RULING

The Regional Court in Plzeň decided on 9 December 2004 in the legal matter of the Plaintiff M. against the Defendant No. 1: V. V. and Defendant No. 2: CZ.NIC on the petition for the issue of a preventive measure as follows:

The Court orders the following preventive measure:

I. On Defendant No. 1 it imposes the obligation to refrain from using the domain name "x+y+z.cz", including dealing with it in any way, but especially regarding its transfer to any other party with the exception of the Plaintiff himself.
II. Defendant No. 2 is obliged to restrict the transfer of the domain name "x+y+z.cz" to any other person with the exception of the Plaintiff himself.
III. The Plaintiff is obliged to pay the court fee for this proceeding at the level of 500 CZK into the account of the Regional Court in Plzeň within 3 days of this Ruling coming into force.

On 3 December 2004 the Plaintiff lodged a petition for protection against the infringement of rights of a trademark and protection against the act of unfair competition.

Together with this petition he submitted a proposal for the ordering of the above-mentioned preventive measure. In the proposal he stated that the Plaintiff is a legal entity whose subject of business is chiefly publishing and printing, the provision of software, the lending of recorded sound and audio-visual recordings, agency activity in the sphere of culture and advertising activity. He is the holder of Czech Telecommunications Office Certificate of Registration No. 111/111, Ref. No. 11111/1111 according to General Licence No. GL-28/S/2000, issued for the provision of telecommunications services. He is also the owner of the trademark "X+Y+Z", registered by the Office for Industrial Ownership as a verbal trademark under Reg. No. 111111. The entry in the register of trademarks was made on the basis of an application dated 27 October 1999 with priority right from 11 February 1998. The trademark was properly registered. The Plaintiff had registered on the Internet, with validity until 5 December 2003, the domain name "x+y+z.cz". The administrator of the .cz domain is Defendant No. 2, who is the only one entitled to allocate domains of the second order coming under the top-level domain .cz to individual subject on their request and to administer these domains. Defendant No. 1 is a physical person who does business on the basis of a trade authorisation with the subject of business given as the provision of services in the field of information systems, purchase of goods for the purpose of their further sale and sale and activity as a presenter and compere. Defendant No. 1 had the domain name "x+y+z.cz" registered on the Internet with Defendant No. 2 with effect from 5 December 2003with exactly the same designation as the Plaintiff's protective trademark as mentioned above and thus he prevented the Plaintiff from using it in his business activity. In an official letter dated 8 January 2004 Defendant No. 1 was called upon to refrain from infringement of the trademark rights and refrain from unfair competitive behaviour. He is still continuing his unlawful activity. Through this activity he is encroaching on the rights of the Plaintiff from his trademark and at the same time meets the criteria for unfair competition contained in the general clause according to the provisions of Par. 44 of the Commercial Code: He is of the opinion that Defendant No. 1 is using unlawfully on the Internet, without the consent of the Plaintiff, the designation of the domain name "x+y+z.cz", which is completely identical to the registered trademark of the Plaintiff, for the same products and services. The Plaintiff supported his statements with the extract of the Plaintiff from the Commercial Register, the extract of Defendant No. 1 from the Commercial Register, the certificate of the Office for Industrial Ownership for registration of the trademark "x+y+z", confirmation of the registration of Defendant No. 2 in the register of special-interest legal entities, the confirmation from the Czech Telecommunications Office of the registration of the Plaintiff No. 111/111, the extract from the register of domains of "x+y+z.cz", extracts from the Internet pages "www.x+y+z.cz", the appeal of the Plaintiff to Defendant No. 1 of 8 January 2004and copies of various publicity material relating to

the products and services of the Plaintiff under the designation "x+y+z". Defendant No. 1 has this domain registered with effect from 5 December 2003.

In the case under consideration it is a matter of the issue of a preventive measure at the stage following the commencement of proceedings on the charge of unfair competition according to the provisions of Par. 102 of the Civil Court Rules with the use of Par 74 and Par 76 section 1 letter f) of the Civil Court Rules. At this stage of proceedings it is possible to order a preventive measure if it is necessary to regulate temporarily the relations of the participants, or if there is fear that the execution of the court ruling might be at risk. In accordance with the provisions of Par. 76 section 1 letter f) of the Civil Court Rules the court may impose on a participant through a preventive measure that he do something, refrain from something or suffer something. In making a decision on a preventive measure the court must have all the decisive facts verified for the issue of a ruling. He must also have certified the need for the temporary regulation of the relations of the participants, which must always be urgent. An urgent need for the temporary regulation of the relations of participants is constituted when failure to order the preventive measure would give scope for such a legal act to be executed as would create either an irreversible legal state or would lead to worsening the legal position of the Plaintiff. According to the provisions of Par. 76 section 2 of the Civil Court Rules it is possible through a preventive measure to enjoin an obligation on someone other than a participant only if this can fairly be asked of him.

In the case under consideration the court also investigated whether the above-mentioned conditions are fulfilled for the ordering of a preventive measure imposing the obligation on Defendant No. 1 to refrain from the use of the domain name "x+y+z.cz" including the handling of it in any way, especially its transfer to any other person with the exception of the Plaintiff himself, and on Defendant No. 2 the obligation to restrict the transfer of the domain name "x+y+z.cz" to any other person with the exception of the Plaintiff himself . In the given case the Plaintiff properly testified that the Plaintiff and the Defendant are businessmen who, with regard to the subject of their activity, clash in the business activity and are therefore competitors. The Plaintiff testified that he is the owner of the verbal trademark "x+y+z" with priority right as of 11 February 1998. The registration of both domain names took place first of all to the benefit of the Plaintiff as the previous user up to 5 December 2003 and then Defendant No. 1 was registered with effect from 5 December 2003. According to the extract from the Internet pages "www.x+y+z.cz" there is proof that these pages with the trademark were operated by Defendant No. 1. Defendant No. 1 had the domain name "x+y+z.cz" registered for himself through Defendant No. 2 whose subject of activity is the allocation and administration of domain names. From the above it is evident that there is a real danger that through this activity of Defendant No. 1, when he had the domain name "x+y+z.cz" registered for himself with effect from 5 December 2003, there arises detriment to the Plaintiff because the behaviour of Defendant No. 1 undoubtedly causes interference in the Plaintiff's rights to his trademark. The prolonging of this situation undoubtedly increases the detriment that may really occur for the Plaintiff through this behaviour. Through the long-term use of the designation "x+y+z", which is interchangeable with the trademark of the Plaintiff there arises the danger of the disintegration of the trademark and thus the reduction of its value. There undoubtedly also exists a real danger that Defendant No. 1 might, through Defendant No. 2, before the legalisation of the ruling on the matter itself, transfer the domain name "x+y+z.cz" to another person and thus make it impossible for the Plaintiff to achieve his rights. Here it is necessary to refer to the provisions of Par. 8 of Law No. 441/2003 Coll. (Collection of Laws), according to which the owner of a trademark has the exclusive right to use the trademark in connection with the products or services for which it is protected. Nobody may use a trademark in trade relations without the consent of the owner. This concerns designation identical to the trademark for products or services or similarity to the trademark and identity or similarity of the products or services designated by the trademark. In that the Defendant is thus acting without the consent of the Plaintiff and using the designation "x+y+z.cz" in his domain, he is undoubtedly causing the

probability of confusion on the part of the public, and it cannot be ignored that the Plaintiff has used his trademark for many years and thus reached the awareness of the public, which has formed a certain opinion of the quality of the services provided in connection with this trademark. The trademark law must be understood as part of the broader competition law. In the use of the concept "x+y+z" in both domains 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. With regard to the above verified fact there exists a high probability for reaching the opinion that the behaviour of Defendant No. 1 is at variance with the good morals of economic competition and is of a nature to cause detriment to the Plaintiff, who is a competitor of Defendant No. 1. In the opinion of the Court the need for temporary regulation of the relations of the participants until the final ruling on the matter is urgent and therefore the Court ordered the above-mentioned preventive measure when he imposed on Defendant No. 1 the obligation to refrain from the use of the domain name "x+y+z.cz", including the handling of it in any manner. In that Defendant No. 1 had the domain name "x+y+z.cz" registered for himself with Defendant No. 2 with exactly the same designation as the Plaintiff's protective trademark, he thus factually prevented the Plaintiff from using it in his business activity. The Court also imposed on Defendant No. 2 the obligation to restrict the transfer of the domain name "x+y+z.cz" to any other person with the exception of the Plaintiff himself. It is of the opinion that it can justly be demanded of him that he have this obligation because his subject of activity is exclusively the allocation and administration of domain names under the top-level national domain ".cz" under stipulated conditions. With regard to the above-mentioned testified facts the Court decided in the manner expressed in the statement of this ruling.

It enjoined on the Plaintiff the obligation to pay the court fee for the ordering of the preventive measures at the level of 500 CZK according to item 3 of the list of charges relating to the Law on Court Fees No. 549/1991 Coll. In the sense of this law the Plaintiff is the one due to pay this fee.

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.