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THE TRADE MARKS ACT CAP 506 OF THE LAWS OF KENYA

AND

IN THE MATTER OF TMA NO 68414 "KINKY BULK" IN CLASS 26 IN THE NAME OF REBECCA FASHION LIMITED AND OPPOSITION THERETO BY STRATEGIC INDUSTRIES LIMITED

RULING BY THE ASSISTANT REGISTRAR OF TRADE MARKS

Background

On 16th June 2010, Rebecca Fashions Limited (hereinafter referred to as the Applicants) filed an application to register their trade mark TMA 068414 "KINKY BULK" (WORDS) (hereinafter referred to as the mark) before the Registrar of Trade Marks. The mark was applied for in class 26 in respect of "artificial hair, beards, moustaches, toupees, hair bands, hair grips, hair ornaments, hair nets, bows for the hair".

The Registrar duly examined the mark in accordance with the provisions of the Trade Marks Act Cap 506 of the Laws of Kenya and on 28th July 2010, the mark was approved and published in the Industrial Property Journal of 31st July 2010, on page 37.

On 28th September 2010, Strategic Industries Limited (hereinafter referred to as the Opponents) filed a Notice of Opposition against the registration of the mark. The grounds of opposition were as follows:

1. We are the owner of the registered trade mark AFRO KINKY which is well known in the Kenyan market and if allowed to proceed to registration, the mark KINKY BULK will cash in on the good will our aforementioned mark has created in the Kenyan market.

2. The trade mark KINKY BULK is not distinctive and is not registrable in respect of goods in class 26 since the word KINKY describes the character of the goods in the said class 26 and therefore offends the provisions of sections 12 and 17 of the Trade Marks Act.
3. The goods covered by the Applicant's mark are identical to and/or are goods of the same character, nature or description to the goods on which our trade mark AFRO KINKY is used. This is likely to further enhance the likelihood of confusion and deception arising if the Applicant's TMA. No. 0068414 KINKY BULK is allowed to proceed to registration and use on the Kenyan market and therefore further disentitles that trade mark to protection in a court of justice.
4. The trade mark KINKY BULK which REBECCA FASHION (KENYA) LTD hereinafter called ('The Applicant') is attempting to register so closely resembles trade mark AFRO KINKY visually and phonetically that confusion and deception is likely to arise in the minds of the public so as to disentitle the trade mark KINKY BULK (which is the subject of TMA. No. 0068414 in class 26) to protection in a court of justice.
5. Arising from what is stated in paragraphs (2), (3) and (4) above, there is a likelihood that members of the public may mistakenly purchase the Applicant's goods bearing the Trade Mark No. 0068414 KINKY BULK thinking they are goods manufactured by ourselves or vice versa.
6. TMA. NO. 0068414 KINKY BULK should therefore be refused registration under sections 14 and 15 of the Trade Marks Act.

Wherefore, we the Opponent pray:

- (a) That registration of the mark represented in TMA. No. 0068414 KINKY BULK should be refused;
- (b) That the costs of these proceedings be awarded to us (the Opponent).

The Opponents' Notice of Opposition was duly forwarded to the Applicants who on 17th November 2010 filed their Counter Statement of the same date. The Applicants stated the following as the grounds on which they would rely in support of their application:

1. The Applicant denies the contents of paragraph 1 of the Notice of Opposition and in particular that the opponent is the owner of the alleged registered mark AFRO KINKY (the Mark) or that the alleged mark has been extensively used, advertised and promoted by the opponent and or that the opponent has created any goodwill from the mark in the Kenyan market as alleged or at all.
2. The Applicant denies the contents of paragraph 2 of the Notice of Opposition and in particular that the trade mark KINKY BULK is not distinctive and or that it is not registrable under class 26 and puts the opponent to strict proof thereof. The Applicant further denies that the use of the word KINKY offends the provisions of sections 12 and 17 of the Trade Marks Act. In further reply thereto, the Applicant pleads that it has disclaimed any right to the exclusive use of the word KINKY in its application in terms of section 17 of the Trade Marks Act Cap 506 of the Laws of Kenya.
3. The Applicant denies in toto the contents of paragraph 3 of the Notice of Opposition and puts the opponent to strict proof thereof. Particularly, that the products covered by its intended mark are identical to and/or are goods of the same character, nature or description to any other products and that it is likely to cause confusion and deception amongst members of the public as alleged or at all.
4. The Applicant denies the contents of paragraph 4 of the Notice of Opposition and puts the opponent to strict proof thereof. Particularly, that the mark belongs to the opponent or at all. Further that the mark closely resembles any other registered trade mark or unregistered marks visually and phonetically or that confusion and deception is likely to arise in the minds of the members of the public as alleged or at all.
5. The contents of paragraph 3 of the Notice of Opposition are denied in toto and the opponent put to strict proof thereof. The Applicant denies that the members of the public may mistakenly purchase its products bearing the Applicant's intended trade mark KINKY BULK thinking that they are goods manufactured by the Opponent as claimed or at all.
6. Further, that the Opponent has no valid registration in Kenya and the associated variations thereto.
7. The Applicant pleads that trade marks are territorial in nature and the Opponent has no proof of use, advertisement, or promotion of

products with the mark in Kenya and/or any other countries in the world as alleged in the Notice of Opposition or at all.

8. The Opponent has never or at all acquired any distinct goodwill and reputation on account of the mark, therefore, acceptance and registration of the Applicant's trade mark application number 68414 is not in any way seeking to deceive, confuse, exploit and or ride off the Opponent's goodwill but an enjoyment of the Applicant's inherent rights as the originator of the KINKY BULK trade mark.
9. Without prejudice to the foregoing, the Applicant pleads that the opposition herein is actuated by bad faith and solely designed to deny the Applicant the benefit of its hard work and purposely exploit and ride off the distinctiveness of the current application for registration of trade mark KINKY BULK.

Reasons wherefore: The Applicant prays that:

- i. The present opposition be dismissed;
- ii. The subject application be allowed to proceed to registration; and
- iii. Costs of these opposition proceedings be awarded in favour of the Applicant.

The Applicants' Counter Statement was forwarded to the Opponents who on 1st February 2011 filed their Statutory Declaration. The Statutory Declaration was sworn by one Mahmoud Saffideen, the Opponents' Managing Director who declared as follows *inter alia*:

1. I confirm that the opponent is the owner of the Trade Mark No. 52832 AFRO KINKY in class 26. Labels attached to this declaration marked Exhibit MS1.
2. The Opponent has used the Opponent's mark AFRO KINKY since 1993, extensively on class 26 alongside our registered trade mark (TM NO. 38928) Darling for hair additions, hair pieces and braids, weaves and wigs.
3. The Opponent has sold the goods bearing the Opponent's marks to purchasers in Kenya from the year 1993. Photocopies of the invoices/Delivery notes of the Opponent proving such sales are attached to this declaration in the bundle marked Exhibit MS2.

4. That I verily believe that by virtue of resultant sales of the goods referred to in Exhibit MS2 the Opponent's marks are well known to the Kenyan public in connection with the goods sold by the Opponent.
5. With regard to paragraph 2 of the Counter statement, I am advised by the Opponent's Advocates Messrs Onyony & Company Advocates and verily believe that the registration and bona fide use of a trade mark gives the owner of that trade mark exclusive rights so long as the mark is validly existing in the Register of Trade Marks. Annexed hereto and marked SM3 is the certificate of registration, renewal certificate and certificate of assignment.
6. The goods covered by the TMA.NO.68414 filed by the Applicant are either identical to or are goods of the same character, nature or description to the goods on which the Opponent uses the Opponent's marks AFRO KINKY BULK in class 26.
7. I verily believe that the trade mark which Applicant is attempting to register under TMA.068414 KINKY BULK so closely resembles the Opponent's mark visually and phonetically that the Kenyan public are likely to be confused or deceived into thinking that the goods to which the Applicant intends to affix the mark which is shown in TMA.NO.068414 originate from the Opponent. This possibility of confusion is further enhanced by the fact that the Opponent's mark is used on identical goods or essentially identical goods.
8. With regard to paragraph 2 of the Counter statement, I am advised by the Opponent's Advocates Messrs Onyony & Company Advocates and verily believe that the principal test to proof reputation and goodwill in such an Opposition, a trader needs to demonstrate that the words have acquired a secondary meaning not only of the goods of which they relate but also specifically of the goods which he is the source. The trader must show the length of use and demonstrate that they have sold and marketed the product in Kenyan market. The Opponent's Advocates will make further submission on this aspect at the hearing of this opposition.
9. With regard to paragraph 3 of the Counter statement, I am advised by the Opponent's Advocates and verily believe that the fact that the Applicants have disclaimed the right to the exclusive use of the word KINKY does not prevent the opponents from opposing the application because the deception and or confusion will arise in the market in the

case of trade. The Opponent's Advocates will make further submission on this aspect at the hearing of this opposition.

10. With regard to paragraphs 4,5 and 6 of the Counter-Statement, I am advised by the Opponent's Advocate and verily believe that the principal test in such an opposition is whether the two marks are sufficiently close visually and phonetically as to be likely to cause the public to be confused or deceived. I verily believe that on the basis of that test confusion or deception of the public is likely to arise. The Opponent's Advocates will make further submission on this aspect at the hearing of this opposition.
11. With regard to paragraphs 7 and 8 of the Counter-Statement, I reiterate the contents of paragraphs 7 and 8 and attachments Exhibits MS2 and MS3 of my statutory declaration.
12. With regard to paragraph 9 of the Counter statement, I am advised by the Opponent's Advocates and verily believe that the whole picture in relation to each of the marks being compared has to be considered. There may be differences in the parts of each mark, but it is important to consider the mode in which the parts are put together and to judge whether the dissimilarity of the part or parts is enough to make the whole dissimilar. The opponent's Advocate will make further submission on this aspect at the hearing of this opposition.
13. With regard to paragraph 10 of the Counter-Statement we deny the contents and put them to strict proof thereof and further that our unsuspecting consumers are likely to purchase the applicants goods bearing the words KINKY BULK believing they are our AFRO KINKY BULK WEAVE and/or thinking that the two marks KINKY BULK and AFRO KINKY BULK come from one source. The Opponent's Advocate will make further submission on this aspect at the hearing of this opposition.
14. In response to paragraph 11 of the Counter-Statement I am advised by the Opponent's Advocate and verily believe that it is within our right provided under Sections 14 and 15 of the Trade Marks Act Cap 506 of Laws of Kenya to oppose the registration of deceptive, identical and resembling trade marks. We believe that KINKY BULK and AFRO KINKY cannot co-exist in the Trade Mark's Register and in the market without causing confusion.

The Opponents' Statutory Declaration was forwarded to the Applicants who on 25th March 2011 filed their Statutory Declaration. The Statutory Declaration was sworn by one Hongxia Li, a Director of the Applicants who declared as follows *inter alia*:

1. The contents of paragraph 6 of the Declaration are not true or correct.
2. There is no evidence tendered by the Opponent to demonstrate that it has been selling goods bearing the mark AFRO KINKY from the year 1993 as claimed. In further reply, the invoices/delivery notes attached to Opponent's Statutory Declaration are not dated.
3. I am a stranger to the contents of paragraph 7 of the Declaration. However, an analysis of the invoices and delivery notes annexed to the declaration would indicate that the Opponent's product is not as popular with the Kenyan market as claimed by the Opponent.
4. The contents of paragraph 8 of the Affidavit are correct. In further reply thereto, I am aware that the Applicant has not claimed the use of the Opponent's mark Afro Kinky.
5. The contents of paragraph 9 of the Declaration are not true or correct in so far as they seem to suggest that the Opponent's trade mark is Afro Kinky Bulk. In further reply thereto, I am aware that both the Applicant and the Opponent business relates to hair additions and extensions. However, it is not true or correct that the Applicant's products under the mark Kinky Bulk are of the same character, nature and description as claimed or at all.
6. The contents of paragraph 10 of the Affidavit are not true or correct. The correct position is that the Kenyan public will not be confused as to the origin and manufacturers of the products as alleged or at all for the following reasons:-

(a) All the goods sold by the Applicant are clearly marked with the Applicant's name and mark;

- (b) It is not likely to be taken as indicating a connection in the course of trade between the Applicant's goods and the Opponent's goods for the reason that the Applicant clearly indicates the distinctiveness of its products as compared to the Opponent's products;
- (c) The Applicant's hair products are distinctly identified by the Applicant's conspicuous Trade Mark, KINKY BULK logo, name and website and there can be no confusion in the eyes of the general public and in particular, a client within the hair industry, with those of the Opponent which are equally distinctly identified by the Opponent's maroon, yellow and dark blue colours together with the caption "Afro Kinky", logo, name and telephone numbers;
- (d) The Opponent's and the Applicant's products are not so similar as to be likely to deceive or cause confusion in the minds of the general public and in particular, a client within the hair industry.

7. The contents of paragraph 11 of the declaration are correct.

8. In reply to the contents of paragraphs 12, 13, 14, 15, 16 and 17 of the declaration I reiterate the contents of paragraph 8 hereinabove.

The Applicants' Statutory Declaration was forwarded to the Opponents who on 23rd May 2011 filed their Statutory Declaration. The Statutory Declaration was sworn by the said Mahmoud Saffideen, the Opponents' Managing Director who denied in toto singularly and severally the allegations and averments made in the Statutory Declaration of the Applicants. This marked the close of the pleadings, subsequent to which the parties herein agreed on a hearing date. However, it was later agreed that the matter would proceed by way of written submissions. The Opponents filed their written submissions on 2nd September 2011 and the Applicants filed their written submissions on 30th January 2012.

Ruling

I have considered the Notice of Opposition filed by the Opponents herein, the Counter-Statement filed by the Applicants and the evidence adduced by the parties by way of their respective Statutory Declarations. I have also considered the written submissions filed herein by Onyony & Company Advocates and Issa & Company Advocates for the Opponents and the Applicants respectively. These opposition proceedings have been filed under sections 14 and 15 of the Trade Marks Act. I am of the view that the following is the issue that should be determined in these opposition proceedings:

Is the Applicants' mark KINKY BULK so similar to the Opponents' mark AFRO KINKY as to be likely to deceive or cause confusion as provided for under sections 14 and 15(1) of the Trade Marks Act?

Section 14 of the Trade Marks Act provides as follows:

"No person shall 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."

Section 15 (1) of the Trade Marks Act provides as follows:

"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 or resembles a mark belonging to a different proprietor and already on the register in respect of the same goods or description of goods, or in respect of services is identical or nearly resembles a mark belonging to a different proprietor and already on the register in respect of the same services or description of services."

To be able to determine whether or not marks are similar, several factors need to be considered. In the Canadian case of *Veuve Clicquot Ponsardin v Boutique Cliquot Ltee* the following were indicated as some of the factors to consider:

- (a) The inherent distinctiveness of the trade marks or trade names and the extent to which they have become known with the Applicant's name and mark;
- (b) the length of time the trade marks or trade names have been in use;
- (c) the nature of the wares, services or business;
- (d) the nature of the trade;
- (e) the degree of resemblance between the trade marks or trade names in appearance or sound or in the ideas suggested by them.

In the case *Eli Lilly & Co V Natural Answers Inc* 233, F. 3d 456, [USA] the following were indicated as some of the factors to consider:

- (a) The strength of the complainant's mark;
- (b) Similarity between the marks in appearance and suggestion;
- (c) The degree of care likely to be exercised by consumers; and
- (d) The area and manner of concurrent use of the products.

In the New Zealand case of *Pioneer Hi-Bred Corn Co. v. Hy-Line Chicks Pty Ltd*, the Court stated as follows:

"In considering the likelihood of deception or confusion, all surrounding circumstances have to be taken into consideration, including the circumstances in which the applicant's mark may be used, the market in which his goods may be bought and sold and the character of those involved in that market.

The following is a consideration of some of the aforementioned factors:

(a) What is the strength of the earlier mark?

The Opponents have filed these opposition proceedings on account of their mark **AFRO KINKY** which has subsisted in the Register of Trade Marks since

2002. The Opponents' mark is therefore the earlier mark and is the one whose strength should be considered.

The said mark was entered in the Register of Trade Marks in respect of goods in class 26 of the International Classification of Goods and Services for Purposes of Registration of Mark, which include hair additions and attachments, hair pieces and braids, weaves and wigs. Records in the said Register of Trade Marks indicate that the mark was registered with a disclaimer of the right to the exclusive use of the words "**AFRO**" and "**KINKY**" each separately and apart from the mark as a whole. The requirement of a disclaimer was necessitated by the fact that both the words that constituted the Opponents' mark are not distinctive of the goods in the said class 26. This means that the said mark cannot be considered to be a strong mark.

The common element between the Opponents' and the Applicants' mark is the word "**KINKY**" which has been disclaimed both by the Opponents in their registration and the Applicants in their application. This is for the reason that "**KINKY**" is an English word, which describes the kind or texture of hair that is commonly the black people's hair. This means that the word "**KINKY**" is common to the goods that form the bulk of the Opponents' and the Applicants' trade. It is actually worth noting that at paragraph 2 of their Notice of Opposition, the Opponents admit "the word "**KINKY**" is not registrable because the same describes the character of the goods in the said class 26".

Further, a consideration of the aforementioned Register of Trade Marks indicates that the term "KINKY" has been entered in the said Register in respect of goods in class 26 in the name of several proprietors but with a disclaimer of the right to the exclusive use of the said term separately and apart from the mark as a whole. The said marks include TMA Numbers 060413- NICE & LOVELY AFRO KINKY STYLE in the name of Cicero Holdings Limited and 067080- KINKY WORLD OF HAIR and device in the name of Kinky Group (PTY) Ltd.

In the English case referred to as General Cigar Co Inc V Partagas Y Cia S.A., it was stated as follows:

"All that an express disclaimer provides is a clear indication on the face of the register that the disclaimed component is non-distinctive at the date of filing for the purposes of trade mark registration, **and so no exclusive trade mark rights may be claimed therein. Accordingly, a subsequent application for a trade mark is free to use that component.**" (Emphasis added)

David I. Bainbridge, the learned author of the book, *Intellectual Property*, Sixth Edition states as follows on page 634:

"Where the similarity with an earlier trade mark results only from elements disclaimed in that earlier trade mark, there can be no similarity if no other elements are the same or similar."

In the South African case of *Adcock Ingram Products Ltd V Beecham (PTY) Ltd*, the court stated as follows:

"the plaintiff must prove in the first instance that the defendant has used or is using in connection with his own goods a name, mark, sign or get up which has become distinctive in the sense that by the use of the plaintiff's name or mark, in relation to goods they are regarded by a substantial number of members of the public or in the trade, as coming from a particular source known or unknown. In other words, the Plaintiff must prove that the feature of his product on which he relies has acquired a meaning or significance, so that it indicates a single source for goods on which that feature is used."

In the case of *Sabel v Puma*, the court stated as follows:

"However, in circumstances such as those in point in the main proceedings, where the earlier mark is not especially well known to the public and consists of an image with little imaginative content, the mere fact that the two marks are conceptually similar is not sufficient to give rise to a likelihood of confusion."

In the case of *Reed Executive PLC v Reed Business Information Ltd*, the court stated as follows:

"Of importance here is the recognition that an addition in the defendant's sign to a registered mark may take the case outside one of "identity". This is obviously sensible – one word can qualify another so as to change its impact, "Harry" qualifies "Potter" and vice versa, for instance. It is particularly in the recognition that additions can change identity that the ECJ has moved on from the rather rigid view taken under the old UK law.

The last sentence is an acknowledgement of a fact that has long been recognised: where a mark is largely descriptive "small differences may suffice" to avoid confusion (per Lord Simonds in *Office Cleaning Services v Westminster Window and General Cleaning* (1946) 63 RPC 30 at p.43). This is not a proposition of law but one of fact and is inherent in the nature of the public perception of trade marks.

It is worth examining why that factual proposition is so – it is because where you have something largely descriptive the average consumer will recognise that to be so, expect others to use similar descriptive marks and thus be alert for detail which would differentiate one provider from another. Thus in the cited case “Office Cleaning Association” was sufficiently different from “Office Cleaning Services” to avoid passing off.”

In the WIPO Intellectual Property Handbook: Policy Law and Use, it is stated as follows on page 87:

“The third most important point is that highly distinctive marks (coined or arbitrarily used marks) are more likely to be confused than marks with associative meanings in relation to the goods for which they are registered”.

In the passing off proceedings referred to as Antec International Ltd v South Western Chicks (Warren) Ltd (at page 285), Laddie J said as follows:

“As it is sometimes put, no trader will be allowed to fence off words in the common of the English language. From this it flows, that in some cases where a trader has used a highly descriptive name, he will find it virtually impossible to obtain protection at all by means of passing off proceedings.”

To identify their goods in class 26 which are largely artificial hair and hair additions, the Opponents adopted a trade mark that incorporates the word KINKY which is highly descriptive of the said goods. As aforementioned, this is a common English word, which refers to a type/texture of hair, and the Opponents would not be allowed to fence it off for their exclusive use. The Opponents' mark is not what would be described as a strong mark. As indicated in the above-mentioned case General Cigar Co Inc V Partagas Y Cia S.A., once a person in a certain trade registers a mark with a disclaimer, other persons would be allowed to use the disclaimed element because the disclaimer means that the element cannot on its own be termed to be distinctive. For this reason, the Opponents' mark is not a strong mark.

(b) Is there a similarity between the marks in appearance and suggestion?

The marks being compared are the marks “AFRO KINKY” and “KINKY BULK” for the Opponents and the Applicants respectively. It is apparent that the two trade marks are not identical. The common element between the two trade marks is the term “ KINKY”.

In regard to this issue, David I. Bainbridge, the learned author of the book Intellectual Property, Sixth Edition states as follows on page 632:

"As a likelihood of confusion is presumed where there is a complete identity of the sign, and the earlier trade mark and the goods or services, the grounds of refusal...should be reserved for those cases where a significant number of consumers would presume that there was complete identity given that it has been established that consumers do not usually make a direct comparison between the sign and the earlier trade mark."

In the case of National Brand Ltd v Blue Lion Manufacturing Ltd, the court stated as follows:

A word mark, and particularly one that makes use of ordinary language, is not merely a combination of abstract symbols (at least to the illiterate observer) but is usually recognizable as a whole. In that respect, in my view, its visual appearance cannot be separated altogether from its sense. Where the sense of one word mark differs markedly from that of another, it seems to me that the scope of deception or confusion is reduced.

In the case of SA LTJ Diffusion V SA Sadas Vertbaudet, the European Court of Justice held that a sign is to be regarded as identical with a trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they could go unnoticed by an average consumer.

In the Swedish case of Gucci Gucci Spa Application, the Supreme Court of Sweden held as follows:

"The two letter combination GG existed both in the earlier trade name and in Gucci's trade marks. However, the distinctiveness of the letter combination GG is that the trade name may be considered as having only a limited scope of protection".

In the English case of 10 Royal Berkshire Polo Club Trade Mark [2001] RPC 643, it was held that the semantic content of the marks was not such as to give rise to a belief that the Opponents' goods and the Applicants' goods came from the same undertaking or economically linked undertaking.

As earlier indicated in this Ruling, the term "KINKY" is generic in the trade of hair additions and therefore available to all traders who deal in class 26 goods. I had

also stated that there are other marks that have been entered in the Register of Trade Marks bearing the said term "KINKY" in respect of goods in class 26.

In the WIPO Intellectual Property Handbook: Policy Law and Use, it is stated as follows on page 87:

"When trade marks with a common element are compared, it also has to be established whether there are other trade marks on the register and used by different owners that have the same common element. If so, the consumer will have become accustomed to the use of this element by different proprietors, and will no longer pay special attention to it as a distinctive element of the mark."

In the UK case of *European Ltd v Economist Newspaper Ltd*, the Claimant alleged that the Defendant had infringed, under section 10(2) of the Trade Marks Act 1994, its registered trade mark THE EUROPEAN and device by producing a newspaper called 'European Voice', because it was so similar as to give rise to a likelihood of confusion. The Court of Appeal found that the judge was right to have decided that there was no likelihood of confusion, and had in mind the correct factors, including that the goods were identical. The signs were different in appearance, the word 'European' was being used in a different manner in the two signs, and because the word was descriptive, the monopoly attaching to the registration of the trade mark was restricted on the descriptive use of registered trade marks and criminal liability.

Following all the above-mentioned authorities, I am of the view that the two marks "AFRO KINKY" and "KINKY BULK" contain differences that would be sufficient to make the two marks to co-exist in the register of Trade Marks and enable the respective goods of the Opponents and the Applicants to be offered for sale in the Kenyan market without offending the provisions of sections 14 and 15(1) of the Trade Marks Act.

Conclusion

For the above-mentioned reasons, I have come to the conclusion that on a balance of probabilities:

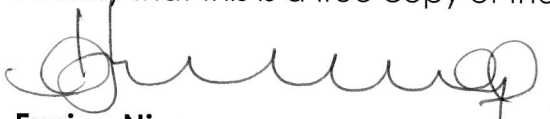
- (a) the Opponents have failed in these opposition proceedings; and
- (b) the Applicants' trade mark no. KE/T/20010/68414 "KINKY BULK"(WORDS) shall proceed to registration.

The Opponents and the Applicants in these opposition proceedings shall each bear their own costs.

Eunice Njuguna
Assistant Registrar of Trade Marks

24th Day of July 2013

I certify that this is a true copy of the original.

A handwritten signature in black ink, appearing to read 'Eunice Njuguna', with a stylized flourish at the end.

Eunice Njuguna
Assistant Registrar of Trade Marks

24th Day of July 2013