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BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME DISPUTE RESOLUTION POLICY
(Appointed by the National Internet Exchange of India)

ARBITRATION AWARD

Disputed Domain Name: <SAPTRAININGINSTITUTENOIDA.IN>

IN THE MATTER OF

SAP SE

Dietmar-Hopp-Allee 16,
69190 Walldorf,
Germany

...Complainant

-----versus-----

SAPTRAINING, SysaAppPro
1-DDA Market Community Centre,
Naraina Vihar, New Delhi-110028

...Respondent

Vikrant Rana

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1. The Parties

The **Complainant** in this arbitration proceeding is **SAP SE**, of the address: *Dietmar-Hopp-Allee 16, 69190 Walldorf, Germany*.

The **Respondent** in this arbitration proceeding is **SAPTRAINING, SysaAppPro** of the address: *1-DDA Market Community Centre, Naraina Vihar, New Delhi-110028*.

2. The Domain Name, Registrar and Registrant

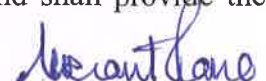
The present arbitration proceeding pertains to a dispute concerning the registration of domain name **<SAPTRAININGINSTITUTENOIDA.IN>** with the .IN Registry. The Registrant in the present matter is **SAPTRAINING, SysaAppPro**, and the Registrar is **Hiox Softwares Private Limited**.

3. Procedural History

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated July 8, 2021, had sought consent of Mr. Vikrant Rana to act as the Sole Arbitrator in the matter. The Arbitrator informed of his availability and gave his consent vide Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure vide email on the same day, i.e. July 8, 2021. Thereafter the Arbitrator received soft copies of the Amended Domain Complaint and the annexures thereto from NIXI on July 12, 2021 and confirmed receipt of the same vide email dated July 14, 2021. Further, vide the said email, the Arbitrator directed the Complainant's attorneys to submit a **Power of Attorney in soft copy** (via email) showing that they are authorized to file the present complaint on behalf of the Complainant on or before **July 20, 2021**. Additionally, the Arbitrator sought the Complainant's confirmation regarding service of the Domain Complaint as well as the annexures thereto upon the Respondent by post and/or email. Consequently, on July 20, 2021, the Arbitrator received an email from the Complainant providing copies of the Vakalatnama and Power of Attorney and further attaching a copy of the email as sent to the Respondent. The Arbitrator, vide email dated July 20, 2021, acknowledged receipt of the authority documents and further directed the Complainant to submit proof of service of both soft copy and hard copy on the Respondent within a stipulated time period.

On July 23, 2021, the Complainant provided the Arbitrator with proof of delivery (delivery receipt) of the soft copy of the complaint and annexures as served on the Respondent vide email dated July 22, 2021. Further, the Complainant informed the Arbitrator that the hard copy of the complaint as sent to the Complainant could not be delivered and that they have not received the document stating the reason for non-delivery of the consignment and shall provide the



Arbitrator with an update once they have received the same. Additionally, the Complainant requested the Arbitrator to waive the requirement of service of hard copy owing to the said non-delivery. Vide email dated July 23, 2021, the Arbitrator confirmed receipt of the proof of service of soft copy and further waived the requirement of service by hard copy. The Respondent was deemed to have been sufficiently served with the Complaint and Annexures thereto and was granted a period of **fourteen (14) days** from the date of receipt of the email, i.e. till August 09, 2021, within which to file a response to the Complaint and forward copies of the same to the Complainant, the Arbitrator and the .IN Registry, failing which, the matter would be decided on the basis of material already available on record and on the basis of applicable law. The arbitration proceedings were therefore deemed to have commenced from August 09, 2021.

On July 30, 2021, the Complainant provided the Arbitrator with the snapshots of the envelope as well as the courier tracking status with the remark "Phone number not reachable".

On August 12, 2021, the Arbitrator, vide email addressed to the Respondent, brought it on record that despite the prescribed deadline for the Respondent to respond in the matter having elapsed on August 09, 2021, in the interests of justice the Respondent was being granted an additional but final and non-extendable period of **seven (7) days** i.e. till August 19, 2021, within which to submit a response (if any) in the matter.

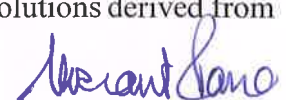
As no response to the Complaint was preferred by the Respondent in the matter even after expiration of the aforementioned final time period of **seven (7) days**, the Arbitrator, vide email dated August 20, 2021, reserved the award to be passed on the basis of facts and documents available on the record.

4. Factual Background

The Complainant has submitted that it is a company organized and existing under the laws of Germany founded in 1972 and is engaged in developing application software products for real time business processing efforts. As per the Complainant, they are a market leader in enterprise application software, business analytics and mobile solutions.

Complainant has submitted that they actively use its name internationally as evidenced by their dedicated website at www.sap.com. Further, Complainant has submitted that it employs 103,142 people of more than 145 nationalities and that its customers include 92% of the Forbes Global 2000 companies. Additionally, the Complainant has stated that they are listed on both the Frankfurt Stock Exchange and the New York Stock Exchange under the ticker symbol "SAP" and has attached their SAP Global Corporate Fact Sheet as **Exhibit 2**.

Complainant has further stated that with more than 48 years of experience, their 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. As per the Complainant, 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. Towards this end, the Complainant has created education and training programs 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. In India, for the purpose of providing education training services upon its software products, the Complainant has claimed that it has partnerships with specific entities to provide such training and has attached a list of authorized education training partners of the Complainant in India as **Exhibit 3**. Additionally, the Complainant has stated that any company/ entity intending to provide training and education courses to third parties, or any entity intending to use **SAP** software, must enter into a valid license agreement with the Complainant. As per the Complainant, such licensing policy adopted and used by the Complainant helps it reduce chances of illegal and unauthorised 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 specialised and purpose specific in nature, require deep knowledge and understanding of their features.

Complainant has submitted that they have coined, adopted and commenced use of the trademark '**SAP**' in the year 1972. Complainant has further submitted that since its adoption, the trade mark '**SAP**' has formed an integral part of their trade and business and that they have continuously and extensively used the trade mark '**SAP**' and **SAP** formative marks for its products and services. Additionally, the Complainant has stated that they are the registered proprietor of the trademarks '**SAP**' and various **SAP** formative marks in over 75 countries and have adduced a list of **SAP** marks registered by the Complainant across various countries in the world as **Exhibit 4**.

Further, Complainant has annexed as **Exhibit 5** a list of world's top 100 most valuable brands in 2020 wherein Interbrand has ranked **SAP** at 18th position. Complainant has submitted that as per Interbrand Best Global Brands, 2020, the brand/ trade name '**SAP**' is valued at USD 28,011 million, hence making the brand/ trade name '**SAP**' an extremely valuable asset of the Complainant. Additionally, the Complainant has claimed that it spends enormously on advertising and promoting its popular trade mark/trade name **SAP** worldwide and has stated that their sales and marketing expense was Euro 7,693 million in 2019 and total annual revenue was approximately Euro 27.34 billion.

With respect to India, the Complainant has submitted registration certificates issued by the Trade Marks Registry as **Exhibit 6** showing statutory rights of the Complainant in the name/ mark **SAP** dating back to **July 09, 1992**.

Further, Complainant has claimed that they are owner of the domains www.sap.com and www.sap.in which was registered by the Complainant on **January 18, 1995** and **February 16, 2005**, respectively. The WHOIS records in this regard have been annexed as **Exhibit 7**. Additionally, the Complainant has submitted extracts from its website www.sap.com as **Exhibit 8** informing about their business activities and presence in several jurisdictions around the world. As per the Complainant, online searches for the name/ mark **SAP** on popular search engines including Google show only the Complainant's products and services amongst the top hits or results.

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5. Complainant's Contentions and Arguments

Complainant has submitted that they came across the impugned domain incorporating their prior well-known trademark **SAP** and engaged in offering online training classes for **SAP** courses from Noida. In this regard, Complainant has submitted printouts from the Respondent's website as **Exhibits 9 and 10** evidencing the various **SAP** courses offered by them such as SAP FICO, SAP MM, SAP ABAP, SAP Basis, SAP SD, etc. Therefore, the Complainant has alleged that the Respondent is unauthorizedly offering **SAP** training courses from the impugned website at www.saptraininginstitute.in by using unlicensed **SAP** software and other confidential or copyright-protected training materials. Complainant has further alleged that the Respondent is misusing and misappropriating the Complainant's mark **SAP** as part of their domain name www.saptraininginstitutenoida.in as well as on the contents of their website to misrepresent trade connection with the Complainant and lend legitimacy to their business operations.

Complainant has further submitted that the Respondent is not an Education Partner and has not been authorized by the Complainant to impart **SAP** training courses. As per the Complainant, the Respondent is using **SAP** as part of the domain name www.saptraininginstitutenoida.in for **SAP** trainings, which directly conflicts with the Complainant's famous registered **SAP** mark/trade name/ domain name.

In light of the above, the Complainant has submitted that they sent the Respondent a cease and desist letter dated November 30, 2020 (annexed as **Exhibit 11**) putting the Respondent on notice of its rights in the **SAP** mark and asking them to cease their infringing activities of imparting **SAP** courses. Thereafter, given the Respondent's non-compliance, the Complainant addressed a further letter to the Respondent on March 04, 2021 (annexed as **Exhibit 12**). However, the Respondent did not initiate any action and since the website still remained active, the Complainant has alleged that such conduct of the Respondent shows intention to defraud and take advantage of the reputation and goodwill of the **SAP** brand and its business reputation. Further, the Complainant has alleged that the Respondent can have no plausible explanation for adoption of a domain name phonetically, visually and conceptually identical to the Complainant's well-known and highly distinctive trademark **SAP** and the Respondent's intention is to take advantage of the goodwill and reputation enjoyed by the Complainant's trademarks/domain name associated with **SAP**.

6. Other Legal Proceedings

The Complainant has submitted that they are unaware of any other legal proceedings that have been commenced or terminated in connection with the domain name **<SAPTRAININGINSTITUTENOIDA.IN>**.



7. Reliefs claimed by the Complainant (Paragraph 10 of the INDRP read with Paragraph 4(b)(vii) of the INDRP Rules of Procedure)

The Complainant has requested that the domain name <SAPTRAININGINSTITUTENOIDA.IN> be transferred to them.

8. Respondent's Contentions

As already mentioned in the Procedural History of the matter, despite having been duly served with a copy of the Domain Complaint as filed, and thereafter granted adequate time to respond to the same, the Respondent had not submitted any response thereto, or in fact any communication of any kind to either the Complainant, NIXI or the Arbitrator in respect of the matter.

9. Discussion and Findings

In a domain complaint, the Complainant is required to satisfy three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e.:-

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

i. The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights
(Paragraph 4(a) of the .IN Domain Name Dispute Resolution Policy)

The Complainant has established its rights in the mark **SAP** in India (vide Registration Nos. 576754 and 576755 dated July 09, 1992) and based on the evidence placed on record, Complainant has demonstrated that it is the owner and registered proprietor of the trademark **SAP** which is registered in many jurisdictions throughout the world including in India.

Additionally, Complainant has submitted that they are the owner of the domain names consisting of the term **SAP** such as <**sap.com**> including the India-specific domain <**sap.in**>. It is pertinent to mention that the domain <**sap.com**> was created on **January 18, 1995**. These rights significantly pre-date the registration of the domain name <SAPTRAININGINSTITUTENOIDA.IN> by the Respondent, which was only registered on **June 28, 2016**.

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Complainant has further submitted evidence of the distinctive and well-known nature of the term **SAP** as well as provided evidence of the 2020 Interbrand reports wherein it has been ranked as 18th in the world's top 100 most valuable brands.

It is observed that the disputed domain name <SAPTRAININGINSTITUTENOIDA.IN> comprises of the mark **SAP** in toto followed by the generic dictionary words “**training**”, “**institute**” and “**Noida**”, which are not sufficient to distinguish the domain name or differentiate it from the Complainant's trademarks and domain name/website incorporating the name/ mark **SAP**. As submitted by the Complainant, the words “**training**”, “**institute**” and “**Noida**” connote the Respondent's alleged training institute operating in Noida, thereby making the terms descriptive and incapable of lending any distinctiveness to the impugned domain name. As submitted by the Complainant, the mark **SAP** is the most dominant feature of the domain <SAPTRAININGINSTITUTENOIDA.IN>.

Further, the Complainant has relied on the decision in *SAP AG v. Domain Admin WIPO Case No. D2006-1526* wherein the disputed domain name <sapeducation.com> was found to be confusingly similar to the Complainant's trademark **SAP**. The Panel in that case had 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. Since the impugned website in that case was making liberal use of the Complainant's trademark **SAP** in a purportedly educational context, the Panel concluded that the same could confuse users into believing they are dealing with the Complainant. In the present case as well, the Respondent's website is displaying the name/ mark **SAP** prominently and overlapping with the Complainant's area of imparting training of **SAP** courses.

Accordingly, it is held that the addition of the words “**training**”, “**institute**” and “**Noida**” are insufficient to distinguish the domain name or differentiate it from the Complainant's trademarks and domain names incorporating the name/ mark **SAP**.

In view of the aforesaid, the Arbitrator finds that the Complainant has successfully established the requirements as under Paragraph 4(a) of the .IN Domain Name Dispute Resolution Policy, and that the Respondent's domain <SAPTRAININGINSTITUTENOIDA.IN> is confusingly identical/similar to the Complainant's trade mark(s) **SAP**.

ii. **The Registrant has no rights and legitimate interest in respect of the domain name (Paragraph 4(b) and Paragraph 6 of the .IN Domain Name Dispute Resolution Policy)**

The Complainant has contended that the Respondent has no right or legitimate interest in respect of the domain <SAPTRAININGINSTITUTENOIDA.IN>.



In the present dispute, Complainant has established that it has rights over the name/mark **SAP** and that the domain <SAPTRAININGINSTITUTENOIDA.IN> is confusingly identical/similar to the Complainant's trade mark.

The element under Paragraph 4(b) and Paragraph 6 of the .IN Domain Name Dispute Resolution Policy necessitates that Complainant has to establish a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain in question. The burden thereafter lies on the Respondent to rebut the showing by providing evidence of its rights or legitimate interests in the domain name. It has been held in numerous cases, including in ***Huolala Global Investment Limited v Li Chenggong (INDRP /1027)*** that the onus of proving rights or legitimate interest in the disputed domain name lies on the Respondent. If the Respondent fails to come forward with relevant evidence to prove rights and legitimate interest in the disputed domain name, and if the Complainant is found to have put forward a *prima facie* case, then the Complainant prevails.

In this case, the Respondent has not submitted any response and/or any evidence of its rights and interests even though extended time period and ample opportunities were granted to the Respondent in this regard. The Respondent has not been able to establish any of the conditions pre-requisite for considering a registrant's rights and legitimate interests in a domain name as set out under Paragraph 6 of the INDRP.

Further, it has been contended by the Complainant that they have not licensed or authorized the Respondent to use the said domain name and neither is the Respondent commonly known by the said domain name. Further, as submitted by the Complainant, the impugned domain is being used in connection with providing illegal and unauthorized **SAP** online training courses. In the absence of any defense tendered by the Respondent, the Arbitrator is constrained to give merit to the Complainant's allegations *inter alia* stating that the Respondent is offering identical services under the name/ mark **SAP** by using unlicensed **SAP** software and other confidential or copyright-protected training materials.

Accordingly, the Complainant's claim that such use by the Respondent is neither a *bona fide* offering of goods or services nor a legitimate non-commercial or fair use of the domain name hold merit. In view of the above, it can be stated that *prima facie* the Respondent cannot be said to be making legitimate or fair use of the domain name.

The Complainant has established a *prima facie* case of its rights in the name/mark **SAP**, and in view of the Respondent's non-response, despite ample opportunities having been provided to them, the Arbitrator finds that Respondent has not established any rights or legitimate interests in the disputed domain name and that the Respondent is not using the disputed domain name for a *bona fide* offering of services and is not making legitimate non-commercial or fair use of the Complainant's trade mark.

In view of the aforesaid, the Arbitrator finds that the Complainant has successfully established the requirements as under Paragraph 4(b) of the .IN Domain Name Dispute Resolution Policy.



iii. The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4(c) and Paragraph 7 of the INDRP)

Paragraph 7 of the INDRP stipulates the below circumstances which show registration and use of a domain name in bad faith - (a) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or (b) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or (c) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The Complainant has established its rights in the name/ mark **SAP** (dating back to 1972 globally) along with submitting evidence of its trademark/ domain registrations pre-dating the Respondent's registration of the impugned domain. Further, Complainant has submitted that given the fame and prior use of the name/ mark **SAP**, the Respondent had prior knowledge of the Complainant's mark. In this regard the Complainant has submitted:

- That at the time of the registration of the impugned domain on June 28, 2016, the Complainant's **SAP** mark was well-known and registered in numerous jurisdictions across the world including India;
- That since the **SAP** mark exclusively refers to the Complainant and the suite of products/services provided by the Complainant, the adoption of the **SAP** mark as part of the domain name www.saptraininginstitutenoida.in by the Respondent cannot be a coincidence and is to align its business/services with the Complainant which reflects 'bad faith';
- That the Respondent's disputed domain name is virtually identical to Complainant's distinctive trademark **SAP** and 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;
- That 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 trademark **SAP**;

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- That the Respondent did not respond to cease and desist letter/email addressed by the Complainant which shows that the Respondent has no legible explanation for its infringing activities indicating dishonest intention.

The Complainant has also relied on a decision in *SAP AG v. Peifang Huang [WIPO Case No. D2014-0928]*, wherein the Panel found 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 Panel further held that 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, thereby falling squarely within the example of bad faith registration and use under paragraph 4(b)(iv) of the Policy.

Based on the above, it appears that by registering and using the domain <SAPTRAININGINSTITUTENOIDA.IN>, the Respondent has engaged in conduct as enumerated in paragraph 7 (c) of the INDRP, namely that *it has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.*

Further, the Respondent's use of the disputed domain name has not been defended as having been bona fide and the Respondent has not submitted any reply nor rebuttal to the Complainant's contentions, or evidence in support of its bona fide use and/ or adoption of the disputed domain name.

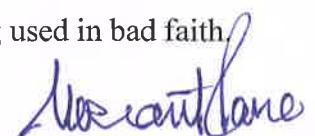
In light of the above and in the absence of any defense by the Respondent, the Arbitrator finds that the disputed domain name was registered and is being used in bad faith.

In view of the aforesaid, the Arbitrator concludes that the Complainant has satisfactorily proved the requirements of Paragraph 4(c) and Paragraph 7 of the INDRP.

10. Decision

Based upon the facts and circumstances and further relying on the materials as available on the record, the Arbitrator is of the view that the Complainant has established rights over the name/mark **SAP**. In light of the non-response by the Respondent, the Complainant has been able to prove conclusively that:

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



The Arbitrator therefore allows the prayer of the Complainant and directs the .IN Registry to transfer the domain <SAPTRAININGINSTITUTENOIDA.IN> to the Complainant.

The Award is accordingly passed and the parties are directed to bear their own costs.



Vikrant Rana, Sole Arbitrator

Date: August 31, 2021.

Place: New Delhi, India.