



Press and Information

Court of Justice of the European Union

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Judgment in Case C-482/09

Budějovický Budvar, národní podnik v Anheuser-Busch Inc.

Anheuser-Busch and Budějovický Budvar can both continue to use the Budweiser trade mark in the United Kingdom

United Kingdom consumers are well aware of the difference between Budvar's beers and those of Anheuser-Busch

The Trade Mark Directive¹ provides that a trade mark is not to be registered or is liable to be declared invalid if it is identical with an earlier trade mark, and the goods or services covered by the two trade marks are also identical. However, if the proprietor of the earlier trade mark has acquiesced, for a period of five successive years, in the use of an identical later trade mark while being aware of such use, he is, as a general rule, no longer entitled either to apply for a declaration that the later trade mark is invalid or to oppose its use.

Since the Czech brewer Budvar and the American brewer Anheuser-Busch entered the United Kingdom market, in 1973 and 1974 respectively, they have each marketed their beers using the sign 'Budweiser' or expressions including that sign.

On 11 December 1979 Anheuser-Busch applied to the United Kingdom Trade Marks Registry to register the word 'Budweiser' as a trade mark for the goods 'beer, ale and porter'. While Anheuser-Busch's application was being examined, Budvar also submitted, on 28 June 1989, an application for registration of the word 'Budweiser' as a trade mark.

In February 2000 the United Kingdom courts decided that Anheuser-Busch and Budvar could each have the word 'Budweiser' registered as a trade mark. United Kingdom law expressly allowed concurrent registration of the same or confusingly similar marks in circumstances where there was honest concurrent use. Further to that decision, both companies were entered in the United Kingdom Trade Marks Register, on 19 May 2000, as a proprietor of the Budweiser trade mark.

On 18 May 2005, that is four years and 364 days after Budvar and Anheuser Busch registered the Budweiser trade mark, Anheuser-Busch lodged at the United Kingdom Trade Marks Registry an application for a declaration that Budvar's registration of that mark was invalid. In its application, the American company claimed that the trade mark of which it was the proprietor was earlier than Budvar's trade mark because its application for registration of the word 'Budweiser' (on 11 December 1979) was made earlier than the application of the Czech brewer (on 28 June 1989).

The question referred to the Court of Justice by the Court of Appeal (England & Wales), before which the case was brought on appeal, is whether Anheuser-Busch's application for a declaration of invalidity should be granted although both companies have used the word 'Budweiser' in good faith in the United Kingdom for more than 30 years.

In its judgment today, the Court of Justice clarifies, first, its case-law on the rules applicable to the period of five years (the period of 'limitation in consequence of acquiescence') on the expiry of which the proprietor of the earlier mark loses his right to oppose the use of the later mark. In that regard, the Court holds that, according to the wording of the directive, that period starts to run only

¹ Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1)

after the registration of the later mark in the Member State concerned. Accordingly, mere use of the later mark without any steps to have it registered cannot start that period running.

On the other hand, registration of the earlier mark does not constitute a prerequisite for that period to start running. The directive states that a trade mark can be considered to be earlier without having been registered, as in the case of 'applications for trade marks ... subject to their registration' and trade marks which are 'well known'.

The Court also states that the proprietor of an earlier trade mark cannot be held to have acquiesced in the long and honest use by a third party of an identical later trade mark if he was not in any position to oppose that use. Consequently, the period during which the proprietor of the earlier trade mark was not capable of opposing the use of the later mark cannot be taken into account when calculating the expiry of the limitation period.

Next, the Court states that a later registered trade mark can be declared invalid only if it has or is liable to have an adverse effect on the essential function of the earlier trade mark which is to guarantee to consumers the origin of the goods covered by it.

In that regard, the Court recalls that Anheuser-Busch and Budvar had each marketed their beers in the United Kingdom using the sign 'Budweiser' or a trade mark including that sign for almost 30 years prior to registration thereof and that the two companies were authorised to register jointly and concurrently their Budweiser marks in the United Kingdom. The Court also stresses that while Anheuser-Busch submitted an application for registration of the word 'Budweiser' as a trade mark in the United Kingdom earlier than Budvar, both of those companies have from the beginning used their Budweiser trade marks in good faith.

Further, the Court notes that, according to the referring court, although the names are identical, United Kingdom consumers are well aware of the difference between Budvar's beers and those of Anheuser-Busch, since their tastes, prices and get-ups have always been different. Likewise, it follows from the coexistence of those two trade marks on the United Kingdom market that, even though the trade marks are identical, the beers of Anheuser-Busch and Budvar are clearly identifiable as being produced by different companies.

Accordingly, the Court notes that, in the circumstances of this case, **a long period of honest concurrent use of the two identical trade marks concerned neither has, nor is liable to have, an adverse effect on the essential function of the earlier trade mark of Anheuser-Busch. Consequently, Budvar's registration in the United Kingdom of the later 'Budweiser' trade mark need not be declared invalid.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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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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