

**RED BULL AG,**  
*Opposer,*

**-versus-**

**MILES & LEVELS PHILIPPINES, INC.,**  
*Respondent-Applicant.*

X-----X

}	<b>IPC No. 14-2014-00101</b>
}	Opposition to:
}	Appln. Serial No. 4-2013-007950
}	Date Filed: 08 July 2013
}	
}	
}	
}	<b>TM: RED BUFFALO &amp; DEVICE</b>

**NOTICE OF DECISION**

**CESAR C. CRUZ & PARTNERS LAW OFFICES**  
*Counsel for Opposer*  
30<sup>th</sup> Floor, Ayala Life-FGU Center  
6811 Ayala Avenue, Makati City

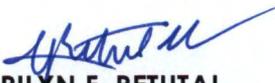
**MARCELINA M. CASTILLO**  
*Respondent- Applicant*  
Miles & Levels, Inc.  
9 Williams corner Sheridan Streets,  
Mandaluyong City

**GREETINGS:**

Please be informed that Decision No. 2017 - 200 dated 07 June 2017 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOPHEL 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, 07 June 2017.

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

<b>RED BULL A.G.,</b>	} <b>IPC NO. 14-2014-00101</b>
Opposer,	} Opposition to:
	}
-versus-	} Appln. Ser. No. 4-2013-007950
	} Date Filed: 8 July 2013
<b>MILES &amp; LEVELS PHILIPPINES, INC.,</b>	} Trademark: <b>"RED BUFFALO &amp;</b>
Respondent-Applicant.	} <b>DEVICE"</b>
	}
x-----x	} Decision No. 2017- 200

**DECISION**

RED BULL A.G., (Opposer)<sup>1</sup> filed an opposition to Trademark Application Serial No. 4-2013-007950. The application, filed by MILES & LEVELS PHILIPPINES, INC. (Respondent-Applicant)<sup>2</sup>, covers the mark "RED BUFFALO & DEVICE", for use on "air compressor, air flow, door lock, fan, jack hydraulic bottle, jack hydraulic floor, polisher, protector license, pump, pump foot, vacuum cleaner" under Class 7 of the International Classification of Goods<sup>3</sup>.

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

(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

<sup>1</sup> A corporation organized and existing under the laws of Switzerland with address at Poststrasse 3, 6431 Baar, Switzerland

<sup>2</sup> with address at 9 Williams Corner Sheridan Streets, Mandaluyong City

<sup>3</sup> 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.



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.

The Opposer alleges, among other things, that:

“14. The act of the Respondent-Applicant in adopting the mark RED BUFFALO & DEVICE for its products in International Class 7 is clearly an attempt to trade unfairly on the goodwill, reputation, consumer awareness and ride on the notoriety of the Opposer's internationally well-known RED BULL marks. Such act of the Respondent-Applicant results in the diminution and degradation of the value of the Opposer's internationally well-known RED BULL marks and usurpation of the property rights that rightfully belong to the Opposer. xxx

“15. The Opposer's internationally well-known RED BULL marks are with prior applications and/or registrations and is currently being used in the Philippines. The Respondent-Applicant's mark RED BUFFALO & DEVICE seeks registration in Class 7 despite the fact that the same is undoubtedly identical, similar and closely related to the Opposer's internationally well-known marks. As Opposer's marks are internationally well-known, the marks are highly likely to be associated, leading to consumer confusion as to the origin of the Respondent-Applicant's products which may gravely endanger the reputation of the Opposer.

“16. The Respondent-Applicant's mark is visually, aurally, phonetically and conceptually similar to the Opposer's internationally well-known RED BULL marks that was previously applied and/or registered in the Philippines and previously registered elsewhere in the world. The RED BULL marks are considered to be the distinct brand name for the Opposer's products that led to its recognition as the leading brand in energy drinks around the world including the Philippines.

“17. As one of the means of promoting the Opposer's products, it has invested and participated heavily in the motor sporting industry by having its own racing team in numerous and prestigious motor sporting races worldwide such as Formula One, the Dakar Rally, the Moto Grand Prix and the World Rally Championship. The attempt of the Respondent-Applicant to register the mark RED BUFFALO & DEVICE for products that directly related to the automotive industry will definitely lead to confusion among the Filipino public as it falsely suggests business associations, linkages, and/or sponsorship due to the vital participation of the Opposer in activities associated with the automotive industry.

“18. The RED BULL marks, specifically RED BULL, DOUBLE BULL DEVICE and SINGLE BULL DEVICE and the Respondent-Applicant's mark RED BUFFALO & DEVICE are identical and/or similar xxx”

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 and has been using the mark openly and continuously around the world since then. To date, the RED BULL marks are protected in two hundred jurisdictions worldwide. The Opposer's products have been extensively sold in more than 160 countries worldwide. As a result of extensive promotion and sales of Red Bull Energy drink, Opposer avers that it has built and now enjoys valuable goodwill in its business as represented by its internationally well-known RED BULL brand.

To support its opposition, the Opposer submitted as evidence the Authenticated Special Power of Attorney and the Affidavit of Jennifer A. Powers.<sup>4</sup>

This Bureau served upon the Respondent-Applicant a “Notice to Answer” on 30 May 2014. The Respondent-Applicant, however, did not file an Answer. Thus, the Hearing Officer issued on 26 August 2014 Order No. 2014-1118 declaring the Respondent-Applicant in default for its failure to file an Answer.

Should the Respondent-Applicant be allowed to register the trademark RED BUFFALO?

Records show that the Respondent-Applicant applied for registration of the mark RED BUFFALO on 8 July 2013 for goods under Class 7.

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



Opposer's mark



Respondent-Applicant's mark

Both marks contain the word “RED”. Both marks use the image of an animal. The Opposer utilizes the image of a bull 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 image of a buffalo, in a running

<sup>4</sup> Exhibit “A”/Annexes “A” and “B”, inclusive of submarkings.

and/or standing position. This similarity does not automatically result to a finding of confusing similarity between the two marks. The words BUFFALO and BULL are distinct and different. Bull is defined as a male cow, or male of particular animals such as elephant or whale.<sup>5</sup> A buffalo is defined as large animal of the cattle family with long curved horns.<sup>6</sup> The over-all commercial presentation of the marks are not the same. More importantly, however, since the marks are applied on different goods, the likelihood of confusion is remote. In the case of *Great White Shark v. Danilo Caralde*<sup>7</sup>, the Supreme Court upheld the finding that no confusing similarity existed in spite of the use 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 green, 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' and '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 of the Respondent-Applicant under class 7, namely: “air compressor, air flow, door lock, fan, jack hydraulic bottle, jack hydraulic floor, polisher, protector license, pump, pump foot, vacuum cleaner”. In the case of *Taiwan Kolin Corporation, Ltd. v. Kolin Electronics, Co., Inc.*<sup>8</sup>, 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

<sup>5</sup> <http://dictionary.cambridge.org/dictionary/english/bull>

<sup>6</sup> <http://dictionary.cambridge.org/dictionary/english/buffalo>

<sup>7</sup> G.R. No. 192294, 12 November 2012

<sup>8</sup> G.R. No. 209843, March 25, 2015

background. The differing features between the two, though they may appear minimal, are sufficient to distinguish one brand from the other.

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 not immediately form a connection that the goods are that of the Opposer’s, advertised extensively, even at promotional motor sports events, simply because the mark of Respondent-Applicant has an image of a buffalo and the words RED BUFFALO.

**WHEREFORE**, premises considered, the instant Opposition to Trademark Application No. 4-2013-007950 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, 07 JUN 2017

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