

T.C. PHARMACEUTICAL
INDUSTRIES CO., LTD.
2008

IPC No. 14-2008-00255
Case Filed: 23 October

Opposer,

Opposition to:

- versus -

Appl'n Serial No. 4-2007-007519
Date Filed: 16 July 2007
TM: TORO INSIDE A DARK
RECTANGULAR DEVICE

GRUPO OSBORNE, S.A.
Respondent-Applicant.
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Decision No. 2009-110

DECISION

This is a VERIFIED NOTICE OF OPPOSITION filed by opposer T.C. Pharmaceutical Industries Co., Ltd. to Application Serial No. 4-2007-007519 filed on July 16, 2007 by respondent-applicant Grupo Osborne, S.A. for registration of the mark "TORO INSIDE A DARK RECTANGULAR DEVICE" for goods under International Classes 32, namely, "beer, mineral and aerated waters and other non-alcoholic drinks, fruit juices, syrups and other preparations for making beverages; 33 for "alcoholic beverages (except beers)"; & 43 for "services for providing food and drink", which application was published for opposition in the Intellectual Property Philippines (IP Philippines) E-Gazette that was officially released for circulation on July 04, 2008.

Opposer is a corporation organized and existing under the laws of Thailand, with principal office at 39/13 MU 8, Ekachai Road, Bangbon Sub-District, Bangbon District, Bangkok 10150, Thailand. Respondent-applicant is a Corporation organized and existing under the laws of Spain, with principal office at 311500 Puerto De Santa Maria, Cadiz, Spain.

Opposer is filing the instant opposition under the following laws:

- a. Section 123 (d) of the Intellectual Property Code (Republic Act 8293) - which states that a mark cannot be registered if it:

(d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:

- (i) The same goods or services, or
- (ii) Closely related goods or services, or
- (iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion;

- b. Section 123 (e) of the Intellectual Property Code (Republic Act 8293) - which states that a mark cannot be registered if it:

(e) Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: Provided, That in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;

- c. Section 123 (f) of the Intellectual Property Code (Republic Act 8293) - which states that a mark cannot be registered if it:

(f) Is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods or services which are not similar to those with respect to which registration is applied for: Provided, That use of the mark in relation to those goods or services would indicate a connection between those goods or services, and the owner of the registered mark: Provided further, That the interests of the owner of the registered mark are likely to be damaged by such use;

d. Section 3 and 160 of the same code, which read:

Section 3. International Conventions and Reciprocity. - Any person who is a national or who is domiciled or has a real and effective industrial establishment in a country which is a party to any convention, treaty or agreement relating to intellectual property rights or the repression of unfair competition, to which the Philippines is also a party, or extends reciprocal rights to nationals of the Philippines by law, shall be entitled to benefits to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of an intellectual property right is otherwise entitled by this Act. (n)

Section 160. Right of Foreign Corporation to Sue in Trademark or Service Mark Enforcement Action. - Any foreign national or juridical person who meets the requirements of Section 3 of this Act and does not engage in business in the Philippines may bring a civil or administrative action hereunder for opposition, cancellation, infringement, unfair competition, or false designation of origin and false description, whether or not it is licensed to do business in the Philippines under existing laws. (Sec. 21-A, R.A. No. 166a)

Opposer relies on the following facts to support its opposition:

2. Opposer is the owner of the marks "DOUBLE BULL DEVICE" and RED BULL," having used, registered and popularized the same in various countries of the marks (a) "DOUBLE BULL DEVICE" and (b) "RED BULL" for the following goods: beer, mineral aerated waters and other non-alcoholic drinks; fruit juices; syrups and other preparations for making beverages in Class 32 on July 16, 1993. Opposer's mark "DOUBLE BULL DEVICE" was registered on March 29, 1995 per Certificate of Registration No. 60093 while Opposer's "RED BULL" was registered on March 14, 1995, per Certificate of Registration No. 60086.

On the other hand, this application for registration of the mark TORO, which means "BULL," was filed on July 16, 2007 for different classes including beers; mineral and aerated waters and other non-alcoholic drinks, fruit drinks fruits and fruit juices; syrups and other preparations for making beverages under Class 32, which are exactly the same goods of Opposer.

3. Clearly, Opposer's mark "DOUBLE BULL DEVICE" and "RED BULL" were filed and registered much earlier than that of Respondent's.
4. Opposer has been using its marks for 13 years now, having first used and adopted the same as early as 1993, in the Philippines, Opposer has first used the mark "DOUBLE BULL DEVICE" and "RED BULL" on June 30, 1993. Opposer's products were used/are currently used in the Philippines by Energy Food and Drinks, Inc., of 119-E, West Avenue, Quezon City, the Philippines.
5. Clearly, Opposer is the rightful owner of the mark "DOUBLE BULL DEVICE" and "RED BULL," having used, adopted and registered the same in the Philippines and on several countries in the world much earlier than Respondent-Applicant.

Being the owner of the marks, Opposer has sought the registration of the same in Thailand and in various countries of the world, including Philippines, Hong Kong, Indonesia, Singapore, China, Cambodia, Myanmar, Vietnam, Taiwan, Korea, Australia, Brunei, Malaysia and Laos.

6. Through widespread and extensive use by the Opposer in most parts of the world, Opposer's marks have acquired inherent or acquired distinction and notoriety.
7. Opposer has developed goodwill and reputation for its marks "DOUBLE BULL DEVICE" and "RED BULL" through extensive promotion, worldwide registrations and use.
8. Opposer has built, for its marks "DOUBLE BULL DEVICE" and "RED BULL," superior quality-image or reputation through its long use characterized by high standards.
9. From the foregoing, it is apparent that Opposer's marks satisfy the criteria set by the Rules and Regulations Implementing RA 8297 to be considered as well-known marks, entitled to protection under Section 123 (e) and (f) of R.A. 8293.
10. Respondent-Applicant's mark "TORO INSIDE A DARK RECTANGULAR DEVICE" which means "BULL" and Opposer's marks "DOUBLE BULL DEVICE" and "RED BULL" are confusingly similar, and hence, will cause confusion among their prospective market, coupled by the fact that the goods covered are the same or related, sold in the same channels and belonging to the same Class 32.
11. Considering the above circumstances, registration is proscribed by R.A. 8293 Section 123 (d).
12. If allowed contrary to existing laws and jurisprudence, respondent's use of the mark "TORO INSIDE A DARK RECTANGULAR DEVICE" which means "BULL" and which confusingly similar to Opposer's marks "BULL DEVICE" and "RED BULL," will likely mislead the buying public into believing that the goods of Respondent's are produced or originated from, or are under the sponsorship of Oppose, to the detriment and damage of Opposer's interests, considering the foods are the same or related.
13. Opposer hereby alleges that the Respondent-Applicant's adoption of "TORO INSIDE A DARK RECTANGULAR DEVICE" trademark which means the same as Opposer's "DOUBLE BULL DEVICE" and "RED BULL," was clearly done with the illegal reputation and will cause great and irreparable damage and injury to the Opposer.
14. Further, Respondent-Applicant is clearly in bad faith in so using and adopting the subject trademark "TORO INSIDE A DARK RECTANGULAR DEVICE" which means "BULL" and which is the same as Opposer's marks "BULL DEVICE" and "RED BULL" which Opposer has, because of its prior use and registration, gained worldwide notoriety for said marks.

Opposer submitted the following to support its opposition:

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| Exhibit A | Authenticated Verified Notice of Opposition |
| Exhibit B | Authenticated Affidavit-Testimony of Ms. Pavana and Mr. Saravoot Yoovidhya |
| Exhibit C | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Philippines for the "DOUBLE BULL DEVICE" |
| Exhibit C-1 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Philippines for the "RED BULL" |
| Exhibit D | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Brunei Darussalam for the "DOUBLE BULL" |

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| | DEVICE" dated July 17,1991 |
| Exhibit D-1 | Copy of the Certificate of Registration of TC-Mycin Company Limited, in Brunei Darussalam for the "DOUBLE BULL DEVICE" dated March 03,1981 |
| Exhibit D-2 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Brunei Darussalam for the "RED BULL" dated July 07,1991 |
| Exhibit D-3 | Copy of the Certificate of Registration of TC-Mycin Company Limited in Brunei Darussalam for the "RED BULL" dated October 02,1988 |
| Exhibit D-4 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Brunei Darussalam for the "DOUBLE BULL DEVICE" dated September 17, 2001 |
| Exhibit D-5 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Brunei Darussalam for the "RED BULL" dated September 17, 2001 |
| Exhibit E | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in China for the "RED BULL" dated November 06, 2007 |
| Exhibit E-1 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in China for the "DOUBLE BULL DEVICE" dated November 06, 2007 |
| Exhibit E-2 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in China for the "DOUBLE BULL DEVICE" from June 21, 1988 to June 20,2008 |
| Exhibit F | Copy of the Certificate of Registration of Trademark in Australia dated June 17, 1991 |
| Exhibit F-1 | Copy of the Renewal Certificate of Registration of Trademark in Australia dated October 27, 1994 |
| Exhibit G | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Cambodia for the "DOUBLE BULL DEVICE" dated April 19, 1993 |
| Exhibit G-1 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Cambodia for the "DOUBLE BULL DEVICE" dated August 08,2001 |
| Exhibit G-2 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Cambodia for the "RED BULL" dated April 19, 1993 |
| Exhibit G-3 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Cambodia for the "RED BULL" dated August 08, 2001 |
| Exhibit H | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Canada for the "DOUBLE BULL DEVICE" dated November 06,1997 |
| Exhibit I | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Germany for the "DOUBLE BULL DEVICE" dated February 08,1994 |
| Exhibit I-1 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Germany for the "RED BULL" dated February 08, 1994 |
| Exhibit J | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Hong Kong for the "DOUBLE BULL DEVICE" dated March 12,2002 |
| Exhibit J-1 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co, Ltd. in Hong Kong for the "RED BULL" dated August 30, 1988 |

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| Exhibit J-2 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Hong Kong for the "RED BULL" dated March 12, 2002 |
| Exhibit K | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Budapest, Hungary for the "DOUBLE BULL DEVICE" dated September 20, 1993 |
| Exhibit K-1 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Budapest, Hungary for the "RED BULL" dated September 20, 1993 |
| Exhibit L | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Indonesia for the "DOUBLE BULL DEVICE" dated December 29, 1993 No.A02393 |
| Exhibit L-1 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Indonesia for the "RED BULL" dated December 29, 1993 No.A02394 |
| Exhibit L-2 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Indonesia for the "DOUBLE BULL DEVICE" dated October 01, 1997 |
| Exhibit L-3 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Indonesia for the "RED BULL" dated October 1, 1997 |
| Exhibit M | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. for the "DOUBLE BULL DEVICE" dated September 09, 1999 (No English Translation) |
| Exhibit N | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Mexico for the "DOUBLE BULL DEVICE" dated October 27, 2004 |
| Exhibit N-1 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Mexico for the "DOUBLE BULL DEVICE" dated November 14, 2002 |
| Exhibit O | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Myanmar for the "DOUBLE BULL DEVICE" dated March 10, 1993 |
| Exhibit O-1 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Myanmar for the "RED BULL" dated June 26, 2001 |
| Exhibit P | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. In New Zealand for the "DOUBLE BULL DEVICE" dated February 14, 1996 |
| Exhibit P-1 | Copy of the Renewal Certificate of Registration of Trademark in New Zealand dated September 07, 1999 |
| Exhibit Q | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Philippines for the "DOUBLE BULL DEVICE" dated March 29, 1995 |
| Exhibit Q-1 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Philippines for the "RED BULL" dated March 14, 1995 |
| Exhibit R | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Sabah for the "DOUBLE BULL DEVICE" dated March 31, 1981 |
| Exhibit S | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Singapore for the "DOUBLE BULL DEVICE" dated June 05, 1991 |
| Exhibit S-1 | Copy of the Renewal Certificate of Registration of Trademark for T91/0571 E in Singapore dated June 29, 2001 |
| Exhibit S-2 | Copy of Certification of Registration issued by Singapore for class |

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| Exhibit S-3 | Copy of the Renewal Certificate of Registration of Trademark for T91/0570E in Singapore dated June 29,2001 |
| Exhibit S-4 | Copy of Certification of Registration issued by Singapore for class 25 |
| Exhibit S-5 | Copy of the Renewal Certificate of Registration of Trademark for 495/88 class 5 in Singapore dated May 24, 1995 |
| Exhibit S-6 | Copy of the Renewal Certificate of Registration of Trademark for T91 /0572E in Singapore dated June 29, 2001 |
| Exhibit S-7 | Copy of Certification of Registration issued by Singapore for class 32 |
| Exhibit S-8 | Copy of Certification of Registration issued by Singapore for class 25 |
| Exhibit T | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Sweden for the "DOUBLE BULL DEVICE" dated November 25,1994 |
| Exhibit T-1 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co, Ltd. in Sweden for the "RED BULL" dated April 07,2000 |
| Exhibit U | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Laos for the "DOUBLE BULL DEVICE" dated January18, 2002 |
| Exhibit U-1 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Laos for the "RED BULL" dated April 27,1992 |
| Exhibit U-2 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Laos for the "RED BULL" dated January 14, 1999 |
| Exhibit V | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Macau for the "RED BULL" dated March 31, 2005 for class 5 |
| Exhibit V-1 | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Macau for the "RED BULL" dated March 31,2005 for class 25 |
| Exhibit W | Copy of the Certificate of Registration of TC-Mycin Company Limited in Malaysia for the "RED BULL" dated May 30,1994 |
| Exhibit X | Copy of the Certificate of Registration of T.C. Pharmaceutical Industries Co., Ltd. in Vietnam for the "RED BULL" dated October 16, 1992 |
| Exhibit Y | Invoice # 340934 E |
| Exhibit Y-1 | Invoice # 340934 J |
| Exhibit Y-2 | Invoice # 350335 AB |
| Exhibit Y-3 | Invoice # 363607 BC |
| Exhibit Y-4 | Invoice # 360936 0 |
| Exhibit Y-5 | Invoice # 370136 A |
| Exhibit Y-6 | Invoice # 370672 A |
| Exhibit Y-7 | Invoice # 9/95 (I) |
| Exhibit Y-8 | Invoice # 74/95 (I) |
| Exhibit Y-9 | Invoice # 16/96 (I) |
| Exhibit Y-10 | Invoice # 99/96 (I) |
| Exhibit Y-11 | Invoice # 20/97 (I) |
| Exhibit Y-12 | Invoice # 122/97 (I) |
| Exhibit Y-13 | Invoice # 20/99 (I) |
| Exhibit Y-14 | Invoice # 21/99 (I) |
| Exhibit Y-15 | Invoice # 47/99 (I) |
| Exhibit Y-16 | Invoice # 02/43 (I) |
| Exhibit Y-17 | Invoice # 06/43 (I) |

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| Exhibit Z | Invoice # 361236 F |
| Exhibit Z-1 | Invoice # 370570 A |
| Exhibit Z-2 | Invoice # 01 P |
| Exhibit Z-3 | Invoice # 6/95 (P) |
| Exhibit Z-4 | Invoice # 18/95 (P) |
| Exhibit Z-5 | Invoice # 5/96 (P) |
| Exhibit Z-6 | Invoice # 14/96 (P} |
| Exhibit Z-7 | Invoice # 8/97 (P) |
| Exhibit Z-8 | Invoice # 15/97 (P) |
| Exhibit Z-9 | Invoice # 1/98 (P) |
| Exhibit Z-10 | Invoice # 9/98 (P) |
| Exhibit Z-11 | Invoice # 4/99 (P) |
| Exhibit Z-12 | Invoice # 12/99 (P) |
| Exhibit Z-13 | Invoice # 1/43 (P) |
| Exhibit Z-14 | Invoice # 18/43 (P) |
| Exhibit Z-15 | Invoice # 04/44 (P) |
| Exhibit Z-16 | Invoice # 21/44 (P) |
| Exhibit Z-17 | Invoice # 11/45 (P) |
| Exhibit Z-18 | Invoice # 21/45 (P) |
| Exhibit Z-19 | Invoice # 01/46 (P) |
| Exhibit Z-20 | Invoice # 20/46 (P) |
| Exhibit Z-21 | Invoice # 27/46 (P) |
| Exhibit Z-22 | Invoice # 38/47 (P) |
| Exhibit Z-23 | Invoice # 47/47 (P) |
| Exhibit Z-24 | Invoice # 07/48 (P) |
| Exhibit Z-25 | Invoice # 28/48 (P) |
| Exhibit AA | Invoice # 02/47 (H) |
| Exhibit AA-1 | Invoice # 07/47 (H) |
| Exhibit AA-2 | Invoice # 02/48 (H) |
| Exhibit AA-3 | Invoice # 03/48 (H) |
| Exhibit AA-4 | Invoice # 04/48 (H) |
| Exhibit BB | Invoice # 48/46 (CP) |
| Exhibit BB-1 | Invoice # 139/46 (CP) |
| Exhibit BB-2 | Invoice # 297/47 (CP) |
| Exhibit BB-3 | Invoice # 341/47 (CP) |
| Exhibit BB-4 | Invoice # 77/48 (CP) |
| Exhibit BB-5 | Invoice # 220/48 (CP) |
| Exhibit CC | Invoice # 560/46 (L) |
| Exhibit CC-1 | Invoice # 610/46 (L) |
| Exhibit CC-2 | Invoice # 030/47 (L) |
| Exhibit CC-3 | Invoice # 090/47 (L) |
| Exhibit CC-4 | Invoice # 543/48 (L) |
| Exhibit CC-5 | Invoice # 592/48 (L) |
| Exhibit DD | Invoice # 45/46 (M) |
| Exhibit DD-1 | Invoice # 19/47 (M) |
| Exhibit DD-2 | Invoice # 54/47 (M) |
| Exhibit DD-3 | Invoice # 29/48 (M) |
| Exhibit DD-4 | Invoice # 38/48 (M) |
| Exhibit DD-5 | Invoice # 42/48 (M) |
| Exhibit EE | Invoice # 370188 A |
| Exhibit EE-1 | Invoice # 370633 A |
| Exhibit EE-2 | Invoice # 113/95 (MG) |
| Exhibit EE-3 | Invoice # 34/96 (MG) |
| Exhibit EE-4 | Invoice # 76/96 (MG) |
| Exhibit EE-5 | Invoice # 084/45 (MG) |

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| Exhibit EE-6 | Invoice # 017/46 (MG) |
| Exhibit EE-7 | Invoice # 431/46 (MG) |
| Exhibit EE-8 | Invoice # 260/47 (MG) |
| Exhibit EE-9 | Invoice # 611/47 (MG) |
| Exhibit EE-10 | Invoice # 264/48 (MY) |
| Exhibit EE-11 | Invoice # 229/48 (MY) |
| Exhibit FF | Invoice # 2/96 (S) |
| Exhibit FF-1 | Invoice # 74/96 (S) |
| Exhibit FF-2 | Invoice # 175/96 (S) |
| Exhibit FF-3 | Invoice # 64/97 (S) |
| Exhibit FF-4 | Invoice # 84/97 (S) |
| Exhibit FF-5 | Invoice # 5/98 (S) |
| Exhibit FF-6 | Invoice # 23/98 (S) |
| Exhibit FF-7 | Invoice # 23/99 (S) |
| Exhibit FF-8 | Invoice # 32/99 (S) |
| Exhibit FF-9 | Invoice # 11/43 (S) |
| Exhibit FF-10 | Invoice # 25/43 (S) |
| Exhibit FF-11 | Invoice # 18/44 (S) |
| Exhibit FF-12 | Invoice # 30/44 (S) |
| Exhibit FF-13 | Invoice # 05/45 (S) |
| Exhibit FF-14 | Invoice # 12/45 (S) |
| Exhibit FF-15 | Invoice # 07/46 (S) |
| Exhibit FF-16 | Invoice # 23/46 (S) |
| Exhibit FF-17 | Invoice # 01/47 (S) |
| Exhibit FF-18 | Invoice # 16/47 (S) |
| Exhibit FF-19 | Invoice # 24/47 (S) |
| Exhibit FF-20 | Invoice # 01/48 (S) |
| Exhibit FF-21 | Invoice # 17/48 (S) |
| Exhibit FF-22 | Invoice # 18/48 (S) |
| Exhibit GG | Advertising and Articles of Red Bull in Various Countries |
| Exhibit HH | Authenticated Special Power of Attorney from the Opposer |

Opposer prays, thus, that the instant opposition be allowed and that the subject application be denied.

A Notice to Answer was issued to and received by Respondent-Applicant on January 08, 2009. On February 09, 2009, Respondent-Applicant filed its ANSWER and alleges the following:

1. That Respondent-Applicant admits the allegation on Opposer's person and office address as well as its personality to file the opposition but denies that the word "RED BULL" and figures of two bulls are similar to the words "TORO" inside a dark rectangular device, the same is clearly different from the word "RED BULL" and figures of two bulls, and any buyer or purchaser of the products represented by each mark will surely distinguish the same. Certainly, there is no confusion arising therefrom and therefore no passing off is possible.
2. Respondent-Applicant admits that Opposer is filing the opposition under the Intellectual Property Code, but certainly denies that Respondent-Applicant's mark cannot be registered since the same is not identical or confusingly similar to Opposer's marks as discussed and stated above.
3. Respondent-Applicant admits that Opposer is the registrant of "DOUBLE BULL DEVICE" and "RED BULL" but again it denies that these marks are similar to its marks as discussed above. The mere word "TORO" is entirely different in spelling and appearance to "RED BULL." Further, the latter word is already much used in

commerce and abused that the same may soon become generic on syrups, whether alcoholic or not.

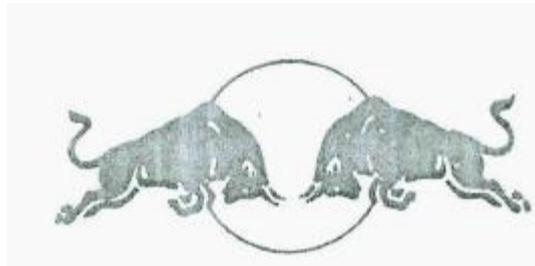
Moreover, respondent-applicant specifically denies opposer's allegations mentioned in Paragraphs 3 to 9 and 12 to 16 of the opposition for lack of knowledge on its part. Further, respondent-applicant specifically denies the allegations in Paragraph 10, alleging that its mark is certainly different from the word "BULL" as its products and goods are different and not related for which reason the law and rules have never been violated.

Respondent-applicant prays, thus, that the opposition be denied for lack of merit.

The issues to be resolved are as follows:

1. Whether the subject mark, "TORO INSIDE A DARK RECTANGULAR DEVICE" is confusingly similar to opposer's marks "DOUBLE BULL DEVICE" and "RED BULL"; and
2. Whether respondent-applicant is entitled to the registration of the mark "TORO INSIDE A DARK RECTANGULAR DEVICE".

Opposer's marks are depicted below:



Meanwhile, respondent-applicant's mark is depicted below:



"TORO INSIDE A DARK RECTANGULAR DEVICE"

A careful perusal of the competing marks shows that they are not literally the same visually and aurally, but they nevertheless give rise to a likelihood of confusion of goods and confusion of business as the meaning of the words evoke the same aural and visual impressions and connotations. "Toro" is the Spanish word for "bull". Said word is sometimes used as a Filipino colloquialism for the bull. Notwithstanding the literal difference of the words in terms of spelling and saying it, what immediately comes to mind when the competing marks are spoken or

read alternately is the image of a bull or bulls. When these image/s are created in the mind and connected to the goods to which they are attached, the likelihood of confusion is heightened: The image/s of a bull/s connote/s vigor, vitality, and/or strength, implying that the alcoholic and non-alcoholic products of either party produce or enhance these qualities or at least are associated with such qualities. The delineation of which products belong to whom is blurred.

Thus, even a purchaser from the sector who patronizes the products of the parties might likely be induced to believe that the goods of one party are those of the other party and/or that, at the least, there is some connection between opposer and respondent-applicant which, in fact, does not exist. There is likelihood not only of confusion of goods but also confusion of business. Similarity in size, form and color, while relevant, is not conclusive. Neither duplication/imitation, or the fact that the infringing label suggests an effort emulate, is necessary. The competing marks need only contain the main essential or dominant features of another; and that confusion and deception are likely (*Sterling Products International, Inc. v. Farbenfabriken Bayer Aktiengesellschaft*, G.R. No. L-19906, April 30, 1969; *Urn Hoa v. Director of Patents*, G. R. No. L-8072, October 31, 1956; *Co Tiong Sa v. Director of Patents, et al.*, G. R. No. L-5378, May 24, 1954). In this case, the dominant feature of the competing marks is actually the impression of a bull/bulls that is created in one's mind when one either reads the words "TORO" or "RED BULL", or when ones sees the "DOUBLE BULL DEVICE".

As to the first issue, thus, this Bureau rules in the affirmative.

It is to be noted that opposer has secured a registration for its mark "RED BULL" on March 14, 1995 per Certificate of Registration No. 60086, and for its mark "DOUBLE BULL DEVICE" on March 29, 1995 per Certificate of Registration No. 60093. Meanwhile, respondent-applicant applied for registration of the mark "TORO" on July 16, 2007. Thus, opposer's said marks to which respondent-applicant's mark is confusingly similar were already registered by the time respondent-applicant filed the aforesaid application.

Section 123.1 (d) of the IP Code provides:

"A mark cannot be registered if it:

(d) is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:

- (i) The same goods ... or
- (ii) Closely related goods ... or
- (iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion" (Underscoring supplied.)

Moreover, Section 138 of the IP Code provides:

"A certificate of registration of a mark shall be prima facie evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate."

Considering, then, that opposer has certificates of registration for its marks "RED BULL" and "DOUBLE BULL DEVICE" for goods which are similar/ related to opposer's and that respondent-applicant's mark "TORO" is confusingly similar to opposer's marks "RED BULL" and "DOUBLE BULL DEVICE", the Bureau rules in the negative as to the second issue.

WHEREFORE, the VERIFIED OPPOSITION is, as it is, hereby SUSTAINED. Consequently, Application Serial No. 4-2007-007519 filed on July 16, 2007 by respondent-applicant Grupo Osborne, S.A. for registration of the mark "TORO INSIDE A DARK RECTANGULAR DEVICE" for goods under International Classes 32, namely, "beer, mineral and

aerated waters and other non-alcoholic drinks, fruit juices, syrups and other preparations for making beverages; 33 for “alcoholic beverages (except beers)”; & 43 for “services for providing food and drink “is, as it is hereby, REJECTED.

Let the filewrapper of this case be forwarded to the Bureau of Trademarks (BOT) for appropriate action in accordance with this Decision.

SO ORDERED.

Makati City, August 24, 2009.

ESTRELLITA BELTRAN-ABELARDO
Director, Bureau of Legal Affairs
Intellectual Property Office