JUDGMENT

On 31/3/2006 the Municipal Court decided in the legal case of the Plaintiff: Toyota Peugeot Citroen Automobile Czech s.r.o. vs. Defendants: l/Jan Vopička and 2/ CZ.NIC for protection against infringement of the rights to a trademark, company name, interventions in the goodwill, and unfair competition as follows:

- Starting from the date this judgment becomes legally effective, the First Defendant is obliged to refrain from using the TPCA.CZ domain name and handling this domain name in any manner except for transferring it free of charge to the Plaintiff.
- The Second Defendant is obliged to transfer the TPCA.CZ domain name to the Plaintiff within three days after this judgment becomes effective.
- The First Defendant is obliged to pay the Plaintiff the costs of the proceedings in the amount of CZK 11,275 within three days after this judgment becomes effective.
- In the relationship between the Plaintiff and the Second Defendant, neither party is entitled to receive any compensation for the costs of the proceedings.

The Plaintiff sought by the action filed, after the demand was modified, that the aforementioned decision should be made and at the same time a preliminary measure should be ordered. It stated in the action that it is a subsidiary - a joint enterprise of two leading world producers of motor vehicles: the Japanese company Toyota Motor Corporation and the French company Peugeot Citroen Automobiles S.A. The joint enterprise was established for the purpose of realisation of the joint investment intention to build a plant making small cars in the Czech Republic within the industrial zone of Kolín-Ovčáry. This is an investment of nationwide importance with essential participation and support of the Czech Republic. With respect to the volume of the investment and the fact that this is a project of two of the most important and best known international car manufacturers, the investment had been a subject of great interest of the media as well as the general public since its very beginning. The Plaintiff's founders and subsequently the Plaintiff itself had used the "TPCA" abbreviation since the very beginning of considerations about the realisation of the construction project of the plant for manufacture of small cars in Kolín and this abbreviation had also quickly become generally known with regard to the importance of the project through the media. The first mentions of the prepared project in the press including the abbreviation mentioned above may be found at the beginning of January 2002. The "TPCA" marking is protected as a word trademark registered at the Office of Industrial Ownership of the Czech Republic, reg. No. 259731, on the basis of an application of 25/10/2002. On 10/1/2002, i.e. on the same day when the first mentions about the Plaintiff's company being prepared and its shortened form - TPCA - appeared in the press, the First Defendant had the TPCA.CZ designation as its Internet domain registered by the Second Defendant. The First Defendant tried to contact the Plaintiff's senior managers in his endeavour to sell the domain to them or to operate it for a regular monthly payment in the amount of a few thousand Czech crowns. The Plaintiff could not accept such proposals, nevertheless it required the First Defendant to release the TPCA.CZ domain, which is the most suitable domain for its Internet pages from the viewpoint of the common Internet user and with respect to the general public knowledge of the company name abbreviation, namely against a payment of the costs connected with registration of the domain. In the course of 2004, Defendant No. 1 started to use the domain concerned actively when he started to operate pages here providing the logged-in persons with sexually explicit materials. On his pages the First Defendant used the TPCA designation in a graphical form that is identical with the logo graphic design (the form as well as the graphic completion) which had been created and used by the Plaintiff's founders even before the Plaintiff was established and which is still used by the Plaintiff. It is true that after receiving the Plaintiff's request of 3/12/2004 the First Defendant partially modified the graphic design of the logo where he uses squares instead of discs in the same colour combination. At the meeting

with the Plaintiff's legal representatives held on 14/12/2004 the First Defendant repeated its proposal of payment of a purchase price of several hundred thousand or a regular monthly payment as aforesaid. He did not respond to arguments concerning the illegal character of his acts. Therefore the registration by Defendant No. 1 was clearly speculative, motivated by a vision of a financial profit if the domain was possibly transferred to the Plaintiff. The use of TPCA and the TPCA.CZ domain name by the First Defendant is, with respect to the circumstances described above, exercise of the right to the domain name which affects the Plaintiff's rights and justified interests and is contrary to good manners and does not enjoy legal protection as such. By using the "TPCA" marking for operation of the Internet pages, furthermore with a sexually explicit character, the First Defendant commits infringement of the Plaintiff's right to a trademark, company name and damages the Plaintiff's goodwill. He also commits banned unfair competition acts in economic competition as his acts are contrary to good manners of competition and cause non-proprietary losses. The behaviour of the First Defendant also fulfils factual features of parasitizing on the Plaintiff's reputation and causing a risk of mistaken identity.

By using the TPCA word trademark illegally as the domain of web pages the First Defendant obstructs the Plaintiff in using the TPCA marking in the simplest and easiest form to remember for the general public, and causes and makes use of frequent cases of mistaken identity when a person interested in information on the Plaintiff looks for such information in good faith (and logically) under the publicly well known TPCA marking. Nevertheless the TPCA.CZ domain will lead him to web pages which the interested person has not looked for and which he would not visit otherwise. By using the aforementioned domain, the First Defendant caused illegal accesses to web pages, especially in the period the Plaintiff appeared to be in the stage of recruiting a labour force and seeking suppliers. The First Defendant thereby misuses the goodwill and knowledge of the TPCA marking. The First Defendant's acts also result in a loss of the ability to distinguish the competence of the TPCA marking, which is the primary function of a trademark according to section 1 of Act No. 441/2003 Coll. on trademarks. The Plaintiff as the owner of the trademark has an exclusive right to use the trademark and nobody is allowed to use, without its consent, a marking in the case of which there is probability of a mistaken identity on the side of the general public due to reasons of identity or similarity. The described intentional, wilful and misusing registration of the domain name resulting in an infringement of the owner's intellectual property rights to the trademark has also been known as so-called "cyber squatting" for a long time and is condemned both by international organisations, e.g. WIPO, and by individual states. The Plaintiff acts under the company name Toyota Peugeot Citroen Automobile Czech, s.r.o., which was already publicly presented in the period before the Plaintiff was established and entered in the Commercial Register, together with its shortened version. The abbreviation is perceived by the general public even more intensively that the company name itself. Using the "TPCA" marking as an Internet domain without any consent granted by the Plaintiff means an infringement of the Plaintiff's rights because the First Defendant thereby restricts the Plaintiff's rights to the company name. Furthermore the sexually explicit content of the First Defendant's domain concerned means an infringement of the Plaintiff's goodwill. Acting as described above, the Defendant also commits acts of unfair competition. The TPCA abbreviation is very specific and the time connection between announcement of the Plaintiff's company name including its shortened version and the registration of the domain concerned by the First Defendant leads to an undisputable conclusion that this is only one of other cases of speculative registration of the marking of a new entrepreneurial entity for the purposes of obtaining a material benefit during transfer of the domain to the legitimate user. According to the established practice of the courts, such acts are contrary to good manners of competition due to their speculative character and results in losses incurred by the Plaintiff that is forced to use another more complicated domain for operation of its web pages.

By resolution No. 41 Cm 195/2004-11 made on 21/12/2004 , legally effective as from 19/1/2005, the court admitted the Plaintiff's petition and ordered a preliminary measure imposing the duty on the

First Defendant to refrain from using the domain name concerned and handling it and the Second Defendant was ordered to prevent the domain name concerned from being transferred to another person except for transfer to the Plaintiff.

The First Defendant proposed that the action should be dismissed as it registered the TPCA.CZ domain at the beginning of 2002, when the Plaintiff as a person with legal personality did not exist and none of the entrepreneurial entities in the Czech Republic used a company name in the form of TPCA and no entity had the name TPCA registered as a trademark in any form. The combination of the TPCA letters was not publicly known or connected just with the Plaintiff or any other entity in any manner. The First Defendant's sphere of business activities includes data processing, web design and web-hosting. Administration of creation of domains is a part of its sphere of business activities for which it has a due trade licence. Within its activities the First Defendant offers its clients, among other things, creation of Internet presentations including administration of Internet pages, which also includes registration and maintenance of Internet domains. Registration of the domain by the First Defendant was not therefore a purposeful and "speculative act" but performance of its business activity. It is not true that the First Defendant tried to contact the Plaintiff's senior managers in an endeavour "to sell the domain or to operate it for a regular monthly fee". The First Defendant negotiated with the Plaintiff only after it had been authoritatively required by it to transfer the domain free of charge. The First Defendant really did not respond to the Plaintiff's requests as he is convinced that he is an authorised user of the domain. The First Defendant does not use the identical design of the TPCA logo, the logo concerned differs in the arrangement of letters and in the fonts. It is true that in its action the Plaintiff gives a large description of the scope and "importance" of its investment but does not clarify in any manner due to which reason the founders of the Plaintiff had failed to register the TPCA.cz domain or this letter combination as a trademark before 2002 if they had really intended to use it. The Plaintiff is now trying to transfer the consequences of its inactivity to the First Defendant. The First Defendant is convinced that no entity, while choosing a domain or its company name, can be influenced by the fact that in the future any other entity, which in fact is still to be established, decides on a similar domain or company name. Registration of domains in the Czech Republic as well as abroad is based on the "first come, first serve" principle, i.e. that a domain is registered for the entity that is the first to apply for registration of the domain. The existing court practice provides protection only in those cases where the registration of a domain results in an infringement of already existing rights to a company name or a trademark. In January 2002 the combination of the TPCA letters was registered neither as a trademark nor a company name, however. The Plaintiff registered the trademark only on the basis of an application of 25/10/2002, i.e. 10 months after the TPCA combination had been registered by the First Defendant. Furthermore the Plaintiff has the trademark registered for classes 12 and 37, which are not included in the sphere of business activities performed by the First Defendant; therefore the First Defendant does not infringe the Plaintiff's rights to the trademark concerned. Furthermore, he does not infringe the Plaintiff's right to its company name, our legal regulations do not recognize the term "shortened version of the company name", an abbreviation of a company name cannot be registered in the Commercial Register according to the established practice of the courts, and therefore it is not subject to protection related to the company name. According to the Plaintiff the First Defendant also misused the goodwill and awareness of the TPCA marking. In this context the First Defendant points out that at the moment of registration of the domain in the Czech Republic the Plaintiff did not have any goodwill as it did not exist yet. The First Defendant is of the opinion that even now the Plaintiff does not have any "goodwill" which could be damaged by registration of the domain. Due to the same reason the Defendant could not commit acts of unfair competition in the form of parasitizing on the Plaintiff's goodwill if the Plaintiff had not created any goodwill yet. The Defendant is of the opinion that even now the TPCA.CZ combination is not exclusively related to the production of cars in Kolín in general awareness. With respect to the aforementioned facts the 1st Defendant is of the opinion that it is an

authorised user of the TPCA.CZ domain, which was duly registered even before the Plaintiff was established and therefore its due and proper registration could not infringe on any of the Plaintiff's rights.

The Second Defendant stated that it is an interest association of legal entities that is in charge of the administration of the so-called top level domain - CZ. Within these activities, it administers above all the so-called central register of domain names on the second level found within the CZ domain. While registering domain names, the Second Defendant does not check in any manner whether or not the domain names being registered infringe third parties' rights. These names may be rather varied and the Second Defendant cannot be fairly required to check every registered name from the viewpoint of whether or not it infringes such rights if the number of the registered names is taken into account. At the moment of registering a domain name created by an applicant the Second Defendant only guarantees that upon request it will provide technical information concerning the inquired domain of the second level which enables one to find the domain in question designated by a computer. The basic condition of registration then follows from the requirement of uniqueness of the second level domain name found below one domain of the top level, when it is impossible to register a domain name whose text is the same as the text of another registered domain name. Furthermore the Second Defendant stated that it would leave the decision to be considered by the court and if the action were found to be justified, it would comply with the decision of the court and perform relevant changes.

There was no dispute between the parties that on 10/1/2002 the First Defendant registered "TPCA.CZ" with the Second Defendant, which is the administrator of the national cz domain. It was found out from the Plaintiff's Commercial Register that the company was entered in the Commercial Register on 8/3/2002, and its founders and partners are Toyota Motor Corporation, Japan, and Peugeot Citroen Automobiles S.A., France. The sphere of business activities includes, among other things, production of motor vehicles. Furthermore there was no dispute about the fact that the First Defendant is a businessman in the field of data processing, web-design and web-hosting. It was also proven by means of a copy of the Internet pages during the proceedings that for his business activities the First Defendant uses a presentation at the address www.vopicka.cz. It was shown from articles in the daily press - "Media Monitoring" that already on 7/1/2002 the news was published that the future car factory in Kolín, Toyota Peugeot Citroen Automobile (TPCA), which the firm planned to build by 2005, had its director and that the amount of the future investment was estimated to reach EUR 1.5 billion. On 10/1/2002 Hospodářské noviny (Economic paper) published an article entitled "Kolín to start as early as May", informing that a construction of the Toyota Peugeot Citroen Automobile (TPCA) factory for production of minicars in the industrial zone of Kolín-Ovčáry had commenced. It follows from the copy of the www.tpca.cz page of the First Defendant that the TPCA marking on the initial page is in a similar colour and graphical form as the logo of the Plaintiff or its founders used already during the project preparation (by comparison with materials submitted by the Plaintiff) with a notice that the pages contain sexually explicit materials exclusively intended for persons above the age of 18 and that each letter stands for an initial letter of a young lady (e.g. T-Theresa) and her picture in the aforementioned spirit with a veil-covered face. In a letter of 3/12/2004 the Plaintiff's legal representative then invited the First Defendant to refrain from using the tpca.cz domain any longer and to transfer the same to the Plaintiff. It is clear from the e-mail sent by the First Defendant to the Plaintiff on 15/10/2003 that the First Defendant offered the Plaintiff a lease of the domain concerned on the basis of a due contract. It follows from the examination of the witness M.S., former legal representative of the Plaintiff in the period from October to December 2004, that after finding out the existence of the domain in question impairing its goodwill the Plaintiff addressed the First Defendant and offered to purchase the domain for compensation of costs incurred for registration and maintenance. The First Defendant did not agree to that and referred to another investor that should approve the matter; the Defendant expected a profit from the domain concerned and required compensation in the form of regular monthly instalments or a single amount of CZK 500,000.

Furthermore the witness said that at that time he tried to get past the initial page of the domain concerned, when registration was required after the next click, but it could not be done; the witness was not provided any password and therefore the domain concerned did not provide any particular services. According to the extract from the database of trademarks administered by the Office for Industrial Ownership the Plaintiff had had the TPCA word trademark registered with a priority right since 25/10/2002. From newspaper articles that are part of the material on file for the period from the beginning of 2002 till the present time the fact that the abbreviation TPCA was used in the press in connection with the Plaintiff's car factory may be considered to have been proven. It also follows from the aforementioned material on file that the production started at the beginning of 2005.

On the basis of evidence produced as above the court reached the conclusion that the action is justified due to protection from unfair competition with reference to the provision of section 44 of the Commercial Code. The court is of the opinion that it is proven that just before the First Defendant registered his domain, it had been announced that the aforementioned two international car manufacturers would build a car manufacturing plant in the Czech Republic while the abbreviation TPCA was already used in this connection. This is quite a specific grouping of letters just typical for this abbreviation of the two foreign firms. The First Defendant uses the www.vopicka.cz marking for presentation of his business activities and did not provide any explanation of what had made him register the domain designated as TPCA. It was proven from the examination of the witness M.S., who had had no relationship to the Plaintiff for a long period of time and therefore the court did not have any reason to have any doubts about his testimony that the domain concerned had not provided any services even if it had presented them on the initial page. The court is of the opinion that the speculative intention of the First Defendant is proven by the aforementioned e-mail offer made by the First Defendant, by the testimony of the aforementioned witness and the circumstances found out preceding the registration of the domain concerned. It is not important then whether Jan Vopička as the First Defendant was the first to address the Plaintiff's company or not. This conclusion is also supported by a proven fact that for his pages the First Defendant used similar graphical and colour design of the abbreviation TPCA which was used by the founders of the Plaintiff at that time. The Defendant stopped using the domain concerned only on the basis of the preliminary measure issued at the beginning of 2005. Therefore he continued in his acts even after the Plaintiff had been registered in the Commercial Register. Thus the active legitimacy in the meaning of protection against acts of unfair competition should be assessed in a broader context than e.g. in the case of protection of a company name or the rights of a trademark holder. Similarly the competitive relationship according to the established practice of the courts may also be considered in a broader context than in a direct competitive relationship under certain circumstances. In the given case the First Defendant committed the aforementioned acts within economic competition and his purely speculative intention to register the domain concerned in order to achieve the financial benefit at the Plaintiff's expenses cannot be assessed otherwise than these acts are contrary to good manners of economic competition and could cause a loss to the Plaintiff as a competitor - firstly a financial loss as it was forced to register a domain with a different content, which meant increased efforts and financial costs, and the sexually explicit content of the initial page also certainly impaired the goodwill of the Plaintiff and of its founders, which is a non-material loss. Therefore the court admitted the action in its full scope, namely also with respect to the Second Defendant, which did not object to its right to transfer the domain to the Plaintiff during the proceedings. The court did not find the other points of the action justified as the TPCA marking is not contained in the Plaintiff's company name registered in the Commercial Register and the application for registration of the trademark was filed only after the domain concerned was registered. Nevertheless the conclusion may be reached with reference to the provision of section 154 of the Code of Civil Procedure that if the ordered preliminary measure was not taken and the First Defendant still operated the domain concerned referring to a sexually explicit content, he would certainly impair the goodwill of the Plaintiff which has built one of the largest car

factories in the Czech Republic and started its operation in the meantime.

Statement III. on the costs of the proceedings is justified by the provision of section 142/1 of the Code of Civil Procedure. The Plaintiff was awarded compensation for the court fee in the amount of CZK 3,500 and the remuneration for legal representation according to Decree No. 484/2000 Coll. in the amount of CZK 6,200, remuneration for the preliminary measure in the amount of CZK 1,200 and 5 times an overhead lump-sum, in the total amount of CZK 11,275. The Plaintiff did not require any compensation for the costs of the proceedings from the Second Defendant and the court therefore decided as stated in statement IV.

While the decision is being studied, it is necessary to take into account the fact that the decision contains not only the court's statement itself and its justification but also a summary of claims made by individual parties while the court did not have to deal with some of the claims at all (e.g. while ordering a preliminary measure) and these claims only represent the legal opinion of the relevant party and not the conclusion reached by the court.

The decision made by the court cannot apply automatically to other cases (although similar with regard to the facts of the case) and the association CZ.NIC recommends that a particular case should be consulted with experts on domain names and with lawyers.