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| **RED BULL A.G.,**<br>*Opposer,*<br><br>**-versus-**<br><br>**BULLSONE CO., LTD.,**<br>*Respondent-Applicant.* | } | **IPC No. 14-2015-00119**<br>Opposition to:<br>Appln. Serial No. 4-2014-009557<br>Date Filed: 01 August 2014<br><br>**TM: BULLSONE** |

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**NOTICE OF DECISION**

**CESAR CRUZ AND PARTNERS**
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**GREETINGS:**

Please be informed that Decision No. 2016 - 543 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. RETUTAL**
IPRS IV
Bureau of Legal Affairs

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| **RED BULL A.G.,** | }**IPC NO. 14-2015-00119** |
| Opposer, | }Opposition to: |
| | } |
| -versus- | }Appln. Ser. No. 4-2014-009557 |
| | }Date Filed: 1 August 2014 |
| **BULLSONE CO., LTD.,** | }Trademark: **"BULLSONE"** |
| Respondent-Applicant. | } |
| | } |
| x----------x | }Decision No. 2016-543 |

**DECISION**

**RED BULL A.G.,** (Opposer)[1] filed an opposition to Trademark Application Serial No. 4-2014-009557. The application, filed by **BULLSONE CO., LTD.** (Respondent-Applicant)[2], covers the mark "BULLSONE", for use on "additives (detergent) to gasoline [petrol]; fuel-savings preparations; additives, chemical, to motor fuels; anti-tarnishing chemicals for windows; anti-freeze; radiator flushing chemicals; anti-static preparations, other than household purposes; decarbonizing engines (chemical preparations for); additives (chemical) for oils; frosting chemicals (glass) under Class 1; Antistatic preparations for household purposes, rust removing preparations; paint stripping preparations; air (canned pressurized) for cleaning and dusting purposes; aromatic for household purposes; ragrance for household purposes; aromatics for automobiles; windscreen cleaning liquids; detergents for automobiles; automobile polishes" under Class 3; "Dust laying compositions, dust removing preparations; lubricants; dust binding compositions for sweeping; oil for preservation of leather; additives, non-chemical, to motor-fule; lubricating oil for motor vehicle engines; gas for lighting; carburants; non-chemical additives for oils and fuels" under Class 4; and "Deodorants, other than for personal use; insect repellants; incense (insect repellant); air purifying preparations; air freshening preparations; insecticides; disinfectants for hygiene purposes; sticks (fumigating); fumigating pastilles" under Class 5 of the International Classification of Goods[3].

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

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

[2] A corporation organized in Korea 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.



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(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 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 BULLSONE for goods under Classes, 1, 3, 4 and 5, 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 BULLSONE 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 of Red Bull, Video clip of Aaron Colton, 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, Bullsone Co., Ltd. It launched 'Bullspower' an engine coating agent that was jointly developed with the Korea Research Institute of Chemical Technology, 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 1 June 2016 where both parties were directed to file their respective position papers. The Opposer and the Respondent-Applicant filed their respective position papers on 25 June 2016 and 17 June 2016.

Should the Respondent-Applicant be allowed to register the trademark BULLSONE?

The records show that Respondent-Applicant applied for registration of the mark BULLSONE on 1 August 2014. The IP trademark database shows that the Opposer already registered the mark RED BULL for "Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; walkie-talkies; portable and mobile telephones and parts, spare parts equipment"

[4] Annexes "A" to "D", inclusive of submarkings
[5] Exhibit "1" inclusive of submarkings

under Class 9; "Telecommunications; transmission of radio and television programs; electronic bulletin board services; wireless mobile phone services; providing telecommunications connections to a global computer network..." under Class 38; "Scientific and technological services and research and design relating thereto..." under Class 42; "Tobacco; smoking tobacco, snuff and chewing tobacco; cigars; cigarillos and cigarettes..."; under Class 34; "games and playthings, namely, playing cards, card games and board games; practical jokes (novelties), confetti; gymnastic and sporting articles (included in class 28); gymnastics and sports equipment" under Class 28; "Education, providing of training and entertainment..." under Class 41; and "Services for providing food and drinks..." under Class 43. The Opposer claims prior application and use of the mark on goods namely: "energy drinks" under Class 32 while the Respondent-Applicant's trademark application is applied on goods under Classes 1, 3, 4 and 5.

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

Bullsone

Respondent-Applicant's mark

The marks identical with respect to their use of the term "BULL" as the second word in Opposer's composite mark and prefix in Respondent-Applicant's mark. This similarity does not automatically result to a finding of confusing similarity. The Opposer's composite mark, includes two bulls depicted in a charging or fighting stance with its neck, head and horns positioned in a lowered position, as if ready to attack. Above the pictorial representation of the bulls the words RED BULL. On the other hand, the Respondent-Applicant's mark is one word, written in block style. The Opposer argues that Respondent merely added the letter "S" and the word "ONE" which can easily be read as "BULL'S and "ONE", "BULL'S-ONE", that could pass as a variant of Opposer's RED BULL. We disagree. BULLSONE is a mere word mark, while Opposer's is a composite mark with two words and the representation of two bulls.

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 classes, 1,3,4 and 5, namely: "additives (detergent) to gasoline [petrol]; fuel-savings preparations; additives, chemical, to motor fuels; anti-tarnishing chemicals for windows; anti-freeze; radiator flushing chemicals; anti-static preparations, other than household purposes; decarbonizing engines (chemical preparations for); additives (chemical) for oils; frosting chemicals (glass) under Class 1; Antistatic preparations for household purposes, rust removing preparations; paint stripping preparations; air (canned pressurized) for cleaning and dusting purposes; aromatic for household purposes; ragrance for household purposes; aromatics for

automobiles; windscreen cleaning liquids; detergents for automobiles; automobile polishes" under Class 3; "Dust laying compositions, dust removing preparations; lubricants; dust binding compositions for sweeping; oil for preservation of leather; additives, non-chemical, to motor-fule; lubricating oil for motor vehicle engines; gas for lighting; carburants; non-chemical additives for oils and fuels" under Class 4; and "Deodorants, other than for personal use; insect repellants; incense (insect repellant); air purifying preparations; air freshening preparations; insecticides; disinfectants for hygiene purposes; sticks (fumigating); fumigating pastilles" under Class 5.

In the case of Taiwan Kolin Corporation, Ltd. v. Kolin Electronics, Co., Inc.[6], 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.
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> x x x
>
> It is hornbook doctrine, as held in the above cited cases, that emphasis should be on the similarity of the products involved and not on the arbitrary classification or general description of their properties or characteristics. The mere fact that one person has adopted and used a trademark on his goods would not, without more, prevent the adoption and use of the same trademark by others on unrelated articles of a different kind.

Preceding there from, the more reason that BULLSONE may be registered considering that the products of Respondent are so remote to the goods of the Opposer. The Respondent-Applicant's goods are car care products and automotives and even if the marks of Opposer are visible in sporting and motor events, confusion is unlikely because the products are so different. Besides, the ordinary buyer must be credited with a modicum of intelligence in making purchases. Again, in Taiwan Kolin[7], the Supreme Court held:

> 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"

[6] G.R. No. 209843, March 25, 2015
[7] Ibid

In the instant case, a customer intending to buy Respondent-Applicant's goods, would mull over their purchase, as they are not ordinary household items. They would not immediately form a connection that the goods are sponsored by or affiliated with that of the Opposer's RED BULL, simply because the mark of Respondent-Applicant uses the prefix/letters "BULL" in BULLSONE.

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

**WHEREFORE,** premises considered, the instant Opposition to Trademark Application No. 4-2014-009557 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 25-27, Verified Answer