

ADMINISTRATIVE PANEL DECISION

SAP SE v. MICHEL LUDMANN

Case No. D2023-3319

1. The Parties

The Complainant is SAP SE, Germany, represented by Natalie Braham, Germany.

The Respondent is MICHEL LUDMANN, France.

2. The Domain Name and Registrar

The disputed domain name <at-sap.com> (the “Disputed Domain Name”) is registered with Domain.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 2, 2023. On August 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 2, 2023, 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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 9, 2023 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 10, 2023.

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 the Respondent of the Complaint, and the proceedings commenced on August 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 5, 2023.

The Center appointed Mariia Koval as the sole panelist in this matter on September 8, 2023. 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, founded in 1972, is a German multinational software company with 105,328 employees worldwide, which develops enterprise software to manage business operations and customer relations. The Complainant is the world's leading enterprise resource planning (ERP) software (including software and software-related services) vendor and is the largest non-American software company by revenue, the world's third largest publicly traded software company by revenue, and, with more than 440,000 customers in more than 180 countries, is the largest German company by market capitalization.

The Complainant is the owner of numerous SAP trademark registrations (the "SAP Trademark") around the world, among which are:

- International Trademark Registration No. 638470, registered on June 2, 1995, in respect of goods and services in classes 9, 16, 42;
- International Trademark Registration No. 726890, registered on November 15, 1999, in respect of goods and services in classes 9, 16, 35, 41, 42;
- European Union Trademark Registration No. 001270693, registered on July 9, 2002, in respect of goods and services in classes 9, 16, 18, 25, 28, 41, 42;

The Complainant operates domain name <sap.com> since 1995 to support and promote its business. The Complainant is also active on social media platforms such as Facebook, LinkedIn, Instagram and YouTube.

The Disputed Domain Name was registered on May 18, 2023. As of the date of this Decision the Disputed Domain Name automatically redirects to the Complainant's Austrian website in German language.

5. Parties' Contentions

A. Complainant

The Complainant contends that due to continuous use of its SAP Trademark and the success of the products and services provided thereunder, the SAP Trademark has come to be recognized by the relevant public. Indeed, the SAP Trademark is a well-known international brand, most recently ranked at Number 20 among the world's brands according to Interbrand's Best Global Brands of 2022. Since 1983, the Complainant has used, and widely promoted its SAP Trademark for its enterprise software and related services.

The Complainant claims that the Disputed Domain Name is confusingly similar to the Complainant's SAP Trademark in view of the Disputed Domain Name fully incorporates the Complainant's well-known company name and the SAP Trademark. Moreover, the addition of the term "at" does not provide a sufficient differentiation from the famous SAP Trademark.

The Complainant further asserts that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Respondent has no rights or any other legitimate rights in the SAP trademark, nor has it been authorized or licensed by the Complainant to use its SAP Trademark. There is no webpage associated with the Disputed Domain Name. Indeed, the Respondent reconfigured the Disputed Domain Name to impersonate the Complainant's company and to generate fraudulent purchase orders under the SAP name. The Respondent created an email address "[...].@at-sap.com" and used the contact information

to order equipment on the SAP's account, using the Complainant's Austrian address (SAP Österreich GmbH) in the signature block. The Disputed Domain Name redirects to the Complainant's legitimate Austrian website. Thus, Internet users, in checking to see if the Disputed Domain Name is legitimate, will be persuaded that the transaction is legitimate, and will thus be defrauded.

The Complainant further claims that the Respondent has registered and is using the Disputed Domain Name in bad faith. The fraudulent use of the Complainant's name in connection with email address "[...].@at-sap.com" by itself evidences the bad faith of the Respondent in registering the Disputed Domain Name. Moreover, registration of the Disputed Domain Name that is confusingly similar to the famous SAP Trademark by an entity that has no relationship to that Trademark is sufficient evidence of bad faith registration and use.

In addition, the incorporation of the well-known SAP Trademark into the Disputed Domain Name by the Respondent with no plausible explanation for the usage is an indication of bad faith. The Respondent registered the Disputed Domain Name in order to fraudulently represent itself as the Complainant. The Disputed Domain Name incorporates the SAP Trademark in which the Complainant has prior valid and subsisting rights. These factors are sufficient to establish bad faith.

B. Respondent

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

6. Discussion and Findings

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

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has properly asserted its rights in the SAP Trademark due to the long use and number of registrations worldwide. The Panel notes that the registration of the Complainant's SAP Trademark significantly predates the registration of the Disputed Domain Name. The Panel also finds that the Complainant has established that the SAP Trademark is well-known.

The Disputed Domain Name completely reproduces the Complainant's SAP Trademark in combination with a hyphen the term "at", and the generic Top-Level domain ("gTLD") ".com". According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8, 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. In this case, the addition of the term "at", to the SAP Trademark does not prevent a finding of confusing similarity.

According to the [WIPO Overview 3.0](#), section 1.11, the applicable gTLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Pursuant to section 1.7 of the [WIPO Overview 3.0](#), in cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing.

Furthermore, the use of hyphens in the Disputed Domain Name is irrelevant in a finding of confusing similarity, see e.g. *Royale Indian Rail Tours Limited v. Divino Indian Memoirz Tours Pvt. Ltd.*, WIPO Case No. [D2010-2107](#) (“In the present case, the Panel finds that... adding a hyphen between the two words “maharaja” and “express” in the disputed domain name are insignificant modifications that do not reduce the confusing similarity between the disputed domain name and the Complainant’s mark”).

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s SAP Trademark pursuant to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has used its SAP Trademark for more than 25 years, which is long before the Respondent registered the Disputed Domain Name in 2023. The Complainant’s SAP Trademark is well known throughout the world.

The Complainant alleges that the Respondent has no rights or legitimate interests in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy. The Complainant has never authorized in any way, licensed, or permitted the Respondent to use its SAP Trademark.

The Panel considers that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. There is no evidence that the Respondent appears to own any SAP Trademark, nor is the Respondent commonly known by the Disputed Domain Name. Furthermore, the Panel concludes that in view of the global notoriety of the SAP Trademark it is highly unlikely that anybody could legitimately adopt and use the Disputed Domain Name without creating confusion with the Complainant. Also, taking into consideration the reputation of the Complainant’s SAP Trademark, it is impossible to assume that the Respondent was unaware of the Complainant’s brand and business at the time of registration of the Disputed Domain Name.

There is also no evidence that the Respondent is using the Disputed Domain Name to offer *bona fide* goods and services or making a legitimate non-commercial or fair use of the Disputed Domain Name. On the contrary, as of the date of this Decision the Disputed Domain Name redirects to the Complainant’s Austrian website. Moreover, according to the evidence presented by the Complainant (Annexes 7 and 8 to the Complaint) the Respondent has used, and/or is using, the Disputed Domain Name for the fraudulent scheme, namely, to impersonate the Complainant’s company in order to generate fraudulent purchase orders under the Complainant’s name. For the purpose of such fraudulent scheme, the Respondent has used an email address “[...]@at-sap.com”, which incorporates the Disputed Domain Name, and the contact information to order equipment on the Complainant’s connected company’s account, using the Complainant’s Austrian company’s name and address (SAP Österreich GmbH) in the signature block. In pursuance of section 2.13.1 of the [WIPO Overview 3.0](#), “Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.” With respect to the circumstances of this case, the Panel considers that it is obvious that the Respondent registered the Disputed Domain Name with good awareness of the Complainant and with the sole intention of commercial gain by creating a likelihood of confusion with the Complainant’s SAP Trademark as to the source of the email communication sent using the Disputed Domain Name.

Moreover, in accordance with the [WIPO Overview 3.0](#), section 2.5.1, even where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. The addition of the term “at”, which is the two-letter country code for Austria where

the Complainant also conducts its business and has a website in the German language tailored to Austrian customers, to the Complainant's SAP Trademark in the Disputed Domain Name, is further evidence, that the Respondent was very well aware of the Complainant's SAP Trademark and business at the time of registration of the Disputed Domain Name and has done so for the only purpose of creating an impression that the Disputed Domain Name is connected with the Complainant's SAP Trademark.

The Respondent did not file any response to the Complaint and did not participate in this proceeding, respectively, the Respondent did not present any evidence for supporting any rights or legitimate interests in the Disputed Domain Name.

In view of the foregoing, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Complainant succeeds under the second element of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Panel comes to the conclusion that the Disputed Domain Name was registered and is being used in bad faith in view of the following. The Complainant obtained the registration of the SAP Trademark more than 25 years earlier than the Respondent registered the Disputed Domain Name in 2023. Taking into account all circumstances of this case, it is highly likely that the Respondent was very well aware of the Complainant's business and its SAP Trademark when registering the confusingly similar Disputed Domain Name that completely incorporates the Complainant's Trademark. The Panel considers it is obvious bad faith that the Respondent deliberately chose the Disputed Domain Name to create a likelihood of confusion with the Complainant's SAP Trademark so as to create a false association or affiliation with the Complainant.

Given the use of the Disputed Domain Name, as further described above and below, the Respondent obviously chose to register the Disputed Domain Name, which completely reproduces the Complainant's SAP Trademark with addition of the country code "at", for the only purpose of misleading unsuspecting Internet users by creating a likelihood of confusion with the Complainant's SAP Trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's emails.

The Panel notes that the Disputed Domain Name is being used by the Respondent for a fraudulent scheme. Evidence presented by the Complainant shows that the Respondent impersonated employees of the Complainant's connected company for sending fraudulent orders to the Complainant's partners. The Respondent has used the email address "[...]@at-sap.com" that incorporates the Disputed Domain Name and has also used the signature of the employee which obviously made the impression of the sender's connection with the Complainant's connected company. In accordance with the [WIPO Overview 3.0](#), section 3.4, UDRP Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution (in some such cases, the respondent may host a copycat version of the complainant's website). Many such cases involve the respondent's use of the domain name to send deceptive emails, *e.g.*, to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers. Taking into account the above Respondent's use of the Disputed Domain Name, such behavior cannot be in any way considered to be undertaken in good faith.

Also, in accordance with section 3.1.4 of the [WIPO Overview 3.0](#), Panels have moreover found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: (i) actual confusion, (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent's commercial benefit, even if unsuccessful, (iii) the lack of a respondent's own rights to or legitimate interests in a domain name, (iv) redirecting the domain name to a different respondent-owned website, even where such website contains a disclaimer, (v) redirecting the domain name to the complainant's (or a competitor's) website, and (vi) absence of any conceivable good faith use. In this case the Disputed Domain Name, among other supporting evidence, completely reproduces the Complainant's SAP Trademark and redirects to the Complainant's Austrian website.

The Panel is also of the opinion that it is clear that the Respondent, having registered and used the Disputed Domain Name, which is confusingly similar to the Complainant's SAP Trademark, intended to disrupt the Complainant's business and confuse Internet users seeking for or expecting the Complainant.

In view of the absence of any evidence to the contrary and that the Respondent did not file any response to claim otherwise, the Panel concludes that the Respondent has registered and is using the Disputed Domain Name in bad faith.

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, <at-sap.com> be transferred to the Complainant.

/Mariia Koval/

Mariia Koval

Sole Panelist

Date: September 22, 2023