ARBITRATION AWARD

issued by the Arbitration Court at the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic.

With respect to a dispute between the Plaintiff 1: A., Plaintiff 2: V. against Defendant 1: W. and Defendant 2: CZ.NIC, with respect to unfair-competition conduct and for the protection of trademark rights, the arbitrators arrived at the following conclusion on 25 July 2006

- The petition is hereby dismissed.
- None of the parties involved shall be entitled to any compensation for the costs of the arbitration proceedings.

This arbitration award is final, is delivered to the parties involved and CZ.NIC as the domain registrar, becomes legally effective upon the delivery hereof and is enforceable by law (Section 28 Paragraph 2 of Act 216/1994 Coll., on Arbitration Proceedings and Enforcement of Arbitral Awards).

RATIONALE

1. Arbitration court jurisdiction and appointment of arbitrators

1.1 The Arbitration Court appointed arbitrators for the Plaintiff and the Defendant, in accordance with Art. 21 of the Arbitration Court Rules. The arbitrators appointed elected the Arbitration Senate presiding arbitrator. All arbitrators acknowledged their appointment or election in writing and the parties involved confirmed during oral proceedings that they had no objections to the members of the Arbitration Senate.

1.2 The jurisdiction of the Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic with respect to the Defendant 1 is based on the public arbitration offer stipulated in Article 18 Paragraph 1 of the Rules of Domain Name Registration under .cz Domain. The registration rules have been issued by the CZ.NIC Association and contain rules applicable to the registration of domain names under the .cz domain. Each application for registration is obliged to acknowledge the current wording of the Registration Rules as one of the conditions for the domain name registration (see Art. 3.5 of the Registration Rules). The wording of the public arbitration offer is as follows: "The Holder hereby irrevocably and publicly acknowledges the jurisdiction of the Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic, hereinafter the "Arbitration Court", under arbitration proceedings conducted before this Arbitration Court, according to the Rules published in the Commercial Journal, with respect to disputes involving property rights, in which a compromise can be achieved, and in which a third party challenges the Holder's domain name registered in the domain name electronic database under the ".cz" national domain administered by the CZ.NIC Association, provided that the third party provides the Holder with a written statement acknowledging its will to accept the jurisdiction of this Arbitration Court with respect to the dispute concerned by raising such a dispute at this Arbitration Court."

1.3 The Defendant 1 claimed in its statement of the defence that the Arbitration Court lacked jurisdiction with respect to the dispute concerned. The Arbitration Senate requested the document proving the acceptance by the Defendant 1 of the current wording of the Registration Rules, including the public arbitration offer. The CZ.NIC Association documented such a written acceptance by the Defendant 1. The Registration Rules and their acceptance by a domain registration holder under the .cz domain represent a contract entered into between the registration holder and the CZ.NIC Association. The content of this contract includes the rights and responsibilities of the registration holder and the CZ.NIC Association acting as the .cz national domain administrator with respect to the

registration, also representing the contractual obligation of the domain name holder with respect to the third party - the Plaintiff with respect to a dispute regarding such a domain name, i.e. to accept the jurisdiction of the Arbitration Court with respect to the matters anticipated in the public arbitration offer specified above. It is not to the detriment of the validity of the public arbitration offer that it does not include an individual specification of the third party or third parties in whose favour such an offer is rendered. It is sufficient if such a third party or such third parties can be identified on the basis of objective features stipulated in the relevant contractual obligation (comment to the Civil Code, 9th edition, Jehlička, Švestka, Škárová et coll., CH Beck 2004, p. 285). As regards the public arbitration offer, this condition has been fulfilled because the offer states that it is applicable with respect to persons filing an action with the Arbitration Court to challenge the domain name concerned, which is an objective fact. An arbitration agreement is subsequently deemed signed as soon as the individually specified person or persons - Plaintiff 1 and Plaintiff 2 expressed their consent with the public arbitration offer by filing an action with the Arbitration Court. Therefore, the Arbitration Senate came the conclusion on the basis of the reasons stated above that the jurisdiction of the Arbitration Court with respect to the Defendant 1 duly exists.

1.4 The Defendant 2 also claimed in its statement of the defence that the Arbitration Court lacked jurisdiction with respect to the dispute concerned. The Arbitration Court accepted the arguments rendered by the Defendant 2 in his statement and came to the conclusion that the jurisdiction of the Arbitration Court did not exist with respect to the Defendant 2, because no arbitration agreement had been entered into. For this reason, the Arbitration Senate issued a verdict suspending the arbitration proceedings with respect to the Defendant 2.

2. Relief sought and parties' claims

2.1 The Plaintiff 1 claimed in its motion that it was the owner of the "X+Y+Z" registered word trademark, application number 123456, entry number 654321, with the right of priority established in August 2004. Furthermore, the Plaintiff 1 is an operator of the X+Y+Z hotel and the owner of movables forming the hotel's equipment. These assets were contractually transferred by the Plaintiff 2 to the Plaintiff 1 as part of a transaction under which a lease agreement between the building owner and the Plaintiff 2 was terminated and a new lease agreement was entered into with respect to the building concerned with the Plaintiff 1. The assets transferred under the transaction above included the **x+y+z.cz** and **a-x+y+z.cz** domain names, registered at that time in favour of the Plaintiff 2. The Plaintiff 1 and 2 claim in unison that the Defendant 1, the current holder of the registrations concerning the disputed **x+y+z.cz**, **x+y+z-a.cz**, **a-x+y+z.cz** and **x+y+z-a.com** domain names, is holding such domain names in an unauthorized manner, in conflict with the trademark law and the law to protect against unfair competition. Both plaintiffs claim in particular that the transfer of the **x+y+z.cz** and **x+y+z-a.cz** domain name registrations from the Plaintiff 2 to the Defendant 1, effected on 7 September 2005 with approval from Mr F., former director of Plaintiff 2, was conducted in bad faith, with the aim of causing detriment to both plaintiffs. It is the opinion of both plaintiffs that this constitutes violation of the trademark rights of the Plaintiff 1, i.e. "X+Y+Z", also constituting unfair-competition conduct. The plaintiffs are of the opinion that the subsequent registration of the **a-x+y+z.cz** and **x+y+z-a.com** domain names by the Defendant 1 constitutes further violation of the trademark rights of the Plaintiff 1 and unfair-competition conduct. Both plaintiffs attempted at proving in their statements that the agreement of 17 March 2004 and its supplement of 25 June 2004, copies of which were submitted by the legal representative of the Defendant 1 as documents proving the rights of the Defendant 1 to the "X+Y+Z" identification, were deliberately antedated and are therefore invalid, which would prove the alleged bad faith Mr F., former director of the Plaintiff 2, concerning the transfer of the x+y+z.cz and x+y+z-a.cz domain names to the Defendant 1.

2.2 In its statement, the Defendant 1 claimed lacking jurisdiction of the Arbitration Court to decide the dispute concerned. Furthermore, the Defendant 1 claimed that the name "X+Y+Z" was created to

the order of Mr K., the sole partner in the company of the Defendant 1, with respect to the business plan of a pet hotel, and that subsequently an agreement was entered into with Plaintiff 2 for a temporary loan of this name for the purposes of the X+Y+Z hotel. The Defendant 1 proved its claim by the above-mentioned agreement on marketing support in the preparations of the opening of the X+Y+Z pet hotel dated 17 March 2004, entered into between the M. company and Mr K., in which Mr K. placed an order with M. for the creation of the X+Y+Z name with respect to the business plan of a pet hotel, and its supplement of 25 June 2004, in which Mr K. agreed with M. temporarily lending the X+Y+Z name and the challenged domain to the Plaintiff 2. On the basis of these agreements, the Defendant 1 explains the transfer of the domains from the Plaintiff 2 to the Defendant 1, i.e. the returning of the domains concerned to Mr K. or its company - W. The domain transfer was confirmed by Mr F. then acting as the director of the Plaintiff 2. Witnesses summed by the Defendant 1 confirmed that the content of the above-specified agreements corresponded to the actual relationships between the parties concerned.

2.3 In its statement, the Defendant 2 claimed lacking jurisdiction of the Arbitration Court to decide the dispute concerned because the Defendant 2 has not entered into an arbitration agreement.

3. Facts of the case and legal consideration

3.1 The arbitrators ascertain the facts of the case from the written statements submitted by the Plaintiff 1 and Plaintiff 2 and from the pleadings of both plaintiffs and the Defendant 1 during the course of verbal proceedings.

3.2 During the course of the oral proceedings, evidence was admitted and obtained as suggested by both plaintiffs and the Defendant 1 in their statements, on which the parties concerned insisted during oral proceedings, including the hearing of witnesses.

3.3. Based on the evidence provided, the Arbitration Senate claims that the transfer of the challenged domain names to the Defendant 1 was effected in accordance with the CZ.NIC Registration Rules. The Arbitration Senate is of the opinion that on the contrary, the Contract for Transfer of Assets dated 1 April 2005 does not constitute a valid transfer of the challenged domain names because this contract had not been registered with the CZ.NIC Association in accordance with the Registration Rules (definition of the domain name holder, Art. 7 - Transfer of Domain Names), according to which a transfer does not become effective with a contract entered into between the domain name holder and the future domain name holder but with the registration thereof by the CZ.NIC Association. The interpretation according to which domain names may be transferred using other procedures, including non-standard procedures derived either from the general application of legal regulations and general judicature, and apply other institutes than stipulated in the registration rules, casts doubts on the entire domain name registration system and significantly impairs the principles of legal assurance among parties involved in legal relationships associated with domain names, their holding via registration and possible transfers. The Arbitration Senate found such an interpretation unacceptable.

3.4 Based on the evidence provided, the Arbitration Senate claims that it does not consider it proven that Defendant 1 acquired the challenged domain names in bad faith. It is true that the challenged domain names are identical or confusingly similar with the "X+Y+Z" trademark of the Plaintiff 1; however, the two basic domain names, **x+y+z.cz** and **a-x+y+z.cz**, were registered on 8 June 2004, or 9 June 2004, i.e. prior to this trademark's preference date (12 August 2004). In addition, the plaintiffs failed to prove that either of them would hold the rights or interests protected by law to the "X+Y+Z" name prior to the date on which the **x+y+z.cz** or **a-x+y+z.cz** domain names were registered. On the contrary, the Defendant 1 submitted duly signed contractual documents dated 17 March 2004 or 25 June 2004, respectively, according to which the "X+Y+Z" name, including the relevant domain names, was temporarily lent for the operation of the X+Y+Z hotel. This contractual documentation does not contain any mention of the trademark registration, and the trademark registration is likely to

constitute violation of these contracts.

3.5 The Arbitration Senate is therefore of the opinion that in order to prove acting in bad faith by the Defendant 1 and violation of the rights to the "X+Y+Z" trademark by the Plaintiff 1, the plaintiffs would have to prove that the contract dated 17 March 2004, or its supplement of 25 June 2004, were antedated and are invalid.

3.6 The Arbitration Senate claimed the plaintiffs failed to prove that the Defendant 1 or Mr F., former director of the Plaintiff 2, knew about the registration of the trademark by the Plaintiff 2. It was evident from the evidence that the trademark was registered by the other director of the Defendant 2, Mrs V. She independently transferred the "X+Y+Z" trademark, the disputed domain names and other assets of the X+Y+Z hotel to the Plaintiff 1.The Arbitration Senate believes that if it had been successfully proven that Mr F. knew about the registration of the trademark and its subsequent transfer to the Plaintiff 1, it would have been possible to draw the conclusion concerning the antedating of the contract of 17 March 2004 and its supplement of 25 June 2004. The Arbitration Senate is confident that Mr F. would be unable to adequately explain that he knew about the registration of the trademark without objecting to or commenting on the existence of the contract of 17 March 2004 and its supplement of 25 June 2004. Furthermore, his approval of the transfer of the challenged domain names to the Defendant 1 would be difficult to explain otherwise than as an intention to cause detriment to both plaintiffs.

3.7 However, the plaintiffs failed to prove this. It is true that the plaintiffs stated several reasons indicating that the contract of 17 March 2004 and its supplement of 25 June 2004, dealing with the temporary loan of the X+Y+Z name, including the domain names, to the Plaintiff 2 were antedated and are therefore invalid; however, the Arbitration Senate is of the opinion that none of the presented evidence is clear proof thereof. It is obvious from the dispute, according to the Arbitration Senate, that the two former directors of the Plaintiff 2, i.e. Mr F and Mrs V, took a series of action associated with the company management separately and independently of each other, which was possible owing to the company structure and their respective authorizations. It is obvious from the evidence that it was not successfully proven that former director Mr F. was aware of the registration of the "X+Y+Z" trademark in favour of the Plaintiff 2 and that former director Mrs V. was aware of the contract of 17 March 2004 and its supplement of 25 June 2004, or the transfer of the challenged domains to the Defendant 1. Subsequently, the company must bear the consequences of such proceedings. It is not enough in this case for the Plaintiff to prove certain inaccuracies or improbabilities in the Defendant's claims; acting in bad faith must be duly proven. Any further claims or objections from both former directors may illustrate the manner in which the company was managed during the period concerned; however, this cannot affect the decision adopted by the Arbitration Senate in this specific matter.

Therefore, the Arbitration Senate decided to dismiss the petition.

Except for CZ.NIC, all participants of the proceedings are identified with the first letters of their surnames or trade names. The domain names in question are 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 actually 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 the issue of preliminary ruling) 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 experts in domain names and lawyers.