# PRELIMINARY RULING

On 20 September 2004 the Municipal Court of Prague decided on the case of E, the Plaintiff, versus P.Š., the Defendant No. 1, CZ.NIC, the Defendant No. 2, and the Defendants Nos. 3 to 19 (registering agents), moving for the following preliminary ruling:

I. I. The Court issued the following preliminary ruling:
    1. The Defendant No. 1 shall refrain from using the domain name "x+y+z.cz" as well as disposing of it in any way.

II. The Defendant No. 7 shall prevent the transferring of the domain name "x+y+z.cz" to another person except to the Plaintiff.

III. Regarding the motion to impose on the Defendants Nos. 2 to 6 and Nos. 8 to 19 the obligation to prevent the transferring of the domain name "x+y+z.cz" to another person except to the Plaintiff, the motion is denied.

IV. The Plaintiff shall pay a court fee resulting from the motion for a preliminary ruling amounting to CZK 9,500 to the bank account of the Municipal Court of Prague within three days after this decision comes into force.

V. The Plaintiff shall file a motion regarding the case within 1 month after the delivery hereof.

The Plaintiff is an entrepreneur engaged in the publishing business, purchasing goods for further resale and selling goods, etc., and has been undertaking business since 10 September 1994, and is the owner of the trademark "X+Y+Z", registered with the Industrial Property Office under the trademark number 123456 and the file number 111222 of 3 May 1995. The subject trademark is registered in the categories of products and services No. 35, 36, 39, 42 and is used as the name of the "X+Y+Z" magazine published by the Plaintiff.

The Defendant No. 1 registered speculatively the domain "X+Y+Z" as a second-level domain under the national domain "cz" and prevented the Plaintiff from registering this domain and limited the Plaintiff's possibility of using the above trademark.

The Defendants Nos. 2 to 19 are registering agents of domain names. Being worried that after the Court imposes a ban on one of the registering agents, the Defendant No. 1 might register the domain with a different agent, the Plaintiff seeks a subject ban on all existing agents registering the domain names.

Pursuant to the provisions of Section 74 et. seq. of the Civil Procedure, provided that the conditions of the above decision have been satisfied, the Court may issue a preliminary ruling in order to temporarily regulate the circumstances of the parties. With an extract from the database of trademarks of the Czech Industrial Property Office, the Plaintiff proved his ownership of the trademark "X+Y+Z", registered under the number 123456, with a priority as of 1 December 1993, and proved he is the publisher of the magazine "X+Y+Z" of the same name. Thus the registration of the domain "x+y+z.cz" by the Defendant No. 1 on 11 October 2003, as results from the database of CZ.NIC, infringes the Plaintiff's rights. Since, pursuant to Section 8 of Act No. 441/2003 Coll., on trademarks, an owner of a trademark has an exclusive right to use the trademark, and since the Court considers the above infringement by the Defendant No. 1 as well proved, the Court confirms forthwith the motion as to the Defendant No. 1.

Regarding the requirement to impose obligations on the above registering agents, the Court proceeded from the subject motion whose factual statement does not include the information as to which of the above registering agents registered the domain; albeit out of the need for caution the Plaintiff seeks the imposition of obligations on all existing registering agents

Based on the intended demand for relief, according to which the Court should decide only against the

Defendant No. 7, the Court does not consider the conditions of the preliminary ruling satisfied as far as the other defendants are concerned, unless the Plaintiff intends to file a suit against them. Therefore the motion against them was denied.

Pursuant to the provisions of Section 4, paragraph 1f) of Act No. 549/1991 Coll., on court fees, as amended, the Plaintiff shall pay the court fee for the subject motion according to Item No. 3 of The Fee Tariff, amounting to CZK 500 and assessed separately regarding each request towards the 19 defendants.

The imposed obligation to file a suit follows the provisions of Section 76, paragraph 3 of the Civil Procedure.

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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 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.*