

RED BULL A.G.,  
Opposer,

-versus-

SAMMITR AUTOPART CO., LTD.,  
Respondent- Applicant.

X-----X

}  
} IPC No. 14-2015-00197  
} Opposition to:  
} Appln. Serial No. 4-2012-012166  
} Date Filed: 03 October 2012  
} TM: "SMA SAMMITR  
} AUTOPART"

**NOTICE OF DECISION**

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**GREETINGS:**

Please be informed that Decision No. 2017 - 151 dated April 27, 2017 (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, May 02, 2017.

**MARILYN F. RETUTAL**  
IPRS IV  
Bureau of Legal Affairs

**RED BULL A.G.,**  
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IPC No. 14-2015-00197

Opposition to Trademark  
Application No. 4-2012-012166  
Date Filed: 03 October 2012  
Trademark: "**SMA SAMMITR  
AUTOPART**"

Decision No. 2017- 151

### DECISION

Red Bull A.G.<sup>1</sup> ("Opposer") filed an opposition to Trademark Application Serial No. 4-2012-0121268. The contested application, filed by Sammitr Autopart Co., Ltd.<sup>2</sup> ("Respondent-Applicant"), covers the mark "SMA SAMMITR AUTOPART" for use on "*(machinery) machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs*" and "*(vehicles) vehicles; apparatus for locomotion by land, air or water*" under Classes 07 and 12, respectively, of the International Classification of Goods<sup>3</sup>.

According to the Opposer, it is the owner of the internationally well-known "RED BULL", "DOUBLE BULL DEVICE" and "SINGLE BULL DEVICE" trademarks by prior actual use in commerce and prior application in the Philippines and all over the world. It first used its internationally well-known "RED BULL" marks in 1987 in Austria when it launched Red Bull Energy Drink and has been using the mark openly and continuously around the world since then. To date, the Red Bull marks are protected in 200 jurisdictions worldwide. As a brand, the "RED BULL" marks are widely seen and associated with all forms of motorsport due to its use of the same in vehicles of all kinds which participate in various world famous motorsporting events. Its brand is also associated with programs aimed at cultivating young athletes as well as organizing, sponsoring and supporting a series of regional events. The Opposer thus objects the Respondent-Applicant's mark on the ground of confusing similarity.

In support of its Opposition, the Opposer submitted affidavit of Jennifer A. Powers.<sup>4</sup>

<sup>1</sup>A corporation duly organized and existing under and by virtue of the laws of Switzerland with business address at Poststrasse 3, 6341 Baar, Switzerland.

<sup>2</sup>With business address at 135 Moo 12 Petchkasem Rd., Om-Noi-Kratumban, Samuthsakorn 74130, Thailand.

<sup>3</sup>The Nice Classification is a classification of goods and services for the purpose of registering trademark and services marks, based on the multilateral treaty administered by the World Intellectual Property Organization. The treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks concluded in 1957.

<sup>4</sup>Marked as Exhibit "B".



This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 22 July 2015. The latter, however, did not file Answer. Thus, the Adjudication Officer issued Order No. 2016-932 on 08 June 2016 declaring the Respondent-Applicant in default and the case submitted for decision.

The issue to be resolved is whether the Respondent-Applicant's mark "SMA SAMMITR AUTOPART" should be allowed registration.

Records reveal that at the time the Respondent-Applicant filed an application for registration of the contested mark on 03 October 2012, the Opposer already has valid and existing registrations of its "RED BULL" marks issued as early as 16 July 2010 under Certificate of Registration No. 4-2009-000027.

But are the competing marks, as shown below, confusingly similar?

**Red Bull**



*Opposer's mark*



**SAMMITR AUTOPART**



*Respondent-Applicant's mark*

It can be readily gleaned that both marks appropriate a device consisting two bulls facing each other. The main difference is that the Opposer's mark uses of the words "RED BULL" above the bull device while that of the Respondent-Applicant's appropriate "SMA SAMMITR AUTOPART". Just the same, it is likely that consumers will be confused or have the wrong impression that the contending marks and/or the parties are connected or associated with one another. Even with the different accompanying word marks, the similar adoption of a two bulls facing each other will not eradicate the likelihood of confusion. It is possible that the consumers will be reminded of the Opposer's "RED BULL" marks when they see the logo in the Respondent-Applicant's. After all, confusion cannot be avoided by merely adding, removing or changing some letters of a registered mark. Confusing similarity exists when there is such a close or ingenuous imitation as to be calculated to deceive ordinary persons, or such resemblance to the original as to deceive ordinary

purchased as to cause him to purchase the one supposing it to be the other.<sup>5</sup> As held by the Supreme Court in **Del Monte Corporation vs. Court of Appeals**<sup>6</sup>:

***"The question is not whether the two articles are distinguishable by their label when set side by side but whether the general confusion made by the article upon the eye of the casual purchaser who is unsuspecting and off his guard, is such as to likely result in his confounding it with the original. As observed in several cases, the general impression of the ordinary purchaser, buying under the normally prevalent conditions in trade and giving the attention such purchasers usually give in buying that class of goods is the touchstone."***

That the Opposer's marks primarily cover energy drinks while the Respondent-Applicant uses its applied mark to vehicles, the probability of confusion still subsists. It is highly possible that purchasers will be confused, mistaken or deceived that the goods of the Respondent-Applicant is connected to, sponsored by or affiliated to the Opposer's because of the former's similar adoption of the mirroring bull logo. Of course, as in all other cases of colorable imitations, the unanswered riddle is why, of the millions of terms and combinations of letters and designs available, the Respondent-Applicant had to choose those so closely similar to another's trademark if there was no intent to take advantage of the goodwill generated by the other mark.<sup>7</sup> Noteworthy, the Respondent-Applicant was given ample opportunity to explain how it came up with the contested mark but it did not file an Answer.

Moreover, Section 123.1 paragraphs (d) of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code"), provides 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; xxx***" (Emphasis supplied.)

Furthermore, Callman notes two types of confusion. The first is the *confusion of goods* "in which event the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other." In which case, "defendant's goods are then bought as the plaintiff's, and the poorer quality of the

<sup>5</sup> Societe des Produits Nestle, S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.

<sup>6</sup> G.R. No. L-78325, 25 January 1990.

<sup>7</sup> American Wire & Cable Company vs. Director of Patents, G.R. No. L-26557, 18 February 1970.



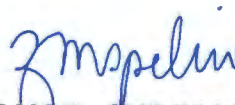
former reflects adversely on the plaintiff's reputation." The other is the *confusion of business*. "Here though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff, and the public would then be deceived either into that belief or into the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist."<sup>8</sup>

Finally, it is emphasized that the essence of trademark registration is to give protection to the owners of trademarks. The function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; to secure to him who has been instrumental in bringing into the market a superior article of merchandise, the fruit of his industry and skill; to assure the public that they are procuring the genuine article; to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his product.<sup>9</sup>

**WHEREFORE**, premises considered, the instant Opposition to Trademark Application No. 4-2012-012166 is hereby **SUSTAINED**. Let the filewrapper of the subject trademark application be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

**SO ORDERED.**

Taguig City, **27 APR 2017**



**Atty. Z'SA MAY B. SUBEJANO-PE LIM**  
Adjudication Officer  
Bureau of Legal Affairs

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<sup>8</sup> Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 172276, 08 August 2010.

<sup>9</sup> Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.