

30 20

**DECISION OF THE REGISTRAR OF TRADE MARKS IN THE  
MATTER OF TRADE MARK OPPOSITION NO. 111/2005 DAILY IN  
CLASS 3 PURSUANT TO THE TRADE MARKS ACT CAP 401 OF  
THE LAWS OF ZAMBIA AND REGULATIONS THEREUNDER**

**Between**

**OLIVINE INDUSTRIES (PTY) LTD**



**APPLICANT**

**And**

**D H BROTHERS INDUSTRIES (PTY) LTD**

**OPPONENT**

**Before Mrs. A.M. Banda-Bobo, Registrar of Trade Marks**

**For the Applicant** : Messrs Zain Hamir & Mr. N. Makayi, Christopher, Russell  
Cook & Co.

**For the Opponent** : Messrs L. Kalaluka and B. Mwalongo, Ellis & Co

**Cases and Authorities referred to:**

Trade Marks Act Cap 401 of the Laws of Zambia

Trade Mark Opposition 292/2001 SUPAKILL

Trade Mark Opposition 137/2006 BULL DIAMOND

Trade Kings Limited v Unilever & Others (2000) ZLR p 16

Trade Kings Limited v The Attorney General (1999) ZLR p 53

Pianotist Company's Application (1906) 23 RPC 774

British Sugar Plc v James Roberson and Sons (1996) RPC 281

This is a matter in which D H Brothers Industries (PTY) Limited of South Africa (hereinafter called 'the Opponent') is contesting the registration of trademark 111/2005 DAILY by Olivine Industries (PTY) Limited of Zimbabwe (hereinafter

called 'the Applicant'). The Applicant lodged the application on 23<sup>rd</sup> February 2005 and subsequently caused it to be advertised at page 183 of the Trade Marks Journal of 25<sup>th</sup> July 2005. Registration was sought in respect of goods in Class 3 namely bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps, perfumery, essential oils, cosmetics, hair lotions; and dentifrices.

The grounds of opposition as set out in the notice of opposition dated 23<sup>rd</sup> February 2006 were that the Applicant's trademark is a reproduction in whole or in part, or an imitation of the Opponent's trademark and therefore similar and consequently likely to deceive or confuse the consuming public. The Opponent contended that it was the true proprietor in Zambia of the trademark DAILY wherein it had continuously used it in respect of soaps prior to the application and thus earned reputation. The Opponent argued that for the foregoing reasons and given its prior rights, the trademark was not capable of distinguishing the goods the Applicant was connected with in the course of trade either inherently or by use of the mark and therefore fell short of the requirements of Part IV of the Trade Marks Act Cap 401 of the Laws of Zambia.

The Applicant responded in a counterstatement lodged on 12<sup>th</sup> September 2006 that use of an unregistered trademark could not confer upon the proprietor or user, exclusive legal rights to the use of such a mark and that, in any event, the Applicant had since March 1997 exported into Zambia products bearing the DAILY trademark and as such acquired reputation in the relevant Zambian market. The Applicant argued that for the reasons aforesaid, the Opponent's alleged prior use of an identical mark could not render the Applicant's mark ineligible for registration nor was the mark likely to deceive or confuse as alleged or otherwise be disentitled to protection in a court of justice. The Applicant added that besides, the Opponent had not disclosed the Trade Mark Journal in which the Applicant's trademark was advertised.



In reply, Mr. Shoaib Moosa, the Opponent Company's Chief Legal Adviser, deposed in a Statutory Declaration in Support of Opposition dated 27<sup>th</sup> November 2006 and lodged on 22<sup>nd</sup> December 2006 that the Opponent was the registered proprietor in South Africa of trademarks 82/0246 DAILY and 88/0276 DAILY label, both in class 3 and in respect of soaps, effective 14<sup>th</sup> January 1982 and 18<sup>th</sup> January 1988, respectively. Copies of alleged register pages were exhibited as 'SM1' and 'SM2'. Mr. Moosa further deposed that the Opponent had for over 20 years made exclusive use of these marks, in relation to soaps, particularly laundry soap, in South Africa and elsewhere. He deposed that products worth over One Million South African Rands ascribed with the marks had been exported to Zambia since 2003. Copies of alleged tax invoices showing purchases of the product in Zambia were exhibited as 'SM4' as proof of the exports.

Mr. Moosa also swore that in view of the aforesaid exports to Zambia, the Zambian consuming public had at all times associated the DAILY mark and label with the Opponent and that notwithstanding the claim to have also exported products affixed with the DAILY trademark into Zambia, the Applicant was not the bona fide proprietor of the mark and did not use it in good faith to distinguish its goods from those of competitors. He deposed that consequently, the Applicant's trademark was unregistrable in terms of section 16 of the Trade Marks Act and that its use was likely to cause the Opponent loss of business.

The Applicant's response in a Statutory Declaration in Support of Application dated 18<sup>th</sup> December 2007 and filed on 24<sup>th</sup> December 2007, sworn by Mr. Farayi Mtangadura the Applicant Company's Marketing Manager, was that the Opponent did not use trademarks DAILY and DAILY label in relation to laundry soap but toiletries for personal use and, considering that they would be sold in different sections of a supermarket, there was no likelihood of confusion or deception. The Applicant further reaffirmed its earlier argument that it had over a period of 10 years, allegedly from 30<sup>th</sup> April 1997 (i.e. 6 years before the

Opponent is said to have first exported its product to Zambia) exported its products to Zambia under the trademark. An invoice was exhibited as proof of the alleged export. The Applicant also maintained that its trademark was distinguishable.

Mr. Mtangadura further deposed that in light of the above, contrary to the Opponent's contention, the Applicant was the bona fide proprietor of the DAILY trademark in Zambia and enjoyed earlier rights to its use in Zambia. He contended that, if anything, it was the Opponent who was seeking to reproduce or imitate the Applicant's mark. It was also the Applicant's case that in view of the distinctiveness of the soaps as allegedly shown, no damage was likely to ensue, thus the products in issue should be allowed to continue to co-exist in the Zambian market place as had been the case for 4 years or so.

The Opponent in turn replied in a Statutory Declaration in Reply sworn on 4<sup>th</sup> April 2008 by Mr. Mwenya Lwatula, its Advocate, that it had no knowledge that the DAILY trademark was not used for laundry but toiletries, nor that the Applicant had for over 10 years exported to Zambia products carrying the mark. Counsel deposed that the Applicant's invoice only showed a single sale of April 1997, arguing that no evidence was adduced of use or continuous use since then. Mr. Lwatula deposed that, in any case, the invoice referred to 'Daily Soap' which may as well could have been the Opponent's laundry soap. The Opponent buttressed this point by contending that, as could be seen from the Applicant's invoice, a typical consumer identifies soaps by the word 'soap' or 'soaps'. Thus, an order for the Opponent's DAILY soap could be confused with that of the Applicant while a complaint regarding the Applicant's soap could similarly be mistakenly blamed on the Opponent's soap.

The affidavit evidence was supported by oral submissions at a hearing before me held on 4<sup>th</sup> February 2009. Both parties essentially repeated their arguments in their affidavits and pleadings. Mr. Hamir submitted on behalf of the Applicant that



the Opponent Company could not rely on Section 16 and that it had not produced evidence of use or continuous use. My attention was also drawn to our own decision in the matter of **Trade Mark Opposition 292/2001 SUPAKILL** in which a similar opposition was said to have been rejected. He submitted that we opined in the **SUPAKILL** case that trademark protection was territorial. Counsel further argued that section 17(1) of the Trade Marks Act, which prohibits registration of identical marks, presupposes a registered mark. It was also his contention that it is trite law and practice that use of an unregistered mark can not give the owner rights to prevent others from registering a similar mark. Mr. Hamir also argued that in terms of section 7 of the Act, no action could be commenced for infringement nor recovery of damages.

Mr. Kalaluka, for the Opponent, in turn reaffirmed that the mark be denied registration for violating Part IV of the Trade Marks Act as it is not capable of being distinguished from the Opponent's mark which was allegedly already in wide circulation in the country and that the same was likely to deceive the public. He argued that the Applicant purported to rely on a single invoice of 1997 and had not shown any use since then. Counsel contended that it was therefore safe to infer from the evidence adduced that the Applicant last used the mark in Zambia over 10 years ago. He added that moreover, according to the invoice, only 24 tablets were exported to Zambia. Mr. Kalaluka argued that the Opponent, on the other hand, had demonstrated continuous use from 2003 to 2006 and the volumes exceeded One Million South African Rands. It was thus his case that the Applicant had established reputation in Zambia.

In responding to Mr. Hamir, Mr. Kalaluka argued that while section 7 precludes instituting proceedings or recovery of damages in respect of unregistered marks, the interest of justice requires that an act which is commonly in use be given protection. In any case, he argued, the issue is not about infringement but that the Opponent has been using the mark in the last 10 years and members of the public would as a result be deceived if registration of the Applicant's mark was

allowed. Counsel therefore prayed that the applicant's mark be denied registration as 'it would defeat the purpose of marks in wide circulation in the country'.

Mr. Hamir responded that the invoice exhibited in Mr. Farayi's Affidavit was not intended to prove continuous use but how far back the mark had been used in Zambia. He also disputed claims that the invoice showed 24 tablets as having been exported but that 1, 056 boxes, each containing 24 tablets, had instead been exported. He added that section 16 was in respect of registered trade marks. Mr. Hamir was supported by Mr. Makayi who argued that in the Applicants' view, for one to use a mark, it meant the mark was distinguishable. Mr. Makayi argued that even if the names were similar, the products were distinguishable as the Opponent's soap is a toiletry soap while the Applicant's is a laundry soap. He argued that consequently, the soaps would be located in different sections of a supermarket.

He also referred me to the Supreme Court decision of **Trade Kings Ltd vs Unilever and Others**, reported at page 16 of the 2000 Zambia Law Report, in which the Court allegedly gave guidance on how similarity of marks should be determined. Regarding territoriality of trademarks, Mr. Makayi submitted that whereas the Applicant did not dispute the alleged registrations in South Africa, the same could not be a factor in effecting refusal in Zambia. He contended that this position had been enunciated even by this Tribunal on many occasions. Mr. Kalaluka responded that the invoice referred to 'soap', as such, the products were not distinguishable. It was thus his argument that consumers would be under the impression that the products originated from a common source. He added that the Supreme Court decision cited by the Applicant confirmed that there would be confusion.

I am indebted to Counsel on both sides for the learned arguments and authorities. I have carefully considered the documentary evidence, submissions and the law applicable. The issue, as I can see, is whether the Applicant's



trademark DAILY is disqualified from registration under section 16 and Part IV of the Trade Marks Act Cap 401 of the Laws of Zambia as a whole, on account of the Opponent's unregistered trademark DAILY which has nonetheless allegedly been used and thus probably acquired reputation and good will in the relevant Zambian market.

It is incontrovertible that the trademarks in question are phonetically similar and both relate to goods in Class 3, particularly soap. It is also common cause that the Opponent's mark and label are not registered in Zambia. It also seems well settled, in spite of the lack of registration in Zambia, that the Opponent has for some years used the DAILY mark and label in Zambia through exports. The exhibited invoices, in particular, suggest several exports to have been made. Apparently, these exports were not disputed by the Applicant. In fact, the Applicant's own evidence supports the Opponent's claim on exports to Zambia. In paragraph 10 of its Statutory Declaration, the Applicant deposed, *inter alia*, that '...the products concerned should be permitted to continue peacefully to co-exist in the Zambian marketplace as has been the case for the past 4 years or more....'.

On the other hand, on the basis of the invoice exhibited in the Applicant's Statutory Declaration, which invoice, I must also add, was not disputed by the Opponent, I am equally prepared to afford the Applicant the benefit of the doubt that, as alleged, it exported to Zambia products ascribed with the DAILY label at least in 1997. As this would mean the Applicant was the first to use the DAILY trademark in the Zambian market, I have difficulties agreeing with the Opponent that the Applicant did not use the mark *bona fide*. I agree with the Opponent, nevertheless, that in the absence of evidence of subsequent or continuous exports, it is not possible to infer any reputation as having been established. I therefore find that whereas the Opponent has established reputation and good will in the Zambian soap market, the Applicant has not. I hold this view even

taking into account the clarification given by Counsel for the Applicant on the quantities exported to Zambia.

As I had earlier observed, in so far as phonetics are concerned, I doubt there can be dispute that the marks are similar. Mr. Makayi's argument, however, was that notwithstanding, the marks relate to different soaps, namely laundry and toilet soap, and would thus be located in different sections of a supermarket and that the mere use of a mark symbolised it was distinguishable. Counsel presumably assumed that a rational businessperson would not use a mark that was incapable of distinguishing his goods. Mr. Makayi was certainly on firm ground in so far as he suggested that the channels of distribution and sale of a product are factors to be taken into account in determining likelihood of confusion and deception. I will return in a moment to this question of similarity and confusion, but let me state that, in my view, it does not necessarily follow as Counsel would want me to believe. It is possible for one to try to ride on the goodwill of a popular brand.

In fact, if Counsel's argument were stretched further, there would be no need for a requirement that a mark be distinctive. As regards the alleged differences in the soaps and consequently their location in supermarkets, this argument, to start with, overlooks the fact that there is no specification of the type of soap in respect of which registration would be granted. Registration was sought in respect of 'soap', among others, and nothing more. It would therefore be open for the Applicant to claim exclusive rights to all kinds of soap. The argument also overlooks the point that not every soap would be sold in a supermarket. As a matter of fact, it may be the case that majority would be sold in small groceries in which the soaps may be positioned in close proximity. Having said this, I must add that I agree with the Opponent's contention that a consumer would most likely identify a brand of soap merely with 'Soap'.



Admittedly, an intelligent and well informed consumer might be able to differentiate between the Applicant and the Opponent's soap, but the standard to be employed is not that of a 'sophisticated' but an average consumer. It is a well settled principle of trademark law that in assessing whether there is similarity in marks, regard should be had to all circumstances of the case, including the nature of customers. To shade a bit more light on this question of distinctiveness and the test for similarity, I wish to quote what I said in the matter of **Trade Mark Opposition 137/2006 BULL DIAMOND**:

'It is well settled that the basic function of a trademark is to distinguish goods and services from one source from identical or similar products or services from other sources; the sources being the various enterprises that offer such products or services. For this reason, trademarks are said to be indicators of origin. It is thus a key requirement for the registration of a trademark that it be distinctive. Accordingly, a trademark is disqualified from registration if doing so would result in deception or confusion about the source of the product. ....

.....As stated above, the question at hand is whether the two trademarks are phonetically similar. Lord Parker suggested the following approach in **Pianotist Company's Application (1906) 23 RPC 774** for determining the similarity of words in trademarks:

***'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 circumstances; and you must further consider what is likely to happen if each of those trade marks is used in a normal way as a trade mark for the goods of the respective owners of the marks'.***

In the **Pianotists** case, an application to register 'neola' for player piano was opposed by the proprietor of the registered trademark 'pianola' for musical instruments. The court however held that the two words were not similar. Parker J concluded that having regard to the nature of the customer, the article in question, and the price at which it was likely to be sold and all the surrounding circumstances, no man of ordinary intelligence was likely to be deceived. He added, '...if he wants a 'pianola', .... I can not imagine that anybody hearing the word 'pianola' if pronounced in the ordinary way in the shop, and knowing the instruments as all shop men do, would be likely to be led to pass that customer a 'neola' instead of a 'pianola'.

Similarly, in **British Sugar Plc v James Roberson and Sons (1996)** RPC 281, Jacob J. proposed that the uses, users, physical nature of the respective goods, the trade channels through which they are marketed, the respective locations where the goods are sold in the supermarket and whether the two products or goods are rivals in the same market, should be taken into account when determining similarity of trademarks.

The Zambian High Court adopted a similar test in the case of **Trade Kings Limited v The Attorney General (1999)** ZR p 53. This was an appeal against the decision of the Registrar of Trade Marks not to register YEBO as a trademark on assumption that it would conflict with EBU, an already registered trademark. Silomba J allowed the appeal and quashed the Registrar's decision. Relying on the English case of **Newsweek Inc V BBC (1979)** RPC 441, he had the following to say:

*'The test to be used in deciding the similarities or dissimilarities between two words or marks was whether the ordinary sensible members of the public would be confused by the use of the two marks...YEBO though it is a Ngoni word the manner it is pronounced by the Ngoni would be of no relevance in view of the*



*limited influence the Ngoni language has on the Zambian public. In my view, the key letters in YEBO that are likely to distinguish the mark from EBU are 'Y' at the beginning and 'O' at the end. In this regard the ordinary sensible Zambian would, in his or her pronunciation of the word YEBO, tend to fuse Y and E into 'YEE' and 'B' and 'O' into 'BOO'. The result would be that trademark YEBO would be pronounced as YEEBOO which is phonetically different from the trademark EBU.'*

Although the **BULL DIAMOND** matter was about word marks, the principles enunciated in the authorities referred to above apply to all types of marks. As a matter of fact, the Zambian Supreme Court decision which Mr. Makayi referred to is also in support of these principles and the test laid down in these above cases. Ngulube CJ, as he then was, in delivering the majority decision in the **Trade Kings Ltd vs Unilever and Others** case, SCZ Judgment No. 2 of 2000 reported at page 16 of the Zambian Law Report edition of 2000, stated:

*' It would of course be unpardonable for any court to assume that the average Zambian consumer is some kind of a retard as suggested by some of the affidavits. Indeed, in considering issues of get-up for example, a good summary is given in Wadlow's "The Law of Passing Off" at paragraph 6.54 at page 433-4 which reads-"A comprehensive summary of the issues involved in cases turning on get-up was given by Bryne J. in Clarke v Sharp (3) – "First, it must always be kept in mind that the actual issue is, not whether or not the judge or members of the jury determining it would, or would not, have personally been deceived, but whether or not, after hearing the evidence, comparing the articles, and having had all the similarities and dissimilarities pointed out, the true conclusion is that the ordinary average customer of the retail dealers is likely to be deceived'.*

The Chief Justice then went on to quote with approval the following from Wadlow's "The Law of Passing Off":

*'It is necessary to consider the nature of the article sold, the class of customers who buy, to remember that is a question of likelihood of deceiving the average customer of the class which buys, neither those too clever, nor fools; neither those over careful, nor those over careless. One must bear in mind the points of resemblance and the points of dissimilarity, attaching fair weight and importance to all, but remembering that the ultimate solution is to be arrived at, not by adding up and comparing the results of such matters, but by judging the general effect of the respective wholes...Another matter of vital importance to be considered is whether there is, or is not, some essential point of difference or resemblance which overcomes or establishes the effect of other points of resemblance....but the ultimate decision must be come to, having regard to all considerations, as a matter of judgment on a question of fact.'*

The upshot of the view I take is that, taking into account all the circumstances of the case, including the trademark names, the nature of the article, its distribution channels and the nature of customers, the marks are confusingly similar.

Let me now turn to allegations regarding possible violation of section 16 and Part IV of the Trade Marks Act as a whole. Part IV generally provides for qualifications for registrability and matters incidental thereto. It comprises sections 14 to 21. Of these, the Opponent placed particular emphasis on section 16 as rendering the mark unregistrable. Section 16 prohibits the registration of a trademark which by reason of it being likely to deceive or cause confusion or otherwise, may be disentitled to protection. It provides:

***'It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would, by reason of its being likely to deceive or***



***cause confusion or otherwise, be disentitled to protection in a court of justice or would be contrary to law or morality, or any scandalous design’.***

As the marks are similar, *prima facie*, the registration of the Applicant’s mark would seem to violate the above provision. Section 16 cannot however be read in isolation of other related provisions. The spirit and intent of this provision and thus the complete picture of its essence and the mischief it is intended to address only becomes clear when read with and in the context of section 17(1), in particular. The said section 17 (1) provides:

***(1) ‘Subject to the provisions of subsection (2), no trade mark shall be registered in respect of any goods or description of goods that is identical with a trade mark belonging to a different proprietor and already on the register in respect of the same goods or description of goods, or that so nearly resembles such a trade mark as to be likely to deceive or cause confusion’.***

It is quite evident from section 17(1) that to be disqualified from registration, a mark sought to be registered should be identical with an already registered trademark. Similarly, under section 9(1), exclusive rights to the use of a trademark are incidental to registration. Section (9) (1) of the Act provides: -

***‘Subject to the provisions of this section and of sections twelve and thirteen, the registration of a person in Part A of the register as proprietor of a trade mark in respect of any goods shall, if valid, give or be deemed to have given to that person the exclusive right to the use of the trade mark in relation to those goods and, without prejudice to the generality of the foregoing words, that right shall be deemed to be infringed by any person who, not being the proprietor of the trade mark or a registered user thereof using by way of the permitted use, uses a mark identical with it or so nearly resembling it as to be likely to deceive or cause confusion in the course of trade in relation to any goods in respect of which it is registered and in such manner as to render the use of the mark likely to be taken either – (a)***

*as being used as a trade mark; or (b) in a case in which the use is upon the goods or in physical relation thereto or in advertising circular or other advertisement issued to the public....'.*

On the strength of the above provisions, it seems to follow, as argued by Mr. Hamir, that a proprietor of an unregistered trademark lacks the basis upon which to prevent registration of a trademark. This was also our view in the matter of **Trade Mark Opposition 292/2001 SUPAKILL** which is on all fours with the instant case. I therefore hold that section 16 envisages a trademark registered under the Trade Marks Act. Ipso facto, the argument that the Applicant's mark does not satisfy Part IV of the Act can not be sustained. May I add that section 7 further clarifies that no person can bring an action or recover damages for infringement of an unregistered trademark. It provides:

*'No person shall be entitled to institute any proceedings to prevent or to recover damages for the infringement of an unregistered trade mark, but nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof'.*

While I agree with Mr. Kalaluka that section 7 concerns infringement which I also admit is not in issue, what I nonetheless distill from this and the other provisions is that Parliament envisaged rights accruing under unregistered trademarks to be protected and/or enforced through an action in the tort of passing off. I should further point out that as correctly argued also by Mr. Hamir, trademarks are, as a general rule, territorial. As such, subject to exceptions, a trademark can only enjoy protection in the territory of registration. In this regard, I wish to quote what we said at page 5 of our decision in **Trade Mark Opposition 292/2001 SUPAKILL**:

*'Protection of trademarks is territorial, in that protection of a trade mark will only be recognized in the country of registration. 'SUPAKILL' has never*



been registered in Zambia and therefore, cannot claim legal protection under Zambian legislation'.

One of the exceptions relates to what are termed 'well known' marks, that is, marks that are considered to be so well known by competent authorities in particular territories that they need not be registered to be protected. As Zambia has not yet domesticated the relevant international law, however, 'well known' marks are not recognized in Zambia. In stead, our statute provides for 'defensive registration' of 'well known' marks. Again, as Mr. Himir argued, we have been quite consistent on this point as can be seen from what we stated on page 7 in the **SUPAKILL** matter, thus:

'It is claimed by the opponents that SUPERKILL is a well known trade mark throughout Africa. Unfortunately, the Trade Mark Act as it exists in Zambia today, does not provide for the protection of well-known unregistered trade marks and therefore, such a claim cannot be sustained'

The other scenario, which nevertheless is not so much an exception in that it merely provides for a different form of registration, relates to marks registered under a convention to which Zambia is party and designated to apply in Zambia. An example is a mark registered through the International Bureau of WIPO under the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.

The point I wish to underscore, in saying all this, is that it is inconsequential that the Opponent's mark and label are registered in South Africa, nor that they may have attained 'well known' mark status. Further, as there is no requirement under the Trade Marks Act for an applicant to establish prior use, it is also immaterial whether or not the Applicant did use the trademark prior to the application.

The Opponent nevertheless claims that though not registered, the interest of justice requires that an 'act commonly in use should be given protection'. No authority, unfortunately, was cited in support of this proposition. I am therefore left to speculate. Under the circumstances, suffice to say it is trite law that while principles of common law and equity may assist in the interpretation of a statute and sometimes fill gaps therein, they should not in effect vary a statute, otherwise I would be usurping the powers of Parliament under the guise of interpretation.

For the reasons cited above, I dismiss the opposition but order that each party bears its costs of and incidental to this application. A suggestion was made to the parties regarding possible co-existence of the marks but the opponent was categorical that it is not desirous of such a co-existence. I cannot therefore impose it on the parties.

I have tried to be long winded in my decision in the hope that I may provide some guidance on some of the issues raised by this opposition. Despite our consistency on the question of oppositions based on unregistered trademarks, for example, we continue to see an increase in such oppositions. I can only therefore hope that this decision finally settles the matter and that parties to this action, their advocates and other interested parties, take heed.

Either party is at liberty to appeal to the High Court if dissatisfied with the decision herein.

DELIVERED THIS 4<sup>th</sup> DAY OF MARCH 2009



A.M. Banda-Bobo (Mrs)

**REGISTRAR**

