INTERLOCUTORY JUDGEMENT

On Jun 14, 2007, the Regional Court in Hradec Králové decided on the motion of the petitioner: S. against the defendant: 1. Š.P., 2. CZ.NIC on the motion to render an interlocutory judgement as follows:

1. The defendant 1 shall be obliged to refrain from using the domain name "x+y+z.cz" and to dispose of it except for its transfer to the petitioner.
2. The defendant 2 shall be obliged to refrain from such conduct that would allow the defendant 1 to dispose of the domain name "x+y+z.cz" except for its transfer to the petitioner.
3. The petitioner is obliged to file a petition on the merit within 30 days.
4. The court shall consider the obligation specified in clause III to be met upon delivery of a document confirming that the petitioner filed a petition with the Arbitration Court by the Economic Chamber.

The petitioner proposed to the court to render an interlocutory judgement against the defendant imposing an obligation to refrain from using the domain name and acts connected with its disposition.

He described the grounds of his proposal at the web site "x+y+z.cz" and "a+b+c.cz" and as evidence, he presented extracts from these sites, documents proving the legal status of the petitioner and the defendant 1, extracts from the database of trademarks x+y+z, extracts from the database of domains of the defendant 2 and the rules of the defendant 2. He described the conduct of the defendant to be an unfair competition, specifically misleading advertising, conduct contributing towards mistaken identity and parasitic use of reputation. He further claimed a breach of the rights from trademarks by the use of marking identical with the trademark whereas the petitioner did not give his consent to the defendant 1 with such use.

From the presented evidence - see above - and by inspecting the incriminated web sites, the court verified that the defendant 1 uses these sites in the described manner, i.e. the interested person is redirected from the web site "x+y+z.cz" to the web site "a+b+c.cz". This conduct may accomplish the elements of both the so-called general clause according to Section 44 Clause 1 of the Commercial Code and some of the bodies considered in provisions of Sections 45, 46, 47 or 48 of the quoted act and also endanger the rights according to Section 8 Clause 1 of Act No. 441/2003 Coll. In such cases, it is necessary to regulate the relationship of the parties to the proceeding by an interlocutory judgement, in particular of the danger of delay is imminent, if there is an urgent need to regulate the relationship or prevent incurrence of damage or other loss, as concerns this, see also R: 30/93, p. 214, C.H.BECK, Commentary to the Civil Code of Procedure, whereas rendering an interlocutory judgement may not be ruled out also in such a case when the petitioner sues for the same as in the petition if refraining from such conduct is concerned that accomplishes the elements of unfair competition - see R : 46/96 ibid.

According to Section 74 et seq., the court considers the conditions for rendering an interlocutory judgement in the extent of imposing an obligation to remove the defective state of affairs - see Section I of the verdict, to be fulfilled and hence it satisfied the motion to render and interlocutory judgement and imposed the obligation on the defendant 1 to refrain from using the domain name. The obligation imposed on the defendant 2 in Section II is of informative nature.

In consideration of the fact that the petitioner only alleged but did not prove filing a of petition with the Arbitration Court, the court ordered him to file the petition in Section III or at least to deliver a proof of its filing in Section IV according to Section 76 Clause 3 of the Court of Civil Procedure.

Except for the association CZ.NIC, the parties to the proceedings are identified by the first letters of

heir surnames or business names only. The concerned domain names are replaces with a sequence x+y+z.cz. If the wording of the decision mentions also other domain names, they were randomly replaced with other symbol sequences. Except for the data allowing identification of the parties to the proceedings or other persons and domain names, as few changes were made in the wording of the decision as possible. Any relationship of the applied abbreviations and abbreviating symbols with persons and domain names that actually apply a marking using such abbreviations or abbreviating symbols, is purely accidental.

When studying the judgement, it is necessary to bear in mind that it includes not only the verdict and its grounds but also a summary of allegations of individual parties whereas the court might have decided not to consider some of them at all (for example when an interlocutory judgement is rendered) and hence these allegations represent only a legal opinion of the relevant party and not a conclusion by the court.

The decision of the court may not be automatically applied to other cases (though similar in their facts) and the association CZ.NIC recommends to consult a specific case with experts on domain names and with lawyers.