

## Intellectual Property Tribunal, Zimbabwe

19-IPT-001

### Bayer Aktiengesellschaft v Millborrow Animal Health (Zimbabwe) (Pvt) Ltd

<b>Court</b>	:	IP Tribunal
<b>Case</b>	:	Criminal
<b>Date of Judgement</b>	:	May 29, 2019
<b>Plaintiff</b>	:	Bayer Aktiengesellschaft
<b>Defendant</b>	:	Millborrow Animal Health (Zimbabwe) (Pvt) Ltd
<b>Concept</b>	:	Trade Mark
<b>Statue</b>	:	Section 15 (1) (a), 15 (1)(b), 14 (1) (a), 14 (1),37, 38, 64 - 68 of the Trade Marks Act [Chapter 26:04]; Section 60 (1) - 67 of the Trade Mark Regulations S.I. 170 of 2005; Section 3 (1) of the Administrative Justice Act [Chapter 10:28]; Section 72 and 74 of the High Court Act [ Chapter 7:06]

#### Panel of Justices

Hungwe J President

#### Case Background

In 2009 the appellant submitted an application for registration of its HI-TET trade mark under application number 508/2009. ZIPO issued a notice of conditional acceptance for registration. Appellant had previously filed that application. Appellant advised that the two marks could not be associated since mark number 428/2002 had lapsed. Appellant's application was later accepted. During this period, appellant was aware that respondent had previously held a registration for HITET under mark number 205/1989. On 23 June 2015 respondent filed an application for expungement of trade mark number 508/2009 with the Registrar of Trade Marks on the basis of trade mark number 205/1989 that was already on the Register. on 1 March 2017 the Registrar of Trade Marks granted the application without inviting the appellant to make representations before making the decision.

#### Procedural History

The IP Tribunal gave a ruling on the case.

#### Issue

- Whether respondent's application in terms of s 37 is defective.
- Was audi alteram partem rule implicated.
- Whether the respondent's application filed with the Registrar discharged the evidentiary onus.
- Whether the findings made by the Registrar are irrational.

#### Rational

Trade Marks – appeal against decision of the registrar – rectification of mark by the Tribunal. Practice and Procedure — public policy — breach of principles of natural justice — audi alteram partem (right to be heard before a case is decided) — parties have a right to challenge evidence presented before forum before final decision.

**Keywords**

Fairness and natural justice expungement, Tribunal, review