RULING

The Municipal Court in Prague decided on 24 September 2004 in the legal matter of the Plaintiff M. against the Defendant P. Š. on the petition for the issue of a preventive measure as follows:

- The Defendant is obliged to refrain from legal actions aiming at the transfer of the rights to domains **www.x+y+z.cz** and **www.t+u+v.cz** to third persons or at the cancellation of the registration of either of them.

The Plaintiff demands through the suit protection against the infringement of the rights to a trademark and firm. According to his statement the Plaintiff is the owner of 19 national trademarks containing the verbal element x+y+z. The oldest recorded trademark x+y+z in the Czech Republic is trademark No. 123456 with priority from 14 December 1981, which protects products and services in classes 16,35 and 36. The Plaintiff is the owner of national trademark No. 234567 t+u+v with priority from 10 June 1991, which protects services in class 36.

The Defendant is recorded in the Register of Domain Names in the top-level domain cz as the owners of domains x+y+z.cz and t+u+v.cz. The Defendant registered domain x+y+z.cz on 15 January 2000 and domain t+u+v.cz on 16 September 2000. Neither of these websites is in use at present.

The registration of the domain names x+y+z.cz and t+u+v.cz by the Defendant effectively prevents the Plaintiff from the creation and operation ofa web page the address of which would be based on the trademarks and firms owned by the Plaintiff. The Defendant prevents the Plaintiff from promoting his products through the Internet, concentrating on Czech savers.

The Plaintiff tried to convince the Defendant to cease using the domain names x+y+z.cz and t+u+v.cz and to give up their ownership, doing so in letters dated 19 July 2002 and 12 August 2002. The Defendant replied to the letter by electronic mail on 23 September 2002 with an offer to sell the domain t+u+v.cz to the Plaintiff for 3,000,000 CZK. On 27 May 2003 the Plaintiff offered the Defendant the sum of 3,000 USD for the transfer of both domains. The Defendant replied to this offer on 24 June 2003 and demanded that the Plaintiff make him a loan of 1,200,000 CZK. Under these circumstances it is clear that the behaviour of the Defendant is motivated by speculation and bad faith.

The Plaintiff demands a preventive measure for reasons of the threat to the execution of the decision in that the Defendant might, in the course of proceedings, transfer the domain names to a third person or else release the registration in such a way that it might be registered by a third party.

The Court considered the proposal for a preventive measure to be substantiated.

According to Par. 102 section 1 of the Civil Court Rules, if it is necessary after the start of proceedings to regulate temporarily the relations of the participants, or if there is a fear that the execution of the ruling finally issued in the proceedings might be at risk, the Court may order a preventive measure.

The Plaintiff testified that he is the owner of the verbal trademark No. 234567 T+U+V (the certificate of the Office of Industrial Ownership on the registration of a trademark) and further testified that he is the owner of the combined trademark with registration No. 223215 containing the text part X+Y+Z (extract from the Register of Trademarks of the Office of Industrial Ownership).

The Plaintiff further demonstrated with an extract from the Commercial Register of Domain Names CZ the registration of the domains x+y+z.cz and t+u+v.cz to the Defendant. The domain x+y+z.cz was registered on 15 January 2002, the domain of t+u+v.cz on 16 September 2000. The commercial correspondence between the participants showed that the Defendant demanded the sum of 3,000,000 CZK for the sale of domain t+u+v.cz and further required the provision of a loan of 1,200,000 CZK (letters of the representative of the Plaintiff dated 12 August 2002, 19 July 2002,and 27 May 2003,

internet replies of the Defendant dated 23 September 2002 and 24 June 2003).

The Court considered as substantiated the fear of a threat to the execution of the ruling finally issued in the matter itself if during the proceedings the domains were transferred to further persons or if their registration were cancelled.

The Court therefore complied with the proposal for a preventive measure.

The participants in the proceedings, with the exception of the association of CZ.NIC are designated only by the first letter of their surname or commercial firm. 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.