

RED BULL A. G.,
Opposer,

-versus-

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

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IPC No. 14-2015-00244
Opposition to:

Appln. Serial No. 4-2012-012165
Date Filed: 10 March 2012



TM:

NOTICE OF DECISION

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GREETINGS:

Please be informed that Decision No. 2017 - 232 dated 20 June 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, 20 June 2017.


MARILYN F. RETUAL
IPRS IV
Bureau of Legal Affairs

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Date Filed: 10 March 2012

Trademark: 

Decision No. 2017 - 232

DECISION

Red Bull A.G. ("Opposer"),¹ filed an opposition to Trademark Application Serial No. 4-2012-012165. The application, filed by Sammitr Autopart Co., Ltd. ("Respondent-Applicant"),² covers the mark "" for use on "*(machinery) machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (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 Goods³.

The Opposer alleges that it is the owner of the internationally well-known RED BULL, DOUBLE BULL DEVICE and SINGLE BULL DEVICE trademarks (the "Red Bull Marks") by prior actual use in commerce and prior application in the Philippines and all over the world. The Opposer first used its internationally well-known Red Bull Marks in 1987 in Austria when it launched Red Bull Energy Drink. It has been using the Red Bull Marks openly and continuously around the world since then. To date, the Red Bull Marks are protected in 200 jurisdictions worldwide. The Opposer's energy drink product has been sold in more than 160 countries worldwide. The global sales volume has grown from 113 million countries units in 1994 to over 5.4 billion units worldwide in 2013.

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

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

³ 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.

The Opposer further alleges that the Red Bull Marks are also used and/or registered globally and in the Philippines for a vast range of products and services offered by the Opposer. The Red Bull Marks and brand are probably one of the most widely seen and associated brands with all forms of motorsport due to the Opposer's use of the same on vehicles of all kinds in various world famous participating events. The Opposer's sponsorship in all forms, air, sea and land give the Red Bull Marks unrivalled visibility in the said area. It also sponsors other competitive motorsporting events which displayed Red Bull Marks across all events. In fact, in 1995, the Opposer began its participation in Formula One Racing, and sponsorship of the RED BULL SAUBER PETRONAS team, which it co-owned until 2001. At the end of 2004, the Opposer took over the former Jaguar team and renamed it RED BULL RACING and established "Team Red Bull".

Thus, as a result of the extensive promotion and sales of the Red Bull Energy Drink and associated products in the Asia-Pacific territories and worldwide, the Opposer has built and now enjoys valuable goodwill in its business as represented by its internationally well-known RED BULL brand. It has become distinctive for the Opposer's goods and services and has become a well-known name. Even the terms RED and BULL have independently acquired secondary meaning, sufficient to associate it with RED BULL.

Accordingly, the Opposer has not consented to the Respondent-Applicant's use and registration of the mark SRB SUPER RED BULL & DOUBLE BULL, or any other mark identical or similar to its internationally well-known RED BULL mark. Thus, the subject application should not be accepted as it is contrary to Section 1232.1 (d) and (f) of the Intellectual Property Code ("IP Code").

The Opposer's evidence consists of the following:

1. Original, legalized and authenticated Special Power of Attorney;
2. Affidavit of Jennifer A. Powers, Intellectual Property Counsel of Red Bull GmbH, inclusive of exhibits;
3. Pictures and publications of RED BULL sponsored events and copy of the video clip of Aaron Colton; and,
4. Bureau of Legal Affairs Decision dated 23 April 2015 in IPC No. 14-2013-00161;

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 08 September 2016. The latter, however, did not file an Answer. Thus, this Bureau issued Order No. 2017-825 dated 10 April 2017, declaring the Respondent-Applicant in default and the case submitted for decision.

Should the Respondent-Applicant be allowed to register the trademark



Prefatorily, 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.⁴

Records reveal that at the time the Respondent-Applicant filed an application for registration of the contested mark on 30 March 2016, 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



Respondent-Applicant's mark

The competing marks contain an almost identical image of two bulls facing each other. While the Opposer's mark has the words "Red Bull", it appears as description of the bull device, which is retained in the eyes and mind of the observer.

Thus, 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. The dissimilarities are almost negligible that one cannot help but at least be reminded of the Opposer's "RED BULL" marks when one sees Respondent-Applicant's bull logo. 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.⁵ As held by the Supreme Court in **Del Monte Corporation vs. Court of Appeals**⁶:

"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."

⁴ Pribhdas J. Mirpuri v. Court of Appeals, G.R. No. 114508, 19 November 1999.

⁵ Societe des Produits Nestle, S.A. v. Court of Appeals, GR No. 112012, 04 April 2001.

⁶ G.R. No. L-78325, 25 January 1990.

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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. Succinctly, 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 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."⁷

Furthermore, it is noteworthy that the mark "RED BULL" has been declared well-known by the Director General in the decision promulgated on 16 September 2010 in Appeal No. 14-07-21 (IPC No. 14-2006-00029) entitled "**T.C. Pharmaceutical Industries Co., Ltd. vs. Osborne Y Compania S.A.**", to wit:

"Accordingly, considering that at least a combination of the criteria set forth under the Trademark Regulations were met, RED BULL is deemed a well-known mark."

Corollarily, Section 123.1 paragraphs (d), (e) and (f) 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;

(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;

(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,

⁷ Societe des Produits Nestle, S.A. v. Dy, G.R. No. 1772276, 08 August 2010.

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That the interests of the owner of the registered mark are likely to be damaged by such use;

x x x”

Hence, the registration of the mark applied for registration by the Respondent-Applicant must not be allowed pursuant to Section 123.1 of the IP Code.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2012-012165 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. 20 JUN 2017



Atty. GINALYN S. BADIOLA, LL.M.
Adjudication Officer, Bureau of Legal Affairs