DISMISSAL OF A CLAIM FOR INTERLOCUTORY JUDGMENT

(the Plaintiff has lodged an appeal against this decision; a decision on which has been made - see Judicial verdict 10)

- The Municipal Court in Prague decided on 27 August 2001, with respect to a lawsuit between the Plaintiff **K.** against the Defendant 1) **CZ.NIC**, 2) **M.** by refusing the claim for interlocutory judgement which would put the Defendant **CZ.NIC** under an obligation of abstaining from any changes and not allowing any third party to make changes concerning the owner of the **x+y.cz** domain in the register (database) of domains under the ".cz" domain of the highest level, which the Defendant No. 1) administers and which is available on the Internet, at http://www.nic.cz, and which would put the Defendant **M.** under an obligation of abstaining from providing any information about itself and its services, to the public or individuals, via electronic mail or pages registered within the World Wide Web, pertaining to the use of the **x+y.cz** domain.

The Plaintiff claimed ordering of an interlocutory judgement against the Defendant No. 1 and 2, as defined by this verdict, claiming that the Plaintiff registered an internet domain **x+y.cz** with the predecessor in title of the Defendant No. 1 in 1997 and that the Plaintiff had properly used this domain until 6 August 2001, when it received a letter from the Defendant No. 2, of 4 August 2001, informing that the Defendant No. 2, acting in the capacity of an owner of the "x+y.cz" domain had decided to make changes concerning the domain's further use and that the Plaintiff was disabled from further access to the domain, and its contents were deleted and replaced with other contents later on. The Plaintiff discovered that the Defendant No. 1 had no longer been registered as an owner of the domain in question, as it had been transferred on 14 August 2000, according to a document issued on 14 August 2000, in which Mr. M.H. consented to the changes required in an electronic application, which was allocated a number. The Plaintiff insists that the legal premises for a transfer of domain have not been fulfilled, and that the rules issued by the Defendant No. 1 in 1999, which may be considered as trade terms and conditions of the Defendant No. 1, have not been fulfilled either. In addition, the Plaintiff claims that - as the owner of the domain, the Plaintiff had not expressed any will to transfer the domain in question to any third party, as Mr. M.H. was no longer a member of the board of the Plaintiff as of the date of the alleged transfer. Moreover, according to the Articles of Incorporation, the Plaintiff must be represented by two members or more of its board. Mr. M.H. was not authorized to conclude any contract on domain transfer whatsoever.

Due to the fact that the domain has not been transferred by the Plaintiff to the Defendant No. 2, the Defendant No. 1 has failed to meet its contractual obligations, i.e. enable the Plaintiff to make use of the internet domain **x+y.cz** and enabled Defendant No. 2 to make use of this domain, due to which the Plaintiff remained without any internet connection to its clients (both existing and potential) for several days, suffered loss of all electronic mail and was forced to register another domain, under which the Plaintiff is not known to the customers and which is not defined in any trade and advertising materials of the Plaintiff. In consequence thereof, the Plaintiff has suffered considerable loss. The Plaintiff fears that the Defendant No. 1 may consent to further changes in the registration of the domain in question and therefore claims preliminary adjustment of the relationship between the Plaintiff and the Defendant No. 1, as specified in the verdict above.

As regards the claim against the Defendant No. 2, with respect to the fact that the Defendant No. 2 commenced - on 6 August 2001 - to promote its services at an address based on the **x+y.cz** domain, the Defendant No. 2 acts in conflict with the principles of fair competition, i.e. in conflict with the

provisions of Section 44, Paragraph 1, and Section 48 of the Commercial Code. In consequence, the Plaintiff may suffer a loss of customers, as the Defendant No. 2 is involved in the same market segment as the Plaintiff, which shall be classified as taking advantage of the Plaintiff's goodwill. In addition, the Plaintiff claims that the Defendant No. 2 presents false comparative advertising, as defined in Section 50 a), Paragraph 2, Item g) of the Commercial Code, by making use of a special identification used by the Plaintiff on the Internet. In consequence, the Plaintiff has suffered considerable loss concerning its goodwill, which is why it is necessary to adjust temporarily the relationships between the Plaintiff and the Defendant No. 2, until final settlement of the issue.

As the Plaintiff has claimed - along with the aforesaid proposals for an order of interlocutory judgement - also a proposal on the merits, it is necessary to follow the provisions of Section 102, Paragraph 1 of the code of civil procedure, with terms practically identical to those of the provisions of Section 74, Paragraph 1 of code of civil procedure The court may order interlocutory judgement in case that it is necessary to adjust the relationships between the parties involved, during the proceedings, and that the priority of this is duly verified, if not given.

Based on the fact that the transfer of the domain to the Defendant No. 2, denied by the Plaintiff, was to be carried out in August 2000 and the Plaintiff made use of the **x+y.cz** domain at the aforesaid address until 6 August 2001, i.e. for a period of one year, the court came to a conclusion that the factual claims presented by the Plaintiff were incomplete and therefore misleading; and it has to be pointed out that the interlocutory judgement may not affect any damage or interference in the rights, and therefore a ruling given against it, unless the factual circumstances are without any doubt and duly evident. In consideration of this principle, which is necessary to be fulfilled when making a decision concerning each individual proposal, the court came to a conclusion that the conditions for ordering an interlocutory judgement against the Defendant No. 2 had not been fulfilled, as well as against the Defendant No. 1, as the action against Defendant No. 1 is directly related to the outcome of the claim raised against the second Defendant. The court has also decided that - as regards the Defendant No. 1 - there is no emergent need for adjustment of the relationships between the participants, owing to the fact that if the Defendant No. 2 enjoyed unauthorized benefits from the transfer of the aforesaid domain on the expense of the Plaintiff, it cannot be assumed that the domain may become subject to any other transfer, or such an assumption must be at least evident, which is not the case. The court therefore decided that it was necessary to demonstrate and duly consider (during finding proceedings) the facts presented by the Plaintiff, and the claim for an interlocutory judgement was therefore turned down.

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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.