JUDGEMENT

The High Court of Justice in Praha decided on 19 November 2008, under ref. No. 3 Cmo 112/2008-107 with respect to the lawsuit between the Plaintiff, UNILEVER ČR, spol. s r.o. and the Defendants 1/ Pavel Šimon, 2/ CZ.NIC, z.s.p.o., 4/ HERA, spol.s.r.o, for the protection against unfair competition and transfer of domains, responding to an appeal filed by Defendants 1/ and 2/ against the Judgement of Municipal Court in Prague of 13 December 2007 ref. No. 2 Cm 105/2004-75, as follows:

1. **The judgement of the court of first instance is hereby modified in verdict I, i.e. the petition claiming the obligation of Defendant 1 to abstain from using the dove.cz and hera.cz domain names and transfer the registration of these domain names to the Plaintiff is dismissed; while the judgement in verdict II is hereby confirmed.**

2. **In the relationship between the Plaintiff and Defendant 1, none of the parties involved shall be entitled to any compensation of the costs of the proceedings before the courts of both instances.**

3. **The Plaintiff shall pay Defendant 2 the costs of the proceedings, to the Defendant's legal representative, in the amount of CZK 8,627.50, and the costs of the appeal proceedings in the amount of CZK 5,712.00, within three days following the legal validity of the judgement herein.**

In the above-specified judgement, the first instance court ordered Defendant 1, in verdict I, to abstain from using the domain names "dove.cz" and "hera.cz" and to remedy the detrimental situation by transferring the registration of both domain names specified above to the Plaintiff, within three days following the legal force of the judgement; in verdict II, the court ordered Defendant II to transfer the registration of the domain names "dove.cz" and "hera.cz" to the Plaintiff within three days following the legal force of the judgement; in verdict III, the court refused the petition claiming that Defendant 4 is ordered to abstain from using the domain name "hera.cz" and remedy the detrimental situation by transferring the registration of the domain name to the Plaintiff; in verdicts IV and V of the judgement the court decided about the costs of the proceedings by ordering Defendant 1 to pay the Plaintiff CZK 13,359.00, and did not grant Defendants 2 and 4 any compensation of the costs of the proceedings. In the justification of the judgement, the first instance court described the reasons behind the petition, the Defendant's defence, the course of the proceedings, and the court's findings on which the court based its conclusions. In the proceedings, the Plaintiff claimed that Defendant 1 is imposed an obligation to abstain from using domain names algida.cz, dove.cz, hera.cz and remedies the detrimental situation by transferring the registration of these domain names to the Plaintiff, against the remuneration of the costs associated with the domain name registration, and that Defendant 2 is imposed an obligation to transfer the registration of domain names algida.cz, dove.cz, hera.cz to the Plaintiff (or that such an obligation is imposed on the registrar, INTERNET.CZ, a.s.) By filing the petition, the Plaintiff complied with an obligation previously imposed in a preliminary ruling order, in which Defendant 1 was imposed an obligation to abstain from any disposal of the domain names concerned, and Defendant 2 was imposed an obligation not to enable the transfer of the domain names to any third parties, except for the Plaintiff. In the justification of the petition, the Plaintiff claimed to be a lawful user of the "algida" word mark and the composite trademark, user of the "hera" word mark and the composite trademark and the "dove" word mark and the composite trademark - the trademarks were owned by the parent company in the Netherlands, which had granted the right to use the trademarks to the Plaintiff on the basis of Licence Agreements and agreed with the Plaintiff's claiming of the trademark rights under the proceedings. Having attempted at registering the domain names corresponding to the wording of the trademarks under the .cz national domain, the Plaintiff discovered that all three domain names were held by

Defendant 1, i.e. one of the entities speculating with domain names and registering them for further resale. The Plaintiff also offered to buy the domains from Defendant 1; however, Defendant 1 was only willing to sell the domain names against the payment of 1 x 100 thousand and 1 x 200 thousand Czech crowns. The Plaintiff considers the action of Defendant 1 unlawful, constituting a breach of trademarks and unfair competition. Because the general public expects that the Plaintiff will present its offers under the domain names specified, the Plaintiff is thus unable to present itself through communication channels anticipated by potential customers, thus suffering from increasing detriment. The Plaintiff's claims are presented as claims of a person affected by unfair competition of Defendant 1 in accordance with the provisions of Section 53 of the Commercial Code (Act 513/1991 Coll., as amended, hereinafter the „ComCo"); Defendant 2, acting as the national registrar (and similarly Defendant 3, acting as a contractual registrar) of domain names, is an entity through which Defendant 1 pursued its unlawful steps (domain name registration) and through which the detrimental situation may be remedied.

Defendant 1 claimed that the petition is dismissed, arguing that the Plaintiff did not hold exclusive rights for the dove and hera designations - these are words for which other entities may also claim their rights (based on the fact that dove is a common English word and hera is the name of a Greek goddess Hera), and that these expressions were also part of third parties' trademarks. The Plaintiff presents itself on the Internet under domain names unilever.cz, algidacity.cz, dovekosmetika.cz, does not need the domain names in question and was able to register them in a timely manner (while the Plaintiff registered the unilever.cz domain in 1998, Defendant 1 registered the domain names concerned in 2000). The Plaintiff did not prove that Defendant 1 used the domain names and that this constituted the Plaintiff's trademark rights - Defendant 1 has never offered products or services under the domain names in question.

Defendant 2 explained its position within the process of domain name registration under the .cz national domain and explained the inability to prevent from the registration of domain names which may be in conflict with third parties' rights; Defendant 2 was therefore not liable in this respect in accordance with the applicable registration rules. Defendant 2 expressed its readiness to comply with the court's order regarding the transfer of the domain names concerned, which is generally evident from the registration rules. Defendant 3, i.e. contractual registrar INTERNET.CZ, a.s., responded in basically the same manner.

A conciliation agreement was entered into on 28 November 2006, regarding the use and transfer of the algida.cz domain name, Defendant 1 undertook to transfer this domain name to the Plaintiff by 13 December 2006. Because another domain name, hera.cz, was transferred to HERA spol. s r.o. in the meantime, Defendant 1 claimed a lack of passive legitimation with respect to this domain name - in addition to the defence specified above. The court decided, with respect to a motion of the Plaintiff who before that withdrew its petition against Defendant 3 (INTERNET.CZ, a.s.), by permitting the accession of the acquirer of the hera.cz domain name to the proceedings as Defendant 4, and the corresponding amendment to the petition. However, Defendant 4 - HERA spol. s r.o. - claimed the lack of passive legitimation, stating that it did not approve the registration of the domain name specified or the transfer thereof to HERA spol. s r.o., and that HERA spol. s r.o. was not the valid holder of the domain name.

The first instance court discovered from an extract from a trademark database, information submitted by the Industrial Property Office and the consent of Unilever N.V., that the Plaintiff's claims regarding hera and dove trademarks and the Plaintiff's right to use such trademarks and raise claims in connection with the breach of such trademark rights corresponded to the reality, and came to the conclusion that Defendant 1 had been the holder of the dove.cz domain since 17 December 2000, and was the holder of the hera.cz domain from 7 December 2000 to 20 September 2004, when the domain name was transferred to Defendant 4 (however, Defendant 1 continued to

act as so-called administrative contact with respect to the registrar). The court came to a conclusion on the basis of the correspondence between the Plaintiff and Defendant 1 that Defendant 1 requested the payment of certain prices for the transfer of the domain name registrations to the Plaintiff. Having summarized the applicable provisions of the domain name registration rules binding for the parties involved, pursuant to which Defendant 2 shall cancel the delegation or registration of the domain name on the basis of an enforceable court judgement or arbitration court award, the court came to the conclusion that the petition claiming the imposing of an obligation to abstain from using both domain name concerned by Defendant 1 and to transfer the domain names to the Plaintiff was justifiable, with respect to the protection against unfair competition. The activities of Defendant 1 can be classified under Section 44 (1) of ComCo, as a result of the registration of the dove.cz and hera.cz domain names, identical to the wording of the trademarks used by the Plaintiff, without Defendant 1 using such domain names for business activities within the Internet. The court also concluded the speculative intentions of Defendant 1 and the conflict with the good manners of economic competition from the correspondence between the parties involved and the transfer of the hera.cz domain name to Defendant 4. Owing to the non-existent consent of Defendant 4 with the transfer and the lack of the authorization of Defendant 1 for such action, the court concluded that the transfer was invalid. The Plaintiff was therefore right to raise delaying claims against Defendant 1 and claims for the remedying of the detrimental situation with respect to both disputed domain names. With respect to the obligation to change the existing registration imposed on the existing holder, a corresponding obligation was also imposed on the national domain registrar, i.e. Defendant 2. Because the hera.cz domain was not validly transferred to Defendant 4, the court considered the defence of Defendant 4 (claiming the lack of passive legitimation with respect to the proceedings) as justifiable and therefore refused the petition with regard to Defendant 4. In conclusion, the court justified its verdicts regarding the settlement of the costs of the proceedings between the Plaintiff and Defendant 1; as regards the relationship between the Plaintiff and Defendant 2, the court referred to the fact that the winning Plaintiff waived the compensation for costs of the proceedings with respect to this defendant; the court explained the fact that no compensation of costs was awarded to Defendant 4 by referring to the passivity of Defendant 4 and the circumstances constituting causes under Section 150 of the Civil Procedure Code.

Defendant 1 appealed against the judgement, as regards the conforming verdicts in the matter and related verdict IV regarding the costs of the proceedings; the appeal court considered Defendant 1 a person authorized to file an appeal against verdict II (in addition to verdict 1), imposing an obligation on Defendant 2; however, the court also decided that Defendant 1 was entitled to continue to hold both domain names (i.e. the rights of Defendant 1 were infringed); verdict V regarding the costs of the proceedings was also appealed against by Defendant 2, to an extent applicable to such Defendant 2. It is therefore true that the judgement was not appealed against and became legally effective as regards negative verdict III and related verdict V regarding the costs of the proceedings with respect to the Plaintiff and Defendant 4.

In the appeal, Defendant 1 objected that the first instance court did not consider the possibility of a non-commercial use of both domain names which would eliminate the infringement in the Plaintiff's trademark rights - according to the appellant's opinion, the situation differs from the possibility of using the algida designation, therefore Defendant 1 acknowledged this and voluntarily transferred the algida.cz domain name to the Plaintiff. Defendant 1 suggested that the appeal court changes the judgement as regards the appealed verdicts, and that the petition against Defendant 1 is dismissed. Defendant 2 suggested in the appeal that the appeal court changes the judgement as regards the verdict concerning the costs of the proceedings, and awards compensation of such costs to Defendant 2, referring to the opinion presented by Defendant 2, i.e. that Defendant 2 would make a change in the domain name registration on the basis of a lawful court judgement, irrespective of whether or not Defendant 2 is a party involved in the proceedings. The participation

of Defendant 2 in the proceedings was not necessary and because Defendant 2 was not liable for any violation of the Plaintiff's rights, there was not reason for the court not to award the compensation of the costs associated with the involvement of Defendant 2 in the proceedings.

Acting as an appeal court, the High Court of Justice in Praha reviewed the appealed judgement of the first instance court, in response to appeals filed by Defendant 1 and 2 in accordance with Section 212 et seq. of the Civil Procedure Code - Act 99/1963 Coll., as amended, hereinafter the "Civil Procedure Code" - to an extent specified above, and came to the following conclusions, based on evidence supplemented pursuant to Section 213 (4) of the Civil Procedure Code:

It is especially necessary to point out that the appeal court was of the opinion that the first instance court based its judgement on facts ascertained to a necessary extent, the appeal court accepted such ascertained facts for its judgement and based its final judgement on such facts, referring to the facts for briefness.

Within the scope of the appeal reasons presented during the hearing (Section 20S (3) of the Civil Procedure Code), Defendant 1 claimed other facts, stating and proving that the facts ascertained by the first instance court cannot suffice as of the date of the appeal court's hearing (Section 205 (2) (f) of the Civil Procedure Code). The appeal court accepted the evidence presented by Defendant 1 (Section 212a (3) of the Civil Procedure Code) and processed evidence pursuant to the proposal of Defendant 1. Defendant 1 stated that the Plaintiff's claims raised through the petition - i.e. to "transfer the registration" (as ordered in the judgement verdict) of domain names - have been fulfilled by Defendant 1, i.e. that Defendant 1 submitted consent to Defendant 2 (the registrar) with the transfer of the domain names, and that Defendant 1 cannot take any further legal action in this context; however, the domain names were not transferred to the Plaintiff through Defendant 2. The appeal court found out from a document addressed to Defendant 2, dated on 14 October 2008, identified as "Re: Change in "dove.cz" and "hera.cz" Domain Name Holders" and signed by Defendant 1, including a signature authentication clause, that Defendant 1 agrees with the transfer of both domain names to the Plaintiff; the document includes a confirmation of acceptance. Defendant 2 confirmed that Defendant 2 received the consent with the domain transfer from Defendant 1 on 15 October 2008; however, the Plaintiff has not submitted the necessary consent with the transfer of the domain names to the Plaintiff. The Plaintiff did not make any comments with respect to the instruction of Defendant 1 regarding the transfer of the domain names during the appeal court hearing and did not take any procedural action, either.

The subject matter of the proceedings included the Plaintiff's request that an obligation is imposed on Defendant 1 to abstain from using both domain names and to transfer their registration to the Plaintiff, and to order Defendant 2 to transfer the domain name registration to the Plaintiff. As is evident from the nature of the matter and the procedure of domain name transferring in accordance with the Domain Name Registration Rules, binding for the parties involved (or binding for both Defendants until the Plaintiff's consent), on which the first instance court based its opinion, the role of the existing domain name holder, upon the transfer thereof to a new holder via the registrar, is limited in terms of legal action to submitting written consent with the transfer of the domain name to the new acquirer and the delivery of such consent to the registrar (see Article 5.1 of the valid Rules). The appeal court came to a conclusion, on the basis of the collected evidence, that Defendant 1 did all that may be reasonably required to meet the obligation which the Plaintiff claimed to be imposed on Defendant 1 through the judgement, in connection with "remedying the detrimental situation in the form of the transfer of the registration" of both domain names, and that the fact that the transfer of both domain names had not been technically completed is not caused by reasons on the side of Defendant 1. If the registrar has written consent from the existing holder of both domains, than in order to fulfil what the Plaintiff claims (i.e. the transfer of the

registration of both domain names to the Plaintiff), it is sufficient to leave it up to the registrar to actually (technically) carry out the re-registration pursuant to verdict II of the judgement.

The appeal court - whose decision is based on the decisive situation at the time of the delivery of the judgement (Section 154 (1) of the Civil Procedure Code) - concluded that the conditions have not been fulfilled for imposing an obligation on Defendant 1 to abstain from further using the domain names because Defendant 1 proved by submitting consent to the registrar regarding the transfer of the domain names to the Plaintiff (or by submitting evidence thereof) that Defendant 1 was not using the domain names and there is no risk or fear that Defendant one would continue using the domain names or intended to use them. The appeal court concluded that the conditions have not been fulfilled for imposing an obligation on Defendant 1 to remedy the detrimental situation "in the form of the registration transfer", because Defendant 1 has already taken the applicable legal action. The petition claiming that the obligations specified above are imposed on Defendant 1 is therefore no longer justifiable and because the first instance court imposed such obligations on Defendant 1 in verdict I of the judgement, the appeal court changed the judgement to this extent according to Section 220 (1) (b) of the Civil Procedure Code and dismissed the petition. However, for reasons explained above, the appeal court confirmed - pursuant to Section 219 of the Civil Procedure Code - the obligation of Defendant 2 (registrar) to technically carry out (complete) the re-registration of the domain names, according to the previously submitted instruction of Defendant 1, contained in verdict II of the judgement.

Pursuant to Section 224 (2) of the Civil Procedure Code, the appeal court decided about the costs of the proceedings among the parties involved, as regards the relationship between the Plaintiff and Defendant 1, concluding (while reflecting the fact that Defendant 1 did not succeed before courts of both instances as regards the claim specified in verdict II of the judgement, succeeded as regards the claims included in verdict I and the part subject to the conciliation is subject to the provisions of Section 146 (1) (b) of the Civil Procedure Code) that none of the parties involved has succeeded to such an extent that my justify the compensation for the costs of the proceedings (Section 224 (1), Section 142 (2) of the Civil Procedure Code). As regards the relationship between the Plaintiff and Defendant 2, the appeal court concluded the justifiability of the objections raised by this Defendant according to the content of the appeal. Defendant 2 did not violate any legal or other liability with respect to the Plaintiff that may constitute an separate claim of the Plaintiff, or a claim which may be raised independently - i.e. independently of the participation of other parties in the proceedings and other claims raised against them - against Defendant 2, for the transfer of the domains from Defendant 1 to the Plaintiff. As Defendant 2 stated, Defendant 2 declares in the Domain Name Registration Rules (binding for registrars and the registering persons - domain name holders) its commitment to change registration on the basis of a court's lawful order, obliging the existing holder to transfer the domain to a third party, irrespective of whether or not Defendant 2 is a party to the proceedings. It is therefore not necessary for Defendant 2 to be involved in the proceedings regarding the matter itself, i.e. the transfer of domain names. The appeal court therefore concluded that Defendant 2 was not the cause for a motion to be filed for the commencement of the proceedings with respect to the matter concerned, and therefore Defendant 2 has the right to claim the Plaintiff's compensation of the costs of the proceedings before courts of both instances, in accordance with the provisions of Section 143 of the Civil Procedure Code. Defendant 2 is therefore entitled to compensation under Section 137 of the Civil Procedure Code and the above-mentioned Section 143 of the Civil Procedure Code for the proceedings before the court of the first instance (no reasons were identified for not granting such compensation to the Defendant according to Section 150 of the Civil Procedure Code, to which the first instance court referred) in the amount of CZK 8,627.50, in accordance with Section 8 (b) of Edict 484/2000 Coll., in wording valid before 31 August 2006 (CZK 6,200), also including 2 overhead refunds of CZK 75.00 (acceptance and statement action) and 3 x CZK 300.00 (for participation in two court hearings and submitting written statements) according to Section 13 (3) of Edict 177/1996 Coll., in previous

wording and the currently valid wording (i.e. from 1 September 2006), plus the applicable DPH. For the appeal proceedings, Defendant 2 shall be entitled to the compensation of the costs in the amount of CZK 5,712.00, in accordance with the valid wording of Edict 484/2000 Coll., Section 8, Section 18 (1) (1/2 of CZK 9,000.00), and the lawyer's fee - Edict 177/1996 Coll. (CZK 300.00 per single action - participation in the hearing), in the valid wording, plus the applicable VAT.

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.