DISMISSAL OF THE MOTION FOR AN ORDER TO ISSUE A PRELIMINARY RULING

On 14 November 2003 the Municipal Court of Prague determined the case of T, the Plaintiff, based in Prague, vs. E, the Defendant No. 1, based in Prague, and CZ.NIC, the Defendant No. 2, concerning the motion for an order to issue a preliminary ruling, as follows:

1. The motion for the order to issue a preliminary ruling, imposing on the Defendant No. 1 the duty to refrain from using the domain name "x+y+z", is dismissed.
2. The Plaintiff moved for the order to issue a preliminary ruling, imposing on the Defendant No. 2 the duty to prevent any person but the Plaintiff from using the domain name "x+y+z.cz", including any use of the information conceming registration of the above domain names; and to prevent any person from transferring the domain name "x+y+z.cz" to any other person but the Plaintiff. The above motion is dismissed.

The Plaintiff sought an order to issue a preliminary ruling, specified herein. He claims to have been incorporated in the Commercial Register as from 12 November 2001. His business activities comprise tax consultancy, entrepreneurial, financial, organizational and economic consultancy, data processing, databank services, network management, translation and interpreting services, service procurement, and wholesale. The Plaintiff has been using the combined trademark "x+y+z", registered with the Office of Industrial Property on 29 October 2002. The Plaintiff specializes in the US tax system, providing tax return and tax refund services to his clients.

In view of the Internet advancement the Plaintiff wanted to properly register the domain name "x+y+z.cz", i.e. the second-level domain "x+y+z" within the national domain "cz". It was discovered that the above domain name had been registered to another entity, the Defendant No. 1. The business activities of the Defendant No. 1 comprise trade and service procurement, trade and service mediation, purchase of goods for further sale, and sale. The main purpose of business is tax return and tax refund services for the USA, Germany and other countries.

On 16 January 2002 the Defendant No. 1, being a direct competitor of the Plaintiff, registered the domain name "x+y+z.cz".

The fact that the domain name "x+y+z.cz" may be used by an unauthorized entity, i.e. the Defendant No. 1, is caused, inter alia, by the agreement made between the Defendant No. 1 and the Defendant No. 2, whose main business comprises the registration of domain names under the national domain "cz" for a consideration.

Domain names represent significant other property value. They are easy to remember and help in referring to websites (the server) of the given entity which registered them and uses them to promote its goods and offer commercial or other services. Domain names are usually in uniform with business firms or trademarks.

Both the professional literature and the application of relevant provisions of the Commercial Code (hereinafter referred to as the CC) clearly imply that the registration of a domain name in uniform with a trademark of another entity must be considered unfair competition in compliance with Section 47 or 48 of the CC, as well as in compliance with the general clause on unfair competition of Section 44. The use of the domain name, which has uniformity with the domain protected as a trademark, must especially be considered an unfair business practice.

The use of the domain name by the Defendant No. 1 has caused permanent and increasing losses to the Plaintiff since the customers interested in his goods or services, which employ the name which has uniformity with his trademark, come through to the websites of the Defendant No. 1. In this way the

Plaintiff has lost orders and has been denied his rights in promoting his goods and services via the Internet as a new media of world-wide influence and impact and he has been intentionally damaged. The Plaintiff believes that in view of the facts at issue and the increasing damage, it is desirable to order a preliminary ruling before bringing an action.

According to Section 75a of the Civil Proceedings, the court shall dismiss a motion for an order to issue a preliminary ruling if the motion does not include all essential elements or if it is incomprehensible or unclear, and due to such imperfections the proceedings cannot continue. Section 43 shall not be applied.

In this case the Plaintiff sought the order to issue a preliminary ruling according to Section 74 of the Civil Proceedings. The preliminary ruling may not be ordered if the circumstances of the parties must be temporarily regulated. A primary precondition of any preliminary ruling is a claim acknowledgement in the case; the court may not anticipate a judgement in the case.

In order to consider whether the motion in the case is acknowledged as regards the order to issue a preliminary ruling, it is important to know what specific measures are the subject-matter of the proceedings. This is the only way to consider not only the acknowledgement of the claim, but also the necessity to regulate temporarily the circumstances of the parties before the case is resolved. The preliminary ruling itself may not settle disputes between the parties - it can regulate temporarily the circumstances before they are settled by a final decision. Therefore the Plaintiff must know at the moment when the order to issue a preliminary ruling is moved for whether it will be followed by a declaratory action or by an action for performance (in the former case, the Plaintiff shall specify a legal relation or correct subject-matter of the declaration and the grounds for his urgent legal request to declare it).

The Plaintiff denominated the motion as follows: Action for prohibition of the unfair business practices consisting in the use of the domain name in uniform with the business firm and the trademark of the Plaintiff and a Motion for an order to issue a preliminary ruling. Nevertheless, when filing the motion he failed to bring the action for unfair business practices. He did not prove he had filed any motion in the case. He only demanded a preliminary ruling to be issued before bringing the action.

The motion for a preliminary ruling shall specify what kind of motion the Plaintiff intends to file. Only then may the court order a preliminary ruling, acting in compliance with Section 76, paragraph 3 of the Civil Proceedings, and impose on the Plaintiff the duty to file the motion for proceedings within a given period. The subject-matter of the proceedings, as determined in the motion, shall be specified solely by the Plaintiff. The court may not consider any other possible motions and impose on the Plaintiff the duty to file a motion the court considers appropriate. Such a procedure would be contradictory to the principle of equality of the parties.

The motion for an order to issue a preliminary ruling, as indicated in part I. hereof, is not complete as it does not specify the domain name used by the Defendant No. 1. Due to the above imperfection, this motion is not clear enough to be accepted into a judicial decision and to be subject-matter of a court decision (in case of voluntary performance). A decision complying with the Plaintiff's motion would not be enforceable.

Whereas the motion for an order to issue a preliminary ruling does not include all essential elements and is not sufficiently clear; and whereas the provisions of Section 75a, paragraph 1 of the Civil Proceedings exclude the application of Section 43 thereof, the motion for a preliminary ruling was dismissed by the court.

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 are 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.