DISMISSAL OF THE MOTION FOR AN ORDER TO ISSUE A PRELIMINARY RULING

On 4 October 2004 the Municipal Court of Prague decided on the case of E, the Plaintiff, versus 1) I. and 2) CZ.NIC, the Defendants, on protection against unfair competition as follows:

I. The motion for a preliminary ruling by which the Court would impose on the Defendant No. 1 the obligation to refrain from using in any way the domain name "x+y+z.cz" and on the Defendant No. 2 the obligation to prevent the transfer of the above domain name to another person except for the Plaintiff is denied.
II. The Plaintiff shall pay a court fee for the motion for a preliminary ruling within 3 days after delivery hereof. In compliance with Item No. 3 of the Court Fee Tariff the due fee is CZK 500, paid either in duty stamps or to the bank account of the Court at the Czech National Bank (ČNB) in Prague.

Having filed the action in this case, by virtue of seeking protection against unfair competition, the Plaintiff asks the Court to impose on the Defendant No. 1 the obligation to refrain from using the domain name "x+y+z.cz" and to remove defects by transferring the registration of the above domain name to the Plaintiff, and to impose on the Defendant No. 2 the obligation of preventing any person except for the Plaintiff from using the domain name, including any manipulation of the database relating to the registration of domain names, as well as preventing the transfer of the domain name to any person except for the Plaintiff, and the obligation to transfer the domain name "x+y+z.cz" to the Plaintiff. According to the Plaintiff, the unfair trade practices of the Defendant No. 1 consist in using the domain name "x+y+z.cz" which is identical with the Plaintiff's trademark. Filing the motion, delivered to the Court on 29 September 2004, the Plaintiff moves for a preliminary ruling by which the Court would impose on the Defendants specified in part I. hereof the above obligations. In order to justify the motion with reference to the explanation of the action itself, the Plaintiff stated that an Internet research showed that the Defendant No. 1 had registered more domain names identical with trademarks or trade names of other entities. These domain names are very attractive precisely because they are identical with world-known trademarks. The Defendant No. 1 offers these domain names for registration for a multiple price, which is the essence of his business plan. The Plaintiff mentions that, as results from other similar cases, it is very common that before a judgement is issued or comes into force, the Defendant transfers the domain to another entity making it impossible for the proceedings to continue. Since a judgement on the merits may be issued several years later, it is possible that non-disposal of the domain name before a legitimate decision is made might not be ensured and the Plaintiff's right will be further infringed. For this reason the Plaintiff wants the Court to impose also on the Defendant No. 2 a ban on transferring the domain name "x+y+z.cz" until a legitimate decision is issued. The use of the domain name by the Defendant No. 1 causes permanent and increasing harm to the Plaintiff. The Plaintiff believes that the preconditions of issuing a preliminary ruling before the action is brought have been satisfied pursuant to Section 74 of the Civil Procedure since the circumstances of the parties have to be temporarily regulated and there is a concern that the enforcement of a judicial decision might be endangered.

One of the preconditions of ordering a preliminary ruling is a necessity to temporarily regulate the circumstances of the parties. The somewhat confusing explanation of the motion filed by the Plaintiff, seeking a preliminary ruling to be ordered before an action is brought (although the action had been brought already by 10 March 2003), is based on the explanation of the case itself. As stated therein, the Plaintiff registered the trademarks with a priority on 30 November 1993 and 1 December 1993 respectively. The Defendant No. 1 registered the domain name on 6 February 2000. The fact that the Defendant No. 1 does not intend to waive the domain name has been known to the Plaintiff since 17 August 2001. The motion for a preliminary ruling was filed on 29 September 2004. The circumstances

of the parties as of the moment when the Court is considering a preliminary ruling only continue the circumstances reported in August 2001 at the latest. Provided the Plaintiff has suffered on a long-term basis the alleged infringement of his rights, it is not possible to infer a risk of delay and there is no need to temporarily regulate the circumstances of the parties with a preliminary ruling.

With respect to the aforementioned, the Court has denied the motion for a preliminary ruling in the full extent.

The obligation to pay the court fee was decided by the Court pursuant to the provisions of Section 4, paragraph 1 f) of Act No. 549/1991 Coll., on court fees, as amended.

The costs of the proceedings shall be decided by the Court pursuant to the provisions of Section 145 of the Civil Procedure in the final judgement on the case.

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.