

S.C.A. 01429 J.D.E.

No. ~~01429~~

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Anheuser-Busch Brewers
Association,
Plaintiff,

and,

The Edmonton Brewing and
Malting Company,
Defendant,

.....

STATEMENT OF DEFENCE

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Supreme Court, Alberta

FILED
OCT 13 1910



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EMERY, NEWELL & BOLTON,
BARRISTERS, EDMONTON, ALTA.

.....

IN THE SUPREME COURT OF ALBERTA.
JUDICIAL DISTRICT OF EDMONTON.

Writ Number 01429.

B E T W E E N

The Anheuser-Busch
Brewers Association,
Plaintiff,

- and -

The Edmonton Brewing and Malting Company,
Defendant.

STATEMENT OF DENENCE

As to the Plaintiff's Statement of Claim, the Defendant says:

1. It denies the allegations set out in paragraph Two of the Statement of Claim.
2. It denies the allegations set out in paragraph Three of the Statement of Claim, and denies that Carl Conrade, referred to in the said paragraph, adopted a characteristic label in 1881 or any label in 1881, or at any other time, and also denies that the said Carl Conrade applied a neck label as a companion label to said body label.
3. If any such label was adopted by the said Carl Conrade, which the Defendant does not admit but denies, the same was not as set out in paragraph Four of the Statement of Claim.
4. If the Plaintiff used any such body label in connection with the sale of its Beer the same was not as set out in paragraph Six of the Statement of Claim.

5. If the Plaintiff used any neck label, which the Defendant does not admit, but denies, the same is not as set out in Paragraph Eight of the Statement of Claim.

6. The Plaintiff did not put the said labels on a special brew of Beer, as set out in Paragraph Ten, nor was the said Beer packed and shipped in bottles, nor were the said bottles provided with body and neck labels substantially identical with those set out in the Statement of Claim, nor was the said bottled Beer sent to the trade nor to the public nor to the ultimate consumer identified by the said body and neck labels or either of them.

7. The Plaintiff did not acquire for valued consideration, or otherwise, the right and interest of the said Conrade to his business or to the said labels in or about the year 1883, or at any other time, nor did the Plaintiff become ^{owner} the exclusive, nor the proprietor of the said business nor the good will thereof, nor did he become proprietor of the said Trade Mark, nor is the Plaintiff now the proprietor of the said labels or Trade Mark.

8. The Plaintiff's said Beer is not in great demand and is not extensively sold in the City of Edmonton, nor in the Province of Alberta, nor in Canada.

9. The said Conrade neither in the manner of bottling or selling the said Beer, nor in the said body and neck labels was the first to adopt or continue using the same.

10. The Plaintiff is not entitled to the exclusive use of the said label or either of them. The distinguishing mark to the said body and neck labels and the manner of affixing the same on the bottles were in common use prior to the using of the same by the said Conrade or the Plaintiffs.

11. The Defendant is not

11. The Defendant is not aware, or was not aware of the large sale of the Plaintiff's Beer at Edmonton, or in the Province of Alberta, nor in Canada generally. The Defendant was not aware that the consumers of beer are guided in the selection of the Plaintiff's beer by the characteristics in the body and neck label, nor are the consumers of the said Plaintiff's beer guided by the said labels other than by the word "Budweiser" under which word the Plaintiff's beer is sold.

12. The Defendant did not with any intent to deceive the public or consumers of beer, nor of defrauding the Plaintiff, nor of injuring the Plaintiff's good will in the manner and sale of beer, nor of passing off nor of enabling others to pass off, the Defendant's beer as the beer of the Plaintiff, nor with the intent and purpose of appropriating any part of the Plaintiff's business or good will, nor of any of the profit incident thereto, in 1910, or otherwise, place upon its beer bottles body and neck labels, or either of them in close similarity to differ only colorably from the body and neck labels of the Plaintiff.

13. It has not deceived the public in any way by its labels.

14. It has not deceived the Plaintiff or injured the Plaintiff in its good will in any way.

15. It has not passed off, or enabled others to pass off, the Defendant's beer as the beer of the Plaintiff.

16. It has not committed any fraud upon the Plaintiff nor has it palmed off, nor enabled any other persons to palm off on the public or the consumers of beer the Defendant's beer for the Plaintiff's.

17. The Defendant's labels are not as set out in paragraphs, Sixteen, Seventeen, and Eighteen of the Plaintiff's Statement of Claim.

18. The labels used by the Defendant, taken together or separately, do not deceive intending purchasers of the Plaintiff's or Defendant's beer, as set out in said Statement of Claim, nor is the same calculated to deceive or mislead purchasers of beer, nor does it deceive customers, nor is it calculated to induce them to purchase the Defendant's beer under the belief that they are purchasing beer of the Plaintiff.

19. The characterizing feature of the Plaintiff's labels is the word "Budweiser". The characterizing feature of the Defendant label is the word "Capitol" and it is by these names and no other that the said beers are known to the public and sold to the public.

20. If the labels are similar in some respects to the Plaintiff labels, the same were made so innocently and not with any intent to defraud or deceive either the Plaintiff or others.

21. The Plaintiff's said labels constitute a Trade Mark within the meaning of "Trade Mark" as defined in Chapter 71, of the Revised Statutes of Canada 1906, entitled the "Trade Mark and Design Act".

22. The Plaintiff's said Trade Mark is not registered as provided by the said Act, being Chapter 71, of the Revised Statutes of Canada 1906, as aforesaid.

23. The Defendant pleads as a bar and a defence to the said action, Section 20, of the said Chapter 71, of the Revised Statutes of Canada, 1906.

DATED at Edmonton, Alberta, this 12th. day of October, A.D.1910, and DELIVERED by Messrs. Emer, Newell & Bolton, of the City of Edmonton, Solicitors for the Defendant in this action.