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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 599/2015

SAP SE & ORS

..... Plaintiff

Through: Ms. Astha Joshi, Advocate

versus

SAP EDGE

..... Defendants

Through: None

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Date of Decision: 22nd August, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (oral):

1. Present suit has been filed for permanent injunction restraining infringement of copyright, trademark, passing off, rendition of accounts, damages and delivery up etc. The prayer clause in the suit is reproduced hereinbelow:-

“(a) An order of permanent injunction restraining the defendants, its principal officers, directors, agents, franchisees, servants and all other acting for and on its behalf, from directly or indirectly reproducing/installing,, providing training on software programs of the plaintiff, including but not limited SAP – HANA, SAP, HR, SAP – SECURITY With GRC, SAP MM, including the use of all training manuals, course material etc. which are published by the plaintiff or copies thereof, amounting to

infringement of the plaintiff's copyright in its SAP computer programs;

(b) An order of permanent injunction restraining the defendants, its principal officers, directors, agents, franchisees, servants and all other acting for and on its behalf, from directly or indirectly from using the well known trademark SAP or SAP label, either by itself or in conjunction with any other word or mark, or any deceptive variant of the well known trademark SAP or any other mark of the plaintiff, as trade mark or trading style or domain name or key words or meta-names, amounting to infringement of the plaintiffs' registered and well known trademarks registered under various classes including registration nos.989935, 576754, 576755 in class 9, registration nos.879285, 578461, 578462 in class 16, and registration nos. 1238968, 1238969 in class 41;

(c) An order restraining the defendants, its principal officers, directors, agents, franchisees, servants and all other acting for and on its behalf, from directly or indirectly operating the website www.sap-edge.com and www.sreetechnologies.com inactivating their websites and authorizing the transfer of ownership of the domain name www.sap-edge.com in favour of the plaintiff;

(d) An order and decree of permanent injunction restraining the defendants, its directors, partners, officers, servants, employees, franchisees, agents, representatives and all other acting for and on its behalf from using the well known trademark SAP or 'SAP' label, either by itself or in conjunction with any other word or mark, or any deceptive variant of the well known trademark mark SAP, or any other mark of the plaintiff, as a trademark or trading style or domain name or

keywords or meta-names, amounting to passing off of the business/services/products of the defendants as or for those of the plaintiff or having any connection/association with the plaintiff.

(e) An order for delivery up of all unlicensed/pirated plaintiffs' software contained in hard discs, compact discs, floppy discs and/or other storage media, including any CD/DVD/Writers/Burners or servers, or any other material infringing the plaintiffs' copyright in its computer programs including plaintiffs' user instruction manuals/training manuals, and of all the signboards, display boards, impugned goods, articles and item that have upon it, mark that is identical/deceptively similar to that of the plaintiffs' mark SAP or any other material infringing the rights of the plaintiff, lying in the possession of the defendants and or/their principal officers, directors, agents, franchisees, servants etc.

(f) A decree for damages of Rs.20,00,000/- be passed in favour of the plaintiffs and against the defendants.

(g) Any other and further orders, as this Hon'ble Court deems fit and proper in the facts and circumstances of the present case as well as in the interest of justice, be passed in favour of the plaintiff and against the defendants."

2. Vide order dated 4th March, 2015 this Court granted an ex-parte ad interim injunction in favour of the plaintiff and against the defendants. This court further appointed a Local Commissioner to visit the premises of the defendant no.1. The relevant portion of the ex-parte injunction order is reproduced hereinbelow:-

"In view of the oral and documentary evidence placed on record, a prima facie case is made out in

favour of the plaintiff and in case ad interim ex parte injunction is not granted in favour of the plaintiff, the plaintiff would suffer an irreparable loss and harm. At this stage balance of convenience is also in favour of the plaintiff. Accordingly, till next date, defendants, its officers, directors, agents, franchisees and servants etc. are restrained from directly or indirectly reproducing/installing, providing training on software programs of the plaintiff, including but not limited to SAP-HANA, SAP HR, SAP-SECURITY with GRC, SAP MM, including the use of all training manuals, course material etc. which are published by the plaintiff or copies thereof, amounting to infringement of the plaintiffs' copyright in its SAP computer programs as also all its registered trademark SAP and also use of the trademark SAP H. The defendants are also restrained from operating from operating directly or indirectly the websites www.sap-edge.com and www.sreetechnologies.com till net date."

3. Since the defendants did not appear despite service, they were proceeded ex-parte vide order dated 17th, September, 2015.
4. It has been averred in the plaint that plaintiff is a German company and the owner of the copyright in the software programmes and products which are developed and marketed by it including SAP ERP, SAP-HANA, SAP HR, SAP MM. The aforesaid software programmes are computer programmes within the meaning of Section 2(ffc) of the Copyright Act 1957 and are included in the definition of a 'literary work' as per Section 2(o) of the Copyright Act, 1957. It has been further averred that the plaintiff has a wholly owned Indian subsidiary who is responsible for the sales of SAP solutions, implementation, post-implementation support, training and certificate

of its customers and partners in India.

5. It has been averred in the plaint that plaintiff coined, adopted and commenced the use of trademark SAP in the year 1972 and it forms an integral part of the plaintiff's trade and business and acts as a distinctive identifier of the plaintiff's products. The plaintiff's mark SAP and SAP label  is registered under Classes 9, 16, 14 and 42 under the Trademark Act, 1999. It is contended that the plaintiff provides various business solutions to its customers which are collectively called as SAP Business Suite.

6. Learned counsel for the plaintiff states that the software products of the plaintiff are customised solutions tailored to the specific needs of each client and are not available off-the-shelf, or through e-stores or resellers or with any computer hardware vendors as an Original Equipment Manufacturer (OEM) product or as a gift. She further states that due to the high levels of customisation of the plaintiff's software products or SAP software products, the plaintiff has purpose-specific versions of its software license agreements. She also states that license given by the plaintiff for a particular purpose cannot be used for any other purpose i.e. a EULA (End User License Agreement) license does not permit the licensee to provide training to any third party except as specifically provided. She points out that for training purposes, the plaintiff enters into an Education/Training License agreement with the Licensee.

7. Learned counsel for the plaintiff states that in February 2015, it came to plaintiff's knowledge that the defendant no.1 is trading under the SAP EDGE using the logo  and operating through

website www.sap-edge.com and claiming to be a leading SAP Training Institute in Hyderabad. She further states that defendant no.1 has been offering classroom as well as online SAP training on 25 SAP software courses including SAP-HANA, SAP HR, SAP-SECURITY with GRC,SAP MM, and various others. She also states that defendant no. 1 is operating through alternate names, namely defendant no. 2-Sree Technologies through website www.sreetechnologies.com and defendant no. 3-BestOnlineSoftwareTraining through their website www.bestonlinesoftwaretraining.com.

8. Ms. Astha Joshi states that though at the time of filing the present suit the website of defendant no. 3, i.e., www.bestonlinesoftwaretraining.com had been pulled down, yet, defendant no. 2-Sree Technologies continued offering SAP training courses from their website under sub heading “SAP All Modules”. She has today handed over an affidavit under Section 65-B of the Evidence Act, 1872 in which it is stated that the plaintiff apprehends that defendants intend to activate their website for offering SAP courses in the near future. The same is taken on record.

9. Ms. Astha Joshi further states that defendants have infringed upon the exclusive rights of the plaintiff by providing unauthorised training on their copyright-protected software such as SAP ERP, SAP-HANA, SAP HR, SAP MM, SAP-SECURITY, SAP GRC etc. She further states that defendants’ activities are illegal since the plaintiff has not authorised the defendants to use the aforesaid software or access other material to provide training or use their trademark SAP and/or their logo. She also states that no licence has been granted in

favour of the defendants to use any of the SAP's copyright protected software for providing training.

10. Learned counsel for the plaintiff states that the defendants have been using plaintiff's trademark SAP in its trade name SAP EDGE, in their trading logo  and in their domain name www.sap-edge.com. She admits such adoption and use is illegal and amounts to infringement of plaintiff's exclusive rights in the trademark SAP and SAP label under Section 29 of the Trademarks Act, 1999.

11. The plaintiff has filed its ex-parte evidence by way of affidavit of Mr. Rahul Sethi (PW1).

12. The plaintiff's witness has proved the aforesaid averments as well as the copies of the Trade Mark Registration Certificates in favour of the plaintiff as Ex.PW1/6 and Ex.PW1/7 respectively. The PW1 has further proved the screenshots taken from the defendant's website www.sap-edge.com as Ex.Pw1/11. PW1 has proved the course materials and schedules for all the SAP courses provided by the defendant no.1 on its website as EX.PW1/12. The plaintiff's witness also proved the photograph of the signboard displayed on the defendant no.1's premises promoting its unauthorised SAP training as EX.PW1/13.

13. Having heard learned counsel for plaintiff as well as having perused the papers, this Court is of the view that due to extensive worldwide use over substantial period of time, the plaintiff's SAP mark and SAP logo have acquired reputation and goodwill in the marks globally as well as in India.

14. Further, as the plaintiff's evidence has gone unrebutted, said evidence is accepted as true and correct.

15. From the evidence on record, it is apparent that without any explicit permission or licence to use the plaintiff's software, the defendants have been blatantly installing/using pirated software to train the students amounting to unauthorised reproduction of the plaintiff's copyrighted software.

16. Consequently, the allegation that the trademark, logo, label and software pertaining to SAP used by defendants on their website amounts to infringement of plaintiff's copyright, is accepted. The use of illegal trade activities by the defendants is bound to cause incalculable losses, harm and injury to the plaintiff and immense public harm.

17. Accordingly, present suit is decreed in accordance with the paragraph 41(a), (b), (c) and (d) of the plaint along with the actual costs. Registry is directed to prepare a decree sheet accordingly.

AUGUST 22, 2017

rn/mk

MANMOHAN, J