PRELIMINARY RULING

On 27 April 2004, the Municipal Court in Prague issued a verdict with respect to an action between the Plaintiff: F. and the Defendants: 1. K. and 2. CZ.NIC, concerning a motion for a preliminary ruling, as follows:

The Court has issued the following preliminary ruling:

1. Defendant No. 1 shall abstain from using the domain name "a+b+c.x+y+z.cz" and the domain name "x+y+z.cz", including any disposal thereof.
2. Defendant No. 2 shall prevent any transfer of the domain name "a+b+c.x+y+z.cz" and domain name "x+y+z.cz" to any third party except the Plaintiff.
3. The Plaintiff shall bring a legal action on the matters, within 1 month of the delivery of this decision.

The Plaintiff is an entrepreneur involved in intermediation services in collecting, editing and publishing, and is the owner of the "X+Y+Z" trademark, registered by the Czech Industrial Property Office, with a priority right as of 11 March 1993, pursuing its activities under the trade name X+Y+Z. The Defendant No. 1 is involved in a similar business as the Plaintiff, had the domain names "www.a+b+c.x+y+z.cz" and "www.x+y+z.cz" registered, and offers services within its website focusing on philately, postal stamps, postal stamps exchange, etc.

The Plaintiff claims its exclusive right to use the "X+Y+Z" trademark, pursuant to the provisions of Section 8, Paragraph 1 of the Law No. 441/2003 Coll., concerning trademarks, referring to the provisions of Section 44, Paragraph 1 of the Commercial Code, stipulating the general definition of unfair competition which the Defendant No. 1 commits by acting in a manner which may cause confusion according to Section 47 of the Commercial Code and be deemed parasitizing on others' goodwill according to Section 48 of the Commercial Code, also through making an unauthorized use of the trade name used lawfully by another competitor, exploiting the goodwill of the Plaintiff's products and services with the aim of obtaining a benefit for the Defendant's business which the Defendant No. 1 would otherwise be unable to achieve. The Plaintiff has made considerable investments in the promotion of its trade name, trade mark and maintaining its goodwill, and the Defendant No. 1 is obtaining an unfair benefit of the goodwill associated with this trademark and to its detriment, disables the Plaintiff from conducting further promotions via the Internet and causes considerable detriment in terms of immaterial prejudice, occurring in connection with the amateur quality of the website presentation under a title which is, among customers, commonly associated with the Plaintiff. The Plaintiff therefore claims the issuance of the preliminary ruling specified above in order to avoid further use of the domains in question and prevent the Defendant No. 2 from transferring the domain names concerned to any third parties.

Pursuant to the provisions of Section 74, Paragraph 1 of the Code of Civil Procedure, the Court may issue its verdict concerning the preliminary ruling if the Court deems it necessary to adjust the relations between the parties concerned prior to the commencement of the legal proceedings on the matters. The Plaintiff submitted an extract from the Commercial Register according to which the company was established on 21 January 1993 and is involved in intermediation services in collecting, editing and publishing; according to an extract from the Commercial Register submitted by the Defendant, the Defendant's company was set up on 4 October 1994 and pursues its activities in a field similar to that of the Plaintiff, including production and intermediation services in culture, advertising and promotions, editing and publishing, and dealer activities. According to a Certificate issued by the Prague Municipal Office, the Defendant No. 2 was incorporated in the register of interest of legal persons under reg. No. ZS 30/3/98, with its scope of business including the services of a domain name registrar. Pursuant to an abstract from the trademark database kept at the Czech Industrial Property

Office, the Court acknowledged the Plaintiff's ownership of the verbal trademark "X+Y+Z", with a priority right as of 11 March 1993, and printouts of the "www.x+y+z.cz" and "www.a+b+c.x+y+z.cz" websites proved the fact that these websites were operated by the Defendant No. 1 in the wording of the domains concerned as trademarks. Having presented the X+Y+Z magazine, No. 3/2004, issued by the Plaintiff, P. magazines (volumes 2003 and 2004), photocopies of the front pages of X+Y+Z magazines and copies of correspondence postal cards with postal stamps identified with X+Y+Z, the Plaintiff proved a long history of its use of the X+Y+Z trademark and its promotion in the collecting business by the Plaintiff, publishing its own magazine entitled X+Y+Z.

The Court understands and acknowledges that the Plaintiff holds the owner right of the verbal trademark X+Y+Z, pursuant to the provisions of Section 8 of the Law No. 441/2003 Coll., concerning trademarks, that the Plaintiff has conducted business under the trade name X+Y+Z since 1993, and that both domains were registered for the benefit of the previous holder as of 8 July 1998, with their subsequent assignment to the Defendant No. 1/ as of 20 October 1999, both parties involved are entrepreneurs and competitors in the collecting business, as is evident from the website of the Defendant No. 1, offering its services in philately, postal stamps, postal stamp exchange, etc., and are therefore competitors.

The identity of the "x+y+z.cz" domain with the Plaintiff's trademark is beyond dispute and the use of the word "x+y+z" in the "a+b+c.x+y+z.cz" domain also means an infringement of the Plaintiff's rights to the "X+Y+Z" trademark.

The trademark law shall also be perceived as a part of the broader competition law, i.e. the use of the expressions "x+y+z" in both domains may be deemed an infringement in the fair economic competition, behaviour which may be classified as unfair competition as stipulated in the provisions of Section 44, Paragraph 1 of the Commercial Code and acting in a manner which may cause confusion according to Section 47 of the Commercial Code and parasitizing on others' goodwill according to Section 48 of the Commercial Code.

It is also evident that the Plaintiff has made earlier and lawful use of the expression X+Y+Z in the trade name of its business.

The Court therefore deems it justifiable and necessary to adjust the relations of the parties involved towards Defendant No. 1 as the competitor to and trespasser of the Plaintiff's rights, as well as towards Defendant No. 2, acting as a domain name registrar, whose involvement in the proceedings is derived from and dependent on the results of the motion against the Defendant No. 1. The Court therefore issued this preliminary ruling according to the provisions of Section 74, Paragraph 1 of the Code of Civil Procedure and ordered the Plaintiff to file a motion for the commencement of the proceedings, according to Section 76, Paragraph 3 of the Code of Civil Procedure.

Except for CZ.NIC, all participants of the proceedings are identified with the first letters of their surnames or trade names. The domain names in question are replaced with an x+y+z.cz sequence. All other domain names mentioned in the text have been also replaced with randomly chosen sequences of letters and signs. Except as regards 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 people or domain names using such abbreviations or dummy symbols for the purposes of identification is merely coincidental.

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 the individual parties involved, that the court may not have been concerned with some of these claims at all (e.g. with respect to the issue of a 4 preliminary ruling) and that such claims merely represent the 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 domain name experts and lawyers.