INTERLOCUTORY JUDGMENT

On 2 December 2002, the Municipal Court in Prague issued a verdict with respect to the action between the Plaintiff, Č., and the Defendants, 1. O. and 2. CZ.NIC, concerning the motion for preliminary rulings, as follows:

I. Defendant No. 1 shall abstain from using the domain name, x+y+z.cz, and transferring the domain name, x+y+z.cz, to any third party except the Plaintiff.

II. The motion to issue a preliminary ruling, according to which Defendant No. 1 would be ordered to abstain from any disposal of the domain name x+y+z.cz, is hereby repudiated.

III. The motion to issue a preliminary ruling, according to which Defendant No. 2 would be ordered to prevent Defendant No. 1 from any disposal of the x+y+z.cz domain name, is hereby repudiated.

IV. The motion to issue a preliminary ruling, according to which Defendant No. 2 would be ordered to prevent Defendant No. 1 from any operation of the website under the x+y+z.cz domain name, is hereby repudiated.

V. The motion to issue a preliminary ruling, according to which Defendant No. 2 would be ordered to prevent any person other than the Plaintiff to operate the website under the x+y+z.cz domain name, is hereby repudiated.

VI. The Plaintiff shall pay the court fees of CZK 500, within ten days of the day on which this verdict becomes legally effective.

VII. The Plaintiff shall bring legal action against Defendants No. 1 and No. 2 on the matters, within thirty days of delivery of this decision.

Based on a motion of 26 November 2002, the Plaintiff entered a claim that the court adopt a preliminary ruling, according to which Defendant No. 1 would be ordered to abstain, as of the day on which the verdict concerning the preliminary ruling is delivered, from using the x+y+z.cz domain name and any disposal of the x+y+z.cz domain name, particularly its transfer to any third party. Furthermore, the Plaintiff entered a claim that the court adopt a preliminary ruling, according to which Defendant No. 2 would be ordered to prevent, as of the day on which the verdict concerning the preliminary ruling is delivered, Defendant No. 1 from any disposal of the x+y+z.cz domain name, particularly as regards the operation of a website under this name by Defendant No. 1, or any other person other than the Plaintiff.

In justification of the motion, the Plaintiff claimed to be a legal entity established pursuant to the provisions of the Law. It is not incorporated in the Commercial Register and it derives its name directly from the law specified above. It is the owner of two combined trademarks, registered under entry numbers 123456 and 123456, which are the graphic presentations of the Plaintiff's name. The Plaintiff has incorporated these trademarks for categories No. 9, 16, 35, 38 and 41 of products and services. The Plaintiff has been using these trademarks within the scope of the categories given above for several decades, and considers beyond any doubt that the "X+Y+Z" trademarks are generally known trademarks.

Defendant No. 1 is a limited liability company, whose subject of enterprise includes automatic data processing, purchase of goods for sale and resale, and agency services. Defendant No. 1 presents itself in the Internet as the carrier of the abc.cz project.

Defendant No. 2 administers the Internet domain "cz" and the registration of second level domain names in the Czech Republic, and it is the author of the "Rules for the Registration of Domain Names

in the .cz Domain", defining the processing and use of domain names.

In August 2002, the Plaintiff discovered that Defendant No. 1 was the owner of the "x+y+z.cz" domain and that it made use of this domain for its presentation in the website at www.x+y+z.cz. After entering this address in an Internet browser, one enters an almost empty page with an active link to www.abc.cz and to the "corporate" page of Defendant No. 1. At www.abc.cz, the abc.cz project is presented, operating by O. The project is particularly focused on the registration of domains.

In a letter dated 2 September 2002, the Plaintiff asked Defendant No. 1 to transfer the x+y+z.cz domain to the Plaintiff. Defendant No. 1 refused to carry out such a transfer in a letter dated 15 October 2002, offering only to place a link to www.y+z.cz on the page of www.x+y+z.cz.

Subsequently, the Plaintiff referred to Defendant No. 2, requesting - in a letter dated 22 October 2002 - assistance in the transfer of the domain from Defendant No. 1 to the Plaintiff. Defendant No. 2 replied in a letter dated 29 October 2002, informing the Plaintiff that is was unable to help the Plaintiff, as Defendant No. 2 was not competent to make decisions concerning the rights of third parties.

The Plaintiff believes that Defendant No. 1 is in breach of the provisions of Section 13, Paragraph 1 and Section 14, Paragraph 1 of the Trademark Act. It claims its rights as owner of trademarks registered under entry numbers 123456 and 123456, in line with the provisions of Section 15, Paragraph 2 of the law mentioned above. In addition, the activities of Defendant No. 1 show signs of unfair competition, according to Section 44, respectively Section 47, Item a) and Section 48 of the Commercial Code. In particular, Defendant No. 1 makes use of the Plaintiff's goodwill in order to achieve benefits for its own business. In addition, the activities of Defendant No. 1 may show signs of causing possible confusion, as it makes unlawful use of the name of a third entity.

The Plaintiff believes that it is necessary to ensure temporary settlement of the relations between the parties involved, as the Plaintiff is suffering detriment every day due to the activities of Defendant No. 1. Owing to the reasons given above, the Plaintiff requested a preliminary ruling to be issued as specified above.

According to the provisions of Section 74 et seq. of the Code of Civil Procedure, the court may issue its verdict concerning the preliminary ruling if it deems it necessary to adjust the relations between the parties concerned. The preliminary ruling is based on the claims presented by the Plaintiff, which have been duly documented. Evidence of these facts is the subject of the proceedings to be carried out according to the proposal on the matters.

The objective of the preliminary ruling is not to adjust the factual relations between the parties involved, but to adjust their legal relations (even though on a preliminary basis).

The court came to the conclusion that it was necessary to ensure the temporary adjustment of the relations between the Plaintiff and Defendant No. 1 and, therefore, accepted the Plaintiff's motion for a preliminary ruling, requiring Defendant No. 1 to abstain from using and transferring the x+y+z.cz domain name.

The court understands and acknowledges that the Plaintiff is the owner of two combined trademarks of X+Y+Z, incorporated on 18 April 1998 in the trademark register kept by the Industrial Property Office. In addition, Defendant No. 1 is the owner and user of the x+y+z.cz domain. Defendant No. 1 provides Internet services, including registrations to the .cz national domain. The www.x+y+z.cz

website is a standard website, presented in each registered domain operated at the Defendant, without any particular content.

The court therefore came to the conclusion that it was possible to consider the activities of Defendant No. 1, who had registered the x+y+z.cz domain for its own benefit, as an unauthorized infringement of the Plaintiff's rights. Another reason for the issue of a preliminary ruling, specified in Item I. of this verdict, is that it was necessary to make sure that a further decision can be adopted in this respect without any possible changes in the parties involved.

According to the provisions of Section 75a, Paragraph 1 of the Code of Civil Procedure, the indefinite motion to issue a preliminary ruling shall be refused by the court, provided that it is impossible to continue in the proceedings due to this failure; the provisions of Section 43 shall not be applied.

The court came to the conclusion that the motion to issue a preliminary ruling (statement of claim), specified in Items II., III. and V. of this verdict, was not definite with respect to the defined obligations and that it was impossible to adopt it in the court's verdict and its decision (in case of its voluntary non-execution). The decision, satisfying the Plaintiff's motion, would not be enforceable. For this reason, the court refused this part of the motion for a preliminary ruling.

In addition, the Plaintiff claimed a preliminary ruling against Defendant No. 2, according to which the court would order Defendant No. 2 to prevent Defendant No. 1 from operating its website under the x+y+z.cz domain name. The court repudiated this motion to issue a preliminary ruling as Defendant No. 2 registers domain names according to the Rules for the Registration of Domain Names.

Item VI. of the verdict has been justified on the basis of the provisions of Section 4, Paragraph 1, Item f) of Law No. 549/1991 Collection of Laws, concerning court fees, as amended, according to which the duty to pay fees arises according to a decision adopted by the court, concerning a motion for preliminary ruling; Section 5, Section 7, Paragraph 1 and Section 8 of the law quoted above. According to the provisions of Section 7, Paragraph 1 of the law mentioned above, the duty to pay fees is based on the provisions of Section 4, Paragraph 1, Item d) to g), and the fee shall be paid within three days of the day on which the pertinent decision becomes legally effective. The Plaintiff paid the court fees for the motion to issue a preliminary ruling, totalling CZK 500. As it claimed the issue of a preliminary ruling both against Defendant No. 1 and Defendant No. 2, the court ordered the Plaintiff to pay the court fees of CZK 500.

The preliminary ruling, specified in Item I. of this verdict, shall cease to be effective according to the provisions of Section 77, Paragraph 1 of the Code of Civil Procedure, unless a petition is filed on the matters during the period specified by the court; or otherwise, on the day on which the decision becomes legally effective, unless the petition is successful. Provided that the petition on the matters is successful, the preliminary ruling shall cease to be effective upon the expiry of a period of 15 days from the day on which the decision on the matters becomes enforceable. According to the second paragraph of the quoted provisions, the court shall cancel the preliminary ruling if the reasons according to which it had been ordered shall cease to be effective.

Except for CZ.NIC, all participants of the proceedings are identified with the first letters of their surnames or trade names. The domain name in question is replaced with a wwwx+y.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 using such abbreviations or dummy symbols for purposes of identification is merely accidental.

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 individual parties involved, and that the court may not have been concerned with some of these claims at all (e.g. with respect to the issue of interlocutory judgement) and that such claims represent merely a 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.