# PRELIMINARY RULING

On 12 May 2004 the Regional Court of Ostrava decided on the case of D, the Plaintiff, versus 1) G. and 2) CZ.NIC, the Defendants, as follows:

The Court issued the following preliminary ruling:

1. The Defendant No. 1 shall refrain from using the domain name "x+y+z.cz".
2. The Defendant No. 1 shall refrain from any actions leading to any changes in the condition of the registration as to the domain name "x+y+z.cz", especially from an assignment of any kind, except for transferring it to the Plaintiff.
3. Starting from the date when a final decision comes into force, the Defendant No. 2 shall refrain from changing the registration of the domain name "x+y+z.cz" except for transferring it from the Defendant No. 1 to the Plaintiff.

The Plaintiff pursues business activities in the installation and operation of a public mobile GSM communication network, provides mobile telecommunication services, telecommunication and IT consulting services and owns the international word trademark "T+U+V", registered with the World Organization of Intellectual Property, also for the Czech Republic, with a priority as from 31 August 1996. The Plaintiff also owns the international word trademark "X+Y+Z", registered with the Office of Intellectual Property of the Czech Republic as of 26 August 1997, with a priority from 20 December 1995. The Defendant No. 1 pursues business activities in the acquisition of goods to be resold and for sale, and in advertising, promotion and in the providing of software and the Internet.

The Plaintiff sought the exclusive right to use the trademark "X+Y+Z" pursuant to Section 13 et seq. of Act N. 137/1995 Coll. on Trademarks and sought the provisions of Section 44, paragraph 2 c) of the Commercial Code, regulating the elements of the risk of such mistaken identity committed by the Defendant No. 1 with respect to an unauthorized use of the name the Plaintiff uses for his services in order to gain profit from his own business activities, which without the said use could not be realized. The Plaintiff has invested significant financial means to promote his tradename and trademark whereas the Defendant No. 1 uses the trademark contrary to the law damaging the trademark and prevents the Plaintiff from achieving further promotion by the Internet, causing non-proprietary damage in relation to the presentation of websites. Having entered the denomination "x+y+z.cz" in Internet Explorer, the user is automatically redirected to another website denominated www.a+b+c.cz (the domain name "x+y+z.cz" does not include any website). The website, once opened, contains an advertising banner including a striking advertisement "SMS na T+U+V jen za 1,20 Kč" (send an SMS by T+U+V for CZK 1.20 only). Therefore the Plaintiff seeks a preliminary ruling to be issued against the Defendant No. 1 in order to prevent him from further use of the above domain names. The Plaintiff also seeks an obligation to avoid assigning the domain names to a third party to be imposed on the Defendant No. 2.

Pursuant to Section 102, paragraph 1 of the Civil Procedure, a preliminary ruling may be used providing the circumstances for an urgent regulation of the parties were proved after the proceedings itself commenced. The Plaintiff presented an entry in the Commercial Register for the company "T+U+V+E+D+F", in which he has a majority share. As is apparent from the entry, the above company began on 15 February 1996 and pursues business activities in the installation and operation of a public GSM telecommunication network and provides mobile telecommunication services and telecommunication and IT consulting. As is apparent from the entry in the Commercial Register of the Defendant No. 1, the company pursues similar business activities to the Plaintiff, as both of them provide and offer services connected with the Internet. As is apparent from the statutes, business activities of the Defendant No. 2 include, among aspects, the registration of domain names. An entry in the database of trademarks, registered with the Office of Intellectual Property of the Czech

Republic, proves that the Plaintiff owns the word trademarks"X+Y+Z" and "T+U+V"; printouts of "www.x+y+z.cz" proved that this website is operated by the Plaintiff and printouts of www.a+b+c+.cz proved that this website is operated by the Defendant No. 1 within the meaning of the above domains as trademarks. The Plaintiff proved a long-term use of the trademarks X+Y+Z and T+U+V with copies of various promotional material related to the products and services under the name "T+U+V" and a list of articles from Czech newspapers and magazines proving the use of the denomination "T+U+V" in the Czech Republic.

The Court deems it proved that the Plaintiff has the right of ownership to the word trademarks X+Y+Z and T+U+V, as regulated by the provisions of Section 13 et seq. of Act N. 137/1995 Coll. on Trademarks; that the Plaintiff has pursued his business activities under the trade name T+U+V+E+D+F since 1996; and that both the entities are in conflict, offering and providing services related to the Internet, and are therefore competitors.

The identity of the domain "x+y+z.cz" and the Plaintiff's trade mark is unquestionable and the use of the word "x+y+z" in the domain "x+y+z.cz" interferes with the Plaintiff's rights to the trade mark "X+Y+Z".

Trademark law must be interpreted as a part of the law of competition and therefore the use of the word "x+y+z" in both the domains may be viewed as an interference with the good manners of economic competition and the realisation of the general clause of unfair competition, as regulated by Section 44, paragraph 1, of the Commercial Code, and of the elements of the risk of mistaken identity pursuant to Section 47 of the Commercial Code.

It is also obvious that the Plaintiff uses the denomination X+Y+Z in the trade name correctly.

The Court therefore ruled that it is legitimate and urgent that the circumstances of the parties be regulated with respect to the Defendant No. 1 as a competitor and a disturber of the rights of the Plaintiff, as well as with respect to the Defendant No. 2 as a body registering domain names, whose position in the proceedings is derived from and is dependant on the proposal directed towards the Defendant No. 1, until the final decision comes into force. Pursuant to the provisions of Section 102, paragraph 1, of the Civil Procedure, the Court decided to issue the requested preliminary ruling.

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*Apart from the organization "CZ.NIC", the legal proceedings participants are denominated by the first letters of their surnames or tradenames. 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 is modified to the least degree. Any connection between the abbreviations or symbols and persons or domain names that in reality 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 (albeit with identical facts) and the organization CZ.NIC recommends consulting on any case with domain and legal experts.*