



தமிழ்நாடு தமில்நாடு TAMILNADU

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122 JAN 2016

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IS. SHANMUGASUBRAMANIAM
STAMP VENDOR
T. No. 44 / 100 / 88
HIGH COURT CAMPUS,
CHENNAI-600 008 (TAMILNADU)

BEFORE THE SOLE ARBITRATOR MR.D.SARAVANAN
.IN REGISTRY
(C/o. NATIONAL INTERNET EXCHANGE OF INDIA)

Disputed Domain Name: <saphana.in>
in
INDRP Case No. 748

SAP SE
Dietmar-Hopp-Allee 16,
69190 Walldorf,
Germany

.. Complainant

Versus

Mr. Raghava
Plot No. 66, K.R.Nagar,
Hyderabad,
Andhra Pradesh - 500 036,
Phone: + 91-9849608725
Email: raghavakrishnab@gmail.com

.. Respondent

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CHENNAI 600 004, TAMILNADU

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1. The Parties:

The Complainant is SAP SE, having address at Dietmar-Hopp-Allee 16, 69190 Walldorf, Germany.

The respondent is Mr. Raghava, having address at Plot No. 66, K.R.Nagar, Hyderabad, Andhra Pradesh - 500 036, Phone: + 91-9849608725, Email: raghavakrishnab@gmail.com

2. The Domain Name and Registrar:

The disputed domain name is: <www.saphana.in>

The disputed domain name is registered with Webiq Domain Solutions Pvt. Ltd., (R131-AFIN)

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3. Procedural History:

17.12.2015	The .IN REGISTRY appointed D.SARAVANAN as Sole Arbitrator from its panel as per paragraph 5(b) of INDRP Rules of Procedure.
17.12.2015	Consent of the Arbitrator was given to the .IN REGISTRY according to the INDRP Rules of Procedure.
28.12.2015	.IN REGISTRY sent an email to all the concerned intimating the appointment of arbitrator.
30.12.2015	The Complaint and annexures were received from the .IN Registry. The hard copy of the Complaint with annexures sent to the respondent were unable to deliver through courier service.
08.01.2016	Pursuant to the directions of this Tribunal the Complainant had sent a soft copy of the complaint and annexures to the Respondent.
18.01.2016	Due date for filing response.
19.01.2016	Notice of default was sent to the respondent notifying his failure in filing the response, a copy of which was marked to the Complainant's representative and .IN Registry.

4. Factual Background

4.1 The Complainant:

The Complainant is SAP SE, having address at Dietmar-Hopp-Allee 16, 69190 Walldorf, Germany.

4.2 Complainants' Activities:

- a) The Complainant was founded in 1972 and during the course of over four decades, has evolved from a small, regional enterprise into the market leader in



enterprise application software. The primary aim of the Complainant has been to develop application software products for real time business processing efforts.

b) The complainant is recognized as the global market leader in providing collaborative, inter-enterprise business solutions for all types of industries and for every major market. Headquartered in Germany, the Complainant employs 75,643 (Seventy five thousand six hundred and forty three) people of more than 120 nationalities as on October 31, 2015. It serves more than 296,000 customers in 190 countries worldwide to operate profitably, adapt continuously, and grow sustainably. In India, the Complainant has over 3,000 (Three Thousand) Customers. The Complainant's customers include 87% of the Forbes Global 2000 companies. Each day, millions of people work with the Complainant's products and services. The Complainant actively uses its name internationally as is apparent from its dedicated website www.sap.com. The Complainant is listed on several exchanges, including the Frankfurt Stock Exchange and the New York Stock Exchange under the ticker symbol "SAP." A copy of SAP Global Corporate Fact Sheet dated October 20, 2015 is annexed as **Exhibit 2**.

c) The Complainant provides various end-to-end solutions to its customers by developing applications. One such application is SAP Business Suite which optimizes all business-critical processes. It is the market leader in products for business analysis and a technology leader for real time analysis. SAP Business Suite is based on the Complainant's technology platform called NewWeaver and has following five components:

- 1) **SAP CRM** (Customer Relationship Management);
- 2) **SAP ERP** (Enterprise Resource Planning);
- 3) **SAP PLM** (Product Lifecycle Management);
- 4) **SAP SCM** (Supply Chain Management);
- 5) **SAP SRM** (Supplier Relationship Management).

d) With almost 42 years of experience, the Complainant's market-leading SAP ERP software is a proven, trusted foundation, which serves large as well as small and



midsize enterprise in more than twenty five different industrial sectors. The Complainant's ERP Software has assumed extreme importance worldwide with emphasis being drastic cost cutting and extremely efficient utilization of available resources.

e) Many of 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. The Complainant's Business Suite software products, in India, are not available with any computer hardware vendors as an Original Equipment Manufacturer (OEM) product or as a gift.

f) The Complainant has purpose-specific versions of its software license agreements. These license agreements are purpose-specific because the Complainant's software titles, licensed for any particular stream of use, are expressly prohibited from being used in any other manner or for any other purpose. One example is the End User License Agreements (EULA) pertaining to the specific use of the Complainant's software programmes by end users. A sample copy of a EULA is annexed as **Exhibit 3**.

g) Many of the Software titles of the Complainant require trained software professionals to load, execute, access, employ, utilize, store and display integrated en-to-end solutions derived from such software products. In short, at each stage of utilization of Complainant's software by its clients, professionals are required and towards this end, the Complainant has entered into several specific arrangements with third party software specialists (known as 'Partners') the world over, for provisions and execution of the aforesaid functions. In India, for the purpose of providing education training services upon its software products, the Complainant has partnerships with specific entities to provide such training. As an example, the Complainant has appointed four entities in Bangalore namely Atos India Pvt. Ltd., Connaissance IT Ltd., Lillian Genovate and Source One Management Services Pvt. Ltd. A List of authorized education training partners of the Complainant in India is annexed as **Exhibit 4**.



h) It is pertinent to note that only when an entity signs a relevant License Agreement with the Complainant to provide training and education courses, does it become legally authorized to provide access to Complainant's software for training purposes. Thus, no individual/company can provide access to Complainant's software for training purposes, nor can it become eligible or authorized to act as 'Education Partner' of the Complainant, if it does not have a valid Education License Agreement from the Complainant herein. Such Licensing policy adopted and used by the Complainant help it reduce chances of illegal and unauthorized use of its software. Further, it also contributes tremendously towards protecting the reputation and goodwill attached to the Complainant's software products, which being highly specialized and purpose specific in nature, require deep knowledge and understanding of their architecture and features. The Complainant also helps in providing extensive and continuing troubleshooting solutions support to those who use its products.

4.3 Complainant's Trading Name:

a) The Complainant coined, adopted and commences use of the trade mark 'SAP' in the year 1972. Since, its adoption, trade mark 'SAP' forms an integral part of the Complainant's trade and business. The Complainant has continuously and extensively used the trademarks 'SAP', "SAP HANA" and its formative marks for its products and services. The Complainant is the registered proprietor of the trademarks 'SAP', 'SAP HANA' and its various formative marks in over 75 countries. A list of SAP marks registered by the Complainant across various countries in the world is annexed as **Exhibit 5**.

b) Due to the widespread use of Complainant's software, applications, solutions and platforms globally and long standing goodwill in the trade and business, the trademarks 'SAP' and 'SAP HANA' have become highly distinctive of Complainant's products and are exclusively associated with the products and services of the Complainant alone. Moreover, the Complainant has earned enviable goodwill and



reputation worldwide for its products and services all under the trademarks "SAP" and "SAP HANA".

c) It is submitted that SAP HANA platform of the Complainant is the market leading open platform for real time computing and forms basis for all major SAP solutions. As on current date, more that 2,400 startups are developing on SAP HANA platform and there are 1,290 HANA One customers. SAP HANA constitutes large ecosystem with 8,600 partners and 1,020 Suite on HANA and S/4HANA resellers.

d) The Complainant markets, sells and distributes its products and services under the iconic brand/trade name 'SAP'. It is noteworthy that the brand/trade name. 'SAP' ranks 26th (twenty sixth) in the list of Best Global brands (2015), which is issued by a popular agency called interbrand. Interbrand, one of the most recognized global branding consultants, specializing in brand valuation among other areas, has continuously ranked SAP as one of the top 50 most valued brands since 2001. It is further noted that as per interbrand Best Global Brands, 2015, the brand/ trade name 'SAP' is valued at USD 18,768 Millions (Eighteen Thousand Seven Hundred and Sixty Eight Million Dollars). Hence, the brand/trade name 'SAP' is an extremely valuable asset of the Complainant.

e) The Complainant spends enormously on advertising and promoting its popular trade mark/trade name SAP, worldwide. In 2014, the Complainant incurred sales and marketing expenses of around Euro 4,304 million. In the fiscal year 2014, the Complainant's total annual revenue was approximately Euro 17.56 billion.

f) By virtue of the aforementioned continuous and extensive use, wide spread advertisement, promotional activates and global presence of the company through its subsidiaries, trade mark SAP has become a renowned name for the consumers and trade alike, worldwide. It is apparent that trade mark SAP has attained the status of a well-known mark across the globe and hence is equally protected across all the classes of goods and services as listed in the Nice Classification of Goods and



Services. The trade mark SAP has high degree of inherent distinctiveness denoting the services of the Complainant only; has been used extensively over a long period of time and spanning a wide geographical area including in India; has been given tremendous publicity and attained immense popularity; it is well recognized by members of the trade and public. Therefore, the Complainant is entitled to protection against its misappropriation for goods or services whether similar or different in nature to those of the Complainant. Resultantly, the brand and name "SAP" has built up an immense value for itself and thus qualifies for enhances protection as a 'well-known mark' within the meaning of the Section 2(1) (zg) read with Section 11(6) of the Act. Therefore, the mark/name "SAP" ought to be protected against all sorts of misrepresentations and misuse ranging diverse sectors/industries which may or may not be allied, more so in case of identical or similar services.

g) In India, the Complainant commenced its business in the year 1992 and applied for registration of trade mark 'SAP' in the same year. The Complainant is the registered proprietor of trade mark 'SAP' and 'SAP HANA' in various classes as noted in the table below:

Mark	Registration No.	Classes	Registration Date
SAP HANA	2128825	9,16,35,38,41 and 42	12/04/2011
SAP Device	989935	9	13/02/2001
SAP			
SAP	576754	9	09/07/1992
SAP Device	576755	9	09/07/1992
SAP Device	578461	16	04/08/1992
SAP	578462	16	04/08/1992
SAP Device	1238968	41 and 42	22/09/2003
SAP	1238969	41 and 42	22/09/2003



Besides aforesaid registrations, the Complainant has applied for registration of its trade mark SAP in several other classes. A list of trade mark registrations and applications filed by the Complainant for SAP and SAP HANA with the Indian Trade Mark Office along with copies of a selection of registration certificates are annexed as **Exhibit 6**.

h) All the aforesaid marks are valid and subsisting and therefore in full legal force, conferring upon the Complainant the exclusive right to its use and to restrain use of any identical or deceptively similar mark(s) by any unauthorized persons.

i) Owing to its immense popularity, goodwill and huge consumer base in India, Complainant's trademarks SAP and 'SAP HANA' are well recognized in public and in trade alike. The Complainant is the owner and user of the name and/or mark 'SAP', 'SAP HANA' including variations thereof, since 1972. Further, as stated earlier, due to its extensive worldwide registrations and worldwide use over a substantial period of time, the Complainant's 'SAP' and 'SAP HANA' marks have acquired the status of a well-known mark globally as well as in India. Therefore, the mark 'SAP' and 'SAP HANA' is inherently distinctive and denotes the products and services of the Complainant to the exclusion of all others.

j) The Complainant uses the ubiquitous medium of the Internet to render and advertise its products and services. The Complainant owns the domain name www.sap.com, which is assessable throughout the world. The domain name www.sap.com was registered by the Complainant on January 18, 1995. Further, the India specific domain name www.sap.in was registered by the Complainant on February 16, 2005. Extract from WHOIS search database for the said domain names is annexed as **Exhibit 7**. The details and/or information about the Complainant's business activities in various jurisdictions around the world are available on its website located at www.sap.com. The relevant extracts from the Complainant's website www.sap.com are annexed as **Exhibit 8**.



k) It is worth mentioning that the online searches for the Complainant's name/mark 'SAP' on popular search engines such as Google, Yahoo, Bing, etc. show only its products and services among the top most hits or results. The Complainant has extensive presence over the social networking websites *inter alia* Facebook and Twitter. It is apparent that the Complainant has widespread presence over the internet through its websites and also through various online public forums, blogs, discussions, reviews, etc. Thus, the public at large identifies the Complainant through its trade mark/trade name 'SAP' even on the internet.

5. Respondent's Identity and activities:

a) The disputed domain name www.saphana.in as shown in Exhibit 1 was registered by the Registrant on August 27, 2011. The date of registration of the disputed domain name is subsequent to the adoption and use of the mark/name SAP by the Complainant. It is clear that the disputed domain name incorporates the Complainant's well-known, prior used trademarks SAP and SAP HANA in entirety.

b) It is submitted that the aforesaid domain name incorporates the Complainant's well-known, prior used marks SAP and SAP HANA. The Complainant has not licensed or otherwise authorized or given consent to the Respondent to use/utilize or commercially exploit the Complainant's registered and well known trademarks in any manner.

c) It is evident that the disputed domain name www.saphana.in incorporates the Complainant's famous mark/name SAP and SAP HANA and has been registered in bad faith. The Respondent is misusing and misappropriating the Complainant's SAP brand/name and mark SAP HANA as part of their disputed domain name 'saphana.in'. Further the contents of their website misrepresented trade affiliation of the Respondent with the Complainant indicating that the Complainant approves of the third party listings and their offered courses which is not true.



d) The disputed domain name resolves to parked website which features 'sponsored links' pertaining to various SAP courses and services which includes Complainant core area of business, i.e., SAP courses and services. It is obvious intention of the Respondent is to leverage the strength of Complainant's brand/domain name to divert traffic to such unrelated websites and make illegal commercial gains. The Respondent has made no use of the domain name in connection with a bonafide offering of goods or services and is holding on to the domain name in bad faith to derive monetary gains. It is submitted that the Respondent has registered the domain name www.saphana.in for the purpose of reselling and not for carrying out any business. The Respondent should not be allowed to continue with the aforesaid illegal activities and the said domain name registration should be transferred to the Complainant. A printout from the Respondent's website www.saphana.in is enclosed as **Exhibit 9**.

e) It is submitted that the Complainant on becoming aware of the registration of the infringing domain www.saphana.in by the Respondent addressed a letter requesting them to cease their infringing activities and also bring down the website www.saphana.in for an amicable settlement of the matter. A copy of the cease and desist letter dated September 21, 2015, is enclosed as **Exhibit 10**. However, the Complainant till date has not received any reply from the Respondent nor have they complied with the requisitions.

f) The Complainant submits that on account of its extensive use and popularity the domain name/trademarks/corporate name, 'SAP' and 'SAP HANA' across the world including in India, the marks SAP and SAP HANA are well recognized. Its use has been popularized by the Complainant. Therefore, the Respondent can have no plausible explanation for adoption of a domain name phonetically, visually and conceptually identical to the Complainant's well-known had highly distinctive trademarks SAP and SAP HANA. The Respondent's Intention is clearly to take advantage of the goodwill and reputation enjoyed by the Complainant's trademarks/domain names associated with SAP and SAP HANA.



6. Dispute:

The dispute arose when the respondent registered and used the domain name <saphana.in>. According to the WHOIS database, the disputed domain name was registered on August 27, 2011. The registrar with whom the domain name is registered is Webiq Domain Solutions Pvt Ltd. Complainant became aware of the disputed domain name and issued a cease and desist letter on September 21, 2015.

7. Parties contentions:

A. Complainant:

i. The domain name <saphana.in> is identical/ confusingly similar to complainant's trade mark SAP HANA:

a) The Complainant has continuously used **SAP** and **SAP HANA** marks much prior to August 27, 2011, the registration date for the disputed domain name. The Complainant owns the domain names www.sap.com and www.sap.in dating back to the year 1995 and 2005 respectively as contained in **Exhibit 7** including in India. The Complainant had obtained trade mark registrations for **SAP** and **SAP HANA** (as contained in **Exhibit 6**) much prior to the year 2011, the registration date of the Respondent's domain. Each of these registrations remain valid and in full force. The registration of **SAP** and **SAP HANA** marks dates back to 1992 and 2011 respectively in India which is the Respondent's place of business/residence. Thus, the Complainant has rights in the **SAP** and **SAP HANA** mark that predates registration date of the domain name. In Uniroyal engineered products Vs Nauga Network Services D 2000-0503 (WIPO July 18,2000); the Panel determines that Complainant has rights in the trademarks "NAUGA", "NAUGAHYDE", "NAUGALON" and NAUGAFORM'. Based on the September 9, 1969 date of Complainant's registration of the trademark "NAUGA", and without prejudice to Complainant's earlier-arising rights in the marks (e.g., "NAUGAHYDE"), the Panel determines that Complainant's rights in the trademark arose prior to Respondent's registration, on October 21, 1998 and January 15, 1999, respectively of the disputed domain names "nauga.net" and "naugacase.com".



b) As the disputed domain www.saphana.in of the Respondent incorporates the Complainant's famous SAP and SAP HANA marks in its entirety and is identical/ confusingly similar to it, the use will cause confusion. A domain name is "nearly identical or confusingly similar" to Complainant's mark when it "fully incorporate[s] said mark. In *SAP AG v. Domain Admin* [WIPO Case No.D2006-1526, February 2, 2007], the disputed domain name <sapeducation.com> was found to be confusingly similar to the Complainant's trademark SAP. The Panel concluded that many of those Internet users who find their way to <sapeducation.com> may have attempted to make contact with the business of the Complainant, or have searched for specific descriptors in the nature of the Complainant's business, particularly "sap" and "education", and believe they have reached an authentic website of the Complainant. Those users have been misled to the Respondent's website. The site makes liberal use of the Complainant's trademark SAP in a purportedly educational context, and in the Panel's assessment, could confuse users into believing they are dealing with the Complainant. From this spurious website the user, by selecting from a variety of so-called "related searches", is further diverted to external commercial sites."

c) The Respondent's domain name www.saphana.in, contains Complainant's well known SAP HANA mark in its entirety. The Respondent has used the mark SAP HANA in its entirety to attract internet users and consumers for commercial gain by abusing the goodwill and reputation associated with the Complainant's SAP and SAP HANA marks suggesting connection with the Complainant. The users are likely to assume that it is a sponsored or approved listed site of the Complainant directed towards the internet users and customers. In *Yahoo! Inc. v. Chan*, FA162050 (Nat. Arb. Forum July 16, 2003) (Concluding that Yahoosighup.com domain name was confusingly similar to Complainant's famous YAHOO! Mark because the addition of "sign up" did not alter the fact that Complainant's famous mark was the principal feature of the domain). In *PepsiCo., FA466022* ("The mere addition of common terms such as 'sports,' 'basketball,' 'soccer,' 'volleyball', 'rugby' and the like to the 'PEPSI' mark, does not change the overall impression of the designations as being domain names connected to the Complainant"). In *SAP AG vs. PrivacyProtect.org/John Harvard, John Harvard* [WIPO Case No.D2013-1097, August 9, 2013], the Panel finds that the disputed domain names <sapcertified.com> and <sapcertified.info> are confusingly similar to the trademark owned by the Complainant since, pursuant to a number of prior decisions rendered under the Policy,



the addition of a descriptive term to a trademark is not a distinguishing feature. In SAP SE vs. Sapteq Global Consulting Services [WIPO Case No.D2015-0565, May 19, 2015], the Panel finds that the addition of the suffix “teq” does not suffice to distinguish the disputed domain name from the Complainant’s trademark SAP since “sap” is the dominant part of the disputed domain name and since “teq” associates to technology and software which is the Complainant’s field of business and the goods and services included under the Complainant’s trademark registrations are software and technology related.

d) The Complainant further submits that it has not licensed or otherwise permitted the Respondent to use the SAP or SAP HANA trademark, or any other trademark incorporating the SAP mark. The Complainant has also not licensed or otherwise permitted the Respondent to apply for or use any domain name consisting of or incorporating the SAP or SAP HANA name/mark.

ii. Respondent has no rights or legitimate interests in respect of the domain name <saphana.in>:

a) The Respondent registered the Domain Name in the year 2011; several decades after the Complainant invested millions of dollars in popularizing and seeking registration of the SAP and SAP HANA marks and domain names www.sap.com and www.sap.in. Moreover, by the time Respondent registered the disputed domain name, the Complainant had generated hundreds of millions of dollars in revenue under the SAP mark/name, use of SAP HANA platform, and the SAP and SAP HANA marks had already attained the status of well-known/famous marks. Accordingly, it is evident that the Respondent was well aware of Complainant’s prior rights in the SAP and SAP HANA marks at the time it registered the Domain Name in the year 2011. In Charles Schwab & Co., Inc. v. Josh Decker d/b/a I GOT YOUR TIX, WIPO Case No.D2005-0179 (Apr. 20, 2005) and Accord Young Genius Software AB v. MWD, James Vargas, WIPO Case No.D2000-0591 (Aug.7, 2000), it was held that “where a Respondent has constructive notice of a trademark, and yet registers a confusingly similar domain name thereto, the Respondent cannot be said to have a legitimate interest in the domain name.



b) The Complainant submits that there is no credible legitimate reason for the Respondent to have chosen to adopt the identical domain name consisting of identical SAP HANA mark. The Respondent's purpose in selecting the disputed domain name was plainly to use fame of the Complainant's SAP and SAP HANA marks to generate web-traffic and to confuse internet users visiting the Respondent's website/domain name www.saphana.in when looking for the Complainant and their famous suite of goods/services. The respondent is not and has never been known by the SAP mark/name or by any similar name.

c) As on current date, the Respondent's domain resolves to parked website. However, it is evident that the Respondent has adopted an identical domain name containing the words SAP and SAP HANA entirely for offering business listing for similar services as those provided by the Complainant in order to attract internet users to their web site. This also creates a likelihood of confusion with the Complainant's trademark SAP and SAP HANA as to the sponsorship, affiliation, or endorsement of the Respondent's website. Such use by the Respondent is neither *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the Domain Name.

d) The Complainant submits that when the Respondent registered the disputed domain name, it was aware of the Complainant's activities, its **SAP** and **SAP HANA** trademarks and its domain name www.sap.com and these facts establish a *prima face* case that the Respondent has no right or legitimate interest in the Domain Name and that pursuant to the Policy the burden shifts to the Respondent to show it does have a right or legitimate interests. *see Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No.D2003-0455 and Clerical Medical Investment Group Limited v. Clericalmedical.com (Clerical & Medical Services Agency), WIPO Case No.D2000-1228.*

e) On information and belief, the Respondent is not commonly known by the name or nickname of the disputed domain name or any name containing Complainant's SAP and SAP HANA mark. The Registrant/Respondent's information on Whois Search Database in connection with the disputed domain name makes no mention of the SAP/SAP HANA mark as Respondent's name or



nickname. The Respondent has not been authorized by the Complainant to register or use the domain name. Unlicensed, unauthorized use of the domain name incorporating Complainant's trademark is strong evidence that Registrant has no rights or legitimate interests. *See, Popular Enterprises, LLC v. Sung-a Jang*, FA0610000811921 (Nat. Arb. Forum Nov.16, 2006) ("[r]espondent's WHOIS information does not suggest that [r]espondent is commonly known by the <ntester.com> domain name"). In *SAP Systeme/SAP India Systems v. Davinder Pal Singh Bhatia* [WIPO Case No.D2001-0504, June 8, 2001], the panel finds force in contentions of the Complainant that the Respondent is not, either as an individual, businesses or other organization, commonly known by the name SAP. Secondly, the Complainant has not licensed or otherwise permitted the Respondent to use its trademark SAP or to apply for any domain name incorporating this mark. Thus the Respondent has no legitimate interests in respect of the disputed domain names <sapmaster.com> and <sapwizard.com>

iii. The domain name <saphana.in> was registered and is being used in bad faith:

a) The evidence overwhelmingly supports the conclusion that Respondent registered and is using the disputed Domain Name in bad faith. The fame and prior use of the Complainant's SAP and SAP HANA marks make it extremely unlikely that the Respondent created the disputed domain name independently. The Complainant has been continuously using the SAP name/brand since 1972, the year it was incorporated and is presently the registered proprietor of the trademarks 'SAP', 'SAP HANA' and its various formative marks in over 75 countries. Further, it is pertinent to mention that the earliest trade mark, registration for the SAP mark dates back to 1988 which was obtained by the Complainant in Switzerland, Germany and Norway. The Complainant has also registered the domain name www.sap.com and www.sap.in in the year 1995 and 2005 respectively which is well before Respondent's registration of the disputed domain name www.saphana.in in the year 2011. Further, the Respondent's choice of the domain name www.saphana.in is allegedly based on their business of showing third party business listings of offers on trainings for use of SAP proprietary software without the Complainant's authorization. This clearly proves their bad faith. The Respondent could have



adopted any other domain name instead of adopting the domain name containing Complainant's SAP and SAP HANA marks in its entirety. Thus, given the prominence and well known stature of Complainant's SAP and SAP HANA products and services and also prior domain name registrations of SAP and SAP HANA and SAP formatted marks, it is incomprehensible that the Respondent would have been unaware of Complainant's SAP and SAP HANA marks at the time the Domain Name was registered in August, 2011. In The J.Jill Group, Inc. v. John Zuccarini d/b/a RaveClub Berlin, FA0205000112627 (Nat. Arb. Forum July 1, 2002) it was held that "Because of the famous and distinct nature of Complainant's mark and Complainant's J.JILL listing on the Principal Register of the USPTO, [r]espondent is thought to have been on notice as to the existence of Complainant's mark at the time [r]espondent registered the infringing <jjilll.com> domain name. Thus, [r]espondent's registration despite this notice is evidence of bad faith registration".

In SAP AG v. Peifang Huang [WIPO Case No.D2014-0928, July 28, 2014], the Panel finds that the Respondent more likely than not was aware of the Complainant and had the Complainant's Trade mark in mind when registering the disputed domain name. The evidence demonstrates that the disputed domain name has been registered and used in order to attract Internet users to the Website for commercial gain, by creating a likelihood of confusion with the Trade Mark. This falls squarely within the example of bad faith registration and use under paragraph 4(b)(iv) of the Policy.

b) Even constructive knowledge of a famous/well known SAP and SAP HANA marks is sufficient. In Google v. Abercrombie 1, FA0111000101579 (Nat. Arb. Forum Dec.10,2001) it was held that ("because of the famous and distinctive nature of Complainant's GOOGLE Mark, [r]espondent is thought to have been on notice of the existence of Complainant's mark at the time [r]espondent registered the infringing [domain name]") (re googld.com domain name). Despite prior knowledge, the Respondent has registered the disputed domain name which is virtually identical to the Complainant's SAP and SAP HANA marks. Such conduct amounts to clear evidence of bad-faith registration and use. In so doing, the Respondent has intentionally attempted to attract for commercial gain the Internet users to the website, by intentionally misleading them and creating a likelihood of confusion with the



Complainants' trademark as to the source, sponsorship, affiliation, or endorsement of the website.

c) The Respondent's choice of disputed domain name is not accidental and has clearly been made to derive unfair monetary advantage. In support of this submission, the Complainant contends:

i) At the time of registration of the Domain Name by the Respondent i.e., on 27th August, 2011, the Complainant's SAP and SAP HANA marks were well-known and registered in numerous jurisdictions across the world including India. The earliest registration of the SAP mark dates back to the year 1988 granted in Germany, Switzerland and Norway. Additionally, the Complainant has been using SAP as part of the corporate name since 1972 and domain names www.sap.com and www.sap.in have been registered since 1995 and 2005 respectively. Thus, the Respondent registered the disputed domain name much subsequent to extensive use of SAP and SAP HANA as part of the trade name, trade mark and domain name www.sap.com. Also, the popularity and numerous registrations of SAP *per se*, SAP HANA and SAP formatted marks and domain name www.sap.com and www.sap.in was a constructive notice to the Respondent of the Complainant's rights in the SAP mark and name. Thus, adoption of identical/deceptively similar Domain Name by the Respondent is in bad faith.

ii) The SAP and SAP HANA marks exclusively refer to the Complainant and the suite of products/services provided by the Complainant. Thus, adoption of the SAP HANA mark as part of the domain name www.saphana.in by the Respondent cannot be a coincidence and align its business/services with the Complainant which reflects 'bad faith'.

iii) As previously set out, the Respondent's disputed domain name is virtually identical to Complainant's distinctive trademarks SAP and SAP HANA. The entire business activity of the Respondent is to deceive the innocent trade and public by misrepresenting themselves as part of the Complainant's company or to misrepresent that their activities have been authorized, approved or sponsored by the Complainant. The Respondent has wrongfully registered the disputed domain



name to deceive consumers. Thus, it's clear that the adoption of the Domain Name was not independent but parasitic and made in bad faith.

iv) The business activities carried out by the Respondent through the virtually identical disputed domain name are illegitimate and only to divert internet traffic by using Complainant's well known/famous trademarks SAP and SAP HANA. Thus, it is obvious that the registration of the Domain Name www.saphana.in by the Respondent is in bad faith..

B. Respondent:

In spite of notice, notice of default and emails, the respondent did not submit any response.

8. Discussion and Findings:

It has to be asserted as to whether the Constitution of Arbitral Tribunal was proper? Whether the Respondent has received the notice of this Arbitral Tribunal?

Having gone through the procedural history, this Tribunal comes to the irresistible conclusion that the Arbitral Tribunal was properly constituted and Respondent has been notified of the complaint of the Complainants. However, the Respondent did not choose to submit any response and that non-submission of the Response by the Respondent had also been notified to the Respondent on 19.01.2016.

Under paragraph 4 of the IN Domain Name Dispute Resolution Policy (INDRP), the Complainants must prove each of the following three elements of its case:

- (i) The respondent's domain name <saphana.in> is identical to the Complainant's trademark SAPHANA;
- (ii) Respondent has no rights or legitimate interests in respect of the domain name <saphana.in>; and
- (iii) The registration and usage of domain name <saphana.in> by the respondent is in bad faith.



(a) Identical or confusing similarity:

i. The Arbitral Tribunal finds that the disputed domain name <saphana.in> is identical to complainant's trademarks 'SAP' and 'SAP HANA'; corporate name 'SAP' and domain names <sap.com> and <sap.in>.

ii. The complainant has established that their trademarks 'SAP' and 'SAP HANA' were registered in the year 1992 and 2011 while the corporate name 'SAP' is being used since 1972 and registered the domain names <sap.com> and <sap.in> in the year 1995 and 2005 respectively. It is clear that the disputed domain name incorporates the complainant's well-known, prior used trade marks 'SAP' and 'SAP HANA' in its entirety. The Tribunal also finds that by merely affixing a ccTLD (i.e., .in) as a suffix will not remove the distinctiveness of the trade mark.

Thus, the Arbitral Tribunal concludes that the Complainants have established paragraph 4(i) of the IN Domain Name Dispute Resolution Policy.

(b) Respondent's Rights or Legitimate Interests:

i. The Complainant contends that the Respondent has no legitimate interest in the disputed domain name. Paragraph 7 of the IN Dispute Resolution Policy sets out three elements, any of which shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(ii) of the Policy. The Respondent had been given the opportunity to respond and to present evidence in support of the elements in paragraph 7 of the INDRP. The Respondent has not chosen to do so and has not filed any response in these proceedings to establish any circumstances that could assist it in demonstrating, any rights or legitimate interests in the disputed domain name. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a prima facie case of



lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests.

ii. Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services as required under paragraph 7(i) of the Policy nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 7(ii) or 7(iii) of the Policy apply. The Complainant asserts that they have not licensed or otherwise authorized the Respondent to use their trademark.

iii. The Arbitral Tribunal find that there is no evidence on record to show that Respondent is known by the disputed domain name or that he has used the disputed domain name in connection with a bona fide offering of goods or has any rights in the disputed domain name.

iv. The respondent has failed to show any justification for the adoption, usage or registration of disputed domain name.

v. The Arbitral Tribunal thus holds that the circumstances listed above demonstrate rights or legitimate rights of the Complainant in the domain name and holds that the respondent has infringed the rights of the Complainant by registering the trademark of the complainant.

vi. The Arbitral Tribunal is satisfied that the Respondent has no rights or legitimate interests in respect of the disputed domain name and, accordingly paragraph 4(ii) of the Policy is satisfied.

(c) Registration and Use in Bad faith:

(i) Paragraph 6 of the Policy provides the circumstances evidencing registration and use of a domain name in bad faith are that, by using the same, the



Respondent has engaged in a pattern of such conduct and the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent's web site or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's web site or location. It is the specific case of the Complainant that the respondent's modus operandi is by creation of the website <saphana.in> mark with generic/descriptive suffix, is seeking illegal commercial gain through its opportunistic bad faith registration of the disputed domain name.

(ii) The Arbitral Tribunal observes that the Respondent has registered the domain name which appears to have been selected precisely for the reason that it is identical to registered trademark of the Complainant. The Respondent has no affiliation or connection or any kind of relationship with the Complainant. Registration of a domain name that is identical to a famous trademark by any entity, which has no relationship to that mark, is itself sufficient evidence of bad faith registration and use.

(iii) In view of the submitted evidence and in the specific circumstances of this case, this Arbitral Tribunal draws the legal inference that Respondent's purpose of registering the domain name was in bad faith within the meaning of the Policy. The Respondent has no legitimate rights or interests in the disputed domain name and there was a malafide intent for registering the disputed domain name for commercial gains as the disputed domain name resolves to parked website offering similar services as those provided by the complainant and that the intention of the Respondent was simply to generate revenue, either by using the domain name for its own commercial purpose or through the sale of the disputed domain name to a competitor or any other person that has the potential to cause damage to the ability of the Complainant to have peaceful usage of the Complainant's legitimate interest in using their own trade names.



In the light of the above, this Arbitral Tribunal finds that the Complainant has established that the disputed domain name was registered and is being used in bad faith.

9. Decision:

For all the foregoing reasons, in accordance with paragraph 10 of the Policy, the Arbitral Tribunal orders that the disputed domain name <saphana.in> be transferred to the Complainant.

Dated at Chennai (India) on this January 23rd, 2016.


(D.SARAVANAN)
Sole Arbitrator