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**BEFORE THE .IN REGISTRY OF INDIA  
INDRP CASE NO. 1445**

**IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN NAME DISPUTE  
RESOLUTION POLICY; THE INDRP RULES OF PROCEDURE AND THE  
ARBITRATION AND CONCILIATION ACT, 1996**

**FINAL AWARD**

Page 1 of 18

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BEFORE THE .IN REGISTRY OF INDIA

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IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN  
NAME DISPUTE RESOLUTION POLICY THE INDRP RULES OF  
PROCEDURE AND THE ARBITRATION AND CONCILIATION ACT,  
1996

IN THE MATTER OF:

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

...Claimant

Versus

Sreenil dew  
GoDaddy.com, LLC on behalf of  
Registry Domain ID  
D2E7C1C820902492C968EFF56CDA  
42A3F-IN

...Respondent

A DISPUTE RELATING TO THE DOMAIN NAME -  
**saplabs.in**

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FINAL AWARD

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Dated: 25<sup>th</sup> February, 2022  
Venue: New Delhi, India

  
ROBIN RATNAKAR DAVID  
SOLE ARBITRATOR

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## **I. PARTIES TO THE ARBITRATION**

### **a) The Complainant**

The Complainant is SAP SE, a European Company having its registered address Dietmar-Hopp-Allee 16, Walldorf, Germany 69190, Telephone: 267-468-7961, [lgenovese@kassgen.com](mailto:lgenovese@kassgen.com)


### **b) The Respondent**

The Respondent is Sreenil dew [sreenildew@gmail.com](mailto:sreenildew@gmail.com) through GoDaddy.com, LLC on behalf of D2E7C1C820902492C968EFF56CDA42A3F-IN, [postmaster@saplabs.in](mailto:postmaster@saplabs.in)

## **II. APPLICABLE LAW AND JURISDICTION**

### **The .IN Domain Name Dispute Resolution Policy**

- a) The present arbitration proceeding is under and in accordance with the .IN Domain Name Dispute Resolution Policy (the Policy) which was adopted by the National Internet Exchange of India (NIXI) and sets out the legal framework for resolution of disputes between a domain name registrant and a complainant arising out of the registration and use of an .IN Domain Name. By registering the domain name [saplabs.in](http://saplabs.in) with the NIXI accredited Registrar, the Respondent has agreed to the resolution of disputes under the .IN Dispute Resolution Policy and Rules framed thereunder. The Policy and the .IN Domain Name Dispute Resolution Rules of Procedure posted on 25 October 2021 (the Rules) were approved by NIXI in accordance with the Arbitration and Conciliation Act, 1996.





- b) The Complainant filed a Complaint under the .IN Domain Name Dispute Resolution Policy against the Respondent, seeking the transfer of Domain Name saplabs.in to the Complainant. On 20<sup>th</sup> October, 2022, the .IN Registry sought the consent of Mr. Robin Ratnakar David (the undersigned), who is a listed .IN Dispute Resolution Arbitrator under Rule 5 (a) of the Rules, to act as Arbitrator in this matter. Accordingly, consent was given, and this Arbitral Tribunal was constituted on 20<sup>th</sup> October, 2022 under Rule 5(b) of the Rules. On 22<sup>nd</sup> October, 2022 the Arbitral Tribunal issued the notice of arbitration as required under Rule 5(c) of the Rules. The Respondent was granted an opportunity to file its response by 8<sup>th</sup> November, 2022. The Tribunal served the Notice of Arbitration on the Respondent by email. However, no response was filed by the Respondent.
- c) The Arbitral Tribunal has been constituted properly and in accordance with the Arbitration and Conciliation Act, 1996, the INDRP Policy and the Rules as amended from time to time. No party has objected to the constitution and jurisdiction of the Arbitral Tribunal and to the arbitrability of the dispute.

### III. THE DOMAIN NAME, REGISTRAR & REGISTRANT

The disputed domain name sapslab.in is registered with GoDaddy.com, LLC; <http://www.godaddy.com> having registrar IANA ID: 146

User Form	saplabs.in
ROID	D2E7C1C820902492C968EFF56CD A42A3F-IN
Registrar Name	GoDaddy.com, LLC
IANA ID	146
Create Date	2020-08-04T05 :57:06Z
Expiry Date	2021-08-04T05 :57:06Z



Last updated Date	2021-09-15T08 :10:31Z
Domain State	Redemption
Assigned Name servers	
Registrant Client ID	CR435657772
Registrant ROID	C9A64DF44086A42F38E595985E45 BC094-IN
Registrant Create Date	2020-08-04T05 :57:04Z
Email	sreenildew@gmail.com
Phone	+91.7204087339
International Postal Name	Sreen il dew
International Postal Street Line 1	#4335, freewfwr
International Postal Street Line 2	
International Postal Street Line 3	
International Postal City	Kalka
International Postal State	Harayana
International Postal Postcode/Zip Code	133301
International Postal Country	IN
Registrant Registrar Name	GoDaddy.com, LLC
Registrant Registrar IANA ID	146

#### IV. PROCEDURAL HISTORY

- a) On 22<sup>nd</sup> October, 2022, the Arbitral Tribunal issued the Notice of Arbitration to the Respondent by email with the Complaint and Annexures. The Respondent was given an opportunity to file a Response in writing in opposition to the Complaint, if any, along with evidence in support of its stand or contention on or before 8<sup>th</sup> November, 2022. The Complainant was directed to serve a soft copy of the Notice of Arbitration with the Complaint and annexures on the Respondent. The Complaint (including annexures) was sent to the email address of the Respondent shown in the WHOIS details, accordingly, the service on the Respondent was done in accordance with Rule 2 of the Rules.

- b) Further, Ms. Laura A. Genovese Counsel for SAPSE on 25<sup>th</sup> October, 2021 informed the Tribunal that the Complainant had acquired the domain name and therefore the matter may be closed.
- c) On 15<sup>th</sup> December, 2021 the Arbitral Tribunal asked the Complainant to provide either (i) a statement confirming the settlement of the matter as mentioned in email of October 25 2021, in the form of an affidavit by the complainant, or (ii) a written confirmation from the Respondent's registered email in the WHOIS details stating that the matter has been settled by the parties. The tribunal reiterated confirmation by court dated 16 December, 2021 and 17 February, 2022. However the counsel for the Complainant failed to provide a proper confirmation as requested by the aforementioned email dated 15 December, 2021. On 17 February 2022, the Complainant responded stating "*I own the domain name now, so the proceedings do not need to go forward*".
- d) The Notice of Arbitration was issued on 22 October 2021 and under Rule 5(e) the award was to be passed by 21 December 2021. However, the Complainant has failed to provide a satisfactory response to the query from the Tribunal by emails dated 15 December, 2021, 16 December 2021 and 17 February 2022 till date. Further orders of the Hon'ble Supreme Court dated 23 March 2020, 6 May 2020 and 10 January 2022 in *suo motu* Writ Petition (C) No. 3 of 2020, excluded the period from 15 March 2020 till 28 February 2022. Considering the delay caused by the Complaint in not satisfactorily responding to the emails of the Arbitral Tribunal dated 15 December 2021, 16 December 2021 and 17 February 2022 and the orders of the Supreme Court in *suo motu* Writ Petition (C) No. 3 of 2020, the Arbitral Tribunal holds that the present award is within time.






## V. PARTIES CONTENTIONS

### a) THE CLAIMANT

1. The Complainant contends that the Respondent has no rights in any trademarks that comprise part or all of the disputed Domain Name and the same is identical to the Complainant's rights.
2. The Complainant has asserted that it is the owner of the following rights:

- i) Indian Trade Mark Registration No. 531981 for , registered on 26 May 2006 and covering "machine- readable data media provided with programme, computer programs and software, magnetic carriers, namely magnetics tapes magnetic disks, magnetic wafer and magnetic cards" in Int'l Class 09";
- ii) Indian Trade Mark Registration No. 673889 for SAP, registered on 29 January, 2008 and covering "training about the creation, design, development, use and application of computer programs and software and about electronic data processing" in Int'l Class 41" and "creation, development and design of computer programs and software, particularly for internal function areas such as financial and controlling management production and materials management, quality management and plant maintenance, sales and distribution, human resource and project management, general office functions such as word processing, electronic mail and archiving, implementation, servicing, leasing, updating, outsourcing and maintenance of computer programs and software, consulting and advising

*toohoo*



about programming, design, development, use and application of computer programs and software, research in the field of computer programs and ” in Class 42;

- iii) Indian designation of International Registration No. 632356 for SAP and Design, registered on 31 March, 2001 and covering machine- readable data media provided with programme, computer programs and software, magnetic carriers, namely magnetics tapes magnetic disks, magnetic wafer and magnetic cards” in Int’l Class 09”.

- iv) Indian designation of International Registration No. 35360 for



SAP and Design, , registered on April 16, 2005 and covering “computer programs and software programs, computer program manuals, data recording means” in Int’l Class 09.

- v) Indian designation of International Registration No. 647447 for



SAP and Design, , registered on July 10, 2007 and covering “written material for software and data processing program namely manuals, catalogues, operating instructions and working instructions” included in Int’l Class 16.

- vi) Indian Trade Mark Registration No. 586337 for SAP, registered on January 5, 2007 and covering “written material for software and data processing program namely manuals, catalogues, operating instructions and working instructions” included in Int’l Class 16.

*ten has*

- vii) Indian Trade Mark Registration No. 673889 for SAP and



Designs, , registered on 23 January, 2007 and covering “training about the creation, design, development, use and application of computer programs and software and about electronic data processing” in Int’l Class 41” and “creation, development and design of computer programs and software, particularly for internal function areas such as financial and controlling management production and materials management, quality management and plant maintenance, sales and distribution, human resource and project management, general office functions such as word processing, electronic mail and archiving ,implementation, servicing, leasing, updating, outsourcing and maintenance of computer programs and software, consulting and advising about programming, design, development, use and application of computer programs and software, research in the field of computer programs” in Class 42;

- viii) Indian designation of International Registration No. 262489 for



SAP and Design, , registered on May 30, 2003 and covering “computer programs and software programs, computer program manuals, data recording means” in Int’l Class 09.

- ix) Indian Trade Mark Registration No. 265558 for SAP, registered on June 30, 2003 and covering “computer program manual” in Int’l Class 16.

*Handwritten signature*

3. It is asserted by the Claimant that the Respondent does not own any registered rights in any trademarks that comprise part or all of the disputed Domain Name. The term 'SAP' is not descriptive in any way, nor does it have any generic, dictionary meaning. The Claimant has not authorised or licensed the Respondent to reproduce its registered trademark in a domain name registration, nor had the Registrant disclaimed any association with the Claimant on its website when the Domain Name did resolve to a website.
4. Claimant states that the Respondent does not have any legitimate interest or *bona fide* business purpose for using the domain name "saplabs.in" which is also incorporating the Claimant's trademark that tend to give false impression to users and does not constitute a *bona fide* use under the INDRP.
5. Claimant submits that the domain name registered by the Respondent "saplabs.in" is used in bad faith as the domain name which is incorporated with a well-known trademark by a registrant with no plausible explanation for the usage in indicated to be trading on SAP's goodwill to attract users to Respondent's website.
6. The Claimant submits that the disputed domain name is confusingly similar to the Claimant's SAP trademark and trade name, in which SAP SE has prior rights throughout the world, where respondent has no legitimate interest and rights on the disputed domain name.
7. The Claimant submits that the Registrant is in breach of Sections 3(b) and (d) of the INDRP. Regarding Rule 3(b), the Claimant submits that the Registrant was aware of the Claimant's Rights when it chose to register the disputed Domain Name.





8. Further, the Claimant submits that the Registrant is in breach of Rule 3(d) of the INDRP, as it assumed the corporate identity of the Claimant, with a view to deceiving consumers and generating revenue from that deception.

#### **b) THE RESPONDENT**

The Respondent has not filed any response to the Notice of Arbitration dated 22 October, 2021. The Respondent has not replied to the contentions of the Complainant even though the Respondent has been served under the Rules. The emails of service sent to the Respondent were not returned undelivered. Further, though the complainant has asserted that it now owns the domain name, it has produced no evidence of a proper settlement. However, the Respondent's default would not automatically result in a decision in favour of the Complainant. The Supreme Court in *Sudha Agrawal v X Additional District Judge and others* (1996) 6 SCC 332 held that even in an uncontested matter the petitioner's case must stand on its own legs and it cannot derive any advantage by the absence of the defendants. Therefore, the Complainant must still establish each of the three elements required by paragraph 4 of the Policy.

#### **VI. DISCUSSIONS AND FINDINGS**

1. A Complainant who alleges that the disputed domain name conflicts with its legitimate rights or interests must establish the following three elements required by Paragraph 4 of the Policy<sup>1</sup> namely:

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<sup>1</sup> 4. Class of Disputes

4. Class of Disputes: Any Person who considers that a registered domain name conflicts with his/her legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:



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

2. Accordingly, the Arbitral Tribunal shall deal with each of the elements as under:

a) **The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.**

- (i) The Complainant has contended that it owns Indian Trademark registrations as well as international trademark registrations of the SAP trademarks and names. The Complainant is the holder of several trademarks registered with the USTPO, WIPO and European Union (EUTM) with the trade name "SAP" and "SAP and Design" in various classes. The Complainant have also stated that SAP has over 230 million users and employs over 103,000 people worldwide and also representing over 156 nationalities. The SAP trademark is

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(a) the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and

(b) the Registrant has no rights or legitimate interests in respect of the domain name; and

(c) the Registrant's domain name has been registered or is being used in bad faith.



a well-known International brand and most recently ranked at number 18 among the world's brands.

- (ii) A visual comparison of the disputed domain name *saplabs.in* of the Respondent with the Complainant's name, trademark, brand SAP demonstrate that "SAP" is entirely contained in the disputed domain name of the Respondent.
- (iii) In *Yahoo! Inc. v Akash Arora & Anr. (1999 PTC (19)210 Delhi)*, the Hon'ble Delhi High Court enjoined the use of domain name 'yahooindia.com' in a suit filed by Yahoo! Inc., the owner of the trademark "Yahoo" and the domain name <yahoo.com> by holding that defendant's domain name incorporated the plaintiff's name in its entirety and was deceptively similar and could be perceived as being that of the Plaintiff's. In *eBay, Inc v. Progressive Life Awareness Network, WIPO Case No. D2001-0068*, the UDRP returned a finding that the domain name <gayebay.com> incorporated the Complainant's mark "eBay" in its entirety which is confusingly similar to Complainant's mark.
- (iv) The registered trademark(s) and brand name "SAP" are distinctive and the Respondent's domain name "saplabs.in" bears the Complainant's registered trademark "SAP" in its entirety. Considering the similarity between the Complainant's trademark and domain name "SAP" and the disputed domain name "saplabs.in" of the Respondent, the Arbitral Tribunal finds that an average consumer would be





led to believe that the Complainant and the Respondent and/or the disputed domain name are related. After taking into consideration the facts of the present case and the settled law on the issue, the Arbitral Tribunal finds that the disputed domain name "saplabs.in" is identical and confusingly similar to the Complainant's registered trademarks and service mark "SAP". Accordingly, the Arbitral Tribunal holds that the requirement of the first element in the INDRP Policy paragraph 4(a) is satisfied.

**b) The Registrant has no rights or legitimate interests in respect of the domain name**

- (i) To pass muster under paragraph 4(b) of the Policy, the Complainant has to show that the Respondent has no rights to and legitimate interests in the disputed domain name under paragraph 6 of the Policy.
- (ii) According to paragraph 3<sup>2</sup> of the Policy, it is the obligation of the Respondent (registrant) to provide complete and accurate particulars and find out before registration that the

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<sup>2</sup> Paragraph 3 of the INDRP:

**3. Registrant's Representations**

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant hereby represents and warrants that:

- (a) the credentials furnished by the Registrant for registration of domain name are complete and accurate;
- (b) to the knowledge of registrant, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;
- (c) the Registrant is not registering the domain name for an unlawful and malafide purpose; and
- (d) the Registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations.



domain name intended for registration does not violate the rights of any third party. The Complainant has been able to establish that the Complainant and its trademark, service mark and brand name have been in use since long and is commonly known by the name "SAP" and that it owns and holds intellectual property rights in the name, trademark and brand name in India and other jurisdictions. However, the disputed domain name "saplabs.in" was created in September 21, 2021.

(iii) Accordingly, the Arbitral Tribunal finds that the Complainant has made a prima facie case that the Respondent has no rights and legitimate interests in respect of the disputed domain name "saplabs.in" and has satisfied the second element under paragraph 4 (b) of the Policy.

**c) The Registrant's domain name has been registered or is being used in bad faith**

(i) It is evident that the Respondent knew of and targeted Complainant's trademark and Respondent has registered and used the Disputed Domain Name in bad faith. In *Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, D2014-1754 (WIPO Jan 12, 2014) has been considered by *Valvoline Licencing and Intellectual Property LLC v. Jau Khan* WIPO Case No. D2018-1486 based on the balance of facts set forth above and the latitude of the trademark, it is more likely than not that the Respondent knew of and



targeted that Complainant's trademark and Respondent should be found to have registered and used the disputed domain name in bad faith.

Further the use of the term 'SAP' in its entirety in the disputed domain name saplabs.in is a deliberate attempt to attract Internet users to its website by creating a likelihood of confusion with the Complaint's trademark to infringe and violate the rights of the Complainant.

- (ii) Considering the findings above, Arbitral Tribunal holds that the Respondent's domain name saplabs.in has been registered and is being used in bad faith. Therefore, the third element in paragraph 4(c) of the Policy has been satisfied.

Considering the findings above, Arbitral Tribunal holds that the Respondent's domain name saplabs.in has been registered with an opportunistic intention and is being used in bad faith. Therefore, the third element in paragraph 4(c) of the Policy has been satisfied.

## **VII. DISPOSITIONS**

The Arbitral Tribunal holds that the Respondent's domain name saplabs.in is identical and confusingly similar to the name, trademark and brand name "SAP" owned by the Complainant. The Respondent has no rights or legitimate interests in the domain name saplabs.in and the same have been registered in bad faith. The three elements set out in paragraph 4 of the INDRP Policy have been established by the Complainant.





The Arbitral Tribunal directs that the disputed domain name saplabs.in be and is transferred to the Complainant, SAP SE, a European Company having its registered address at Dietmar-Hopp-Allee 16, Walldorf, Germany 69190.

Place of Arbitration: New Delhi, India

Date: 25<sup>th</sup> February 2022



**Robin Ratnakar David**

**Sole Arbitrator**

**The Arbitral Tribunal**