

“CARABAO” AND “RED BULL” UNLOCK HORNS

by Somboon Earterasurun

Frederick W. Mostert and Lawrence E. Apolzon, the authors of *From Edison to iPod: Protect Your Ideas and Make Money*, quote the following words of wisdom from Frederick’s father:

“When your client is looking for blood, settlement seems tame. But always, always try to settle first. Only if you’ve tried everything reasonable to settle out of court and failed, do you take off the gloves. And then: to battle.”

This philosophy is illustrative of the approach employed by Carabao Tawandang Company Limited in its cases against Red Bull GmbH on the use and registration of the marks “Carabao & Device” and “Red Carabao & Device” with respect to “energy drinks products.”



vs.



Carabao Tawandang Company Limited (hereinafter referred to as “Carabao”) was established in Thailand in 2001, and it has rapidly become one of the top three energy drink beverages manufacturers locally, where the industry’s volume is well over Baht 15 billion (approx. US\$470 million) a year. Carabao launched a range of energy drink products in Thailand in 2002 under the brand “Carabao Daeng” or “Red Carabao” with a figurative element made up of a horned buffalo skull on a predominantly red



*Somboon Earterasurun, Trademark Executive
Intellectual Property Department*

circular background. This buffalo design was originated by a famous Thai rock band, which has been in existence for more than 25 years. The band members also hold 50% stake in the company. The products were later distributed on a global basis.

After an enormous welcome in the local market, Carabao applied for registration of both the marks “Red Carabao & Device” as well as “Carabao & Device” as shown above in more than 100 countries worldwide, including the major European, American, and Asian energy drinks markets.

Most of the trademark applications were approved by the Examiners in each country, but these applications encountered oppositions/cancellations by

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Red Bull GmbH and its affiliates in a number of countries. Several cases went to Court, but there was no general consensus about the likelihood of confusion among consumers, as it solely depends on each country's circumstances. One generalization that can be drawn from the case is that the success rate in defending the mark "Carabao & Device" was greater than the defense of "Red Carabao & device."

As one can anticipate, considerable expenses in legal fees and valuable

management time and efforts of both parties were put toward reaching a settlement agreement, but a resolution was not easily achieved. After approximately four years of opposition and cancellation proceedings, these efforts finally proved to be successful when both parties agreed to settle the cases amicably on a worldwide basis late last year.

The settlement was clearly a positive outcome because Carabao and Red Bull GmbH were able to reach a mutual agreement on the terms and obligations with which each party has to comply.

Both parties had already dedicated significant resources to the disputes in Court, and the settlement ensured that these efforts were not in vain and that further resources would not have to be expended. Settlement may seem tame, but this is yet another story which proves that where applicable, settlement of disputes through negotiation can be a fast, cost-effective, confidential, and interest-based procedure for the parties to a dispute. ♦