INTERLOCUTORY JUDGMENT

The regional court in Usti nad Labem ruled on 3 October 2002 in the legal case of the plaintiff: **LTAG** against defendants: 1. **CT**, 2. **CZ.NIC**, on a motion to issue an interlocutory judgement by issuing an interlocutory judgement according to which defendant No. 2 is liable to carry out all measures (blocking) in order to prevent handling of the second level domain "**x+y+z.**" registered under the top level "cz", particularly to prevent defendant No. 1 from handling the domain in any way - namely transfer of rights and titles to the domain to a third person, with the exception of transfer from defendant No. 1 to the plaintiff. The plaintiff shall file to commence hearing of the case within 30 days of effectuation of this resolution.

In the motion, delivered to the court on 2 October 2002, the plaintiff requested the court to issue an interlocutory judgement imposing on defendant No. 2 the obligation specified in the resolution of the interlocutory judgement for purposes given in detail. In accordance with Article 74, paragraph 1 of the Code of Civil Procedure, the judicial panel chairman may order an interlocutory judgement before the commencement of the hearing if necessary to arrange relationships of litigants or should there be apprehension of a threat to execution of a court verdict. In accordance with Article 76, paragraph 3, first clause before semicolon, Code of Civil Procedure, the chair orders the plaintiff, in issuing of an interlocutory judgement, to file for commencement of a hearing within a term specified by the panel.

The basis for the issue of interlocutory judgement to arrange relationships of litigants is a demonstration of the necessity of such measure, while decisive circumstances need to be at least verified. In this particular case the court has concluded that the plaintiff is the owner of registered trademark "**x+y+z**", registered on 18 September 1996, under registration number 123456 with World Intellectual Property Organization, as demonstrated in the statute of the entity, verified by a stamp of the Bureau of Industrial Property of the Czech Republic. Furthermore, the court considers verified that defendant No. 1 is the owner of Internet domain "**x+y+z.cz**", from 22 July 1999. Excerpts from the Register of Companies of both the plaintiff and Defendant No. 1 demonstrate that the sphere of business of both is the operation of travel agency. In a letter dated 23 November 2001, the plaintiff appealed to defendant No. 1 to terminate use of the notation "**x+y+z**" and to transfer the domain "**x+y+z.**" to the plaintiff. Defendant No. 1, in a declaration dated 15 January 2002, stated that the domain used by the defendant is not exactly identical to the registered trademark of the plaintiff; the defendant further stated that the presentation at the domain "**x+y+z.cz**" offered no products or services, and gave the opinion that the defendant had not been as popular in the Czech Republic as would render the Internet domain "**x+y+z.cz**" capable of misleading Czech clients to mistake it for a presentation of the plaintiff. The declaration of defendant No. 1 that the Internet presentation "**x+y+z.cz**" offers no products or services is true and has been verified by the court. Nevertheless, nearly immediately after loading of the presentation, the web browser is redirected to a web page "**x+a+b.cz**", which presents an offer of tours by defendant No. 1. It is therefore apparent that the page "**x+y+z.cz**" enables viewing of the tour offer of defendant No. 1, however mediated. The opinion of defendant No. 1 that the presentation "**x+y+z.cz**" is incapable of creating the impression of being a presentation of the plaintiff is not shared by the court, since it is commonly known that the web page is available worldwide, therefore by clients outside the Czech Republic as well. The objection that the web page "**x+y+z.cz**" and particularly the redirect page "**x+a+b.cz**" are in the Czech language cannot hold, since particularly in Germany there can be expected many people with knowledge of the Czech language and at the same time familiar with the plaintiff, and therefore such persons may take the Internet presentation "**x+y+z.cz**" for a presentation by the plaintiff in the territory of the Czech Republic and namely for an offer of tours in the country. The court has therefore resolved that the web page "**x+y+z.cz**" may be identified with the registered trademark of the plaintiff "**x+y+z**", since the

only differential character is the apostrophe after the letter "x", which has not been considered by the court as sufficient differentiation. With respect to the fact that the plaintiff has been owner of the registered trademark "**x+y+z**" already since 1996, while defendant No. 1 registered the domain name "**x+y+z**" as late as 1999 and use of such domain may be an act of unfair competition, to be subject to proof in hearing of the case, the court considers it necessary to temporarily arrange relationships of the litigants in a manner given in the verdict I. of this resolution. The court considered the fine print filed by the plaintiff as too broad since it banned transfer of rights and titles to the domain "**x+y+z**" to any person, the plaintiff included. The court thus excluded the plaintiff from the circle of persons to whom the ban of transfer of rights and transfer to the domain "**x+y+z**" applies. Since defendant No. 2 is an entity which is exclusively entitled to effectuate the transfer of rights to domain names, the obligation to abstain from such handling of the domain "**x+y+z**" had to be imposed on this defendant. The court also took into account in reaching the verdict the significant fact that defendant No. 1 does not necessarily require the domain "**x+y+z**" for presentation of products and services, for it serves merely for redirection to the Internet presentation "**x+a+b.cz**".

Since the court sustained the motion to issue the interlocutory judgement, it has ordered the plaintiff to file for commencement of hearing the case within the time period considered appropriate by the court.

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*Except for CZ.NIC, all participants of the proceedings are identified with the first letters of their surnames or trade names. The domain name in question is replaced with a **wwwx+y.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 using such abbreviations or dummy symbols for purposes of identification is merely accidental.*

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 individual parties involved, and that the court may not have been concerned with some of these claims at all (e.g. with respect to the issue of interlocutory judgement) and that such claims represent merely a 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.