PRELIMINARY RULING

On 22 June 2004, the Regional Court in Ústí nad Labem determined the case of Plaintiff A): Z. and Plaintiff B): Z. B. versus Defendant 1: Z. K. and Defendant 2: CZ.NIC regarding the petition for an interlocutory judgement as follows:

The Court delivered the following interlocutory judgement:

I. Defendant No. 1 shall refrain from using the domain name of "x+y+z.cz" including any disposal thereof with the exception of its transfer to Plaintiff A) or Plaintiff B).
II. Defendant No. 2 shall refrain from any acts enabling any disposal of the domain name of "x+y+z.cz", particularly its cancellation or transfer to a third party with the exception of its transfer to Plaintiff A) or Plaintiff B).

The Court dismissed the original petition for delivering an interlocutory judgement, the reason being that the grounds specified in the petition were considered very vague and abstract. As the Plaintiffs made their petition more concrete and specific during the appellate procedure, the Court of Appeal reversed the decision of the Court of First Instance in which it was stated that the petition for delivering an interlocutory judgement applicable to both the Defendants was so vague and unspecific that it was impossible to continue the proceedings.

Plaintiff A) has been incorporated in the Companies Register since 28 June 1999, with his sphere of business including the following: purchase of goods to be resold and sale of goods, intermediary activities in the field of business contacts, activities of organisational and business advisers and manufacture of machines and devices utilising mechanical energy, ball bearings and ball bearing components, parts intended for the conversion of rotational motion. Defendant No. 1 has been the owner of the trade name of X+Y+Z since 10 November 2003 when the change of the original trade name of T+U+V was registered. The spheres of business of Defendant No. 1 and Plaintiff A) are partly identical; this applies to the following activities: purchase of goods to be resold and sale of goods, intermediary activities in the field of trade, activities of organisational and business advisers and manufacture of machines and devices utilising mechanical energy, ball bearings and balls, parts intended for the conversion of rotational motion. Taking into account the incorporation date, Plaintiff A) is entitled to the priority right. Plaintiff A) has already filed an action, claiming that the trade name used by Defendant No. 1 be changed; the use of the trade name of X+Y+Z by Defendant No. 1 is contrary to fair business practice and may lead to a risk of confusing the goods and services of the two competitors. Plaintiff A) also refers to the interlocutory judgement delivered by the Court regarding the trademarks of "X+Y+Z", which was claimed so as not to prevent Plaintiff A) from effectively exercising his right to exclude trademarks from the assets of the bankrupt company of X+Y+Z. Proceedings following an action claiming that the trademarks of "X+Y+Z" be excluded from the assets of the bankrupt company of X+Y+Z are still under progress. The previous administrator of the bankruptcy assets concluded an invalid contract of enterprise sale, transferring the trademarks of "X+Y+Z" to Defendant No. 1. Based on that invalid contract, the Defendant uses the domain name of "x+y+z.cz" registered with Defendant No. 2 as at 6 March 1998. According to the current extract from the Domain Register, the X+Y+Z company remains the owner of the "x+y+z.cz" domain name. This implies that Defendant No. 1 makes an illegal use of the domain name of "x+y+z.cz".

Plaintiff B) stated that he was the owner of the domain name of "x+y+z.cz" registered as soon as 25 March 1997 with Defendant No. 2. Plaintiff B) and Plaintiff A) as members of the A+B+C concern. As the legitimate owner of the domain name of "x+y+z`.cz", Plaintiff B) has been using and operating the web site of www.x+y.cz, the main web site of the concern, since 25 March 1997.

The petition for delivering an interlocutory judgement was lodged considering the fact that Defendant No. 1 was breaching the principles of fair competition, causing prejudice to other competitors, i.e.

Plaintiff B) and, particularly, Plaintiff A), with the damage aggravating according to the further duration of such illegal conduct.

The Plaintiffs stressed that the urgent need to settle the relations of the parties resulted chiefly from the lack of legal safeguards due to the following facts:

I. Defendant No. 1 purchased the enterprise of the bankrupt company of "X+Y+Z" within the framework of bankruptcy proceedings.
II. The newly-appointed administrator of the bankruptcy assets declared the contract of sale concerned invalid, re-including the complete set of movable and immovable items forming the enterprise of the bankrupt, which had been acquired by Defendant No. 1 pursuant to the above-specified contract, in the list of bankruptcy assets.
III. Even though the above-mentioned decision was made by the administrator of the bankruptcy assets on 2 July 2003 and exclusion actions were filed in October 2003 based on an invitation of the Bankruptcy Court, Defendant No. 1 changed his trade name to X+Y+Z on 10 November 2003 and began to use the domain name of "x+y+z.cz" as his web site. Defendant No. 1 presents e.g. the following information at his web site: "No other manufacturer in Central Europe can boast of such a long and rich tradition in the field of bearing production as X+Y+Z. The beginning of this production dates back to 1923." As the X+Y+Z company still remains a member of the X+Y+Z concern (disregarding the bankruptcy proceedings), the customers may be given an impression that - according to the trade name - Defendant No. 1 is a company of the X+Y+Z concern, even the oldest manufacturer of ball bearings.

Therefore the Plaintiffs assume that until the pending legal disputes regarding the assets of the bankrupt company of X+Y+Z are finally settled, the publishing of false and misleading information at the domain name of "x+y+z.cz" is without doubt contrary to the principles of fair competition and may cause damage to the companies of the X+Y+Z concern. Until the final decision is delivered, there is an urgent need to provide for a temporary settlement of the relations of the parties, i.e. Plaintiffs A) and B) and Defendant No. 1.

In the given case, the court arrived at a conclusion that there was a need for the temporary settlement of the parties' relations. Disregarding the fact that, in principle, it is not permissible to let the justified party achieve a result which can be achieved exclusively on the basis of the final decision determining the case after proceedings and substantiation of facts, this principle does not apply to interlocutory judgements referring to refraining from acts having a character of unfair competition. The aspect of preventing further damage to the affected party must be considered as decisive.

The Court considers it substantiated that the acts of Defendant No. 1 have a character of unfair competition aimed at the Plaintiffs and that the use of the domain name specified in the verdict may create an impression that the Defendant is a member of the X+Y+Z concern, i.e. lead to confusion. The Court therefore granted the petition for delivering an interlocutory judgement.

Except for CZ.NIC, all participants of the proceedings are identified with the first letters of their surnames or trade names. The domain name in question is replaced with an x+y+z.cz sequence. All other domain names mentioned in the text have been also replaced with randomly chosen sequences of letters and signs. Except for the identification of the participants or other entities and the pertinent domain names, there were only minimal interventions in the text of the decision. Any relation between the abbreviations and dummy symbols used and the people or domain names using such abbreviations or dummy symbols for purposes of identification is merely coincidental.

When studying this decision, it is necessary to be aware of the fact that the decision comprises not only the verdict alone and the pertinent justification, but also a summary of the claims presented by the individual parties involved, that the court may not have been concerned with some of these claims

at all (e.g. with respect to delivering an interlocutory verdict) and that such claims merely represent the legal opinion of the party concerned, not a finding of the court.

This decision may not be automatically applied to other instances even though they may be similar and the CZ.NIC association recommends consulting each particular case with domain name experts and lawyers.