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The National Archives at Philadelphia

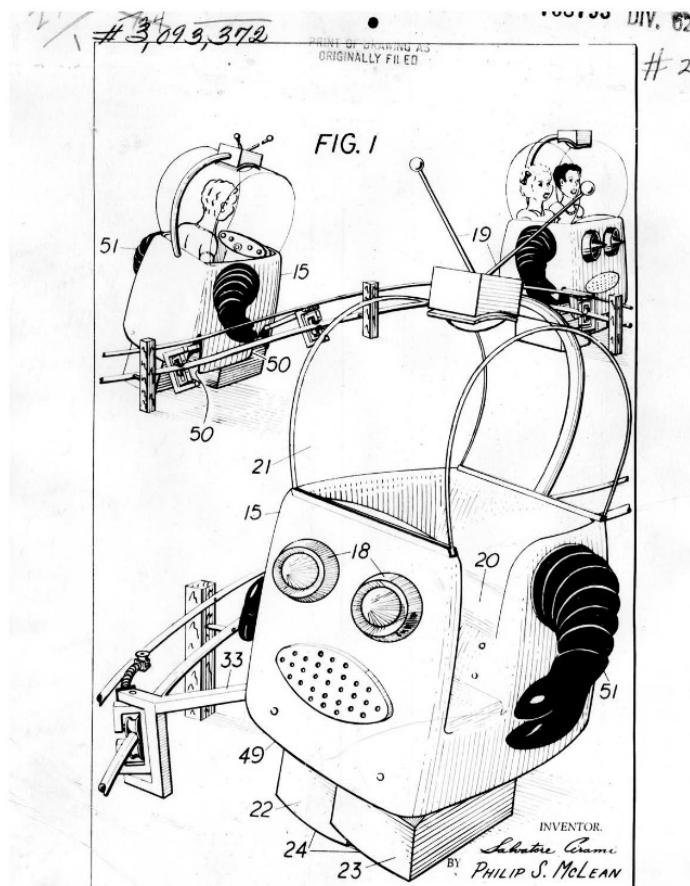
April 2016

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## April 2016 Newsletter

Celebrate National Intellectual Property Day on Friday, April 29<sup>th</sup> with the [National Archives Coloring Book of Patents](#)! Read the full post on the AOTUS blog. One of our favorites is this patent for a robot amusement ride from 1958, below:



Patent for a robot amusement ride, 1958.

Page 1: Intellectual Property Day

Page 2: National Beer Day

Page 3 and 4: Information about Upcoming Initiatives

The National Archives at Philadelphia research room is open to the public Monday through Friday from 8:30 am to 3:30 pm. Researchers can also call to schedule an appointment to view textual records in our text research room.

## This Bud's NOT for You.

We commemorated #NationalBeerDay, April 7<sup>th</sup>, by discovering some of our records related to beer. Enjoy this article from Patrick Connelly, Archivist at the National Archives at Philadelphia.



When is a Bud not a Budweiser? When it's a DuBois Budweiser of course! The iconic Budweiser brew has not been the sole domain of the Anheuser-Busch Brewing Company since it was first brewed in 1878. On the contrary, dozens of American (and Czech) brewers have been churning out barrels of the lemon colored libation from the close of the nineteenth century to 1970. In fact, Budweiser could have easily become the “champagne of beers” if Fred Miller had won a suit brought by Anheuser-Busch in 1898, in which Miller was accused of brewing and labeling a Budweiser beer that didn't conform to the style's traditional standards.

Busch beat Miller not because he was infringing upon a trademark, rather he won by proving that Miller's beer was a fraud that did not resemble the characteristics of a true Budweiser. Adolphus Busch himself testified during the trial that his beer was, “brewed according to the Budweiser Bohemian process.” That process using Sazaar hops and Bohemian barley was used by countless other brewers of the era, including the Du Bois Brewing Company, a small brewery located 100 miles northeast of Pittsburgh, PA.

Barrels and bottles of Du Bois Budweiser hit taverns and pubs in New York, Ohio, and Pennsylvania in 1905 and tended to be a hit with consumers. Du Bois' owner, Frank Hahne, didn't think twice of using the Budweiser name for his beer. He, along with most brewers at the time, viewed Budweiser as a descriptive term illustrating that the beer was brewed in the tradition of beers originally brewed in the Czech city of Budweis, similar to the term Pilsener being used to describe beers hailing from Pilsen.

At least 29 other brewers had been cited by Anheuser-Busch as being purveyors of Budweiser beer prior to 1910 – a majority of which had ceased to produce the beer through the intervention of Anheuser-Busch. However, Du Bois saw no reason to desist and was sued in the U.S. District Court for the Western

District of Pennsylvania for trademark infringement. The suit didn't go far, as Anheuser-Busch withdrew its complaint citing the health of the company's president, Adolphus Busch and the looming specter of Prohibition.

By 1940, Anheuser-Busch transformed into a national behemoth, rather than the regional powerhouse it was prior to Prohibition. The company instituted a new suit against Du Bois to once and for all claim the name of their "King of Beers." In its Bill of Complaint, the brewer contended that because they have been using the name Budweiser uncontested since 1879 and because of their widespread advertising and sales the public has become so familiarized with Budweiser that any other beer of that name would cause confusion among consumers, thus violating long held legal precedent.

Unfortunately for Du Bois, Judge Gibson of the Western District Court agreed with the plaintiff and ordered Du Bois to stop using the term Budweiser for its beverage. Undeterred by the decision of the district court, Du Bois appealed the decision to the U.S. Circuit Court of Appeals for the Third Circuit. The appeal was based on the contention that the lower court ignored three vital points of fact – that Budweiser was open to use in Bohemia and the United States as a common name for beer brewed in the style of the Budweis region, that the Anheuser-Busch Brewing Company used the term as a descriptor of the process in which its beer was brewed, and that Anheuser-Busch relied on the use of the word Budweiser as a descriptor, not trademark, in its litigation against the Miller Brewing Company in 1898.

The circuit judges agreed with Du Bois and reversed the ruling of the lower court. Judge O'Connell wrote, "Anheuser has permitted Du Bois to conduct a localized operation over so long a period of time that it would be inequitable to compel Du Bois to surrender use of the name at this time. By the same token, Du Bois, having confined the sale of its Du Bois Budweiser product to localized territory, should not expect to extend its use of that name to other areas with legal impunity."

DuBois continued to brew Budweiser unabated for another 20 years. In 1967 the company was acquired by the Pittsburgh Brewing Company and by 1968 they had found themselves back in court with Anheuser's lawyers. The beer known as Du Bois Budweiser ceased being produced by 1972 leaving the Anheuser-Busch Brewing Company to be the sole American purveyor of Budweiser.

Today's post was written by Patrick Connelly, Archivist at the National Archives at Philadelphia.

[#nationalbeerday](#) [#budweiser](#) [#thisbudsforyou](#) [#history](#) [#beer](#)

Citation: Collage of exhibits from Case No. 9527; US Circuit Court of Appeals for the Third Circuit Case; Briefs and Appendices; National Archives at Philadelphia (NAID: 279186) (Record Entry PH-6697).

## Upcoming Events and Initiatives:

**The National Archives at Philadelphia does not have any upcoming onsite events.** However, our colleagues in Washington D.C. are hosting many [programs](#) throughout April, some of which you can live-

stream or watch afterword on youtube.com! Our staff will definitely be tuning into the following program through youtube.com:

**“African American Life in Washington, DC, Before Emancipation”**

As Washington became the focus of abolitionism before the Civil War, antislavery activists argued that the sight of slavery and slave dealers in the nation’s capital disgraced the nation and its ideals. A panel will explore life before the 1862 Compensated Emancipation Act and discuss the “Slavery and Freedom” exhibit at the Smithsonian’s new National Museum of African American History and Culture (NMAAHC). Moderated by John W. Franklin of the NMAAHC, panelists include Mark Auslander, Central Washington University; Maurice Jackson, Georgetown University; and NMAAHC curators Nancy Bercaw and Mary Elliott. *Presented in partnership with NMAAHC, the DC Commission of African American Affairs, and the DC Commission on Emancipation.*

Watch the program on or after Wednesday, April 13<sup>th</sup>, at 7:00 pm here:

<https://www.youtube.com/watch?v=KyKDEbaUJcE>



Follow the National Archives at Philadelphia on [Facebook](#) and [Tumblr](#) for featured highlights from our collection! We’ll be commemorating the 100<sup>th</sup> anniversary of the National Park Service throughout 2016 by highlighting some of our many NPS records.

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