



THE REPUBLIC OF UGANDA

UGANDA REGISTRATION SERVICES BUREAU

THE TRADEMARKS ACT, CAP. 225

**IN THE MATTER OF TRADEMARK APPLICATION NO. UG/T/2022/075575
"STRESS CLINIC" IN CLASS 41 BY KAZIBWE ROBERT**

**AND OPPOSITION OF REGISTRATION BY AMPURIRE PAUL AND VIGARAS
UG LIMITED**

- 1. PAUL AMPURIRE**
- 2. VIGARAS UG LIMITED:.....OPPONENTS**

VERSUS

KAZIBWE RONALD:.....APPLICANT

RULING

Before: Birungi Denis: Asst. Registrar Trademarks

A. Background.

- 1. This opposition was filed on 14th December 2023 objecting to the registration of the mark "STRESS CLINIC" filed vide application number 075575. Application number 075575 was filed on 26th May, 2022 by the Applicant seeking to register the mark "STRESS CLINIC" for services in class 41 of the Nice Classification of Goods and Services of Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, 1957 in respect of education; providing of training; entertainment; sporting and cultural activities.
- 2. On the other hand, on 23rd November 2023, the 2nd opponent also applied to register the word "STRESS CLINIC" as a mark vide application number UG/T/2023/081378

in class 41 in respect of entertainment and entertainment services. The application was rejected on grounds that the mark was similar to the Applicant's mark filed prior. It is after receiving this information vide exam report dated 30th November 2023 that the opponents got to know about the applicant's application and consequently filed this opposition on the grounds that the application for registration of the mark was filed in bad faith.

3. According to the statement of grounds for opposition, the 1st opponent contends that he is the one who came up with the phrase "STRESS CLINIC". That he did so during management meetings for Comedy Store Uganda Limited, an entertainment company, which the first opponent says, was the one running the comedy project titled "STRESS CLINIC". He adds that "STRESS CLINIC" was a comedy event held during the Covid-19 pandemic, and was first held at Nexus Lounge Najera and later at Net studios Africa Kitante.
4. It is the opponents' case that Comedy Store Uganda Ltd was contacted by Nexus Lounge to conduct a comedy show during the Covid-19 pandemic. Comedy store Uganda Ltd agreed to this leading to internal management meetings aimed at coming up with a brand name for the comedy show. That the applicant's Nexus Lounge only hosted the event under a partnership with Comedy Store Uganda Ltd, and the word "STRESS CLINIC" did not originate from the Applicant. The first opponent maintains that he is the one who originated the word "STRESS CLINIC" in 2021, when he was part of the management of Comedy Store Ltd. He suggested the word "STRESS CLINIC" to brand a weekly show of Comedy store during a meeting of the company called to discuss the same. At the time, the 1st opponent was the Manager of Comedy Store Uganda Ltd.
5. The opponents state that the choice of the phrase "STRESS CLINIC" was informed by the circumstances of Covid-19 where people suffered from stress arising from the lockdowns imposed by the government to contain the pandemic. Viewing

comedy online, the opponents thought, would relieve people of stress, hence acting as “a stress clinic” of sorts. That after the 1st opponent had convinced the Comedy store team on the appropriateness of the word, the team agreed and adopted the phrase “STRESS CLINIC” for use, with the first show being held on May 3rd 2021.

6. The Applicant in his counterstatement claims that he is the one who came up with the phrase “STRESS CLINIC” in 2021 and that the brand has since gained significant goodwill and recognition due to his marketing efforts. He further claims that the Opponents were never part of the conception of the phrase and are only “plagiarizing” the word.

B. Hearing and Representation

7. When this matter came up for scheduling on 6th May 2025, Learned Counsel Kalivayo Blair of Orima and Company Advocates appeared for the opponents while the Applicant was not represented. He prayed for the matter to proceed *ex parte*. Upon perusing the affidavit of service dated 5th May 2025 filed by the Opponent’s Counsel, I was convinced that service had been duly effected and granted the prayer for the proceedings to proceed *ex parte*.
8. The parties were directed to file written submissions. The Opponents filed written submissions while the Applicant did not.
9. The following issues were raised during scheduling;
 - 1) Whether the Applicant filed for the registration of the opposed mark in bad faith?
 - 2) What remedies are available to the parties?

C. Determination of the issues.

Preliminary issue on absence of publication.

10. I note that there is no evidence on record to prove that this application was ever published in the gazette. This issue was not raised during scheduling but I cannot overlook because of its legal implications. In **Makula International vs. His Eminence Cardinal Nsubuga and another 1982 HCB**, court emphasized that it cannot overlook a legal issue once it comes to its attention. At page 11, Court noted that:-

“Despite the fact that the appeal was incompetent, a court of law cannot sanction what is illegal and illegality once brought to the attention of the court overrides all questions of pleadings, including admissions made thereon”

In the same case, court considered an issue that had been raised, regarding the extension of time by the trial court, which had been done without jurisdiction, court noted that;

“Another ground for rejecting this appeal is Manyindo J’s order (supra). Although this issue was not raised in the High Court or before us, it is well established that a court does not have residual or inherent jurisdiction to enlarge a period of time laid down by statute” [emphasis mine]

11. The above case augments the principle that a court or any other tribunal cannot overlook a legal issue simply because it was not raised. It is on the basis of this principle that I am inclined to address the fundamental question of whether an opposition can be filed when a trademark application is not published in the gazette. The opponents state that they got to know about the opposed application when the 1st opponent filed application number UG/T/2023/081378 seeking registration of the same word as a mark and the same was rejected vide exam report dated 30th November 2023. This fact is inferred from the last paragraph of the statement of grounds of opposition. Further, in his written submissions at paragraph 4, Counsel for the opponents states;

“The Opponents, Vigaras UG Limited (a company co-founded by Paul Ampurire and Kenneth Kemba, another former Comedy Store management member) and Paul Ampurire, later sought to register “Stress Clinic” as their trademark, only to discover the Applicant’s pending application”

12. From the grounds of opposition, together with the submission of Counsel for the opponents, it is clear that the Opponents got to know about the current application when their application was rejected and not through publication in the gazette. The opponents also did not adduce evidence of publication of the opposed application in the gazette, implying that either the application was never published in the gazette or if it was, the opponents did not bother to find out.

13. In opposition proceedings such as this, it is a mandatory requirement to state when the application was published and to attach the gazette in which it was published as part of the supporting documents, either in the statement of grounds of opposition or in the statutory declaration. This, as I will later discuss, forms the basis for determination of certain legal issues. I will begin with the provisions of section 12 of the Trademarks Act Cap 225 which state as follows;

“12. Objection to registration

(1) A person may, within the prescribed time from the date of publication of an application, give notice to the registrar of objection to the registration.”

14. First, as expressly stated in section 12 (1) of the Trademarks Act, a person can only give notice of opposition within a prescribed time from the date of publication of the application. The time referred in section 12 (1) is prescribed under regulation 28 of the Trademark Regulations 2023. It states;

“28. Opposition

A person may, within sixty days from the date of any advertisement in the Gazette of an application for registration of a trademark, give notice in Form TM 7 to the Registrar opposing the registration”

15. Reading section 12 (1) of the Trademarks Act together with Regulation 28 above, it is clear that an opposition can only be filed after an application has been published in the gazette. Accordingly, without evidence of publication in the gazette, the Opponents' opposition is premature.
16. There are important reasons why the Trademark Act and the Regulations require an opposition to be filed after an application for a trademark has been published in the gazette. First, the law sets a timeline of sixty (60) days within which to file an opposition. Where one cannot file within the sixty days, there is an option of requesting for extension of time under regulation 79 of the Trademark Regulations, which grants the Registrar powers to extend time. Without evidence of publication of an opposed mark, it is not possible to ascertain whether the opposition was filed within the time set by law or whether the opponent sought or ought to have sought extension of time to file the opposition in the first place.
17. Second, publication of the application in the gazette demonstrates a clear intention by an applicant to acquire ownership of the applied for mark, by putting the public on notice. Indeed many persons often file for a trademark but do not prosecute the application to its conclusion (registration and issuance of a certificate). Therefore, without taking the significant step of notifying the public, an applicant has not yet expressed a clear intention and hence an intending opponent need not oppose at that stage. This does not mean the intending opponent has no remedies. The Trademarks Act provides sufficient safeguards to ensure that an applicant prosecutes their application to conclusion within reasonable time. For example, section 16 (3) of the Trademarks Act provides for a 12 months period within which to complete an application, failure of which the Registrar may consider the application abandoned. It states;
- "Where registration of a trademark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the registrar may, after*

giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified for the purpose in the notice.”

18. Consequently, where an applicant has filed for an application and does not complete it within 12 months due to his or her own fault, the intending opponent can move the Registrar to invoke his or her powers under section 16 (3) and regulation 40 of the Trademark Regulations 2023, to compel completion of the registration and upon failure, to consider the application abandoned. This would pave the way for an interested party, including an opponent, to file and register for the same trademark. In the present case, the opposed application was filed on 26th May 2022. The gazette notice was issued on 10th August 2022. The opponents got to know about it on or after 30th November 2023, through an exam report dated 30th November 2023 which rejected their application No.UG/T/2023/081378. From 26th May 2022, which is the filing date of the opposed application, twelve months expired on the 1st June 2023.
19. Consequently, by or after the 30th November 2023, when the opponents got to know about the instant application, twelve months within which to complete registration had already expired. Instead of filing this opposition, which as I have already determined cannot be filed when the application is not published, the Opponents ought to have invoked the Registrar’s powers under section 16 (3) of the Act and regulation 40 to issue a non-completion notice to the Applicant to complete registration. This would trigger the Applicant to either publish the application, hence enabling the opponents to properly file an objection/opposition or fail to do so and risk the Registrar deeming the application abandoned.
20. Where an applicant does not complete registration within 14 days or such further time specified by the Registrar as provided under regulation 40 (3), the Registrar is required to consider the application abandoned, which has the same effect as a

successful opposition, namely that the application collapses and does not proceed to registration. For the avoidance of doubt, this position should not be interpreted as a blanket cover to applicants who only wait for issuance of non-completion notice to complete their registration. As was stated by the office in the application for **cancellation of trademark no. 47160 of Liberty Group Ltd v Liberty ICD Ltd**, the duty to complete registration is imposed on the applicant at all times. In that case, the office noted at page 9 and 10, para 31 stated;

“While the Registrar has a duty to issue non-completion notices, the primary duty to complete the registration lies with the applicant who filed the application in the first place, and who is interested in the trademark anyway. Having failed to complete the registration, Counsel for the applicant cannot turnaround to argue that its duty is dependent on the registrar issuing non-completion notices. The provisions of section 16 (3) of the Trademarks Act is a tool to aid the Registrar in efficient administration of the Register and not to be invoked as a scapegoat for the applicant’s own unreasonable delay” [emphasis mine]

21. Therefore, while the mark cannot be opposed when it is not yet published, it does not follow that the Registrar cannot approve it for another applicant if he or she finds that the applicant of the earlier mark has spent an unreasonably long period without completing it. The Registrar can properly do so without first issuing a non-completion notice.
22. For those reasons, I find that this opposition was filed prematurely. Court or any other tribunal cannot entertain a premature application. This position was emphasized by the High Court in **Misc. Cause 14 of 2014: Kawuki Mathius V Commissioner General Uganda Revenue Authority**. In that case, the applicant had filed an application to court for release of his goods, before applying for review of the decision of the officer, to the Commissioner as required by section 229 of the East African Customs Management Act. The Court noted;

“The cases cited of R v Chief Constable of the Merseyside Police, ex parte Calveley and others [1986] 1 All ER 257 and Ashmore v Corp of Lloyd’s [1992] 2 All ER 486 House of Lords were relied on by the Respondent’s Counsel for the proposition that where the law prescribes a special procedure and forum, it should be exhausted before filing an action in court. I have found one of the cases to be directly relevant to the objection and is to the effect that where a specific procedure have been provided for, parties should exhaust that procedure or other remedies before filing an action in Court.”[emphasis mine]

23. In line with the above authority, the procedure under section 12 of the Trademark Act is that an opposition is filed after the application is published and when it is unnecessarily delayed, the non-completion process under section 16 (3) of the Act and regulation 40 of the Trademark regulations, is invoked. In this case, it was not and hence the opposition is premature and cannot be entertained. The opposition accordingly fails.
24. Before I conclude this matter and for purposes of completeness, let me also address the question as to whether in the first place, the opponents even had a cause of action. In the statement of grounds and the statutory declaration sworn by the 1st opponent, it is clear that the phrase “STRESS CLINIC” was a project of Comedy Store Ltd, where the 1st opponent was employed. In paragraph 11 of his statutory declaration, the 1st opponent states; *“...much as Stress Clinic was a comedy Store Project, the name Stress Clinic was my creation. I coined the term...”* In paragraph 6-8, the 1st opponent narrates the meeting of Comedy Store Ltd which was aimed at coming up with the name to give to the show held at Levels Lounge. In para 8, he states; *“I proposed that the show be named Stress Clinic”*
25. Going by the 1st opponent’s own admission, the concept of “Stress Clinic” was a project of Comedy Store Uganda Ltd, to which Mr. Muhangi Alex was the Chief Executive Officer. The 1st opponent further admits that they raised the issue of

Levels Lounge's continued use of the word "Stress Clinic" with Muhangi Alex but he ignored it on grounds that he is a brand ambassador for Levels Lounge and hence challenging their continued use of the brand name "Stress Clinic" would jeopardize the relationship. For clarity, the Applicant is one of the proprietors and Directors of Levels Lounge. So the question is, if it is true that 1st Opponent is the one who suggested the word "Stress Clinic" while he was in a work meeting brainstorming a viable comedy stage name, does this, in and of itself, grant him a right to claim ownership of the word?

26. In my view the answer to the above question is no. The 1st opponent by his own admission, states that he was part of management, meaning that he was an employee of Comedy Store Uganda Ltd. By merely suggesting the word in a meeting which was subsequently adopted by his employer, it does not follow that he is entitled to claim ownership of ideas he contributes as that is part of his employment deliverables. Therefore, his suggestion of the brand name "Stress Clinic" was part of work done in the course of his employment and hence the rightful opponent ought to have been Comedy Store Uganda Ltd (the Employer) and not the opponents.

27. While the Trademarks Act does not provide for the concept of commissioned works the same way the Copyright and Neighboring Rights Cap 222 does, the principle generally applies to all intellectual property rights including trademarks. I will draw inferences from copyright law to better explain this. Section 7 of the Copyright and Neighboring Rights Act for instance provides;

"Where a person creates a work—

(a) in the course of employment by another person;

(b) on commission by another person or body,

then in the absence of a contract to the contrary, the copyright in respect of that work shall vest in the employer or the person or body that commissioned the work."[emphasis mine]

28. Similarly, section 19 of the Industrial Property Act Cap 72 provides as follows;

“Notwithstanding section 18 and in the absence of a contract to the contrary, the right to a patent for an invention made in execution of a commission or of a contract of employment belongs to the person having commissioned the work or to the employer.” This principle is in tandem with section 7 of the Copyright and Neighboring Rights Act. In a copyright case of **Michael Penhallurick v MD5 Limited [2021] EWHC 292**, the UK High Court in determining whether a software developed by the employee belonged to the employer, taking into account section 11 of the Copyright, Designs and Patents 1988 of the UK, at para 56 and 67 of the judgment, confirmed that while the employee is the author of the works, the employer is the first owner if the works are created in the course of employment.

29. While the above authorities deal with patents and copyrights, the same principles, in my view are applicable to trademarks and in any case some logos depending on their originality in terms of the degree of skill and labour expended, may qualify as copyright eligible and hence subject to copyright law. A contrary view would imply that designers contracted or employed by corporations to design logos or trademarks could later oppose their registration on grounds that they are the originators of those marks. Be that as it may, unlike copyright, trademark rights in Uganda are acquired upon registration (the first to register) and not upon creation and fixation (as in copyright) or prior use of the mark. In other systems where rights are based on the first to use, the question of determination of who the rightful owner is depends on who was the first to use the mark as opposed to who was the first to file. However, in determining whether a mark is being filed in bad faith, a determination of who was the first to use is important, and not who first coined the word as the opponents plead.

30. Regarding the concept that trademarks are intended for use in commerce, I am persuaded by the writings of Peter **S. Menell et al., Trademark Case Management**

Judicial Guide Chapter 2 at page 21, the author analyses United States Trademark principles and states;

“Both at common law and under federal registration procedures, determining who owned a trademark involves determining who was first to use the mark to identify her goods or service. Lanham Act § 45; 15 U.S.C. § 1127. Section 45 of the Lanham Act requires that the mark either be (1) “used in commerce” or (2) registered with a bona fide intention to use it in commerce. The requirement of “use in commerce” is a historical result of the constitutional basis for the trademark law, which (unlike the patent and copyright statutes) relies on the congressional power to regulate interstate commerce. This requirement also goes hand in hand with the basic trademark purpose of protecting consumers; the consumer’s association of a mark with a particular product can only arise after a trademark is placed on goods and services sold in commerce.”

31. Even if the opponents had a cause of action based on the ground of bad faith, the correct approach was to prove use or intended use of the disputed mark in any form of business or commerce and not merely being the originator of the word. The purpose of filing for a mark is reinforced by section 7 of the Trademarks Act, which provides;

“A person who claims to be the owner of the trademark used or proposed to be used by him or her and is desirous of registering it shall apply in writing to the prescribed form for registration...” [Emphasis mine]

32. The above provision is clear that before registration, ownership of a mark is based on either use or intention to use, and not merely designing or proposing the mark. This is particularly so because of the internationally recognized function of trademark in commerce, which is to distinguish goods or services of one undertaking from those of the others. As such, if a person designs a word or comes up with any mark for the sake of it, without using it or intending to use it in some form of business or commerce, such a person ordinarily is not entitled to apply for

registration and consequently has no right to object to another person who is applying on the basis of prior use or intention to use.

33. In this case, the opponents neither state that they intend to use the word “Stress Clinic” nor do they adduce any evidence to demonstrate use themselves. All that the opponents base their claim on is that because the 1st Opponent was the one who suggested the word “STRESS CLINIC” while he was in employment of Comedy Store Uganda Ltd, he should have rights over it and is entitled to object to its registration. In light of the principles discussed above, such a claim is unfounded and cannot form a legally justified ground of opposition.
34. Having found that this opposition is premature and the opponents do not have sufficient grounds of opposition, I make the following orders;
- (a) The opposition is dismissed.
 - (b) A non-completion notice is hereby issued against the Applicant directing him to take relevant steps towards registration of trademark application number 07557 within 14 days from the date of this ruling, failure of which, the Registrar shall deem the application abandoned.
 - (c) Each party shall bear its own costs.

I so order.

Given under my hand this 12th day of September 2025

Birungi Denis
Assistant Registrar of Trademarks