INTERLOCUTORY RULING

JUDICIAL DECISION

On 8 January 2004, the Municipal Court in Prague, establishment Slezská 9, Praha 2, determined the case of T., the Plaintiff, and E., Defendant No. 1, and CZ-NIC, Defendant No. 2, concerning the petition for delivering an interlocutory ruling, as follows:

1. The Court ordered the following interlocutory ruling:
    a. Defendant No. 1 shall refrain from using the domain name of "x+y+z.cz", as well as from handling it in any manner.
2. Defendant No. 2 shall prevent the transfer of the domain name of "x+y+z.cz" to any other person with the exception of the Plaintiff.
3. Regarding the obligation of Defendant No. 2 to prevent any modification of the data related to the domain name of "x+y+z.cz" in the database kept by Defendant No. 2, the petition was dismissed.
4. The Plaintiff shall pay a sum of CZK 1,000, i.e. the reimbursement of the costs of these proceedings, to the bank account of the Municipal Court in Prague 3 within three days after this decision comes into force.
5. The Plaintiff was ordered by the court to file an action regarding the case itself in one month after this decision is served.

The Plaintiff submitted the petition for this interlocutory ruling as an entity established on the basis of an entry in the Companies Register dated 12 November 2001, with his subject of business activities including tax counselling, business, financial, organisational and economic counselling, data processing, databank services, network administration, translating and interpreting services, mediation and wholesale trade. The Plaintiff is the owner of the "x+y+z" combined trade mark registered by the Industrial Property Office as at 29 October 2002 with a priority right dated 13 February 2002 applicable to the categories of products and services corresponding with the Plaintiff's subject of business activities. Focusing on services connected with the U.S. taxation system issues, the Plaintiff offers his clients the execution of tax returns, as well as related services rendered also through the mediation of the Internet. Nevertheless, Defendant No. 1 had the domain name of x+y+z.cz registered in his name, preventing the Plaintiff from using it for his business activities. Pursuing his business activities in the same field of trade with the same territorial policy, publishing information on his business activities and offering services related to his subject of business activities on his server at the "a+b+c.com" domain to which the visitors are redirected, Defendant No. 1 causes a permanent and increasing harm consisting in the fact that the Plaintiff's customers interested in his services are redirected to a web site of Defendant No. 1 after inserting the name corresponding with the Plaintiff's company name and his trade mark. Thus the Plaintiff is losing orders and his rights and opportunities to promote his services on the Internet, which is a medium with a global reach, are being infringed. The Plaintiff claims that an interlocutory ruling be delivered with respect to Defendant No. 2 in connection with the Defendant's position of the registrar of domain names under the national domain of "cz" providing for the registrations and modifications thereof in the register of domain names.

According to Article 74, paragraph 1 of the Civil Procedure Code, the Court may deliver an interlocutory ruling before initiating the proceedings provided that the conditions of delivering such a ruling are complied with, in particular when 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 and the contention is supported with an appropriate evidence.

In the case concerned, the Plaintiff attested his ownership of the combined trade mark of "x+y+z" by

submitting an extract from the trade marks database kept by the Industrial Property Office, attesting the priority right to the registered trade mark concerned as at 13 February 2002. Submitting the contents of the web sites of www.x+y+z.org and www.x+y+z.cz, it was attested that Defendant No. 1 was the holder of the above-specified domain, using his web sites to offer and advertise his services which, according to the subject of business activities filed in the Companies Register, were found to be analogous or equal to those forming the subject of the entry in the Companies Register in favour of the Plaintiff.

The Plaintiff thus attested his right to the protection of his trade mark of "x+y+z" properly registered by the Industrial Property Office pursuant the provisions of Article 13 and Article 14 of the current version of Law No. 137/1995 of the Collection of Laws (Coll.), on trade marks, with the right to claim that any unauthorised use of such a trade mark by any person be prohibited pursuant to the provision of Article 15 of the above-specified law. Using the domain of the same name as the trade mark, Defendant No. 1 is interfering with the above-specified rights of the Plaintiff, causing him a material harm.

Considering this, the Court granted the petition to the full with respect to Defendant No. 1, prohibiting this defendant from a further use of the "x+y+z.cz" domain.

With respect to Defendant No. 2, the registrar of domain names, the Court found the petition justified to the extent of the judicial decision specified in Article I.2 hereof, considering the fact that unless prohibited by the Court, Defendant No. 2 could effect a modification of the registration of the domain concerned, transferring it to a third party based on a request of Defendant No. 1, defeating the effect of the interlocutory ruling delivered with regard to Defendant No. 2.

With respect to the requirement to impose an obligation upon Defendant No. 2 to prevent any modification of the data pertaining to the domain name of "x+y+z.cz", the Court found the petition ill-defined and dismissed it, applying the procedure pursuant to the provisions of Article 75a), paragraph 1 of the Civil Procedure Code and stating that the prohibition to transfer the domain name imposed upon Defendant No. 2 was fully adequate and all-inclusive.

Pursuant to the provisions of the current version of Article 4, paragraph , letter f) of Law No. 549/1991 (Coll.), the obligation to pay the court fee in relation to the petition concerned was imposed upon the Plaintiff.

Pursuant to the provision of Article 76, paragraph 3 of the Civil Procedure Code, the Plaintiff was ordered by the court to file an action within a specified period of time.

Except for CZ.NIC, all participants of the proceedings are identified with the first letters of their respective surnames or trade names. The domain names in question are replaced with the x+y+z.cz sequence. All other domain names mentioned in the text (if any) 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 the 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 delivery of an interlocutory judgement) and that such claims represent merely a legal opinion of the party concerned, not a finding of the court.

This decision of the court may not be automatically applied to other cases even though the facts in

issue may be similar; the CZ.NIC association recommends that each particular case be consulted with experts in domain names and lawyers.