

A circular blue ink stamp from SWMCS LTD. (P). The outer ring contains the company name "SWMCS LTD. (P)" at the top and "75B, Palla Indiranagar, B'lore-56" at the bottom, separated by two stars. In the center, there is a handwritten signature in dark ink. Below the signature, the words "Authorized Signatory" are printed. Underneath that, the text "Head Office:" is followed by the phone number "08045294330". A small portion of another stamp or logo is visible in the bottom left corner.

Government of Karnataka

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BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

INDRP CASE NO. 1193

SAP SE

Vs.

SAP Education / Vikram Vikram

Complainant

Respondent

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BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA

ARBITRATION AWARD

INDRP CASE NO. 1193

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

Complainant

Versus.

**SAP Education / Vikram Vikram
3rd Floor, GCC Layouts
Chaityanayanagar
Madurwada, Vishakapatnam
Andhra Pradesh
India**

Respondent

1. The Parties

The Complainant SAP SE, of Germany is represented in these proceedings by Ranjan Narula of RNA IP Attorneys, of Gurgaon, India. The Respondent is SAP Education / Vikram Vikram of Visakhapatnam, India.

2. The Domain name, Registrar and Policy

The present arbitration proceeding pertains to a dispute regarding the domain name <sap-education.in> (hereinafter referred to as the disputed domain name). The registrar for the disputed domain name is Go Daddy.com LLC. The disputed domain name was registered on September 29, 2019. The Arbitration proceedings are conducted in accordance with the Arbitration and Conciliation

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Act of 1996 (India), the .IN Domain Name Dispute Resolution Policy (the “INDRP Policy” or “Policy”), and the INDRP Rules of Procedure (the “Rules”).

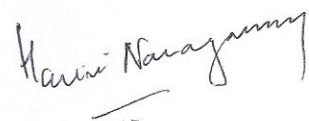
3. Procedural History

The sole arbitrator appointed in the case is Mrs. Harini Narayanswamy. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, in compliance with the Rules. The Arbitrator received the Complaint and the electronic copy of the case documents from the .IN registry on January 29, 2020 and subsequently the printed copy of the documents by courier. On January 29, 2020 the Arbitrator transmitted by email a notification of commencement of the arbitration proceedings to the Respondent under the INDRP Rules and informing the Respondent to send the reply with supporting documents within twenty-one days of the notification. Copies of the said notification were sent to other interested parties to the dispute. No reply was received from Respondent.

3. Factual Background

The Complainant is engaged in the business of enterprise application software products particularly for real time analysis, business analytics and mobile solutions. The Complainant offers its services under the SAP trademarks.

The Complainant has trademark registrations for the SAP mark in several jurisdictions including India. Given here are the Complainant’s trademark registrations in India:



Trademark	Registration Number	Application Date	Class	Status
SAP	576754	09 July 1992	9	Registered valid till July 09, 2026
SAP (Device)	576755	09 July 1992	9	Registered valid till July 09, 2022
SAP	578462	04 August 1992	9	Registered valid till 04 August 04, 2029
SAP((Device)	879286	30 September 1999	9	Registered valid till September 30, 2029
SAP (Device)	989935	13 February 2001	9	Registered valid till February 13, 2021
SAP(Device)	1238968	22 September 2003	41, 42	Registered valid till September 22, 2003
SAP	1238969	22 September 2003	41, 42	Registered valid till September 22, 2003
SAP HANA	2128825	12 April 2011	9,16,35,38,41,42	Registered valid till 12 April 12, 2021

The Respondent, registered the disputed domain name <sap-education.in> on September 29, 2019. The Respondent has parked the disputed domain name which is currently not being used except to post sponsored links. The Respondent had also registered the domain name <saptrainings.in>, and the said domain name has been suspended by the Registrar at the behest of the Complainant.

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The Parties Contentions

The Complainant

The Complainant states that its business was founded in 1972 and it is currently a global market leader in enterprise business solutions for all types of industries. The Complainant adds that its headquarters is in Germany and that it has a presence in more than 180 countries worldwide with over 404,000 customers. The Complainant states SAP India Private Limited is its wholly owned Indian subsidiary which is responsible for sales of SAP solutions, implementation, post-implementation support and training of its customers and partners in India. The Complainant adds that it has established development centers in many prominent Indian cities.

The Complainant states that in India, it has over 3000 customers, ninety two percent of which are Forbes Global 2000 companies. The Complainant states that each day, millions of people work with the its products and therefore its name / trademark SAP is actively used the world over, which is apparent from its website "www.sap.com". The Complainant states that it is listed on the Frankfurt stock exchange and the New York stock exchange under ticker symbol SAP.

The Complainant states that its business suite software is not available in any retail stores, with computer hardware vendors or as an Original Equipment Manufacturer (OEM) product or even as a gift. Its software requires trained professionals to load, execute, access, employ, utilize, store and display integrated end-to-end solutions derived from its software products. The Complainant states that it has created educational and training programs to meet these needs and has entered into contractual agreements with third party

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software specialists known as its "Education / Authorized Partners" the world over. The Complainant has provided the names of some of its training partners located in Delhi. The Complainant states it also offers extensive online training options through its website. Any entity intending to provide training and education courses in any SAP software product is required to enter into an agreement with the Complainant. Consequently, any party offering SAP training without a valid user license or agreement with the Complainant is deemed to infringe its rights.

The Complainant states it holds all the intellectual rights, benefits and interests in connection with the SAP trademark and the programs associated with SAP including copyright. The Complainant asserts that the SAP mark is recognized as a leading brand globally. The Complainant contends that the SAP brand ranks 28th in the list of best innovative companies (2019) by Boston Consulting Group, and ranks 16th in the list of popular brands, BrandZ Top 100 Most Valuable Global Brands (2019), issued by Milward Brown. The Complainant adds that it has been ranked 28th position in the list of Innovative Companies (2019) by www.rankingthebrands.com, and that SAP ranks 4th in the list of Best German brands (2015) issued by Interbrand and that Interbrand 2016 has valued the SAP brand at USD 21,293 million. The Complainant submits that this is indicative of the very high value attached to its SAP mark.

The Complainant, based on its submissions, requests for the transfer of the disputed domain name with costs on the grounds that: (i) the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name and (iii) The disputed domain name has been registered or is being used in bad faith by the Respondent.

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Respondent

The Respondent did not respond in these proceedings although notifications have been sent to the Respondent under the INDRP Rules.

4. Discussion and Findings

Under the INDRP Policy, the following three elements are required to be established by the Complainant in order to obtain the remedy of transfer of the disputed domain name:

- (i) The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights, and
- (ii) The Respondent lacks rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.

Identical or Confusingly Similar

The first element requires the Complainant to prove that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

The disputed domain name contains the SAP mark with the term “education” preceded by a hyphen. The Complainant has argued that the term “education” is non-distinctive and does not lessen confusion with the Complainant’s mark. It is

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well established that addition of generic terms or the hyphen to a well-known trademark does not prevent a finding of confusing similarity between the disputed domain name and the mark.

The Complainant has submitted evidence of its trademark registrations for the SAP mark in India and has accordingly established its rights in the mark. The Complainant has also provided evidence of the reputation, goodwill and fame associated with its mark due to its extensive use.

The disputed domain name is accordingly found to be confusingly similar to the Complainant's mark. The Complainant has successfully fulfilled the first element under paragraph 4 of the Policy, that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

Rights and Legitimate Interests

The second element requires the Complainant to put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. Although the onus of proving rights or legitimate interest in the disputed domain name lies on the Respondent, the Complainant however has to put forward a *prima facie* case, to prevail under the second element.

The Complainant has argued that the Respondent lacks rights or legitimate interests in the disputed domain name and has discussed that there are no circumstances that establish that (i) before notice of the dispute, the respondent had used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services or (ii) the respondent (as an individual, business organization) has been commonly known by the

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domain name, or (iii) the respondent is making legitimate, non-commercial or fair use of the domain name without intent for commercial gain.

The Complainant has argued that due to extensive use of the SAP mark globally and in India, the mark is distinctive and enjoys substantial goodwill, reputation and fame. It is found that the Complainant has acquired rights in the SAP mark through use and registration and the Complainant has provided evidence of the mark being distinctive and having a substantial recognition. In the light of these facts and circumstances, it is found that the Respondent's use of the SAP mark which is distinctive of the Complainant and its products, does not constitute legitimate use or fair use of the mark by the Respondent.

The Complainant has further argued that the Respondent has registered the disputed domain name after a considerable time of the Complainant having established its rights the SAP mark. It is found that the Complainant has provided evidence of its prior adoption of the SAP mark. The Complainant has submitted that the use of its mark by the Respondent is likely to mislead people and the Respondent lacks rights to use the SAP trademark in the disputed domain name. The Arbitrator accepts the Complainant's submissions that the Respondent's use of mark in the disputed domain name is likely to mislead Internet users.

Use of the SAP mark by the Respondent with the intention of attracting customers is likely to cause confusion and deception to those who encounter the disputed domain name. Internet users are likely to believe that the disputed domain name is in some way connected to the Complainant or is endorsed or authorized by the Complainant. Use of a trademark with the intention to derive mileage from the mark and to make improper commercial gains by such use, is recognized as infringing use under the INDRP Policy. See, *Google LLC v.*

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Gurdeep Singh, INDRP Case No. 1184 (<googlepays.in>), where use of the GOOGLE mark in the domain name <googlepays.in> by the respondent in that case, was found to lack rights or legitimate interests because the mark was used to attract customers by a respondent who was found to have no connection with the well-known mark. The use of the Complainant's SAP mark by the Respondent in the present case, who clearly has no connection with the Complainant, is found to be misleading use of the mark, and is accordingly found not qualifying as legitimate use by the Respondent.

The Complainant has furthermore submitted that only those parties who have entered into an Authorized Partner Agreement with the Complainant are allowed to impart training for SAP products and the use of the trademark in connection with such training. The Respondent has not participated in these proceedings and has not shown that any such agreement exists between the parties or provided any other reasons for claiming any rights to use the SAP mark in the disputed domain name. The Complainant has categorically submitted that it not consented, authorized or permitted the Respondent to use its name or its trademark. The use of the SAP mark by the Respondent in the disputed domain name under these circumstances, does not support a finding of the Respondent rights or legitimate interests in the disputed domain name.

In the light of the facts and circumstances discussed, it is accordingly found that the Complainant has made a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name. The second requirement under paragraph 4 of the Policy has been met by the Complainant.

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Bad Faith

The third element of Policy requires the Complainant to establish the disputed domain name was registered in bad faith or is being used in bad faith.

The evidence on record clearly demonstrate the Complainant's prior adoption and extensive use of the SAP mark. The disputed domain name, has been registered in 2019, whereas the earliest trademark registration of the SAP mark was obtained by the Complainant in 1988 in Switzerland, Germany and Norway. In India, its trademark registrations were obtained from the year 1992 onwards. These facts establish that the Complainant's prior adoption of the SAP mark and the evidence filed by the Complainant also establish that it has extensively used of the SAP trademark in commerce for a number of years continuous and the mark is recognized as an internationally well-known brand which has substantial value. Furthermore, the Arbitrator notes that the Complainant has registered the domain names <sap.com> and <sap.in> in the years 1995 and 2005 respectively.

In addition to the other evidence filed by the Complainant, prior UDRP cases where the Complainant has prevailed based on the strength of the SAP trademark are also referred to by the Complainant. These cases are: *SAP Systeme / SAP India Systems v. Davinder Pal Singh Bhatia*, WIPO Case No. D2001-0504 and *SAP AG v. Peifang Huang*, WIPO Case No. D 2014-0928. The orders in the cases clearly establish the international recognition and reputation associated with the SAP mark.

In the previous section, the Respondent was found to have no rights or legitimate interests in the disputed domain name. It was furthermore discussed, that the facts, circumstances and the evidence showed the Respondent has used

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the SAP mark in the disputed domain name to mislead and attract users based on the reputation associated with the mark, the use of which has not been authorized by the Complainant.

There are numerous precedents under the Policy, where it has been held that the registration of a domain name with a well-known mark which is likely to create confusion in the minds of Internet users and attempting to use such a domain name to attract Internet traffic based on the reputation associated with the mark is considered bad faith registration and use under the Policy. See for instance *Patagonia Inc. v. Doublefist Ltd.* INDRP Case No.1185 (<patagonia.co.in>), where it was found that the use of the complainant's mark in the domain name is likely to mislead the public and it was found to be registration and use of the domain name in bad faith under the Policy. Or see *Colgate Palmolive Company and Colgate Palmolive (India) Ltd. v. Zhaxia*, INDRP Case No. 887, where bad faith was found when the respondent had registered the disputed domain name to cause confusion with the complainant's mark. Similarly, in the present case the Arbitrator finds that the use of the SAP mark by the Respondent is likely to attract customers based on the Complainant's mark, and Internet users are likely to be misled by the use of the trademark in the disputed domain name.

Additional inference of bad faith can be drawn from the fact that the Respondent has also registered another domain name <saptrainings.in>, which indicates the Respondent has tried to engage in a pattern of registration of domain names containing the Complainant's SAP mark. For the reasons discussed, the registration of the disputed domain name by the Respondent is recognized as bad faith registration of the disputed domain name under the Policy.

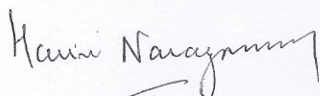
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In the light of all that has been discussed, the Arbitrator finds that the Respondent has registered the disputed domain name in bad faith. Accordingly, it is found that the Complainant has established the third element under paragraph 4 of the Policy.

Decision

It is ordered that the disputed domain name <sap-education.in> be transferred to the Complainant.

No order as to costs.



Harini Narayanswamy
Arbitrator

Date: March 23, 2020