DISMISSAL OF MOTION FOR PRELIMINARY RULING

On 10 April 2003, the Municipal Court in Prague issued a verdict with respect to a controversy between the Plaintiff:, Z.D. SA, with its principal place of business in Switzerland, and the Defendants: 1) CZ.NIC, 2) -., concerning a motion for a preliminary ruling, as follows:

1. The motion for the issue of a preliminary ruling, according to which the Plaintiff claimed that the Court order that Defendant 1) shall not be entitled to transfer the second level domain "x+y+z.cz" to third parties, except for the Plaintiff, and that Defendant 2) shall not be entitled to use or transfer the domain, or enable third parties to use such a domain, except for the Plaintiff, is hereby refused.
2. None of the parties involved shall be entitled to any compensation of expenses associated with the proceedings.

The Plaintiff submitted a claim that the Court adopt a preliminary ruling, according to which Defendant 1), acting as an administrator and operator of the "cz" national domain, would not be entitled to transfer the "x+y+z.cz" domain to any third parties, except for the Plaintiff, and Defendant 2) would not be entitled to use or transfer such a domain, or enable third parties to use such a domain, except for the Plaintiff. The Plaintiff further claimed that it was the owner of the X+Y+Z.CZ trademarks, with a priority since 1 September 1981, registered for products and services in classes 3, 14, 15, 16, 18, 20, 21, 25, 33 and 34, and with a priority since 20 August 1992, registered for products and services in classes No. 3, 8, 9, 11, 14, 15, 16, 18, 20, 21, 25, 28, 29, 30, 31, 32 and 33. The "X+Y+Z" identification is also part of the Plaintiff's trade mark. The Defendant, acting as a private physical entity, had an Internet domain registered on 26 February 2002, i.e. second level domain "x+y+z.cz". This Internet domain is used for the presentation of x+y+z, s.r.o., which has nothing in common with the Plaintiff. Defendant 2) turned down the Plaintiff's request for the transfer of the domain name to the Plaintiff. The wording of the domain may be confused with the Plaintiff's trademark, particularly with its trade name. The fact that Defendant 2) had this domain registered evidently with respect to its business purposes, Defendant 2) entered into competition and its activities, infringing the Plaintiff's trade mark rights, exhibit signs of unfair competition.

The Court considered the motion for preliminary ruling with respect to the fulfilment of the conditions set out in the provisions of Section 74 et seq. of the Code of Civil Procedure, i.e. the admissibility and reasonability of the preliminary ruling. With respect to the nature of the dispute, a preliminary ruling may be issued only if it is necessary to ensure temporary composition of the relations among the parties involved. According to the provisions of Section 76 Paragraph 1) of the Code of Civil Procedure, temporary composition of the relations among the parties involved (again with respect to the given case) may be established only if a party is ordered not to dispose of certain items or rights, or to fulfil something, abstain from something or tolerate something. The Plaintiff's statement of claim concerns a claim for determination (i.e. of the competence to dispose of a right); it is neither a claim for imposition of a duty not to dispose of a certain right, nor a duty to fulfil something, a bstain from something or tolerate something. The statement of claim thus formulated by the Plaintiff cannot be deemed a motion for any temporary composition of the relations among the parties involved. Even though Section 76, Paragraph 1 of the Code of Civil Procedure comprises an account of duties that may be imposed in the course of a preliminary ruling, it is evident from the nature of the institute of a preliminary ruling that the imposed duties of the parties involved must be a duty to fulfil a certain obligation, i.e. that it shall necessarily impose a particular obligation. A preliminary ruling cannot be used to claim the determination of an existence of a right or a legal relation.

With respect to what has been said above, the Court dismissed the motion in its full scope, without

further investigating the legitimacy of the Plaintiff's claim regarding the existence of basic prerequisites for the acknowledgement of what would form the claim in re and the reasonability of any temporary composition of the relations between the parties involved. As regards the costs of the proceedings, the Court adopted a decision with respect to the provisions of Section 142, Paragraph 1 of the Code of Civil Procedure. Concerning the fact that the Defendants did not carry out any transactions during the proceedings for which they would be entitled to compensation of costs, the Court decided that none of the parties involved shall be entitled to any compensation of expenses associated with the proceedings.

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.