PRELIMINARY RULING

The Municipal Court in Prague decided on 14 September 2004 in the legal matter of the Plaintiff U. against the Defendant No.: 1. P. S., Defendant No. 2. CZ.NIC and Defendants Nos. 3 to 19 (registrars) on the petition for a preventive measure as follows:

I. I. The petition for a preventive measure through which Defendant No. 1 would be obliged to refrain from the use of the domain names "x+y+z.cz", "t+u+v.cz" and "q+r+s.cz" is refused.
II. II. Defendant No. 1 is obliged to refrain from dealing with the domain names "x+y+z.cz", "t+u+v.cz" and "q+r+s.cz" in any way.
III. III. Defendant No. 2 is obliged to disallow the transfer of the domain names "x+y+z.cz", "t+u+v.cz" and "q+r+s.cz" to any other person with the exception of the Plaintiff.
IV. IV. The proposal for the ruling of a preventive measure through which the Court would impose on Defendants Nos. 3 to 19 the obligation to disallow the transfer of the domain names "x+y+z.cz", "t+u+v.cz" and "q+r+s.cz" to any other person with the exception of the Plaintiff is refused.
V. V. The Court enjoins the Plaintiff to lodge a complaint on the actual case within a time limit of 14 days.
VI. VI. The Plaintiff is obliged to pay the state into the account of this court the payment of the court fee of 500 Czech crowns within 3 days of the coming into legal force of this ruling.

Through the petition the Plaintiff demands the issue of a preventive measure through which the Court would order Defendant No. 1 to refrain from using the domain names "x+y+z.cz", "t+u+v.cz" and "q+r+s.cz" and dealing with these domain names. At the same time the Plaintiff demands that the Court should impose on 18 registrars the obligation to refrain from carrying out changes in the registration of the domain names "x+y+z.cz", "t+u+v.cz" and "q+r+s.cz".

According to his statement the Plaintiff is the owner of the combined trademark X+Y+Z registered with the Office for Industrial Ownership under registration No. 123456. The Plaintiff uses the verbal and combined trademark X+Y+Z Reg. No. 654321 on the basis of a non-exclusive licence agreement recorded in the Trademark Register with effect from 26 November 2001. The trademark "X+Y+Z" recorded under registration No. 234567, the trademark "Q+R+S" recorded under registration Nos. 345678, 456789 and 567891, and the trademark "T+U+V" recorded under registration Nos. 678912 and 789123 are used by the Plaintiff on the basis of a licence agreement concluded with the mother company of the Plaintiff U. N.V. on 15 May 2001, recorded in the Trademark Register on 15 April 2002.

The Plaintiff wanted to register the domain names "x+y+z.cz", "t+u+v.cz" and "q+r+s.cz" and ascertained that these domain names have been registered by Defendant No. 1.

On 19 July 2004 the Plaintiff sent a letter to Defendant No. 1 with the offer of the settlement of the dispute out of court. Defendant No. 1 stated in his reply that he requires for the domain names the sums of 100,000 Czech crowns and 200,000 Czech crowns. If the Plaintiff does not accept this proposal he will sell off the domain names to another subject.

The Plaintiff is damaged by the fact that his possibilities of promotion on the Internet are threatened.

The Plaintiff demands the issue of a preventive measure because through the transfer of the domain names to another subject the execution of the court ruling would be threatened.

According to Par. 74 of the Civic Court Code the Court may order a preventive measure before the start of proceedings if it is necessary that the relations of the participants be provisionally regulated or

if there is any fear that the execution of the Court ruling might be threatened.

The prerequisite is that the Plaintiff should prove the existence of factual circumstances that substantiate the proposed measure and the urgency of the need for provisional regulation.

The Plaintiff testified that he is the holder of the licences for the trademarks "X+Y+Z", "T+U+V" and "Q+R+S", registered with the Office for Industrial Ownership (confirmation of the Office for Industrial Ownership dated 17 April 2002, 26 November 2001 and 23 July 2001).

The Plaintiff testified the consent of the owner of the trademarks to the lodging of the petition for the opening of proceedings in the matters of the infringement of trademark rights by the acquirer of the licence (consent of the firm of U.N.V. dated 16 August 2004, 8 August 2004, and 10 August 2004).

In the proceedings the Plaintiff further testified that Defendant No. 1 is the owner of the domain "x+y+z.cz", with date of registration from 7 December 2000, domain "t+u+v.cz" with date of registration from 7 December 2000, and domain "q+r+s.cz" with date of registration from 7 December 2000 (extracts from the Internet).

The Plaintiff further testified that Defendant No.1 stated in his reply to the Plaintiff's proposal for the selling off of the Internet domains that he requires for the domain "x+y+z.cz" 100,000 CZK and for the domains "q+r+s.cz" and "t+u+v.cz" 200,000 CZK. In the case that this proposal should not be accepted, he would sell the domains to other interested parties (Internet message of 26 July 2004).

The Court has been shown the interchangeability of the domain names with the trademarks of the Plaintiff and the speculative intentions of Defendant No. 1 in the registration of the domain names. The Court found a prerequisite for the issue of a preventive measure because of the threat to the court ruling by transfer of the domains from the present owner to a third party. The Court therefore consented to the petitions in the part of the statement given in the part of the second statement of the ruling. At the same time the Court imposed on Defendant No. 2, as the national administrator of the supreme-level domain "cz", the obligation to refrain from carrying changes in the registration of the domain names.

The petition for the issue of a preventive measure was refused in the extent given in the 1st part of the statement of the ruling. With regard to the fact that Defendant No. 1 registered the domains concerned in the year 2000, the Court did not see the urgency of the need for temporary regulation of the relations of the participants by means of a preventive measure and did not comply with the petition in this part.

The petition was refused also in the part of the demand for the obligation to refrain from carrying out changes in the registration, which was to have been imposed on all registrars active on the market in the Czech Republic, because it did not see the grounds for this request. After concluding an agreement with a user the appropriate registrar turns to the national registrar, who then carries out changes in registration. The Court did not therefore consider the passive authorisation of Defendants Nos. 3 to 19.

The Court enjoined the Plaintiff, in accordance with Par. 4 section 1 letter f) of Law No. 549/1991 Coll. (Collection of Laws) in its current wording, to pay the court fee.

Only the first letter of their surnames or commercial firms designates the participants in the proceedings, with the exception of the association of CZ.NIC. The domain names concerned are replaced by the sequence x+y+z.cz. If there is mention in the text of further domain names, these have been replaced at random by other sequences of symbols. With the exception of data enabling the identification of the participants in the proceedings or other persons and domain names there has been the least possible interference with the text of the rulings. Any connection of the abbreviations and substitute symbols used with persons or domain names that actually use designations with the use

of such abbreviations or substitute symbols is purely coincidental.

In the study of the rulings it is necessary to bear in mind the fact that the decision contains not only the actual statement of the Court and its substantiation, but also a summary of the statements of the individual parties, some of which statements the Court need not have taken into account at all in the decision (e.g. in the issue of a preventive measure) and these statements therefore represent only the legal opinion of the party concerned and not the conclusion of the Court.

A Court ruling cannot be automatically applied to other cases (albeit the basic facts are the same) and the CZ.NIC association recommends that a concrete case be consulted with experts on domain names and with lawyers.