

ANHEUSER-BUSCH, INC.,	)	INTER PARTES CASE NO. 3598
Petitioner,	)	
	)	PETITION FOR CANCELLATION
	)	
	)	Cert. of Reg. No. 46928
	)	Issued on : November 23, 1989
- versus -	)	Registrant : Esther B. Caling
	)	Trademark : BOB-WISER
	)	Used on : Briefs, sweaters,
	)	jeans, men's briefs,
	)	and handkerchiefs
	)	
	)	<u>DECISION NO. 94-31 (TM)</u>
	)	
ESTHER B. CALING,	)	June 28, 1994
Respondent-Registrant.	)	
x-----x	)	

DECISION

This is a Petition for Cancellation of the trademark "BOB-WISER" bearing Certificate of Registration No. 46928 issued on November 23, 1989 used on briefs, sweaters, jeans, men's briefs and handkerchiefs, falling under Classes 24 and 25 of the International Classification of goods which was filed on December 14, 1987 by Esther B. Caling hereinafter referred to as Respondent-Registrant.

Petitioner, Anheuser-Busch, Incorporated, is a corporation organized and existing under the laws of the State of Missouri with Offices at One Busch Place, City of St. Louis, State of Missouri, United States of America.

The grounds for the Petitioner for Cancellation of the said Registration are as follows:

1. The registration was obtained fraudulently by respondent.
2. Petitioner is the true and lawful owner and first user of the mark "BUDWEISER" and the registration of the confusingly similar mark "BOB-WISER" in the name of the registrant was accordingly secured contrary to the provisions of Sections 4 and 17 of Republic Act No. 166, as amended.
3. Respondent's use of the mark on her goods will likely mislead the buying public into believing that those goods are produced by, originate from, or are under the sponsorship of petitioner.
4. The registration of the trademark "BOB-WISER" in the name of and its use in commerce by respondent, amount to an infringement of petitioner's trademark which is registered under Registration No. 767 dated June 10, 1968 in respect of "yeast, yeast food, conditioners in powder form, malt sugar syrup" in Class 47, and renewal filed March R-5237 and Registration No. 746, registered August 26, 1968 in respect of "beer" in Class 49, and renewal filed May 22, 1989 under Renewal Application Serial No. R05565. Petitioner's trademark is entitled to protection under the Trademark Law and Article 6bis of the Paris Convention to which the Philippines and the United States of America are parties.
5. The cancellation is authorized by other provisions of the Act."

In support of the Petition for Cancellation, Petitioner will prove and rely upon on the following facts:

1. Petitioner is the owner and first user of the trademark "BUDWEISER" used on beer and on clothing for promotional purposes. The trademark "BUDWEISER" has been continuously used on these goods and has been known throughout the world in relation to and in association with the name and goods of petitioner.
2. Respondent's knowledge of the existence of the "BUDWEISER" name and trademark is reflected in the duplication/imitation of petitioner's said trademark. Respondent's "BOB-WISER" trademark is a particularly contrived term, suggesting that it was adopted for the purpose of creating confusion with petitioner's "BUDWEISER" trademark.
3. Respondent's adoption of a colorable imitation of petitioner's trademark indicates an intent to capitalize on the goodwill and popularity of petitioner's "BUDWEISER" trademark to respondent's own benefit.
4. Respondent's trademark consists of the word "BOB-WISER" which is clearly and evidently identical in sound, appearance and commercial impression to the trademark of petitioner, and will definitely deceive the public into believing that the trademark is associated with or is under the sponsorship of petitioner."

In her Answer to the Petition for Cancellation, Respondent-Registrant denied all the material allegations of the Petition and further alleged that:

1. The registration of the trademark "BOB-WISER" was obtained legally and regularly by Respondent with the form and substance and requirements of R.A. No. 166 as amended.
2. While Opposer is the owner and user of the trademark "BUDWEISER" the registration of the trademark "BOB-WISER" in the name of Respondent is not confusingly similar, and it was secured not contrary to the provisions of Sec. 4 and 17 of R.A. No. 166 as amended.
3. The use of the trademark by Respondent-Registrant on her goods (Class 24 and 25) will not mislead the buying public into believing that they are produced by Petitioner, because the goods of the latter are altogether different (Cases 47 and 49).
4. The registration of the trademark "BOB-WISER" in the name of and its use in commerce by Respondent-Registrant does not infringe Petitioner's trademark "BUDWEISER" at all as they produce different classes of products . . . yeast, yeast food, conditioners in powder form, malt sugar syrup (Class 47) and "BEER" (Class 49) for the Petitioner and on the other hand "briefs, sweaters, jeans, men's briefs, handkerchiefs, and t-shirts, briefs, jeans, (Classes 24 and 25) for Respondent-Registrant."

The parties were not able to reach an amicable settlement of the case; henceforth trial on the merit was conducted.

The only issue to be resolved in this case is whether or not the trademark of Respondent-Registrant "BOB-WISER" is confusingly similar to the trademark of Petitioner "BUDWEISER".

Our Law on Trademark, particularly Section 4(d) of R.A. No. 166 provides:

“SEC. 4. Registration of trademark, tradenames and service marks on the principal register. there is hereby established a service marks which shall be known as the principal register. the owner of a trademark, tradename or service mark used to distinguish his goods, business or services from the goods, business or services from the goods, business or services of others shall have the right to register the same on the principal register unless it;

x        x        x

(d) Consists of or comprises a mark or tradename which so resembles a mark or tradename registered in the Philippines or a mark or tradename previously used in the Philippines by another and not abandoned, as to be likely, when applied to or used in connection with the goods, business or service of the applicant, to cause confusion or mistake or to deceive purchasers.”

In resolving this case, we must have first to consider the joint stipulation of facts entered into by the parties submitted with this Honorable Office on May 18, 1993 as follows:

“1. Respondent-Registrant is the proprietor of a trademark Registration No. 46928, which is described herein as follows:

Regn No.	:	46928
Registrant	:	Ester B. Caling
Trademark	:	BOB-WISER
Issued on	:	November 23, 1989
Goods	:	Briefs, sweater

2. Petitioner is the proprietor of trademark Registration No. 1389-S, which is described herein as follows:

Regn No.	:	1389-S
Registrant	:	Anheuser-Busch, Inc.
Trademark	:	BUDWEISER
Issued on	:	May 10, 1949
Goods	:	Foods, ingredients in Foods, and beverages, and particular description of the articles comprised in said class on which the trademark is used are yeast, yeast food (dough conditioner in powdered form) malt sugar syrup, barley malt syrup, corn syrup and corn starch.

3. It was further stipulated that a person who goes out to buy BEER would not buy t-shirts by mistake.”

It is clear that the goods for which the Respondent-Registrant obtained the registration for the mark BOB-WISER, consisting of “Briefs, sweaters, jeans, men’s briefs and handkerchief”, falling under classes 24 and 25 of the international classification of goods are unrelated to “foods, ingredients of food, yeast and beer” – for which Petitioner obtained the registration of the mark Budweiser. The Supreme Court in the case ESSO Standard Eastern, Inc. vs. The Hon. Court of Appeals and United Cigarette Corporation (No. L-29971 August 31, 1982) ruled that:

“The trademark “ESSO” which Petitioner uses for its various petroleum products may also be used as a trademark by a manufacturer of cigarettes, the two products not being related and the public cannot be deceived as to which product they are buying. The Court further stated that the two classes of products flow through different trade channels.”

Goods are related when they belong to the same class or have the same descriptive properties; when they possess the same physical attributes or essential characteristics with reference to their form, composition, texture or quality. They may also be related because they serve the same purpose or are sold in grocery stores. (2 Callman Unfair Competition & Trademarks, p. 1257) Thus, biscuits were held related to milk because they are both food products. (ARCE vs. SELECTA, Supra) Soap and perfume, lipstick and nail polish are similarly related because they are common household items nowadays. (Chua Che vs. Phils. Patent Office, Supra)

WHEREFORE, the Petition for Cancellation of the trademark Registration No. 46928 issued on the name of Ester B. Caling on November 23, 1989 in Inter Partes Case No. 3598 is hereby DENIED and said registration is declared valid and subsisting for the remainder of its term, unless sooner terminated as provided for by law.

Let the records of this case be forwarded to the Patents/Trademarks Registry and EDP Division for appropriate action in accordance with this Decision. Furnished the Trademark Examining Division to update its records.

SO ORDERED.

IGNACIO S. SAPALO  
Director