

S. C. A.

E. J. D.

No. 01429.

Anheuser Busch Brewing
Association,

- vs -

Edmonton Brewing & Malting
Company Limited,

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AFFDT. OF WILLIAM E. LINES.

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Supreme Court, Alberta

FILED
OCT 14 1910
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EMERY, NEWELL & BOLTON.

IN THE SUPREME COURT OF ALBERTA
EDMONTON JUDICIAL DISTRICT.

BETWEEN:-

Anheuser Busch Brewing Association,
Plaintiffs,

- and -

Edmonton Brewing & Malting Company,
Limited,
Defendants.

I, William E. Lines, of the City of Edmonton, in the Province of Alberta, the Manager for the above named defendant Company, make oath and say as follows:-

1. That in or about July, 1909, the defendants decided to put upon the market a new brew of Beer and then decided to call the same "Capitol."
2. The defendant Company advertised the Beer extensively as a Beer which they intended putting on the market by sending samples of the same to the trade and advertised largely ~~in the~~ ^{in the} papers both then and later that they were putting the "Capitol Beer" on the market.
3. At ~~that~~ time no label had been prepared for their said Beer.
4. In or about October, 1909, the said Beer came on the market and has ever since been known as the "Capitol."
5. I have been connected with the brewery business for some years and am familiar with the same.
6. The plaintiffs beer has always sold in this District as the

Budweiser Beer.

7. At the time of the making of the label for the Capitol I had before me the Budweiser label but I did not then wish and do not consider I have infringed on the said label. I made as I considered then and still consider it quite plain on the said label that the Beer was the Capitol and no other beer.

8. A short time ago I was informed that the plaintiffs objected to the use of the label but did not consider they were objecting to our sale of the Capitol or that they claimed that we were trying to pass off our goods as the Budweiser Beer.

9. I have read over the affidavits of Smith and Gillman, filed herein, and until the reading of the said affidavits I had never heard of any person handing out Capitol Beer when they were asked for Budweiser.

10. Since the issue of the writ herein I have inquired of several of the Hotel Keepers of the City of Edmonton and I have universally been told that the plaintiffs beer went always by the name of the Budweiser and the defendants by the name of the Capitol and in no case, so far as they knew, had Capitol Beer been handed out when Budweiser Beer was called for and which statements I verily believe to be true.

11. The defendants are selling Capitol Beer at the rate of about forty carloads per year.

12. From information I have been able to learn I do not believe the plaintiffs have ever sold at the City of Edmonton or the immediate district more than a carload or so of Budweiser Beer in a year.

13. I am informed by my solicitors herein and verily believe

the same to be true that the plaintiffs have not registered their Trade Mark as a Trade Mark in Canada under the Trade Mark and Design Act.

14. At the time of the making of the said label there was no intention of ~~in~~fringing the plaintiffs rights herein and I verily believe the same does not infringe the plaintiffs rights.

15. So far as I am aware there never has been any attempt on behalf of the defendants or any person under their control to pass off, or palm off the defendants goods as the goods of the plaintiffs. I verily believe that it would not be in the interests of the defendants to do so for I verily believe that the sale of the defendants Beer at Edmonton exceeds many times the sale of the plaintiffs beer.

16. I verily believe that the defendants Capitol Beer is not palmed off on intending purchasers of the Budweiser any more than any other beer and I verily believe that in no case if the purchaser is reasonably cautious that it is possible to palm off the said beer, for the reason among others that the neck label on the said bottles is the part most easily seen by the purchaser ~~to~~ either by the bottle or by the glass and that the same, as well as the body label, is easily seen and easily distinguishable from the neck and body labels of the plaintiffs.

17. I verily believe that if an injunction is granted herein restraining the defendants from disposing of Capitol Beer that the defendants would suffer more thereby than all the profit the plaintiffs have derived from the sale of Beer in Edmonton or its vicinity within the last five years and from the injury to the defendants business I consider they would suffer at least

Fifteen Thousand (\$15,000.00) Dollars by such an injunction.

SWORN before me at Edmonton,)
in the Province of Alberta,)
this 12 day of October,)
1910.)



A Commissioner in and for the Province of Alberta.

MIRACLE BOND