PRELIMINARY RULING

On 5 June 2003 the Municipal Court of Prague determined the law case of L., the Plaintiff, and H, the Defendant No. 1, and CZ-NIC, the Defendant No. 2, concerning the motion for an order to issue a preliminary ruling, as follows:

The Court ordered the following preliminary ruling:

1. The Defendant No. 1 shall refrain from any use of the domain name "x+y+z.cz", from dealing with it in any way and, in particular, from transferring it to a third person except for the Plaintiff.
2. The Defendant No. 2 shall refrain from acting so as to enable the Defendant No. 1 to deal with the domain name "x+y+z.cz", in particular as far as terminating it or transferring it to a third person except for the Plaintiff is concerned.
3. The Plaintiff shall pay the difference of the court fees for the preliminary ruling amounting to CZK 500 to the bank account of the Court within three days of the legal force of this decision.
4. The Plaintiff shall present the motion instituting the proceedings on the merits within 30 days of the serving of this decision.

The Plaintiff submitted the subject motion for a preliminary ruling declaring that he is a famous producer and distributor of a wide range of cosmetic products and owns a number of word and combined trademarks consisting of the word "X+Y+Z". These trademarks are protected also in the Czech Republic and the trademark X+Y+Z is famous and well-known and is subject to protection by virtue of Article 6 bis of the Paris Convention on Industrial Property Protection and Section 15, paragraph 2, of Act N. 137/1995 Coll., as amended.

The Defendant No. 1 used this well-known trademark without the Plaintiff's approval and on 16 May 2003 registered the domain name "x+y+z.cz", infringing the Plaintiff's rights to the trademark. This practice prevents the Plaintiff from using the trademark, harming his interests and confusing consumers. According to the Plaintiff, this practice is also contradictory to good manners by virtue of Section 3 of the Civil Code and the rules of fair business connections in compliance with Section 265 of the Commercial Code, fulfilling the elements of unfair competition. The Defendant No. 2 as an interest group dealing with registrations of domain names made it possible for the Defendant No. 1 to register the domain name "x+y+z.cz" and use it. The Plaintiff therefore seeks a temporary regulation of the circumstances between the parties in compliance with Section 74 of the Civil Procedure Code in order to minimise the damage incurred by the Plaintiff with respect to the fact that he may not promote and sell his products and services by the Internet.

According to Section 74 of the Civil Procedure Code, the circumstances between the parties can be regulated before the proceeding on the merits is instituted, if the urgency of such a regulation is proved. In this case the Plaintiff attested the corporate franchise with a copy of the entry in the Commercial Register in Paris. With a copy of the entry in the trademark register the Plaintiff also attested to be the owner, among others, of the combined trademark "AAAAA X+Y+ZBBBBB" with a priority as of 7 July 1997, protected also in the Czech Republic, and the owner of the combined trademark "X+Y+Z" with a priority as of 28 November 1986, protected in the Czech Republic as well. A copy of an entry in the domain register attested that from 16 May 2003 the Defendant No. 1 is the owner of the domain "x+y+z.cz".

It has been attested that the Plaintiff, being the owner of world-famous trademarks consisting of the words "AAAAA" and "X+Y+Z", which are protected also in the Czech Republic, has an exclusive right to use the trademark. No third person may use the trademark without the Plaintiff's approval and

the Plaintiff has an undeniable right to protection within the intention of Article 6 bis of the Paris Convention and Section 15, paragraph 1 and 2, of Act N. 137/1995 Coll. on trademarks, as amended.

The Court considers the above right as well as the urgency of temporary regulation of the circumstances between the Plaintiff and the Defendant No. 1 attested by infringement of the trademark rights, as against the Defendant No. 2, the registration body, who acts on the instructions of an owner of a domain and according to the Rules of the Registration of domain names under the domain .cz takes steps needed in order to change the registration.

Having considered the above facts and acting in compliance with section 74 et seq. the Court ordered this preliminary ruling.

In accordance with Item 3 of the Scale of Fees, Act N. 255/2000 Coll., the court fee of the motion amounts to CZK 1,000 (i.e. CZK 500 against each defendant). The Plaintiff shall pay the difference according to Section 4, paragraph 1(f) of the above Act.

In accordance with Section 76, paragraph 3, of the Civil Procedure Code, the Plaintiff shall file an action on the merits.

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.