



Press and Information

General Court of the European Union

PRESS RELEASE No 6/13

Luxembourg, 22 January 2013

Judgment in Joined Cases T-225/06 RENV, T-255/06 RENV, T-257/06 RENV and T-309/08 RENV
Budějovický Budvar, národní podnik v OHIM

The General Court dismisses the actions brought by Budějovický Budvar against the registration of the Community trade mark 'BUD' for beer applied for by Anheuser-Busch

That trade mark can be registered because of the insignificant use in France and Austria of the appellation of origin 'bud'

The Community Trade Mark Regulation¹ provides that the proprietor of a sign used in the course of trade of more than mere local significance can oppose the registration of a Community trade mark.

From 1996 to 2000 the American brewery Anheuser-Busch applied to the Community trade mark office (OHIM) for the registration of the word and figurative signs BUD as Community trade marks for various kinds of goods, including beer.

The Czech brewery Budějovický Budvar filed notices of opposition against the registration of the Community trade marks, in respect of all the goods referred to. In support of its oppositions, the Czech firm relied on the existence of the appellation of origin 'bud', as protected in France, Italy and Portugal under the Lisbon Agreement² and in Austria under bilateral treaties concluded between Austria and the former Czechoslovak Socialist Republic³.

OHIM dismissed Budějovický Budvar's oppositions in their entirety, on the ground in particular that the evidence of the use of the appellation of origin 'bud' in Austria, France, Italy and Portugal produced by the Czech firm was insufficient.

Budějovický Budvar brought actions before the General Court, which, in an earlier judgment, annulled OHIM's decisions rejecting the Czech brewery's oppositions⁴. Anheuser-Busch appealed against the General Court's judgment to the Court of Justice, which set it aside in part⁵. The Court of Justice held in particular that a geographical indication protected in a Member State could prevent registration of a Community trade mark only if it was actually used in a sufficiently significant manner in the course of trade in a substantial part of the territory of that State. As the state of the proceedings did not permit judgment to be given by the Court of Justice, it referred the cases back to the General Court for judgment. The General Court thus had to examine whether, in the light of the judgment on appeal delivered by the Court of Justice, the use by Budějovický Budvar of the appellation of origin 'bud' enabled it to oppose the registration applied for by Anheuser-Busch.

¹ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), as amended (replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1)).

² Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of 31 October 1958, revised at Stockholm on 14 July 1967, and amended on 28 September 1979 (*United Nations Treaty Series*, vol. 828, No 13172, p. 205).

³ The Treaty on the protection of indications of source, appellations of origin and other designations referring to the source of agricultural and industrial products signed on 11 June 1976 between the Republic of Austria and the Czechoslovak Socialist Republic, and the bilateral agreement on the application of that treaty.

⁴ Joined Cases [T-225/06](#), T-255/06, T-257/06 and T-309/06 *Budějovický Budvar v OHIM*; see also Press Release No. [95/08](#).

⁵ Case [C-96/09 P](#) *Anheuser-Busch v Budějovický Budvar*; see also Press Release No [25/11](#).

By its judgment of today, the General Court finds, first, that in Case T-309/06 RENV Budějovický Budvar did not produce before OHIM any item of evidence capable of showing the use – before the date of filing of Anheuser-Busch’s application for a Community trade mark, which was 1 July 1996 – of an earlier sign in the course of trade of more than mere local significance. The Court therefore dismisses the application in this case.

Next, in the other cases, the General Court observes that the Czech brewery produced before OHIM invoices to show actual use of the appellation ‘bud’ in France. The Court finds that some of those invoices must be discarded from the analysis, as they are subsequent to the date of filing of the application for registration of the Community trade mark concerned. The Court also finds that the other invoices produced relate to a very limited volume of products and that the relevant deliveries were limited to three towns at most in French territory, Thiais, Lille and Strasbourg. In those circumstances, the Court holds that **the condition of use in the course of trade of a sign of more than mere local significance is not satisfied as regards French territory.**

Similarly, the Court observes that the documents produced by Budějovický Budvar to show actual use of the appellation ‘bud’ in Austria attest to sales that are very low in terms both of volume and turnover. Furthermore, while the Czech brewery sold beer under that name in several towns in Austria, sales outside Vienna represent negligible volumes. The Court concludes that **the condition of use in the course of trade of a sign of more than mere local significance is not satisfied as regards Austrian territory either.**

Under those circumstances, the Court **dismisses the actions brought by Budějovický Budvar in their entirety.**

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

Unofficial document for media use, not binding on the General Court.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery

Press contact: Christopher Fretwell ☎ (+352) 4303 3355