

Federal Court



Cour fédérale

Date: 20140718

Docket: T-1416-13

Citation: 2014 FC 716

Ottawa, Ontario, July 18, 2014

PRESENT: The Honourable Madam Justice Gleason

BETWEEN:

**COORS BREWING COMPANY AND
MOLSON CANADA 2005**

Applicants

and

ANHEUSER-BUSCH, LLC

Respondent

REASONS AND JUDGMENT

[1] The respondent, Anheuser-Busch, LLC [Anheuser], is the owner of the trade-mark “GRAB SOME BUDS”. On February 24, 2010, the Canadian Intellectual Property Office [CIPO] issued Registration No. TMA 818,398 [the 398 Registration] to Anheuser for the GRAB SOME BUDS mark. The applicants, Coors Brewing Company and Molson Canada 2005 [Molson Coors] own a competing mark, “GRAB SOME STONES”. Both parties use their respective trade-marks in association with beer.

[2] In an action that is currently pending before the Ontario Superior Court, Anheuser has sued Molson Coors, alleging, among other things, that Molson Coors' use in Canada of the GRAB SOME STONES trade-mark infringes Anheuser's 398 Registration.

[3] In addition to defending the Ontario action, Molson Coors took the offensive and made an application to this Court, seeking expungement of the 398 Registration under subsection 57(1) of the *Trade-marks Act*, RSC 1985, c T-13 [the *Trade-marks Act* or the Act]. Although Anheuser followed what appears to have been a relatively common practice in seeking the registration, Molson Coors argues that the recent decision of my colleague, Justice Manson, in *The Thymes, LLC v Reitmans Canada Limited*, 2013 FC 127 [*Thymes*] should result in the expungement of the 398 Registration. It asserts in this regard that it was not open to Anheuser to make its initial application based on intended use in Canada and then to subsequently amend its application to rely on a pending U.S. Registration for the GRAB SOME BUDS mark in the United States in circumstances where it had not yet started to use the mark in the U.S. at the date it originally made its Canadian application. Although it appears that it is not uncommon for applicants to proceed in this fashion, Molson Coors argues that this process is not viable and that the decision in *Thymes* requires the expungement of the GRAB SOME BUDS registration.

[4] I disagree that the ruling in *Thymes* stands for any such thing and have accordingly dismissed this application, with costs, for the reasons set out below.

I. Background

[5] To put the issues in context, the background to the registration at issue may be described as follows.

[6] On August 16, 2010 Anheuser filed a U.S. trade-mark application to register the GRAB SOME BUDS trade-mark in the U.S. The application was premised on intended use. Anheuser commenced using the GRAB SOME BUDS trade-mark in the U.S. on September 24, 2010. It thereafter filed the requisite proof of use of the mark in the U.S. with the U.S. Patent and Trademark Office and on March 8, 2011 received a U.S. registration for the GRAB SOME BUDS mark.

[7] As is frequently done, Anheuser pursued registration for the mark concurrently in Canada. It filed its Canadian application with CIPO on September 14, 2010, under subsection 30(e) of the *Trade-marks Act*, which allows an applicant to apply for registration based on its intent to use a trade-mark in Canada. (By virtue of subsection 40(2) of the Act, the registration may not issue in a paragraph 30(e) application until the applicant files a declaration of use of the mark in Canada with CIPO.)

[8] On January 18, 2011, CIPO approved Anheuser's Canadian application under subsection 37(1) of the Act. Such "approval" is not synonymous with granting the registration. Rather, it is merely notice to the applicant that CIPO does not oppose the mark and that it will therefore be advertised in the *Trade-marks Journal*. Advertisement is intended to provide notice to potentially

interested parties so as to afford them the opportunity to oppose the registration if they wish to do so.

[9] On February 9, 2011, before the application was advertised in the *Trade-marks Journal*, Anheuser amended its application to withdraw the proposed use basis and substitute subsection 30(d) of the Act as the basis for registration. Under that provision, an applicant may apply for registration of a trade-mark in Canada based upon prior registration or application for registration of a trade-mark in another country (that is party to the *Paris Convention for the Protection of Industrial Property* or a member of the World Trade Organization) and use by the applicant of the mark in that country. In its amendment, Anheuser referenced its then still-pending U.S. application as the basis for registration in the U.S.

[10] On February 28, 2011, CIPO voided its earlier approval notice in light of Anheuser's change of grounds and issued an office action, requiring Anheuser to file a certified copy of its U.S. registration. It did so on April 21, 2011, and on May 31, 2011 CIPO issued a further approval notice in respect of Anheuser's Canadian application. On July 27, 2011, Anheuser's Canadian application was advertised in the *Trade-marks Journal*. No one opposed the application, and on November 10, 2011, CIPO allowed Anheuser's application. On February 24, 2012, CIPO issued the 398 Registration to Anheuser.

[11] Anheuser has used the GRAB SOME BUDS trade-mark in both Canada and the U.S. in association with its beer for the last several years. Molson Coors commenced this application for expungement in August of 2013.

[12] Finally, Anheuser filed evidence in this application from a title searcher showing that several other owners of U.S. registered trade-marks followed the same process as Anheuser took in this case, namely filing in Canada first based on proposed use of the mark in Canada and then amending the application to rely on an intervening U.S. registration or pending registration. In some of these cases, like here, the U.S. registration materials documented that use in the U.S. post-dated the Canadian application date.

II. Relevant Legislation

[13] Before examining Molson Coors' argument it is necessary to review the relevant provisions of the *Trade-marks Act* and *Trade-marks Regulations*, SOR/96-195 [the Regulations]. All these provisions are set out in full in the Appendix to these Reasons. I accordingly cite below only the most salient provisions.

[14] The first of these is section 57 of the *Trade-marks Act*, which allows for the expungement of registered trade-marks (or their removal from the Register) by this Court. Subsection 57(1) provides in relevant part as follows:

Exclusive jurisdiction of
Federal Court
57. (1) The Federal Court has exclusive original jurisdiction, on the application of the Registrar or of any person interested, to order that any entry in the register be struck out or amended on the ground that at the date of the application the entry as it appears on the register does not accurately express or

Jurisdiction exclusive de la
Cour fédérale
57. (1) La Cour fédérale a une compétence initiale exclusive, sur demande du registraire ou de toute personne intéressée, pour ordonner qu'une inscription dans le registre soit biffée ou modifiée, parce que, à la date de cette demande, l'inscription figurant au registre n'exprime ou ne définit pas exactement les

define the existing rights of the person appearing to be the registered owner of the mark.	droits existants de la personne paraissant être le propriétaire inscrit de la marque.
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[15] Expungement proceedings are not the only way in which a challenge may be made to the registration of a trade-mark. The Act also provides in section 38 for opposition by any person to a proposed registration. The portions of section 38 relevant to this application provide as follows:

<p>Statement of opposition</p> <p>38. (1) Within two months after the advertisement of an application for the registration of a trade-mark, any person may, on payment of the prescribed fee, file a statement of opposition with the Registrar.</p>	<p>Déclaration d'opposition</p> <p>38. (1) Toute personne peut, dans le délai de deux mois à compter de l'annonce de la demande, et sur paiement du droit prescrit, produire au bureau du registraire une déclaration d'opposition.</p>
<p>Grounds</p> <p>(2) A statement of opposition may be based on any of the following grounds:</p> <p>(a) that the application does not conform to the requirements of section 30;</p> <p>(b) that the trade-mark is not registrable;</p> <p>(c) that the applicant is not the person entitled to registration of the trade-mark; or</p> <p>(d) that the trade-mark is not distinctive.</p>	<p>Motifs</p> <p>(2) Cette opposition peut être fondée sur l'un des motifs suivants :</p> <p>a) la demande ne satisfait pas aux exigences de l'article 30;</p> <p>b) la marque de commerce n'est pas enregistrable;</p> <p>c) le requérant n'est pas la personne ayant droit à l'enregistrement;</p> <p>d) la marque de commerce n'est pas distinctive</p>

[16] Section 18 of the Act governs validity of registrations and provides in relevant part as follows:

When registration invalid	Quand l'enregistrement est invalide
18. (1) The registration of a trade-mark is invalid if	18. (1) L'enregistrement d'une marque de commerce est invalide dans les cas suivants
(a) the trade-mark was not registrable at the date of registration,	a) la marque de commerce n'était pas enregistrable à la date de l'enregistrement;
(b) the trade-mark is not distinctive at the time proceedings bringing the validity of the registration into question are commenced, or	b) la marque de commerce n'est pas distinctive à l'époque où sont entamées les procédures contestant la validité de l'enregistrement;
(c) the trade-mark has been abandoned, and subject to section 17, it is invalid if the applicant for registration was not the person entitled to secure the registration.	c) la marque de commerce a été abandonnée. Sous réserve de l'article 17, l'enregistrement est invalide si l'auteur de la demande n'était pas la personne ayant droit de l'obtenir.

[17] Section 12 of the Act deals with the types that are marks are registrable. It is concerned with issues surrounding the nature of the proposed mark as opposed to whether it has been used.

[18] As noted, subsection 40(2) of the *Trade-marks Act* requires that an applicant who has based his application on proposed use in Canada to file proof of that use before registration may issue. Likewise, section 31 of the Act requires an applicant who has based its application on registration or pending registration and use abroad to file the foreign registration before the applicant's Canadian application is advertised.

[19] Section 16 of the *Trade-marks Act* governs entitlement to registration. Subsection 16(2)

is of particular importance in this application. It states:

Marks registered and used abroad

(2) Any applicant who has filed an application in accordance with section 30 for registration of a trade-mark that is registrable and that the applicant or the applicant's predecessor in title has duly registered in or for the country of origin of the applicant and has used in association with wares or services is entitled, subject to section 38, to secure its registration in respect of the wares or services in association with which it is registered in that country and has been used, unless at the date of filing of the application in accordance with section 30 it was confusing with

- (a) a trade-mark that had been previously used in Canada or made known in Canada by any other person;
- (b) a trade-mark in respect of which an application for registration had been previously filed in Canada by any other person; or
- (c) a trade-name that had been previously used in Canada by any other person.

Marques déposées et employées dans un autre pays

(2) Tout requérant qui a produit une demande selon l'article 30 en vue de l'enregistrement d'une marque de commerce qui est enregistrable et que le requérant ou son prédécesseur en titre a dûment déposée dans son pays d'origine, ou pour son pays d'origine, et qu'il a employée en liaison avec des marchandises ou services, a droit, sous réserve de l'article 38, d'en obtenir l'enregistrement à l'égard des marchandises ou services en liaison avec lesquels elle est déposée dans ce pays et a été employée, à moins que, à la date de la production de la demande, en conformité avec l'article 30, elle n'ait créé de la confusion :

- a) soit avec une marque de commerce antérieurement employée ou révélée au Canada par une autre personne;
- b) soit avec une marque de commerce à l'égard de laquelle une demande d'enregistrement a été antérieurement produite au Canada par une autre personne;
- c) soit avec un nom commercial antérieurement employé au Canada par une

autre personne.

[20] The required contents of a trade-mark application are set out in section 30 of the Act.

Subsections 30(b) and (d), which Anheuser relied on, provide:

Contents of application	Contenu d'une demande
<p>30. An applicant for the registration of a trade-mark shall file with the Registrar an application containing</p> <p>[...]</p> <p>(b) in the case of a trade-mark that has been used in Canada, the date from which the applicant or his named predecessors in title, if any, have so used the trade-mark in association with each of the general classes of wares or services described in the application;</p> <p>[...]</p> <p>(d) in the case of a trade-mark that is the subject in or for another country of the Union of a registration or an application for registration by the applicant or the applicant's named predecessor in title on which the applicant bases the applicant's right to registration, particulars of the application or registration and, if the trade-mark has neither been used in Canada nor made known in Canada, the name of a country in</p>	<p>30. Quiconque sollicite l'enregistrement d'une marque de commerce produit au bureau du registraire une demande renfermant :</p> <p>[...]</p> <p>b) dans le cas d'une marque de commerce qui a été employée au Canada, la date à compter de laquelle le requérant ou ses prédécesseurs en titre désignés, le cas échéant, ont ainsi employé la marque de commerce en liaison avec chacune des catégories générales de marchandises ou services décrites dans la demande;</p> <p>[...]</p> <p>d) dans le cas d'une marque de commerce qui est, dans un autre pays de l'Union, ou pour un autre pays de l'Union, l'objet, de la part du requérant ou de son prédécesseur en titre désigné, d'un enregistrement ou d'une demande d'enregistrement sur quoi le requérant fonde son droit à l'enregistrement, les détails de cette demande ou de cet enregistrement et, si la marque n'a été ni employée ni révélée au Canada, le nom d'un pays où</p>

which the trade-mark has been used by the applicant or the applicant's named predecessor in title, if any, in association with each of the general classes of wares or services described in the application;

le requérant ou son prédécesseur en titre désigné, le cas échéant, l'a employée en liaison avec chacune des catégories générales de marchandises ou services décrites dans la demande;

[21] Section 37 of the Act sets out the situations where registration applications must be refused; these include situations where the mark is not registrable or where the applicant has not complied with section 30 of the Act.

[22] Sections 30 to 33 of the Regulations govern amendments to trade-mark applications.

Amendments like that made in this case are specifically foreseen by section 32 of the Regulations, which provides in relevant part as follows:

32. No application for the registration of a trade-mark may be amended, after it has been advertised in the Journal, to change

- (a) the trade-mark in any manner whatsoever;
- (b) the date of first use or making known in Canada of the trade-mark;
- (c) the application from one alleging use or making known to one for a proposed trade-mark;
- (d) the application from one

32. La modification d'une demande d'enregistrement d'une marque de commerce n'est pas permise après l'annonce de la demande dans le Journal, si elle vise, selon le cas :

- a) à modifier la marque de commerce, à quelque égard que ce soit;
- b) à changer la date de premier emploi ou de révélation, au Canada, de la marque de commerce;
- c) à modifier la demande qui allègue que la marque de commerce a été employée ou révélée en une demande alléguant qu'il s'agit d'une marque de commerce projetée;
- d) à modifier la demande

that does not allege that the trade-mark has been used and registered in or for a country of the Union to one that does so allege; or

(e) the statement of wares or services so as to be broader than the statement of wares or services contained in the application at the time of advertisement.

n'alléguant pas que la marque a été employée et enregistrée dans un pays de l'Union ou pour un pays de l'Union en une demande alléguant ce fait;

e) à modifier l'état déclaratif des marchandises ou services pour étendre la portée de celui qui figurait dans la demande au moment de l'annonce.

[23] Finally, section 19 of the Act sets out a presumption of validity of a trade-mark that flows from registration.

[24] As is more fully discussed below, these provisions have been collectively interpreted as providing that there are fewer issues that may give rise to a successful expungement claim as opposed to a successful opposition claim.

III. The Decision in *Thymes*

[25] I turn next to the decision in *Thymes*, which provides the underpinning for Molson Coors' argument in this case. That case involved an appeal from the Trade-Marks Opposition Board [the TMOB] in the context of an opposition under section 38 of the Act. In addition, there, unlike here, the applicant had not amended its application. Rather, it based its application on a foreign registration, noting in its application that it had made the foreign application and intended to use the trade-mark in question in the other jurisdiction. The TMOB allowed the opposition, holding that the material date for assessment of compliance with subsection 30(d) of the Act in that case was the application date, and that, since the applicant had not used the mark as of that date, the

application was refused. In upholding the decision of the TMOB, Justice Manson wrote as follows at paras 18-20 of *Thymes*:

A. *Was Use of the Applicant's THYMES Mark in the United States Required as of the Filing Date of the Application in Canada?*

18. I will deal with the applicant's first ground of appeal. There is no doubt a proper reading of that section requires that, at the time of filing the application, if an applicant relies on registration or application and use abroad pursuant to that section, there must have been use of the trade-mark at the time of the application to rely on this section as a valid basis to obtain registration in Canada.

19. It is clear that section 16(2) of the Act emphasizes that use of the mark in the country of origin of the applicant is a requirement for registration in Canada.

20. Further, the last portion of section 16(2) of the Act, namely: "unless at the date of filing of the application in accordance with section 30", also supports the view that both section 16 and section 30 requirements must exist and be reviewed as at the date of filing of the application.

IV. Does *Thymes* Require the Expungement of the 398 Registration?

[26] Molson Coors argues that the decision in *Thymes* must necessarily result in the expungement of the 398 Registration in this case because at the date the Canadian application was filed Anheuser had not yet used the trade-mark in the U.S. and commenced doing so only ten days later. It asserts that the foregoing passage from Justice Manson's decision must be taken as meaning that in all cases where an application is filed under subsection 30(d) of the *Trade-marks Act* there must have been actual use in the foreign jurisdiction of the foreign-registered mark as of the Canadian application date. It thus asserts that Anheuser's application did not conform to subsection 30(d) of the Act and that the 398 Registration ought to have been refused under section 37 of the Act.

[27] Molson Coors further contends that in such circumstances it is entitled to have the GRAB SOME BUDS registration expunged because the jurisprudence recognises that a false statement in a trade-mark application will warrant expungement where there was fraudulent misrepresentation or where the inclusion of a material false statement of use was fundamental to the registration (relying on *WCC Containers Sales Ltd v Haul-All equipment Ltd*, 2003 FC 962 at para 25 [WCC] and *General Motors of Canada v Décarie Motors Inc*, [2001] 1 FC 665 (FCA) at paras 17-18 [*General Motors*]). It argues that a misstatement was made in this case as *Thymes* requires that there be actual foreign use as of the Canadian application date, but this did not occur. It says that such lack of use would have been sufficient to refuse registration after the decision in *Thymes*, and accordingly that the GRAB SOME BUDS registration should be expunged, as occurred in *Unitel Communications Inc v Bell Canada* (1995), 61 CPR (3d) 12 (FCTD) [*Unitel*], a case cited by the Court in both *WCC* and *General Motors*. (In both *WCC* and *General Motors*, the Court accepted the misstatement doctrine but found there was no such misstatement warranting invalidation.)

[28] In response, Anheuser makes two principal arguments. First, it asserts that *Thymes* should not be understood so as to require there to have been both foreign use and registration or application for registration as of the Canadian application date in all cases. It notes in this regard that the TMOB in *Thymes*, whose decision Justice Manson upheld, premised its determination as to the material date for the assessment of compliance with subsection 30(d) of the Act in that case on the earlier TMOB decision in *Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 [*Georgia-Pacific*]. There, the TMOB noted that the material date for assessing compliance with section 30 of the Act may not always be the application date, and suggested that

it may well be the date an amendment is made in a case like the present. The TMOB wrote in this regard in *Georgia-Pacific* at 475 as follows:

16. In assessing the issue arising pursuant to s. 29(b) [now s. 30(b)] of the Act, I consider that the material time for considering the circumstances relating to that issue to be the filing date of the applicant's application (although this may change if the application is amended).

[29] Secondly, Anheuser argues that even if the material date for assessing compliance with section 30 of the Act in this case were the date of its original Canadian application – i.e. September 14, 2010 – the issue of compliance with section 30 of the Act does not govern as this is an expungement application and not an opposition. Thus, Anheuser claims that even if the mark could have been successfully opposed, it cannot be expunged. It argues in this regard that both the relevant case law and doctrine require there to have been a material or fraudulent misrepresentation made by the applicant in the registration application before a registered – and presumptively valid – trade-mark registration can be expunged. It relies in this regard on Harold G. Fox, *Canadian Law of Trade-Marks and Unfair Competition*, 3rd ed (Scarborough: Carswell, 1972) [Fox], where Dr. Fox stated at 252-253:

There is ... no provision in the Act under which mis-statements in an application for registration ... become grounds for invalidating the registration unless the mis-statements had the effect of making the trade-mark not registrable under s. 12 of the Act or unless there was a fraudulent misrepresentation.

[30] Anheuser notes that the foregoing passage from Dr. Fox was endorsed by the Court in *WCC*. It also relies on *Parfums de Coeur, Ltd v Asta*, 2009 FC 21 and *Miranda Aluminum Inc v Miranda Windows & Doors Inc*, 2010 FCA 104 in support of the argument that Canadian trade-

mark law does not favour the striking of registrations based on mere technical irregularities, but rather takes a more nuanced and balanced approach.

[31] Anheuser argues that this case is distinguishable from *Unitel* and *Marchands Ro-Na Inc v Tefal SA* (1981), 55 CPR (2d) 27 [*Marchands*] because it made no misrepresentation, unlike the trade-mark registrants in those cases. It asserts in this regard that its “use and application for registration abroad” claim was correct at the time that it was made because it commenced use of the mark in the U.S. on September 24, 2010 and did not amend its application to allege use and application abroad until over four months later on February 9, 2011. It also notes that its amendment was in accordance with the applicable requirements of the Regulations and common practice. It thus argues that there is no basis for expungement in this case in the absence of a misrepresentation.

[32] As counsel for Anheuser noted during oral argument, it is not necessary for me to rule on his first argument, which might well involve disagreeing with the reasoning in *Thymes*. I instead believe that Anheuser’s second argument is a complete answer to Molson Coors’ application in this case. In this regard, as noted, the authorities do recognise that the bases for expungement under section 57 of the *Trade-marks Act* are narrower than those which might give rise to a successful opposition under section 38 of the Act, and under these narrower grounds, there is no basis for expungement in this case.

[33] Section 18 of the *Trade-marks Act* provides four statutory grounds for invalidating a registration: (a) non-registrability (which invokes the issues in section 12), (b) non-

distinctiveness; (c) abandonment, and (d) non-entitlement. It is common ground between the parties that none of these statutory grounds applies in the present case.

[34] In terms of non-statutory grounds for expungement, the case law originally limited those situations to ones of fraudulent misrepresentation by a trade-mark applicant or innocent misrepresentation as to one of the matters listed in section 12 of the Act, as Dr. Fox noted in his text, referred to by Anheuser. In *General Motors*, Justice Desjardins summarised these principles as follows at paras 16-18:

16. The appellants claim that the Trial Judge failed to consider the incomplete and misleading nature of the Segal affidavit which, they claim, renders the registration invalid *ab initio*.

17. They rely on the case of *Unitel Communications Inc. v. Bell Canada* and *Marchands Ro-Na Inc. v. Tefal S.A.*, but more specifically on the following statement of Harold G. Fox referred to with approval in these cases:

There is . . . no provision in the Act under which mis-statements in an application for registration . . . become grounds for invalidating the registration *unless the mis-statements had the effect of making the trade mark not registrable under s. 12 of the Act* or unless there was a fraudulent misrepresentation.

[Emphasis added]

18. A registration can be invalidated by two kinds of misstatements: (i) fraudulent, intentional misstatements, and (ii) those that may be innocent but that are material in the sense that, without them, the section 12 barriers to registration would have been insurmountable.

[Emphasis in original]

[35] In *Unitel*, Justice Gibson interpreted the second form of misstatement to include those which do not go to section 12 of the Act, but are nonetheless fundamental to the registration. In

that case, he found that the respondent's statement of intent to use in its application for a proposed trade-mark, as well as its declaration of use, were "simply false", but did not link these misstatements to any of the factors listed in section 12 of the *Trade-marks Act*. Nevertheless, he held that "the statement of intent in the application and the declaration of use were both fundamental to the registration of the trade-marks", and so voided the registrations *ab initio* (at para 131).

[36] In *WCC*, Justice Kelen interpreted *Unitel* in this manner, at para 23:

23. When these statements are put side by side it is apparent that Gibson J. was not overruling *Bonus Foods* or *Biba Boutique Ltd.*, but limiting their applicability in cases where the application contains "material false statements" of use that are "fundamental to the registration" of the mark. Gibson J.'s conclusion is also consistent with the paragraph from Dr. Fox set out above. In addition to fraudulent misrepresentation, Dr. Fox stated that a registration could be invalidated if "the mis-statements had the effect of making the trade mark not registrable under s. 12 of the Act." Gibson J. in effect extended this reasoning beyond section 12 to include other circumstances where a registration could not have been secured without a misstatement.

[Emphasis added]

[37] Thus, in *Unitel* and *WCC*, this Court expanded the situations where expungement is available in cases of innocent misrepresentation beyond misrepresentations on issues under section 12 of the Act to any circumstance where the misrepresentation allowed for the issuance of a registration that otherwise would not have issued (although in truth this was not so much an expansion as a reaffirmation of the principle set out by Justice Addy in *Marchands*, decided in 1981, where the Court invalidated a registration based on a false declaration of use).

[38] From the foregoing, the law on invalidity of trade-mark registrations can be summarised as follows:

1. There are four statutory grounds for invalidity: (a) non-registrability, (b) non-distinctiveness; (c) abandonment, and (d) non-entitlement (*Trade-marks Act*, s. 18).
2. In addition, misstatements in the trade-mark application may serve to invalidate a registered trade-mark in two circumstances: (a) where the misstatement was intentional and fraudulent, and (b) where the misstatement was innocent but fundamental to the registration, in the sense that the registration could not have been secured without the misstatement (*Fox; General Motors; Unitel; WCC*).
3. Where, but for the misstatement in the application, the trade-mark would not have been registrable under section 12, that misstatement is fundamental and thus grounds to invalidate the registration (*Fox; General Motors; WCC*).
4. Where the trade-mark application was based on proposed use under subsection 30(e) of the Act, and the statement of intent to use (required under subsection 30(e)) and the declaration of use (required under subsection 40(2)) are shown to have been false, the Court has found that to be a fundamental misstatement warranting invalidation of the registration (*Marchands; Unitel*). There may be other situations where an innocent misstatement not linked to section 12 of the Act is nonetheless fundamental to the registration and thus grounds to invalidate the registration, but the parties have not presented another example of such in the case law.

[39] When these principles are applied to the present case, it is my view that there is no misstatement (let alone a fundamental one) that can form the basis of a ground of invalidity.

[40] In this regard, subsection 30(d) of the Act requires that an application for registration based on use and registration abroad contain particulars of the application or registration, and, if the trade-mark has neither been used nor made known in Canada, the name of a country in which the trade-mark has been used by the applicant (or the applicant's named predecessor in title) in association with each of the general classes of wares or services described in the application. Anheuser provided this information in connection with its application for the 398 Registration and did not at any point make a misstatement in the Canadian application.

[41] More specifically, on the filing date of September 14, 2010, the Canadian application was based on proposed use, so there was no statement that Anheuser had used the trade-mark GRAB SOME BUDS in the U.S. when in fact it had not. On February 9, 2011, Anheuser amended its application to withdraw the proposed use basis and add a claim of 'use and registration abroad' under subsection 30(d), and filed a statement indicating that it "has used the trade-mark in association with (1) beer in UNITED STATES OF AMERICA" (Applicant's Record, Vol 1, Tab 3A at 000028). At the time of this declaration, this statement was true, as Anheuser had commenced actual use of the GRAB SOME BUDS trade-mark in the U.S. as of September 24, 2010.

[42] Therefore, Anheuser did not make any misstatement in the Canadian application. As the presence of a misstatement is a necessary precondition for expungement, it follows that this application for expungement must be dismissed.

[43] The parties concur that costs should follow the event in this matter and should be fixed at the mid-point of Column III of Tariff B of the *Federal Courts Rules*, SOR/98-106 [the Rules]. I agree that this is appropriate and accordingly so award.

JUDGMENT

THIS COURT'S JUDGMENT is that:

This application is dismissed, with costs at the mid-point of Column III to Tariff B to the Rules.

"Mary J.L. Gleason"

Judge

APPENDIX*Trade-marks Act, RSC 1985, c T-13*

When trade-mark registrable	Marque de commerce enregistrable
12. (1) Subject to section 13, a trade-mark is registrable if it is not	12. (1) Sous réserve de l'article 13, une marque de commerce est enregistrable sauf dans l'un ou l'autre des cas suivants :
(a) a word that is primarily merely the name or the surname of an individual who is living or has died within the preceding thirty years;	a) elle est constituée d'un mot n'étant principalement que le nom ou le nom de famille d'un particulier vivant ou qui est décédé dans les trente années précédentes;
(b) whether depicted, written or sounded, either clearly descriptive or deceptively misdescriptive in the English or French language of the character or quality of the wares or services in association with which it is used or proposed to be used or of the conditions of or the persons employed in their production or of their place of origin;	b) qu'elle soit sous forme graphique, écrite ou sonore, elle donne une description claire ou donne une description fausse et trompeuse, en langue française ou anglaise, de la nature ou de la qualité des marchandises ou services en liaison avec lesquels elle est employée, ou à l'égard desquels on projette de l'employer, ou des conditions de leur production, ou des personnes qui les produisent, ou du lieu d'origine de ces marchandises ou services;
(c) the name in any language of any of the wares or services in connection with which it is used or proposed to be used;	c) elle est constituée du nom, dans une langue, de l'une des marchandises ou de l'un des services à l'égard desquels elle est employée, ou à l'égard desquels on projette de l'employer;
(d) confusing with a registered trade-mark;	d) elle crée de la confusion avec une marque de commerce déposée;
(e) a mark of which the	e) elle est une marque dont

adoption is prohibited by section 9 or 10;

(f) a denomination the adoption of which is prohibited by section 10.1;

(g) in whole or in part a protected geographical indication, where the trade-mark is to be registered in association with a wine not originating in a territory indicated by the geographical indication;

(h) in whole or in part a protected geographical indication, where the trade-mark is to be registered in association with a spirit not originating in a territory indicated by the geographical indication; and

(i) subject to subsection 3(3) and paragraph 3(4)(a) of the Olympic and Paralympic Marks Act, a mark the adoption of which is prohibited by subsection 3(1) of that Act.

Idem

(2) A trade-mark that is not registrable by reason of paragraph (1)(a) or (b) is registrable if it has been so used in Canada by the applicant or his predecessor in title as to have become distinctive at the date of filing an application for its registration.
[...]

Registration of marks used or made known in Canada

l'article 9 ou 10 interdit l'adoption;

f) elle est une dénomination dont l'article 10.1 interdit l'adoption;

g) elle est constituée, en tout ou en partie, d'une indication géographique protégée et elle doit être enregistrée en liaison avec un vin dont le lieu d'origine ne se trouve pas sur le territoire visé par l'indication;

h) elle est constituée, en tout ou en partie, d'une indication géographique protégée et elle doit être enregistrée en liaison avec un spiritueux dont le lieu d'origine ne se trouve pas sur le territoire visé par l'indication;

i) elle est une marque dont l'adoption est interdite par le paragraphe 3(1) de la Loi sur les marques olympiques et paralympiques, sous réserve du paragraphe 3(3) et de l'alinéa 3(4)a) de cette loi.

Idem

(2) Une marque de commerce qui n'est pas enregistrable en raison de l'alinéa (1)a) ou b) peut être enregistrée si elle a été employée au Canada par le requérant ou son prédécesseur en titre de façon à être devenue distinctive à la date de la production d'une demande d'enregistrement la concernant.
[...]

Enregistrement des marques employées ou révélées au

16. (1) Any applicant who has filed an application in accordance with section 30 for registration of a trade-mark that is registrable and that he or his predecessor in title has used in Canada or made known in Canada in association with wares or services is entitled, subject to section 38, to secure its registration in respect of those wares or services, unless at the date on which he or his predecessor in title first so used it or made it known it was confusing with

(a) a trade-mark that had been previously used in Canada or made known in Canada by any other person;

(b) a trade-mark in respect of which an application for registration had been previously filed in Canada by any other person; or

(c) a trade-name that had been previously used in Canada by any other person.

Marks registered and used abroad

(2) Any applicant who has filed an application in accordance with section 30 for registration of a trade-mark that is registrable and that the

Canada

16. (1) Tout requérant qui a produit une demande selon l'article 30 en vue de l'enregistrement d'une marque de commerce qui est enregistrable et que le requérant ou son prédécesseur en titre a employée ou fait connaître au Canada en liaison avec des marchandises ou services, a droit, sous réserve de l'article 38, d'en obtenir l'enregistrement à l'égard de ces marchandises ou services, à moins que, à la date où le requérant ou son prédécesseur en titre l'a en premier lieu ainsi employée ou révélée, elle n'ait créé de la confusion :

a) soit avec une marque de commerce antérieurement employée ou révélée au Canada par une autre personne;

b) soit avec une marque de commerce à l'égard de laquelle une demande d'enregistrement avait été antérieurement produite au Canada par une autre personne;

c) soit avec un nom commercial qui avait été antérieurement employé au Canada par une autre personne.

Marques déposées et employées dans un autre pays

(2) Tout requérant qui a produit une demande selon l'article 30 en vue de l'enregistrement d'une marque de commerce qui est

applicant or the applicant's predecessor in title has duly registered in or for the country of origin of the applicant and has used in association with wares or services is entitled, subject to section 38, to secure its registration in respect of the wares or services in association with which it is registered in that country and has been used, unless at the date of filing of the application in accordance with section 30 it was confusing with

(a) a trade-mark that had been previously used in Canada or made known in Canada by any other person;

(b) a trade-mark in respect of which an application for registration had been previously filed in Canada by any other person; or

(c) a trade-name that had been previously used in Canada by any other person.

Proposed marks

(3) Any applicant who has filed an application in accordance with section 30 for registration of a proposed trade-mark that is registrable is entitled, subject to sections 38 and 40, to secure its registration in respect of the wares or services specified in

enregistrable et que le requérant ou son prédécesseur en titre a dûment déposée dans son pays d'origine, ou pour son pays d'origine, et qu'il a employée en liaison avec des marchandises ou services, a droit, sous réserve de l'article 38, d'en obtenir l'enregistrement à l'égard des marchandises ou services en liaison avec lesquels elle est déposée dans ce pays et a été employée, à moins que, à la date de la production de la demande, en conformité avec l'article 30, elle n'ait créé de la confusion :

a) soit avec une marque de commerce antérieurement employée ou révélée au Canada par une autre personne;

b) soit avec une marque de commerce à l'égard de laquelle une demande d'enregistrement a été antérieurement produite au Canada par une autre personne;

c) soit avec un nom commercial antérieurement employé au Canada par une autre personne.

Marques projetées

(3) Tout requérant qui a produit une demande selon l'article 30 en vue de l'enregistrement d'une marque de commerce projetée et enregistrable, a droit, sous réserve des articles 38 et 40, d'en obtenir l'enregistrement à l'égard des marchandises ou

the application, unless at the date of filing of the application it was confusing with

(a) a trade-mark that had been previously used in Canada or made known in Canada by any other person;

(b) a trade-mark in respect of which an application for registration had been previously filed in Canada by any other person; or

(c) a trade-name that had been previously used in Canada by any other person.

Where application for confusing mark pending

(4) The right of an applicant to secure registration of a registrable trade-mark is not affected by the previous filing of an application for registration of a confusing trade-mark by another person, unless the application for registration of the confusing trade-mark was pending at the date of advertisement of the applicant's application in accordance with section 37.

Previous use or making known

(5) The right of an applicant to secure registration of a

services spécifiés dans la demande, à moins que, à la date de production de la demande, elle n'ait créé de la confusion :

a) soit avec une marque de commerce antérieurement employée ou révélée au Canada par une autre personne;

b) soit avec une marque de commerce à l'égard de laquelle une demande d'enregistrement a été antérieurement produite au Canada par une autre personne;

c) soit avec un nom commercial antérieurement employé au Canada par une autre personne.

Si une demande relative à une marque créant de la confusion est pendante

(4) Le droit, pour un requérant, d'obtenir l'enregistrement d'une marque de commerce enregistrable n'est pas atteint par la production antérieure d'une demande d'enregistrement d'une marque de commerce créant de la confusion, par une autre personne, à moins que la demande d'enregistrement de la marque de commerce créant de la confusion n'ait été pendante à la date de l'annonce de la demande du requérant selon l'article 37.

Emploi ou révélation antérieur

(5) Le droit, pour un requérant, d'obtenir l'enregistrement

registrable trade-mark is not affected by the previous use or making known of a confusing trade-mark or trade-name by another person, if the confusing trade-mark or trade-name was abandoned at the date of advertisement of the applicant's application in accordance with section 37.
[...]

d'une marque de commerce enregistrable n'est pas atteint par l'emploi antérieur ou la révélation antérieure d'une marque de commerce ou d'un nom commercial créant de la confusion, par une autre personne, si cette marque de commerce ou ce nom commercial créant de la confusion a été abandonné à la date de l'annonce de la demande du requérant selon l'article 37.

[...]

When registration invalid

Quand l'enregistrement est invalide

18. (1) The registration of a trade-mark is invalid if

18. (1) L'enregistrement d'une marque de commerce est invalide dans les cas suivants :

(a) the trade-mark was not registrable at the date of registration,

a) la marque de commerce n'était pas enregistrable à la date de l'enregistrement;

(b) the trade-mark is not distinctive at the time proceedings bringing the validity of the registration into question are commenced, or

b) la marque de commerce n'est pas distinctive à l'époque où sont entamées les procédures contestant la validité de l'enregistrement;

(c) the trade-mark has been abandoned,

c) la marque de commerce a été abandonnée.

and subject to section 17, it is invalid if the applicant for registration was not the person entitled to secure the registration.

Sous réserve de l'article 17, l'enregistrement est invalide si l'auteur de la demande n'était pas la personne ayant droit de l'obtenir.

Exception

Exception

(2) No registration of a trade-mark that had been so used in Canada by the registrant or his predecessor in title as to have become distinctive at the date of registration shall be held

(2) Nul enregistrement d'une marque de commerce qui était employée au Canada par l'inscrivant ou son prédécesseur en titre, au point d'être devenue distinctive à la

invalid merely on the ground that evidence of the distinctiveness was not submitted to the competent authority or tribunal before the grant of the registration.
[...]

Rights conferred by registration

19. Subject to sections 21, 32 and 67, the registration of a trade-mark in respect of any wares or services, unless shown to be invalid, gives to the owner of the trade-mark the exclusive right to the use throughout Canada of the trade-mark in respect of those wares or services.
[...]

Contents of application

30. An applicant for the registration of a trade-mark shall file with the Registrar an application containing

(a) a statement in ordinary commercial terms of the specific wares or services in association with which the mark has been or is proposed to be used;

(b) in the case of a trade-mark that has been used in Canada, the date from which the applicant or his named predecessors in title, if any, have so used the trade-mark in association with each of the general classes of wares

date d'enregistrement, ne peut être considéré comme invalide pour la seule raison que la preuve de ce caractère distinctif n'a pas été soumise à l'autorité ou au tribunal compétent avant l'octroi de cet enregistrement.

[...]

Droits conférés par l'enregistrement

19. Sous réserve des articles 21, 32 et 67, l'enregistrement d'une marque de commerce à l'égard de marchandises ou services, sauf si son invalidité est démontrée, donne au propriétaire le droit exclusif à l'emploi de celle-ci, dans tout le Canada, en ce qui concerne ces marchandises ou services.

[...]

Contenu d'une demande

30. Quiconque sollicite l'enregistrement d'une marque de commerce produit au bureau du registraire une demande renfermant :

a) un état, dressé dans les termes ordinaires du commerce, des marchandises ou services spécifiques en liaison avec lesquels la marque a été employée ou sera employée;

b) dans le cas d'une marque de commerce qui a été employée au Canada, la date à compter de laquelle le requérant ou ses prédécesseurs en titre désignés, le cas échéant, ont ainsi employé la marque de

or services described in the application;

(c) in the case of a trade-mark that has not been used in Canada but is made known in Canada, the name of a country of the Union in which it has been used by the applicant or his named predecessors in title, if any, and the date from and the manner in which the applicant or named predecessors in title have made it known in Canada in association with each of the general classes of wares or services described in the application;

(d) in the case of a trade-mark that is the subject in or for another country of the Union of a registration or an application for registration by the applicant or the applicant's named predecessor in title on which the applicant bases the applicant's right to registration, particulars of the application or registration and, if the trade-mark has neither been used in Canada nor made known in Canada, the name of a country in which the trade-mark has been used by the applicant or the applicant's named predecessor in title, if any, in association with each of the general classes of wares or

commerce en liaison avec chacune des catégories générales de marchandises ou services décrites dans la demande;

c) dans le cas d'une marque de commerce qui n'a pas été employée au Canada mais qui est révélée au Canada, le nom d'un pays de l'Union dans lequel elle a été employée par le requérant ou ses prédécesseurs en titre désignés, le cas échéant, et la date à compter de laquelle le requérant ou ses prédécesseurs l'ont fait connaître au Canada en liaison avec chacune des catégories générales de marchandises ou services décrites dans la demande, ainsi que la manière dont ils l'ont révélée;

d) dans le cas d'une marque de commerce qui est, dans un autre pays de l'Union, ou pour un autre pays de l'Union, l'objet, de la part du requérant ou de son prédécesseur en titre désigné, d'un enregistrement ou d'une demande d'enregistrement sur quoi le requérant fonde son droit à l'enregistrement, les détails de cette demande ou de cet enregistrement et, si la marque n'a été ni employée ni révélée au Canada, le nom d'un pays où le requérant ou son prédécesseur en titre désigné, le cas échéant, l'a employée en liaison avec chacune des catégories générales de marchandises ou services

services described in the application;
(e) in the case of a proposed trade-mark, a statement that the applicant, by itself or through a licensee, or by itself and through a licensee, intends to use the trade-mark in Canada;

(f) in the case of a certification mark, particulars of the defined standard that the use of the mark is intended to indicate and a statement that the applicant is not engaged in the manufacture, sale, leasing or hiring of wares or the performance of services such as those in association with which the certification mark is used;

(g) the address of the applicant's principal office or place of business in Canada, if any, and if the applicant has no office or place of business in Canada, the address of his principal office or place of business abroad and the name and address in Canada of a person or firm to whom any notice in respect of the application or registration may be sent, and on whom service of any proceedings in respect of the application or registration may be given or served with the same effect as if they had been given to or served on the applicant or registrant himself;

(h) unless the application is for the registration only of a

décrites dans la demande;

e) dans le cas d'une marque de commerce projetée, une déclaration portant que le requérant a l'intention de l'employer, au Canada, lui-même ou par l'entremise d'un licencié, ou lui-même et par l'entremise d'un licencié;

f) dans le cas d'une marque de certification, les détails de la norme définie que l'emploi de la marque est destiné à indiquer et une déclaration portant que le requérant ne pratique pas la fabrication, la vente, la location à bail ou le louage de marchandises ou ne se livre pas à l'exécution de services, tels que ceux pour lesquels la marque de certification est employée;

g) l'adresse du principal bureau ou siège d'affaires du requérant, au Canada, le cas échéant, et si le requérant n'a ni bureau ni siège d'affaires au Canada, l'adresse de son principal bureau ou siège d'affaires à l'étranger et les nom et adresse, au Canada, d'une personne ou firme à qui tout avis concernant la demande ou l'enregistrement peut être envoyé et à qui toute procédure à l'égard de la demande ou de l'enregistrement peut être signifiée avec le même effet que si elle avait été signifiée au requérant ou à l'inscrivant lui-même;

h) sauf si la demande ne vise que l'enregistrement d'un

word or words not depicted in a special form, a drawing of the trade-mark and such number of accurate representations of the trade-mark as may be prescribed; and

(i) a statement that the applicant is satisfied that he is entitled to use the trade-mark in Canada in association with the wares or services described in the application.

[...]

Applications based on registration abroad

31. (1) An applicant whose right to registration of a trade-mark is based on a registration of the trade-mark in another country of the Union shall, before the date of advertisement of his application in accordance with section 37, furnish a copy of the registration certified by the office in which it was made, together with a translation thereof into English or French if it is in any other language, and such other evidence as the Registrar may require to establish fully his right to registration under this Act.

Evidence required in certain cases

(2) An applicant whose trade-mark has been duly registered in his country of origin and who claims that the trade-mark

mot ou de mots non décrits en une forme spéciale, un dessin de la marque de commerce, ainsi que le nombre, qui peut être prescrit, de représentations exactes de cette marque;

i) une déclaration portant que le requérant est convaincu qu'il a droit d'employer la marque de commerce au Canada en liaison avec les marchandises ou services décrits dans la demande.

[...]

Demandes fondées sur l'enregistrement à l'étranger

31. (1) Un requérant dont le droit à l'enregistrement d'une marque de commerce est fondé sur un enregistrement de cette marque dans un autre pays de l'Union fournit, avant la date de l'annonce de sa demande selon l'article 37, une copie de cet enregistrement, certifiée par le bureau où il a été fait, de même qu'une traduction de cet enregistrement en français ou en anglais, s'il est en une autre langue, et toute autre preuve que le registraire peut requérir afin d'établir pleinement le droit du requérant à l'enregistrement prévu par la présente loi.

Preuve requise en certains cas

(2) Un requérant dont la marque de commerce a été régulièrement enregistrée dans son pays d'origine et qui

is registrable under paragraph 14(1)(b) shall furnish such evidence as the Registrar may require by way of affidavit or statutory declaration establishing the circumstances on which he relies, including the length of time during which the trade-mark has been used in any country.
[...]

When applications to be refused

37. (1) The Registrar shall refuse an application for the registration of a trade-mark if he is satisfied that

- (a) the application does not conform to the requirements of section 30,
- (b) the trade-mark is not registrable, or
- (c) the applicant is not the person entitled to registration of the trade-mark because it is confusing with another trade-mark for the registration of which an application is pending,

and where the Registrar is not so satisfied, he shall cause the application to be advertised in the manner prescribed.

Notice to applicant

(2) The Registrar shall not refuse any application without first notifying the applicant of his objections thereto and his reasons for those objections,

prétend que cette marque de commerce est enregistrable aux termes de l'alinéa 14(1)b), fournit la preuve que le registraire peut requérir par voie d'affidavit ou de déclaration solennelle établissant les circonstances sur lesquelles il s'appuie, y compris la période durant laquelle la marque de commerce a été employée dans un pays.

[...]

Demandes rejetées

37. (1) Le registraire rejette une demande d'enregistrement d'une marque de commerce s'il est convaincu que, selon le cas :

- a) la demande ne satisfait pas aux exigences de l'article 30;
- b) la marque de commerce n'est pas enregistrable;
- c) le requérant n'est pas la personne qui a droit à l'enregistrement de la marque de commerce parce que cette marque crée de la confusion avec une autre marque de commerce en vue de l'enregistrement de laquelle une demande est pendante.

Lorsque le registraire n'est pas ainsi convaincu, il fait annoncer la demande de la manière prescrite.

Avis au requérant

(2) Le registraire ne peut rejeter une demande sans, au préalable, avoir fait connaître au requérant ses objections, avec les motifs pertinents, et

and giving the applicant adequate opportunity to answer those objections.

Doubtful cases

(3) Where the Registrar, by reason of a registered trade-mark, is in doubt whether the trade-mark claimed in the application is registrable, he shall, by registered letter, notify the owner of the registered trade-mark of the advertisement of the application.

Statement of opposition

38. (1) Within two months after the advertisement of an application for the registration of a trade-mark, any person may, on payment of the prescribed fee, file a statement of opposition with the Registrar.

Grounds

(2) A statement of opposition may be based on any of the following grounds:

- (a) that the application does not conform to the requirements of section 30;
- (b) that the trade-mark is not registrable;
- (c) that the applicant is not the person entitled to registration of the trade-mark; or
- (d) that the trade-mark is not distinctive.

[...]

Registration of trade-marks

40. (1) When an application for registration of a trade-mark, other than a proposed trade-mark, is allowed, the Registrar shall register the trade-mark and issue a

lui avoir donné une occasion convenable d'y répondre.

Cas douteux

(3) Lorsque, en raison d'une marque de commerce déposée, le registraire a des doutes sur la question de savoir si la marque de commerce indiquée dans la demande est enregistrable, il notifie, par courrier recommandé, l'annonce de la demande au propriétaire de la marque de commerce déposée.

Déclaration d'opposition

38. (1) Toute personne peut, dans le délai de deux mois à compter de l'annonce de la demande, et sur paiement du droit prescrit, produire au bureau du registraire une déclaration d'opposition.

Motifs

(2) Cette opposition peut être fondée sur l'un des motifs suivants :

- a) la demande ne satisfait pas aux exigences de l'article 30;
- b) la marque de commerce n'est pas enregistrable;
- c) le requérant n'est pas la personne ayant droit à l'enregistrement;
- d) la marque de commerce n'est pas distinctive.

[...]

Enregistrement des marques de commerce

40. (1) Lorsqu'une demande d'enregistrement d'une marque de commerce, autre qu'une marque de commerce projetée, est admise, le registraire inscrit la marque de commerce et

certificate of its registration.

Proposed trade-mark

(2) When an application for registration of a proposed trade-mark is allowed, the Registrar shall give notice to the applicant accordingly and shall register the trade-mark and issue a certificate of registration on receipt of a declaration that the use of the trade-mark in Canada, in association with the wares or services specified in the application, has been commenced by

- (a) the applicant;
- (b) the applicant's successor in title; or
- (c) an entity that is licensed by or with the authority of the applicant to use the trade-mark, if the applicant has direct or indirect control of the character or quality of the wares or services.

[...]

Exclusive jurisdiction of Federal Court

57. (1) The Federal Court has exclusive original jurisdiction, on the application of the Registrar or of any person interested, to order that any

délivre un certificat de son enregistrement.

Marque de commerce projetée

(2) Lorsqu'une demande d'enregistrement d'une marque de commerce projetée est admise, le registraire en donne avis au requérant. Il enregistre la marque de commerce et délivre un certificat de son enregistrement après avoir reçu une déclaration portant que le requérant, son successeur en titre ou l'entité à qui est octroyée, par le requérant ou avec son autorisation, une licence d'emploi de la marque aux termes de laquelle il contrôle directement ou indirectement les caractéristiques ou la qualité des marchandises et services a commencé à employer la marque de commerce au Canada, en liaison avec les marchandises ou services spécifiés dans la demande.

[...]

Jurisdiction exclusive de la Cour fédérale

57. (1) La Cour fédérale a une compétence initiale exclusive, sur demande du registraire ou de toute personne intéressée, pour ordonner qu'une

entry in the register be struck out or amended on the ground that at the date of the application the entry as it appears on the register does not accurately express or define the existing rights of the person appearing to be the registered owner of the mark.

Restriction

(2) No person is entitled to institute under this section any proceeding calling into question any decision given by the Registrar of which that person had express notice and from which he had a right to appeal.

inscription dans le registre soit biffée ou modifiée, parce que, à la date de cette demande, l'inscription figurant au registre n'exprime ou ne définit pas exactement les droits existants de la personne paraissant être le propriétaire inscrit de la marque.

Restriction

(2) Personne n'a le droit d'intenter, en vertu du présent article, des procédures mettant en question une décision rendue par le registraire, de laquelle cette personne avait reçu un avis formel et dont elle avait le droit d'interjeter appel.

Trade-marks Regulations, SOR/96-195

30. Except as provided in sections 31 and 32, an application for the registration of a trade-mark may be amended either before or after the application is advertised pursuant to subsection 37(1) of the Act.

31. No application for the registration of a trade-mark may be amended where the amendment would change

- (a) the identity of the applicant, except after recognition of a transfer by the Registrar;
- (b) the trade-mark, except in respects that do not alter its distinctive character or affect its identity;
- (c) the date of first use or making known in Canada of the trade-mark to an earlier date, except where the evidence proves that the change is justified by the facts;
- (d) the application from one not alleging use or making known of the trade-mark in Canada before the filing of the application to one alleging such use or making known; or
- (e) the statement of wares or services so as to be broader than the statement of wares or services contained in the application at the time the application was filed pursuant to section 30 of the

30. Sauf dans les cas prévus aux articles 31 et 32, la demande d'enregistrement d'une marque de commerce peut être modifiée avant ou après l'annonce faite en vertu du paragraphe 37(1) de la Loi.

31. La modification d'une demande d'enregistrement d'une marque de commerce n'est pas permise si elle vise l'un des objectifs suivants

- a) changer l'identité du requérant, sauf après reconnaissance du transfert par le registraire;
- b) modifier la marque de commerce, sauf à certains égards qui n'en changent pas le caractère distinctif ni n'influent sur son identité;
- c) changer pour une date antérieure la date de premier emploi ou de révélation, au Canada, de la marque de commerce, sauf s'il est prouvé que les faits justifient le changement;
- d) changer une demande n'alléguant pas que la marque de commerce a été employée ou a été révélée au Canada avant la production de la demande en une demande qui contient l'une ou l'autre de ces allégations;
- e) modifier l'état déclaratif des marchandises ou services pour étendre la portée de celui qui figurait dans la demande au moment du dépôt effectué conformément à l'article 30 de la Loi.

Act.

32. No application for the registration of a trade-mark may be amended, after it has been advertised in the Journal, to change

- (a) the trade-mark in any manner whatsoever;
- (b) the date of first use or making known in Canada of the trade-mark;
- (c) the application from one alleging use or making known to one for a proposed trade-mark;
- (d) the application from one that does not allege that the trade-mark has been used and registered in or for a country of the Union to one that does so allege; or
- (e) the statement of wares or services so as to be broader than the statement of wares or services contained in the application at the time of advertisement.

33. (1) The Registrar may correct a clerical error in any instrument of record where

- (a) the clerical error is discovered by the Registrar;
- or
- (b) a request for correction is made by an applicant, registered owner or trade-

32. La modification d'une demande d'enregistrement d'une marque de commerce n'est pas permise après l'annonce de la demande dans le Journal, si elle vise, selon le cas :

- a) à modifier la marque de commerce, à quelque égard que ce soit;
- b) à changer la date de premier emploi ou de révélation, au Canada, de la marque de commerce;
- c) à modifier la demande qui allègue que la marque de commerce a été employée ou révélée en une demande alléguant qu'il s'agit d'une marque de commerce projetée;
- d) à modifier la demande n'alléguant pas que la marque a été employée et enregistrée dans un pays de l'Union ou pour un pays de l'Union en une demande alléguant ce fait;
- e) à modifier l'état déclaratif des marchandises ou services pour étendre la portée de celui qui figurait dans la demande au moment de l'annonce.

33. (1) Le registraire peut corriger toute erreur d'écriture qui s'est glissée dans un document aux archives si, selon le cas :

- a) il découvre lui-même l'erreur;
- b) le requérant, le propriétaire inscrit ou l'agent de marques de commerce de

mark agent of the applicant
or registered owner.

l'un ou de l'autre demande la
correction.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1416-13

STYLE OF CAUSE: COORS BREWING COMPANY AND MOLSON
CANADA 2005 v ANHEUSER-BUSCH, LLC

PLACE OF HEARING: OTTAWA, ONTARIO

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