INTERLOCUTORY JUDGMENT

On 27 November 2002, the Regional Court in Brno issued a verdict with respect to the action between the Plaintiff, R., and the Defendants, 1. M. and 2. CZ.NIC, concerning the motion for preliminary rulings, as follows:

I. As of the day on which this verdict is delivered, Defendant No. 1 shall abstain from using domain name **x+y+z.cz**.

II. As of the day on which this verdict is delivered, Defendant No. 1 shall abstain from transferring domain name **x+y+z.cz** to any third parties.

III. As of the day on which this verdict is delivered, Defendant No. 1 shall abstain from establishing a right of lien or pre-emption with respect to domain name **x+y+z.cz** for the benefit of third parties.

IV. As of the day on which this verdict is delivered, Defendant No. 1 shall abstain from enabling third parties to make use of domain name **x+y+z.cz** (either for or without a consideration).

V. Defendant No. 2 shall abstain from carrying out any changes to the registration of domain name **x+y+z.cz**, except for its transfer from Defendant No. 1 to the Plaintiff.

VI. Within three days of delivery of this verdict, the Plaintiff shall pay CZK 2,000 in duty stamps for court fees concerning the preliminary ruling procedures.

Based on a motion made on 19 November 2002, delivered to the court on 21 November 2002, the Plaintiff entered a claim that the court adopt a resolution on the matters, together with a preliminary ruling arising from unfair competition and a breach of trademark rights. The Plaintiff justified its motion as follows:

The Plaintiff is a trading company based in Austria, incorporated in the Commercial Register and involved in the processing and sale of minerals. Based on a right of priority, the Plaintiff has been using international word and combined trademark since 3 April 1997. This trademark, X+Y+Z, has become generally known and the products offered by the Plaintiff and distributed in the Czech market are generally associated with this name.

Among other activities, Defendant No. 1 offers intermediation in sales and services, and the purchase of goods for sale and resale. During a limited period, approximately from summer 1999 to February 2001, Defendant No. 1 acted as distributor for the Plaintiff's products in the Czech Republic, pursuant to a verbal agreement concerning the delivery of goods. In February 2001, the Plaintiff decided to terminate this distribution arrangement. In early 2002, the Plaintiff concluded a new verbal agreement concerning the delivery of goods with I., s.r.o. (Ltd.)

Defendant No. 2 is an interest association of legal entities, acting as the administration of the national domain of the highest level, i.e. ".cz" and entitled to register second level domains. Domain names are registered only if a standard agreement submitted by Defendant No. 2 is accepted, also comprising the "Rules for the Registration of Domain Names in the .cz Domain".

The Plaintiff discovered that Defendant No. 1 registered at Defendant No. 2 and has since been using domain name **x+y+z.cz**. Within its website at www.**x+y+z.cz**, Defendant No. 1 claims to be the exclusive and sole distributor of X+Y+Z goods, which is a false statement, as the cooperation between the Plaintiff and Defendant No. 1 was terminated early in 2001. Defendant No. 1 also specifies its contact address for the Czech Republic. Moreover, Defendant No. 1 does not specify the area in which it should allegedly act as the exclusive and sole distributor.

In a letter dated 4 October 2002, the Plaintiff requested that Defendant No. 1 abstain from any further use of the **x+y+z.cz** domain name and to adopt measures by 31 October 2002, at the latest, in order to transfer this domain name to the Plaintiff. The Plaintiff repeated its claim that Defendant No. 1 abstain from its malfeasance and carry out the required measures in a letter dated 7 November 2002. However, Defendant No. 1 failed to respond to these requests.

The facts that the preliminary ruling is exigent and that the activities carried out by Defendant No. 1 jeopardize the business activities of the Plaintiff, including a threat of loss and corruption of the trademark, have been substantiated on the following:

- Defendant's website,
- Letters and requests sent by the Plaintiff to Defendant No. 1,
- Other documents described by the court hereinafter.

Pursuant to the presented documents, the court considers the following Plaintiff's claims to be substantiated:

According to an extract dated 13 November 2002, the Plaintiff is a trading company, incorporated on 25 January 1996 in Section FN XXXXXXp of the Commercial Register kept on file at the Regional Court in St. Pölten, Austria, involved in the processing and sale of minerals.

According to the presented extract, Defendant No. 1 was incorporated on 17 April 1996 in Section X, Insert XXXXX of the Commercial Register kept on file at the Regional Court in Brno, with the scope of enterprise comprising e.g.:

- Intermediation of sales and services - since 17 April 1996,
- Purchase of goods for sale and resale - since 17 April 1996,
- Since 17 September 2002 - purchase, storage and sale of mass-produced pharmaceuticals, ...,
- Since 17 September 2002 - production of vitamins and mineral products.

The parties of the action are therefore considered competitors, as they are involved in the sales of products in mineral form.

According to the extract from the register of interest associations of legal entities, kept by the Department of Internal Affairs, Prague 6 City District Office, Defendant No. 2 was incorporated on 27 May 1998. Its scope of business enterprise is to carry out registration of second level domain names under the domain of highest level - CZ, operate nominal servers for the CZ domain and to ensure operation of nominal servers under the CZ domain.

According to an extract from the ROMARIN database, kept by the World Intellectual Property Organization, the Plaintiff has been the holder of an international combined trademark, X+Y+Z, since 3 April 1997, registered under number 123456, with a right of priority. The protection includes words and representations, with a particular emphasis on the combination of bright and dark green colours. This trademark is also registered within the territory of the Czech Republic for category No. 05 of products and services, particularly for pharmaceutical nutrients, pharmaceutical powders, drugs, tablets, including mineral tablets, pharmaceutical and therapeutic starch capsules, special subsistence for patients and convalescents, all the aforesaid products for therapeutic purposes, clay mineral soil for therapeutic purposes, therapeutic packages, therapeutic baths and therapeutic plasters.

The Plaintiff is making legitimate use of its trademark with respect to its products and business activities and the Plaintiff's products are also associated with this trademark in the Czech market,

where they are distributed.

Based on the correspondence between the Plaintiff and Defendant No. 1, dated 20 February 2001, 7 May + 4 October + 7 November 2002, the court understands and acknowledges that Defendant No. 1 acted as distributor for the Plaintiff's products in the Czech Republic, pursuant to a verbal agreement concerning the delivery of goods, during a limited period, approximately from summer 1999 to February 2001, that in February 2001, the relationship between the Plaintiff and Defendant No. 1, as distributor of Plaintiff's products in the Czech Republic, was terminated by the Plaintiff, and that in early 2002, the Plaintiff concluded a new verbal agreement conceming the delivery of goods with I., s.r.o. (Ltd.).

Pursuant to an extract from the domain register, dated 7 November 2002, and a printout of the virtual "web pages", the court understands and acknowledges that Defendant No. 1 registered the **x+y+z.cz** domain name with Defendant No. 2 on 13 October 2000, that it has been actively using the domain name and that the website specified above still includes the Plaintiff's trademark, in full or its textual part.

According to an extract from the register of interest associations of legal entities, Defendant No. 2 is an interest association of legal entities, acting as the administration for the national domain of the highest level, i.e. ".cz" and to register what are known as second level domains.

According to a printout of the standard agreement conceming the registration of domain names, including the "Rules for the Registration of Domain Names in the .cz Domain", the court understands and acknowledges that

- In order to register the domain name for the benefit of Defendant No. 1, Defendant No. 1 was obliged to accept the standard agreement submitted by Defendant No. 2, including the "Rules for the Registration of Domain Names in the .cz Domain", which form an integral part of the agreement,
- By accepting the provisions of Article 6.2. of the agreement specified above, Defendant No. 1 expressly undertook to make sure that the registration of the domain name and the use of this domain name (whether direct or indirect) would not violate any rights of third parties.

The right to use a trademark may be provided in the form of a licence agreement, effective on third parties upon its incorporation in the trademark register, at the request of the trademark owner. However, no such incorporation has been proven.

By registering and using the **x+y+z.cz** domain name**,** identical to the trademark registered by the Plaintiff, Defendant No. 1 has wrongfully intervened in the Plaintiff's rights concerning the trademark.

According to the website at www.**x+y+z.cz**, the court understands and acknowledges that Defendant No. 1 claims to be the exclusive and sole distributor of Plaintiff's products.

Based on the letters dated 4 October 2002 and 7 November 2002, the court understands and acknowledges that the Plaintiff has twice requested that Defendant No. 1 abstain from any further use of the **x+y+z.cz** domain name and to adopt all necessary measures in order to transfer the domain name in question to the Plaintiff. Defendant No. 1 appears to have failed to respond to these requests, and it is evident according to the printouts of the current web pages that the wrongful activity of Defendant No. 1 has continued.

It appears that in the Czech market, the Plaintiff's products are traded by more entrepreneurs. However, none of them seem to be violating the Plaintiff's rights related to the X+Y+Z trademark.

Those who choose a name for their Internet domain can choose from a wide spectrum of possibilities and should not attempt to use a name that others are using for their products, or even as an incorporated international trademark.

According to the aforesaid findings of the court, the activities of Defendant No. 1 have been considered as competitive activities, violating the trademark rights of the Plaintiff, which can be classified as unfair competition, as the activities are in conflict with the fair principles of competition and are likely to cause detriment to the Plaintiff as a competitor of Defendant No. 1.

By registering and using the domain name identical to the Plaintiff's duly registered and used trademark, the activities of Defendant No. 1 are considered unfair competition, both according to the general clause - provisions of Section 44 of the Commercial Code, and the provisions of Section 47, Item b) and Section 48 of the same Code, as the **x+y+z.cz** domain name may be confused with the Plaintiff's trademark and may cause detriment to the Plaintiff, based on the fact that the Plaintiff is unable to present its products via the Internet. In conclusion, Defendant No. 1 may be wrongfully considered to be associated with the Plaintiff's company and products (even though no such association has existed for a considerable period of time and Defendant No. 1 is no longer a distributor of Plaintiff's products in the Czech Republic). The fact that Defendant No. 1 claims to be the exclusive and sole distributor of the products in question in the Czech Republic (presented at the **www.x+y+z.cz** website) may create the illusion that Defendant No. 1 is an exclusive and sole distributor of Plaintiff's products not only in the Czech Republic, but also in other countries. By using the **x+y+z.cz** domain name, Defendant No. 1 is taking unauthorized advantage of the image of the Plaintiff's product, with the aim of gaining benefits for its own business that would otherwise be out of reach of Defendant No. 1.

According to an extract from the register of interest associations of legal entities, Defendant No. 2 is an interest association of legal entities, acting as the administration of the national domain of the highest level, i.e. ".cz" and entitled to second level register domains. Based on the printout of the standard agreement concerning the registration of domain names, including the "Rules for the Registration of Domain Names in the .cz Domain", the court understands and acknowledges that Defendant No. 2 is entitled to cancel or intercept the registration of the domain name, particularly to the extent that it may be in conflict with the legal obligations or if such a cancellation is ordered by a court.

Pursuant to what has been said above, the court has decided to allow the motion for a preliminary ruling, as it understands and acknowledges that Defendant No. 1 acted in conflict with the principles of fair competition and is in breach of trademark rights. The court considers the activities of Defendant No. 1 and the imminent detriment to the Plaintiff to be more serious compared to the detriments that may be suffered by the Defendants. In addition, should the Defendants suffer loss in consequence of any preliminary ruling, they shall be entitled to claim Plaintiff's indemnification, pursuant to the provisions of Section 77, Paragraph 3 of the Code of Civil Procedure.

Furthermore, the court has ordered the Plaintiff to pay an additional 4 x CZK 500 as court fees, as its motion refers to a total of five preliminary rulings, even though the Plaintiff paid only CZK 500 in duty stamps.

The active capacity of the Plaintiff, as a foreign-based entrepreneurial entity, is based on the

provisions of Section 43, Paragraph 2 of the Commercial Code. In legal consideration of the case, the court reflected the protection of business enterprise, defined by our Constitution and the Charter of Rights and Freedoms, with respect to the international treaty identified as "TRIPS", binding for the countries of the juristic persons involved - the Czech Republic and Slovakia, Law No. 137/1995 Collection of Laws, concerning trademarks, as amended, in line with Section 2 of the Code of Civil Procedure, and Section 44, Paragraph 1, Section 47, Section 48 and Section 53 of the Commercial Code. This provision defines protection from the violation of rights and interests protected by the laws, and the misuse of rights. The Court also based its verdict on the procedural and legal provisions of Section 74, Paragraph 1-3, Section 75, Paragraph 1 and 3-5, Section 76, Paragraph 1, Item e) and f), Section 76, Paragraph 3, Section 171 of the Code of Civil Procedure.

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.