

# KENYA INDUSTRIAL PROPERTY INSTITUTE



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Our Ref: TMA NO. 127210

Date: 27<sup>th</sup> September 2024

Your Ref: TMS/EL/49/3

Kaplan & Stratton  
Advocates  
P.O. Box 40111-00100  
Nairobi

Dear Sirs

## TMA. NO. 127210 IN THE NAME OF KAKUZI PLC

I refer to the above matter and to your letter dated 21<sup>st</sup> March 2024.

It is noted that in a letter dated 5<sup>th</sup> October 2023, the Registry of Trade Marks required you to enter a disclaimer of the right to the exclusive use of the word "GROWING", each separately and apart from the mark as a whole, as a condition for approval of the above trade mark for publication and registration. In your letter of 21<sup>st</sup> March 2024, you indicated that you were opposed to entry of a disclaimer with respect to the word "GROWING" for the following reasons, *inter alia*:

- (a) The Applicants' trade mark is distinctive of the services in classes 35, 38 and 41 of the Nice Classification of Goods and Services for Purposes of Registration of Marks (the Nice Classification), in respect of which the mark is sought be registered; and
- (b) There was no reason for other traders to be likely to desire to use the word "GROWING", with respect to services in classes 35, 38 and 41 of the Nice Classification.

Upon consideration of this matter, I agree with the contents of your letter dated 21<sup>st</sup> March 2024 for the following reasons:

- (a) A disclaimer in an application for registration of a trade mark is required under the provisions of section 17 of the Trade Marks Act where an element constituting a trade mark is common to the particular trade related to the goods or services in

respect of which a mark is sought to be registered or where the element is of a non-distinctive nature;

- (b) In *Discovery Holdings Limited v Sanlam Ltd & 2 Others*,<sup>1</sup> the Court stated that a trade mark can be descriptive where “it can literally describe the product or it can describe the purpose or utility of the product”; and
- (c) The word “GROWING” does not describe the character of services in classes 35, 38 and 41 of the Nice Classification, in respect of which your trade mark is sought to be registered.

Therefore, I conclude that:

- (a) Your application T.M.A No.127210 is hereby allowed to proceed to publication in accordance with the provisions of the Trade Marks Act; and
- (b) The Examination Report dated 5<sup>th</sup> October 2023 that was issued by the Registry of Trade Marks, relating to the requirement to enter a disclaimer of the right to the exclusive use of the word “GROWING” separately and apart from the mark as a whole, is hereby revoked.

Yours Faithfully



Eunice Njuguna  
Assistant Registrar of Trade Marks

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<sup>1</sup> Case No. 8995/2012.