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Intellectual Property - Sweden

Protection of Indication of Origin Does Not Extend to Translation

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American company Anheuser-Busch Inc and Czech company Budejovický Budvar have litigated around the world for many years with regard to the right to sell beer under the trademark BUDWEISER.

The Svea Court of Appeal has recently ruled against Budvar and its Swedish distributors, finding that '*Budejovický pivo*' is an indication of origin which is registered and protected in the European Union, but translations thereof are not protected by EU regulations.

Background

Anheuser began brewing beer in 1852. In 1876 the company began selling beer under the name 'Budweiser' and registered the trademarks BUDWEISER (figurative and word), BUDWEISER KING OF BEERS and BUD in Sweden and other countries.

Budvar is seated in the Czech city of České Budejovice. The German name of the town is 'Budweis'. Budvar held trademark registrations for BUDVAR and BUDWEISER BUDVAR in Sweden for many years. Anheuser applied for registration of the trademarks BUDWEISER, BUD and BUDWEISER KING OF BEERS, but Budvar's trademarks were found to block registration. Anheuser then obtained the cancellation of Budvar's trademarks due to lack of use. Following that decision, Anheuser's trademarks were registered in 1999.

Decision

Anhauser sought an injunction against Budvar and its Swedish distributors to prevent them from using the trademarks BUDWEIS and BUDWEISER to sell beer in Sweden. In its defence, Budvar argued that 'Budweiser' is a geographical indication of origin and hence the scope of protection for Anheuser's trademarks was narrow. The district court agreed that words that contain names of cities, districts or states (and therefore indicate geographical origin) are usually considered as lacking distinctiveness. However, the court found that Budvar had failed to prove that Swedish consumers perceived Budweiser as an indication of origin. The court therefore prohibited Budvar from using the trademarks BUDWEISER and BUDWEIS.

The court of appeal agreed with the district court and found that Anheuser's BUDWEISER trademark was not a geographical indication of origin on the Swedish market. Hence, the court of appeal found that the scope of protection awarded by registration of the trademarks was not limited. According to the court, there was a risk of confusion with Anheuser's trademarks when Budvar used the words 'Budweiser' or 'Budweis' to sell beer.

Budvar raised new grounds of defence before the court of appeal, arguing that Budweiser beer is an indication of geographical origin protected under Council Regulation 2081/92 and Commission Regulation 2400/96. Therefore, Budvar should be allowed to use its trademarks in parallel with

Anheuser's trademarks.





The court of appeal stated that, for a geographical indication of origin to be protected in the European Union, the designation must be registered at EU level. The court found that the indication of origin 'Budejovický pivó' was protected. Budvar claimed that the translation of this term should also fall within the scope of protection, but the court disagreed. The court noted that the geographical indications listed in Commission Regulation 2400/96 were all listed in only one language. The court also pointed out that a reservation was introduced in the regulation when the Czech geographical indications were registered; according to the reservation, these registrations should not affect beer trademarks or other EU rights existing at the time of the Czech Republic's succession. The court concluded that 'Budweiser beer' was not a protected geographical indication of origin for beer from the Czech Republic. Budvar was thus prohibited (under penalty of a fine) to offer, market or sell beer in Sweden using the trademarks BUDWEISER or BUDWEIS (on their own or in combination with other words).

Comment

According to the Svea Court of Appeal, a registered and protected indication of origin in the European Union is protected only in its registered wording. A translation is not protected and cannot therefore be invoked in case of conflicts with registered trademarks.

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