VERDICT

The District Court of Justice in Prague decided on 2 June 2004 in the legal case of the plaintiff K. S. against the defendant no. 1 CZ.NIC and the defendant no. 2 M, in which the plaintiff claims breach of contractual conditions and unfair competition, as follows:

- I. The defendant no. 1 is obliged to allow the plaintiff to register as the owner of the internet domain "systemy.cz" in the register (database) of first-level "cz" domains administered by the defendant no. 1 and accessible at the address http://www.nic.cz and to enable the plaintiff to make full use of the domain "systémy.cz".
- II. The defendant no. 2 is obliged to refrain from using the domain "systémy.cz".
- III. The plaintiff and the defendant no. 1 do not have the right to claim compensation for their legal expenses on each other.
- IV. The defendant no. 2 is obliged to pay the plaintiff CZK 9,725.00 as compensation for its legal expenses (the said sum is to be paid to the plaintiff's legal representative no later than 3 days after the effective date of this verdict).

The plaintiff is a business subject engaged above all in purchasing and reselling goods, providing software and installing and repairing electronic devices. In 1997, the plaintiff - through its internet provider - registered with the legal predecessor of the defendant no. 1 an internet domain titled "systemy.cz". On 6 August 2001, however, the plaintiff's access to the said domain was blocked and its original content deleted and replaced. On the same day, the plaintiff received a letter from the defendant no. 2 (dated 4 August 2001) in which it was informed that the utilisation terms of the domain "systémy.cz" had been changed. Having contacted the defendant no. 1, the plaintiff found out that on 14 August 2000, the domain concerned had been transferred to the defendant no. 2 in accordance with an order issued by MH, former member of the plaintiff's Board of Directors and the plaintiff's administrator designated to conduct technical communication between the plaintiff and the defendant no. 1. The plaintiff claims that the said person was not authorised to transfer the domain in question from the plaintiff to the defendant no. 2, that no transfer agreement was concluded between the plaintiff and the defendant no. 2 and that the defendant no. 1 enabled a third party (the defendant no. 2) to use the domain "systémy.cz", duly registered by the plaintiff, without legal reason, by accepting a proof of transfer presented by the defendant no. 2. The plaintiff also claims that the defendant no. 2 breached Section 44, Subsection 1, of the Commercial Code, by acting contrary to good manners of economic competition, as well as Section 48 of the Commercial Code, by parasitizing on the reputation of other subjects, as it allowed MH, former member of the plaintiff's Board of Directors, to become its business partner. The plaintiff furthermore requests that the defendant no. 1 - who unlawfully tolerated the transfer of the domain "systémy.cz" to the defendant no. 2 - duly meet its obligations resulting from the agreement on registration of domain concluded by and between the defendant no. 1 and the plaintiff.

The defendant no. 1 refers to the relevant provisions of the Registration Regulations of Domains and the Regulations of Communication, Authorisation and Verification of Changes issued by the defendant no. 1 and binding for all parties concerned. Pursuant to the said Regulations each domain owner is obliged to appoint an administrator (contact person) dealing with all domain-related matters on its behalf. The defendant no. 1 is not obligated to verify the extent of authorisation of such administrators (contact persons). The defendant no. 1 insists that the plaintiff appointed MH as its administrator and that it was MH who applied for the domain "systémy.cz" to be transferred from the plaintiff to the defendant no. 2 in compliance with the Regulations, using the relevant electronic form. The defendant no. 1 also claims that it always dealt with the plaintiff through MH and, therefore, had no reason to doubt MH's right to apply for the aforementioned transfer, especially as MH was clearly appointed as the plaintiff's contact person and proceeded strictly in compliance with the Regulations.

The defendant no. 2 points out that MH was the plaintiff's authorised administrator and, therefore, was also authorised to transfer the domain in question. The defendant no. 2 also states that in 2000, in connection with its expected collaboration with the plaintiff, it started preparing a new software product titled "a+b+c" scheduled to be presented at the plaintiff's domain "systémy.cz". The defendant no. 2 was also paying all domain utilisation fees to the defendant no. 1 until August 2000, allowing the plaintiff to use the domain "systémy.cz" free of charge. Because the plaintiff failed to pay the defendant no. 2 the agreed annual fee for its domain utilisation, the defendant no. 2 blocked the plaintiff's access to the domain, using the domain to present its own product. Due to the aforementioned reasons the defendant no. 2 refuses to qualify its activities as unfair competition. In addition, the defendant no. 2 points out the general character of the domain's name, claiming that it could not be directly linked with the plaintiff as it was not related to the plaintiff's business name or commercial activities, and that in its opinion, the domain's name was not generally known in the region in which the plaintiff carried out its business activities (Karlovy Vary). As a result, the defendant no. 2 refuses to accept that its activities should be classified as parasitizing on the plaintiff's reputation and proposes that the plaintiff's suit be dismissed.

According to the extracts from the Trade and Commercial Register concerning the plaintiff and the defendant no. 2 both subjects can be regarded as competitors as one of their registered business activities is the provision of software. The plaintiff has been commercially active since 1991, the defendant no. 2 since 1996. According to the Register of Special Interest Associations of Corporate Bodies administered by the Local Authority of Prague 6 the defendant no. 1 is engaged in arranging registrations of internet domains and providing related services.

It is clear from the model agreement on registration of domain titles that since 1 September 1999 the defendant no. 1 has been concluding written agreements with its clients, with each subject wishing to register an internet domain automatically accepting the terms and conditions of the defendant no. 1 defined in compliance with the Regulations of Registration of Domain Names, by completing the relevant electronic domain registration form.

Using the register of internet domains and full record of central registration of domains, the Court established that from 22 August 1997 till 16 August 2000 the plaintiff had been registered as the owner of the domain "systemy.cz" and MH had worked as the plaintiff's administrator (contact person). At the moment, the domain "systemy.cz" is registered by the defendant no. 2 (since 16 August 2000). In its letter of 4 August 2001, the defendant no. 2 informed the plaintiff that the utilisation terms of the domain "systémy.cz" would be changed on 6 August 2001. The plaintiff reacted on 6 August 2001, by sending a letter to the defendant no. 1 in which it claimed the rights resulting from its ownership of the domain "systemy.cz" and asked the defendant no. 1 to present the documents on which the change registration was based.

In his letter of 14 October 2000 addressed to the defendant no. 1, MH confirms all domain registration changes requested in his electronic application.

Section 7 of the record of regular general meeting of K. S. Co. of 25 July 2000 concerning the election of new members of the company's Board of Directors and Board of Trustees shows that MH and ing. Vladimír Loník, executive director of the defendant, stood as candidates (although neither of them was appointed in the end). Notarial Record no. NZ 36/2000, N 38/2000 verifying the course of the plaintiff's extraordinary general meeting of 31 January 2000 also confirms that the company must be represented by at least two members of its Board of Directors acting in concord. The plaintiff uses the said Notarial Record to demonstrate that MH was not authorised to act on its behalf when applying for the domain "systemy.cz" to be transferred.

That MH had no special authorisation to transfer the domain "systemy.cz" to a third party is supported by his own testimony in which he states that the change of registration was his own decision resulting

from the fact that the plaintiff failed to pay the required annual fee, showing, in his opinion, no interest in further utilisation and registration of the domain "systemy.cz".

To demonstrate the utilisation, presentation and local familiarity with the domain "systemy.cz", the plaintiff presents business cards of its representatives, business letter forms, advertisements in Yellow Pages and photographs of company cars, all featuring the domain "systemy.cz". The extent of the plaintiff's portfolio of clients is supported by a file titled "List of Issued Invoices" containing all its business partners.

The Court regards as established that the suit for the domain "systemy.cz" is above all a dispute between the plaintiff and the defendant no. 2 and that the plaintiff had been the first to conclude an agreement on registration of the domain "systemy.cz" with the defendant no. 1 and had been using the domain for several years before it was transferred by the plaintiff's administrator, MH, to the defendant no. 2 and the transfer registered by the defendant no. 1. It is the transfer itself, in particular the right of the plaintiff's administrator to change the domain's registration, by transferring it to the defendant no. 2, which represents the subject of the parties' dispute. The Court also regards as established that at the time the domain was transferred to the defendant no. 2 MH was no longer a member of the plaintiff's Board of Directors (his membership having ceased on 25 July 2000). Nevertheless, MH was still the plaintiff's administrator (contact person) entitled to deal with all domain-related technical matters in compliance with the Regulations issued by the defendant no. 1 in writing and valid since September 1999. After questioning MH, the Court established that MH had had no special authorisation from the plaintiff's statutory body to transfer the domain "systemy.cz" and indeed could not have any such authorisation because the plaintiff had not intended to transfer the domain, having learnt about the transfer only afterwards from the defendant no. 2 when its access to the domain was blocked. In compliance with the Regulations issued by the defendant no. 1 a domain can be transferred through an application confirmed by its owner's statutory bodies (as registered in the Trade and Commercial Register), with all respective signatures duly notarised, or by an e-mail sent and subsequently confirmed in writing by the owner's administrator. The Court established that the domain "systemy.cz" had been transferred in the latter way.

The Regulations issued by the defendant no. 1 also state that owners may appoint a third party as their administrators. This means that an administrator does not have to be the owner's statutory body or employee. This is precisely the case of MH because at the time the domain's transfer took place, MH had no longer any legal relationship with the plaintiff, his membership in its Board of Directors having ceased earlier. In this connection, MH, acting as the plaintiff's administrator, can be, therefore, regarded as a mandatory providing domain-related technical services for its client, the plaintiff, in compliance with Sec. 566 et seq. of the Commercial Code or in compliance with Sec. 724 et seq. of the Civil Code. The particular extent of such services (and, therefore, the mandatory's authorisation) would be specified by the relevant mandatory agreement and the client's instructions. In any case, however, the mandatory would be obliged to act in his client's interest. If the mandatory overstepped his authorisation, his client would have to approve such an overstepping in order to bear responsibility (Section 33, Subsection 1, of the Civil Code). In this case, however, that the plaintiff did not authorise the actions of MH. It is, therefore, clear that the domain's transfer never became legally effective and that the plaintiff's request that the defendant no. 2 refrain from using the domain is completely rightful. This fact is furthermore supported by the subsequent relation between MH and the defendant no. 2 apparently benefiting from the transfer and interested in the domain's utilisation. As a result, the actions of the defendant no. 2 can be clearly qualified as unfair competition as defined by Section 44, Subsection 1, of the Commercial Code, and even as parasitizing on the reputation of other subjects defined by Section 48 as well as Section 47, Subsection b), of the Commercial Code because the defendant no. 2 was illegally using special attributions well-known within client circles.

The Court finds the plaintiff's suit against the defendant no. 1, as a subject registering internet

domains and the plaintiff's business partner, legitimate, with its resolution depending on the verdict in the plaintiff's suit against the defendant no. 2. Even thought the Court agrees with the plaintiff's claims, however, in its opinion, the defendant no. 1 proceeded correctly when re-registering the domain "systémy.cz" because MH was the plaintiff's duly appointed contact person (administrator) authorised to deal with the defendant no. 1 and acting on the plaintiff's behalf, and the defendant no. 1 did not know (and could not know) that MH's had overstepped the extent of his authorisation. That is why the plaintiff does not have the right to claim compensation for its procedural expenses on the defendant no. 1 pursuant to Section 150 of the Rules of Civil Procedure.

The Court's decision concerning the respective legal costs of the plaintiff and the defendant no. 2 is based on Section 142, Subsection 1, of the Rules of Civil Procedure. The Court awarded the plaintiff, as the injured party, compensation for the following procedural expenses: judicial fee for the issue of interlocutory judgement - CZK 500.00, proposal presentation fee - CZK 1,000.00, and the following legal representation expenses pursuant to Edict No. 484/2000 of the Collection of Laws: interlocutory judgement preparation - CZK 1,200.00 (Section 9), suit proposal - CZK 6,200.00 (Section 8, Subsection b)), 5 x overhead fixed fee - CZK 75.00 (i.e. CZK 375.00 in total).

When studying this resolution, it is necessary to bear in mind the fact that it contains not only the verdict itself and its grounds, but also the respective statements of the parties concerned. However, some of them (or parts thereof) the court did not have to take into account (for instance, when issuing an interlocutory judgement). Such statements, therefore, represent only a legal opinion of the given party and not a judicial conclusion.

The court's resolution cannot be automatically applied to other cases (even if their merits are similar or identical) and the association CZ.NIC recommends that each individual case be consulted with internet domain experts and lawyers.