RESOLUTION

On 9 September 2005, the High Court of Justice in Prague issued a verdict with respect to the action between the Plaintiff: I. against the Defendant 1: M., s.r.o. and Defendant 2: CZ.NIC, interest association of legal entities, concerning the protection against unfair competition and unauthorized infringement into registered trademark rights, and regarding an appeal raised by the Defendant 1 against the resolution of the Municipal Court in Prague concerning a preliminary ruling, as follows:

The decision of the first-instance court in the verdict 1 is hereby acquitted.

In the Resolution specified above, the court acquitted the motion filed by the Plaintiff for a preliminary ruling according to Section 102 of the Civil Procedure Code and ordered the Defendant 1 to abstain - as of the date on which the Resolution is delivered - from any disposal of the "x+y+z.cz" domain in any manner (verdict I, item 1); the Defendant 2 was ordered not to enable any transfer of this domain to any third person, except for the Plaintiff (verdict I, item 2.). In verdict II, the Plaintiff was ordered to pay the court fees at the amount of CZK 500 within three days of the day on which this resolution becomes legally effective, to the account of the Municipal Court in Prague.

The Defendant 1 appealed against the acquitting verdict identified as I, item 1, claiming that the formal conditions have not been fulfilled for the ordering of such a preliminary ruling according to the provisions of Section 102 of the Civil Procedure Code. The Defendant 1 referred particularly to the fact that at the time when the appealed decision was issued, the website under the name "x+y+z.cz" had already been out of operation and therefore the Plaintiff's trademark rights had not been infringed. The Defendant never claimed in any correspondence with the Plaintiff that the Defendant would intend to use the website specified above - if it was in operation again - to offer the products and services for which the trademark concerned was registered. The Defendant 1 is confident that the use of the X+Y+Z identification in connection with other products or services is not in any conflict with the valid legal regulations. Under the given situation, the Defendant claims that the Plaintiff failed to prove an emergent need to ensure temporary adjustments of the relationships between the parties concerned. Furthermore, the Defendant claimed that the appealed verdict adopted by the first-instance court was vague because the Defendant believed that the Court should specify in its verdict in what manner the Defendant 1 is prohibited to dispose of the domain concerned. The Defendant 1 claims that the "disposal in any manner" may also include mere preservation of the current situation. According to the Defendant 1, such a vaguely formulated duty also makes it impossible to reach an agreement with the Plaintiff before a decision is issued with respect to the case. The preliminary ruling with respect to the Defendant 1 is also in conflict with the principle of proportionality because the Defendant 1 is thus limited beyond the necessary extent. Finally, the Defendant 1 claimed that the Plaintiff failed to duly document its active material legitimacy, as it is obvious from the presented extract from the trademark register that IB is the owner of the registered mark in the wording of X+Y+Z for categories 9, 14 and 16, i.e. an entity other than the Plaintiff. The Defendant 1 therefore suggested that the appeal court revokes the decision of the first-instance court.

In its comments to the appeal, the Plaintiff stated that the Defendant 1 was presenting a biased picture of the petition by taking out partial quotes from the text. The Plaintiff claimed the formal conditions for ordering a preliminary ruling were fulfilled because there was an urgent need already during this stage of the proceedings to prevent the Defendant 1 from transferring the "x+y+z.cz", whether for a consideration or otherwise, reactivating the domain or other form of its misuse to the Plaintiff's detriment. The Plaintiff considers the verdict to be adequately definite and is confident that the verdict replaces the exact specification of all possible forms of disposal of the domain, including its cancellation, and that this is in agreement with the judicature of the Municipal Court in Prague. If the Defendant 1 claims the alleged impossibility of an out-of-court settlement, the Plaintiff objected that under the given situation, when the Defendant 1 at first insisted on a transfer for a consideration, the

Plaintiff was no longer interested in reaching an agreement and insisted on a meritorious decision of the case. The Plaintiff also considered as unjustified and subjective the objection raised by the Defendant 1 concerning the restriction of its rights beyond the necessary extent because the Plaintiff considers any use of the "x+y+z.cz" domain to constitute breach of the Plaintiff's trademark rights. As regards the alleged lack of the Plaintiff's active legitimacy, the Plaintiff referred to the fact that the trademark in the wording X+Y+Z No. 234567 was actually registered for another entity; however, this was a legal predecessor of the Plaintiff, as evident from the enclosed extract from the Commercial Register, and that the Plaintiff was the owner of both trademarks in the wording X+Y+Z, i.e. No. 123456 for the categories of products 7 and 16 and No. 234567 for categories No. 9, 14 and 16. The Plaintiff therefore suggested that the appeal court confirms the decision of the first-instance court and orders the Defendant to settle the costs of the appeal proceedings.

The appeal court revised - according to Article II., Item 5 of Act 59/2005 Coll. - the resolution of the first-instance court and the verdict ordering preliminary ruling (interfering as a whole with the rights of the appellant), according to the provisions of Section 212 et seq. of the Civil Procedure Code, in the wording valid before 31 March 2005, following the provisions of Section 75 Paragraph 5 of the Civil Procedure Code, and - without ordering any hearing (Section 214 Paragraph 2 Letter c) of the Civil Procedure Code) - the appeal court came to the conclusion that the appeal was not substantiated.

In its decision concerning the motion for the establishment of a preliminary ruling filed together with the petition for the protection against unfair competition and the breach of trademark rights the first-instance court considered it evident that the Petitioner had been the owner of the trademarks No. 123456 and 234567 with a priority since 15 December 1989 and 18 January 1994 and that the Defendant 1 had been the owner of the X+Y+Z second-level domain registered under the "cz" first-level domain since 2 February 2001, presenting document editing technologies on the website in the form of an e-store. Furthermore, the court considers it evident that the Plaintiff's subject of enterprise (even though the Plaintiff is a foreign legal person seated in Switzerland) and the Defendant 1 is identical in parts and that the products of both companies were offered on the domestic market. The first-instance court considered it evident that the action of the Defendant 1 may constitute an infringement into the Plaintiff's rights to international trademarks protected also in the Czech Republic and that this may constitute unfair competition according to Section 44 Paragraph 1 of the Commercial Code.

The appeal court considers this conclusion of the first-instance court to be correct. The Plaintiff and the Defendant 1 can be considered competitors because their products may compete on the domestic market. Even though the Plaintiff is a foreign entity and cannot be considered an entrepreneur under Section 21 et seq. of the Commercial Code, the Plaintiff may claim protection against the Defendant 1 according to the Paris Convention for the Protection of Industrial Property, dealing among other aspects with the protection against unfair competition. The Plaintiff is also beyond any doubt the owner of both trademarks in the wording of X+Y+Z, because the subject identified as IB. is the legal predecessor of the Plaintiff according to an extract from the Commercial Register. Therefore, the objection raised by the Defendant 1 concerning the lack of active legitimacy on the side of the Plaintiff, as regards the trademark rights, or the trademark No. 234567 is not justified. In addition, the objection of the Defendant 1 that at the time of the decision of the first-instance court, the website under the identification of "x+y+z.cz" was deactivated immediately after the Plaintiff's request and that the Defendant 1 never stated in any correspondence with the Plaintiff that it would intend to continue in using the website (if activated again) to offer the products or services protected by the trademarks concerned is not justified either. In a letter dated 30 December 2003, sent to the Plaintiff's legal representative, the legal representative of the Defendant clearly claimed that the sale of the X+Y+Z domain (i.e. not its transfer without consideration claimed by the Plaintiff) to the Plaintiff would be possible only until a new version of the X+Y+Z is launched, i.e. not later than in February 2004. It is undoubtedly evident from this that the Defendant 1 intended to reactivate the website under

the "x+y+z.cz" domain, and the fact that the Defendant 1 did not specify what the website would be like and what would be offered on it does not mean that this action would be in harmony with the given rights; particularly that regarding the identical subject of enterprise, the use of the X+Y+Z identification in connection with the products offered by the Defendant 1 would constitute an infringement into the rights of the Plaintiff as a competitor. The need for a temporary adjustment of the relationships between the parties concerned was therefore not sufficiently documented from this perspective. As regards the alleged vagueness of the appealed verdict of the first-instance court, the appeal court considers it evident that the resolution is enforceable and it is not necessary to list all the manners in which the internet domain may be disposed of as incorporeal goods (which the Defendant 1 claimed in its appeal). The objective of the preliminary ruling was to prevent the Defendant 1 from changing the domain holder during the proceedings, i.e. from allowing another entity to use the domain or cancelling the domain, etc., because this may frustrate the purpose of the proceedings. If the proposed preliminary ruling banning any handling of the domain concerned restricts the use of such a domain by the Defendant 1, it may not fulfil this purpose according to the appeal court because no such a duty was imposed on the Defendant 1. The appeal court considers it evident that the duty not to dispose of the domain during the course of the proceedings and to keep it does not mean any significant restriction for the Defendant which may exceed the necessary extent. The Defendant 1 is neither restricted in its business nor inadequately burdened. The truth is that the Defendant 1 is able to present its products and services on the Internet under another domain, e.g. under the domain in the wording of its trade name. This does not mean any obstacle for possible negotiations concerning an amicable settlement even though this appears as little possible with respect to the Defendant's position. If the Plaintiff and the Defendant 1 seek an amicable solution, the existence of this preliminary ruling does not mean any obstacle to them.

With respect to what has been said above, the appeal court confirmed the decision of the first-instance court according to the provisions of Section 219 of the Civil Procedure Code as materially correct.

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.