PRELIMINARY RULING
(Decision of the Appeal Court on the defendant's appeal against the decision of the first level court - see JUD-009)

On 25 November 2002, the High Court of Prague confirmed the decision of the first level court on the judicial case of K, the plaintiff, vs. L, the defendant, concerning protection of the trade name and reputation of a corporate body and protection against unfair competition, moving for a preliminary ruling as to the defendant's appeal against the decision of the Regional Court of Prague of 13 March 2002.

The plaintiff demands a judgement on merits of the case to be issued. The judgement would impose on the defendant the duty to refrain from using the domain name of "x+y+z.cz", to provide for the transfer of the above name as indicated therein and to pay the plaintiff a reasonable compensation of CZK 50,000. Further, the judgement would impose on the defendant the duty to settle the court costs, stating that the use of the trademark "X+Y+Z", registration number 123456, for the indicated classes of products and services is unfair competition. To give reasons for the rights claimed by virtue of protection of the trade name and reputation of a corporate body and protection against unfair competition, the plaintiff contends that the defendant, without having any subjective right to the trade name "x+y+z", registered it as a trademark to be protected and used by him as a domain name. Websites under this domain show texts and pictures, including pornography, which infringe the plaintiff's rights. Conside ring the fact, as stated by the plaintiff, that the defendant registered and used the domain name with the intent to damage the plaintiff and the content of the websites infringes plaintiff's rights, there is a concern that the domain name might be transferred to a third party and the registration body of CZ.NIC domains may be asked for co-operation in protection of the plaintiff's rights. The plaintiff considers it fit to make provisional arrangements of the conditions of the parties. In filing the action, the plaintiff asked the Court to issue a preliminary ruling and impose on the defendant the duty to remove the website under the domain name "x+y+z.cz", to refrain from using the "x+y+z.cz" domain name, to refrain from transferring it to a third party, and to impose on CZ.NIC, an interest group of corporate bodies, the duty to refrain from transferring the "x+y+z.cz" domain name from the defendant to a third party.

The first level court allowed the motion for a preliminary ruling, issuing the above-mentioned resolution, and imposed the proposed duties both on the defendant and on CZ.NIC. Considering the conditions for a preliminary ruling under sections 102, 74 and the following of the Civil Procedure Code, the first level court examined the documents submitted by the plaintiff and declared the fact that the parties are competitors in the real-estate business. The plaintiff was registered under their trade name on 22 July 1999, the defendant registered the X+Y+Z name as a trademark on 8 November 2001, and since 12 November 2000 the domain "x+y+z.cz" has been registered in favour of the defendant. The official deed of 15 February 2002 should have declared the contents of the website under the above domain, which includes a pornographic photograph with a German caption. Considering the conditions for a preliminary ruling, the Court reached the conclusion that the motion for it is reasonable. The plaintiff declare d his priority in using the trade name and his right to claim protection of this right. He also declared that using the denomination of the domain with respect to the competitive character of the parties' relation might be considered an act made against good morals of competition and might damage the plaintiff. Therefore, the Court considered the conditions of preliminary arrangement to have been met, including the legitimacy of claims against the third party, the interest group CZ.NIC as a registration body, and prevented the transfer of the domain to another subject in compliance with paragraph 3 of section 76 of the Civil Procedure Code. The defendant contested the decision by his appeal, pointing out that the plaintiff failed to indicate that the X+Y+Z

denomination has been used by the interest group since 1997 in accordance with section 829 of the Civil Code. The defendant reproves the Court for confusing a trade name with a domain name in the Internet - an Internet domain, which is not regulated by the rule of court, may not be confused with a trade name. The Court confuses the priority right to use a trade name with the use of an Internet domain. The alleged pornographic content of the x+y+z.cz websites cannot be related to the fact that this domain is owned by the defendant. The plaintiff has not contended, as indicated by the defendant, that there is a casual nexus in the above facts. Furthermore, it is obvious that the decision may not be executable for the vagueness of duties. The defendant summarized that the website content does not accomplish the alleged qualified acts of unfair competition and might not have impaired p laintiff's reputation. The defendant therefore suggested the decision be cancelled and the case referred to the first level court.

In accordance with section 212 and the following of the Civil Procedure Code, the Court of Appeal reviewed the decision of the first level court, contested by the appeal, and without having considered a hearing in the case (section 214, paragraph 2c of the Civil Procedure Code), it concluded that the appeal is not reasonable.

In this case, the plaintiff demanded a preliminary ruling in order to impose on the defendant the duty to refrain from using the "x+y+z.cz" domain name, remove the website under this domain and refrain from transferring this domain. The last mentioned duty implies the demand for an order, which would prevent the registration body from transferring the domain. Due to its character, the preliminary ruling should regulate the conditions of the parties during the proceedings. As with the first level court, the Court of Appeal also thinks that the conditions for a preliminary ruling, in accordance with sections 102, 74 and the following of the Civil Procedure Code, have been complied with; however, it is impossible to deduce that the order included in the ruling would inadequately hamper defendant's rights. The plaintiff's right to his trade name, which includes the denomination of "x+y+z", has been declared, as well as the plaintiff's time priority over this denomination and the fact that their rights a re older than the defendant's rights to the "x+y+z.cz" domain. The possibility to view the defendant's actions, i.e. the registration of the x+y+z.cz domain, as an infringement of the plaintiff's right has been declared to an extent sufficient for a preliminary ruling. The content of the website provides sufficient grounds and decalration of the possibility to consider the defendant's actions in the case as an attack on the plaintiff's reputation. In respect of the provisional arrangement of the parties conditions and in order to prevent obstruction of the enforcement of the decision, it is fit to satisfy the motion in all aspects, including the prevention of transfer to a third party. The purpose of this order according to the ruling, which also includes the activities of the domain-registration body (or subdomains in the national domain ".cz"), is to settle the conditions so that this case may be decided without further delay and without any possible changes of parties.

The first level court cannot be reproved for deviations in having satisfied the plaintiff's motion and issued a preliminary ruling. In order to complete the contents of the defendant's appeal, it must be said that the relationship between the owner of the subdomain and the registration body is a civil-law one; however, this fact does not mean their actions may not be considered to have infringed older rights of the entitled person, especially the right to the denomination. The Internet is not extra legem, exempt from any rules and responsibility for the information published and spread by it. Consequently it may happen that publication of some website contents will be considered in a case as an act of unfair competition or (in addition to it, as the case may be) as an infringement of the subject's reputation. Then there is no reason to question the possibility of issuing a preliminary ruling in accordance with section 74 of the Civil Procedure Code (or section 102 of the Civil Procedure Code, as the case may be) in order to prevent from further spreading of information published in this way. The defendant's objection that the order of a preliminary ruling may not be executed or performed by him shall be dismissed. It is at the defendant's discretion whether to and how to execute an order - e.g. the defendant may announce the website is temporarily out of order without indicating the owner's name.

For the above reasons, the Court of Appeal confirmed the decision is factually correct in compliance with section 219 of the Civil Procedure Code.

Apart from the organization "CZ.NIC", the legal proceedings participants are denominated only by the first letters of their surnames or trademarks. The subject domains are replaced by a chain of x+y+z.cz. Whenever the decision refers to other domain names, these were replaced by different chains. Apart from the identification of participants or other persons and domain names, the text of the decision was modified to the least extent possible. Any connection between the abbreviations or symbols, and persons or domain names that actually use such abbreviations or symbols is purely coincidental.

The decision contains not only the judicial statement and its reasons, but also summarized statements from each party that represent only the legal opinion of the relevant party, rather than a conclusion, as the Court may not have dealt with these statements at all (e.g. when issuing a preliminary ruling).

The judicial statement may not be automatically applied to other cases (albeit with identical facts) and the CZ.NIC organization recommends consulting any case with domain and legal experts.