INTERLOCUTORY JUDGMENT

The Regional Court in Prague decided on 13 March 2002, with respect to a lawsuit between the Plaintiff K. and the Defendant L. concerning the good reputation of a legal person, unfair competition and just redress amounting to CZK 50,000 and the motion to order an interlocutory judgement, by ordering the interlocutory judgement according to which the Defendant shall (1) remove the www internet page displayed under the domain name of "x+y.cz", (2) abstain from using the domain name of "x+y.cz" and (3) abstain from conveying the domain name of "x+y.cz" to a third person. The Court has also ordered an interlocutory judgement ruling that CZ.NIC shall abstain from implementing the conveyance of the domain name of "x+y.cz" from the Defendant to a third person.

In his action filed with the Court on 8 March 2002, the Plaintiff claimed that the Court should render a legal decision imposing an obligation on the Defendant to abstain from using the domain name of "x+y.cz", to apply to CZ.NIC for the conveyance of the domain name from the Defendant to the Plaintiff, to pay the just redress amounting to CZK 50,000 and that it be stipulated in the legal decision that the use of the verbal trademark of "X+Y", application No. 123456 for selected classes, was an illegal act. The Plaintiff prosecuted the above mentioned claims, referring to the following titles: the title to be protected against any infringement of his rights by an unauthorised use of his company name pursuant to the provisions of Article 12, paragraph 1 of the Commercial Code (considering the fact that the Defendant used the Plaintiff's company name without authorisation), the title to be protected against any interference with his good reputation pursuant to the provisions of Article 19b, paragraph 3 of the Civic Code (considering the fact that information capable of damaging the reputation enjoyed by the Plaintiff with the public and his business partners was spread) and the title to be protected against any unfair competition pursuant to the general clause (Article 44, paragraph 1 of the Commercial Code) and Articles 47 and 50, paragraph 1 of the Commercial Code (considering the fact that the contending parties were competitors and the Defendant's activities were capable of injuring the Plaintiff's business standing).

To justify his action, the Plaintiff stated that the contending parties pursued their activities on the market in the field of trade and services, focusing on real estates, with the Plaintiff's company name registered as from 22 July 1999. Though the Defendant had never pursued his business activities under the name constituting the Plaintiff's company name, on 12 November 2000 he registered the domain name of "x+y.cz" with the CZ.NIC association for himself and then applied for registering the verbal trademark of "X+Y" for selected classes with the Industrial Property Office. The irregular acts committed by the Defendant consisted chiefly in displaying www internet pages under the domain name of "x+y.cz", with their contents infringing the Plaintiff's rights. At the time of filing the action, texts and images of a pornographic character including links to other pages dealing with similar subjects were displayed. The Defendant injured the Plaintiff and infringed the Plaintiff's rights by registering and using the above specified domain name, taking into account the character of the contents of the www internet pages displayed under the domain name concerned.

Filing the action, the Plaintiff claimed that the Court should issue an interlocutory judgement, with its scope identical with that mentioned in the verdict of that judicial decision. To justify the motion to issue an interlocutory statement, the Plaintiff stated that it was necessary to settle the relations of the parties temporarily, i.e. until the proceedings related to the action are concluded as the Plaintiff's position was injured repeatedly and there was a danger of conveying the domain name concerned to a third person acting in accord with the Defendant, which would have made it possible for the Defendant to continue injuring the Plaintiff in the above described manner. To prevent any further conveyance, the Plaintiff claimed that an obligation should be imposed on the CZ.NIC association that acts as the registrar of internet domains in the Czech Republic.

The proofs proposed by the Plaintiff to substantiate his claim to issue an interlocutory statement were identical with those proposed to substantiate the justness of his claim in the case itself.

Pursuant to the provisions of Article 102 of the Code of Civil Procedure, the Court can order an interlocutory provision after initiating the proceedings provided that it is necessary that the relations between the parties be settled temporarily or that it is suspected that the execution of the future ruling might be avoided. The conditions of issuing an interlocutory statement after initiating the proceedings are almost identical with those stipulated by the law (Article 74 and following articles of the Code of Civil Procedure) for issuing an interlocutory statement before initiating the proceedings. In every case, it is required that the urgent need to settle the relations of the parties temporarily as well as the title itself be verified properly so as to make sure that (without substantiating the facts) enforcing the title successfully is not evidently impossible. The interlocutory statement does not anticipate the legal decision in the case itself and it may not be ordered in case the consequences of the settlement would have a final rather than temporary character. That is why the motion for an interlocutory statement should not have the same contents as the motion in the case itself. However, the application of this rule is not absolute; the claims based on the provisions of Article 44 and following articles of the Commercial Code clearly demonstrate this fact. In these cases (and the same holds for the case concerned), the motion to order an interlocutory statement is identical or partially identical with some claims applied in the case itself. The viewpoint of preventing the damage to the Plaintiff from arising or increasing is considered decisive for evaluating the motion.

Pursuant to Article 76, paragraph 2 of the Code of Civil Procedure, an obligation may be imposed on other persons than the contesting parties only in case such a demand can be justly made on them.

In the case concerned, the Plaintiff claimed abstaining from certain activities, with the contents of that claim identical with the motion to order an interlocutory statement in the case itself. Imposing the obligation to abstain from using the domain name concerned was claimed, with the remaining claims mentioned in the motion to order an interlocutory statement aiming at justifying the redress of the irregular situation - removing the www internet pages containing irregular contents and preventing the potential conveyance of the domain name to a third person.

Checking the documents submitted, the Court found it substantiated that - according to the respective entries in the Companies Register, the Plaintiff and the Defendant were legal persons - the companies were pursuing their business activities in the same field - the real estate market. This implied that they are rival companies, i.e. competitors. Checking the extract pertaining to the Plaintiff, the Court found it substantiated that the Plaintiff had been using his company name since the date of entering his company in the Companies Register, i.e. since 22 July 1999. Checking the trademarks database, the Court found it substantiated that the Plaintiff was the applicant of the verbal trademark of X+Y, application No. 123456. Checking the Internet database of domain names kept by the CZ.NIC association, the Court found it substantiated that the “x+y.cz” domain had been registered since 12 November 2000, with the Defendant being the domain owner and payer since that date and the technical administrator of the domain since 9 October 2001. The Plaintiff substantiated the principles of registering domain names by the CZ.NIC association with the domain names registration rules applicable from 1 September 1999 to 28 February 2001 and from 1 March 2001 to 28 February 2002. Submitting the Distrainer's Report No. EZ 02/02 dated 15 February 2002, the Plaintiff substantiated the facts of the case - the use of the domain concerned and the result of entering the domain name in the computer, i.e. opening a www internet page presenting an image with pornographic contents and a text in the German language pertaining to that image.

With the issue of fact substantiated as specified above, the Court concluded that the motion to issue an interlocutory statement was fully justified. The Plaintiff substantiated his preferential right to use the company name and the right to claim protection against any unauthorised infringement of that right. In addition, the Plaintiff substantiated that the Defendant's activities were activities pursued in the economic competition as the parties carry on business in the same field. Besides that, the Plaintiff substantiated that the Defendant had been registered with the association providing for the registration of domain names in the Czech Republic as the owner of a domain containing the word constituting the Plaintiff's company name. The use of that name (which is characteristic of the business activities pursued by the Plaintiff) in the manner substantiated in the Distrainer's Report was found to be an act capable of causing damage to the Plaintiff, taking into account the manner of using it, as well as an act contrary to the principles of fair competition. Considering the above mentioned facts, the Court decided that the terms and statutory preconditions of ordering an interlocutory statement and settling the relations of the parties temporarily had been complied with. The temporary settlement was found justified both from the standpoint of preventing any further use of the domain name and from the standpoint of eliminating the irregular state lying in the fact that the domain name whose major part consisted in the Plaintiff's company name was used for displaying pages with pornographic contents, which produced the impression that it was the Plaintiff's intention to do so. However, the Plaintiff did not have any chance to influence the contents of the pages. Considering the preventative character of the interlocutory judgement, the Court was convinced that it was necessary to prevent the infringement of the Plaintiff's rights from being continued, to prevent any damage to the Plaintiff and to prevent the conveyance of the domain concerned to a third person. As the domain had been registered with the CZ.NIC association, which is entitled to register and administer domain names, the Court reached the conclusion that in that case, it was just to request that the association abstain from conveying the domain name to a third person. Therefore the Court granted the petition pursuant to Article 76, paragraph 3 of the Code of Civil Procedure even though the motion aimed at a person that was not a contesting party.

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.