



# Canadian Intellectual Property Office

## **THE REGISTRAR OF TRADEMARKS**

**Citation:** 2023 TMOB 162

**Date of Decision:** 2023-09-25

## **IN THE MATTER OF AN OPPOSITION**

**Opponent:** Anheuser-Busch, LLC

**Applicant:** Dallas Clancy

**Application:** 1,892,965 for BUDWISE

### **OVERVIEW**

[1] Dallas Clancy (the Applicant) has filed application No. 1,892,965 to register the trademark BUDWISE (the Trademark).

[2] The application, as revised by the Applicant on December 29, 2021, lists the following goods in Nice class 9 and services in Nice class 42:

GOODS: Computer software and mobile application software for an online social networking platform for allowing users to post, share, upload, access and manage videos, audio namely downloadable music, interviews and lectures, podcasts, photographs, articles, documents and information related to cannabis for medical and recreational use.

SERVICES: Software as a service allowing users to build an on-line directory information service featuring information in the field of cannabis, user-defined information, classifieds, virtual community, social networking, photo sharing, and the transmission of

videos, text, audio, podcasts, and photographic images, all the aforesaid in the field of cannabis for medical and recreational use.

[3] Anheuser-Busch, LLC (the Opponent) has opposed the application.

[4] For the reasons that follow, the opposition is successful.

### **THE RECORD**

[5] The application was filed on April 10, 2018 and advertised for opposition purposes in the *Trademarks Journal* of February 24, 2021.

[6] The Opponent opposed the application by filing a statement of opposition pursuant to section 38 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) on April 23, 2021.

[7] The Applicant filed a counter statement denying the grounds of opposition.

[8] Subsequently, the Opponent requested leave to amend its statement of opposition to add three registrations, namely those for the trademarks BUDWEISER (TMA1,099,717), BUD LIGHT (TMA1,101,995), and BUDWEISER in bow tie (2015 in colours) & Design (TMA1,099,715), all in association with cannabis-related goods and services, to the list of trademarks on which the Opponent relies in its pleading. The Registrar granted such leave on August 6, 2021.

[9] The Opponent raises grounds of opposition based on an alleged likelihood of confusion, namely non-registrability, non-entitlement to registration, and non-distinctiveness, as well as other grounds such as non-compliance of the Application with sections 30(2) and 30(3), bad faith, non-entitlement to use, and that the Applicant did not use nor propose to use the Trademark.

[10] In support of its allegation of likely confusion, the Opponent relies on numerous trademarks which include or consist of the terms BUD or BUDWEISER (the BUD Trademarks). The BUD Trademarks are registered in association with various goods and services which include beer and cannabis, and educational services such as promoting public awareness of the responsible use of alcohol and providing educational

information in the field of cannabis and cannabidiol via a website. The particulars of each registration are set out in Schedule A.

[11] Both parties filed evidence, written representations and were represented at a hearing.

### **AMENDED STATEMENT OF OPPOSITION**

[12] At the hearing, the Applicant contested the Registrar's August 6, 2021 decision to grant the Opponent leave to amend its statement of opposition. As correctly pointed out by the Opponent, the period of time to apply for judicial review of that decision, which was communicated to the Applicant more than two years ago, has long since closed [*Federal Courts Act*, section 18.1(2)].

[13] Insofar as the Applicant's submissions could be considered as a late request for reconsideration of the Registrar's decision, I note that the Applicant has not identified any error of law or error in the interpretation of the facts before the Registrar when that decision was made [see *Jalite Public Ltd v Lencina* (2001), 19 CPR (4th) 406 (TMOB)].

[14] In view of the above, the amended statement of opposition remains of record and is properly considered as the Opponent's pleading in this proceeding.

### **ONUS AND LEGAL BURDEN**

[15] The legal onus is on the Applicant to show that its application complies with the provisions of the Act. However, there is an initial evidential burden on the Opponent to adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist. Once this initial burden is met, the Applicant must satisfy the Registrar, on a balance of probabilities, that the grounds of opposition pleaded should not prevent the registration of the Trademark [*John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD) at 298, 1990 CanLII 11059; *Dion Neckwear Ltd v Christian Dior, SA*, 2002 FCA 29].

## **EVIDENCE**

[16] In support of its opposition, the Opponent filed the affidavit of Pieter Van Den Bulck, affirmed on August 19, 2021, together with Exhibits PB-1 to PB-14 (the Van Den Bulck Affidavit), as well as certified copies of the three registrations for trademarks more recently registered in association with, notably, cannabis-related products and services (No. TMA1,099,717 for BUDWEISER; No. TMA1,101,995 for BUD LIGHT; and No. TMA1,099,715 for BUDWEISER in bow tie (2015 in colors) & Design).

[17] In support of its application, the Applicant filed the affidavit of Dallas Clancy, sworn on December 31, 2021, together with Exhibits A to D (the Clancy Affidavit).

[18] Neither affiant was cross-examined on his affidavit.

[19] I am providing hereafter a summary of the parties' evidence. While I have considered the evidence in its entirety, the summary focuses on those portions most pertinent in assessing the grounds of opposition and the parties' representations. In particular, with respect to the Opponent's evidence, I have focused the summary on evidence relating to the trademark BUDWEISER, as that trademark forms the strongest basis for the Opponent's case.

### ***Van Den Bulck Affidavit***

[20] Mr. Van Den Bulck is the Global Director of Intellectual Property for Anheuser-Busch InBev S.A. (ABI) and he has occupied that position since December 2017. He explains that the Opponent, a wholly-owned subsidiary of ABI, is a brewing company based in St. Louis, Missouri, and headquartered in Belgium.

[21] Generally speaking, Mr. Van Den Bulck discusses the Opponent's beer business in Canada and around the world. His affidavit details the success of the Opponent's beer, and provides annual advertising expenditures in the millions of dollars and sales figures in the hundreds of millions of dollars.

[22] Mr. Van Den Bulck provides evidence regarding the Opponent's use of its BUD Trademarks, including BUDWEISER, BUD and BUD LIGHT, largely in association with

beer. The affidavit is silent as to use of the Opponent's trademarks in association with cannabis-related goods and services.

[23] The evidence regarding use of the trademark BUDWEISER can be summarized as follows:

- The Opponent has used the trademark BUDWEISER in Canada since at least as early as 1903 [para 10].
- Annual gross sales of BUDWEISER beer exceeded \$900 million in Canada between 2014 and 2018 [para 50]. According to Mr. Van Den Bulck, that figure is representative of sales before and after that period [para 53].
- The Opponent's products are sold in bars, restaurants and cafés, as well as beer retail stores, grocery stores, and convenience stores [paras 49 and 55].
- Annual marketing and advertising expenditures for the BUDWEISER trademark were approximately \$30 million in Canada between 2013 and 2018 [para 57].
- The Opponent promotes BUDWEISER beer extensively at sporting events in Canada. By way of example, during the 2017 Major League Baseball season, the Opponent spent over \$2 million in advertising which targeted fans of the Toronto Blue Jays [para 30]. The Opponent's promotional efforts include advertising on television, XM radio, social media, as well as promotional items, in-store displays, and signage at sports venues. The BUDWEISER trademark is displayed throughout the exhibited materials provided as examples of the Opponent's advertising, including on bottles and cans of beer [e.g. Exhibits PB-3 and PB-5].

[24] There is also evidence showing use of the BUDWEISER trademark in association with more than beer. For example, net sales for collateral merchandise sold through the Opponent's online store exceeded \$1 million between 2018 and 2020 [paras 34 to 39]. The exhibited printouts of the online store depict merchandise such as ball caps, glassware, umbrellas, all bearing the BUDWEISER trademark. The online store invites consumers to "shop beer gear" in the following categories: "Apparel", "Bar Essentials", "Games" and "For The Home" [Exhibit PB-8]. While Mr. Van Den Bulck

describes the Opponent's goods as including "smokers articles" [paras 17 and 34], no such articles appear to be depicted in the exhibited materials.

[25] In contrast to the relatively detailed evidence regarding the Opponent's goods, the Van Den Bulck Affidavit provides limited factual particulars regarding the Opponent's services. For example, Mr. Van Den Bulck refers to use of the BUD Trademarks, collectively, in association with services which include "restaurant, café and bar services" [paras 47-48]. With respect to BUDWEISER, specifically, Mr. Van Den Bulck refers to a BUDWEISER STAGE concert venue in Toronto and asserts that the trademark BUDWEISER is "advertised and used in association with musical performances and associated services" [para 60]. I do not find it necessary to discuss the probative value of the evidence relating to those services. Indeed, even if I were to accept that the Opponent used the BUDWEISER trademark in association with restaurant services and musical performances, it would not change the outcome of this proceeding.

[26] Finally, I note that while Mr. Van Den Bulck references "informative services and educative services notably in the field of beverages, sports and music" in his broad assertion of use of the BUD Trademarks, collectively, at paragraph 17 of his affidavit, the evidence before me is insufficient to conclude that the Opponent has used the BUDWEISER trademark in association with such services. In fact, at the hearing, the Opponent could only point to one instance of informative and educative services in the evidence, namely the tagline "Enjoy Responsibly" displayed on exhibited webpages of the Opponent's website [Exhibit PB-8].

### ***Clancy Affidavit***

[27] Mr. Clancy is the owner of the subject trademark application. He explains that, at the time of filing the application, he was a fourth year student at the University of Western Ontario and developed an idea for a software platform to provide information about cannabis.

[28] Mr. Clancy states that "bud" is a commonly used synonym for the harvested and ready-to-smoke flower of the cannabis plant, and that this term is used in Canada to

refer to marijuana and/or cannabis. He explains that, as an undergraduate student at the University of Western Ontario, he regularly heard and used the term “bud” to describe marijuana. Mr. Clancy also states that “wise” is a common dictionary word that means having or showing experience, knowledge, and good judgment. In support, he attaches printouts showing dictionary definitions of the words “bud” and “wise” that he obtained from the Internet [Exhibits A and B, respectively].

[29] Mr. Clancy states that he has “never seen a print or television advertisement, or product label in which the Opponent refers to its products or services as BUDWISE or BUDWEIS” [para 7].

[30] Mr. Clancy states that he conducted searches on the Canadian Intellectual Property Office (CIPO) trademark database and provides a printout of the search results, namely a list of applications and registrations for trademarks which include either the term BUD or the term WISE, and have the word “cannabis” in the statement of goods and/or services [Exhibits C and D].

## **ANALYSIS**

### ***Grounds of opposition summarily rejected***

[31] For the reasons set out below, the following grounds of opposition are rejected:

- contrary to section 30(2) of the Act, the application does not contain a statement in ordinary commercial terms of the specific goods in association with which the Trademark is proposed to be used or is used (per section 38(2)(a) of the Act);
- contrary to section 30(3) of the Act, the goods and services specified in the application are not grouped according to the Nice Classification (per section 38(2)(a) of the Act);
- the application was filed in bad faith because the Applicant could not have been satisfied that it was entitled to use the Trademark in association with the goods and services specified in the application because the Applicant was aware of the BUD Trademarks, and because use of the Trademark would be contrary to

Canadian legislation on cannabis, and to sections 7 and 22 of the Act (per section 38(2)(a.1) of the Act);

- at the filing date of the application, the Applicant was not using and did not propose to use the Trademark in association with the applied-for goods and services, and the Applicant did not propose to use the Trademark in association with those goods and services (per section 38(2)(e) of the Act); and
- at the filing date of the application, the Applicant was not entitled to use the Trademark in association with the goods and services specified in the application because the Trademark was confusing with at least one of the BUD Trademarks, and its use would be contrary to Canadian legislation on cannabis, and to sections 7 and 22 of the Act (per section 38(2)(f) of the Act).

[32] The material date for considering the above grounds of opposition is the filing date of the application.

[33] I will begin by addressing the ground of opposition alleging that the applied-for goods and services are not grouped according to the Nice Classification. In this regard, section 30(4) of the Act provides that any question arising as to the class within which any goods or services are to be grouped shall be determined by the Registrar, whose determination is not subject to appeal. Accordingly, non-compliance with section 30(3) does not form a proper ground of opposition under section 38(2)(a) of the Act and is rejected.

[34] Next, insofar as the section 38(2)(f) ground of opposition relies on the allegation that the Trademark was confusing with the BUD Trademarks, I note that likely confusion between an applied-for trademark and previously-used trademarks is not a fact that supports a non-entitlement to use ground of opposition. Indeed, section 38(2)(f) of the Act does not address an applicant's entitlement to *register* the mark relative to another person's trademark (pursuant to section 16 of the Act). Instead, section 38(2)(f) addresses an applicant's lawful entitlement to use the trademark, for example, in compliance with relevant federal legislation and other legal obligations prohibiting "use" of the trademark within the meaning of section 4 of the Act [see *Methanex Corporation v*



*Suez International, société par actions simplifiée*, 2022 TMOB 155]. Accordingly, the section 38(2)(f) ground of opposition based on an alleged likelihood of confusion is also rejected.

[35] Finally, the Opponent confirmed at the hearing that it did not file evidence nor would it submit arguments in support of the grounds of opposition that are not based on an alleged likelihood of confusion. Each of the remaining grounds listed above are therefore rejected on the basis that the Opponent has failed to meet its initial evidential burden.

### ***Non-registrability ground***

[36] Pursuant to section 38(2)(b) of the Act, the Opponent has pleaded that the Trademark is not registrable in view of section 12(1)(d) of the Act, because it is confusing with at least one of the BUD Trademarks.

[37] The material date to assess this ground of opposition is the date of my decision.

### Test for confusion

[38] The test for confusion is one of first impression and imperfect recollection. Section 6(2) of the Act provides that use of a trademark causes confusion with another trademark if the use of both trademarks in the same area would be likely to lead to the inference that the goods or services associated with those trademarks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods or services are of the same general class or appear in the same class of the Nice Classification. Therefore, section 6(2) of the Act does not deal with confusion between the trademarks themselves, but with the likelihood that the goods or services from one source will be perceived as originating from another source.

[39] In determining whether two trademarks are confusing, the Registrar must have regard to all the surrounding circumstances, including those listed at section 6(5) of the Act. This list is not exhaustive; all relevant factors are to be considered, and are not necessarily attributed equal weight [see *Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22; *Veuve Clicquot Ponsardin v Boutiques Clicquot Ltée*, 2006 SCC 23].

[40] At the hearing, the Opponent focused its representations on what it considers to be its strongest case, namely the likelihood of confusion between the Trademark and its trademark BUDWEISER, registered for use in association with cannabis-related goods and services (No. TMA1,099,717). I do not disagree that registration No. TMA1,099,717 represents the Opponent's strongest case. However, in view of the Opponent's sales of BUDWEISER beer for over a century in Canada, I find it relevant to also consider registration No. TMDA9010 for BUDWEISER in association with beer.

[41] In my view, if the Opponent does not succeed with respect to its pleading that there is a likelihood of confusion between the Trademark and either of these two registrations, it would not succeed with respect to the remaining trademarks pleaded in the statement of opposition.

[42] I have exercised my discretion and confirm that both registrations are extant [*Quaker Oats Co of Canada v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)]. The Opponent has therefore met its initial evidential burden in respect of those registrations.

*Degree of resemblance in appearance, sound and ideas*

[43] The Supreme Court of Canada has discussed the importance of the resemblance factor in conducting an analysis of the likelihood of confusion [*Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27 at para 49]:

[...] the degree of resemblance, although the last factor listed in s. 6(5), is the statutory factor that is often likely to have the greatest effect on the confusion analysis [...] if the marks or names do not resemble one another, it is unlikely that even a strong finding on the remaining factors would lead to a likelihood of confusion. The other factors become significant only once the marks are found to be identical or very similar [...] As a result, it has been suggested that a consideration of resemblance is where most confusion analyses should start.

[44] In the present case, the Trademark when sounded is entirely included in the Opponent's BUDWEISER trademark; the only phonetic difference is the "-er" suffix in BUDWEISER. When viewed, the difference between the marks is the presence of two additional letters in the Opponent's trademark, namely BUDWEEISER.

[45] That being said, when considering their degree of resemblance, trademarks must be considered in their totality; it is not correct to lay them side by side to identify similarities or differences among the elements or components of the trademarks. With that in mind, I find that – notwithstanding the small differences identified above – the trademarks BUDWISE and BUDWEISER resemble each other to a meaningful degree in both appearance and sound.

[46] In terms of the ideas suggested by the marks, the Opponent’s BUDWEISER trademark is not a dictionary word. As correctly noted by the Opponent at the hearing, there is no evidence that BUDWEISER would be understood by the average Canadian consumer to convey any particular meaning.

[47] As for the Trademark, the Applicant submits that it consists of two words, namely “bud” and “wise”. Relying in part on Mr. Clancy’s statement that the word BUD is commonly used to refer to cannabis, the Applicant submits that the Trademark refers to the idea of an individual who is “wise about bud”, or to the general notion of gaining familiarity, knowledge and wisdom about cannabis, akin to the meaning of the word “streetwise”, which is used to describe a person who is familiar with the ways of modern urban life.

[48] In response, the Opponent indicated at the hearing that trademarks cannot be dissected and that there is no evidence establishing that any idea is suggested by the Trademark taken as a whole.

[49] While I agree with the Opponent that trademarks must be considered in their totality, it is clear that even a coined word, which has no dictionary meaning, can suggest an idea when it is comprised of one or more components conveying a particular notion, concept or idea. In this case, I accept that the Trademark may suggest the notion of becoming “wise about cannabis”, as described by the Applicant. Nevertheless, in terms of first impression and imperfect recollection, the particular idea suggested by the Trademark is not sufficient to offset the strong resemblances in appearance and sound between the marks.

[50] Accordingly, this important factor favours the Opponent.

*Inherent distinctiveness of the trademarks and the extent to which they have become known*

[51] The overall consideration of this factor involves a combination of inherent and acquired distinctiveness of the trademarks. The acquired distinctiveness of a trademark refers to the extent to which it has become known in Canada as a result of its use or promotion.

[52] The Opponent's trademark BUDWEISER is inherently distinctive because it has no meaning in French or in English. With respect to acquired distinctiveness, while there is no evidence that it has been used or has become known to any extent in Canada in association with cannabis-related goods or services, the Opponent has provided evidence of use of the BUDWEISER trademark in association with beer since 1903 in Canada.

[53] The Applicant's Trademark has a lower degree of inherent distinctiveness than the Opponent's trademark. While the Trademark is a coined term, its inherent distinctiveness is somewhat limited to the extent that it is suggestive of the objective of the applied-for goods and services purported by the Applicant, namely becoming "wise about cannabis". The Applicant has not filed any evidence that it has commenced use of the Trademark or that the Trademark is known to any extent in Canada.

[54] Accordingly, this factor also favours the Opponent.

*Length of time the trademarks have been in use*

[55] As indicated above, there is no evidence of use of the trademark BUDWEISER in association with cannabis-related goods and services. However, there is some evidence that BUDWEISER has been used in Canada in association with beer since 1903, and there is detailed evidence of such use since 2014.

[56] There is no evidence that the Applicant has used its Trademark.

[57] As a result, this factor favours the Opponent.

*Nature of the goods, services or business; and nature of the trade*

[58] The Opponent's trademark BUDWEISER is registered for use in association with cannabis-related goods and services, including cannabis and cannabidiol (CBD) oils, and the services of providing educational information in the field of cannabis and CBD via a website (TMA1,099,717), and in association with beer (TMDA9010). The Opponent's evidence shows that its beer is sold in establishments such as restaurants and retail stores.

[59] The Applicant's goods and services are specified in the application as "computer software and mobile application software for an online social networking platform" and "software as a service allowing users to build an on-line directory information service"; each allowing users to essentially share information related to cannabis for medical and recreational use. In a nutshell, these are online platforms for sharing cannabis-related information. The Applicant has not introduced evidence regarding its business or channels of trade.

Registration No. TMDA9010

[60] I will begin by addressing registration No. TMDA9010. The nature of the Applicant's software-related goods and services is intrinsically different from beer, and there is no evidence before me from which to find an apparent nexus between them. In addition, the description of the goods and services in the application leads me to conclude that the parties' businesses and channels of trade are not likely to overlap, and the Opponent has submitted neither evidence nor representations to convince me otherwise.

Registration No. TMA1,099,717

[61] With respect to registration No. TMA1,099,717, the Applicant notes that the subject application does not cover cannabis, CBD or any goods containing those substances. According to the Applicant, the applied-for goods and services are software and their relation to cannabis is at most ancillary in that the software's purpose is to share information about cannabis [see Clancy Affidavit at para 3, where Mr. Clancy describes his "idea" as a "software platform to provide information about cannabis"].

[62] The Applicant contends that, because none of the Opponent's registrations cover software, there is no overlap in the parties' goods and services. It argues that the Opponent's service of "hosting a website" to provide educational information is distinct from the Applicant's goods and services because a website is "passive", not "downloadable" and does not have "users" *per se*, whereas the Applicant's software is essentially an interactive networking and community platform for users to share information online. As part of its submission, the Applicant points to the Nice classification of its goods and services (classes 9 and 42, respectively), which differs from that of the Opponent's service of "hosting a website" (class 41).

[63] The Opponent submitted in response that these are distinctions without any true differences. I agree. The Opponent's information-providing services through a website and the Applicant's software are both electronic resources that aim to inform individuals about cannabis. Even if a conceptual distinction could be drawn between hosting a website and software, it is apparent that the nature of these goods and services overlap.

[64] That being said, even if both parties were to provide information about cannabis, the Opponent is a brewing company. In the absence of evidence to the contrary, I do not find it reasonable to conclude that the parties' businesses overlap.

[65] Finally, there is no evidence from either party regarding their channels of trade. However, it goes without saying that websites are accessed online. Therefore, for the purpose of assessing the likelihood confusion, having regard to the description of the Applicant's goods and services, I find that there is likely overlap in the channels of trade.

#### Conclusion on sections 6(5)(c) and (d)

[66] Overall, I find that this factor favours the Opponent, but only insofar as registration No. 1,099,717 is concerned. To put it differently, I find the differences between the Opponent's beer and the Applicant's software to be meaningful, and sufficiently important to tip the balance in favor of the Applicant when considering registration No. TMDA9010.

*Additional surrounding circumstances alleged by the Opponent*

Fame of the BUD Trademarks

[67] The Opponent asserts that given their iconic status and fame, its BUD Trademarks, including BUDWEISER, are famous and deserve a wide ambit of protection [Opponent's written representations at paras 15-22, and 56-75].

[68] The Applicant does not dispute that the BUDWEISER trademark is famous, but contests that any such fame extends to goods and services which are notably different from the Opponent's, such as software [Applicant's written representations at paras 39-48].

[69] Whether one's trademark aura extends to the facts of a particular case is a matter not of assertion, but of evidence [*Veuve Clicquot, supra*, at para 26]. In the present case, the evidence is clear that although the Opponent also sells collateral merchandising items, and is involved in sports and music sponsorship activities where its trademarks are displayed, the Opponent's business is that of beer.

[70] While I agree with the Opponent that the trademark BUDWEISER is well-known "outside the specific circle of beer consumers" [Opponent's written representations at para 70], I do not consider that the evidence allows me to find that the Opponent's notoriety extends to the applied-for goods and services.

[71] Accordingly, this factor does not favour the Opponent.

Alleged family of trademarks

[72] Without providing specific submissions regarding a family of marks, the Opponent refers to the BUD Trademarks as a "family" of marks. The Applicant did not specifically address this point.

[73] There is no presumption of the existence of a family of marks in opposition proceedings. A party seeking to establish a family of marks must establish that it is using more than one or two trademarks within the alleged family [*Techniquip Ltd v Canadian Olympic Assn* (1998), 145 FTR 59, 1998 CanLII 7573 (FCTD)].

[74] In this case, it is not clear that the Opponent has evidenced a relevant family of trademarks. To begin, while the Van Den Bulck Affidavit references the trademarks BUDWEISER GARDENS [para 32, Exhibit PB-6] and BUDWEISER STAGE [para 60], few factual particulars are provided about their use. Otherwise, much of the Van Den Bulck Affidavit describes the use of BUD-formative trademarks, such as BUD LIGHT [paras 52-53], THIS BUD'S FOR YOU [para 16], and BUD & BURGERS [paras 41-46].

[75] Ultimately, even if a family of BUD-formative trademarks exists, the evidence is that this family revolves around the Opponent's beer business, and is not associated with software, or with cannabis-related goods and services.

[76] Consequently, I conclude that this factor only nominally favours the Opponent.

*Additional surrounding circumstances alleged by the Applicant*

[77] The Applicant also briefly argues that additional surrounding circumstances weigh in its favour, namely the absence of evidence of actual confusion between the marks at issue, and the existence of third-party trademarks on the register.

No evidence of actual confusion

[78] An opponent is under no obligation to submit evidence of instances of actual confusion. Although the failure to file evidence of actual confusion may result in a negative inference being drawn against an opponent in the face of an lengthy period of coexistence [see *Mattel, supra*], there is no indication in the present case that there has been any coexistence of the marks at issue.

[79] Accordingly, the absence of evidence of actual confusion is not a relevant surrounding circumstance in this case.

State of the register

[80] The Applicant argues that given the existence of the "over 100 trademarks that contain the element 'BUD' for use with cannabis [on the CIPO trademarks register]", prospective consumers are unlikely to be confused when seeing the marks at issue



because they are accustomed to distinguishing between such marks based on relatively small differences [Applicant's written representations at paras 27 and 96].

[81] State of the register evidence is relevant to the extent that inferences may be drawn from it concerning the state of the marketplace in Canada; such inferences can only be drawn when a large number of relevant trademark registrations are located [*McDowell v Laverana GmbH & Co. KG*, 2017 FC 327 at para 42; see also *Caterpillar Inc v Puma SE*, 2021 FC 974 at paras 91-94]. Relevant trademarks include those that are registered for similar goods and services as the marks at issue, and incorporate the component at issue in a material way [*Sobeys West Inc v Schwan's IP, LLC*, 2015 TMOB 197 at para 38].

[82] The Applicant's state of the register evidence – which consists of printouts of the result pages obtained by Mr. Clancy through his searches of the CIPO trademark database – is of little probative value in this case. First, the complete particulars of the references identified are not provided; the printouts are essentially a list of identified trademarks, along with other information including their application numbers and Nice classes. In addition, a brief review of the search results reveals that over 90 identified references relate to trademark applications that had not proceeded to registration at the date of Mr. Clancy's search.

[83] I am therefore not prepared to draw inferences about the state of the marketplace, particularly in the absence of any demonstrated marketplace use. That being said, even if common use of BUD-formative trademarks in the marketplace could be inferred, the trademarks must be considered in their entirety and, in this case, the Applicant has not evidenced common use of the WISE element, alone or in combination with BUD [for a similar approach, see *Mastrandrea Commercial Bakeries Limited v Les Industries Certico Inc*, 2022 TMOB 156 at paras 56-58].

[84] Accordingly, this factor does not favour the Applicant.

### *Conclusion*

[85] Having regard to all of the surrounding circumstances, I conclude that the Applicant has discharged its legal onus to show, on a balance of probabilities, that there is no reasonable likelihood of confusion between the Trademark and the Opponent's trademark BUDWEISER registered in association with beer (No. TMDA9010). I consider that the differences in the nature of the goods, services and likely channels of trade, outweigh the other factors which favor the Opponent including the high degree of resemblance, and negate the likelihood of confusion between the marks at issue.

[86] Such is not the case when it comes to the Opponent's BUDWEISER trademark registered for use in association with cannabis-related goods and services. In that case, the direct overlap in the nature of the goods and services is sufficient to tip the balance of probability in the Opponent's favour. Indeed, it seems to me that as a matter of first impression, an average consumer seeing the Trademark in association with the applied-for goods and services, having only a vague recollection of BUDWEISER in association with the goods and services specified in registration No. 1,099,717, would be likely to think that the Applicant's goods and services emanate from or are licensed, approved or sponsored by the Opponent.

[87] Accordingly, the section 12(1)(d) ground of opposition is successful insofar as it is based on registration no. TMA1,099,717 for the trademark BUDWEISER.

### ***Non-entitlement ground***

[88] Pursuant to section 38(2)(c) of the Act, the Opponent has pleaded that the Applicant is "not the person entitled to the registration of the goods as described in the Application and of the goods and services as described in the Application" in view of section 16(1) of the Act, since the Trademark was confusing with at least one of the BUD Trademarks.

[89] The material date to assess this ground of opposition is the filing date of the application or the date of first use of the Trademark in Canada, whichever is earlier. As

the Applicant has not filed any evidence of use of the Trademark, the relevant material date for under this ground is the filing date of the application.

[90] As indicated previously, there is no evidence of use of the Opponent's trademarks in association with cannabis-related goods and services. However, I am satisfied that the Opponent used its trademark BUDWEISER, notably in association with beer, as of the filing date of April 10, 2018, and had not abandoned it as of the advertisement date of February 24, 2021. The Opponent therefore meets its burden under this ground.

[91] I do not consider that the difference in material dates affects my findings under the non-registrability ground of opposition discussed above in any meaningful way. I therefore reach the same conclusion regarding the likelihood of confusion under this ground as under the non-registrability ground with respect to the trademark BUDWEISER registered for use in association with beer (TMDA9010).

[92] In coming to that conclusion, I have also considered the Opponent's use of the trademark BUDWEISER in association with collateral merchandise products, such as those referenced in Van Den Bulck Affidavit. However, I do not consider that the slightly broader range of associated goods is sufficient to shift the confusion analysis in the Opponent's favour.

[93] Accordingly, for reasons similar to those expressed in the analysis above with respect to registration No. TMDA9010, the section 16(1) ground of opposition is dismissed.

***Non-distinctiveness ground***

[94] Pursuant to section 38(2)(d) of the Act, the Opponent has pleaded that the Trademark is not distinctive within the meaning of section 2 since it does not actually distinguish and is neither adapted to distinguish nor capable of distinguishing the goods and services specified in the application from the goods and services associated with at least one of the BUD Trademarks which have been and are used in Canada by the Opponent and/or its predecessors-in-title.

[95] In order to meet its initial burden in support of the non-distinctiveness ground of opposition, the Opponent is required to show that, as of the date of filing its statement of opposition, the trademarks on which it relies were known to some extent in Canada in association with relevant goods and services, having a “substantial, significant or sufficient” reputation to negate the distinctiveness of the Mark, or else “well known in a specific area of Canada” [*Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FCTD); *Bojangles’ International LLC v Bojangles Café Ltd*, 2006 FC 657 at para 33].

[96] I have no difficulty concluding that the Opponent has met its burden insofar as beer and collateral merchandise products are concerned.

[97] While the material date to assess this ground of opposition is the filing date of the statement of opposition, I do not consider the differing material dates between this ground and the non-entitlement ground to have any impact on the outcome of a confusion analysis. In particular, I do not find that the longer period of use of the Opponent’s trademark under this ground is sufficiently important to outweigh the significant differences in goods, services and likely channels of trade.

[98] For reasons similar to those expressed in the above analysis, I therefore reach the same conclusion as under the section 16(1) ground of opposition.

[99] Accordingly, the section 2 ground of opposition is dismissed.

### **DISPOSITION**


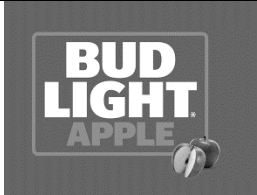
[100] In view of all of the foregoing, pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the application pursuant to section 38(12) of the Act.

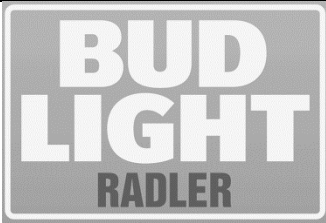
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Eve Heafey  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

**SCHEDULE A**

***The Opponent's BUD Trademarks***

Registration Number	Trademark	Registration Date	Goods/Services
TMA157,723	BUD	1968-07-26	Beer
TMA780,658	BUD HOUSE	2010-10-26	Beer
TMA377,887	BUD LIGHT	1991-01-11	Beer
TMA907,795		2015-07-06	Beer
TMA994,112		2018-04-10	Beer
TMA551,072		2001-09-19	Beer
TMA907,957		2015-07-08	Beer
TMA938,807	BUD LIGHT APPLE	2016-05-25	Flavored beer
TMA1,004,723		2018-09-12	Beer
TMA787,263	BUD LIGHT LIME	2011-01-14	Beer
TMA1,004,737		2018-09-12	Beer
TMA907,958		2015-07-08	Beer

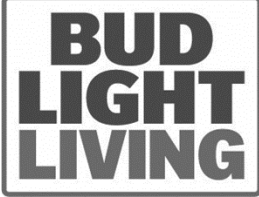
TMA818,406	BUD LIGHT LIME ARE YOU IN?	2012-02-24	Beer
TMA933,008	BUD LIGHT LIME STRAW-BER-RITA	2016-03-30	Flavoured beers
TMA899,562	BUD LIGHT PLATINUM	2015-03-26	Beer
TMA899,559		2015-03-26	Beer
TMA1,004,000	BUD LIGHT RADLER	2018-08-31	Flavoured beer
TMA1,003,998		2018-08-31	Flavoured beer
TMA819,130	BUD LIGHT. ARE YOU IN?	2012-03-05	Beer
TMA883,185	BUD LIME	2014-07-31	Beer
TMA904,868	BUD LIME LIME-ARITA	2015-05-29	Beer
TMA1,011,267	BUD LIME MIX-A-RITA	2018-12-14	Flavoured beer
TMA969,742	BUD LIME STRAW-BER-RITA	2017-05-02	Beer
TMA1,011,254	BUD LIME THE RITAS	2018-12-14	Flavoured beer
TMA433,303	BUD MAN	1994-09-16	Beer
TMDA9010	BUDWEISER	1903-08-07	Beer
TMA172,014		1970-10-16	Beer
TMA806,439	BUDWEISER 4	2011-09-12	Brewed alcoholic beverages, namely, beer.
TMA873,892	BUDWEISER CROWN	2014-03-20	Beer
TMA864,748		2013-11-08	Beer

TMA864,743		2013-11-08	Beer
TMA1,003,679		2018-08-27	Non-alcoholic beer
TMA726,839	BUDWEISER SELECT	2008-10-24	Beer
TMA739,769		2009-05-08	Beer
TMA854,035	BUDWEISER SHOT	2013-06-26	Beer
TMA854,042		2013-06-26	Beer
TMA960,474	BUDWEISER SIGNATURE DRAUGHT	2017-01-19	Beer
TMA701,731	BUDWEISER TRUE MUSIC	2007-11-27	Beer
TMA780,395	BUDWEISER UNITED	2010-10-22	Beer
TMA818,398	GRAB SOME BUDS	2012-02-24	Beer
TMA261,007	THIS BUD'S FOR YOU	1981-07-17	Beer
TMA990,013	THIS IS THE FAMOUS BUD LIGHT BEER. WE KNOW OF NO BRAND PRODUCED BY ANY OTHER BREWER WHICH IS BREWED AND AGED TO BE MORE REFRESHING. OUR BEECHWOOD AGING PROCESS PRODUCES A LIGHT-BODIED LAGER WITH A FRESH TASTE, A CRISP, CLEAN FINISH, AND A SMOOTH DRINKABILITY.	2018-02-05	Beer
TMA1,088,232	BUDWEISER COPPER LAGER	2020-11-20	Beer
TMA174,608	BUD	1971-02-19	Yeast


TMA745,899	BUD LIGHT	2009-08-21	Lighters for smokers
TMA745,896	BUDWEISER	2009-08-21	Lighters for smokers
TMA1,073,827	<b>#BUD LIGHT LIVING</b>	2020-02-28	<p>GOODS</p> <p>Beer; apparel, namely shirts; bags, namely cooler bags; promotional items, namely bottle openers, key chains, refrigerators, audio speakers, and electronic accessories namely headphones and earphones; mobile application, namely downloadable software in the nature of a mobile application accessed via the Internet providing live and recorded musical concerts, sports games and tournaments and cultural events namely art exhibitions, art shows, travel tours and cruises, entertainment performances, namely, dance and theatrical performances and facilitating interaction and content sharing by users in the field of online social networking, and to allow users to enter and participate in online contests relating to music, sporting and cultural events; mobile phone chargers; bags, namely beach bags and sport bags</p> <p>SERVICES</p> <p>Arranging and conducting musical concerts, sporting events namely soccer, tennis, baseball, football, basketball, and hockey games and cultural events namely art exhibitions, art shows, travel tours and cruises, entertainment performances, namely, dance and</p>



			theatrical performances; promoting the sale of goods through promotional contests
TMA1,073,833	<b># LA VIE BUD LIGHT</b>	2020-02-28	<p>GOODS</p> <p>Beer; apparel, namely shirts; bags, namely cooler bags; promotional items, namely bottle openers, key chains, refrigerators, audio speakers, and electronic accessories namely headphones and earphones; mobile application, namely downloadable software in the nature of a mobile application accessed via the Internet providing live and recorded musical concerts, sports games and tournaments and cultural events namely art exhibitions, art shows, travel tours and cruises, entertainment performances, namely, dance and theatrical performances and facilitating interaction and content sharing by users in the field of online social networking, and to allow users to enter and participate in online contests relating to music, sporting and cultural events; mobile phone chargers; bags, namely beach bags and sport bags</p> <p>SERVICES</p> <p>Arranging and conducting musical concerts, sporting events namely soccer, tennis, baseball, football, basketball, and hockey games and cultural events namely art exhibitions, art shows, travel tours and cruises, entertainment</p>

			performances, namely, dance and theatrical performances; promoting the sale of goods through promotional contests
TMA1,073,828		2020-02-28	<p>GOODS</p> <p>Beer; apparel, namely shirts; bags, namely cooler bags; promotional items, namely bottle openers, key chains, refrigerators, audio speakers, and electronic accessories namely headphones and earphones; mobile application, namely downloadable software in the nature of a mobile application accessed via the Internet providing live and recorded musical concerts, sports games and tournaments and cultural events namely art exhibitions, art shows, travel tours and cruises, entertainment performances, namely, dance and theatrical performances and facilitating interaction and content sharing by users in the field of online social networking, and to allow users to enter and participate in online contests relating to music, sporting and cultural events; mobile phone chargers; bags, namely beach bags and sport bags</p> <p>SERVICES</p> <p>Arranging and conducting musical concerts, sporting events namely soccer, tennis, baseball, football, basketball, and hockey games and cultural events namely art exhibitions, art shows, travel tours</p>

			and cruises, entertainment performances, namely, dance and theatrical performances; promoting the sale of goods through promotional contests
TMA963,261		2017-02-17	<p>GOODS</p> <p>(1) Beer; apparel, namely shirts; bags, namely cooler bags; promotional items, namely bottle openers, key chains, refrigerators, audio speakers, and electronic accessories namely headphones and earphones; mobile application, namely downloadable software in the nature of a mobile application accessed via the Internet providing live and recorded musical concerts, sports games and tournaments and cultural events namely art exhibitions, art shows, travel tours and cruises, entertainment performances, namely, dance and theatrical performances and facilitating interaction and content sharing by users in the field of online social networking, and to allow users to enter and participate in online contests relating to music, sporting and cultural events;</p> <p>(2) Mobile phone chargers.</p> <p>SERVICES</p> <p>Arranging and conducting musical concerts, sporting events namely soccer, tennis, baseball, football, basketball, and hockey games and cultural events namely art exhibitions, art shows, travel tours</p>

			and cruises, entertainment performances, namely, dance and theatrical performances; promoting the sale of goods through promotional contests.
TMA629,659	BUD WORLD	2005-01-07	(1) Retail gift shop services. (2) Educational services, namely interactive presentations, demonstrations, seminars and workshops in the field of beer and brewing.
TMA852,455	BUDWEISER APPRÉCIEZ DE MANIÈRE RESPONSABLE	2013-06-04	Promoting the public awareness of the need for responsible consumption of alcoholic beverages
TMA948,241	 <b>GOOD SPORT</b> ENJOY RESPONSIBLY	2016-09-01	Promoting public awareness of the responsible use of alcohol
TMA875,558	BUDWEISER PLAYOFF PAYOFF	2014-04-11	GOODS Beer SERVICES Promoting the sale of wares through promotional contests and the distribution of related printed material; providing a website featuring contests in the field of sports via a global computer network
TMA917,133	BUDWEISER RED ZEPPELIN	2015-10-15	GOODS Beer; model hockey goal lights; Internet-enabled indicator lights, namely, indoor indicator lights whose operation may be controlled through the wireless internet. SERVICES Communicating information, in the fields of sports, concerts and

			alcoholic and non-alcoholic beverages, via mobile billboards.
TMA1,001,796	BUDWEISER STAGE	2018-07-30	<p>GOODS</p> <p>Posters, books, post cards, gift wrap, bumper stickers, embroidered crests, invitation cards and stickers; calendars; clothing namely, shirts, sweaters, vests, jackets, aprons, caps, sweatshirts, pants and tops, shorts, t-shirts; clothing accessories namely, wallets, suspenders, headbands, hats, scarves, sun visors, belts, umbrellas and earrings; bags namely, plastic bags, tote bags, suit bags, sports bags, cooler bags, briefcases, back packs, hip packs, luggage bags and handbags; glassware and related accessories, namely, drinking glasses, plastic cups, pint glasses, steins, mugs, cups, sports bottles, coasters and insulated beverage holders, cozies; housewares namely, cans of metal, aprons, paper and cloth napkins, place mats of paper and textiles, ice chests, ice buckets, beer tubs namely beverage containers, tap handles, serving trays, and framed pictures; novelty items namely, pencils, pens, clocks, sunglasses, key chains, pens, watches, lapel and novelty buttons, lapel and novelty pins, bottle openers, lighters, mirrors, playing cards, hockey sticks, hockey pucks, souvenir albums, photos, postal cards, neon signs</p>

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and banners of textile, cloth flags, toys, namely plush toys, stuffed animals and dolls, dancing cans namely, battery operated novelty items which move in response to sound, posters, puzzles, calendars, blank USB flash drives, and stickers; pre-recorded CDs and DVDs containing movies and music; pre-recorded CDs containing music and computer games; mouse pads

SERVICES

Entertainment and educational services, namely the organization and sponsorship of musical concerts, sporting events namely soccer, tennis, baseball, football, basketball, and hockey games, theatrical shows at performance venues, and providing convention hall facilities; operation of retail kiosks selling printed souvenir books and signs, clothing, clothing accessories, bags, glassware, housewares, toys, pre-recorded CDs and DVDs containing movies, music and computer games; mouse pads; bar services, namely the provision of alcoholic and non-alcoholic beverages to others; retail food services, namely, the serving of food to others at a stadium; promoting the goods and services of others by arranging for sponsors to affiliate goods and services with particular sporting events namely soccer, tennis, baseball, football,

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basketball, and hockey games, and entertainment events namely musical concerts and theatrical shows at performance venues; ticket reservation services, ticket sale services, namely the sale of tickets and vouchers for sporting and entertainment events performed by others; operation of retail outlet for the sale of promotional items, souvenirs and novelty items namely printed souvenir books and signs, clothing, clothing accessories, bags, glassware, housewares, toys, pre-recorded CDs and DVDs containing movies, music and computer games; mouse pads; production of cable television programs; production of radio and television programs; distribution of television programming to cable television systems; the organization and performance of baseball games, football games, basketball games, soccer games, martial arts contests, wrestling matches, motocross competitions, gymnastic competitions, cultural and religious exhibitions, cultural and religious festivals, musical performances, ice skating shows, trade shows, namely, car shows and boat shows, and concerts presented live and through television, radio, and internet, and provision of cinema facilities; advertising services,

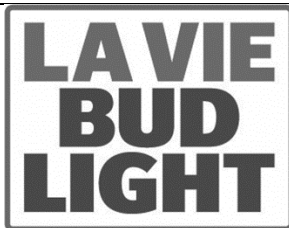
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namely placing advertising for others, electronic billboard advertising of the goods and services of others, co-operative advertising of the goods and services of others and marketing the sale of goods and services through promotional contests and the distribution of related printed material, dissemination of advertising matter on behalf of third parties; leasing billboards, signage, and advertisement spaces to advertise the goods and services of others; vehicle parking lot services; fundraising activities on behalf of others; providing sports arena facilities, and entertainment venue services for entertainment and informational events namely for musical concerts, sporting events namely soccer, tennis, baseball, football, basketball, and hockey games, theatrical shows at performance venues, and providing convention hall facilities; bus transportation and shuttlebus services

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TMA1,004,719



2018-09-12

GOODS

Beer; apparel, namely shirts; bags, namely cooler bags; promotional items, namely bottle openers, key chains, refrigerators, audio speakers, and electronic accessories namely headphones and earphones; mobile application, namely downloadable software in

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the nature of a mobile application accessed via the Internet providing live and recorded musical concerts, sports games and tournaments and cultural events namely art exhibitions, art shows, travel tours and cruises, entertainment performances, namely, dance and theatrical performances and facilitating interaction and content sharing by users in the field of online social networking, and to allow users to enter and participate in online contests relating to music, sporting and cultural events; mobile phone chargers; bags, namely beach bags and sport bags

SERVICES

Arranging and conducting musical concerts, sporting events namely soccer, tennis, baseball, football, basketball, and hockey games and cultural events namely art exhibitions, art shows, travel tours and cruises, entertainment performances, namely, dance and theatrical performances; promoting the sale of goods through promotional contests

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TMA1065019



2019-12-03

GOODS

Posters, books, post cards, gift wrap, bumper stickers, embroidered crests, invitation cards and stickers; calendars; clothing namely, shirts, sweaters, vests, jackets, aprons, caps, sweatshirts, pants and tops, shorts, t-shirts; clothing accessories

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namely, wallets, suspenders, headbands, hats, scarves, sun visors, belts, umbrellas and earrings; bags namely, plastic bags, tote bags, suit bags, sports bags, cooler bags, briefcases, back packs, hip packs, luggage bags and handbags; glassware and related accessories, namely, drinking glasses, plastic cups, pint glasses, steins, mugs, cups, sports bottles, coasters and insulated beverage holders, cozies; housewares namely, cans of metal, aprons, paper and cloth napkins, place mats of paper and textiles, ice chests, ice buckets, beer tubs namely beverage containers, tap handles, serving trays, and framed pictures; novelty items namely, pencils, pens, clocks, sunglasses, key chains, pens, watches, lapel and novelty buttons, lapel and novelty pins, bottle openers, lighters, mirrors, playing cards, hockey sticks, hockey pucks, souvenir albums, photos, postal cards, neon signs and banners of textile, cloth flags, toys, namely plush toys, stuffed animals and dolls, dancing cans namely, battery operated novelty items which move in response to sound, posters, puzzles, calendars, blank USB flash drives, and stickers; pre-recorded CDs and DVDs containing movies and music;

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pre-recorded CDs containing music and computer games; mouse pads

SERVICES

Entertainment and educational services, namely the organization and sponsorship of musical concerts, sporting events namely soccer, tennis, baseball, football, basketball, and hockey games, theatrical shows at performance venues, and providing convention hall facilities; operation of retail kiosks selling printed souvenir books and signs, clothing, clothing accessories, bags, glassware, housewares, toys, pre-recorded CDs and DVDs containing movies, music and computer games; mouse pads; bar services, namely the provision of alcoholic and non-alcoholic beverages to others; retail food services, namely, the serving of food to others at a stadium; promoting the goods and services of others by arranging for sponsors to affiliate goods and services with particular sporting events namely soccer, tennis, baseball, football, basketball, and hockey games, and entertainment events namely musical concerts and theatrical shows at performance venues; ticket reservation services, ticket sale services, namely the sale of tickets and vouchers for sporting and entertainment events performed by others; operation of

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retail outlet for the sale of promotional items, souvenirs and novelty items namely printed souvenir books and signs, clothing, clothing accessories, bags, glassware, housewares, toys, pre-recorded CDs and DVDs containing movies, music and computer games; mouse pads; production of cable television programs; production of radio and television programs; distribution of television programming to cable television systems; the organization and performance of baseball games, football games, basketball games, soccer games, martial arts contests, wrestling matches, motocross competitions, gymnastic competitions, cultural and religious exhibitions, cultural and religious festivals, musical performances, ice skating shows, trade shows, namely, car shows and boat shows, and concerts presented live and through television, radio, and internet, and provision of cinema facilities; advertising services, namely placing advertising for others, electronic billboard advertising of the goods and services of others, co-operative advertising of the goods and services of others and marketing the sale of goods and services through promotional contests and the distribution of related printed

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material, dissemination of advertising matter on behalf of third parties; leasing billboards, signage, and advertisement spaces to advertise the goods and services of others; vehicle parking lot services; fundraising activities on behalf of others; providing sports arena facilities, and entertainment venue services for entertainment and informational events namely for musical concerts, sporting events namely soccer, tennis, baseball, football, basketball, and hockey games, theatrical shows at performance venues, and providing convention hall facilities; bus transportation and shuttlebus services.

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TMA1,065,023	<i>Budweiser</i> <b>STAGE</b>	2019-12-03	<p>GOODS</p> <p>Posters, books, post cards, gift wrap, bumper stickers, embroidered crests, invitation cards and stickers; calendars; clothing namely, shirts, sweaters, vests, jackets, aprons, caps, sweatshirts, pants and tops, shorts, t-shirts; clothing accessories namely, wallets, suspenders, headbands, hats, scarves, sun visors, belts, umbrellas and earrings; bags namely, plastic bags, tote bags, suit bags, sports bags, cooler bags, briefcases, back packs, hip packs, luggage bags and handbags; glassware and related accessories, namely, drinking glasses, plastic cups, pint glasses,</p>
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steins, mugs, cups, sports bottles, coasters and insulated beverage holders, cozies; housewares namely, cans of metal, aprons, paper and cloth napkins, place mats of paper and textiles, ice chests, ice buckets, beer tubs namely beverage containers, tap handles, serving trays, and framed pictures; novelty items namely, pencils, pens, clocks, sunglasses, key chains, pens, watches, lapel and novelty buttons, lapel and novelty pins, bottle openers, lighters, mirrors, playing cards, hockey sticks, hockey pucks, souvenir albums, photos, postal cards, neon signs and banners of textile, cloth flags, toys, namely plush toys, stuffed animals and dolls, dancing cans namely, battery operated novelty items which move in response to sound, posters, puzzles, calendars, blank USB flash drives, and stickers; pre-recorded CDs and DVDs containing movies and music; pre-recorded CDs containing music and computer games; mouse pads

#### SERVICES

Entertainment and educational services, namely the organization and sponsorship of musical concerts, sporting events namely soccer, tennis, baseball, football, basketball, and hockey games, theatrical shows at performance venues, and providing convention

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hall facilities; operation of retail kiosks selling printed souvenir books and signs, clothing, clothing accessories, bags, glassware, housewares, toys, pre-recorded CDs and DVDs containing movies, music and computer games; mouse pads; bar services, namely the provision of alcoholic and non-alcoholic beverages to others; retail food services, namely, the serving of food to others at a stadium; promoting the goods and services of others by arranging for sponsors to affiliate goods and services with particular sporting events namely soccer, tennis, baseball, football, basketball, and hockey games, and entertainment events namely musical concerts and theatrical shows at performance venues; ticket reservation services, ticket sale services, namely the sale of tickets and vouchers for sporting and entertainment events performed by others; operation of retail outlet for the sale of promotional items, souvenirs and novelty items namely printed souvenir books and signs, clothing, clothing accessories, bags, glassware, housewares, toys, pre-recorded CDs and DVDs containing movies, music and computer games; mouse pads; production of cable television programs; production of radio and television

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programs; distribution of television programming to cable television systems; the organization and performance of baseball games, football games, basketball games, soccer games, martial arts contests, wrestling matches, motocross competitions, gymnastic competitions, cultural and religious exhibitions, cultural and religious festivals, musical performances, ice skating shows, trade shows, namely, car shows and boat shows, and concerts presented live and through television, radio, and internet, and provision of cinema facilities; advertising services, namely placing advertising for others, electronic billboard advertising of the goods and services of others, co-operative advertising of the goods and services of others and marketing the sale of goods and services through promotional contests and the distribution of related printed material, dissemination of advertising matter on behalf of third parties; leasing billboards, signage, and advertisement spaces to advertise the goods and services of others; vehicle parking lot services; fundraising activities on behalf of others; providing sports arena facilities, and entertainment venue services for entertainment and informational events namely for

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			musical concerts, sporting events namely soccer, tennis, baseball, football, basketball, and hockey games, theatrical shows at performance venues, and providing convention hall facilities; bus transportation and shuttlebus services
TMA866,033	BUDWEISER GARDENS	2013-11-27	Entertainment and educational services, namely, providing an arena facility for spectator, entertainment and educational events, namely, sports events, concerts, conventions, trade and traveling shows, and exhibitions.
TMA1,099,717	BUDWEISER	2021-05-07	<p>Goods</p> <p>(1) Cannabis oil for cosmetic purposes; cannabidiol (CBD) oil for cosmetic purposes.</p> <p>(2) Edible oils; cannabis oil for food; cannabidiol (CBD) oil for food; prepared meals consisting principally of chicken and containing cannabis plant derivatives; prepared meals primarily consisting of cooked fruits and vegetables and containing cannabis plant derivatives; prepared meals primarily consisting of cannabis plant derivatives; hemp-based beverages for use as a milk substitute; cannabis-based spreads; fruit chips, kale chips, potato chips, yuca chips, all containing cannabis plant derivatives.</p> <p>(3) Bread, pastries, cakes, cake mixes, cupcakes, chocolate, candy bars, cereal bars, candies, caramel,</p>

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almond confectionery, chocolate confectionery, frozen confectionery, fruit-based confectionery, sugar confectionery, chewing gum and biscuits all containing cannabis plant derivatives; sauces containing cannabis plant derivatives namely barbecue sauce, chicken wing sauce, steak sauce, tartar sauce, pizza sauce, tomato sauce, pasta sauce, cheese sauce, chili sauce and marinades; dressing and vinaigrette for salads containing cannabis plant derivatives; mustard containing cannabis plant derivatives; popcorn, corn chips, taco chips, tortilla chips, wonton chips, chocolate-covered pretzels, soft pretzels, all containing cannabis plant derivatives; coffee infused with cannabis; tea infused with cannabis; ice cream containing cannabis plant derivatives; prepared pizza containing cannabis plant derivatives; noodle-based prepared meals containing cannabis plant derivatives, rice-based prepared meals containing cannabis plant derivatives; coffee beverages infused with cannabis; tea beverages infused with cannabis; hemp-based tea.

(4) Live cannabis plants.

(5) Non-alcoholic malt-based beverages infused with cannabis; non-alcoholic beer beverages infused with cannabis, non-alcoholic

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fruit-based beverages infused with cannabis; aerated water, bottled water, carbonated water, drinking water, flat water, glacial water, mineral water, soda water and flavoured water infused with cannabis; hemp-based carbonated waters; alcoholic malt-based beverages, namely toasted-malt beer ; beer infused with cannabis.

(6) Alcoholic beverages infused with cannabis namely, vodka-based beverages, rum-based beverages, gin-based beverages, alcoholic coolers, alcoholic cocktails, alcoholic bitters, wine-based beverages; alcoholic malt-based beverages, namely malt whiskey, alcoholic malt-based coolers.

(7) Dried cannabis and dried cannabinoid; Smoking accessories, namely, lighters, matches, ashtrays, pipes, water pipes, cigarettes rolling papers, grinders, vaporizers.

SERVICES

(1) Providing educational information in the field of cannabis and cannabidiol (CBD) via a website.

(2) Bar and restaurants services; cafés; catering services.

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TMA1,101,995 BUD LIGHT

2021-06-14

GOODS

(1) Edible oils; cannabis oil for food; cannabidiol (CBD) oil for food; prepared meals primarily consisting of meat, poultry and fish and cooked vegetables, all containing

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cannabis plant derivatives; kale chips; potato chips; cannabis-based spreads; hemp-based beverages for use as a milk substitute

(2) Bread, pastries, cakes, cake mixes, cupcakes, chocolate, candy bars, cereal bars, candies, caramel, confectionery namely candy, chewing gum and biscuits all containing cannabis plant derivatives; sauces containing cannabis plant derivatives namely barbecue sauce, chicken wing sauce, steak sauce, tartar sauce, pizza sauce, tomato sauce, pasta sauce, cheese sauce, chili sauce and marinades; dressing and vinaigrette for salads containing cannabis plant derivatives; mustard containing cannabis plant derivatives; popcorn, corn chips; tortilla chips, chocolate-covered pretzels, soft pretzels, all containing cannabis plant derivatives; coffee infused with cannabis; tea infused with cannabis; ice cream containing cannabis plant derivatives; prepared pizza containing cannabis plant derivatives; noodle-based prepared meals containing cannabis plant derivatives, rice-based prepared meals containing cannabis plant derivatives; coffee beverages infused with cannabis, tea beverages infused with cannabis

(3) Non-alcoholic malt-based beverages infused with cannabis,

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namely non-alcoholic beer infused with cannabis, non-alcoholic fruit-based beverages infused with cannabis, carbonated water; drinking water; flat water and flavoured water infused with cannabis, hemp-based drinking waters; alcoholic malt-based beverages, namely beer infused with cannabis

(4) Alcoholic beverages infused with cannabis namely, vodka-based cocktails, rum-based cocktails, gin-based cocktails, alcoholic coolers, alcoholic cocktails, alcoholic bitters, wine-based beverages

(5) Smoking accessories, namely, lighters, matches, ashtrays, pipes, water pipes, cigarettes rolling papers, grinders, vaporizers

SERVICES

(1) Bar and restaurants services; cafés; catering services

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TMA1,099,715



2021-05-07

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GOODS

(1) Cannabis oil for cosmetic purposes; cannabidiol (CBD) oil for cosmetic purposes.

(2) Edible oils; cannabis oil for food; cannabidiol (CBD) oil for food; prepared meals consisting principally of chicken and containing cannabis plant derivatives; prepared meals primarily consisting of cooked fruits and vegetables and containing cannabis plant derivatives; prepared meals primarily consisting of cannabis plant derivatives; hemp-

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based beverages for use as a milk substitute; cannabis-based spreads; fruit chips, kale chips, potato chips, yuca chips, all containing cannabis plant derivatives.

(3) Bread, pastries, cakes, cake mixes, cupcakes, chocolate, candy bars, cereal bars, candies, caramel, almond confectionery, chocolate confectionery, frozen confectionery, fruit-based confectionery, sugar confectionery, chewing gum and biscuits all containing cannabis plant derivatives; sauces containing cannabis plant derivatives namely barbecue sauce, chicken wing sauce, steak sauce, tartar sauce, pizza sauce, tomato sauce, pasta sauce, cheese sauce, chili sauce and marinades; dressing and vinaigrette for salads containing cannabis plant derivatives; mustard containing cannabis plant derivatives; popcorn, corn chips, taco chips, tortilla chips, wonton chips, chocolate-covered pretzels, soft pretzels, all containing cannabis plant derivatives; coffee infused with cannabis; tea infused with cannabis; ice cream containing cannabis plant derivatives; prepared pizza containing cannabis plant derivatives; noodle-based prepared meals containing cannabis plant derivatives, rice-based prepared meals containing cannabis plant derivatives; coffee beverages

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infused with cannabis; tea  
beverages infused with cannabis;  
hemp-based tea.

(4) Live cannabis plants.

(5) Non-alcoholic malt-based  
beverages infused with cannabis;  
non-alcoholic beer beverages  
infused with cannabis, non-alcoholic  
fruit-based beverages infused with  
cannabis; aerated water, bottled  
water, carbonated water, drinking  
water, flat water, glacial water,  
mineral water, soda water and  
flavoured water infused with  
cannabis; hemp-based carbonated  
waters; alcoholic malt-based  
beverages, namely toasted-malt  
beer ; beer infused with cannabis.

(6) Alcoholic beverages infused with  
cannabis namely, vodka-based  
beverages, rum-based beverages,  
gin-based beverages, alcoholic  
coolers, alcoholic cocktails,  
alcoholic bitters, wine-based  
beverages; alcoholic malt-based  
beverages, namely malt whiskey,  
alcoholic malt-based coolers.

(7) Dried cannabis and dried  
cannabinoid; Smoking accessories,  
namely, lighters, matches, ashtrays,  
pipes, water pipes, cigarettes rolling  
papers, grinders, vaporizers.


#### SERVICES



(1) Providing educational  
information in the field of cannabis  
and cannabidiol (CBD) via a  
website.

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			(2) Bar and restaurants services; cafés; catering services.
TMA869,495	TRACK YOUR BUD	2014-01-20	Downloadable software applications for mobile devices which provide information about beer; downloadable software accessed via the Internet, which provide information about beer.
TMA1,040,828	BUD-E APP	2019-07-12	Goods Computer application software for mobile devices, namely, software for mobile devices that enables users to remotely view, monitor, program, operate, and control household appliances.
TMA875,449	BUD LIGHT	2014-04-10	Neon signs, sunglasses, audio speaker boxes, music docking stations, on-line downloadable software in the nature of a mobile application providing information about beer; downloadable software in the nature of a mobile application accessed via the Internet, providing information about beer; indoor and outdoor decorative electrical string lights, barbecue grills and refrigerators; pens, paper napkins, coasters, calendars; mirrors, namely, decorative mirrors; non-metal key chains, bar stool, chairs, tables.
TMA898,367	BUDWEISER RED LIGHTS	2015-03-10	GOODS (1) Model hockey goal lights; Internet-enabled indicator lights (2) Beer SERVICES



			(1) Promoting the sale of wares through promotional contests and the distribution of related printed material.
TMA898,366	 <b>RED LIGHTS</b>	2015-03-10	<p>GOODS</p> <p>(1) Model hockey goal lights; Internet-enabled indicator lights</p> <p>(2) Beer</p> <p>SERVICES</p> <p>(1) Promoting the sale of wares through promotional contests and the distribution of related printed material.</p>
TMA429,251	BUD	1994-06-24	<p>(1) Caps, hats, sweatshirts, sweatpants, shirts and shorts.</p> <p>(2) Clothing, namely socks.</p> <p>(3) Wearing apparel for men and women, namely shorts, jackets, coats, sweaters, shirts, sweatshirts, pants, headwear namely hats, caps, visors, bags namely handbags, sportbags, cooler bags, shoulder bags, tote bags, golf head covers, drinking vessels namely glasses plastic cups, umbrellas, chairs and folding seats.</p>
TMA646,717	BUD BOWL	2005-08-25	<p>(2) Clothing namely hats and shirts.</p> <p>(1) Beer.</p>
TMA770,505	BUD CAMP	2010-06-22	<p>GOODS</p> <p>(1) Beer; clothing, namely shirts; headwear, namely hats; drinking vessels, namely cups, mugs and drinking glasses.</p> <p>SERVICES</p> <p>(1) Entertainment services, namely the organization, presentation and sponsorship of musical concerts</p>

			and of sporting events and competitions namely, whitewater rafting, paintball games, and track and field competitions.
TMA434,860	BUD LIGHT	1994-10-28	(1) Clothing, namely caps, hats, visors, t-shirts, shirts, shorts, jackets, vests, belts, socks, sweatshirts, suspenders, scarves, wind-resistant jackets, sweaters, aprons and warmup suits. (2) Wearing apparel for men and women, namely jackets, mitts, bags namely handbags, sportbags, cooler bags, shoulder bags, tote bags, gifts and novelties namely drinking vessels namely plastic cups bottle openers, ornamental pins, umbrellas, key chains.
TMA435,223		1994-11-11	(1) Clothing, namely aprons, hats, jackets, shorts, shirts, socks, sweatshirts and visors. (2) Wearing apparel for men and women, namely shorts, vests, jackets, coats, sweaters, shirts, sweatshirts, pants; headwear namely hats, caps, visors; bags namely sportbags, cooler bags, shoulder bags, tote bags; gifts and novelties namely drinking vessels namely glasses and paper, plastic and ceramic cups, ceramic steins, coolers, bottle openers; ornamental pins; mirrors; umbrellas; key chains.
TMA434,585		1994-10-21	(1) Clothing, namely aprons, hats, jackets, scarves, shorts, shirts,

			<p>socks, sweatshirts, sweaters, warmup suits, visors and vests.</p> <p>(2) Wearing apparel for men and women, namely shorts, vests, jackets, shirts, sweatshirts, pants; headwear namely hats, caps, visors; bags namely sportbags, cooler bags; drinking vessels namely paper, plastic and ceramic cups, ceramic steins; bottle openers; towels; mirrors; umbrellas and key chains.</p>
TMA429,786	BUDWEISER	1994-07-01	<p>(1) Aprons, headbands, wrist bands, bandanas, belts, suspenders, blazers, blouses, caps, golf gloves, hats, jackets, ski jackets, vests, scarves, jerseys, ponchos, rainwear namely rain jackets, raincoats and ponchos, robes, shirts, shorts, slacks, socks, sport coats, athletic suits, sweatshirts, swimsuits, sweaters, neckties, uniforms and visors.</p> <p>(2) Radios, telephone receivers, cameras and sunglasses.</p> <p>(3) Key chains, ornamental badges made primarily of metal, and metal clips for closing bags; playing cards, pens, pencils, writing boards, paper napkins, coasters, greeting cards, note paper, paper clips, gift wrapping paper and paper pennants; tote bags, billfolds and umbrellas; mirrors, plaques, name badges, plastic clips for closing bags, cabinets and bar stools; drinking vessels, beer pails, trays,</p>

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bottle openers, flower holders, heat insulated containers for beverages and beer carriers and coolers; towels and pennants not of paper; belt buckles, ornamental pins, buttons for clothing and shoe laces; matches, ashtrays and lighters for smokers.

(4) Clothing, namely shoes.

(5) Wearing apparel for men and women, namely shorts, vests, jackets, coats, sweaters, shirts, sweatshirts, pants, warm-up suits, swimsuits, ski jackets, headwear namely hats, caps, bags namely handbags, sportbags, cooler bags, shoulder bags, back packs, tote bags, drinking vessels namely glasses and paper, plastic and ceramic cup; ceramic steins, mugs; coolers namely insulated beverage containers, bottle openers, ornamental pins, ornamental badges made primarily of metal; mirrors, umbrellas, key chains and chairs.

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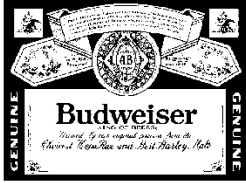


TMA429,250





1994-06-24

(1) Wearing apparel for men and women, namely shorts, jackets, coats, sweaters, shirts, sweatshirts, pants headwear namely hats, caps, visors bags namely handbags, sportbags, cooler bags, shoulder bags, tote bags, drinking vessels namely glasses and plastic cups, mugs insulated mugs and steins, ornamental pins, mirrors, umbrellas, key chains, chairs.

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TMA495,717		1998-06-08	<p>(1) Clothing, namely shoes.</p> <p>(2) Clothing, namely socks.</p> <p>(3) Wearing apparel for men and women, namely shirts, swimsuits, dresses, steins, bottle openers, towels, playing cards, chairs.</p>
TMA730,943		2008-12-15	<p>(1) Beer.</p> <p>(2) Clothing namely t-shirts and hats.</p>
TMA877,006		2014-05-02	<p>(1) Key chains, lapel pins, novelty pins, tie pins, ornamental badges, beer head cutters, gazebos made primarily of metal; neon signs, sunglasses, audio speaker boxes, music docking stations, on-line downloadable software in the nature of a mobile application providing information about beer; downloadable software in the nature of a mobile application accessed via the Internet, providing information about beer, indoor and outdoor decorative electrical string lights, barbecue grills and refrigerators, clocks, watches and jewelry; pens, paper napkins, coasters, calendars; tote bags, billfolds and umbrellas; mirrors namely decorative mirrors, non-metal key chains, bar stool, chairs, tables; table glassware, drinking vessels namely beer glasses and cups, trays, bottle openers, heat insulated containers for beverages, beer carriers and coolers, beer buckets of metal; towels and pennants not of paper; aprons, headbands, bandanas,</p>

			belts, blouses, caps, hats, jackets, ski jackets, vests, jerseys, ponchos, rainwear, robes, shirts, T-shirts, shorts, slacks, athletic suits, sweatshirts, swimsuits, sweaters, visors, slippers, wristbands; bowling balls, basket balls, soccer balls, darts, dart boards, pool cue racks, adult collectible die-cast trucks and cars, playing cards, roll-up pool floats, shuffleboard tables, poker sets, checker sets; mustard, sauces namely barbecue sauce, chicken wing sauce, steak sauce, marinades and barbecue meat seasoning; matches, ashtrays and lighters for smokers.
TMA608,871	<i>Budweiser</i>	2004-04-29	Beer, clothing namely t-shirts and hats, drinking vessels namely cups, mugs, glasses and steins, lighters, footwear namely beach sandals, key rings, and model/hobby remote control boats
TMA779,688		2010-10-13	Clothing, namely t-shirts and hats, and drinking vessels, namely cups, mugs, glasses and steins.
TMA523,120	MAKE IT A BUD LIGHT	2000-02-15	(1) Beer. (2) Clothing, namely shirts and headwear, namely caps.
TMA435,446	THIS BUD'S FOR YOU	1994-11-18	(1) Beer; wearing apparel for men and women, namely, shorts, jackets, sweaters, shirts, sweatshirts, pants, headwear, namely, hats, caps, visors, bags, namely, sportbags, cooler bags,

			shoulder bags, tote bags, drinking vessels, namely, glasses and plastic cups, bottle openers, posters, towels, ornamental pins, mirrors, umbrellas, key chains, folding seats.
TMA1,040,794	BUD-E FRIDGE	2019-07-12	Refrigerators.
TMA1,085,511		2020-10-20	Automatic vending machine, autonomous vending machine for alcoholic beverages

# Appearances and Agents of Record

**HEARING DATE:** 2023-08-23

## **APPEARANCES**

**For the Opponent:** Bruno Barrette

**For the Applicant:** Paula Clancy

## **AGENTS OF RECORD**

**For the Opponent:** Barrette Legal Inc.

**For the Applicant:** Gowling WLG (Canada) LLP