



HIGH COURT REFUSES “BUDABOSS & DEVICE” FOR CONFUSING SIMILARITY TO “BOSS”

On 30th October 2025, the High Court in [Trademark v Owino \(Civil Appeal E584 of 2022\) \[2025\] KEHC 15362 \(KLR\)](#) overturned a decision of the Assistant Registrar of Trade Marks and refused registration of “BUDABOSS & Device” in Class 25 (clothing) for being confusingly similar to the earlier registered mark “BOSS.” The Court held that:

- a) The addition of a prefix (“BUDA”) and device elements did not sufficiently distinguish the mark where the dominant element “BOSS” remained central.
- b) The likelihood of confusion must be assessed from the perspective of the reasonable consumer with imperfect recollection, considering visual, phonetic and conceptual similarity.
- c) Issuance of a registration certificate does not deprive the High Court of jurisdiction to hear an appeal or order rectification.
- d) In assessing whether a mark is well known, the Registrar should not confine the analysis strictly to local advertising evidence where broader market reputation is demonstrated.

The decision reinforces strong protection for distinctive brand elements and signals a stricter approach to composite marks incorporating core components of established brands in overlapping classes.

Background

The dispute concerned an application to register “BUDABOSS & Device” in Class 25 (clothing). The Assistant Registrar had dismissed the opposition and allowed registration.

On appeal, the High Court reconsidered registrability under Section 14(1) of [the Trade Marks Act \(Cap 506\)](#), which bars registration of marks that are identical with or nearly resemble an earlier mark in a manner likely to deceive or cause confusion.

Key legal findings

1. Dominant element analysis prevails

The Court held that the Registrar misdirected herself by placing undue weight on the prefix “BUDA” and device elements while failing to adequately consider the dominance of the shared element “BOSS.”

Where the shared component of competing marks is distinctive and commercially significant and the goods in question are identical or closely related, the likelihood of consumer confusion is heightened.

2. The proper test: overall impression and imperfect recollection

Reaffirming established jurisprudence, including the [Pianotist test](#), the Court emphasized that the assessment of similarity must be undertaken holistically, taking into account visual, phonetic and conceptual similarity, as well as the nature of the goods, the class of purchasers, the relevant trade channels and the surrounding circumstances.

The Court further reiterated that consumers do not engage in side-by-side comparisons of competing marks; rather, the inquiry is whether the ordinary purchaser, exercising average caution and relying on imperfect recollection, is likely to be confused.

3. Registration does not immunize a mark from appeal

The Court confirmed that the fact that a certificate of registration has been issued does not oust the jurisdiction of the High Court to review the decision of the Registrar or to rectify the register if necessary.

4. Contextual approach to well-known marks

The Court indicated that reputation analysis should not be limited to local advertising alone. Recognition within relevant sectors in Kenya, including through global market presence, may be relevant in determining distinctiveness and brand strength.

Court orders

The High Court allowed the appeal and set aside the decision of the Registrar. It further refused the registration of “BUDABOSS & Device” in Class 25 and awarded costs to the Respondent.

Practical implications of the case

- 1. Protect core distinctive elements:** The Court reaffirmed that dominant and distinctive components of a trademark receive judicial protection. Brand owners should ensure these elements are central to their brand strategy, as they carry the greatest weight in legal disputes.
- 2. Comprehensive clearance searches are essential:** Effective clearance searches should assess not only visual similarity but also phonetic and conceptual resemblance. Attention should be paid to overlapping or identical classes, which carry a higher risk of refusal or opposition.
- 3. Proactive monitoring and enforcement:** Brand owners should continuously monitor the marketplace and the Trade Marks Journal for potentially conflicting applications. Timely opposition or appeal actions are crucial to prevent dilution or infringement.
- 4. Integrate intellectual property into business strategy:** Intellectual property considerations should be embedded into all aspects of brand management, including product naming, online branding, domain acquisition, digital marketing and platform expansion.

Conclusion

This decision strengthens trademark jurisprudence in Kenya by reaffirming dominant element analysis and reinforcing judicial oversight over administrative decisions.

It underscores the importance of strategic brand protection in competitive consumer markets and evolving digital ecosystems.

How CM Advocates LLP's Intellectual Property and Technology Unit Can Support You?

At CM Advocates LLP, our Intellectual Property and Technology Unit helps businesses across Kenya and the wider African region protect and maximize the value of their trademarks and other intellectual property. We provide practical guidance to safeguard core brand elements, manage risk and leverage intellectual property assets for commercial growth.

Our services tailored to trademark and brand management include:

- **Trademark clearance and valuation:** Conducting thorough assessments of existing and proposed trademarks to identify potential conflicts, evaluate brand strength, and support strategic decision-making.
- **Intellectual property audits and portfolio management:** Reviewing trademark portfolios to identify unexploited or at-risk assets, ensuring compliance and aligning IP strategy with overall business objectives.
- **Transaction and licensing support:** Advising on licensing, franchising, and structuring IP-backed transactions to maximize commercial value while mitigating risk.
- **Enforcement and dispute resolution:** Assisting clients in opposing conflicting applications, enforcing rights and resolving disputes through litigation or alternative dispute resolution.
- **Strategic brand protection:** Developing frameworks to monitor the marketplace, prevent dilution and integrate intellectual property considerations into product naming, online branding, domain acquisition, and digital marketing.

Need legal guidance?

For businesses seeking expert legal guidance on intellectual property protection or related technology matters, please contact our Intellectual Property and Technology Unit at corporate.commercial@cmadvocates.com

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