



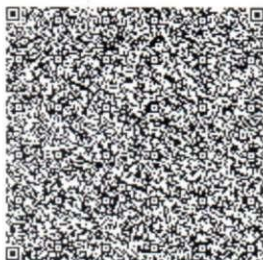
सत्यमेव जयते

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Certificate Issued Date	: 23-Jan-2016 10:48 AM
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Unique Doc. Reference	: SUBIN-DL921303134329974519600
Purchased by	: RAJEEV SINGH CHAUHAN
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: RAJEEV SINGH CHAUHAN
Second Party	: Not Applicable
Stamp Duty Paid By	: RAJEEV SINGH CHAUHAN
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE THE SOLE ARBITRATOR UNDER THE .IN DISPUTE RESOLUTION POLICY

IN THE MATTER OF:

SAP SE

Dietmar-Hopp-Allee 16,
69190 Walldorf, Germany

Versus

....Complainant

Sanjay Mundada
Mundada
Malakpet, Hyderabad,
Andhra Pradesh-500036, India

....Respondent

Statutory Alert:

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THE PARTIES:

The Complainant in this proceeding is SAP SE, a company organized and existing under the laws of Germany, Contact Details-Dietmar-Hopp-Allee 16, 69190 Walldorf, Germany Phone Number- +49 (0) 6227/7-68788 Email Address – ka.williams@sap.com. The Complainant has authorized Rachna Bakhru of RNA IP Attorneys for the administrative proceedings.

The Respondent in this proceeding is Mr. Sanjay Mundada, of Malakpet, Hyderabad Andhra Pradesh-500036, India, Phone: +91-9989820522, Email address - sanju250@gmail.com.

THE DOMAIN NAME AND REGISTRAR:

The domain name in dispute is www.saphanatraininghyderabad.in. The Registrar of this domain name is GODADDY.COM, LLC.

PROCEDURAL HISTORY:

The Arbitrator was appointed by the .IN Registry, to adjudicate upon the Complaint of the Complainant, regarding the dispute over the domain name www.saphanatraininghyderabad.in.

.In Registry had supplied the copy of the Complaint and the Annexures to the Arbitrator.

The Complainant has filed various documents as Annexures in support of their contentions. The Respondent has not filed any reply to the complaint despite of being given various reminders / opportunities by the Tribunal.

The Arbitrator has perused the record and annexures / documents.

FACTUAL BACKGROUND:

The Complainant in this proceeding is SAP SE, a German Corporation founded in 1972 and whose domain name www.sap.com was registered on 18th January, 1995. Further, the Indian specific domain name www.sap.in was registered by the Complainant on 16th February, 2005.



The Trademarks 'SAP', 'SAP HANA' has been continuously and extensively used by the complainant. The complainant is the registered proprietor of the trademarks 'SAP', 'SAP HANA' and its various formative marks in over 75 countries, including India. The websites of the Complainant contains extensive information about the Complainants business activities in various jurisdictions around the world.

The Complainant has further stated that it has wide spread presence over the internet and social networking sites like facebook and twitter and thus the public at large identifies the Complainant through its trademark / trade name SAP on the internet. It is further stated that as per the Interbrand Best Global Brands, 2015, the brand/ trade name SAP is valued at USD 18,768 millions.

Further according to the Claimant SAP HANA platform of the Complainant is the market leading open platform for real time computing and forms basis for all major SAP solutions and as on current date there are 1290 HANA one customers.

The Complainant further submits that the unlawful registration of the disputed domain name by the Respondent is resulting in dilution of the Complainant's well known trademarks 'SAP', 'SAP HANA'. The illegal registration of the above-mentioned disputed domain name and diversion of Internet traffic to www.saphanatraininghyderabad.in is causing irreparable damage and injury to the Complainant's reputation and business interests.

The Complainant has submitted the list of registered Trade Mark across various countries in the world is as annexed as Exhibit-5 to the complaint.

The Complainant in order to resolve the issue amicably sent a cease and desist notice dated 21st September, 2015 to the Respondent through its counsel. The said notice was not delivered due to incomplete address and was returned without service.

The Complainant's counsel then sent a mail dated 13th October, 2015 requesting the Respondent to cease the use of SAP and SAP HANA in the domain name and to transfer the ownership rights of the disputed domain

name to the Complainant. No reply was received for 13th October, 2015 mail also.

PARTIES CONTENTIONS

(a) Complainant

The Complainant contends as follows:

1. The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The Respondents has no rights, claims or legitimate interest in respect of the Disputed Domain Name; and
3. The Disputed Domain Name was registered and is being used in bad faith.

(b) Respondent

The Respondent has not filed any response/reply to the Complaint despite being given several reminders / opportunities by the Arbitrator.

DISCUSSION AND FINDINGS

As previously indicated, the Respondent has failed to file any reply to the Complaint and has not rebutted the submissions put forth by the Complainant, and the evidence filed by it.

Rule 8 (b) of the INDRP Rules of Procedure provides that "*In all cases, the Arbitrator shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case*".

As mentioned above enough opportunities have been provided to the Respondent to file a reply but no response was received. Therefore, the Respondent has been preceded against *ex-parte* and the arbitration proceedings have been conducted in his absence.

Rule 12 (a) of the INDRP Rules of Procedure provided that *"An Arbitrator shall decide a Complaint on the basis of the statements and documents submitted to it and in accordance with the Arbitration and Conciliation Act, 1996, Dispute Resolution Policy, the Rules of Procedure and any bye-laws, rules and guidelines framed there under, and any law that the Arbitrator deems to be applicable"*

In these circumstances, the decision of the Arbitrator is based upon the Complainant's assertions and evidence, and inference drawn from the Respondent's failure to reply.

A perusal of the submissions and evidence placed on record by the Complainant, it is proved that the Complainant has statutory and common law rights in the marks "SAP", "SAP HANA".

Further, the Arbitrator is of the view that the Complainant has satisfied all the three conditions outlined in the paragraph 4 of .IN Domain Name Dispute Resolution Policy, viz.:

- i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- ii) The Registrant has no rights or legitimate interests in respect of the domain name; and
- iii) The Registrant's domain name has been registered or is being used in bad faith.

BASIS OF FINDINGS

- 1. The Domain Name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights - (Policy, para. 4 (i); Rules, paras. 3 (b) (vi) (1))**

The Complainant submits that it has continuously used SAP and SAP HANA marks much prior to 04th June, 2013, the registration date for the disputed domain name.

The Complainant further submits that disputed domain name www.saphanatraininghyderabad.in of the Respondent incorporates the Complainant's famous SAP and SAP HANA marks in its entirety and is nearly identical / confusingly similar to it and the use of the same will cause confusion.

The Complainant also stated that while securing the registration of the domain name www.saphanatraininghyderabad.in, the Respondent has merely added common words like training and Hyderabad to Complainant's famous mark SAP HANA and the mere addition of these words do not alter the fact that Complainant's famous mark SAP and SAP HANA forms the dominant portion of the disputed domain name.

The Complainant also states that 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 and added associated words like training suggesting connection with the Complainant.

The Complainant has further very categorically stated that it has not given any license or otherwise permitted the Respondent to use the SAP or SAP HANA or any other trade mark incorporating the SAP mark.

The Complainant in support of its above submissions has also relied upon various judgments, which have been considered and taken note of by the Tribunal.

The Respondent has not filed any reply to the above mentioned contentions and therefore, the same are deemed to be admitted by him.

The Arbitrator, therefore, comes to the conclusion that the disputed domain name is confusingly similar and identical to the mark of the Complainant.

2. The Registrant has no rights or legitimate interests in the respect of the domain name- (Policy, para. 4 (ii); Rules, paras. 3 (b) (vi) (2))

The Complainant states that the respondent could have no justification for registering a domain name incorporating the well-known trademarks '**SAP**', '**SAP HANA**' of the Complainant in its entirety since the respondent has never been known by the name '**SAP**', '**SAP HANA**' or conducted any bonafide business under the impugned name.

The Complainant further states that it has generated millions of dollars in revenue under SAP mark / name.

The Complainant has alleged that 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.saphanatraininghyderabad.in when looking for the Complainant and their famous suite of goods/services.

The Complainant has further alleged that on current date, the Respondent has pulled down its website at www.saphanatraininghyderabad.in subsequent to receipt of the cease and desist notice from the counsels for the Complainant, but is using the disputed domain name to display the third party listings for entities who were allegedly providing the unauthorized training on SAP HANA courses.

The Complainant further submits that 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 Complainant in support of its above submissions has also relied upon various judgments, which have been considered and taken note of by the Tribunal.

The Respondent has neither responded nor has put forth or provided any evidence to show that the Respondent is engaged in or demonstrably prepared to engage in offering any *bonafide* goods or services in the name of the disputed domain name.

The Arbitrator therefore comes to the conclusion that the Respondent has no right or legitimate interest in respect of the domain name.

3. The Registrant domain name has been registered or is being used in bad faith - (Policy, para. 4 (iii), 6; Rules, paras. 3 (b) (vi) (3))

The Complainant submits that the evidence presented by it overwhelmingly supports the conclusion that Respondent registered and is using the disputed Domain Name in bad faith.

The Complainant has also alleged that the Respondent's choice of the domain name www.saphanatraininghyderabad.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.

The Complainant has also states that the constructive knowledge / prior knowledge of their well known SAP and SAP HANA mark is sufficient to prove that the conduct of the Respondent amounts to bad faith registration and has been intentional attempt on the part of the Respondent to attract the internet users for commercial gains.

The Complainant has also given various reasons to show that the Respondent's choice of disputed domain name is not accidental and has clearly been made to drive unfair monetary advantage.

The judgments relied upon by the Complainant to prove the bad faith registration has been considered and taken note of by the Tribunal.

In the light of the above submissions and evidence on record and failure of the Respondent to file any reply, the Arbitrator has come to the conclusion that the disputed domain name was registered in bad faith.

DECISION

In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.

The Respondent has registered and used the disputed domain name in bad faith. .IN Registry of the NIXI is hereby directed to transfer the domain name of the Respondent i.e. <www.saphanatraininghyderabad.in> to the Complainant. The Award is accordingly passed on this day of 26th February, 2016.



Rajeev Singh Chauhan
Sole Arbitrator
Date: 26th February, 2016