PRELIMINARY ACTION

The Regional Court in Pilsen decided on 13 April, 2007, in the law case of the plaintiff, A, and the defendant, J. M., on the petition to issue a preliminary action in the matter of protection from the unauthorized intervention to the rights related to trademarks and for a protection from unfair competition, as follows:

1. Petition to found the defendant obliged to refrain from using the Internet domain of the second level, **inzerce-x+y+z.cz**, is rejected.
2. The defendant is obliged to refrain from disposing with the Internet domain of the second level, **inzerce-x+y+z.cz**, particularly to refrain from its transfer, rent, and pledge.

On 12 April, 2007, the plaintiff filed the petition to issue a preliminary action where the obligation to refrain from the use of the Internet domain of the second level, **inzerce-x+y+z.cz**, would be imposed on the defendant, as well as the obligation to refrain from a disposition with this domain, e.g. to refrain from its transfer, rent, or pledge. The legal proceedings were sustained by reasons that the plaintiff is the limited partnership company duly registered in the Register of Companies with a defined subject of undertaking. He is also an operator of the electronic version of the advertising newspaper, **"X+Y+Z"** on the Internet portal **http://www.x+y+z.cz**. The plaintiff is also an owner of total of 34 trademarks valid on the territory of the Czech Republic; among them are 18 trademarks containing the **"X+Y+Z"** word as the dominant and trademark line unifying element. The plaintiff has been using the **"X+Y+Z"** name since the very beginning of his existence. The defendant is an individual not registered in the Register of Companies who has been registered in the Trade Register kept by the Trades Licensing Office of the Pilsen Municipal Council since 16 June, 2004, with the defined subject of undertaking as data processing, databank services, and network administration, the same as one of the activities of the plaintiff. During November, 2006, the plaintiff found out that the defendant registered the **inzerce-x+y+z.cz** Internet domain. The plaintiff considers this domain name interchangeable with the "X+Y+Z" name and with his registered trademarks. The plaintiff drew this fact to the defendant's attention by the letter of 29 November, 2006, where he was informed about all the results of his conduct. Since 14 December, 2006, when the defendant received the letter where he was informed about his objectionable conduct, he had not reacted to it, and neither did he react to the reminder of the letter of 19 February, 2007. The defendant keeps using the Internet domain, **http.//www.inzerce-x+y+z.cz**, even for promoting his advertising services. He has been expanding a supply of his services, he started to offer and arrange erotic services and various Internet servers with pornography. With his aforementioned activities, the defendant makes unauthorized use of trademarks registered at the plaintiff, and also uses unfair competition methods in terms of Article 44 par. 1 of the Commercial Code, as amended, as well as some special facts of the case as misleading advertising, misleading labeling of goods and services, parasiting on a reputation. His conduct violates the principle of honest business relation and good demeanor, as the plaintiff specified in Article VII of this petition. The plaintiff supported his aforementioned statements with the plaintiff's transcripts from the Register of Companies, the defendant's transcript from the Trade Register, with a list of the plaintiff's registered trademarks containing the "X+Y+Z" word, and also with relevant transcripts from the Internet pages of both the plaintiff, as well as the defendant. He proved the warnings via letters, and the **inzerce-x+y+z.cz** domain has been registered to its bearer, J. M., since 15 September, 2006. The plaintiff did not prove his statement about criminal activities of the defendant. Therefore, the plaintiff proposed to impose the aforementioned obligations as a part of the preliminary action on the defendant. He stated that the defendant has no other possibility to prevent the defendant from his unfair competition. Despite the plaintiff's actions, the defendant remains passive. The plaintiff is being harmed by the defendant's unprecedented intervention into his business activities, and he believes in a real danger of an efflux of customers, which would cause irreversible damage on the good reputation

of the plaintiff's product and his company. The defendant has a reasonable fear that in a course of legal proceedings, the defendant will take measures to avoid consequences of the court's ruling, including a transfer of the domain to the third party.

In terms of Article 74 of the Civil Procedure Code, the presiding judge may issue, if necessary, the preliminary action before the legal proceedings begin, in order to temporary settle a situation between participants or in case of a fear that the execution of the court ruling would be jeopardized. Therefore, before the proceedings begin, it is possible to issue a preliminary action if one of the parties participating in proceedings petitions for that and submits a proper petition for issuing the preliminary action, meets the condition of the provisions of Article 75b par. 1 of the Civil Procedure Code, e.g. deposits a security for costs of CZK 100.000, and attests facts, which are crucial for issuing an obligation via a preliminary action, in terms of Article 75c par. 1 item a) of the Civil Procedure Code. The court has to make the ruling regarding the petition for a preliminary action without delay. The court makes its ruling without hearing the participants. For a preliminary action, a status in time of announcing the ruling of a court of the first instance is conclusive. In terms of Article 76 par. 1 item e) of the Civil Procedure Code, a court may impose on a participant the obligation not to dispose with certain items or rights, execute something, refrain from something, or endure something via a preliminary action. A court always has to consider the urgency of a temporary settlement of a situation of the participants. The urgent need to temporary settle a situation of the participants arises when not-imposing a preliminary action would create a room for a legal action that would create either irreversible legal relationship or that would lead to aggravation of the plaintiff's legal capacity. A court has to consider the matter of urgency of a temporary settlement of a situation between the participants from the time aspect as well; it has to consider its timeliness.

In the case under consideration, the plaintiff petitions for the aforementioned preliminary action before the legal proceedings start. The plaintiff properly attested that both the participants are registered in relevant registers as undertakers, they share some parts of their subjects of undertaking, and, therefore, it is possible to make a competent conclusion that their both have a position of competitors on the market in the Czech Republic. The plaintiff also attested that for a longer period of time, he has been an owner of several trademarks - verbal, as well as verbal and graphical combined - where the **"X+Y+Z"** word occurs. The plaintiff attested that since September, 2006, the defendant has been a bearer of the domain of the second level, **inzerce-x+y+z.cz**. According to the plaintiff's statement, he learned this fact in November, 2006, and, therefore, he wrote two letters to the defendant, in which he pointed out his improper conduct in the competitive environment and asked him to cease his activities. The defendant continues in operating his domain that he owns, and currently, he has been publishing an ad for arranging erotic services and pornography there. The plaintiff did not attest the rest of the stated facts; he especially did not attest to occurrence and incidence of irreversible damage to his customer base and to the company's good name. Therefore, the court considers the aforementioned facts attested. When considering if it is necessary to issue a preliminary action for fulfillment of this attest, the court has to take into account if it is necessary to temporary settle a situation of participants. With regard to the fact that the defendant keeps running his business activities on his domain, of which he is a bearer, it is possible to assume that a proper petition for protection from unauthorized interference with rights derived from trademarks and for protection from unfair competition will be submitted. The court considers the plaintiff's fear that the defendant might avoid consequences of the court ruling in case of unfair competition before or during the proceedings by transferring the domain to the third party as reasonable. Therefore, the urgent need to settle the situation between the participants exists, in order to keep the defendant from disposing of the Internet domain of the second level, **inzerce-x+y+z.cz**. The court granted the petition for issuing the preliminary action in this scope and imposed that obligation upon the defendant. Pursuant to imposing the obligation to the defendant to refrain from using the Internet domain of the second level, **inzerce-x+y+z.cz**, the court believes that there is no urgency for temporary settlement of the situation

between the participants after instituting legal proceedings on 12 April, 2007, because the aforementioned conduct of the defendant has been continuing since September, 2006. Since that time, the plaintiff's company good name has been supposedly jeopardized and the disappearance of customers has been supposedly observed; however, the plaintiff has not attested or proved it, yet. With regards to the time delay between the defendant's conduct and the initialization of legal proceedings, the court does not have a proof that it is necessary to temporary settle the situation between the participants in this matter, to impose the obligation to refrain from using the Internet domain on the defendant. Based on all the aforementioned reasons, the court ruled in case of the plaintiff's petition in the manner defined in this court ruling verdict.

With the exception of CZ.NIC, the participants in the legal proceedings are identified only by first letters of their last names or business companies. The domain names in question are replaced by the ***x+y+z.cz*** *sequence. If other domain names are mentioned in the text of the court ruling verdict, they have been replaced by other character sequences. With exception of data that would enable identification of participants in the proceedings or other parties and domain names, the text of verdict was modified in least possible scope. Relation of used abbreviations and substituting symbols to parties or domain names that utilize names with such abbreviations or substituting symbols is purely accidental.*

When studying the verdict, it is necessary to give consideration to the fact that the ruling contains not only the court ruling and its rationalization, but also a summary of statements of individual parties, whereas the court might not consider some statements in its ruling (for example, when issuing the preliminary action) and those statements represent only a legal opinion of the relevant party and not the conclusion of the court.

The court ruling cannot be automatically applied to other cases (even if they are similar in facts) and the CZ.NIC association recommends consulting the particular case with domain names´ experts and lawyers.