RULING

The Municipal Court in Prague decided on 2 December 2004 in the legal matter of the Plaintiff I. against the Defendant No. 1: M. and Defendant No. 2: CZ.NIC on the petition for the issue of a preventive measure within the framework of the suit on refraining from unfair competitive behaviour as follows:

I. The Court orders the following preventive measure:
    1. Defendant No. 1 is obliged from the day of the delivery of this ruling to refrain from dealing with the domain name "**x+y+z.cz**" in any way.

II. Defendant No. 2 is obliged to make impossible the transfer of the domain name "**x+y+z.cz**" to any other person with the exception of the Plaintiff.

III. The Plaintiff is obliged to pay the court fee for the proposal for ordering a preventive measure at the level of 500 CZK into the account of the Municipal Court in Prague within 3 days of this Ruling coming into force.

The Plaintiff demanded the ordering of a preventive measure within the framework of the case for the obligation of Defendant No. 1 to transfer to the Plaintiff the domain name "x+y+z.cz" and the obligation of Defendant No. 2 to carry out a change in the owner of the domain "x+y+z.cz" within a set time limit, further for the payment of adequate satisfaction by means of the sum of 50,000 CZK. The Plaintiff stated that he does business in the field of the production of office technology, especially in the sphere of the binding of documents and the shredding of documents, and that he is the owner of international trademark No. 123456 with priority as of 15 December 1989 for goods in classes 7 and 16 and international trademark No. 234567 X+Y+Z with priority as of 18 January 1994, registered for goods in classes 9, 14 and 16. According to the Plaintiff these trademarks have become known on the Czech market and the products of the Plaintiff are linked with them.

Defendant No. 1 does business in the field of intermediary activity, provision of software, advertising activity and according to his Internet pages also in the sphere of office technology.

Defendant No. 2 as a special-interest association of legal entities acts as the administrator of the national top-level domain and is the registrar of the so-called second-level domain. Defendant No. 1 had the domain name "x+y+z.cz" registered for himself on 2 February 2001 for the area of the Czech Republic through Defendant No. 2 with validity until 3 February 2005 and through this registration and the use of the domain name "x+y+z.cz" for the operating of internet trade in technology for the processing of documents there occurs interference with the rights to the Plaintiff's trademarks in the sense of the provisions of Par. 8 of Law No. 441/2003 Coll. Defendant No. 1 originally promised the transfer of the domain to the Plaintiff and ceased the operation of the Internet page "x+y+z.cz", but after disagreement with the Plaintiff he announced the renewal of operation of this page and continues to block the Plaintiff's possibility of using the domain "x+y+z.cz" together with interference in the trademark rights of the Plaintiff, behaving in such a way towards the Plaintiff as can be described as being at variance with the good morals of economic competition according to the provisions of Par. 44 section 1 of the Commercial Code, in particular the fulfilment of the factual basis of evoking the danger of confusion according to Par. 47 of the Commercial Code and parasitic behaviour with regard to reputation according to Par. 48 of the Commercial Code, aiming at the acquisition of economic benefit to the detriment of the Plaintiff. The Plaintiff, for fear of the renewal of the operation of the domain page "x+y+z.cz" and the threat connected with this of the occurrence and expansion of damages and the devaluation of the trademarks of the Plaintiff, demanded the temporary regulation of the relations of the participants until the final decision on the matter.

According to the provisions of Par. 102 section 1 of the Civil Court Rules the Court may on proposal, after the start of proceedings on the matter itself, regulate the relations of the participants if the

conditions exist for such procedure and there is appropriate evidence for the facts declared. It has been testified by the Plaintiff that he is the owner of both international trademark No. 123456 with priority as of 15 December 1989 and No. 234567 with priority as of 18 January 1994 in the wording X+Y+Z for office technology. Defendant No. 1 is, according to the domain scanner on the Internet page kept by CZ.NIC, the holder of the domain with the wording "x+y+z.cz" since 2 February 2001 and on his Internet page M. presents e-trade in technology for the processing of documents under the address www.x+y+z.cz. It has also been demonstrated by the Plaintiff that he does business in the sphere of the production of, among other things, office goods, according to the extract from the Commercial Register of Kanton Schaffau, and also that defendant No. 1 on the basis of the correspondence of the participants threatened to start up a new form of the Internet pages www.x+y+z.cz.

The Court considers to have been proved by the Plaintiff the stated interference in his rights to the protective international trademarks by the first Defendant, enjoying in the sense of the provisions of Par. 2 letter b) of Law No. 441/2003 Coll. on trademarks protection on the territory of the Czech Republic, and therefore the rightly implemented rights of the owner of the trademark in the sense of the provisions of Par. 8 of the law quoted against Defendant No. 1. In this unauthorised intervention one can also see the behaviour of Defendant No. 1 as being at variance with the good morals of economic competition through fulfilment of the traits stipulated by the provisions of Par. 44 section 1 of the Commercial Code, also the fulfilment of the factual basis of the evocation of the danger of confusion and parasitic behaviour according to Par. 47 and Par. 48 of the Commercial Code by this Defendant. It therefore appears to the Court to be appropriate to regulate the relations of these participants by means of a preventive measure according to the above-mentioned provisions of Par. 102 section 1 of the Civil Court Rules. With regard to Defendant No. 2 the ruling on the obligation to make impossible the transfer of the challenged domain name "x+y+z.cz" to third persons with the exception of the Plaintiff in the form of a preventive measure has validity for his status as the registrar of the domain name concerned, being in legal relationship to Defendant No. 1 as a derived relationship. In that the Court found the condition fulfilled, consisting of the real threat of the occurrence of damages and their further expansion through the declared restarting of the domain page by Defendant No. 1, it complied in full with the demand of the Plaintiff for the ordering of a preventive measure.

According to the provisions of Par. 4 section 1 of Law No. 549/1991 Coll. on court charges in its current wording the Plaintiff was enjoined to pay the court fee with regard to the proposal for the ordering of the preventive measure, the level of which emerges from item 3 of the Tariff Sheet.

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.