



UGANDA REGISTRATION SERVICES BUREAU

THE TRADEMARKS ACT, CAP 225

IN THE MATTER OF TRADEMARK APPLICATION NO. UG/T/2024/082777

“IMITRUST” IN CLASS 1 IN THE NAMES OF TRUST SATE UGAND LTD

AND OPPOSITION THERERETO BY NINSIMA MOREEN

NINSIMA MOREEN:..... OPPONENT

VERSUS

TRUST SATE UGANDA LTD:..... APPLICANT

Ruling

Before: Birungi Denis: Asst. Registrar Trademarks

Background

1. The applicant filed application number UG/T/2024/082777 for registration of a word mark ‘IMITRUST’ in class 1 of the Nice Classification of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 1957, covering Agricultural chemicals, except fungicides weedkillers, herbicides, insecticides, parasitocides; Chemicals (Agricultural -), except fungicides, weedkillers, herbicides, insecticides and parasitocides; Agricultural chemicals, except fungicides, weedkillers, herbicides, insecticides and parasitocides; chemicals for use in horticulture [other than fungicides, weedkillers, herbicides, insecticides, parasitocides]; Chemicals for the protection of plants [other than fungicides, weedkillers, herbicides,

insecticides, parasiticides].

2. The opponent, a director and proprietor of Ntori Development Initiative Ltd, filed an opposition against registration of the applicant's mark, on grounds that the applicant applied for the trademark in bad faith, having sold his entire chemical dealership business including products branded with the disputed trademark, to the opponent. The opponent also contends that the applicant's application is intended to deceive the public and to frustrate her commercial interests.
3. The opponent contends that she is a dealer, importer and distributor of agricultural chemicals in Uganda, which business she conducts through her company, Ntori Development Initiative Ltd. That on 9th October 2023, the opponent and a one Bashaija Moses executed an agreement for sale of the business and the rights to deal in agricultural chemical products manufactured by a Chinese Company—Shenzen King Quension Industry Co. Ltd, wherein the said Bashaija Moses sold his entire business to the opponent including importation and distribution of the products bearing the disputed mark—IMITRUST/70WG. That in addition to this agreement, Mr. Bashaija also sold certificates of registration of the agricultural products, including IMITRUST/70WG, all authorization and permissions to the opponent. He then covenanted not to engage in similar business in Uganda. Subsequently, after these transactions, by letter dated 29th April 2024, the manufacturer wrote to the Agricultural Chemicals Board of the Ministry of Agriculture, Animal Industry and Fisheries (MAAIF) revoking the license from Mr. Bashaija's company Trust Chemicals Uganda ltd, and granting the rights to the opponent's company—Ntori Development Initiative Ltd. This transfer of rights included, among others, the product IMITRUST/70WG, registered by MAAIF under number UGc/2018/001777/In/RR.

4. That after those transactions, the opponent conducted a search with Uganda Registration Services Bureau (URSB), wherein she established that Mr. Bashaija Moses had incorporated the applicant company with the objective of conducting similar business as that of the opponent. She also discovered that Mr. Bashaija, through his newly incorporated company—Trust Sate Uganda Ltd, had also filed trademark number UG/2024/82777 to register the trademark IMITRUST, which is used for branding of a product he had already sold to the opponent. The opponent contends that these actions were done in bad faith, are fraudulent and constitute acts of unfair competition and hence illegal under section 23 of the Trademarks Act. The opponent further avers that she intends to register for the disputed mark to protect her intellectual property rights but such registration is hindered by the applicant's actions.
5. Finally, the opponent maintains that the word—IMITRUST, is not a word invented by the Applicant but it is a product name, for which the applicant has since lost rights. The opponent prays that the application is refused and costs be granted.
6. In its counterstatement, the applicant states that the opponent it entered into an agreement dated 30th January 2024 with Trust Chemicals Uganda Ltd for the sale of the product bearing the disputed mark, registered as UgC/2022/002970/in/RR (IMITRUST 10 SL and UGC/2017/001582/fu/RR and not with itself. The applicant adds that it made a search on 29th of February 2024 for the disputed name in class 01 of the Nice Classification and established that the same was not registered, after which it proceeded to file the current application. The applicant argues that its product is in liquid form and hence different from that of the opponent which is in powder form. The applicant also states that Bashaija Moses is not a shareholder or director

of the applicant company but is a director and shareholder of Trust Chemicals Uganda Ltd. As such, his actions cannot be imputed on the applicant company. That being the first to file, the applicant pray that its application is registered and the opposition be dismissed.

Hearing and determination

7. This matter came up for hearing on 15th April 2025. Learned Counsel Mwanje Lawrence of Imran Advocates and Solicitors appeared for the opponent while Learned Counsel Brian Mukisa of Muwema and Co Advocates appeared for the applicant. The applicant company was represented by its Directors Sam Byekora and Joel Rukundo.
8. During scheduling, I noted that the applicant had not filed its evidence, although Counsel for the applicant insisted that the evidence was filed. The matter was adjourned to 28th April 2025 to verify whether the applicant's evidence was filed. On further hearing on 28th April 2025, the opponent's Counsel appeared, while the Applicant's Counsel was absent and did not instruct another advocate to hold brief for him. The applicant was also not represented by any official. Counsel for the opponent prayed that the matter proceeds *ex parte*. The prayer was granted and the matter proceeded for scheduling. The following issues were raised;
 - (i) Whether the applicant's application was filed in bad faith to the opponent's detriment?
 - (ii) Remedies
9. The parties were given timelines to file and serve written submissions.

Preliminary issues

10. In his submissions, Counsel for the opponent drew my attention to two issues. The first issue is that the applicant's counterstatement mentions

annexures but the same were never attached to the statement. The second, is that the applicant did not file evidence in reply. I will address both issues concurrently since both are in regard to admissibility of evidence. First, I highlight the law on admissibility of evidence in trademark disputes before the Registrar. Section 68 of the Trademarks Act provides that;

"In any proceeding under this Act before the registrar, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which the registrar thinks fit, he or she may take evidence orally in place of or in addition to evidence by statutory declaration."

11. The above section is further elaborated by provisions of the Trademark Regulations, 2023. Regulation 31 and 32 both provide for admission of evidence by statutory declaration and state the effect of not doing so. Regulation 31 require the opponent to file a statutory declaration and serve the same on the applicant. Regulation 32 requires the applicant to file a statutory declaration in support of the application and serve a copy to the opponent. Regulation 32 however provides for the consequences of not filing a statutory declaration —which is that the opposition shall be deemed abandoned unless the Registrar directs otherwise. For clarity I reproduce it below;

32. Evidence in support of application

If an opponent leaves no evidence, the opponent shall, unless the Registrar otherwise directs, be taken to have abandoned the opposition; and if the opponent leaves evidence, then, within forty-two days from the receipt of the copies of the declarations, the applicant shall leave with the Registrar such evidence by way of statutory declaration as the applicant desires to adduce in support of the application and shall deliver to the opponent copies of the statutory declaration"

12. While in regulation 31, failure by the opponent to file evidence by statutory declaration has the effect of considering the opposition abandoned, failure by the applicant in regulation 32 does not have the same effect. However, that does not mean it does not affect the applicant's case under the rules of evidence. Its actual effect is that the evidence of the opponent is left unchallenged and the principles of law on unchallenged evidence apply. With regard to omitting the annexures on the counterstatement, while annexures may be annexed to a counterstatement, the correct way of admitting documents is by annexing them to the statutory declaration, which as I have already stated, is the legally permissible way of admitting evidence in trademark disputes before the Registrar in absence of contrary directions. I now proceed to determine the main issue, considering the pleadings and the evidence on record.

Issue 1: Whether the applicant's application was filed in bad faith to the opponent's detriment?

13. I will begin with a brief discussion on what constitutes bad faith, and whether it can be raised as a ground for opposition. In *Consolidated application for cancellation of trademark Nos. 045697 "TORA BIKA", 043533 "ROMA" AND 032264 "DANISA" Elite Gold Ltd v Indo Bali Distributors Ltd*, the office elaborately considered the concept of bad faith in cancellation proceedings. The office cited and applied the decision of the United Kingdom Supreme Court in the case of *Sky Kick UK Ltd v Sky Ltd [2024] UKSC 36* where bad faith in the context of trademark law, was explained as follows;

"While, in accordance with its usual meaning in everyday language, the concept of bad faith presupposes the presence of a dishonest state of mind or intention, the concept must also be understood in the context of trade mark law, which involves the

use of marks in the course of trade. Further, it must have regard to the objectives of the EU law of trade marks, namely the establishment and functioning of the internal market, and a system of undistorted competition in which each undertaking must, in order to attract and retain customers by the quality of its goods or services, be able to have registered as trademarks signs which enable consumers, without any possibility of confusion, to distinguish those goods or services from those which have a different origin...”

14. The Court went further to explain that bad faith is subjective, assessed by examining the intention of the applicant at the time of filing and considering the circumstances of the case. It noted;

“..., the objection will be made out where the proprietor made the application for registration, not with the aim of engaging fairly in competition but either (a) with the intention of undermining, in a manner inconsistent with honest practices, the interests of third parties; or (b) with the intention of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark, and in particular the essential function of indicating origin...”

15. The intention of an applicant for a trade mark is a subjective factor which is to be determined objectively by the hearing officer. Consequently, any claim of bad faith must be the subject of an overall assessment, taking into account all the factual circumstances relevant to the particular case (see, judgment of 11 June 2009, *Chocoladefabriken Lindt & Sprüngli*, C 529/07, EU:C:2009:361, paragraphs 37 and 42).

16. The above principles were emphasized in **Case C 104/18 Koton Mağazacılık Tekstil Sanayi ve Ticaret AŞ v EUIPO**, an appeal from an opposition decision of the Registrar of the European Union Intellectual Property Office (EUIPO), which was appealed to the European Union Court of Justice. In that

Case, the EUCJ noted that *“While, in accordance with its usual meaning in everyday language, the concept of ‘bad faith’ presupposes the presence of a dishonest state of mind or intention, that concept must moreover be understood in the context of trade mark law, which is that of the course of trade”*.

17. Given the above principles, the main question is whether the actions of the applicant qualify to be acts of bad faith within the context of trademark law in the course of trade. The burden of proving bad faith against the applicant, lies with the opponent (*see section 101 (2) of the Evidence Act*). Briefly the actions of the applicant alleged to give rise to bad faith are that, by agreement dated 9th October 2023, Mr. Moses Bashaija sold his business of selling and distributing chemicals to the opponent. The preamble to the agreement clearly stated that the Mr. Bashaija operates the business under the name Trust Chemicals (U) Ltd, whose address is in Container Village, Nakivubo road. Under clause 1 and 2 of the agreement, stock that was already in transit was transferred to the opponent plus all the rights to operate the business. The sold stock and rights included the disputed product name IMITRUST 70WG product no. Ugc/2018/0017777/In/RR.

18. Clause 3 of the agreement provided that for goods in transit, the parties shall agree on case by case basis. The goods in transit also include the product branded with the disputed mark. In clause 11 of the agreement, the seller (Mr. Moses Bashaija) covenanted not to engage in a similar business. The clause provided as follows;

“The seller shall no longer engage in a business similar to that involved in the transaction in any capacity within Uganda or with any restricted person, directly or indirectly. This is a condition of this agreement.” The agreement was duly signed by the opponent and Mr. Bashaija Moses and

witnessed by an advocate.

19. In accordance with clause 5 of the agreement which imposed an obligation on the seller to introduce the buyer to the manufacturer and the regulating Ministry, the said Bashaija wrote a letter (undated) introducing the opponent to the manufacturer, King Quension Industry Group- a Chinese company.
20. After selling the business to the opponent, the said Bashaija Moses together with others incorporated a company in the name of Trust Sate Uganda Ltd on the 25th January 2024, with Mr. Bashaija owning 10 shares. On 2nd July 2024, the company passed a resolution wherein Bashaija Moses sold his 10 shares to Rukundo Joel. On 15th October 2024, Trust Sate Uganda Ltd (the applicant) filed for registration of “IMITRUST” as a trademark in class 1 of the Nice Classification in respect of agrochemicals, leading to the current opposition.
21. The applicant’s defense is that it is a different person from Bashaija Moses who sold the business to the opponent and hence the actions of bad faith that Mr. Bashaija might have occasioned the opponent should not be imputed on it. They further submit that Mr. Bashaija does not own any shares in the applicant company.
22. First, it should be noted that the applicant did not file evidence to present the above narrative in response to the opponent’s evidence and therefore its evidence cannot be submitted at the bar. It ought to have been filed by way of statutory declaration as provided under the regulations. Secondly, even if the applicant had submitted evidence, its arguments do not hold and are too simplistic in light of the evidence on record and the chronology of events highlighted above. Third, as stated in **Nampa V Ssebagala Civil Suit No.913 of 20204**, citing with approval, **Uganda Revenue Authority v Stephen Mabosi SCCA No.26 of 1995**, *“the law on failure to challenge evidence is that*

such evidence is deemed admitted and inherently credible and probably true”.

Therefore, by failure to file a statutory declaration to refute the opponent’s evidence, the applicant failed to discharge the shifting evidential burden and hence the evidence of the opponent is admitted and accepted as true.

23. I have no doubt that the actions of Mr. Bashaija constitute bad faith. They also qualify as acts of unfair competition within the meaning of article 10 *bis* of the Paris Convention on the Protection of Industrial Property of 1883, which defines unfair competition as “*any act of competition contrary to honest practices in industrial or commercial matters....*” Unfair competition as defined under that provision and considering the authorities cited above, also constitute an act of bad faith.

24. What is clear from the evidence is that Mr. Bashaija through his company Trust chemicals Ltd sold his agro-chemicals business to the opponent. This business included the product containing the disputed mark “IMITRUST” imported from a Chinese manufacturer. After selling the business, the said Bashaija decided to make it difficult for the opponent to deal in that product, and hence incorporated the applicant company—Trust Sate Uganda Ltd—merely as an instrument to effect registration of the disputed trademark.

25. After incorporating a company together with others, Mr. Bashaija decided to register and acquire the trademark over the same product by filing it through the applicant company. Realizing that being a shareholder in the applicant company will make it clear that he is acting in bad faith, on 2nd July 2024 he transferred his shares to Rukundo Joel. The evidence of this is by a resolution and a share transfer form filed and registered with the Registrar of companies on the 23rd August 2024. Moreover this was done after the trademark application had been filed on 14th April 2025, meaning that even if I was to accept the argument that Mr. Bashaija is not part of the company

as the applicant's Counsel submits, on the date of filing, he was clearly a shareholder in the applicant company. These actions are cunning and fraudulent. They were clearly intended to conceal the fraudulent motive of Mr. Bashaija Moses and his intentions to frustrate the opponent from dealing in a product whose rights she clearly bought and paid adequate consideration for.

26. It should be recalled that pursuant to clause 3 of the sale agreement between the opponent and Mr. Bashaija, the said Bashaija Moses covenanted not to deal in the same or similar business, directly or indirectly. I reproduce clause 3 for clarity;

"The seller shall no longer engage in a business similar to that involved in the transaction in any capacity within Uganda or with any restricted person, directly or indirectly. This is a condition of this agreement."

27. By incorporating another company—the applicant company and attempting to acquire the rights over the trademark through it, Mr. Bashaija is indeed attempting to deal in the product indirectly through a company contrary to the terms of the agreement. By doing so in the manner he did, including passing a resolution and leaving the company to avoid being detected, Mr. Bashaija acted in bad faith and dishonestly in breach of his contractual obligations. While the Registrar of trademarks does not have jurisdiction to entertain claims of breach of contract in these proceedings, evidence of such breach is important in assessing whether a party is acting in bad faith, and indeed in this case, it proves just that. Bad faith, simply put, is dishonest conduct in commercial dealings intended to take unfair advantage of others. The actions of Mr. Bashaija Moses in this case qualify as dishonest.

28. As the authorities cited have stated, circumstances giving rise to bad faith must be assessed in the context of trademark law and the purpose of a

trademark, which is to distinguish the goods of one undertaking from those of another. Mr. Bashaija sold the products so that the opponent can take over and continue the business he was doing. To be able to deal in this business, the opponent needs what in intellectual property is called the freedom to operate, that is to say, the freedom to deal in the product without infringing any intellectual property rights. How will the opponent operate freely when Mr. Bashaija transferred the rights through one hand vide a legitimate sale, for which he was paid adequate consideration, and now attempts to take them back using another hand—filing for registration of a trademark? To permit this is to allow an injustice, insulated in legal machinations.

29. The improper motive of the said Mr. Bashaija Moses can also be inferred from the fact that before the sale of the business to the opponent, the said Bashaija did not have a registered trademark in the disputed product name IMITRUST and only later attempted to register it to acquire the rights after the sale. This is indicative of the intention to frustrate the opponent's freedom to operate. It would have been a different matter if the applicant already had the mark registered prior to the sale of the business, for which the question of inquiry would have been whether the sale also included the sale of the trademark. Mr. Bashaija's conduct in my view is illegal and intended to deceive within the meaning of section 23 (1) of the Trademarks Act. The section provides as follows;

"The registrar shall not register as a trademark or part of a trademark any matter the use of which would be likely to deceive or would be contrary to law, morality or any scandalous design."

30. The underlined words under that provision are important to note. The prohibition is against registration of a mark, whose use is likely to deceive. The online Cambridge dictionary defines the word to "deceive" as "to

persuade someone that something false is the truth, or to keep the truth hidden from someone for your own advantage". The actions of Mr. Bashaija, right from selling the rights over the goods branded with the disputed mark and covenanting not to deal in the same business, and later turning around to register a trademark to deal in the same product, coupled with filing for the mark under the name of the applicant company and later transferring his shares to conceal his involvement, are all actions that are deceitful within the meaning of section 23 of the Trademarks Act. I reject Counsel for the applicant's argument that the goods are different simply because the applicant's chemicals are in liquid form, while the opponent's chemicals are in powder form. Regardless of the form of the product, existence of the similar products, performing the same functions, with the same or similar brand name is likely to cause confusion in the market between the opponent's and the applicant's goods. This would also deceive an ordinary consumer to believe that the goods come from the same undertaking.

31. Further if the applicant managed to acquire that trademark, it would deceive the public to believe that they are the authorized dealer, yet Mr. Bashaija sold that business and such rights have since been granted to the opponent by the manufacturer and on that basis, the Ministry of Agriculture, Animal Husbandry and Fisheries (MAAIF) which is responsible for regulating the importation and dealing of chemicals, in its letter dated 16th September 2024, has since permitted the opponent's company to be the importer of the products. The applicant alludes to dealing in the same products branded with the disputed mark in liquid form but does not disclose if it is the manufacturer or not, and if so, why it chose to brand its products with the mark of products, whose rights it has since sold.

32. I do not agree with the submission of Counsel for the applicant that the

opponent has not met the criteria in the case of **Cholcolade Fabriken Lindt & Sprungli Agv Franz Hauswirth Gmbh Case-529/07** which list three factors, namely the applicant's knowledge of the third party's rights over the mark, the intention to prevent a third party from using the mark and the degree of legal protection enjoyed by the third party.

33. First, the factors in the above case are not exhaustive regarding circumstances giving rise to bad faith as was stated in Sky Kick decision (supra). Bad faith is determined on a case by case basis. In this case, the opponent satisfies the first two factors, namely, she has proved that the applicant had knowledge of her rights over the product name branded under the disputed mark arising from a sale agreement. Secondly, with regard to the second factor, the evidence adduced by the opponent reveal bad faith intentions by Mr. Bashaija. The act of incorporating the applicant to file and obtain the mark of a product he already sold are indeed aimed at frustrating the opponent—a third party.
34. With regard to the third factor, namely the degree of legal protection enjoyed by the third party's sign, this factor in the circumstances does not mean the legal protection granted by registration, since the basis of the opponent's case is that the intended registration is aimed at defeating her rights acquired through sale. This would mean, the opponent would not be able to acquire trademark rights over the disputed mark as the same would have already been acquired in bad faith by the opponent. In fact, on 23rd May 2024, the opponent filed to register the same mark via trademark application number UG/T/2024/083284 but the same was rejected vide exam report dated 24th May 2025 on grounds of the applicant's prior application, which as I have already determined, was filed in bad faith where the applicant company was used merely as instrument to perpetuate the bad faith.

35. Can bad faith be raised as a ground for opposition? I answer this question in the affirmative because of the following reasons. First, bad faith as already discussed, has an element of registering a mark intended to be used in manner that can deceive within the meaning of section 23 of the Trademarks Act. Secondly, bad faith (*mala fides*) is illegal conduct, which is recognized as a general principle of law across jurisdictions. Courts across multiple jurisdictions consistently recognize that bad faith is a general principle of law and is prohibited in contractual, administrative, and international legal relations.

36. The principle is enshrined in domestic laws, international treaties, and judicial precedents worldwide. Persons, entities and even states are expected to have some sort of fair dealing. The contrary is deemed bad faith and is prohibited worldwide. For example Lord Justice Bingham in **Interfoto Picture Library Ltd v Stiletto Visual Programmes [1989] QB 433 at 439** stated:

"In many civil law systems, and perhaps in most legal systems outside the common law world, the law of obligations recognises and enforces an overriding principle that in making and carrying out contracts parties should act in good faith. This does not simply mean that they should not deceive each other, a principle which any legal system must recognise; its effect is perhaps most aptly conveyed by such metaphorical colloquialisms as 'playing fair', 'coming clean' or 'putting one's cards face upwards on the table.' It is in essence a principle of fair open dealing... English law has, characteristically, committed itself to no such overriding principle but has developed piecemeal solutions in response to demonstrated problems of unfairness."

37. Therefore, filing for a trademark in bad faith is both deceptive and contrary

to law within the meaning of section 23 of the Trademarks Act and hence can be raised as a ground for opposition since section 23 prohibits registration of trademarks the use of which is likely to deceive or would be contrary to law.

38. Having determined that the application was filed in bad faith and that the registration is intended to deceive and is contrary to law within the meaning of section 23 of the Trademarks Act, the opposition succeeds. The application is accordingly refused registration. The applicant is free to proceed with registration of trademark application number UG/T/2024/083284 which had been rejected on account of the current application.

39. The opponent also prayed for costs, citing section 27 of the Civil Procedure Act, Cap 282 to support the proposition that costs are discretionary and that a successful party ought to be reimbursed the expenses of the proceedings. I agree with that principle, however I should add that the Trademark Act and regulations provide for the powers of the Registrar to award costs. Section 57 of the Trademarks Act provides as follows;

57. Power of registrar to award costs

(1) In all proceedings before the registrar, the registrar may award to any party costs as he or she may consider reasonable and may direct how and which parties are to be paid.

(2) An order made under subsection (1) may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.

40. Section 57 grants the Registrar discretion to award costs and direct how and which parties may be paid, and under section 57 (2) such an order is enforced as an order of court, but after obtaining leave of court. I also make reference to the Trademark (Costs) Rules SI 217-2, which were made under section 44 (2) of the now repealed Trademarks Act Cap 217, but were saved by section 99 (2) of the current Trademarks Act. Those regulations are applicable with

necessary modification, to the taxation and enforcement of an order of costs granted under section 57 of the current Trademarks Act. Accordingly, I award costs to the opponent and direct that the same be paid by Applicant for allowing itself to be used as instrument to perpetuate bad faith.

I so order.

Given under my hand this 08th day of July 2025

Birungi Denis
Assistant Registrar of Trademarks