

KENYA INDUSTRIAL PROPERTY INSTITUTE



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Our Ref: T.M.A. No.117986

Date: 19th September 2024

Your Ref: AD500758_6209532

Coulson Harney LLP

P.O. Box 10643 - 00100

Nairobi

Dear Sirs

**TRADE MARK APPLICATION NO. 117986 IN THE NAME OF ROHTO
PHARMACEUTICALS CO. LTD**

I refer to the above-mentioned matter and to your letter dated 25th November 2021.

It is noted that in a letter dated 25th August 2021, the Registry of Trade Marks refused registration of the above trade mark. This was for the reason that the trade mark was deemed to lack essential elements under the provisions of section 12 of the Trade Marks Act, when it used or sought to be registered with respect to goods in class 3 of the Nice Classification of Goods and Services for Purposes of Registration of Marks (the Nice Classification).

In your letter of 25th November 2021, you requested the Registrar of Trade Marks to review the above decision for the following reasons:

- i. The trade mark had been used extensively in Kenya since 2015 and has, therefore, acquired distinctiveness; and
- ii. When considered as a whole, the mark is distinctive when used in relation to goods in class 3 of the Nice Classification; respect to the trade mark.

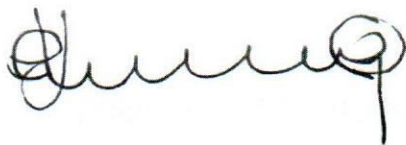
Upon consideration of the circumstances of this matter I am of the view that the application should proceed to publication for the reason that the trade mark has been used in the Kenyan market since 2015. When an application for registration of a trade mark is filed at the Registry of Trade Marks, the Registrar of Trade Marks examines the mark in accordance with the provisions of the Trade Marks Act. The Registrar only approves the mark for publication and registration upon being satisfied that the mark is distinctive and adapted to distinguish the goods or services of the applicant in accordance with the provisions of section 12 of the Trade Marks Act. Section 12(3) of the Act provides that "in determining whether a trade mark is adapted to distinguish, the Court or the Registrar may have regard to the extent to which

- (i) the trade mark is inherently adapted to distinguish; and
- (ii) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact adapted to distinguish." (*Emphasis added*).

It is apparent that the above trade mark has been used extensively in Kenya, meaning that the trade mark has acquired distinctiveness in the market.

For the above reason, I hereby approve the above trade mark to proceed to publication. The Examination Report dated 25th August 2021 that was issued by the Registry of Trade Marks relating to the objection to registration of your mark is hereby revoked.

Yours faithfully



Eunice Njuguna
Assistant Registrar of Trade Marks