PRELIMINARY RULING

On 22 September 2004 the Regional Court of Plzeň decided on the case of R, the Plaintiff, and I, the Defendant, and CZ.NIC as a third party, with regard to the motion for issuing a preliminary ruling as follows:

I. The Defendant may not dispose in any way of the rights resulting from the registration of the domain name "www.x++y+z.cz", particularly transfer, sell, assign, burden with other rights or cancel the domain registration, except for transferring it to the Plaintiff.
II. The third party CZ.NIC z.s.p.o. shall take all possible measures to prevent the manipulation of the domain "www.x++y+z.cz" within 24 hours after delivery of the preliminary ruling at the latest, especially to prevent the transferring of the domain to another person except for the Plaintiff, the cancelling of the domain or the performing of any other interventions.
III. The Court denied the granting of a motion ordering the Defendant to place, at his own costs, at the internet address to which the domain is being directed, a text of 25 points according to the usual computer rate in blue print on a white background in a frame of 500x300 pixels, positioned in the top left-hand corner, reading as follows: "This domain is a subject of a legal dispute at the Regional Court of Plzeň." This text was supposed to be the only graphic element of any internet address accessible through the address "www.x+y+z.cz" with a usual Internet browser. The motion was supposed to order the third party to set down in the register of domain names in a usual way information that the above domain is a subject of a dispute at the Regional Court of Plzeň and is blocked.
IV. The Plaintiff shall bring an action for unfair competition within two months after the issuing hereof.

The Plaintiff filed a motion for the above preliminary ruling. He explained the action by the fact that both the Plaintiff and the Defendant are duly incorporated business companies, dealing in tyres, wheels and discs. The Defendant is the Plaintiff's competitor and rival both in the Czech Republic and in Germany. The third party is an existing interest group of legal entities being the only one to provide registration, records and cancellations regarding domain names in the Czech Republic and disposing of all means to prevent the use of the domain. This interest group is the only registering agent and the only place where the whole database of domain names in the Czech Republic is accessible. To efficiently prevent the domain name from manipulation it is essential to involve the third party to the proceedings in a preliminary ruling. The action brought by the Plaintiff also indicates that the Defendant has been the registered owner of the domain "www.x++y+z.cz" since 10 January 2002. He has also registered the domain "www.a+b+c.cz" and is the registered owner of the domains "www.x++y+z.cz" and "www.t+u+v.cz". These statements were supported with copies of entries in the Commercial Register of both the parties as well as the third party, with a printout of the content of the Defendant's web site, with an electronic extract from the domain database for different addresses of participants. The Plaintiff believes that the situation where the addresses "www.x++y+z.cz" and "www.a+b+c.cz" contain identical web sites of the Defendant, may evoke in a potential client or consumer a wrongful and false presumption that the Defendant has in some way established business contacts with the Plaintiff or that the Plaintiff and the Defendant are one entity, whereas in fact the parties are competitors. The Plaintiff is convinced that having registered the domain "www.x++y+z.cz" under which he presents products, the Defendant causes harm to the Plaintiff's good name. The Plaintiff intends to file a suit for an illegal action which is in contradiction with the rules of economic competition. The Plaintiff is convinced that the Defendant accomplished the elements of the provisions of section 44, paragraph 1, of the Commercial Code, and Section 47, letter a) of the Commercial Code, as amended. The Plaintiff is convinced of the urgency of ordering a preliminary ruling since any domain may be very easily transferred to a related entity or other entities

as soon as the Defendant learns about the suit. The Plaintiff believes that the above mentioned facts explain the statutory need for the temporary regulation of the circumstances of the parties. This need includes only the necessity to regulate temporarily the circumstances, to ensure the future enforcement of the law in case the Plaintiff wins the litigation, and the urgency given by the speed of the possibility of transferring the domain if the objective possibility itself is decisive for the issuing of a preliminary ruling.

Pursuant to the provisions of Section 74, paragraph 1, of the Civil Procedure, the presiding judge may order a preliminary ruling if necessary in order to regulate temporarily the circumstances of the parties or if there is a concern that enforcement of a judgement might be endangered. A preliminary ruling is ordered by the presiding judge upon a motion. The parties to the proceedings must be heard. The fact of whether a preliminary ruling is issued or not depends on the conditions at the moment when a first instance court issues a decision - pursuant to Section 75, paragraph 1f), of the Civil Procedure, a court may impose on one of the parties the obligation to do something, refrain from doing something or suffer something. In compliance with paragraph 2 of the above section, a preliminary ruling may impose an obligation on a non-participating person only if this can be fairly requested. Pursuant to paragraph 3 of the above section, the presiding judge issuing a preliminary ruling imposes on the Plaintiff the obligation to file a motion to start proceedings within a determined period of time. The Court may issue a preliminary ruling even if the claim is not reliably proven but decisive facts have been attested to. The need to temporarily regulate the circumstances of the parties must be urgent. An urgent need to temporarily regulate the circumstances of the parties occurs when the failure to issue a preliminary ruling would result in a legal act creating an irreversible legal status or worsening the legal status of the Plaintiff.

In this case the Plaintiff has proved that the Plaintiff and the Defendant are competitors both in Germany and in the Czech Republic. He has duly proved that they are registered owners of the above domain names. Since the Plaintiff believes that the fact that the Defendant registered the domain www.x++y+z.cz causes harm to his good name and since the Defendant has accomplished the elements of unfair business practices according to the valid Commercial Code, the Plaintiff intends to bring an action for unfair competition. These proceedings would examine whether the action is justified and whether the Defendant should refrain from unfair competition practices, as requested by the Plaintiff. However, this would mean an evidence procedure conducted as concentrated legal proceedings. The Plaintiff duly attested that the Defendant registered the above domains and their content. The Plaintiff also attested that similar domains presenting products are also duly registered by the Plaintiff who is trying to penetrate the Czech market. The Court believes that with respect to an unfair competition case to be conducted between the participants, it is urgent to temporarily regulate the circumstances of the parties since the Plaintiff suggests imposing a ban on the Defendant to dispose of the rights resulting from the registration of the domain name "www.x++y+z.cz", particularly a ban on transferring, selling, assigning, burdening or cancelling the registration except for transferring it to the Plaintiff. The above domain and the product presentation are undoubtedly related to the dispute between the parties of the unfair competition proceedings. Therefore it is necessary to ensure that the Defendant does not dispose of the domain until the dispute is settled. Otherwise the action for unfair competition practices and the dispute would be meaningless. The fact that the Court imposes a ban on the disposal of the rights resulting form the registration of the above domain name cannot jeopardize other activities carried out by the Defendant. On the other hand, if the Defendant disposed of the domain in some way, it would result in an irreversible legal condition endangering the legal status of the Plaintiff. Therefore the Court has complied with the motion as regards part I. and ordered a preliminary ruling. The Court has also ordered the third party CZ.NIC to take any appropriate measures to prevent any manipulation of the above domain pursuant to the provisions of Section 76, paragraph 2, of the Civil Procedure. The third party is not a participant in the proceedings but may be charged with the above obligation so that the blocking of the domain is

meaningful and effective. Thus the third party may be fairly asked to meet the obligations. For that reason pursuant to the above provision of the Civil Procedure, the Court has not found it necessary to temporarily regulate the circumstances of the parties and does not think it is urgent to order the Defendant to place at his own costs, to the address at which the domain is redirected at the moment, a text informing that the domain is a subject of a dispute at the Regional Court of Plzeň. Currently the Court does not see making a decision in this respect as urgent and for that reason this part of the motion against the Defendant and the third party has been denied.

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 randomly 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 as issued by the court, but also summarized statements of each party, which represent only legal opinions of the relevant parties, rather than conclusions, 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.