PRELIMINARY RULING

On 10 March 2004, the Municipal Court in Prague issued a verdict with respect to the action between the Plaintiffs a) KpK, a.s. a b) K. Municipality, and the Defendants 1) P. S. a 2) CZ.NIC, identified in the draft preliminary ruling as a secondary party, concerning the motion for preliminary rulings, as follows:

I. Commencing upon the delivery of this verdict, Defendant No. 1 shall abstain from using the domain "x+y+z.cz" and from any disposal thereof, particularly as regards its pledging or transfers to any third parties, except for the transfer of the domain to the Plaintiff a).
II. The motion for a preliminary ruling according to which the Court is requested to order CZ.NIC to disable the Defendant No. 1 from pledging the domain "x+y+z.cz" is hereby repudiated.
III. The proceedings concerning the preliminary ruling, through which the Court is requested to order CZ.NIC to disable the transfer of the domain "x+y+z.cz" from the Defendant No. 1 to a third party except for the Plaintiff a), are hereby repudiated.

The Plaintiffs a) and b) have requested the issue of a verdict through which the Court would order the Defendant No. 1 to abstain from using the domain "x+y+z.cz", particularly from publishing any contents within the Internet under the domain "x+y+z.cz" and entering into negotiations concerning the transfer of the domain "x+y+z.cz" from the Defendant No. 1 to any third party, except for the transfer of the domain "x+y+z.cz" to the Plaintiff a). Furthermore, the Plaintiff a) has requested the Court to order the Defendant No. 1 to transfer the domain "x+y+z.cz" free of charge and at the Defendant's expense to the Plaintiff a) and pay the Plaintiff a) adequate compensation of CZK 500,000.

In a motion dated 3 March 2004, the Plaintiffs a) and b) requested the issue of a preliminary ruling, through which the Court would order the Defendant No. 1 to abstain from using the domain "x+y+z.cz" and from making any disposal of the domain, particularly its pledging or transfer to any third party except for the transfer of the domain to the Plaintiff a). Furthermore, the Plaintiffs requested the issue of a preliminary ruling, through which the Court would order CZ.NIC., z. s. p. o. to disable the Defendant No. 1 from pledging the domain "x+y+z.cz" and/or transfer the domain "x+y+z.cz" from the Defendant No. 1 to any third party, except for its transfer to the Plaintiff a).

In justification of the motion, the Plaintiffs claimed that the Plaintiff a) was a legal entity incorporated in the Commercial Register on 4 May 1992 and pursuing activities primarily in the production and distribution of beer and malt and in catering services. From the day of its establishment to 24 November 1994, the Plaintiff a) was using the trade name "AAA X+Y+Z a. s." and since 24 November 1994 the Plaintiff has been using the trade name "AAA BBB X+Y+Z, a.s.". The Plaintiff a) is the holder of a number of verbal trademarks comprising the element of "X+Y+Z" and combined trademarks with the word "X+Y+Z" as a dominating word from the perspective of the graphic design of the combined trademarks, typical for all the trademarks indicated above and serving for clear distinguishing recognition of the products offered by the Plaintiff a) from products of its competitors.

The Plaintiff a) is also a registered user of the indications of origin "X+Y+Z", "X+Y+Z lezák" (lager) and "X+Y+Z pivo" (beer), for the "beer" products. These indications have been registered in the register of origin maintained by the Office for the Protection of Industrial Property.

The Plaintiff b) is a municipality with the name of X+Y+Z and it is a legal entity.

The Defendant No. 1, P. S., resident at AAAAA XXXX, Prague X, whose identification was specified by the Plaintiffs a) and b) in the motion for the issue of the preliminary ruling by indicating the number of his Identification Card, is a holder of an internet domain x+y+z.cz. The Defendant No. 1 filed an application for registration on 6 December 2000 and the domain was registered in the system

of CZ.NIC on 19 December 2000.

The domain x+y+z.cz is a second level domain falling under the .cz first level domain. The Defendant No. 2 is the administrator of the first level domain .cz. The Defendant No. 2 is the only entity authorized to allocate second level domains to individual entities, falling under the first level domain, and to act as an administrator of the domains. Therefore, the Defendant No. 2 holds a monopoly position.

It has been proven with convincing evidence that all those who - under the domain x+y+z.cz - search for information concerning the Plaintiffs No. 1 or 2 are rerouted to the website www.a+b+c.cz., comprising information and promotion materials of a company which is a direct competitor to the Plaintiff No. 1, i.e. PP, a. s.

The Plaintiff a) believes that by registering the domain x+y+z.cz and rerouting all those who enter this domain to the website www.a+b+c.cz, the Defendant No. 1 has been acting in an unfair manner, in conflict with the trademark and trade-name rights of the Plaintiff a). In addition, the Defendant No. 1 acts in conflict with the rights of the Plaintiff b) concerning its name.

In its arguments presented on 3 July 2003, the Defendant No. 1 claimed that should the Court attempt the carrying out of any of the proposed technical evidence presented by the Plaintiffs, e.g. via a technical recording of processes which follow after one tries to connect to the computer identified as x+y+z.cz, the Court would be able to check that there is no information available or used under the domain "x+y+z.cz". No information means zero information, i.e. it is impossible to talk about any "use" of the domain. Therefore, it is impossible to talk about any detriment if - after connecting to the Internet by typing the letters www.x+y+z.cz, nothing appears on the screen (or there is a message displayed according to which the "page cannot be displayed").

The Plaintiffs have documented their claims with an extract from the commercial register of the Plaintiff a), extracts from the trademarks kept in the database of the Industrial Property Office, a list of the registered indications of origin, an extract of data from the register of economic entities kept at the Czech Ministry of the Interior, an extract from the domain register, a notarial record certifying the factual processes, a technical recording of processes which follow after one tries to connect to the computer identified as x+y+z.cz, an assessment of the domain www.x+y+z.cz, and an overall information concerning the status of the domain "x+y+z.cz" as of 20 February 2003.

According to the extract from the register of domains kept by CZ.NIC, the administrator of the highest level domain, issued by the Plaintiffs a) and b) on 2 March 2004, the domain "x+y+z.cz" was registered on 6 December 2000 and P. S. is the holder and technical administrator, resident in AAAAA XXXX, Prague X, Postal Code: XXX XX, ID Card Number XXXXXXX, card type O.

The Plaintiffs believe that the conditions have been fulfilled for the issuance of the preliminary ruling, in order to provide for a temporary settlement of the relations among the parties involved. This is based particularly on the fact that the so-called rerouting from the website www.x+y+z.cz to the website www.a+b+c.cz means a significant violation of the Plaintiffs' rights, particularly the rights of the Plaintiff a) and that every day on which this situation persists means an increasing detriment caused to the Plaintiffs. There is also a real risk that the Defendant No. 1 could - with the help of the Defendant No. 2 and prior to the legal validity of a decision on the matters - transfer the domain x+y+z.cz to a third party, and thus disable the Plaintiffs from enforcing their rights.

Pursuant to the provisions of Section 102, Paragraph 1 of the Code of Civil Procedure, Courts may issue a preliminary ruling whenever it is necessary to ensure a temporary settlement of the relations between the parties involved after the commencement of proceedings. However, this is conditioned on the Plaintiff's evidencing of the factual conditions which mean a material justification of the proposed measures and on the Plaintiff's justification of the urgent need to ensure a temporary settlement of the relations concerned. In its decision concerning a preliminary ruling, the Court follows the facts

claimed and demonstrated by the Plaintiff and - according to Section 75, Paragraph 5 of the Code of Civil Procedure - the situation as of the issue of the court decision is a critical aspect for the decision concerning the issue of the Court's verdict.

Through their petition, the Plaintiffs claim that the Court should order the Defendant No. 1 to abstain from the use of the domain "x+y+z.cz", particularly the publishing of any contents within the Internet under the domain "x+y+z.cz" and entering into negotiations concerning the transfer of the domain "x+y+z.cz" from the Defendant No. 1 to any third party, except for the transfer of the domain concerned to the Plaintiff a). As indicated above, the Court understands that before a decision is adopted on the matters, it is necessary to ensure a temporary settlement of the relations between the Plaintiffs a) and b) and the Defendant No. 1, as it has been made evident that the Plaintiff a) holds the rights to the wording of its trade name, including the expression "x+y+z" as a significant part thereof, and the rights to the trademarks containing this expression, and it has been sufficiently proven (adequately with respect to the possible issuance of a preliminary ruling) that the activities of the Defendant No. 1 who has registered the domain "x+y+z.cz" for itself, may be deemed an unauthorized infringement in the rights of the Plaintiff a). The Plaintiff b) proved the use of its name X+Y+Z and its legal subjectivity. The Court also understands that the Defendant No. 1 has registered the domain name "x+y+z.cz" through the Defendant No. 2, who is an interest association of legal entities and that its objective is to allocate and administer domain names in the highest national domain "cz", under the terms and conditions set out by the Defendant No. 2 in the Rules of Registration which the Defendant No. 2 has announced and has been using. The fact that the domain name "x+y+z.cz" has been registered by the Defendant No. 1 means that no other entity is able to register this domain, including the owner of the registered trademark and the user of the trade name identical to the name of the domain.

Concerning the fact that the Plaintiff a) proved its right to the wording of its trade name, including the expression "x+y+z" as its significant part, the rights to the trademarks containing this expression, and that the Plaintiff b) demonstrated the use of the name X+Y+Z, the Court believes that it is possible to issue a preliminary ruling based on the possibility of considering the activities of the Defendant No. 1, who has registered the domain "x+y+z.cz" for itself as an unauthorized infringement in the rights of the Plaintiffs a) and b). The Court therefore satisfied the motion of the Plaintiffs, also because it was necessary to avoid the risk that the decision on the matter may not be enforced in the future. Therefore, the Court decided to issue this preliminary ruling as specified in Item I of this verdict.

In addition, the Plaintiffs claimed the issue of a preliminary ruling, through which the Court would place CZ.NIC under the obligation not to enable the Defendant No. 1 to pledge the domain "x+y+z.cz". The Court rejected such a motion since - as indicated above - the objective of this interest association of legal entities is to allocate and administer domain names in the highest national domain "cz", under the terms and conditions set out in the Rules of Registration. The Court understands that the association is not authorized to influence the activities of the Defendant No. 1 leading towards the cessation of the domain "x+y+z.cz".

Finally, the Plaintiffs made a claim for the issuance of a preliminary ruling, according to which CZ.NIC shall disable the Defendant from transferring the domain "x+y+z.cz" from the Defendant No. 1 to a third party, except for a transfer to the Plaintiff a). However, the Court has already made a decision on this issue, in a resolution issued on 2 June 2003, through which the motion of the Plaintiffs a) and b) was refused. Therefore, the Court ceased the proceedings concerning the proposal for the issuance of such a preliminary ruling.

A decision concerning the settlement of costs of the preliminary ruling will be made as a part of the verdict on the matters by the end of the proceedings. The preliminary ruling shall cease to be effective according to the provisions of Section 77, Paragraph 1 of the Code of Civil Procedure, on the day on which the decision becomes legally effective, unless the petition is successful. Provided that the

petition on the matters is successful, the preliminary ruling shall cease to be effective upon the expiry of a period of 15 days from the day on which the decision on the matters becomes enforceable. According to the second paragraph of the quoted provision, the presiding judge shall cancel the preliminary ruling if the reasons according to which it had been ordered shall cease to be effective.

Except for CZ.NIC, all participants of the proceedings are identified with the first letters of their surnames or trade names. The domain name in question is replaced with an x+y+z.cz sequence. All other domain names mentioned in the text have been also replaced with randomly chosen sequences of letters and signs. Except for the identification of the participants or other entities and the pertinent domain names, there were only minimal interventions in the text of the decision. Any relation between the abbreviations and dummy symbols used and the people or domain names using such abbreviations or dummy symbols for purposes of identification is merely coincidental.

When studying this decision, it is necessary to be aware of the fact that the decision comprises not only the verdict alone and the pertinent justification, but also a summary of the claims presented by the individual parties involved, that the court may not have been concerned with some of these claims at all (e.g. with respect to the issuance of a preliminary ruling) and that such claims merely represent the legal opinion of the party concerned, not a finding of the court.

This decision may not be automatically applied to other instances even though they may be similar and the CZ.NIC association recommends consulting each particular case with domain name experts and lawyers.