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EUROPEAN COMMUNITY LAW NEWS

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INTERNAL MARKET - TRADEMARKS

Budějovický Budvar

In several joined cases *Budějovický Budvar v. Office for Harmonisation in the Internal Market (OHIM)*, and *Anheuser Busch Inc. v OHIM*, the Court of First Instance (CFI) dismissed the actions of *Budějovický Budvar* concerning the registration of Community word trade marks “BUDWEISER” and “BUD” by Anheuser Busch.

Between 1996 and 1998, American company Anheuser-Busch applied to OHIM for registration of the word marks BUDWEISER and BUD and a figurative sign containing the term BUDWEISER as Community trade marks, for various products including stationery, articles for cleaning purposes, clothing, pastry and confectionery. The trade mark application for the figurative sign also covered beer, ale, porter, malted alcoholic and non-alcoholic beverages in Class 32.

Czech company *Budějovický Budvar* brought opposition proceedings against Community trade mark registrations in respect of all goods and services, based on its earlier appellations of origin, registered for “beer” under the Lisbon Agreement, and an international word mark BUDWEISER, registered for “beer of any kind”.

OHIM rejected the oppositions of *Budvar* based on the appellations of origin, against which decision *Budvar* brought actions to the Court of First Instance. On the other hand, OHIM accepted the oppositions of *Budvar* based on the international word mark, against which decision Anheuser-Busch brought action to the CFI.

In its decision, the CFI dismissed in its entirety the *Budvar*'s actions against the decisions of OHIM, as, according to the CFI, *Budějovický Budvar* has not demon-

strated that the appellations of origin “*Budweiser*” and “*Bud*”, registered under the Lisbon Agreement, with effect *inter alia* in France, allowed it to oppose Community Trade Mark applications filed by Anheuser-Busch for goods other than beer. *Budvar* did not produce any evidence to show that the use of the trade mark by Anheuser-Busch was likely to misappropriate or weaken the reputation - assuming it had been established in France (what has not been proven) - of the appellations of origin concerned.

As to the Case 71/04, Anheuser-Busch has withdrawn its application for registration of the figurative sign containing the term BUDWEISER as a Community trade mark for goods in Class 32, and therefore, the CFI did not rule on this case.

An appeal limited to points of law only may be brought against the decisions of the CFI before the Court of Justice within two months of their notification.

Judgments of the Court of First Instance in joined cases T-53/04 to 56/04, T-58/04 and 59/04, in joined cases T-60/04 to T-64/04, in all *Budějovický Budvar v. Office for Harmonisation in the Internal Market (OHIM)*, and in joined cases T-57/04 and T-71/04 *Budějovický Budvar and Anheuser Busch Inc. v OHIM*

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INTERNAL MARKET - COMPANY LAW

Insolvency proceedings

Council Regulation (EC) No 681/2007 changed the annexes to Council Regulation (EC) 1346/2000 on insolvency proceedings with regard to 2003 Act of Accession so as to include the insolvency proceedings, the winding-up proceedings and the liquidators of the 10 Member States which acceded to the European Union in 2004, as well as insolvency proceedings, the winding-up proceedings and the liquidators of Bulgaria and Romania in compliance with the Regulation (EC) No 1791/2006 adapting

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certain Regulations and Decisions by reason of the accession of Bulgaria and Romania. For the Slovak Republic, the proceedings that are covered by the Regulation are “konkurzné konanie” (bankruptcy proceedings) and “reštrukturalizačné konanie” (restructuring proceedings), “predbežný správca” (preliminary administrator) and “správca” (administrator).

The Regulation entered into force on 21 June 2007 and is binding in its entirety and directly applicable in the Member States.

Official Journal of the European Union, L 159, 20 June 2007.

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FINANCIAL CONTROL

Money-laundering Duties versus Professional Secrecy and Independence of Lawyers

By two applications made by several Belgian bar associations, the Constitutional Court in Belgium was asked to annul certain articles of the Belgian legislation transposing Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering because they unjustifiably interfere with the professional secrecy and the independence of lawyers. These principles are a constituent element of the fundamental right of every individual to a fair trial and to the respect of his right of defence. With regard to the applications the Court of Justice, to which the Constitutional Court in Belgium applied for a preliminary ruling, observes that the obligations of information and cooperation apply to lawyers only in so far as they advise their client in the preparation or execution of certain transactions essentially of a financial nature or concerning real estate, as such activities have no link to judicial proceedings.

As soon as a lawyer is called upon for assistance in defending a client or in representing him before the courts, or for advice as to the manner of instituting or avoiding judicial proceedings, that lawyer is exempt from the obligation of information

and cooperation. An exemption of that kind safeguards the right of the client to a fair trial. The Court therefore holds that the obligations of information and cooperation with the authorities responsible for combating money laundering, imposed on lawyers where they participate in certain financial transactions with no link to judicial proceedings, do not infringe the right to a fair trial.

Judgment of the Court of Justice in case C-305/05.
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TAXATION

National legislation restricting deductions on taxable income of intra-group transfers compatible with Community law

The Court of Justice, in its judgement in Case C-231/05, Oy AA, established that national legislation preventing deduction of intra-group over-border transfers from subsidiary to parent company from taxable income pursues legitimate public interest within the scope of the EC Treaty and as such is compatible with community law.

As the Court reasoned, acceptance of contrary would allow companies to choose the Member State in which their profits will be taxed to the detriment of the right of the Member State to tax profits generated by activities carried out by companies on its territory. Moreover, the possibility to deduct such transfers could lead to artificial arrangements of transfers and incomes within economic groups aimed at lowering of tax obligation of the whole group to the harm of individual Member States and whole Community.

Judgment of the Court of Justice in Case C-231/05, Oy AA

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COMPETITION

Indemnities for damage suffered due to illegal decision of the Commission on prohibition of merger

The Court of First Instance in the breaking decision ruled that the company Schneider

Electric SA must be compensated for damages it suffered in relation to the Commission's decisions which found contemplated merger with the company Legrand incompatible with internal market and ordered divestiture of both companies. Even though the CFI confirmed that the Commission may not be held liable for wrong economic assessment, failure to provide Schneider with right to be heard prior to the adoption of the decision presents manifest breach of limits of powers of the Commission conferred upon it as a part of discretion and latitude which it must enjoy in application of the Community law. The Commission has appealed the case to the Court of Justice.

Judgment of the Court of First Instance in Case T-351/03, *Schneider Electric SA v. Commission*
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SCHENGEN INFORMATION SYSTEM (SIS II)

Council Decision No. 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System (SIS II)

This Council Decision ("Decision") establishes the second generation Schengen Information System ("SIS II"), which will replace the first generation Schengen Information System.

The purpose of SIS II shall be to ensure a high level of security within the area of freedom, security and justice of the European Union including the maintenance of public security and public policy and the safeguarding of security in the territories of the Member States, and to apply the provisions of Title IV of Part Three of the EC Treaty relating to the movement of persons in their territories, using information communicated via this system. For this purpose, the Council Decision establishes the conditions and procedures for the entry and processing in SIS II of alerts on persons and objects, the exchange of supplementary information and additional data for the purpose of police and judicial cooperation in

criminal matters. SIS II shall be composed of: (a) a central system, (b) a national system in each of the Member States, consisting of the national data systems which communicate with the central system; and (c) a communication infrastructure between the central system and national systems. Each Member State shall designate an authority, which shall have central responsibility for its national system.

This Decision entered into force on 27 August 2007.

Official Journal of the European Union, L 205, 7 August 2007, p. 63-84.

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TELECOMMUNICATIONS

Roaming on public mobile telephone networks within the Community

Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC ("Regulation") sets at Community level a maximum average per-minute charge at wholesale level and the limiting of charges at retail level through the introduction of a Eurotariff. The aim of Regulation is to limit inappropriate prices for roaming paid by users of mobile networks in order to achieve the high level of consumer protection while safeguarding competition.

The average wholesale charge that the operator of a visited network may levy from the operator of roaming customer's home network shall not exceed EUR 0.30 per minute. It shall decrease to EUR 0.28 and EUR 0.26, on 30 August 2008 and on 30 August 2009 respectively. The retail charge excluding VAT shall not exceed EUR 0.49 per minute for any call made and EUR 0.24 per minute for any call received. The prices shall decrease to EUR 0.43 and EUR 0.19 till 30 August 2009. From 30 July 2007 the customer can ask his operator for activation of the Eurotariff. If the customer accepts the Eurotariff, he will be able to phone for lower prices from September 2007. Roaming customers, who do not

provided the Eurotariff from October 2007. However, roaming customers, who already have specific roaming tariff or package, shall remain on their previously chosen package, if they do not ask the operator for activation of the Eurotariff.

This Regulation entered into force on 30 June 2007.

Official Journal of the European Union, L 171, 29 June 2007, p. 32

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JUDICIAL COOPERATION IN CIVIL MATTERS

European Small Claims Procedure

Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure establishes a European small claim procedure where the value of the claim does not exceed EUR 2000 excluding all interests, expenses and disbursements. The Regulation does not apply to Denmark. It is aimed to simplify and speed up litigation concerning small claims in cross-border cases and to reduce costs. The European small claims procedure shall be a written procedure, however, on request of parties to a case an oral hearing can be held. Representation by a person with legal education shall not be mandatory. The applicable procedural law in which the procedure is conducted is the law of the Member State where the procedure is conducted. The judgment shall be recognised and enforced in another Member State without the need for a declaration of enforceability. The courts or tribunals which have jurisdiction to give a judgment shall be communicated by Member States to the Commission before 1 January 2008.

This Regulation shall apply from 1 January 2009

Official Journal of the European Union, L 199, 31 July 2007, p. 1

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EURATOM

Bohunice V1 Nuclear Power Plant

The European Council has adopted Regulation (Euratom) No. 549/2007 on implementation of Protocol No. 9 on Unit 1 and Unit 2 of the Bohunice V1 nuclear power plant in Slovakia to the Act concerning the conditions of accession to the European Union of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

This regulation governs the programme laying down detailed rules for implementation of the Community's financial contribution provided for in Protocol No 9 annexed to the 2003 Act of Accession with respect to the Slovakia's commitment to close the Bohunice V1 nuclear power plant. The total reference amount necessary for implementation of the programme pursuant to this Regulation for the period from 1 January 2007 to 31 December 2013 shall be 423 million EUR. Furthermore, the Regulation prescribes that the amount of appropriations allocated to the programme may be reviewed in the course of the period from 1 January 2007 to 31 December 2013 to take account of the progress made with implementation of the programme and ensure that the programming and allocation of the resources are based on actual payment needs and absorption capacity. Finally the Regulation states that the Commission may have an audit of the use made of the assistance carried out either directly by its own staff or by any other qualified outside body of its choice. That condition will bring more clarity to the whole process of evaluation.

The Regulation came into force on 12 June 2007.

Official Journal of the European Union, L 131, 23 May 2007, p. 1-4

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Advokátska kancelária Čechová & Partners

Združenie advokátov: JUDr. Katarína Čechová (evidenčné číslo v zozname advokátov vedenom Slovenskou advokátskou komorou/IČO: 0339/317 831 63) poverená vedením účtovníctva združenia pod IČ DPH SK1020333083, JUDr. Jana Borská (4543/308 665 37), Mgr. Zuzana Gaálová (2157/318 155 96), Mgr. Ing. Michaela Jurková (4286/307 989 57), Mgr. Tomáš Mareta (1601/318 172 11), Mgr. Tomáš Rybár (3988/307 967 76), Mgr. Tomáš Zárecký (4020/360 754 18)

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