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Bottorff

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Red Bull GmbH
v.
American Baseball Company, Inc.

Opposition No. 91150958
to application Serial No. 76201394
filed on January 29, 2001

Opposition No. 91150961
to application Serial No. 76201393
filed on January 29, 2001

Martin R. Greenstein of TechMark a Law Corporation for Red
Bull GmbH.

Robert B. Famiglio of Famiglio & Associates for American
Baseball Company, Inc.

Before Bucher, Bottorff and Holtzman, Administrative
Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

The above-captioned opposition proceedings were
consolidated by order of the Board dated January 22, 2003.

The cases are now ready for decision, and shall be decided

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by the Board in this single opinion, which shall be entered in the proceeding files of both proceedings.

In application Serial No. 76201394 (involved in Opposition No. 91150958), applicant seeks registration on the Principal Register of the mark BULL NECK (in typed form) for goods identified in the application as "leather sports equipment, namely baseball gloves," in Class 28. In application Serial No. 76201393 (involved in Opposition No. 91150961), applicant seeks registration of the mark PLAY BALL WITH THE BULL (in typed form) for the same goods. Both applications are based on applicant's asserted bona fide intention to use the respective marks in commerce, under Trademark Act Section 1(b), 15 U.S.C. §1051(b).

Opposer has opposed registration of both of applicant's marks, alleging as its ground of opposition in both cases that opposer is the prior user of the corporate name, trade name and trademark RED BULL on and in connection with various non-alcoholic beverages including energy drinks and sports drinks, and on or in connection with other products and services relating to or complementary to its beverages, including sports equipment; that opposer is the owner of Registration No. 2494093, which is of the mark RED BULL for goods and services in numerous classes, including Class 28; that opposer also owns "various trademarks for and which include the word BULL, as well as the design or logo of a

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Bull" for the aforesaid goods and services; and that each of applicant's marks, as applied to the goods identified in the applications, so resembles opposer's marks as to be likely to cause confusion, to cause mistake, or to deceive.

Trademark Act Section 2(d), 15 U.S.C. §1052(d).

In each case, applicant filed an answer by which it essentially denied the salient allegations of the notices of opposition.¹

At trial, opposer presented evidence, but applicant did not. Both parties filed main briefs, and opposer filed a reply brief.² No oral hearing was requested. For the reasons discussed below, we dismiss the opposition in each case.

The evidence of record consists of the pleadings; the files of the opposed applications; status and title copies of five registrations owned by opposer, submitted by opposer via notice of reliance;³ and printouts of articles and other

¹ Applicant's answers also include allegations of various affirmative defenses which either are not legally cognizable in an opposition proceeding or which, in any event, were not established at trial. We have given these allegations no consideration.

² Opposer's motion to extend the time for filing its reply brief is granted.

³ In the two notices of opposition, opposer specifically pleaded only one registration, Reg. No. 2494093. The other four registrations submitted via notice of reliance were not pleaded by number. See Trademark Rule 2.106(b)(1). However, because applicant in its brief has treated the unpleaded registrations as being of record and at issue, we deem the pleadings in each of the oppositions to be amended to include the additional

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materials downloaded from the Internet by opposer's attorney, submitted by opposer via notice of reliance.⁴

The five registrations made of record by opposer in support of its Section 2(d) claim are:

- Registration No. 2494093, which is of the mark RED BULL (in typed form) for goods and services in eighteen classes.⁵ Opposer relies particularly on the following goods and services identified in the registration: "balls for ... baseball" in Class 28; "sports drinks" and various other non-alcoholic beverages in Class 32; "promoting sports events and competitions for others" in Class 35; and "sports competitions, namely, baseball and football games" in Class 41;

registrations. See Fed. R. Civ. P. 15(b); *Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650, 1653 n.2 (TTAB 2002).

⁴ Materials downloaded from the Internet are not self-authenticating "printed publications" which may be made of record via notice of reliance. See Trademark Rule 2.122(e), 37 C.F.R. §2.122(e); *Plyboo America Inc. v. Smith & Fong Co.*, 51 USPQ2d 1633, 1634 n.3 (TTAB 1999); *Raccioppi v. Apogee Inc.*, 47 USPQ2d 1368, 1370 (TTAB 1998). However, because applicant has not objected to these materials but instead has treated them as being of record and at issue, we deem applicant to have waived any objection to the admissibility of these materials, and we deem them to be of record. See *Conde Nast Publications Inc. v. Vogue Travel, Inc.*, 205 USPQ 579, 580 n.5 (TTAB 1979); TBMP §704.08 at n.204 (2d ed. June 2003). However, we have given the materials only so much probative value as they deserve. In particular, these documents are admissible and probative only for what they show on their face, not for the truth of the matters asserted therein. See, e.g., *Harjo v. Pro-Football Inc.*, 50 USPQ2d 1705, 1721 n.50 (TTAB 1999); TBMP §704.08 at n.201 (2d ed. June 2003).

⁵ Issued October 2, 2001, pursuant to Trademark Act Section 44, 15 U.S.C. §1126. No use in commerce is alleged as to any of the goods and services, which are in Classes 3, 5, 12, 14, 16, 18, 20, 25, 26, 28, 29, 30, 32, 34, 35, 39, 41 and 42.

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- Registration No. 1935272, which is of the mark RED BULL (in typed form) for "malt liquor" in Class 32;⁶

- Registration No. 2579008, which is of the mark BULL (in typed form) for various nonalcoholic beverages including "energy and sports drinks" in Class 32;⁷

- Registration No. 2560956, which is of the mark ENERGY BULL (ENERGY disclaimed) for goods and services in Classes 32, 33 and 42, including "sports drinks; energy drinks; isotonic drinks, hypertonic drinks and hypotonic drinks, for use and/or as required by athletes and those engaged in active or stressful sports and activities" in Class 32, and "technical consultation and research services in the field of food and beverages, health and fitness, sports, sports training and physical performance" in Class 42;⁸ and

- Registration No. 2524020, which is of the mark SPEEDY BULL for goods in Classes 32, 33 and 34, including "sports drinks; energy drinks; isotonic drinks, hypertonic drinks and hypotonic drinks, for use and/or as required by athletes

⁶ Issued November 14, 1995 to Stroh Brewery Company and later assigned to opposer; affidavits under Section 8 and 15 accepted and acknowledged. The registration is based on use in commerce, and September 1985 is alleged as the date of first use and first use in commerce.

⁷ Issued June 11, 2002. The registration is based on use in commerce, and alleges January 1987 as the date of first use, and January 1996 as the date of first use in commerce.

⁸ Issued April 16, 2002, pursuant to Trademark Act Section 44, 15 U.S.C. §1126. No use in commerce is alleged.

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and those engaged in active or stressful sports and activities" in Class 32.⁹

Because opposer has made of record status and title copies of its registrations, we find that opposer has established its standing to oppose. *See, e.g., Lipton Industries, Inc. v. Ralston Purina Company*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982). Also, Section 2(d) priority is not at issue in this case with respect to the marks and the goods and/or services covered by opposer's registrations. *See King Candy Co., Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974). We turn now to the Section 2(d) issue of whether a likelihood of confusion exists as between applicant's marks and any of the registered marks made of record by opposer.

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks."

⁹ Issued January 1, 2002, pursuant to Trademark Act Section 44, 15 U.S.C. §1126. No use in commerce is alleged.

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Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Before we discuss the relevant *du Pont* factors, we must address two contentions by opposer regarding its Internet evidence, which appear to underlie opposer's likelihood of confusion arguments to a large extent. Specifically, opposer argues that the Internet materials made of record via notice of reliance establish two facts which support a finding of likelihood of confusion. First, opposer contends, the materials establish that there exists a "close association" in the public's mind between opposer's RED BULL energy drink and "baseball and baseball-related activities." Second, opposer contends, the materials establish that the press and the purchasing public commonly refer to opposer and/or to opposer's RED BULL energy drink by the shortened nickname "the Bull." Aside from the hearsay problems with this evidence, we are not persuaded that the evidence establishes either of these contentions.

The fact that opposer was able to locate seven Internet articles or postings which happen to mention both baseball and opposer's RED BULL beverage product does not establish that there is any particular association between the two in the public's mind which would create or enhance a likelihood of confusion. These articles refer only incidentally or tangentially to opposer's product, and always with reference

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to its caffeine content, not to any connection between the product and the sport of baseball, per se.¹⁰ To the extent

¹⁰ The posting on WebMD.com is an article about a completely different product, i.e., a caffeine/ephedrine dietary supplement called "Ripped Fuel," and its potential drawbacks when used by professional baseball players. The article closes as follows:

Every baseball season, one supplement or another becomes popular, Stout says. "Right now, for instance, the Boston Red Sox are all drinking Red Bull," says Stout, who says ..."I don't have any problem with that, because it is really only ginseng tea and is harmless. There isn't any ingredient in it that can improve their performance, but they think it does, so maybe it helps."

Red Bull, according to its web site, is a high-energy drink made from the amino acid taurine and also contains caffeine.

The article's statement that "the Boston Red Sox are all drinking Red Bull" clearly is hearsay and not proof of the matter asserted. In any event, the statement appears in the article in the context of a discussion about professional baseball players' use of dietary supplements generally; it does not prove opposer's contention that there is a "close association" in the public's mind between baseball and opposer's product in particular.

The October 29, 2002 article from the Orange County Register is about the Anaheim Angels' 2002 World Series victory celebration rally which was held at the ballpark and attended by 100,000 fans. Opposer's Red Bull product is mentioned only in passing, in the context of a discussion of how advertisers were using the rally as a marketing opportunity: "It was a banner day for advertisers who used small airplanes to get their messages across, while others handed out freebies to lure potential customers. A woman handing out Red Bull energy drinks from the back of a sport utility vehicle rubbed her hands, cold from digging into the ice and pulling out the beverage. 'Do you want a Red Bull?' she asked."

The July 3, 2002 posting on the East Coast Sports Network website mentions Red Bull only in passing, and in connection with late-night viewing of World Cup soccer, not baseball: "Well, after a month of staying up 'til all hours of the night to watch the World Cup (my thanks to the man who invented Red Bull)..."

(footnote cont. next page)

The posting on the strikethree.com website discusses many baseball topics, and includes a mention of Red Bull only at the end, in the "About the author" tagline: "Michael Cox is now officially really, really tired. Send Red Bull to [him], and make it snappy."

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that the Internet evidence might be deemed to show any connection at all between opposer's energy drink and the sports world, it is with respect to opposer's sponsorship of "extreme" sports competitions and events such as snowboarding, big mountain skiing, kitesurfing, street luge, endurance cycling and cliff diving, not baseball.

Nor does opposer's Internet evidence establish that the public commonly refers to opposer or its products as "the Bull." There are seven postings which refer to opposer's product as "the Bull" or "Bull," most of which use that term only as part of a clever or punning headline;¹¹ in the text of these articles, opposer's product is called "Red Bull." In any event, these usages of "the Bull" or "Bull" are in reference only to opposer's energy drink, which is already

The posting on the mlb.com website is an hour-by-hour recounting of two fans' "quest to make it to all 30 ballparks in 50 days." At 4:21 a.m. of Day One, the two fans make their only reference to Red Bull: "I think I see the sun rising in the distance. We may stay up late every night hopped up on Red Bull writing quirky leads about pine tar and the hour-to-hour deterioration of our sanity..."

The August 23, 2003 article on espnmag.com includes, buried deep in its text, the following rather random reference to Red Bull: "My violin's in the shop, or else I'd be playing it like Charlie Daniels after six Red Bull vodkas..."

A similarly random reference to Red Bull appears in the August 24, 2001 article from the Las Vegas Mercury about Cal Ripken's consecutive games streak: "...I believe some of us would work 2,632 consecutive days if we were earning that kind of money and even show up on time if we had stayed out the night before drinking Red Bull and vodka at Studio 54 until 3 a.m."

¹¹ Examples are: "It's a (Red) Bull Market After All"; "Running of the Bull: How the Brand Got Hot"; "Get the Bull about 'Red Bull'"; "A Bull Market"; "The Rage Over the Bull"; and "The Bull Witch Project."

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covered by opposer's Registration No. 2579008 of the mark BULL. The evidence does not show use of "the Bull" or "Bull" in reference to any of the other goods or services covered by opposer's registrations.

In short, the Internet evidence submitted by opposer fails to prove opposer's contentions that there is a close association in the public's mind between opposer or its products and the sport of baseball, or that the public commonly refers to opposer or its products as "the Bull" or "Bull." The evidence does not affect our likelihood of confusion analysis in any material way, nor does it expand the scope of protection to be accorded each of opposer's registered marks.

We turn now to the question of whether any of the registrations made of record by opposer suffices as a Section 2(d) bar to registration of applicant's marks. We shall consider each of opposer's registrations in turn.¹²

Opposer's Registration No. 2494093 is of the mark RED BULL for, inter alia, "balls for ... baseball" in Class 28, "sports drinks" and various other non-alcoholic beverages in Class 32, "promoting sports events and competitions for

¹² To the extent that opposer's arguments in its briefs might be construed as a claim that opposer owns a family of "bull" marks, we are not persuaded. Mere ownership of multiple registrations with a common word or feature does not create a family of marks. See, e.g., *J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 18 USPQ2d 1889 (Fed. Cir. 1991); *Consolidated Foods*

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others" in Class 35, and "sports competitions, namely, baseball and football games" in Class 41. Applicant's application Serial No. 76201394 seeks registration of the mark BULL NECK for "leather sports equipment, namely baseball gloves," in Class 28.

We first must determine whether applicant's mark and opposer's mark, when compared in their entireties in terms of appearance, sound and connotation, are similar or dissimilar in their overall commercial impressions. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entireties, it is well-settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. *See In re*

Corporation v. Sherwood Medical Industries Inc., 177 USPQ 279 (TTAB 1973).

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National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

In terms of appearance and sound, opposer's RED BULL mark and applicant's BULL NECK mark are similar to the extent that both marks include the word BULL, but dissimilar insofar as BULL is the second word in opposer's mark and the first word in applicant's mark. Opposer argues that the word BULL is an arbitrary term as applied to opposer's goods, and that it therefore is the dominant feature in the commercial impression of its RED BULL mark and so should be accorded greater weight in our comparison of the marks. We are not persuaded. Although BULL is an arbitrary term, we cannot ignore the word RED in opposer's mark, which likewise is an arbitrary term and is an integral component in the commercial impression of opposer's mark. Viewed as a whole, opposer's mark is a unitary phrase or expression, denoting a red-colored bull.¹³ Applicant's mark BULL NECK likewise is a unitary expression with a well-understood meaning; it is a noun denoting "a thick short powerful neck." Webster's

¹³ Opposer argues that the Internet evidence it has submitted, which includes instances of the public's use of the term "bull" in reference to opposer's product, shows that BULL is the dominant feature in the commercial impression of opposer's mark. We are not persuaded. At best, this evidence shows that the word "bull" lends itself to punning headlines and references, such as "bull market." See *supra* at footnote 11.

Ninth New Collegiate Dictionary (1990) at 186.¹⁴ The commercial impression created by applicant's mark is not of a red-colored bull (nor of a bull of any other color), but rather is of the human anatomical feature known as a "bull neck."

The only point of similarity between the marks is that they both include the word BULL. That point of similarity is outweighed by the distinctly different manners in which the word appears and is used in the respective marks. When we consider the two marks in their entirety, as we must, we find that they have distinctly different connotations and that they create quite dissimilar overall commercial impressions. Opposer's contention that the marks are similar because they both include the word BULL rests on an improper dissection of the marks. Thus, we find that the first *du Pont* factor, i.e., the similarity or dissimilarity of the marks, weighs in applicant's favor in our likelihood of confusion analysis.

We turn next to the issue of the similarity or dissimilarity of the parties' goods, under the second *du Pont* factor, and to the related issue of the similarity or dissimilarity of the normal trade channels and classes of

¹⁴ The Board may take judicial notice of dictionary definitions. See, e.g., *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

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purchasers for such goods, under the third *du Pont* factor. In making this determination, it is not necessary that the respective goods or services be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods or services are related in some manner, or that the circumstances surrounding their marketing are such, that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same source or that there is an association or connection between the sources of the respective goods or services. See *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); *In re International Telephone & Telegraph Corp.*, 197 USPQ2d 910 (TTAB 1978).

Applicant's goods are "leather sports equipment, namely baseball gloves," in Class 28. The Class 28 goods in opposer's registration include "balls for ... baseball." Opposer's baseballs and applicant's baseball gloves are obviously complementary, related items which normally are marketed in the same trade channels (such as sporting goods stores and the sporting goods department of department stores) and to the same classes of purchasers. We find that

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these goods are sufficiently related that source confusion is likely to occur if the goods were to be marketed under confusingly similar marks. As to these Class 28 goods in opposer's registration, therefore, we find that the second and third *du Pont* factors weigh in opposer's favor.

We find, however, that the other goods and services identified in opposer's registration and upon which opposer relies for its Section 2(d) claim, i.e., "sports drinks" and various other non-alcoholic beverages in Class 32, "promoting sports events and competitions for others" in Class 35, and "sports competitions, namely, baseball and football games" in Class 41, are dissimilar and unrelated to applicant's baseball gloves, for purposes of Section 2(d). Unlike opposer's baseballs, these goods and services of opposer's are not sporting goods items which are self-evidently similar or related to applicant's "baseball gloves," and there is no evidence in the record which would support a finding that any such relationship exists.

Opposer's services include promoting and staging sports competitions, including baseball games. However, there is no evidence that opposer or any other provider of such services also markets or permits others to market baseball gloves under the same or a similar mark, or that any manufacturer or marketer of baseball gloves provides the services recited in opposer's registration. There is no

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basis in the record for finding that purchasers would expect or assume that baseball gloves originate from, or are sponsored or approved by, the provider of such services. Baseball gloves are highly specialized pieces of sports equipment which normally are sold only in sporting goods stores and in the sporting goods departments of department stores. There is no evidence that baseball gloves normally are sold or distributed (or ever sold or distributed) at baseball games or exhibitions, either as sports equipment or as souvenir items. Even assuming that spectators or participants in the baseball games and exhibitions provided by opposer might also own baseball gloves, or even might use them while attending or participating in such baseball games and exhibitions, that fact does not suffice to establish that they are likely to assume that a source, sponsorship or other relationship exists between baseball gloves and baseball games or exhibitions which are offered under confusingly similar marks.

Likewise, the evidence of record simply does not support a finding that purchasers are likely to assume that a source relationship exists between opposer's "sports drinks" and applicant's baseball gloves. The goods obviously are dissimilar in nature, one being a beverage and the other being a specialized sporting goods item. There is no evidence that opposer or any other manufacturer or

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marketer of sports drinks (or any other type of drink) also markets or permits others to market baseball gloves under the same or a similar mark, either as sports equipment or as a promotional/merchandising item or collateral good. Again, baseball gloves are specialized sporting goods equipment sold in sporting goods stores and in sporting goods departments of department stores. There is no evidence that opposer's sports drinks are sold in such trade channels, but even assuming that they are, there is no basis for finding that purchasers are likely to assume that any source, sponsorship or other relationship between such disparate goods exists. Finally, even assuming that sports drinks and other beverages are consumed by spectators at baseball games or by persons playing baseball, that fact does not suffice to establish that such persons are likely to assume that a source relationship exists between baseball gloves and such beverages. In short, there is no basis in the record for finding that purchasers are likely to assume that baseball gloves originate from or are sponsored by the maker of a sports drink, or that sports drinks originate from or are sponsored by a maker of baseball gloves.

Thus, we find that opposer has failed to establish that applicant's baseball gloves are similar or related to the goods and services in Classes 32, 35 and 41 upon which opposer relies, and that the second and third *du Pont*

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factors (like the first *du Pont* factor) accordingly weigh in applicant's favor as to those goods and services. We find, however, that applicant's baseball gloves are similar and related to opposer's Class 28 "balls for ... baseball," and that the second and third *du Pont* factors accordingly weigh in opposer's favor as to those goods.

Upon considering all of the *du Pont* factors as to which evidence has been made of record, we find that there is no likelihood of confusion between applicant's mark BULL NECK for baseball gloves and opposer's mark RED BULL for the Class 32, 35 and 41 goods and services in opposer's Registration No. 2393093. The respective marks are dissimilar when viewed in their entirety, and the respective goods and services have not been shown to be related or similar.

Opposer's Class 28 "balls for ... baseball" are similar and related to applicant's baseball gloves. However, for the reasons discussed above, we find that the parties' marks are too dissimilar to support a finding of likelihood of confusion, even as to goods as closely related as baseballs and baseball gloves. The marks present distinctly different and dissimilar commercial impressions when they are viewed in their entirety, such that purchasers are not likely to be confused as to the source or sponsorship of the parties' respective goods. The relatedness of the goods simply is

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outweighed by the overall dissimilarity of the marks. *Cf. Kellogg Co. v. Pack'Em Enterprises Inc.*, 14 USPQ2d 1545 (TTAB 1990), *aff'd*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991).

In short, opposer's Registration No. 2494093 does not bar registration of applicant's BULL NECK mark for baseball gloves.

We turn next to the issue of whether opposer's RED BULL Registration No. 2494093 bars registration of applicant's mark PLAY BALL WITH THE BULL. For the reasons discussed above, we find that the "baseball gloves" identified in applicant's application are dissimilar and unrelated to the Class 32, 35 and 41 goods and services upon which opposer relies, and that they are similar and related to the Class 28 "balls for ... baseball" identified in opposer's registration.

We also find that opposer's RED BULL mark is dissimilar rather than similar to applicant's PLAY BALL WITH THE BULL mark. Again, the only point of similarity between the two marks is that both include the word BULL. Viewing the marks in their entireties, as we must, we find that they look and sound different, have different connotations, and present dissimilar overall commercial impressions. Applicant's mark is an alliterative unitary phrase of five words and syllables, which does not include or connote the word RED

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(or any other color), an integral component of the commercial impression of opposer's mark. Likewise, opposer's RED BULL mark lacks any reference to playing ball, which is an integral component of the commercial impression created by applicant's mark. The only way that we could conclude that these marks are similar would be if we dissected the marks, focusing solely on the presence of the word BULL in both marks and disregarding the obvious differences in appearance, sound, connotation and overall commercial impression of the respective marks. We cannot conclude that purchasers would dissect the marks in such a manner; rather, we find that purchasers viewing the marks in their entireties will readily distinguish the marks, as well as the sources of the respective goods and services sold under the marks.

Based on the evidence of record pertaining to the relevant *du Pont* factors, we conclude that there is no likelihood of confusion as between applicant's PLAY BALL WITH THE BULL mark for baseball gloves and opposer's RED BULL mark for the Class 32, 35 and 41 goods and services identified in opposer's registration. Even as to the parties' related goods, i.e., the Class 28 baseballs and baseball gloves, we find that the marks simply are not sufficiently similar to warrant a finding of likelihood of confusion. Thus, opposer's Registration No. 2494093 does

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not bar registration of applicant's mark PLAY BALL WITH THE BULL for baseball gloves.

We turn next to opposer's Registration No. 1935272, which is of the mark RED BULL for "malt liquor" in Class 32. For the reasons discussed above, we find that opposer's mark RED BULL is dissimilar rather than similar to each of applicant's marks, BULL NECK and PLAY BALL WITH THE BULL. When the marks are viewed in their entirety, the differences in appearance, sound, connotation and overall commercial impression outweigh the sole point of similarity, i.e., the presence of the word BULL in the respective marks.

We also find that applicant's baseball gloves are unrelated and dissimilar to the "malt liquor" identified in opposer's registration, and that the normal trade channels for the respective goods likewise are different. There is no evidence that baseball gloves and malt liquor are ever marketed by the same or a related source under the same or a similar mark. Even assuming that opposer is correct in contending (without supporting evidence) that malt liquor (as opposed to beer) is sold and consumed at baseball games, that fact does not suffice to establish the existence of a source, sponsorship or other relationship between baseball gloves and malt liquor in the minds of relevant purchasers.

In short, we find that opposer's RED BULL mark is dissimilar to applicant's BULL NECK and PLAY BALL WITH THE

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BULL marks, and that applicant's baseball gloves are unrelated and dissimilar to opposer's malt liquor. No likelihood of confusion exists, and opposer's Registration No. 1935272 does not bar registration of either of applicant's marks.

Next, we consider opposer's Registration No. 2579008, which is of the mark BULL for various nonalcoholic beverages including "energy and sports drinks" in Class 32. For the reasons discussed above in connection with opposer's Registration No. 2494093, we find that opposer has failed to establish the existence of any source, sponsorship or other relationship between baseball gloves, the goods identified in applicant's applications, and the sports and energy drinks identified in opposer's registration. There is no evidence that opposer or any other beverage maker uses or permits use of its marks on baseball gloves, either as sports equipment or as promotional or collateral goods. Nor is there any evidence that makers of baseball gloves use their marks on sports or energy drinks. Even assuming that opposer's beverages might be consumed by spectators at, or participants in, baseball games, there simply is no basis in the record for concluding that such purchasers are likely to assume that the respective goods originate from or are sponsored or approved by a single or related source.

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Applicant's marks are similar to opposer's BULL mark to the extent that they include the word BULL, but that is the only point of similarity. As noted above, BULL NECK is a unitary phrase or expression denoting a human anatomical feature, and PLAY BALL WITH THE BULL is an alliterative five-word phrase with a unitary meaning. When we view the respective marks in their entireties, as we must, we find that they are sufficiently dissimilar that no source confusion is likely. This is especially so in view of the dissimilarity of the parties' goods.

We conclude that confusion is unlikely to result from applicant's use of either its BULL NECK or its PLAY BALL WITH THE BULL marks on baseball gloves and opposer's use of the mark BULL on sports and energy drinks. Opposer's Registration No. 2579008 accordingly does not bar registration of either of applicant's marks.

Remaining for consideration are opposer's Registration No. 2524020, which is of the mark SPEEDY BULL for, inter alia, "sports drinks; energy drinks; isotonic drinks, hypertonic drinks and hypotonic drinks, for use and/or as required by athletes and those engaged in active or stressful sports and activities" in Class 32, and opposer's Registration No. 2560956, which is of the mark ENERGY BULL (ENERGY disclaimed) for those same Class 32 goods as well as for "technical consultation and research services in the

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field of food and beverages, health and fitness, sports, sports training and physical performance" in Class 42.

Viewing the marks in their entireties, we find that applicant's BULL NECK mark is dissimilar rather than similar to opposer's SPEEDY BULL and ENERGY BULL marks. As was the case in our comparison of applicant's BULL NECK mark and opposer's other marks, the only point of similarity between these marks is the word BULL, and that point of similarity is outweighed by the differences in the marks' appearance, sound, connotation and overall commercial impression. The same is true for applicant's PLAY BALL WITH THE BULL mark. The mere presence of the word BULL in the marks is an insufficient basis for finding that the marks, in their entireties, are confusingly similar.

We also find that applicant's baseball gloves are unrelated and dissimilar to the beverage products covered by opposer's registrations. It is true that these products both might be used by athletes, including baseball players. As discussed above, however, there is no evidentiary basis for concluding that opposer or any other beverage maker also markets or permits others to market baseball gloves under the same or a similar mark, or that makers of baseball gloves also market beverage products like opposer's. Even if we presume that opposer's beverages are marketed in the same trade channels and to the same purchasers as

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applicant's baseball gloves, the evidence of record simply does not support a finding that purchasers are likely to assume the existence of a source, sponsorship or other connection between these products. The same is true with respect to the "technical consultation and research services in the field of food and beverages, health and fitness, sports, sports training and physical performance" recited in opposer's ENERGY BULL registration. There is no evidentiary basis for finding that purchasers will assume that a provider of such services also markets baseball gloves, or that a baseball glove maker also provides services such as opposer's.

We conclude that there is no likelihood of confusion between either applicant's BULL NECK mark or its PLAY BALL WITH THE BULL mark for baseball gloves and opposer's SPEEDY BULL or its ENERGY BULL mark for the goods and services identified in opposer's registrations. Accordingly, opposer's Registration Nos. 2524020 and 2560956 do not bar registration of either of applicant's marks.

In summary, we find that opposer has failed to carry its burden of proving that there is a likelihood of confusion between either of applicant's marks, as used on baseball gloves, and any of opposer's marks, as used on or in connection with the goods and services identified in opposer's registrations. Opposer therefore has failed to

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make out its Section 2(d) ground of opposition in each of these opposition proceedings.

Decision: Opposition Nos. 91150958 and 91150961 are dismissed.