INTERLOCUTORY JUDGMENT

The Municipal Court in Prague decided on 10 October 2001, with respect to the lawsuit between the Plaintiff **Č.** against the Defendants, 1) **H.** and 2) **CZ.NIC,** concerning the transfer of a domain name and the protection of the trade name pertaining to a legal entity, together with a claim for an interlocutory judgement, in the form of an interlocutory judgement according to which the Defendant No. 2, **CZ.NIC,** was obliged to make all necessary steps (blocking) in 24 hours from the delivery of this verdict, in order to avoid any manipulation with the domain of the second level **x+y**, registered under the domain of the highest level, i.e. ".cz", particularly to prevent the Defendant No. 1 - Mr. **H.** - from manipulating this domain, e.g. transferring it to a third party.

The Plaintiff claimed that a verdict would be issued in which the court would order the Defendant No. 1 to abstain from any manipulation with the domain of the second level **x+y**, registered under the domain of the highest level, i.e. ".cz", and to provide the Plaintiff with adequate satisfaction in the form of a monetary deposit of CZK 200,000.00, and the Defendant No. 2 should be ordered to carry out necessary changes in the registration of an internet domain of the second line **x+y** registered under the internet domain of the highest level, i.e. ".cz", so that within three days from the legal validity of this verdict, the Plaintiff is registered as an authorized person, all at the expenses of the Defendant No. 2. The Defendant No. 2 shall enable the Plaintiff - as of the date of modification - to manipulate with the domain as approved by the Czech legal system. In addition, the Defendant No. 2 shall provide the Plaintiff with an adequate satisfaction in the form of a monetary deposit of CZK 100,000.00 and publish - within 7 days from the validity hereof at its own expenses - an apology on the opening page of http://www.nic.cz, as specified in the statement of claim and leave it there for a period of thirty calendar days from its publication. In addition, the Plaintiff suggested that the court should order on the basis of an interlocutory judgement the Defendant No. 2 to make all necessary steps (blocking) within 24 hours from the delivery of this verdict, in order to avoid any manipulation with the domain of the second level **x+y**, registered under the domain of the highest level, i.e. ".cz", particularly to prevent the Defendant No. 1 - Mr. **H.** - from manipulating this domain, e.g. transferring it to a third party.

The Plaintiff claimed to be the owner of several combined trademarks (No. 111111, 222222, 333333, 444444, 555555 and 666666), of which the trademark No. 222222 is internationally registered and was claimed on 12 June 1995 by the Industrial Property office as renowned. All the aforesaid trademarks comprise the text **x+y**. This identification is also used as the Plaintiff's trade name, incorporated on 1 May 1999 in the Commercial Register. Based on a written application submitted by the Defendant No. 1, i.e. a physical entity, addressed to the Defendant No. 2 (an interest association of legal entities), with a major scope of activities comprising a non-profitable national administration and operation of the internet domain of the highest level, i.e. ".cz", acontract "concerning domain name registration ", based on which the Defendant No. 2 carried out "registration of a proprietary right" in the register of internet domains falling under its administration, for the benefit of the Defendant No. 1, commencing 1 January 2000. The Internet domain - domain name is an electronic address available in the World Wide Web (hereinafter the www), under which it is possible to locate web pages pertaining to such an address. Each domain name must be unique worldwide, as it is impossible to register two identical names under a particular domain of the highest level (.cz in the Czech Republic). In addition to an identification of a particular computer, the domain name bears a number of other functions - particularly searching, promotional, information and competitive, in the widest sense. After entering a domain name in a www browser, the collection of data available for other network users - i.e. home page - is made available. Through such a home page, it is possible to get access to other data files stored within the pertinent computer. In consequence of the fact that the

Defendant No. 1 registered speculatively the domain identical to the trade name and trademarks of the Plaintiff, which it is not entitled to use, the Defendant No. 1 has infringed the Plaintiff's rights resulting from the ownership of trademarks, and the Plaintiff's rights to its trade name. The Plaintiff informed the Defendant No. 1 about these circumstances in several letters in March 2000, in which the Defendant No. 1 was urged to cancel the registration of the domain name, and in May 2000, in which the Plaintiff expressed disagreement with the suggested solution - the Defendant No. 1 proposed to the Plaintiff in the form of an email message of 10 April 2000, that the Defendant No. 1 would transfer the rights to the domain for a symbolic CZK 100,000.00. By registering a domain with an obvious purpose of making this a subject of transaction, the Defendant No. 1 entered willingly and in conflict with the law into an economic competition and its conduct, infringing the rights of the Plaintiff to its trademarks and trade name, showing signs of unfair competition, as defined in the provisions of Section 44, Paragraph 1 of the Commercial Code - the so-called general clause.

The Defendant No. 2, as an entity with a monopoly position in the market, whose major objective is registration of domain names - national administration and operation of the internet domain of the highest level, i.e. ".cz", does not carry out its services so as to ensure adequate protection from speculative steps taken by third parties. This is particularly because the Defendant No. 2 directly enforces unacceptable terms and conditions stipulated in contracts with other market participants, depriving itself of all responsibilities, registers without any control randomly registered domain names, irrespective of other protected rights and fundamental legal principles and values, on which our legal system is based, the mechanism of solving potential conflicts, presented and enforced by the Defendant No. 2 is discriminating in principles, ensuring inadequate legal guarantee for entities entering into legal relationships with the Defendant No. 2. Unsatisfied entities may refer to independent experts who will express their statement; however, the Defendant No. 2 need not accept this statement and may follow its own consideration; in case of any breach of rules by an applicant for a domain registration or a failure to pay the fees required, the Defendant No. 2 is entitled - at its own (quite broad) discretion - to cancel or discontinue with an immediate effect the registration of the pertinent domain name. In conclusion, the Defendant No. 2 manipulates with the Czech internet - the domain of the highest level - ".cz" as it was his own property.

Due to the fact that the internet network (both worldwide and in the Czech Republic) is not only a significant means of communication, but also a place where it is possible (by simply connecting your computer) to find information and contacts to an increasing number of entities, both profit-making and non-profit-making, when the most common way of searching for a home page is by entering the trade name or other name (without Czech diacritics), the activities carried out by the Defendant No. 1, directly enabled by the Defendant No. 2, means a considerable damage for the Plaintiff, as everyone who wishes to learn something about the Plaintiff and enters the Plaintiff's trade name - i.e. www.x+y.cz, will find no information about the Plaintiff. This is why the Plaintiff believes that until an effective solution to this dispute is reached, it appears reasonable to order an interlocutory judgement in order to avoid any further speculative transformations of the **x+y.cz** domain to other parties. This interlocutory judgement will be logically aimed against the Defendant No. 2, too, who is involved in the registration of domain names and who shall make sure on the basis of a decision made by the court that this domain is no longer transferred.

The Plaintiff submitted its extract from the Commercial Register, extract from the register of interest associations of legal entities, certificate of registration pertaining to Defendant No. 2, extracts from the domain register, information provided by the Defendant No. 2 on the internet, together with the specification of the current number of members, information concerning the Defendant No. 2, draft standard contract concerning domain name registration, presented by the Defendant No. 2, current copy of the web page www.x+y.cz, certificates concerning the entries of the Plaintiff's trademarks,

including appendices and illustration of individual trademarks, description of the Plaintiff's history, correspondence between the Plaintiff and the Defendant No. 1 and information concerning the decisions of the Supreme Court of the Czech Republic and the Constitutional Court.

Based on the claim and the documents presented, the court considers it evident that the Plaintiff has been using a trade name of **x+y, a.s.**, that it is the owner of trademarks comprising the phrase **x+y**, that the trademark No. 222222 is a generally known trade mark (renowned according to the previous wording), internationally incorporated, and that the Defendant No. 1 has registered through the mediation of the Defendant No. 2 the domain **x+y**, under the internet domain of the highest level, i.e. ".cz".

Pursuant to the provisions of Section 102, Paragraph 1 of the code of civil procedure, it is necessary to adjust the mutual relations between parties involved upon the commencement of proceedings, or, should there be any threat that the execution of a subsequent decision may be jeopardized, the court may order an interlocutory judgement. The terms and conditions pertaining to the order of interlocutory judgement after commencement of proceedings are essentially identical to those defined by the law for ordering an interlocutory judgement before commencement of procedures. It is particularly necessary to demonstrate the necessity of the temporary adjustment of relationships between the parties involved, at an intensity corresponding to the obligations resulting from the interlocutory adjustment and the claim itself. With respect to the issue in question, the court considers the terms and conditions for ordering an interlocutory judgement with respect to the Defendant No. 2 to be fulfilled, as the Plaintiff has adequately demonstrated that the identification of **x+y** is its trade name and that this identification is included in the Plaintiff's combined trade marks, of which one is a generally known trade mark. In addition, the Plaintiff demonstrated that the sign identical to its trade name and the texts of its trademarks was a domain, which the Defendant No. 1 registered through the mediation of the Defendant No. 2. The need for this necessary adjustment of relationships between the parties involved is based on the fact that it is necessary to restrict further transfer of the domain to other entities during the procedures, until an effective verdict is adopted. The court therefore fully accepted the Plaintiff's claim for an interlocutory judgement. Pursuant to the provisions of section 77, Paragraph 1 of the code of civil procedure, the aforesaid interlocutory judgement shall become void on the date on which a decision on the merits becomes effective, in case that the action is turned down, and 15 days from the execution date of the decision on the merits, providing that the Plaintiff's action is accepted.

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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.