PREVENTIVE MEASURE

The Municipal Court in Prague decided on 8 October 2003 in the legal matter of Plaintiff C. against Defendants No. 1. O. and No. 2. CZ.NIC, on the petition for the issue of a preventive measure, as follows:

1. Defendant No. 1 is obliged to refrain from the use of the Domain name "x+y+z.cz" and all actions aiming at a change in the registration of this domain name, especially its transfer, with the exception of its transfer to the Plaintiff.
2. The proposal for the ruling of a preventive measure, that the Court should impose on Defendant No. 1 the obligation to publish on the pages under the domain name a clear announcement of the wording: "A legal dispute is at present under way about the registration of this domain between the firms of C. and O. Until the conclusion of this dispute all information about the magazine X+Y+Z, which was provided here until the end of the year 2000, is available at the address "x+y+z.c+c+c.cz", is refused.
3. Defendant No. 2 is obliged to refrain from carrying out changes in the registration of the domain name "x+y+z.cz", with the exception of its transfer from Defendant No. 1 to the Plaintiff, until the ruling on the actual case becomes legally effective.

In the lawsuit of 29 September 2003 the Plaintiff demands that the Court should impose on Defendant No. 1 the obligation to refrain from the use of the domain "x+y+z.cz" and to pay the Plaintiff adequate compensation at the level of CZK 150,000 and on Defendant No. 2 the obligation to eliminate the exceptionable situation by cancelling the registration of Defendant No. 1 for the domain name "x+y+z.cz" and immediately afterwards enabling the Plaintiff to register the domain again to himself, for which the Plaintiff is permitted the exclusive period of 15 days. Simultaneously with the complaint the Plaintiff also lodged a proposal for the issuing of a Preventive Measure in the wording stipulated in the decisions of this ruling.

He stated that he is a company dealing with publishing activity, which has issued the magazine X+Y+Z, registered with the Ministry of Culture of the Czech Republic, since May 1991.

Defendant No. 1 is a commercial company dealing with the automated processing of data, the purchase and sale of goods and intermediary activity in the field of trade, production and services.

Defendant No. 2 is a special-interest association of legal entities associating over 20 commercial companies dealing with information technology. The association is the registrar of domains of the 2nd level under the domain of the highest level "cz", of which it is the administrator. It has a monopoly standing in this activity.

Since 24 October 1996 the Plaintiff has had the trademark "X+Y+Z" recorded by the Czech Office for Industrial Ownership in the register of trademarks with right of priority from 7 July 1995, as a verbal trademark intended for the class of periodicals, books, printed matter and publishing activity. The trademark was used by the Plaintiff on the one hand for the publication of the magazine X+Y+Z and on the other hand for the operation of Internet pages under the domain name "x+y+z.cz".

In 1997 the Plaintiff, through Defendant No. 2, registered the domain name "x+y+z.cz". On the Internet pages under this domain name visitors had at their disposal in particular information about the Plaintiff, about the periodical X+Y+Z and information in the nature of advertising and publicity.

In the course of November 2000 the Plaintiff allegedly forgot to pay Defendant No. 2 the regular annual administrative renewal charge of CZK 800 (CZK 840 with VAT). As a result of this the Plaintiff's registration was cancelled 76 days after the alleged first appeal by Defendant No. 2.

On 21 December 2000 the domain name x+y+z.cz was registered, through Defendant No. 2, in favour

of Defendant No. 1, in spite of the fact that communication was taking place between the Plaintiff and Defendant No. 2 in which the Plaintiff was trying to demonstrate the invalidity of the termination of the registration of the domain name concerned.

Since January 2001 Defendant No. 1 has operated under the domain x+y+z.cz pages which merely announce that they are still operated on the server "www.o+o+o.cz", in other words on the server of Defendant No. 1, and he has placed advertising banners here with references both to his own pages and to the pages of third parties.

To the Plaintiff there applies the protection afforded by Part Three of Law No. 137/1995 Coll. (Collection of Laws), in the wording of later amendments on trademarks, especially Par. 15 of the Law. Through his actions Defendant No. 1 is in flagrant defiance of this law and by the fact that has registered and used the domain "x+y+z.cz" he has violated the Plaintiff's exclusive rights arising from this trademark.

Through the fault of Defendant No. 1, the readers of the periodical X+Y+Z who visit the pages under the domain of "x+y+z.cz" can no longer find here the information they would expect, but merely the "empty" advertising page of Defendant No. 1. He is preventing the Plaintiff from placing his presentation on these pages. This may then give customers the impression that the pages are being administered for the Plaintiff. Customers may form the erroneous opinion that the Plaintiff is not capable of creating his own good-quality presentation. The number of such misled customers increases with every day that this illegal situation continues, causing the Plaintiff considerable damage, both financial and especially to his good reputation, and with regard to the fact that this is a complicated problem, which presumes that the Court proceedings will in no way be brief, the Plaintiff has proposed the ordering of a preventive measure through which such obligations will be imposed on both the defendants as will prevent the intensification of the unfavourable situation described.

The Plaintiff substantiated his factual statements with the extracts from the Commercial Register of the Plaintiff and of Defendant No. 1, with the extract from the Register of Special-interest Associations of Legal Entities on the registration of Defendant No. 2, with the certificate of registration of the trademark X+Y+Z, printouts of the Internet pages, a printout of the Agreement on the Registration of the Domain Name, the extract from the Register of Domains and correspondence between the Plaintiff and Defendants No. 1 and No. 2.

According to the provisions of Par. 102 section 1 of the Civic Court Code the Court may order a preventive measure if it is necessary after the start of proceedings to regulate the relations of the participants temporarily.

The institution of a preventive measure is not intended merely to regulate the factual relations of the participants, but always to regulate the legal relations, even if only in a preliminary manner.

The Court reached the conclusion that it is necessary to have temporary regulation of the relations of the participants in proceedings and complied with the petition of the Plaintiff for the issue of the preventive measures stated in points I and III of the statement of the ruling. The Court considers it to be proven that the Plaintiff is the owner of the verbal trademark X+Y+Z recorded by the Office of Industrial Ownership. Also that Defendant No. 1 has been since December 2000 the owner of the domain "x+y+z.cz" on the basis of an agreement on the registration of a domain name concluded with Defendant No. 2 as the administrator of the supreme-level domain of "cz", for in the extract from the Register of Domains he is stated as the owner of the domain "x+y+z.cz" with registration from 8 December 2000 and registration in the CZ.NIC system from 21 December 2000. Defendant No. 1 uses the domain concerned for his presentation on the Internet pages at the address http://www.x+y+z.cz/.

Through the complaint of 29 September 2003 the Plaintiff demands that on Defendant No. 1 there be imposed the obligation to refrain from the use of the domain "x+y+z.cz" and to pay the Plaintiff adequate compensation at the level of CZK 150,000 and that on Defendant No. 2 be imposed the

obligation to rectify the exceptionable situation by cancelling the registration of Defendant No. 1 for the domain name x+y+z.cz and immediately after this enabling the Plaintiff to register the domain for himself once again, for which the Plaintiff will be given an exclusive time limit of 15 days. The Court is of the opinion, as stated above, that until the decision on the actual case it is necessary for temporary regulations of the relations between the Plaintiff and Defendants No. 1 and No. 2, this being due to the fear of a threat to the execution of the ruling on the actual case. The Court therefore decided to issue the preventive measure stated in points I and III of the statement of the ruling.

As far as concerns the petition of the Plaintiff for the ordering of a preventive measure through which the Court would impose on Defendant No. 1 the obligation to publish on the pages under the domain name "x+y+z.cz" a clear announcement with the wording "A legal dispute is at present under way about the registration of this domain between the firms of C. and O. Until the conclusion of this dispute all information about the magazine X+Y+Z, which was provided here until the end of the year 2000, is available at the address "x+y+z.c+c+c.cz", the Court reached the conclusion that the conditions for ordering this have not been met. A legal dispute is not under way, as the Plaintiff states, between the Plaintiff and Defendant No. 1 on the registration of the domain "x+y+z.cz", but a dispute about the use of the domain concerned by Defendant No. 1. The Court is further of the opinion that this proposed preventive measure is not a proposal for the temporary regulation of the relations between the Plaintiff and Defendant No. 1. In addition the wording of the statement is indefinite because in it is stated, instead of the wording "a dispute is at present under way about the registration of the domain "x+y+z.cz"", the wording "A legal dispute is at present under way about the registration of this domain". The Court therefore refused the order of the preventive measure stated in point II of the statement of the ruling.

Only the first letter of their surnames or commercial firms designates the participants in the proceedings, with the exception of the association of CZ.NIC. 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.