UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Zervas

February 6, 2004

Opposition No. 91107989

Anheuser-Busch, Inc.

v.

Bud K Worldwide, Inc.

Before Seeherman, Hohein and Rogers, Administrative Trademark Judges.

By the Board.

This case now comes up on the following motions: applicant's motion (filed May 20, 2002) for summary judgment; applicant's motion (filed May 31, 2002) for sanctions;[1] and opposer's motion (filed July 8, 2002) for an extension of time to respond to applicant's summary judgment motion.[2] Each motion is addressed in turn below.[3]

Motion to Extend Time to Respond to Summary Judgment Motion

Applicant, in its response to opposer's motion for an extension of time, states:

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[1] The certificates of service accompanying applicant's motion for summary judgment and motion for sanctions do not comport with Trademark Rule 2.119 in that they do not identify the manner of service. Applicant is advised to review its certificates of service accompanying any additional papers filed in this proceeding for compliance with Trademark Rule 2.119.

[2] The "Substitution of Attorney" (filed January 15, 2004) is noted.

[3] The Board regrets the delay in turning to applicant's motions.

> The Trademark Trial and Appeal Board is not likely to, nor should it reject opposer's response to the Motion for Summary Judgment, no matter how late. Such a rejection would only create an issue for the appeal which will inevitably follow the TTAB decision in this case.

In view of applicant's apparent consent, opposer's motion to extend the time to respond to applicant's summary judgment motion until July 19, 2002 is granted, and opposer's response (filed July 19, 2002 via a certificate of mailing) to applicant's motion for summary judgment is deemed timely.

Motion for Summary Judgment[4]

Applicant's motion for summary judgment is denied. There are, contrary to applicant's contention, various genuine issues of material fact which preclude entry of summary judgment. While applicant has relied on the existence of numerous third-party registrations for "Bud" formative marks in an attempt to establish that there is no genuine issue about the weakness of opposer's marks, opposer has shown that there is at least a genuine dispute about the strength of its marks, including whether its marks are famous. There is also a genuine issue as to the relatedness of the parties' goods.[5]

[4] For purposes of this order, the Board presumes familiarity with the pleadings, arguments, and evidence submitted with regard to the summary judgment motion.

[5] The parties should note that these are not necessarily the only issues for trial.

Motion for Sanctions

On March 22, 2002, the Board agreed with applicant that opposer's initial answer to Interrogatory No. 23 was insufficient[6] and ordered opposer to "identify which products listed in paragraph nos. 5 and 6 of the notice of opposition have not been marketed as promotional items for opposer's beer." Opposer supplemented its answer to Interrogatory No. 23 with the following response:

> [O]pposer states that it has marketed the products identified in Paragraphs 5 and 6 of the Notice of Opposition both as stand-alone, income generating products and to assist in promoting opposer's beer.

Applicant maintains that this response is "evasive and not responsive to the interrogatory." Opposer disagrees, arguing that "use of a mark on so-called promotional merchandise also serves to identify the owner of the mark as the source of that merchandise," citing *Bridgestone Tire Co. Ltd. v. Bridgestone Trading Co*., 221 USPQ 1012 (TTAB 1984).

Opposer has stated in its supplemental response that it has marketed the products listed in paragraphs 5 and 6 of the notice of opposition as "stand-alone, income generating products," a response which clearly indicates that these products have a "purpose other than to promote and advertise opposer's beer." That they may also have been used as

[6] Interrogatory No. 23 asks opposer to "identify any of the products or services listed in paragraph 5 and 6 of the Notice of

promotional items distributed for free does not detract from the unequivocal statement that they have been sold. While we find that opposer's supplemental response is not so deficient that opposer should be sanctioned, we nonetheless believe a fuller response is due. The response does not state, as applicant inquired, whether the "primary" purpose of the products is to generate income through sales of the products at market rates or for promotional purposes via free distribution or below-market rate sales. Opposer is, therefore ordered to provide within **twenty days** from the mailing date of this order a further response which specifies the primary purpose of **each** of the products. Applicant's motion for sanctions[7] is denied.

Discovery and Trial Dates

Proceedings are resumed, and trial dates are reset as follows:

DISCOVERY TO CLOSE:	March 31, 2004
Testimony period for party in position of plaintiff to close (opening thirty days prior thereto)	June 29, 2004

Opposition, the primary purpose of which is other than to promote and advertise opposer's beer sold under the mark."

[7] Applicant filed its motion for sanctions after it had filed its motion for summary judgment. Pursuant to Trademark Rule 2.127(d), the Board will suspend proceedings upon the filing of a summary judgment motion and will only consider matters germane to that motion. Applicant is advised that after a summary judgment motion is filed, parties to the proceeding should not file any further motions which are not germane to the summary judgment motion.

Testimony period for party in position of defendant to close (opening thirty days prior thereto)	August 28, 2004
Rebuttal testimony period to close (opening fifteen days prior thereto)	October 12, 2004

IN EACH INSTANCE, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party **WITHIN THIRTY DAYS** after completion of the taking of testimony. Trademark Rule 2.l25. Briefs shall be filed in accordance with Trademark Rule 2.l28(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.l29.

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