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Press and Information

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Judgment of the Court of First Instance in Joined Cases T-225/06, T-255/06, T-257/06 and T-309/06

Budějovický Budvar v OHIM

THE COURT OF FIRST INSTANCE ANNULS OHIM'S DECISIONS ON THE REGISTRATION AS A COMMUNITY TRADE MARK OF THE SIGN 'BUD' FOR BEER ETC

OHIM made several errors by rejecting the opposition brought by Budějovický Budvar against Anheuser-Busch's applications for registration

Between 1996 and 2000 the American brewing company Anheuser-Busch made applications to the Office for Harmonisation in the Internal Market (OHIM) for the registration as Community trade marks of the word sign BUD and a figurative sign containing the word 'bud' for a wide range of goods and services, including beer.

The Czech brewing company Budějovický Budvar filed notices of opposition against registration of the Community trade marks, in respect of all of the goods covered by the application. In support of its opposition, the Czech company relied, inter alia, on the appellation of origin 'bud' registered previously for beer under the Lisbon Agreement¹ and protected as such in France, and the appellation 'bud' protected under a treaty entered into by Austria and the former Czechoslovak Socialist Republic².

OHIM rejected Budějovický Budvar's opposition in its entirety on the ground that the sign BUD could not be deemed to be an appellation of origin, that the Czech company had not proved genuine use in trade of the appellation of origin 'bud' and that that appellation did not entitle Budějovický Budvar to prohibit use of the word 'bud' as a trade mark, in Austria or in France. In particular, OHIM considered that European consumers could not perceive the word 'bud' to be an abbreviation of the name of the Czech city České Budějovice, the German name of which is 'Budweis'.

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

² 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 by Austria and the Czechoslovak Socialist Republic, and subsequently incorporated into the legal order of the Czech Republic.

Budějovický Budvar brought actions before the Court of First Instance against the decisions rejecting its opposition.

The Court of First Instance observes, firstly, that OHIM must take account of earlier rights which are protected in the Member States, and **cannot call into question how they are classified**. Consequently, in so far as the protection granted in Austria and in France to the appellation ‘bud’ is valid under the national law of those States, OHIM is obliged to take account of the effects of that protection.

Next, the Court of First Instance holds that, by having required Budějovický Budvar to prove a ‘genuine’ use of the appellations ‘bud’ and to do so on each of the territories where those appellations were protected, OHIM made an error of law. OHIM ought merely to have determined whether the signs concerned were used **in the context of a commercial activity with a view to economic advantage, and not as a private matter**, whatever the territory concerned by that use.

Further, the Court of First Instance considers that the Czech company successfully proved that the appellations concerned are used in the course of trade. As regards OHIM’s assertion that Budějovický Budvar uses the sign BUD as a trade mark, the Court of First Instance observes that there is nothing to suggest that the expression ‘bud’, displayed on the goods concerned, refers to the commercial origin rather than to the geographical origin of the product.

Lastly, the Court of First Instance holds that OHIM made an error by not taking into account all the relevant elements of fact and law to determine whether Austrian and French law gave Budějovický Budvar the right to prohibit use of a subsequent trade mark.

On all of those grounds, **the Court of First Instance annuls OHIM’s decisions**.

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.

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Languages available: ES CS DE EN EL FR HU IT PL 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-225/06>

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

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