DENIAL OF THE MOTION TO ISSUE INTERLOCUTORY JUDGMENT

> The Municipal Court in Prague decided on 5 February 2002, with respect to a lawsuit between the Plaintiff C. and the 1st Defendant, CZ.NIC, and the 2nd Defendant, P., concerning the order of interlocutory judgement, to dismiss the motion to order the interlocutory judgement that would impose an obligation to the 1st Plaintiff to suspend the registration of the domain name x+y a x+yabc in the CZ domain names register pursuant to the domain registration rules set by the 1st Plaintiff and to bar the registration of any changes pertaining to these domain names and that would prevent the 2nd Plaintiff from conveying the ownership title pertaining to any of the x+y and x+yabc domain names within the CZ domain to third parties, pledging the ownership title or the pre-emption right to these domains in favour of third persons or letting third parties use these domain names either in return of payment or free of charge.

The Plaintiff claimed that the court issue an interlocutory judgement in the wording of that verdict, claiming to be an entrepreneur pursuing his business activities in the field of real estates, with his trading company registered by the Industrial Property Office as a registered trademark under the file No. 123456. The 1st Defendant is an interest association of legal persons exclusively authorised to register and administer domain names within the CZ domain. The 2nd Defendant pursues his business activities in the field of information technologies, dealing mainly with counselling, designing and implementing computer networks, supplying hardware and software components and creating and administering Internet presentations and www pages in the territory of the Czech Republic. The 2nd Defendant operates Internet pages under the domain names concerned in the .cz domain, publishing information that have no connection with the Plaintiff's business in the territory of the Czech Republic, which may give a deceptive impression of the illegal character of the methods applied by the Plaintiff and which disturbs the Plaintiff's reputation. The Plaintiff uses the identical domain names in other countries where he pursues his business activities. These domain names are typical of him and are considered to be a generally known mark. Contacting both the Defendants, the Plaintiff tried to obtain redress without success. The Plaintiff claimed that the activities pursued by the 2nd Defendant be assessed as a mere speculation in contradiction with the rules of economic competition and against morality. The Plaintiff insisted to be ready to defend himself by taking legal steps against the Defendant. Considering the fact that the Plaintiff incurred further damages and that the conveyance of the ownership title to the domain names concerned to third persons was imminent, the Plaintiff insisted on settling the relations of the parties temporarily.

Judging the justification of the motion with respect to the relation of the Plaintiff to the 2nd Defendant, the Court proceeded from the documentation appended to the motion, finding out from the extract of the Trademarks Register kept by the Industrial Property Office of the Czech Republic that the Plaintiff's ownership title to the trademark No. 123456 did not comply with the specifications given in the Plaintiff's motion. No other trademark-related protection was verified by the Plaintiff. The Court further proceeded from the appended extracts of the Commercial Register of both the entities, according to which both of them had the same scope of business, "purchase of goods to be resold and resale of goods", however, proceeding from the original justification of the motion, the Plaintiff's principal scope of business was counselling and mediation of services in the field of real estate trade. On the other hand, the Defendant was found to run business in the field of information technologies. Article IX of the Plaintiff's motion was found unjustified as the entrepreneurs concerned did not compete within the scope of the economic competition pursuant to the provisions of Article 44 and following articles of the Commercial Code. Besides that, the 2nd

Defendant's speculative behaviour in relation to the offer to monetise the domain names was not verified sufficiently enough to prove the 2nd Defendant's malicious intent to act in a speculative manner when registering the domain names, the principal reason being that the motion did not specify any relation between the 2nd Defendant and the Plaintiff.

Pursuant to the provisions of Article 74, paragraph 1 of the Code of Civil Procedure, the court can order an interlocutory provision before initiating the proceedings in the given case, ordering that the relations between the parties be settled until the legal decision is rendered in the case concerned. Apart from other things, the motion to issue an interlocutory provision must specify what action is to be filed by the Plaintiff and what is to be claimed by filing the action in future. It must be clear that the suggested interlocutory judgement is based on the same facts of the case and their assessment.

Considering the fact that the motion concerned failed to give that specification and that the Plaintiff failed to verify the factual information properly, the motion was dismissed with respect to the 2nd Defendant as well as the 1st Defendant whose position in the motion concerned is derived from the result of the decision concerning the 2nd Defendant.

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.