PRELIMINARY RULING

On 17 March 2003, the Regional Court in Brno issued a verdict with respect to the action between the Plaintiff, S., with its registered office in Italy, against the Defendants No. 1), R., and No. 2), CZ.NIC, concerning the motion for a preliminary ruling, as follows:

I. As of the day on which this verdict is delivered, the Defendant R. shall abstain from publishing any sort of materials or information, or any contents whatsoever via the Internet, under the "x+y+z.cz" domain name, and it shall also abstain from any disposal of the registration of such a domain name, particularly any transfer.

II. As of the day on which this verdict is delivered, the Defendant CZ.NIC shall abstain from allowing any transfer of the "x+y+z.cz" domain name from the Defendant R. to any other person, and it shall also abstain from any cancellation of the "x+y+z.cz" domain name.

III. Within 30 days of the delivery of this verdict, the Plaintiff shall file an action in re.

Based on a motion of 7 March 2003 (delivered on 11 March 2003), the Plaintiff claims that the court adopt a preliminary ruling against the Defendants, according to which the Defendant R. would be ordered to abstain from publishing any sort of materials or information, or any contents whatsoever via the Internet, under the "x+y+z.cz" domain name, and it shall also abstain from any disposal of the registration of such a domain name, particularly any transfer thereof. In addition, the Defendant CZ.NIC shall - as of the day on which this verdict is delivered - abstain from allowing any transfer of the "x+y+z.cz" domain name from the Defendant R. to any other person, and it shall also abstain from any cancellation of the "x+y+z.cz" domain name. In the motion, the Plaintiff claimed to be the owner of the "X+Y+Z" trademark, No. 123456, registered for the territory of the Czech Republic. The Plaintiff and the Defendant R. have been cooperating for several years with respect to the distribution and sale of Plaintiff's products, under the "X+Y+Z" trademark.

The Defendant R. is also involved in the purchase and distribution of goods under the "X+Y+Z" trademark.

The Defendant CZ.NIC is an interest association of legal entities, acting as administrator of the national domain of the highest level, i.e. ".cz" and entitled to register domains of the second level. In this respect, the Defendant holds a monopoly. The registration of domain names is carried out in line with the registration regulations issued by the Defendant. Domain names are transferred according to Article 9 of the Regulations. Having fulfilled the specified requirements, the existing holder of the domain name may dispose of the registered domain name without any restrictions, i.e. transfer the domain name to another individual or corporation. For the registration principles, see the "Rules for the Registration of Domain Names", valid as of 1 March 2003.

On 24 January 2000, the Defendant R. registered the "x+y+z.cz" domain name through the Defendant CZ.NIC. R. carried out the registration even though it must have been aware of the fact that "X+Y+Z" was the Plaintiff's trademark and generally used for the identification of Plaintiff's products, which are also distributed by the Defendant and which can be found in shops selling car accessories throughout the Czech Republic. The Plaintiff has never rendered its consent concerning the registration of the "x+y+z.cz" domain name.

The Plaintiff notified the Defendant R. about the unlawful nature of its registration of the "x+y+z.cz" domain name in a letter dated 1 October 2001 and asked the latter to transfer the domain name to the

Plaintiff. In conclusion, the Defendant agreed to transfer the domain name at the Plaintiff's initial request. On 11 April 2002, the Plaintiff and the Defendant signed an agreement, in which the Defendant undertook to transfer the "x+y+z.cz" domain name, whenever requested by the Plaintiff. On 28 June 2002, the Plaintiff requested the Defendant R. to transfer the domain name to the Plaintiff. The Defendant failed to respond to such a request and adopted no measures to transfer the domain name to the Plaintiff. This meant a breach of the contract, particularly of section 3. The Plaintiff, furthermore, believes that the "x+y+z.cz" domain name can be confused with the "X+Y+Z" trademark.

By registering the "x+y+z.cz" domain name, the Defendant R. violates the Plaintiff's rights - i.e. Plaintiff's trademark rights. This further means a violation of the provisions of Section 14 of the Trademark Act No. 137/1995 Collection of Laws (Coll.). Furthermore, the Defendant hampers the Plaintiff in full application of its rights stipulated in Section 13, Paragraph 1) of Law No. 137/1995 Coll. - particularly the exclusive right to identify its products of services with a trademark, for which it is incorporated, or use such a trademark in connection with such products or services.

Due to the current registration of the "x+y+z.cz" domain name by the Defendant, the Plaintiff is unable to register this domain as its own domain name. It is therefore necessary to adjust the relations between the parties involved, according to the provisions of Section 74 of the Code of Civil Procedure, as the Defendant may transfer the domain name before an action is initiated with respect to the violation of trademark rights to a third party and in consequence, the Defendant would cease to be a passively legitimised party involved in this dispute.

With respect to the current wording of the Rules for the Registration of Domain Names, enabling the Defendant CZ.NIC to cancel the existing "x+y+z.cz" domain name under certain circumstances, it is necessary to ensure temporary composition of the relations between the Plaintiff and this Defendant. In the main action, the Defendant CZ.NIC would not be passively legitimised.

In addition, the Defendant R. may present data within the www.x+y+z.cz pages that may be harmful to the Plaintiff.

With respect to the fact that the Plaintiff did not file an action together with the motion for preliminary ruling, it is necessary to consider the motion according to the provisions of Section 74 et seq. of the Code of Civil Procedure. According to the provisions of Section 74, Paragraph 1 of the Code of Civil Procedure, the presiding judge may issue a preliminary ruling prior to the commencement of the court proceedings if it is deemed necessary to adjust the relations between the parties concerned, or if there is a suspicion that the execution of the court decision may be jeopardized in the future. According to the provisions of Section 74, Paragraph 2) of the Code of Civil Procedure, the parties involved are those that would be involved if the merits were concerned. Pursuant to Section 75, Paragraph 5) of the Code of Civil Procedure, a preliminary ruling is dependent on the situation as of the date on which court of first instance issues its resolution. According to the provisions of Section 76 Paragraph 2) of the Code of Civil Procedure, a preliminary ruling may be used to lay an obligation on other parties than the parties involved only if this may be fairly required.

The Plaintiff suggests that a preliminary ruling is issued with respect to the necessity to ensure temporary composition of the relations among the parties involved, i.e. those who are members of the proceedings in re (Plaintiff and Defendant R.), and to order cooperation by a third party - Defendant CZ.NIC, who would not be involved in the main action (according to the Plaintiff).

It is necessary to make sure that the Plaintiff proves the facts claimed, according to which the

preliminary ruling shall be issued.

Pursuant to a certificate dated 24 October 2002, concerning the incorporation in the category of general corporations for S., the Plaintiff proved its incorporation with the Commercial Register Office at the Turin Chamber of Commerce for Industry, Crafts and Agriculture, as of 6 November 1979. The scope of enterprise includes the purchase, production and trading of accessories and spare parts, including lubrication oil for vehicles in general, plastic items and products made of combined materials intended for security purposes and for vehicles, trading with clothes, purchase of motor vehicles, vessels, motorcycles and registered vehicles in general.

From the website, dated 5 February 2003, "Welcome to the x+y+z website", it is evident that the products offered under the x+y+z domain include seats, belts, steering wheels, suits, hoods, helmets, boots, gloves, fire extinguishing systems, etc. In addition, S. is promoted as a sponsor of F1 2002, including a motto: "Become a dealer of x+y+z, visit our sample store". In addition, the website reads: "For any inquiries, please contact X+Y+Z Product Manager, V.L., or our staff within our branches".

Based on a document identified as an option contract, signed in Brno on 11 April 2002 and in Turin on 29 April 2002, the Court understands and acknowledges that this deed was signed by S. s.r.l., Italy (hereinafter "S.") and R. Czech Republic (hereinafter "R."). According to the contract, S. is the owner of a generally known "X+Y+Z" trademark, registered in the Czech Republic for car accessories, special outfit for car racing, sports wear and other products. R. was appointed a distributor for products offered under the "X+Y+Z" trademark in the Czech Republic. On 24 January 2000, R. registered the x+y+z.cz domain name without the prior consent of S. Both parties wish that S. would become the sole owner of the domain name. At the first request of S., R. undertook to transfer the domain name immediately to a Czech company selected according to the requirements of S., without any financial claims towards S. Should it be impossible to transfer the domain name, R. undertakes to waive the registration of the domain name at the first simple request of S. and fully cooperate with S. to ensure that the domain name is registered with the name of a Czech company selected according to the requirements of S. As long as R. is the owner of the domain name, it will be responsible for the maintenance of the ownership and its validity for the benefit of S. Provided that the terms of the contract are fulfilled, S. undertakes not to object to the registration of the domain name of R.. All amendments to the contract must be made out in writing.

Based on a letter sent by the Plaintiff to the Defendant R. on 1 October 2001, it is evident that the Plaintiff discovered that R. had been using the Plaintiff's registered trademark "x+y+z" as the main part of its "x+y+z.cz" domain name. The registration of the word "x+y+z" can be considered a breach of the rights to the aforesaid trademark with respect to the provisions of Section 13, Paragraph 1) of Law No. 137/1995 Coll., concerning trademarks (the exclusive right of the trademark owner to the identification of its products and services) and Section 14, Paragraph 1) of the same law (the approval of the trademark owner with the use of an expression that is identical or could be confused with the trademark). The Plaintiff claims in its letter that it has not given its consent with the registration of the domain name. The Defendant refused its signature under the Option Contract concerning the transfer of the domain name. A representative of the Plaintiff requests the Defendant to transfer the "x+y+z.cz" domain name immediately to S. or to a person designated by the Plaintiff.

Based on a letter sent by the Plaintiff to the Defendant on 28 June 2002, it is evident that the Plaintiff has requested the Defendant to assign the domain name voluntarily to S. or another person designated by the Plaintiff. If the Defendant agrees, the Plaintiff accepts the Defendant's use of the domain name during the period in which the Defendant acts as Plaintiff's official distributor. A reply is expected within 7 days.

Based on the registration of domain names, made out via the Internet on 7 March 2003, it is evident that the "x+y+z.cz" domain has been registered for the holder R. since 24 January 2000.

Based on an extract from the World Intellectual Property Organization, issued on 24 February 2003 at the Industrial Property Office in Prague, the court acknowledged that the "x+y+z" trademark, No. 123456, had been registered for S. s.r.l., Italy, since 12 July 1983 and that it was registered for the Czech Republic on 24 May 1993. The same is evident from a confirmation issued by the Industrial Property Office in Prague on 27 February 2003.

According to an extract from the Commercial Register for the Defendant R., it is evident that the Defendant was incorporated in the Commercial Register on 22 October 1990, with the scope of enterprise including the repair of motor vehicles, car body repairs and the purchase of goods for sale and resale.

Based on a statement issued by the Prague Municipal Authority on 28 January 2003, the court ascertained that the CZ.NIC interest association was incorporated in the register of interest associations of legal entities, kept with the Prague Municipal Authority, reg. No. ZS 30/3/98.

Pursuant to the "Rules for the Registration of Domain Names", valid since 1 March 2003, the court understands and acknowledges that there are rules for the registration and delegation of second level domain names in the Internet under the CZ domain, including rules for the registration of domain names, prolongation of domain name registration, transfer of registered domain names and cancellation of domain name registration (at the request of holder, based on a exercisable court resolution, verdict of an arbitration court) - Article 13.4. Furthermore, the rules stipulate that the CZ.NIC association is entitled to carry out all measures ordered in the form of a preliminary ruling, including restrictions of the right to transfer a domain name.

The Plaintiff therefore claims that the preliminary ruling is adopted in order to ensure a temporary composition of the relations among the parties involved, i.e. that the Defendant R. shall abstain from publishing any sort of materials or information under the "x+y+z.cz" domain name, and shall abstain from the disposal of the domain name registration (particularly its transfer).

The Plaintiff proved that it had been the owner of the "x+y+z" trademark, registered internationally as well as for the territory of the Czech Republic, since 24 May 1993. The products registered under the trademark include helmets, glasses, gloves, footwear, suits, motor vehicles, car seats, outerwear and underwear woven or knitted from non-textile materials, etc.

The Defendant's scope of enterprise includes the purchase of goods for sale and resale, repairs of motor vehicles and car body repairs, according to its Commercial Register, incorporated on 22 October 1990. Within its website presented under the "x+y+z.cz" domain name, the Defendant offers suits, hoods, helmets, footwear and gloves, and potential customers are invited to visit the Defendant's sample store. According to the Defendant's website, it is not evident that the Defendant would promote goods that belong to someone else, i.e. goods that the Defendant would only distribute and that it would not denote its own goods under the "x+y+z.cz" domain.

The Plaintiff claimed that the Defendant distributed goods in the Czech Republic, which he proved with an option contract dated 29 April 2002, signed by the Plaintiff and the Defendant, where this is stipulated. In addition, the Plaintiff and the Defendant R. acknowledge in this contract that the Plaintiff has not allowed the Defendant to register the "x+y+z.cz" domain.

According to this Contract, the Defendant undertook to transfer the "x+y+z.cz" domain at the Plaintiff's request, which, however, the Defendant failed to do. This is evident from the fact that on 5 February 2003, the Defendant still offered its goods under the "x+y+z.cz" domain, in which the word "x+y+z" is written with the same font as the Plaintiff's registered trademark. According to the aforesaid contract, the Defendant was twice requested by the Plaintiff to transfer the domain name, in a letter of 1 October 2001 and 28 June 2002.

The Plaintiff proved that the Defendant had registered the "x+y+z.cz" domain name at the Defendant CZ.NIC, of which the part "x+y+z" is graphically identical to the Plaintiff's trademark "x+y+z", and had been using this domain to offer goods, for which the Plaintiff's trademark has been registered.

The Plaintiff intends to claim protection of its trademark rights, in line with the provisions of Section 13, Paragraph 1) and Section 14, Paragraph 1) of Law No. 137/1995 Coll., concerning trademarks.

In this respect, and with regard to what has been stipulated above, the Court understands that the conditions have been fulfilled for it to issue a preliminary ruling, as specified in verdict I) of this resolution, according to which the Defendant R.'s disposal of the domain name will be restricted for a certain period of time (the preliminary ruling shall cease to be effective or will be cancelled pursuant to the provisions of Section 77, Paragraph 1), 2) of the Code of Civil Procedure). However, the Defendant R. shall remain the holder of the domain name.

As regards Defendant No. 2) - CZ.NIC, this is a third party that is required to cooperate with respect to the ordered preliminary ruling against the Defendant R. This Defendant is an interest association, involved exclusively in the registration of domain names (including their transfer, cancellation, etc.); however, it is not intended to become a party involved in the main proceedings. With respect to the fact that the association holds a monopoly, it is in line with the provisions of Section 76, Paragraph 2) of the Code of Civil Procedure to lay the association under the obligations specified in verdict II) of this resolution.

According to Article 13 - 13.5 of the Rules for the Registration of Domain Names in the .CZ Domain, CZ.NIC shall be entitled to carry out all measures ordered in the form of this preliminary ruling, including the right to restrict any transfer of the domain name.

Therefore, the Court ordered the preliminary ruling, in line with the provisions of Section 74, 75, Paragraph 2) and Section 76, Paragraph 2) of the Code of Civil Procedure, specified in the verdict herein, as the Plaintiff proved the claimed facts and the Court believes that it is necessary to ensure temporary composition of the relations between the parties involved. The parties involved shall fulfil the duties specified in this preliminary ruling upon the delivery of this resolution.

According to the provisions of Section 76, Paragraph 3 of the Code of Civil Procedure, the Court ordered the Plaintiff to submit a motion for legal action in re within 30 days of the delivery of this resolution.

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.