PRELIMINARY RULING

Regarding the case of D., the Plaintiff, vs. 1) S. and 2) CZ.NIC, the Defendants, the High Court of Prague decided on 26 March 2004 in favour of protection against unfair competition and infringement of trademark rights, moving for the order to issue a preliminary ruling concerning the appeal filed by the Defendant No. 1 against the resolution of the Municipal Court of Prague of 7 July 2003 as follows:

The resolution of the first instance court has been confirmed by the statement a), against which the appeal was filed.

Having adopted the above resolution, the first instance court complied with the Plaintiff's proposal and issued a preliminary ruling, imposing on the Defendant No. 1 the obligation to refrain from using the domain name as well as from any other actions aimed at the change in registration thereof, in particular the transfer of the domain name, with the exception of transferring it to the Plaintiff. (letter a) of the above statement). As to the Defendant No. 2, the first instance court imposed the obligation to refrain form changing the registration of the domain name x+y+z.cz with the exception of transferring the domain name from the Defendant No. 1 to the Plaintiff (letter b) of the above statement). The justification of the above resolution issued by the court included Plaintiff's declarations as specified in the action, including the motion for issuing the above preliminary ruling. To justify the preliminary ruling, the Plaintiff declared to be the owner of a number of trademarks, protected also within the Czech Republic, namely the national word trademark X-Y+Z and the combined trademark X-Y+Z, the international word trademark X-Y+Z+W and the combined trademark X-Y+Z+W, registered, inter alia, for telecommunication services, including but not limited to the dissemination of information and provision of products and services by the Internet. The Plaintiff also owns a number of second-level domains, and the domain name x-y+z+w.cz in the Czech Republic. As indicated by the Plaintiff, the name X-Y+Z+W has become world-known in relation to the Plaintiff's business activities in telecommunications, even in the Czech Republic, particularly due to big advertising campaigns. As indicated by the Plaintiff, the Defendant No. 1 registered the domain name x+y+z.cz with the Defendant No. 2 for speculative reasons, but did not link any websites to this domain name. Upon entering the above name, potential users are directed to the Plaintiff's website www.x-y+z+w.cz, however this redirection has not been authorised by and announced to the Plaintiff. This action of the Defendant No. 1 infringes the Plaintiff's rights to trademarks, as detailed by the Plaintiff, and is considered an act of unfair competition. Considering the fact that the Defendant No. 1 has not deliberately refrained form using the domain name (and he offered to sell the domain to the Plaintiff for CZK 1,300,000) and since further disposal of the domain (i.e. the transfer) cannot be ruled out, the Plaintiff moved for the preliminary ruling. Furthermore, the first instance court used in the aforementioned justification documentary materials, attached to the motion filed by the Plaintiff, and mentioned the legal regulation of conditions under which the preliminary ruling may be issued pursuant to Section 102 of the Civil Proceedings. The court considered attested Plaintiff's rights to the trademarks, as well as the fact that the Defendant registered the domain name x+y+z.cz, the fact that potential users who enter the name are redirected to Plaintiff's websites and the offer to sell the domain to the Plaintiff made by the Defendant. The court believes that the conditions of issuing a preliminary ruling have been met. With respect to the interchangeability of the trademarks with the domain name and establishing a relation between the domain name and the Plaintiff and services he provides (using unauthorized redirection to Plaintiff's websites), the court considers it indispensable to impose on the Defendant No. 1 the obligation to refrain from further use of the above domain name, and in order to avoid changes in the status quo, the obligation to refrain from changing the registration of the domain name. Identical obligations aimed at preserving the status quo have been also imposed on the Defendant No. 2, as requested by the Plaintiff.

The resolution was appealed by the Defendant No. 1 as to the obligation imposed on him. The

Defendant No. 1 pointed out that having complied with the Plaintiff's request, the court of first instance anticipates the meritorious decision since the regulation is not preliminary, but final. The Defendant No. 1 believes that the conditions of issuing the preliminary ruling have not been met and the court has not even given details of the fulfilment thereof. If the obligation to refrain from using the domain name is imposed on him, it concerns an activity which has never been performed by the Defendant (the Plaintiff himself confirms that the Defendant No. 1 has not linked any websites to the above name), and the redirection to the Plaintiff's websites, as indicated by the appellant, can be entered by anybody. According to the appellant, the registration of a domain name itself does not infringe the rights to trademarks and does not prevent a user of the Internet from accessing the websites presenting the Plaintiff's activities. The Defendant also points out the differences between the domain name and the trademarks registered by the Plaintiff and suggests the Court of Appeal change the appealed resolution dismissing the motion for the preliminary ruling. The Defendant enclosed to the appeal websites informing of conditions of domain registration and websites displayed when the domain name is entered.

The Court of Appeal reviewed the resolution issued by the first instance court pursuant to Section 212 et seq. of the Civil Proceedings without ordering any action (Section 214, paragraph 2c) of the Civil Proceedings) and concluded that the appeal was not justified.

Pursuant to Section 102 of the Civil Proceedings, the court may order a preliminary ruling if it is necessary in order to temporarily regulate the circumstances of parties, while the provisions of Section 74 et seq. of the Civil Proceeding shall be applied accordingly. If a preliminary ruling is issued, the Plaintiff must verify facts which justify the order to issue it and the necessity to temporarily regulate the circumstances of the parties. If the obligated party is injured with respect to the preliminary ruling, then it must be pointed out that if the Plaintiff is defeated in the proceedings itself and the proceedings do not take place or are cancelled for reasons other than due to compliance with the motion or satisfaction of the Plaintiff's right, then he shall compensate the obligated party pursuant to Section 77, paragraph 3 of the Civil Proceedings.

Pursuant to Section 75, paragraph 5 of the Civil Proceedings, the issuance of a preliminary ruling is based on the situation at the moment when the resolution of the first instance court was issued. The Court of Appeal therefore based its decision on the status described in the file concerning the decision of the first instance court, and considered only whether the decision is in compliance with the provisions of Section 102 of the Civil Proceedings with respect to the above state. In compliance with the decision of the first instance court, the Court of Appeal concluded that the reasons for ordering a preliminary ruling, as proposed with respect to the Defendant No. 1, were given. If, based on the evidence which was presented and is indicated in the justification of the decision, the first instance court considered proved the Plaintiff's rights resulting from the trademarks of the registered name as well as the use of the name in its interchangeable form by the Defendant No. 1, the court decided appropriately (the aforementioned use shall also include registration of the name the Defendant realized, since it is a basic action and prerequisite of presenting the Internet owner, whether such presentation has been realized by linking websites thereto or not). The same applies to the conclusion that the Defendant's conduct infringed the Plaintiff's rights resulting from the trademarks which justifies the issue of the preliminary ruling. A long-term use of a name interchangeable with the trademark results in a diffusion of the trademark and reduction of its value which justifies the necessity of a temporary regulation of the circumstances of the parties. Nevertheless, it is not possible to infer that the order included in the preliminary ruling unreasonably restricted rights of the Defendant No. 1. Taking into account both the temporary regulation of the circumstances of the parties and the elimination of a potential obstruction of the ruling, the motion should be complied with also as to prohibiting the transfer of the domain to a third person - the aim of this order is to create conditions in order to decide the case without further delays and potential changes in the parties of the proceedings. It must be added that that the imposition of the obligation to refrain from certain

actions for a definite period of time does not anticipate the decision of the case itself, and if the final decision does not affirmatively dispose of the action, the original state can be restored without any difficulties and the injury can be compensated for, as indicated in Section 77, paragraph 3 of the Civil Proceedings (as mentioned above).

With respect to the above-mentioned reasons and pursuant to Section 219 of the Civil Proceedings, the Court of Appeal has confirmed the resolution issued by the first instance court as factually correct.

Apart from the organization "CZ.NIC", the legal proceedings participants are denominated by first letters of their surnames or trademark only. The subject domains are replaced by a chain of x+y+z.cz. Whenever the decision refers to other domain names, these are 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 degree. Any connection between the abbreviations or symbols and persons or domain names that really use such abbreviations or symbols is purely accidental.

The decision contains not only the judicial statement and its reasons, but also summarized statements of each party which represent only a 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 used in other cases (notwithstanding cases with identical facts) and the organization CZ.NIC recommends consulting on any case with domain and legal experts.