

ADMINISTRATIVE PANEL DECISION

SAP SE v. Nilesh Sharma, Nilesh Pvt Ltd / Nilesh Sharma
Case No. D2022-3244

1. The Parties

Complainant is SAP SE, Germany, represented by K&G Law LLC, United States of America (“U.S.”).

Respondent is Nilesh Sharma, Nilesh Pvt Ltd, India.

2. The Domain Names and Registrar

The disputed domain names <sapcertprep.com> and <sapeduworld.com> (the Domain Names) are 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 August 31, 2022. On September 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On September 2, 2022, the Registrar transmitted by email to the Center its verification response confirming that 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on September 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 25, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 27, 2022.

The Center appointed Marina Perraki as the sole panelist in this matter on October 3, 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

Complainant is based in Germany and is listed in Frankfurt and New York. Per the Complaint, Complainant is a market leader in business software, with more than 440,000 customers in more than 180 countries. Founded in 1972, Complainant has grown to a multinational enterprise with 107,415 employees worldwide, as of December 31, 2021, representing over 140 nationalities. SAP was recently ranked at Number 20 among the world's brands, according to Interbrand's Best Global Brands of 2021. In addition to providing enterprise software and software-related services under the brand SAP since 1983, Complainant is also providing training services for its customer and partner community. Complainant's home page for training is located at "www.training.sap.com".

Complainant owns several trademark registrations for SAP worldwide, including

- International Trademark Registration No. 726890, registered on Nov 15, 1999 for goods and services in international classes 9, 16, 35, 41, and 42; and

- International Trademark Registration No. 1220579, registered on July 24, 2014 for goods and services in international classes 9, 16, 35, 38, 41, and 42.

Complainant also owns the domain name registration for <sap.com>, registered in 1995, under which it has operated its website since then.

The Domain Names were registered on January 25, 2019 as regards to <sapcertprep.com>, and on January 14, 2017 as regards to <sapeduworld.com>. Both lead to websites that advertise and sell among others, Oracle, VMWare, Salesforce, and Cisco training materials, namely products that have no affiliation with Complainant, and in some cases, are competing products. Moreover, the websites purport to sell and advertise unauthorized SAP certification exam questions, unlicensed SAP certification materials and infringing SAP certification exam materials (the Websites).

5. Parties' Contentions

A. Complainant

Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the Domain Names.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements that Complainant must satisfy with respect to the Domain Name:

(i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and

(ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and

(iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Complainant has demonstrated rights through registration and use on the SAP mark.

The Panel finds that the Domain Names are confusingly similar with the SAP trademark of Complainant.

The Domain Names incorporate the said trademark of Complainant in its entirety. This is sufficient to establish confusing similarity (*Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#)).

The addition of the words “cert” (short for “certification”), “prep” (short for “preparation”), “edu” (short for education) and “world”, in the Domain Names does not prevent a finding of confusing similarity as the SAP mark remains clearly recognizable (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8).

The generic Top-Level Domains (“gTLD”) “.com” are also disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons only (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#)).

The Panel finds that the Domain Names are confusingly similar to the SAP trademark of Complainant.

Complainant has established Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to Respondent of the dispute, Respondent’s use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent (as an individual, business, or other organization) has been commonly known by the Domain Name, even if it has acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Names.

Respondent has not submitted any response and has not claimed any such rights or legitimate interests with respect to the Domain Names. As per Complainant, Respondent was not authorized to register the Domain Names.

Prior to the notice of the dispute, Respondent did not demonstrate any use of the Domain Names or a trademark corresponding to the Domain Names in connection with a *bona fide* offering of goods or services.

On the contrary, as Complainant demonstrated, the Domain Names are used to host the Websites in an attempt to mislead Internet users into thinking that goods and services purportedly offered on the Websites originate from Complainant. Such use demonstrates neither a *bona fide* offering of services nor a legitimate interest of Respondent (*Arkema France v. Aaron Blaine*, WIPO Case No. [D2015-0502](#)). At the same time they offer competing products.

Furthermore, there is no evidence on record giving rise to any rights or legitimate interests in the Domain Names on the part of Respondent within the meaning of paragraphs 4(c)(ii) and 4(c)(iii) of the Policy.

In addition, the Domain Names incorporate in entirety Complainant's mark combined with the words "cert" (short for "certification"), "prep" (short for "preparation"), "edu" (short for education), namely all related to Complainant's business, and "world", and thus carry a risk of implied affiliation ([WIPO Overview 3.0](#), section 2.5.1).

The Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests in respect of the Domain Names.

Complainant has established Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation", are evidence of the registration and use of the Domain Name in "bad faith":

(i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the Domain Name; or

(ii) that Respondent 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 Respondent has engaged in a pattern of such conduct; or

(iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Names in bad faith.

Because the SAP mark had been widely used and registered by Complainant before the Domain Names' registration, the Panel finds it more likely than not that Respondent had Complainant's mark in mind when registering the Domain Names (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#); and *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#)).

Respondent obviously knew about Complainant's rights given the composition of the Domain Names.

As regards bad faith use, Complainant demonstrated that the Domain Names were employed to host the Websites that not only link to competing goods but also provide goods and services as those provided by Complainant under Complainant's trademark SAP, purportedly offering SAP certification exam questions, unlicensed SAP certification materials and infringing SAP certification exam materials which, per Complaint, are not for public use, as well as competing goods. The Domain Names operate therefore by intentionally creating a likelihood of confusion with Complainant's trademark and business as to the source, sponsorship, affiliation or endorsement of the Websites they resolve to. This can be used in support of bad faith registration and use ([WIPO Overview 3.0](#), section 3.1.4). Furthermore, the Panel finds that Respondent has registered and used the Domain Names to disrupt Complainant's business.

Under these circumstances and on this record, the Panel finds that Respondent has registered and is using the Domain Names in bad faith.

Complainant has established Policy, paragraph 4(a)(iii).

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 names, <sapcertprep.com> and <sapeduworld.com> be transferred to the Complainant.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: October 17, 2022