PRELIMINARY RULING

On 7 March 2003, the Municipal Court in Prague issued a verdict with respect to the action of the Plaintiff K. against the Defendant CZ.NIC, concerning the motion for a preliminary ruling, as follows:

1. The Court issued the following Preliminary Ruling: As of the day on which this verdict is delivered, the Defendant shall preclude any transfer of the domain names "x+y+z.cz" and "a+y+z.cz" to any other person.
2. Within 30 days of the delivery of this resolution, the Plaintiff shall file an action in re to the present Court - i.e. an action for the protection against unfair competition and unauthorized use of a trademark. The Plaintiff may also fulfil this duty by filing a motion with respect to the issue with ref. No. 19 Cm 273/2001, kept with the present Court, within the aforesaid period, concerning the accession of the Defendant in the proceedings as another party on the side of the Defence.
3. Within 7 days of the delivery of this resolution, the Plaintiff shall pay a fee to the Municipal Court in Prague concerning the motion for a preliminary ruling, equalling CZK 500.
4. As regards the motion that the Defendant is ordered to adopt immediate measures to prevent any use of the domain names "x+y+z.cz" and "a+y+z.cz" by any person, including any manipulation with data included in the databases, concerning the registration of these domain names, the motion for preliminary action is refused.
5. V. The motion that the Defendant is ordered to adopt immediate measures in order to prevent any person from manipulating with the data included in the databases, concerning the registration of domain names "x+y+z.cz" and "a+y+z.cz" is refused.

The Plaintiff filed a motion for a preliminary ruling, according to which the Court would order the Defendant to immediately preclude any use of the domain names "x+y+z.cz" and "a+y+z.cz" by any person, including any manipulation with data included in the databases, concerning the registration of these domain names, and to preclude any transfer of the domain names "x+y+z.cz" and "a+y+z.cz" to any person, until the day on which a final verdict in this matter becomes legally effective, and to compensate the Plaintiff's costs of the proceedings.

The Plaintiff claimed that it was an entrepreneur, incorporated in the Commercial Register on 28 April 1993, under the trade name (the then business name) of K. and the subject-matter including - in addition to the provision of medical care in the field of K. - a diagnostic and monitoring network, consultancy in measurement and diagnostic devices, operation of a private health-care centre in internal medicine, cardiology. The Plaintiff is the owner of the X+Y+Z trademark, No. 123456, filed on 7 April 1995, incorporated on 24 July 1996 for the classes of products and services 5, 9, 10 and 42. The Plaintiff has been using its trade name and trademark for the purposes of its business activities, this identification has become characteristic for the Plaintiff and the Plaintiff has been associated with this identification. When he attempted to register the domain name identical to its trade name and trademark, the Plaintiff discovered that this domain name had been previously registered by another entity, i.e. CC trading company, which is a direct competitor of the Plaintiff. With the Defendant, acting as an administrator of domains of the highest level, the aforesaid company also registered the domain name "a+y+z.cz", which can be easily confused with the Plaintiff's trade name and trademark.

On 5 September 2001, the Plaintiff filed a motion at the present Court for the issue of a preliminary ruling against CC, according to which CC would be ordered to abstain from using the domain names "x+y+z.cz" and "a+y+z.cz". On 31 August 2001, the present Court issued a verdict under ref. No. Nc 1147/2001-8, in which it acquitted the Plaintiff's motion and ordered the Plaintiff to file an action in re within one month of the delivery of this resolution. The Plaintiff fulfilled this duty and the matter is

registered under ref. No. 19 Cm 273/2001. The resolution was adopted on 31 August 2001 and became legally effective on 25 September 2001; however, CC has failed to fulfil the preliminary ruling and has still been using the aforesaid domain names. According to the Plaintiff, there is no legal or technical solution to preclude the use of the domain names without the cooperation of the Defendant; however, the Defendant refused to cooperate with the Plaintiff without an order issued by the court. The Def endant is an interest association of legal entities, and its main activity is the provision of services associated with the registration of domain names under the national domain "cz", for a consideration. Pursuant to a contract between the Defendant and CC, the "x+y+z.cz" and "a+y+z.cz" domains were registered for CC, even though the use of these names by a competitor means a breach of trademark rights and can be classified as unfair competition, according to the provisions of Section 44, Paragraph 1 et seq. of the Commercial Code. Based on its negative approach, the Defendant enabled CC to continue in the breach of Plaintiff's rights and it cannot be discharged of its liabilities arising from this fact by simply referring to the rules that the Defendant has established itself, and which cannot be binding for the Plaintiff, who is not a party of a private relations between the Defendant and CC. Concerning the fact that the Defendant claims that a court resolution (preliminary ruling) has been issu ed only against CC and not against the Defendant, which has not been ordered to carry out any transactions with respect to the domain in question, the Plaintiff believes that the Defendant should be ordered duties - with respect to its position of an administrator of the highest level domains - which would preclude any further use of the "x+y+z.cz" and "a+y+z.cz" domains, and which would prevent any transfer of these domains to other entities prior to the conclusion of the issue, which would result in changes in the group of participants in the already commenced action against CC. Therefore, the Plaintiff filed a motion for a preliminary ruling.

The Plaintiff enclosed to its motion an extract from the commercial register, and extract from the register of domains, the resolution of the present Court, ref. No. Nc 1147/2001-8, dated 31 August 2001, the Defendant's Rules for the Registration of Domain Names, an expert's report issued by Ing. J.F., a letter by the Plaintiff's legal representative addressed to the Defendant, dated 10 February 2003 and a reply to this letter, dated 17 February 2003

The issue comprises a motion for a preliminary ruling, according to the provisions of Section 74 et seq. Code of Civil Procedure, i.e. a motion filed prior to the commencement of the proceedings, as no proceedings have been initiated with respect to the "x+y+z.cz" and "a+y+z.cz" domains, concerning the relationship between the Plaintiff and the Defendant. However, it is obvious that a motion for a preliminary ruling was already filed against the holder of the aforesaid domains, i.e. CC, in 2001, which was acquitted. The Court is aware that the Plaintiff filed a motion in re against the aforesaid company, kept at the present Court under ref. No. 19 Cm 273/2001.

Based on the motion and the presented documents, the Court understands and acknowledges the following Plaintiff's claims: the Plaintiff is an entrepreneur incorporated in the Commercial Register on 28 April 1993, under the trade name (the then business name) of K. and the subject-matter including the purchase of goods for sale and resale, provision of medical care in the field of K. - diagnostic and monitoring network, consultancy in measurement and diagnostic devices, operation of a private health-care centre in internal medicine, cardiology. The Plaintiff is the owner of the X+Y+Z word trademark, No. 123456, filed on 7 April 1995, with a priority right as of this date, published on 17 April 1996 and incorporated on 24 July 1996 under No. 123456, for the classes of products and services 5, 9, 10 and 42. The domains "x+y+z.cz" and "a+y+z.cz" are held by CC, registered on 20 March 2000 and in the CZ.NIC system since 21 March 2000. Pursuant to a resolution adopted by the Municipal Court in Prague, ref. No. Nc 1147/2001-8, dated 31 August 2001, CC was ordered to abstain from using the "x+y+z.cz" and "a+y+z.cz" domain names, and the Plaintiff was ordered to file an action in re within one month of the delivery of this resolution. The action in re was filed and is now registered under ref. No. 19 Cm 273/2001.

It is, therefore, evident that the Plaintiff has been using the K. trade name to carry out its business activities and that it is also the owner of the X+Y+Z trademark, under which it offers its products and services. However, the Plaintiff is currently unable to register the domain name "x+y+z.cz" (or "a+y+z.cz"), as this domain has been registered by CC through the Defendant and - according to the Defendant's conditions - and it is impossible to have these domains registered for another entity (i.e. for the Plaintiff). The motion for a preliminary ruling against the Defendant can be considered justified only in part, with respect to the Defendant's competence - as an administrator of the highest level domains - to effectively preclude the transfer of the aforesaid domains from CC to any other entity, as this obligation may be actually imposed on the Defendant as an administrator of the highest level domains. Before a final decision is adopted in re, it is necessary to ensure that there are no changes concerning the holders of the aforesaid domains. On the other hand, the Defendant cannot be ordered to preclude the use of these domain names by anyone, as the Defendant is not competent to do this as a private entity and this duty cannot be ordered, as it not stipulated in any legal regulations. However, the motion comprises a claim that the Defendant is ordered to prevent any person from manipulating the data included in the databases concerning the registration of these domain names. This claim was so vague that i t is not even obvious what particular obligation should be imposed on the Defendant, and, therefore, the Court refused this claim, in line with the provisions of Section 75a, Paragraph 1 of the Code of Civil Procedure.

Concerning the fact that the Court acquitted the Plaintiff's claim and ordered the Defendant to preclude any transfer of the two aforesaid domain names to any other person, the Court ordered the Plaintiff to file an action in re within a period of 30 days, in line with the provisions of Section 76, Paragraph 3 of the Code of Civil Procedure. With respect to the fact that proceedings have already been commenced concerning the domain holder - CC, and that the claim against the Defendant is applied owing to the fact that the Defendant is the administrator of the highest level domains, the court resolved that the Plaintiff may also fulfil this duty by filing a motion with respect to the issue of ref. No. 19 Cm 273/2001, kept with the present Court, within the aforesaid period, concerning the accession of the Defendant in the proceedings as another party on the side of the Defence(in this respect, CC is the Defendant).

The settlement of the costs for the preliminary ruling shall be decided in line with the provisions of Section 145 of the Code of Civil Procedure, depending on the result of the proceedings in re, i.e. in the final resolution adopted in this respect.

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 people or domain names actually using such abbreviations or dummy symbols for the 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 the preliminary ruling) and that such claims represent merely 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.