

RED BULL A.G.,
Opposer,

-versus-

BULLSONE CO., LTD.,
Respondent-Applicant.

}	IPC No. 14-2015-00149
}	Opposition to:
}	Appln. Serial No. 4-2014-014693
}	Date Filed: 27 November 2014
}	
}	
}	TM: BULLSHIELD DEVICE

X-----X

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2016 - 544 dated 23 December 2016 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOPHL Memorandum Circular No. 16-007 series of 2016, any party may appeal the decision to the Director of the Bureau of Legal Affairs within ten (10) days after receipt of the decision together with the payment of applicable fees.

Taguig City, 11 January 2017.

MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs

RED BULL A.G.,
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BULLSONE CO., LTD.,
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} **IPC NO. 14-2015-00149**
} Opposition to:
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} Appln. Ser. No. 4-2014-014693
} Date Filed: 27 November 2014
} Trademark: "**BULLSHIELD**
} **DEVICE**"
}
x-----x } Decision No. 2016-544

DECISION

RED BULL A.G., (Opposer)¹ filed an opposition to Trademark Application Serial No. 4-2014-014693. The application, filed by **BULLSONE CO., LTD.** (Respondent-Applicant)², covers the mark "**BULLSHIELD DEVICE**", for use on "Windscreen wipers, rearview mirrors for automobiles, automobile roof racks, automobile chains, covers for vehicle steering wheels, luggage racks for motor cars, seat covers for automobiles, multipurpose holder for motor cars, mobile phone holder for motor cars, compact disks case for motor cars, memo paper holder for motor cars, sunglasses holder for motor cars, sun-blinds adapted for automobile, vehicle door protectors (door defenders), automobile bumper guard (car bumper protector), gears shift knob, anti-skid pad for motor cars, sun visors for motor cars" under Class 12 of the International Classification of Goods³.

The Opposer anchors its opposition on the ground that the registration would be contrary to Section 123.1 (d) and Section 123.1 (f) of the Intellectual Property Code ("IP Code"), which states that:

Section 123. Registrability.- 123.1 A mark cannot be registered if
it: x x x

(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.

x x x

¹ A corporation organized and existing under the laws of Switzerland with address at Poststrasse 3, 6341 Baar, Switzerland

² with address at 7th Floor Dabong Tower Building, 418 Teheran-Ro, Gangnam-Gu, Seoul 135-839

³ The Nice Classification of Goods and Services is for registering trademarks and service marks based on multilateral treaty administered by the WIPO, called the Nice Agreement Concerning the International Classification of Goods and Services for Registration of Marks concluded in 1957.

(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 and services which are not similar to those with respect to which registration is applied for: Provided, that the use of the mark in relation to the 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.”

Opposer claims to be the owner of the internationally well-known RED BULL, DOUBLE BULL DEVICE and SINGLE BULL DEVICE (“Red Bull marks”) by prior use in commerce and application in the Philippines. It first used the mark in 1987 in Austria when it launched Red Bull Energy Drink. The Opposer further claims that its energy drink product has been sold in 160 countries worldwide, its mark registered in various jurisdictions worldwide, including the Philippines. As a result of extensive promotion and sales of Red Bull Energy drink, Opposer avers that it has built valuable goodwill.

The Opposer alleges that the Respondent-Applicant’s act in adopting the mark BULLSHIELD DEVICE for goods under Class 12, is an attempt to ride upon the goodwill and reputation of Opposer’s internationally well-known marks. The Opposer further alleges that Respondent-Applicant’s bull device is visually and conceptually similar to Opposer’s mark. The Opposer opines that the Respondent-Applicant’s bull device is identical/similar and very closely resembles its Red bull marks. According to the Opposer, the goods of both parties are commercially available through the same channels of trade and because the goods involved are related to the industries where the Opposer is very visible, the likelihood of confusion is a possibility. The Opposer argues that its Red Bull marks are widely used and recognized in the automotive industry, because the brand is endorsed by various celebrities. Locally it has sponsored numerous events, both motoring and motor sporting events. It obtained favorable decisions for the protection of its mark in various courts in jurisdictions abroad and in the Philippines. Thus, the Opposer believes that the registration of the BULLSHIELD DEVICE will cause confusion, mistake or deception to the public as to the source of goods, and will falsely suggest a connection between the Opposer to the Respondent-Applicant.

To support its opposition, the Opposer submitted as evidence the Affidavit of Jennifer A. Powers including copies of advertisements, publications and print-outs of Respondent’s website.⁴

The Respondent-Applicant filed its Answer on 17 September 2015, alleging among other things, that it began as an independent entity in 2001 and later on developed the engine system cleaner “BULLSONESHOT” with its own technology. The auto care product division of the company became a separate entity in 2001 with the establishment of the Respondent, Bullson Co., Ltd. It launched ‘Bullspower’ an engine coating agent that was jointly developed with the Korea Research Institute of Chemical Technology,

⁴ Annexes “A” to “D”, inclusive of submarkings

and obtained a patent for the product. The Respondent-Applicant avers that it registered its mark in various countries abroad and secured favorable decisions for the registration of the BULL MARK against the opposition of Red Bull A,G. in Korea. It further avers that it has obtained favorable decisions for the registration of its mark in Japan, United Arab Emirates and Thailand.

The Respondent-Applicant raised as its defense, that fact that Opposer's composite mark is different and cannot be confused with its mark because one is a composite mark, accompanied by the words "RED BULL", while the other mark is simply a device with no words. It describes Opposer's device as a single white charging bull with its head down while Respondent-Applicant's red jumping bull has its legs extending forward. The Respondent-Applicant states that the Opposer has no monopoly over the image of bulls as the IPOPhil trademark database reveal a number of registrations using the image of a bull. The Respondent-Applicant further states that the products of Opposer are not related to Respondent's goods. Finally, it argues that the average Filipino buys his automobiles, car-care products and energy drink by brand.

To support its Answer, the Respondent-Applicant submitted as evidence the Affidavit of Chang-Hoon Lee as evidence.⁵

The Preliminary Conference was held on 30 May 2016 where both parties were directed to file their respective position papers. The Opposer and the Respondent-Applicant filed their respective position papers on 28 June 2016 and 17 June 2016.

Should the Respondent-Applicant be allowed to register the trademark BULLSHILED AND DEVICE?

Records show that at the time Respondent-Applicant applied for registration of the mark BULLSHIELD AND DEVICE on 27 June 2014, the Opposer already registered the mark RED BULL for goods namely: "energy drinks". Respondent-Applicant's trademark application is applied on goods under Classes 12.

The question is: Are the competing marks identical or closely resembling each other such that confusion or mistake is likely to occur?

Red Bull



Opposer's mark



Respondent-Applicant's mark

⁵ Exhibit "1" inclusive of submarkings

The marks identical with respect to their use of the image of a bull. This similarity does not automatically result to a finding of confusing similarity. In Opposer's mark, the bull is depicted in a charging or fighting stance with its neck, head and horns positioned in a lowered position, as if ready to attack. On the other hand, the Respondent-Applicant's mark is a red colored bull, depicted with in a jumping position. The back of the bull is extended and while Opposer's bull has an arched or hunched back. The words RED BULL are on top of the bulls while a shield is a background for Respondent-Applicant's bull image. These peculiarities distinguish one from the other.

In the case of *Great White Shark v. Danilo Caralde*⁶, the Supreme Court upheld the finding that no confusing similarity existed in spite of the use of by the competing marks of the image of a shark on the same type of goods, it held:

In *Great White Shark's 'GREG NORMAN LOGO'*, there is an outline of a shark formed with the use of gree, yellow, blue and red lines/strokes. In contrast, the shark in *'Caralde's 'SHARK & LOGO'* mark is illustrated in letters outlined in the form of a shark with the letter 'S' forming the head, the letter 'H' forming the fins, the letters 'A' amd 'R' forming the body, and the letter 'K' forming the tail. In addition, the latter mark includes several more elements such as the word 'SHARK' in a different font underneath the shark outline, layers of waves, and a tree on the right side, and liberally used the color blue, with some parts in red, yellow, green and white. The whole design is enclosed in an elliptical shape with two linings, thus xxx

As may be gleaned from the foregoing, the visual dissimilarities between the (2) two marks are evident and significant, negating the possibility or confusion in the minds of the ordinary purchaser, especially considering the distinct aural difference between the marks. xxx”

Therefore, when the images of the marks are juxtaposed beside each other, bearing in mind the difference in the goods they represent, mistake, confusion as to source or even deception is not likely.

Aside from the visual dissimilarities of the marks, it is evident that the marks are to be applied on totally different goods. Clearly, energy drink is not the same in its characteristics or descriptive properties with goods under class 12. In the case of *Taiwan Kolin Corporation, Ltd. v. Kolin Electronics, Co., Inc.*⁷, the Supreme Court held:

While both marks refer to the word 'KOLIN' written in upper case letters and in bold font, the Court at once notes the distinct visual and aural differences between them: *Kolin Electronics' mark* is italicized and colored black while that of *Taiwan Kolin* is white in pantone red color background. The differing features between the two, though they may appear minimal, are sufficient to distinguish one brand from the other.

⁶ G.R. No. 192294, 12 November 2012

⁷ G.R. No. 209843, March 25, 2015

It cannot be stressed enough that the products involved in the case at bar are, generally speaking, various kinds of electronic products. These are not ordinary household items, catsup, soy sauce or soap which are of minimal cost. The products of the contending parties are relatively luxury items not easily considered affordable. Accordingly, the casual buyer is predisposed to be more cautious and discriminating in and would prefer to mull over his purchase. Confusion and deception, then, is less likely. xxx”


In the instant case, a customer intending to buy Respondent-Applicant’s goods, would mull over their purchase. They would not immediately form a connection that the goods are that of the Opposer’s simply because the mark of Respondent-Applicant has an image of a bull.

Finally, as correctly argued by the Respondent-Applicant, the IPOPhil trademark database reveals registrations using the image of a “bull”, which proves that the Opposer does not have a monopoly over the use a bull to distinguish its goods.⁸ As long as the images are distinct and unique, images of the same animal may be used as valid trademarks without the likelihood of confusion among the buying public.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2014-014693 is hereby **DISMISSED**. Let the filewrapper of the subject trademark be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 23 DEC 2016


Atty. **ADORACION U. ZARE, LL.M.**
Adjudication Officer
Bureau of Legal Affairs

⁸ Paragraph 31-35, Verified Answer