

World Trademark Review Daily

**Supreme Court finds 'bull' marks not to be confusingly similar
Thailand - Tilleke & Gibbins**

**Examination/opposition
National procedures**

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The Trademark Act (BE 2534 (AD 1991)), as amended by the Trademark Act (No 2) (BE 2543 (AD 2000)), provides that, in order to be registered, a trademark or service mark must not be identical, or similar, to an earlier registered trademark. Additionally, a trademark must not be identical, or similar, to a well-known mark, and cause public confusion as to the proprietor of the mark.

In *TC Pharmaceutical Industrial Co Ltd v Bullson Co Ltd* (13889-13891/2553, December 30 2010, released on October 10 2011), the Supreme Court has examined the possibility of confusion between a trademark application and an earlier registered mark that is well known in Thailand.

TC Pharmaceutical Industries Co Ltd filed an opposition with the Department of Intellectual Property against three applications filed by Bullson Co Ltd for the registration of the trademark BULLSPower for goods in Classes 1, 2 and 4 of the Nice Classification. TC Pharmaceutical claimed that Bullson's trademark was confusingly similar to its well-known mark RED BULL and related 'bulls' device, which are registered for goods in Classes 29, 30, 31, and 32. The trademark registrar found that BULLSPower was not confusingly similar to the RED BULL mark or the 'bulls' device. TC Pharmaceutical appealed to the Board of Trademarks, which agreed with the trademark registrar's decision.

TC Pharmaceutical then filed a complaint with the Central Intellectual Property and International Trade Court (IP & IT Court) against Bullson (as the first defendant) and the Board of Trademarks (as the second defendant). The suit claimed that the board's decision was unlawful because the first defendant's trademark was confusingly similar to TC Pharmaceutical's trademarks. In particular, TC Pharmaceutical noted that the first defendant's trademark contained the essential element 'bull', which was identical to the essential element of TC Pharmaceutical's mark, and that the first defendant had disclaimed the exclusive right to use the word 'power'. Therefore, the word 'power' was not an essential part of the first defendant's mark.

The IP & IT Court disagreed with TC Pharmaceutical's arguments and decided that the mark BULLSPower was not similar to any of the plaintiff's marks. The IP & IT Court thus dismissed the complaint.

The plaintiff subsequently appealed to the Supreme Court, which affirmed the IP & IT Court's decision. According to the Supreme Court, in considering the similarities between the marks, it is necessary to consider the overall appearance of the marks, rather than focusing only on certain elements.

The Supreme Court agreed with TC Pharmaceutical's premise that the first defendant had disclaimed the exclusive right to use the word 'power' and that both marks shared the common word 'bull'. However, the court held that the marks belonging to TC Pharmaceutical were RED BULL (or RED BULL and 'bulls' device), and that the goods covered by the parties' marks were different. Therefore, the Supreme Court found that the first defendant's mark was not confusingly similar to TC Pharmaceutical's marks and, therefore, would not cause confusion among consumers.

The Supreme Court clearly made its decision on the likelihood of confusion by focusing on the appearance of the marks, their pronunciation and the goods covered by each mark. The court did not give special consideration to the earlier mark's well-known status.

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