REFUSAL OF PETITION FOR ORDERING A PREVENTIVE MEASURE

The Regional Court in Plzeň ruled as follows on 14 August 2003 in the legal matter of the plaintiffs: A) AVJK with headquarters in the FRG and B) A. with offices in Prague against the defendants: 1) P.L. and 2) CZ.NIC for the elimination of an exceptionable situation - the petition for the issue of a preventive measure:

1. The petition for the issue of a preventive measure, which would enjoin the first defendant to refrain from handling the Internet domain of x+y+z.cz, in particular its paid or unpaid transfer, stoppage or other burdening of this domain, is refused in relation to the first defendant.
2. The petition for the issue of a preventive measure, by which the second defendant would be forbidden to carry out changes in the registration of the owner of the Internet domain x+y+z.cz, is refused in relation to the second defendant.
3. Plaintiffs A) and B) are each obliged to pay to the Czech Republic through the Regional Court in Plzeň the court fee for the issue of a preventive measures at the level of CZK 500, doing so within 3 days of the delivery of this ruling.

Plaintiffs A) and B) opened the proceedings by the lodging of a complaint on 13 August 2003. Through the complaint they are demanding the transfer of the Internet domain x+y+z.cz to the first plaintiff. At the same time they are demanding the issue of a preventive measure through which the first defendant would be forbidden to handle the Internet domain x+y+z.cz and the second defendant would be forbidden to carry out changes in the registration of the owner of this domain.

For the substantiation of the complaint and the proposal for the issue of a preventive measure the plaintiffs stated factually that the plaintiff A) is the owner of an international verbal trademark that is also valid on the territory of the Czech Republic in the wording "XX+Y+Z" registered as of 6 December 1991 for classes 9 and 16 of products and services. Plaintiff A) is also the owner of a total of 25 registered national trademarks, 17 of which contains the word XX+Y+Z. Plaintiff A) is also the owner and operator of a number of Internet domains, 13 of which contain the word XX+Y+Z. Plaintiff B) is the owner of 3 trademarks, none of which contain the word XX+Y+Z, but he is the owner and operator of the Internet domains xx+y+z.cz and xx+y+zonline.cz.

On 30 November 1997 the first defendant submitted a request for the registration of the Internet domain x+y+z.cz, with the intention of using this domain as a virtual space for the presentation and archiving of journalists' products, articles and graphic works. He never, however, realised this intention and did not use the domain. Since June 2001 both plaintiffs have been trying to reach an agreement with defendant No. 1 according to which defendant No. 1 would transfer the domain concerned to the plaintiffs, but the first defendant constantly sabotages the possibility of agreement. By registration of the domain concerned the first defendant infringed and is still infringing the trademark rights of the plaintiffs. At the time of submitting the request for registration the first defendant must have known that the domain he was requesting was interchangeable with the trademarks of the plaintiff. The fact that this domain is not being used may cause consumers to gain the impression that the plaintiffs are having trade difficulties or that their commercial activity has ended. Through this behaviour the first defendant is engaging in unfair competition.

In relation to the second defendant the complaint consists of a single sentence, according to which the second defendant is a special-interest association of legal entities authorised to register Internet domains of the second order within the framework of TLD.cz.

The plaintiffs further substantiate their application for the issue of a preventive measure by the fact that the plaintiffs have urgent legal and economic interest in their series of trademarks not being

splintered. For the whole of the period that the first defendant has owned the domain x+y+z.cz, there has been confusion and deception of consumers and other competitors. In this way the first defendant has caused detriment to the reputation of the plaintiffs and their trademarks and damage to the commercial activities of the plaintiffs. In the opinion of the plaintiffs these facts give sufficient substantiation of urgent legal interest and the urgent need for interim regulation of relations between the parties to the dispute. According to the plaintiffs there is also the real danger here that the possible execution of the ruling in this dispute might be threatened if a preventive measure is not proposed.

The plaintiffs further supplemented the complaint and the petition for the issue of a preventive measure with documentary evidence. From this it was demonstrated for the requirements of the decision on the petition for the issue of the preventive measure that both defendants are existent subjects. The first defendant does business in accordance with the Trade Law and is not recorded in the Commercial Register. The subject of business of the first defendant is the activity of an advertising agency and production of audio-visual works. Also verified from the submitted documents was the declaration of the plaintiffs that they are the owners of the trademarks mentioned above and the number of these. According to the excerpt from the Domain Register the plaintiff B) is the holder of the domain xx+y+z.cz, with date of registration 4 October 1997, and registration in the CZ.NIC system from 20 October 1999, and the domain xx+y+zonline.cz, with registration date 7 June 2001 and registration in the CZ.NIC system since 10 June 2001. The first defendant is the holder of domain x+y+z.cz with the registration date 30 November 1998 and registration in the CZ.NIC system from 21 October 1999.

According to the letters submitted the representative of the plaintiffs communicated with the first defendant, or with his representative, concerning the possible transfer of the domain x+y+z.cz to the plaintiff, from 8 June 2001 to 24 July 2001. From the correspondence it was not ascertained that the first defendant showed any intention of handling, alienating, burdening, pawning, etc. the domain x+y+z.cz.

According to the provisions of Par. 102 section 1 of the Civic Court Rules the court may order a preventive measure if it is necessary after the start of proceedings to regulations the relationship of the participants temporarily or if there is fear, after the start of proceedings, that the execution of the decision in the proceedings last issued might be at risk.

According to the provisions of Par. 75a section 1 of the Civic Court Rules a petition for a preventive measure that does not contain all that is necessary or that is incomprehensible or indefinite will be rejected by the Chairman of the Senate, if it is impossible to continue proceedings because of these shortcomings the provisions of Par. 43 are not applied.

In relation to the first defendant the court rejected the petition for the issue of a preventive measure because the plaintiffs did not, in the opinion of the court, prove the urgency of the need for a temporary regulation or the fear of possible threat to the execution of the ruling. The plaintiffs demanded a ruling by which the first defendant would be forbidden in the interim until the decision on the case to deal with the x+y+z.cz, to alienate it, burden it, pawn it, etc. They did not, however, demonstrate that defendant No. 1 showed any sign of doing anything with the domain, from none of the submitted evidence does it emerge that the defendant intended anything of the sort, was preparing for anything similar or had perhaps already taken some steps in this direction. In the opinion of the court there is clearly no reason here to forbid the defendant the described activity until the first defendant perpetrates it and it is not demonstrated that he intended to do such a thing.

Furthermore, according to the conclusions of the court there is no urgent need here for the temporary regulation of the parties because the situation described in the complaint has existed since 1997, and in the year 2001 the plaintiffs attempted to reach an agreement. If the plaintiffs have endured the exceptionable situation for a period of at least 7 years, and for the first and last time appealed to the

1st defendant for the transfer of the domain on 8 June 2001, in other words over two years ago, then in the opinion of the court of 1st instance there is no reason here for it to be necessary to order a preventive measure as an exceptional intervention in the sphere of the 1st defendant.

In relation to the second defendant the court refused the petition for the issue of a preventive measure according to the provisions of Par. 75a section 1 of the Civic Court Code because the complaint did not contain sufficient factual statements from which it would be clear from whence the plaintiffs deduce the passive legitimacy of the second defendant in this matter. On the second defendant it is only stated in the complaint that the second defendant is a special-interest association of legal entities authorised to register Internet domains. The complaint does not contain any other factual statement and it is not therefore known what relationship the second defendant has to the disputing parties and for what reason the plaintiffs demand that it be forbidden to carry out any changes in the registration of the owner of the Internet domain x+y+z.cz. The plaintiffs did not even substantiate the existence of the second defendant. With the exclusion of procedure according to the provisions of Par. 43 of the Civic Court Code the court had no option other than refusal to issue a preventive measure.

This costs of the proceeding connected with the issue of a preventive measure will be decided by the court in accordance with the provisions of Par. 145 of the Civic Court Code together with the decision on the actual case.

Each of the plaintiffs has been enjoined, in accordance with item 3 of the court charges tariffs, to pay to the Czech Republic, through the Regional Court in Plzeň, the court fee for the lodging of the petition for a preventive measure at the level of CZK 500.

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.