

ADMINISTRATIVE PANEL DECISION

SAP SE v. Lakshmi Reddy Bhumireddy and P. Hareesh
Case No. D2017-0396

1. The Parties

The Complainant is SAP SE of Walldorf, Germany, represented by RNA IP Attorneys, India.

The Respondents are Lakshmi Reddy Bhumireddy of Hyderabad, Andhra Pradesh, India and P. Hareesh of Chittoor District, Andhra Pradesh, India.

2. The Domain Names and Registrars

The disputed domain names <saponlineaccess.com> and <sapremoteaccess.com> 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 February 28, 2017. On the same date, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 2, 2017, the Registrar transmitted its verification response to the Center by email which confirmed that the Respondent Bhumireddy is listed as the registrant of both disputed domain names and provided the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), 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 the Respondent of the Complaint, and that the proceedings commenced on March 3, 2017. In accordance with the Rules, paragraph 5, the due date for Response was set to March 23, 2017. The Center received an email communication from the Respondent Bhumireddy on March 3, 2017 claiming that he is not the owner of the disputed domain names. No response whatsoever was received from the Respondent Hareesh. The Center notified the parties of the commencement of the panel appointment process on March 27, 2017.

The Center appointed Peter L. Michaelson as the sole panelist in this matter on April 6, 2017. 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

As reflected in the registration records for the disputed domain names in the public Whois database (copies of those records appear in Annex 1 to the Complaint), both names were registered on June 23, 2014 and will expire on June 23, 2017.

A. The Complainant's SAP Mark

The Complainant owns numerous trademark registrations in more than 75 countries worldwide for the term SAP (in block letters and also stylized), which of particular relevance here includes registrations in India. The Complainant has provided in Annex 8 to the Complaint a list of its registrations worldwide and in Annex 10 to the Complaint a list of its Indian registrations and pending applications in the Indian Trademark Office along with a copy of the registration certificates of a representative sample of its Indian trademark registrations. Salient details of two of its Indian registrations are as follows.

1. SAP

Indian trademark registration 576,755; registration date: July 9, 1992

This mark is registered for use in connection with: "Computer programmes and software programmes, computer program manuals, data recording means" in international class 9.

2. SAP

Indian trademark registration 578,462; registration date: August 4, 1992

This mark is registered for use in connection with: "Computer program manuals" in international class 16.

B. The Complainant

The Complainant is a German company headquartered in Walldorf, Germany. Founded in 1972, the Complainant is now a significant supplier of end-to-end enterprise application software, business analytics and mobile solutions, primarily for processing business-critical data in real-time.

Currently, the Complainant has over 84,000 employees spanning over more than 150 nationalities and serves more than 345,000 customers in 190 countries, including 87% of the Forbes Global 2,000 companies, across more than 25 different industrial sectors. In India, the Complainant has over 3,000 customers.

Many of the Complainant's software products are not available off-the-shelf, or through e-stores or through other general, commercial retail channels, nor are they available integrated with any vendor's computer hardware in the form of an original equipment manufacturer (OEM) product. These products require trained personnel to initially deploy, load, configure, execute, access, utilize, store and display integrated end-to-end solutions derived from the products, and thereafter, to assist as needed, at each stage of customer use. Towards this end, the Complainant has created education and training programs to meet these customer needs, and enters into contractual arrangements with third-party software specialists the world over, to provide education and training for provision and execution of its software products. In India, the Complainant has formed partnerships with various authorized organizations, as indicated in the screenshots, shown in Annex 7 to the Complaint, of webpages taken from the Complainant's website, to provide this education and training.

As a condition for an entity obtaining access to any of the Complainant's software products as well as education and training from the Complainant or one of its partners, that entity must first execute an appropriate license agreement with the Complainant to use that product.

The Complainant adopted the term "SAP" as its mark in 1972 and since then that term has been an integral part of the Complainant's trade name and business. The brand associated with the SAP mark ranks twenty-second in the "Best Global brands 2016 Rankings", as recognized by Interbrand, and, as estimated by Interbrand, carries a valuation of over USD 21 billion (a copy of these ranking and corresponding brand valuations is provided in Annex 9 to the Complaint). The Complainant commenced its business in India and under its SAP Mark in 1992.

The Complainant's 2015 total annual revenue was approximately EUR 20.8 billion with its 2015 sales and its marketing expenditure – which is considerable – constituted approximately EUR 5.4 billion (having increased 25% from its EUR 4.3 billion expenditure in 2014).

C. The Respondents and interactions between the parties

The Respondents currently offer each of the disputed domain names for sale at USD 1,800 – as indicated, in Annex 3 to the Complaint, by a screenshot of the corresponding home page at each of the Respondents' websites to which these names resolve.

Shortly after the Complainant learned of the disputed domain name <saponlineaccess.com>, it, through its Counsel, sent the Respondent Bhumireddy on June 16, 2015 a cease and desist letter objecting to the use of both that name and the Complainant's SAP mark, and demanding transfer of the domain name. Upon receiving no response, the Counsel sent a reminder letter to the Respondent Bhumireddy on July 2, 2015. Copies of these letters appear in Annex 13 to the Complaint. Shortly thereafter, the Respondent Bhumireddy contacted the Counsel by telephone and stated that his function is only a web host and registrant of the name and that he registered that name on behalf of the Respondent Hareesh. The Respondent Bhumireddy also stated that he registered the other disputed domain name, <sapremoteaccess.com>, also on behalf of the Respondent Hareesh. An exchange of emails (copies are provided in Annex 14 to the Complaint) ensued on or about July 9, 2015 between the Respondent Bhumireddy and the Counsel through which the former provided contact details of the Respondent Hareesh. The Counsel then telephoned the Respondent Hareesh. During the call, the Respondent Hareesh stated that he had acquired the disputed domain names through his keyword research project and then offered to sell each of the names to the Complainant for USD 1,800.

On November 23, 2016, Counsel sent a cease and desist letter (a copy of which appears in Annex 4 to the Complaint) to the Respondent Hareesh objecting to the registration of the disputed domain names and demanding their transfer. The Respondent Hareesh refused delivery of this letter (as indicated in a copy of the tracking record provided in Annex 16 to the Complaint). The Counsel never received a response to the November 23 letter.

5. Parties' Contentions

A. Complainant

(i) Identical or Confusingly Similar

The Complainant contends that each of the disputed domain names is confusingly similar to its SAP Mark.

Specifically, each of the disputed domain names includes the term SAP in its entirety followed by a generic word group "on line access" or "remote access" – neither of these added groups being capable of imparting sufficient distinctiveness whatsoever to the name to mitigate any resulting user confusion between that disputed domain name and the Complainant's mark.

Hence, the Complainant believes that it has satisfied the confusing similarity/identity requirement in paragraph 4(a)(i) of the Policy.

(ii) Rights or Legitimate Interests

The Complainant contends that, for any of several reasons, the Respondents have no rights or legitimate interests in either of the disputed domain names pursuant to paragraphs 4(a)(ii) and 4(c) of the Policy.

The Complainant has not licensed or otherwise permitted the Respondents to use the SAP Mark, or any other trademark or domain name incorporating that mark.

The Respondents are not and have never been known by the SAP Mark or by any similar mark or name. As such, there is no legitimate reason for the Respondents to have chosen either of the disputed domain names. The Respondents' purpose in choosing these names was to use the fame inherent in the Complainant's SAP Mark to generate web-traffic and, by doing so, confuse Internet users, who might be looking for the Complainant and its products, as a result of diverting them to the Respondents' websites instead.

The Respondents, in offering each of the disputed domain names for a price well in excess of its cost of registration, are not using either name in connection with a *bona fide* offering of goods or services or in a manner consistent with a legitimate noncommercial or fair use. Further, as the Respondents were well aware of the Complainant, its SAP mark and its reputation in that mark while they offered the disputed domain names for sale in an attempt to illicitly profit from that reputation, their actions clearly reflect a lack of any rights or legitimate interests in either name.

(iii) Registered and Used in Bad Faith

The Complainant also contends that the Respondents have registered and is using each of the disputed domain names in bad faith in violation of paragraph 4(a)(iii) of the Policy.

The Respondent was well aware of the fame enjoyed by the SAP Mark and its substantial prior use. Yet, in spite of that knowledge, the Respondent intentionally registered the disputed domain names in order to opportunistically exploit the reputation of SAP Mark for the Respondent's own pecuniary advantage by offering to sell each of the disputed domain names – which included that Mark in its entirety – most likely to the Complainant or perhaps an interested third-party for an amount (USD 1,800) exceeding the Complainant's out-of-pocket costs of registering each disputed domain name.

B. Respondent

In response to the Complaint, the Respondent Bhumireddy responded with an email message through which he simply claimed that he is not the owner of the disputed domain names but failed to reply to any of the Complainant's substantive contentions. The Respondent Hareesh did not respond at all. Thus, the Panel treated this proceeding as if the Respondents effectively defaulted. Hence, under paragraphs 5(e), 14(a) and 15(a) of the Rules, the Panel decided this proceeding on the basis of the Complainant's undisputed factual allegations which the Panel finds are not inherently implausible.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that each of the disputed domain names is confusingly similar to the Complainant's SAP Mark.

From a simple comparison of each name to the Complainant's SAP Mark, no doubt exists that the disputed domain name is confusingly similar to the mark. Each of the two disputed domain names <saponlineaccess.com> and <sapremoteaccess.com> consists of the term SAP followed by a group of two or three descriptive terms, either "on line access" or "remote access". The Panel takes judicial notice of the fact that both of these word groups are clearly and commonly well-known as describing generic functions of computer networking and communications, certainly in the application software industry in which the Complainant operates. Each of these names also contains the generic Top-Level Domain ("gTLD") ".com". The addition of the gTLD is generally irrelevant in assessing confusing similarity or identity under paragraph 4(a)(i) of the Policy and thus ignored.

It has also become very well-established in UDRP precedent, including numerous decisions previously rendered by this Panel, that a minor variation to a mark is usually insufficient in and of itself, when used in forming a domain name, particularly a Second-Level Domain (SLD), that results from modifying the mark, to confer requisite and sufficient distinctiveness to the resulting domain name to avoid a finding of confusing similarity. Here, the Respondent's incorporation of either the word group "on line access" or "remote access" to form each SLD clearly constitutes such a minor variation. See, e.g., *Compagnie Générale des Etablissements Michelin v. Cameron Jackson*, WIPO Case No. D2016-2392; *Kumfs Brand Limited v. George*, WIPO Case No. D2016-1272; *Dubizzle Limited BVI v. Rana Anabtawi*, WIPO Case No. D2016-0843; *Chicago Mercantile Exchange Inc. and CME Group Inc. v. Domains By Proxy, LLC / Phupinder Gill*, WIPO Case No. D2015-1842; *Cummins Inc. v. Jamie Lent*, WIPO Case No. D2015-0188; *Staatliche Porzellan-Manufaktur Meissen GmbH v. Buy Meissen*, WIPO Case No. D2013-1687; *Forideas Pty Limited v. Movember Organization*, WIPO Case No. D2013-1385; *AlgaeCal Inc. v. AlgaeCal Fraud*, WIPO Case No. D2013-1248; *General Motors LLC v. Carol Schadt*, WIPO Case No. D2012-2106; *National Westminster Bank plc v. Steve Mart*, WIPO Case No. D2012-1711; *Tommy Bahama Group, Inc. v. Berno Group International*, WIPO Case No. D2012-0531; *National Association of Realtors v. Hammerberg & Associates, Inc.*, WIPO Case No. D2012-0075; *Space Needle LLC v. Erik Olson*, WIPO Case No. D2011-0931; *Oakley, Inc. v. Kate Elsberry, Elsberry Castro*, WIPO Case No. D2009-1286; *Clearwire Legacy, LLC v. Leon Ganesh*, WIPO Case No. D2010-0148; *Burberry Limited v. Domain Admin*, WIPO Case No. D2009-0703; *Krispy Kreme Doughnuts, Inc. v. John Sharp*, WIPO Case No. D2009-0099; *MasterCard International Incorporated v. Global Prepaid*, WIPO Case No. D2008-2008; *HRB Innovations Inc., Express Tax Service Inc. v. Calvin Brown*, WIPO Case No. D2008-1072; *Dreamworks Animation, LLC v. Creahq, Mike Furlong*, WIPO Case No. D2008-0505; *Marvel Manufacturing Company Inc. v. Koba Internet Sales, LP*, WIPO Case No. D2008-0265; *MySpace, Inc. v. Edwin De Jesus, EDJ Associates Inc.*, WIPO Case No. D2007-1878; *BlackRock, Inc. v. blackrockfinancialservices.com*, WIPO Case No. D2007-1627; *F. Hoffmann-La Roche AG v. Transliner Consultants*, WIPO Case No. D2007-1359; *National Football League v. Peter Blucher d/b/a BluTech Tickets*, WIPO Case No. D2007-1064; *Toilets.com, Inc. v. Rons Porta Johns*, WIPO Case No. D2007-0952; *Associated Bank Corp. v. Texas International Property Associates*, WIPO Case No. D2007-0334; *Gerber Childrenswear Inc. v. David Webb*, WIPO Case No. D2007-0317; *The Cheesecake Factory Inc. and The Cheesecake Factory Assets Co., LLC v. Say Cheesecake*, WIPO Case No. D2005-0766; *Napster, Inc. v. Giovanni Vinscani*, WIPO Case No. D2005-0531; *Caesars Entertainment, Inc. v. Nova Internet Inc.*, WIPO Case No. D2005-0411; *Lockheed Martin Corporation v. The Skunkworx Custom Cycle*, WIPO Case No. D2004-0824; *Lockheed Martin Corporation v. Deborah Teramani*, WIPO Case No. D2004-0836; *National Collegiate Athletic Association v. Dusty Brown*, WIPO Case No. D2004-0491; and *National Association of Professional Baseball Leagues, Inc., d/b/a Minor League Baseball v. John Zuccarini*, WIPO Case No. D2002-1011.

Therefore, the Panel finds that each of the disputed domain names is either identical or confusingly similar to the Complainant's SAP Mark. Hence, the Complainant has satisfied its burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Based on the evidence of record here, the Panel finds that no basis exists which would appear to legitimize a claim of rights or legitimate interests by the Respondents to either of the disputed domain names under paragraph 4(c) of the Policy.

The Complainant has never authorized either or both of the Respondents to utilize the Complainant's SAP Mark and does not have any relationship, affiliation or connection whatsoever with the Respondents.

Further, the Respondents never did and do not now use nor have they ever made any demonstrable preparations to use either of the disputed domain names to resolve to an operational website through which they present do or will make *bona fide* offerings of any goods or services. Offering a domain name for sale which infringes the trademark rights of another is not a *bona fide* offering of goods and services.

Moreover, the evidence of record clearly reflects that neither of the Respondents is commonly known by either of the disputed domain names or the Complainant's SAP Mark. Given the Complainant's exclusive rights in its SAP Mark which in India significantly predates, by at least some 22 years, the date, June 23, 2014, on which the Respondents registered both of the disputed domain names, the Respondents could not legitimately acquire such a public association or even an association with any mark similar to that of the Complainant — at least for the goods and services provided by the Complainant under its mark — without interfering with the exclusive trademark rights of the Complainant. See, e.g., *Compagnie Générale des Etablissements Michelin, supra*; *Philip Morris USA Inc. v. Daniele Kanai, iKiss LLC*, WIPO Case No. D2015-1527; *Valero Energy Corporation and Valero Marketing and Supply Company v. Lisa Katz, Domain Protection LLC / Domain Hostmaster, Customer ID: 62520014085963*, WIPO Case No. D2015-0787; and *Chicago Mercantile Exchange Inc., Cummins Inc. v. Jamie Lent, and Staatliche Porzellan-Manufaktur Meissen GmbH v. Buy Meissen*, all *supra*.

Consequently, the Respondents do not satisfy any of one of paragraphs 4(c)(i)-(iii) of the Policy, and thus neither of the Respondents has any rights or legitimate interests in either of the disputed domain names under paragraphs 4(a)(ii) and 4(c) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the Respondents' actions, with respect to each of the disputed domain names, constitute bad faith registration and use.

The Panel infers, particularly from the lack of any substantive response and the Respondent's very choice of domain names, that, the Respondents were well aware of the Complainant and its SAP Mark, the substantial reputation, goodwill and fame which that mark acquired and the exclusive rights which the Complainant held in that mark when the Respondents registered each of the disputed domain names. Under the present facts of record, any contrary finding is simply so improbable that it lacks any reasonable credibility whatsoever.

Yet, in spite of that knowledge and in the absence of any authority to do so from the Complainant, the Respondents intentionally registered each of the disputed domain names for its potential to opportunistically exploit that reputation and goodwill for the Respondents' own pecuniary benefit by subsequently offering to sell each disputed domain name to the Complainant for a profit, *i.e.*, an amount exceeding its out-of-pocket costs of registration. This is clearly reflected in the Respondent's subsequent actions in having offered to sell each of the disputed domain names to the Complainant for USD 1,800. Thus, the Respondent's conduct directly violated paragraph 4(b)(i) of the Policy.

Hence, the Respondent's conduct reflects both bad faith registration and use under paragraphs 4(a)(iii) and 4(b)(i) of the Policy.

Thus, the Panel concludes that the Complainant has provided sufficient proof of its allegations, with respect to both of the disputed domain names, to establish a case under paragraph 4(a) of the Policy upon which the relief it now seeks can be granted.

7. Decision

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel grants the relief sought by

the Complainant.

The disputed domain names, <saponlineaccess.com> and <sapremoteaccess.com>, are to be transferred to the Complainant.

Peter L. Michaelson

Sole Panelist

Date: April 18, 2017