PRELIMINARY RULING

On 2 June 2003 the Municipal Court of Prague determined the case of A) KpK and B) OK, the Plaintiffs, vs. S., the Defendant No.1, and CZ.NIC, the Defendant No. 2, concerning the motion for a preliminary ruling as follows:

1. Defendant No. 1 shall refrain from using the domain "x+y+z.cz" and transferring it to a third person, with the exception of the Plaintiffs.
2. The motion for a preliminary ruling, imposing on the Defendant the duty to refrain from disclosing any information on the Internet under the domain "x+y+z.cz" and using the domain in any way "x+y+z.cz", is refused.
3. The motion for a preliminary ruling, imposing on the Defendant No. 1 the duty to remove from the computer, found on the Internet under the domain "x+y+z.cz", a programme which is used, by those who want to connect to the computer under the domain "x+y+z.cz", to redirect to a computer, found on the Internet under the domain "a+b+c.cz", is refused.
4. IV. The motion for a preliminary ruling, imposing on the Defendant No. 2 the duty to act so as not to enable the Defendant No. 1 to use the domain "x+y+z.cz", in particular to transfer the domain "x+y+z.cz" from the Defendant no. 1 to a third person, except to the Plaintiff A., and the duty to prevent the Defendant No. 1 from using the domain "x+y+z.cz" and, in particular, from disclosing any information on the Internet under the domain "x+y+z.cz", is refused.

Bringing the action, the Plaintiffs A. and B. seek a judicial decision imposing on the Defendant No. 1 the duty to refrain from using the domain "x+y+z.cz", in particular from publishing any Internet information under the domain "x+y+z.cz", and from acting so as to enable the Defendant to transfer the domain "x+y+z.cz" from the Defendant No. 1 to a third person, with the exception of transferring the domain "x+y+z.cz" to the Plaintiff A. The Plaintiffs also request the court to impose on the Defendant No. 1 the duty to transfer free of charge the domain "x+y+z.cz" at his own costs to the Plaintiff A and provide the Plaintiff A with reasonable satisfaction of CZK 500,000. The Plaintiffs also moved for a preliminary ruling to be given, imposing on the Defendant No. 1 the duty to remove from the computer, designated with the domain "x+y+z.cz" on the Internet, a programme used by those who want to connect to a computer, designated with the domain "x+y+z.cz", to redirect to a computer designated with the do main "a+b+c.cz"; the duty to refrain from using the domain "x+y+z.cz", in particular from publishing any Internet information under the domain "x+y+z.cz", and the duty to refrain from using the domain "x+y+z.cz", in particular from transferring it to a third person, with the exception of the Plaintiff A. The Plaintiffs also moved for a preliminary ruling, imposing on the Defendant No. 2 the duty to refrain from acting so as to enable the Defendant No. 1 to use the domain "x+y+z.cz", in particular to transfer it from the Defendant No. 1 to a third person, with the exception of the Plaintiff A., and the duty to prevent the Defendant No. 1 from using the domain "x+y+z.cz", in particular from publishing any Internet information under the domain "x+y+z.cz".

As indicated in the justification of the action, the Plaintiff A is a legal entity incorporated in the Commercial Register as from 4 May 1992 and his business activities include production and distribution of beer and malt and hostelry trade. From its incorporation till 24 November 1994, the Plaintiff A used the trade name "AAAA AAAAAA a.s." and since 24 November 1994 he has been using the trade name "AAAA AAAA AAAAAA, a.s." He is the holder of word trademarks and combined trademarks. The dominant word of these trademarks, common to all of them and distinguishing clearly the product of the Plaintiff A from his competitors', is the word "X+Y+Z".

The Plaintiff A is also a registered user of designations of origin "X+Y+Z". These designations are registered in the Register of Origin at the Office of Industrial Property Protection.

The Plaintiff B is a municipality called X+Y+Z and a legal entity. The Defendant No. 1 is the holder of the Internet domain "x+y+z.cz". The application for registration was made on 6 December 2000 and the above domain was registered in the CZ.NIC system on 19 December 2000.

The domain "x+y+z.cz" is a second-class domain belonging to the first-class domain .cz. The administrator of the first-class domain is the Defendant No. 2, being the only person entitled to grant second-class domains belonging to the first-class domain cz. to other entities, and to administer these domains. The Defendant No. 2 has a monopolistic position.

The Defendant No. 1 used a simple computer programme and set it in the computer denominated with domain name "x+y+z.cz", which serves for searching the Internet, so that everyone who wants to connect to this computer via the Internet is automatically redirected to another computer, denominated with the domain name "a+b+c.cz". The latter shows a product presentation of a direct competitor of the Plaintiff A.

The Plaintiff A presumes that having registered the domain "x+y+z.cz" and redirecting all connections to the websites www.a+b+c.cz, the Defendant No. 1 has committed unfair competition and infringed the right to the trademark and trade name of the Plaintiff A. The Defendant No. 1 also infringed the rights of the Plaintiff B to his name.

To prove their factual allegations the Plaintiffs presented the Certificate of Incorporation of the Plaintiff A, copies of registrations of the above trademarks in the Office of Industrial Property, a list of registered designations of origin, a list of data of economic entities of the Czech Ministry of the Interior, a copy of an entry in the domain register, a notarial deed acknowledging the factual process, a technical description of the steps in line with an attempt to connect to the computer denominated "x+y+z.cz", an examination of the domain www.x+y+z.cz and comprehensive information on the state of the domain "x+y+z.cz" as to 20 February 2003.

The Plaintiffs presume that the conditions of a preliminary ruling on the provisional arrangement between the parties have been performed. The primary reason is the fact that the redirection from www.x+y+z.cz to www.a+b+c.cz infringes substantially the rights of the Plaintiffs, in particular the Plaintiff A., and the damage caused to the Plaintiffs increases every day. The Plaintiffs also fear that the Defendant No. 1, with the help of the Defendant No. 2, might transfer the domain "x+y+z.cz" to a third party, preventing the Plaintiffs from gaining their rights before the legal force of the decision.

In compliance with the provisions of Section 102, paragraph 1, of the Civil Procedure Code, a court may order a preliminary ruling to regulate temporarily the relationships between the Parties.

A preliminary ruling is not issued to regulate factual relationships between the Parties - it is issued to regulate their legal status - even if done on a preliminary basis.

The Court concluded that the circumstances of the Parties must be temporarily regulated and satisfied the Plaintiffs' motion for a preliminary ruling by means of which the Plaintiffs requested the Defendant No. 1 to refrain from using the domain "x+y+z.cz" and transferring it to a third person. The Court takes as being attested that the Plaintiff A is the owner of the word and combined trademarks indicated in the action. The Defendant No. 1 has been the owner of the domain "x+y+z.cz" since 19 December 2000. The Defendant No. 1 uses the above domain to present his goods on the web pages http://www.x+y+z.cz.

Bringing the action, the Plaintiffs A. and B. seek a judicial decision imposing on the Defendant No. 1 the duty to refrain from using the domain "x+y+z.cz", in particular from publishing any Internet information under the domain "x+y+z.cz", and from acting so as to enable the Defendant to transfer the domain "x+y+z.cz" from the Defendant No. 1 to a third person, with the exception of transferring the domain "x+y+z.cz" to the Plaintiff A. The Court presumes, as indicated above, that until a judgement on merits is given, the circumstances of the Plaintiffs and the Defendant No. 1 must be

regulated, as the right of the Plaintiff A to his trade name, consisting of the word "x+y+z", has been proved, as well as the rights to trademarks which also consist of the same word. The above facts prove sufficiently that having registered the domain "x+y+z.cz", the Defendant No. 1 unlawfully infringed the rights of the Plaintiff A, and a preliminary ruling may be issued. The Plaintiff B proved use of the name X+Y+Z and his legal personality. The Court satisfied the Plaintiff's motion also in order to prevent the obstruction of execution of a judicial decision on the merits. For that reason the Court decided, as indicated above, to issue a preliminary ruling, referred to in Part I. of the decision.

In compliance with the provisions of Section 75a, paragraph 1, of the Civil Procedure Code, a court shall refuse a motion for a preliminary ruling which is indefinite, if the proceedings cannot continue due to this imperfection; the provisions of Section 43 shall not be applied.

The Court concluded that the motion for a preliminary ruling, referred to in Part II hereof, is not definite as far as the imposed duties are concerned, in other words it is not so specific as to be taken into a judicial decision and be a subject-matter of execution of the ruling (in case of deliberate non-performance). The decision which would satisfy the Plaintiffs' motion would not be executable. The Court therefore refused this part of the motion for a preliminary ruling.

The Plaintiffs also asked the Court to impose on the Defendant No. 1 the duty to remove from the computer, denominated on the Internet with the domain "x+y+z.cz", a computer programme used by those who desire to connect to the computer, denominated with the domain "x+y+z.cz", for redirection to a computer denominated on the Internet with the domain "a+b+c.cz". Concerning this motion for a preliminary ruling, the Court concluded that the regulation of circumstances between the Parties is not temporary, but a final one. Moreover, as indicated in Part I. of the resolution, the Court imposed on the Defendant No. 1 the duty to refrain from using the domain "x+y+z.cz". Therefore the motion for a preliminary ruling was refused.

Bringing the action, the Plaintiffs seek imposition of duties set out in the relief of the action only against the Defendant No. 1. The Court therefore concluded that the Plaintiffs do not seek the proposed preliminary ruling against the Defendant No. 2 and do not want the Court to impose on the Defendant No. 2 the duty to refrain from acting so as not to enable the Defendant No. 1 to use the domain "x+y+z.cz", in particular to transfer the domain "x+y+z.cz" from the Defendant No. 1 to a third person, with the exception of the Plaintiff A; and the duty to prevent the Defendant No. 1 from using the domain "x+y+z.cz", in particular from publishing any Internet information under the domain "x+y+z.cz". Having considered this, the Court refused the motion for a preliminary ruling against the Defendant No. 2, as indicated in Part IV hereof.

The expenses of the preliminary ruling shall be settled by a judgement on the merits which will terminate the proceedings. The preliminary ruling which has been ordered shall terminate, in accordance with the provisions of Section 77, paragraph 1, of the Civil Procedure Code, with legal force of the judgement if the motion is satisfied. Should the motion not be satisfied, the preliminary ruling will terminate after fifteen days of enforcement of the judgement. Should the grounds of the preliminary ruling cease to exist, the presiding judge shall cancel it in accordance with paragraph 2 of the abovementioned provisions.

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 randomly 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 of 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 over any case with domain and legal experts.