PRELIMINARY RULING

On 1 June 2004, the High Court in Olomouc determined the case of Plaintiff D. versus Defendant B. and third party CZ.NIC regarding the petition for an interlocutory judgement, based on the appeal lodged by the first Defendant against the order of the Regional Court in Brno dated 15 December 2003, as follows:

The order of the Court of first Instance was confirmed.

The above-specified order of the Court of First Instance stated that the Defendant may not dispose of the rights arising from the registration of the domain name www.x+y+z.cz; in particular, the Defendant may not transfer, sell, assign, charge with other rights or terminate the domain registration, except for transferring it to the Plaintiff (verdict I); in addition the Court ordered that the Defendant should at his own costs place at the website at which the domain is currently directed a text in blue letters on a white background, in standard computer font size 25, in a box of 500 by 300 pixels, in the left upper corner, which reads as follows: "This domain is the subject of a litigation at the Regional Court in Brno", stating that this text should be the only graphic element at any address accessible by entering the address of www.x+y+z.cz in a standard Internet browser (verdict II); the third party - CZ.NIC z.s.p.o. - was ordered that within 24 hours of the serving of this interlocutory verdict, the third party, CZ.NIC, should take all measures to prevent any person from any further manipulation with the domain name, especially to prevent a transfer of the domain name to another person except for the Plaintiff, a termination or any other intervention (verdict III); the third party - CZ.NIC z.s.p.o. - was further ordered to mark in the Domain Register in the usual way that the above domain has been the subject of a litigation at the Regional Court in Brno and is therefore currently blocked (verdict IV).

Among the grounds for its decision, the Court of First Instance states that the name of X+Y+Z is very specific and therefore is eligible for distinguishing a trade name, as well as trademarks or a domain; opposing statements made by the Defendant were found to be purpose-made, intended for a so-called "domain speculation", as the Defendant was a company dealing with IT administration and did not use the name of X+Y+Z for any of his activities. Neither products, nor services rendered by the Defendant are connected with the name concerned and there is no relevant connection between the Defendant and the domain held by him; the Defendant holds the domain for the purpose of speculation. The Defendant claimed that the domain was held "for a client", then "for his own purposes", later on "for an American client who will operate a bookstore"; during the arbitration proceedings, the Defendant reasoned that it was "for an American client from Music Hall with a music bazaar". None of these purposes, nor any relation of the Defendant to the word X+Y+Z was substantiated. The court arrived at a conclusion that the Defendant's acts cause a prejudice to the Plaintiff's trade name and trademark right and that the Defendant commits an act of unfair competition as, according to the Unity Treaty of Paris protecting industrial property as of 20 March 1883, included in the Collection of Laws under the number 64/1975 Sb. (Coll.), as amended with later revisions and amendments, according to Article 8 of the Treaty, the Plaintiff's trade name is protected as such and it is clear that the word X+Y+Z is the most significant and in fact the only designation distinguishing it from other trade names. This right is also infringed by the Defendant pursuant to the provisions of Article 12 of the Commercial Code, as well as the provisions of Article 14 of Law No. 137/1995 Sb. of the Collection of Laws (Coll.), on trademarks, as amended with later laws. The Defendant prevents the Plaintiff from fully exercising his rights specified in Article 13 of the Law No. 137/1995 Sb. (Coll.), on trademarks, particularly his exclusive right to mark his products or services with the appropriate registered trademark or to use it in connection with such products or services as a result of the fact that someone prevents its use in the field of Internet domains. The acts of the Defendant are also contrary to the provision on economic competition, committing a so-called "domain grabbing". Based on other activities pursued by the Court in the decision-making processes, it is known to the Court that the most commonly used

method of speculating with domain names consists in searching for newly-incorporated companies, and registering the appropriate domains unless they have already been registered by the companies concerned.

The Defendant lodged an appeal against this decision in due time, claiming that the Court of First Instance had not taken into consideration the facts claimed and evidence specified by him. The Defendant assumed that considering the fact that an action had already been filed regarding the case concerned, the ordered interlocutory verdict itself should be in compliance with the regulation specified in the provision of Article 102 of the Civil Procedure Code, i.e. when it is necessary to settle the mutual relations of the parties once the proceedings are initiated or when it is feared once the proceedings have been initiated that the execution of the subsequent decision may be jeopardised. He claimed that it was not necessary to provide for a temporary settlement of the parties' relations as the failure to deliver the preliminary judgement would by no means deteriorate the existing Plaintiff's position as it had lasted for a long period of time and no grounds for its deterioration had been substantiated. He claimed that neither had the second alternative prerequisite of delivering an interlocutory judgement been complied with as the Defendant had not committed any acts jeopardising the execution of the decision made within the scope of the proceedings; on the contrary, the Plaintiff had refused the domain transfer several times. He assumed that the Plaintiff had stated in his petition only his own speculations or simply had mentioned the method of transferring the domain without specifying any concrete circumstances substantiating the need to deliver an interlocutory judgement and without specifying and substantiating that the Defendant had taken any steps on whose basis the need to deliver an interlocutory judgement would arise due to the feared jeopardising of the decision execution. The Defendant claimed that no rights pertaining to the Plaintiff's registered trademark had been infringed by registering the domain name as no substantiating proceedings had been performed regarding that objection and the prerequisites of delivering an interlocutory verdict had not been complied with. He also claimed that it was questionable whether the rights pertaining to the registered trademark were infringed by the Defendant or by a third party who had ordered the creation of an information system pursuant to the appropriate contract. The Defendant presented his opinion that such a granted trademark protection before delivering the final judgement would prevent the Defendant from making the proper fulfilment of a previously concluded contract, which would imply a factual decision. Enclosing the contract, the Defendant substantiated that he was obliged to create an information system and that a major injury would be threatening him in the event of his failure to fulfil the contract. He assumed that the delivering of an interlocutory verdict might cause him substantial and excessively harsh consequences. He suggested that the Court of Appeal modify the contested decision to deliver an interlocutory judgment by fully rejecting the petition for delivering an interlocutory judgment.

The Court of Appeal re-examined the contested decision of the Court of First Instance, as well as the proceedings preceding its delivery (Article 206, Article 212 and Article 212a of the Civil Procedure Code), arriving at a conclusion that the appeal lodged by the Defendant was not justified.

The Court of Appeal assumes that the Defendant's acts cause a prejudice to the Plaintiff's trade name, reputation and trademark-related rights and that the Defendant has committed several acts of unfair competition. The Defendant's acts are contrary to the provisions of Article 12 of the Commercial Code, provisions of Article 14 of the Law on trademarks and provisions pertaining to economic competition. The Court states that the domain of www.x+y+z.cz does not present any information, which may arouse a supposition in a less experienced Internet user searching for information on the Plaintiff that the Plaintiff's activities have been terminated or have been unsuccessful. The urgent need to deliver an interlocutory judgement lies in the fact that the domain may be easily transferred as of the moment of the Defendant's learning of an action filed against a related entity or at any time later on. The Court assumes that the statutory need to provide for a temporary settlement of the parties' relations exists and has been fully substantiated.

In consonance with the Court of First Instance, the Court of Appeal arrived at a conclusion that the prerequisites of delivering an interlocutory judgement pursuant to the provisions of Article 74 and following articles of the Civil Procedure Code had been complied with, stating that there was no reason to deduce that the order included in the interlocutory judgement would have constituted an inadequate infringement of the Defendant's rights. In addition, it cannot be agreed with the appellant that the prerequisites of delivering an interlocutory judgement have not been complied with as the Plaintiff has tolerated the claimed Defendant's infringement of his rights. Presenting a letter dated 8 March 2002, the Plaintiff substantiated that he had protested against the use of the domain registered by the Defendant since 21 January 2001. The Plaintiff also substantiated subsequent negotiations taking place between the parties during the year 2002; after exhausting all attempts to settle the matter out of court, the Plaintiff lodged the currently heard petition for delivering an interlocutory judgement as soon as 2 June 2003. This situation excludes the Defendant's argument that the Plaintiff has tolerated the situation in the long term and that the temporary settlement of the parties' relation is not necessary. The Defendant's objection specified in the appeal that delivering an interlocutory verdict should be in compliance with the regulation specified in the provision of Article 102 of the Code of Civil Procedure also appears entirely groundless as the prerequisites of delivering an interlocutory verdict in the stage following the initiation of the proceedings are fundamentally concordant with those provided by the law for delivering an interlocutory judgement before initiating the proceedings. The Plaintiff substantiated his title to the wording of his trade name comprising the word of "X+Y+Z"; besides that, he substantiated that he was the owner of several different types of registered trademarks comprising various variants of the word of "X+Y+Z", and he also substantiated that the Defendant had been the registered owner of the domain name of www.x+y+z.cz since 21 January 2002. The Plaintiff thus substantiated his time priority pertaining to the use of the "X+Y+Z" designation, i.e. he substantiated that his rights are older than the Defendant's title to the registered domain. In consonance with the Court of First Instance, the Court of Appeal arrived at a conclusion that the act of the Defendant who had registered the domain name of www.x+y+z.cz for himself might be considered during the proceedings pertaining to the case itself as an unauthorised infringement of the Plaintiff's rights, his title to his trade name and trademarks; such an act might be detrimental to the Plaintiff as claimed, i.e. it might lead to confusing his customers due to the non-functional domain and the related subsequent damage to the company and its reputation etc. It is therefore desirable to prevent the Defendant from making any disposal of the rights related to the registration of the domain name of www.x+y+z.cz until the final judgement is delivered in the case concerned, ordering at the same time that an informative text stating that the domain is the subject of a litigation at the Regional Court in Brno be placed at the address to which the domain is directed.

Taking into consideration the above-specified grounds, the Court of Appeal confirmed the contested verdict of the Court of First Instance as objectively correct pursuant to the provision of Article 219 of the Civil Procedure Code.

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.