

## **ADMINISTRATIVE PANEL DECISION**

SAP SE v. 林宗兴 (Lin Zong Xing)

Case No. D2022-2335

### **1. The Parties**

Complainant is SAP SE, Germany, represented by RNA, Technology and IP Attorneys, India.

Respondent is 林宗兴 (Lin Zong Xing), China.

### **2. The Domain Name and Registrar**

The disputed domain name <risewithsap.com> (the “Domain Name”) is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 28, 2022. On June 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 29, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on June 29, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on July 4, 2022.

On June 29, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On July 4, 2022, Complainant submitted a request that English be the language of the proceeding. On July 4, 2022, Respondent submitted a request that Chinese be the language of the proceeding.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent in English and Chinese of the Complaint, and the proceedings commenced on July 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 25, 2022. Respondent did not submit any formal

response. The Center received Respondent's communications by email on June 30, 2022, July 2, 2022 and July 4, 2022. On July 26, 2022, the Center informed the Parties that it would proceed to panel appointment.

Complainant had previously sent a cease and desist letter to Respondent on April 8, 2022, attempting to resolve the dispute, with a follow up letter on April 22, 2022. Respondent did not provide a response to either letter. Complainant then filed the current Complaint.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on August 12, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

Complainant is a German based corporation founded in 1972, that provides software products for business applications. Complainant employs around 109,798 employees of more than 155 nationalities, serving 400,000 customers in over 180 countries worldwide. Complainant owns and operates from its main website <sap.com>, which was registered by Complainant on January 18, 1995.

Complainant also owns numerous registered trademarks for SAP in over 75 countries, including:

- German registered trademark number 39946355 for SAP, registered on November 15, 1999;
- German registered trademark number 1153534 for SAP, registered on February 5, 1990;
- Chinese registered trademark number 1081455 for SAP registered on August 21, 1997;
- Chinese registered trademark number 829951 for SAP registered on April 7, 1996; and
- Chinese registered trademark number 848933 for SAP registered on June 21, 1996.

Complainant provides software services under "Rise With SAP" on their website, as featured on <sap.com>.

Respondent is located in China. The Domain Name was registered on January 27, 2021 and resolves to a parked page, offering the Domain Name for sale.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for SAP and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for *bona fide* and well-known SAP products and services.

Complainant notes that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, Complainant contends that Respondent has acted in bad faith in registering and using the Domain Name, when Respondent clearly knew of Complainant's rights.

##### **B. Respondent**

Respondent did not submit a formal Response to Complainant's contentions. However, the Center received Respondent's informal communications by email on June 30, 2022, July 2, 2022 and July 4, 2022.

## 6. Discussion and Findings

### 6.1. Preliminary Procedural Issue – Language of the Proceeding

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the proceeding shall be the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

#### *Complainant:*

Complainant submitted its Complaint in English. In its Complaint, email dated July 4, 2022 and amended Complaint, Complainant requested that the language of the proceeding be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant contends that: the Domain Name is registered in English characters and not in Chinese script; that it wholly incorporates the term “SAP” which is identical to Complainant’s SAP trademark, while the terms “rise” and “with” in the Domain name are also English words; and that the Domain Name resolved to a website that features the English words “Welcome to risewithsap.com” and “the domain name is for sale” in the English language. Complainant also contends that in previous UDRP proceedings involving the same Respondent, panels have determined that Respondent is well acquainted with the English language. Complainant thus contends that for the above reasons, Respondent understands English. Complainant further notes that it will have to retain specialized translation services which will be expensive and cause delay, if the proceedings have to be conducted in Chinese.

#### *Respondent:*

Respondent requested that Chinese be the language of the proceeding. In his response regarding the language of the proceeding, Respondent noted that the registrar is a Chinese company and he is Chinese, and does not understand English. He further contends that he has no knowledge of the sales featured on the website the Domain Name resolves to, and that the sales page was created by the registrar, and does not represent any intention on his behalf. The Panel notes that on the website, it is indicated that the contact information for the Domain Name is provided by the Seller.

However, Respondent did not submit a formal response regarding Complainant’s contentions.

In exercising its discretion to use a language other than that of the Registration Agreement for the Domain Name, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties’ ability to understand and use the proposed language, time, and costs.

The Panel has duly considered the circumstances of this case and the relevant policy considerations in arriving at its decision that English shall be the language of the proceeding. It notes that the Domain Name comprises Latin characters and wholly incorporates Complainant’s SAP trademark with additional terms “rise” and “with” in the Domain Name that are also English words; Respondent’s website offers content in English; that Respondent had been involved in many other UDRP proceedings where panels have determined that he understands English. The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner.

The Panel further notes that the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified the Parties in Chinese and English of the Complaint. The Panel has also read the Chinese text of what was submitted by Respondent, and it is evident from Respondent’s informal email

reply that he understands the nature of the claims being asserted by Complainant.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

## 6.2. Substantive Issues

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

(i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and

(ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and

(iii) the Domain Name was registered and is being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to the complainant's contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true.

Thus, although in this case Respondent has failed to formally respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

### A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant provided evidence of its rights in the SAP trademarks, as noted above. Complainant has also submitted evidence, which supports that the SAP trademarks are widely known and a distinctive identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the SAP trademarks.

With Complainant's rights in the SAP trademark established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the generic Top-Level Domain ("gTLD") in which it is registered (in this case, ".com"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainant's SAP trademark. This trademark, which is fanciful and inherently distinctive, is recognizable in the Domain Name. In particular, the Domain Name includes Complainant's trademark SAP in its entirety, preceded by the terms "rise" and "with". The addition of the terms "rise" and "with" before the SAP trademark in the Domain Name does not prevent a finding of confusing similarity between the Domain Name and the SAP trademark.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

### B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or

legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and the SAP trademarks, and does not have any rights or legitimate interests in the Domain Name.

Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, the evidence demonstrates that the Domain Name resolves to a parked page, which indicates that the Domain Name is for sale. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#). Moreover, there is no evidence showing that Respondent has been commonly known by the Domain Name.

Accordingly, Complainant has provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Panel finds that Complainant provided ample evidence to show that registration and use of the SAP trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant's SAP trademarks and related services are widely known and recognized. Therefore, Respondent was likely aware of the SAP trademarks when it registered the Domain Name, or knew or should have known that the Domain Name was confusingly similar to Complainant's trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainant's SAP trademark in its entirety with the addition of the terms "rise" and "with" suggests Respondent's actual knowledge of Complainant's rights in the SAP trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, the evidence demonstrates that the Domain Name resolves to a parked page, that offers the Domain Name for sale.

Even if, as Respondent had indicated in his informal reply regarding the Language of the Proceedings, that he has no knowledge of the sales featured on the website the Domain Name resolves to, and that the sales page was created by the registrar, and does not represent any intention on his behalf, from the inception of the UDRP, panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. See section 3.3 of the [WIPO Overview 3.0](#).

In the present circumstances, considering the distinctiveness and reputation of the SAP trademarks, the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, and the implausibility of any good faith use to which the Domain Name may be put, the Panel finds that the use of the Domain Name supports a finding of bad faith.

Accordingly, the Panel finds that Respondent has registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) of the Policy.

## 7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <risewithsap.com> be transferred to Complainant.

*/Kimberley Chen Nobles/*

**Kimberley Chen Nobles**

Sole Panelist

Date: August 26, 2022