

Pleas in law and main arguments

By the first plea in his appeal, the applicant submits that the Tribunal committed a breach of procedure adversely affecting his right to a fair hearing in that he was not able to submit his observations regarding the documents on which the Tribunal based its arguments and that certain matters raised by the applicant and documents lodged during the procedure were not taken into consideration. By his second plea, the applicant claims that the Tribunal infringed Community law by distorting the pleas relied on in the action and by incorrectly interpreting the provisions of the Staff Regulations of officials of the European Communities. He also submits that the Tribunal made manifest errors of assessment of the facts.

Action brought on 15 September 2006 — Budějovický Budvar v OHIM — Anheuser-Busch (BUD)

(Case T-255/06)

(2006/C 281/69)

Language in which the application was lodged: French

Parties

Applicant: Budějovický Budvar, národní podnik (České Budějovice, Czech Republic) (represented by: F. Fajgenbaum, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Other party to the proceedings before the Board of Appeal of OHIM: Anheuser-Busch, Incorporated

Form of order sought

- annul the contested decision R 241/2005-2 of 28 June 2006 of the Second Board of Appeal of OHIM;
- reject application No 1 257 849 for registration of the Community trade mark 'BUD' for all of the goods which it designates in Classes 16, 21, 25 and 32;
- send the decision of the Court of First Instance to OHIM;
- order Anheuser-Busch to pay all the costs and expenses.

Pleas in law and main arguments

Applicant for the Community trade mark: Anheuser-Busch, Incorporated

Community trade mark concerned: Figurative mark 'BUD' for goods in Classes 16, 21, 25 and 32 — Application No 1 257 849

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: Protected designation of origin 'BUD' to designate beer

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 62(1) of Regulation No 40/94 ⁽¹⁾ and Article 20 of implementing Regulation No 2868/95 ⁽²⁾ in that the Board of Appeal is not competent to rule on the validity of the designation of origin invoked by the applicant in the context of its opposition. It further submits that the sign 'BUD' constitutes a designation of origin, protected in both France and Austria. The applicant also invokes misapplication of Article 8(4) of Regulation No 40/94 in that, in its view, the designation of origin 'BUD' is indeed a sign used in the course of trade.

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

⁽²⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 15 September 2006 — Budějovický Budvar v OHIM — Anheuser-Busch (word mark 'BUD')

(Case T-257/06)

(2006/C 281/70)

Language in which the application was lodged: French

Parties

Applicant: Budějovický Budvar, národní podnik (České Budějovice, Czech Republic) (represented by: F. Fajgenbaum, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Other party to the proceedings before the Board of Appeal of OHIM: Anheuser-Busch, Incorporated