

The battle for Budweiser

It's a story that involves royal dynasties, new world settlers, the collapse of Eastern European communism and a place that some say doesn't exist. But at its heart, the interminable dispute between brewers Anheuser-Busch and Budejovicky Budvar over the name Budweiser is all about trademarks.

The Czechs have always been a little protective of their beer. In the 10th century, 'Good King' Wenceslas endeared himself to locals by mandating the death penalty for anyone caught exporting cuttings from prized Bohemian hops. Fast-forward a millennium and some would argue that the fierce legal battle between one of the world's biggest brewers and a small state-owned Czech outfit indicates that not much has changed.

From other angles, however, beer is only secondary to this dispute. Frank Hellwig, Anheuser-Busch's senior associate general counsel, says that his company has no problem with Czech brewery Budejovicky Budvar exporting its beer to anywhere in the world – including the US corporation's homeland. "If they want to sell Czechvar in North America – and they currently are – they certainly have the right to do so. This isn't a dispute about their beer. It's a dispute about the trademarks they use."

One too many

In particular, the trademarks BUDWEISER and BUD – with trouble brewing for almost as long as the parties concerned. Anheuser-Busch was the first to register the BUDWEISER mark, doing so in the United States in 1878. Seventeen years later, Budvar's predecessor was founded in the Bohemian town of Ceské Budejovice – known in German as Budweis – with a beer from any of the town's breweries potentially referred to as a Budweiser.

In an attempt to nip problems in the bud, Anheuser-Busch and the Ceské Budejovice breweries signed an agreement in 1911, essentially allotting spheres of influence, with the former excluded from Europe and the latter from North America. The terms were further defined in 1939. But as the world changed and expansion ambitions increased, boundaries became blurred and conflict inevitable. At present, Anheuser-Busch and Budvar are engaged in over 100 legal proceedings in more than 40 jurisdictions, concentrated in Europe, where one or both parties feel their rights are infringed.

Hellwig says such extensive litigation – which in one instance Anheuser-Busch has taken right up to the European Court of Human

Rights – is necessary to protect the value of the US brand. He points out that in most of the world, his company has uncontested rights to the BUDWEISER trademark, having attempted to establish its beer on a global basis. "It's important to realize that we are the party that really developed Budweiser into the international name that it has become," he says.

In some territories in which it feels its rights are infringed, Anheuser-Busch objects to the Czech brewer labelling its beer Budweiser Budvar. In others, where the name Budejovicky Budvar is used, it argues that this trademark might be confused with Budweiser or shortened to Bud. "We essentially believe that Budvar is simply trying to capitalize on the world-famous brand that we've created and invested millions upon millions of dollars in," Hellwig explains.

Bohemian like you

Needless to say, Budvar sees things differently. "We are proud of our tradition of beer brewing here in Budweis and that is why we consider the trademark BUDWEISER so important," says Helena Lejtnarová, the company's in-house counsel.

The emphasis on heritage and use of the town's German name are both significant. When the brewery was founded in its current form by the Czech Ministry of Agriculture in 1967, it inherited most of the trademarks associated with the Ceské Budejovice brewing industry. Operating under the Communists, however, was not conducive to outward expansion using a German language mark, and certainly not at the rate or range of Anheuser-Busch. Today, Budvar has more than 380 trademarks registered in over 100 countries; but its claim to the name of Budweiser is also an appeal to centuries of tradition, which Lejtnarová says goes back to the town's foundation in 1265 – more than 200 years before Columbus made his fateful voyage across the Atlantic. "Right from that time, the town's beer was protected from outside influence and that is why it gained such specific features that it started to be called '*Budweiser Bier*' – beer from Budweis."

Anheuser-Busch has a couple of problems with this burgher brewing story when it is used to imply an appellation of origin comparable with, say, champagne or Tennessee whiskey. First, says Hellwig, the quality and characteristics of beer are not dictated by its place of manufacture – no matter how often Budvar cites its centuries-old recipe or the quality of the water from the town's underground ice-age lake. "You can essentially make the same beer worldwide," Hellwig claims.

Second, look at a Czech map of South Bohemia today, and you'll

struggle to find the town in question. “There’s no place called Budweiser or Bud,” Hellwig says. In court, when Anheuser-Busch is trying to prove the point, it refers not only to maps but also to expert opinions from linguists, statements of those familiar with the area and even road signs, all confirming the town’s name is České Budejovice. But Budvar has similar evidence of its own, says Lejtnarová. “Even today, in Austria you can see road signs to Freistadt, for example, and the other way to Budweis. In encyclopaedias the name is everywhere. It’s no problem to find the town referred to in the German language.”

The old world and the new

Karin Pomaizlová, a leading trademark lawyer with Linklaters in Prague, points out that the situation is even more complicated than it might first appear, given that what is now the Czech Republic was a German-speaking country under the Austro-Hungarian empire until 1918. “This word Budweiser didn’t just fall out of the blue sky,” she says. Pomaizlová makes the comparison with Pilsen, the Czech city now known as Plzen, where the settlement’s German name can be used to refer to a generic style of beer – Pilsner. Nevertheless, she continues, the Budweiser dispute is not only important, but also unique, with a ‘chicken or egg’ dilemma at its centre. “This is a conflict between a geographical indication which developed in Europe and a brand which developed in the new world – and now we are facing the issues.”

A stark illustration of how the dispute, in Pomaizlová’s words, “is testing the law of the old continent and the new world” is apparent in a World Trade Organization (WTO) ruling last year concerning US objections to the EU-protected geographical indications (GIs) system. While the WTO panel held that it was possible for GIs and similar, pre-existing trademarks to coexist, it sided with the United States by concluding that the protection of GIs should not harm the rights of trademark owners. The České Budejovice breweries had been granted the registration of ‘Budejovicé pivo’ as an EU GI in 2004, after the Czech Republic acceded to the European Union. However, the WTO panel ruled that the EU system could protect indications only as registered, so that unregistered translations or variations were not covered. With Budvar unable to rely on its GI to justify using the translation ‘Budweiser beer’, Anheuser-Busch claimed victory. “We were very pleased with the WTO decision,” says Hellwig, “because the ruling concluded that general coexistence of prior trademarks with later GIs is not allowed.”

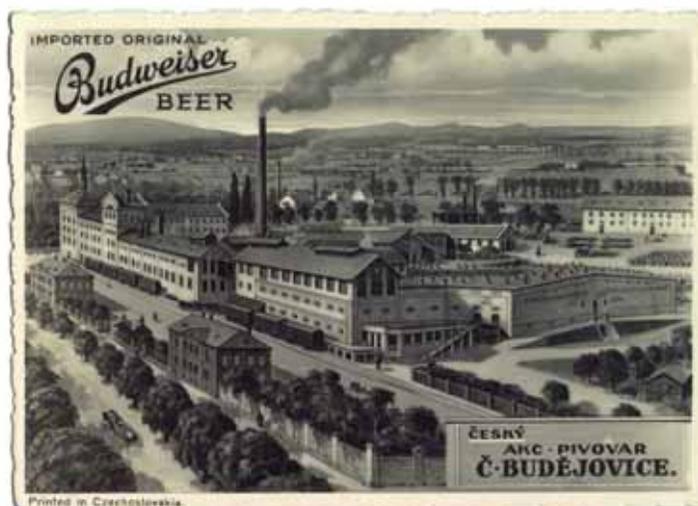
A litany of litigation

Anheuser-Busch’s registrations of BUDWEISER or BUD in 21 of the European Union’s 25 member states may look more secure since the decision, but actually the litigious ground war continues as fiercely as ever.

Shortly after the WTO ruling, a Budapest court confirmed a Hungarian Patent Office ruling that Budejovicé pivo and its translations could be registered as an indication of origin, but Bud could not. Budvar, which already holds the BUDWEISER trademark in Hungary, has appealed the decision.

Then, in October 2005, the European Court of Human Rights rejected Anheuser-Busch’s claim that a 1986 bilateral treaty between Czechoslovakia and Portugal on the protection of registered designations of origin infringed its right to the “peaceful enjoyment” of the BUDWEISER trademark, which it had previously applied to register. The court ruled that Anheuser-Busch was not in a strong enough legal position to mount a complaint. The US brewer has appealed to the court’s so-called Grand Chamber.

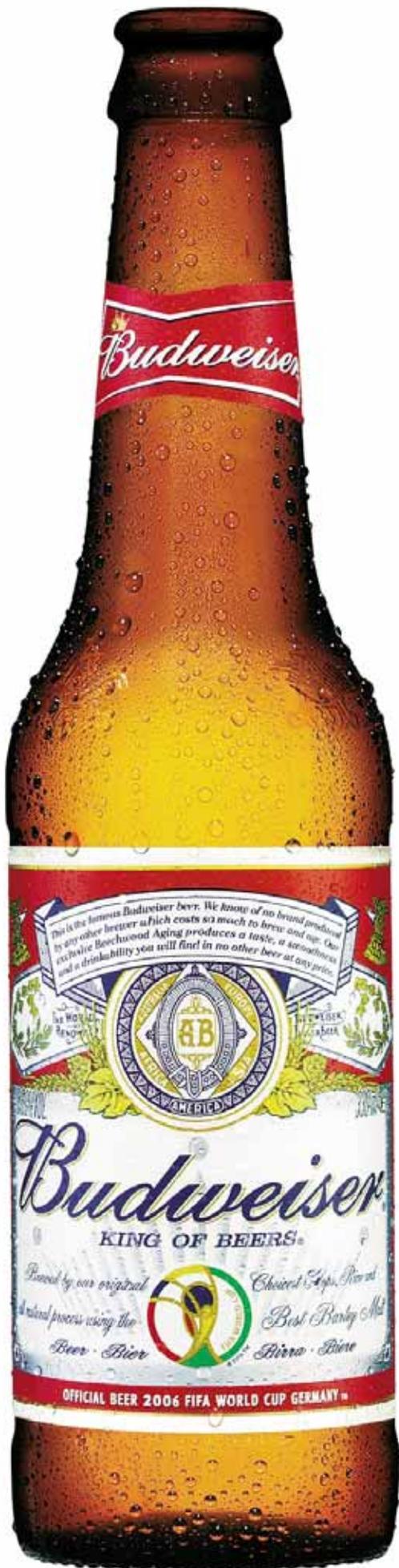
However, there was better luck for Anheuser-Busch earlier this



year in Sweden, where it has been embroiled in various legal disputes with Budvar since 1979. In January the Svea Court of Appeal confirmed a Stockholm District Court decision that prohibited Budvar from using marks containing the words ‘Budweiser’ or ‘Budweis’, as there was a likelihood of confusion with Anheuser-Busch’s registered trademark BUDWEISER. In addition, the court of appeal held that Budweiser could not be seen as a GI with regard to the Swedish market. Budvar has appealed the decision.

With such an array of proceedings taking place over dozens of territories and several decades, no wonder it is difficult keeping up with who’s won what – even for the parties themselves. Both sides say that the recent Finnish Supreme Court decision – bringing almost 10 years of disagreement to a close – was in their favour. Budvar claims a “significant victory” in being allowed to use the name Budweiser as part of its trade name in small lettering on beer labels and promotional materials. Anheuser-Busch sees it differently. “What’s important to remember is that they were enjoined from using Budweiser as a brand name. So in that respect I would say Finland was a victory for Anheuser-Busch,” Hellwig says.

But in the United Kingdom, where in a sense both sides did win and are allowed to use their respective BUDWEISER trademarks side by side, things are a little different. “It’s not an optimal situation,” comments Hellwig. “We are happy that we continue to grow and outsell Budvar in the United Kingdom. Our concern is that the Czech brewer’s use of BUDWEISER does create confusion among consumers.” Similarly, Budvar also has its reservations about the ultimate outcome of legal wrangling that began in the late 1970s. “We consider the result as definitive and final, and fully accept it,” says Lejtnarová. “However, we feel that this method – in general – is in principle against the merit of a trademark, which is to provide the owner with exclusive rights to its use.” Still, in the United Kingdom, Lejtnarová does not believe there is much danger of the products being confused: “The situation has



been around for a long time and I think consumers are really well informed, with the marketing and so on.”

The price of fame

Indeed, one such knowing individual turns out to be Her Majesty Queen Elizabeth II, who spoke with Budvar United Kingdom’s then Chief Executive Officer John Harley about the trademark dispute at a Buckingham Palace garden party in 2004. That monarchs have gone from ordering the death penalty for smuggling hops to expressing a “lively interest” (Harley’s words) in lager-based trademark disputes says something about the way our civilization has developed, but also indicates just how famous the Budweiser dispute has become.

Steve Cheliotis, European marketing director of Superbrands – an independent arbiter on branding – says that whatever the result of the legal battles, the clear winner in PR terms is Budvar. “That’s not to say that Budweiser isn’t a great brand. It’s produced some iconic advertising through the years and it’s very well respected. However, the David always beats the Goliath in these disputes.”

Whether the Biblical metaphor that plays in the press is fair – and Hellwig notes that state-owned Budvar is theoretically backed by the resources of the Czech government – there are also the costs of the dispute to be considered, in terms of not only legal fees, but also brand value. Lejtnarová comments that, while the litigation is not cheap, the costs have not affected enterprise development – on the contrary, there have been very important overall benefits, with a strengthening of Budvar’s trade positions worldwide. Hellwig, by contrast, says that Anheuser-Busch has not enjoyed any real advantages, although he believes that the brewery has managed the dispute well in terms of keeping its most valuable brand consistent worldwide.

But while Hellwig maintains that the commercial impact on Anheuser-Busch has been minimal, some independent commentators are not so sure. John Olsen, head of Field Fisher Waterhouse’s brands and trademarks group and co-editor of *Trademarks, Trade Names and Unfair Competition*, says that it is hard to think of another dispute that has been so long-running or poses so much potential damage to a major brand. Olsen comments that the top global brands – such as Coca-Cola, Microsoft and IBM – all depend on carving a wide area of exclusivity in a particular area. “In the Budweiser dispute, there are two beers supporting the same name, so that the area of exclusivity is much smaller and the value is impinged by that fact.” The effect of restricted market access is also likely to be significant, with Oliver Schmitz at Brand Finance estimating that – if the legal bars in Eastern Europe alone did not exist – Anheuser-Busch



could reasonably expect Budweiser's brand value to be \$300 million higher than it is now (see "The value of the Budweiser brand to Anheuser-Busch" on page 24).

A Bit on the side

The potential pitfalls presented by the trademark dispute have been brought into focus by claims that Anheuser-Busch scored something of an own goal by paying \$40 million to become one of the main sponsors of this year's FIFA World Cup, with a monopoly on beer sales in the tournament's stadiums. The US brewer's Budweiser brand has sponsored the competition since 1986 – but this year the World Cup is being held in Germany, firmly within Budvar territory, since it owns the BUDWEISER trademark there.

However, the main stumbling block for Anheuser-Busch has actually been the German Bitburger brewery. The local producer, which owns the beer trademark BIT, had previously objected to applications to register AMERICAN BUD and ANHEUSER BUSCH BUD, claiming that the latter "is difficult to pronounce, especially after drinking beer", so that consumers would shorten it to Bud – confusingly similar to its own mark. The German Federal Court of Justice ruled that the ANHEUSER BUSCH BUD mark was acceptable, as customers would refer to the beer as 'Anheuser', but rejected AMERICAN BUD on the grounds that a shortened form would likely violate Bitburger's mark. With the court holding up a red card to using 'Bud' on its own, Anheuser-Busch was forced to enter into an agreement with Bitburger. The result is that the US brewer can promote its beer as Bud within the 12 World Cup football stadiums – but also that Bitburger will be allowed to sell its product alongside Anheuser-Busch's in the 500 catering outlets within the grounds, accompanied by the Bitburger brand on manual boards.

With the final whistle on this particular match blown, perhaps the outcome is not as bad for Anheuser-Busch as some of its rivals would make out. On the negative side the deal with Bitburger is not a licensing agreement and in Germany the US brewer will be allowed to use the name Bud only within the stadiums and for the duration of the tournament. But as Cheliotis observes, the point of sponsoring a major event like the World Cup is to reach a global audience, not to break a local one, and in this sense the Anheuser-Busch brand will succeed almost on its own terms.

More than a private matter

Still, without Budvar lifting a finger, there is the danger endemic to the trademark dispute as a whole that the US company could be viewed by the public as playing offside, reprising the role of the

A rum tale

Drink enough of Cuba's national tippie, Havana Club rum, and it is a fair bet you'll end up seeing double. But in this case, the same could be true even if you are as sober as a judge – the dispute over who owns the Havana Club trademark in the United States is one hangover from the Cuban Revolution that requires a remedy stronger than aspirin.

The Havana Club brand was originally developed by the Arechabala family, whose Cuban assets were seized by Che Guevara and comrades in 1960. Like many wealthy Cubans, the Arechabalas fled the island. When they failed to renew their lapsed US trademark in 1973, the national Cuban export company bought the Havana Club rights instead – even though the US embargo against Cuba meant they could not take advantage of them.

Then, in 1993 Fidel Castro's government partnered with French drinks giant Pernod Ricard to export Havana Club across the world – a threat which spurred another Cuban family in exile, the Bacardis, into action. Bacardi – the world's largest privately held, family-owned spirits company – bought from the Arechabalas what it claimed were the real rights to the name and began selling Havana Club rum in the United States. Pernod sued.

But such a politically charged dispute was never likely to be left to the courts to decide alone. Intense Bacardi lobbying resulted in retrospective US legislation – which the WTO later found violated freetrade agreements – that exempted many trademarks confiscated by the Cuban state from the usual international protections. The US courts therefore ruled that, because the embargo would continue indefinitely, Pernod suffered no impairment of its ability to compete as a result of Bacardi's actions. In response, Castro upped the stakes by threatening to abrogate US trademarks in Cuba – and even to start producing a rum labelled Bacardi.

The situation has since subsided into a rather dull stalemate. Bacardi, with no contemporary connection to Cuba, has been unable to register other names containing Havana and has failed to revoke Pernod's Havana Club registration. Pernod, meanwhile, remains unable to sell the Cuban rum in the United States – a situation unlikely to change while Castro is in power.

At least it seems Bacardi's trademark battles have led it to a kindred spirit; in the United States, Bacardi has teamed up with Anheuser-Busch to create a range of drinks headed by Bacardi Silver – a clear malt beverage incorporating the flavours of Bacardi rum.





giant spoilsport against a plucky local upstart. Despite this risk, Hellwig firmly states that Anheuser-Busch has no plans to draw its litigation against Budvar to a premature close. “I would say that our primary strategy is to continue to push the cases that we are currently pushing in the hopes of getting total victory. While I can’t speculate on what will happen in the future, all indications are that we will be forced to litigate the dispute for an extended period.” On Budvar’s behalf, Lejtnarová maintains that the brewer respects Anheuser-Busch’s trademarks where they are registered, but expects exclusive use in the territories where it has got in first. “Nobody can interrupt this right or infringe this right. This is the foundation, the centre of trademarks.”

There was a time when other solutions seemed possible. Negotiations between Anheuser-Busch, the Czech government and Budejovický Budvar started after the Velvet Revolution’s overthrow of the Czech Communists in 1989 and continued right up to 1996, with the US brewer keen to buy a majority stake in its European counterpart, thereby solving the dispute once and for all. But the rumoured privatization never transpired and the rift between the parties has since grown bigger than ever, with Anheuser-Busch switching from Czech Saaz hops to a variety grown in Idaho and Budvar affirming that it will not consider licensing its trademarks. A slight possibility of a business solution lies in the upcoming Czech elections, scheduled for June. But Adam Cardais, business editor of the *Prague Post*, says that with pension reforms and healthcare initiatives of prime concern, the new government is likely to be as reluctant as the current one to initiate a major privatization of a profitable and iconic enterprise. “Especially given that Budvar is in all these legal disputes, I don’t foresee them wanting to privatize this next year, because I don’t see what their incentive would be.” Even if a sell-off did go ahead, Anheuser-Busch would be unlikely to be the only bidder – brewers SABMiller and InBev both have a strong presence in the Czech Republic, and there is even the possibility that regional government authorities would club together to buy a majority stake.

Geographical indications: Craft v Kraft?

Most articles on geographical indications (GIs) lead with a wizened Italian cheese maker, or some such, coming down from the hills after years of solitary milk curdling to express his disdain at the bland, industrial produce which global food corporations are also labelling Parmigiano or Parmesan.

Cheesed-off artisan food producers are certainly part of the story. France, that most gourmet of nations, appeased them early when it regulated the production of Roquefort cheese by parliamentary decree in the 15th century. The French appellation of controlled origin system was introduced in 1935, originally to protect wine makers. By 1992 the European Union had created its own scheme of protected designations of origin (covering production, processing and preparation in a particular area) and protected GIs (where at least one of the three stages is linked to a particular place). Both labels imply the use of traditional know-how and a quality product.

But not everyone is happy about the garrison being erected around EU craft foods – especially not companies like Kraft, the US food giant, which in Europe was forced to rebrand its Parmesan cheese, recognized as a generic name in most of the world, but linked to the Italian town of Parma in the European Union.

In 2003 at World Trade Organization (WTO) talks in Cancun it became clear that while European delegates considered that producers and consumers would both benefit from a global GI registry operating beyond trademarks, their North American and Australasian counterparts were outraged by what they viewed as mere protectionism. The situation wasn’t helped by an EU regulation which resulted in less favourable treatment of non-EU GIs in Europe – a practice criticized by the WTO in 2005. (Since then the European Commission has issued two proposals amending the rules for protected GIs, protected designations of origin and traditional specialities guaranteed.)

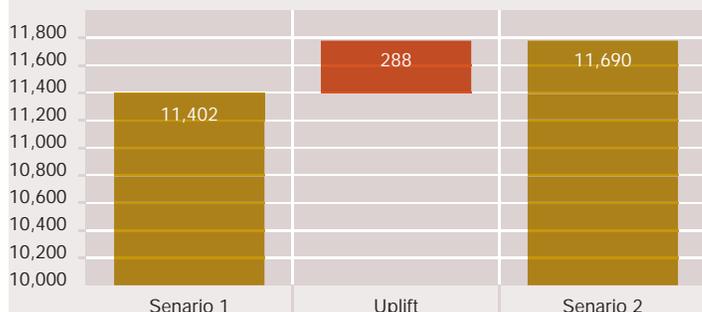
But this is not a straightforward fight between the new and old worlds. Following a string of favourable court decisions, vintners from California’s Napa Valley met with Washington DC movers and shakers in March this year to discuss how the Napa name can be better protected. In addition, developing nations could be the biggest winners of a global system that ensured names such as Basmati rice and Ceylon tea guaranteed links to origin.

That’s not all, folks

And so the dispute goes on, with one Budvar representative confiding that, rather than David and Goliath, perhaps Tom and Jerry might be a better analogy. He has a point. There seems something cheekily cartoonish, for instance, in Budvar’s claimed right to export Budweiser Budvar to extraterritorial diplomatic corps and embassies in the United States, technically outside of the US market. In addition, one of the dispute’s curiosities is that each side says the other has provided evidence undermining its own case. Budvar points to court testimony of Adolphus Busch – the founder of Anheuser-Busch – in an unrelated 1894 proceeding, apparently using an appellation of origin by saying: “Budweiser beer is brewed according to the Budweiser Bohemian process.” Anheuser-Busch, meanwhile, cites a statement made by Budvar to the Swedish Patent Office in 1970 that “the word ‘Budweiser’ is not a designation of origin any longer, nor is it a designation of a certain type of beer”.

The two parties are firmly back on message today, however. Hellwig reiterates why settlement is not a high priority for Anheuser-

The value of the Budweiser brand to Anheuser-Busch



TOTAL	Scenario 1	Scenario 2
Total market share (%)	9.60%	10.28%
Total market share (L)	13,300.00	14,250.00
Implied price (US\$ per L)	1.11	1.11
Implied royalty rate	4.85%	4.67%
Implied discount rate	6.04%	6.09%
Net revenue	15,230	16,294
EBIT	2,655	2,840
NOPAT	1,608	1,738
Enterprise value (US\$m)	40,994	43,393
United States	37,597	37,597
Europe	1,130	3,530
Asia	2,266	2,266
Brand value (US\$m)	11,402	11,690
United States	11,124	11,124
Europe	100	388
Asia	178	178
BV/EV	27.8%	26.9%

Brand Finance's indicative brand valuation of Anheuser-Busch's Budweiser brand was compiled using publicly available information regarding market share, market growth, company financials and geographic footprint. Other sources of information include Bloomberg and various market reports.

Brand Finance used the royalty relief approach to perform the valuation. This is an intuitively simple approach that assumes a company does not own its own brand and calculates how much it would need to pay to license it from a third party. The present value of that stream of (hypothetical) royalty payments represents the value of the brand. For the purposes of this exercise, Brand Finance has defined the term 'brand' as trademarks and associated goodwill, together with other intangible assets and IP rights that help produce the associated goodwill. Brand Finance has a particular expertise in determining royalty rates for commercial and valuation purposes.

Brand Finance has estimated an indicative fair market value for the Budweiser brand (as previously defined) of \$11.4 billion. This is an indicative valuation of the brand in its current use and assuming that it is licensed into perpetuity.

The brand value is estimated to equal 28% of the total enterprise value. Brand Finance's experience of other brand valuations for alcoholic beverage companies is of a brand to enterprise value ratio of between 15% and 30%.

Scenario 1 represents current Anheuser-Busch sales of Budweiser in the Americas, Western Europe and Asia, with Budvar holding rights to distribute Budweiser in Eastern Europe. Scenario 2 makes the assumption that Anheuser-Busch would be allowed to distribute Budweiser in all jurisdictions including Eastern Europe increasing its European market share by 2%.

Busch. "We believe we owe it not only to our shareholders in terms of protecting our brand because it is such a valuable corporate asset, but also to our consumers to make sure that when they order a Budweiser or a Bud they get only the true Budweiser from Anheuser-Busch."

Lejtnarová says Budvar hopes the dispute will be resolved, but in the meantime will fight its corner as a matter of pride as much as anything else. "The government has described our brewery as a national treasure – we have a rich tradition and really good beer."

But even as the latest court decision in Austria appears to have gone Anheuser-Busch's way, the ultimate winner and the outcome of the international dispute are far from clear. Neither David and Goliath nor Tom and Jerry quite sums it up – at the moment, this trademark battle seems more a case of even stevens. [WTR](#)