



RED BULL A.G.,
Opposer,

-versus-

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

}
} IPC No. 14-2013-00161

}
} Opposition to:

}
} Application No. 4-2012-012168

}
} Date filed: 03 October 2012

}
} TM: "SRB SUPER RED BULL
} BULL AND DOUBLE BULL"

X-----X

NOTICE OF DECISION

CESAR C. CRUZ AND PARTNERS

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GREETINGS:

Please be informed that Decision No. 2015 - 58 dated April 23, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City , April 23, 2015.

For the Director:


Atty. EDWIN DANILO A. DATING
Director III
Bureau of Legal Affairs



RED BULL A.G.,
Opposer,

-versus-

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

IPC No. 14-2013-00161

Opposition to Trademark
Application No. 4-2012-012168
Date Filed: 03 October 2012
Trademark: "**SRB SUPER RED
BULL AND DOUBLE BULL**"
Decision No. 2015- 58

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DECISION

Red Bull A.G.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2012-0121268. The contested application, filed by Sammitr Autopart Co., Ltd.² ("Respondent-Applicant"), covers the mark "SRB SUPER RED BULL AND DOUBLE BULL" 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 facts, according to the Opposer, are as follows:

"4. The Opposer is the owner of the internationally well-known RED BULL mark by prior actual use in commerce and prior application in the Philippines and all over the world. x x x

5. The Opposer first used its internationally well-known RED BULL marks 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 205 jurisdictions worldwide.

6. The Opposer's products has been extensively sold in more thn 157 countries worldwide. The Opposer's global sales volume has grown from 113 million units in 1994 to over 4.1 billion units worldwide in 2010. Based on these figures, the brand has undoubtedly become the unchallenged market leader for energy drinks world-wide.

7. The promotion of the RED BULL marks is focused on television, cinema and radio as well as print ad media such as leaflets, flyers, retail displays and the like. The Opposer also participates and/or sponsors different events both regionally and internationally which further boosts the renown of the RED BULL marks and

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

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

³The 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.

brand. Internationally, the RED BULL marks are prominently presented in numerous events with a world-wide following such as in Formula One, Dakar Rally, World Rally Championship and Red Bull X-Fighters World Tour. In addition, the RED BULL brand is associated with programmed aimed at cultivating young athletes as well as organizing, sponsoring and supporting a series of regional events such as Red Bull Jams, Red Bull Drifting, Red Bull Quicket, Red Bull Can Art and many, many more.

8. 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 sold in commerce all over the world. RED BULL has become a well-known name. Even the terms RED and BULL have independently acquired secondary meaning, sufficient to associate it with RED BULL. x x x

9. The Opposer has extensively sold and promoted its products bearing its internationally well-known RED BULL trade mark across the Asia-Pacific Regions and has been doing so prior to the Respondent-Applicant's filing of its trademark application for the mark SRB SUPER RED BULL & DOUBLE BULL with this Honorable Office.

10. Notwithstanding the prior use and prior application of the Opposer's internationally well-known RED BULL mark, the Respondent-Applicant filed Trademark Application No. 4-2012-012168 for SRB SUPER RED BULL & DOUBLE BULL on October 03, 2012 with this Honorable Office.

11. 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 for that matter."

In support of its Opposition, the Opposer submitted affidavit of Jennifer A. Powers.⁴

This Bureau issued a Notice to Answer and served a copy thereof upon the Respondent-Applicant on 05 July 2013. The latter, however, did not file Answer. Thus, the Hearing Office issued Order No. 2013-1584 on 20 November 2013 declaring the Respondent-Applicant in default and the case submitted for decision.

The issue to be resolved is whether the Respondent-Applicant's mark "SRB SUPER RED BULL AND DOUBLE BULL" should be registered.

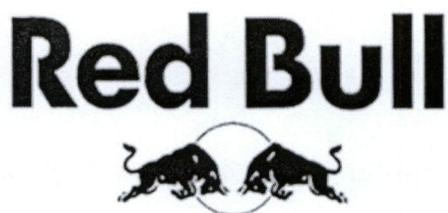
Prefatorily, it is emphasized that the essence of trademark registration is to give protection to the owners of trademarks. The function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; to secure to him who has been instrumental in bringing into the 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

⁴ Marked as Exhibit "B".

manufacturer against substitution and sale of an inferior and different article as his product.⁵

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?



Opposer's mark



Respondent-Applicant's mark

When one looks at the Opposer's mark, what is retained in the eyes and mind are the words "RED BULL" and the picture of two bulls facing each other. The same conclusion can be drawn when one looks at the Respondent-Applicant's mark, the word "SUPER" and the letters "SRB" notwithstanding. 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. The dissimilarities are almost negligible that one cannot help but at least be reminded of the Opposer's "RED BULL" marks when one sees the "SRB SUPER RED BULL AND DOUBLE BULL" mark. 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.⁶ As held by the Supreme Court in **Del Monte Corporation vs. Court of Appeals**⁷:

"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

⁵ Pribhdas J. Mirpuri vs. Court of Appeals, G.R. No. 114508, 19 November 1999.

⁶ Societe des Produits Nestle, S.A. vs. Court of Appeals, GR No. 112012, 04 April 2001.

⁷ G.R. No. L-78325, 25 January 1990.

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. 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."⁸

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;

⁸ Societe des Produits Nestle, S.A. vs. Dy, G.R. No. 1772276, 08 August 2010.

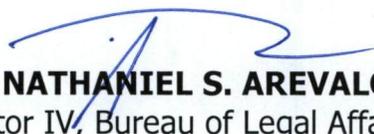
(f) Is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods or services which are not similar to those with respect to which registration is applied 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; xxx"

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. 4-2012-012168 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, 23 April 2015.


Atty. NATHANIEL S. AREVALO
Director IV, Bureau of Legal Affairs