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

Date of decision: 21st July, 2023

\+ **CS(COMM) 303/2020**

SAP SE ..... Plaintiff

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

versus

INTELLIPAAT SOFTWARE SOLUTIONS PRIVATE LIMITED & ORS. ..... Defendants

Through: Mr. Anand Shankar Jha, Ms. Meenakshi Devgan, Mr. Abhilekh Tiwari & Mr. Sachin Mintri, Advocates for D-33. (M: 7428307214)

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done through hybrid mode.

2. The present suit for permanent injunction has been filed by SAP SE against various Defendants who were using the mark SAP as domain names with different variations. Initially, the present suit was filed impleading 26 Defendants, wherein Defendant No. 1- Intellipaat Software Solutions Private Limited, was infringing the Plaintiff's rights in its various software programmes under the name 'SAP' and Defendants Nos. 2-24 were intermediaries. The Plaintiff had also impleaded Department of Telecommunications and Ministry of Electronics and Information Technology (MEITY), of the Union of India as Defendant Nos. 25-26. In addition, Domain Name Registrars (DNRs) GoDaddy.com, LLC and Cloudflare, Inc. were impleaded as Defendant Nos. 27 and 28 to secure the

prayer for deactivation of access to the impugned website i.e., www.intellipaat.com. Defendant No. 29- ICICI Bank was also impleaded seeking a direction for freezing the account of Defendant No. 1.

3. The Plaintiff company was incorporated in Germany and adopted the mark SAP in 1972. The grievance in this suit is that the Defendant No.1 i.e., Intellipaat Software Solutions Pvt. Ltd. had registered a domain name www.intellipaat.com, on which it is providing training on SAP products/services using copyright-protected SAP training materials and software. Vide order dated 5th August, 2020, the Court had granted an interim injunction in the following terms:

> *"8. Considering the averments in the plaint as also the documents filed therewith, this Court finds that the plaintiff has made out a prima facie in its favour and in case no ad-interim ex-parte injunction is granted, the plaintiff would suffer an irreparable loss. The balance of convenience also lies in favour of the plaintiff. <u>Consequently, an ad-interim injunction is granted in favour of the plaintiff and against the defendants in terms of prayers (a), (b) and (c)of IA 6558/2020 till the next date of hearing before this Court.</u> In view of the undertaking on behalf of the defendant No. 1 that the defendant No. 1 will be removing all the alleged infringing material from the website of the defendant as also from third party platform where unauthorized use of the SAP programmes are going on within 72 hours, at this stage, this Court is refraining from passing any ad-interim order in terms of prayer (e), (f) and (g) of the application. However, if within 72 hours, the alleged infringing material is not removed from the website of the defendant No. 1 as also from the platforms of third parties, the plaintiff would be at its liberty to again approach this Court.*
>
> *9. Learned counsel for the defendant No. 1, during the*

course of arguments stated that the defendant No. 1 has actually purchased the licences from a third party in respect of the plaintiff's copyright material. Defendant No. 1, on affidavit will disclose the identity and contact details/addresses of the said third party who is issuing the licences on behalf of the plaintiff as also the copy of the licence agreements which the defendant No. 1 claims to have obtained from the third party. The defendant No. 1 along with its written statement and reply affidavit to the application will also file its statement of accounts w.e.f. 16th August, 2019 in a sealed cover in respect of its earnings from the use of various SAP software programmes."

4. The said injunction which was granted on the said date i.e., prayer A, B and C reads as under:

"(a) An order of permanent injunction restraining the Defendant No. 1, its directors/partners/ proprietors, officers, servants, employees, and all others in capacity of principal or agent acting for and on its behalf, or anyone claiming through, by or under it, from hosting, streaming, reproducing, distributing, making available to the public and/or communicating to the public, or facilitating the same, in any manner/ through online platforms including website of Defendant No. 1 at www.intellipaat.com and third parties websites including but not limited to Facebook, Linkedin, Twitter, Youtube, Instagram or any other cloud based platforms from unauthorisedly distributing, reproducing licensed/unlicensed SAP software and/or installing unlicensed SAP software, certification and training material of various SAP modules inclusive but not limited to instruction handbook, teaching materials, manuals, SAP online or classroom training videos, and/or offering remote server access to Plaintiff's software programs for various SAP courses including but not limited to SAP HANA SAP S/4 HANA SAP BW/4HANA SAP FICO SAP SD, SAP MM, SAP

QM, SAP PP, SAP BI/BW, SAP NetWeaver, etc., amounting to infringement of the Plaintiff's copyright in its SAP computer programs, software, certification and training material;

(b) An order of permanent injunction restraining the Defendant No. 1, its directors/ partners/ proprietors, officers, servants, employees, and all others in capacity of principal or agent acting for and on its behalf, or anyone claiming through, by or under it, from infringing the well-known trademarks SAP or (SAP logo) or SAP HANA by using it any manner including on website of Defendant No. 1 at www.intellipaat.com or on third parties social media platforms, cloud based platforms, third party websites or as part of various courses offered by the Defendant No. 1 including but not limited to SAP HANA, SAP S/4 HANA, SAP BW/4HANA, SAP FICO, SAP SD, SAP MM, SAP QM, SAP PP, SAP BI/BW, SAP NetWeaver, etc. videos, press manuals, practice test, training videos, and/or offering remote server access in relation to their business 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 for which Plaintiff' is the registered proprietor amounting to infringement of the Plaintiff's registered and well-known trade marks SAP, and SAP HANA registered in various classes including registration nos. 989935, 576754, 576755 in Class 9, registration no. 578462 in Class 16, registration nos. 1238968, 1238969 in Classes 41 and 42, and registration no. 2128825 in Classes 9, 16, 35, 38, 41, 42;

(c) An order of permanent injunction restraining the Defendant No. 1, its directors/ partners/ proprietors, officers, servants, employees, and all others in capacity of principal or agent acting for and on its behalf, or anyone claiming through, by or under it, from hosting, streaming, reproducing, distributing, making available to the public and/or communicating to the public, or facilitating the same, in any manner/ through online platforms including website of Defendant No. 1 at www.intellipaat.com and third parties websites including but not limited to Facebook, Linkedin, Twitter, Youtube, Instagram or any other cloud based platforms from unauthorisedly distributing, reproducing licensed/unlicensed SAP software and/or installing unlicensed SAP software, certification and training material of various SAP modules inclusive of but not limited to instruction handbook, teaching materials, manuals, SAP online or classroom handbook, teaching materials, manuals, SAP online or classroom training videos and/or offering remote server access for various SAP courses including but not limited to SAP HANA, SAP S/4 HANA, SAP BW/4HANA, SAP FICO, SAP SD, SAP MM, SAP QM, SAP PP, SAP BI/BW, SAP NetWeaver, etc., videos, press manuals, practice test, training videos, in relation to their business either by itself or in conjunction with any other word or mark, or any deceptive variant of the well-known trademark SAP, SAP and SAP HANA or any other mark of the Plaintiff, as trade mark or trading style or domain name or key words or meta-names, amounting to passing off of the business/services/products of the Defendants No.1 as and for those of the Plaintiff or having any connection association with the Plaintiff and SAP"

5. The matter was also referred to the Delhi High Court Mediation and Conciliation Centre (*hereinafter 'Mediation Centre'*) simultaneously. The Plaintiff and the Defendant No.1 entered into a settlement on 1st October, 2020. The said settlement was recorded vide order dated 22nd October, 2020 and the Defendant No. 1 disclosed various other parties who were using the SAP as part of the domain name or were committing piracy of the Plaintiff's software. The relevant extract of the said order dated 22nd October, 2020 is extracted as under:

> *"6. Mr. Diwakar Chittora, the authorized representative of the defendant is also present in Court through video conferencing. Thus, as per the terms of settlement as noted above, the defendant No.1 has informed the plaintiff from whom the defendant No.1 had taken infringing software.*
> *7. Mr. Diwakar Chittora who is present through video conferencing affirms the terms of settlement and undertakes that the defendant No.1 will abide by the terms of settlement arrived at before the Delhi High Court Mediation and Conciliation Centre on 1st October, 2020. Mr. Diwakar Chittora states that the defendant No.1 has already paid the compensation amount of ₹7,60,000/- as agreed to between the parties which fact is affirmed by learned counsel for the plaintiff.*
> *8. Considering that the settlement had been arrived at between the plaintiff and defendant No.1, learned counsel for the plaintiff and defendant No.1 states that the suit be decreed in terms of the settlement viz-a-viz the defendant No.1. The plaintiff be permitted to proceed in the suit against newly sought to be added defendants as per prayers in IA 9713/2020.*
> *9. Suit is accordingly decreed in favour of the plaintiff and against the defendant No.1 in terms of the*

settlement as noted above. Decree sheet will incorporate the terms of settlement.
10. The suit will now however proceed against defendant No.2 to 24 the internet connectivity intermediaries and defendant No.25 and 26.
11. Learned counsel for the plaintiff states that he be permitted to delete defendant No. 27, 28 & 29 as the same were domain name Registrar, Webhost and the Bank of defendant No.1.
12. Consequently, the defendant No.27, 28 and 29 are directed to be deleted from the array of parties.

6. As noted above, the suit was decreed in terms of the settlement, by this Court on 22nd October, 2020 *qua* Defendant No.1. On the said date, it was directed that the suit would proceed against Defendant Nos. 2 to 24 and 25 and 26. The Plaintiff had sought permission to delete Defendant No. 27 to 29. On the said date, based upon the information disclosed by Defendant No.1 an application under Order I Rule 10 CPC was filed, being I.A., 9713/2020 by which the Court added further Defendant Nos. 30 to 33. Defendant No. 30 was the infringer who had obtained the infringing software, Defendant No. 31 was the domain name registrar, Defendant No. 32 was the hosting company web host, and Defendant No. 33 was the bank. A tabular representation of Defendant Nos. 30 to 33 is set out below:

Defendant No.	**Name of the Defendant**
Defendant No. 30	SAP CLOOUDS
Defendant No. 31	Register.com, Inc
Defendant No. 32	Netmagic Solutions Pvt. Ltd.
Defendant No. 33	ICICI Bank Ltd. (Kakinada Branch)

7. It is submitted that, though, notice was issued, none of the Defendants

have put in appearance except Defendant No.1. In the order I Rule 10 CPC application, i.e., **I.A. 9713/2020** the details of how the Defendant No. 1 had purchased the pirated software was disclosed. It was on the basis of the said disclosure that the remaining Defendants were impleaded. Defendant No. 31 is the domain name www.sapcloouds.com, Defendant Nos. 31 and 32 are related to Defendant No. 30.

8. After the injunction was granted, none of the Defendants have entered appearance. The domain name www.sapcloouds.com is currently not in use. The direction that was passed on 8th February, 2021 reads as under:

> *"6. It is the case of the plaintiff that as per information available on the website www.sapcloouds.com, the proposed defendant No.30 still claims to offer SAP System Access Online, SAP Remote Server Access from all modules in SAP to the students as well as training institutes for practice or learning purpose. Other illegal activities are also indulging.*
> *7. It is stated that said the act of the proposed defendants amounts to infringement of copyright, trademark and passing off of its exclusive rights in the SAP Software, certificating and training materials as well as SAP brand name.*
> *8. The plaintiff has made out a prima facie case. A direction is passed in favour of the plaintiff and against proposed defendant No.30 in terms of the para/prayer clause 13(a), (b) and (c) of this application; an injunction is passed in favour of the plaintiff and against proposed defendants No.31 and 32 in terms of the para/prayer clause 13(d) of this application; and an injunction is also passed in favour of the plaintiff and against proposed defendant No.33 in terms of the para/prayer clause 13(e) of this application."*

9. In view of the fact that the use of the domain name has been stopped and none of the Defendants have filed any replies or written statements, the

present is a case where a decree could be passed directly, following the rationale of the judgment of a ld. Single of this Court in ***Disney Enterprises Inc. & Anr. v. Balraj Muttneja &Ors. [CS (OS) 3466/2012 decided on 20th February, 2014]***. The same has been reiterated by the Court in ***S. Oliver Bernd Freier GMBH & CO. KG v. Jaikara Apparels and Ors. [210 (2014) DLT 381]***, as also, in ***United Coffee House v. Raghav Kalra and Ors. [2013 (55) PTC 414 (Del)]***. Accordingly, no *ex parte* evidence would be required in this matter. The relevant extract of the judgement in **Disney (Supra)** is extracted as under:

> *"3. Though the defendants entered appearance through their counsel on 01.02.2013 but remained unrepresented thereafter and failed to file a written statement as well. The defendants were thus directed to be proceeded ex-parte vide order dated 04.10.2013and the plaintiffs permitted to file affidavits by way of exparte evidence.*
> *4. The plaintiffs, despite having been granted sufficient time and several opportunities, have failed to get their affidavits for leading ex-parte evidence on record.* ***However, it is not deemed expedient to further await the same and allow this matter to languish, for the reason that I have in Indian Performing Rights Society Ltd. Vs. Gauhati Town Club MANU/DE/0582/2013 held that where the defendant is ex parte and the material before the Court is sufficient to allow the claim of the plaintiff, the time of the Court should not be wasted in directing ex parte evidence to be recorded and which mostly is nothing buta repetition of the contents of the plaint.****"*

10. The use of the 'SAP' or 'Sap cloouds' would be clearly violative of the Plaintiff's statutory and common law rights. In this background, the suit

of the Plaintiff is decreed against Defendant No. 30 to 32. A decree is passed restraining the Defendant No. 30 from using www.sapcloouds.com or any other domain name or mark or logo or name which is identical or deceptively similar to the Plaintiff's mark SAP.

11. Insofar as intermediaries are concerned, Defendant Nos. 3 to 24 they shall ensure that www.sapcloouds.com continues to remain blocked. The bank shall also ensure that the account which has been frozen on 8th February, 2021 shall continue to remain frozen.

12. The concerned Domain Name Registrar is directed to transfer the domain name to the Plaintiff subject to payment of any registration charges, if any.

13. Decree sheet be drawn accordingly.

PRATHIBA M. SINGH
JUDGE

JULY 21, 2023
dj/am
[Corrected and Released on 27th July, 2023]