INTERLOCUTORY JUDGMENT

The Municipal Court in Prague decided on 18 October 2002, in the legal matter of the Complainant **SAF** against the Defendant **Š.**, on the petition for ruling of a precautionary measure, in that it decreed a precautionary measure according to which

> I. The Defendant is obliged to refrain for using the domain name "**x+y+z.cz**".
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> II. The Defendant is obliged to refrain from transferring the domain name "**x+y+z.cz**" to a third person, with the exception of transfer to the Complainant.
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> III. CZ.NIC is obliged to refrain from the realisation of the transfer of the domain name "**x+y+z.cz**" unless it is to the Complainant.
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> IV. With regard to the imposition of the obligation on the Defendant to fulfil all his contractual liabilities towards CZ.NIC concerning the domain name "**x+y+z.cz**", especially to pay properly the charges for the renewal of registration of this domain name for each further year, the precautionary measure is refused.

The Complainant, together with the petition concerning the case itself, through which the obligation is to be imposed on the Defendant to transfer the domain name "**x+y+z.cz**" to the Complainant and refrain from its further use, implemented a petition for the ruling of the above precautionary measure. The Complainant stated that on 24 November 2001 the Defendant registered for himself the Internet domain "**x+y+z.cz**" with the completely speculative intention of transferring this domain subsequently to the Complainant for payment. The Defendant does business in the field of the trade "retail trade in mixed goods".

The Complainant is one of the most important and best-known world airlines and since 18 September 1992 it has had an organisational unit in the Czech Republic with the name of the commercial firm AF and is the owner of trademarks containing the dominant verbal element "x+y+z" registered with the International Office of Industrial Ownership and enjoying protection in accordance with the Madrid Convention on the international registration of manufacturers' or trade marks.

Apart from the fact that the Defendant is committing interference in the rights of the Complainant in the sense of the provisions of Par. 13 section 1 and Par. 14 section 1 of the Law on Trademarks, implemented in accordance with Par. 15 sections 1 and 2 of the Law, he is also, in the opinion of the Complainant, committing activity at variance with the provisions of Par. 12 section 1 of the Commercial Code, behaviour at variance with the good morals of economic competition through fulfilment of the facts of the case of evocation of the danger of confusion according to Par. 47 of the Commercial Code, parasitising on reputation according to Par. 48 of the Commercial Code and in the sense of the general clause on unfair competition of the provisions of Par. 44 of the Commercial Code. According to the Complainant the Defendant has also committed unauthorised intervention in the good reputation of the Complainant in the sense of the provisions of Par. 19b) section 3 of the Civil Code.

The Complainant, with regard to the activity of the Defendant, claims palpable detriment in connection with the impossibility of operating under this domain an effective system of electronic reservations and the sale of air tickets and the occurrence in connection with this of material damage consisting in particular of lost profit and also, due to fear of the speculative transfer of the domain name to a third party, implemented the above-mentioned petition for the ruling of a precautionary measure in the given wording.

The Complainant substantiated the statements contained in the proposal with an extract from the Commercial and Company Register kept by the Court in Bobigny on the registration of the Complainant in this Register on 20 July 1990, with an extract from the Commercial Register kept by the Commercial Court in Prague on the registration in the Register of the commercial representation of AF " commercial representation as of 18 September 1992, an extract from the International Register of Trademarks testifying to the registration of trademarks, an extract from the data of the register acquired through the internet on the business subject of the Defendant with the giving of decisive data and stating the subject of activity as consisting of retail trade in mixed goods, verification of the registration of the domain "**x+y+z.cz"** in favour of the owner Š., and correspondence, the content of which is the proposal of the Defendant concerning transfer of the domain name in return for payment.

According to the provisions of Par. 102 and in the sense of Par. 74 and following of the Commercial Code the Court may issue a precautionary measure if the need for temporary adjustment of the relationship of the participants is urgent and the decisive facts given in the petition are sufficiently convincing. The Complainant refers to his legal rights on several legal grounds, these being that of the owner of a trademark on the grounds of unfair competition and protection against interference with the good reputation of the Complainant.

For the case under consideration the protection dealt with by the provisions of Par. 15 sections 1 and 2 of Law No. 137/1995 Coll. (Collection of Laws), in its current wording, on the right of the owner of a trademark, arising from the provisions of Par. 13 and Par. 14 section 1 of the law, to appeal against any prohibition to use his trademark, is important and sufficient. This right has been suitably proven by the Complainant**.** In the same way it is clear that there was interference in the rights of the Complainant as the owner of a firm registered in the Commercial Register in the sense of the provisions of Par. 12 section 1 of the Commercial Code, doing business in the Czech Republic through an organisational unit in accordance with the provisions of Par. 21 section 3 of the Commercial Code. The very fact that the Complainant has substantiated his proposal with these two lawful reasons means that it is indubitable that through the actions of the Defendant there was violation of the rights of the Complainant and the prerequisites have been fulfilled for the ruling of a precautionary measure enjoining the Defendant to refrain from the use of the domain name concerned and not to transfer it to a third person, this being so with regard to the attested speculative behaviour of the Defendant and the therefore verified fear of the possibility of a further transfer of the domain to a third person.

As far as concerns the declared unfair competition activity in the sense of the provisions of Par. 44 section 1 of the Commercial Code and the interference with the good reputation of the Complainant in the sense of Par. 19b) section 3 of the Civil Code, the Court did not observe and does not consider as confirmed the violation of the Complainant's rights in these respects (it does not consider as demonstrated the standing of the two participants as competitors or any behaviour which can be classified as the behaviour governed by Par. 19b) section 3 of the Civil Code) and it will be up to the Complainant to demonstrate this behaviour in the proceedings on the case itself.

The Court also satisfied the Complainant in point 4 of the petition, by means of which he urges, in accordance with the provisions of Par. 76 section 2 of the Court Rules, the imposing of an obligation on the registrar of domains which, with regard to what is stated above, also appears to have been demonstrated.

With regard to the imposing of an obligation on the Defendant to fulfil all his liabilities arising from the agreement concluded with the CZ.NIC association, the Court considers that this petition is on the one hand outside the framework of the precautionary measure and in addition lacks logic, because the

non-fulfilment of contractual obligations can lead only to the cancellation of the registration in favour of the Defendant, which may be considered one of the desired results of the case in question. In this part of the petition for the ruling of a precautionary measure the Court therefore did not consider this to be in accordance with the principles and conditions set for a precautionary measure and therefore rejected it in this point.

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.