INTERLOCUTORY JUDGMENT

- The Municipal Court in Prague decided on 12 April 2001, with respect to a lawsuit between the Plaintiff **R.** and the Defendant **T.**, concerning the order of interlocutory judgement, by issuing an interlocutory judgement, according to which that the Defendant **T.** shall abstain from using the domain name **wwwx+y.cz**. As regards the imposition of an obligation to the registrar of the domains, CZ.NIC, z.s.p.o., to stop registering the domain name **wwwx+y.cz** in three days from the delivery of the verdict, the court dismissed the proposal for an order of interlocutory judgement. In addition, the court ordered the Plaintiff to file an action on the merits within 30 days from the delivery of the verdict concerning the order of interlocutory judgement.

The Plaintiff claimed that the court issues an interlocutory judgement, obliging the Defendant **T.** to abstain from using the domain name **wwwx+y.cz** within three days from the delivery of the verdict, and the domain registrar to discontinue the registration of such a domain name within the same period. The Plaintiff **R.** claimed to have been providing services under the identification of **x+y** since 1996, that this identification has become generally well-known and that the Plaintiff had been using it in a majority of its advertising campaigns and the Plaintiff had expended considerable financial means in order to ensure its promotion. In 1996, the Plaintiff registered and became the owner of the internet domain **x+y.cz**, and in order to connect to the domain on the Internet, it is necessary to enter www.x+y.cz. The domain name serves for purposes of connecting to the Plaintiff's Internet home page, comprising a presentation of the services offered by the Plaintiff and other identification data about the Plaintiff and its business activities, along with the function of promotion and information. The Defendant **T.** registered in 2000 the **wwwx+y.cz** domain, under which it operates a web site with pornographic contents. By using a domain name which may cause and which causes confusion between the Plaintiff and the Defendant as operators of web sites, or otherwise evoking that there is a particular relationship between the Defendant and the Plaintiff, the Defendant acts in conflict with the principles of fair competition. The speculative registration of a domain name by the Defendant helps to increase the number of accesses to its home page and subsequently the Defendant's earnings. Due to the contents of the Defendant's web pages, the Plaintiff's goodwill has been impaired. The fact that the Defendant's strategy is speculative is obvious from further registration of **wwwabc.cz**, **wwwdef.cz**, **wwwghi.cz**, **wwwjkl.cz**, **wwwmno.cz**. The national domain registrar and database administrator under the main ***.cz** domain, i.e. CZ.NIC association, has refused the Plaintiff's request to cancel the registration of the **wwwx+y.cz** domain name. With respect to the continuous detriment, the Plaintiff assumes that prior to filing an action with respect to its protection from unfair conduct, it is necessary to adjust temporarily the situation of the parties concerned, and that the proposed interlocutory judgement does not restrict the Defendant considerably from carrying out its business activities. As the only entity entitled to stop the registration of a domain name is CZ.NIC, z.s.p.o., the Plaintiff suggests laying this entity under obligation, too, even though it is not involved in the proceedings.

The decision concerning an application for an order of interlocutory judgement was based on the court's consideration of whether the terms and conditions stipulated in the provisions of Section 74 and following of the code of civil procedure have been fulfilled. The court also reviewed whether the suggested interlocutory judgement was admissible and legitimate. The court based its decision on the definition of the suggested interlocutory judgement and the arguments presented by the Plaintiff with respect to the necessity of an interlocutory provision. Whoever applies for an order of an interlocutory provision must demonstrate the existence of the basic premises pertaining to what would be the grounds for its claim during the subsequent proceedings. The court therefore reviewed whether the

documents presented by the Plaintiff justified its claims, so that the court could assume whether or not there is a legal relationship between the parties involved, which would require a preliminary treatment under the given circumstances. During the proceedings concerning the application for an order of interlocutory judgement, the court need not judge the presented evidence, the claim need not be proved to be reasonable, and it is sufficient to verify it to the court.

From the presented extracts of the Commercial Register of the Plaintiff and the Defendant, from the extract of domain register and the advertising materials presented by the Plaintiff, the Court has verified that the Plaintiff registered its **x+y.cz** domain in 1996 and that the Defendant registered its **wwwx+y.cz** domain in 2000 and that the Plaintiff has been rendering services under the identification of **x+y,** together with the promotion of such services. Based on the contents of the Plaintiff's home page and the contents of the www.x+y.cz page, the court considers it evident that the Plaintiff offers and promotes its services under the identification of **x+y** and that the Defendant operates web pages with pornographic contents at **wwwx+y.cz**. Based on an extract of domain register, pertaining to **wwwabc.cz**, **abc.cz**, **wwwdef.cz**, **def.cz**, **wwwghi.cz**, **ghi.cz**, **wwwjkl.cz**, **jkl.cz**, **wwwmno.cz** and **mno.cz,** the court considers it evident that the Defendant has registered its domain names later than the entities registering the domain names **abc.cz**, **def.cz**, **ghi.cz**, **jkl.cz** and **mno.cz**. Based on the presented correspondence, the court considers it evident that the Plaintiff attempted unsuccessfully at settling the dispute out of court and cancelling the registration of the domain name. Based on an extract from the register of interest associations of legal entities, the contract on domain name registration and the rules pertaining to the registration of domain names under the .cz domain, valid from 1 September 1999 and from 1 March 2001, the court considers it evident that the CZ.NIC association is entitled to register domain names under the .cz domain.

After thorough consideration of all the crucial facts, the court came to a decision that the terms and conditions for ordering of an interlocutory judgement have been fulfilled. The Plaintiff has arisen its claim in order to protect itself from unfair competition. Unfair competition is classified by the following basic criteria: (a) activities classified as economic competition, (b) these activities must be in conflict with the principles of fair competition, (c) the activities must be objectively likely to cause harm to other competitors or consumers. In this case, the court came to a decision that the Plaintiff and the Defendants were involved in economic competition. It is not a relationship of a direct Plaintiff's competitor, as the Defendant does not provide services similar to the Plaintiff's services; however, both parties are involved in the Internet, where they promote and offer their services, even though these services are classified in different categories. As long as the Defendant promotes its services with an identification similar to that previously used within the same "market" by the Plaintiff, this conduct is undoubtedly in conflict with the principles of fair competition and potentially harmful to the Plaintiff and the consumers (Internet users). In consideration of the fact that this potential harm arises daily, particularly thanks to the fast and easy access to information transmitted over the Internet, it is necessary to ensure temporary adjustment of the relationships between the parties involved. With respect to the aforesaid, the court decided to accord to the proposal for an order of interlocutory judgement, where the Plaintiff claims that the Defendant is put under an obligation of abstaining from the use of the **wwwx+y.cz** domain name.

As regards the Plaintiff's application for imposing an obligation towards a third party, which is not involved in the proceedings, i.e. CZ.NIC association, as an administrator of the .cz domain and a domain name registrar, the court did not find this claim legitimate. With a reference to the rules concerning the registration of domain names under the .cz domain, the court came to a conclusion that the order of interlocutory judgement against the Defendant was adequate with respect to Item 6.1. of the rules and that the Plaintiff was to make sure that CZ.NIC is aware of this fact. According to the

court, the imposition of such an obligation may not be justifiably claimed.

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.