PRELIMINARY RULING

On 1 December 2006, the Regional Court in Plzeň issued a verdict with respect to the action between the Plaintiff: F. against the Defendant 1) P. K. and 2) CZ.NIC, concerning a motion for a preliminary ruling, as follows:

I. The Court hereby issues preliminary ruling, according to which the Defendant 1) is obliged, as of the date of the delivery hereof, to abstain from legal action leading towards the transfer or any other disposal with the rights to the **"x+y+z.cz"** domain name, including the cancellation of the domain name registration, except for the transfer of the rights to the domain name to the Plaintiff.

II. The Defendant 2) shall prevent from any transfer of the **"x+y+z.cz"** domain name to any other person, save the Plaintiff alone, 0

III. The Defendant 1) shall arrange for the cancellation of all rerouting from the **"x+y+z.cz"** domain name to the websites, e-mail boxes or other electronic services, and shall tolerate such cancellation of rerouting.

IV. The Defendant 1) is obliged to abstain from using **"X+Y+Z"** when marketing its products or services.

V. The Plaintiff is hereby ordered to file action within one month of the legal force of this resolution, with the Regional Court in Plzeň, for the protection of trade name rights or trademark rights, or for unfair competition.

The Plaintiff filed motion for the preliminary ruling, claiming that both Defendants are ordered to comply with the obligations stipulated in the verdict of this resolution under clauses I- IV. The Plaintiff is of the opinion that the current action of the first Defendant imposes risk on its rights regarding its trade name, trademark and for reasons of the first Defendant's unfair competition. The Plaintiff therefore seeks ways to have the **"x+y+z.cz"** domain name transferred to the Plaintiff. The current situation has been lately threatening to detriment the Plaintiff's goodwill. The Defendant acquired the **"x+y+z.cz"** domain name on 3 November 2006 and started offering competitive goods on the website later on. Therefore, the Plaintiff is concerned about possible damages, is afraid that the first Defendant may attempt at transferring the rights to the domain name to another person, whether directly or by its re-registration, or that the Defendant may cancel the registration and make the domain name available. If the Defendant 1) pursued in this manner, acting as the holder of the **"x+y+z.cz"** domain name, the Plaintiff would face a complicated situation and would have to suggest the exchange of the respective defendants. With respect to the protection regarding the breach of the trade name or trademark rights (i.e. absolute rights), other persons may also violate the Plaintiff's rights. It is therefore necessary to prevent Defendant 1) from transferring the rights to the domain name to a third person; this does not derogate the Defendant 1), in addition, this obligation does not derogate the second Defendant who should be ordered to prevent from any transfer of the domain name to another party. The Plaintiff faces the imminent threat of damage because the Defendant 1) has been offering competitive sites under the **"x+y+z.cz"** domain name. It's site is visited every day by a lot of visitors; the importance of the sales of goods via the Internet before Christmas. There is a threat that some visitors may order goods in these websites even though they originally intended to purchase the goods from the Plaintiff. Justifiable fears exist that some of the products offered by the Defendant 1) may be considered to be marketed by the Plaintiff's authorized distributor. This would cause detriment not only to the Defendant but also to its business partners. It is therefore necessary to temporarily stipulate the relationships between the parties concerned, so as to ensure that when entering the **"x+y+z.cz"** domain name, no site is displayed, and that other relevant services are also blocked. If this is not successfully performed, the Plaintiff may suffer further detriment. The Plaintiff is not aware whether it is able to clearly define the area of all possible identifications of **"X+Y+Z"**,

and suggests that for the reasons above, it is forbidden to use this identification for all purposes of marketing products or services by the first Defendant.

Furthermore, the Plaintiff certified in the motion for the issue of a preliminary ruling, by presenting the Plaintiff's unabbreviated extract from the Commercial Register and the extract of the trading licence register data of the first Defendant that both parties were running specialized retail and wholesale business in photographic services. Both parties sell studio equipment for photographers. The Plaintiff further documented that it had this equipment displayed on its website and confirmed by presenting a notary's report issued on 20 November 2006 by Mgr. J. K., Notary Public, that the content of the **"x+y+z.cz"** website which the Defendant 1) had registered also offered studio equipment for photographers by the Defendant 1). The Plaintiff documented that the Defendant had been the holder of the **"x+y+z.cz"** domain name since 3 November 2006, and it is evident from the extracts from these websites that the Defendant 1) uses the same to offer studio equipment for photographers, such as studio flashes, sets, studio assemblies of flash accessories, cables, softboxes, studio umbrellas, lamp stands, etc. This structure is very similar to that used in the Plaintiff's website. Furthermore, the Plaintiff duly documented by presenting an extract from the Commercial Register that it had been using the **"X+Y+Z"** trade name root, and documented by presenting an extract from the trademark register for trademark **No. 000001** that the Plaintiff had been using this combined trademark corresponding to the **"X+Y+Z"** wording. On the basis of a licence agreement and that the trademark owner agrees with the recovery of the rights.

Under Art. 74 para. 1 of the Civil Procedure Code, the presiding judge may, prior to the commencement of the proceedings, issue a preliminary order if it is necessary to provisionally adjust the relationship between the participants or if there is reasonable concern regarding the enforcement of the judgement. The proposal for the preliminary ruling must contain the specifications provided in Art. 75 of the Civil Procedure Code, within the meaning of Art. 75p of the Civil Procedure Code; as regards the compensation for damages that may arise from the preliminary ruling, the petitioner is obliged to deposit a commercial security on the same day at the latest, in the amount of CZK 100,000.00. Within the meaning of the provisions of Art. 75c Paragraph 1 Letter a) of the Civil Procedure Code, the presiding judge shall issue a resolution ordering preliminary ruling, if it is demonstrated that it is necessary to temporarily adjust the relationships between the parties concerned and if at least the facts critical for the preliminary ruling based obligations are duly demonstrated. The presiding judge shall adopt a decision regarding the preliminary ruling without any undue delay and may decide without hearing the parties to the proceedings. For the preliminary ruling, the situation at the time of the announcement of the first instance court is decisive. According to the provisions of Art. 76 para. 1 letter e) and f) of the Civil Procedure Code, a court may issue a preliminary ruling to order a party to proceedings not to dispose of certain items or rights or to fulfil an obligation, abstain from or tolerate certain action. It is only possible to adopt preliminary ruling to impose an obligation on another party than the parties to the proceedings if this may be justly claimed. Within the meaning of Art. 3 of the quoted provision, the presiding judge shall instruct the plaintiff upon issuing the preliminary ruling to file with the court an action for the commencement of proceedings.

The court therefore reviewed in this case whether the conditions above have been fulfilled as regards both Defendants for ordering a preliminary ruling regarding the imposing of the obligations above in the resolution verdict.

In this cases, the court is of an opinion that the Plaintiff duly demonstrated by the filed documentary evidence that it had been using the **"X+Y+Z"** trade name root since 1 April 1998; in such a case, a person searching information regarding the Plaintiff and its offer of goods and services on the Internet will regularly enter the root of the trade name concerned and an average consumer will expect that the Plaintiff's website will be displayed. The Plaintiff duly documented that it has been using the combined trademark corresponding to the **"X+Y+Z"** wording. The Plaintiff is also registered under

the trade name of **"X+Y+Z a.s."** in the Commercial Register. Under this trade name, the Plaintiff takes legal action as an entrepreneur. Furthermore, the Plaintiff is entitled to offer its services under this trade name. The Plaintiff duly demonstrated that in early November 2006, the first Defendant had the **"x+y+z.cz"** domain name registered with the second Defendant. On this website and on this internet address, the first Defendant began offering its goods in November 2006, corresponding to the presentation of the Plaintiff's website, especially as regards studio equipment. The fact that it is possible to obtain information on the **"x+y+z.cz"** website which the Defendant has registered regarding the Defendant's business activities was duly demonstrated by the Plaintiff by presenting a notary's protocol and correspondence with its business partners who also noted this fact and requested due remedy thereof.

The facts explained above authorize the court to come to the conclusion that it is necessary to temporarily adjust the relationships between the parties concerned as required by the Plaintiff and as the court expressed in the verdict of this resolution. The court is of the opinion that the need to temporarily adjust the between the parties concerned is urgent; such relationships are urgent if the failure to order the preliminary ruling would provide space for taking such legal action that may either form an irreversible legal relationship or that may render the Plaintiff's legal position complicated. Because there is a real threat since November this year, based on the registration of the **"x+y+z.cz"** domain name with the first Defendant that the Plaintiff may suffer damages, both as regards the breach of rights to trade name and the breach of rights to trademark, as well as problems regarding unfair competition, because both the Plaintiff and the first Defendant are beyond any doubt competition and the publication and offering of its products of studio equipment for photographers on the newly created by the first Defendant may threaten the goodwill of the Plaintiff who has long established itself on the Czech market. With respect to the facts explained above, the court came to a conclusion, regarding the fact that the Plaintiff was also ordered to file action within one month in the matter concerned regarding the trade name protection, trademark protection and unfair competition, it is necessary to provide preventive remedy so that the first defendant cannot arbitrarily change the domain name registration under its contractual relationship with the second Defendant, i.e. that the Plaintiff's requirements can be duly reviewed evidence procedures after the Plaintiff files the action.

With respect to the fact that the Plaintiff has long been pursuing business under the trade name of **"X+Y+Z"** and has been using the same as a trademark, is known on the market, and the Defendant 1) appeared on the market in November 2006, it is also necessary to ensure that the first Defendant ensures the cancellation of the rerouting from the **"x+y+z.cz"** domain name and abstains from any use of the **"X+Y+Z"** identification when offering its products. The court therefore decided about the Plaintiff's motion for preliminary ruling as indicated first above in the verdict hereof.

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.