THE REPUBLIC OF UGANDA

THE TRADEMARKS ACT, CAP 225

IN THE MATTER OF TRADEMARK NO.S UG/T/2016/055988 AND UG/T/2016/055989 "RED HORSE" IN CLASS 32 IN THE NAME OF SAN MIGUEL BREWING INTERNATIONAL LIMITED

AND

IN THE MATTER OF CONSOLIDATED APPLICATION FOR CANCELLATION THEREOF BY POWER HORSE ENERGY DRINKS GMBH

POWER HORSE ENERGY DRINKS GMBH ……APPLICANT

VS

SAN MIGUEL BREWING INTERNATIONAL LIMITED …… RESPONDENT

RULING

Before: Kukunda Lynette Africa – Asst. Registrar of Trademarks

Background

1. On 26th September 2020 Power Horse Energy Drinks GmBH (hereinafter the Applicant) filed for rectification of the register by way of cancellation of the trademarks numbers UG/T/2016/055988 and UG/T/2016/055989 "RED HORSE" registered in the name of San Miguel Brewing International Limited (hereinafter the Respondent) in Class 32 on the ground that the Respondent's mark was similar to their prior registered and well known mark "Power Horse" and that the Respondent's mark is likely to deceive or cause confusion or association in the market.

2. The matter came up for hearing on 13th May, 2024. At the hearing, the Applicant was represented by Counsel Brian Kajubi of MMAKS Advocates and the Respondent was represented by Counsel Dinnah Kyasimire of Sipi Law Associates.
3. The following issues were agreed upon:
    1. Whether the registration of the marks was done in error?
    2. Whether the marks are confusingly similar?
    3. What are the available remedies?

Parties filed written submissions on the agreed issues.

Determination of Issues

Issue one: Whether the marks were registered in error?

4. The Applicant contends that it is the lawful proprietor of the "POWER HORSE" trademark which has been registered and used in Uganda since 2008 and is currently used in over 50 countries worldwide. Counsel for the Applicant argues that trademark no. 55989 "RED HORSE" in Class 32 was erroneously entered on the register as it closely resembles and wholly incorporates the dominant and distinctive element "HORSE" of the Applicant's prior trademarks, thereby creating visual, phonetic, and conceptual similarities. Counsel further submits that the offending mark was registered in respect of identical or highly similar goods under the same class, which is likely to cause confusion among consumers, dilute the distinctiveness of its well-known "POWER HORSE" trademark, and unlawfully take advantage of the Applicant's established goodwill and reputation. Finally, Counsel for the Applicant asserts that the registration of the Respondents marks contravenes Sections 9, 23, and 25 of

the Trademarks Act Cap 225 as well as Uganda's obligations under the Paris Convention, and prays that the same be expunged from the register.

5. The Respondent on the other hand states that its trademark "RED HORSE," was duly filed, examined, published, and registered in accordance with the Trademarks Act, Cap 225 and therefore the Applicant's cancellation attempt is an abuse of procedure. Counsel for the Respondent argues that "RED HORSE" coexists with the Applicant's "POWER HORSE" mark in several jurisdictions, and the cancellation application in Uganda is an attempt to unfairly restrict competition. The Respondent further avers that there are other marks which employ the use of the word "Horse" and that therefore the word cannot be exclusively owned in relation to the subject goods. The Respondent maintains that the certificate of registration was lawfully issued, rejects claims that it was issued in error, and contends that the Applicant's delayed action renders the cancellation request unconscionable. Counsel for the Respondent submits that the RED HORSE products have been around since 1983 and that the mark has been registered in in over 60 jurisdictions with sales in over 70 countries, and insists that this points to the distinctiveness and reputation of the mark and consequently there is no likelihood of confusion between RED HORSE and POWER HORSE. Counsel further states that the existence of both marks in several jurisdictions is an indicator that the "RED HORSE" mark is distinctive and there is no confusion between the marks.
6. From the nature of arguments and evidence presented, I find it best to handle issue one and issue two concurrently as a determination of one will lead to the determination of the other.
7. The Applicant brought this application under Section 88 of the Trademarks Act Cap 225 which provides as follows;

> *"**A person aggrieved by an omission, entry, error, defect or an entry wrongly remaining on the register**, may apply in the prescribed manner to the court and subject to section 64, **to the registrar, and the court or the registrar may make an order for making, expunging or varying the entry** as the court or the registrar, as the case may be, may think fit." [emphasis mine]*

8. Under Section 88 the Registrar has powers to correct any error or defect on the register. From a reading of the applicant's application, the Applicant firstly claims that the registration of the mark was done in error because on 19th June, 2020 before the expiration of the 60 days publication period, the Applicant had filed for extension of time to oppose the Respondents marks. That pending the Registrar's decision on the extension, the Applicant went ahead to file a notice of opposition on 27th August, 2020. However, the marks proceeded to be registered on 14th September, 2020. That because of the above events, the mark was registered in error.
9. I disagree with Counsel for the Applicant on the above submissions. Regulation 79 (1) of the Trademarks Regulations, 2023 provides as follows:

> *If in **any particular case the Registrar is satisfied** **that the circumstances justify an extension of the time for doing any act or taking any proceeding under these Regulations**, not being a time expressly provided in the Act or prescribed by regulation 58(4) or 65, the Registrar **may extend the time upon such notice to the other parties**, and proceedings on it, and upon such terms as he or she may direct, and the extension may be granted though the time has expired. [emphasis mine]*

10. In interpreting the scope and effect of Regulation 79, I consider it appropriate to apply the literal rule of statutory interpretation. The literal rule is widely recognised as the primary rule of statutory interpretation, requiring that statutory provisions be given their ordinary and natural meaning where the language is clear and unambiguous. Under this approach, words are to be given their plain, ordinary meaning, without reference to external considerations such as context, legislative intent, purpose, or broader symbolism. The court's function is limited to applying the everyday meaning of the words used, rather than adopting technical or specialized interpretations.
11. Where the words are clear and unambiguous and the court is capable of assigning meaning and purpose to the said words, the court will look no further than the literal rule. However, where the language of the statute sought to be interpreted is imprecise or ambiguous, a liberal, generous or purposeful interpretation is applied by the court. **(See: Uganda Revenue Authority vs Siraje Hassan Kajura & Others, SCCA No. 9 of 2015)**
12. In my view, when applying the rules of statutory interpretation, the first point of call is the literal rule provided its application does not lead to absurdity. I will therefore analyze the regulation as follows:

"If in any particular case..."

This means the request will be considered on a case-by-case basis and the extension shall be considered depending on the specific situation or facts of that particular case.

"the Registrar is satisfied that the circumstances justify…"

The above phrase indicates that the Registrar has to be convinced (i.e satisfied) that the reasons provided by the party requesting for more time are good and

justifiable reasons to grant the requested extension of time. The operative words under Regulation 79 are *"the Registrar is satisfied…"* This clearly confers discretion upon the Registrar to determine, on a case by case basis, whether the grant of an extension of time is justified, necessary, and not prejudicial to either party. However, Regulation 79 further provides that the Registrar ***"****may extend the time upon such notice to the other parties"***.** This means that once the Registrar has decided to either grant or refuse an extension, the decision has to be duly communicated to all parties involved.

13. In the present case, although an application for extension of time was filed, the record indicates that the Registrar did not grant the requested extension. It follows that the Applicant's subsequent act of filing a Notice of Opposition in the absence of a granted extension was irregular and contrary to the provisions of Regulation 79. Consequently, since there was no valid extension of time in place, the Registrar rightly proceeded to register the Respondent's mark upon application.
14. The procedural sequence is clear; an extension of time must first be granted before any subsequent action such as the filing of a Notice of Opposition, can be validly undertaken. A party cannot allege that a mark was registered in error when no extension of time had been granted. Where an extension is applied for, the party requesting for the extension bears the responsibility to ascertain whether the request has been granted or rejected. In the absence of a positive grant, any action taken is without legal foundation and is therefore deemed null and void. Accordingly, in regard to the first claim of error, I find it lacks merit.
15. Furthermore, the Applicant contends that the Respondent's mark was registered in error on account of its alleged similarity to the Applicant's well-

known “Power Horse” mark. However, it should be noted that the Applicant bears the burden of establishing such similarity, in accordance with Section 101 of the Evidence Act, which embodies the principle that *He who alleges must prove.*

16. Section 25 of the Trademarks Act, Cap 225 prohibits the Registrar from registering marks that are similar for similar goods or services. It provides as follows:

> (*1) Subject to section 27, a trademark relating to goods* ***shall not be registered*** *in respect of* ***goods or description of goods that is identical with or nearly resembles a trademark belonging to a different owner and already on the register*** *in respect of—*
>
> *(a) the same goods;*
>
> *(b) the same description of goods; or*
>
> *(c) services or a description of services which are associated with those goods or goods of that description. [emphasis mine]*

17. In disputes concerning trademark removal based on similarity, the primary consideration is the comparison of the alleged similar marks and whether they convey the same impression to the average consumer thereby giving rise to a likelihood of confusion. I will therefore start by assessing the similarity of the marks.

18. Case law regarding examination of similar marks is well settled and stated in the case of the **Pianotist Co. Ltd 23 RPC 77** where Parker J said:

> *‘You must take the two words.* ***You must judge of them both by their look and by their sound. You must consider the goods to which they are to be applied.*** *You must consider the nature*

and kind of customer who would be likely to buy those goods. In fact, ***you must consider all the surrounding circumstances;*** *and you must further consider what is likely to happen if each of these trademarks is used in a normal way as a trade mark for the goods of the respective owners of the marks.'" [emphasis mine]*

Both marks are therefore reproduced below for a side by side comparison:

APPLICANT'S MARKS	RESPONDENT'S MARKS
	
POWER HORSE	**RED HORSE**

19. From the above representations, it is seen that the Applicant's mark consists of an image of a black horse which is rearing (i.e standing up on its hind legs) facing forwards to the right. The horse is placed at the forefront, and in its background is a white sharp abstract hourglass design created by connection of two red triangles at the left and right and two white triangles at the top and bottom. The word "Power Horse" is placed below the image of the horse, in black bold capital letters and the word "Power" is placed above the word "Horse".

20. On the other hand is the Respondents mark, which is predominantly represented in the colours yellow and red. The mark is made up of a horse-shoe device in the colour red with yellow dashes that represent the corrugated lines/holes of a horse shoe. The horse shoe is facing upwards, and at the end of the horse shoe is the head of a horse which is represented in a bright red colour. The head of the horse is facing forwards to the left. Both the horse shoe and horse head are encircled in a red line that outlines the two devices together. In the enclosed space of the mark, the word 'RED HORSE" appears in black bold letters and is placed in the center of said space. However, the word "Red" is placed above the word "Horse." The whole mark contains a yellow background.
21. The word marks of either party are self-explanatory. Power Horse simply means a horse with strength or power while Red Horse simply means a Horse that is Red in colour. From a side-by-side comparison of the marks and an assessment of their respective graphical elements above, it is my finding that the marks are visually distinct.
22. Conceptually, the Applicant's mark, particularly the rearing black horse, depicts or conveys a message of power (as indicated in its name), vitality and a form of motion (the rearing horse pose). Indeed, in my view, the mark makes sense for a producer dealing in energy drinks. The posture of the horse suggests movement, strength, and vigour, characteristics that are closely associated with energy drinks. Viewed as a whole, the mark communicates an impression of enhanced performance, endurance, and vitality, which are attributes that producers of energy drinks commonly seek to project to consumers.
23. The Respondent's mark on the other hand conceptually conveys a more subtle message.The mark has equestrian symbolism, which is expressed

through the horse shoe with the addition of the horse head. This conveys an idea of strength and stability (the horse head is in one position). Unlike the Applicant's rearing horse, the horse's head is static and composed, conveying steadiness rather than movement or dynamism. The consistent use of red and yellow further reinforces the overall impression of confidence, strength, and vibrancy, while maintaining a cohesive visual identity. When considered as a whole, the Respondent's mark communicates concepts of tradition, steadfastness, and dependability rather than the energy, motion, and vitality conveyed by the Applicant's mark.

24. Accordingly, although both marks incorporate horse devices, they evoke different conceptual meanings and create distinct overall impressions in the minds of the relevant consumers. I therefore find that the marks are conceptually distinct.

25. In **de Cordova vs Vick (1951) 68 RPC 103** at page 106 court stated that*;*

> *"A* ***trade mark is undoubtedly a visual device; but it is well-established law that the ascertainment of an essential feature is not to be by ocular test alone. Since words can form part, or indeed the whole, of a mark, it is impossible to exclude consideration of the sound or significance of those words****. . . . The likelihood of confusion or deception in such cases is not disproved by placing the two marks side by side and demonstrating how small is the chance of error in any customer who places his order for goods with both the marks clearly before him, for orders are not placed, or are often not placed, under such conditions. It is more useful to* ***observe that in most persons the eye is not an accurate recorder of visual detail, and that marks are***

remembered rather by general impressions or by some significant detail than by any photographic recollection of the whole." *[emphasis mine]*

26. It is seen that visually the marks are different however, the common element between the two marks is the word “Horse”. It is on this basis that the Applicant alleges that the Respondent’s mark is similar to their mark. The issue left is to determine whether the use of the word “Horse” and “horse symbolism” in both marks is likely to cause confusion in the mind of an average consumer.

27. To determine this, I will first assess who an average consumer is. An average consumer was discussed in the case of **Lloyd Schuhfabrik Meyer & Co. GmbH vs Klijsen Handel BVF (Case C-342/97)** Court held that:

“….*for the purposes of that global appreciation****, the average consumer of the category of products concerned is deemed to be reasonably well-informed and reasonably observant and circumspect****. However, account should be taken of ****the fact that the average consumer only rarely has the chance to make a direct comparison between the different marks but must place his trust in the imperfect picture of them that he has kept in his mind. It should also be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question.***

In order to assess the degree of similarity between the marks concerned, the national court ***must determine the degree of visual, aural or conceptual similarity between them and, where appropriate, evaluate the importance to be attached to those***

different elements, taking account of the category of goods or services in question and the circumstances in which they are marketed." *[emphasis mine]*

28. From the above case, court makes it clear that in assessing the likelihood of confusion, the perspective of the average consumer is paramount. This is a legal construct, not a statistical average, representing a reasonably well-informed, reasonably observant, and circumspect person within the relevant sector of the public. As established in **Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV (supra)** this consumer is deemed to perceive marks in their entirety, focusing on their overall impression rather than an analytical dissection of individual elements. However, the level of attention may vary; for example, the average consumer of everyday consumer goods is presumed to exercise a relatively low degree of attention (**Gut Springenheide GmbH v Oberkreisdirektor des Kreises Steinfurt C-210/96**), whereas the consumer of specialized or expensive goods, such as professional services or luxury items, will exhibit a correspondingly higher standard of care (**Bravado Merchandising Services Ltd v Mainstream Publishing (Edinburgh) Ltd [1995] 4 All E.R. 812**). All the above must be balanced with the fact that when in the market, the consumer rarely has the chance to make direct comparisons between marks and must rely on the imperfect picture of the mark held in their memory **(Sabel BV v Puma AG, Rudolf Dassler Sport C-251/95)**. Usually, this memory is majorly comprised of the dominant element of the mark or an element of the mark that is catchy or easier to remember.

29. Furthermore, all the above must also be applied globally, considering the typical purchasing process for the goods or services in question, to

determine whether such a consumer would be misled as to the commercial origin of the goods or services bearing the allegedly conflicting sign.

30. The anti-dissection rule further guides this analysis. It is a settled principle that composite marks must be considered in their entirety and not broken down into their individual components for purposes of comparison. The rationale is that the commercial impression conveyed to the ordinary consumer is derived from the mark as a whole, rather than its constituent elements viewed in isolation. Accordingly, the likelihood of confusion must be assessed based on the overall impression of the mark created in the mind of the average consumer, who typically retains only a general recollection of a mark. While it is permissible to examine individual elements as a preliminary step, such analysis must not displace the overarching requirement of a holistic comparison, as affirmed in **M/S South India Beverages Pvt Ltd v General Mills Marketing Inc. and Another (No. 961/2013 in CS (OS) 110/2013).**

31. However, as stated in S**outh India Beverages Pvt. Ltd. v. General Mills Marketing Inc. (supra)** while applying the anti-dissection rule, greater weight may be accorded to the dominant or essential features of a composite mark. In the present case, the marks, when viewed as a whole, create distinct commercial impressions. The “Power Horse” mark conveys a different conceptual and visual identity from the “Red Horse” mark. Although both marks share the word “Horse,” that common element is insufficient in itself, to give rise to a likelihood of confusion given that the overall graphical representation of the marks are different. To completely isolate and compare that element alone, in disregard of the overall presentation, would be contrary to the anti-dissection principle.

32. Further, as stated in the case of **Lloyd Schuhfabrik Meyer & Co. GmbH vs Klijsen Handel BVF (supra),** I have already assessed the visual, aural and conceptual similarity of the marks. However, in assessing the likelihood of confusion in the average consumer it is pertinent to also assess the nature of goods or services for the two marks and whether due to the similarity of the goods, there would be a likelihood of confusion. It should be noted that the assessment of the likelihood of confusion also takes into account the likelihood of association **(Sabel BV v Puma AG, Rudolf Dassler Sport C-251/95).**

33. Both the Applicant and Respondent registered theirs marks in class 32 covering (*Beers; mineral and aerated waters and other non-alcoholic beverages; fruit beverages and fruit juices; syrups and other preparations for making beverages).* Class 32 covers non-alcoholic drinks with the unique inclusion of beers which is alcoholic in nature.

34. However, the evidence on record indicates that the Applicant predominantly manufactures and sells energy drinks while the Respondent predominantly deals in beers. Therefore, while both these goods are catered for by the same class of goods under the Nice Classification system it is still important to assess whether they are similar. This is because while the Nice Classification system is widely and universally used by trademark registries through out the world, it does not explicitly mention all types of goods or services and is not entirely determinative of the similarity or dissimilarity of goods or services. **(British Sugar PLC v. James Robertson & Sons Ltd., 1996 R.P.C. 281 (Chancery Division)**

35. In assessing the similarity of the goods or services, all relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia**,** their nature, their end users and

their method of use and whether they are in competition with each other or are complementary as stated in **Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc. (Case C-39/97).**

36. As the High Court stated in **Southern Cross Refrigerating Co. v Toowoomba Foundry Pty Ltd (1954) 91 CLR 592 ("Southern Cross")** at 606-607:

> *The fact that examination of the nature of the applicant's goods may, by itself, induce an observer to conclude that they are different in character from those of an opponent, and designed to serve different purposes, is by no means conclusive**. Nor is the fact that the applicant's goods are not specified by the regulations as being within the same class of goods:** see In re The Australian Wine Importers Ltd (1889) 41 Ch D 278, at p 291 and Reckitt & Colman (Australia) Ltd v Boden (1945) 70 CLR 84, at p 90 per Latham CJ. There may be many matters to be considered apart from the inherent character of the goods in respect of which the application is made and some indication of what matters are relevant to this inquiry was given by Romer J in In re Jellinek's Application (1946) 63 RPC 59. Romer J thought **it necessary to look beyond the nature of the goods in question and to compare not only their respective uses but also to examine the trade channels through which the commodities in question were bought and sold.** Shortly after the decision in Jellinek's Case…. the Assistant-Comptroller elaborated on the observations of Romer J in the following manner: 'In arriving at a decision upon this issue the reported cases show that I have to take account of a number of factors, including in particular **the***

nature and characteristics of the goods, their origin, their purpose, whether they are usually produced by one and the same manufacturer or distributed by the same wholesale houses, whether they are sold in the same shops over the same counters during the same seasons and to the same class or classes of customers, and whether by those engaged in their manufacture and distribution they are regarded as belonging to the same trade. *In the case of Jellinek's Application …, Romer J classified these various factors under three heads, viz., the nature of the goods, the uses thereof, and the trade channels through which they are bought and sold****. No single consideration is conclusive in itself, and it has further been emphasized that the classifications contained in the schedules to the Trade Marks Rules are not a decisive criterion as to whether or not two sets of goods are "of the same description"****: [emphasis mine]*

37. Energy Drinks are non-alcoholic drinks, composed of ingredients like caffeine, taurine and sugar. These are stimulants whose main purpose is to boost energy levels, increase alertness and performance. They are usually bought when one needs a boost of energy to work, do sports, driving or even studying or reading. On the other hand, beers are alcoholic drinks which are composed of ingredients like water, malted grains, usually barley, hops, and yeast which are put through a fermentation process to make the drink turn alcoholic. Beers are purposely bought for recreational or social purposes and are consumed for relaxation, leisure or social enjoyment. From the above, it is seen that the nature and purpose of the two goods are different. However, both goods are sold to the same

consumer base i.e adults with alcohol sale particularly limited to persons above the age of 18, meaning a person who buys an energy drink today, could also probably buy a beer tomorrow, simply because they are able to and can buy one or the other depending on their needs for that particular day or time.

38. Furthermore, both beers and energy drinks are sold and purchased through the same channels i.e supermarkets, bars, restaurants, convenience stores, online shops etc. Although, when being displayed in a place such as a supermarket, beers are placed together with other alcoholic drinks while energy drinks are displayed next to or together with soft drinks. This is due to the fact that energy drinks are composed of different ingredients from alcoholic drinks and further because regulatory bodies often forbid marketing strategies that suggest mixing of energy drinks with alcohol, as this combination is known to be dangerous to health.

39. In terms of being complementary or competitive with each other, beers and energy drinks are not complementary. Complementary goods are goods which are used together for example, printers and ink, when one has a printer, they would obviously need to purchase ink for it. Cars and fuel, when one has a car, they would need to purchase fuel for it, phones and chargers, when one has a phone, they would need to have a charger for it etc. In the present case, beers and energy drinks are not complementary, because as discussed above, their core purpose is different. In my view, the average consumer purchases goods or services for a particular purpose. Particularly, for consumables like food and drinks, an average consumer buys a particular product with a certain reason and use in mind. The average consumer purchasing beer is doing so for leisurely or relaxation purposes, whereas an average consumer purchasing an energy

drink is doing so to boost their energy levels to enable them to do a certain activity like work, sports or studying. With this in mind, and because the goods are not complementary, they are also not competing with each other.

40. From the above analysis, I find that energy drinks and beers are not similar products. Any similarity in retail environment or consumer base is insufficient to outweigh the fundamental differences in nature, purpose, and use. The average consumer purchasing either product would therefore not be confused as to which product i.e beer or energy drink is from which producer.

41. In light of the above analysis, I find that the marks in issue, when considered as a whole and through the eyes of the average consumer, are distinguishable visually, conceptually and in their overall commercial impression. The shared use of the word “Horse” and horse-related imagery does not, in the present case override the clear visual and conceptual differences created by the marks in their entirety. Equally, although the respective goods fall within the same class and may occasionally be encountered by the same consumers within similar retail environments, the analysis demonstrates that they differ materially in nature, composition, purpose and consumer expectation.

42. The factors identified in **Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc** (supra) provide a well-established framework for assessing similarity of goods and services, but they are not exhaustive. The Registrar is entitled to consider any additional relevant factors necessary to conduct a holistic and realistic assessment of similarity, having regard to the circumstances of each case and the perception of the average consumer. As stated in the case of **Pianotist Co. Ltd (supra) “***…**you must consider all the surrounding circumstances; and you must further consider*

what is likely to happen if each of these trademarks is used in a normal way as a trade mark for the goods of the respective owners of the marks…" [emphasis mine]

43. Furthermore, in **Sabel vs Puma** at page 11 para. 22 court stated that "***The likelihood of confusion must therefore be appreciated globally, taking into account all factors relevant to the circumstances of the case.****" [emphasis mine]*

44. In my view, what is required is not a mechanical application of a closed checklist, but a reasoned evaluation of all factors capable of influencing the likelihood of confusion. However, these considerations must be balanced carefully and must be supported by evidence.

45. In the present case, there are other factors present that impact on the assessment of likelihood of confusion of the two marks in question. In particular, I have considered the fact that both the Applicant's and the Respondent's marks are registered and coexist on the trademark registers of several foreign jurisdictions. While I am mindful that the mere coexistence of two marks on domestic or foreign registers is not, of itself, conclusive evidence that the marks are dissimilar or incapable of causing confusion, in this case, I find that it is a relevant consideration. Similarity must be assessed in accordance with the statutory criteria, the perception of the average consumer and the likelihood of confusion. Having already independently assessed the similarity of the marks in accordance with Ugandan law and found no likelihood of confusion, it is further notable that the same marks have been registered and both exist on the registers of several common law jurisdictions.

46. Further to the above, both parties state that their marks are used and registered in several countries around the world. The Applicant in

paragraph 1.7 of their submissions stated that the Power horse mark is used in more than 50 countries around the world. The Respondent in paragraph 13 of their counterstatement stated that their Red Horse mark is used and registered in over 60 jurisdictions. I have conducted a search on the World Intellectual Property (WIPO) Global Brand Database, which provides access to the collections of International trademarks under the Madrid System and Trademarks from participating national and regional offices. The Database indicated that both “Power Horse” and “Red Horse” are currently registered in the following jurisdictions; United Kingdom (UK), United States of America (USA), Philippines, Malaysia, Oman, Australia, Brazil, Japan, Cambodia, Germany, Switzerland, and Australia.

47. While registrations from other jurisdictions are not binding on the Registrar as trademark registration is territorial in nature, such registrations may be persuasive in demonstrating that the marks are capable of co-existence registration without consumer confusion. In the present case, I am persuaded by the registrations of both marks in several other jurisdictions. Based on this additional factor, I further find that the marks “Power Horse” and “Red Horse” are not similar and there is no likelihood of confusion among consumers in the Ugandan market.

48. Accordingly, in light of all the above, I find that issues one and two are resolved in favour of the Respondent.

Issue three: Available Remedies

49. Having established that the Applicant’s mark and the Respondent’s mark are not similar and there is no likelihood of confusion, the Respondent’s marks were validly registered and shall remain on the register with all legal protection.

50. The application for cancellation fails and is hereby dismissed.
51. Each party to bear their own costs.

I so order.

Dated at Kampala this 23rd day of June, 2026.

Digitally signed by Kukunda Lynette Africa
Date: 2026.06.23 11:05:57 +03'00'

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Kukunda Lynette Africa

ASSISTANT REGISTRAR OF TRADEMARKS