PRELIMINARY RULING

On 3 June 2003 the Municipal Court of Prague determined the law case of L., the Plaintiff, vs. P., the Defendant No. 1, and CZ.NIC z.s.p.o., the Defendant No. 2, registered office: Prague 5, Luzna 591, company registration number: 67985726, on the issue of a preliminary ruling as follows:

1. The Plaintiff moved for a preliminary ruling imposing on the Defendant No. 1 the duty to refrain, as of the serving of this decision, from further use of the domain name "x+y+z.cz", in particular from transferring it to a third person, except for the Plaintiff, and imposing on the Defendant No. 2 the duty to refrain, as of the serving of this decision, from dealing with the domain name, in particular from its termination or transferring to a third person except for the Plaintiff. The motion was dismissed.
2. Within seven days of the serving of this decision, the Plaintiff shall pay to the Czech Republic the difference of the court costs of the motion amounting to CZK 500.
3. Neither of the parties is entitled to receive compensation for the preliminary ruling costs

The Plaintiff sought a preliminary ruling imposing on the Defendant No. 1 the duty to refrain, as of the serving of this decision, from any use of the domain name "x+y+z.cz" and dealings with it, in particular as far as transferring it to a third party, except for the Plaintiff, is concerned, and a preliminary ruling imposing on the Defendant No. 2 the duty to refrain, as of the serving of this decision, from dealing with the domain name "x+y+z.cz", in particular as far as termination, or transferring it to a third party except for the Plaintiff, is concerned.

The Plaintiff declared it is a world-famous producer and distributor of cosmetic products and owns a number of word, as well as combined, trademarks, all of them consisting of the word "X+Y+Z", especially the word trademark "X+Y+Z", No. 123456. This last one must be considered a well-known trademark. Since 31 August 2001 the Defendant No. 1 has been holding the domain name "x+y+z.cz". The Defendant No. 2 is the administrator and registration body of the highest domain "cz". As stated by the Plaintiff, the Defendant No. 1 violated the Plaintiff's rights to the trademark, having registered a designation of this trademark identical to the domain name. Nevertheless, the Defendant No. 1 does not operate any web page under this domain, offering the domain for hire or sale. This practice, permitted by the Defendant No. 2, can be considered as an act of unfair competition as it restricts the Plaintiff's possibilities for offering services and products under the above designation, which is typical of them. This practice is definitely in contradiction with the principles of fair competition. With the help of the company ABC Česká republika s.r.o., the Plaintiff notified the Defendant No. 1 repeatedly of these facts with letters of December 2002 and January 2003, however, the Defendant No. 1 has not received these letters, although they were sent to her permanent address and habitual residence. With the help of the company ABC Česká republika s.r.o. the Plaintiff notified the Defendant No. 2 of the defects of his registration activities. The defendant No. 2 responded that he is not entitled to control whether the registration of a domain name infringes rights of third persons and referred the Plaintiff to judicial proceedings. However, the Plaintiff assumes that the conditions of a preliminary ruling in accordance with the provisions of Section 74 et seq. of the Civil Procedure Code have been fulfilled and the circumstances between the parties must be temporarily regulated in order to minimize the damage inc urred by the Plaintiff, keep the status quo as regards the registration of the subject domain and eliminate the risk of a change of the parties to the proceedings.

The Plaintiff enclosed to the motion the following documents: a copy of the entry in the Commercial Register; a copy of the entry in the Domain Register for the domain X+Y+Z; a copy of the entry in the Domain Register - certificate of registration of the domain name "x+y+z.cz" by the Defendant No. 1); a copy of the entry of the Defendant No. 2 in the register of interests of associations of legal entities;

the rules of registration for domain names; the Plaintiff's demand notes; an affirmation made by the Defendant No. 1 of 8 January 2003; the web page under the domain "x+y+z.cz"; a letter and facsimile of 2 and 6 December 2002 respectively sent by the company ABC Česká republika s.r.o.; a letter by the defendant No. 2 of 12 December 2002; the decisions of the High Court of Nanterre of 30 June 1999 and 15 May 2000; a copy of the entry in the register of domain names - as regards previous registrations of the domain names "a+b+c.cz", "d+e+f.cz" and "g+h+i.cz".

Having considered the motion and the documents enclosed, the Court concluded that the principal condition of a preliminary ruling had not been satisfied - i.e. the urgency of temporary regulation of the circumstances between the parties. By the motion of 30 May 2003 the Plaintiff sought a preliminary ruling regulating temporarily the circumstances between the parties when the Defendant No. 1. The holder of the domain "x+y+z.cz", registered this domain on 31 August 2001. The Plaintiff knew of this fact (in the motion itself the Plaintiff declares that the web page has been without any content for a very long time) but he had not before prevented the situation he considers unacceptable.

If the Plaintiff seeks a preliminary ruling regulating temporarily the circumstances between the parties 21 months after the Defendant No. 1 registered the domain, this need of a temporary arrangement may not be considered urgent. The Court therefore denied the motion for a preliminary ruling.

In view of the fact that the Plaintiff sought imposition of a duty on two different entities, he had to pay a court fee of CZK 1,000 (2 times CZK 500), as motions may be enforced separately against each of the Defendants. As the Plaintiff paid only CZK 500, the Court ordered him to pay the difference additionally. The difference may be paid in revenue stamps.

The decision on court costs is justified by the fact that the Plaintiff did not succeed and no costs were incurred by the Defendants as regards the proceedings.

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.