

THE UNITED REPUBLIC OF TANZANIA  
THE CHIEF INSPECTOR HEARING COMMITTEE  
AT DAR-ES-SALAAM  
IN THE MATTER OF THE MERCHANDISE MARKS ACT, NO. 20 OF 1963  
CONSOLIDATED CLAIMS NO. 3, 5, 6 AND 7 OF 2025

BETWEEN

CHOMPISA ENTERPRISES LIMITED.....	}	CLAIMANTS
ASB INVESTMENT LIMITED.....		
HANIYABIBI INVESTMENT LIMITED.....		
DELHI DARBAR INVESTMENT LIMITED.....		

AND

THE CHIEF INSPECTOR OF THE MERCHANDISE MARKS ACT.....1<sup>ST</sup> RESPONDENT  
COLGATE PALMOLIVE COMPANY.....2<sup>ND</sup> RESPONDENT

RULING

*(Ruling Delivered on 30/07/2025)*

The Claimants herein are private limited companies incorporated in Zambia. On the 30<sup>th</sup> April, 2025 they filed Statements of Claims pursuant to the provisions of Regulation 34 of the Merchandise Marks Regulations, 2008 challenging seizure and detention of their 1150 cartons of toothbrushes branded **Doctor Good** and **Fresh Doctor** respectively which were seized and detained for infringing **Colgate Double Action** trademarks contrary to the provisions of section 3(1)(g) of the Merchandise Marks Act, 1963 ("the MMA"). Under the said Statements of Claims, the Claimants asked this Committee to be pleased to quash the decision regarding Notice of Seizure No. **FCC/SN/1557**, **FCC/SN/1044C**, **FCC/SN/1242C** and **FCC/SN/1556** and order restoration of the goods that were seized and detained thereunder.

The background to these claims is briefly that, on 13<sup>th</sup> February, 2025 and 06<sup>th</sup> March, 2025, the 2<sup>nd</sup> Respondent lodged complaints to the 1<sup>st</sup> Respondent that she has reliable information regarding importation of **Container No. TCKU7214900, IAAU1884240, TGBU1598640 and TEMU8402830-20240218** containing toothbrushes branded **Doctor Good** and **Fresh Doctor** respectively through the Port of Dar es Salaam which are infringing her **Colgate Double Action** trademark. Consequently, the 2<sup>nd</sup> Respondent asked the 1<sup>st</sup> Respondent to be pleased to suspend release of the aforementioned consignments.

In response, the 1<sup>st</sup> Respondent scrutinised the complaint pursuant to the provisions of the MMA and thereafter on different dates in March and April, 2025 upon arrival of the aforementioned containers, the 1<sup>st</sup> Respondent inspected them and seized a total of 1150 cartons of toothbrushes branded **Doctor Good** and **Fresh Doctor** respectively for being alleged to infringe **Colgate Double Action** trademark contrary to the provisions of section 3(1)(g) of the MMA.

Thereafter, the 2<sup>nd</sup> Respondent examined the seized goods and submitted a confirmation report pursuant to the provisions of Regulation 19 and 20 of the Merchandise Marks Regulations, 2008 confirming that the seized goods are indeed counterfeits, hence infringing her protected proprietary rights.

Being dissatisfied with the 1<sup>st</sup> Respondent's decision, on 30<sup>th</sup> April, 2025 the Claimants lodged Claims No. 3, 5, 6 and 7 of 2025 challenging seizure and detention of the goods in question in their entirety on the ground that the seized goods are not counterfeits as they are lawfully registered in the manufacturing and destination countries which are China and Zambia respectively. Following such claims, the Chief Inspector established a Hearing Committee pursuant to the provisions of Regulation 34B (1)-(16) of the Merchandise Marks Regulations, 2008 to determine the same.

When the said claims were called on for hearing on 28<sup>th</sup> May, 2025, for an expeditious and convenient disposal of the matter, by consent of parties, the four claims were consolidated and disposed in that spirit. During hearing, the Claimants were represented by Mr. Okare Emesu, learned counsel. On the other hand, the 1<sup>st</sup> Respondent was represented by Ms. Trust Lupondo and Mr. Yesse Rugaiya who are Inspectors under the MMA at the Fair Competition Commission (FCC) while the 2<sup>nd</sup> Respondent enjoyed the service of Mr. John Mponela, Mr. Hakiel Mgonja, Mr. Nabiry Jumanne and Ms. Grace Mahuza, learned counsels.



During the hearing, the Claimants case featured one witness, Mr. Dumisani Dlamini (CW1), the Managing Director of Simera Group of Companies, the Respondents fielded one witness each, Mr. Emmanuel Mgeni (RW1), Inspector of the MMA at the FCC and Ms. Kirstin Thackwel (RW2), Legal Manager for East Africa Region at Colgate-Palmolive East West Africa Region (Pty) Limited.

During the testimonies in chief, various documents were tendered and admitted into evidence as exhibits. On part of the Claimants were; **Exhibit C1** - Notice of Seizure No. **FCC/SN/1557, FCC/SN/1044C, FCC/SN/1242C** and **FCC/SN/1556**, **Exhibit C2** – one set of twelve toothbrushes branded **Doctor Good**, **Exhibit C3** - one set of twelve toothbrushes branded **Fresh Doctor**, **Exhibit C4** - Extracts of Trademarks Official Search Report for Trademark No. **TZ/T/2016/1554** and **TZ/T/2014/000692**.

On part of the 1<sup>st</sup> Respondent seven exhibits were tendered and admitted by this Committee. These are, **Exhibit R1** - complaints from the 2<sup>nd</sup> Respondent to the 1<sup>st</sup> Respondent dated 13<sup>th</sup> February, 2025 and 06<sup>th</sup> March, 2025 respectively, **Exhibit R2** - Copy of Certificate of Trademark Registration No. **TZ/T/2016/1554** and its Notice of Renewal dated 18<sup>th</sup> May, 2023, **Exhibit R3** – two toothbrushes of genuine Colgate toothbrushes, **Exhibit R4** – a letter from the FCC to the Commissioner of Customs and Excise dated 7<sup>th</sup> March, 2025, **Exhibit R5** - sample of the seized toothbrushes branded **Doctor Good**, **Exhibit R6** - sample of the seized toothbrushes branded **Fresh Doctor** and **Exhibit R7** – Confirmation Report from the 2<sup>nd</sup> Respondent.

Conversely, the 2<sup>nd</sup> Respondent's case featured three exhibits, **Exhibit A1** - Copies of Certificate of Trademark Registration No. **TZ/T/2014/691, TZ/T/2022/3062** and **TZ/T/2022/3052** registered in Tanzania, **Exhibit A2** - Copies of Certificate of Trademark Registration No. **288/2014, 1388/2022, 1384/2022, 1704/2022** and **291/2014** registered in Zambia and **Exhibit A3** – a Copy of Copyright Registration Certificate for the Artwork of the Packaging of the **Colgate Double Action** registered in the United States of America.

Such as outlined hereinabove briefly is a summary of the documentary evidence that were tendered and admitted by this Committee. We will however not reproduce the oral testimonies and submissions made thereof, but they have all been certainly and fully taken into account when analyzing the matter at hand. At the closure of case by the parties, learned counsels prayed to be allowed to file their final written submissions, the prayer which was granted and complied accordingly save for the 1<sup>st</sup> Respondent who relinquished that opportunity.

We highly appreciate industrious efforts demonstrated by the learned counsels in their final submissions addressing three issues upon which these claims revolves around. These are;

- (a) *Whether the Claimants are registered proprietors and/or owners of "Doctor Good" and "Fresh Doctor" trademarks;*
- (b) *Whether the seized goods are counterfeits; and*
- (c) *What relief (s) are the parties entitled to.*

Let's now start to dispose the framed issues one by one in line with the pleadings, evidence and submissions on record. Starting with the first issue, ***whether the Claimants are registered proprietors and/or owners of "Doctor Good" and "Fresh Doctor" trademarks.*** Capitulating on this issue, it was Mr. Emesu's submission that the Claimants as owners of the seized and detained goods had a right to put up their claim within one month of the notice of detention or seizure for restoration of the seized and detained goods by the Chief Inspector pursuant to the provision of Regulation 34 of the Merchandise Marks Regulations, 2008. Therefore, according to him, the Claimants have preferred these claims rightfully as the title holders of the seized and detained goods.

On this regard, it was Mr. Nabiry's submission that Regulation 2 of the Merchandise Marks Regulation, 2008, has defined an "owner" to mean ***"a person who is a title holder of a registered intellectual property..."*** and that in order for one to be protected he must first satisfy the conditions set out under section 32(a) of the Trade and Service Marks Act, [the TSMA].

He was of the view that, for the Claimants to be recognized as the proprietors or lawful owners of **Doctor Good** and **Fresh Doctor** trademarks, they must demonstrate the existence of a valid certificate of registration and their exclusive rights to use the said trademarks or that they are recognised as a registered user, none of which has been established. Hence, the Claimants are neither the registered proprietors nor the lawful owners of **Doctor Good** and **Fresh Doctor** trademarks.

He referred this Committee to the case of **Keds Tanzania Company Limited vs. Royal Soap and Detergent Industries Limited, Commercial Case No. 53 of 2020** where the court views from the High Court (Commercial Court) of Kenya in **Harleys Limited vs. Ripples Pharmaceuticals Limited & Another [2015] EKLK at P5** was quoted that;



*"In order for one to institute trademark infringement case must demonstrate that it had registered the said trademark or they are the manufacturer of the product which eventually may suffer loss and damage upon the infringement of the trademark."*

Therefore, according to him, it is beyond legal doubt that the Claimants are neither the registered proprietors nor the lawful owners of any trademark relating to **Doctor Good** and **Fresh Doctor**.

Now let's point out here at the outset that, in Tanzania matters pertaining to registration and protection of trade and service marks are governed under the TSMA and the MMA respectively. Under TSMA, a registered trademark confers upon a person with whom it is registered ownership and to its exclusive use. This legal position is expressly stipulated under section 31 of the TMA which provides that;

*"Subject to the provisions of this Act and any limitation or conditions entered in the register, the registration of a trade or service mark shall, if valid, give or be deemed to have given to the registered proprietor the exclusive right to the use of a trade or service mark in relation to any goods including sale importation and offer for sale or importation." (The emphasis is of this Committee).*

According to the above position, the exclusive right of a registered proprietor to the use of a trade or service mark only arises if a trade or service mark is registered in the register of trade and service marks. This position draws our attention to the next pertinent question which is **whether Doctor Good and Fresh Doctor trademarks** are registered trademarks in Tanzania so as to confer upon the Claimants ownership and right to their exclusive use. Again, in Tanzania the only sufficient proof of registration of a trade or service mark is a **certificate in the prescribed form** as provided under section 28(2) of the TSMA thus:

*"On the registration of a trade or service mark, the Registrar shall cause to be sealed and shall issue to the applicant a certificate in the prescribed form of the registration thereof." (The emphasis is of this Committee).*

Further, in terms of section 6(1) of the TSMA a registered trademark is that **which is actually upon the register** maintained by the Registrar of Trade and Service Marks. This position finds judicial restatement in the decision of the High of Court of Tanzania,

Commercial Division as per Makaramba J, at page 23 in the case of **IPP Limited vs. Prince Bagenda and 3 Others, Commercial Case No. 20 Of 2009 (Unreported)**.

Therefore, it is our settled view that in Tanzania a sealed certificate in the prescribed form issued by the Registrar of Trade and Service Marks is a conclusive evidence of registration of proprietorship of a trade or service mark. In the present matter, nothing to that effect has been tendered before this Committee indicating that **Doctor Good** and **Fresh Doctor** trademarks are registered trademarks in Tanzania in the name of any of the Claimants by the Registrar of Trade and Service Marks.

Therefore, we are of the considered position that the Claimants are neither registered proprietors nor owners of **Doctor Good** and **Fresh Doctor** trademarks. Consequently, they have neither ownership nor exclusive right to the use over the said trademarks pursuant to the provisions of sections 14 and 31 of the TSMA. Therefore, the first issue has been answered in negative.

However, before we traverse further, let's point it out that we are of the considered view that the Claimants were only challenging seizure and detention of their seized and detained goods which is their statutory right as rightful owners of the seized goods as stipulated under the provisions of Regulation 34 of the Merchandise Marks Regulations, 2008. Therefore, we do not agree with the Mr. Nabiry's insinuation that the Claimants were instituting infringement case regarding **Doctor Good** and **Fresh Doctor** trademarks upon which they were supposed to demonstrate that they have registered the said trademarks or they are the manufacturer of the product which eventually may suffer loss and damage upon the infringement of the said trademarks.

Let's now embark to consider the second issue, ***whether the seized goods are counterfeits or not***. Submitting on this issue, Mr. Emesu was of the view that the 2<sup>nd</sup> Respondent has only registered the packaging and that the colours that have been registered thereof are red, white, blue and yellow only. To him, from **Exhibit R5** and **Exhibit R6**, it is clear that the colour pink is dominantly visible when it comes to **Doctor Good**, **Good Doctor** and **Fresh Doctor** trademarks. Hence, the Claimants trademarks are distinguishable from that of the 2<sup>nd</sup> Respondent.

He went on submitting that, unfortunately, the 1<sup>st</sup> Respondent has also seized toothbrushes branded **Good Doctor** whose packaging is purely blue and white which is very different from that of **Colgate Double Action**. He underscored that, in our laws, it is not an offense to have trademarks which are similar in identity in selling similar



goods or providing similar services. To bolster his stance, Mr. Emesu referred this Committee to the provisions of section 20(2) of the TSMA which provides:

*"In the case of honest concurrent use or other special circumstances, trade or service marks that are identical or nearly resemble each other in respect of the same goods or services or closely related goods or services may be registered in the names of more than one proprietors, subject to any conditions and limitations, if any which consider necessary to impose."*

He further referred this committee to the decision of the Court of Appeal in the case of **RIG Co. Limited vs. Watercom Tanzania Limited, Civil Appeal No. 210 of 2022 at P22** where the Court Appeal had this to say:

*"Equally aware, registration of a trademark which is identical or substantially similar with that which has already been registered is as a general rule prohibited under section 20(1) of the Trade and Service Marks Act. It is the law, however that, such prohibition is not absolute. This because the registrar of trade and service marks enjoys discretion under section 20(2) and (3) of the Act to register a trademark which is identical or nearly similar with that already in the register in the case of honest and concurrent use or other special circumstances."*

It was his further submission that, it is a clear position of the law that, the Registrar of Trade and Service Marks enjoys discretionary powers to register similar trade or service marks depending on the circumstances. He added that, in the instant matter, the 2<sup>nd</sup> Respondent's trademarks are not the same as the Claimants since the Claimants goods have a distinctive feature of the pink colour which is quite different from that of **Colgate Double Action**. Further, **Doctor Good** and **Fresh Doctor** packaging design have more colours such as red, blue, white, yellow, pink, peach, black and grey unlike that of **Colgate Double Action**.

He submitted further that, in Tanzania there a number of trademarks with similar colours that co-exist in the same industry. He pointed out that, one of the clear examples are Airtel Tanzania and Vodacom Tanzania trademarks. They are all red and white in colour but the words written there and the marks are different. He lastly referred this Committee to two test that are commonly used by courts in analysing trademarks. The first one being anti-dissection as stated in **M/S South India Beverage Pvt Ltd. v. General Mills Marketing Inc. and Another (No. 961/2013 in CS (OS) 110/2013)** which is to the effect that when comparing two marks which are

alleged to be identical or materially similar, the composite marks must be considered in their entirety rather than dissecting them into their component parts. The second one is syllable test according to which, the initial letter is particularly weighted in the assessment of similarity and likelihood of confusion of word marks.

In contrast, Mr. Nabiry was of the view that the seized goods branded **Doctor Good** and **Fresh Doctor** are imitations of **Colgate Double Action** to such an extent that they are identical or substantially similar. He vehemently stated the assertion by the Claimants that the seized goods have additional pink colour which is not available in the 2<sup>nd</sup> Respondent's trademark is irrelevant under the applicable legal provisions.

He stressed that pursuant to the provisions of Regulation 2(a) & (b) of the Merchandise Marks Regulations, 2008, an infringement does not require exact or identical replication; it is sufficient if the imitation is substantially similar something that is clearly the case in the present matter, as demonstrated in **Exhibits R5 and R6**. According to him, the likelihood of confusion is evident when applying the standard of an ordinary consumer who upon viewing the products side by side originating from different manufacturers would likely be unable to distinguish them.

He invited this Committee's attention to the decisions of the Chief Inspector's Committee in the case **Royal Soap and Detergent Industries Ltd vs. Inspectors of the Merchandise Marks Act and Keds Tanzania Company Ltd, Claim No. 62 of 2019** and **Checknocrats Limited vs. Magner International Corporations and Inspectors of the Merchandise Marks Act, Claim No. 4 of 2024** where it was ruled that counterfeit goods include those involving colourable imitation, and that infringement can occur where goods are substantially similar in appearance, even if marketed under different names.

He stressed that, the trade dress, get-up, artwork and design of the packaging of the goods seized constitute a reproduction or an adaptation of the artwork of the packaging of the well-known **Colgate Double Action** toothbrushes. To him, the similarities are glaring, and these goods are likely to confuse the consumers, something infringes protected rights of the 2<sup>nd</sup> Respondent.

After thoughtful analysis of the counsels debate, we shall hereinafter separate the wheat from the chaff. However, before doing that we hereby reiterate that as we have intimated earlier in this Ruling, in Tanzania matters pertaining to registration and protection of trade and service marks are governed under TSMA and the MMA



respectively. For easy reference and appreciation of the matter under contention let's produce the provisions of section 32(1) & (2) of the TSMA in verbatim thus:

"32 (1) The exclusive right referred to in section 31 **shall be deemed to be infringed by any person who, not being the proprietor of a trade mark or its registered user using by way of the permitted use,** uses a sign either-

(a) **identical with or so nearly resembling it as to be likely to deceive or cause confusion,** in the course of trade or business, in relation to any goods in respect of which it is registered or in relation to any closely related goods and in such manner as to render the use of the sign likely to be either-

(i) as being used as a trade mark or business or company name; or

(ii) in a case in which the use is upon the goods or in physical relation to them, or in relation to services, or in an advertising circular or other advertisement issued to the public, as importing a reference to some person having the right either as proprietor or as a registered user to use the trademarks or to goods or services with which that person is connected in the course of business or trade; or

(b) identical with or nearly resembling it in the course of trade or business in any manner likely to impair the distinctive character or acquired reputation of the trade mark.

(2) The exclusive right referred to in section 31 shall, subject to provisions of subsection (3) **also be deemed to be infringed by any person who, not being the proprietor of the trade mark or its registered user using by way of permitted use, does any of the following acts in the course of trade in** respect of goods purchased from the proprietor of the trade mark of a registered user-

(a) **applying the trade mark upon the goods after they suffered alteration as respects their state or condition, get up or packing;**

(b) where the trade mark is upon the goods, altering or obliterating it, whether wholly or partly;

(c) where the trade mark is upon goods, and there is also on it other matter, being matter indicating a connection in the course of trade between the proprietor or registered user and the goods, removing or obliterating, whether wholly or partly, the trade mark, unless that other matter is wholly removed or obliterated;

(d) where the trade mark is upon the goods, applying any other trade mark to the goods; and

- (e) *where the trade mark is upon the goods, adding to the goods any other matter in writing that is likely to injure the acquired reputation of the trade mark."*

Further under Regulation 2 of the Merchandise Regulations, 2008 the terms counterfeiting has also been defined to mean;

"counterfeiting" means without the authority of the owner of any intellectual property right subsisting in Tanzania or elsewhere in respect of protected goods:-

(a) *The manufacturing, producing, packaging, repackaging, labelling or making, whether in Tanzania or elsewhere, of any goods whereby those protected goods are imitated in such a manner and to such degree that those other goods are identical or substantially similar copies of the protected goods.*

(b) *The manufacturing, producing or making, whether in Tanzania or elsewhere, the subject matter of that intellectual property, or a colourable imitation thereof so that the other goods are calculated to be confused with or to be taken as being the protected goods of the said owner, or any goods manufactured, produced or made under his license;*

(c) *The manufacturing, producing or making of copies in Tanzania or elsewhere, in violation of authors rights or related rights; (The emphasis is of this Committee).*

Indeed, the above provisions are speaking for themselves in a clear and loud voice. According to them, in order for the Claimant to succeed in an action for infringement of a trade or service mark, he must prove in the first place **his title and exclusive right to the use of the trade or service mark in question**. Not only that, but he must also establish that the Defendant has infringed the respective protected trade or service mark by **making identical or deceptively similar or colourable imitation of the protected mark as to be likely to deceive or cause confusion**.

In the present matter, essential aspects of title and exclusive right to the use of the **Colgate** and **Double Action** trademarks have been established. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents successfully tendered **Exhibit R2** and **A1** respectively, Copies of Certificate of Trademark Registration No. **TZ/T/2014/691**, **TZ/T/2022/3062** and **TZ/T/2022/3052** under Class 21 in respect of toothbrushes upon which the **Colgate** and **Double Action** trademarks are respectively registered in the register of Trade and



Service Marks in the name of the 2<sup>nd</sup> Respondent. Conversely, the Claimants have neither disputed that the 2<sup>nd</sup> Respondent is a registered proprietor of **Colgate** and **Double Action** trademark nor claimed any proprietary rights over the **Colgate** and **Double Action** trademarks.

Therefore, it is our settled view that registration of **Colgate** and **Double Action** trademarks in the register of Trade and Service Marks as evidenced under **Exhibit R1** and **A1** confers upon the 2<sup>nd</sup> Respondent, ownership and exclusive use over **Colgate** and **Double Action** trademarks under Class 21 in respect of toothbrushes.

Let's now revert to remaining pertinent question under this issue which is *whether the Claimants have infringed the 2<sup>nd</sup> Respondent's registered trademarks by making identical or deceptively similar or colourable imitation of Colgate and Double Action trademarks* through their seized goods branded **Doctor Good** and **Fresh Doctor**. In order to defuse this issue, we must establish whether the disputed marks are distinctive or identical/nearly resembling. Under this score, the Committee was well guided by the authoritative wisdom laid down by Makaramba J, at page 19 in the case of **Bata Limited Canada vs. Bora Industries Limited, Commercial Case No. 76 of 2005 (Unreported)** that:

*"The question whether a trademark is distinctive or not, is a question of facts and it can only be settled by considering the whole of the circumstances of the particular case in a particular given factual situation". (The emphasis is of this Committee).*

Further, we alive to the test for determining whether one mark is deceptively similar to another that was laid down from the pen of the Supreme Court of India in the case of **Pianotistco. Ltd's Case (1906) 23 RPC 774** that;

*"You must take the two words, you must judge of 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. In fact, you must consider all the surrounding circumstances, and you must further consider what is likely to happen if each of those trademarks is used in a normal way as a trade mark for the goods of the respective owners of the marks. If, considering all those circumstances, you come to the conclusion that there will be a confusion..." (The emphasis is of this Committee).*

As a bedrock for comparison of trademarks, we are also mindful of the case of Tanzania Distilleries Ltd vs. Vitain Foods (1989) Ltd (2000) TLR 15 at page 41 that;

*"You must take the two words. You must judge them, both by their look and their sound. 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 in each of those trademarks is used in a normal way as a mark for the goods of the respective owners of the marks" (the emphasis is of this Committee).*

Lastly on this particular aspect we are alive to the case of Kiwi European Holdings BV vs. Sajad Ali Limited (2005) TLR 434 at page 435 where it was observed;

*"The cumulative effect of section 31 and 32(1)(a) of Trade and Service Marks Act 1986 is that the right to exclusive use upon registration of a trademark cannot be infringed unless it is proved that the offending mark is either identical with the registered mark or it so resembles the registered trade mark as to be likely to deceive or cause confusion in relation to the goods in respect of which the mark is registered."*

With the above token in mind, the Committee carefully considered and compared **Colgate** and **Double Action** trademarks against **Doctor Good** and **Fresh Doctor** trademarks as appearing in **Exhibits A1, C2, C3, R1, R3, R5 and R6**. Upon a closer and careful comparison of the said trademarks as appearing in the aforesaid exhibits, we are the view that there is sufficient similarities between the Claimants and the 2<sup>nd</sup> Respondent's products to justify infringement. This is vindicated by the following resemblances:

- (i) The adoption of a predominantly red-coloured background by the Claimants to a substantial extent as that of the 2<sup>nd</sup> Respondent;
- (ii) The adoption of white colour for inscribing the trademark **Doctor Good** and **Fresh Doctor** is similar to that of **Colgate** which is also inscribed in white colour;
- (iii) Similar placement of all three trademarks **Doctor Good** and **Fresh Doctor** and **Colgate** on the top left panel of the packet;
- (iv) The adoption of yellow colour for inscribing the words "**Protect Love**" and "**New Super Cleaning**" in **Doctor Good** and **Fresh Doctor** products is similar



to that of **Double Action** which is also inscribed in yellow colour in Colgate goods;

- (v) Similar placement of the word "**Protect Love**", "**New Super Cleaning**" and "**Double Action**" in **Doctor Good**, **Fresh Doctor** and **Colgate** products on the middle of the packet;
- (vi) Similar placement of the word "**Medium**" in **Doctor Good** and **Fresh Doctor** and **Colgate** products i.e. on the right side of the packet;
- (vii) Similar placement of "**Curved** and **Straight Strips**" in **Doctor Good** and **Fresh Doctor** and **Colgate** products i.e. on the middle of the packet;
- (viii) The nature of goods in respect of which the marks **Doctor Good** and **Fresh Doctor** and **Colgate** are used as trademark are the same i.e. toothbrushes; and
- (ix) Toothbrushes are fast turnover items and an ordinary consumer is not likely to bestow much attention on a daily use product such as a toothbrush.

Basing on the foregoing resemblances, this Committee is of the settled view that the noted similarities were not coincidence rather they are a clear indication that the Claimants get ups and packaging in one way or another were inspired by the 2<sup>nd</sup> Respondent's products.

In a bid to prove their case, the Claimants counsel stated that, the 2<sup>nd</sup> Respondent's trademarks are different from that of the Claimants due to different brand names and distinctive feature of the pink colour. In our opinion, **Doctor Good**, **Fresh Doctor**, **Colgate** and **Double Action** trademarks as used by the Claimants and the 2<sup>nd</sup> Respondent respectively are in no doubt different. Further, **Doctor Good** and **Fresh Doctor** trademarks by themselves are not likely to confuse and deceive but the entire get up, packaging and the colour scheme of the packet as adopted by the Claimants are substantially similar to that of the 2<sup>nd</sup> Respondent in many details and are likely to confuse and deceive customers.

Therefore, we do not agree with Claimants counsel assertion since essential features of the 2<sup>nd</sup> Respondents trademarks have been imitated/adopted, therefore the mere differences in brand names and colour are immaterial. Hence, it is our settled view that, substantial imitation of get up, packaging and the colour scheme of an established product such as **Colgate** not only causes confusion but also is the dilution of the distinctiveness of the same.

Further, in our opinion, toothbrushes markets have purchasers from all levels of society and having various levels of education and awareness and they may not notice the difference in the trademarks and are likely to get influenced by the overall packaging and get ups of the respective products. This possibility is heightened by the fact that toothbrushes are high turnover consumer items where a purchaser is unlikely to bestow adequate attention to the product.

Therefore, transiting through Tanzania a total of 1150 Cartons of toothbrushes branded **Doctor Good** and **Fresh Doctor** respectively that have substantially imitated **Colgate** and **Double Action** trademarks is likely to deceive or cause confusion in the course of trade or business in relation to any goods in respect of which **Colgate** and **Double Action** trademarks are registered or in relation to any closely related goods.

Let's now embark to the last issue that is *what relief(s) are the parties entitled to*. Let's point here at the outset that, since the Claimants have failed to prove their case, no relief can be granted. The Claimants have failed to establish that the seized 1150 cartoons of toothbrushes branded **Doctor Good** and **Fresh Doctor** have not contravened the provisions of section 3(1)(g) of the MMA. Therefore, nothing can be granted. With regard to the relief sought by the 2<sup>nd</sup> Respondent, this Committee does not have appropriate jurisdiction to award the costs under the provisions of Regulation 34B (1) – (16) of the Merchandise Marks Regulations, 2008. Therefore, costs cannot be granted as sought.

On the foregoing reasons, the Committee is satisfied on a balance of probabilities that the Claimants transited through Tanzania a total of 1150 Cartons of toothbrushes branded **Doctor Good** and **Fresh Doctor** respectively which have substantially imitated the trademarks of the 2<sup>nd</sup> Respondent contrary to the provisions of section 3(1)(g) of the MMA.

In the event and for the foregoing reasons the consolidated claims fails and the committee **HEREBY ORDERS** as follows;

1. **THAT**, 1150 cartons of toothbrushes branded "**Doctor Good**" and "**Fresh Doctor**" respectively that were seized and detained by the 1<sup>st</sup> Respondent under No. **FCC/SN/1557, FCC/SN/1044C, FCC/SN/1242C** and **FCC/SN/1556** are in contravention of the provisions of Section 3(1)(g) of the MMA.



2. **THAT**, the decision regarding No. FCC/SN/1557, FCC/SN/1044C, FCC/SN/1242C and FCC/SN/1556 issued by the 1<sup>st</sup> Respondent against the Claimants is hereby upheld.

**It is so ordered**



Emmanuel S. Nyanza

**CHAIRMAN OF THE COMMITTEE**

**Dated, Issued and Delivered on this 30<sup>th</sup> day of July, 2025 in the presence of**

For the Claimants: Okare Emesu

For the 1<sup>st</sup> Respondent: Yesse Rugaiya

For the 2<sup>nd</sup> Respondent: Nabiry Jumanne, Noreen Maghimbi and Grace Mahuza

**SIGNED BY MEMBERS OF THE HEARING COMMITTEE**



Mr. Emmanuel S. Nyanza

**CHAIRMAN**



Mr. Wambie J. Malata

**SECRETARY**



Ms. Thecla M. Kitosi

**MEMBER**



Mr. Henry Chaula

**Member**



Ms. Abdulkarim N. Ally

**Member**



.....  
**Seal of the Commission**