



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-96/09 P  
Anheuser-Busch Inc. v Budějovický Budvar

**The Court sets aside in part the judgment of the General Court concerning registration of the sign 'BUD' as a Community trade mark and refers the matter back to the General Court for a further decision**

*A geographical indication protected in a Member State may prevent registration of a Community trade mark only when it is actually used in a sufficiently significant manner in the course of trade in a substantial part of that State*

The Community Trade Mark Regulation<sup>1</sup> provides that a sign used in the course of trade of more than mere local significance may prevent registration of a Community trade mark.

Between 1996 and 2000 the American brewer Anheuser-Busch applied to the Community Trade Mark Office (OHIM) for registration as a Community trade mark of the word and figurative sign "BUD" for certain kinds of goods, including beer.

The Czech brewer Budějovický Budvar ('Budvar') brought opposition proceedings against registration of the Community trade mark in respect of all of the goods covered by the applications. In support of its oppositions, Budvar relied on the appellation 'bud', protected in France, Italy and Portugal under the Lisbon Agreement<sup>2</sup> and in Austria under bilateral treaties entered into by Austria and the former Czechoslovak Socialist Republic<sup>3</sup>.

OHIM rejected Budvar's oppositions in their entirety on the ground, inter alia, that the evidence provided by Budvar, regarding use of the appellation of origin 'bud' in Austria, France, Italy and Portugal, was insufficient.

Budvar brought actions before the Court of First Instance (now the General Court), which annulled OHIM's decisions rejecting the Czech company's oppositions<sup>4</sup>. The General Court found that OHIM had made errors of law concerning the protection of the earlier rights and the use of the appellation concerned.

Anheuser-Busch brought an appeal before the Court of Justice against the judgment of the General Court.

In its judgment today, the Court of Justice finds that the **General Court's judgment contains three errors of law.**

The Court of Justice states, first of all, that the General Court was incorrect in holding that it was sufficient, for the purpose of establishing that the sign 'bud' was of more than mere local significance, that the sign was protected in a number of States. The Court of Justice notes, in that

<sup>1</sup> Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

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

<sup>3</sup> The Treaty on the protection of indications of source, designations 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 the bilateral agreement on the application of that treaty.

<sup>4</sup> Judgment of 16 December 2008 in Joined Cases [T-225/06](#), [T-255/06](#), [T-257/06](#) and [T-309/06](#), *Budějovický Budvar v OHIM – Anheuser-Busch* (BUD). See also PR [95/08](#).

regard, that, even if the geographical extent of the protection of the sign concerned is more than local, registration of a Community trade mark may be prevented only when the sign is actually used in a sufficiently significant manner in the course of trade in a substantial part of the territory in which it is protected. Use in the course of trade must also be assessed separately for each of the territories in which the sign is protected.

Next, the Court of Justice finds that the General Court also made an error in holding that the Regulation did not require the sign 'bud' to have been used in the territory in which it is protected and that use in a territory other than the territory of protection may be sufficient to prevent registration of a new trade mark, even where there is no use at all in the territory of protection. In that connection, the Court of Justice makes clear that it is only in the territory in which the sign is protected, in its entirety or in a part of it, that the exclusive rights attached to the sign may enter into conflict with a Community trade mark.

Finally, the Court of Justice states that, in holding that it had to be shown only that the sign concerned was used in the course of trade before publication of the trade mark application and not, at the latest, as at the date of the application, the General Court made a further error of law. In view, in particular, of the considerable period of time which may elapse between the filing of an application and its publication, applying the test relating to the date of the application provides a better guarantee that the use claimed for the sign concerned is real and not an exercise whose sole aim has been to prevent registration of a new trade mark. Furthermore, as a general rule, where the sign concerned is used exclusively or to a large extent during the period between filing of the application for a Community trade mark and publication of the application, that will not be sufficient to establish that the use of the sign in the course of trade has been such as to prove that the sign is of sufficient significance.

The Court of Justice, while rejecting the other grounds of appeal raised by Anheuser-Busch, **sets aside in part the judgment of the General Court** in so far as the judgment makes the three errors of law thus found. Since the state of the proceedings does not permit final judgment to be given by the Court of Justice, **the latter refers the case back to the General Court to give judgment afresh.**

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NOTE: Community trade marks are valid throughout the European Union and co-exist with national trade marks. Applications for registration of a Community trade mark are sent to OHIM. Actions against its decisions may be brought before the General Court.

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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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