# RESOLUTION

On 11 August 2005, the Regional Court in Ostrava issued a verdict by a sole judge with respect to the action between the Plaintiff: C. GmbH against the Defendant, B.K., concerning a motion for a preliminary ruling, as follows:

The Defendant shall abstain from any legal action towards the transfer of the rights to the www.x+y+z.cz domain to any third parties or towards the cancellation of the registration.

On the basis of the petition dated 4 August 2005 (delivered to the Court on 10 August 2005), the Plaintiff seeks protection against the violation of its rights to the registered marks attached to its trade name and the transfer of a domain name. According to the claim, the Plaintiff is the corporation C. GmbH based in Germany, involved particularly in the manufacturing of packaging machinery and instruments for the packaging of parcels of all sorts; it conducts its business worldwide, including the Czech Republic, where it sells its goods in the form of an exclusive sales agency. The Plaintiff offers its products also on the Internet and its main website is located at www.x+y+z.de. According to the action, the Defendant is one of three company executives of C. O., s.r.o., with the main subject of enterprise in "wholesale of packaging material". The Defendant is entered in the domain name register kept at the "Cz" top-level domain, as the owner of the "x+y+z.cz" domain name, with the date of registration on 3 March 2004, and this website is currently used for the promotion of the products and services of the company specified above. According to the Plaintiff, the Defendant expressly undertook in the contract for the registration with the domain name specified above, concluded with the CZ.NIC z.s.p.o. Association, among other duties, not to interfere in any rights of third parties protected by the law (particularly as regards the trademark law), to act in harmony with the principles of economic competition and not to use its domain name in a manner confusing for Internet users. According to the action, the Plaintiff is an owner of an international registered trademark including the element of "X+Y+Z", protected also in the territory of the Czech Republic under No. 123456 "X+Y+Z International" (combined), registered on 28 September 1982, entered for a wide spectre of products and used within the territory of the Czech Republic. The Plaintiff claims that the Defendant has been using the identification of "x+y+z" without an approval of the Plaintiff with the use of the identification of "x+y+z", separately or in combination with another verbal or graphic element. Owing to the Defendant's registration of the "x+y+z.cz" domain, the Plaintiff is unable to create and operate its own website for customers in the Czech Republic; this causes confusion to customers because with respect to the huge amount of websites and entities presented on the Internet, Czech Internet users who enter the address www.x+y+z.cz will log on a website presenting the competitive products of C. O., s.r.o., instead of information concerning the Plaintiff's production. Thus, the Defendant violates the rights of a registered mark owner, where the use of a registered mark has a significant importance particularly from the competitive and promotional perspective and therefore the Plaintiff has a legitimate interest to use its registered marks in connection with its products and services also on the Internet, under the www.x+y+z.cz website address. Having registered the "x+y+z.cz" domain name, the Defendant prevents the Plaintiff from utilizing its exclusive right to use its registered mark, further infringing the Plaintiff's exclusive rights to the "x+y+z" trade name protected in the Czech Republic; similarly to a trade name, the domain name is an identification used by entrepreneurs for the identification of its business activities. The Defendant did not respond to the Plaintiff's request dated 29 March 2005, instead C. O., s.r.o. filed an application on 21 April 2005 for the registration of a mark at the Industrial Property Office ("X+Y+Z"). The Plaintiff shall take action against the registration as stated in the petition claim. According to further Plaintiff's claims, the Defendant enabled C. O. s.r.o. to make use of the "x+y+z.cz" website for the promotion of the sale of products and services, and this is a clear proof of the speculative character of the Defendant's registration of the domain name concerned, in conflict with goods manners, which is not eligible for legal protection.

These activities are detrimental to the Plaintiff who has suffered damage to its goodwill concerning its image and products, and because there is a danger that the Defendant may transfer its rights to the domain name to another entity in order to avoid the transfer of the domain name to the Plaintiff on the basis of a court decision, the Plaintiff suggested the issue of a preliminary ruling, substantiating the urgent need to regulate the relationships between the parties concerned until a decision is issued in order to avoid further detriment to the Plaintiff and prevent the Defendant from transferring the domain concerned to another entity. The Plaintiff settled the principle of CZK 100,000 on 10 August 2005 to the Court's account.

According to the provisions of Section 102 Paragraph 1 of the Civil Procedure Code, if it is necessary to temporarily adjust the relationships between parties to proceedings or where there is a threat after the commencement of proceedings that the execution of a decision subsequently issued may be threatened, the court may issue a preliminary ruling.

According to the provisions of Section 76 Paragraph 1 Letter f of the Civil Procedure Code, a court may order parties to proceedings to fulfil an obligation, abstain from or tolerate certain action.

In this case the Plaintiff claims the issue of a preliminary ruling in order to have the relationships between the parties temporarily adjusted until a decision is adopted on the merits on the basis of a petition filed on 4 August 2005.

According to the regulation quoted above and the accustomed judicature, a preliminary ruling adjusting the relationships between parties requires proof of the claim and urgency of such adjustment of the relationships concerned before a court issues a final decision in the case.

The court considers such circumstances proven from the documents enclosed to the petition:

It is evident from an extract from the Commercial Register issued by the court on 28 July 2005, that C. O., s.r.o. is entered in Section C, Insert 23456 (registered on 30 August 2001) and that the Defendant is one of the three company executives. The company specified above is involved in wholesale and packaging services. It is evident from the Czech translation of an extract from the Commercial Register kept by the Court in Cologne on 18 April 2005, that the Plaintiff's registered subject of enterprise includes the "manufacturing and sale of packaging systems and similar products under the "X+Y+Z" trademark. It is evident from the website seen on 28 July 2005, that the Defendant is the owner of the "x+y+z.cz" domain, registered on 3 April 2001. It is evident from the database of registered marks kept by the Industrial Property Office of 27 July 2005, that the Defendant filed an application on 21 April 2005 for the registration of a trademark in the wording of "X+Y+Z". It is evident from an extract from the International Trademark Register dated 29 June 2005 that the Plaintiff is the owner of the international trademark No. 123456 "X+Y+Z GmbH", registered on 28 September 1982. It is evident from a Plaintiff's letter dated 29 March 2005, that C. O., s.r.o. and other company executives of this company were informed about the violation of the trademark rights, together with a request for statement or comments to be submitted during a specific time period. It is evident from the website seen on 4 August 2005 that C. O. s.r.o. is offering under the www.x+y+z.cz domain name various products (steel tapes, steel tape decoilers, strapping machines, pneumatic strappers). It is evident from the www.x+y+z.cz website seen on 28 July 2005 that the Plaintiff is offering similar products.

Having summarized these facts, the court came to a conclusion that the Plaintiff successfully proved that the Plaintiff had been holding the right to the wording of the X+Y+Z trademark, the right to identify its products under the X+Y+Z name and the right to the registered "X+Y+Z GmbH" trademark, i.e. the right to use this identification since 1982 and that the Defendant had been holding the right to use the "x+y+z.cz" domain name only since 3 March 2001. Furthermore, the court understands that the Plaintiff and the Defendant, as one of the company executives of C. O., s.r.o. are competitors on the Czech market concerning their business activities, particularly as regards

packaging equipment. The identification which the Defendant uses also for the purposes of the named company does not have (unlike in the case of the Plaintiff), any association with the name of the company and it is therefore possible to agree with the Plaintiff that the Defendant registered the "x+y+z.cz" domain name with the aim of causing detriment to the Plaintiff, as both the Defendant and the Plaintiff conduct business in the same area and the court understands that this Defendant's action has the character of unfair business according to the provisions of Section 44 Paragraph 1 of the Commercial Code and the facts of the case stipulated in the following provisions (provisions of Section 45 et seq. of the Commercial Code).

With respect to what has been said above, the Court agreed that there was an emergent need to adjust the relationships between the parties in order to ensure that no detriment is caused before the court issues its decision, and therefore acquitted the motion for the preliminary ruling as stated in the verdict of this Resolution as the Court does not see the dilatory verdict as constituting an inadequate infringement into the Defendant's rights.

The court will decide about the settlement of the cost of the proceedings in connection with the final decision on the merits according to Section 145 of the Civil Procedure Code.

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*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.*