

ARTICLE



Falcon Prevails: Tribunal Confirms Exclusive Rights in FALCON & Device Mark

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The background of the top section of the page is a photograph of an industrial facility, likely a refinery or chemical plant, with several tall distillation columns and pipes silhouetted against a sunset sky with orange and blue tones.

FALCON V FALCON

Falcon Corporation Limited has recorded a successful outcome in opposition proceedings before the Nigerian Trade Marks Tribunal concerning the mark FALCON & Device in Class 4.

A Notice of Opposition was filed on behalf of Falcon Corporation Limited against the Applicant's mark in Class 4, alongside the issuance of a Cease-and-Desist Letter to the Applicant. The Applicant initially failed to submit a counterstatement within the statutory period, leading the Opponent to apply for the abandonment of the opposed application. In response, the Trade Marks Registry issued a Notice of Abandonment. However, the Registrar subsequently set aside the notice upon determining that the Applicant had, in fact, filed its counterstatement within the prescribed period, though it had not yet been received by the Opponent. Once the counterstatement was received, the Opponent duly filed its Statutory Declaration within the stipulated time frame.

Following the close of pleadings, the Registrar directed the Opponent to file its Written Address and, if necessary, a Reply on Points of Law within seven days of receiving the Applicant's Written Address. The matter proceeded to a full hearing before the Tribunal, after which the Tribunal delivered its ruling in favour of Falcon Corporation Limited.

The Tribunal considered the sole issue for determination to be whether the Applicant had demonstrated true proprietorship of the FALCON mark and whether the use of the mark by the Applicant was likely to cause confusion with the Opponent's registered trademark.

In its analysis, the Tribunal found that the Applicant failed to produce credible or convincing evidence to establish that its mark was distinctive or that it would not cause confusion among consumers. The Tribunal also noted the absence of any evidence showing that the Applicant had registered or used the FALCON mark in Nigeria prior to the filing of the contested application.

Given the Applicant's failure to provide cogent evidence to rebut the Opponent's claims, the Tribunal held that the Applicant did not intend to challenge the



Opponent’s evidence, particularly the assertion that the contested mark lacked distinctiveness and was capable of causing deception. The Tribunal reaffirmed the settled principle that “evidence which is unchallenged is deemed admitted and requires no further proof.”

On this basis, the Tribunal determined that the Applicant had not proved prior use of the FALCON & Device mark and that the evidence instead established the Opponent’s earlier use and ownership of the registered trademark. The Tribunal therefore upheld the validity of Falcon Corporation Limited’s registered FALCON & Device trademark in Class 4, holding that the Applicant had no valid proprietary claim.

The application was accordingly dismissed, the opposition succeeded, and the Tribunal directed both parties to bear their respective costs.

This ruling reinforces the importance of timely and substantiated evidence in trademark opposition proceedings, as well as the Tribunal’s continued stance on protecting established rights and preventing confusion in the marketplace.

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