PRELIMINARY RULING

On 8 January 2004, the Supreme Court in Prague, determined the case of T., the Plaintiff, and E., Defendant No. 1, and CZ-NIC, Defendant No. 2, concerning the motion for a preliminary ruling, and concerning the appeal lodged by the Defendant No. 1 against the verdict adopted by the Municipal Court in Prague on 8 January 2004 as follows:

The Court upholds the verdict adopted by the first-instance court according to the statement I.1 in the verdict concerned.

Through the verdict specified above, the Court acquitted the motion submitted by the Plaintiff and issued a preliminary ruling, according to which the Defendant No. 1 shall abstain from using the x+y+z.cz domain name, including any disposal thereof (statement I.1) and the Defendant No. 1 shall prevent any transfer of the "x+y+z.cz" domain name to any person except for a transfer from the Defendant No. 1 to the Plaintiff (statement I.2). In the verdict, the Court referred to the Plaintiff's claims based on its motion for the preliminary ruling, according to which the Plaintiff is the owner of the X+Y+Z combined trademark. In addition, the Plaintiff is the owner of the x+y+z.org domain name. Furthermore, the Plaintiff claimed that the X+Y+Z logo represents a trade name under which the Plaintiff conducts its activities in the same segment as the Defendant No. 1, and the Defendant No. 1 registered the x+y+z.cz domain name with the Defendant No. 2, thus preventing the Plaintiff from using it for the purpose of its business activities. Pursuing his business activities in the same field of trade with the same territorial policy, publishing information on his business activities and offering services related to his subject of business activities on his server at the "a+b+c.com" domain to which the visitors are automatically redirected after entering the address www.x+y+z.cz means that the Plaintiff is losing orders. Thus, the Plaintiff's rights arising from the trademarks are being infringed, as the Plaintiff explains below. The Court acknowledged the Plaintiff's claims concerning its trademark and the registration of the x+y+z.cz domain name by the Defendant No. 1, concerning the redirecting of Plaintiff's potential customers who enters this name, to the Plaintiff's site and justified the fulfilment of the conditions for the issue of the suggested preliminary ruling.

The Defendant No. 1 has challenged the statement I.1, claiming that by registering the x+y+z.cz domain name, the Defendant No. 1 did not infringe the Plaintiff's rights to the X+Y+Z trademark, i.e. the it was impossible to join the use of a domain name and the use of a trademark, even if a domain name is identical to such a trademark. In addition, the Defendant No. 1 registered the domain name on 16 January 2002, i.e. before the Plaintiff filed a motion for the entry of its trademark - on 13 February 2002. Concerning the fact that the Plaintiff registered the x+y+z.org domain already in 2001 and has been using this domain for its business purposes since then, it is evident that the Plaintiff did not intend to use the national domain. Therefore, the Defendant No. 1 suggested that the court of appeal cancels the challenged verdict of the first-instance court and returns the case for further proceedings.

The court of appeal reviewed the challenged verdict adopted by the first-instance court according to Section 212 et seq. of the Code of Civil Procedure, without ordering any hearing on the merit (Section 214, Paragraph 2, Letter c) of the Code of Civil Procedure) and came to the following conclusion:

The first-instance court based its decision concerning the motion for preliminary ruling on the protection of the Plaintiff's rights to the X+Y+Z trademark, even though the statement of facts in the motion also testifies the fact that the Plaintiff and the Defendant No. 1 are competitors and the activities of the Defendant No. 1 were deemed competitive activities, although the Plaintiff did not mention this expressly in its motion. However, this is evident from the fact that the Plaintiff and the Defendant No. 1 pursue their business in the same field of trade (services associated with the tax system in the USA), which is not very common and widespread and that the Defendant No. 1 as the holder of the x+y+z.cz domain (the X+Y+Z logo is not only the Plaintiff's trademark but also its trade

name) had the website www.x+y+z.cz redirected to its website at www.a+b+c.com, i.e. those potential customers who wished to visit a website with an address identical to the Plaintiff's trade name were redirected to the website run by the Defendant No. 1, offering similar services. This may have led to the consequence that the Defendant No. 1 won customers to the Plaintiff's detriment and may have thus caused damage to the Plaintiff. From this perspective, it has been proven that it is urgently necessary to ensure temporary composition of the relations between the Plaintiff and the Defendant No. 1 in order to avoid any further loss. In addition, for the purposes of this preliminary ruling, the Court has acknowledged the claim itself, in order to be able to order the preliminary ruling. Concerning the fact that the Plaintiff and the Defendant No. 1 offer the same services via the Internet, the activities of the Defendant No. 1 bear the signs of misleading advertising, since the "X+Y+Z" identification has no connection with the Defendant's trade name (which is the case with the Plaintiff) or with the identification of its website. It is therefore impossible to claim that the first-instance court was not in position to acquit the motion for the preliminary ruling against the Defendant No. 1, even if it based its decision on other reasons than specified in the challenged verdict. The Court is not obliged by the legal evaluation of the parties involved, in case that - based on the representation of the essential facts - it is possible to classify the claimed fact under the hypothesis of a legal norm. The Plaintiff fulfilled this requirement in the motion. Therefore, even if the conditions for the preliminary ruling had not been fulfilled with respect to the protection of the trademark registered by the owner, because it is necessary to acknowledge the Defendant's claim that it had registered the "x+y+z.cz" domain before the Plaintiff filed a trademark application, it is possible to come to a conclusion that it is necessary to ensure temporary composition of the relations between the Plaintiff and the Defendant No. 1 in order to avoid any further loss pursuant to the evident unfair-competition conduct by the Defendant No. 1.

For the reasons specified above, the court of appeal confirmed the verdict of the first-instance court specified in the statement I.1 according to Section 219 of the Court of Civil Procedure as materially correct, even though - as specified above - for other reasons. In addition, the verdicts which were not subject to the appeal became legally effective.

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 for 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 the people or domain names actually using such abbreviations or dummy symbols for 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 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 experts in domain names and lawyers.