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TRIBUNAL DE PRIMERA INSTANCIA DE LAS COMUNIDADES EUROPEAS  
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SÚD PRVÉHO STUPŇA EURÓPSKYCH SPOLEČENSTEV  
SODIŠČE PRVE STOPNJE EVROPSKIH SKUPNOSTI  
EUROOPAN YHTEISÖJEN ENSIMMÄISEN OIKEUSASTEEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT

## Press and Information

### PRESS RELEASE No° 40/07

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Judgments of the Court of First Instance in Joined Cases T-53/04 to T-56/04, T-58/04 and T-59/04, in Joined Cases T-57/04 and T-71/04 and in Joined Cases T-60/04 to T-64/04

*Budějovický Budvar, národní podnik v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*

*Anheuser-Busch, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*

### **THE COURT OF FIRST INSTANCE DISMISSES BUDĚJOVICKÝ BUDVAR'S ACTIONS IN PROCEEDINGS BETWEEN IT AND ANHEUSER-BUSCH CONCERNING THE REGISTRATION OF COMMUNITY WORD MARKS 'BUDWEISER' AND 'BUD'**

*Budějovický Budvar has not demonstrated that the appellations of origin 'Budweiser' and 'Bud', registered under the Lisbon Agreement,<sup>1</sup> with effect inter alia in France, allowed it to oppose Community trade mark applications filed by Anheuser-Busch for goods other than beer*

Between 1996 and 1998, the American company Anheuser-Busch applied to the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) for registration of the word marks 'BUDWEISER' and 'BUD' and a figurative sign containing the term 'BUDWEISER' as Community trade marks, for various products including stationery, articles for cleaning purposes, clothing, pastry and confectionery. The trade mark application for the figurative sign containing the term 'BUDWEISER' also covered the following goods in Class 32: 'beer, ale, porter, malted alcoholic and non-alcoholic beverages'.<sup>2</sup>

The Czech company Budějovický Budvar brought opposition proceedings against Community trade mark registration in respect of all of the goods sought. In support of its oppositions, Budějovický Budvar relied, inter alia, on earlier appellations of origin,<sup>3</sup> registered for 'beer' under the Lisbon Agreement, and an international word mark BUDWEISER, registered for 'beer of any kind'.

<sup>1</sup> Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, adopted on 31 October 1958, revised at Stockholm on 14 July 1967 and amended on 28 September 1979.

<sup>2</sup> Class for the purposes of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.

<sup>3</sup> Those appellations of origin are: BUDWEISER BIER, BUDWEISER BIER – BUDVAR, BUDWEISER BUDVAR and BUD.

The contracting parties to the Lisbon Agreement undertake to protect on their territories, the appellations of origin of products of the other contracting parties, recognised and protected as such in the country of origin and registered at the International Bureau of the World Intellectual Property Organisation. The Czech Republic and the French Republic are contracting parties to the Lisbon Agreement.

In France, under Article L. 641-2 of the Code rural (Rural Code), as applicable at the material time, a geographical name which constitutes an appellation of origin may not be used for any similar product or for any other product or service if that use is likely to misappropriate or weaken the reputation of the appellation of origin.

OHIM rejected the oppositions brought by Budějovický Budvar on the basis of the appellations of origin in question in respect of the Community trade mark applications for goods other than beer. Budějovický Budvar brought actions against the decisions rejecting those oppositions before the Court of First Instance of the European Communities.

OHIM did, however, accept the opposition brought by Budějovický Budvar on the basis of the international word mark BUDWEISER against registration of the figurative sign containing the term BUDWEISER in respect of 'beer, ale, porter, malted alcoholic and non-alcoholic beverages'. Anheuser-Busch brought an action before the Court of First Instance against that decision (Case T-71/04).

In its judgment today, the Court finds that the appellations of origin relied on by Budějovický Budvar are protected under the Lisbon Agreement only for beer and similar products. The Court notes, however, that French law allows for more extensive protection when the goods in question are dissimilar. In order to benefit from the more extensive protection, Budějovický Budvar should have proven that Anheuser-Busch's use of the disputed signs is likely to misappropriate or weaken the reputation in France of the appellations of origin in question. The Court concludes that Budějovický Budvar has not succeeded in proving the existence of the reputation of those appellations of origin in France. The Court also finds that Budvar has not demonstrated how the reputation of the appellations of origin, assuming it does exist in France, would be likely to be misappropriated or weakened if Anheuser-Busch were allowed to use the signs in question for the specific goods sought. The Court accordingly upholds the decisions of OHIM.

With regard to Case T-71/04, Anheuser-Busch informed the Court on 8 May 2007 that it had withdrawn its application for registration of the figurative sign containing the term BUDWEISER as a Community trade mark for goods in Class 32. The Court finds that the action in that case has become devoid of purpose and that there is no longer any need to adjudicate in the case.

**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: BG ES CS DE EL EN FR IT HU NL PL PT RO 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-53/04>*

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

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