INTERLOCUTORY JUDGMENT

The Municipal Court in Prague, workplace at Slezská 9, Praha 2, decided on 20 November 2002 in the legal matter of the Complainant: NGS, against the Defendant: 1. CZ.NIC and 2. IK, on the petition for the ruling of a precautionary measure, to decree the following precautionary measure:

I. The First Defendant is obliged to refrain from making changes in the registration of the domain "**x+y+z.cz**" with the exception of its transfer from the Second Defendant to the Complainant.

II. The Second Defendant is forbidden to utilise the domain "**x+y+z.cz**".

III. The Complainant is enjoined to submit a petition on this matter within a period of 1 month from the delivery of this ruling.

The Complainant urged the ruling of the precautionary measure concerned on the grounds that it is one of the largest non-profit educational institutions in the world, publishing a periodical since 1888 which has been distributed to the Czech Republic since 1927, and which since 6 December 1994 has been the owner of a combined trademark with Reg. No. 123456 in the wording "**x+y+z**". This designation is also protected according to Par. 8 and following of the Commercial Code as part of the name of the commercial firm of the Complainant.

On 29 October 2000 the Defendant had an Internet domain registered in the wording "**x+y+z.cz**" through the First Defendant, which is a special-interest association of legal entities operating and managing internet domains of the highest level "cz". The registered Internet domain can be confused with the trademark of the Complainant and his world-famous commercial firm. According to the Complainant the action of the Defendant demonstrates the traits of the facts of the case of unfair competition in accordance with the provisions of Par. 44 and following of the Commercial Code and makes it impossible for those interested in information about the Complainant to acquire this through the Internet. The Complainant further fears speculation in the possible transfer of the domain to another person.

The Court can, in accordance with the provisions of Par. 74 section 1 of the Court Rules, issue a precautionary measure for the interim regulation of the relations of the participants if the conditions of this provision are fulfilled and the declared facts suitably attested.

The Complainant proved ownership of the combined trademark "**x+y+z**" by means of an extract from the Register of Trademarks kept by the Office of Industrial Ownership of the Czech Republic, showing the trademark under the number 123456, with right to priority as of 6 December 1994; by a declaration of the legal existence and authority of the Complainant, written up by a Notary, attesting to the founding of the Complainant's company in 1888; by an extract from the Domain Register verifying the registration of the domain "**x+y+z.cz**" from 29 November 2000 to the Defendant and with the title pages of the Complainant's periodical with the identical name. From the above documents there emerges unequivocally the violation of the rights of the Complainant relating to the trademark and the protections emerge from this which are stipulated in the provisions of Par. 13 and following of Law No. 137/1995 Coll. (Collection of Laws) in its current wording. The international protection of this mark is given by the Paris Convention on the protection of industrial ownership and the Madrid Treaty on the international registration of trademarks.

As far as concerns the protection implemented by the Complainant with reference to the provisions of

Par. 8 and following of the Commercial Code, it was not proved by the Complainant that the Complainant is an entity doing business in the Czech Republic in the manner prescribed in the provisions of Par. 21 section 3 of the Commercial Code and therefore registered in the Commercial Register as is stipulated in section 4 of the provision quoted. Also dubious and unproven is the question of the protection of the Complainant on the ground of unfair competition, this being due to the fact that the Complainant did not substantiate or even declare the business activities of Defendant No. 2.

With regard to the legitimacy of the petition for the existence of the ownership of the Complainant with regard to the trademark "**x+y+z**" the petition for the ruling of a precautionary measure has been agreed to both against Defendant No. 2 as the violator of these rights of the Complainant, and against Defendant No. 1, this being for the purpose of preservation of the status quo and the exclusion of possible changes in the circle of participants.

According to the provisions of Par. 76 section 3 of the Court Rules the Complainant was enjoined to submit within the stipulated time-limit a petition for the start of proceedings in the case itself, in the case of the failure to implement which the precautionary measure will be cancelled in accordance with Par. 77 section 1 letter a) of the Court Rules.

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*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.