

# BUDWEISER dispute clarifies concept of acquiescence



In *Budejovicky Budvar, narodni podnik v Anheuser-Busch Inc* (Case C-482/09), the ECJ has ruled that Anheuser-Busch must continue to share the BUDWEISER trademark with Budejovický Budvar when marketing its products in the United Kingdom.

In doing so, the ECJ confirmed that 'acquiescence' within the meaning of Article 9(1) of the First Trademarks

Directive (89/104/EEC) is a European concept to be applied uniformly across all member states.

According to Edwards Wildman Palmer's Nick Bolter, the most striking aspect of this decision is that the ECJ recognised that Article 4(1)(a) of the directive must be interpreted as meaning that the longstanding honest concurrent use of two identical marks is liable to prevent the proprietor of the earlier mark from obtaining the cancellation of the later mark.

This interpretation effectively introduces the English concept of 'honest concurrent use' into EU law.

Mark Blair, partner at Marks

& Clerk Solicitors (which acted for Budvar), welcomed the ruling: "The two brands have co-existed in the United Kingdom for decades. The identical nature of the BUDWEISER marks is an honest, historical coincidence, and causes no significant confusion among UK consumers.

"This is effectively a very strong endorsement from the ECJ of Budvar's right to the Budweiser name in the United Kingdom, and of the underlying principles of trademark law in general - it sends a clear message that you cannot simply cancel a trademark that has been used for 30-plus years in good faith."



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