

IN THE UNITED REPUBLIC OF TANZANIA

THE BUSINESS REGISTRATIONS AND LICENSING AGENCY (BRELA)

IN THE MATTER OF THE TRADE AND SERVICE MARKS ACT, CAP 326 [R.E. 2023]
AND
IN THE MATTER OF TRADE AND SERVICE MARKS REGULATIONS, 2000
AND
IN THE MATTER OF THE TRADEMARK APPLICATION NO.
TZ/T/2022/001382 ‘‘MOM EASY’’ (and logo) IN CLASS 10 IN THE NAME OF MOM EASY COMPANY LIMITED

AND

IN THE MATTER OF OPPOSITION THERETO BY PROCTER & GAMBLE COMPANY

BETWEEN
PROCTER & GAMBLE COMPANY ..... OPPONENT

AND
MOM EASY COMPANY LIMITED ..... APPLICANT

BEFORE:

Hon. Seka Kasera,
Deputy Registrar of Trade and Service Marks

RULING

A. INTRODUCTION

1. This decision is in respect of an opposition brought by **THE PROCTER & GAMBLE COMPANY** ("the Opponent"), being an objection to registration of application No. **TZ/T/2022/001382 ''MOM EASY''** (and logo) in Class 10 in the name of **MOM EASY COMPANY LIMITED** ("the Applicant").

B. THE PARTIES

2. The Opponent is a company organized and existing under the laws of the United States of America, with its principal place of business at One Procter & Gamble Plaza, Cincinnati, Ohio, United States of America, and in this matter, they are enjoying the legal services of Akiplaw Advocates.

3. The Applicant is a company incorporated and existing under the laws of the United Republic of Tanzania, with its principal place of business at Plot Number 29, Block K, Kariakoo, 11106, Congo Street, Ilala CBD, Dar es Salaam, Tanzania, and in this matter, it is being represented by ABC Attorneys.

C. BRIEF BACKGROUND TO THE CASE (PROCEDURAL HISTORY)

4. On the 09th day of May 2022, the Applicant, through their representative, ABC Attorneys, applied for registration of a Trademark "**MOM EASY''** (and logo) in class 10 in respect of;

"Articles, instruments, and devices for menstruation, contraception, and childbirth, for example, menstrual cups, pessaries, condoms, childbirth mattresses, and forceps".

5. On 05th August, 2022, the Applicant requested the addition of goods including;

   "*baby feeding bottles, water bottles & pacifiers; baby teethers & sterilisers; and thermometers*".

6. The Registrar of Trade and Service Marks "the Registrar" accepted the application as applied. On the 15th September 2022, the Registrar advertised the application in the Patents, Trade and Service Mark Journal in compliance with **Regulation 27** of the Trade and Service Marks Regulations, 2000 "the Regulations".

7. On 09th November, 2022, the Opponent, through the services of their Agent, Akiplaw Advocates, filed a Notice of Opposition in compliance with **Section 27** of the Trade and Service Marks Act, cap 326 R.E. 2023 "the Act", and **Regulation 34** of the Regulations, to object to the registration.

8. The Registrar duly transmitted the Notice of Opposition to the Applicant for purposes of filing a Counter Statement as required under **Regulation 36** of the Regulations, which the Applicant duly filed as required on 20th January, 2023.

9. Several extensions of time within which to file a Statutory Declaration by the Opponent were granted by the Registrar. By 13th August, 2024, all the initial pleadings were filed with the Registrar.

10. Upon being called for hearing, on 11th October, 2024, the Opponent filed a Notice of Attendance at the hearing with the Registrar through Form TM/SM 7. The same was filed by the Applicant on the date when the matter came for hearing. Parties agreed for the matter to be disposed of by way of written submissions, which prayer the Registrar duly granted, and the dates of filing the same were scheduled.

D. BRIEF STATEMENT OF THE FACTS

i) Facts as per the Opponent

11. In its Notice of Opposition, the Opponent states that it is a multinational company specializing in the manufacture and sale of personal care and hygiene goods, including pre-impregnated wipes and disposable baby diapers.

12. The Opponent further stated that it is the registered proprietor of the Trademarks TZ/T/2012/988 **"HEART Device"** under class 5 of the Nice Classification for disposable diapers made of paper and/or cellulose and TZ/T/2012/985 "**HEART Device"** under class 3 of the Nice Classification for pre-impregnated wipes made of paper and/or cellulose. It then

stated that the Opponent is the proprietor of the well-known PAMPERS Trademark that was coined and first used in relation to disposable baby diapers in 1960, and since that time, the PAMPERS Trademark has also been used in relation to wipes.

13. The Opponent further stated that PAMPERS goods have been used extensively worldwide and in Tanzania from a date before the filing date of the Opposed Application. The Opponent has therefore acquired a significant reputation and goodwill in its Trademarks and their associated get-ups from an earlier date, and they are exclusively associated with the Opponent and its goods.

14. The Opponent's PAMPERS and **HEART device logo** Pampers is an original, artistic work, as envisaged by **Section 5(1)** of the Copyrights and Neighbouring Rights Act 7 of 1999 ("the Copyright Act") and the Opponent owns the copyright subsisting in that work and its individual components, specifically, the **HEART device** and Opponent's copyright subsisting in this work extends to Tanzania by virtue of the provisions of **Section 6(a)** of the Copyright Act, read together with **Articles (l)** and **(2)** of the Berne Convention for the Protection of Literary and Artistic Works ("the Berne Convention"), as well as **Articles 3(1)** and **9(1)** of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("the TRIPS Agreement"), to which Tanzania is a signatory.

15. They further state that the dominant and most memorable element of the Opposed Mark is the 3-Ray **HEART device**, which bears a striking resemblance and is virtually identical to the Opponent's, which is registered and well-known in Tanzania. This element clearly imitates or very nearly resembles the **HEART device** of the Opponent, which is a registered Trademark and also the prominent and central element of the getup of its PAMPERS goods.

16. The Trademark MOMEASY is a combination of two ordinary English words and is a reference to or descriptive of the usefulness of the goods in respect of which the Applicant is seeking registration. Mothers are the intended users or consumers of the goods. The mark MOMEASY is lacking in distinctiveness, and the letters "OMEASY" are also disproportionate to the 3-ray heart device, and the combination of letters is visually less impactful. The Opposed Trademark is therefore not distinguishable from the Opponent's prior registered and well-known Trademark.

17. The Opponent further stated that registration of the Opposed Trademark is being sought in relation to *inter alia* "*...baby feeding bottles, water bottles & pacifier; baby teelher & sterilizers; thermometers*", which goods are closely related to or, at least, overlap with the goods in respect of which the Opponent's Trademarks above are registered, used and have become well-known. They believe that the similarity between these goods is clear on considering that they are all intended

for use in relation to babies or infants, occur in proximity in stores, and therefore enter the market through the same trade channels, are advertised together, and are usually purchased together. To them, these considerations increase the degree of similarity between the parties' goods.

18. The Opponent further submitted that it would also appear that the Applicant intends to use the dominant element of the Opposed Trademark in a manner that imitates the manner of use of the Opponent's **heart device**. Again, The Opposed Trademark so nearly resembles the Opponent's Trademarks that the use by the Applicant of the Opposed Trademark in relation to the goods applied for is likely to lead to deception and/or cause confusion between the Opponent's and the Applicant's respective goods, causing members of the public to believe that there exists some connection between their goods or between the business of the Opponent and that of the Applicant. The Opponent further claims that registration of the Offending Trademark will be contrary to **Section 20(1)** of the Act, which prohibits the registration of a mark that so nearly resembles a Trademark belonging to a different proprietor that is already on the register in respect of the same or closely related goods.

19. Furthermore, the Opponent stated that if the Opposed Trademark were to proceed to registration, this would be damaging to the Opponent's interests in Tanzania and aside from members of the public being deceived regarding the origin

of the Applicant's goods, there is a real risk that any goods emanating from the Applicant which are of an inferior quality, or which could cause a negative consumer experience will be damaging to the reputation of the Opponent and the commercial magnetism of its PAMPERS Trademarks and products.

20. Finally, the Opponent prayed for the mark to be refused.

ii) Facts as per the Applicant

21. In its Counter Statement, the Applicant states that the Mark **"MOM EASY"** (and logo) is dissimilar, distinguishable from the Opponent's Trademark as the Applicant's Trademark consists of the stylised letter "M" with three (3) rays on top. In comparison, the Opponent's Trademark is the **HEART device** with four (4) rays on top.

22. The Applicant further counters that the application in relation to the Trademark **"MOMEASY"** (and logo) was made for goods falling under class 10 of the Nice Classification, while what is purported to be a likely infringed Trademark "**HEART device**" was registered for goods falling under class 3 and 5 of the Nice Classification, hence non-resemblance of the goods.

23. Furthermore, the Applicant contends that the Notice of Opposition lacks merit. The Applicant further submits in reply that the application complies with all legal requirements for the

registration of **"MOMEASY"** (and logo) Trademark in Tanzania, and it does not contravene any provision of the Act, the Paris Convention, or the TRIPS Agreement.

24. The Applicant prays for the Opposed Trademark to proceed with the registration process and costs be borne by the Opponent.

E. RELIEFS SOUGHT BY THE PARTIES

25. The Opponent prays that the opposed application be refused and should not proceed to registration.

26. The Applicant prays that the Opposed Trademark proceed with the registration process and costs be borne by the Opponent.

F. ISSUES FOR DETERMINATION OF THE CASE

27. Having gone through the pleadings by the parties, the following issues for determination have been framed;

*i) Whether the contested Trademark **"MOMEASY"** (and logo) is confusingly similar to the **"HEART device"** Trademark.*

*ii) Whether an application for registration of the opposed Trademark **"MOMEASY"** (and logo) was filed in bad faith.*

G. WRITTEN SUBMISSIONS BY THE PARTIES

i) The Case for the Opponent

28. Regarding the first issue as to whether the contested Trademark **''MOMEASY''** (and logo) is confusingly similar to the **''HEART device''** Trademark. The Opponent stated that the determination of similarity should be based on a global assessment of factors, and in particular, the degree of recognition of the earlier mark in the market, the association the public might make between the two Trademarks, and the degree of similarity between the signs and the goods or services.

29. The Opponent further states that the argument by the Applicant that its Trademark subject of this opposition comprises the addition of the words "**OMEASY''** while the Opponent's Trademark is the **HEART** Device is enough to differentiate the two Trademarks is legally flawed. He went further to cite the case of **Agro-processing & Allied Products Limited vs Said Salim Bakhresa & Co. Limited and Registrar of Trade and Service Marks** *Commercial Case No.31 of 2004 (unreported),* where the presiding judge did not ask for any evidence of confusion from any consumer but ruled that if the essential feature of the mark is adopted, additional words or devices do not enable the defendant to escape from liability.

30. The Opponent again challenges the argument by the Applicant that the Opposed Mark does not compose a **HEART**

Device but a stylized "M". To him, this argument is disingenuous since in no known language is the letter "M" represented in the graphic form subject of this opposition.

31. The Opponent goes further to cite the decision by the Trade Mark Office in Morocco in the Opposition against the Opposed mark between **The Procter & Gamble Company vs Madscom**, *decision number 9049/2022*, where the office declared the sign ***MOMEASY*** to be identical with the logo in the form of a heart and three rays.

32. The Opponent is of the view that the likelihood of confusion also depends on the degree of similarity between the parties' goods and services. To him, the similarity between the parties' goods is very clear, considering that they are all intended for use in relation to babies or infants, occur in proximity in stores, and therefore enter the market through the same trade channels, are advertised together, and usually purchased together. These considerations increase the degree of similarity.

33. To him (the Opponent), the fact that the goods in question are distinguishable because they belong to different classes is misleading since a difference in classification does not mean that the goods or services are at all distinguishable. The classification of goods and services is not meant to measure the degree of similarity between goods and services. He strongly defends this position by citing the case of **Tiffany and**

Company vs Wilmer Resources PTE Limited, *High Court of Tanzania at Dar es Salaam Civil Appeal No. 42 of 2023 [2024] TZHC 8051*, in which the Appellant owned the Trademark **TIFFANY and Co** in class 14 and the Respondent tried to register the Trademark **TIFFANY** in classes 3 and 5. In this matter, the court held that,

> "*it is clear that the existing trademark* ***TIFFANY and Co****. was for goods in different classes; however, I agree with the Appellant's submissions that, notwithstanding the existence of different classes, the use of the subsequent trademark* ***TIFFANY*** *would certainly nearly resemble* ***TIFFANY and Co.***"

34. Regarding the second issue as to whether an application for registration of the contested Trademark "**MOMEASY**" (and logo) was filed in bad faith, the Opponent stated that bad faith in Tanzania includes acts that are contrary to law and morality as envisaged under **Section 19(a)** of the Act.

35. The Opponent states that its mark has acquired a reputation in its own right and is associated with the Opponent and its goods. The Applicant and Opponent are ultimately operating in the same field of baby care and consumer goods for babies, and it is highly unlikely that the Applicant does not know of the use of a similar or nearly resembling **HEART Device** Trademark by the Opponent. The Applicant adopted the

opposed Trademark because of its knowledge of the Opponent's reputation and use of its **HEART Device** Trademark.

36. The Opponent further argues that the Applicant provides a misleading statement that the **HEART Device** on its application is a stylized letter "M". To him, the Applicant's denial of familiarity with Opponent's **HEART Device** while using the same elements in its website cements the argument by the Opponent that the opposed application was brought in bad faith and its registration will mean endorsing bad conduct and unfair competition, which is contrary to morality under **Section 19(a)** of the Act.

ii) The Case for the Applicant

37. In his submissions, the Applicant argued on the first issue that contrary to the opponent's claims, the Applicant's Trademark does not contravene **Section 20(1)** of the Act, as it is not similar to the Opponent's Trademark nor is it likely to confuse, as stipulated in the section. To him (the Applicant), the Opponent's reliance on a stylized letter "M," which the Opponent incorrectly interprets as a heart symbol, as the sole basis for determining similarity, is contrary to the legally established method for assessing similarity.

38. He further states that the principles for determining similarity or likelihood of confusion have been well-established

in case law. He cited the case of **Pianotist Co. Ltd** *(1906) 23 RPC 774*, where the court articulated that;

> *"When determining similarity, you must take the two words, and you must judge them both by their look and by their sound. You must consider the nature and kind of customer who would be likely to buy those goods... but that there will be confusion in the mind of the public, which leads to confusion in the goods—then you may refuse the registration, or rather you must refuse the registration in that case*."

39. The Applicant went further to submit that similarity is a question of overall impression rather than element-by-element comparison of the two marks, the focus being on the buyer who might be deceived by the similarity. The proposition that these marks are similar is preposterous, as evidently, the colour schemes used in the marks are distinct. The Applicant's Trademark features a mix of orange, green, blue, and yellow colours, while the Opponent's Trademark is predominantly light blue with the yellow heart-shaped device. Also, it is clear that the letter "M" in the Applicant's mark is a stylized part of the word "**MOMEASY**" itself, whereas the heart-rayed design in the Opponent's Trademark is a separate, non-integrated graphic placed above the word "Pampers."

40. The Applicant further states that, in assessing the likelihood of confusion, courts and tribunals have consistently

examined the matter through the perspective of the average consumer. He cites the decision in the case of **Glaxo Group Limited Vs Agri-Vet Limited** where the court was of the considered view that,

> *"…Thus, in drawing its conclusion the Court has to wear the shoes of a common man, spread the two marks before itself and ask itself whether there is resemblance between the two which would make it pick a product which was not intended by but the opposite."*

The Applicant further states that the Opponent has not demonstrated sufficient similarity between the Trademarks, nor have they provided a proper comparison through the eyes of the ordinary consumer, as required by law. The Applicant insisted that without proof of confusion or resemblance, their claims lack merit.

41. To justify distinctiveness, the Applicant cited the decision in the case of **Procter and Gamble Company v Momeasy Enterprises Limited** *(Trademark Application 73609 of 2021) 2023 UGRSB 11 (24 October 2023)* in Uganda, where registration of the Applicant's Trademark was opposed for the same reasons. It was found that the goods were not similar or homogeneous. However, it was held that even if the goods had been similar, the marks were distinctive enough to distinguish them, and while the goods of the Applicant and those of the Opponent are used by the same end-users and may be found in the same section of a shop or supermarket, they are not closely similar nor are they homogeneous goods sold together.

It is not likely, for instance, that a person intending to purchase the Opponent's **Pampers** bearing its mark will, upon finding the Applicant's goods bearing the **MOMEASY** mark in the same section in the supermarket, be confused.

42. Regarding the issue of whether the Opposed mark was filed in bad faith, the Applicant stated that he has no intention of acting in bad faith by using the letter "M" in its Trademark. The word "**MOMEASY**" is derived from the Applicant's company name, and the inquiry of bad faith would only be relevant if the marks were found to be confusingly similar. He states that the allegation that the Applicant is acting in bad faith, contrary to **Section 19(a)** of the Act, is false and remains unsubstantiated. The allegation of bad faith requires the Opponent to provide clear and convincing evidence of ill intent as stated in a case of **Beijing Judian Restaurant Co. Ltd. v. Wei Meng,** *2022 FC 743*, where it was established that, for an applicant to strike the registration of a Trademark under bad faith, one must prove on a balance of probabilities, with "clear, convincing and cogent evidence" that the mark was registered in bad faith.

iii) Rejoinder Submissions

43. In his Rejoinder submissions, the Opponent's reiterated by submitting that, the Trademark "**MOMEASY** and logo" is confusingly similar to the Opponent's Trademark "**HEART Device"** and the use by the Applicant of the proposed Trademark "**MOMEASY** and logo" will, undoubtedly, take unfair

advantage of the extensive and enviable reputation that the Opponent has established over many years in the market place and to its Trademark "**HEART DEVICE**."

44. He further states that the argument that the opposed Trademark incorporates a **HEART Device** as its dominant element does not amount to dissection, and visual similarity between the **HEART Device** in both marks is undeniable and forms the degree of identity between the parties' marks and the basis of this opposition.

H. DETERMINATION OF ISSUES

45. Before I go on to determining the two raised issues, and for clarity and reference, let me reproduce the Marks that are subject to this matter.

The Applicant's alleged Offending Trademark	**The Opponent's Registered Trademark**
	

46. My analysis of issues is based on the submissions made by the parties and their statutory declarations. The primary

issue for determination is whether the contested mark "**MOMEASY**" (and logo) is confusingly similar to the Opponent's earlier **HEART Device** Trademarks within the meaning of **Section 20(1)** of the Act, such that its registration ought to be refused.

47. **Section 20(1)** of the Act prohibits registration of a mark that is identical with or confusingly similar to an earlier Trademark in respect of the same or similar goods or services, where such use is likely to deceive or cause confusion. The principles governing the assessment of confusing similarity are well established and include:

(a) Global appreciation of similarity, considering visual, phonetic, and conceptual aspects of the marks;
(b) The distinctive and dominant elements of the marks;
(c) The nature of the goods, trade channels, and consumers;
(d) The perspective of the average consumer, who is reasonably observant but imperfect in recollection; and
(e) The principle that actual evidence of confusion is not a prerequisite

48. The Opponent submits that the Applicant's Trademark reproduces the essential and dominant feature of its earlier mark, namely the Heart-shaped device with rays, and that the addition of the word "OMEASY" does not dispel the likelihood of confusion. The Opponent relies on established jurisprudence

that the adoption of the essential feature of a mark suffices to establish similarity, notwithstanding additional elements. The Applicant, on the other hand, contends that the device in its mark is a stylized letter “M” and not a heart symbol, and that the Trademarks are distinguishable by colour, layout, and overall presentation.

49. Having carefully considered the rival submissions, the statutory declarations, the representations of the respective marks, and the authorities cited by both parties, I am mindful of the well-established principle that the determination of similarity between Trademarks is based on the overall impression conveyed by the marks and not upon a dissection of their individual components. This principle has consistently been affirmed by courts in Tanzania, including **Compania Licorera De Centroamerica, SA vs Mohan’s Oysterbay & Another,** *Commercial Application No. 29 of 2011,* which emphasize that relying on dissecting the Trademarks into different segments and only picking some segments to determine similarity would not be proper.

50. Applying that principle by looking at the two contested marks as a whole and relying on the above-cited cases, I find that the Opponent's approach substantially focuses on what it considers to be the dominant device appearing at the beginning of the Applicant's Trademark. While that device may attract visual attention, it cannot be isolated from the remainder of the Trademark. The Applicant's Trademark comprises the stylized

word "MOMEASY" with its own distinctive colour combination, artistic presentation and integrated lettering. In contrast, the Opponent's earlier registration consists of the HEART Device associated with the PAMPERS brand. When viewed in their entirety, the marks create different visual, phonetic and conceptual impressions.

51. I have also considered the foreign decisions relied upon by both parties. Although the Moroccan Trademark Office reached a contrary conclusion, its decision is not binding upon this Quasi-Judicial Body. I find the reasoning adopted by the Uganda Registration Services Bureau (URSB) in **Procter and Gamble Company v Momeasy Enterprises Limited** *(Trademark Application No. 73609 of 2021) [2023] UGRSB 11 (24 October 2023)* to be more persuasive because it involved similar facts and legal wrangle. URSB held that the goods were not similar or homogeneous and further observed that even if the goods had been similar, the respective Trademarks were sufficiently distinctive to distinguish them.

52. I am therefore unable to agree with the Opponent that the Trademarks are so nearly resembling as to be likely to deceive or cause confusion within the meaning of **Section 20(1)** of the Act. The ordinary consumer is expected to perceive the marks as complete signs and not to analyze individual elements separately. Considering the overall appearance, pronunciation and commercial impression created by each mark, I find that

the contested marks are sufficiently distinctive from one another.

53. Consequently, it is my legal take that the Opponent has failed to establish proximity of similarities to its earlier HEART Device Trademark against the Trademark application MOMEASY. I therefore dispose of the first issue in the negative.

54. The second issue is whether the Applicant filed the application in bad faith contrary to **Section 19(a)** of the Act.

55. Bad faith is a serious allegation which must be established by cogent evidence. The burden rests upon the Opponent to demonstrate dishonest conduct or an intention on the part of the Applicant to appropriate the goodwill associated with the Opponent's Trademark.

56. Upon examining the evidence before me, I find that the Opponent has not discharged that burden of proving bad faith in the balance of probability. Apart from producing copies of pictures from the Opponent's website and alleging that the Applicant adopted a similar device, no sufficient evidence has been produced demonstrating dishonest intention, deliberate imitation, or an intention to deceive consumers or ride upon the reputation of the Opponent by the Applicant.

57. In the absence of satisfactory evidence establishing bad faith on the part of the Applicant, I find that the allegations are far-fetched and hence fail.

58. Taking into consideration my findings that the Trademarks are not confusingly similar and that the Opponent has failed to establish bad faith on the part of the Applicant, I find that the Applicant's Trademark is distinctive enough to be distinguished from the Opponent's earlier Trademark and there is no likelihood of deception or confusion in the market.

I. FINAL ORDERS

59. The Notice of Opposition lodged by Opponent is hereby dismissed.

60. Trademark Application No. **TZ/T/2022/001382** "**MOMEASY**" (and logo) in Class 10 in the name of the Applicant be proceeded to registration in accordance with the Act and the Regulations made thereunder.

61. Each party shall bear its own costs.

62. Any party aggrieved by this decision has the right to appeal to the High Court of Tanzania in accordance with **Section 48** of the Act and **Regulation 96** of the Trade and Regulations.

Dated and signed at **Dar es Salaam** this **4th** day of **September 2026**

Seka Kasera

DEPUTY REGISTRAR OF TRADE AND SERVICE MARKS

This ruling is rendered electronically on the **4th** day of **September, 2026.**

Seka Kasera

DEPUTY REGISTRAR OF TRADE AND SERVICE MARKS