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IN THE MATTER OF THE TRADE MARKS ACT CAP 506 OF THE LAWS OF KENYA

AND

IN THE MATTER OF TRADE MARK APPLICATION NO. IR 1101122



(WORD & DEVICE) IN CLASSES 18 & 25

IN THE NAME OF GUANGZHOU BAOLUO COSMETICS CO. LTD AND EXPUNGEMENT

PROCEEDINGS THERETO BY LA GROUP (PTY) LIMITED

RULING BY ASSISTANT REGISTRAR OF TRADE MARKS

INTRODUCTION

This is an application filed by LA Group (Pty) Ltd, the Applicant for expungement, (hereinafter referred to as “the Applicant”) for expungement of IR No.1101122,



registered in the name of Guangzhou Baoluo Cosmetics Co. Ltd, the registered proprietor, (hereinafter referred to as the Respondent).

BACKGROUND

On 29th December 2011, the Registrar of Trade Marks was notified by the International Bureau of the World Intellectual Property Organization (WIPO) of designation of Kenya under the Madrid Protocol by virtue of Article 9sexies in respect

to IR No. 1101122,



(word & device). The application was filed by

Guangzhou Baoluo Cosmetics Co. Ltd in respect to goods in classes 18 and 25 of the International Classification of Goods and Services as follows:

Class 18: Purses; garment bags for travel; shopping bags; pocket wallets; backpacks; attaché cases; handbags; travelling bags; briefcases; valises.

Class 25: Underwear; clothing; trousers; fur stoles; girdles; shoes; hats; hosiery; gloves (clothing); underclothing.

The refusal period expired on 29th December 2012 and no notification of provisional refusal was recorded from Kenya and by virtue of the principle of tacit acceptance, the mark was registered in Kenya.

On 7th November 2017, LA Group (Pty) Ltd filed an application for expungement of

the mark “” (word & device) from the Register of trade marks. The application comprised Form TM 25 together with statement of case. The Applicant stated inter alia as follows:

1. The Applicant is the registered owner in Kenya of *inter alia* the “POLO” (word) trade mark in class 14,18, 25 and 35 and “POLO PONY” (device) trade mark in class 18, 25 and 35 under registration nos. 55535 and 55887 respectively.
2. The Applicant has used and continues to use its registered POLO and POLO PONY device (in various forms) trade marks in respect of the goods covered by its registrations in various jurisdictions, including in Kenya. In particular, the Applicant markets and sells its products bearing the POLO and POLO PONY device trade marks in Kenya through a number of local retailers, including Manix Ltd t/a Manix Clothing Store and Hans Apparel.
3. That in the circumstances, the Applicant has a real and commercial interest in Kenya, and qualifies as an aggrieved person in terms of section 29 of the Trade Marks Act, Cap.506 Laws of Kenya.
4. That this application for expungement relates to Kenyan Trade Mark No. 1101122 POLO SANTA ROBERTA (device), which was registered on 27 November 2011 in Classes 18 and 25 in the name of Guangzhou Baoluo

Cosmetics Co. Ltd. of No. 38 Yifa Leather Fittings Plaza, Zoumagang Section, Baiyun District Guangzhou City Guangdong Province, China.

5. During May 2017, the Applicant instructed Walker Kontos Advocates to cause an investigation to be conducted to establish whether or not the POLO SANTA ROBERTA (device) trade mark was in use in respect of the goods covered by Trade Mark No. 1101122 in classes 25 and 18 in Kenya.
6. The Applicant's investigation revealed that no use of the POLO SANTA ROBERTA (device) trade mark has ever been made in Nairobi. The Applicant annexed a copy of the report from the investigator, Keysian Investigators confirming this enclosed as annexure "B".
7. That in addition, a local retailer, Mr. Manish Savji Tank, who has been trading in the clothing, apparel and retail industry for several years has declared under oath that he has never encountered any goods bearing the POLO SANTA ROBERTA (device) trade mark in Kenya. The Applicant annexed an Affidavit sworn by one Mr. Manish Savji Tank enclosed as annexure "C".
8. That it is evident from the above that no use has been made of the POLO SANTA ROBERTA (device) trade mark in Kenya.
9. That the Applicant, who trades in Kenya, is unaware of any external factors in the trade that would have prevented any party from using a trade mark in the clothing, retail and apparel industry in Kenya.
10. That in the circumstances, it is clear that no objective special circumstances exist that could have prevented the owner of Trade Mark No. 1101122 POLO SANTA ROBERTA (device) from using its trade mark in Kenya for the last 5 years.
11. That accordingly, there has been no *bona fide* use of the above trade mark by the registered proprietor, or with his consent, for the goods in the specification, for a continuous period of 5 years from the date of registration of the said registered trade mark up to the date one month before the date of this application in Kenya.
12. That the said acts above are therefore contrary to the provisions of section 29(1) (b) of the Trade Marks Act, Cap.506 Laws of Kenya.

13. That the Applicant therefore seeks the expungement of Kenya Trade Mark No. 1101122 POLO SANTA ROBERTA in Class 18 and 25 in the name of Guangzhou Baoluo Cosmetics Co. Ltd from the date of this application in respect of all the goods in the specification and further asks for an award of costs in its favour.

14. The Applicant requested that:

- a) An order for the expungement and removal of Trade Mark No. 1101122 POLO SANTA ROBERTA in class 18 and 25 in the name of Guangzhou Baoluo Cosmetics Co. Ltd from the Register of Trade Mark with effect from the date of this application.
- b) Costs of the application.

The Form TM 25 together with statement of case were duly forwarded to the Respondent vide a letter dated 25th January, 2018. The Respondent was required to file its counter statement within 42 days from the date of receipt of the Form TM 25 and statement of case. The Respondent did not file the counter statement.

The Registrar of Trade Marks vide a letter dated 12th July 2021 granted the Respondent a further 30 days to take a hearing date in liaison with the Applicant's Advocates. The Respondent did not file any response.

On 20th December 2021, the Applicant filed its statutory declaration sworn by Rae James, the Group's Legal Adviser who declared *inter alia as follows*:

1. That the application is made in terms of section 29(1)(b) of the Trade Marks Act in that the Respondent had not made continuous and bona fide use of its trade mark in the relevant five-year period up to a date one month before the application for expungement filed on 7th November 2017. In fact, the Applicant was unable to find any evidence of use of the trade mark at all.
2. That the Declarant is the Group Legal Advisor of the Applicant and has held the position since 2006.

3. That the Declarant is authorised to depose to this statutory declaration and to institute these proceedings on behalf of the Applicant. The Declarant annexed a copy of a resolution evidencing the authority to so act marked as annexure “RJ2”.
4. That the Applicant is the proprietor in Kenya of the registered trade marks POLO and a POLO PLAYER device (the “POLO trade marks”). The POLO trade marks are registered in, *inter alia*, classes 18 and 25. These registrations cover goods of the same description as those that are covered by the Respondent’s POLO SANTA ROBERTA device trade mark registration.
5. Details of the Applicant’s POLO trade mark registrations are set out below:
 - a) Trade Mark No. 55887, POLO, Classes: 14,18,25,35



- b) Trade Mark No. 55535, , Classes: 18,25,35
6. That the POLO trade marks have been extensively used by the Applicant in Kenya since at least 2006. The Applicant enjoys and owns a widespread and substantial reputation and goodwill in its POLO trade marks in Kenya (and has done so at all relevant times hereto).
7. That the POLO SANTA ROBERTA device trade mark registration proceeded to registration on 27 September 2011, being more than five years ago. It is thus vulnerable to removal on the basis of section 29(1) (b) of the Trade Marks Act.
8. That the Applicant has a real and commercial interest in the apparel, bags, belts and footwear sectors in Kenya. The continued registration of the POLO SANTA ROBERTA device trade mark, which wholly incorporates the Applicant’s POLO trade marks, conflicts with section 15(1) of the Trade Marks Act, because the trade mark is confusingly and/or deceptively similar to the registered POLO and POLO PLAYER device trade marks of the Applicant. Use of the POLO SANTA ROBERTA device trade mark would be likely to result in confusion arising in the market place. Consumers are likely to be confused and/or deceived into believing that the Respondent’s goods emanate from,

or are connected with, the Applicant because of the similarity between the respective parties' trade marks and the goods for which they are registered. In the circumstances, the Applicant qualifies as an aggrieved person as envisaged by the provisions of section 29(1).

9. That during May 2017, the Applicant caused an investigation to be undertaken in Kenya which revealed that no use had been made of the POLO SANTA ROBERTA device trade mark for a continuous period of five years. Further, Mr Tank, a director of Manix Ltd, has deposed to an affidavit stating that he had not encountered any goods bearing the POLO SANTA ROBERTA device for five years preceding the signature of his affidavit on 24 April 2017.
10. That in the circumstances, the Respondent's registration ought to be expunged from the Register of Trade Marks on the basis of section 29(1) (b) of the Trade Marks Act.
11. That since 1976, the Applicant's POLO trade marks have been, and continue to be, used on clothing and related items, including bags, belts and footwear. These goods under the POLO trade marks which were first made available in trade in South Africa have been continuously sold in Kenya since at least 2006.
12. That the Applicant has sold very significant quantities of POLO branded products in Kenya. The revenue generated from the direct sale of such products through retailers in Kenya is set out in the table below for the financial years 2007 to 2010 and 2013 to 2017, when the expungement application was filed. The sales figures are recorded in the Applicant's financial records in South African Rand, and have been converted below to Kenyan Shillings, at the prevailing exchange rate on 29 November 2021:

Table 2: Total sales figures for products bearing the POLO trade marks in Kenya	
Financial Year (March to February)	Net Sales in Kenya Shillings (in excess of millions, rounded down):
2007	4

2008	11
2009	4
2010	8
2013	1.5
2014	3.5
2015	5
2016	13
2017	13
Total	63

13. That these sales figures are for total sales (rounded down) of POLO products sold at wholesale prices to the Applicant's retailers in Kenya. The value of the retail sales would have been significantly higher. They are clear testament to the popularity of POLO products and that consumers associate the POLO trade marks with a single source in Kenya, namely the Applicant. The Applicant's principal retailer in Kenya is Manix Ltd.

14. Manix Ltd has a number of clothing stores throughout Kenya which sell products branded with the POLO trade marks. Below is a list of them:

Majani Plaza - Koinange Street, Nairobi;
I&M Tower - Muindi Mbingu Street, Nairobi;
Sarit Centre - Westlands, Nairobi;
Garden City Mall - Thika Road, Nairobi;
Two Rivers Mall - Limuru Road, Nairobi;
The Junction Mall - Ngong Road; Nairobi
Rupa's Mall- Eldoret Town; and
City Mall - Nyali, Mombasa.

15. The Declarant referred to a copy of a supporting affidavit of Mr. Tank, in which he confirms that Manix Ltd has been trading in POLO goods. Importantly, Mr. Tank, who is a person with several years' experience in the apparel footwear and related goods (classes 25 and 18 goods) industry, states that he has not seen any goods bearing the POLO SANTA ROBERTA device trade mark in the five-year period prior to 24 April 2017. The supporting affidavit is annexed and marked "RJ4.3".
16. The Declarant annexed a copy of a report addressed to LA Group's Kenyan attorneys, Walker Kontos Advocates, from Keysian Auctioneers. The Report confirms that an investigation was conducted in Nairobi by Mr. Wasulwa. He visited numerous shops, including Mr. Price, Antas and Truworths, to determine whether any of them sold goods branded with the POLO SANTA ROBERTA device trade mark. The investigator visited twenty-seven (27) clothing stores over a period of six weeks to investigate this. He concluded that none of the stores sold goods bearing the POLO SANTA ROBERTA device trade mark. That he is advised that it is not necessary to provide an affidavit from Mr. Wasulwa, because he is an expert in the field of investigations in trade. The Report is annexed and marked "RJ4.4".
17. That in conclusion, the following facts are evident:
- a. the Respondent's POLO SANTA ROBERTA device trade mark registration is vulnerable to removal on the basis of five years' non-use in terms of the provisions of section 29(1)(b) of the Trade Marks Act, its registration date being 27 September 2011;
 - b. the Applicant qualifies as an aggrieved person owing to its commercial presence in Kenya and that the trade mark that is the subject of the expungement application is confusingly and/or deceptively similar to its prior registered POLO and POLO PLAYER device trade marks;
 - c. the Applicant's investigations revealed that no use had been made by the Respondent, or anyone else, of the POLO SANTA ROBERTA device trade mark in the relevant five-year period;

- d. no special circumstances existed in Kenya that prevented the Respondent from trading during the relevant period of non-use; and
 - e. the Respondent has not adduced any evidence to demonstrate that it has indeed made *bona fide* and continuous use of the POLO SANTA ROBERTA device trade mark in Kenya in the five-year period up to one month before the filing of the expungement application on 7 November 2017.
18. In the result, the applicant respectfully requests an order expunging trade mark registration IB/D/0001/1101122 POLO SANTA ROBERTA device in classes 18 and 25 from the Register of Trade Marks and awarding the costs of this application to it.

RULING

I have considered the application filed by the Applicant together with evidence adduced by way of the statutory declaration filed. I have also taken note of the Respondent's failure to file its counter statement as well as not defending the registration of its trade mark.

I have considered the provisions of Rule 83 (b) of the Trade Marks Rules which stipulates as follows:

"The Registrar shall not rectify the register or remove the mark from the register merely because the registered proprietor has not filed a counter statement"

It is my considered view that Rule 83(b) of the Trade Marks Rules requires the Registrar of Trade Marks to consider the grounds on which the application to rectify the register is based in order to make a determination on whether the rectification is justified or not. There is thus need that I consider the facts and the evidence filed by the Applicant which gives the basis for the expungement request made.

In the statement of case filed by the Applicant, the Applicant is seeking an order for the expungement and removal of Trade Mark No. 1101122 POLO SANTA ROBERTA in classes 18 and 25 in the name of Guangzhou Baoluo Cosmetics Co. Ltd from the Register of Trade Mark with effect from the date of the application and an order of costs of the application.

I am of the view that the following are the issues that should be determined in these

expungement proceedings:

1. Is the Applicant an aggrieved person in accordance with the provisions of Section 29(1) of the Trade Marks Act?
2. Was the trade mark registered without any bona fide intention on the part of the Applicant for registration that it should be used in relation to those goods by him, and that there has in fact been no bona fide use of the trade mark in relation to those goods by the proprietor?
3. Up to the date one month before the date of the application, has a continuous period of five years or longer elapsed during which the Respondent's trade mark was a registered trade mark and during which there was no bona fide use thereof in relation to those goods it is registered?

Section 29 of the Trade Marks Act provides as follows:

(1) Subject to the provisions of section 30, a registered trade mark may be taken off the register in respect of any of the goods or services in respect of which it is registered on application by any person aggrieved to the court or, at the option of the applicant and subject to the provisions of section 53, to the Registrar, on the ground that either—

- a) the trade mark was registered without any bona fide intention on the part of the applicant for registration that it should be used in relation to those goods by him, and that there has in fact been no bona fide use of the trade mark in relation to those goods by any proprietor thereof for the time being up to the date one month before the date of the application; or*
- b) up to the date one month before the date of the application a continuous period of five years or longer elapsed during which the trade mark was a registered trade mark and during which there was no bona fide use thereof in relation to those goods by any proprietor thereof for the time being:*

1) Is the Applicant an aggrieved person in accordance with the provisions of Section 29(1) of the Trade Marks Act?

As indicated above, Section 29(1) of the Trade Marks Act provides that a registered trade mark may be taken off the register in respect of any of the goods or services in respect of which it is registered on application by **any person aggrieved (emphasis mine)** to the court or, at the option of the Applicant and subject to the provisions of section 53, to the Registrar.

In the statement of case filed by the Applicant, the Applicant has indicated that it has a real and commercial interest in Kenya, and qualifies as an aggrieved person in terms of Section 29 of the Trade Marks Act.

In the statutory declaration filed, the Applicant indicated that it has a real and commercial interest in the apparel, bags, belts and footwear sectors in Kenya. That the continued registration of the POLO SANTA ROBERTA device trade mark, which wholly incorporates the Applicant's POLO trade marks, conflicts with section 15(1) of the Trade Marks Act, because the trade mark is confusingly and/or deceptively similar to the registered POLO and POLO PLAYER device trade marks of the Applicant. That the use of the POLO SANTA ROBERTA device trade mark would be likely to result in confusion arising in the market place. Consumers are likely to be confused and/or deceived into believing that the Respondent's goods emanate from, or are connected with, the Applicant because of the similarity between the respective parties' trade marks and the goods for which they are registered.

The depiction of the Applicant's marks and the Respondent's mark is as follows:

Applicant's Marks	Respondent's Mark
TMA No. 55887 in classes 14, 18, 25 & 35 POLO	
TMA No. 55535 in classes 18, 25 & 35 	TM No. 1101122 in classes 18 & 25

In comparing the Applicant's mark TM No. 55887, with the Respondent's mark, both marks consist of the word "POLO". When TM No. 55535 is compared with the Respondent's mark, there is a device of a man seated on a horse with what appears to be a long handled mallet in both marks.

In considering the goods applicable to the Applicant's marks and the Respondent's mark, there is a similarity in the goods in classes 18 and 25 of the International Classification of Goods and Services.

In ***Powell v Birmingham Vinegar Brewery Co Ltd***¹, the Court held that an aggrieved person includes any person who may have his legal rights limited due to the fact that a mark ought not to be on the register of Trade Marks remains on the register.

In ***Saudia Arabian Airlines Corporation v Saudia Kenya Enterprises Limited***² it was stated that anyone in the same trade and dealing in the same articles as one who has wrongfully registered a trade mark is *prima facie* an aggrieved person. That anyone in the same trade who can show he wishes to trade in the same articles and would be hampered or impeded in his business or developing it by the existence of the registration of that mark is an aggrieved person.

In the ***"Daiquiri Rum" Trade***³, Lord Pearce stated as follows:

"In my opinion, the words 'person aggrieved' were intended by the Act to cover all trade rivals over whom an advantage was gained by a trader who was getting the benefit of a registered trade mark to which he was not entitled..."

The learned author of Kerly's Law on Trade Marks and Trade Names, 10th Edition, states as follows at page 203, paragraph 11-02;

"The persons who are aggrieved are...all persons who are in some way or other substantially interested in having the mark removed ...from the register; including all persons who would be substantially damaged if the mark remained, and all the

¹ (1894) A.C. 8

² [1986] eKLR

³ Mark [1969] RPC 600 at 615

trade rivals over whom an advantage was gained by a trader who was getting the benefit of a registered trade mark to which he was not entitled.”

In *Health World Ltd v Shin-Sun Australia Pty Ltd*⁴, the Court defined an aggrieved person to include the person who would be concerned about the purity of the Register of Trade Marks that contains an accurate record of trade marks which are capable of performing their statutory duty of indicating “the trade origins of the goods to which it is intended that they be applied.” The persons aggrieved are unlike the persons who would want to make an application to rectify the Register of Trade Marks as busybodies who have no interest in the purity of the Register and would make such an application to gratify “an intellectual concern”.

I am of the view that the Applicant herein has an interest in seeking to ensure that its interests are protected as far as trade is concerned as well as the purity of the Register of Trade Marks in Kenya.

Guided by the law, the above cited decisions, the grounds relied on by the Applicant and the statutory declaration filed, I find that the Applicant is an aggrieved person and has the locus standi to initiate these expungement proceedings under the provisions of the Trade Marks Act.

- 2) Was the trade mark registered without any bona fide intention on the part of the Applicant for registration that it should be used in relation to those goods by him, and that there has in fact been no bona fide use of the trade mark in relation to those goods by the proprietor?**

In *Westminster Tobacco (Pty) Ltd v Philip Morris Products S.A. and Others*⁵ it was stated as follows:

The concept of bona fide use of a mark has received the attention of our courts on various occasions. There is no need to rehearse the jurisprudence in this regard. It

⁴ [1946] HCA 29; (1946) 75 CLR 487

⁵ (925/2015) [2017] ZASCA 10; [2017] 2 All SA 389 (SCA) (16 March 2017)

suffices to cite the following passage from the judgment in **A M Moolla Group v The Gap**⁶

‘The concept of bona fide use has been the subject of a number of judgments, also of this Court, and the area need not be traversed again. For present purposes, it suffices to say that “bona fide user”:

“means a user by the proprietor of his registered trade mark in connection with the particular goods in respect of which it is registered with the object or intention primarily of protecting, facilitating, and furthering his trading in such goods, and not for some other, ulterior object”

This test is similar to that proposed in an opinion by the Advocate General in the European Court of Justice in the **Ansul** case⁷:

“When assessing whether use of the trade mark is genuine, regard must be had to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark is real, particularly whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark, the nature of those goods or services, the characteristics of the market and the scale and frequency of use of the mark.”

I add one further quotation from the decision in **Ansul (supra)**:

“Genuine use” must therefore be understood to denote use that is not merely token, serving solely to preserve the rights conferred by the mark. Such use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of goods or services to the consumer or end user by enabling him, without any possibility of confusion, to distinguish the product or service from others which have another origin.

In the **Westminster Tobacco (Pty) Ltd** case it is summarised that, bona fide use is use of the trade mark in relation to goods of the type in respect of which the mark

⁶ (123/2004) [2005] ZASCA 72; [2005] 4 All SA 245 (SCA); 2005 (6) SA 568 (SCA) (9 September 2005):

⁷ Judgment of 11 Mar 2003, C-40/01 (Ansul), ECLI:EU:C:2003:145

is registered. The use must be use as a trade mark, for the commercial purposes that trade mark registration exists to protect. It must be use in the course of trade and for the purpose of establishing, creating or promoting trade in the goods to which the mark is attached. The use does not have to be extensive, but it must be genuine.

In *Anheuser-Busch, Inc. v OHIM*⁸, it was stated that genuine use entails use in accordance with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services for which it is registered, in order to create or preserve an outlet for those goods or services. It is not token use of the respective trade mark.

In *Laboratories Goemar SA V La Mer Technology Inc*, the court stated that the use should be consistent with the essential function of a trade mark. The function of a trade mark is to assist the consumer to identify the goods or services of one entity from those of another entity, without a possibility of confusion. Use of the trade mark preserves the marks' "commercial raison d'être", which is to create and preserve an outlet for the goods or services that bear the sign of which it is composed, as distinct from the good or services of other undertakings".

From the facts given above, the Respondent did not defend these expungement proceedings.

By way of an affidavit sworn by Mr. Manish Savji Tank, who has been involved in the apparel retail and clothing industry since 1992, he has never encountered any goods

bearing the mark  in Kenya and he has not seen any such goods or products for the last 5 years.

Through the Applicant's statutory declaration, the Applicant instructed Walker Kontos Advocates to cause an investigation to be conducted to establish whether or

⁸ Case T-191/07

not the  trade mark was in use in respect of the goods covered by Trade Mark No. 1101122 in classes 25 and 18 in Kenya. That the Applicant's investigation revealed that no use of the POLO SANTA ROBERTA (device) trade mark has ever been made in Nairobi. The Investigation was done by one Muganda Wasulwa, Chief Investigator of Keysian Auctioneers, who revealed that he visited numerous shops, including Mr. Price, Antas and Truworths, to determine whether any of them sold goods branded with the POLO SANTA ROBERTA device trade mark. He indicated that he visited twenty-seven (27) clothing stores over a period of six weeks to investigate this and concluded that none of the stores sold goods bearing the

 trade mark.

From the Applicant's statement of case, there has been no bona fide use of the

 trade mark by the Respondent, or with his consent, for the goods registered in respect to the mark, for a continuous period of 5 years from the date of registration of the said registered trade mark up to the date one month before the date of the application for expungement in Kenya.

From the evidence adduced by the Applicant, I am persuaded that the Respondent registered its mark without any bona fide intention that it should be used in relation to the goods registered in classes 18 and 25. In addition, there has in fact been no bona fide use of the trade mark in relation to the goods in classes 18 and 25, registered by the Respondent.

- 3) Up to the date one month before the date of the application, has a continuous period of five years or longer elapsed during which the Respondent's trade mark was a registered trade mark and during which there was no bona fide use thereof in relation to those goods it is registered?**

Section 29 (1) (b) of the Trade Marks Act provides as follows:

b) up to the date one month before the date of the application a continuous period of five years or longer elapsed during which the trade mark was a registered trade mark and during which there was no bona fide use thereof in relation to those goods by any proprietor thereof for the time being...

As indicated earlier, the Applicant in its statement of case indicated that there has

been no *bona fide* use of the  trade mark by the registered proprietor, or with his consent, for the goods in the specification, for a continuous period of 5 years from the date of registration of the said registered trade mark up to the date one month before the date of the application for expungement, in Kenya. The affidavit sworn by Mr. Tank, was to the effect that he had not seen any goods

bearing the  trade mark in the five year period prior to 24th April 2017.

Based on the information provided in the statement of case, the evidence adduced by the Applicant and the declaration made through its statutory declaration, I am persuaded that the Respondent had not up to the date of one month before filing

this application, put the  mark to bona fide use in Kenya in relation to the goods in classes 18 and 25 for a continuous period of five years or more.

DECISION

For the reasons set out above and having taken into account all the circumstances of the case, I rule as follows:

- 1) The Applicant has succeeded in these expungement proceedings;

- 2) The Applicant is an aggrieved person and has the locus standi to initiate these expungement proceedings;
- 3) The Respondent registered its mark without any bona fide intention that it should be used in relation to those goods registered. In addition, there has in fact been no bona fide use of the trade mark in relation to the goods in classes 18 and 25, registered by the Respondent.
- 4) The Respondent had not up to the date of one month before filing this application, put the  mark to bona fide use in Kenya in relation to the goods in classes 18 and 25 for a continuous period of five years or more.
- 5) The Register of Trade Marks is hereby rectified by expunging Trade Mark No. 1101122,  from the Register of Trade Marks;
- 6) I make no order as to costs.

Ruling delivered at Nairobi this 24 day of June 2025



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CONCILIA WERE

ASSISTANT REGISTRAR OF TRADE MARKS