

### ***Budějovický Budvar left crying in its beer by Anheuser-Busch***

The latest development in the ongoing Budweiser Trademark saga comes from a recent ruling of the European Court of First Instance (CFI). Czech Brewers Budějovický Budvar ("Budvar") and American company Anheuser-Busch, Inc. have been engaged in a long-running trademark dispute surrounding the use of the mark BUDWEISER. Despite forming a landmark alliance earlier this year, in an agreement which gives Anheuser-Busch the right to import the Czech beer under the name "Czechvar," the two companies are still engaged in over 40 lawsuits around the world and have agreed that their importation agreement cannot be used to support either side in any trademark cases.

Between 1996 and 1998, Anheuser-Busch filed twelve Community trademark applications for BUDWEISER, BUD, and BUDWEISER Device for various products and services, including stationary, clothing, confectionery, education, and entertainment. Budvar opposed these applications, citing its international registrations BUDWEISER (R 238 203) and BUDWEISER Device (R 342 157), and protected appellations of origin BUDWEISER BIER, BUDWEISER BIER-

BUDVAR and BUDWEISER BUDVAR registered with World Intellectual Property Organization (WIPO) in 1964 under the Lisbon Agreement.

The Office for Harmonization in the Internal Market (OHIM) accepted Budvar's opposition to Anheuser-Busch's application for BUDWEISER Device, objecting to the registration of the mark for "beer, ale, porter, malted alcoholic and non-alcoholic beverages," and Anheuser-Busch had since withdrawn the application and dropped its appeal.

OHIM rejected Budvar's other oppositions to Anheuser-Busch's applications because they were for the goods other than beer, and the Lisbon Agreement only offers protection to appellations of origin as against identical or similar products.

Budvar appealed to the CFI, relying heavily on International-, EU-, and French national law providing for the protection of appellations of origin: legislation most notable for safeguarding the Champagne industry in France. The French Code Rural offers greater protection to appellations of origin as it not only covers "similar products" but also offers protection

against use of an appellation of origin on "any other product or service if that use is likely to misappropriate or weaken the reputation of the appellation of origin" (Article L. 641-2).

The CFI upheld the decision of OHIM, concluding that Budvar had not provided sufficient evidence to show that it enjoyed a reputation in France, and noting that even if such reputation existed, Budvar failed to demonstrate how the reputation of the appellations of origin would be misappropriated or weakened by Anheuser-Busch's trademarks.

Budvar has two months to lodge an appeal before the Court of Justice of the European Communities against the decision of the CFI. Budvar can also sue in France under the French Code Rural, as a lower standard of proof may apply there. As things stand, though, Budvar has prevented Anheuser-Busch from registering BUDWEISER as a Community trademark for beer, and Anheuser-Busch will have to continue to rely on its BUD mark in the countries where Budvar has secured international registrations for BUDWEISER.

### ***"That looks familiar," says YouTube***

After several high-profile copyright disputes, including a lawsuit by Viacom, Inc. and a subpoena from 20th Century Fox for the unauthorized use of copyrighted material, YouTube will begin testing a new "video fingerprinting tool" that will enable the online video website to identify content that has been uploaded without the copyright owner's consent. This new technology, which has been developed by engineers at Google, Inc., will be tested in partnership with Time Warner Inc. and Walt Disney Co. Copyright owners would first be required to submit copies of their

works to be cataloged by the program. The technology examines the video by analyzing it frame-by-frame and establishes a pattern and relationship among the frames that is specific to that video. The result is the "digital fingerprint," which can then be used to search for videos with matching content that have been posted on YouTube by other users. If a match is found, the registered copyright owner is advised and can determine whether the posting is unauthorized.

The technology is expected to recognize

the copyrighted material even if it has been "disguised" with other material, because the tool is designed to analyze the whole video and to recognize catalogued content. If proven to work, the technology will allow media companies to identify whether their copyrighted works have been uploaded, letting the registered content owners determine whether or not they wish to have the content removed. If the testing is successful, YouTube plans to launch its new "video fingerprinting tool" later this year.