DISMISSAL OF THE MOTION FOR AN ORDER TO ISSUE A PRELIMINARY RULING

On 26 March 2003 the Municipal Court of Prague determined the case of B, the Plaintiff, vs. CZ.NIC, the Defendant, concerning an order to issue a preliminary ruling as follows:

1. The motion for the order to issue a preliminary ruling, imposing on the Defendant the duty to refrain from registration of the domain name to another person except for the Plaintiff, is refused.
2. No party is entitled to reimbursement of the costs of the preliminary ruling.

The Plaintiff made a motion for a preliminary ruling, imposing on the Defendant the duty to refrain from registration of the domain name to another person except for the Plaintiff and to compensate the costs.

The Plaintiff is said to be a limited liability company and since his incorporation in 1997 he has been using the trade name "B. s.r.o." The Plaintiff also owns the combined trademark "x+y+z", registered in the Trademark Register at the Czech Office of Industrial Property with a priority as from 30 May 2001. The Plaintiff declared to have been provided for the service of the domain name "x+y+z.cz" by the Defendant, as from 9 February 2002. According to the Plaintiff, the Defendant cancelled the domain earlier than was lawfully possible, i.e. before 9 February 2003. The Plaintiff assumes that the cancellation was unlawful, as the Defendant could not have done this, even if he were in delay with payment, without a new application for registration of the domain by another person. In addition to this, special applications have been constantly made but none of the applicants has paid any registration charge. Therefore the domain has been blocked for several months. In spite of having been notified of the unlawful situation and of the interference with the rights of our company, the Defendant has not renewed the domain and continues processing special applications. With respect to the Plaintiff's rights resulting from the ownership rights to a trademark and the rights resulting from use of the trademark, the Plaintiff assumes that registration of the domain to another owner except for the Plaintiff must be considered contradictory to the Commercial Code and the rues of economic competition. The person whose specialapplication is being dealt with is V.P. The Plaintiff assumes that a status quo registration would be unlawful and would result in another action being brought against the Defendant. With regard to this fact and in order to stop any false registration, the Plaintiff moved for a preliminary ruling.

In compliance with the Provisions of Section 75, paragraph 1, of the Civil Procedure Code, the presiding judge shall deny the motion for a preliminary ruling if this does not include all elements, is incomprehensible or indefinite, and if these imperfections prevent further proceedings. The provisions of Section 43 of the Civil Procedure Court shall not be applied. The Plaintiff's claim, as presented in the prayer of the action, is undoubtedly incomprehensible and indefinite, as the Plaintiff calls for the Defendant to refrain from registering the domain name to another person except for the Plaintiff, without specifying the domain name concerned. For that reason the Court decided in accordance with the provisions of Section 75 of the Civil Procedure Code and denied the motion. To make the facts complete it must be stated that even if the motion contained a particular demand, it contains other imperfections, both formal and factual. The Plaintiff did not specify the substance of the unlawful acts of the Defendant, did not demonstrate any intention to bring an action (a preliminary ruling is only a temporary measure and if no proceedings are pending the preliminary ruling terminates with the end of the proceedings to be instituted) and did not specify the nature of the action. The conclusion on the subject-matter of the case is essential if the Court is to satisfy the motion and order the Plaintiff to bring an action. However, the motion presented by the Plaintiff does not provide any such conclusion and the statement that the Defendant's acts are contradictory to the Commercial Code and the rules of

economic competition is only general and insufficient as regards the subject-matter of the case. The documents enclosed to the motion prove that the domain name "x+y+z.cz" is registered, although the registration charge has not been paid yet, and at the moment the domain is not free. Finally, the imperfections concerning the factual justification of the motion make it impossible to decide who the potential action would be brought against, i.e. whether against the Defendant as the registration body or against other persons as well.

With respect to the fact that the motion was held to be imperfect, it is not subject to any charges. As the court costs were paid there is no reason for returning them.

The statement concerning the court costs is based on the provisions of Section 146, paragraph 3, of the Civil Procedure Code. As indicated, no expenses were incurred to the Defendant and the Court decided accordingly.

Apart from the organization "CZ.NIC", the legal proceedings participants are denominated only by the first letters of their surnames or trademarks. The subject domains are replaced by a chain of x+y+z.cz. Whenever the decision refers to other domain names, these were replaced by different chains. Apart from the identification of participants or other persons and domain names, the text of the decision was modified to the least extent possible. Any connection between the abbreviations or symbols, and persons or domain names that actually use such abbreviations or symbols is purely coincidental.

The decision contains not only the judicial statement and its reasons, but also summarized statements from each party that represent only the legal opinion of the relevant party, rather than a conclusion, as the Court may not have dealt with these statements at all (e.g. when issuing a preliminary ruling).

The judicial statement may not be automatically applied to other cases (albeit with identical facts) and the CZ.NIC organization recommends consulting over any case with domain and legal experts.