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TRIBUNAL DE PRIMEIRA INSTÂNCIA DAS COMUNIDADES EUROPEIAS  
SÚD PRVÉHO STUPŇA EURÓPSKYCH SPOLEČENSTEV  
SODIŠČE PRVE STOPNJE EVROPSKIH SKUPNOSTI  
EUROOPAN YHTEISÖJEN ENSIMMÄISEN OIKEUSASTEEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT

## Press and Information

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Judgment of the Court of First Instance in Case T-350/04

*Bitburger Brauerei Th. Simon GmbH v OHIM*

### **NEITHER THE WORD TRADE MARK “BUD”, NOR TWO FIGURATIVE TRADE MARKS APPLIED FOR BY ANHEUSER-BUSCH ARE SIMILAR TO THE EARLIER GERMAN TRADE MARKS “BIT” AND “BITTE EIN BIT!”**

*Despite a slight similarity in visual and aural terms, considered as a whole, the trade marks applied for differ from the earlier German marks*

The German company, Bitburger Brauerei, has asked the Court of First Instance to annul three decisions of the Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) upholding the rejection of oppositions which Bitburger Brauerei had lodged against three applications for Community trade marks made by the American company, Anheuser-Busch. The applications were for registration of a word trade mark “BUD” and for registration of the figurative trade marks below:



Bitburger Brauerei based its oppositions on the existence of the word trade mark “BIT” and three earlier figurative trade marks “BIT” and “Bitte ein Bit” registered in Germany.

The Board of Appeal of OHIM took the view that there was no likelihood of confusion between the trade marks applied for and the earlier German marks and dismissed the appeal by Bitburger Brauerei against the rejection of its oppositions by the Opposition Division.

In today's judgment, the Court of First Instance considers the aural, visual and conceptual similarities between the marks at issue. It takes the view that there is only a slight visual similarity between the word marks "BIT" and "BUD". The figurative trade marks applied for by Anheuser Busch are not visually similar to the earlier German marks "BIT". As regards aural similarity, the Court of First Instance finds, inter alia, that the difference in pronunciation of the vowels "i" and "u" enables the average German consumer to distinguish between "BIT" and "BUD". Neither are the marks conceptually similar. Finally the Court of First Instance observes that the "Bitte ein Bit" marks are even more remote from the trade marks applied for than the word mark "BIT".

The Court of First Instance concludes that, considered as a whole, the marks at issue are not similar and there is no likelihood of confusion. Consequently, the Court has dismissed the actions brought by Bitburger Brauerei.

**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: FR CS DE EN HU PL SK SL*

*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-350/04>

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

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