INTERLOCUTORY JUDGMENT

The Municipal Court in Prague decided on 30 May 2001, with respect to a lawsuit between the Plaintiff **B.** against the Defendants 1) **I.** and 2) **CZ.NIC,** concerning the proclamation of an interlocutory judgement, i.e. proclaimed an interlocutory judgement according to which the Plaintiff No. 1, company **I.** shall - as of the date of the delivery of this decision - abstain from transferring the domain name **x+y.cz** to any third party, until a verdict is effective with respect to the lawsuit between the Plaintiff, the Defendant No. 1 and Defendant No. 2, kept with the Municipal Court in Prague, file No. 00 AA 000/2001. The court also decided that the Defendant No. 2, i.e. **CZ.NIC** association, was obliged to abstain - as of the date of the delivery of this decision - from any transfer of the domain name **x+y.cz** to any third party, until a verdict is effective with respect to the lawsuit between the Plaintiff, the Defendant No. 1 and Defendant No. 2, kept with the Municipal Court in Prague, file No. 00 AA 000/2001.

Based on an action filed on 23 May 2001, the Plaintiff referred to the court in order to have the contract concerning registration of domain name **x+y.cz**, concluded between the Defendants No. 1 and 2, nullified; and in case that the court decides to turn down this action, the Plaintiff suggested issuing a decision in which the court would order the Defendant No. 2 to cancel the registration of the domain name **x+y.cz**, registered on the basis of a contract concerning registration of domain name **x+y.cz**, concluded between the Defendants No. 1 and 2. In addition, the Plaintiff suggested that the court issue an interlocutory judgement, ordering the Defendants No. 1 and 2 to abstain from any transfer of the domain name **x+y.cz** to a third party, until the decision concerning the action raised with respect to the nullity of the contract concerning registration of domain name **x+y.cz,** concluded between the Defendants No. 1 and 2, becomes effective.

The Plaintiff claimed that the Plaintiff's sole partner, i.e. **B. AG** company**,** with a registered office in Austria, was the owner of the word trademark **x+y**, registered in Austria since 1973, protected in the Czech Republic on the basis of an international registration with the World Organisation of Intellectual Property, international registration No.: 123456. In addition, the Plaintiff claimed that this company was the owner of a combined trademark **x+y-x**, registered in Austria since 1993, protected in the Czech Republic on the basis of an international registration with the World Organisation of Intellectual Property, international registration No.: 654321. The aforesaid trademarks were transferred to **B. AG** on the basis of a contract on transfer of trademarks, concluded in August 2000 with the **F** company. By the beginning of 2001, the Plaintiff found out that the Defendant No. 1 was "the owner" of the domain (domain name of the 2nd level) **x+y.cz** and had been using it for its presentation on the web pages http://www.x+y.cz. As you enter this address in an Internet browser, you find yourself at a page identified with the "1st Web Design" logo. Within the pages to which there are links from this home page, the project is identified as an inventive activity of the Defendant No. 1, based on its experience and background.

The Defendant No. 2 is the administrator of the national domain of the highest level, .cz, entitled to register domains of the second level (e.g. **x+y.cz**). In order to ensure successful registration of a domain name **x+y.cz,** it is necessary to accept a sample contract submitted by the Defendant No. 2, with "Regulations concerning the registration of domain names within the .cz domain" attached as an integral part. Considering the fact that the Defendant No. 1 is - according to an extract from the domain register, the owner of the **x+y.cz** domain, it is obvious that the Defendant No. 1 must have concluded such a contract with the Defendant No. 2.

The Plaintiff claims that the Defendant No. 1 has infringed the rights of the Plaintiff to its trade name. In addition, the Defendant No. 1 has been in breach of the principles of fair competition, which is likely to cause damage to other competitors, i.e. unfair competition. According to the Plaintiff, the activities carried out by the Defendant No. 1 should be classified as unfair competition according to the principles of Section 48 of the Commercial Code, i.e. as taking advantage of the Plaintiff's goodwill. In addition, the activities carried out by the Defendant No. 1 bear signs of deceitful identification of goods and services. The Plaintiff is particularly convinced that the Defendant No. 1 concluded the contract concerning the domain name registration with the Defendant No. 2 in conflict with the provisions of Section 3 of the Commercial Code, which stipulate that the execution of rights and obligations related to civil relationships must not arbitrarily intervene in the rights and justifiable interests of other parties, and that it must not be in any conflict with the principles of morality.

The Plaintiff demonstrated its claims with an extract from the Plaintiff's commercial register, an extract of the registration of the **x+y** trademark, an extract of the registration of the **x+y-x** trademark, a contract - transfer deed of August 2000, an extract from the Commercial Register of the Defendant No. 1, printouts of web pages, a printout of the contract concerning the domain name registration, a printout of the principles of registering domain names within the .cz domain, a domain registration form, a printout of the pricelist pertaining to the domain name registration in the .cz domain, all printed from the Internet on 22 May 2000.

The Plaintiff claimed that it was necessary to adjust the mutual relationships between the participants, and therefore requested the court to order an interlocutory judgement, according to the wording provided in the verdict of this decision. According to the Plaintiff, the terms and conditions for issuing an interlocutory judgement according to the provisions of Section 102, Section 74 and following of the code of civil procedure have been fulfilled, both concerning the necessity to adjust the temporary relationships between the participants and the imminent threat to later execution of a decision.

According to the provisions of Section 102, Paragraph 1 of the code of civil procedure, in case that it is necessary to adjust the relationships between parties concerned after the commencement of proceedings, the court may issue an interlocutory judgement. The institute of interlocutory judgement does not aim at a mere adjustment of the factual relationships between the participants, but the adjustment of legal relations, even though preliminary.

The court came to the decision that it was necessary to adjust temporarily the relationships between the parties involved and meet the requirements of the Plaintiff concerning an issue of an interlocutory judgement, claiming that - until the final verdict becomes effective - the Defendants No. 1 and No. 2 abstain from any transfer of the domain name **x+y.cz** to any third party. The court considers it to be evident that the Plaintiff's sole partner is the owner of the word trademark **x+y** and the combined trademark **x+y-x**, registered in Austria and protected in the Czech Republic on the basis of international registration with the World Organisation of Intellectual Property, international registration No.: 123456 and 654321, and that the Defendant No. 1 has become an owner of the **x+y.cz** domain in February 2000, on the basis of a contract concerning the registration of a domain name, concluded with the Defendant No. 2 as the administrator of the domain of the highest level, i.e. ".cz", as the Defendant No. 1 is registered as the owner of the **x+y.cz** domain in the domain register, since 4 February 2000 and the registration in the CZ.NIC system, since 6 February 2000. The Plaintiff has been using the aforesaid domain for its presentation at web pages under the address http://www.x+y.cz.

Based on an action filed on 23 May 2001, the Plaintiff claims that the court either pronounces the

contract concerning the registration of the domain name **x+y.cz**, concluded between the Defendant No. 1 and No. 2 to be invalid, or in case that the Plaintiff's action is refused, the court shall put the Defendant No. 2 under obligation to cancel the registration of the domain name **x+y.cz,** registered on the basis of this contract concerning the registration of the domain name **x+y.cz** concluded between the Plaintiff and the Defendants No. 1 and 2, due to an imminent threat of the of later execution of this decision. The court therefore decided to issue an interlocutory judgement, as specified in the verdict.

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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.