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

+ **CS(COMM) 447/2016**

SAP SE

..... Plaintiff

Through: Mr. Ranjan Narula with
Ms. Astha Joshi, Advocates

versus

**NEWYORKSYS INFO SOLUTIONS
PRIVATE LIMITED & ANR**

..... Defendants

Through: None

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Date of Decision: 26th September, 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 of profit, damages and delivery up etc. The prayer clause in the suit is reproduced hereinbelow:-

“(a) An order of Permanent injunction restraining the Defendant, its principal officers, directors, agents, franchisees, servants and all others acting for and on its behalf, from directly or indirectly reproducing / installing, providing training on software programmes of the Plaintiff, including but not limited to SAP ERP (functional and technical modules), SAP CRM, SAP SCM, SAP HANA SAP-ABAP and SAP FICO 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 Defendant, its principal officers, directors, agents, franchisees, servants and all others 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 Plaintiff's 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 Defendant, its principal officers, directors, agents, franchisees, servants and all others acting for and on its behalf, from directly or indirectly operating the websites www.newyorksystraining.com, www.newyorksys.com, www.businessintelligenceonlinetraining.com, www.businessobjectstrainingonline.com, www.boditraining.com, www.ficotraining.com, www.grconlinetraining.com, www.hanatrainingonline.com, www.objectsbusiness.com, www.sapapofscmtraining.com, www.sapbasisonlinetraining.com, www.sapficoonlinetraining.com, www.saphanaonlinetraining.com, www.saphronlinetraining.com, www.sapplmppttraining.com, www.sappsrm-wmtraining.com, www.traininghana.com, www.trainingsaphana.com, www.trainingnetweaver.com, and any other website offering training / courses in the

name of SAP without authorization to inactive their websites and authorizing the transfer of ownership of the said domain names in favour of the Plaintiff.

(d) An Order and Decree of Permanent Injunction restraining the Defendant, its Directors, Partners, officers, servants, employees, franchisees, agents, representatives and all others acting for and on its behalf from using the well known trademark SAP, 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 a trademark or trading style or domain name or keywords or meta-names, amounting to passing off of the business/services/products of the Defendant 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 Plaintiff's software contained in hard discs, compact discs, and/or other storage media, including any CD/DVD/Writers/Burners or servers, whether hosted at their premises through remote servers or any other material infringing the Plaintiff's copyright in its computer programs including Plaintiff's User Instruction Manuals/training manuals, and of all the signboards, display boards, impugned goods, articles and items that have upon it, mark that is identical/deceptively similar to that of the Plaintiff's mark SAP or any other material infringing the rights of the Plaintiff, lying in the possession of the Defendant and/or their principal officers, directors, agents, franchisees, servants etc.

(f) An order for the Rendition of Accounts of profits illegally earned by the Defendant by reason of infringement of Plaintiff's copyright and trade marks and passing off, as aforesaid and a Decree be passed against the Defendant in the sum of the amount so ascertained.

(g) A decree for punitive or exemplary damages to the tune of Rs. 20,00,000/- be passed in favour of the Plaintiff and against the Defendants for wilful infringement of Plaintiff's statutory and vested rights.

(h) 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 interests of justice, be passed in favour of the Plaintiff and against the Defendant."

2. At the outset, learned counsel for plaintiff gives up prayers (e) (f) and (g) of the prayer clause to the suit. The statement made by learned counsel for plaintiff is accepted by this Court and plaintiff is held bound by the same.

3. Vide order dated 15th July, 2015 this Court granted an ex-parte ad interim injunction in favour of the plaintiff and against the defendants. The relevant portion of the ex-parte injunction order is reproduced hereinbelow:-

"Accordingly, the defendants are restrained directly or indirectly in offering and/or providing training of software programmes of plaintiff, including but not limited to SAP ERP (functional and technical modules), SAP-CRM, SAP-SCM, SAP-HANA, SAP-ABAP and SAP-FICO 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 copy right. The defendants are also restrained from using directly or indirectly the mark 'SAP' or trading style or domain name, that is, www.sapbasisonlinetraining.com, www.sapficoonlinetraining.com, www.saphanaonlinetraining.us,

www.saphronlinetraining.com,
www.saplmppttraining.com,
www.sapsrm-wmtraining.com,
www.sapapofscmtraining.com,
www.trainingsaphana.com, amounting to
infringement of the plaintiff's trade mark.
Defendants are further restrained from providing
any software training and courses by mentioning the
plaintiff's trade mark on their other websites, in any
manner, which may give impression that they are
associated with the plaintiff."

4. Since the defendants did not appear despite service, they were proceeded ex-parte vide order dated 09th January, 2017.

5. 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 2005, SAP-HANA, SAP security and SAP GRC. 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 which is responsible for the sales of SAP solutions, implementation, post-implementation support, training and certification of its customers and partners in India.

6. It has been stated in the plaint that the 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 own the domain name www.sap.com and its mark SAP and SAP label is

registered in various classes including classes 9, 16 and 41 under the Trademark Act, 1999.

7. Mr. Ranjan Narula contends that the plaintiff provides various business solutions to its customers which are collectively called as SAP Business Suite. He 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.

8. Mr. Narula states that in June 2015, it came to plaintiff's knowledge that the defendant no.1 is claiming to be a leading SAP Training Institute, offering online SAP training, in Hyderabad, falsely representing to be based in New York and is operating through websites www.newyorksystraining.com, www.newyorksys.com and several other websites. She states that the defendant no.1 also operates a number of alternate websites that use the mark SAP as part of its domain name. He further states that the defendants have cleverly

hidden their identity by not disclosing the domain registrant's name and veiled themselves through proxy registration services.

9. Mr. Narula states that the defendant no.1 extensively advertises and promotes its unauthorized training programmes through various third party websites including creating web pages on Facebook and LinkedIn and that the defendants have also uploaded training videos on YouTube which bears the mark SAP and their website.

10. Mr. Narula states that defendants have infringed upon the exclusive rights of the plaintiff by providing unauthorised training on their copyright-protected software such as SAP FICO, SAP-HANA, SAP-SECURITY, SAP GRC, SAP MM, etc. He 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.

11. Mr. Narula states that the defendants have been using plaintiff's trademark SAP and the SAP logo, for promoting and offering its unauthorised training by setting up a number of websites. He states that 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.

12. The plaintiff has filed its ex-parte evidence by way of affidavit of Mr. Dhirender Singh Rawat (PW1).

13. 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.PW1/11(Colly). The PW1 has further proved the screenshots of the training videos on Youtube uploaded by the defendants' which bears the mark SAP and their website as Ex.PW1/12(Colly). PW1 has proved the screenshots of the websites operated by the defendant no.1 which use the mark SAP as part of their domain name as Ex.PW1/14. The plaintiff's witness also proved the extract of the whois search database for the defendants' websites as Ex.PW1/15.

14. 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.

15. Further, as the plaintiff's evidence has gone unrebutted, said evidence is accepted as true and correct. The Supreme Court in ***Ramesh Chand Ardawatiya Vs. Anil Panjwani, AIR 2003 SC 2508*** has held as under:-

"33. In the absence of denial of plaintiff averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex parte the court is not bound to frame issues under Order 14 and deliver the judgment on every issue as required by Order 20 Rule 5. Yet the trial court should scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the

“points for determination” and proceed to construct the ex parte judgment dealing with the points at issue one by one. Merely because the defendant is absent the court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence.”

16. 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.

17. 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.

18. Accordingly, present suit is decreed in accordance with the paragraph 43(a), (b), (c) and (d) of the plaint along with the actual costs. Registry is directed to prepare a decree sheet accordingly.

MANMOHAN, J

SEPTEMBER 26, 2017

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