

## **ADMINISTRATIVE PANEL DECISION**

SAP SE v. Jitesh Agrawal

Case No. D2022-3430

### **1. The Parties**

The Complainant is SAP SE, Germany, represented by RNA, Technology and IP Attorneys, India.

The Respondent is Jitesh Agrawal, India.

### **2. The Domain Name and Registrar**

The disputed domain name <thesapsolutions.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 15, 2022. On September 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 16, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

Noting the disputed domain name’s expiration date of October 8, 2022, the Center transmitted by email to the Registrar a request for the disputed domain name to be placed in LOCK status until the conclusion of the UDRP proceedings. The Registrar transmitted by email to the Center confirmation that the disputed domain name has been placed under a Registrar Lock which it will continue until November 13, 2022, after which either the Complainant or the Respondent should renew the disputed domain name in order to continue to keep the domain name under Registrar Lock. The Center relayed this information to the Parties, and the Complainant renewed the disputed domain name, which makes the new expiration date for the disputed domain name October 8, 2023.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 10, 2022. On September 20, 2022, the Center received an email communication from the Respondent. On October 11, 2022, the Center notified the Parties that the Respondent did not file a Response on the merits and the Center would proceed with the panel appointment.

The Center appointed Kathryn Lee as the sole panelist in this matter on October 25, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is a German company founded in 1972 and one of the largest software companies in the world by revenue. It is a developer of enterprise software to manage business operations and customer relations, and currently has more than 400,000 customers in 180 countries, which, according to the Complaint, include 92% Forbes Global 2000 companies. In India, the Complainant has over 3,000 customers. The Complainant's SAP mark has been consistently included in Interbrand's list of Best Global brands since 2001, and it was ranked number 20 in the 2021 list. The Complainant has trademark registrations to SAP and SAP formative marks in over 75 jurisdictions, including the following: Registration Number 39946355 registered in Germany on November 15, 1999, Registration Number 1238969 registered in India on September 22, 2003, Registration Number 557756 registered internationally on February 13, 1990, and Registration Number UK00001326038 registered in the United Kingdom on January 6, 1995.

The Respondent appears to be an individual with an address in India.

The disputed domain name was registered on October 8, 2020, and at the time of the filing of the Complaint resolved to a website advertising online training in the Complainant's software.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is confusingly similar to the SAP trademark in which it has rights. The disputed domain name incorporates the SAP trademark in its entirety which is the predominant element of the disputed domain name, and the additional words "the" and "solutions" do not lend distinctiveness to the disputed domain name. Further, "solutions" is commonly used for training and educational services and the use in conjunction with the Complainant's mark suggests that the Respondent provides training classes for SAP courses.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name and confirms that it has not authorized or licensed rights to the Respondent in any respect.

Finally, the Complainant contends that the disputed domain name was registered and is used in bad faith. First, the Complainant contends that the Respondent was certainly aware of the Complainant and its mark at the time of registration of the disputed domain name. For one, the Complainant and its mark are famous, and secondly, the Respondent used the disputed domain name to offer online trainings in the Complainant's software such as SAP FICO, SAP MM, SAP SD, and SAP HR, which is evidence that the Respondent registered the disputed domain name in order to derive unfair monetary advantage by creating a likelihood of confusion from the use of the Complainant's mark in the disputed domain name. Further, the Complainant contends that such use was in bad faith. Specifically, in India, only approved partners are authorized to provide access to the Complainant's software and use its confidential and copyright-protected materials for training purposes, and the Respondent is not an approved partner. In addition, the Respondent initially

offered the unauthorized trainings at the disputed domain name and another domain name <imigioustech.com>. The Complainant sent three demand letters to the Respondent in May, June, and July 2022, respectively, and while the Respondent responded to the last letter confirming that he has removed references to the Complainant's mark as requested, he did not actually remove all infringing uses of the disputed domain name. The Complainant asserts that this shows the Respondent's intention to defraud and take advantage of the reputation and goodwill of the Complainant's mark.

## **B. Respondent**

In an email sent on September 20, 2022, the Respondent stated that he was shutting down the website at the disputed domain name and that he already removed the content referenced in the above-mentioned demand letter in July 2022 sent by the Complainant.

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

The Complainant has demonstrated with supporting evidence that it has rights to the trademark SAP. As for the disputed domain name, it contains the SAP mark in its entirety along with the terms "the" and "solutions". According to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7, a domain name is considered confusingly similar to a trademark if it "incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name". In this regard, the SAP mark is readily recognizable within the disputed domain name, and the additional terms do not prevent a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.8).

For the reasons mentioned above, the Panel finds that the first element has been established.

### **B. Rights or Legitimate Interests**

On the basis of the present record as set out above, the Panel finds that the Complainant has made the required allegations to support a *prima facie* case showing that the Respondent has no rights or legitimate interests in the disputed domain name. Once such a *prima facie* case has been established, the burden of production shifts to the Respondent to demonstrate his rights or legitimate interests in the disputed domain name, with the burden of proof always remaining with the Complainant. The Respondent did not specifically respond to these assertions by the Complainant, and there is no evidence or allegation in the record that would warrant a finding in favor of the Respondent on this point.

Besides, a respondent's use of a domain name is not considered "fair" if it falsely suggests affiliation with the trademark owner. See [WIPO Overview 3.0](#), section 2.5.1. Here, the dominant element of the disputed domain name corresponds exactly to the Complainant's mark, and one of the additional terms "solutions" suggests that the Respondent is providing services in relation to the Complainant's SAP software, and thus carries a risk of implied affiliation.

For the reasons provided above, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, and that the second element has been established.

### **C. Registered and Used in Bad Faith**

The Panel finds that there is strong and clear evidence to find bad faith in this case.

First, the disputed domain name contains the Complainant's SAP mark and the Respondent used the disputed domain name to offer unauthorized online trainings in the Complainant's software programs. Considering the fame of the Complainant and the Complainant's trademark, and the Respondent's use of the

disputed domain name, it is highly unlikely for the Respondent to have not known about the Complainant prior to registering the disputed domain name. Rather, it is highly likely for the Respondent to have registered the disputed domain name specifically with the Complainant's mark in mind to offer unauthorized online trainings in the Complainant's software for commercial gain.

Based on the evidence, the Respondent offered online trainings in a number of the Complainant's software such as SAP ABAP, SAP BASIS, and SAP FICO. The Complainant has explained that its software are not available through general retail channels, and only provided to customers directly, and that any entity that intends to provide training on the Complainant's software must first obtain a license from the Complainant.

The Respondent is not an authorized partner, and providing such trainings without a license violates the Complainant's proprietary rights. Further, the use of "solutions" in the disputed domain name in conjunction with the Complainant's mark creates confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website which constitutes bad faith under paragraph 4b(iv) of the Policy.

For the reasons given above, the Panel finds that the third element has been established.

## **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <thesapsolutions.com> be transferred to the Complainant.

*/Kathryn Lee/*

**Kathryn Lee**

Sole Panelist

Date: November 8, 2022