

Daily

Archive

Channel

'Two Bulls' design not confusingly similar to RED BULL marks Examination/opposition
Slovenia - ITEM doo National procedures
March 07 2007

The Slovenian Intellectual Property Office (SIPO) has refused **Red Bull GmbH's** opposition against an application to register the trademark WODKA MASZKA (and 'Two Bulls' design) (Decision 31207-833/2002-10).

Slovenian company APIS-VITA podjetje za proizvodnjo doo applied to register the trademark WODKA MASZKA (and 'Two Bulls' design) for "alcoholic drinks (except beer)" in Class 33 of the **Nice Classification**. The trademark features a label with the prominent inscription 'WODKA MASZKA' in the centre. Above the inscription two bulls are depicted. Above the bulls there is another figurative element, namely a circle, and above the circle appears the small inscription '*Močna alkoholna pijača*' meaning 'a strong alcoholic drink' in Slovenian.

Red Bull, the producer of energy drinks under the mark RED BULL, filed an opposition against the WODKA MASZKA (and 'Two Bulls' design) application based on several international trademarks designating Slovenia, which Red Bull claimed were reputed marks. The marks included the following:

- three marks featuring a single charging bull with no inscription;
- a trademark depicting two charging bulls facing each other;
- one mark representing a label with the inscription 'RED BULL ENERGY DRINK', as well as a two charging bulls design;
- a trademark comprising of the word mark RED BULL with a design showing two charging bulls facing each other; and
- a VODKA BULL word mark.

All the trademarks cover, among other things, alcoholic drinks in Class 33, except the RED BULL ENERGY DRINK label trademark, which covers merely non-alcoholic drinks in Class 32.

SIPO refused the opposition and held that although bull designs appear in the contested trademark and the earlier marks, the overall appearance of the contested trademark is different enough to prevent confusion in the market. The bulls in the earlier trademarks, SIPO held, are depicted in an obviously very hostile and attacking posture with the head lowered to expose the horns and with the front two hoofs in the air indicating a leap forward; this impression is emphasized in those earlier trademarks where the two bulls face each other as if moments before a collision. On the other hand, the two bulls in the contested trademarks do not show any signs of hostility.

SIPO further compared the contested trademark WODKA MASZKA with the earlier trademark VODKA BULL and established that the first word in each case ('WODKA' or 'VODKA') would be pronounced identically in spite of the different first letter. However, this word merely designates a kind of a strong alcoholic drink, so it is descriptive in relation to the goods covered by the trademarks in question. SIPO concluded that this meant that the word 'WODKA' or 'VODKA' is not the dominant element of the marks in terms of distinctiveness and is therefore not relevant to the similarity analysis. The word 'BULL' in the earlier trademark has an obvious meaning known to Slovenian consumers, whereas the word 'MASZKA' does not have any meaning, so the difference between these two trademarks will enable consumers to distinguish between the goods bearing the two marks.

After SIPO established that there is no similarity between the signs, it concluded that it was not necessary to establish whether the earlier trademarks enjoy a reputation because, even if they did, the similarity of signs would be required to achieve the refusal of the contested trademark.

Gregor Maček, ITEM doo, Ljubljana

© Copyright 2003-2011 **Globe Business Publishing Ltd**