

Supreme Court of the Czech Republic decision

Court:	Supreme Court
Grounds for appeal:	Section 265b, paragraph 1 (g) of the Code of Penal Procedure
Date of decision:	17/09/2014
Case number:	5 Tdo 1070/2014
Type of decision:	RULING
Keywords:	Infringement of the rights to trademarks and other distinctive signs Gain
Legislation at issue:	Section 268, paragraph 1 and paragraph 3 (a) of the Penal Code

R U L I N G

On 17 September 2014, the Supreme Court, sitting in private, delivered the following ruling on a Supreme Court appeal brought by **DC** against a ruling of the Regional Court in Brno (Regional Court case number 5 To 64/2014 of 2 April 2014) concerning DC's appeal in a penal case which originated in the Municipal Court in Brno (Municipal Court case number 92 T 99/2011):

The Supreme Court appeal brought by DC is **d i s m i s s e d** on the basis of Section 265i, paragraph 1 (e) of the Code of Penal Procedure.

Grounds for the dismissal – excerpt:

“In a ruling delivered on 23 January 2014 (case number 92 T 99/2011), the Municipal Court in Brno found DC guilty of the crime of infringement of the rights to trademarks and other distinctive signs in terms of Section 268, paragraphs 1 and 3 (a) of the Penal Code (Act No. 40/2009 as amended, hereinafter referred to as the “Penal Code”). As sole director and owner of the **World Intellectual Property Database, s.r.o.** (limited liability company), registered office address: Roháčova 188/37, 130 00 Prague, company ID: 246 89 017, head office address: Cejl 32, 602 00 Brno (hereinafter referred to as the “WIPD Company”) DC knowingly provided services under a logo that was liable to be confused with another party’s exclusive trademark. Following the registration of the WIPD Company on 9 June 2010, DC commissioned the design of a company logo, deliberately ordering a logo closely resembling and liable to be easily confused with the logo of the **World Intellectual Property Organization based in Geneva** (hereinafter referred to as the “WIPO Organization”). The WIPO Organization’s logo is protected as a trademark under Article 6ter of the Paris Convention for the Protection of Industrial Property. DC also commissioned the design of a company website that was to resemble the WIPO Organization’s website. DC then proceeded to contact, in writing, patent and trademark owners worldwide offering to include them in the trademarks and patents database operated by the WIPD Company, subject to payment of a fee. In his correspondence he cited each addressee’s registration number in the WIPO Organization’s register, taking advantage of the similarity of logos, stationery and websites to lead the addressees to believe that the offer came from the WIPO Organization. DC continued this activity until 31 January 2011 when the WIPD Company changed its logo and name. As a result of its unauthorized use of a trademark, the WIPD Company gained CZK 2,745,131.28 profit after tax. As its sole director, DC had the exclusive right to dispose of this net profit. DC did not incur any costs other than those identified in the expert report. This means that DC, the sole owner of the WIPD Company, gained the above amount of money as his income from business. For this crime he was sentenced to 18 (eighteen) months in prison pursuant to Section 268, paragraph 3 of the Penal Code. The sentence was to be served in a semi-open prison pursuant to Section 56, paragraph 2 (b) of the Penal Code. In addition, pursuant to Section 67, paragraph 1 and Section 68, paragraphs 1 and 2 of the Penal Code, the court ordered DC to pay 500 day fines. One day fine was set at CZK 2,000 and the total amount to be paid was CZK 1,000,000 (one million). In case of failure to pay the total

amount within the set time limit, DC was to serve an additional 1 (one) year in prison pursuant to Section 69, paragraph 1 of the Penal Code.

DC appealed to the Regional Court in Brno. This appellate court's ruling of 2 April 2014 (Regional Court case number 5 To 64/2014) overruled the Municipal Court's decision concerning the prison sentence and the manner in which DC was to serve it, with reference to Section 258, paragraph 1(e) and paragraph 2 of the Code of Penal Procedure. Noting that the case met the criteria set out in Section 259, paragraph 3 of the Code of Penal Procedure, the Regional Court sentenced DC to 12 (twelve) months in prison pursuant to Section 268, paragraph 3 of the Penal Code. The sentence was to be served in a semi-open prison pursuant to Section 56, paragraph 2 (b) of the Penal Code.

DC, acting through his legal counsel ..., appealed to the Supreme Court against the ruling of the Regional Court in Brno (case number 5 To 64/2014 of 2 April 2014) in conjunction with the ruling of the Municipal Court in Brno (case number 92 T 99/2011 of 23 January 2014). DC's Supreme Court appeal was based on the ground for appeal set out in Section 265b, paragraph 1 (g) of the Code of Penal Procedure. ...

...The public prosecutor from the Supreme Public Prosecutor's Office on whom the notice of DC's appeal was served pursuant to Section 265h, paragraph 2 of the Code of Penal Procedure stated that the courts that had previously heard DC's case had respected the existing legal view of the Supreme Court ... The Supreme Court had expressly upheld a finding of guilt in a case of infringement of the rights to trademarks and other distinctive signs in terms of Section 268, paragraph 1 and paragraph 3 (a) of the Penal Code... Once the existing assessment of DC's actions is called into question, the relevant Supreme Court ruling would be open to challenge as well, which is unacceptable...

... The public prosecutor concluded that the courts that had previously heard DC's case had made none of the errors mentioned by DC in his Supreme Court appeal. Therefore, the public prosecutor requested the Supreme Court to dismiss the appeal pursuant to Section 265i, paragraph 1 (e) of the Code of Penal Procedure...

... According to the established case law, damage is not an essential element of the crime of infringement of the rights to trademarks and other distinctive signs as defined in Section 268, paragraph 1 of the Penal Code. As a result, the damage, if any, caused to the holders of such rights is not relevant to the finding of guilt and to the sentencing process (cf. Supreme Court ruling of 17 August 2011, case number 5 Tdo 751/2011, published in the Supreme Court's Penal Case Reports as case No. T 1415)...

... Following consideration of all objections raised in DC's appeal, the Supreme Court concluded that the challenged ruling of the Regional Court in Brno (case number 5 To 64/2014 of 2 April 2014) in conjunction with the ruling of the Municipal Court in Brno (case number 92 T 99/2011 of 23 January 2014) did not contain errors that would justify a decision to set it aside with reference to Section 265b, paragraph 1 (g) of the Code of Penal Procedure. The first instance ruling (Municipal Court case number 92 T 99/2011 of 23 January 2014) shows that the original (first instance) court heard and considered all relevant evidence necessary to establish the facts of the case and to make a legal assessment. This ruling and the proceedings that preceded it were duly reviewed by the appellate (second instance) court. The appellate court overruled only the decision concerning the prison sentence and the manner in which DC was to serve it, and then proceeded to clearly and logically deal with all the relevant points raised by DC in the appellate proceedings. In the light of the content of the Supreme Court appeal and the objections raised in it, as compared with the objections already made in the Regional Court appeal, and considering the way this appellate court had already dealt with these objections, it is obvious that there are no errors of law in the ruling challenged by the Supreme Court appeal and in the proceedings that preceded this ruling. On this basis, the inevitable conclusion is that DC's appeal is manifestly unsubstantiated. Accordingly, the Supreme Court dismissed the appeal with reference to Section 265i, paragraph 1 (e) of the Code of Penal Procedure".