

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No 2268105
BY NARESH KUMAR VERMA
TO REGISTER THE TRADE MARK:**

Budindian

IN

CLASS 32

AND

**THE OPPOSITION THERETO
UNDER No 90383
BY ANHEUSER-BUSCH COMPANIES INC
BASED UPON THE EARLIER TRADE MARK:**

BUD LIGHT

AND OTHERS

Trade Marks Act 1994
in the matter of application no 2268105
by Naresh Kumar Verma
to register the trade mark: Budindian
in class 32
and
the opposition thereto
under no 90383
by Anheuser-Busch Companies Inc

BACKGROUND

1) On 21 April 2001 Naresh Kumar Verma applied to register the trade mark **Budindian**. The application was published for opposition purposes in the Trade Marks Journal on 6 June 2001 with the following specification:

lager, mineral and aerated waters and other preparations for making beverages

The above goods are in class 32 of the International Classification of Goods and Services.

2) On 4 September 2001 Anheuser-Busch Companies Inc (referred to hereafter as AB) filed a notice of opposition to this application.

3) AB states that it is the owner of various trade marks. For the purposes of this case I consider it necessary to refer to only one of the trade marks upon which AB relies, namely:

- United Kingdom registration no 1366513 of the trade mark **BUD LIGHT**. The application for this trade mark was filed on 18 November 1988 and the trade mark was registered on 14 December 1990 for the following goods:

beer, ale and porter, mineral waters, aerated waters, non-alcoholic drinks, syrups, and preparations for making beverages, all included in Class 32

(I have chosen to consider this trade mark in preference to others owing to the breadth of its specification.)

4) AB states that Mr Verma's trade mark is similar to the various earlier trade marks it refers to and that the goods encompassed by the respective trade marks are identical or similar. Consequently, there is a likelihood of confusion and registration of Mr Verma's trade mark would be contrary to section 5(2)(b) of the Trade Marks Act 1994 (the Act). AB seeks an award of costs.

5) Mr Verma filed a counterstatement in which he denies the grounds of opposition. He claims that the Bud element of Budindian relates to the Lord Buddha. He states that his product is designed for the Indian market.

6) Only AB filed evidence.

7) After the completion of the evidence rounds both sides were advised that it was believed

that a decision could be made without recourse to a hearing. However, the sides were advised that they retained their rights to a hearing. Neither side requested a hearing, so I will make a decision after a careful study of the papers.

8) AB filed written submissions and I take these into account in reaching my decision.

EVIDENCE OF AB

9) This consists of an affidavit by Frank Z Hellwig who is the senior associate general counsel of AB which he states has been authorised by its subsidiary, Anheuser-Busch, Incorporated, to act on its behalf. (This latter company is the registered proprietor of the various trade marks.) Much of Mr Hellwig's affidavit and supporting evidence is not directly relevant to this case as it relates to use outside of the United Kingdom. However, I consider that in these proceedings that little turns upon the claimed reputation of the trade mark BUD. Consequently, I will say no more about the evidence.

DECISION

Likelihood of confusion - section 5(2)(b) of the Act

10) According to section 5(2)(b) of the Act a trade mark shall not be registered if because

“it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

Section 6(1)(a) of the Act defines an earlier trade mark as:

“a registered trade mark, international trade mark (UK) or Community trade mark which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks”

11) United Kingdom registration no 1366513 is an earlier trade mark as defined by section 6(1)(a) of the Act.

12) In determining the question under section 5(2)(b), I take into account the guidance provided by the European Court of Justice (ECJ) in *Sabel BV v Puma AG* [1998] RPC 199, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117, *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV* [2000] FSR 77 and *Marca Mode CV v Adidas AG* [2000] ETMR 723.

Comparison of goods

13)

Goods of AB's registration

beer, ale and porter, mineral waters, aerated waters, non-alcoholic drinks, syrups, and preparations for making beverages, all included in Class 32

Goods of the application

lager, mineral and aerated waters and other preparations for making beverages

The goods of the application are completely subsumed by the goods of AB's registration. **The respective goods are, therefore, identical.**

Comparison of trade marks

14) The trade marks to be compared are:

AB's trade mark:

BUD LIGHT

Applicant's trade mark:

Budindian

15) The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details (*Sabel BV v Puma AG* page 224). The visual, aural and conceptual similarities of the marks must, therefore, be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components (*Sabel BV v Puma AG* page 224). I take into account the matter must be judged through the eyes of the average consumer of the goods/services in question (*Sabel BV v Puma AG* page 224) who is deemed to be reasonably well informed and reasonably circumspect and observant - but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV* page 84, paragraph 27).

16) The word LIGHT for beverages has no distinctiveness (see European Court of First Instance Case T-79/00 *Rewe Zentral v OHIM (LITE)*). It is simply indicative of a quality. So the distinctive and dominant element of AB's trade mark is the word BUD. In the case of Mr Verma's application, although the words Bud and indian are joined together, the average consumer, in my view, will see and understand the two different elements. There is a natural division between the Bud and Indian elements owing to both words being common English words. Indian for the goods is clearly directly descriptive of goods produced in India or of an Indian style or developed for consumption with Indian food. Consequently, the distinctive and dominant element of Mr Verma's trade mark is the Bud element.

17) The two trade marks are identical in relation to the Bud element. This distinctive and dominant element is identical phonetically and conceptually and effectively the same visually. I see that little if nothing turns upon AB's trade mark being in upper case and Mr Verma's in title case. In normal and fair use AB's trade mark could also be used in title case. I need to compare the trade marks in their entireties. However, owing to the weak nature of the other elements, to a great extent, in real terms, the comparison is between BUD and Bud. I, of course, have to consider the distinctiveness of the BUD elements of the two trade marks. The distinctive character of a trade mark can be appraised only, first, by reference to the goods or

services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public (European Court of First Instance Case T-79/00 *Rewe Zentral v OHIM (LITE)*). In this case BUD is neither descriptive nor allusive of the goods. I can see nothing that precludes it from enjoying a high degree of inherent distinctiveness.

18) Consequent upon the above, I have no hesitation in coming to the conclusion that the respective trade marks are not only similar but very similar.

Conclusion

19) There is a greater likelihood of confusion where the earlier trade mark has a particularly distinctive character, either per se or because of the use that has been made of it (*Sabel BV v Puma AG*). I consider that as a whole AB's trade mark, owing to the dominance of the BUD element, has a high degree of distinctiveness. The European Court of Justice held that a lesser degree of similarity between trade marks may be offset by a greater degree of similarity between goods, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*). In this case the goods are identical and the trade marks highly similar, so increasing the likelihood of confusion. I have not considered the reputation claimed by AB as the distinctiveness of its earlier trade mark, the similarity of the respective trade marks and the identity of the goods has already filled the pint pot to the brim. To pour the ale of reputation into it will simply lead to it overflowing.

20)The European Court of Justice in *Canon* stated:

“Accordingly, the risk that the public might believe that the goods or services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, constitutes a likelihood of confusion within the meaning of Article 4(1)(b) of the Directive (see *Sabel*, paragraphs 16 to 18).”

I consider that the average consumer is almost certain to believe that goods sold under the trade mark Budindian have been produced by AB; being beverages of Indian origin or aimed at the Indian population or for consumption with Indian food. Mr Verma even states in his counterstatement that his goods are aimed at Indians.

21) This is a case where I have not the least hesitation or doubt in deciding that there is a likelihood of confusion. I would go so far as to say that in normal and fair use of Mr Verma's trade mark there would be a near certainty of confusion.

COSTS

22) Anheuser-Busch Companies Inc having been successful it is entitled towards a contribution towards its costs. I order Naresh Kumar Verma to pay Anheuser-Busch Companies Inc the sum of £1200. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 20 day of January 2003

**D.W.Landau
For the Registrar
the Comptroller-General**