AB InBev And Patagonia Trademark Dispute Will Proceed To Trial

from the *busch-league* dept

Thu, Sep 10th 2020 08:19pm - Timothy Geigner

Trademark

A little over a year ago, we discussed a lawsuit brought by Patagonia, famed West Coast clothier for all things outdoor lifestyle, against AB/InBev, famed macro-brewer. At issue was AB/InBev's decision to sell a Patagonia-branded beer line at pop up stores at ski resorts, the exact place where Patagonia clothing is quite popular. Within those stores, AB/InBev also sold Patagonia-branded clothing. Coupled with the beer maker's decision to do absolutely nothing with its "Patagonia" trademark for six years, you can see why Patagonia sought to invalidate AB/InBev's trademark. It's also understandable that the court ruled against AB/InBev's attempt to have the suit tossed last summer, with the absurd claim that the Patagonia brand for clothing isn't actually well-known at all. In the meantime, Patagonia asserted in filings that AB/InBev actually defrauded the USPTO when it got its trademark in the first place.

Which brings us to the present, where the beer maker attempted to get at least some of the claims against it dismissed, arguing that the claims about defrauding the USPTO were simple clerical errors and that Patagonia had failed to protect its mark for too long. The court ruled in favor of Patagonia, meaning this will now go to trial. We'll start with the claims of Patagonia failing to protect its mark, which center around AB/InBev's registration for trademark indicating the company had been using "Patagonia" continually for five years.

> *Argentinian brewer Warsteiner Importers Agency Inc. first filed the intent-to-use application for a Patagonia beer trademark in 2006, based on its intent to sell its beer in the U.S., the court said. It filed several extension requests, including one in 2011 that said it still intended to use the mark, but didn't intend to import its beer. Anheuser-Busch asked it to file one more extension and then bought the application in March 2012. It filed a statement of use, claiming it began using the trademark in July 2012 and received the trademark registration later that year.*
>
> *Patagonia learned of the trademark in 2013 but believed that Anheuser-Busch had legitimate rights, according to the opinion. But shortly after the beermaker launched Patagonia beer at a pop-up stores at ski resorts in 2019, with the beer and promotional apparel featuring a mountain logo that allegedly infringed Patagonia's trademarks, Patagonia sued.*

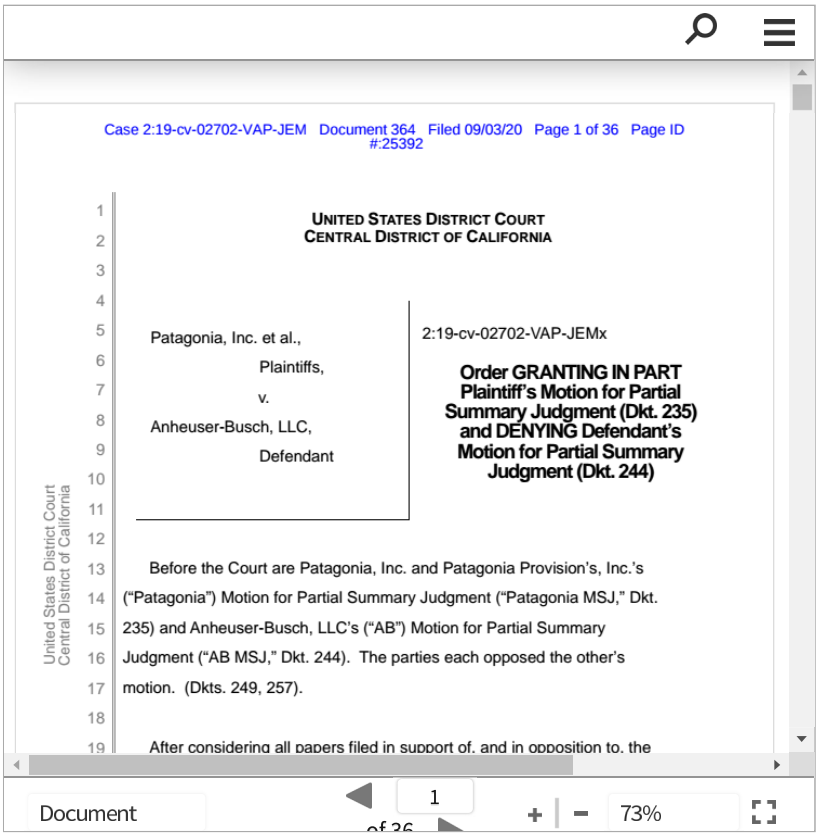
In other words, the company picked up on a long-delayed application by another beer maker, bought the application rights to the trademark, and then claimed it had been using the mark for five years, which it had not. When Patagonia learned of the application, it thought AB/InBev's application was legit, but learned after the pop-up stores began selling clothing that it was not. Patagonia, to add to all of this, sells

The court rejected Anheuser-Busch's bid for a judgment that its Patagonia trademark had become incontestable, finding it hadn't been used continuously for five years as required. Incontestable marks can only be challenged if they became generic, abandoned for nonuse, or acquired by fraud.

Anheuser- Busch also still faces allegations of fraud through its alleged violation of the anti-trafficking rule and false claims of continuous use.

In addition to all of the above, the court also decided that the branding AB/InBev decided to use was similar enough that a jury should decide if there was true trademark infringement here.

What should perhaps be most striking in all of this is just how callous AB/InBev appears to be when it comes to the trademark rights of others, especially compared with how **protective** and **expansionist** the company is of its own trademarks. It is quite silly to expect virtue and consistency from a multi-national corporation, of course, but the hypocrisy is still quite glaring.



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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Patagonia, Inc. et al.,
Plaintiffs,
v.
Anheuser-Busch, LLC,
Defendant

2:19-cv-02702-VAP-JEMx

Order GRANTING IN PART Plaintiff's Motion for Partial Summary Judgment (Dkt. 235) and DENYING Defendant's Motion for Partial Summary Judgment (Dkt. 244)

Before the Court are Patagonia, Inc. and Patagonia Provision's, Inc.'s ("Patagonia") Motion for Partial Summary Judgment ("Patagonia MSJ," Dkt. 235) and Anheuser-Busch, LLC's ("AB") Motion for Partial Summary Judgment ("AB MSJ," Dkt. 244). The parties each opposed the other's motion. (Dkts. 249, 257).

After considering all papers filed in support of, and in opposition to, the

United States District Court Central District of California

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Companies: ab/inbev, inbev, patagonia

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