

**Action brought on 10 February 2004 by Budějovický Budvar, národní podnik, against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)**

(Case T-59/04)

(2004/C 94/150)

(Language of the case: French)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 10 February 2004 by Budějovický Budvar, národní podnik, established in České Budějovice (Czech Republic), represented by Fabienne Fajgenbaum, lawyer.

Anheuser-Busch, Incorporated, was also a party to the proceedings before the Second Board of Appeal.

The applicant claims that the Court should:

- annul the decision of the defendant's Second Board of Appeal of 3 December 2003;
- reject the application for the registration of BUDWEISER for Classes 35, 38, 41 and 42 filed on 1 April 1996 on behalf of Anheuser-Busch;
- order Anheuser-Busch to pay the costs.

*Pleas in law and main arguments:*

Applicant for Community trade mark:	Anheuser-Busch, Incorporated
Community trade mark sought:	Word mark 'BUDWEISER' — Application No 927533 in respect of goods in Classes 35, 38, 41 and 42
Proprietor of mark or sign cited in the opposition proceedings:	Applicant
Mark or sign cited in opposition:	Appellations of origin 'BUDWEISER BIER', 'BUDWEISER BIER - BUDVAR', 'BUDWEISER BUDVAR'
Decision of the Opposition Division:	Opposition rejected
Decision of the Board of Appeal:	Appeal dismissed

Pleas in law:

Incorrect application of Article 8(4) of Regulation (EC) No 40/94 <sup>(1)</sup>. The applicant, entitled in France to use the above-mentioned appellations of origin, submits that French law enables it to oppose the registration of the mark sought without having to demonstrate that the appellations in question possess a reputation in France and without having to examine whether the use of the mark at issue could have the consequence of misappropriating or weakening the reputation of those appellations.

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

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Anheuser-Busch, Incorporated, was also a party to the proceedings before the Second Board of Appeal.

The applicant claims that the Court should:

- annul the decision of the defendant's Second Board of Appeal of 3 December 2003;
- reject the application for the registration of BUD for Classes 9 and 14 filed on 1 April 1996 on behalf of Anheuser-Busch;
- order Anheuser-Busch to pay the costs.