**Summary of Case**

**e easy travel (and device) Service Mark**

**Service Mark No. TZ/S/2017/509 e easy travel (and device) - IN CLASS 39 - In the Name of Easy Travel and Tours Limited and Opposition Thereto by Enterprise Holdings Inc.**

*The possibility of confusion is presumable where the marks resemble, however,* *if there is only a slight difference between them like in this case,* *renders the likelihood of confusion unlikely. The Deputy Registrar of Trademarks asserted that ,swhen the earlier mark lacks significant originality, the conceptual resemblance between the marks might not be enough to result in confusion in the market. Consequently, the trademarks are deemed dissimilar*. – A mark has to be taken as a whole instead of dissecting it into individual parts.

This is a brief summary of the decision of the Deputy Registrar of Trade and Service Marks in respect of opposition proceedings between Enterprise Holdings Inc., Ltd., the Opponent, and Easy Travel and Tours Limited of Tanzania, the Applicant. The Opponent’s grounds for the Opposition were to the effect that, the Applicant’s marks consist of a stylized “e” device which is visually and nearly identical to the Opponent’s well-known stylized “e” & design service mark. That, the “e” device contained in the Applicant’s marks so closely resembles the Opponent’s service mark that the use by the Applicant of any of the offending marks is likely to lead to deception and/or cause confusion between the Opponent’s and the Applicant’s respective services, causing members of the public to believe that there exists some connection between their services or the business of the Opponent and that of the Applicant. The Opponent therefore prayed that, the Offending Marks be refused registration; an order for costs for the proceedings be made in favour of the Opponent; and any other order that the Registrar may deem fit and just to grant.

**ISSUES**

1. Whether the opposed service mark **“e easy travel and devices”** is visually and nearly identical to the Opponent’s service mark **“e”** design, that is likely to deceive and/or cause confusion between the services of the Applicant and Opponent and to members of the public.
2. Whether the Opponent’s service mark **“e”** design is a well-known mark.

**HOLDING:**

1. It is well recognized that in deciding a question of similarity between two marks, the marks **must be considered as a whole**. Whereas, in the case at hand, letter “e” in both Opponent’s and Applicant’s marks is from the first letters of their company names to wit, **“Enterprise Holdings Inc.”** for the Opponent and “**Easy Travel and Tours Limited”** for the Applicant. The marks have been designed in ways each party wished to use the letters as brands for their services. Although letter “e” forms essential feature of Opponent’s and Applicant’s marks, they have both been differently designed, they incorporate features when looked at both marks as whole, one can find that the same are different.
2. It is a well-established principle of the trade mark law that while comparing and considering a trademark, the mark has to be **seen as a whole** and **not in parts**. The Opponent’s and Applicants marks are found to be different if they are to be looked at as a whole and not dissecting them from the respective designs.
3. The Applicant has failed to prove that its trade mark **‘e’** design has acquired such reputation to accord it the status of being considered a well-known mark. A mark is considered as well-known or famous in circumstance where the said mark is widely known among the consuming public.

**ORDERS:**

* + 1. The Opposition for registration of a service mark Application No. TZ/S/2017/509, **e easy travel (and device**) in class 39 in the name of Easy Travel and Tours Limited was dismissed and an order for the said service mark proceed to registration.
    2. Each party to bear its own costs of the proceeding.

**CITED CASES:**

1. Sabel v. Puma C-351 95
2. Starbucks v. BskyB [2012] EWHC 3074
3. Tanzania Distilleries Limited Vs Vitamin foods (1989) Ltd [2000] TLR 15
4. Glaxo Group Limited Vs J.B. Chemicals & Pharmaceuticals Ltd, High Court of Tanzania (Commercial Division), Misc. Case No. 3 of 2007 (Unreported)
5. Ultratech Cement Limited and Anr. Vsss. Dalmia Cement Bharat Limited, No. 37 and 42 of 2014
6. Oakville Hills Cellar, Inc. Vs. Georgallis Holdings, LLC [2016-1103]
7. Registrar of Trademarks Vs. Ashok Chandra Rakhit Ltd., Glaxo Group Ltd. & Anr. V. Sunlife Sciences Pvt. Ltd. and Aravind Laboratories Vs. Modicare [2011].
8. Double Diamonds Holdings Limited V. East African Spirits (T) Limited
9. *Compania Licorera de Centroamerica, SA Vs. Mohan’s Oysterbay Drinks Limited & another,*

**LAWS, REGULATIONS AND TREATIES**

1. The Trade and Service Marks Act, Cap 326 [R.E. 2002]
2. The Trade and Service Marks Regulations, 2000.
3. Trade Related Aspects of Intellectual Property (TRIPS) Agreement of 1994.
4. Paris Convention for the Protection of Industrial Property of 1883, as amended.