



UGANDA REGISTRATION SERVICES BUREAU

THE TRADEMARKS ACT, 2010



**IN THE MATTER OF TRADEMARK REGISTRATION No. 46255
FIGURATIVE ELEMENT WITH WORDS "RICHARDS" IN CLASS 30 BY
RICHARD MAIZE MILLERS LTD
AND**

**IN THE MATTER OF AN APPLICATION FOR CANCELLATION OF
REGISTRATION BY REAL FOOD MAIZE MILLERS LIMITED**

BEFORE: AGABA GILBERT, ASST. REGISTRAR TRADEMARKS

- 1- Richard Maize Millers Ltd (herein the Respondent) is the registered proprietor of the trademark number 46255, "RICHARDS" with symbol (herein the Respondent' Mark) from 5th October 2012.
- 2- Real Food Maize Millers Ltd (herein the Applicant) applied for cancellation of the Respondent's Mark on 22nd July 2014 on the ground that the Respondent's Mark resembles the Applicant's trademark number 41435 registered earlier from 26th October 2010.
- 3- At the outset, it seems that the Respondent – Richard Maize Millers Ltd does not exist. The Respondent's statutory declaration was filed by Kivumbi Moses on behalf of Richard Millers Ltd. Richard Millers Ltd is a different person from the person who owns the Respondent's mark to-wit Richard Maize Millers Ltd. Richard Millers Ltd was incorporated on 30th January 2011; Richard Maize Millers Ltd does not exist on the register.
- 4- Section 7(1) Trademarks Act provides:
"A **person** who claims to be the owner of a trademark used or proposed to be used by him or her and is desirous of registering it shall apply in writing to the registrar in the prescribed form for registration in Part A or Part B of the register."

- 5- A person can be an individual or legal person of which the Respondent is neither. Trademark number 46255 is therefore owned by a non-existent entity.
- 6- On this basis alone, the registration of the Respondent as owner of TM 46255 was defective and the mark wrongly remains on the register.
- 7- Secondly, the Applicant argues that the marks resemble. I agree.
- 8- The Applicant's and Respondent's marks are represented herewith;

Applicant's mark	Respondent's mark
	

- 9- Parker J in the **PIANOTIST CO LTD 23 RPC 77** said:

"You must take the two words [marks]. 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."
- 10- The Applicant's mark comprises of a figure of a man's upper body with raised arms flexed at the hands. The Respondent's mark also comprises of a figure of a man's upper body with raised arms except the hands appear to be holding up dumb-bells. The Respondent's mark also contains the word "RICHARDS'" set out below the figure and in blue colour. Both figures comprised in the Applicant's mark and the Respondent's mark are covered in a shade of the colour red.
- 11- Set out side by side the marks resemble save for two elements, the dumb-bells and the word RICHARDS' in the Respondent mark. The

addition of the dumbbells, however is too insignificant to affect the overall perception of the mark. According to the Respondent, the additional word "RICHARDS" differentiates their mark. I do not agree.

12- In the **Case T-169/02, Cervecería Modelo, SA de CV v OHIM** at paragraph 39 (Supra) that:

"...in the analysis of the overall impression created by the marks in question in visual, aural and conceptual terms, there is no need for the likelihood of confusion to exist in respect of all of those terms. It is possible that certain differences existing on one of those levels may be neutralised, in the overall impression produced for the consumer, by similarities existing on other levels."

13- Both marks are dominated by the figure of the upper body of a man; the element "RICHARDS" in the Respondent's mark is located below the figurative element. In perception of the mark the consumer will not attach much importance to the word element on account of its relative position on the mark dominated by the figurative element (see **Case T-6/01 Matratzen Concord v OHIM — Hukla Germany (MATRATZEN) [2002] ECR II-4335**). The additional word element does not neutralize the domineering aspect of the figurative element but may indeed be perceived as being either a brand extension or as being intermittently used by the owner since it does not appear on all the products with the figurative element.

14- Accordingly, the marks resemble.

15- Section 25(1) of the Trademarks Act states:
"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."

- 16- The Applicant's mark was registered for goods in class 30 of the Nice Classification to wit coffee, tea, cocoa and artificial coffee; rice; tapioca and sago; flour and preparations made from cereals; bread, pastry and confectionery; ices; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar, sauces (condiments); spices; ice.
- 17- The Respondent's mark is registered for identical goods.
- 18- The Applicant's mark was registered from 26th October 2010 which is nearly two years before the Respondent registered their mark which was from 5th October 2012. I have already found that the marks resemble and are in respect of the same goods. It follows that registration of the Respondent's mark was not permitted as provided under section 25(1) Trademarks Act.
- 19- Trademark number 46255 being a figurative mark with words "RICHARDS" in the name of the Respondent wrongly remains on the register
- 20- Section 88 (1) of the Trademarks Act which states:
"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."
- 21- Aggrieved person was defined by McLelland J in the case of **Ritz Hotel Ltd v Charles of the Ritz Ltd (1988) 15 NSWLR 158**, who held:
"Decisions of high authority appear to me to establish that the expression has no special or technical meaning and is to be liberally construed. It is sufficient for present purposes to hold that the expression would embrace any person having a real interest in having the Register rectified, or the trade mark removed in respect of any goods, as the case may be, in the manner claimed, and thus would include any person who would be, or in respect of whom there is a reasonable possibility of his being, appreciably disadvantaged in a legal or practical sense by

the Register remaining unrectified, or by the trade mark remaining unremoved in respect of any goods, as the case may be, in the manner claimed."

- 22- Clearly, the Applicant is an aggrieved person and that's why they brought this application for rectification of the register on 22nd July 2014 since the Respondent's mark wrongly remains on the register.
- 23- For the reasons hereinabove given, I therefore, order that TM 46255 a figurative element with words "RICHARDS" in the names of Richard Maize Millers limited be expunged from the register.
- 24- Before I take leave of this matter, the Respondent had argued that pursuant to section 27 of the Trademarks Act, they should be allowed on the register as a concurrent user. There is however, no evidence of honest concurrent use. Honest concurrent use would arise where the mark in issue was in use prior to the registration of the mark that was entered on the register first. Neither Richard Millers Ltd nor the Respondent was in existence at the time of the registration of the Applicant's mark. This argument is therefore not tenable. There are even no special circumstances upon which the Applicant's mark and the Respondent's mark could be permitted to both stay on the register.
- 25- The Respondent's mark shall be expunged from the trademark register. Costs for this application shall be borne by the Respondent.

Dated this ^{17th}..... day of November 2021



AGABA GILBERT
Asst. REGISTRAR TRADEMARKS