



Court of Justice of the European Union

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Press and Information

Anheuser-Busch Inc. v OHIM and Budějovický Budvar, národní podnik

Judgment in Case C-214/09 P

Anheuser-Busch may not register the word 'Budweiser' as a Community trade mark for beer

Budějovický Budvar, which brought opposition proceedings against that registration, was not obliged to provide, automatically, proof of renewal of its earlier identical mark during the period set for submission of evidence in support of its opposition

In 1996, the American brewer Anheuser-Busch applied to OHIM (the Office for Harmonisation in the Internal Market) for registration of the word 'Budweiser' as a Community trade mark for beer and malted alcoholic and non-alcoholic beverages.

The Czech brewery Budějovický Budvar brought opposition proceedings against such registration relying on its earlier international word mark BUDWEISER, protected in particular in Germany and Austria.

Budějovický Budvar provided evidence showing its ownership of the earlier trade mark but the protection enjoyed by that mark expired during the period which OHIM had set for submission of evidence in support of the opposition. As OHIM had not requested during that period that Budějovický Budvar provide evidence of renewal of its earlier mark, the company submitted that evidence – on its own initiative – but at a later stage in the opposition proceedings.

OHIM rejected Anheuser-Busch's application for a Community trade mark on the ground that the mark applied for was identical to Budějovický Budvar's earlier mark. OHIM also found that the goods listed in Anheuser-Busch's application were essentially identical to the goods 'beer of any kind' covered by the earlier mark. In view of the identity of the marks and the obvious similarities between the goods concerned, OHIM also upheld Budějovický Budvar's opposition in relation to malted non-alcoholic beverages.

Anheuser-Busch brought an action before the General Court against the OHIM decision. In its judgment delivered in March 2009¹, the General Court upheld OHIM's decision, finding that Budějovický Budvar already held the right in Germany and Austria to use the word 'BUDWEISER' commercially for beer. The General Court also held that the Czech brewery had not been obliged to produce, on its own initiative, evidence of renewal of its earlier mark during the period fixed by OHIM for the submission of evidence.

Anheuser-Busch challenged the judgment before the Court of Justice, relying inter alia on the argument that, as the protection afforded to the earlier mark had expired before the end of the period fixed for the submission of evidence, Budějovický Budvar ought to have submitted evidence of the mark's renewal within that period.

The Court of Justice today finds that Budějovický Budvar was not obliged to provide, automatically, within that period evidence of renewal of its earlier mark even though the protection afforded by that mark expired between the date on which notice of opposition had been filed and the end of that period. In fact, Budějovický Budvar would have been obliged to submit such evidence only if OHIM had expressly requested it. OHIM did not, however, make such a request.

¹ Case [T-191/07](#) Anheuser-Busch v OHIM – Budějovický Budvar (BUDWEISER). See also Press Release [25/09](#).

Furthermore, the new rules relating to the production of evidence, which entered into force in 2005 and which now impose an express obligation on an opponent to produce proof of renewal of its earlier trade mark, may not be applied retroactively to the present case.

The Court therefore finds that, as Budějovický Budvar was not required to prove renewal of its trade mark during the period set for the submission of evidence in support of its opposition, it could submit the renewal certificate for the mark after that period had expired.

None of the grounds of appeal being founded, the Court **dismisses Anheuser-Busch's appeal** in its entirety.

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

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