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

Date of Decision: 29th January, 2024

+ **CS(COMM) 110/2020 & I.A. 3498/2020, I.A. 7098/2020**

SAP SE

..... Plaintiff

Through: Mr. Ranjan Narula, Mr. Shashi P. Ojha, Ms. Shivangi Kohli and Ms. Aishani Singh, Advocates.

versus

VTECH SOFT SOLUTIONS & ORS.

..... Defendants

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 trademarks and copyright, passing off, unfair competition; and delivery up, rendition of accounts, damages, etc.
2. The case set out in Plaint 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.

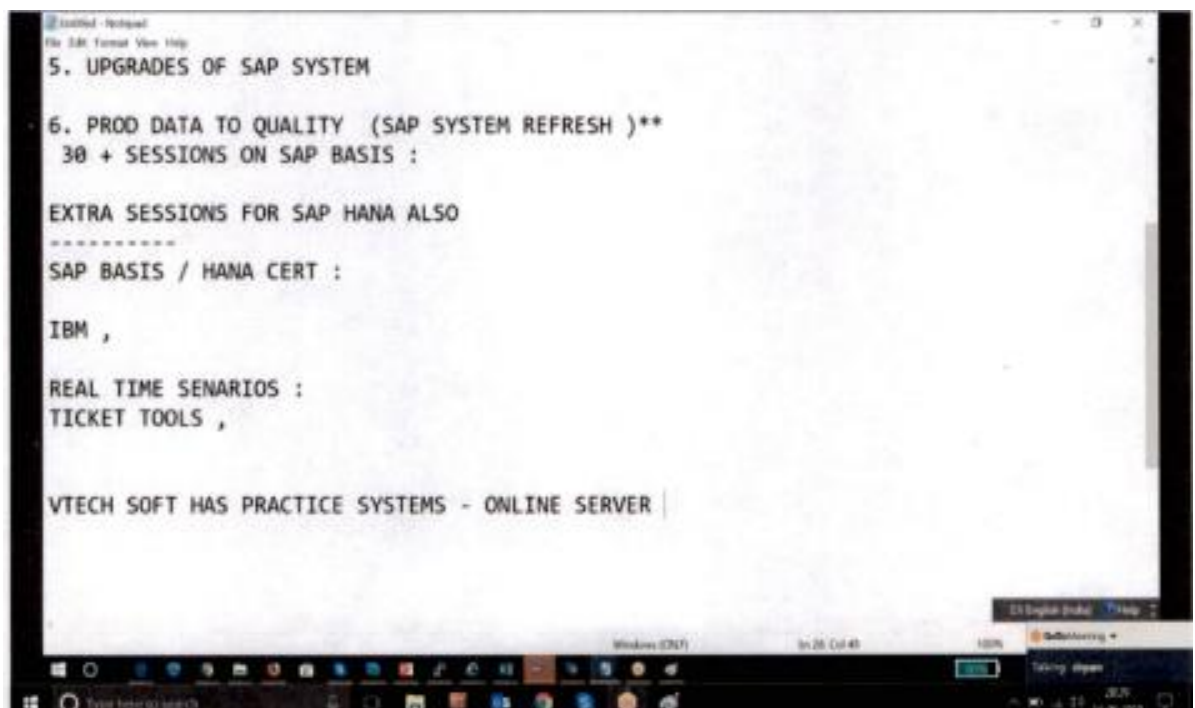
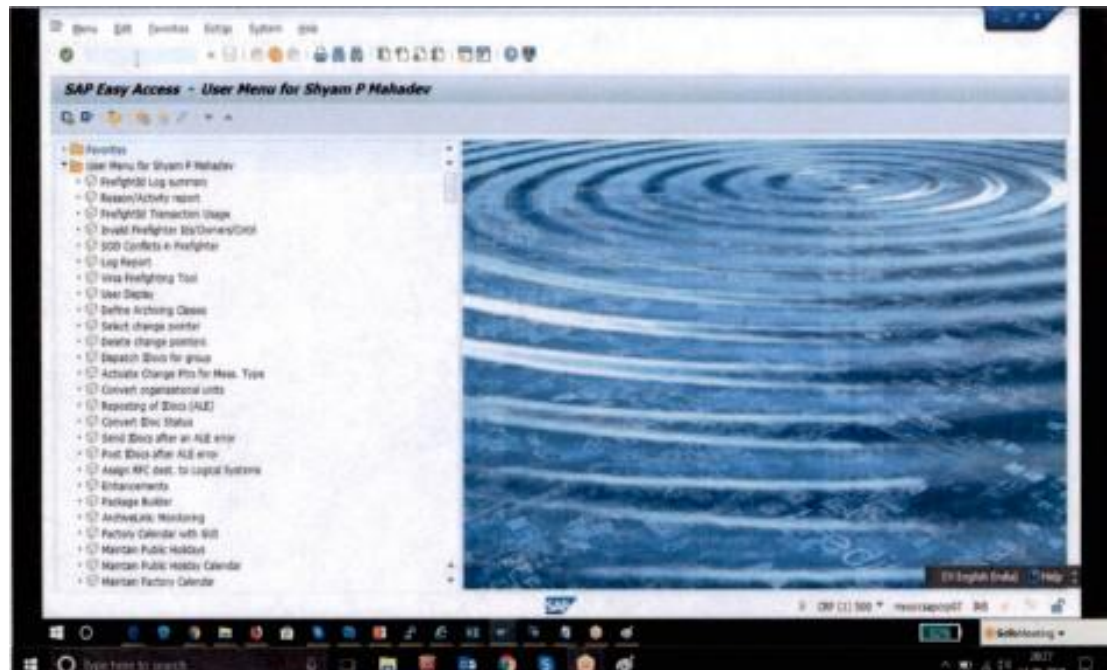


- (ii) It has been selling and distributing its products and services under trade mark ‘SAP’, which was coined, adopted and has been in use since 1972. Plaintiff is the registered proprietor of the mark ‘SAP’ and its formative marks such as ‘’, ‘SAP HANA’ etc. in over 75 countries, including India. Details of trademark and copyright registrations in favour of Plaintiff has been provided at Paragraph Nos. 14, 20 and 21 of the Complaint, 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 related to software such as ‘SAP HANA’, ‘SAP CRM’ and ‘SAP ABAP’. Details of global revenue earned by Plaintiff and expenditure incurred worldwide for advertising and promoting trademark ‘SAP’ have been detailed in Paragraph no. 18 of the Complaint.
- (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) Plaintiff first learnt about the infringing activities conducted by Defendant No. 1 in May 2019, whereby it was learnt that the said Defendant was offering pirated software with remote SAP server access through the website <www.vtechsoft.in> (“**Impugned Website**”) and unauthorised training on technical and functional



modules on software such as SAP BASIS, SAP FICO, SAP HANA ADMIN, SAP HR-HCM, SAP BI-BW/BO, SAP Success Factors, SAP MM, SAP BODS etc. The Impugned Website claimed that Vtech Soft Solutions provided an intensive and comprehensive hands-on SAP Training in Ameerpet, Hyderabad. Defendant No. 1 utilised various online tools apart from the website such as webinars, social media, cloud platforms to advertise its business activities without authorisation or license of the Plaintiff. Several parties acting as agents/brokers for Defendant No. 1 in distributing pirated software, training materials of various SAP Modules, etc. have been impleaded as Ashok Kumar/John Doe as their identity could not be ascertained by Plaintiff.

- (v) In last week of May 2019, Plaintiffs representative contacted Defendant No. 1 via email provided on the Impugned Website (info@vtechsoft.in) to enrol for Defendant No. 1's SAP BASIS Course and enquire about the Defendant No. 1's infringing activities. Plaintiff's representative attended the demo session in second week of June 2019 through the link shared by the Defendant No. 1. Screenshots of the demo session and the aforesaid email communications have been provided in the Plaint as under:







- (vi) On 2nd August 2019, Plaintiff sent a cease and desist notice (“**C&D Notice**”) through its counsel, notifying Defendant No. 1 about copyright in SAP software and other confidential information, training and educational materials, and called upon the said Defendant to cease infringement of its copyright and trademarks through the online courses. As no response to the C&D Notice was received by



Plaintiff, a follow up letter was sent *via* e-mail and courier, asking Defendant No. 1 to comply with the requisitions stated in the C&D Notice and provide their response latest by 29th August, 2019. However, no reply was received from Defendant No. 1.

- (vii) In the first week of September, Plaintiff noted that Defendant No. 1 has deactivated the website and on 11th September, 2019 a letter *via* e-mail and courier was sent to Plaintiff, whereby it was stated that Defendant No. 1 has deactivated the Impugned Website. This was treated as an undertaking by Plaintiff that Defendant No. 1 will not engage in any acts of offering, distributing or using pirated SAP software, training materials or training in the future, which would amount to infringement of Plaintiff's intellectual property.
- (viii) However, Plaintiff found that the Impugned Website was reactivated in last week of November 2019, whereby Defendant No. 1 continued to advertise SAP training on various courses. Again, a representative of Plaintiff contacted Defendant No. 1 on telephone for seeking enrolment in SAP ABAP course, whereby the said Defendant informed Plaintiff's representative that they provide both online and classroom training for the course. It was further informed that classroom training spanning three months with sessions lasting 1-1.5 hours costs INR 10,000, and online training with 24/7 lab facility along with server access costs INR 25,000/-. Defendant No. 1 also shared their SAP HANA course and other relevant details *via* email, which has been reproduced below:



- (ix) A final warning letter was sent on 16th December 2019, asking Defendant No. 1 to immediately discontinue with the impugned activities, however, no reply was received. Thereafter, in January 2020, Plaintiff filed the trademark and copyright violation complaints with Facebook, X (Twitter) and LinkedIn.
- (x) Such illegal and unauthorised use of aforesaid Plaintiff's trademarks on website/ training materials would invariably create confusion among customers and infringe Plaintiff's trade mark and copyright registrations. Relevant extracts from Defendant No. 1's website and related social media accounts of Plaintiff's documents are given as under:



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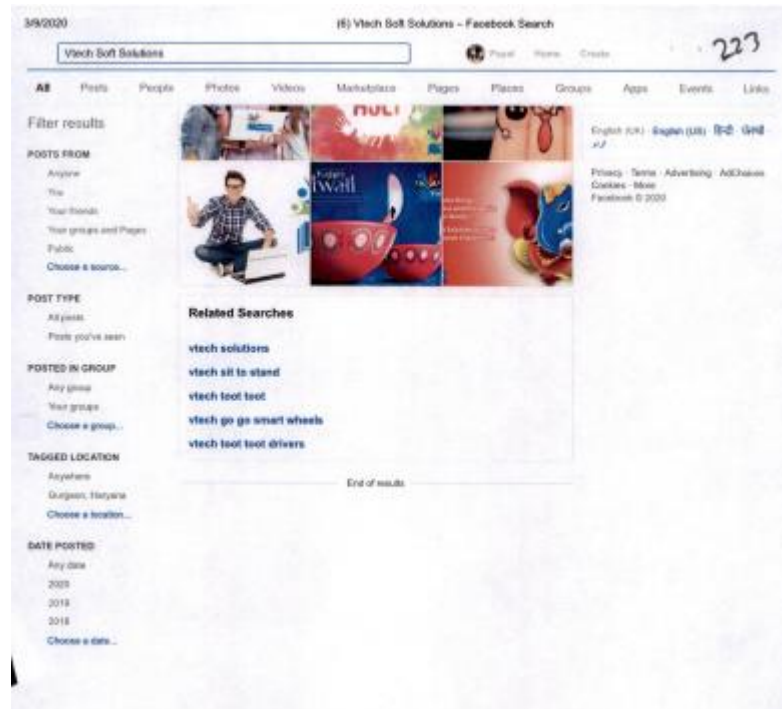
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(xi) Repeat inquiries made in February 2020 disclosed that Defendant No.



1 continued to actively infringe upon Plaintiff's trademarks and copyrights.

3. In the above circumstances, an *ex-parte ad interim* injunction was granted in the present suit in favour of Plaintiff and against Defendant No. 1 *vide* order dated 16th March, 2020, relevant portion whereof is as follows:

"11. Considering that the defendant No.1 is engaging in activities without any license/ authorization from the plaintiff, plaintiff has made out a prima facie case in its favour based on the documents placed on record and in case no ad-interim injunction is granted, the plaintiff would suffer an irreparable loss. The balance of convenience also lies in favour of the plaintiff and against the defendant No. 1.

12. Consequently, an ex-parte ad-interim injunction is passed in favour of the plaintiff and against the defendant No.1 in terms of prayer (a), (b) and (c) of the application.

13. Since the domain name of the defendant No.1 is registered with the defendant No.3, the defendant No.3 is directed to deactivate/ disable the access to the websites and domain names www. vtechsoft. in and www.vtechsoft.co.in.

14. Defendant No.4 to 25 are also directed to block the services and disable the access provided to defendant No. 1 as under:

S.No.	DOMAIN NAME	URL	IP ADDRESS
1.	www.vtechsoft.in	http://www.vteehsoft.in	166.62.30.153
2.	ww.vtechsoft.co.in	Http://www.vteehsoft.co.in	148.66.138.161

15. Considering the fact that the defendant No.1 is collecting money and facilitating transactions for selling the pirated SAP software/ certification and training material through its account "VTECH SOFT SOLUTIONS, A/C#11905000545, ICICI Bank (Current Account) IFSC Code: ICIC0001119", the Chief Manager of defendant No.28 at its Head Office is directed to freeze the A/C#1 11905000545 till the next date of hearing before this Court.

16. Defendant No.29 and 30 are also in the meantime directed to deactivate the social media accounts of defendant No.1 through which defendant No.1 is advertising and promoting its infringing activities and providing pirated SAP software/ certification and training material etc."

4. Subsequently, Plaintiff filed an Application under Order XXXIX Rule 2A of CPC (I.A. No. 7098/2020) as Defendant No. 1 commenced offering SAP training through its newly created websites, i.e., <www.vtech-soft-



solutions.business.site> and <<https://vtechsoftsolution.wordpress.com>>, and promoting and advertising its infringing activities through third party portals such as Twitter and YouTube. Plaintiff states that MarkMonitor Inc. and Automatic Inc. are the registrars of the aforementioned new websites. On 19th August 2020, the following directions were passed:

“2. Case of the plaintiff is that pursuant to the directions of this Court the two websites of defendant No.1, i.e., www.vtechsoft.in and www.vtechsoft.co.in were taken down. However, now defendant No. 1 has started unauthorizedly taking SAP classrooms, online and corporate training through its newly created website, i.e., www.vtech-soft-solutions.business.site and is thus promoting and advertising infringing activities to third party portal including Twitter and You Tube.

3. Plaintiff also claims that in second week of August, 2020 it also came to the plaintiff's notice that defendant is offering unauthorized SAP classrooms, online and corporate training through another newly created website <https://vtechsoftsolution.wordpress.com>.

4. Since the identity of the persons allegedly committing contempt is not known to the plaintiff at this stage, the learned counsel for the plaintiff seeks leave to file application to implead the Registrar of the website so as to find out the identity of the persons who got the website registered.”

5. Plaintiff impleaded 33 Defendants, of which, Defendant Nos. 4 to 31 were deleted from array of parties as noted in orders dated 18th January, 2022 and 31st October, 2023, on the basis of undertakings given by their counsel that they would comply with all directions of the Court. Thus, presently the suit is continuing against (a) Vtech Soft Solutions, (b) Ashok Kumar/ John Doe, (c) Automatic Inc., and (d) MarkMonitor Inc.

6. All Defendants who are indulging in infringing activities have been served¹ (except Defendant No. 2 who is impleaded as Ashok Kumar/ John Doe.) No written statements have been filed on their behalf and their right to file the same was closed *vide* order dated 21st September, 2023.

¹ Office noting for 01st November, 2022 and order dated 02nd February, 2023.



7. Counsel for Plaintiff, on instructions, states that Plaintiff is only pressing for prayers given at paragraph 61 (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. Their 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 the Court is of the opinion that Plaintiff has made out a case for a grant of decree of permanent and mandatory injunction.



10. In view of the foregoing discussion, the Court is satisfied that the present is fit for rendering of a summary judgement in terms of Order XIII-A of CPC, read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022. Further, since there is no written statement(s) on behalf of Defendant No. 1, despite service, the Court is also empowered to pass a judgement in terms of Order VIII Rule 10 of CPC.

11. Suit is decreed in favour of Plaintiff and against Defendant No. 1 in terms of prayers (a), (b) and (c) at paragraph 61 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 29, 2024

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