PRELIMINARY RULING

On 7 July 2003 the Municipal Court of Prague determined the case of D, the Plaintiff, vs. 1) - and 2) CZ.NIC, the Defendants, concerning protection against unfair competition and infringement of rights to trademarks, and the motion for a preliminary ruling as follows:

The Court ordered the following preliminary ruling:

1. As from the serving of this decision, the Defendant No. 1 shall refrain from using the domain name "x+y+z.cz" and from any other acts leading to a change in the registration of this domain name, in particular its transfer, with the exception of its transfer to the Plaintiff.
2. As from the serving of this decision until legal force of the final judgement of the proceedings, the Defendant No. 2 shall refrain from changing the registration of the domain name "x+y+z.cz" with the exception of transferring it from the Defendant No. 1 to the Plaintiff.

The Plaintiff moved for the Court to make a judgement imposing on the Defendant No. 1, -, the duty to refrain from further registration and use of the domain name "x+y+z.cz", to cancel within three days after the legal force hereof the registration of the domain name "x+y+z.cz" in the system owned by the Defendant No. 2, and to compensate the Plaintiff for the court costs. The judgement would be published by the Plaintiff as an advertisement of 20cm by 20cm, with the trade names of the Plaintiff and the Defendant - highlighted, in the extent specified in the prayer of the action. The above advertisement would be published in the Thursday issue of Mladá fronta DNES, a national daily. The Plaintiff also moved the Court for a preliminary ruling imposing on the Defendant No. 1 the duty to refrain, as from service of this resolution, from using the domain name "x+y+z.cz" as well as any acts resulting in a change of the registration of this domain name, in particular in its transfer to any other person than the Plaintiff. The above preliminary ruling would impose on the Defendant No. 2 the duty to refrain, as from the serving hereof, from any changes in registration of the domain name "x+y+z.cz" except for its transfer from the Defendant No. 1 to the Plaintiff.

The Plaintiff is a business person - a legal entity registered in the Federal Republic of Germany and one of the biggest telecommunication companies in the world. His main business activities include mobile communication, the Internet, the fixed line network and IT system solutions. The Defendant No. 1 is a natural person - a sole trader undertaking upon a trade licence. The subject-matter of his business consists in purchasing goods for further sale and sale as such. The Defendant No. 2 is a national administrator of the highest domain "cz" and a registration body of second-level domain names under the highest domain. As such he has an exclusive position in the Czech Republic. The Plaintiff is the owner of several trademarks, registered also for the Czech Republic, such as the word trademark "X-Y+Z", the combined trademark "X-Y+Z", the word trademark "X-Y+Z+W" and the combined trademark "X-Y+Z+W". All the trademarks are reserved for a wide range of products and services related closely to regional telecommunications, including dissemination of information and provision of products and services via the Internet. The Plaintiff also owns a lot of second-class domain names, registered under the highest national or general domain names in many countries over the world. In the Czech republic the Plaintiff owns e.g. the domain names "x-y+z+w.cz" and "x+y+z+w.cz", including the related web pages used for presentation and promotion of the Plaintiff's products and services. The Plaintiff does not undertake any direct business in the Czech Republic, however, he controls the company C and through this company he has a share in the company X+Y+Z CR, a.s. For his business activities related to mobile communications, the Plaintiff uses the global name of "X+Y+Z". The Plaintiff uses this name also in the Czech Republic where he has invested substantially into promotion.

The Defendant No. 1 has pursued long-term business activities in mass registration of domain names and consequent dealings in these, being the best-known organization of this business in the Czech Republic. According to the information provided by the server Lupa.cz, on 1 July 2002 the Defendant No. 1 registered 2,476 domain names, but paid registration charges only for 6.4% of them. An absolute majority of them do not link to any web pages. Activities of the Defendant No. 1 are therefore purely speculative, aiming at enrichment to the prejudice of trademark holders who purchase from the Defendant No. 1 domain names identical to trademarks registered by him. On 29 December 2001 the Defendant No. 1 applied for registration of the domain name "x+y+z.cz". The registration in the system owned by the Defendant No. 2 was made on 13 January 2001, after the registration charge was paid. Since then the Defendant No. 1 has not attached any web page to the above domain name. Nevertheless, a user who enters the domain name "x+y+z.cz" in the server, is automatically redirected to the Plaintiff's web page www.x-y+z+w.cz. This redirection was done by the Defendant No. 1 without the Plaintiff's approval. Having been informed in December 2002 of the fact that the registration of the domain name "x+y+z.cz" infringes the Plaintiff's rights to his trademarks and accomplishes elements of unfair competition, the Defendant No. 1 responded with an e-mail containing an attachment in the Word format called "soubor.doc". This file contained a reply by which the Defendant No. 1 declared to be willing to negotiate transfer of the domain for which he required fixed charges amounting to CZK 1,300,000, as the Defendant intended to "commence business of a certain level". The Defendant No. 1 also offered to transfer to the Plaintiff the domain "a+b+c.cz" as a counter value to be sold and to compensate the Plaintiff's costs.

Regarding the manifest interchangeability of the domain name "x+y+z.cz" and the Plaintiff's trademarks, the Plaintiff considers the acts of the Defendant No. 1 as an unlawful interference with his rights to trademarks and also as an act of unfair competition with respect to the Convention on Industrial Property Protection (Regulation N. 64/1975 Coll.) In view of the fact that the Defendant No. 2 is the national administrator of the highest domain "cz" and any registration or termination thereof may be performed only by him, the Plaintiff moved for a preliminary ruling against the Defendant No. 2 as well. However, in the case itself the Plaintiff seeks imposition of duties only against the Defendant No. 1.

The Plaintiff enclosed to the motion the following documents: a copy of the Plaintiff's entry in the Commercial Register; an abstract of the on-line database of sole traders in compliance with the Trade Act as regards the Defendant No. 1; the articles of association of the Defendant No. 2; copies of entries in the trademark database of the Office of Industrial Property Protection; copies of entries in the domain register on the Internet, as administered by CZ.NIC for the domain names x-y+z+w.cz and x+y+z+w.cz; an overview of articles published in Czech periodicals, dealing with use of the name X-Y+Z+W in the Czech Republic as from 1 January 2002; copies of promotional material relating to products and services under the name of X-Y+Z+W; a copy of the registration of Plaintiff's structural component in the Commercial Register; a copy of an entry in the Commercial Register as regards the company X-Y+Z+W CR, a.s.; copies of articles published on the server Lupa (www.lupa.cz), dealing with activities of the Defendant No. 1; an Internet abstract of the domain register administered by the Defendant No. 2, proving the registration of the domain name "x+y+z.cz" made by the Defendant No. 1; an Internet abstract of the domain register showing the registration history of the domain name "x+y+z.cz"; a Plaintiff's letter of 18 December 2002 addressed to the Defendant No. 1; a copy of an e-mail of 26 February 2003 sent by the Defendant No. 1 to the Plaintiff, including the attached document with the Defendant's statement.

In compliance with the provisions of Section 102, paragraph 1, of the Civil Code Procedure, the circumstances between the parties must be temporarily regulated, or in case of concern that the execution of a judgement given once the proceedings commenced might be endangered, the Court may order a preliminary ruling. Preconditions of a preliminary ruling issued after the proceedings commenced are basically identical to those legally required for a preliminary ruling issued before the

proceedings. The urgency of making a temporary arrangement between the parties (if the preliminary ruling is issued for this reason) must be proved, as well as the claim itself, at least to the extent that its successfulness is probable. In this case the motion for a preliminary ruling as against both the Defendants was filed together with the action which was brought only against the Defendant No. 1. As regards the case itself, the Defendant No. 2 is not a party to the proceedings, especially with respect to the fact that he is not accused of a breach of legal duties, but his co-operation in the preliminary proceedings is required, according to the Plaintiff. Under the motion and the documents enclosed, the Court presumes that the Plaintiff is the owner of both the word and the combined trademarks "X-Y+Z" and "X-Y+Z+W", registered in the Czech Republic, and that the Defendant No. 1 registered speculatively the domain name "x+y+z.cz" but has not opened any web page thereunder, although this domain name has been registered since 13 January 2002 and any user who enters the above domain name is redirected to the Defendant's web page. Such a redirection takes place without the Plaintiff's approval. Moreover the Defendant No. 1 offered to the Plaintiff a repurchase of the domain name for the amount of CZK 1,300,000 and the obtaining of the domain "a+b+c.cz" as a counter value. As far as the preconditions of a preliminary ruling are concerned, the Court presumes that the Plaintiff's declarations concerning the interchangeability of the domain name "x+y+z.cz" and the Plaintiff's trademarks as well as the speculative intentions of the Defendant No. 1 have been approved. With respect to the number of domain names which have been registered by the Defendant No. 1, it cannot be ruled out that during the proceedings the Defendant No. 1 will transfer the domain name "x+y+z.cz" to another person, and therefore it is appropriate to keep the status quo and prevent him from further transferring of the domain name to other persons, except for the Plaintiff. Having considered this, the Court satisfied the motion and imposed on the Defendant No. 1 the duty to refrain from using the domain name "x+y+z.cz", which will temporarily stop the connection between this domain name and the presentation of the Defendant's products and services on the web page www.x-y+z+w.cz. The Court also imposed on the Defendant No. 1 the duty to refrain from changing the registration of the domain name "x+y+z.cz", in particular from transferring it to a third person, except for the Plaintiff. In order to secure the performance of the above rights and duties, the Court imposed on the Defendant No. 2 the duty to refrain from changes in registration of the domain name "x+y+z.cz", with the exception of transferring it from the Defendant No. 1 to the Plaintiff. With respect to the fact that the Defendant No. 2 participates only in the preliminary proceedings, it is necessary to limit the preliminary ruling as against the Defendant No. 2 in time. Therefore the above duty shall expire as soon as the proceedings on the case itself are terminated.

The expenses of the preliminary ruling shall be settled by a judgement which will terminate the proceedings in accordance with the provisions of Section 145 of the Civil Code Procedure.

The preliminary ruling shall terminate with the legal force of the judgement if the motion is satisfied. Should the motion not be satisfied, the preliminary ruling shall 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 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 over any case with domain and legal experts.