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Press and Information

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Judgment of the Court of First Instance in Case T-191/07

Anheuser-Busch, Inc. v OHIM

THE COURT OF FIRST INSTANCE UPHOLDS OHIM'S DECISION NOT TO REGISTER THE WORD 'BUDWEISER' AS A COMMUNITY TRADE MARK, INTER ALIA FOR BEER, FOR THE AMERICAN BREWER, ANHEUSER-BUSCH

The right commercially to use the word 'Budweiser' for beer is already held in Germany and Austria by the Czech brewery, Budějovický Budvar.

In 1996, the American brewery Anheuser-Busch applied to the Office for Harmonisation in the Internal Market (OHIM) for registration of the word sign 'BUDWEISER' as a Community trade mark for the following goods: 'Beer, ale, porter, malted alcoholic and non-alcoholic beverages'.

The Czech brewery Budějovický Budvar brought opposition proceedings against such registration in respect of the all goods applied for. In support of its opposition, Budějovický Budvar relied on earlier international trade marks and appellations of origin including the word 'Budweiser', registered for beer.

OHIM rejected Anheuser-Busch's application for a Community trade mark on the ground that the trade mark applied for was identical to the earlier international word mark BUDWEISER, protected in particular in Germany and Austria. OHIM found that the goods indicated in the American brewery's application were essentially identical to the goods 'beer of any kind' covered by the earlier trade mark. OHIM also upheld the Czech brewery's opposition for malted non-alcoholic beverages, in view of the identity of the marks and the obvious similarities of the goods concerned.

Anheuser-Busch brought an action before the Court of First Instance against the OHIM decision.

The Court of First Instance finds, first, that Anheuser-Busch was in a position to put forward its observations on the validity of the earlier trade mark during the proceedings before OHIM and that, accordingly, its right to be heard was not infringed. It notes in that regard that Budějovický Budvar duly proved the validity of that trade mark during the proceedings before OHIM.

In addition, the Court of First Instance rejects Anheuser-Busch's argument that OHIM should not have taken account of documents furnished late by Budějovický Budvar in support of its

opposition. OHIM has a wide discretion to decide whether or not to take such documents into consideration.

Next, the Court of First Instance points out that Budějovický Budvar submitted advertisements and invoices bearing the earlier trade mark, addressed to customers in Germany and Austria, with a view to marketing the beer during the five years preceding the publication of Anheuser-Busch's application for a Community trade mark. The Court of First Instance states that those advertisements and invoices constitute proof of genuine use by the Czech brewery of the earlier trade mark. Accordingly, Budějovický Budvar was entitled to rely on that trade mark for the purpose of opposing registration, inter alia for beer, of the trade mark applied for by Anheuser-Busch.

Lastly, in respect of malted non-alcoholic beverages, the Court of First Instance states that, as those beverages are similar to the goods 'beer of any kind' covered by the earlier trade mark, Anheuser-Busch's application for registration must also be rejected in their regard. In that context, the Court of First Instance points out that 'beer of any kind' includes non-alcoholic beer, which is, by definition, a malted non-alcoholic beverage.

Such similarity gives rise to a likelihood of confusion on the part of German and Austrian consumers, since they may believe that malted non-alcoholic beverages sold under the trade mark BUDWEISER come from the same source as beer sold under the trade mark BUDWEISER.

For all these reasons, **the Court dismisses Anheuser-Busch's action in its entirety.**

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: ES CS DE EN FR HU NL PL SK

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-191/07>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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