PREVENTIVE MEASURE

The Municipal Court in Prague decided on 22 July 2003 in the legal matter of the Plaintiff E. against the Defendants: 1) VP and 2) CZ.NIC on the petition for the establishment of a preventive measure within the framework of the suit on the prohibition of unfair competition as follows:

The Court orders the following preventive measure:

1. The First Defendant is obliged to refrain from using the domain name "x+y+z.cz".
2. The Second Defendant is obliged to restrict the transfer of the domain name "x+y+z.cz" to any other person apart from the Plaintiff.
3. The part of the petition for the establishment of a preventive measure through which the Second Defendant would be imposed with the obligation to render impossible the use of the domain name "x+y+z.cz" by any other person than the Plaintiff himself, including any manipulation with the data situated in the databases relating to the registration of these domain names, is refused.

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The Plaintiff stated that within the framework of his business activity he issues the periodical X+Y+Z and has had the trademark "X+Y+Z" registered by the Office of Industrial Ownership of the Czech Republic since 1994. The Plaintiff has been publishing the periodical concerned since the year 2000 and with the development of the Internet he wished to utilise this medium as communicative and informative. The First Defendant acquired the domain in question by its transfer from another person after the legal court decision enjoining this person to transfer the domain to the Plaintiff and he thus participates in speculative action utilising the name of a domain identical to that of the Plaintiff's periodical and his trademark. Because the Second Defendant, in spite of the appeal of the Plaintiff, did not prevent manipulation with this domain, the Plaintiff is also demanding that the measure in question be implemented against him as the registrar of domain names. The Plaintiff claimed a continuing increase in material damage due to the fact that he cannot utilise the domain concerned and therefore he himself implemented the above petition for the ordering of a preventive measure.

According to the provisions of Par. 102 section 1 of the Civic Court Code the Court may, after the start of proceedings on the actual case, regulate the relationships of the participants if the facts declared are sufficiently verified and the conditions exist for such interim regulation of the participants.

The Plaintiff proved by an extract from the database of trademarks of the Office of Industrial Ownership of the Czech Republic that he is the owner of a combined trademark in the wording "X+Y+Z" with priority right as of 11 November 1993 and by an extract from the database of domains of the registrar, the association CZ.NIC, it was certified that the holder of the domain "x+y+z.cz" is Defendant No. 1). A further document, which is alleged to represent the content of the page www.x+y+z.cz, is not in the Court's opinion evidence of the fact stated by the Plaintiff that this is the content of the page mentioned by the Plaintiff, because the photocopy submitted does not contain any such information.

Nevertheless, from the two documents quoted above the Court considers it to be proven that the Plaintiff is the authorised owner of the trademark that was used by Defendant No. 1) in the domain

registered with Defendant No. 2). The Plaintiff is entitled to the protection that is guaranteed him by the provisions of Par. 6 of Law No. 137/1995 Coll. (Collection of Laws), on trademarks, in its current wording, and may according to Par. 15 of the law quoted demand from the Court the prohibition of the use of this trademark. He may also proceed in the same manner by means of a preventive measure in accordance with the already quoted provision of Par. 102 section 1 of the Civic Court Code and demand a similar prohibition against the unauthorised user. With regard to Defendant No. 1) the Court found the petition to be completely verified and therefore justified and imposed upon this Defendant the obligation stated under Point I section 1 of the statement of this decision.

As far as concerns Defendant No. 2), this is, as is generally known, an association carrying out the registration of domain names and therefore the imposition of the obligation forbidding the transfer of the domain to a third person has its foundation. In the opinion of the Court this also fully exhaust any possibility of unfair handling of the domain concerned in any way. This is also why the Court refused the remaining part of the demands of the Plaintiff, but the basis for this rejection is, in accordance with Par. 75a) section 1 of the Civic Court Rules, the evident impossibility of determining and understanding the remainder of the proposal aimed against Defendant No. 2).

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.