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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 23rd January, 2023

+ CS(COMM) 226/2020 & I.A. 5184/2020 (u/ Order XXXIX Rule 1 and 2 r/w Sec. 151 of the Code of Civil Procedure, 1908)

SAP SE

..... Plaintiff

Through: Mr. Ranjan Narula and Ms. Shashi Ojha, Advocates.

versus

RAJ PUNARVASI

..... Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. Plaintiff has filed the instant suit, *inter alia*, seeking permanent injunction restraining infringement of trademark, copyright, passing off, unfair competition, delivery up, rendition of accounts, damages, etc.
2. The case set out in Complaint is as follows:
 - (i) Plaintiff – ‘SAP SE’ engaged in providing end-to-end software application solutions, is incorporated under the laws of Germany. It was established in 1972 and is the market leader in enterprise application software. It has extensive operations in India and has set up a wholly-owned subsidiary – ‘SAP India Private Limited’.
 - (ii) It has been selling and distributing its products and services under

trade mark 'SAP', which was coined, adopted and has been in use since 1972. Plaintiff is the registered proprietor of the mark 'SAP' and its formative marks such as '  ', 'SAP HANA' etc. in over 75 countries, including India. Details of trademark and copyright registrations in favour of Plaintiff has been provided at paragraph no. 20 to 21 and 14 of the Plaint, respectively. Plaintiff's trademarks form an integral part of Plaintiff's trade and business. Apart from its trademark registrations, it also holds copyright registrations for its various software programs and training materials including, *inter alia*, 'SAP HANA', 'SAP Net Weaver'. Details of revenue earned by Plaintiff and expenditure incurred for advertising and promoting trademark 'SAP' have been culled out in paragraph no. 18 of the Plaint.

- (iii) Plaintiff extensively uses the medium of Internet to render and advertise its products and services, through its website and social media portals. By virtue of continuous, extensive and widespread use and advertisement/ promotional activities – Plaintiff's trademarks have earned substantial goodwill and reputation, which is associated worldwide with Plaintiff alone.
- (iv) In 2015 – Plaintiff first learnt about use of the subject mark by Defendant No. 1 – 'Raj Punarvasi', an individual running a firm under the name and style of 'Punarvasi Technologies' in Hyderabad offering SAP-based courses including 'SAP Basis', 'Netweaver', 'HANA' and 'S4HANA Administration'. He operated websites being – www.punarvasi.com and www.knowbasis.com wherein he displayed

various SAP-based training videos which, Defendant No. 1 recorded through SAP IDES software. He also provides access to remote server to customers and methods to download pirated SAP software. He was using the marks 'SAP', 'SAP HANA' and '' in relation to pirated version of Plaintiff's copyright software, certification and training materials.

- (v) On 19th November, 2015, Plaintiff sent a cease-and-desist notice to Defendant No. 1, to which no response was received. Subsequently, on various occasions, Defendant No. 1 communicated that all SAP-related content was removed from the website. In September 2019, Plaintiff came to know that Defendant No. 1 is still continuing to provide unauthorised classroom and/ or online trainings and education services on SAP modules using SAP pirated software.
- (vi) Such illegal and unauthorised use of aforesaid Plaintiff's trademarks on website/ training materials would invariably create confusion among customers and infringes Plaintiff's trade mark and copyright registrations.
- (vii) Relevant extracts from Defendant No. 1's website and related social media accounts [pages 173 to 224 of Plaintiff's documents] are given as under: –

Step-by-step procedure to install SAP HANA software

As usual, installing SAP software is little confusing when you compare with other software install. It is just because SAP software is not single piece of software, It need integration between other dependencies like specific database and operating system. Hardware requirements to install SAP HANA also huge. But, If you try to understand, SAP HANA installation is pretty simple.

Step-by-step procedure to install SAP HANA software:

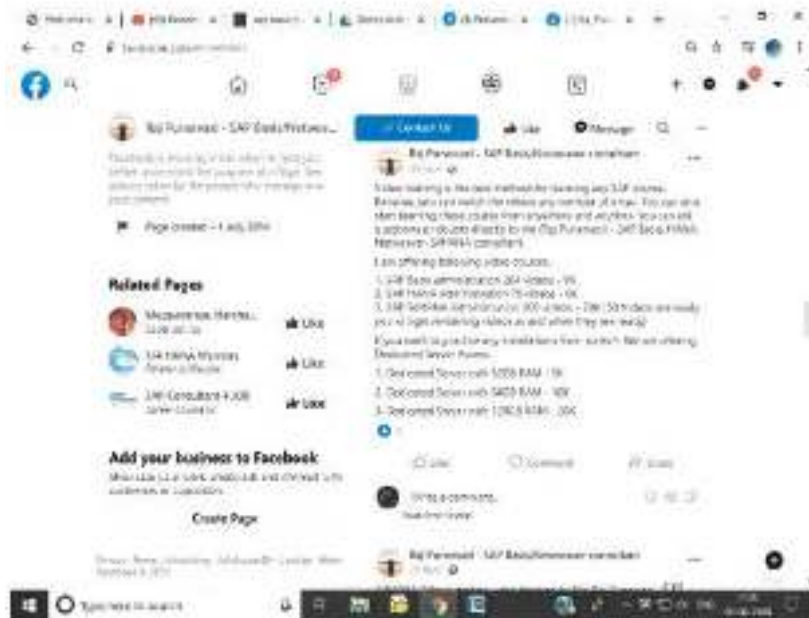
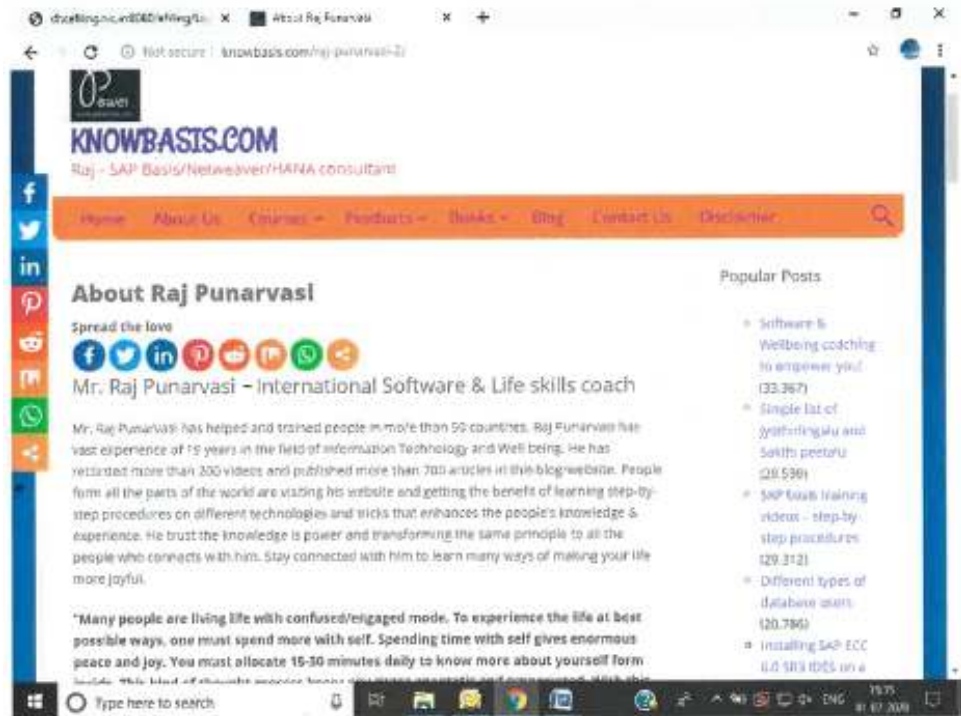
1. Download and install SUSE Linux enterprise 12 SP3 (Today's available version)
2. You can install SUSE Linux either in the server directly or can be installed using VMware kind of virtualization software
3. Download HANA DB installation files from SAP Service Market place
4. HANA database files usually in this format (S1052325_part1.exe, S1052325_part2.rar, S1052325_part3.rar and S1052325_part4.rar) Numbers would change as new version releases
5. Extract above multi-rar files using first exe file. Simply double clicking on exe file will extract and browser will show files addition. E:\S1052325\Part1\

SAP Netweaver 7.5 remote installation training

SAP Netweaver 7.5 remote installation training. You can learn how to install SAP Netweaver 7.5 on your desktop or laptop easily within 2-3 hours.

Minimum Hardware requirements to install SAP Netweaver 7.5 AS ABAP:

- RAM: 8GB (4GB for VM and 4GB for your host operating system (Windows 7 or 10))
- Hard Disk: 100GB free space
- Processor: Any 64bit processor
- Virtualization Technology: This option should be there within the BIOS of your computer





(viii) Defendant No. 1 further shared demo links and other information in relation to online training, cost of his services, installation files etc.

through WhatsApp and e-mail correspondences exchanged with Plaintiff's representative, between September 2019 and January 2020, relevant extracts whereof are as under:





3. In the above circumstances, an *ex-parte ad interim* injunction was granted in favour of Plaintiff and against Defendant No. 1 *vide* order dated 06th July, 2020, relevant portion whereof is as follows:

“ XX ... XX ... XX

8. I am of the view that, at least at this stage, the plaintiff has established a *prima facie* case in its favour. The balance of convenience also appears to be in favour of the plaintiff.

8.1 To my mind, if *ad interim* protection is not granted to the plaintiff, its statutory and commercial interests are likely to be jeopardised.

9. Accordingly, till the next date of hearing, defendant No.1, its associates, agents and employees are enjoined from using, distributing and reproducing, in any manner, the plaintiffs SAP software or installing the same for educational and training material.

9.1 Furthermore, defendant No.1, its agents, employees and/or associates are also enjoined from using, in any manner, the plaintiffs registered trademark i.e. SAP or

SAP label  or SAP HANA including on its websites i.e. www.punarvasi.com and www.knowbasis.com and/or on any social media platform, cloud based platforms, third party websites or even as part of various educational and training courses offered by it such as SAP Basis/Netweaver administration, SAP HANA, SAP S4HANA.

9.2 Besides this. Defendant Nos. 28 and 29 will suspend/disable the access to the websites/domain names i.e. www.punarvasi.com and www.knowbasis.com till further orders of the Court.

9.3 Furthermore, defendant Nos. 3 to 24 will disable access to defendant No.1's

websites whose URLs and IP addresses are given hereafter:

S.No.	DOMAIN NAME	URL	IP ADDRESS
<i>DEFENDANT NO. 1</i>			
1.	www.punarvasi.com	http://punarvasi..com	52.116.49.10
2.	mw.knowbasis.com	http://knowbasis..com	52.116.49.10

10. The plaintiff will comply with the provisions of Order XXXIX Rule 3 of the CPC within five days of the receipt of a copy of this order.

11. Renotify the matter on 17.08.2020.”

4. Subsequently, *vide* order dated 10th September, 2020, Defendant No. 1 was proceeded *ex-parte* and his email ID *viz.* punarvasi@gmail.com was deactivated/ disabled.

5. At this juncture, it must be noted that a total of 30 Defendants were impleaded, which included Union of India through Ministry of Information and Technology, Internet Service Providers *et al.* Later, Defendants No. 3 to 26 were deleted from array of parties, on the basis of statement made by the counsel for Plaintiff. Thus, in terms of amended memo of parties, presently the Defendants, are (1) Raj Punarvasi, (2) Ashok Kumar/ John Doe, (3) Name.com Inc., (4) Softlayer Technologies Inc., and (5) State Bank of India.

6. All aforementioned Defendants, except Defendant No. 2 *viz.* John Doe/Ashok Kumar, have been duly served with summons in the suit. No written statements have been filed on their behalf. Defendant No. 5, as described above, is the bank where Defendant No. 1 had opened an account for the purpose of receiving money for providing pirated SAP software and other infringing materials.

7. Court has heard Mr. Ranjan Narula, counsel for Plaintiff, who on instructions, states that he is only pressing for prayers given at paragraph 55

(a), (b) and (c) of the Plaint, for a permanent injunction restraining infringement of Plaintiff's copyrights and trademarks and as also passing off, against Defendant No. 1.

8. Despite service, Defendant No. 1 has neither appeared nor filed a written statement. Statutory period of 120 days for filing of written statements is already over. In the opinion of the Court, no purpose would be served by directing Plaintiff to lead *ex-parte* evidence. Plaintiff has valid trademark and copyright registrations in its favour and is entitled to statutory protection including grant of injunction for infringement. Basis the documents and the plaint, it is demonstrated that Defendant No. 1 has been dishonestly dealing in SAP products/ services comprising of Plaintiff's trademarks and copyrights, including providing remote server access and pirated copies of Plaintiff's software. Defendant No. 1 has been operating by misrepresenting himself as a consultant/ trainer of SAP courses. Even after repeatedly being put to notice of infringement of Plaintiff's rights, Defendant No. 1 has continued to engage in its unlawful activities. His products/ services, which do not emanate from Plaintiff, are bound to create confusion and deception for customers, resulting in irreparable harm to Plaintiff's business, and well-established goodwill and reputation. Therefore, the Court finds that Defendant No. 1 has committed infringement and passing off of Plaintiff's trademarks and copyrights.

9. In view of the foregoing and considering the judgements of this Court in *Disney Enterprises Inc. and Anr. v. Balraj Muttneja and Ors.*,¹ and *Cross Fit LLC v. RTB Gym and Fitness Centre*.², the Court is of the

¹ CS(OS) 3466/2012, dated 20th February, 2014.

² 2022 SCC OnLine Del 2788.

opinion that Plaintiff has made out a case for a grant of decree of permanent and mandatory injunction.

10. Plaintiff is entitled to a judgment in accordance with Order VIII Rule 10 of Code of Civil Procedure, 1908.

11. Suit is decreed in favour of Plaintiff and against Defendant No. 1 in terms of prayers (a), (b) and (c) at paragraph 55 of the plaint. Registry is directed to draw up the decree sheet accordingly.

12. Present suit and pending applications are accordingly disposed of.

SANJEEV NARULA, J

JANUARY 23, 2023

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(corrected and released on 15th February, 2023)