PRELIMINARY MEASURE

(the defendant has submitted an appeal against this ruling, on which a decree has been issued - see Judicial verdict 12)

> The City Court in Prague, with offices at Slezská 9, Praha 2, on 19 June 2001 made the following declaration on the legal dispute of the plaintiff **S.** against the defendant **D.** on the proposal for ordering a preliminary measure thus, that the court ordered a preliminary measure according to which (1) the Opponent is obliged to refrain from use of the domain name **x+y+z.cz**, (2) the Plaintiff is obliged to submit a proposal for commencement of proceedings concerning this matter within a period of two months of the delivery of this decree and (3) the Plaintiff shall be returned the surplus payment on the court fee for the proposal of the amount of CZK 500.00 after this ruling enters into legal force.

The Plaintiff is an entrepreneur, entered in the Commercial Register under the company name S. spol. s.r.o. (Ltd.) since 24 February 1998, who is engaged in the field of purchase of goods with the purpose of further trading and as a subject of activity also performs digitalisation of written documentation, provides consultancy services in the field of computer technology, including digitalisation of written documentation, consultancy in the field of software etc. On the day of 15 December 2000 the plaintiff submitted two proposals for registration of the trademark combining the words "x+y+w" to the Industrial Ownership Authority, and since 11 March 1998 has made use of the domain name "**x+y+w.cz**", registered in the RIPE database in connection with the development of the Internet and publishes information on his/her business and offers services relating primarily to the electronic transfer of documents, so-called digitalisation of written documentation and connected activities on the server indicated with this domain name.

The Opponent conducts activities in a similar competitive environment, since his/her company is also engaged in the electronic processing of documents, filing services and archiving, including deliveries of technology for electronic processing of documents, and as a direct rival in economic competition registered a domain with the name "**x+y+z.cz**" as of 24 October 2000, whilst according to the database of the registrar CZ.NIC the following description of purpose of the domain is entered: "Service for transfer of paper documents into electronic form". The Opponent uses this domain in such a manner that he/she has redirecting set to the domain (server) "**a+b+c.cz**", so that by entering the title - address of the server "**x+y+z.cz**" the web pages of the Opponent appear.

The Plaintiff for this reason is demanding protection in the form of a measure in connection with the previously entered and registered domain, identical to the company of the plaintiff, entered in the Commercial Register, with reference to conduct aimed towards ethical business competition and outlined by the provisions of section 47 and also the provisions of section 48 of the Commercial Code, as well as according to the general clause on unfair competition outlined in the provisions of section 44 paragraph 1 of the Commercial Code, and also with reference to the application for the registered trademark with the Industrial Ownership Authority and with reference to the phonetic similarity of the indication of the opponent"s domain and the similarity or analogy of the offered information on business activities and offer of services of the plaintiff and the opponent. The plaintiff argues that procedure by means of preliminary measure is justified by referring to the long-term and increasing injury caused to the plaintiff through loss of customers and the damage thus incurred.

In the opinion of the court the plaintiff sufficiently verified his/her assertions contained within the proposal by means of his/her own extract from the Commercial Register, according to which the plaintiff is entered in this register as of 24 February 1998 under the company title "S. spol. s.r.o.",

stating the subject of business residing inter alia in the digitalisation of written documentation and consultancy work in the same field and in the field of software; by means of marketing and other analogous promotional materials of the plaintiff testifying to actively developed activity in the field of software and electronic processing of documents etc.; by means of an extract from the database CZ. NIC dated 13 June 2001 and documents on payment for use of the domain since 1998 testifying to the ownership of the plaintiff to the domain name "**x+y+z.cz**" with the date of registration from 11 March 1998 and registration within the system CZ.NIC from 11 October 1999; by means of applications for the trademark "x+y+w" with the Industrial Ownership Authority; by means of one page of a printed document from the business journal "Hospodářské Noviny" dated 22 May 2001 containing advertising of important internet addresses, amongst which both the plaintiff, advertising digitalisation of documents and forms under the address www.x+y+w.cz, and the opponent, advertising electronic processing of documents, filing services and archiving under the address www.a+b+c.cz appear; by means of an extract from the Register of Domains dated 5 February 2001 testifying to the ownership of the opponent to the domain name "**x+y+z.cz**" registered as of 24 October 2000 and finally by means of an expert opinion furnished by a court expert in the field of electronics on the basis of an order from the plaintiff, requesting the establishment and documenting of the content of www pages located on the Internet at the address http://www.x+y+z.cz, containing the finding that at the domain "**x+y+z.cz**", the opponent as the domain"s owner and operator has set redirection to his/her domain "**a+b+c.cz**", so that by entering the address with the name of the domain "**x+y+z.cz**" the web pages of the opponent used for the purpose of offering services for transfer of paper documents into electronic form appear.

According to the provisions of section 74 paragraph 1 of the Civil Law Code the court may issue a preliminary measure in the case that the necessity for provisional arrangement of the relationships of the participants is urgent and the decisive matters stated within the proposal are appropriately verified.

It is necessary to start out from the fact that registration of a domain name does not benefit from the same protection as with a registered trademark in the sense of the relevant provisions of Act no. 137/1995 Coll. on registered trademarks, and that it is also not possible to interfere with the rights of the bearer of a company entered in the Commercial Register through the use of a domain, particularly in the case where this company bearer develops identical or analogous business activity developed with the user of the domain. Registration and use of a domain identical or interchangeable with the company of another entrepreneur and competitor who is challenging in economic competition on an identical or analogous market of supply and demand may and necessarily must give rise to the inadmissible danger of confusion of these subjects, or undesirable parasitic use of the reputation of the other competitor, as is outlined by the provisions of sections 47 and 48 of the Commercial Code, and ensuing conduct which is in conflict with ethical competition, as ensues from the provisions of section 44 of the general clause on unfair competition outlined by the Commercial Code.

In consideration of the procedure according to the provisions of section 74 paragraph 1 of the Civil Law Code, the court started out from the verified matter that both subjects are engaged in a similar field of business and offer inter alia so-called digitalisation of written documentation, also by means of the Internet as well as extended forms of provision of informatics and offering the services of their companies. Use of the title of the domain "**x+y+z**", which is phonetically similar to the title of the domain "**x+y+w**" and indication of the company of the plaintiff (as regards registered trademark, the plaintiff does not thus far benefit from protection in the sense of the provisions of section 15 paragraph 1 of Act no. 137/1995 Coll.) may lead to the danger of confusion of the provider of services offered by means of the Internet and thus to undesirable interference with the rights of the other competitor. The court therefore finds the proposal for ordering of a preliminary measure is justified in

that all conditions for the provisional arrangement of the relationships of the participants required by the provisions of section 74 paragraph 1 of the Civil Law Code have been fulfilled.

Because a definitive arrangement may be brought about only by a ruling on the same matter, the plaintiff was obliged to submit a proposal for the commencement of proceedings within a stipulated period, in accordance with the provisions of section 76 paragraph 3 of the Civil Law Code, without which the preliminary measure expires upon the elapse of the period (section 77 paragraph 1 item a) of the Civil Law Code).

A ruling shall be made on compensation of costs of the preliminary ruling according to section 145 of the Civil Law Code within the ruling on the same matter.

The court fee for the proposal for issue of the preliminary measure, according to Item no. 3 of the Tariff of charges of Act no. 255/2000 Coll., is of the amount of CZK 500.00. The plaintiff is thus returned the surplus payment of the amount of CZK 500.00 in accordance with the provisions of section 10 paragraph 1 of the cited law.

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 a ***wwwx+y.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 accidental.*

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 individual parties involved, and that the court may not have been concerned with some of these claims at all (e.g. with respect to the issue of interlocutory judgement) and that such claims represent merely a 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 experts in domain names and lawyers.