

## TRADE MARKS ACT 1994

**IN THE MATTER OF Application No 1070309 of  
Budejovicky Budvar Narodni Podnik**

**AND IN THE MATTER OF Application  
No 9057 by Anheuser-Busch Incorporated  
for revocation of the registration for non-use**

### DECISION

1. The trade mark shown below was placed on the register on 14 October 1998 in the name of Budejovicky Budvar Narodni Podnik of the Czech Republic (BB).



2. The registration had been applied for much earlier on 4 November 1976. The long delay in achieving registration was due, in part, to an ultimately unsuccessful opposition to the proposed registration by Anheuser-Busch, Inc of the USA (AB). I will say more about this later.

3. The registration is in respect of:-

Beer, ale and porter; and malt beverages included in Class 32; but not including any such goods for supply to, or sale in the United States of America's Embassy and PX stores in the United Kingdom.

4. On 11 June 1996, AB applied for the revocation of the registration on the grounds that:-

“Enquiries which have been carried out have revealed that the trade mark registered under No B1070309 has not been used in the United Kingdom for a consecutive period of five years up to the date three months prior to the date of this application for revocation by any proprietor thereof for the time being, upon or in relation to any of the goods covered by the said registration.”

5. This goes to Section 46(1)(b) of the Trade Marks Act 1994. The relevant statutory provision is re-produced below:-

46.-(1) The registration of a trade mark may be revoked on any of the following grounds-

- (a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;
- (b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

6. The relevant five year period for the purpose of these proceedings is 12 March 1991 - 11 March 1996. It is common ground that the onus is on BB to demonstrate use of the registered mark. This is the inevitable consequence of Section 100 of the Act, which is as follows:-

100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.

7. However, in considering any use put forward by BB it is necessary to bear in mind that Section 46(2) of the Act provides as follows:-

46(2) For the purposes of subsection (1) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

8. BB filed a counterstatement on 2 October 1996 enclosing evidence said to demonstrate use of the registered mark within the relevant period. Both sides subsequently filed further evidence. An index of the evidence filed by the parties is attached as Annex 'A' to this decision. I have read and considered all the evidence. I shall return to particular aspects of the evidence later in my decision. At this stage it is sufficient for me to set out the main evidence upon which BB relies.

#### 9. Use On Packaging

- a) BB shipped a substantial volume of beers to the UK in the relevant five years period, eg turnover in the year to 31 March 1995 amounted to approximately £8.7m (first declaration of Zilka).
- b) All of this beer was shipped and distributed to UK retailers in boxes along the top of which appeared in a form of dot matrix print, the words BUD-BUDVAR-BUDWEISER (Zilka 1).
- c) Approximately 30% of this beer was sold on to the end consumer in boxes of this description, through cash and carry outlets (second declaration of Zilka).

- d) The word BUD does not appear (in the form registered or otherwise) on the bottles used for BB's beer in the relevant period. These bottles carried the mark "Budweiser Budvar."

#### Use On Invoices

- e) Between April 1994 and March 1996, BB issued 1200 invoices for beer to the UK, each of which included the word BUD in a list of marks (BUD...BUDVAR...BUDWEISER...BUDWEISER BUDVAR...BUDWEISER BUDBRAU) repeated in the form of a border around the edge of the invoice (declaration of R. Chrt).

#### Use As Part Of Product Codes

- f) Between October 1993 and the end of the relevant period, BB introduced a computer ordering system for its beers. BBs' four products were identified as BUD33 (330ml bottles), BUD4P (four pack of 330ml bottles), BUD50 (500ml bottles) and BUD11 (eleven gallon keg). Since October 1993, trade customers in the UK have used these codes when placing orders for BBs' beers (Zilka 2). It appears from the only example in evidence of such orders dated in the relevant period (declaration of Wheatley and exhibit NJW10), that the orders also included a description of the product, "Budweiser Budvar".

#### Oral Use By Customers

- g) UK consumers of BB's beers ask for the product as 'BUD', 'BUDWEISER', 'BUDVAR' or as 'Czech BUD'. The last two appear to have been the most popular ways of ordering BBs' beer (declarations of Messrs Martin, Ashmore, Thompson, Jones, Kelly, Considine, Scully and Wheatley).

#### Use On Promotional Beer Mats

- h) Between May 1994 and March 1996, BB sent approximately 75K beer mats to the UK. These mats showed on one side a girl in the folk costume of the South Bohemian region with a ribbon motif containing the words "Bud.....Budweis .....Budweiser". The word BUD appearing on this mat was in the same form as in the registered mark. These beer mats were used for advertising BBs' beers (declarations of R. Chrt & Kocvera). BBs' UK distributor estimates that 70K of these mats were distributed in the UK by March 1996 (Zilka 2).

10. AB's evidence relates to non-use proceedings and the significance of BUD in other jurisdictions. I consider this to be of little, if any, relevance. AB's evidence also includes the results of AB's own investigations into the use of BUD on BB's packaging. These investigations took place early in 1998. They are not as effective as BB's own evidence at shedding light backwards on the position in the relevant period. The investigator, a Mr Godfrey, did not visit any branches of Majestic Wine of any cash and carry outlets where BB claims its beers are only sold in boxes carrying the name BUD. Despite this Mr Godfrey did find one off-licence stocking BB's beers in boxes carrying the marking BUD..BUDVAR...BUDWEISER. There is, therefore, relatively little conflict of relevant

evidence.

11. The matter came to be heard on 18 January 2001 when Mr M Edenborough appeared as counsel for AB. Mr J Mellor appeared as counsel for BB.

12. Mr Edenborough's principal submissions were as follows:-

a) Apart from the use on beer mats, the use shown by BB was not of the mark as registered: it was use of BUD in forms which altered the distinctive character of the mark and do not, therefore, count as use of the registered mark under Section 46(2).

b) In the alternative, the use shown is secondary use and not genuine use of the mark in relation to beers, there being no individual product physically marked "Bud."

c) The use shown in relation to beer mats was similarly only secondary use; the extent of such use was not clearly established and was, in any event, *de minimis* in terms of its likely impact in the market. Further the use of "Bud" on beer mats was as part of an advertising "strap line" and not as a trade mark. As a consequence of these points, the use shown on beer mats was not genuine use for the purposes of Section 46(1)(b).

13. The first point to be decided is whether the use shown of BUD in block capitals counts as use of the registered mark "*.. in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered.*" In this connection, Mr Edenborough accepted that the use of BUD in the form of dot matrix print in which it appears on BB's boxes of bottled beer is no different to the other uses shown of BUD in block capital letters.

14. It is common ground that in assessing the significance of the absence of the graphical form in which BUD is registered, I should consider how those in the market place would view the difference between the registered mark and the word BUD *per se*. Mr Edenborough sought to rely upon the evidence of some of BB's declarants who are publicans or employees of off-licences (ie Messrs Martin, Ashmore, Thompson, Jones, Kelly, Considine and Scully). Mr Edenborough put his case like this in his skeleton argument:-

"31. The evidence of Mr Martin represents a typical example. He is a manager of Unwins wine merchants, which sells both AB's and BB's beer. In Section 3 of this Statutory Declaration, he says "When a customer requests "Bud", I and my staff explain the difference, between the Anheuser-Busch beer and the Budvar beer. Although it must be said that on the majority of occasions the customer is already aware of the two products, and then reference is made to either American Budweiser or Czech Bud or Budvar".

32. Similarly, Mr Considine, the publican at the Old Queen's Head, Islington, which only sells BB's beer, says at s3 of his Statutory Declaration "However, if the term "Bud" is used the difference between the Anheuser-Busch and Budvar is explained."

33. It is submitted that this evidence of oral use shows the following namely:-

(a) if a prospective customer already knows about AB's and BB's beer,

then the request would not be phrased simply as “bud”, because that would be ambiguous and would entail the risk of receiving the wrong brand of beer;

- (b) if however, a prospective customer merely requests a beer using the word “bud”, then on all occasions the manager or the publican will seek further clarification from the prospective customer in order to ascertain whether the customer is seeking AB’s or BB’s beer.

34. Thus, it is clear that the use of the term “bud” simpliciter in oral use is not distinctive of BB’s beer, rather the use of the term “bud” per se is ambiguous (ie it does not function as an indication of source). Furthermore, it is submitted that this ambiguity is known to, and appreciated by, prospective customers of AB’s and BB’s beer, and so, in order to identify correctly the product that the customer wants, the term is avoided. Instead, the prospective customer would use terms like “budvar” or “Czech bud” if BB’s product were desired (eg Mr Scully, Section 4, Mr Wheatley Section 3.15); or “American bud” if AB’s product was desired (eg Mr Kelly, Section 3). There is evidence that some people assume that the term “bud” means AB’s product only (eg Mr Wheatley, Section 3.15).

35. Hence, the oral use of the term “bud”, without any further clarification, cannot count as use of the registered mark, because on the evidence it is clear that an important, and potentially distinctive, element of the mark as registered, namely the stylised script, is absent and cannot be reproduced in oral use, and without that element, the remainder (ie the mere vocalization of the word “bud”) has been rendered undistinctive of BB’s product, ie it has no distinctive character left at all.

36. Thus, the oral use of the word “bud” does not satisfy the requirements of Section 46(2), because it is use of a sign that does differ in elements that have altered the distinctive character of the registered mark; in this case to such a degree that there is no distinctive character left at all, and so such use must be dismissed.”

15. Mr Mellor drew my attention to the judgement of Walton J in Bud Trade Mark 1988 RPC 457. By this time the parties already had a history of litigation in the UK over the name BUDWEISER (1984 FSR 439 and 457). During this litigation it had been established that BUD was a natural abbreviation of BUDWEISER and was in fact the name commonly used by AB’s, and BB’s customers when ordering their beers. Walton J observed:-

“So it seems to me that we have the situation that on one side, that is to say, BB’s side, no use whatsoever down to the moment has been made of the word BUD. On the side of AB, the minimal use, which I have already described, has in fact been made but, having regard to the way in which customers of both beers are known to demand the beer by reference to the contraction, it seems fairly obvious that the sensible course would be for both of them to be registered as proprietors of the trade mark BUD, if they so wanted.”

16. The learned judge concluded:-

“There is no doubt here that there has been honest concurrent use. There is no doubt

here that there are special circumstances, the special circumstances being that the customers for both of the beers are accustomed to use the same abbreviation as an abbreviation of the real name which both of them are free to use as against each other. If ever there was a special circumstance, it appears to me that there is a special circumstance.”

17. On the basis of this finding, BB’s mark was registered under Section 12(2) of the 1938 Act.

18. Mr Mellor pointed out that:-

- a) The finding that BUD was distinctive of both AB’s beers and BB’s beers was the very basis of the registration under attack; and
- b) The Court drew no distinction between the word BUD *per se* and the graphical form of the word it had before it; and
- c) This was the same mark that I had before me.

19. In my view there is force in these points. Although it is true that the registration consists of the word BUD in a particular graphical form, that form, in my view, adds little to the distinctive character of the mark. The mark is plainly a BUD mark. That is how the learned judge regarded it when he took the decision which resulted in the mark being registered in the first place.

20. Mr Edenborough’s argument is based upon the proposition that the word BUD *per se* is not distinctive of BB’s beers because it also identifies AB’s beers. On the same argument it could be said that the word is not truly distinctive of AB’s beers either. In my view this submission is misconceived. Although it is true that, in general, for a sign to be distinctive of one person’s goods it should be incapable of honest application to the goods of another, that is not an exhaustive definition of distinctiveness. This case is an exception to the general rule. The evidence in this and the previous cases between the parties, is that the word BUD distinguishes the beers of AB and BB from those of other traders. The evidence of those engaged in the trade in beers, such as Mr Martin of Unwins, is consistent with this finding. He says that when faced with an order for BUD he sometimes has to explain that there is the American Bud and the Czech Bud. In his mind, BUD is clearly distinctive of both. Messrs Ashmore, Thompson, Jones & Kelly (who similarly work in the off licence trade in establishments which stock both the beers of AB and BB) give evidence to the same effect.

21. I do not think that this finding is significantly undermined by the evidence from the same persons (plus Messrs Considine and Scully, who are publicans in establishments that only stock BB’s beers) that BB’s beers are more commonly ordered as ‘Czech BUD’. This evidence nevertheless confirms that the word BUD is recognised by consumers as the trade mark of BB. Further, although Mr Considine states that his customers more often order BB’s beers as Czech Bud, he says that they sometimes order BB’s beers as BUD. As his public house only stocks BB’s beers, this is clear evidence of consumers ordering BB’s product as BUD *solus*.

22. In my view it is highly unlikely that BB’s customers’ reaction to the word BUD in the

graphical form in which it is registered, would be any different to the word in block capitals, or in any other conventional form of presentation. I drew the attention of counsel to the case of Elle Trade Mark 1997 FSR 529, wherein Mr Justice Lloyd had to deal with a similar issue. The mark in that case was the word “elle” in lower case letters in the middle of a circle with a cross off the circle bottom right (the scientific symbol for the female gender symbol) and there was a disclaimer of any right to the exclusive use of the word “elle.” The learned judge concluded (at page 533):-

“.....one comes back to the question whether, by omitting the device and by converting the four letters of the word from lower to upper case, something has been done which alters the distinctive character of the mark from the registered form. In my judgement it has. It seems to me that the device is at least as much what makes this mark distinctive as the word. The use of the word alone and in capitals does alter the distinctive character of the mark, in my judgement, in a significant and substantial way. Therefore, although I do not proceed by analogy with section 41, I agree with the decision of Mr Knight on this point and without having to consider the position as regards disclaimer.”

23. In my view, what makes BB’s registered mark distinctive is that it is clearly recognisable as the word BUD. I therefore find that the use of BUD in block capitals, or in the form of dot matrix print shown in the evidence, is use of the registered mark within the meaning of Section 46(2) of the Act.

24. The next question is whether use of the word BUD on the top of boxes of beer in the form “BUD-BUDVAR-BUDWEISER” is use of the mark BUD, or use of a composite mark. In my view, this is use of BUD, BUDVAR and BUDWEISER as separate marks presented adjacent to one another. These are all names by which BB’s beers are variously known to its customers. The appearance of these marks on the top of the packaging for its beers is clearly intended to both identify the origin of the goods and to promote the marks.

25. The next question is whether this use of BUD on packaging amounts to “genuine use” as required by Section 46(1). Mr Mellor took the position that “genuine” was the opposite of “sham”. There was no evidence that BB’s use of BUD was a sham or in any way colourable. As I pointed out at the Hearing, this suggested meaning of “genuine” does not accord with the view taken by Jacob J in Euromarket Designs Inc v Peters and Another, 25 July 2000 [2000] ALL ER (D) 1050. The learned judge dealt with this point in the following passages:-

“50. Assume, however there were these three things, namely the packaging on a few items posted at the US customer’s request to the UK, gift registry sales, and a tiny amount of spillover advertisements in what the reader in the UK would know are US journals. Do they individually or collectively amount to “genuine use” of the UK registered mark? Miss Vitoria contends they do. She says the reference to “genuine” is in merely in contradistinction to “sham”. Small though the use may have been, there was nothing fake about it. The mark appeared in the UK in connection with genuine transactions and that is enough.

51. I disagree. It seems to me that “genuine use” must involve that which a trader or consumer would regard as a real or genuine trade in this country. This involves quantity as well as the nature of the use. In part it is a question of degree and there

may be cases on the borderline. If that were not so, if Miss Vitoria were right, a single advertisement intended for local consumption in just one US city in a journal which happened to have a tiny UK distribution would be enough to save a trade mark monopoly in this country. Yet the advertisement would not be “sham”. This to my mind shows that Miss Vitoria’s gloss on the meaning of “genuine” is not enough. And the only stopping place after that is real trade in this country. I think all the examples relied upon are examples of trade just in the US.”

26. Accordingly, “genuine use” requires consideration of the quantity and the nature of the use shown. “Genuine” is not just the opposite of “sham.” This is where Mr Edenborough’s submission about the peripheral or secondary nature of BB’s use of BUD comes in. The real question is whether the particular use shown is a) in relation to the goods at issue, and b) of a nature and on a scale that amounts to “genuine use” in relation to the goods for which the mark is registered.

27. If I am right in holding that the use of BUD in dot matrix print on the packaging for BB’s boxes of beer counts as use of the registered mark, the answer in this case is reasonably clear. The evidence indicates that 30% of BB’s beers are sold to the end consumer in these boxes. Having regard to the substantial size of BB’s trade in the UK, that equates to a substantial use of the mark in relation to beers. Further, in the light of the evidence that BB’s beers are sometimes ordered as “BUD”, and more often ordered as “Czech BUD”, the use of BUD by BB can scarcely be anything other than genuine in nature.

28. This finding is sufficient for me to dispose of the case without considering BB’s further evidence of the use of BUD (in block capital letters) on invoices and in product codes. Strictly speaking it is also unnecessary for me to express any view as to whether the oral use by of BUD by BB’s customers counts as use for the purposes of Section 46(1). However, as this point featured significantly at the hearing, I will deal with it briefly.

29. Section 103(2) of the Act is as follows:-

103(2) References in this Act to use (or any particular description of use) of a trade mark, or of a sign identical with, similar to, or likely to be mistaken for a trade mark, include use (or that description of use) otherwise than by means of a graphic representation.

30. Oral use of a mark therefore counts as use for the purposes of the Act. However, the requirement in Section 46(1) is for genuine use “*by the proprietor or with his consent*”. It is therefore necessary to pose the question “what has the proprietor done to consent to the use of the mark by his customers?” The answer will usually be that the proprietor’s own use of his mark is an invitation to his customers to use the mark. It is therefore difficult to imagine circumstances where use by customers **alone** will be sufficient to defend a registration from a non-use attack, because in the absence of any use by the proprietor, it will be difficult for the proprietor to show that such use is with his consent. Use by customers may nevertheless be relevant in shedding light on the nature and purpose of any limited use shown by the proprietor (or with his consent).

31. If I am right in my findings so far, BB does not need to rely upon the use of BUD by its customers. BB’s own use on packaging is sufficient. If I am wrong in accepting BB’s use of



BUD on packaging as equivalent to the use of the word in the form registered, then the oral use of BUD by BB's customers cannot take its case any further forward. For as Mr Edenborough submitted, oral use of the word BUD cannot capture the graphical element in the registered mark. If the absence of that element alters the distinctive character of the mark, oral use of BUD cannot assist BB.

32. Accordingly, in case I am found to be wrong in treating the use of the mark BUD in block capitals (or the equivalent) as use of the registered mark under Section 46(2), I will also consider the one example (on beer mats) of the use by BB, of the word BUD, in the form in which it is registered.

33. BB filed evidence from Robert Chrt, its Sales Manager, and Ales Kocvera, its Head of Promotions, attesting to the fact that 75K beer mats, bearing on one side the words "Bud....Budweis....Budweiser", were delivered to the UK between 1994 and 1996. The word Bud was used in the same graphical form as in the registered mark. There is a slight discrepancy in the evidence in that Mr Kocvera says these beer mats were delivered to the UK by 11 March 1996, whereas Mr Chrt says by 3 November 1996. There is no doubt that a significant proportion were delivered by March 1996 because Mr Kocvera exhibits two invoices, which he says are for such beer mats. Both are dated in 1995. The earlier invoice, for 8K mats, was sent to a Mr Roger at the "IFC" exhibition in Earls Court, presumably for promotional use at the exhibition. A further invoice, for 10K mats, was sent to the BB Supply Centre Ltd, BB's UK importer/distributor.

34. Ms Zilka's second statutory declaration confirms that the design described by Mr Chrt was the only design used for beer mats distributed in the UK during the relevant period. Ms Zilka states that such goods are not kept in stock long. She estimates that 70K of the 75K beer mats delivered to the UK would have been distributed by 11 March 1996. This evidence is supported by the evidence of Mark Considine, the Manager of the Old Queen's Head public house in Islington, London, and David Scully, the Manager of the Lord John Russell public house, also in London. Both confirm having in the past received promotional beer mats of the type described in Mr Chrt's evidence.

35. It is fair to say - as Mr Edenborough did indeed say - that the evidence of Messrs Chrt, Zilka, Scully and Considine is a little vague about this use, and there are some inconsistencies in the dates given. However, none of this evidence is directly challenged and, allowing for a reasonable degree of inexactitude in the witnesses recollections, it is, in my view, sufficient to establish that a good proportion of the 75K beer mats in question were distributed within the UK during the relevant period.

36. That being so it is necessary to re-pose the same questions I considered earlier in relation to the use of BUD on packaging, namely:-

- a) Is the use of "Bud....Budweis....Budweiser" use of three marks or one composite mark?
- b) If it is use of "Bud" , is it use in relation to beers?
- c) If it is use in relation to beers, is the nature and scale of the use sufficient to constitute "genuine use" of the registered mark?

37. Mr Edenborough characterised the use of “Bud...Budweis...Budweiser” as akin to the use of “P...P...Pick up a Penguin.” He said it was use as an advertising ‘strapline’ and not the use of “Bud” as a source identifier.

38. “Budweis” is the name of the place in Czechoslovakia where BB’s beer is brewed. Unlike the use of BUD-BUDVAR-BUDWEISER on the packaging of BB’s beers, this use cannot therefore be regarded as the use of three separate trade marks, albeit in close proximity to one another. Nevertheless, I believe that the evidence of BB’s beers are known as both “Bud” and “Budweiser”, taken together with the other uses by BB of BUD in block capitals and the like, is sufficient for me to conclude that the use shown of ‘Bud’ and ‘Budweiser’ on beer mats is both use as a part of a promotional ‘strapline’, and use of Bud as a trade mark of BB.

39. On either view, it is obvious that the use is intended to promote BB’s beers rather than its beer mats. It is therefore use in relation to beers.

40. The nature of the use is more peripheral or secondary, than the use shown of BUD on the packaging for BB’s boxes of beers. Further, the extent of the use, although more than *de minimis*, is relatively slight. Considered in isolation, I think it is doubtful that such use would be sufficient to demonstrate a trade in beers under the word mark ‘Bud’ in the form in which it is registered. However, considered in context against the background of BB’s other uses of BUD, and the evidence that its beers are sometimes ordered as ‘BUD’ or “Czech BUD’, I believe that such use does constitute genuine use of the mark BUD, in the exact form registered, in relation to beers. Consequently, even if I am wrong in accepting the use of BUD on packaging as equivalent to use of the registered mark, the application would still fail as a result of the use shown on beer mats.

41. The specification of goods also covers “ales”, “porter”, and “malt beverages”. These all appear to be alternative descriptions of beers or types of beers. AB has not asked for any specific reduction in the specification in the event that its principal ground of attack fails. Nor did I hear any arguments on this point at the hearing. In these circumstances, I propose to leave the specification of goods as it is.

42. For the reasons given above, the application for revocation under Section 46(1)(b) of the Act fails.

43. This brings me to the question of costs. Mr Mellor characterised AB’s application as ‘frivolous’. He argued that BB was entitled to an award of costs off the Registrar’s usual scale because it was unreasonable for AB to make and persist with its application.

44. Behaviour that can properly be characterised as ‘unreasonable’ is to be actively discouraged. A party to proceedings before the Registrar who acts unreasonably cannot expect to be shielded by the Registrar’s scale of costs. Perhaps more so than in the past, the Registrar’s Hearing Officers are prepared to award costs off the usual scale in appropriate cases. It was therefore quite proper for Mr Mellor to make the submissions he did. Unfortunately for BB, I do not agree with him. In my view AB had an arguable case. As it turns out I have decided against AB and in favour of BB. But I do not consider that AB acted unreasonably in adopting the position it did. Accordingly, I intend to award costs on the usual scale.

45. I take into account the amount of evidence BB had to collect (and study) in order to discard the onus placed upon it by Section 100 of the Act. I take account, also, of the fact that BB appointed counsel for the hearing, a decision that was entirely justified in view of the complexities of the case and the decision of AB to appoint counsel. Taking all these factors into account, I order AB to pay BB the sum of £1500 as a contribution towards the cost of the main application. I further order AB to pay BB the sum of £300 in respect of its earlier unsuccessful application for discovery, which resulted in a hearing before the Registrar on 22 July 1997. The combined sum of £1800 should be paid to BB within seven days of the end of the period allowed for appeal.

**Dated this 13 Day of February 2001**

**Allan James  
For the Registrar  
The Comptroller General**

Annex only in a paper copy

## **ANNEX A**

In the matter of Registration No : 1070309 OF BUDEJOVICKY BUDVAR NARODNI PODNIK and Application for Revocation thereto No : 9057 by ANHEUSER-BUSCH INCORPORATED

### **APPLICANT'S EVIDENCE**

1. Statement of Grounds & Form TM26

#### **Rule 31(4) Evidence**

2. Statutory Declaration of Penelope Ann Nicholls - UK Trade Mark Attorney for AB.
3. Exhibit PAN1
4. Affidavit of Dr Dietrick C. Ohlgart, - Legal adviser of AB.
5. Exhibit DO1
6. Exhibit DO2
7. Exhibit DO3
8. Exhibit DO4
9. Second Statutory Declaration of Penelope Ann Nicholls.
10. Exhibit PAN2
11. Statutory Declaration of Marc Andrew Godfrey - a commercial investigator of Farncombe International Limited.
12. Exhibit MAG1
13. Statutory Declaration of Marc Andrew Godfrey - a commercial investigator of Farncombe International Limited.
14. Exhibit MAG2
15. Exhibit MAG3

### **REGISTERED PROPRIETOR'S EVIDENCE**

16. TM8 Counterstatement

#### **Rule 31(3) Evid**

17. Statutory Declaration of Lynne Zilkha - Director of BB Supply Centre Limited, BB's UK importer/distributor.
18. Exhibit A
19. Statutory Declaration of Petr Jansky - Financial Director of BB
20. Exhibit

#### **Rule 13(6) Evidence**

21. Josef Janout - Head of Material Technical Supplies of BB.
22. Exhibit JJ1
23. Statutory Declaration of Ales Kocvera - Head of Promotional Department of BB.
24. Exhibit AK1
25. Exhibit AK2
26. Statutory Declaration of Nicholas John Wheatley - An investigator in the employ of

- Carratu International .
27. Exhibit NJW1
  28. Second Statutory Declaration of Lynne Zilkha - Director of BB Supply Centre Limited.
  29. Statutory Declaration of John Arthur Slater - BB's UK Trade Mark Attorney.
  30. Exhibit JAS1
  31. Exhibit JAS2
  32. Exhibit JAS3
  33. Statutory Declaration of Michael Martin - Manager of the Unwins wine merchants.
  34. Statutory Declaration of Mark Ashmore - Manager of the Shepherds Bush branch of Majestic Wine.
  35. Statutory Declaration of David Thompson - Deputy Manager of the King Street branch of Thresher Wine Merchants.
  36. Statutory Declaration of Greg Jones - Manager of the Pelham Street, London branch of Majestic Wine.
  37. Statutory Declaration of Christopher Kelly - Manager of Unwins wine merchants at Fortune Green Road, Hampstead.
  38. Statutory Declaration of Mark Considine - Manager of the Old Queen's Head public house, Islington, London.
  39. Exhibit MC1
  40. Statutory Declaration of Davis Scully - Manager of the Lord John Russell public house Marchmont Street, London.
  41. Exhibit DS1
  42. Statutory Declaration of Robert Chrt, Sales Manager of BB.
  43. Exhibit A
  44. Exhibit B
  45. Exhibit C