



INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

सत्यमेव जयते

Certificate No.	: IN-DL88713344711840T
Certificate Issued Date	: 23-Jun-2021 03:10 PM
Account Reference	: IMPACC (IV)/ dl752103/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL75210376214116727170T
Purchased by	: V P PATHAK
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: V P PATHAK
Second Party	: Not Applicable
Stamp Duty Paid By	: V P PATHAK
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)

सत्यमेव जयते



Please write or type below this line

AWARD

INDRP Case Number 1411/2021

V. P. PATHAK

H.J.S.

Former Judge
Sole Arbitrator

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

2

BEFORE THE ARBITRAL TRIBUNAL

V.P.PATHAK

SOLE ARBITRATOR

ARBITRAL AWARD

DISPUTED DOMAIN NAME: WWW.SAPTRAININGINSTITUTEDELHI.IN

IN THE MATTER OF INDRP CASE NUMBER 1411/2021

.IN REGISTRY(NATIONAL INTERNET EXCHANGE OF INDIA)

Sap Se

Dietmarr-Hopp-Allee 16

69190 Waldorf,

Germany

....COMPLAINT

AND

Saptraining

SysaAppPro

1 DDA Market, Community Centre

Naraina Vihar,

New Delhi- 110028

India

....RESPONDENT

V.P. Pathak
V. P. PATHAK
H.J.S.
Former Judge
Sole Arbitrator

AWARD

1. The present domain name dispute relates to the registration of the domain name www.saptraininginstituedelhi.in in favor of the Respondent.
2. The Complainant has filed the instant Complaint challenging the registration of the domain name "saptraininginstituedelhi.in" in favor of the Respondent. Pursuant to the ".in" Domain Name Dispute Resolution Policy (INDRP) and the rules framed there under, the Complainant has preferred this arbitration for raising this dispute for reprisal of its grievances.
3. The Declaration of impartiality and acceptance was sent by the Tribunal on 08.07.2021 and with that I gave my consent, to adjudicate the instant domain name dispute. I was handed over the Complaint on 12.07.2021 and accordingly as per **Rule 5 of the INDRP Rules** I issued notice on the same day i.e., on 12.07.2021 calling upon the Respondent to file its reply on the complaint within fifteen days from the date of receipt of the notice and rejoinder within fifteen days thereafter.
4. **Rule 2 of INDRP Rules of Procedure** provides for communication/services of Complaint. In accordance with this rule, the Respondent was sent the Complaint on the email shown in the domain name registration data in .IN Registry's WHOIS database, by the Complainant on 22.07.2021, which has not returned so far.
5. Complainant has also sent a hard copy of the Complaint to the Respondent on 13.07.2021, receipt of which is in record with the Tribunal. But, no reply was filed by the Respondent. Adding to that, the Complainant had sent an email to the Tribunal stating that the hard copy of the Complaint sent to the


V. P. PATHAK
H.J.S.
Former Judge
Sole Arbitrator

4

Respondent was not received as the address was not located as it is incomplete. When the courier service tried to call on the number given it was not reachable. Hence, the delivery of the hard copy of the Complaint to the Respondent has not been done.

6. However, since the Complainant has been served through one of the modes as specified in **Rule 2** (above mentioned), I am of the view that the service of the Complaint upon the Respondent is complied with.
7. Since, there has been no response from the Respondents to the Complaint, so according to **Rule 12 of INDRP Rules of Procedure** which states about default of parties wherein it is clearly mentioned that:

"In the event of any party breaches the provisions of INDRP rules and/or directions of the Arbitrator, the matter can be decided *ex-parte* by the Arbitrator and such arbitral award shall be binding in accordance to law."

8. Further, **Section 25 of the Arbitration Act, 1996** says that the Arbitrator may pass *ex-parte* in the absence of any of the parties to Arbitration. It is also the duty of the Arbitrator to inform the parties concerned about his intention to proceed with the case *ex-parte*.

9. **Order VIII Rule 10 of CPC** also authorizes the arbitrator to pronounce judgment against the Respondent or to make such an order in relation to the Complaint as it thinks fit in the event, the Respondent fails to file its reply to the Complaint in the prescribed period of time as fixed.

10. Following are some of the cases in which the court has allowed *ex-parte*, when either of the parties have not responded to the Tribunals notice:

- **SARASWATHI CHEMICALS v. BALMER LAWRIE & CO. LIMITED. 2011 (3) TMI 1759 MADRAS HIGH COURT:** it was held that the Arbitrator has to


V. P. PATHAK
H.J.S.
Former Judge
Sole Arbitrator

5

inform the parties that he intends to proceed with the reference at a specified time and place, whether that party attends or not. If still a party does not attend, then only the Arbitrator is at liberty to proceed *ex-parte* against him.

NAGASRINIVASULU v. GLADA FINANCE LTD. 2008 (11) TMI 724
MADRAS HIGH COURT: it was held that where a party did not appear on the adjourned date in spite of a note by the Arbitrator in the minutes of hearing that if the party does not appear on the appointed date and time, the hearing would proceed *ex-parte* and no separate notice is given, the *ex-parte* award in such a case is legal.

- P.S. OBEROI v. ORISSA FOREST CORPORATION LTD. 1982 (3) TMI 275-
ORISSA HIGH COURT: has held that when from the conduct of the objectors to an award, it is abundantly clear that they had no intention of appearing before the arbitrators, the arbitrators are justified in proceeding *ex-parte*.
- DAISY TRADING CORPORATION v. UNION OF INDIA 2001 (10) TMI 1183-
DELHI HIGH COURT: it was held that where the Arbitrator had allowed a period of three weeks to the appellant to file its counterclaim and reply to the claim statement of the Respondent, then it was the bounden duty of the Arbitrator to have ascertained the date on which service had been effected on the appellant before taking steps to proceed *ex-parte*.
- STATE OF U.P v. COMBINED CHEMICALS CO. (PO LTD. 2011 (1) TMI 1527-
SUPREME COURT: it was held that where the appellant sought adjournment on the ground that he had filed an appeal against the order of the trial court on the question of maintainability of petition,

V. P. PATHAK
H.J.S.
Former Judge
Sole Arbitrator

the arbitrator granted adjournment but the appellant failed to obtain stay order from the appellant court and continued to abstain from the arbitral proceedings, the arbitrator was justified in proceeding *ex-parte* against such a party.

11. In the above situation when the Respondent has not responded even after lapse of stipulated period for filing their counter, even though an order was again passed on 28.07.2021 that the case will now proceed *ex-parte* and an award will be passed. **Rule 6 of the INDRP Rules** also states that an Arbitrator has to be impartial and independent therefore, I accordingly proceed to pass the award on merit.

CONTENTIONS:

12. Since the Respondent has proceeded *ex-parte*, I shall deal with the contention of the Complainant. The Complaint has been filed for transfer of the disputed domain name www.saptraininginstitutedelhi.in, which was registered by the Respondent.

13. Primarily, the assertion of the Complainant in its Complaint is that the disputed domain name is identical and similar to the trademark of SAP. The Complainant in its Complaint has stated that it is a company organized and existing under the laws of Germany, with its Corporate Headquarters located at Dietmar-Hopp-Allee 16, 69190 Walldorf, Germany.

14. Founded in 1972, the Complainant, during the course of over four decades, has evolved from a small, regional enterprise into the market leader in enterprise application software, business analytics and mobile solutions.

V.P. Pathak
V.P. PATHAK
H.J.S.
Former Judge
Sole Arbitrator

- 7
15. The primary aim of the Complainant has been to develop application software products for real time business processing efforts.
16. 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. It is the market leader in products for business analysis and a technology leader for real time analysis.
17. The Complainant employs 103,142 (One lakh three thousand and one hundred and forty two only) people of more than 145 nationalities as on March 31, 2021.
18. It serves more than 400,000 customers in more than 180 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 92% of the Forbes Global 2000 companies. The Complainant actively uses its name internationally as is apparent from its dedicated 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." A copy of SAP Global Corporate Fact Sheet dated April 22, 2021, is enclosed as **EXHIBIT 2**.
19. 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. SAP Business Suite is based on Complainant's technology platform called NetWeaver and has five components.
20. With more than 48 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 enterprises in more than 25 different industrial sectors.

V. P. PATHAK
H.J.S.
Former Judge
Sole Arbitrator

21. The Complainant's ERP software has assumed extreme importance worldwide with emphasis being drastic cost cutting and extremely efficient utilization of available resources.
22. 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.
23. Many of the Software titles 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. In short, at each stage of utilization of many of Complainant's software titles by its clients, professionals are required.
24. Towards this end, the Complainant has created education and training programs for the purpose to meet these needs, and enters into contractual arrangements with third party software specialists (known as 'Education Partners') the world over, to provide education and training for provision and execution of the aforesaid functions.
25. 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. A list of authorized education training partners of the Complainant in India is annexed as **EXHIBIT 3**.
26. The Complainant coined, adopted and commenced use of the trademark 'SAP' in the year 1972. Since its adoption, the trade mark 'SAP' forms an integral part of the Complainant's trade and business.
27. The Complainant has continuously and extensively used the trade mark


V. P. PATHAK
H.J.S.
Former Judge
Sole Arbitrator

9

'SAP' and SAP formative marks for its products and services. The Complainant is the registered proprietor of the trademarks 'SAP' and various SAP formative marks in over 75 countries. A list of SAP marks registered by the Complainant across various countries in the world is enclosed as EXHIBIT

4.

28. 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 is exclusively associated with the products and services of the Complainant alone.

29. Moreover, the Complainant has earned enviable goodwill and reputation worldwide for its products and services under the trademark 'SAP' and 'SAP' formative marks.

30. The Complainant spends enormously on advertising and promoting its popular trade mark/trade name SAP worldwide. Its sales and marketing expense was Euro 7,693 million in 2019. In the fiscal year 2019, the Complainant's total annual revenue was approximately Euro 27.34 billion.

31. 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' in various classes including 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. Besides these registrations, the Complainant has secured and applied for registration of its trade mark SAP in several other classes.

32. A list of trade mark registrations and applications filed by the Complainant

V.P. Pathak
V.P. PATHAK
H.J.S.
Former Judge
Sole Arbitrator

10
for 'SAP' and SAP formative trademarks with the Indian Trade Mark Office along with copies of a selection of registration certificates are submitted as **EXHIBIT 6.**

33. Owing to its immense popularity, goodwill and huge consumer base in India, Complainant's trademarks SAP and SAP formative marks are well recognized in public and in trade alike. The Complainant is the owner and user of the name and/or mark 'SAP' SAP formative marks including variations thereof, since 1972.

34. 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 formative marks have acquired the status of well-known marks globally as well as in India.

35. The Complainant owns the domain name www.sap.com, which is accessible 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. Extracts from WHOIS Search database for the said domain name is annexed as **EXHIBIT 7.**

36. The details and/or information about the Complainant's business activities in various jurisdictions around the world are provided on its website located at www.sap.com. Copies of relevant extracts from the Complainant's website www.sap.com are attached as **EXHIBIT 8.**

37. 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,

V. P. PATHAK
H.J.S.
Former Judge
Sole Arbitrator

11

the public at large identifies the Complainant through its trade mark/ trade name 'SAP' even on the internet.

38. The domain name www.saptraininginstitutedelhi.in incorporates the Complainant's famous mark SAP in its entirety and has been registered in bad faith. The addition of the descriptive terms like 'training' and 'institute' along with the place 'Delhi' to the domain name does not lend any distinctiveness to the said domain name as the term SAP remains the predominant feature of the domain name.

39. Further, the term 'training' and 'institute' is commonly used for training and educational services and its alleged use in conjunction with the Complainant's mark SAP in the alleged domain name suggests that the Respondent provides online training classes for SAP courses from Delhi.

40. The Respondent's website clearly mentions various SAP courses such as SAP FICO, SAP MM, SAP ABAP, SAP Basis, SAP SD, etc. Printout of the Respondent's website evidencing the various SAP courses offered by them is marked as **EXHIBIT 9**.

41. The domain name in question is identical to the Complainant's trademark **SAP**. That it was registered by the Respondent on June 28, 2016. The Respondent has adopted and registered the disputed domain name, which is identical to the trademark and/or corporate name of the Complainant, thereby wrongfully, illegally and dishonestly trading upon the reputation of the Complainant.

42. The Respondent has no connection with the Complainant and The Respondent is not and has never been known by the SAP mark/name or by any similar name nor has the Complainant licensed or otherwise permitted the Respondent to use **SAP** or has permitted the Respondent to apply for or use any 'Domain Name' incorporating the mark **SAP**.

V. P. PATHAK
H.J.S.
Former Judge
Sole Arbitrator

12
The Complainant relies on the decisions made by the panel of World Intellectual Property Organization (WIPO):

- In SAP AG vs. PrivacyProtect.org/ John Harvard, John Havard [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 v. Mohammed Aziz Sheikh, 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 <sapteq.com> 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.
- In SAP AG v. PrivacyProtect.org / John Harvard, John Havard [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.

V. P. PATHAK
H.J.S.
Former Judge
Sole Arbitrator

ANALYSIS:

44. Since the domain www.saptraininginstitutedelhi.in is registered by Respondent, and he has not turned up even after service of summons.

45. As the proceedings are set *ex-parte*, I shall deal with the Complaint on its prayer for transfer of the disputed domain name. The disputed domain name www.saptraininginstitutedelhi.in consists of the mark 'SAP', which is the registered trademark of the Complainant. 'SAP' has been established by the Complainant over a period of time by its use. The Complainant has used it worldwide, including India, and owns this registered trademark. In support of which, the Complainant has placed on record the details of trademark registration. All these support the Complainant's right over the name 'SAP'. Therefore, the Complainant's claim that it has a right over the disputed name stands proved.

46. Moreso, as the Respondent's action to register the said domain name is not bona fide, therefore, the said registration is done in bad faith. The disputed domain name wholly incorporates the Complainant's well known mark 'SAP' and mentions the same multiple times creating an impression that the Respondent in some way is associated with the Complainant. The Complainant has specifically stated that it has no relation with the Respondent commercially or otherwise. So, therefore, the use of Trademark 'SAP' by the Respondent is not lawful. Therefore, the Respondent has no legitimate right over the said domain name.

47. The following case laws also prove that similar or identical domain names lead to confusion amongst the customers, while the customers think they are buying from the original website, they are being cheated on by the unknown

V. P. PATHAK
H.J.S.
Former Judge
Sole Arbitrator

14
domain owner who will have all the related products.

- Yahoo Inc v. Akash Arora & Anr. 78 (1999) DLT 285:
The Hon'ble High Court of Delhi noted that the two marks/domain names i.e., 'Yahoo!' of the Plaintiff and "Yahoolndia" of the Defendant were almost similar and there was "every possibility and likelihood of confusion and deception being caused". It is no different here.
- In Satyam Infoway Ltd. v. Sifnet Solutions Pvt. Ltd. (2004) 6 SCC 145:
The Hon'ble Supreme Court noted that "The use of the same or similar domain name may lead to a diversion of users which could result from such users mistakenly accessing one domain instead of another."

CONCLUSION:

48. Considering the facts and circumstances of the present matter and taking view of the precedents in this context, I am of the view that the Complainant has proprietary right over the mark 'SAP' followed by the Complainants registered Trademark 'SAP' will not distinguish the Respondents disputed domain name. Under the facts and circumstances and on perusal of the records, I deem it fit and proper to allow the prayer of the Complainant and direct the Registry to transfer the said domain name i.e., www.saptraininginstitutedelhi.in in favor of the Complainant.

49. It is made clear to all concerned that the award is being passed in accordance with the INDRP Rules and Arbitration Act, 1996 has been fully followed by the Tribunal.

ORDER:

V. P. PATHAK
H.J.S.
Former Judge
Sole Arbitrator

50. Since the Complainant has proved its case through its documentary evidence under INDRP Rules, so it is directed that the disputed domain name www.saptraininginstitutedelhi.in be transferred to the Complainant forthwith, .IN Registry to do the needful. Parties to bear their own cost.
51. This award is passed today at New Delhi on 02.08.2021.

V. P. PATHAK
H.J.S.
Former Judge
Sole Arbitrator
V.P. Pathak
02/08/2021

SOLE ARBITRATOR

DATE: 02.08.2021