

## **ADMINISTRATIVE PANEL DECISION**

SAP SE v. Domains By Proxy, LLC / guo huang  
Case No. D2022-2974

### **1. The Parties**

The Complainant is SAP SE, Germany, represented by K & G Law LLC, United States of America.

The Respondent is Domains By Proxy, LLC, United States of America / guo huang, Hong Kong, China.

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

The disputed domain name <sap27.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 11, 2022. On August 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 15, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 16, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on August 17, 2022.

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 sent notification to the Respondent of the Complaint, and the proceedings commenced on August 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 12, 2022. The Respondent did not submit any response. Accordingly, the Center sent notification of the Respondent’s default on September 15, 2022.



The Center appointed Petra Pecar as the sole panelist in this matter on September 28, 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

The Complainant was founded in 1972, and is headquartered in Germany. It is a market leader in end-to-end enterprise software applications, analytics, intelligent technologies, experience management, and training relating to all these offerings. The Complainant employs over 110,000 people worldwide, representing 160 nationalities. The Complainant is a top cloud company with approximately 245 million users.

The Complainant owns numerous trademark registrations for SAP, which, among others, include the following registrations:

- International trademark registration No. 638470 for SAP, registered on June 2, 1995, for goods and services in Classes 09, 16, and 42;
- International trademark registration No. 726890 for SAP, registered on November 15, 1999, for goods and services in Classes 09, 16, 35, 41, and 42;
- International trademark registration No. 727683 for , registered on November 18, 1999, for goods and services in Classes 09, 16, 41, and 42;
- International trademark registration No. 759060 for , registered on April 18, 2001, for goods and services in Classes 09, 16, 41, and 42;
- United States of America trademark registration No. 2538716 for SAP (word), registered on February 19, 2002, for goods and services in Classes 09, 41, and 42;
- European Union trademark registration No. 013107818 for SAP (word), registered on December 16, 2014, for goods and services in Classes 09, 16, 35, 38, 41, and 42; and
- European Union trademark registration No. 001270693 for SAP (word), registered on July 9, 2002, for goods and services in Classes 09, 16, 18, 25, 28, 41, and 42.

The Complainant further holds the domain name <sap.com> which resolves to its official website.

The disputed domain name was registered on April 26, 2022, and, at the time of the Complaint, it resolved to an active website that contained the Complainant's logo and the Complainant's SAP trademark on its homepage. The additional pages of the website were a "log-in" page and a page that contained offers for different levels of SAP-staff, and on which visitors were asked to invest different sums of money in order to receive tasks which would provide them with daily, monthly and annual incomes.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant submits that the disputed domain name fully incorporates its SAP trademark, with the addition of the number 27, and that the disputed domain name is confusingly similar to the Complainant's trademark.

The Complainant states that its SAP trademark is widely used and well known and that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant also contends that the

Respondent has no trademark or other rights in the SAP trademark, and that the Respondent has never been authorized or licensed by the Complainant to use its SAP trademarks. The Complainant states that the Respondent is using the SAP trademarks to attract Internet users to the disputed domain name for commercial gain.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. The Complainant states that the disputed domain contains its famous trademark and that there is no plausible explanation for its registration and use. The Complainant adds that the Respondent's webpage contains the Complainant's logo in the top left corner of the screen. The design of the webpage gives visitors the false impression that they are on the Complainant's "log-in" page and this fact cannot be considered as a *bona fide* offering of goods or services.

The Complainant submits that the Respondent's registration and use of the SAP trademark was after the SAP trademark registrations and only aimed for commercial gain. The Complainant concludes that the disputed domain name is trading on the Complainant's goodwill to attract users to the Respondent's monetized website and that the Respondent is using the SAP name and logo for gaining profit.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

Even if the Respondent did not file a Response to the Complainant's contentions, the Panel shall consider the issues present in the case based on the statements and documents submitted by the Complainant: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable", paragraph 15(a) of the Rules.

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used by the Respondent in bad faith.

### **A. Identical or Confusingly Similar**

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must, firstly, establish rights in a trademark or service mark and, secondly, establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.2.1). The Panel finds that the Complainant has established rights in its SAP trademarks, based on its previous registrations and use of the trademarks in a number of countries around the world.

The disputed domain name incorporates the SAP trademark in its entirety, with additional numeral "27", which does not prevent a finding of confusing similarity with the SAP trademark, particularly considering that the SAP trademark is recognizable within the disputed domain name. According to section 1.8 of the

[WIPO Overview 3.0](#), “where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements”.

Furthermore, the applicable generic Top-Level Domain (“gTLD”) in a domain name, such as “.com” in this case, is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test (see section 1.11.1 of the [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s SAP trademark in which the Complainant has valid trademark rights. Therefore, the Panel finds that the Complainant has satisfied the requirements of the paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

Under the second element of the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant is generally deemed to have satisfied the second element, as set out in paragraph 4(a)(ii) of the Policy (see also [WIPO Overview 3.0](#), section 2.1.).

Moreover, the Policy provides guidance to respondents on how to demonstrate rights or legitimate interests in a domain name. In particular, paragraph 4(c) of the Policy gives examples that might show rights or legitimate interests in a domain name, including: (i) use of the domain name “in connection with a *bona fide* offering of goods or services”; (ii) demonstration that the respondent has been “commonly known by the domain name”; or (iii) “legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the mark or service mark at issue”.

The Panel finds that the Complainant has made *prima facie* case by showing that the Respondent does not have any rights or legitimate interests in the disputed domain name, including by asserting that it has never authorized the Respondent to use its SAP trademark as part of the disputed domain name.

The Respondent has failed to provide any response to the Complainant’s contentions or evidence of circumstances of the types specified in paragraph 4(c) of the Policy, or of any other circumstances, giving rise to any rights or legitimate interests in the disputed domain name. The Respondent also failed to provide any evidence that it is known by the disputed domain name.

Considering that the evidence provided by the Complainant shows that, at the date of the Complaint, the disputed domain name resolved to an active website with the Complainant’s logo in the top left corner, and that the webpage at the disputed domain name is imitating the Complainant’s webpage, this Panel finds that such website can be used for various illegal or fraudulent activities such as a phishing scheme. The evidence clearly shows the Respondent has attempted to impersonate the Complainant and take unfair advantage of the Complainant’s goodwill and its well-known SAP trademarks. Accordingly, the Panel deems that such use of the disputed domain name by the Respondent cannot be considered as use in connection with a *bona fide* offering of goods and services (see, in particular, section 2.13 of the [WIPO Overview 3.0](#)). Furthermore, the Panel finds that the Respondent has not been using the disputed domain name for legitimate noncommercial or fair use.

The Panel therefore finds that the Complainant has made a *prima facie* demonstration of the Respondent’s lack of rights or legitimate interests in respect of the disputed domain name, which has not been rebutted by the Respondent, and that the Complainant has accordingly established the second element of the Policy in accordance with paragraph 4(a)(ii).

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

The third element of paragraph 4(a) of the Policy requires the Complainant to demonstrate that the Respondent registered and is using the disputed domain name in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

The conclusion that arises from the provided evidence is that the Respondent was or should have been aware of the Complainant and its SAP trademark, and targeted that trademark when registering the disputed domain name. This conclusion is supported by the fact that the disputed domain name directs to an active website imitating the Complainant's website, attracting Internet users for commercial gain by creating a likelihood of confusion with the Complainant's name and trademarks. The Complainant has provided evidence sufficient to draw fair inference that the Respondent has registered the disputed domain name for the purpose of commercial gain, specifically the fact that visitors are asked to invest their money on the disputed domain name. In accordance with aforementioned, the Panel finds that the Respondent's had the intention to attract Internet users, for commercial gain, to the disputed domain name, which is considered as evidence of bad faith.

Based on the inspection of the website to which disputed domain name resolves, the Panel has noted that the Complainant's details, as well as its history, are presented under the "profile" tab. Having in mind the Complainant's claims that it has not authorized the Respondent to use its name or trademark, these findings are clearly showing that the Respondent is impersonating the Respondent. The Panel finds such activity also as an evidence of the Respondent's bad faith.

Further, the Panel finds that at the time of registration of the disputed domain name, the Respondent was or should have been aware of the Complainant's trademarks. The Respondent's registration of the disputed domain name occurred more than 20 years after the Complainant's registration of the earliest of its trademarks, and a simple online search prior to the registration of the disputed domain name would have informed the Respondent of the existence of the Complainant's SAP trademarks, and the Complainant's extensive use of those trademarks. Finally, it is indeed difficult to imagine that the Respondent, who actively uses the disputed domain name to imitate the Complainant and its business activities, has registered the disputed domain name without any actual knowledge of the Complainant and its SAP trademarks.

In accordance with section 3.1.4 of the [WIPO Overview 3.0](#), the use of a domain name for illegal activities such as phishing is manifestly considered as evidence of bad faith. Since the website under the disputed domain name contains the "log-in" and "sign-up" page, which require from users to insert their personal data the Panel considers this also evidence of bad faith.

The fact that the disputed domain was registered by privacy shield in order to hide the owner's identity, is also considered as a further indication of bad faith, in accordance with section 3.6 of the [WIPO Overview 3.0](#).

Bearing in mind that the disputed domain name is confusingly similar to the Complainant's SAP trademark and that it resolves to a website which makes unauthorized use of the Complainant's well-known SAP trademark and images from the Complainant's website, it is inevitable that confusion will be caused to Internet users. Based on all above-discussed findings, it also seems rather clear that the Respondent intends to create that confusion for the purpose of commercial gain. For this reason, the Panel finds that the disputed domain name is being used in bad faith.

Given these circumstances and the fact that the Respondent failed to submit a response or to provide any evidence of actual possible good-faith use, the Panel concludes that the Respondent has registered and is

using the disputed domain name in bad faith. Accordingly, the Complainant has satisfied the requirements of paragraph 4(a)(iii) 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 disputed domain name <sap27.com> be transferred to the Complainant.

*/Petra Pecar/*

**Petra Pecar**

Sole Panelist

Date: October 12, 2022