

BESLUT

Internationell registrering skall inte gälla i Sverige
IR 791989

INNEHAVARE

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Exp. Patent- och registreringsverket
2005 -10- 27

OMBUD

Advokatbyrån Gulliksson Aktiebolag
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BESLUT

Patent- och registreringsverket (PRV) har med stöd av 56 § 2 stycket varumärkeslagen (1960:644) denna dag beslutat att den under ovanstående nummer angivna internationella registreringen inte skall gälla i Sverige.

ÄRENDET

Giltighet i Sverige av den internationella varumärkesregistreringen Red Bull, återgiven nedan, registrerad för chemicals used in industry, science, photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; fertilizers; fire-extinguishing compositions; metal tempering and soldering preparations; chemical products for preserving foodstuffs; tanning substances; adhesives used in industry; chemical products for impregnating leather and textile fabrics; adhesives for wallpaper; humus, compost, earth for growing, soil-conditioning chemicals, klass 1, paints, anti-fouling paints, varnishes, lacquers; binders and thinners for paints, turpentine; preservatives against rust and wood deterioration; dyestuffs; mordants; raw natural resins; metal in foil and powder form for painters, decorators, printers and artists, klass 2, bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; dry-cleaning preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices; aerosol products for mouth care, not for medical use, sunscreen products; laundry starch, emery paper, sandpaper, klass 3, industrial oils and greases; lubricants; dust-absorbing, wetting and binding compositions; fuel (including motor gasoline) and illuminants; candles, wicks, wool grease, klass 4, pharmaceutical, veterinary and sanitary products, including rehabilitative and tonic preparations, namely vitamin and tonic preparations as well as preparations containing minerals and/or vitamins and/or trace elements for medical use; preparations for traditional Chinese medicine; medicinal teas, including herbal teas; dietetic preparations for medical use; appetite-suppressing preparations for medical use; chewing gum, fruit-flavored chewing gum and candy for medical use; food for babies; plasters, materials for dressings; sanitary diapers for the sick, sanitary articles for women, including sanitary towels, panty liners, tampons, sanitary panties; chemical contraceptives, material for stopping teeth and dental wax; adhesives for dentures, dental mastics; disinfectants, deodorants, other than for personal use, air-freshening

metals and alloys thereof; building materials of metal; metallic constructions (transportable or non-transportable); materials of metal for railway tracks; non-electrical metallic cables and wires; metallic ironmongery and locksmithing articles; metallic pipes and conduits, safes, works of art and decorative objects made of base metals, banknote clips made of base metals, metal products included in this class, including anchors, anvils, taps for casks, bottle caps, containers, money caskets; signboards, including license plates for vehicles, boards, including signaling boards, non luminous and non mechanical; transportation containers, tanks, ores, class 6, machines, including filling machines, elevators (with the exception of ski tows), excavators, construction machinery, bulldozers, printing machines, electrical kitchen machines for chopping, grinding, pressing and stirring, labeling machines, meat choppers (machines), belt conveyors, power blowers, electricity generators, current generators and alternating current generators; mechanically-operated elevating apparatus, cranes, milking machines, sewing machines, paper machines, polishing machines other than for household purposes, mechanically-operated presses, trueing machines, cutting machines for industrial purposes, welding machines, textile machines, packaging machines, rolling machines, dishwashers, washing machines, milling machines; machine tools, engines and motors, other than for land vehicles, couplings and transmission components, other than for land vehicles; exhaust mufflers, agricultural implements other than hand-operated; egg incubators; spray guns for paint with an air brush, class 7, hand-operated hand tools; hand-operated instruments for agricultural, horticultural and silvicultural purposes, for building machines, apparatus and vehicles as well as for construction engineering; cutlery products, flatware (knives, forks and spoons), side arms, other than firearms, electric or non-electric razors, electric or non-electric machines for cutting hair and shearing machines, belts for tools, class 8, scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), emergency (life-saving) and teaching apparatus and instruments; apparatus and instruments for conducting, opening and closing, transforming, storing, adjusting and monitoring current; apparatus for recording, transmitting and reproducing sound and images; walkie-talkies, mobile telephones, photocopying apparatus and machines, magnetic recording media, including videotapes, sound recording disks; portable stereo apparatus; automatic vending machines and mechanisms for coin-operated apparatus; automatic cash-dispensing machines, automatic teller machines, automated apparatus for having one's picture taken; video games designed to be used only with a television set, video games not operated by inserting money; apparatus for recreational use and designed to be used exclusively with a television set; cash registers, calculating machines; data processing apparatus and computers; all types of data media in machine-readable form and provided with programs; downloadable electronic publications; computer programs and software; game programs for computers; mouse pads, navigation apparatus for vehicles, protective garments, including protective eyewear, protective masks, protective helmets, particularly for sports; protective devices including the ones for protection against acoustic impacts, screens for protection of the human body, face shields; spectacles, frames and cases for spectacles, sunglasses, sports glasses; split audio headsets; breathing apparatus for underwater swimming, swimming belts and swimming floats; special receptacles (cases, sleeves, housings) adapted to the apparatus belonging to this class; luminous beacons, locator beacons, life buoys, signaling buoys; wind sleeves; electric batteries and storage batteries; magnets, illuminated signs, neon signs, indicator boards; gasoline pumps for service stations; fire extinguishers, class 9, surgical, medical, dental and veterinary apparatus and instruments, surgical implants, including artificial limbs, eyes and teeth; orthopedic articles; suture materials, condoms, non-chemical contraceptives, vibrators, vibrating massage apparatus, pacifiers (teats), class 10, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes,

including wash-hand basins, bidets, toilets, installations for toilets and bathrooms; refrigerators, apparatus for cooling drinks; ventilation and air-conditioning apparatus, also for vehicles; lighting apparatus for vehicles, including lights and reflectors for vehicles; electric lamps, lamps for bars; diving lamps; gas generators; solar collectors and solar accumulators, klass 11, vehicles; land, air or water locomotion apparatus; refrigerating cars; air-cushion vehicles; parachutes, vehicle parts, parts for land, air or water locomotion apparatus, parts for air-cushion vehicles; bicycles and spare parts thereof (included in this class), bicycle accessories, including luggage racks, bells, nets, motors, pumps, anti-theft devices, covers for saddles, bicycle kickstands, saddle covers for motorcycles; golf carts and baby carriages; accessories for cars, including tires, seats and seat covers, trailer hitches, roof racks, ski racks, mudguards, snow chains, wind deflectors, headrests, seat belts, safety seats for children, horns, steering wheels, wheel rims, shock absorbers; engines for land vehicles, klass 12, firearms, ammunition and projectiles, explosives, fireworks, firecrackers, guns and rifles, including hunting rifles, compressed air guns; parts of guns and rifles, especially gun and rifle barrels, hammers for guns and rifles; sheaths for guns and rifles, klass 13, precious metals and their alloys and goods made of or coated with these materials not included in other classes, including handicrafts, ornamental objects, tableware (excluding cutlery), table centerpieces, ashtrays, cigar and cigarette cases, cigar and cigarette holders; key rings, jewelry, including rings of precious metals, precious stones, including fashion jewelry, cuff links and tie pins; watches and chronometric instruments; wristwatches and watchbands; watch cases; cases for all the aforesaid goods, klass 14, musical instruments; mechanical pianos and their accessories; musical boxes; electric and electronic musical instruments; consoles; music synthesizers, klass 15, paper, cardboard and goods made from these materials, not included in other classes, including paper napkins, paper filters, paper tissues, toilet paper, diapers and napkins of paper, packages made of paper or cardboard; packaging containers, packaging cones; printed matter, including prospectuses, brochures and leaflets; bookbinding material; photographs; posters, transparencies, paper flags, signboards of paper or cardboard; boards with a device for wedging or clipping paper; stationery, transfers, stickers, non-textile labels, also labels to be applied by ironing, adhesives for stationery or household purposes; artists' supplies, including articles for drawing, painting and modeling; paintbrushes; typewriters and office requisites (except furniture); instructional or teaching material (except apparatus); plastic materials for packaging (not included in other classes); printer's type, printing blocks, writing slates and writing boards, writing and drawing instruments, plastic self-adhesive sheets for decoration, klass 16, rubber, gutta-percha, gum, asbestos, mica and goods made thereof not included in other classes; products made of semi-processed plastics; sealing, packing and insulating materials; flexible nonmetallic pipes; plastic sheets, excluding those for packaging purposes; insulating paints and lacquers, klass 17, leather and imitation leather, goods made thereof not included in other classes, including bags and other containers not adapted to the products they are intended to contain, as well as small leather goods, including purses, wallets, key cases; handbags, briefcases, shopping bags, school bags; traveling bags, backpacks, shoulder straps, animal skins and hides; suitcases and trunks, traveling sets (leather goods), umbrellas, parasols and walking sticks; whips and saddlery, klass 18, nonmetallic building materials; nonmetallic rigid pipes for building; asphalt, pitch and bitumen; transportable or fixed buildings (not of metal), nonmetallic monuments; works of art and decorative objects made of stone, concrete or marble; indicator boards, non luminous, non mechanical and non metallic; nonmetallic gates, klass 19, furniture, mirrors, frames; furniture and tables of metal or plastic materials; indoor blinds (not of metal) for windows, goods included in this class made of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, tortoiseshell, amber, mother-of-pearl, meerschaum, substitutes for all these materials or of plastics; works of art and decorative

objects of wood, wax, plaster or plastic materials; identity plates, not of metal, wardrobes, coat stands, bottle closures, boards for hanging keys, plugs (pegs) of plastic material, display boards and signboards of wood and plastics, flagpoles; containers made of plastic; nonmetallic tanks for liquid fuel, class 20, household or kitchen utensils and containers (neither of precious metal nor coated therewith); drinking containers and drinking glasses; bottles and drinking bottles, ice buckets, ice boxes and freezing blocks, ice cube molds, combs and sponges; brushes (except paintbrushes); brush-making materials; cleaning equipment, apparatus (sprays) for dispensing room odorizers, steel wool; unworked or semi-worked glass (except glass used in building); glass products, chinaware and earthenware not included in other classes; works of art and decorative objects made of glass, porcelain and earthenware; signboards of porcelain or glass; beauty care instruments; cooking pot sets and buckets made of sheet metal, aluminum, plastic or other materials, class 21, ropes, strings, nets, tents, marquees, tarpaulins, sails, bags included in this class, class 22, yarns and threads for textile purposes, class 23, textile fabrics; textile products included in this class, including textiles, textile materials of imitation leather, non-woven fabrics, curtains, household linen, table and bed linen; bed linen made of paper; shower curtains made of textile materials or of plastic sheets, banners made of textile materials, flags not made of paper; labels, also labels to be applied by ironing made of textile materials, stickers made of textile materials, sewing labels, textile wall hangings, class 24, clothing, footwear, headgear, including T-shirts, ladies' shirts, sweaters, anoraks, windbreaker jackets, aprons, head coverings, hats, headbands, suspenders, money-belts, caps; sportswear and sports shoes and boots, football or soccer boots and studs therefor, ski boots, non-slipping devices for boots and shoes, corsetry articles, babies' diapers of textile, class 25, lace and embroidery, ribbons and braids; buttons, hooks and eyelets, pins and needles, clip-on badges or lapel badges, belt clasps, trouser clips for cyclists, pom-poms, lace trimmings, competitors' numbers, artificial flowers, class 26, carpets and rugs, doormats, anti-slip mats for bar counters, mats, linoleum and other floor coverings; non-textile wall hangings, gymnastic mats, car mats, artificial turf, class 27, games, toys, playing cards, jokes and conjuring tricks, confetti, gymnastic and sports articles included in this class; gymnastic and sporting apparatus, including apparatus for winter sports, including skis, snowboards, ice skates and snow boots; tennis and fishing equipment; special bags for sports gear, including bags for skis and surf boards, cricket, golf and tennis bags; ski bindings, ski poles, ski edges, skins for off-track skis, bindings for snowboards, balls for games, dumb-bells, balls (weights), discuses, javelins, tennis rackets, cricket bats, golf clubs and hockey sticks; roller skates, inline roller skates, tables for table tennis, Christmas tree decorations, balls giving the impression that it's snowing when shaken, electric and electronic games (excluding those designed for use only with a television receiver); remote-controlled cars (toys); automatic apparatus (games of chance) operated by inserting cash and entertainment apparatus; fencing weapons, bows, nets for ball games, nets for tennis, fishing implements, fish hooks, landing nets, flippers for swimming, paragliders, skateboards, surf boards, exercise boards, sailboards, trapeze harnesses and masts for surf boards; elbow guards and knee guards, class 28, meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruit and vegetables; jellies, jams, compotes; eggs, milk and dairy products; edible oils and fats, canned meat, fish, fruit and vegetables; mixed beverages made with milk; desserts made with yogurt, soft white cheese and cream, class 29, coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flours and cereal preparations, bread, pastry and confectionery, edible ices; honey, treacle; yeast, baking powder; salt, table salt, mustard; vinegar, sauces (condiments), salad dressings, spices; ice for refreshment, beverages made with coffee, tea, cocoa and chocolate; iced tea, coffee and cocoa preparations for making alcoholic and non-alcoholic beverages, cereals prepared for a human diet, particularly oat flakes or other cereal flakes, flavorings for foodstuffs; sweetmeats,

candy, fruit-flavored chewing gum, chocolate, products made with chocolate, pralines with liqueur filling, chocolate mixes containing alcohol, chewing gum, cereal bars with fruit and muesli bars, klass 30, agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruit and vegetables; sowing seeds, natural and dried plants and natural flowers, animal feed; malt, fresh walnuts and hazelnuts, mulch (humus layer), litter peat, klass 31, non-alcoholic beverages including refreshing beverages, energy drinks, whey beverages and isotonic beverages (hypertonic and hypotonic beverages), for sportsmen and women and adapted to their needs, non-alcoholic malt-based beverages, beers, wheat beer, beers called premium lager, porter, ale, stout and lager; mineral and carbonated waters; fruit drinks and fruit juices; syrups, essences and other preparations for making beverages as well as effervescent tablets and powders for making non-alcoholic beverages and cocktails, klass 32, alcoholic beverages (except beer), hot and mixed alcoholic beverages, including alcoholic energy drinks; mulled wines and mixed alcoholic beverages containing milk; wines, spirits and liqueurs, alcoholic preparations for making beverages; cocktails and aperitifs made with spirits or wines; beverages containing wine, alcoholic malt-based beverages, klass 33, tobacco, products made with tobacco, including cigars, cigarettes, smoking tobacco, chewing tobacco, snuff tobacco; tobacco substitutes for non-medical purposes; smokers' articles, namely snuffboxes, cigar holders or cigarette holders, cigar and cigarette cases, ashtrays, humidifiers, all the aforesaid goods being neither of precious metals, nor of their alloys or plated therewith; pipe racks, pipe cleaners, cigar cutters, pipes, pipe pouches, lighters, utensils in the form of bags for rolling one's own cigarettes, cigarette paper, cigarette boxes, cigarette filters; matches, klass 34, advertising, including promotion of goods and services as well as of competitions, also of sporting activities; development of advertising means; distribution of advertising products; on-line advertising on a computer network; rental of advertising time in communication media; grouping and compilation of articles appearing in the press regarding various subjects; business organization consultancy; business management; business administration; office work, organization of exhibitions and fairs for economic and publicity purposes; rental of vending machines; grouping of a large number of products for third parties, enabling consumers to see and buy them at their convenience, klass 35, insurance underwriting; financial affairs; monetary affairs; on-line banking services (home banking), real estate affairs, klass 36, repair and servicing of utility vehicles and aircraft; construction, repair, installation services; operation of a service station, klass 37, telecommunications, broadcasting of radio and television programs; electronic transmission of announcements; provision of telecommunication links to a global computer network; trunking, routing and linking services for telecommunication; services in connection with teleconferences, provision of access to a global computer network, klass 38, transportation of persons and goods by airplanes, by vehicles, by railway and by boats, travel arrangement, organization of services provided in the field of tourism, arranging city tours, escorting of travelers; leasing of planes and vehicles; parcel delivery, packaging and storage of goods; storage of electronic data or documents in computer memories, klass 39, treatment of materials, klass 40, education; training; entertainment, including music performances as well as radio and television entertainment; sporting and cultural activities, including organization of sports competitions; services provided by night clubs, bars and discotheques; organization of fairs and exhibitions for cultural, sporting and instructional purposes; lending of video tapes and cassettes, video-film production, recording of videotapes and of microfilms, publication of electronic books and magazines on the Internet; electronic publishing services (computer-aided publishing), providing electronic publications on line, services consisting in free supply of games on line, provision of karaoke installations; digital imaging services; services consisting in music composition, klass 41, scientific and technical services as well as research and design relating thereto; industrial analyses and research

services as well as research and design relating thereto; industrial analyses and research services; design and development of computer equipment and computer software; programming; conversion of computer programs and of data (without physical change), design for computer systems, conversion of data or documents from physical media to electronic media; configuration and maintenance of Web sites for third parties; rental and maintenance of storage spaces in the form of Web sites for third parties; software installation, legal services (research and advice); advice about industrial protection rights, issuing of licenses for industrial protection rights, administration of copyrights; monitoring services in the field of intellectual property; services provided by an industrial designer, services provided by engineers, klass 42, services consisting in the provision of foodstuffs and beverages, including services provided by bars, coffee shops, cafeterias, canteens, snack bars, restaurants, self-service restaurants; catering services; reservation of rooms in hotels, inns, holiday camps, tourist homes, motels; room bookings, services provided by boarding facilities for animals, rental of portable buildings, bars and tents; rental of seats, tables, table linen, glass goods and equipment for bars, klass 43, medical and veterinary services; beauty care and health care for humans and animals; tattooing; services provided in agriculture, horticulture and forestry, klass 44, och clothing rental, rental of clothing and fancy dress, fire extinguishing services, funeral director's services and crematoriums, services provided by a private detective, missing persons investigations, opening of security locks, security consultancy, mediation in connection with adoption procedures, horoscope casting, planning of religious events, marriage bureaux, escorting people (chaperoning services), security services for respect of property and personal safety; dating services, klass 45.

Red Bull®



PRV har motanfört varumärket RED BULL med registreringsnummer 336115 som registrerats för energidrycker, icke alkoholtiga drycker; fruktjuicer, kolsyrat vatten, klass 32.

Ett medgivande från innehavaren av den mothållna varumärkesregistreringen har getts in. Innehavaren har anfört att ingivet medgivande ska godtas eftersom märkena skiljer sig åt såtillvida att det egna märket även innehåller ett figurinslag. I sammanhanget hänvisas även till Regeringsrättens avgörande, av den 3 november 1988 avseende märket APOLLO, RÅ 1988 ref. 107. Vidare har innehavaren gett in information rörande två marknadsundersökningar som ska styrka att varumärket är inarbetat och välkänt.

SKÄL

Hinder mot att en internationell varumärkesregistrering skall gälla i Sverige finns enligt 54 § 2 stycket varumärkeslagen om det varumärke som den internationella registreringen avser inte uppfyller förutsättningarna enligt 13 § eller om något hinder mot en nationell registrering skulle ha funnits enligt 14 §.

Ett varumärke får enligt 14 § 1 stycket 6 punkten varumärkeslagen inte registreras om märket är förväxlingsbart med någon annans varumärke som registrerats efter en tidigare ansökan. Enligt 6 § 1 stycket samma lag skall kännetecken anses förväxlingsbara endast om de avser varor eller tjänster av samma eller liknande slag.

Frågan om förväxlingsbarhet skall avgöras vid en helhetsbedömning vid vilken alla omständigheter av betydelse i sammanhanget skall beaktas, bland annat märkenas likhet samt likheten i de varor eller tjänster som avses.

Det föreligger varuslagslikhet mellan de varor som omfattas av föreliggande internationella registrering och de varor som är registrerade för varumärket Red Bull med registreringsnummer 336115. Beträffande märkeslikheten konstateras att de båda märkena har identisk lydelse. Vid en helhetsbedömning finner PRV därmed att märkena är förväxlingsbara.


Enligt 14 § 1 stycket 2 punkten samma lag får ett varumärke inte registreras om märket är ägnat att vilseleda allmänheten.

Ett medgivande från innehavaren av den mothållna varumärkesregistreringen har getts in. Det ingivna medgivandet medför inte att den internationella registreringen kan beviljas giltighet i Sverige. Allmänheten kan komma att vilseledas om varornas kommersiella ursprung eftersom de båda märkena har identisk lydelse och skydd för identiska varor. Av Regeringsrättens avgörande, av den 3 november 1988 avseende märket APOLLO, RÅ 1988 ref. 107, framgår att ett varumärke inte är ägnat att vilseleda om det kommersiella ursprunget om det har skydd för varor eller tjänster som inte är identiska utan där det endast föreligger en viss likhet samtidigt som märkesidentitet föreligger. I förevarande fall avser de motstående märkena identiska varor.

Med hänsyn till vad PRV anfört ovan skall den internationella registreringen inte gälla Sverige.

Beslutat den 27 OKT 2005


Anne Gustavsson


Hans Nordlund

HUR BESLUTET ÖVERKLAGAS

Den som vill överklaga beslutet skall göra det skriftligt. Skrivelsen skall vara ställd till Patentbesvärsrätten, men sändas till Patent- och registreringsverket, Box 530, 826 27 Söderhamn. I skrivelsen skall anges det beslut som överklagas och den ändring beslutet som begärs. Skrivelsen skall ha kommit in till verket **inom två (2) månader** från beslutsdagen.