

## DISPUTE RESOLUTION SERVICE

D00018885

Decision of Independent Expert

*Anheuser-Busch InBev SA*

and

*Surest Ltd.*

1. The Parties:

Lead Complainant: Anheuser-Busch InBev SA  
Brouwerijplein 1  
B-3000 Leuven  
Brussels  
Belgium

Complainant: Anheuser-Busch  
Anheuser-Busch  
One Busch Place  
St. Louis  
MO  
63118  
United States

Respondent: Surest Ltd.  
2nd Floor, Bridge House  
St Clement Street  
Truro  
Cornwall  
TR1 1ER  
United Kingdom

2. The Domain Name:

budlight.co.uk

### 3. Procedural History:

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as they might be of a such a nature as to call in to question my independence in the eyes of one or both of the parties.

10 May 2017 11:09 Dispute received  
18 May 2017 14:04 Complaint validated  
18 May 2017 14:29 Notification of complaint sent to parties  
06 June 2017 15:04 Response received  
06 June 2017 15:04 Notification of response sent to parties  
09 June 2017 02:30 Reply reminder sent  
14 June 2017 11:47 Reply received  
14 June 2017 11:50 Notification of reply sent to parties  
21 June 2017 11:30 Mediator appointed  
21 June 2017 12:48 Mediation started  
13 June 2018 15:03 Mediation failed  
13 June 2018 15:04 Close of mediation documents sent  
25 June 2018 02:30 Complainant full fee reminder sent  
28 June 2018 16:45 No expert decision payment received  
05 July 2018 10:17 Expert decision payment received  
21 August 2018 Further Statement from the Respondent  
17 August 2018 Further Evidence of Reputation from the Complainant  
22 August 2018 Further Statement from the Respondent

### 4. Factual Background

The Complainant and its related group companies own the trade mark BUD LIGHT registered, inter alia in the UK for beer and allied products since 1990. It has owned budlight.com since 1995. BUD LIGHT is a low alcohol beer which was first announced for launch in the UK in February 1999, but was withdrawn from the UK in 2001 until relaunched again in 2017 in the UK.

The Domain Name registered in May 1999 has not been used.

### 5. Parties' Contentions

The Complainant's contentions in the Complaint and Further Evidence of Reputation can be summarised as follows:

The Complainant and its related group companies own the well known trade mark BUD LIGHT registered, inter alia in the UK for beer and allied products since 1990. It has owned budlight.com since 1995. BUD LIGHT is a low alcohol beer available before 2001 and since 2017 in the UK.

The Complainant's BUD LIGHT beer was launched in the US in 1982. Backed by extensive marketing BUD LIGHT was the No 2 beer brand in both the US and worldwide in 1999.

In 1998 Budweiser beer was the leading premium packaged lager with a 19% share and the brand name often referred to by its nickname BUD was a familiar sight in London.

The BUD LIGHT beer would have been well known to British consumers even before it was officially introduced to them in 1999. It was offered by American Airlines in the 1990s and Campaign magazine recorded 'the Bud Light brand had 57% aided awareness before the brand had sold a bottle in the UK and after the [six month trial] Manchester test [in 1998] consumers were hitting 80% aided awareness.' From April 1999, the Complainant rolled out its low calorie beer across the UK with a 4.2 Million GBP advertising campaign. Marketing press announced the launch of BUD LIGHT in the UK in February 1999.

The Domain Name registered in May 1999 resolves to a holding page. It is identical to the Complainant's mark.

The Respondent is not known by the Domain Name. The Complainant has not consented to use of its mark by the Respondent. The Domain Name has not been used.

The Domain Name is an abusive registration due to passive holding of the Domain Name. The Respondent has never actively used the Domain Name since 1999 and the only evidence that the Respondent has submitted to support its apparent intended use of the Domain Name are some undated sketches with no reference to the name of the designer or the date they were created. There is therefore failure to provide convincing evidence of actual or contemplated good faith use of the Domain Name, in particular given BUD LIGHT's distinctiveness and renown worldwide.

The Domain Name will disruptively confuse Internet users and is a blocking registration against a name in which the Complainant has rights.

No provision of the Policy requires that a trade mark owner must challenge a Domain Name registration within any period and failure to take timely action cannot be interpreted as bad faith on the part of the Complainant. Since the relaunch of the BUDLIGHT beer the matter has undoubtedly become more pressing to avoid confusion.

The Respondent's contentions in the Response and its Further Statements can be summarised as follows:

The Respondent is a UK Company established in 1997. The Complainant has failed to prove the Domain Name is an abusive registration. The Complainant did not sell or distribute its Bud Light beer for the majority of the time that the Domain Name has been registered

between 2001 and 2017. The Complainant's failure to raise any issue with the Respondent's registration of the Domain Name in 18 years calls into question the Complainant's rights and motivations in attempting to claim the Domain Name now.

The Respondent was completely unaware of the Complainant's mark in 1999. One project that the Respondent explored in 1998/9 was the creation of an innovative range of small halogen lights inspired by the form of flower buds. The term 'bud light' was coined to capture this new product concept.

The Complainant's product was withdrawn from the UK in 2001 after its launch was a failure. The product must have failed to achieve the distribution and consumer traction required to make it a success in the UK. It is therefore no surprise that the principals in the Respondent's business were unaware of this product in 1999. The Complainant's product cannot have the place in consumer consciousness nor reputation as it does in the USA and other international markets where it is established.

The article referenced in the original Complaint saying the BUD LIGHT brand has 63 percent awareness in the UK is quoting the Complainant's own marketing manager and appears to be talking about 2017 not 1999. Evidence of reputation from the US market has little bearing on the UK market.

Budweiser beer is a separate brand to BUD LIGHT and the Complainant should not attempt to conflate the two.

A small minority of UK individuals regularly travel to the US and a smaller number use American Airlines. The quantity of BUD LIGHT beer sold to American Airlines was small and could have been bought by American citizens already familiar with the brand from the US market.

The only evidence of reputation for BUD LIGHT that precedes the Respondent's registration of the Domain Name is the Manchester trial. Manchester is the UK's 9<sup>th</sup> city with a population in 2001 of about 400K. A test market is short lived and the use of aided awareness is prompted and so questionable. Further, awareness is not itself a good measure of mark reputation.

The Complainant has failed to submit any evidence that the April roll out of BUD LIGHT in the UK took place or to what extent there was national advertising in April 1999.

The Domain Name has never been used to confuse customers of or damage the Complainant.

'Bud' and 'light' are two descriptive words and the Complainant's trade mark registrations only relate to beer and clothing.

After 18 years most documentary evidence has been destroyed or lost in office moves and computer changes, but the Respondent has managed to locate some early concept sketches for its lights in evidence.

The Domain Name was not registered to sell to the Complainant and no such attempt has been made. The Domain Name was registered for a planned project in the consumer electronics field specifically lighting. The founders of the Respondent's business registered a number of domain names for a number of business projects not all of which saw the light of day, the Respondent having chosen other business routes.

The Domain Name was not registered to stop the Complainant using it as the Respondent was unaware of the Complainant and since the Complainant's product was withdrawn for 16 years it cannot be expected to be well known in the UK. The Complainant showed no interest in the Domain Name until the product relaunch in 2017.

If the Domain Name registration was abusive and disruptive the Complainant would have raised their objection a long time ago. The Complainant registered budlightbeer.co.uk in April 2013 why did they not challenge the Domain Name then when they must have noticed it. Failure to take action for 18 years is a reasonable factor to consider and collecting evidence is not a reasonable excuse for such delay. The commercial motivation of the Complainant due to the relaunch of BUD LIGHT does not represent grounds for transfer of the Domain Name under the Policy.

There is no evidence of bad faith on behalf of the Respondent. The Respondent has not offered to sell the Domain Name to the Complainant, has not used budlight.co.uk in e mail addresses and has not threatened to do so and has not made any reference to beer. There is no reference to beer in the Domain Name itself and it is not part of a pattern of registrations.

## 6. Discussions and Findings

### Identical or Similar

The Complainant's BUD LIGHT mark is registered as a trade mark, inter alia, in the UK for, inter alia, beer and has been so registered since 1990.

The suffix .co.uk in the Domain Name does not serve to distinguish it from the Complainant's BUD LIGHT mark as .co.uk has a generic meaning and is a functional part of a domain name, not a part of any trade mark involved in these proceedings.

The Domain Name is therefore identical to a mark in which the Complainant has rights under the Policy.

### Abusive Registration

This leaves the second limb. Is the Domain Name, in the hands of the Respondent, an Abusive Registration? Paragraph 1 of the Policy defines "Abusive Registration" as:-

"a Domain Name which either:

i. was registered or otherwise acquired in a manner, which at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; OR

ii. has been used in a manner, which took unfair advantage of or was unfairly detrimental to the Complainant's Rights."

It is common ground that the Domain Name has not been used leaving a determination to be made under (i) above.

A non-exhaustive list of factors, which may be evidence that the Domain Name is an Abusive Registration is set out in paragraph 5 of the Policy. There being no suggestion that the Respondent has offered to sell the Domain Name, given false contact details, has a pattern of registrations, has used the registration or has a relationship with the Complainant, the only potentially relevant 'factors' in paragraph 5 are to be found in subparagraph 5.1.1 and 5.1.6 which read as follows:

5.1.1 "Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:

5.1.1.1 [intentionally omitted]

5.1.1.2 as a blocking registration against a name or mark in which the Complainant has Rights; or

5.1.1.3 for the purpose of unfairly disrupting the business of the Complainant;" and

"5.1.6 The Domain Name is an exact match .. for the name or mark in which the Complainant has rights, the Complainant's mark has a reputation and the Respondent has no reasonable justification for having registered the Domain Name'.

The Complainant alleges that the Domain Name is a blocking registration which if used would cause confusion and that the Respondent was aware of the Complainant's rights at the time of registration and has passively held the Domain Name for the purpose of unfairly disrupting the business of the Complainant which is bad faith in light of the Complainant's rights.

There is no defence of laches or delay in the .uk dispute resolution policy and so the Complainant is entitled to bring the Complaint at this late stage without penalty per se. The effect of delay in this case is that it appears that both sides have struggled to gather evidence of what happened in 1999 after such a lengthy passage of time.

Whilst it is true that 'bud' and 'light' are two common words in the English language and could theoretically be used to describe lights in the shape of a flower bud, it is less common to see them combined and in the order 'bud light'. The expert agrees with the Complainant that the evidence of drawings submitted by the Respondent is undated and, being hand drawn does not give the impression of any investment or professional or bona fide preparation to use the Domain Name for lighting and since these could have been prepared

at any time up to their submission in evidence do not prove reasonable justification for having registered the Domain Name.

The Expert also agrees with the Respondent that the Complainant has not submitted any evidence that BUD LIGHT beer was launched in the UK in April 1999 prior to the registration of the Domain Name although it must have been launched before December 1999 in the UK when the Respondent concedes there was a relevant advertising campaign. The name BUD LIGHT was famous in the USA for a low alcohol beer in 1999. Even disregarding any spill over awareness of the American product in the UK there is some evidence of use of the name BUD LIGHT for a six month trial in Manchester in 1998 which would have to some extent raised awareness of the Complainant's proposed name in that geographical area. There are also several examples of national marketing press announcing the imminent launch of BUD LIGHT in the UK which date from February 1999 prior to registration of the Domain Name.

The Respondent argues that when the Complainant registered budlightbeer.co.uk in 2013 the Complainant must have been aware of the Domain Name then. The Expert is, therefore, led to question whether by the same reasoning when registering the Domain Name in 1999 the Respondent is more likely than not to have discovered the Complainant's rights, if not due to the Complainant's trade mark registration, due to the Complainant's budlight.com registration made in 1995. .Com being an international registration prized from the beginning by UK businesses.

The Expert is struck by the order of events that have been proved in evidence, and in particular that it was reported in several marketing publications in February 1999 that the Complainant was planning an April launch in the UK of its BUD LIGHT beer. The Domain Name was not registered until May 1999. This is suspicious timing and even disregarding the use of the BUD LIGHT name in Manchester in 1998 and the possibility of a spill over reputation for BUD LIGHT as a significant product in the USA into the UK the Expert believes that given the chronology of events and the fact that the Respondent has not used the Domain Name for lighting in the past 18 years that it is more likely than not that the Respondent was aware of the Complainant's rights when the Domain Name was registered and it has been passively held since that time by the Respondent as a blocking registration to unfairly disrupt the Complainant's business.

Looking at the evidence as a whole, therefore, the Expert on the balance of probabilities does not accept the explanation offered by the Respondent. The Expert is conscious that proceedings under the Policy are of a limited and restricted nature, do not involve oral hearings, discovery or cross examination, and hence are only applicable to clear cut cases, and it is not usually appropriate to decide disputed questions of fact or matters of truth or falsehood. That does not however mean the Panel cannot reach a conclusion as to the veracity of a case that is being advanced where there is no persuasive corroborative evidence. The Panel considers this to be such a case. The Respondent's case is simply not credible in the circumstances.

Accordingly the Expert holds that on consideration of all the evidence the Complainant has shown on the balance of probabilities that the Domain Name was registered or otherwise acquired in a manner, which at the time when the registration or acquisition took place,

