

Fair Use of Trademarks: Anheuser-Busch v Budějovický Budvar

Kirby Watkins

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Supervised by Doc. Ing. Tomáš Cahlík

Charles University

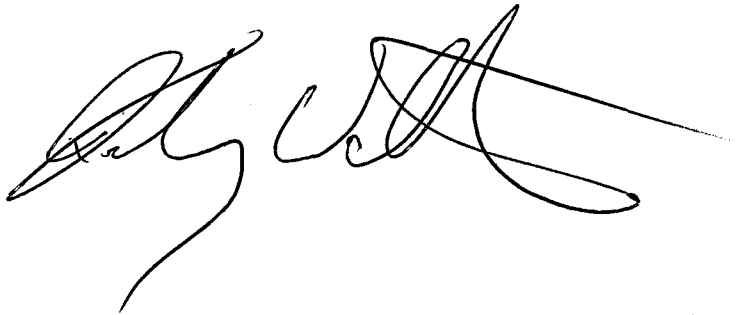
Faculty of Social Sciences

International Economics and Political Studies

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This thesis is an original work. All sources have been properly cited in context and in the bibliography. On my honor as a student I have neither given nor received aid on this thesis.

A handwritten signature in black ink, consisting of two parts. The first part is a stylized, cursive 'K' followed by a long horizontal stroke. The second part is a more complex, cursive signature that appears to be 'Watkins'.

Kirby Watkins

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Abstract

This paper examines the trademark dispute between the breweries Anheuser-Busch of the United States and Budějovický Budvar of the Czech Republic. Their dispute has lasted over a century and it has had numerous near-resolutions. This paper begins with the early histories of each company and continues to the present day (May 2007). It traces the near agreement just after the Velvet Revolution and the sudden change in character of the negotiations due to the privatization process in the Czech Republic. The process of the negotiations between Budějovický Budvar, the Czechoslovak/Czech government and Anheuser-Busch is examined. Then the relevant trademark and applicable geographic indication laws are examined as is the litigation in the 1990s that followed the failed negotiation. Finally, the current privatization proposal from the Czech government is investigated as well as the potential roles for both Budějovický Budvar and Anheuser-Busch.

I. Introduction

The Czech brewery Budějovický Budvar (Czech Budvar) is in a unique position in the world economy. During the two rounds of privatization carried out by the Czech government in the early 1990s, the brewery was the subject of intense interest and controversy. This interest emanated from a few sources. The chief proponents of the controversy which built up around the brewery were the British consumer group the Campaign for Real Ale (CAMRA), the American corporation Anheuser-Busch and the Czech public.

The Czech public was concerned that if Budějovický Budvar was privatized it would be purchased by a foreign company. This foreign company would then either lower the standards of quality of the beer produced by Budějovický Budvar or it would undertake serious and extensive cutbacks. Neither of these was acceptable to a public that regarded Czech Budvar as a distinct source of national pride. So, Budějovický Budvar was not privatized.

This was much to the chagrin of Anheuser-Busch. Anheuser-Busch and Czech Budvar have been engaged in a long dispute. This dispute centers on the right of each brewer to sell beer under the brand name "Budweiser". Anheuser-Busch has sold Budweiser beer in the United States since the late 19th Century. Czech Budweiser is produced in the town Ceske Budejovice which translates in German to Budweiser, by Budějovický Budvar. The beer produced in this town has long been known as Budweiser beer.

In addition, the Czech people are intensely interested in their beer. The bond between a Czech person and their favorite beer is very strong. The pride that the Czechs take in their beer, widely admired as the best in the world, is deep. It was one of the few things the Czechs were allowed to engage in with little restriction during the communist period. Even today, minor changes in the status of beer and breweries in the Czech Republic can be a cause of great upset.

So, with these things in mind, this paper will examine the trademark dispute between Anheuser-Busch and Budějovický Budvar. First, the histories of both companies will be briefly related. Then, the privatization process and the attempts to privatize Budějovický Budvar by the Czechoslovakian/Czech governments will be investigated. The primary players and problems will be identified and illuminated.

Since Budějovický Budvar was not privatized the next necessary step in this project is to understand the laws that affect the dispute so that an understanding of the evolution of this problem can be realized. During the 1990s, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) came into existence and it replaced much of the previous international system with regards to property rights. Geographical indications and their treatment under TRIPS will be thoroughly examined, especially in their relationship to trademarks. This is because much of the Czech government's and Budějovický Budvar's arguments regarding the rights to the Budweiser name center on the belief that Budweiser beer can only truly be produced in České Budějovice. This is in direct contrast to Anheuser-Busch's belief that the same beer can be produced anywhere in the world, which is important for its expansion strategy in the international beer market.

Finally, Budějovický Budvar's prospects for the future will be examined. In early 2007, the current Czech government announced its intention to turn Budějovický Budvar into a joint stock company in preparation for privatizing it. But how many issues that prevented Budějovický Budvar from being privatized in the early 1990s have been solved? What new ones have been created? Since Anheuser-Busch gained a distinct advantage in the legal arena after the adoption of TRIPS, will it still have interest in a potential alliance or partnership with Budějovický Budvar? This paper will argue that despite the weak position of the Czech government and Budějovický Budvar's slackening grip on the rights to the Budweiser trademark, Anheuser-Busch still has a definite and pronounced interest in Budějovický Budvar.

II. The Dispute-From Beginning to Privatization

History of Anheuser-Busch

Eberhard Anheuser was a successful merchant in St. Louis, Missouri in the mid-1800s.¹ His company manufactured and sold soap and candles. In 1859 'The Bavarian Brewery', a local brewery that Anheuser frequented, was struggling to pay its bills. Anheuser feared that he might lose one of his favorite local beverages so he made a loan to help the brewery.²

Unfortunately, the brewery continued to have difficulty and in 1860 Anheuser and a partner, William O'Dench, bought out the minority stakeholders and creditors. This prevented the brewery from declaring bankruptcy but did not solve the brewery's inherent problems. In an attempt to make a clean break with the past difficulties the company was briefly closed, reorganized and then renamed E. Anheuser Brewing and Co. Brewing was restarted following the reorganization.

At the same time that Anheuser was investing in a brewing venture in St. Louis, Adolphus Busch immigrated to that city from Germany. Busch was the second youngest of twenty-two children and three of his brothers had already set up residence in St. Louis. His brother John had started the John B. Busch Brewing Company and invited Adolphus to join him as a partner, but Adolphus declined. Instead, he began a business distributing brewing supplies.³

While selling his wares, Adolphus visited E. Anheuser Brewing and Co and it was here that he met Lily Anheuser. Adolphus asked Eberhard Anheuser for permission to begin courting Eberhard's daughter. Eberhard granted his permission, and in 1861 Adolphus and Lily were married. Four years later, Adolphus merged his company with Anheuser's and the two men became equal partners.

¹ Did You Know? "Anheuser and Busch." <http://www.didyounow.cd/anheuser.htm>. Visited 24 March 2007

² Did You Know? "Anheuser and Busch."

³ Did You Know? "Anheuser and Busch."

In 1876 E. Anheuser Co.'s Brewing Association began brewing a lager inspired by the brews produced in Bohemia.⁴ Adolphus Busch said in court that "the idea was simply to brew similar in quality, colour, flavour and taste to beer then made at Budweis, or in Bohemia. ... The Budweiser beer is brewed according to the Budweiser Bohemian process".⁵ In other words directly copying the brews made in Bohemia. Adolphus Busch also decided to name the beer after the town of Budweis as a marketing ploy to improve sales.⁶ Although E. Anheuser Co.'s Brewing Association made the beer, a company owned by Busch's friend Carl Conrad bottled and distributed it. Conrad registered the name Budweiser in 1878.⁷

One year following Conrad's trademark of "Budweiser", Eberhard Anheuser fell ill and E. Anheuser Co.'s Brewing Association was renamed Anheuser-Busch Brewing Association. Adolphus was appointed president the next year and in 1883, Anheuser-Busch Brewing Association acquired the rights to the name "Budweiser".⁸ The company proceeded to aggressively promote its brew.

Although Anheuser-Busch Brewing Association had a strong market position with the name "Budweiser" in the US, it was not the only company to sell a brew with that name. Indeed, brews made in the Bohemian style were popular in the US and several companies had adopted the name "Budweiser" or a derivative thereof.⁹ Two other popular brewers of the time, Miller and Schlitz, both produced Budweisers.¹⁰ However, with Anheuser-Busch Brewing Association promoting its beer with increasing

⁴ Karel Janicek, "Beer Makers Continue Fight Over "Bud" Trademark Dispute Goes Back to 1906", *Charleston Daily Mail*, Jan. 19, 2004, p. 3D.

⁵ Bernard O'Connor, "Legal Developments in the International Protection of Geographical Indications" p7, available at www.oconnor.be.

⁶ Robert Anderson, "Pressure Mounts in Battle of the Budweiser Brands: End of Century-Old Dispute Between Czech and U.S. Breweries May Be Near", *Financial Times*, Dec. 2, 2003, p 24.

⁷ Peter V.K. Reid, "That Other Budweiser", *Modern Brewery Age*,(2004): p16.

⁸ Reid (2004)p16

⁹ Did You Know? "Anheuser and Busch."

¹⁰ Reid (2004)p16

assertiveness, many companies stopped using the name.¹¹ But not all companies ceased to use the term.

During the late nineteenth and early twentieth centuries, Anheuser-Busch began to defend its popular mark against other companies' appropriation of the name. The court case *Anheuser-Busch Brewing Association v. Frederick Miller Brewing Co.*,¹² saw Anheuser-Busch challenge the Fred Miller Brewing Co.'s use of Budweiser. The defendant contended that Budweiser as a term merely designated the use of a specific brewing process and thus could be used by anyone.¹³ In its decision, the court opposed that claim, stating that Anheuser-Busch had introduced and validly registered the term in the United States.¹⁴ The court also concluded that Anheuser-Busch made a unique beer that had managed to become so popular that Adolphus Busch, the president of Anheuser-Busch, was identified as "Mr. Budweiser."¹⁵

Anheuser-Busch encountered problems in 1905 when it attempted to re-register the trademark "Budweiser" in the United States.¹⁶ Its application was rejected, and again it was rejected in 1906 because the Patent Office reasoned that the term "Budweiser" was a term of geographic origin, meaning "from Budweis".¹⁷ However, the next year the Patent Office granted Anheuser-Busch's trademark application for "Budweiser".¹⁸

Once in possession of the trademark, Anheuser-Busch proceeded to secure its rights against any use that was even slightly similar. In the case *Anheuser-Busch v. Cohen* in 1930, the court granted protection for Budweiser malt syrup.¹⁹ The US courts even extended protection for Anheuser-Busch to the word "Bud" in a 1939 decision.²⁰

¹¹ "Anheuser-Busch Companies Inc-Company History." <http://www.fundinguniverse.com/company-histories/AnheuserBusch-Companies-Inc-Company-History.html>. Visited 24 March 2007.

¹² *Anheuser-Busch Brewing Association v. Frederick Miller Brewing Co.* F. 864, 865 (E.D. Wis. 1898).

¹³ *Anheuser-Busch Brewing Association v. Frederick Miller Brewing Co.*

¹⁴ *Anheuser-Busch Brewing Association v. Frederick Miller Brewing Co.*

¹⁵ *Anheuser-Busch Brewing Association v. Frederick Miller Brewing Co.*

¹⁶ O'Connor p8

¹⁷ O'Connor p8

¹⁸ O'Connor p8

¹⁹ *Anheuser-Busch, Inc. v. Cohen*, 37 F.2d 393, 397 (D. Md. 1930)

²⁰ *Anheuser-Busch, Inc. v. Power City Brewery, Inc.*, 28 F. Supp. 740, 743 (W.D.N.Y. 1939)

According to the decision, people had come to associate the term “Bud” with the Budweiser brand beer produced by Anheuser Busch.²¹

Although Anheuser-Busch was very successful in defending its trademark, it did not win every single court case. Anheuser-Busch contested DuBois Brewing Co.’s use of the Budweiser name in 1949, but the court denied Anheuser-Busch’s challenge.²²

Stating that, between 1909 and 1940 the DuBois Brewing Co. used the name Budweiser without Anheuser-Busch condemning it²³, the court concluded “Anheuser has permitted DuBois to conduct a localized operation over so long a period of time that it would be inequitable to compel DuBois to surrender use of the name at this time.”²⁴ However, the court also warned that DuBois’s rights to Budweiser were limited to its location of DuBois, Pennsylvania.²⁵ “By the same token, DuBois, having confined the sale of its DuBois Budweiser product to localized territory, should not expect to extend its use of that name to other areas with legal impunity.”²⁶ DuBois Brewing Company continued to use Budweiser until it was purchased by Pittsburgh Brewing Co. in 1972.²⁷

Meanwhile, Anheuser-Busch’s expansion continued apace. By 1901 its annual production reached one million barrels and it became the number one brewer in the US.²⁸ In 1913 Anheuser-Busch patented a diesel engine and began to diversify into ice cream, corn syrup and refrigerated cars for trains.²⁹ This diversification would prove important in 1918 when Prohibition laws were instituted in the US and alcohol was made illegal. The company was able to stay afloat owing to its diversity and even managed to grow during the period when its formerly premier product was illicit.

²¹ Anheuser-Busch, Inc. v. Power City Brewery, Inc., 28 F. Supp. 740, 743 (W.D.N.Y. 1939)

²² Anheuser-Busch, Inc. v. Du Bois Brewing Co 175 F.2d 370 (3d Cir. 1949), cert. denied, 339 U.S. 934 (1951).

²³ Anheuser-Busch, Inc. v. Du Bois Brewing Co.

²⁴ Anheuser-Busch, Inc. v. Du Bois Brewing Co

²⁵ Anheuser-Busch, Inc. v. Du Bois Brewing Co

²⁶ Anheuser-Busch, Inc. v. Du Bois Brewing Co

²⁷ Reid (2004) p 16.

²⁸ Anheuser-Busch Inc. “Our History.” http://www.anheuser-busch.com/our_company/history.html. 15 March 2007.

²⁹ Anheuser-Busch Inc “Our History”.

When Prohibition ended in 1933 Anheuser-Busch resumed producing alcoholic Budweiser while continuing with its diverse product range. Beer consumption in the US increased after the end of the Second World War (although per capita consumption did not)³⁰ and Anheuser-Busch's annual production reached six million barrels in 1950.³¹ That same year it broke ground on its first regional brewery in Newark, New Jersey.³²

This marked the beginning of a new direction for Anheuser-Busch in its brewing strategy which would inform much of its future methods. Instead of having a centralized brewing operation from which its beer was distributed across the country, Anheuser-Busch would have numerous regional brewing facilities. This enabled the company to respond faster to changes in demand and to deliver fresher beer with less chance of product spoilage.³³

Soon after this change in strategy, in the year 1953, the company purchased the St. Louis Cardinals baseball team and in 1959 it opened the Busch Gardens Theme Park in Tampa, Florida.³⁴ The expansion into theme parks persisted with the opening of Busch Gardens Williamsburg, Virginia in 1975 and the purchase of SeaWorld Marine Parks in 1989 for \$1.3 billion.³⁵

In 1980, Anheuser-Busch became a publicly traded company when it was listed on the New York Stock Exchange.³⁶ It was a bold decision and the subsequent year the company formed Anheuser-Busch Inc. International in an attempt to expand its presence in foreign markets. The means by which it sought to do so were joint ventures, equity investments in foreign brewers and licensing agreements.³⁷ The timing could not have

³⁰ Ann Horowitz "Firms in a Declining Market: The Brewing Case" *The Journal of Industrial Economics*, Vol 13 No 5, March 1965 pp129-153.

³¹ Anheuser-Busch Inc. "Our History"

³² Anheuser-Busch Inc "Our History"

³³ Petra Breyerova, "A-B Taps into Russia-and Budvar?" *Czech Business Weekly*, <http://www.cbw.cz/phprs/2006081408.html>. 14 August 2006, Visited 1 May 2007.

³⁴ "Anheuser Busch Companies Inc-Company History"

³⁵ "Anheuser Busch Companies Inc-Company History"

³⁶ Anheuser-Busch Inc "Our History"

³⁷ "Anheuser Busch Companies Inc-Company History"

been better as the following years saw a rapid decrease in trade barriers and the conversion of socialist governments in Central and Eastern Europe to capitalist systems.

By 1993 Budweiser was being sold in twenty-one European countries and had become Japan's leading beer import.³⁸ Anheuser-Busch accounted for forty-five percent of American beer exports and was still expanding³⁹. It purchased a fifty percent stake in Grupo Modelo (the producer of Corona beer) in Mexico.⁴⁰ The company grew further a field by buying a majority interest in Budweiser Wuhan International Brewing Co. in 1995 in China.⁴¹ Stephen J Burrows, Anheuser-Busch International CEO and President refers to this as "what we call business development. And that's where we're looking for equity investments in other companies and their brands."⁴² Anheuser-Busch later "made an investment in Tsingtao Brewery Company [A-B has 27 percent share in Tsingtao] and bought [in 2004] the Harbin Brewery [Group] (both in China), so we have both sides of our business strategy there" according to Burrows.⁴³

Two years after the initial venture into China, Anheuser-Busch's worldwide annual beer sales reached 100 million barrels.⁴⁴ Although Anheuser-Busch's stunning growth had much to do with its wise investments and timely expansion, it was also dependant on another factor. This other aspect of the company is perhaps its most widely admired by Anheuser-Busch's competitors.

The other component of Anheuser-Busch's success is its clever advertising campaigns. During the late 19th century, the company started to market its beer aggressively, usually proclaiming Budweiser as the most popular beer in the nation. During the Second World War, Anheuser-Busch was able to tap into the rising tide of patriotism in the US. It used the famous painting of "Custer's Last Stand" to great

³⁸ "Anheuser Busch Companies Inc-Company History"

³⁹ "Anheuser Busch Companies Inc-Company History"

⁴⁰ Anheuser-Busch Inc "Our History"

⁴¹ Anheuser-Busch Inc "Our History"

⁴² Breyerova, "A-B Taps into Russia-and Budvar?"

⁴³ Breyerova "A-B Taps into Russia-and Budvar?"

⁴⁴ Anheuser-Busch Inc "Our History"

success.⁴⁵ This effectively associated drinking Budweiser beer with being “American” in much of the public mind.

Anheuser-Busch also managed to create the most lucrative advertising campaign in the history of the American beer industry with its “pick-a-pair-of-six-packs” ads in the early 1950s.⁴⁶ The push was so successful that references to it can still be found in American popular culture. More recently, Anheuser-Busch has launched a very popular “Real Men of Genius” campaign. This campaign features stories about men who put incredible effort into doing useless or inane things and is framed with the tagline “We salute you, you real men of genius”.

History of Budějovický Budvar

In the Czech Republic, brewing has a slightly longer tradition than brewing in the United States. The town that is now called České Budějovice was founded in 1265 in Bohemia by the Czech King Přemysl Otakar II who named the town “Budiwoyz”.⁴⁷ He gave the burghers in the town exclusive rights to brew beer for their own consumption.⁴⁸ They seized this right with abundant enthusiasm. By the early part of the 16th century, the Czech beer industry was providing up to eighty-seven percent of the total revenue for municipalities.⁴⁹

Soon, however, the geographic area of the current day Czech Republic became a battleground for rising and falling powers. The Thirty Years War devastated much of Northern Europe and with it the Czech brewing industry⁵⁰. Although beer still remained in production and beer from this region was widely prized, few people had the resources to continue production beyond their own needs.

⁴⁵ “Anheuser Busch Companies Inc-Company History”

⁴⁶ “Anheuser Busch Companies Inc-Company History”

⁴⁷ “Did you Know-Budweiser Beer Named After Czech Town”

⁴⁸ Reid (2004) p 16.

⁴⁹ Englund, Terje. The Czechs in a Nutshell. Baset: Czech Republic, 2004; p37.

⁵⁰ Englund (2004) p 37.

After the end of the Thirty Years War, Bohemia came under the jurisdiction of the Austro-Hungarian Empire. The official language became German, and the city of České Budějovice became known as Budweis.⁵¹ The brewing industry continued in much the same condition as at the end of the Thirty Years War.

The impetus for change in the Czech beer industry was the ‘national awakening’ movement of the 19th century⁵². After a long decline, Czech culture began to flourish again. The Czech language and culture were revitalized. At the same time, the Czechs attachment to and pride in their beer became even deeper.⁵³ Beer production increased, as did beer exports. In fact, trade documents show that in 1872 a beer named Budweiser was exported from České Budějovice to the United States.⁵⁴

Later in the nineteenth century, a German owned brewery Die Budweiser Brauberechtigten Bürgerliches Brauhaus (BBBB) produced and sold beer from České Budějovice under the name “Budweiser”.⁵⁵ After a time, BBBB began to export its beer to the United States. Anheuser-Busch challenged the use of the name “Budweiser” as it had already trademarked the name.⁵⁶ BBBB countered that “Budweiser” was the name of a specific geographic location and thus could not be trademarked.⁵⁷ Before the dispute could be decided in court, both sides agreed to a settlement in which Anheuser-Busch retained the right to sell beer under the name “Budweiser” in North America and BBBB held the right to sell beer under that name in the rest of world.⁵⁸

In 1895, the Czech Share Brewery of České Budějovice was incorporated and adopted an indication of origin on its product.⁵⁹ This company was the legal predecessor to today’s Budějovický Budvar brewery in České Budějovice. It also sought to export its

⁵¹ David Minto “The Battle for Budweiser” *World Trade Mark Review* May/June 2006; p 20.

⁵² Englund, p 37.

⁵³ Englund, p37.

⁵⁴ Reid (2006) p16.

⁵⁵ P.T. Muchlinski, “A Case of Czech Beer: Competition and Competitiveness in the Transitional Economies” *The Modern Law Review*, Vol 59, No. 5, September 1996, p660.

⁵⁶ Muchlinski (1996)p 660.

⁵⁷ Muchlinski (1996) p 660.

⁵⁸ Muchlinski (1996)p 660.

⁵⁹ Muchlinski (1996)p 659.

beer to the United States as BBBB was doing.⁶⁰ The Czech Share Brewery encountered problems with Anheuser-Busch as had BBBB. On August 11th, 1911 an agreement was reached between Anheuser-Busch and the Czech Share Brewery with terms similar to those between BBBB and Anheuser-Busch.⁶¹ Although the agreement is not public, some sources claim that it gave Anheuser-Busch the exclusive right to sell Budweiser beer north of Panama, and Budějovický Budvar the right sell Budweiser beer unchallenged in Europe.⁶²

For over twenty years, the companies managed to live with very little acrimony. In 1934, Anheuser-Busch allowed Budejovický Budvar to sell its beer in the United States without any challenge.⁶³ In 1937, Budejovický Budvar patented a beer label reading, "Imported Original Bohemian Budweiser Beer from Budweis City."⁶⁴ Two years after acquiring the patent, the organizations reached their latest accord amidst a tense atmosphere in Europe.

Germany had a taste for expansion and was eyeing neighboring countries with hunger. Hitler had already occupied the Sudetenland and it seemed certain that the rest of Czechoslovakia would soon fall under his grip. Only one week before Czechoslovakia fell to the Nazis, Anheuser-Busch and the Czech brewery signed an agreement giving Anheuser-Busch the exclusive rights to use the Budweiser name in the United States.⁶⁵ Budějovický Budvar (the successor to the Czech Share Brewery) contends the brewery only made the 1939 agreement because of concerns of having its property confiscated in the United States when the German occupation occurred and in hope of financial

⁶⁰ Muchlinski (1991) p 661

⁶¹ Muchlinski(1996) p 660

⁶² Neil Funk, Foreign Direct Investment To The Czech Republic. Comparing The Case of Skoda Automobilova and Volkswagen with Bargaining for Budejovický Budvar By Anheuser-Busch, Miami University, Oxford, Ohio, 2003; p 135.

⁶³ Robert C. Bird "This Bud's for You: Understanding International Intellectual Property Law Through the Ongoing Dispute Over the Budweiser Mark" *Journal of Legal Studies* Vol 23 Is 1; p58.

⁶⁴ Bird p58

⁶⁵ Jitka Smith, Comment, Budweiser or Budwesier?, 32 John Marshall Law Review 1251, 1253 (1999)

reimbursement.⁶⁶ Budějovický Budvar currently alleges that this arrangement was “extremely disadvantageous” to its breweries.⁶⁷

The Second World War broke out and Germany occupied most of Europe. Beer production faltered, but did not cease in České Budějovice. The Germans appreciated the Czech beer and shipped most of it back to Germany (although not the beer intended for domestic consumption as that beer had been cheapened by the addition of sugar and thus did not meet the German’s Reinheitsgebot, or ‘beer purity’ law).⁶⁸ Even as the Germans lost ground to the Russians and Americans production continued. In 1945 the communists were in control of the Czech lands and by 1948 all breweries had been nationalized.⁶⁹

During the communist regime in Czechoslovakia, the quality of Czech beer slipped. Even as late as the 1980s, it was common for people shopping in grocery stores to turn bottles upside down to ensure they were free from visible contaminants.⁷⁰ However, beer was one of the few ‘luxury’ items allowed to be exported. Two brands, Pilsner Urquell and Budvar, were allowed to be exported.⁷¹ This meant that Western Europe retained its familiarity with the Budvar brand and its association of the brand with Bohemia, and specifically České Budějovice.

Yet Budějovický Budvar’s production was limited due to a lack of investment in new infrastructure.⁷² And because there were no preservatives used in the brewing process, the reach of its exports was also limited. Even so, by the late 1980s Budvar was exporting close to seventy-five percent of its annual production.⁷³

⁶⁶ Budweiser Budvar. “History of Budvar.” <http://www.budvar.cz/en/web/Znacka-Budvar/Historie-Budvaru.html>. Visited 15 March 2007.

⁶⁷ Budweiser Budvar. “History of Budvar.”

⁶⁸ Reid (2004) p16

⁶⁹ Englund p 38

⁷⁰ Englund p 38

⁷¹ Funk (2003)p31

⁷² Reid (2004)p17

⁷³ Hajn, Ivo (2002) *Budweiser Budvar im Neuen Jahrtausend*. České Budějovice: Budweiser Budvar, N.C.2002: 65.

The Velvet Revolution and fall of the communist government in Czechoslovakia caused great hope for the beer industry. But the immediate effects for Budějovický Budvar were not entirely positive. Under the communist regime, exports were high for Budvar because the barter system enforced by the Council of Mutual Economic Assistance (COMECON) meant that Budvar was sold artificially cheaply in the COMECON countries.⁷⁴ In addition, because Budvar and Pilsner had been the only two brands allowed to export, Budvar's share of that market was inflated.⁷⁵ The loss of exports due to the disintegration of COMECON and consequent increase of prices in related markets, and increased competition due to the relaxation of export restrictions caused a slight slump for Budvar.

But the slump did not last long. Because of the brand's renown in Western Europe, Budvar was able to raise funds from Western financial institutions to invest in new facilities thus increasing production.⁷⁶ From 1989 to 1995 Budvar was able to boost production from 437,384 hectoliters a year to 908,879 hectoliters a year (see Figure 1).⁷⁷

Figure 1: Annual Production by Budějovický Budvar 1989-1995

| Year | Production in hectoliters |
|------|---------------------------|
| 1989 | 437,384 |
| 1990 | 465,052 |
| 1991 | 491,191 |
| 1992 | 569,058 |
| 1993 | 641,936 |
| 1994 | 756,013 |
| 1995 | 908,879 |

Source: Hajn, Ivo (2002) *Budweiser Budvar im Neuen Jahrtausend*. České Budějovice: Budweiser Budvar, N.C.2002: p112.

Also, it was able to sell more of its production to Western markets where people were willing to pay for the quality of the Budvar brand.⁷⁸ In the time period immediately following the Velvet Revolution, Budvar was able to increase its exports to Western

⁷⁴ Funk (2003) p 31

⁷⁵ Funk p31

⁷⁶ Petra Breyerova "A-B Taps into Russia-and Budvar?"

⁷⁷ Ivo Hajn (2002) p65

⁷⁸ Funk (2003) p36

markets by eight to ten percent per year.⁷⁹ In fact, during this time it surpassed Pilsner Urquell as the leading exporter of beer:

The Budvar brewer is small, producing about 570,000 hectoliters a year representing about 3% of total Czech beer production in 1992. But with exports of 362,000 hectoliters a year represent almost 38% of the total Czech beer exports, it is the country's leading beer exporter.⁸⁰

The only real restriction on the amount exported appeared to be the amount the firm was able to produce (see Figure 2).

Figure 2: Annual Export by Budějovický Budvar 1989-1995

| Year | Beer Export in hectoliters | Percentage of Production |
|------|----------------------------|--------------------------|
| 1989 | 224,282 | 51.3 |
| 1990 | 259,400 | 55.8 |
| 1991 | 331,182 | 67.4 |
| 1992 | 361,846 | 63.6 |
| 1993 | 400,247 | 62.3 |
| 1994 | 422,865 | 55.9 |
| 1995 | 444,822 | 48.9 |

Source: Hajn, Ivo (2002) *Budweiser Budvar im Neuen Jahrtausend*. České Budějovice: Budweiser Budvar, N.C.2002: p114.

In order to increase its production capabilities, the firm invested more than CzK 2 billion towards development and modernization in 1991⁸¹. Much of this money came in the form of credits from Western banks.⁸² Since Western countries had been importing Budvar for a number of years, they were comfortable that the company would be able to repay its loans.⁸³

⁷⁹ Funk (2003) p36.

⁸⁰ Blum, Patrick (1994) "US Brewer Woos Czech Bride-To-Be - Anheuser-Busch's Courtship of Budejovický Budvar." *Financial Times*, 9 February 1994: 28.

⁸¹ Budweiser Budvar. "Economic Information." <http://www.budvar.cz/en/web/O-firme/Ekonomicke-info.html>. Visited 15 March 2007.

⁸² Funk (2003) p 37.

⁸³ Funk (2003) p37.

As the company grew, so did its self-reliance. From 1989 to 2004 Budvar managed to triple its production of beer to 1.1 million hectoliters annually.⁸⁴ In 2006, the amount of Budvar exported was 555,000 hectoliters and demand in the domestic market was up 3.3% on the previous year.⁸⁵ The increased sales of Budvar in the Czech domestic market and the increased demand for exports helped the firm achieve financial independence from the government. Since 2001 all development has been financed exclusively from Budvar's own financial sources.⁸⁶ In 2006, profit was up fifteen percent on the year before, reaching CzK 267.2 million.⁸⁷

Budvar's growing prospects helped it gain the confidence to take the steps necessary to return to the United States' beer market in 2001.⁸⁸ Instead of arriving with a beer named after its Budweis origins, Budvar coined a new name; Czechvar, a portmanteau of "Czech" and "pivovar", the Czech word for brewery.⁸⁹ The beer began being distributed in January of 2005 by Distinguished Brands.⁹⁰

Also in 2004, the Czech Republic and Budvar both made very important moves. The Czech Republic acceded to the European Union after years of planning and restructuring. As part of the accession treaty, Budvar was granted protection for three geographic indications: Budejovicke pivo, Ceskobudejovicke pivo and Budejovicky Mestansky.⁹¹ This had important consequences for the settlement of legal disputes, which is discussed in the third chapter of this paper.

Much of Budvar's growth after the Velvet Revolution can be attributed to the decrease in trade barriers that accompanied the development of a free market in the

⁸⁴ Budweiser Budvar "Economic Information"

⁸⁵ TMC Net "Budvar raises 2006 Gross Profit 15pct to Kc 267m"

<http://www.tmcnet.com/usubmit/2007/04/26/2559168.htm>. 16 April 2007. Visited 1 May 2007.

⁸⁶ Budweiser Budvar "Economic Information"

⁸⁷ "Budvar raises 2006 Gross Profit 15pct to Kc 267m"

⁸⁸ Timothy Hall, "Pivo and Pohoda: The Social Conditions and Symbolism of Czech Beer Drinking" *Anthropology of East Europe Review*, Vol 21 No 1, 2003

⁸⁹ Hall (2003) p1.

⁹⁰ "Budvar Slams Big Brewers" <http://www.realbeer.com/news/articles/news-002363.php>. 25 October 2004. Visited 13 April 2007.

⁹¹ Dietrich Olghart European Communities Trade Mark Association "Flash" no 08-05 18 April 2005; p4.

formerly communist country. Parallel to this was the company's new found ability to export to many areas of the world. Some of it can also be explained by an increased exposure to the brand due to litigation with Anheuser-Busch in some of those new markets.

Though that litigation resulted in 'free' advertising for both Budvar and Anheuser-Busch, the apparently endless court battles would probably rather have been avoided by both parties. In fact, it seemed obvious during the early 1990s that both companies wanted to amicably settle their dispute once and for all. So why was there a breakdown in talks between Anheuser-Busch and the Czech government? Why did the privatization of Budvar not take place during the same period when nearly all other state-owned enterprises were being sold? What were the factors that led both sides to leave the negotiating table?

Settlement of the Trademark Dispute

Meetings between Anheuser-Busch's management and representatives for Budějovický Budvar were held during Czechoslovakia's communist period. Most often, these talks centered on renegotiating the 1939 trademark agreement between the two companies. Each side would have liked to gain access to markets which the agreement locked them out. After the fall of communism, the meetings continued and the focus was still on getting a resolution to the trademark dispute:

Ownership of the name Budweiser has been disputed in European courts for years, and Anheuser-Busch has not always been successful in claiming what it says is its property. For example, Anheuser-Busch must label its beer Bud, not Budweiser, in Spain, France, Switzerland, Italy and Greece. Budweiser is sold in Germany and Czechoslovakia, but it is brewed by Budvar, not the kings of beer in south St. Louis. Anheuser-Busch will not disclose where else it has been prevented from selling its Budweiser, saying through a spokesman only "that depends on the outcome of the litigation. Anheuser-Busch and Budvar have numerous trademark disputes in Europe." Those disputes stem from agreements between Budvar and Anheuser-Busch in 1911 and 1939. While A-B will not

disclose the text or nature of those agreements, they apparently gave Budvar the right to the name Budweiser in central and Eastern Europe.⁹²

Due to this, Anheuser-Busch almost immediately entered into negotiations with the Czechoslovak government and Budějovický Budvar after the Velvet Revolution.

When Anheuser-Busch initially approached Budějovický Budvar after the Velvet Revolution, Budějovický Budvar had two options available to it. First, it could have reiterated its commitment to the separation of markets initiated by the 1939 agreement. This could have meant a loss of markets for Anheuser-Busch: it had been steadily encroaching on Western Europe for some time and enforcement of the provisions of the agreement would have removed it from those areas. The second option would have been to terminate the 1939 agreement. This would have meant that both companies could have entered the other's market.

Tolar thought that this could have led to a situation where the two companies shared in marketing and profits.⁹³ This seemed to him to be a win-win situation because it would have solved the trademark problem as well as increased revenues for both companies.⁹⁴ Naturally this solution was intriguing to Budějovický Budvar which would have liked to spend as little time as possible on the trademark issue. In fact Josef Tolar, the head brewmaster and for a brief time acting director of Budějovický Budvar, "expressed optimism that a partnership with Anheuser – 'like a new lend-lease programme' - might provided a basis for cooperation where Anheuser could provide financial stability and open new markets for Budweiser."⁹⁵

An agreement opening Europe to Anheuser-Busch and the US to Budějovický Budvar certainly would have increased Anheuser-Busch's profits. In fact Anheuser-

⁹² Koenig, Robert L. and Robert Manor (1991) "East Hasn't Met West Yet On Bud Name." *St. Louis Post*, 25 March 1991: 4.

⁹³ Funk (2003) p 135

⁹⁴ Funk (2003) p 135

⁹⁵ Harper, Tim (1990) "Americans Sense Victory In A Bitter War; An International Tussle Over The Budweiser Brand Of Beer Has Come To A Head." *The Independent*, 15 December, 1990: 20.

Busch chairman August A. Busch III was apparently “hoping for a ‘trademark coexistence’ agreement with Budvar”.⁹⁶

However Anheuser-Busch would not make any agreement that allowed another beer to be marketed with the Budweiser name. Anheuser-Busch had spent over a century and untold millions in litigation and advertising dollars in order to make its brand the most recognizable beer brand on the planet.⁹⁷ Having another brewer’s beer piggy-back on its brand name was anathema to Anheuser-Busch, especially in Europe where the plan for a single European market and the opening of Eastern European markets had not gone unnoticed by Anheuser-Busch.⁹⁸ Also, there was the possibility that if Budějovický Budvar were privatized and another company came in control, the agreement between Anheuser-Busch and Budějovický Budvar would not be honored.

Some people felt that the easiest solution for the trademark dispute was for Anheuser-Busch to make a large one off payment in order for Budějovický Budvar to change the name of its beer to “Budvar”.⁹⁹ The Czechoslovakian government considered this idea, but apparently rejected it because the amount that Anheuser-Busch offered was too little.¹⁰⁰ Also the management team at Budějovický Budvar would not have allowed such a deal to be approved; it would be tantamount to “a victory for American beer imperialism.”¹⁰¹

The British beer industry group the Campaign for Real Ale (CAMRA) had a different solution to the problem. In their opinion, Anheuser-Busch should have made an offer, based on an objective expert valuation of the 'Budweiser' trade name to the Czech brewer, in return for the rights to use the trade name in those European countries where it

⁹⁶ Manor, Robert (1993) “‘93 Sales Take 5% Spill, Busch Says.” *St. Louis Post*, 29 April 1993: 1B.

⁹⁷ Mark Jarvis “Which Bud’s For You?” brandhome.com 5 January 2004.

⁹⁸ Protzman, Ferdinand (1990) “A Czech Cousin Haunts Budweiser.” *New York Times*, Section D, 5 April 1990: 1.

⁹⁹ Protz, Roger (1991) “Beer: Cold Lager War - The American Brewers Of Budweiser Are Less Than Pleased About The Invasion Of Europe By Czechoslovakia's Budweiser Budvar Beer. Roger Protz On Two Brewers Who Are Hardly Buddies.” *The Guardian*, 3 August 1991: 16f.

¹⁰⁰ Funk (2003) p107

¹⁰¹ Protz (1991) p 16f

was protected.¹⁰² CAMRA argued that the payment should have been in the form of a continuing royalty to Czech Budvar,¹⁰³ and in addition Budějovický Budvar would have redesigned its labels to avoid confusing customers.¹⁰⁴ This proposal offered a starting point for the resolution of the dispute but it was eclipsed by other developments. The Czechoslovakian government began its privatization process, and Anheuser-Busch became interested in purchasing a part of Budějovický Budvar. Before delving into the attempt by Anheuser-Busch to invest money in Budějovický Budvar, it is necessary to offer some background on how the privatization process worked and the potential gains to each party should such a bid succeed.

How the Privatization Process worked for Budějovický Budvar

After the Velvet Revolution ushered the communists out of power in Czechoslovakia the country began its transformation into a democratic market-oriented society. This meant that state-owned enterprises would have to be privatized. For a time, there was debate about the best way to transfer property from state control to private control. A major point of contention in the debates was how to ensure that the Czechoslovakian people benefited from the privatization process and that foreign investors did not gain control over the entirety of the new economy.

In order to accomplish this, the Czechoslovak Federation created 430 Investment Privatisation Funds (IPFs), of which 265 were in the Czech Republic. These funds competed for vouchers which the government sold to citizens for a small fee, and invested these vouchers on behalf of the citizens in firms that were to be privatized.¹⁰⁵ IPFs were either associated to Czech banks (not yet privatized themselves) or were affiliated to a major foreign bank. Some were tied to both Czech and foreign banks.

¹⁰² Muchlinski (1996) p 668.

¹⁰³ Muchlinski (1996) p 668.

¹⁰⁴ Muchlinski (1996) p 668.

¹⁰⁵ European Bank for Reconstruction and Development, *Transition Report 1994* (London: EBRD, 1994)

Although IPFs were restricted to no more than a 20 per cent stake in any individual company, the European Bank for Reconstruction and Development stated that their activities resulted in concentrated ownership structures for most companies, with two or three funds typically in combined possession of a controlling stake.¹⁰⁶ Through this process a home-grown Czech financial base was created, offering Czech industry a choice between financing through foreign firms or through Czech-based IPF funding.

The IPFs gained a considerable amount of power in the privatization process. Since two or three funds often had a controlling share in a company, they were capable of blocking sales acquisitions by unwanted parties. In addition, the government was forced to heed to the wishes of IPFs regarding the direct sale of state assets to foreign firms since the IPFs basically determined the value that the government would receive when it privatized an enterprise through the voucher process.

So foreign investors faced challenges from the IPFs. They also faced challenges regarding laws that specifically regulated their purchasing of the government's assets. For example, the transitional economies of Central and Eastern Europe had all enacted specialized foreign investment laws.¹⁰⁷ These guaranteed the freedom of investment in all sectors of the economy, except those set aside for national investment. These parts of the economy were closed to foreign investment altogether or foreign investors may have been permitted subject to an approval procedure¹⁰⁸. A specialized foreign investment law was passed by Czechoslovakia in 1988, but this was superseded by Part I Chapter II of the Czech Commercial Code created in 1991, with the result that the Czech Republic was, at that time the only transitional economy in Central and Eastern Europe to have removed specialized foreign investment legislation from its body of laws.¹⁰⁹ Thus, there

¹⁰⁶ European Bank for Reconstruction and Development, *Transition Report* p 51

¹⁰⁷ Frydman *The Privatisation Process in Central Europe* (London: Central European University Press, 1993) pp 70-91

¹⁰⁸ Frydman (1993) pp 70-91.

¹⁰⁹ Gray, *The Legal Framework for Private Sector Activity in the Czech and Slovak Federal Republic* Washington DC: The World Bank, November 1992, Policy Research Working Papers. WPS 1051

was no formal foreign investment screening procedure for of areas in which foreign direct investment was restricted.

According to the provisions of the 1991 Law on Conditions and Terms Governing the Transfer of State Property to Other Persons,¹¹⁰ the direct purchase of a state-owned enterprise had to be approved by the relevant ministry. In most situations this was the “founding ministry” or the ministry which was responsible for the enterprise to be privatized. For Budějovický Budvar, this was the Agriculture Ministry. Consequently, the burden of regulation in a case such as the proposed purchase of a stake by Anheuser-Busch in Budějovický Budvar fell on the provisions of the privatization law.¹¹¹

In the case of a large-scale privatization, the usual procedure was for the managers of the Czech enterprise concerned, or the prospective foreign buyers, to draw up one or more proposed privatization plans, known as 'projects,' which were submitted for approval.¹¹² The founding ministry of the enterprise concerned was responsible for the preparation of a project.¹¹³ However, it had to pass all projects for approval, along with its recommendations, to the Ministry for Privatization or to the Federal Finance Ministry, where the final decisions were made.¹¹⁴ This meant that the management of the company being privatized, members of its founding ministry and also the Ministry of Privatization were all involved on the Czech side of the negotiations.¹¹⁵ Anheuser-Busch had to negotiate first with Budějovický Budvar management, then with members of the Ministry of Agriculture and then with members of the Ministry of Privatization.¹¹⁶

Therefore the success of a bid for Budějovický Budvar depended to a great extent on the personal relationships between members of the Ministry of Agriculture and Budějovický Budvar. Jiri Altera, the deputy minister for agriculture, and Tolar had both

¹¹⁰ Law No 92/91, 26 February 1991

¹¹¹ Frydman (1993) p 73

¹¹² Frydman (1993) p 73

¹¹³ Frydman (1993) p74

¹¹⁴ Frydman (1993) p 74

¹¹⁵ Funk (2003) p 126

¹¹⁶ Funk (2003) p 126

graduated in Chemical Engineering from the Technical University of Prague.¹¹⁷ Because of this, they both held similar views to how the negotiations with Anheuser-Busch should proceed and what the outcome should be.¹¹⁸ Also, because Budějovický Budvar was under the umbrella of the Ministry of Agriculture, the Minister of Agriculture had the right to appoint the director of Budějovický Budvar.¹¹⁹ This meant that the Minister had a tremendous amount of influence over the personnel in positions of power at Budějovický Budvar.

Although these links gave the Ministry of Agriculture significant power both at Budějovický Budvar and in the negotiations with Anheuser-Busch, there was a mitigating factor in its level of control. The Ministry of Agriculture was undergoing a high amount of personnel turn over during the years of the negotiations.¹²⁰ This meant that the employees of Budějovický Budvar had to act as advisors to the Ministry of Agriculture on many occasions.¹²¹

On the other hand, the Privatization Ministry did not have such close contacts with managers at Budějovický Budvar¹²². The Privatization Ministry was supposed to be neutral when it came to evaluating offers to buy state owned enterprises.¹²³ This meant that the Privatization Ministry largely hired “young applicants without any network were preferably accepted when the number of officials nearly doubled during the first two years of his term in office.”¹²⁴

Strangely, the criteria by which the projects were evaluated by these ministries were not clearly delineated.¹²⁵ Thus, the applicable legal rules emphasized a wide discretion in the approval of privatization proposals.¹²⁶ This left considerable room for

¹¹⁷ Funk (2003) p125

¹¹⁸ Funk (2003) p125

¹¹⁹ Funk (2003) p 125

¹²⁰ Funk (2003) p 125

¹²¹ Funk (2003) p 125

¹²² Funk (2003) p 126

¹²³ Funk (2003) p 126

¹²⁴ Funk (2003) p 126

¹²⁵ Frydman (1999) pp 75-80

¹²⁶ Muchlinski (1996) p 663.

lobbying and for the formation of public opinion through public relations activities. Such activities were critical in preventing a successful bid by Anheuser-Busch.

In addition, the Czech Government's role in the case, as the principal regulator of the privatization process needs to be examined. That role will be considered both in the context of the applicable laws and in relation to the various lobbying attempts by Anheuser-Busch, Campaign for Real Ale (CAMRA) and the Czech investment funds.

Potential Gains to Each Party

The structure of the international brewing industry is as follows: large industrial producers who brew international brands for local consumption through owned and controlled overseas breweries or through licensing agreements with local brewers. This allows the large corporation to achieve economies of scale in production, distribution and retailing.¹²⁷ Beer markets all over the world have been undergoing a process of concentration, with larger brewers increasing their market share and smaller brewers disappearing altogether.¹²⁸ This process could have easily repeated itself for Budějovický Budvar. It suffered from a lack of investment in infrastructure during the communist period and could be defined as a 'smaller brewery' when compared to the large international firms.

Anheuser-Busch's vast sources of capital, as well as its managerial expertise and thorough knowledge in the latest technological developments certainly could have helped Budějovický Budvar. Selling a share of the company to Anheuser-Busch could have benefited Budějovický Budvar in other ways as well. There would have been two important consequences of such a sale for Budvar. The first would have been the opening of the US beer market (then the largest in the world) to Budvar brands. The second would have been the injection of capital and organizational expertise by

¹²⁷ Gourvish, 'Economics of Brewing, Theory and Practice: Concentration and Technological Change in the USA, UK and West Germany Since 1945' (1994) 23 *Business and Economic History* 253-265.

¹²⁸ Victor Temblay "A Reappraisal of Interpreting Rising Concentration: The Case of Beer" *The Journal of Business* Vol 58, No 4, pp 419-431

Anheuser-Busch into Budvar. The latter would have been significant because beer is extremely expensive to transport and this would have allowed for greater exports.¹²⁹

However, the Czech brewer was not in need of capital: its export business gave it the ability to gain credit from Western financial institutions, as previously noted.¹³⁰ In addition, Budějovický Budvar had already survived for one hundred years by this point, and through more trying circumstances than Anheuser-Busch. Thus its managerial knowledge was also fairly broad.

Therefore, the advantages that Anheuser-Busch would have brought to Budějovický Budvar were limited. Perhaps the greatest contribution it could have made would have been to allow an immediate expansion of production and advertising. Indeed even Anheuser-Busch argued that its main intention in joining with Budějovický Budvar was not to change it, but to help it grow.¹³¹ Some members of the Czechoslovak government also argued “that a deal with Anheuser-Busch would enable Budvar to expand its annual production of 300,000 barrels”.¹³²

Anheuser-Busch’s pursuit of Budějovický Budvar cannot be boiled down to selflessly trying to help the smaller company grow. It must be noted that Anheuser-Busch wanted to “expand its penetration of European market on two separate fronts: by being able to market its own Budweiser without legal obstacles, and by building on Budvar’s share of the market among mature drinkers.”¹³³ Buying Budějovický Budvar would allow Anheuser-Busch to gain instant credibility and a marketing network in Europe, as well as adding a European-style beer to its portfolio.”¹³⁴

Budějovický Budvar’s excellent reputation would have allowed Anheuser-Busch to “establish itself in the highly competitive European beer market. Budvar’s business

¹²⁹ Funk (2003) p 37.

¹³⁰ Breyerova “A-B Taps Into Budvar?”

¹³¹ *St. Louis Post* (1992)

¹³² Shepherd (1992)

¹³³ Blum (1994)

¹³⁴ *St. Louis Post* (1992)

connections and credibility as a brewer”¹³⁵ also would have been extremely important to Anheuser-Busch. Since Budvar had been exported to Germany for a long time and “had a reputation in Germany and Eastern Europe as a brewer of fine beer”¹³⁶ this would have given Anheuser-Busch access to valuable markets with a top-shelf brand.

Anheuser-Busch evolved in the US domestic market as a large volume brewer, producing a standard quality product in large central breweries located across the US from which the beer can be cheaply produced and quickly distributed. Such a production process is not able to produce the highest quality 'niche' beers. If Anheuser-Busch wanted to offer a full range of products in global markets, including 'niche' beers, the buying-in and marketing of Czech Budweiser would have made good commercial sense. Thus, it may well have been in Anheuser-Busch's interests to invest in Budějovický Budvar and maintain Czech Budweiser as a distinct brand.

Now that it is clear how each firm would have benefited from an investment by Anheuser-Busch in Budějovický Budvar and the process by which that would have happened, it is possible to examine the actual negotiations between the parties. It is now well known that Anheuser-Busch was not allowed to invest in Budějovický Budvar. The reasons for this failure lie in fears from the Czech public. Those fears were taken seriously by the Czech authorities, leading them to treat Budějovický Budvar as a special case.

Attempted Purchase

In 1990 Anheuser-Busch changed tactics and offered to buy a part of Budějovický Budvar. Suddenly, the heart of the negotiations became the sale of Budějovický Budvar

¹³⁵ *St. Louis Post* (1992)

¹³⁶ Koenig and Manor (1991)

to Anheuser-Busch. In an act of good faith, Anheuser-Busch declared an indefinite moratorium on all legal proceedings it had advanced against Budějovický Budvar.¹³⁷

The Ministry of Agriculture approved of this scenario, but with one qualification: that Anheuser-Busch only purchase a minority stake in the company.¹³⁸ This condition raised an important problem; if Budějovický Budvar was privatized, and Anheuser-Busch only bought a minority of the firm, who would be an acceptable majority shareholder? Anheuser-Busch clearly would not accept any partner that would continue the restriction on Anheuser-Busch's use of the term Budweiser. The Czech government would not have accepted any partner that would have relinquished Czech rights to the name Budweiser.

An alternative would have been to sell minority shares to several firms. But the Czech government feared that this could leave the door open for Anheuser-Busch to buy out one or more of the other shareholders and gain a majority position. This was unacceptable to the government and Budějovický Budvar because of the fears over the trademark and of limiting production.¹³⁹

An even larger fear for the government, Budějovický Budvar, the Czech public, and fans of high quality beer¹⁴⁰ was that Anheuser-Busch would "buy Budějovický Budvar only to force it to brew the American Budweiser beer."¹⁴¹ Any alteration to the Czech Budweiser "could result in the disappearance of the distinctive taste of the Bohemian-brewed Budweiser Budvar beer."¹⁴² Anheuser-Busch stated that altering Budějovický Budvar's beer was not in Anheuser-Busch's interest¹⁴³ saying that the two beers should be kept dissimilar.¹⁴⁴ This would help stratify the market because as John

¹³⁷ Reid (2006) p 17

¹³⁸ Funk (2003) p 103

¹³⁹ Funk (2003) p 103

¹⁴⁰ *St. Louis Post* (1992) "One Bud Wouldn't Change The Other, A-B Tells Czechs." 27 September 1992: 1E.

¹⁴¹ Munchau, Wolfgang (1990) "Prague In Talks With US Firm On Brewer." *The Times*, Business, 15 December 1990: 34.

¹⁴² Harper (1990)

¹⁴³ Blum, Patrick (1994) "US Brewer Woos Czech Bride-To-Be - Anheuser-Busch's Courtship of Budejovicky Budvar." *Financial Times*, 9 February 1994: 28.

¹⁴⁴ Blum (1994) p28

Purnell, the then chairman of Anheuser-Busch International, said “Bud has a distinctively fresh taste attractive to the young. Budvar has another profile. Drinkers of each tend not to be the same people. The brands don’t conflict with each other at all.”¹⁴⁵

This did not assuage the concern of Budějovický Budvar and the Czech public. The taste difference between the two beers is not imaginary. According to Michael Jackson, the American Budweiser is “a much thinner beer brewed with rice in addition to barley malt and possesses a barely perceptible hop flavor.”¹⁴⁶ Czech Budweiser, on the other hand, “has a definite hop nose and finish and is clean and rounded.”¹⁴⁷ Josef Tolar described American Bud as “soda water with a dash of color”¹⁴⁸ and others say it has “no discernible aroma or palate because it is brewed to local taste.”¹⁴⁹ Once again in contrast, the Czech Budweiser is “fuller bodied and less carbonated than the American Budweiser, carrying more of the bitter hops flavor, with a hint of sweetness in its finish.”¹⁵⁰ Just to make it perfectly clear, Budějovický Budvar’s beer has a “delightful balance of malt and hops in the aroma, a creamy vanilla note in the palate and a quenching light fruitiness.”¹⁵¹

From the opinions expressed above on the differences between the two Budweisers, it is clear that the Czech version has a prodigious reputation. Therefore much was at stake should Anheuser-Busch purchase Budějovický Budvar and force it to alter its recipe or to brew the American version. The reputation not just of the Budvar brand, but also of the entire Czech Republic could be tarnished if changes were made to the recipe at Budějovický Budvar. In addition, a change could jeopardize any protection that the Czech beer might receive as a unique geographically produced product.

Anheuser-Busch may not have understood exactly what was at stake for the Czech company and people. People at Anheuser-Busch felt that “Budvar made a lager

¹⁴⁵ Blum (1994) p 28

¹⁴⁶ Stephen Beaumont “A Tale of Two Budweisers” *Globe and Mail Magazine* 1994 Available at <http://www.sqc.fi/salhis/beer-descriptions.html>. Visited 15 April 2007.

¹⁴⁷ Beaumont (1994)

¹⁴⁸ Protz (1991)

¹⁴⁹ Funk (2003) p 137

¹⁵⁰ Protzman (1990)

¹⁵¹ Protz (1991)

beer not greatly different from the American Budweiser, but on a far smaller scale.”¹⁵² In addition, the idea of a reputation built on quality may not have resonated deeply with Anheuser-Busch’s management. They may have had trouble with the idea that any beer could be “as famous as its own – the world’s largest-selling beer.”¹⁵³ The American press repeatedly emphasized the small size of the Czech brewery compared to Anheuser-Busch.¹⁵⁴ It was noted that “Budějovický Budvar’s output in the past two years has increased to a point where annually it is equal to only about two days’ production for the world’s biggest brewer.”¹⁵⁵

The Campaign for Real Ale (CAMRA), a British industry group, even stepped in over the concern that Budvar’s Budweiser might be altered:

Yesterday Camra wrote to Vaclav Havel, the president of Czechoslovakia. The letter said: “We believe Anheuser-Busch’s motives on seeking the Czech brewery are to gain complete control over the name, to exclude the Czech product from European markets and to appropriate the heritage of Ceske Budejovice for their own purposes. We believe that the Czech brewery might be reduced to little more than a museum, while production under a Czech name was shifted elsewhere at the whim of American management.”¹⁵⁶

In addition a spokesman for CAMRA said:

We’ve seen what these big brewers do when they buy small breweries. They come in and say what you’re doing isn’t cost-effective, you shouldn’t be lagering your beer for three months, you should be lagering it for three weeks like we do. They just want to get the Budvar licence and replace it around the world.¹⁵⁷

¹⁵² Koenig and Manor (1991)

¹⁵³ Protzman (1990)

¹⁵⁴ Koenig and Manor (1991)

¹⁵⁵ Melcher, Richard A., with Julie Flynn and Robert Neff (1993) “Anheuser-Busch Says Skoal, Salud, Prosit.” *Business Week*, 20 September 1993: 76

¹⁵⁶ Munchau (1990)

¹⁵⁷ Harper (1990)

Shortly after receiving this letter, the Czech President Vaclav Havel intervened and called off the negotiations.

Although the idea that Anheuser-Busch wanted, at this point, to purchase outright Budějovický Budvar was popular, this may be a false belief. In early 1991, Tolar insisted that the talks were only about the Budweiser trademark.¹⁵⁸ Also, Jerry E. Ritter, an executive vice-president at Anheuser Busch told stock holders that

We continue to have promising negotiations with the Budweiser Budvar Brewery in Czechoslovakia on a trademark co-existence agreement which would significantly increase our brands' marketing penetration in Western and Eastern Europe," Ritter said. "We are also discussing other areas of cooperation, including a joint venture with Anheuser-Busch equity participation in that brewery."¹⁵⁹

Mr. Purnell also stated that Anheuser-Busch had been "clear and consistent in its discussions with the Czech government that it would like to invest in a one-third minority participation in Budvar."¹⁶⁰

After Havel called off the negotiations in March of 1991, Budějovický Budvar underwent a change in management. This was because of "many technical difficulties in the negotiations" according to Josef Tolar who continued that negotiations were due to continue "within a few weeks".¹⁶¹

Two months later, in May of 1991, it was stated that talks had recommenced.¹⁶² Even though there had been problems in the negotiations, Budějovický Budvar still thought of Anheuser-Busch as its preferred partner and "made these feelings felt in a letter to the government."¹⁶³

¹⁵⁸ Funk (2003) p 140

¹⁵⁹ Koenig and Manor (1991)

¹⁶⁰ *St. Louis Post* (1992)

¹⁶¹ Koenig and Manor (1991)

¹⁶² Manor (1991).

¹⁶³ Shepherd, John (1992) "Budweiser Wrangle Comes To A Head" *The Independent*, 29 February 1992: 16.

Anheuser-Busch went on the offensive with regards to its intention for Budějovický Budvar often using the quote that “the notion we could change anything about the Budvar brand – except to make it grow – is absurd.”¹⁶⁴ In order to help gain the confidence of government officials and management at Budvar, Mr. Purnell promised:

Workers and management would get a wage increase, comprehensive benefits and a no-layoff guarantee. Budvar Budweiser’s identity would be preserved and its distribution system will be maintained. Key Budvar technical and general managers would have a continued role. Anheuser-Busch would open up worldwide access for Budweiser Budvar “where it has a reasonable potential to sell with appropriate name and label modification to avoid confusion.”¹⁶⁵

Not all members of the Budějovický Budvar team were satisfied with these promises. They claimed that the taste of the American Budweiser was too different to satisfy the complicated palates of German and Czechoslovakian beer drinkers.¹⁶⁶

The change in management at Budějovický Budvar and the clear statements of its plan for Budějovický Budvar had Anheuser-Busch feeling that the negotiations were moving in its favor. Jack MacDonough, executive-vice president of Anheuser-Busch International, said that Anheuser-Busch’s bid was the preferred one¹⁶⁷ and that

Anheuser has incorporated eight guarantees in its bid terms. They include no job losses, higher wages “consistent with a profitable organisation”, and even a promise to give Budvar Budweiser access to worldwide markets, including the US, where it has reasonable sales potential. “Our intention is to help make Budvar one of the strongest brands in Europe.”¹⁶⁸

¹⁶⁴ *St. Louis Post* (1992)

¹⁶⁵ *St. Louis Post* (1992)

¹⁶⁶ Koenig and Manor (1991)

¹⁶⁷ Shepherd, John (1992)

¹⁶⁸ Sheperd (1992)

Anheuser-Busch tried to influence public opinion by building a civic center in Budweis, supporting schools and universities, and launching a strong advertising campaign.¹⁶⁹ Despite Anheuser-Busch's confidence, the Czech public became more hostile and the Czech Ministry of Privatization decided not to privatize Budějovický Budvar during the first round of privatization.

The decision rested largely around the trademark dispute, even though Anheuser-Busch had temporarily ceased its legal proceedings and despite the fact that the Ministry of Agriculture had decided how much the trademark might be worth.¹⁷⁰ Some analysts said that a sale to Anheuser-Busch would fetch the highest price for the trademark and the company:

One analyst, George E. Thompson of Prudential Securities, said this week that he believes A-B must buy part of the brewery if only to retrieve the name Budweiser. "It is something they have to get done before they can even get started in Germany," Thompson said. "They wouldn't get involved unless they had the Budweiser brand in their hand."¹⁷¹

Not long after the government decided not to sell part of Budějovický Budvar to Anheuser-Busch, the second wave of privatization started in the Czech Republic. Budějovický Budvar was scheduled to be listed among the firms to be privatized, but it never was. The Privatization Ministry thought it better to postpone a sale until an agreement could be reached between Anheuser-Busch and Budějovický Budvar.¹⁷² However, no proposal was approved by the Czech government and Klaus took the case of Budějovický Budvar away from the Ministry of Privatization.¹⁷³

¹⁶⁹ Gregor Buhler & Robert M. Kunstadt, " 'Bud' Battle Illustrates Peril of Geographic Marks", 20 National Law Journal, May 18, 1998, at C3.

¹⁷⁰ Funk (2003) p 142

¹⁷¹ Manor, Robert (1991) "Busch Might Buy European Brewery." *St. Louis Post*, 19 May 1991: 1E.

¹⁷² Funk (2003) p 142

¹⁷³ Funk (2003) p 142

Rumours of a renewed bid by Anheuser-Busch for 34 per cent of Czech Budvar surfaced in early 1993.¹⁷⁴ Meetings occurred between Anheuser-Busch and Roman Ceska, the Czech Minister for Privatisation, in January 1993.¹⁷⁵ Although there is some disagreement as to what was actually discussed, it is clear that the preferred option was for Budějovický Budvar to remain in Czech ownership. At the same time as negotiations were taking place, Anheuser-Busch reenergized its public relations campaign to win support for itself and its bid.¹⁷⁶

Within a few months, it became clear that Anheuser-Busch was no longer the sole suitor. Dutch, Japanese, and German businesses were all interested in getting a piece of Budějovický Budvar, even though Jiri Altera stated flatly that he would not allow any foreign firm to take a majority stake in the company.¹⁷⁷ Opportunistic firms scented blood and soon Budějovický Budvar's privatization had attracted more than 42 firms from countries including Austria, Germany and Japan which all wanted a part of the action.¹⁷⁸

John Shepard wrote that "Anheuser-Busch, the world's largest brewer and producer of the US version of Budweiser, is trying to take a 30% stake in Budvar, maker of the Czechoslovakian variety".¹⁷⁹ After Anheuser-Busch made its offer, the Czech government took an extended period of time to decide whether it would even list Budějovický Budvar as available during the second round of privatization.¹⁸⁰

Finally, in September of 1993 the Czech government appeared as if it would partially privatize Budějovický Budvar during the next month.¹⁸¹ But October came and went without a sale. In January of the following year, Anheuser-Busch seemed to have scored a major coup: the Czech government designated it as "exclusive negotiating

¹⁷⁴ Anheuser "one for us" says Czech Minister,' *Off Licence News*, 17 February 1994.

¹⁷⁵ Protz, 'US giant moves to grab Budvar,' *What's Brewing?*, March 1994 p 4

¹⁷⁶ Protz, (1994) p 4

¹⁷⁷ Protz (1991)

¹⁷⁸ Shepard, John (1992) "Budweiser Wrangling Comes to a Head" *The Independent*

¹⁷⁹ Sheperd (1992)

¹⁸⁰ Funk (2003) p 155

¹⁸¹ Melcher, Richard A. (1993)

partner in the sale of a minority stake in Budvar”.¹⁸² Several months passed without a resolution. In order to put pressure on the Czech government, Anheuser-Busch slowed its purchasing of Czech Saaz hops.¹⁸³ This was a major blow to Czech hops growers as in previous years Anheuser-Busch bought nearly 18% of the Czech harvest each year.¹⁸⁴ Then in October of 1994, Anheuser-Busch walked away from the negotiating table for the final time. The company announced that it had indefinitely postponed negotiations and had lifted its moratorium on legal action.¹⁸⁵

It seems that the proposal laid out by Anheuser-Busch succumbed to a lack of inertia in the bureaucracy of the Czech government. Anheuser-Busch became disheartened by the “tangled web of negotiations which had to be undertaken in order to participate in privatization.”¹⁸⁶ The Czech government was highly resistant to the privatization of one of its national treasures and Budějovický Budvar did not have an economic impetus to help Anheuser-Busch break through this resistance.

These developments arose out of growing unease within the Czech administration over the sale of one of the country's leading brand names to a foreign multinational and, moreover, to a firm which was becoming increasingly unpopular among the public as a possible purchaser of Czech Budvar. Furthermore, the failure to resolve the issue in favour of the US brewer may be seen as evidence of wider uncertainty surrounding the role of foreign multinationals in the Czech Republic.

As further proof of the resistance to foreign participation in the Czech beer industry, one need look no further than the reaction of the Czech public when the Japanese Nomura group sold its holdings of Pilsner Urquell and Radegast to the South African Beverage Corporation. The Czech public was not happy that the Nomura group

¹⁸² Blum (1994)

¹⁸³ “Anheuser gets Bud Rights in Europe but Budweiser Still Point of Contention.” *Modern Brewery Age*, 15 September 1997.

¹⁸⁴ *Modern Brewery Age*, 1997

¹⁸⁵ *St. Louis Post* (1994)

¹⁸⁶ Funk (2003)

had control over Pilsner Urquell, but grew to accept that fact as time passed. However, the sale to a huge drinks conglomerate was almost too much for the people to take.¹⁸⁷

Stirrings of unease at foreign intervention in Czech companies appear, in certain cases (such as that of SPT Telecom), to have arisen out of institutional developments associated with the privatization programme. As a result, opposition to foreign investment was strong among some of the increasingly assertive investment funds.

In January 1995, a group of the Czech Republic's largest IPFs made a takeover offer to the agriculture ministry, the Czech brewer's founding ministry.¹⁸⁸ These included ZB Trust and the Investicni a Postovni Banka. The proposal was for Jihoceske Pivovary, a Czech brewery already controlled by the funds, to take a majority stake in Budějovický Budvar thereby keeping it in Czech hands. The group was already a large shareholder in two Czech brewers, Plzensky Prazdroj, the brewer of the famous Pilsner Urquell beer, and Radegast. Together with Jihoceske, these breweries represented over a third of the export market in Czech beers. Budvar already had about 23 per cent of that market to itself.

A successful bid would have created a dominant Czech funded and owned brewing group that could have developed more export markets. This represented a challenge to the logic behind Anheuser-Busch's proposed bid, namely, that Czech Budvar would have benefited from an experienced international brewer as a partner in the international distribution and exploitation of its brand in the market for high-quality lager beer. In March 1996, further complications emerged as a result of three initial bids for a minority stake in Jihoceske Pivovary by Bass of the United Kingdom, Carlsberg of Denmark and Anheuser-Busch. If Anheuser-Busch had been successful in acquiring a

¹⁸⁷ Protz (1991)

¹⁸⁸ 'Czech investment group in bid for Bohemian brewery,' *Financial Times*, 30 January 1995.

minority stake in Jihoceske Pivovary, it is likely that any merger with Budějovický Budvar would have been abandoned.¹⁸⁹

The Czech Government was clearly treating Budějovický Budvar as a special case. By comparison, it offered no opposition to the successful foreign bids for shareholdings in three Czech brewers by the UK brewer Bass and by the Austrian drinks company BBAG in Starobrnno brewery.¹⁹⁰ The explanation for this opposition lies in successful lobbying against Anheuser-Busch, the flop of Anheuser-Busch's attempt to win the hearts and minds of the Czech public, setbacks in other major foreign investment relationships, the ambitions of the IPFs and the unique complications of the trade mark dispute.

After the end of its efforts to purchase a part of Budějovický Budvar and to amicably settle the trademark problem, Anheuser-Busch lifted its moratorium on legal action.¹⁹¹ The company said,

its top priority now is to settle the numerous battles over the Budweiser trademark that has locked it out of key markets in Europe and elsewhere. We don't really expect widespread legal warfare to break out," said Steve Burrows, chief operating officer of Anheuser-Busch International Inc. "We want to be able to once and for all agree on which company can use which brand names and derivatives of their brand name around the world so we can resolve the disputes that have been going on for all these years."¹⁹²

¹⁸⁹ 'Brewing bid battle may affect Budvar,' *Financial Times*, 5 March 1996

¹⁹⁰ *Financial Times* (1996)

¹⁹¹ Reid (2006) p 17

¹⁹² *St. Louis Post* (1994) "A-B Postpones Talks On Stake In Budvar." 12 October 1994: 7C.

III. Relevant Law for the Trademark Dispute

Geographical Indications

A geographical indication (GI) is when the name of a good contains the name of a specific location where that good was produced.¹⁹³ Some famous geographical indications are “Champagne”, “Scotch”, “Tequila” “Cognac” and “Roquefort”.¹⁹⁴ Merely by mentioning or seeing one of those words, a consumer can picture those types of goods. Besides having the effect of identifying a good as originating in a certain region or locality, geographical indications denote attributes of the good, such as reputation or quality, that are intertwined with its geographical origin.¹⁹⁵

The use of geographical indications provides benefits similar to the holding of a copyright or trademark. The first and most obvious is that they identify a good as being associated with a particular source.¹⁹⁶ This is almost so straightforward that it can go unsaid, since the name of the locality in which that good is produced is almost always part or the entirety of the name of that good.

The second benefit is that geographic indications convey certain traits and usually denote a high quality, reputation, or status.¹⁹⁷ Because of this, many consumers are willing to pay higher prices for these goods than they otherwise would. For example, a product marked “sparkling white wine” will probably not fetch as much as the same product would if it were labeled “Champagne”.

As a direct result of the second benefit, geographical indications promote the business welfare of the region for which the good is named.¹⁹⁸ Because a region is willing, or wants to put its name on a product, the geographical indication connotes

¹⁹³ “Understanding the WTO-Intellectual Property:Protection and Enforcement”
http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm. Visited 22 April 2007.

¹⁹⁴ “Understanding the WTO-Intellectual Property:Protection and Enforcement”

¹⁹⁵ “Geographical Indications”

<http://www.uspto.gov/web/offices/dcom/olia/globalip/geographicalindication.htm> Visited 27 April 2007.

¹⁹⁶ P. Kanagavel, Intellectual Property Rights: A Comprehensive Overview, 85 Journal of Patent & Trademark Off. Society 663, 678 (2003).

¹⁹⁷ P. Kanagavel (2003)

¹⁹⁸ P. Kanagavel (2003)

positive implications about the nature of that locality.¹⁹⁹ It almost manages to say that the region is proud of the good it produces. In addition, it can increase the prospects of secondary industries such as tourism.

There are some exceptions. If a name has become generic, it can no longer be used as a GI.²⁰⁰ For example, Cheddar, England was once associated with producing a very specific type of cheese. Now however, the word “cheddar” denotes a certain type of cheese, not necessarily originating from Cheddar, England.²⁰¹ This is also the case for beers known as Pilsners.²⁰² Pilsners were formerly beers produced in what is now Plzen, Czech Republic, a city that once went by the German name of Pilsen. Today “pilsner” simply means a beer brewed in the style that originated in Plzen.

GIs are particularly strong when it comes to protecting wines and spirits.²⁰³ Often times courts decide litigation brought on by GIs based on whether or not there is the likelihood of a consumer being misled. For wines and spirits there is protection even when there is no danger that a consumer may be misled.²⁰⁴

For beer, the protection is not as strong as it is for wine and spirits. The Czech Republic, Iceland, India, Lichtenstein, Slovenia, Sri Lanka, Switzerland, and Turkey requested that the protection for beer be increased to the same level as for wine and spirits.²⁰⁵ In 2004, the Czech Republic was granted three geographical indications as part of its accession treaty with the European Union. These were for the terms Budejovicke pivo, Ceskobudejovicke pivo and Budejovicky Mestansky.²⁰⁶ The important issue facing Budějovický Budvar is whether the protection afforded geographical indications extends to translations of those indications. In this situation, it is whether or not Budějovický has protection when translated to “Budweis” or “Budweiser” (the German equivalents).

¹⁹⁹ P. Kanagavel (2003)

²⁰⁰ “Understanding the WTO-Intellectual Property:Protection and Enforcement”

²⁰¹ “Understanding the WTO-Intellectual Property:Protection and Enforcement”

²⁰² Minto (2003) p 20

²⁰³ “Understanding the WTO-Intellectual Property:Protection and Enforcement”

²⁰⁴ “Understanding the WTO-Intellectual Property:Protection and Enforcement”

²⁰⁵ Philippe Zylberg, Geographical Indications v. Trademarks: The Lisbon Agreement: A Violation of TRIPS?, 11 University of Baltimore Intellectual Property Law Journal. 1, 42–46 (2002/2003).

²⁰⁶ Olghart (2005) European Communities Trade Mark Association “Flash” no 08-05 18 April 2005. p 4

Before examining whether or not the translations receive protection under international law, it is necessary to examine the history of the laws on which geographical indications are based.

The Paris Convention and Subsequent Agreements

In 1883, the international community came together to write the Paris Convention. This agreement was the first to codify international standards in regards to trademark law.²⁰⁷ Previously, every country had widely varying degrees of protection, ranging from nearly nothing to strict. In an effort to rectify this, the Paris Convention set minimum standards for its signatories. Thus, the Paris Convention requires member nations to include basic levels of intellectual property protection in their national law.²⁰⁸

The Paris Convention safeguards trade names, trademarks and permits unfair competition petitions.²⁰⁹ Perhaps the most important aspect of the Paris Convention is the 'national treatment principle'. This principle obliges a country to not give less beneficial handling to foreign intellectual property than it does to its own citizens.²¹⁰ The importance of this principle is tremendous, even today. Without this concept, it would be easy for a foreign national to copy an idea, register it in their country and reap all the benefits. In theory, the 'national treatment principle' should allow for no prejudice if the originator of a work seeks to enjoin the use of their idea in another country. The actual wording of the text is as follows:

Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their

²⁰⁷ Paris Convention for Protection of Industrial Property, Mar. 20, 1883, last revised at Stockholm, July 14, 1967, 21 U.S.T. 1583, 828 U.N.T.S. 305

²⁰⁸ Paris Convention, Articles. 4-11

²⁰⁹ Robert J. Gutowski, Comment, The Marriage of Intellectual Property and International Trade in the TRIPs Agreement: Strange Bedfellows or a Match Made in Heaven?, 47 Buffalo Law. Review 713-718 (1999).

²¹⁰ Gutowski (1999) 718.

respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specifically provided for in this Convention²¹¹

The most relevant feature of the Paris Convention to the Budweiser conflict is its notion of “indication of source” which is included in its definition of industrial property.²¹² This is important for the Budweiser conflict because the Czech Republic holds the three registered geographical indications which include the word Budějovický. If translations are protected under international law, then Budweiser would also be protected and Anheuser-Busch’s use of Budweiser would be a false designation.

In addition, under Article 10 of the Paris Convention it was forbidden for products to use “direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer or merchant”.²¹³ Also prohibited were “indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods”.²¹⁴ Anheuser-Busch’s Budweiser could potentially fall under this category. If it did, it would then be subject to Article 9 of the Paris Convention. Article 9 states that a member state of the Paris Convention is allowed to seize any goods bearing an “unlawful” indication of source.²¹⁵

Subsequent international treaties increased the scope of and clarified geographical indication protection. The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods was introduced in 1891, just a few years after the Paris Convention.²¹⁶ This agreement forbids disingenuous source indications.²¹⁷ An example of such a misleading attribution would be a “town named Dorset, Vermont producing

²¹¹ Paris Convention, Article 2(1).

²¹² Paris Convention, Article 1 (2)

²¹³ Paris Convention, Art. 10.

²¹⁴ Paris Convention, Article 10 (3)

²¹⁵ Paris Convention, Art. 9

²¹⁶ Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, Apr. 14, 1891, 828 U.N.T.S. 163.

²¹⁷ Steven A. Bowers, “Location, Location, Location: The Case Against Extending Geographical Indication Location Under the TRIPS Agreement,” 31 AIPLA Q.J. 129, 140–41 (2003).

Dorset cheese, which would mislead the consumer to believe that the cheese was the world-renowned Dorset blue cheese made in Dorset, England”.²¹⁸

The Lisbon Agreement on the Protection of Appellations of Origin and Their Registration (1958) was another step on the evolution of geographical indications.²¹⁹ The Lisbon Agreement focuses on appellations of origin and not specifically on geographic indications. Appellations of origin are a type of geographical indication used on products that have a specific quality that can be exclusively attributed to the specific geographical environment in which the product is produced.²²⁰ This includes natural and human factors.²²¹

The protection of appellations of origin in the Lisbon Agreement is very strong. Any appellation that has been granted in a Lisbon signatory country cannot be deemed generic in another signatory country. The agreement also prohibits misleading appellations of origin even when accompanied by disqualifying language such as “kind,” “type,” or even “imitation.”²²² Although protection is significant, only twenty-six countries have agreed to its provisions, giving the Lisbon Agreement limited international relevance.²²³

TRIPS

Most international disputes over intellectual property rights had their settlements based on these treaties until 1994. This was when the Uruguay Round of the General Agreement on Tariffs and Trade introduced the Agreement on Trade Related Aspects of

²¹⁸ Bowers (2003) p 141

²¹⁹ Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, Oct. 31, 1958, as last revised Sept. 28, 1979, 923 U.N.T.S. 205.

²²⁰ Lisbon Agreement, Article 2.

²²¹ Lisbon Agreement, Article 2.

²²² Lisbon Agreement, Article 3.

²²³ As of May 12, 2007, twenty-six countries are contracting parties to the Lisbon Agreement: Algeria, Bulgaria, Burkina Faso, Congo, Costa Rica, Cuba, Czech Republic, Democratic People’s Republic of Korea, France, Gabon, Georgia, Haiti, Hungary, Iran, Israel, Italy, Mexico, Moldova, Montenegro, Nicaragua, Portugal, Serbia, Slovakia, Spain, Togo, and Tunisia. See <http://www.wipo.int/treaties/en/registration/lisbon> Visited 12 May 2007.

Intellectual Property Rights, usually abbreviated as TRIPS.²²⁴ All 140 members of the World Trade Organization, are required to acquiesce to the TRIPS agreement.²²⁵ TRIPS has been described as “an international treaty that attempts to remove intellectual property protection as a barrier to international trade”.²²⁶ TRIPS may perhaps better be viewed as the 20th century equivalent of the Paris Convention in that it also established uniform minimum standards of intellectual property protection and required nations to provide mechanisms to enforce them.²²⁷

TRIPS is currently the foremost treaty in regards to geographical indications. The relevant parts of the treaty are Articles 22 through 24. They impose minimum standards of protections that signatory states must provide. Article 22(1) defines geographical indications as “indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”²²⁸ Article 22 maintains that TRIPS members must provide legal recourse for parties to prevent “the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good”.²²⁹

TRIPS members must also allow prosecution of any act of unfair competition as defined by Article 10 of the Paris Convention.²³⁰ This has been called the “misleading test” in that it limits TRIPS violations to (1) geographical indication violations to cases

²²⁴ Agreement on Trade-Related Aspects of Intellectual Property Rights, Dec. 15, 1993, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments Results of the Uruguay Round vol. 31 (1994), 33 I.L.M. 81 (1994)

²²⁵ Stacey D. Goldberg, “Comment, Who Will Raise the White Flag? The Battle between the United States and the European Union over the Protection of Geographical Indications”, 22 *University of Pennsylvania Journal of International Economic Law*, 107, 116 (2001).

²²⁶ Graeme B. Dinwoodie, *A New Copyright Order: Why National Courts Should Create Global Norms*, 149 *University of Pennsylvania Law Review*. 469, 553 (2000)

²²⁷ Gutowski (1998)

²²⁸ TRIPS Agreement, Art. 22(1).

²²⁹ TRIPS Agreement, Art. 22.

²³⁰ Paris Convention,, Art. 10.

where an appellation misleads the public as to its true origin and (2) acts of unfair competition.’’²³¹ In other words, Article 22 requires a geographical indication to be misleading in order for a party to bring a complaint to the WTO.²³²

As stated earlier, wine and spirits receive stronger protection than beer under geographical indications. In TRIPS this is laid out in Article 23. As opposed to Article 22, Article 23 does not oblige parties that bring an action against users of an appellation to prove that consumers have been misled.²³³ Also, Article 23 does not require challengers to show use of a name constituted an act of unfair competition under Article 10 of the Paris Convention.²³⁴ The holder of the geographical indication does not have the burden of showing infringement through proof.²³⁵

False geographical indications for wines and spirits are prohibited even when the product indicates its true place of origin or is accompanied by terms such as “style,” “kind,” or “type.”²³⁶ Competing wine and spirit producers are simply prohibited from using geographical indications that do not reflect the product’s true origin. Consumer perception of the geographical indication’s source does not play a significant role under Article 23.

Article 24 of TRIPS contains exceptions to Article 22, which applies to beer, and Article 23, which does applies to wine and spirits. Article 24(6) allows the use of a geographical indication by others if that term becomes generic.²³⁷ A generic term means a former geographic indication that is now recognized by consumers as a description of a particular product and no longer a product from a specific origin.²³⁸ For example, Dijon

²³¹ Bowers (2003) p145.

²³² Christine Haight Farley, *Conflicts Between U.S. Law and International Treaties Concerning Geographical Indications*, 22 *Whittier Law Review* 73-78 (2000).

²³³ Bowers, p 146.

²³⁴ Bowers p 146.

²³⁵ Bowers p 146

²³⁶ Farley (2000) p 78.

²³⁷ TRIPS Agreement, Art. 24(6).

²³⁸ http://www.wipo.org/about-ip/en/geographical_ind.html Visited 24 April 2007

mustard no longer refers solely to mustard made in the French town of Dijon.²³⁹ Rather, it applies to any mustard manufactured in a specified manner.²⁴⁰ Swiss cheese refers to a type of cheese, not necessarily cheese originating from Switzerland.²⁴¹ Article 24(5) preserves the status quo in nations where trademark owners have used the mark in accordance with their own laws and have acquired an independent reputation for their product.²⁴² These products receive protection as much as the protection of a geographical name.²⁴³

The most important exception for the Anheuser-Busch-Budějovický Budvar dispute is Article 24(4). This article addresses the issue of parallel use of geographical indications for wines and spirits. Article 24(4) allows continued use of a geographical indication that has been in place for “at least 10 years preceding 15 April 1994 or in good faith preceding that date.”²⁴⁴ This article acknowledges that TRIPS does not apply to prior usages. Anheuser-Busch’s Budweiser is a prime example of use at least ten years preceding the April 15, 1994, date. Thus, it is allowed to exist in spite of the Czech brewery’s claims that the Budweiser term is a geographic indication referring to its place of origin, České Budějovice in the Czech Republic. By allowing prior continuous uses such as Anheuser-Busch’s, TRIPS does not settle the conflict. This means that the litigation that followed Anheuser-Busch’s failure to gain a stake in Budějovický Budvar has mostly been settled on a nation-by-nation basis.

Under TRIPS, Budějovický Budvar would have a chance of retaining the Budweiser name, but would still face significant hurdles. Article 23 of TRIPS would grant strong protection for the Czech brewery because it relies upon designation of origin rather than consumer confusion as the determining factor. Anheuser-Busch’s arguments that consumers are not confused by the origin of the Budweiser term would be of

²³⁹ http://www.wipo.org/about-ip/en/geographical_ind.html Visited 24 April 2007

²⁴⁰ http://www.wipo.org/about-ip/en/geographical_ind.html Visited 24 April 2007.

²⁴¹ *Schweizerische Kaeseunion Bern v. Saul Starck, Inc.*, 293 N.Y.S. 816 (N.Y. Sup. Ct. 1937).

²⁴² TRIPS Agreement Art 24(5).

²⁴³ Conrad “The Protection of Geographical Indications in the TRIPS Agreement.” 86 *Trademark Report*. 11, 42 (1996); at 42.

²⁴⁴ TRIPS Agreement, Art. 24.

limited use. However, Article 23 only applies to wine and spirits, not beer.

The Czech Republic has submitted proposals to expand Article 23 protection to products other than wine and spirits.²⁴⁵ However, the council overseeing TRIPS has been deadlocked on extending protection and no change is likely in the imminent future, mostly due to opposition from the US.²⁴⁶ This means that Budejovicky Budvar can only rely on Article 22, which requires consumer confusion. In addition, Anheuser-Busch has 24's good faith exception for established prior uses in its favor. Budejovicky Budvar will face a losing battle under a strict interpretation of TRIPS.

This does not mean that all nations will reach Anheuser-Busch's desired results. TRIPS requires a minimum standard of a protection, not a maximum, and nations may wish to provide greater protection to geographical indications than what TRIPS requires. For example, France has strong laws protecting geographical indications. French law regulates geographic indications for a wide variety of marks, from wine to lace.²⁴⁷ The main objective of its law is to guarantee the authenticity and origin of raw materials and protect the talent and tradition of local industries.²⁴⁸ A geographic indication, as opposed to TRIPS, can never become a generic character and thus never fall into the public domain.²⁴⁹

Not surprisingly, the Czech brewer holds the right to the "Budweiser" name in France, with Anheuser-Busch limited to using the "Bud" abbreviation.²⁵⁰ Finally, the Lisbon Agreement, discussed earlier, offers significant protection for appellations of origin. A Lisbon Agreement signatory might provide special protection to the Czech beer if it accepts the notion that the beer's manufacture is dependent upon local customs and

²⁴⁵ Philippe Zylberg, *Geographical Indications v. Trademarks: The Lisbon Agreement: A Violation of TRIPS?*, 11 U. BALT. INTELL. PROP. L.J. 1, 42-46 (2002/2003).

²⁴⁶ Dwijen Rangnekar, "Geographical Indications: A Review of Proposals at the TRIPS Council: Extending Article 23 to Products other than Wines and Spirits," *UNCTAD/ICTSD Capacity Building Project on Intellectual Property Rights and Sustainable Development*, Issue paper No. 8, March 2004.

²⁴⁷ "Bud with a French Accent" <http://www.realbeer.com/news/articles/news-002299.php>. 10 August 2004. Visited 1 May 2007

²⁴⁸ "Bud with a French Accent"

²⁴⁹ "Bud with a French Accent"

²⁵⁰ "Bud with a French Accent"

local geographic resources. The next section discusses some of the results of the continuing litigation between Anheuser-Busch and Budějovický Budvar. The applicable laws are confusing, and national courts often ask for interpretations of laws from international bodies.

Results of “Budweiser” Litigation

As outlined previously, the Czech government failed to privatize Budějovický Budvar in the early 1990s. There were many interested suitors, but they all left the arena empty-handed. Anheuser-Busch was clearly the party with the most interest in the privatization of Budějovický Budvar. It saw the proposed privatization as, among other things, a means of once and for all settling the legal disputes between the two companies. If Anheuser-Busch could have purchased a stake in Budějovický Budvar then both firms would have been able to free the resources tied up in the legal wrangling and focus on selling beer. Although Budějovický Budvar was willing to have Anheuser-Busch take a share of the company, the Czech government was not.

After Anheuser-Busch left the negotiating table for the last time in 1994 and lifted its moratorium on legal action, litigation between the two companies resumed where it had left off.²⁵¹ Although the public surely senses a note of animosity in the situation, it is probably better to view the proceedings as an extensive effort by both companies to determine the options available to them for marketing and sales in various countries. Both sides would like an absolute claim to the Budweiser mark, but that is not available to either.

Immediately following the Velvet Revolution, it appeared that Budějovický Budvar had a very strong claim on the right to the Budweiser trademark. After all, beer has been brewed in České Budějovice since the late 13th century. In addition, the Paris Convention and Madrid and Lisbon Agreements both forbid the use of misleading

²⁵¹ Richard Hornik, “Can They be Buddies?”, TIME, July 13, 1998, at 58.

appellations or indications of origin. It would have been difficult for Anheuser-Busch to argue that its Budweiser was produced in České Budějovice, although it may have claimed that it had been using the name in good faith and consumers were well aware that its beer was not brewed in that city.

However, as examined in the previous chapter, 1994 also saw the conclusion of the TRIPS agreement. This tilted the balance decidedly in Anheuser-Busch's favor in respect to the legal right to the term Budweiser in all WTO member countries. Perhaps understanding this, Anheuser-Busch has challenged Budějovický Budvar in many places around the world. In this section, the outcomes of some cases will be discussed. This will provide a context for the final chapter of this paper, which discusses the current prospects for Budějovický Budvar.

Nation by Nation

In 1976, Austria signed a bilateral convention with Czechoslovakia to protect geographic indications of origin of food products in the two countries. In this treaty, Austria granted protection to the Czechoslovak government for the word "Bud". Twenty-three years later, Budějovický Budvar asked the Austrian government to issue an injunction against the Austrian company Ammersin.²⁵² This company was importing and distributing Anheuser-Busch's Budweiser. This objection was based on the grounds that Anheuser-Busch's Budweiser is often referred to simply as "Bud" and the treaty between the two countries provided protection for that term to the Czechs.

The Vienna Handelsgericht referred that case to the European Court of Justice. Specifically, it wanted to know whether EC Regulation 2081/92, which protects GIs, or the provisions of the EU treaty ensuring the free movement of goods prohibited the use of the Austrian-Czechoslovakian convention.²⁵³ This was because when Budějovický

²⁵² Case C-216/01 Budějovický Budvar, národní podnik v Rudolf Ammersin GmbH, European Court of Justice, 18 November 2003

²⁵³ Case C-216/01 Budějovický Budvar, národní podnik v Rudolf Ammersin GmbH

Budvar made the objection, the Czech Republic was not yet a member of the EU. The treaty between the two countries prevents any entity from using the term “Bud” whether or not the term will mislead consumers. Also the importation of the product into another member state could possibly be prevented due to the treaty.

The European Court of Justice ruled in favor of Budějovický Budvar. It reasoned that the EC regulation does not prevent the bilateral treaty from being fulfilled.²⁵⁴ The Court found that the simple and indirect indication of origin protected in the treaty should be guaranteed regardless of whether or not consumers would be misled and that the importation of such a good legally marketed in a separate member state may be prevented.²⁵⁵

The ECJ further said that the purpose of the bilateral convention was clearly to ensure free competition. Therefore, as long as the name had not become generic in the state of origin, it fell under the protection of industrial and commercial property.

In 1996, Anheuser-Busch launched a legal action against Budějovický Budvar in Finland.²⁵⁶ Anheuser-Busch was the owner of the trademarks Budweiser and Bud in that country. It wanted to enjoin Budějovický Budvar’s use of the terms Budějovický Budvar, Budweiser, Budvar, Budweiser, Budweiser, Bud, Budvar and Budweiser Budbrau on product labels, in advertising and for all commercial purposes.

A Court of Appeal in Finland had ruled against Budějovický Budvar and stated that the company could not use the name Budweiser Budvar in that country. However the Finnish Supreme Court reversed that decision in saying that the company was allowed to use Budweiser Budvar in order to indicate its trade name. In addition the company can use that mark for all commercial purposes, as long as it is being done in accordance with honest commercial practices. However, the Court also ruled that Budějovický Budvar could not use the term “Bud” in any commercial circumstances.

²⁵⁴ Case C-216/01 Budějovický Budvar, národní podnik v Rudolf Ammersin GmbH

²⁵⁵ Case C-216/01 Budějovický Budvar, národní podnik v Rudolf Ammersin GmbH

²⁵⁶ Anheuser-Busch Inc. v Budějovický Budvar, národní podnik, Judgment of the European Court of Justice in Case C-245/02, 16 November 2004

Originally, the Finish Supreme Court had referred the case to the European Court of Justice.²⁵⁷ The Finnish Court wanted clarification on the interpretation of the TRIPS agreement and the EC Trademark Directive. The ECJ ruled that “a sign, which is identical or similar to a trademark of another, can be used to indicate a trade name, provided that such use is in accordance with honest practices in commercial or industrial matters”.²⁵⁸ The ECJ then left it to the Finnish Court to decide whether honest practices had been adhered to in regards to the use of the mark

The Portuguese Supreme Court rejected Anheuser-Busch’s claim to the Budweiser mark in part because of a bilateral treaty entered into force in 1987 between Portugal and the former Czechoslovakia.²⁵⁹ The treaty guaranteed mutual and extensive protection for geographic marks, including beer.²⁶⁰ In 1981, Budejovicky Budvar objected to trademark applications for “Budweiser” and “Bud” by Anheuser-Busch by asserting that Anheuser- Busch’s request breached international law and infringed upon Budejovicky Budvar’s use of its marks since 1956.

The Portuguese Supreme Court gave the Czech firm full use of the term “Budweiser”, while permitting Anheuser-Busch to use the “Bud” brand name. The court principally based its decision upon a bilateral treaty between the Portuguese and the former Czechoslovakian governments in which both nations promised to safeguard each other’s geographic indications in domestic markets.

During the 1990s, Budějovický Budvar attempted to sell its beer in Australia using the Budweiser name. Anheuser-Busch filed suit against the Czech company. Anheuser-Busch had been selling its own Budweiser beer in Australia since 1965.

²⁵⁷ Anheuser-Busch Inc. v Budějovický Budvar, národní podnik, Judgment of the European Court of Justice in Case C-245/02 , 16 November 2004

²⁵⁸ Anheuser-Busch Inc. v Budějovický Budvar, národní podnik, Judgment of the European Court of Justice in Case C-245/02 , 16 November 2004

²⁵⁹ Zylberg (2002) p 43.

²⁶⁰ Zylberg,(2002) p 43

Anheuser-Busch contested several of the names Budějovický Budvar was marketing its beer under in Australia. The Australian courts granted Anheuser-Busch's wish to enjoin Budejovický Budvar's use of the expressions "Budweiser Budvar," and "Budweiser".²⁶¹ Claiming that "Budejovický Budvar" was likely to be shortened by Australian consumers to the term "Bud", to which Anheuser-Busch had the rights, it also sought to prevent the Czech firm from using that designation.

The Federal Court of Australia decided that Anheuser-Busch's "Budweiser" was protected under Australian law. The court concluded that Anheuser-Busch had accurately registered and continuously used its mark in Australia and the mark had developed considerable recognition because of advertising to Australian consumers. The Czech company was not allowed to use its "Budweiser Budvar" name on its beer labels because of the prominence of Anheuser-Busch's Budweiser in Australia.²⁶²

However, the court denied Anheuser-Busch's objection to the "Budejovický Budvar" term. The court reasoned that the indication would not remind Australian consumers of Budweiser or Bud as it appeared on the Czech company's beer labels. The court found that the words are clearly unrelated to each other, even though they begin with the same three letters.²⁶³ Since the Czech product mark was different from Anheuser-Busch's, it could be used by the Czech firm. The Australian court relied principally upon the consumer's correlation of the term with Anheuser-Busch to determine secondary meaning and thus trademark protection.

In the United Kingdom, the two firms are forced to coexist with one another's use of the Budweiser mark.²⁶⁴ Both companies started advertising their beer under the Budweiser designation in 1973 and court battles between the companies have been

²⁶¹ Anheuser-Busch v. Budejovický Budvar, 56 I.P.R. 182 (2002).

²⁶² Bruce Horowitz et al., International Intellectual Property Rights, 37 INT'L LAW 473, 476 (2003) (citing Anheuser-Busch, Inc. v. Budvar, 2002 F.C.R. 390).

²⁶³ Anheuser-Busch v. Budejovický Budvar, 56 I.P.R. 182 (2002).

²⁶⁴ Zylberg, (2002) p 47-51.

happening ever since. A 1984 court ruling found that allowing both firms to concurrently use the name Budweiser had caused confusion among customers.²⁶⁵

On appeal, other courts in the UK allowed simultaneous use of the Budweiser name, and in 1998, a court upheld the lower court verdicts allowing simultaneous use of Budweiser.²⁶⁶ The court decided that each claimant had acquired an individual reputation even though they both had similar names. The court did not find danger of mistaking the names or deliberate passing-off, saying that “the consumer is aware which beer he prefers.”²⁶⁷ Further objections by Anheuser-Busch to the use of Budweiser by Budějovický Budvar, were rejected with the courts inferring that because both companies originally used the name in good faith.²⁶⁸

In another 1998 decision, Budějovický Budvar was allowed continued use of Budweiser in Switzerland.²⁶⁹ Because of this decision, Anheuser-Busch was prohibited from marketing or selling its beer with the name Budweiser. The United States has also witnessed challenges to the use of the term. In 1999, Anheuser-Busch filed an International Trade Commission challenge against Budějovický Budvar and a local importer, Argen-Wine Imports, alleging that the Czech beer illicitly turned up in the United States at a conference center at the University of Maryland (Budvar’s Budweiser is allowed on the property of foreign embassies in the US, but not at the University of Maryland, Baltimore Campus).²⁷⁰ The International Trade Commission began an investigation, which was concluded when the firms agreed to settle the question.²⁷¹

In 2002, a Japanese court banned two domestic importers from importing Czech Budweiser.²⁷² Anheuser-Busch had filed suit against the importers as well as

²⁶⁵ Muchlinski (1996) p 669.

²⁶⁶ Smith (1999) 1251 n.3.

²⁶⁷ Smith (1999) 1251 n4

²⁶⁸ Zylberg, (2002) p 49.

²⁶⁹ “In Switzerland, ‘This Bud’ May Not Be For You.” <http://www.realbeer.com/library/rbpmail/rbpmail-199903.php#IN%20SWITZERLAND>. March 1999. Visited 17 March 2007.

²⁷⁰ Jack Lucentini, “Anheuser-Busch Calls Czech-Mate in Name Dispute”, J. COMM., May 10, 1999, at 6A.

²⁷¹ Robert Bird, (2006) p 60.

²⁷² “Anheuser Wins Budweiser Case in Japan” *Modern Brewery Age*, 28 October 2002

Budějovický Budvar but the Court did not find against the Czech brewery because it was not involved in the importation. Anheuser-Busch owns the rights to Budweiser and Bud in Japan.

A ruling in Hungary had a bit of a comedic element in the manner that it was reported by the media. On July 25th, 2005 numerous media outlets reported that Budvar had lost the case, and would not be allowed to sell its beer as Budweiser in Hungary.²⁷³ In addition, it was stated in those same reports that Budějovický Budvar had also lost its right to the marks Budweiser, Budweiser Budvar and Bud.

However, a few days after news outlets around-the world carried this story, a different outcome was publicized in some places.²⁷⁴ In these reports it was noted that the Hungarian court had only ruled that Budějovický Budvar could not claim Budweiser as a geographical indicator because it did not come from a place named Budweiser. The court affirmed Budějovický Budvar's right to use Budweiser, Budweiser Budvar, and Bud in advertising and on its products.

World Trade Organization (WTO)

On March 15th, 2005 the World Trade Organization Dispute Settlement Panel rendered decisions in cases brought by the United States and Australia against the EU. The US and Australia claimed that EC Regulation 2081/92 protecting geographical indications and food products violates provisions of the TRIPS agreement.²⁷⁵ The complainants also stated the EC Regulation violated parts of GATT and the Paris Convention.²⁷⁶

²⁷³ "Hungary rejects Budvar's GI Claims" <http://www.cee-foodindustry.com/news/ng.asp?id=61493-budvar-gi-hungary> 25 July 2005. Visited 12 April 2007.

²⁷⁴ Sean Carney "Budweiser vs. Budweiser Ruling Lost in Translation" *Czech Business Weekly*, <http://www.cbw.cz.phprs/1005072504.html> 25 July 2005. Visited 16 April 2007.

²⁷⁵ "European Communities-Protection of Trademarks and Geographical Indications for Agricultural Products and Food Stuffs. Complaint by the United States." World Trade Organization, Report of the Panel, WT/DS174/R, 15 March 2005, p2.

²⁷⁶ "European Communities-Protection of Trademarks and Geographical Indications for Agricultural Products and Food Stuffs. Complaint by the United States." p2.

In their complaint, the US and Australia charged that EC Regulation was faulty on two grounds; first, it amounted to discrimination against US and Australian possessors of GIs, and secondly, that it had caused a failure to protect the rights of trademarks holders in the EU.²⁷⁷ The WTO Dispute Settlement Panel sided with the US and Australia on the first issue. It decided that because the EC regulation did not provide procedures for WTO members outside the EU to apply for GIs the regulation was discriminatory.²⁷⁸ The Panel also said that restricting protection to countries that provided equivalent and reciprocal systems was unfair.²⁷⁹ Finally, it ruled that allowing only governments and not private parties to object to GIs was unreasonable.²⁸⁰

The ruling regarding the charge that the regulation did not provide enough protection for trademark owners was more interesting. Article 14 paragraph 2 of the EC regulation states that a trademark made prior to the registration of a GI has to coexist with the GI even if they are similar.²⁸¹ The only instance in which this is not applicable is if the prior trademark has gained some renown, has been used for some time, and if the GI is “liable to mislead the consumer as to the true identity of the product”.²⁸²

Australia and the US argued that Article 14 paragraph 2 of the EC regulation violated Article 16 paragraph 1 of TRIPS which grants trademark owners “the exclusive right to prevent all third parties from using an identical or confusingly similar sign for identical or similar goods or services”.²⁸³ Furthermore, Article 16 of TRIPS establishes the ‘first in, first in right principle’. Although the European Court of Justice had also confirmed this principle²⁸⁴, the EC defended its position by saying that coexistence

²⁷⁷ Olghart (2005) p2

²⁷⁸ Olghart (2005) p2

²⁷⁹ Olghart (2005) p3

²⁸⁰ Olghart (2005) p4

²⁸¹ “WTO Ruling Will Protect A-B in Trademark Cases” *Modern Brewery Age*, 21 March 2005

²⁸² “European Communities-Protection of Trademarks and Geographical Indications for Agricultural Products and Food Stuffs. Complaint by the United States.” para 7.67

²⁸³ TRIPS, Article 16 (1)

²⁸⁴ Judgement of 16 November 2004 (C-245/02)_Anheuser-Busch v. Budejovicky Budvar, narodni podnik.

between a prior trademark and a similar GI was justified in TRIPS. Specifically, the EC cited Article 24 paragraphs 3 and 5 and Article 17.²⁸⁵

However, the Dispute Panel ruled that Article 24 paragraphs 3 and 5 do not give exceptions to the rights of trademarks owners under Article 16 of TRIPS. Instead, the Panel decided that Article 24 provides exceptions to the extent of protection for GIs.²⁸⁶ In particular, the Dispute Panel said that Article 24 provides an exception to the obligation to provide protection for GIs.²⁸⁷

In addition, the WTO Panel rejected the idea that Article 24 paragraph 5 provides for the coexistence of a geographical indication with a previously registered trademark.²⁸⁸ Thus, in the view of the Panel, the EC regulation did not allow the owners of prior trademarks the right to prevent misleading or confusing uses of geographical indications.²⁸⁹ However as a limitation to this ruling, the Panel found that the EC's arguments regarding Article 17 of TRIPS were valid. So, as Article 17 gives "limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties"²⁹⁰ there was an exception to the right of the trademark holder. There were two major contingencies on which this exception was based.

The first qualification was that Article 17 would not allow the provision of a GI if that GI would cause a very high likelihood of confusion with a previously registered trademark.²⁹¹ This means that in every case that a GI is being applied for, the EC must examine the situation to see if such confusion is likely to occur. If there is any confusion

²⁸⁵ European Communities-Protection of Trademarks and Geographical Indications for Agricultural Products and Food Stuffs. Complaint by the United States. " para 7.53

²⁸⁶ European Communities-Protection of Trademarks and Geographical Indications for Agricultural Products and Food Stuffs. Complaint by the United States. " para 7.614

²⁸⁷ European Communities-Protection of Trademarks and Geographical Indications for Agricultural Products and Food Stuffs. Complaint by the United States. " para 7.132

²⁸⁸ European Communities-Protection of Trademarks and Geographical Indications for Agricultural Products and Food Stuffs. Complaint by the United States. " para 7.688

²⁸⁹ Olghart (2005) p3

²⁹⁰ TRIPS, Article 17

²⁹¹ European Communities-Protection of Trademarks and Geographical Indications for Agricultural Products and Food Stuffs. Complaint by the United States. " para 7.67

that may occur in even a single EU member state, the GI must be denied and the right of the trademark owner must be upheld.²⁹² Thus it follows that if a GI is being applied for and that GI is going to be on an identical product with a similar trademark, that GI must be denied.

In addition, Article 13 of the EC regulation gives protection to GIs against any “misuse, imitation, or evocation, even if the true origin of the product is indicated, or if the protected name is translated”.²⁹³ According to this, some argued that registered GIs give the right of protection to the translation of that GI. The WTO dispute Panel found that this was also not true. It said that the EC must ensure that the use of a GI is strictly confined to the use of the GI as registered. The Panel specifically stated:

We recall our findings in paragraph 7.518 that the GI registration does not confer a positive right to use any other signs or combination of signs, nor to use the name in any linguistic versions not entered in the register. The trademark owners’ right is not curtailed any such uses. If the GI registration prevented the trademark owner from exercising its rights against these signs, combinations of signs or linguistic versions, which do not appear expressly in the GI registration, it would seriously expand the exception [of Art. 17TRIPS] and undermine the limitations on its scope²⁹⁴

If this were not enough to settle the Anheuser-Busch v Budvar question, the WTO Dispute Panel directly addressed the issue. It found that although Budejovicke pivo, Ceskobudejovicke pivo and Budejovicky Mestansky were protected GIs because of the

²⁹² European Communities-Protection of Trademarks and Geographical Indications for Agricultural Products and Food Stuffs. Complaint by the United States. ” para 7.657

²⁹³ Olghrt (2005) p3

²⁹⁴ European Communities-Protection of Trademarks and Geographical Indications for Agricultural Products and Food Stuffs. Complaint by the United States. ” para 7.657

Czech Republic's accession treaty with the EU, translations of those GIs could not be protected.²⁹⁵ Therefore in any country where Anheuser-Busch held the right to the Budweiser trademark before Budějovický Budvar was granted the GI or a previous trademark, it would have the right to prevent Budějovický Budvar from using the term Budweiser.

Similarly, Budějovický Budvar can prevent Anheuser-Busch from using Budweiser in countries where it has registered the name first. So in many countries, the dispute is continuing. There are many different totals in regards to the number of countries, and the number of lawsuits that the two entities are engaged in. Some officials from the companies have been quoted giving different numbers almost every time they are asked. A reliable partial summary is as follows at present, Budejovicky Budvar has the right to "Budweiser" in approximately forty countries, and in Germany and Russia it possesses the exclusive right to the "Bud" derivative.²⁹⁶ Anheuser-Busch holds the right to "Budweiser" in the United States, Spain, Denmark, Italy, Finland, and numerous non-European countries such as Nigeria, Australia, New Zealand, and Argentina.²⁹⁷

IV. A Future Without The Dispute?

Current Prospects for Budějovický Budvar

In February of 2007, the recently formed center-right government of the Czech Republic announced that Budvar would be privatized, or partially privatized during the coming year.²⁹⁸ According to various sources, this is because the government is running a deficit and needs money in order to improve infrastructure, especially highways.²⁹⁹

²⁹⁵ Olghart (2005) p 4

²⁹⁶ Smith (1999) at 1254 n.18.

²⁹⁷ Smith (1999) at 1254 n.18

²⁹⁸ Petra Breyerova "Budvar Sell-Off Back In Play" *Czech Business Weekly* 26 February 2007

²⁹⁹ Breyerova (2007)

This raises several intriguing questions; how would the government set out to privatize the firm? Would the government allow foreign firms to buy stakes in Budějovický Budvar? What does this mean for the trademark dispute between Anheuser-Busch and Budějovický Budvar? Is the government actually serious about privatizing the company this time?

In early 2007, Budějovický Budvar announced that it had signed an agreement with Anheuser-Busch over the distribution rights to Czechvar in the United States.³⁰⁰ According to the agreement, Anheuser-Busch gained exclusive rights to import and distribute Czechvar in the US. Budějovický Budvar gained several benefits from this arrangement.

First, Anheuser-Busch is a much larger company than Budějovický Budvar's previous distributor in the United States, Distinguished Brands. This means that Czechvar will have access to better marketing than it previously did in the US. In addition, Anheuser-Busch is ubiquitous in the United States beer market. In every corner of the country, Anheuser-Busch has a strong presence with at least one of its brands. Thus Czechvar is instantly gaining access to markets where it may never have appeared otherwise. Finally the immense size of Anheuser-Busch gives Budějovický Budvar an enormous amount of leverage over those wishing to purchase Czechvar.

Previously, Budějovický Budvar asked that pubs that wished to purchase kegs of Czechvar sign contracts that said they would completely use a fifty liter keg of Czechvar within three days of opening it and if not, that they would stop serving from that keg after three days.³⁰¹ Budějovický Budvar is a small company, and its previous distributor in the US was also small. Enforcing this agreement on a pub could prove to be extremely difficult with such limited resources. Anheuser-Busch, however, is a behemoth. It has the resources and ability to ensure that the wishes of Budějovický Budvar will be carried out in those pubs which carry kegs of Czechvar. This will ensure that should a consumer

³⁰⁰ Paul Voosen "Tapping into America" *The Prague Post* 17 January 2007

³⁰¹ "Budvar Slams Big Brewers" 25 October 2004 Realbeer.com

enter a pub, wish to try a new brand of beer and purchase a Czechvar, the beer will be fresh and delicious.

Also giving Anheuser-Busch a stake in the success of Czechvar in the United States is important. If more Czechvar is sold in the US, that will mean more money for Anheuser-Busch. The previous arrangement, where a third party was benefiting from the success of Budějovický Budvar in the United States, probably did not decrease the enmity between the two companies. It certainly did nothing to help ease the legal battles between the firms.

Strangely, the Czech government seems almost automatically opposed between the arrangement between Budějovický Budvar and Anheuser-Busch. It has said that it expects that the agreement was somehow detrimental to Budějovický Budvar.³⁰² Although it has not elaborated on what it thinks maybe amiss with the arrangement several speculations can be made.

First, it may think that Budějovický Budvar gave Anheuser-Busch terms that were too positive for the American firm. The government may think that whatever price Anheuser-Busch is getting for distributing Czechvar in the United States is too high. If the deal is in the form of some percentage of the US sales for Czechvar, the government will probably reason that Budějovický Budvar could have extricated a lower percentage from another firm. Perhaps, Budějovický Budvar did not negotiate hard enough or use the interest of competing US firms against each other. For example, if Anheuser-Busch and Adolphus Coors International (another large American beer producer with national reach in the US) were pitted against each other in a bidding war for the rights to distribute Czechvar in the United States, then maybe Budějovický Budvar could have received more favorable terms.

³⁰² "Czech Brewer Budvar Could Be Partially Privatized" Interfax . Available at <http://e-malt.com/mnewsasp/news.asp?Action=View&Id=10438&Email=@EMAIL@> 10 April 2007. Visited 1 May 2007

Second, the Czech government may be reasoning that striking a deal with Anheuser-Busch for the US distribution rights may signal that the Czech firm is not serious about defending its trademark in the various countries where the dispute is still continuing. In such a situation, Anheuser-Busch may decide to redouble its efforts to gain trademark privileges or to go back and re-challenge decisions in countries where Budějovický Budvar has prevailed.

It seems unlikely that Anheuser-Busch would decide that this is the case or that if it were the case that Anheuser-Busch would change its strategy based on the distribution deal. Anheuser-Busch's legal strategy was set long ago and it has repeatedly stated that it would like the resolution of the trademark dispute so that it can know its options for selling its beer in various markets. Although it might like to challenge decisions that went against its wishes, Anheuser-Busch would most likely be better off pressing forward with selling its beer under whatever marks it is allowed. Its brand name is already so large and well known that if it could increase its market share in a country under any name, consumers in that country would soon come to associate that name with the American "Bud".

In the short term, such a strategy might strengthen its competitors' position in those markets, but in the long run it would significantly weaken those same competitors' prospects. With the vast resources available to Anheuser-Busch, sooner or later a popular advertising campaign would increase Anheuser-Busch's sales in that country. In the increasingly global market place, undoubtedly consumers in any such country would become aware that this beer is the American "Bud" and the competitors' is not. So, while the competitor might gain some sales due to consumer confusion, or because of anti-American or anti-globalization sentiment, the reassociation of whatever brand name Anheuser-Busch is selling its Budweiser under would inevitably take place, thus strengthening Anheuser-Busch's position relative to its competitors' position.

Finally the Czech government may just be making its statements based on the aforementioned hostility to Anheuser-Busch and perhaps anti-American or anti-

globalization feelings in the Czech Republic. The elections in the Czech Republic were evenly split between the country's two main political parties. Although the center-right coalition was able to form a government, there were several months of limbo in the Czech Republic after the elections in 2006. The government surely does not feel that it has a very strong mandate and may be seeking to reinforce its position.

Once again, playing off the national pride in beer in the Czech Republic is a certain way to gain some support. However, it does not mean that Budějovický Budvar's agreement with Anheuser-Busch is in any way detrimental to the Czech brewery. In fact, it seems more likely that the agreement is beneficial to Budějovický Budvar than anything else. After all, the management at Budějovický Budvar would not make the agreement if they felt it was unfavorable to them. Although of course, the current Czech government may be hinting that there were improprieties that led to the agreement. But it seems just as likely that the government would want to use such as distraction in order to take attention off its own shaky position in other political matters.

Recently, the Czech government announced that it had investigated the agreement and found that it did not harm Budějovický Budvar's position. Prime Minister Mirek Topalánek said, "It is now clear the agreement neither undermined nor strengthened Budvar's market position. Nor did it affect Budvar's trademark disputes."³⁰³ Although most reasonable people probably could have concluded the same thing without spending tax dollars on an investigation, the Czech government could not have risked such a thing politically.

Although the Czech government's decision to scrutinize the arrangement between Anheuser-Busch and Budějovický Budvar to distribute Czechvar in the US may have been feeble, in even worse shape are the government's finances. The government needs to raise some cash quickly, and publicly floated the idea of privatizing Prague airport, the Czech Airlines, and Budějovický Budvar in early 2007.³⁰⁴ It made no mention of the

³⁰³ "Czech Brewer Budvar Could Be Partially Privatized" Interfax 10 April 2007

³⁰⁴ "Czech Brewer Budvar Could Be Partially Privatized" Interfax 10 April 2007

possible form that a privatization of Budějovický Budvar would take, but it did signal its intention to turn the firm into a joint stock company.³⁰⁵

Because of the emotions attached to the firm and its position as a “national treasure” the government would face intense criticism if the firm were to fall into foreign ownership. Indeed, Budějovický Budvar is currently the largest and the last of the major Czech breweries to still be in Czech control. This is of course a result of the Czech government’s adamant refusal to privatize the company in the early ‘90s. If Budějovický Budvar had been privatized it surely would have fallen into foreign hands like Pilsner Urquell, another source of intense national pride and now some disaffection.

So the government is faced with the same problem as in the early ‘90s, except that now its bargaining position is much, much worse. As previously examined in this paper, in the early ‘90s the Czech government was in fairly good condition. It had low levels of debt, a strong position regarding its need to privatize Budějovický Budvar to raise funds, and a strong probability that the Budějovický Budvar Budweiser trademark would prevail over Anheuser-Busch’s claim to that name in many countries.

Now, however things are different. The Czech government is badly in need of funds. Worse still, the TRIPS agreement and recent WTO Dispute Panel ruling has undermined Budějovický Budvar’s claim to the Budweiser mark in many jurisdictions. Adding insult to injury, very few national courts have decided in Budějovický Budvar’s favor. Anheuser-Busch now has the right to the Budweiser name in twenty-one European countries.³⁰⁶

So, the Czech government needs to raise money and perhaps the best way to do that without incurring future debt and responsibilities is to sell parts of the remaining firms under its control. In addition, it needs to do so while not encouraging extensive public criticism about the manner in which it does so.

³⁰⁵ “Czech Brewer Budvar Could Be Partially Privatized” Interfax 10 April 2007

³⁰⁶ Smith (1999) at 1254 n.18

One option available to the Czech government after it transforms Budějovický Budvar into a joint stock company is to sell shares of the company only to Budějovický Budvar management. Optimistically, this would keep the company under Czech control while giving those same managers increased incentive to see the company perform better. This would have the effect of immediately raising funds for the Czech government in the form of whatever money the management would pay for its share. In addition, the government could justly expect an increased cash flow in the future from the share of Budějovický Budvar that it retains. Since the managers would have the incentive to see the company grow, they would do everything in their power to encourage said growth. Thus, while the government may get a smaller slice of the revenue stream this would be offset by a having a larger revenue stream from which it takes its share.

The government could also have some type of provision in the contract of the sale of the share to management saying that the purchasers would not be allowed to resell their shares for a given number of years, under some type of threat of financial punishment or reversion of those shares to government. In this situation, another bidder would not be able to purchase those shares immediately and gain some type of control in the company. Of course, this would have the adverse effect of decreasing the value of the shares to those same managers who might not work as hard for Budějovický Budvar to grow, thus decreasing the expected revenue slice for the government.

Another factor is that this type of limitation contract on the right to resell the shares could not be indefinite. If it were indefinite, the value to those managers would hardly be greater than if they had no shares at all. Therefore, at some point in the future those shareholders would be able to divest their holdings and it seems likely that a foreign firm (such as Anheuser-Busch) would be willing to make the largest bid for ownership of those stakes. So, while the government would be putting off the political risks of privatization, it would not be eliminating them. Sooner or later, the politicians who decide to privatize part or all of the company will have to face the consequences of that decision.

A different route that could be taken is the same one that was pursued during the initial privatization phase in the Czech Republic: directly selling part or all of the company to some suitor. This would carry immediate political risks for the Czech government, but as shown above the risks cannot be put off forever. A strategy of this sort could have several benefits that might outweigh the risks.

The first benefit would be that the amount received by the Czech government would undoubtedly be higher than of only selling to management. Large firms have much larger pools of capital available to them than managers. Even if the managers were able to have some financial institution underwrite the purchase of the sales, it would probably still be less than what Anheuser-Busch or another firm could muster.

The second benefit would be that Anheuser-Busch or another firm could inject the resources necessary for Budějovický Budvar to grow immediately. The Czech government could certainly expect an increased revenue stream from a sale to managers, but it could expect a much larger increase in revenue much sooner if it sold a stake to such a firm. Additionally, having a few potential suitors for Budějovický Budvar would be better than merely narrowing the list down to only management. It could expect a higher sale price, and if the government sold only a minority stake it would not have to worry too much about consequences such as a change in the recipe of the Czech beer, or an intention to limit production.

Of course a foreign investor would also to take into account the fact that the government would retain control of the operation. The fact that ownership might change after every election could be a great disincentive to an investor. If there is a terrible public out lash against even a partial sale to a foreign firm, it may not be possible for the government to hold the arrangement for very long. In addition, if at the next election the current opposition gained control of the government, they might renege on the current arrangement and force the foreign firm out. Therefore, foreign firms may be unwilling to buy a stake or might greatly reduce whatever bid they would make in the situation of the government not maintaining a majority position in Budějovický Budvar.

One way the government could sell part of the company to a foreign investor, ease the public's fears, and not maintain a majority holding would be to include a provision for a 'golden share' in the terms of the sale. In this situation, the government would sell as much of the company as it is able, but preserve veto rights over certain decisions. The government could hold approval rights over things like changing recipes, limiting production, or changes in strategy. The result of this type of arrangement could be the perception in the public that the company will in the future maintain its quality and its Czech identity.

The problems for this type of arrangement are similar to those for the situation in which the Czech government were to only sell a minority stake. An investor would certainly not like to have any of its decisions vetoed. This could reduce the amount that Budějovický Budvar would fetch. Furthermore, hammering out the details of a contract that an investor would agree to about in which circumstances the Czech government would be allowed to exercise its golden share would be complex and time consuming. Although it would be a windfall pay day for the lawyers involved, the management at an interested investor could be turned off by the entirety of the situation. The negotiations over selling a minority share to Anheuser-Busch in the early '90s failed primarily because they were too complex and time consuming. The current Czech government may also be indecisive in the negotiations, especially since it does not want to make any missteps with the Czech electorate.

Another option for the Czech government might be to sell to both the management of Budějovický Budvar and to other investors. This could allow the government to realize a large initial windfall, maintain the possibility of an increased future revenue stream, and hopefully keep the company in the hands of those who feel attached to the Czech tradition. Although this option sounds attractive, there are drawbacks as well.

For example, although some amount of national pride may keep the management from selling their shares to other investors, bank accounts often have greater influence

than tradition or pride. If the government were to also expect that public anger at a manager who sells their shares would keep them from doing so, then the government would also be ignorant of the fact that private citizens are nowhere near as answerable to the public as are politicians.

Thus some investor could gain a large stake in the company which could put the investor into a position through which they could exert enormous pressure on the government. If such a situation were to occur, the government would not only have to face the pressure from the company, but also from the public who would be upset at the government for not foreseeing this eventuality. This outcome would be even worse for the government than a direct sale of a minority stake to a foreign firm.

Another option for Budějovický Budvar is to license the use of the mark to Anheuser-Busch on a solitary basis, retaining the right to continued use of the mark. In particular, this would permit Budějovický Budvar to invoke its trade mark rights against Anheuser-Busch should the latter breach any provision in the licensing contract regarding its duration, the form in which the trade mark may be used, the scope of the license as regards goods and territory to which the mark applies, and as to breaches of quality control provisions.³⁰⁷ This would help the Czech government in that a licensing arrangement would also open a new revenue stream. Equally important, it would not require the sale of one of the “family jewels”. The Czech public certainly would not react as vociferously as if Budějovický Budvar were privatized and a foreign multinational gained control.

Granted that a licensing arrangement with Anheuser-Busch is very attractive, such a settlement may cause further problems. First, the coexistence of two Budweiser beers might generate a likelihood of confusion in the minds of consumers as to the origin or quality of the beers.³⁰⁸ If so, the continuing validity of the mark may be jeopardized, given that the misleading of the public as to the nature, quality or geographical origin of

³⁰⁷ Muchliski (1996) p 669.

³⁰⁸ Muchliski (1996) p 669.

goods is grounds for the revocation of the mark. Thus, the licensing agreement would have to ensure that quite distinct identities for the two Budweisers are created.³⁰⁹

Secondly, there arises a risk that third parties wishing to use the Budweiser name at some time in the future (for example, a separately owned brewer in České Budějovice) may claim that the name can no longer be validly registered as a trade mark as a result of the acts of both brewers.³¹⁰

A solution to the trade mark dispute which involves some element of licensing can be criticized in that it applies one name to two very different beers, without any assurance as to quality control or common origin.³¹¹ In these circumstances, it is arguable that the Budweiser name may in fact deteriorate into a generic term, much as the term 'pilsner' is no longer capable of acting as a trade mark. Unless some form of joint control between Anheuser-Busch and Budějovický Budvar over the quality of beers sold under the Budweiser name is agreed upon, there is a real danger that the name will be open to future challenge as a valid trade mark.³¹²

Anheuser-Busch's Potential Role

There is no doubt that Anheuser-Busch is keenly interested in Budějovický Budvar's future. Budějovický Budvar may be viewed as the bee in Anheuser-Busch's bonnet by many managers at the latter company. For a long time, the Czech firm has prevented Anheuser-Busch from following a definite strategy. Instead of being able to enter a market, put its advertising team to work, and watching the bank accounts grow, the company has been forced to first test the waters in many jurisdictions.

Anheuser-Busch has to rely on its legal team to ensure that the company does not waste time and money on futile endeavors. Fortunately, being a very large company has

³⁰⁹ Muchliski (1996) p 669.

³¹⁰ Muchliski (1996) p 669.

³¹¹ Muchliski (1996) p 669.

³¹² Muchliski (1996) p 669.

advantages. The small size of Budějovický Budvar means that it cannot enter many markets at the same time, nor can it expand too quickly. Anheuser-Busch has the resources to be able enter as many markets as it can as quickly as it can. There is very little restraining Anheuser-Busch from setting up shop in markets that Budějovický Budvar has not entered and so does not have a claim on the Budweiser mark.

That it is not to say that the dispute is insignificant for Anheuser-Busch. As shown in the preceding sections of this work, Anheuser-Busch has invested a great deal of resources over a large amount of time in settling the conflict. It definitely wants to conclude a formalized understanding with Budějovický Budvar.

Now the question is how badly does Anheuser-Busch want to settle the dispute? Would it be willing to commit a very large amount of money to either a licensing arrangement or an investment in Budějovický Budvar? The answer is probably straight forward for the company: yes. This would certainly be the case if the amount that it would be committing to either the investment in Budějovický Budvar, or towards a licensing arrangement would be less than it would expect to spend on future legal wrangling.

In addition, Anheuser-Busch would have to consider that it would not be the only party interested in partnering with Budějovický Budvar. The Czech company has shown an aptitude for growth, with 2006 being its most successful year to date.³¹³ Furthermore, its expansion into the American market has been a huge success. Its Czechvar is the fastest growing beer import on the American market³¹⁴ and this was when Czechvar was only being sold in thirty states.³¹⁵ Now, with the new distribution deal with Anheuser-Busch concluded, sales for Czechvar in the United States can be expected to be much higher.

³¹³ "Czech Brewer Budvar Could Be Partially Privatized" Interfax 10 April 2007

³¹⁴ Thomas Kellner. "The Best Czech Beers." *Forbes*, available at www.forbes.com/wine&food/2002/12/05/cz.tk.1206wine.html, Visited 12 April 2007.

³¹⁵ "Czech Brewer Budvar Could Be Partially Privatized" Interfax 10 April 2007

With so much potential for Czechvar to grow, companies such as Bass, SABMiller, Nomura and others will be interested in taking a piece should Budějovický Budvar be privatized.³¹⁶ One would expect that Anheuser-Busch would already be positioning itself for when the time comes to bid. A reasonable person could also expect Anheuser-Busch to be making optimistic remarks about a possible future relationship with Budějovický Budvar. But that is not happening.

Instead, Anheuser-Busch seems reluctant to make any clear declarations on the subject beyond that a relationship with Budějovický Budvar is 'possible in the future'.³¹⁷ When asked about what type of partnership might be possible, Steven Burrows, the head of Anheuser-Busch International, refused to comment.³¹⁸ When asked about investing in Budějovický Budvar, he said, "we may invest nothing. There are many ways to construct partnerships. They don't have to require an investment."³¹⁹ Regardless of the dithering as to its strategy regarding Budějovický Budvar, it is almost definite that Anheuser-Busch will be involved with the Czech company in some way.

That is because Budějovický Budvar is blocking Anheuser-Busch from significant sums of money. One analyst estimated that "if the legal barriers in Eastern Europe alone did not exist, Anheuser-Busch could reasonably expect Budweiser's brand value to be \$300 million dollars higher than it is now."³²⁰ If Anheuser-Busch were able to sell its flagship beer unrestricted in the countries where it is now restricted, its market share would almost immediately increase by nearly two percent.³²¹ That two percent would translate into an enormous amount of profit. Talled with the increase in the value to the Budweiser brand and Anheuser-Busch would be in revenue heaven.

³¹⁶ Reid (2004) p 17

³¹⁷ Breyerova (2006)

³¹⁸ Breyerova (2006)

³¹⁹ Breyerova (2006)

³²⁰ Minto(2006) pp 21-22

³²¹ Minto (2006) p 24

V. Conclusion

Both Budějovický Budvar and Anheuser-Busch are prime examples of successful companies. Anheuser-Busch can be viewed as a prototypical American success story. An immigrant starts a company, makes wise decisions and works hard as that company grows. Over the next century, that company becomes one of the largest and most successful in the world.

Budějovický Budvar's story parallels that of the Czech people. The modern company was born out of the Czech 'national awakening movement'. Fate served it a difficult path, with one misfortune (the Nazi occupation) followed by another (communist control). Despite these hardships, the company has managed to shake off the yoke of the past and to once again find its place in the world. Even though it is no longer beholden to history, it is still deeply affected by it. The dispute over the Budweiser name is testament to that fact.

For their part, both companies have used the legal system in ways that they felt would further their interests. Anheuser-Busch has been involved in litigation almost since the moment it started brewing Budweiser beer. It is no stranger to legal challenges, and even when it does not necessarily win a decision outright, the company is able to use its staying power to outlast its competitors.

Still there is something ironic and perhaps a little melancholy about Anheuser-Busch's use of the legal system. It is interesting that Anheuser-Busch's famous beer was intended to be a direct copy of a great invention from somewhere else in the world. Even the name was not original. Then the company managed to use the Paris Convention, and now TRIPS, to secure its rights over this product. The very thing that these agreements are supposed to prevent is the expropriation of a great idea from one place for use in another place without recompense for the originators.

It is difficult to deny, however, that Anheuser-Busch was the first to follow the proscribed legal procedures for safeguarding its product. And, as any rational entity would do, it has continued to fight for all the rights and benefits that are a result of its being the “first in”. To Anheuser-Busch’s credit, it did not seek to litigate Budějovický Budvar into submission. It looked for a peaceful settlement to the dispute. When the opportunity arose for Anheuser-Busch to provide resources for Budějovický Budvar to grow it definitely attempted to help.

The first time was after the Velvet Revolution when it even offered to buy a share of the Czech company. The second time, after the negotiations for investing had failed, was when it signed on to be Budějovický Budvar’s distributor in the American market. A cynic might say that Anheuser-Busch only made these efforts because it had a lot to gain, but at the very least they did not benefit Anheuser-Busch at Budějovický Budvar’s expense, which is not something that can often be said of rivals. Indeed the backfiring of Anheuser-Busch’s public relations campaign while it was negotiating for a piece of Budějovický Budvar was, for a company that is usually an unbeatable advertising champ, both costly and humiliating.

Budějovický Budvar has for its part also used the legal to system to its advantage. Registering Budweiser for its own use has prevented Anheuser-Busch from entering some markets. This has been a help to the Czech company in that it does not have to compete with such a gigantic firm in some markets. Secondly, the litigation has provided some ‘free’ advertising. It has without a doubt raised the company’s profile in many parts of the world. The old saying is that all press is good press and with Budějovický Budvar often being portrayed as David to Anheuser-Busch’s Goliath, the company has surely gained sympathy from many quarters.

Furthermore, as part of the Czech Republic’s accession treaty to the European Union, three marks related to Budějovický Budvar were given protected status as geographic indicators. This has meant that in battles with the US and Anheuser-Busch, Budějovický Budvar now has not only the Czech government fighting for it, but also in

some respects the entirety of the European Union (as in the WTO Dispute Settlement Procedure).

But as some of Anheuser-Busch's moves seemed to backfire on itself, the same may have happened for Budějovický Budvar. The international brewing industry consists largely of companies like Anheuser-Busch: companies with large operations that license production capacity in foreign markets. For Budějovický Budvar's geographic indications to remain valid, its beer must be brewed in České Budějovice. This adds a tremendous amount of cost to the firm, as transporting beer is not easy or cheap. Additionally, the company will not be able to expand in the same way as its peers (licensing production in a foreign market) unless it relinquishes its geographic indications. Such a move might well be ridiculous, especially since the Czech government has spent so much time and effort making sure those rights are acknowledged.

The Czech government itself might be hurting after failing to privatize Budějovický Budvar in the early '90s. Now, much of the legal rights it claimed for the Budweiser name have been undermined by TRIPS. In the coming years, it would not be surprising if Budějovický Budvar can only claim the exclusive right to the Budweiser name in the Czech Republic. Perhaps this, in addition to debt, is the reason that the Czech government now seems eager to proceed with the privatization of one of the 'family jewels'. It is seeking to get the most value for the company, and its related names, that it can possibly get.

One thing is certain, that despite all its apparent indifference Anheuser-Busch will have an interest in Budějovický Budvar's future status. No company rationally seeks to forego money, especially when it could also be solving a problem at the same time. The future for Anheuser-Busch and Budějovický Budvar is uncertain. They seem destined to meet, but whether it will be on opposite sides of a courtroom, or in management excursions depends to a large degree on whether the Czech government can overcome public opposition and its own fears.

Bibliography

Academic Publications:

- Bird, Robert C. "This Bud's for You: Understanding International Intellectual Property Law Through the Ongoing Dispute Over the Budweiser Mark." *Journal of Legal Studies* Vol. 23 Is. 1, March 2006, pp 53-85.
- Conrad, Albrecht. "The Protection of Geographical Indications in the TRIPS Agreement." *86 Trademark Report*. 11, 42 (1996).
- Funk, Neil. Foreign Direct Investment To The Czech Republic. Comparing The Case of Skoda Automobilova and Volkswagen with Bargaining for Budejovicky Budvar By Anheuser-Busch. Miami University: Oxford, Ohio: 2003.
- Frydman et al. "The Privatisation Process in Central Europe." Central European University Press: London, 1993, pp 70-91.
- Gourvish, "Economics of Brewing, Theory and Practice: Concentration and Technological Change in the USA, UK and West Germany Since 1945" *23 Business and Economic History*, 1994, pp 253-265.
- Hall, Timothy. "Pivo and Pohoda: The Social Conditions and Symbolism of Czech Beer Drinking." *Anthropology of East Europe Review*, Vol 21 No 1, 2003
- Horowitz, Ann. "Firms in a Declining Market: The Brewing Case." *The Journal of Industrial Economics*, Vol 13 No 2, March 1965, pp 129-153.

Books:

- Englund, Terje. The Czechs in a Nutshell. Baset: Czech Republic, 2004.

Court Cases:

- Anheuser-Busch v. Budejovicky Budvar, narodni podnik. European Court of Justice Judgement of 16 November 2004 (C-245/02).
- Anheuser-Busch Brewing Association v. Frederick Miller Brewing Co. F. 864, 865 (E.D. Wis. 1898).

Anheuser-Busch, Inc. v. Cohen, 37 F.2d 393, 397 (D. Md. 1930)

Anheuser-Busch, Inc. v. Du Bois Brewing Co 175 F.2d 370 (3d Cir. 1949), cert. denied,
339 U.S. 934 (1951).

Anheuser-Busch, Inc. v. Power City Brewery, Inc., 28 F. Supp. 740, 743 (W.D.N.Y.
1939).

Budějovický Budvar, národní podnik v Rudolf Ammersin GmbH. European Court of
Justice, 18 November 2003 (Case C-216/01).

Schweizerische Kaeseunion Bern v. Saul Starck, Inc., 293 N.Y.S. 816 (N.Y. Sup. Ct.
1937).

International Agreements:

Agreement on Trade-Related Aspects of Intellectual Property Rights, Dec. 15, 1993,
Marrakesh Agreement Establishing the World Trade Organization, Annex 1C,
Legal Instruments Results of the Uruguay Round vol. 31 (1994), 33 I.L.M. 81
(1994).

Lisbon Agreement for the Protection of Appellations of Origin and their International
Registration, Oct. 31, 1958, as last revised Sept. 28, 1979, 923 U.N.T.S. 205.

Madrid Agreement for the Repression of False or Deceptive Indications of Source on
Goods, Apr. 14, 1891, 828 U.N.T.S. 163.

Paris Convention for Protection of Industrial Property, Mar. 20, 1883, last revised at
Stockholm, July 14, 1967, 21 U.S.T. 1583, 828 U.N.T.S. 305.

Law Journals:

Bowers, Steven A. "Location, Location, Location: The Case Against Extending
Geographical Indication Location Under the TRIPS Agreement." 31 AIPLA Q.J.
129, 140-41 (2003).

Buhler, Gregor and Rober Kunstadt. "'Bud' Battle Illustrates Peril of Geographic
Marks." 20 National Law Journal, May 18, 1998, at C3.

- Dinwoodie, Grame. "A New Copyright Order: Why National Courts Should Create Global Norms." 149 *University of Pennsylvania. Law Review*. 469, 553 (2000).
- Farley, Christine. "Conflicts Between U.S. Law and International Treaties Concerning Geographical Indications." 22 *Whittier Law Review* 73, 78 (2000).
- Goldberg, Stacey. "Comment, Who Will Raise the White Flag? The Battle between the United States and the European Union over the Protection of Geographical Indications" 22 *University of Pennsylvania. Journal International Economic. Law* 107, 116 (2001).
- Gutowski, Robert. "Comment, The Marriage of Intellectual Property and International Trade in the TRIPs Agreement: Strange Bedfellows or a Match Made in Heaven?" 47 *Buffalo Law. Review* 713-718 (1999).
- Horowitz, Bruce. "International Intellectual Property Rights." 37 *International Law* 473, 476 (2003) (citing *Anheuser-Busch, Inc. v. Budvar*, 2002 F.C.R. 390).
- Kanagavel, P. "Intellectual Property Rights: A Comprehensive Overview." 85 *Journal Patents & Trademark Off. Society* 663, 678 (2003).
- Lucentini, Jack. "Anheuser-Busch Calls Czech-Mate in Name Dispute." *J. Comm.*, May 10, 1999, at 6A
- Muchlinski, P.T. "A Case of Czech Beer: Competition and Competitiveness in the Transitional Economies." *The Modern Law Review*, Vol 59 No 5, September 1996 pp 658-674.
- Smith, Jitka. "Comment, Budweiser or Budwesier?" 32 *John Marshall Law Review*. 1251, 1253 (1999).
- Zylberg, Phillipe. "Geographical Indications v. Trademarks: The Lisbon Agreement: A Violation of TRIPS?" 11 *University of Baltimore Intellectual Property Law Journal*. 1, 42-46 (2002/2003).

Magazines and Trade Publications:

- 'Anheuser "one for us" says Czech Minister,' *Off Licence News*, 17 February 1994.
- "Anheuser gets Bud Rights in Europe but Budweiser Still Point of Contention." *Modern*

Brewery Age, 15 September 1997.

“Anheuser Wins Budweiser Case in Japan” *Modern Brewery Age*, 28 October 2002.

European Communities Trade Mark Association. “Flash.” No 08-05, 18 April 2005: 2.

Hajn, Ivo (2002) *Budweiser Budvar im Neuen Jahrtausend*. České Budějovice:

Budweiser Budvar, N.C.2002.

Hornik, Richard “Can They be Buddies?” *Time*, 13 July 1998: 58

Melcher, Richard A., with Julie Flynn and Robert Neff (1993) “Anheuser-Busch Says

Skool, Salud, Prosit.” *Business Week*, 20 September 1993: 76.

Minto, David. “The Battle for Budweiser.” *World Trademark Review*, May/June 2006: p
20.

Olghart, Deitrich. European Communities Trade Mark Association “Flash” no 08-05 18
April 2005.

Reid, Peter V.K. “That Other Budweiser”, *Modern Brewery Age*, June 2004: p16.

Temblay, Victor, “A Reappraisal of Interpreting Rising Concentration: The Case of
Beer” *The Journal of Business* Vol 58, No 4, pp 419-431.

“WTO Ruling Will Protect A-B in Trademark Cases.” *Modern Brewery Age*, 21 March
2005

Newspaper Articles:

“Anheuser-Busch seeks decision on Czech brewer.” *Financial Times*, 13 October 1994.

“Budvar Wins Beer Battle With US Namesake.” *The Prague Post*, 19-25 October 1994:
1.

Blum, Patrick (1994) “US Brewer Woos Czech Bride-To-Be - Anheuser-Busch’s
Courtship of Budejovicky Budvar.” *Financial Times*, 9 February 1994: 28.

“Brewing bid battle may affect Budvar.” *Financial Times*, 5 March 1996

“Czech Investment Group In Bid For Bohemian Brewery.” *Financial Times*, 30 January
1995.

“Czechs Think Again Over Budvar Deal.” *The European*, 4 November 1994; 4.

Harper, Tim (1990) “Americans Sense Victory In A Bitter War; An International Tussle

Over The Budweiser Brand Of Beer Has Come To A Head.” *The Independent*, 15 December, 1990: 20.

Janicek, Karel ”Beer Makers Continue Fight Over “Bud” Trademark Dispute Goes Back to 1906.” *Charleston Daily Mail*, Jan. 19, 2004: D3.

Koenig, Robert L. and Robert Manor (1991) “East Hasn't Met West Yet On Bud Name.” *St. Louis Post*, 25 March 1991: 4.

Manor, Robert. “Busch Might Buy European Brewery.” *St. Louis Post*, 19 May 1991: 1E.

Manor, Robert. “’93 Sales Take 5% Spill, Busch Says.” *St. Louis Post*, 29 April 1993: 1B.

Munchau, Wolfgang (1990) “Prague In Talks With US Firm On Brewer.” *The Times*, Business, 15 December 1990: 34.

Oram, Rod. “A Few More For The Road Abroad.” *Financial Times*, 6 July 1995.

Protz, Roger (1991) “Beer: Cold Lager War - The American Brewers Of Budweiser Are Less Than Pleased About The Invasion Of Europe By Czechoslovakia's Budweiser Budvar Beer. Roger Protz On Two Brewers Who Are Hardly Buddies.” *The Guardian*, 3 August 1991: 16f.

Protz, Roger. “US giant moves to grab Budvar.” *What's Brewing?*, March 1994

Protzman, Ferdinand (1990) “A Czech Cousin Haunts Budweiser.” *New York Times*, Section D, 5 April 1990: 1.

Shepherd, John (1992) “Budweiser Wrangle Comes To A Head” *The Independent*, 29 February 1992: 16.

St. Louis Post (1992) “One Bud Wouldn't Change The Other, A-B Tells Czechs.” 27 September 1992: 1E.

St. Louis Post (1994) “A-B Postpones Talks On Stake In Budvar.” 12 October 1994: 7C

Reports:

European Bank for Reconstruction and Development, *Transition Report 1994* (London: EBRD, 1994) p 60

“European Communities-Protection of Trademarks and Geographical Indications for Agricultural Products and Food Stuffs. Complaint by the United States.” World Trade Organization, Report of the Panel, WT/DS174/R, 15 March 2005.

Websites:

“Anheuser-Busch Companies Inc-Company History.”

<http://www.fundinguniverse.com/company-histories/AnheuserBusch-Companies-Inc-Company-History.html>. Visited 24 March 2007.

Anheuser-Busch Inc. “Our History.”

http://www.anheuser-busch.com/our_company/history.html. 15 March 2007

Beaumont, Stephen. “A Tale of Two Budweisers.” *Globe and Mail Magazine*: 1994

Available at <http://www.sqc.fi/salhis/beer-descriptions.html>. Visited 15 April 2007.

Breyerova, Petra. “A-B Taps Into Russia-and Budvar?” *Czech Business Weekly*

<http://www.cbw.cz/phprs/2006081408.html>. 14 August 2006. Visited 1 May 2007.

Breyerova, Petra. “Budvar Sell-Off Back In Play.” *Czech Business Weekly*

<http://www.cbw.cz/phprs/view.php?cisloclanku=2007022619>. 26 February 2007. Visited 1 May 2007.

“Bud with a French Accent” <http://www.realbeer.com/news/articles/news-002299.php>.

10 August 2004. Visited 1 May 2007.

“Budvar Plays Down Sale Speculation.”

<http://www.foodproductiondaily.com/news/ng.asp?id=74648-budejovicky-budvar-anheuser-busch-czech-beer-privatisation>. 2 March 2007. Visited 12 April 2007.

“Budvar Slams Big Brewers” <http://www.realbeer.com/news/articles/news-002363.php>.

25 October 2004. Visited 13 April 2007.

Budweiser Budvar. “Economic Information.”

<http://www.budvar.cz/en/web/O-firme/Ekonomicke-info.html>. Visited 15 March 2007.

Budweiser Budvar. "History of Budvar."

<http://www.budvar.cz/en/web/Znacka-Budvar/Historie-Budvaru.html>. Visited 15 March 2007.

Carney, Sean. "Budweiser vs. Budweiser Ruling Lost in Translation" *Czech Business Weekly*, <http://www.cbw.cz.phprs/1005072504.html> 25 July 2005. Visited 17 April 2007.

"Czech Brewer Budvar Could Be Partially Privatized" Interfax . Available at <http://e-malt.com/mnewsasp/news.asp?Action=View&Id=10438&Email=@EMAIL@> 10 April 2007. Visited 1 May 2007

Did You Know? "Anheuser and Busch." <http://www.didyouknow.cd/anheuser.htm>. Visited 24 March 2007.

"Geographical Indications." http://www.wipo.org/about-ip/en/geographical_ind.html. Visited 24 April 2007.

"Hungary rejects Budvar's GI Claims"

<http://www.cee-foodindustry.com/news/ng.asp?id=61493-budvar-gi-hungary> 25 July 2005. Visited 12 April 2007.

"In Switzerland, 'This Bud' May Not Be For You."

<http://www.realbeer.com/library/rbpmail/rbpmail-199903.php#IN%20SWITZERLAND>. March 1999. Visited 17 March 2007.

Jarvis, Mark. "Which Bud's For You?"

http://www.brandchannel.com/features_effect.asp?pf_id=191. 5 January 2004. Visited 12 April 2007.

Kellner, Thomas. "The Best Czech Beers." *Forbes*.

www.forbes.com/wine&food/2002/12/05/cz.tk.1206wine.html. Visited 12 April 2007.

TMC Net "Budvar raises 2006 Gross Profit 15pct to Kc 267m"

<http://www.tmcnet.com/usubmit/2007/04/26/2559168.htm>. 16 April 2007.

Visited 1 May 2007.

“Treaties and Contracting Parties: Lisbon Agreement.”

<http://www.wipo.int/treaties/en/registration/lisbon>. Visited 12 May 2007.

“Understanding the WTO-Intellectual Property:Protection and Enforcement”

http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm. Visited 22 April 2007.

European Communitites-Protection of Trademarks and Geographical Indications For Agricultural Products and Foodstuffs.. World Trade Organization Report by the Panel. 15 March 2005.

Working Papers:

Gray, *The Legal Framework for Private Sector Activity in the Czech and Slovak Federal Republic* (Washington DC: The World Bank, November 1992), Policy Research Working Papers. WPS 1051

O'Connor, Bernar. “Legal Developments in the International Protection of Geographical Origins.” www.oconnor.be

Rangnekar, Dwijen. “Geographical Indications: A Review of Proposals at the TRIPS Council: Extending Article 23 to Products other than Wines and Spirits.” *UNCTAD/ICTSD Capacity Building Project on Intellectual Property Rights and Sustainable Development*, Issue paper No. 8, March 2004.