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: B., against the Defendant Š., with respect to a change in the registration of the "**x+y+z.cz**" internet domain holder, the arbitrators decided by law as follows, on 12 July 2006, following the oral proceedings

- Within ten days of the legal force of the arbitration award, the Defendant shall file an application for a change in the registration of the holder of the "**x+y+z.cz**" second degree internet domain under the "cz" highest domain, so that the Plaintiff is entered as the "**x+y+z.cz**" domain holder in place of the Defendant.
- Within 40 days of the legal force of this decision, the Defendant shall settle the Plaintiff's costs of the arbitration proceedings, together with the cost of the legal representation to be paid to the Plaintiff's attorney.

This arbitration award is final, is delivered to the parties involved and CZ.NIC, interest association of legal entities acting 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. Relief sought and parties' claims

1.1 The Plaintiff stated in its motion of 1 September 2005 that it was a corporation involved in the manufacturing and sale of X+Y+Z tires and the distribution of goods and services related hereto. The Plaintiff has been involved in this business worldwide for more than 20 years. The Plaintiff is the owner of trademark 123456, X+Y+Z, with priority of March 2000. This trademark became famous on the domestic market and is associated with the Plaintiff's products.

The Defendant is an individual holding many domain names relating to tires and the automotive industry. On 22 November 2002, the Defendant had the **x+y+z.cz** domain name registered. This domain was not functional. Following the receipt of the Plaintiff's letter of 7 September 2004, the **x+y+z.cz** domain was activated, presenting a short text about the town of X+Y+Z in Ohio, USA. A similar text also appear under the a+b+c.cz domain.

The Plaintiff is of the opinion that for the reasons indicated above, the Defendant registered the **x+y+z.cz** domain name for speculative reasons. The Plaintiff states that the registration and blocking of the **x+y+z.cz** domain name constitutes a breach of the Plaintiff's rights to the trademark above. The Plaintiff repeatedly requested the Defendant, to transfer the disputed domain; however, the Defendant did not respond to the requests.

In addition, the Plaintiff originally filed its motion against CZ.NIC, interest association of legal entities. In a motion of 22 November 2005, the Plaintiff withdrew its petition against the second defendant, together with an adjustment of the motion.

1.2 The Defendant did not submit any comments to the motion even though she had been duly summoned, and the motion had been demonstrably delivered to her; furthermore, the Defendant did not appear for the ordered oral proceedings, without any apology, even though it was proved that she had been summoned to appear for such oral proceedings. Therefore, the Arbitration Senate based its decision on the Plaintiff's motion only.

2. Arbitration court jurisdiction and appointment of arbitrators

2.1 The jurisdiction of the Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic 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 Arbitration Senate requested the document proving the acceptance by the Defendant 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.

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."

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 - the Plaintiff expressed its 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 duly exists.

2.2 The Plaintiff appointed an arbitrator in its motion. For the Defendant, the arbitrator was appointed 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.

2.3 No objection concerning the lacking jurisdiction or the members of the Arbitration Senate was raised during the oral proceedings.

3. Facts of the case and legal consideration

3.1 The arbitrators ascertain the facts of the case from the written statement submitted by the Plaintiff and from the oral proceedings held on 18 May 2006 during which the Plaintiff claimed that the Defendant had contacted the Plaintiff via phone offering the voluntary transfer of the domain concerned during February 2006 and asking for the identification data to be used for this purpose; however, no such a transfer occurred.

3.2 The oral proceedings were performed in accordance with Section 26 of the Rules of this Arbitration Court in the Defendant's absence; the Defendant was delivered a notification concerning the holding of the oral proceedings. Evidence was admitted and obtained as suggested by the Plaintiff in its statement, on which the Plaintiff insisted during oral proceedings.

3.3 Based on the evidence provided, the Arbitration Senate claims that it considers it proven that the Defendant registered the challenged domain name in bad faith. The challenged domain name is identical with the Plaintiff's trademark which is an internationally well-known in the automotive sphere. According to the Plaintiff's arguments which the Senate acknowledged, the Defendant knew or must have known that the domain concerned contained an internationally well-known identification of the X+Y+Z tire manufacturer. The Defendant is obviously familiar with the automotive sector, and has registered other domains together with the **x+y+z.cz** domain containing other protected designation of manufacturers known from this sector, such as a+b+c.cz. The Defendant must have known that by registering the **x+y+z.cz** domain the Defendant would disable the Plaintiff as the owner of the protected designation to register this challenged domain and to perform its business under its own designation on the internet under the .cz domain.

3.4 Furthermore, the Senate considers its proven that the Defendant has no other rights or interests protected by the law with respect to the challenged domain name. The Defendant did not obtain any consent from the Plaintiff with the use of the "**x+y+z**" designation, is not the Plaintiff's dealer or otherwise associated with the Plaintiff. Following a written request from the Plaintiff, the Defendant not only failed to transfer the challenged domain name; however, she has been operating a passive website under this name, comprising brief information about the town of X+Y+Z in the USA. Pursuant to the conclusion of the Arbitration Senate, the Defendant attempted to induce an illusion concerning the Defendant's legitimate use of the challenged domain name. However, the Arbitration Senate believes that owing to the very limited and passive character of the Defendant's website operated under the challenged domain, there is practically no reason between this website and the domain under which no website would be operated. The domain has thus remained passive for several years, without any use. The long-term passivity of the domain name registration holder may be one of the signs symptoms of a speculative registration of a domain name as stated in a number of decision regarding international disputes for domain names, for instance in a known and frequently quoted verdict Telstra Corporation Ltd v. Nuclear Marshmallows, WIPO D2000-0003

3.5 Despite she was evidently delivered the motion and information concerning oral proceedings, the Defendant did not submit any comment concerning the petition and did not appear for the proceedings without an apology. Pursuant to the conclusion of the Arbitration Senate, this is another symptom of the Defendant's unfair conduct during the registration and use of the challenged domain name. The Arbitration Senate therefore came to a conclusion that the Defendant registered and was using the challenged **x+y+z.cz** domain name in bad faith, in order to disable the Plaintiff from using this domain name comprising its trademark. The Defendant's likely motif may be speculation of the possible future sale of the challenged domain name. According to a conclusion of the Arbitration Award, this constitutes violation of the Plaintiff's trademark rights and unfair-competition conduct.

Therefore, the Arbitration Senate issued a decision concerning the transfer of the challenged domain to the Plaintiff.

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.