DISMISSAL OF THE PETITION FOR DELIVERING AN INTERLOCUTORY RULING

On 19 December 2003, the High Court in Prague determined the case of a) KpK, a.s. and b) the municipality of K., the Plaintiffs, vs. the Defendants 1) P.S., and 2) CZ.NIC, regarding the protection against an unfair competition, infringement of trade mark rights and protection of a business firm with a petition for delivering an interlocutory ruling, following the appeal against the decision of the Municipal Court in Prague lodged by P.Š. on 2 June 2003 as follows:

The contested Ruling No. I of the decision rendered by the Court of First Instance was changed as follows: The petition for delivering an interlocutory ruling ordering that an obligation to refrain from using the domain of "x+y+z.cz" and transferring it to third parties with the exception of Plaintiff a) be imposed upon Defendant No. 1 was dismissed.

In the above-specified decision, the Court of First Instance delivered an interlocutory ruling against Defendant No. 1, ordering that Defendant No. 1 "refrain from using the domain of "x+y+z.cz" and from transferring it to a third person, with the exception of the Plaintiff" (Ruling No. I). With respect to the requirement that the Court order that the Defendant refrain from publishing any information on the Internet domain of "x+y+z.cz" and from handling the domain of "x+y+z.cz" in any manner, the petition for delivering an interlocutory ruling was dismissed (Ruling No. II). With respect to the remaining requirements regarding Defendant No. 1 and Defendant No. 2, the petition for delivering an interlocutory ruling was dismissed (Rulings No. III and IV). The Court of First Instance proceeded from the fact that Plaintiff a) was an entrepreneur, pursuing his activities in the field of the production and distribution of beer and malt and hostelry trade and using the business firm (formerly trade name) of "AAA X+Y+Z, a.s." since his incorporation in 1994. Plaintiff a) is the owner of numerous word-only and combined trademarks, all of them containing the word of X+Y+Z. Plaintiff a) is also the registered owner of the "X+Y+Z" designation of origin for "beer" products. Plaintiff b) is a municipality and legal person. Defendant No. 1 is the holder of the second-level Internet domain of x+y+z in the highest-level domain ".cz" as from 19 December 2000. Using a simple software to which the designation of the domain name of x+y+z.cz is attached for the purpose of searching the Internet, Defendant No. 1 managed that anyone wishing to connect to this computer through the Internet was automatically redirected to a different computer to which the domain name of "a+b+c.cz" was attached and on which a presentation of the PP, a.s. company, a direct competitor of Plaintiff a) was displayed. The Plaintiffs assumed that, registering the x+y+z.cz domain, and arranging for the redirection as specified above, Defendant No. 1 had committed an act of unfair competition, infringement of rights related to trade marks and business firms of Plaintiff a) and infringement of the rights of Plaintiff b) to its name. The Plaintiffs were positive about the fact that the conditions of delivering an interlocutory ruling providing for a temporary settlement of the relations among the parties had been complied with as the redirection form one page to another was causing a significant and increasing harm to Plaintiff a). It was also claimed that there was a real possibility threatening that Defendant No. 1 could have transferred the x+y+z.cz domain to another person with the assistance of Defendant No. 2, making it impossible for the Plaintiffs to assert their rights.

The Court of First Instance found it attested that the Plaintiff a) was the owner of the above-specified word-only and combined trademarks and that Defendant No. 1 had been the owner of the "x+y+z.cz" domain since 19 December 2000, using this domain for the purpose of an Internet presentation under an address. Considering this, the Court concluded that it was necessary to provide for a temporary settlement of the relations among the Plaintiffs and the Defendant No. 1 as the right of Plaintiff No. 1 to the wording of his business firm, with a significant part thereof being the word "x+y+z", as well as to trade marks also containing this name had been attested and that the possibility to judge the act committed by Defendant No. 1 who had registered the x+y+z.cz domain an unauthorised infringement

of the rights of Plaintiff a) had been attested to the extent sufficient for delivering an interlocutory ruling. Plaintiff b) attested the use of its name (X+Y+Z) and its status of a legal person. The Court granted the petition to the extent of Ruling No. I, aiming at the elimination of the risk of defeating the action in the case itself. The requirement that the Court impose an obligation upon the Defendant to refrain from publishing any information on the Internet in the "x+y+z.cz" domain and from any handling the "x+y+z.cz" domain had been ill-defined according to the Court of First Instance to such an extent that it was unavoidable to dismiss it pursuant to the provision of Article 75a, paragraph 1 of the Civil Procedure Code (Ruling No. II). With respect to the Plaintiffs' requirements that the Court order that Defendant No. 1 remove the software redirecting the interested parties to the web site of the PP, a.s. company, the Court of First Instance concluded that this was a final arrangement rather than a temporary provision and dismissed that motion (Ruling No. III). Considering the fact that, filing an action, the Plaintiffs had claimed that obligations be imposed exclusively upon Defendant No. 1, the Court of First Instance concluded that the obligation to refrain from any act enabling Defendant No. 1 to handle the "x+y+z.cz" domain, in particular any act enabling the transfer of the "x+y+z.cz" domain from Defendant No. 1 to a third party with the exception of Plaintiff a) and the obligation not to enable Defendant No. 1 to use the "x+y+z.cz" domain, in particular to publish any information on the Internet in the "x+y+z.cz" domain, claimed by the Plaintiffs with respect to Defendant No. 2 by virtue of the preliminary ruling had been intended as a final, not temporary, settlement of the relations among the Plaintiffs and Defendant No. 2, and therefore the Court dismissed the petition for delivering an interlocutory ruling in this respect (Ruling No. IV).

This decision of the Court of First Instance was contested by P.Š. who lodged an appeal against Ruling No. I in due time, stating that even though Defendant No. 1 had been identified as P.S. both in the petition and the decision of the Municipal Court in Prague dated 2 July 2003, the petition with the decision was served to him after an unknown person had marked the initial letter of his surname, "S", with the "ˇ" sign on the advice of delivery slip. The appellant accepted the letter without knowing its contents. So as to defend himself, he lodged an appeal to the extent of Ruling No. I in which the Court had imposed an obligation upon Defendant No. 1 to refrain from using the "x+y+z.cz" domain and from transferring it to a third party with the exception of the Plaintiff. The appellant claimed that the identification of Defendant No. 1 in the writ containing also the petition for delivering an interlocutory ruling adopted by the Court of First Instance and without any modification incorporated into the decision rendered by the Court did not comply with the requirements specified in Article 79, paragraph 1 of the Rule of Civil Procedure, requesting that the action identify the respective parties in an appropriate manner so that their identities cannot be mistaken. When an action with a petition for delivering an interlocutory ruling denotes a party in a manner which makes it impossible to identify the party precisely, it is considered as an incorrect submission whose incorrectness must be redressed, applying the procedure specified in Article 43 of the Rule of Civil Procedure. Nevertheless, such a procedure is excluded as regards the petition for an interlocutory ruling. In such a case, only the procedure according to the provision of Article 75 a) of the Rule of Civil Procedure may be considered. Nevertheless, the Court of First Instance did not act accordingly. The appellant also emphasised the objective incorrectness of Ruling No. I delivered by the Court of First Instance which did not specify to which of the two Plaintiffs the potential transfer of the domain allowed as the only option to Defendant No. 1 applied. In addition, the appellant pointed out that the interlocutory ruling had been delivered without specifying any time limit and that the Plaintiffs had attested neither the existence of an urgent need to provide for a temporary settlement of the relations among the parties, nor the fact that they had incurred a damage. The appellant also contested the conclusion of the Court of First Instance regarding the alleged unfair competition committed by Defendant No. 1 and regarding the fact that it had been attested that it had been Defendant No. 1 who had arranged for redirecting to the web pages concerned. Considering the above-mentioned facts, the appellant proposed that the High Court in Prague change the contested Ruling No. I delivered by the Municipal

Court in Prague on 2 July 2003 by ordering that "the Plaintiffs' motion requesting that Defendant No. I be obliged to refrain from using the "x+y+z.cz" domain and from transferring it to a third party with the exception of the Plaintiff" be refused or dismissed.

The Court of Appeal reviewed the contested Ruling No. I of the decision rendered by the Court of First Instance pursuant to the provision of Article 212 and following articles of the Civil Procedure Code and, without ordering a hearing of the case (Article 214, paragraph 2, letter c of the Civil Procedure Code), the Court concluded that the appeal was justified and that it had been lodged by a person entitled to do so. The action with the petition for delivering an interlocutory ruling identified Defendant No. I as "P.S., domicile: AAAAA XXXX, Praha X, postal code: XXX XX". This specification does not provide for the exact identification of a party to an action, making it impossible to verify whether a person of this name exists and stays at the address specified above. The date of birth, personal identity number or entrepreneur's identity number are the primary signs enabling the exact identification of Defendant No. 1 in the sense of his being an existing person. Nevertheless, the action did not give such an identification and the Court of First Instance merely adopted the specification of Defendant No. 1 when delivering the decision. Nevertheless, the decision was served to the appellant, P.Š., at the same address. Considering the fact that the appellant was served an action and decision of the Court of First Instance imposing an obligation upon a person named P.S., it is necessary that the appellant be awarded the right to lodge an appeal against such a decision. As the Court of First Instance treated a person whose existence was dubious (P.S.) as a party and taking into account that the application of the provision of Article 46 of the Civil Procedure Code is expressly excluded in the event of delivering a decision regarding a petition for delivering an interlocutory ruling, the decision delivered by the Court of First Instance was incorrect. The procedure pursuant to the provision of Article 75 a, paragraph 1 of the Civil Procedure Code should have been applied by the Court of First Instance with respect to Ruling No. I. However, this was not the case. The Court of Appeal therefore changed Ruling I delivered by the Court of First Instance and contested by the appeal pursuant to the provisions of Article 220 of the Civil Procedure Code, dismissing the Plaintiffs' petition for delivering an interlocutory ruling pursuant to the provision of Article 75 a, paragraph 1 of the Civil Procedure Code. Considering the conclusion reached by the Court of Appeal, the remaining objections to the contested Ruling No. I of the decision rendered by the Court of First Instance were not dealt with by the Court of Appeal.

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.