DISMISSAL OF THE PETITION FOR DELIVERING AN INTERLOCUTORY VERDICT

On 14 February 2003, the Regional Court in Brno decided on the Petition for delivering an interlocutory verdict with respect to a lawsuit between the Plaintiff **S.** seated in Italy and the Defendants **R. (No. 1)** and **CZ.NIC (No. 2)** as follows:

I. The Petition submitted by the Plaintiff requesting that the Defendant R. abstain from publishing any materials or information or any contents on the Internet under the domain name of "**x+y+z.cz**" and that he abstain from handling the registration of the above specified domain name, particularly from the assignment thereof as from the date of his being served this judicial decision was dismissed.

II. The Petition submitted by the Plaintiff requesting that the Defendant CZ.NIC be obliged to abstain from enabling the assignment of the domain name of "**x+y+z.cz**" from the Defendant R. to a third party and that he abstain from cancelling the domain name of "**x+y+z.cz**" as from the date of his being served this judicial decision was dismissed.

In his Petition dated 6 February 2003 (delivered on 7 February 2003), the Plaintiff claimed that an interlocutory verdict be delivered against the defendants, claiming that the Defendant R. be ordered to abstain from publishing any materials or information or any contents on the Interned under the domain name of "**x+y+z.cz**" and that he abstain from handling the registration of the above specified domain name, particularly from the assignment thereof as from the date of his being served this judicial decision, was dismissed.

It was claimed that the Defendant CZ.NIC (No. 2) be ordered to abstain from enabling the assignment of the domain name of "**x+y+z.cz**" from the Defendant R. (No. 1) to a third party and that he abstain from cancelling the domain name of "**x+y+z.cz**" as from the date of his being served this judicial decision.

It was stated in the Petition that the Plaintiff was the owner of the registered trademark of "X+Y+Z" No. 123456 registered in the territory of the Czech Republic. The Plaintiff together with the Defendant R. used to pursue business activities in the field of distributing and selling the Plaintiff's products protected with the registered trademark of "X+Y+Z" for several years.

The Defendant R. is a legal entity dealing - apart from other activities - with purchasing and reselling goods protected with the registered trademark of "X+Y+Z".

The Defendant CZ.NIC is an interest association of legal persons, whose sphere of business lies in assigning and administering domain names within the first-level national domain of "cz". This Defendant is in a monopoly position as no other entity is authorised to assign domain names within the first-level national domain of "cz". The registration is subject to the Defendant's Registration Regulations attached hereto.

On 24 January 2000, the Defendant R. registered the domain name of "**x+y+z.cz**" with the local administrator of domain names. He carried out the registration even though he must have been aware of the fact that the X+Y+Z trademark was a registered trademark used by the Plaintiff to mark the Plaintiff's products distributed (besides others) by the Defendant. The Plaintiff had never given his consent with the registration of the domain name of "**x+y+z.cz**". The Plaintiff notified the Defendant of the illegal character of the domain name registration in his letter dated 1 October 2001. The Defendant gave his consent with assigning the domain name to the Plaintiff pursuant to the

Agreement dated 11 April 2002. On 28 June 2002, the Plaintiff invited the Defendant to assign the domain name to the Plaintiff, however, the Defendant did not respond to the invitation.

The Plaintiff claimed that there was no doubt that the domain name of "**x+y+z.cz**" was confusable with the trademark of "X+Y+Z" owned by the Plaintiff. The registration of the domain name of "**x+y+z.cz**" without being granted a consent by the Plaintiff, i.e. the owner of the trademark concerned, was contrary to the provisions of Article 14 of the Law No. 137/1995 of the Collection of Laws (Coll.), on trademarks.

Registering the above specified domain name, the Defendant prevents the Plaintiff from his exercising the rights stipulated in Article 13, paragraph 1) of the Law No. 137/1995 (Coll.) (i.e. the exclusive right to mark products with the appropriate registered trademark) to the full extent. The current registration of the domain name of "**x+y+z.cz**" does not enable the Plaintiff to register the domain as his own Internet domain name.

Taking account of the above stipulated facts, it is necessary to provide for a temporary modification of the relations between the parties, particularly with respect to the fact that there is a danger of the Defendant R's assigning the domain name of "**x+y+z.cz**" to a third person.

Besides that, considering the current wording of the Domain Names Registration Regulations enabling the Defendant No. 2 to cancel the previously registered domain name of "**x+y+z.cz**" under certain circumstances, it is also necessary to modify the relation between the Plaintiff and the Defendant CZ.NIC who could render a decision regarding the cancellation of the registration of the domain name of "**x+y+z.cz**" or the assignment thereof to a third party at any time.

With a view of the fact that the Plaintiff did not file an action together with the Petition for Delivering an Interlocutory Verdict, his Petition has to be assessed in compliance with the provision of Article 74 and following Articles of the Civil Court Regulations. Pursuant to the provision of Article 74, paragraph 1) of the Civil Court Regulations, the presiding judge is entitled to deliver an interlocutory verdict before initiating the proceedings provided that it is necessary to modify the relations between the parties temporarily or provided that there is a concern that the execution of the judicial decision might be jeopardised. Pursuant to the provision of Article 74, paragraph 2) of the Civil Court Regulations, the parties to the proceedings are the same as those concerned in the matter itself. Pursuant to the provision of Article 75, paragraph 5) of the Civil Court Regulations, the state of affairs existing when the court of first instance delivers the judicial decision is decisive for delivering the interlocutory verdict. Pursuant to the provision of Article 76, paragraph 2) of the Civil Court Regulations, other entities than the contesting parties may be imposed obligations by the interlocutory verdict only in case this can be justly required from such entities.

The Plaintiff proposed that the interlocutory verdict be delivered due to the necessary temporary modification of the relations between the parties, i.e. those who would have been the parties to the action regarding the matter (the Plaintiff and the Defendant R.) and - due to the necessary assistance of a third party - the Defendant CZ.NIC who would not have been a party to the principal action according to the Plaintiff.

It was required that the Plaintiff attest the contention on whose basis the interlocutory verdict was to be delivered.

Submitting an extract from the Domain Register obtained from the Internet network on 16 January

2003, it was attested that the domain of "**x+y+z.cz**" had been registered by the holder R. since 24 January 200.

The Plaintiff's registration with the Companies Register Office of the Chamber of Commerce of the City of Turin for Industry, Trades and Agriculture dated 6 November 1979 was attested with the Certificate of the Plaintiff's registration in the category of standard trading companies in S. s.r.l. (Ltd.) dated 24 October 2002. The sphere of business includes - apart from other things - the purchase, manufacture and sale of leather goods in general, clothing in general, safety equipment of any kind used for any purpose, accessories and spare parts including lubricating oils for vehicles in general, plastic products and products made of combined materials intended for safety purposes and used as car equipment in general, and the purchase of motor vehicles, vessels, motorcycles and registered means of transport in general.

Submitting the web page dated 5 February 2003 ("Welcome to the x+y+z pages"), it was attested that the domain of **x+y+z.cz** was used to offer seats, belts, steering wheels, balaclavas, helmets, gloves, fire-extinguishing systems and other products. The F1 2002 sponsorship of S. was promoted, inviting the visitors to "become dealers of x+y+z and visit our showroom". Besides that, the web page included the following invitation: "If you have any questions, please turn to V.L., the X+Y+Z product manager or the staff of our branch establishments." In addition, the service centres in Brno, Prague, Ostrava, Zlín, Žilina and Ciszyn (Poland, sale only) were mentioned.

Based on the document marked as "Option Purchase Contract" undersigned in Brno on 11 April 2002 and Turin on 29 April 2002, the Court found it attested that it had been concluded by S. s.r.l., Italy (hereinafter referred to as "S.") and R., Czech Republic (hereinafter referred to as "R."). The agreement stated that S. was the owner of the generally known trademark of "X+Y+Z" registered in the Czech Republic for car equipment, special clothing for car racers, sportswear and other products. R. was appointed distributor of the products marked with the registered trademark of "X+Y+Z" in the Czech Republic. On 24 January 2000, R. registered the domain name of **X+Y+Z.CZ** without having been granted a previous consent from S. Both the parties agreed that S. was to become the sole owner of the domain name concerned. R. undertook to assign the domain name to a Czech company chosen according to the requirements expressed by S. upon the first plain application submitted by S. without requesting any financial compensation from S. In case it was impossible to assign the domain name, R. undertook to renounce the domain name registration upon the first plain application submitted by S. and to cooperate with S. without reservations so as to enable the domain name registration by a Czech company chosen according to the requirements expressed by S. It was agreed that R. should be responsible for maintaining the ownership and validity of the domain name registration in favour of S. while holding the domain name. S. undertook to make no objections to R.'s registering the domain name on condition that all the contractual stipulations were complied with. It was stipulated that any amendments to the agreement should be in writing.

Based on the letter dated 1 October 2001 sent by the Plaintiff to the Defendant, the Court found it attested that R. used the Plaintiff's registered trademark of "x+y+z" as the principal component of the domain name of "**x+y+z.cz**". The registration of the word of "x+y+z" could be considered as interfering with the rights related to the above specified registered trademark pursuant to the provision of Article 13, paragraph 1) of the Law No. 137/1995 (Coll.), on trademarks (the exclusive right of the trademark owner to mark his products and services with that trademark) and Article 14, paragraph 1) of the same law (consent of the trademark owner with the use of a mark identical or confusable with the trademark). The Plaintiff stated in the above specified letter that he had not given his consent with the domain name registration. The Defendant refused to undersign the Option Contract of Assigning Domain Name. The Plaintiff's representative invited the Defendant to assign the domain name of

"**x+y+z.cz**" to S. s.r.l. or a person specified by S.

Based on the letter dated 28 June 2002 sent by the Plaintiff to the Defendant, the Court found it attested that the above specified representative invited the Defendant to assign the domain name to S. s.r.l. or a person specified by S. at the Defendant's own free will. The Plaintiff undertook to allow the Defendant to use the domain name concerned while acting as the Plaintiff's official distributor provided that the Defendant gave his consent. The Defendant was expected to respond in seven days.

The document provided with the stamp of the Industrial Property Office in Prague, Reading Room, was found by the Court insufficient to attest any facts as it was executed in the English and French languages. Considering the fact that the Plaintiff stated in his Petition that he was submitting the extract from the Trademarks Register applicable to the trademark of "X+Y+Z", it appears that the document probably referred to the registration of the trademark of x+y+z.

Based on the notification of the Municipal Authority of the City of Prague dated 28 January 2003, the Court found it attested that the CZ.NIC interest association had been registered in the Register of Interest Associations of Legal Persons kept by the Municipal Authority of the City of Prague, registration No.: ZS 30/3/98.

Based on the Domain Names Registration Regulations applicable as from 1 March 2002, the court found it attested that these are the rules dealing with the registration and delegation of second-level domain names in the Internet network under the domain name of .cz. The Regulations treat the principles of registering domain name, extending the domain name registration, assigning registered domain names, cancelling domain names registrations (upon the holder's application, based on executory judicial decisions or awards of arbitration courts) - Article 13.4. In addition, the Regulations specify that the CZ.NIC association is entitled to implement any provisions ordered by interlocutory verdicts including any restrictions of the right to assign a domain name.

The Plaintiff claimed that an interlocutory verdict was delivered, specifying that, having registered the domain name of "**x+y+z.cz**", the Defendant was infringing the Plaintiff's rights related to his ownership of the trademark pursuant to the Law No. 137/1995 (Coll.), namely the provisions of Article 14, paragraph 1 of that law: using the mark of "x+y+z" identical with the Plaintiff's trademark without the Plaintiff's consent, and the provisions of Article 13, paragraph 1): infringing the Plaintiff's exclusive right to mark his products of services with the Plaintiff's trademark.

In addition, the Plaintiff was prevented from registering the domain name of "**x+y+z.cz**" as his own domain due to the previous Defendant's registration.

The Plaintiff failed to attest (and made contradictory statements in his Petition) whether he had cooperated with the Defendant and whether they both had pursued business activities aimed at the distribution and sale of the Plaintiff's products in the territory of the Czech Republic in the past as stated in Section I of the Petition or whether the Defendant acted as the distributor of the Plaintiff's products at the time of submitting the Petition as stated in Section IV of the Petition. It was not attested whether the Defendant had been a distributor of the Plaintiff's products in the past or at the time of submitting the Petition, which was found important due to the fact that in his letter dated 28 June 2002, the Plaintiff advised the Defendant of his willingness to agree with the Defendant's using the domain name for the duration of the Defendant's acting as the Plaintiff's official distributor on condition that the Defendant agreed with the domain name assignment. It was claimed by the Plaintiff that the consent of the Defendant R. with the domain name assignment had been expressed in the Option Purchase Contract dated 11 April 2002 and 29 April 2002.

Besides that, it is essential that the Plaintiff claimed that the interlocutory verdict be delivered and a judicial decision regarding the matter itself be pronounced due to the fact that the Defendant was infringing the rights of the trademark owner pursuant to Article 13 and Article 14 of the Law No. 137/1995 (Coll.), on trademarks. However, the Plaintiff failed to attest his ownership of the trademark of "X+Y+Z" or "x+y+z" as claimed in his action. If the document provided with the stamp of the Industrial Property Office was intended to attest the trademark registration, than it should be noted that the document was executed in the English and French languages. Proceedings at law in Czech courts are conducted in Czech and should a party to an action wish to submit an evidence (document) executed in a foreign language, it is required that the document be submitted together with the translation thereof into Czech. The same applies to any decision regarding interlocutory verdicts as no attestations and claims expressed in Petitions for delivering interlocutory verdicts may be based on documents executed in foreign languages. The obligation to submit documents executed in foreign languages translated into Czech was complied with by the Plaintiff with respect to the contract concluded with the Defendant on 29 April 2002 (Option Purchase Contract) and the Certificate of Registration by the Commercial Gazette Office. Nevertheless, the Plaintiff failed to submit the Czech wording of the document intended to prove the registration of his trademark in the Czech Republic.

As the Plaintiff claimed that the interlocutory verdict be delivered due to the infringement of the rights related to his trademark, it was found essential that the trademark registration be attested.

Considering the fact that the state of affairs existing when the court of first instance delivers the judicial decision is crucial for the decision regarding the delivery of the interlocutory verdict, the Petition for delivering the interlocutory verdict was dismissed on the above specified grounds.

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.