



UGANDA REGISTRATION SERVICES BUREAU  
THE TRADEMARKS ACT CAP. 225

IN THE MATTER OF TRADEMARK REGISTRATION NO. UG/T/2023/080314  
“AQUELLE” IN CLASS 32 IN THE NAME OF AQUELLE BEVERAGES SMC  
LIMITED  
AND  
APPLICATION FOR CANCELLATION THERETO BY CREDSCAN  
(PROPRIETARY) LIMITED

Ruling

Before: Asst. Registrar Tugume Mark

**A. Background**

1. This is an application for the cancellation of trademark no. **UG/T/2023/080314** “AQUELLE”(represented below) registered as of 15/08/2023 (entitlement date) in class 32 (*Mineral water; Sparkling mineral water; Aerated mineral water; Flavored mineral water; Mineral water [beverages]; Drinking mineral water; Carbonated mineral water; Sparkling mineral waters; Carbonated mineral waters; Mineral and aerated waters; Mineral enriched water [beverages]; Mineral and aerated water; Aerated mineral waters; Syrups for making flavored mineral waters; Mineral and aerated waters and other non-alcoholic beverages; Essences for making flavoured mineral water [not in the nature of essential oils]*) in the name of Aquelle Beverages - SMC Limited (herein after “the Respondent”) a company incorporated in Uganda whose business address is Plot 65/67, 7<sup>th</sup> Street Industrial Area, Kampala, P.O. Box 24593 Kampala



2. Credscan (Proprietary) Limited (Hereinafter, the Applicant), a South African company based in KwaZulu-Natal, South Africa, applied on 28/11/2024 seeking the cancellation of the Respondent’s trademark on the grounds that the registration was made in error. In particular, the applicant contends that;

- 1) The Respondent's trademark is not distinctive as it is not capable of distinguishing the Respondent's goods from those of the Applicant, and that the Applicant has registered the trademark "AQUELLÉ" in various countries in class 32.
- 2) The Respondent's trademark was registered in bad faith; the Respondent intentionally and dishonestly applied for and secured registration of the trademark in issue without any claim of right with the intention to deceive the consumers and subject the genuine owners to unfair competition.

3. In its counterstatement filed on 20/01/2025, the Respondent opposed the cancellation of its mark on the following grounds;

- 1) That the Respondent followed the due process under trademark law in Uganda and was thereafter awarded registration of their trademark UG/T/2023/080314 "AQUELLE" in class 32, and therefore the trademark could not have been registered in error.
- 2) That despite the Applicant being given an extension of 90 days to file their opposition, it elected not to exercise that option, which gave the Respondent a legal right to proceed with their application.
- 3) That there could not have been any resemblance to the Applicant's mark since the latter's trademark did not exist on the register at the time when the Respondent submitted its application for registration of the trademark.
- 4) That there is no likelihood of confusion as the Respondent has already established significant goodwill and reputation in the Ugandan market through its sales volume and list of clientele. In contrast, the Applicant has no market in the subject jurisdiction, that is, Uganda.
- 5) The Respondent contends that the Applicant's statement of case lacks any proof that the Respondent had any knowledge of the existence of the Applicant's AQUELLÈ mark at the time it applied to register the mark.
- 6) The territorial nature of intellectual property law strips the Applicant of any right to claim protection of their trademark in a country where it is not registered.

#### **B. Representation and Hearing**

4. A scheduling hearing was conducted on 11/07/2025. Mr. Kerim Epaphiaditus Clyde of Matsiko, Wanda & Arinda Advocates represented the applicant, while

Ms. Dinnah Kyasimiire of SIPI Law Associates represented the Applicant. The following issues were raised for determination;

- 1) Whether the Respondent's trademark was registered in error?
- 2) Whether the Respondent's trademark was registered in bad faith?
- 3) What remedies are available for the parties?

5. During the same hearing, the Respondent raised a preliminary objection to the cancellation proceedings as to whether the Applicant, who had failed to file an opposition in the prescribed period, had locus to apply for the cancellation of the registered trademark.
6. This objection was overruled on the basis that the Trademarks Act, Cap. 225 provides an aggrieved person with two distinct remedies in relation to a trademark application or registration. First, under section 12 of the Act, any person may oppose an application for registration of a trademark by filing a notice of opposition within sixty (60) days from the date of publication of the application. Second, where a trademark has already been registered, section 88(1) of the Act permits any person aggrieved by such registration to apply for the rectification or cancellation of the register on the ground that the registration was made in error or wrongly remains on the register.
7. Accordingly, the Applicant, being a person aggrieved by the registration of the Respondent's trademark, is within its statutory right to apply for the cancellation of the same under section 88(1) of the Act, notwithstanding its failure to file an opposition at the application stage. Both parties duly filed written submissions for consideration by the Registrar.

### **C. Determination of Issues**

- 1) Whether the Respondent's trademark was registered in error.**
8. Counsel for the Applicant argued that the Respondent's registration was made in error because the Respondent was not the true owner of the mark and the registration conflicted with the Applicant's earlier rights. Counsel submitted that the Applicant's mark AQUELLÉ had been in use since 1998 across multiple jurisdictions and enjoyed international reputation and goodwill, which ought to have been recognised in Uganda. Counsel contended that the Respondent's mark was identical and covered identical goods in Class 32, and is therefore likely to

deceive and cause confusion with the Applicant's trademark. Counsel relied on dictionary definitions and judicial interpretation to explain the meaning of "owner" and argued that international reputation and online presence should suffice to establish prior rights, citing analogies to cases where web/online presence constituted bona fide use. Counsel further submitted that the Respondent must have been aware of the notoriety of the Applicant's trademark and business and adopted their trademark to ride on the goodwill and reputation of the Applicant's business.

9. Counsel for the Respondent submitted that the registration was not made in error because the Respondent correctly filed first under Uganda's first-to-file system and no conflicting mark was on the register at the time of examination. Counsel argued that trademark rights are territorial and that foreign registrations or reputation do not confer enforceable rights in Uganda absent domestic registration or statutory protection. Counsel relied on Ugandan precedents holding that Article 6bis of the Paris Convention for the Protection of Industrial Property (Paris Convention) is domesticated only through defensive registration under Section 47 and cannot be invoked as a ground for cancellation. Counsel further argued that the Applicant had no goodwill in Uganda, having failed to prove actual customers, importation, distribution channels, or compliance with mandatory local standards, whereas the Respondent demonstrated significant local sales and business presence. Counsel submitted that the Applicant's evidence of international reputation did not amount to enforceable rights that could render the Respondent's registration erroneous.

### **Decision**

10. Section 88(1) of the Trademarks Act Cap. 225 provides that any person aggrieved by an omission, entry, error, defect, or by an entry wrongly remaining on the register may apply, in the prescribed manner, to the Registrar for rectification of the register. The Trademarks Act does not provide an express definition of the term "error". In the absence of a statutory definition, recourse must be had to the ordinary meaning of the word, as informed by dictionary definitions and relevant judicial interpretation.
11. The Merriam-Webster Dictionary defines "error" as "an act or condition of ignorant or imprudent deviation from a code of behavior," "an act involving an

unintentional deviation from truth or accuracy," "a mistake in the proceedings of a court of record in matters of law or fact."

12. A trademark registration may therefore be said to have been made in error where, upon review, it is demonstrated that the registration was effected in contravention of the provisions of the Trademarks Act or without compliance with the applicable statutory requirements.
13. In the present case, the Applicant avers that the Respondent's trademark **No. UG/T/2023/080314 – "AQUELLE"** ought not to have been registered. In support of this contention, the Applicant relies on evidence contained in the Statutory Declaration sworn by its General Manager, Ms. Ruth Rita Combrink, which attests to the Applicant's long-standing and extensive use of the trademark "**AQUELLÉ**" for over twenty-five (25) years, its prior registration in South Africa on 21/06/2016, and its registration in multiple other jurisdictions in Class 32. The Declaration further details the mark's international recognition, commercial success, and accrued goodwill, which the Applicant contends, renders the Respondent's mark incapable of performing the essential trademark function of distinguishing the Respondent's goods from those of the Applicant.
14. The Respondent filed a Statutory Declaration from its director, contending that its trademark, "AQUELLE" can be traced back to its origin in Kenya, through its affiliate company, Komax Investments Limited, which has used the mark since 2005 and secured Kenyan trademark registration in 2019. The Respondent Company was incorporated in Uganda in December 2020 to expand its existing business. The Respondent contends that it subsequently established a supply network for its bottled water with various Ugandan hotels, banks, and government entities. Following the proper trademark registration process, the Respondent's mark was advertised in the Uganda Gazette. After the Applicant failed to file an opposition within the granted 90-day extension, the Respondent's mark proceeded to registration. The Respondent further contends that the Applicant has no market presence in Uganda and has failed to demonstrate that its products are known to Ugandan consumers. Consequently, the Respondent argues there is no likelihood of confusion, as its own mark has already acquired significant reputation and goodwill in the Ugandan market.

15. I have carefully considered the evidence and written submissions of the parties and will proceed to address the first issue. The Applicant's case rests on three pillars:

- 1) First, that it is the rightful owner of the mark based on its prior use and international registrations;
- 2) Second, that the Respondent's mark lacks distinctiveness as it is incapable of distinguishing the Respondent's goods from the Applicant's; and
- 3) Third, that its mark is well-known and thus entitled to protection in Uganda under Article *6bis* of the Paris Convention.

16. On the question of ownership and distinctiveness, the Applicant relies on the decision in Kampala Stocks Supermarket Co. Ltd v Seven Days International Ltd to support the proposition that an "owner" of a trademark may include a person who has registered the mark in another jurisdiction. While this is a correct statement of the law for purposes of establishing eligibility to apply for registration under Section 7 of the Trademarks Act, Cap. 225, it does not, of itself, confer automatic superior rights over a party who has already secured registration of an identical or similar mark in Uganda under the applicable first-to-file principle.

17. The determinative consideration in the present proceedings, therefore, is the status of the competing rights within Uganda. In this regard, Section 36 of the Trademarks Act confers exclusive rights upon the proprietor of a trademark that is duly entered on the Register in Uganda, subject only to the statutory grounds upon which such registration may be challenged or rectified.

18. On the question of distinctiveness and likelihood of confusion, Section 25 explicitly prohibits the registration of a mark that is identical to or nearly resembles a trademark already on the register. At the time the Respondent's application was examined and accepted by the Registrar, the Applicant's mark was not on the Ugandan register. The Applicant's own application was filed later, in November 2023. Therefore, the Registrar could not have entered the trademark in error, as there was no conflicting mark on the register to cite against it.

19. In a first-to-file system, rights are granted to the person who first files an application for registration, rather than to the person who first uses the mark in the marketplace. Under this system, priority is determined by the filing date, and not by prior use, reputation, or ownership in another country, unless the law

provides a specific exception (such as opposition, defensive registration, or bad-faith filings). Uganda operates a first-to-file system, subject only to limited statutory exceptions such as opposition proceedings, defensive registration of exceptionally well-known marks, or proof of bad faith.

20. Further, the principle of territoriality is fundamental to trademark law and is codified in Article 6(3) of the Paris Convention, which states that a mark duly registered in a country of the Union shall be regarded as independent of marks registered in the other countries of the Union, including the country of origin. This principle was affirmed in *Kampala Stocks Supermarket Co. Ltd v Seven Days International Ltd. (Civil Suit No. 112 of 2015) [2015] UGCommC 96 (31 July 2015)*, where the Court held that a trademark, which is registered in the country that is a party to the Paris Convention, shall be regarded as independent of trademarks registered in other countries who are also parties to the Paris Convention.
21. The Applicant further invoked Article 6bis of the Paris Convention, claiming AQUELLÉ is a well-known mark entitled to protection even without registration. It argued that Section 47 on defensive registration is permissive rather than exclusive and that Uganda ought to protect its well-known mark without requiring domestic filing.
22. This argument cannot be upheld because trademark protection is territorial. The High Court of Uganda has authoritatively affirmed this principal in *Modino Furniture Company Limited v Homeart Uganda Limited and Others (Civil Suit No. 427 of 2020; Civil Suit No. 724 of 2019) [2024] UGCommC 428 (11 October 2024)*, where it was held that registration of a trademark in a country of origin or under international arrangements does not confer automatic protection in Uganda, and that such marks must comply with the requirements of the Trademarks Act, Cap. 225, including registration or objection procedures prescribed therein. The Court further held that Article 6 of the Paris Convention embodies the territorial principle, under which trademarks registered in one country are independent of registrations in other countries, including the country of origin.
23. The High Court in the same decision emphasized that protection of foreign or well-known marks in Uganda is strictly governed by statute, particularly section 47 of the Trademarks Act, which provides for defensive registration of well-known marks. In the absence of a defensive registration or compliance with the statutory

procedure for protection of a foreign mark, Article 6bis of the Paris Convention cannot be relied upon to invalidate, block, or cancel a trademark duly registered in Uganda.

24. This statutory interpretation follows earlier High Court authorities, including *Anglo Fabrics (Bolton) Ltd & Another v African Queen Ltd & another (HCCS No. 632 of 2006)*, where the Court held that registration on the Ugandan register constitutes *prima facie* evidence of validity and exclusive ownership.
25. Additionally, administrative decisions such as *Wave Intellectual Property Inc v Agaba Ernest [2023]* and *Liberty Group Ltd v Liberty ICD Ltd [2023]* articulate a similar position regarding the limited operation of Article 6bis through section 47 of the Trademarks Act, those decisions are persuasive only and are consistent with, but subordinate to, the binding authority of the High Court. In the present case, the Applicant neither sought defensive registration under section 47 nor complied with the statutory mechanisms for protection of a foreign or well-known mark prior to the Respondent's registration.
26. Therefore, I find that the Respondent's mark was not registered in error. The Applicant has not demonstrated that the Respondent's registration constitutes an "error" as understood in trademark law.

## **2) Whether the Respondent's trademark was registered in bad faith?**

27. The Applicant alleges the registration was made in bad faith, with the intention to deceive consumers and capitalize on the Applicant's well-known international reputation. The Applicant argued that the Respondent registered the mark in bad faith because the Respondent must have known of the Applicant's long-standing international rights and reputation. The Applicant's General Manager avers that the bad faith filing and registration of the trademark by the Respondent has resulted in loss for the Applicant through the brand dilution of the Applicant's genuine products and a loss in market share to the counterfeit products put on the market by the Respondent. Counsel relied on the Applicant's global presence and online footprint to infer awareness by the Respondent, and described the Respondent's conduct as inconsistent with honest commercial practices
28. The Applicant's General Manager also contended that the Respondent's steps to register were an attempt to pre-emptively block the Applicant's entry on the

trademark register. The evidence presented to support this included the timing of the Respondent's application, in 2023, which pre-dated the Applicant's own application in Uganda by a short margin, suggesting a potential pre-emptive filing to block the legitimate owner from acquiring the rights to the subject trademark.

29. In response, counsel for the Respondent contended that the Applicant had not presented any credible evidence that the Respondent knew of the Applicant's mark at the time of filing or intended to take unfair advantage of it. Counsel emphasised that the Respondent's use of the AQUELLE mark was longstanding in the region through its Kenyan affiliate and that its expansion into Uganda was part of a legitimate commercial plan. Counsel argued that the Applicant's speculative assertions did not meet the high evidential threshold for bad faith and that there was no direct or circumstantial evidence of dishonest intent. Counsel maintained that the Respondent's conduct was consistent with normal business expansion and lawful registration under the Act.

### **Decision**

30. Although not defined in the Trademarks Act, bad faith has been elucidated in jurisprudence. The test of proving bad faith can be derived from *Sky Kick UK Ltd v Sky Ltd [2024] UKSC 36*. The Supreme Court, while quoting an earlier decision, explained 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.”*

31. With respect to trademark law, at para 155, the Supreme Court further guided that the circumstances which may justify a finding that an application to register a sign as a trade mark was made in bad faith have tended to fall into one of two categories:

- i. *where the application was made, not with the intention of engaging fairly in competition but with the intention of undermining, in a manner inconsistent with honest practices, the interests of third parties; or*

ii. *where the application was made 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, in particular the essential function of indicating origin – and so enabling the consumer to distinguish the goods and services of one undertaking from others which have a different origin.*

32. From the guidance above, it is imperative to consider the intentions of a trademark applicant when determining the existence of bad faith. A claimant relying on this ground has to prove the dishonest intentions of a trademark applicant at the time of filing for the trademark application. The learned Justices stated that:

*“...Bad faith may, however, be established only where there are objective, relevant and consistent indicia tending to show that, when the application for the trade mark was filed, the applicant had the intention either of undermining, in a manner inconsistent with honest practices, the interests of third parties, or 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”*

*“....Consequently, 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”*

33. In summary, this judgment defines bad faith as a dishonest intention assessed objectively at the date of application, which involves either targeting third parties or, crucially, seeking rights for purposes other than a trademark's functions. A lack of intention to use can be powerful evidence of this, especially when the specification is vastly broader than any plausible commercial rationale. The burden of proof starts with the person alleging bad faith, but it can shift to the trademark owner to provide a plausible commercial explanation.

34. The law governing trademarks in Uganda does not explicitly spell out bad faith as a ground for cancellation of a trademark in the Trademarks Act Cap. 225. Whereas Section 88(1) of the Act permits a person aggrieved by the omission, entry, error,

defect or an entry wrongly remaining on the register to apply for its cancellation, bad faith registration may be deemed as registration of a trademark contrary to law within the meaning of section 23 of TMA and as such, a wrongful entry within the meaning of section 88. For this reason, the parameters established by the *Sky Kick* (supra) case provide sufficient guidance in determining bad faith in trademark cancellation proceedings.

35. In this case, the Applicant alleges bad faith against the Respondent, stating that the respondent intentionally and dishonestly applied for and secured registration of the trademark in issue without any claim of right with the intention to deceive the consumers and subject the genuine owners to unfair competition. Further, the Applicant in the Statutory Declaration sworn by its General Manager in para 32 states that *“...the Respondent must have been and is aware of the Applicant and its business and worldwide notoriety in the AQUELLÉ trademark in relation to class 32 goods, considering the Respondent registered the trademark AQUELLÉ, which is similar to the Applicant’s well-known and distinctive AQUELLÉ trademark, in relation to identical goods of interest and in the same industry of concern to the Applicant. There is no reason why the Respondent adopted the mark AQUELLÉ, other than to ride on the good reputation of the Applicant, generated over many years.”*
36. The Respondent, on the other hand, counters the Applicant’s claims with the history of how it started its business operations in Kenya before expanding to Uganda, evidenced by a registered trademark in Kenya and now in Uganda. As it is a widely known legal principle that he who alleges must prove, I find that the Applicant, who bears the burden of proof of bad faith in this case, has failed to prove any dishonest intentions by the Respondent, especially at the time it applied for a trademark in Uganda.
37. Further, the Respondent has proved that it registered its trademark for its glass-bottled water products, which are available in various hospitality-related institutions in Uganda, demonstrating its intention to use its trademark and not undermining the Applicant’s rights, which, at the time of filing the trademark application.
38. I am guided by the decision of the learned Registrar in the matter of *Elite Gold Limited v Indo-Bali Distributors Limited [2025] UGRSB 6*, wherein he quotes the

Supreme Court of Uganda in the landmark case of Fredrick J. K Zaabwe Vs Orient Bank Limited & Others Civil Appeal No. 4 of 2006, where it was stated that:

*“Bad faith” and “fraud” are synonymous, and also synonymous of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc. ...As distinguished from negligence, it is always positive, intentional. It comprises all acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage to another. And includes anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth, or by look or gesture...”*

39. The evidence submitted by the Applicant does not substantiate the claim of bad faith in this matter. It is unclear how the Respondent must have been aware of the Applicant's brand and business, for example, through a previous employment or contractual relationship, especially outside of Uganda.
40. According to the Applicant, the Respondent's alleged knowledge of the Applicant's pre-existing international rights is attributed to the identical nature of the marks and the Respondent's conduct after receiving the Applicant's demand letter. The Respondent counters this with evidence of independent use through its Kenyan sister company since 2005, its legitimate business expansion into Uganda and its substantial investment and goodwill built in the Ugandan market.
41. The Applicant further claimed that because its mark has acquired a substantial reputation and goodwill in its trademark and has strong common law rights in the trademark AQUELLÉ, the Respondent's acquisition of protection of a trademark that is visually, aurally, phonetically, and conceptually similar and/ or identical to the Applicant's AQUELLÉ trademark is a deliberate attempt by the Respondent to take unfair advantage of the goodwill and reputation the Applicant enjoys in its AQUELLÉ trademark.
42. In addressing the Applicant's claim of goodwill of its brand and products, I am persuaded by the case of *Starbucks (HK) Limited v British Sky Broadcasting Group PLC [2015] UKSC 31*. Although this dispute dealt with the tort of passing off, the UK Supreme Court provided important parameters for claimants to prove when claiming goodwill in their brands:

*“...I consider...that a claimant...must establish that it has actual goodwill in this jurisdiction, and that such goodwill involves the presence of clients or customers in the jurisdiction for the products or services in question. And, where the claimant’s business is abroad, people who are in the jurisdiction, but who are not customers of the claimant in the jurisdiction, will not do, even if they are customers of the claimant when they go abroad....As to what amounts to a sufficient business to amount to goodwill, it seems clear that mere reputation is not enough...The claimant must show that it has a significant goodwill, in the form of customers, in the jurisdiction, but it is not necessary that the claimant actually has an establishment or office in this country. In order to establish goodwill, the claimant must have customers within the jurisdiction, as opposed to people in the jurisdiction who happen to be customers elsewhere. Thus, where the claimant’s business is carried on abroad, it is not enough for a claimant to show that there are people in this jurisdiction who happen to be its customers when they are abroad”*

43. I agree with the learned Justices in the decision above that for one to claim goodwill, it must be accompanied by the presence of actual customers in the subject jurisdiction, even though such a claimant does not have a physical establishment in the country. While it is true that the presence of online and digital marketing can be used to prove goodwill, it has to be accompanied by the actual presence of the claimant’s goods or services. Having Goodwill is like having customers in a country. It means people in that jurisdiction are actively engaging in a commercial relationship with you, paying for your goods or services, and your business is functionally operating within that market. This creates a legitimate, protectable business asset in that place.
44. However, having a mere reputation is like being known in a country. It means people there might have heard of you, seen your advertisements, or even visited your website. But, if they cannot actually be your customers in that jurisdiction, that is, if there is no commercial conduit for them to purchase your product or service locally, then you have reputation, not local goodwill. The Applicant in this case has failed to prove the commercial relationship between the consumers in Uganda and its products. The mere presence of an online link that accords access to the Applicant’s products is insufficient to prove goodwill.
45. The Applicant provided evidence of international reputation, social media following, and brand recognition awards. However, the Applicant has not provided evidence of actual customers in Uganda, market penetration,

importation records, distribution channels, or sales targeted at Ugandan consumers. Without evidence of a commercial foothold, the Applicant possesses only reputation abroad, and not goodwill within Uganda.

46. Conversely, the Respondent adduced extensive evidence of actual trading in Uganda since 2020, supplying bottled water to leading hotels, banks, government agencies, and corporate entities. These records demonstrate significant local goodwill that is both protectable and relevant under trademark law. The Respondent, therefore, has an active commercial relationship with its customers.

47. It is important to note the differences that lie between these facts and the facts that led to the case of *Crafttop Canada Ltd v Grace Capital International Ltd [2024] UGCommC 312*, as cited by the Applicant. In the latter case, on Page 12, the Judge rightly noted:

*"The true sequence of the events... is that the Respondent purchased machines from the Applicant's affiliate in China. When the Applicant wanted to get a dealer... it got in touch with the Respondent. Unfortunately, their negotiations fell through and the Respondent cunningly proceeded to register the Applicant's mark... as a bargaining chip and in order to get an unfair advantage over the Applicant in the Ugandan market"*

The court relied on evidence of a proforma invoice and bill of lading proving the prior sale from the Applicant to the Respondent.

48. In this case, there is no evidence of any prior commercial relationship between the Applicant and the Respondent. The Applicant's claim of bad faith is based on circumstantial inference that the Respondent "must have known" due to the Applicant's international reputation, which is a much higher evidentiary bar to clear.

49. Further, in the *Crafttop case* (supra), use was demonstrated by the Respondent's own admission that it had imported the Applicant's goods into Uganda. The online portals were the channel that facilitated this specific, proven sale to a Ugandan entity. On Page 11, the Judge further stated:

*"This proves that, even without a physical presence in Uganda, the Applicant was able to market its products using its online portals and means and secured the attention and trust of a Ugandan customer who duly purchased its machines and imported them into Uganda."*

50. In this case, the Applicant points to general online accessibility but has neither provided evidence of a similar transactional relationship with a customer in Uganda, nor evidence that its own products are available and consumed on the Ugandan market. The Applicant does not have evidence of a direct relationship with the Respondent, but rather, evidence based on broader legal grounds, in contrast to the Respondent, who has a proven local market presence. Therefore, the interpretation of use in the *Crafttop case* should not be extended to cover a situation involving a mere global online reputation without evidence of resultant commercial activity in Uganda.
51. The burden of proving bad faith rests with the Applicant and requires convincing evidence of dishonest intention at the time of filing. The Respondent has provided a plausible explanation of independent origin and legitimate business expansion.
52. I therefore find that the Applicant has failed to discharge the burden of proving that the Respondent acted in bad faith when applying for its trademark at the time of filing. Consequently, the ground for cancellation based on bad faith must fail.

### **3) What remedies are available to the parties?**

1. Section 88 of the Trademarks Act grants the Registrar broad powers to rectify the register, including the power to *"expunge or vary any entry in the register, or make any entry that may be omitted from the register."* Section 89 further provides that the Registrar may *"on the application of any person aggrieved by the absence or omission from the register of any entry, or by any entry made without sufficient cause, or by any entry wrongly remaining on the register... make such order for making, expunging or varying the entry as the registrar may think fit."*
2. The Applicant has failed to establish that the Respondent's trademark was registered in error or in bad faith.

3. Accordingly, the Application for the cancellation of the Respondent's trademark UG/T/2023/080314 "AQUELLE" in Class 32 is hereby dismissed with costs to the Respondent.
4. The Respondent's trademark registration UG/T/2023/080314 "AQUELLE" in Class 32 is upheld.

I so order.

Given under my hand, this 6<sup>th</sup> day of January, 2026

.....  
Ass. Registrar of Trademarks