Panel unhesitatingly finds that the Complainant has enforceable rights in the trademark SAP which entitle it to claim protection for a domain name incorporating this trademark.

b. Whether the Disputed Domain Name is identical and/or confusingly similar to the trademark SAP

The Disputed Domain Name is www.saponlinetraining.in which contains the trademark SAP in entirety. The Panel agrees with the claims of the Complainant for the following reasons:

- The Disputed Domain Name contains the mark SAP, which is protected as a word mark under registration Nos. 576754, 578462 and 1238969 in favour of the Complainant. Apart from these registrations, the Complainant is the owner of the registered trademark  as a black and white label mark.
- The Panel has accepted the Complainant's submission that the trademarks SAP/ are exclusively associated with its goods/services and it is very likely that consumers who access the Respondent's website www.saponlinetraining.in will associate it with the Complainant or believe it to be connected with the Complainant in some manner. The addition of the words 'online' and 'training' in conjunction with SAP would suggest to an ordinary user that the Respondent offers licensed training for SAP ERP software modules.

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For the above reasons, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's trademark SAP, and that the words 'online' and 'training' would in no way mitigate the confusion that would inevitably be caused amongst users on account of the Disputed Domain Name.

B. Whether the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name

As stated earlier, the Respondent has not submitted its defence or responded to the Notice of Arbitration.

Given the nature of services offered by the Respondent on the website www.saponlinetraining.in the Respondent clearly intends to take advantage of the goodwill and reputation of the Complainant's business under the trademark SAP. The fact that the Respondent was put on actual notice of the Complainant's legal rights in the said mark through express written communications, which were not refuted by the Respondent, gives strong justification to the Complainant's case. The Respondent appears to have no authorization or connection with the trademark/name SAP hence its adoption and use of the trademark SAP in the Disputed Domain Name is not based on legitimate interests.


From the documents on record, it does not appear that the Respondent is making a legitimate non-commercial or fair use of the domain name, rather its use appears to be with intent for commercial gain by misleading and diverting consumers to itself by using the trademark SAP as a part of the Disputed Domain Name.

Considering the uncontroverted claims in the complaint and the documents placed on record by the Complainant, the Panel *prima facie* finds a lack of any rights or legitimate interest in the Disputed Domain Name by the Respondent.

It would be reasonably expected of any entity who claims any rights or interest in the domain name to defend such right or interest, when challenged. Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

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C. Whether the Disputed Domain Name has been registered or is being used in bad faith

A perusal of Exhibits 9 and 10 filed with the complaint shows that the Respondent has misused the trademark SAP in the Disputed Domain Name and also on the website at this domain. The Respondent has also used the trademarks  and SAP HANA, which are registered trademarks of the Complainant. The use of these marks in relation to activities very similar to those of the Complainant leave no doubt that the Respondent's registration and use of the Disputed Domain Name are mala fide.

Based on the above factors and the confusing similarity between the Complainant's trademark SAP and the Disputed Domain Name, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith.

7. Decision: For the reasons discussed above, the Panel finds that the Complainant has satisfied all three elements required under Paragraph 4 of the Policy to obtain the remedy of transfer of the Disputed Domain Name.

Therefore, the Panel orders that the Disputed Domain Name <www.saponlinetraining.in> be transferred to the Complainant.

No order as to costs is being made.

Signed:



Ms. Binny Kalra

Arbitrator

Date: 23 August, 2022