DRESOCECO Ltd v. MININTCO Ltd

[Rwanda URUKIKO RW'UBUJURIRE – RCOMAA 00086/2018/CA (Mukanyundo, P.J., Mukandamage na Kanyange, J.) 27 Nzeri 2019]

Amategeko arengera umutungo bwite mu by'ubwenge – Ikirango – Ibirango bitera urujijo – Ibirango bitera urujijo –Kwigana ikirango – Kugira ngo hamenyekane niba ibirango bisa ku buryo bitera urujijo, si ngombwa ko biba bisa ijana kw'ijana ahubwo harebwa ubwiganze bwo gusa (dominant test of similarity) kuri ibyo birango byombi ku buryo byateza urujijo ku muguzi.

Incamake y'ikibazo: MININTCO LTD ni sosiyete y'ubucuruzi yiyandikishijeho ikirango cya KANTA BRAND muri RDB, ikanakora ubucuruzi bwayo, yaje kumenya ko iyindi sosiyete yitwa DRESOCECO Ltd itumiza mu gihugu cy'Ubushinwa igicuruzwa gifite ikirango cya Wild Olive, ikavuga ko icyo gicuruzwa cyiganye ikirango cyayo, ikaba igicuruza mu buryo bw'uburiganya, akaba ariyo mpamvu yayireze mu Rukiko rw'Ubucuruzi rwa Nyarugenge isaba uru rukiko gutegeka guhagarika ikwirakwizwa ryicyo gicuruzwa, kubisenya no kubifatira ku buryo kitazongera kwinjizwa mu gihugu cy'Urwanda kuko gitera urujijo ku bicurizwa byayo, inasaba indishyi.

DRESOCECO Ltd yo yireguye ivuga ko nta kosa yakoze, kuko nta kimenyetso MININTCO Ltd itanga kigaragaza ko yiganye ikirango cyayo cya KANTA Brand, kuko atari yo ikora ibicuruzwa bya Wild olive, uretse ko n'ibyo birango byombi bitandukanye ku buryo abaguzi badashobora kubyitiranya, haba ku mabara, ibyanditseho n'ibishushanyijeho, ko ikirango " Wild olive" cyari gutera urujijo mu gihe ahanditse " Kanta Brand" handitswe amagambo ahuye n'iryo jambo, ko ahubwo icyo MININTCO Ltd igamije ari ukwikubira isoko yonyine kandi bitemewe mu rwego rw'ubucuruzi. Uru Rukiko rwemeje ko ikirango "Wild olive" n'icya "Kanta Brand" bitandukanye, kandi icya "Wild olive" kitigana icya "Kanta Brand", ndetse kidatera urujijo mu baguzi.

MININTCO Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rw'Ubucuruzi rwa Nyarugenge rutitaye ku bishingirwaho mu gupima ikirango kigana ikindi, ko rwemeje ko itagombaga kurega DRESOCECO Ltd kuko atari uruganda rukora "Wild olive" kandi ntaho rubishingiye, ko ndetse rutasuzumye ikibazo cyo kumenya niba ikirango "Wild olive" kidashobora kwifashishwa mu ihiganwa ririmo uburiganya ugereranyije n'icya "Kanta Brand".

Urukiko Rukuru rw'Ubucuruzi rwemeje ko ubujurire bufite ishingiro, ko imikirize y'urubanza rwajuririwe ihindutse mu ngingo zarwo zose, rutegeka ko ibicuruzwa bya "Wild olive" bizanwa mu Rwanda na DRESOCECO Ltd bihagarikwa kuhacururizwa, kuko birangwa n'ikirango gitera urujijo mu bicuruzwa mu buryo butubahiriza amategeko.

DRESOCECO Ltd yajuriye nayo mu Rukiko rw'Ikirenga ivuga ko ikirego cya MININTCO Ltd kijyanye no kuba ikirango cya " Wild olive" kigana cyangwa se kitigana icya " Kanta Brand" kitagombaga kwakirwa, kuko cyasuzumwe mu rundi rubanza haburana MININTCO Ltd na Unitex Rwanda Ltd rwaciwe n'Urukiko Rukuru rw'Ubucuruzi rwarabaye itegeko, kuko rutigeze rujuririrwa mu Rukiko rw'Ikirenga rwari rufite ububasha icyo gihe, ko ndetse rutigeze rusubirwamo ku mpamvu z'akarengane, n'ubu rukaba rukiriho, isaba guhabwa indishyi z'igihombo yagize. Nyuma y'ivugurura ry'inkiko, urubanza rwoherejwe mu Rukiko rw'Ubujurire.

Mwiburanisha DRESOCECO Ltd isobanura ko ubusanzwe urubanza rwaciwe ku rwego rwa nyuma rudashobora kongera kuburanishwa bundi bushya ku mpamvu zimwe no ku kiburanwa kimwe hagati y'ababuranyi bamwe baburana ikirego kimwe, ko ariko mu birebana na bene ibi birego (class action cases), harebwa icyaburanwaga gusa, kuko bitabaye ibyo, impaka ku birebana no gusa cyangwa kudasa kw'ibicuruzwa zazajya zihoraho ntizirangire, kuko buri muntu wese yajya atanga ikirego atitaye ku rubanza rwabanje.

DRESOCECO Ltd ivuga ko n'ubwo Urukiko Rukuru rw'Ubucuruzi rwemeje ko ikirango Wild Olive gitera urujijo icya "KANTA Brand", nyamara siko bimeze kuko nta sano bifitanye kuko bidateye kimwe, ndetse n'amagambo agiye yanditseho si amwe. Ikomeza ivuga ko ikarito ya " Kanta Brand" hariho umunzani, ariko kuri " Wild olive" hariho ishami rifite imbuto ebyiri kandi ko n'ubwo amabara yakoreshejwe hari amwe ajya kumera kimwe, ariko atari yose, ko kandi hari amabara abantu kimwe n'inganda bakunze kwifashisha agaragara neza, ko rero ibicuruzwa bifite ikirango cya " Wild olive" bidatera urujijo mu baguzi ku buryo babyitiranya n'ibifite icya " Kanta Brand"

Mu kwerekana uburyo ikirango "Wild olive" cyaba kigana ikirango "KANTA Brand", MININTCO Ltd yifashishije agakarito k'amavuta afite ikirango cya "Wild olive" akakagereranya n'akazamo amavuta afite icya "KANTA Brand", agaragaza ibintu bitandukanye kuri ko gakarito aho ikirango cya "Wild olive" cyagiye cyigana icya "KANTA Brand", ku buryo ari urwiganwa rukabije rw'ikirango "KANTA Brand" bityo abaguzi b'amavuta ahindura umusatsi umukara bashobora kwibeshya byoroshye bakagura aya "Wild olive" bakeka ko ari aya "KANTA Brand".

MININTCO Ltd bavuga ko uru Rukiko rukwiye kwemeza ko ubujurire bwa DRESOCECO Ltd nta shingiro bufite, ko ikirango "Wild olive" ari urwiganwa rw'icya "KANTA Brand", maze rugategeka ko ibicuruzwa bifite ikirango cya "Wild olive" bitera urujijo mu baguzi. Maze rukanemeza ko bitemewe gucururizwa ku butaka bw'u Rwanda, rugategeka ko ibyafatiriwe muri Gasutamo bisenywa.

DRESOCECO Ltd bavuga ko irimo gukorerwa akarengane, kuko yaranguye amavuta afite ikirango cya "Wild Olive" yumva ko nta kosa irimo gukora, ko kandi n'iyo urukiko rwasanga icyo gicuruzwa ari urwiganwa rutera urujijo, uretse ko atari byo, yahabwa ibyo bicuruzwa byafatiriwe muri Gasutamo, kuko nta mugambi wo kubangamira MININTCO Ltd yari ifite.

Incamake y'icyemezo: 1. DRESOCECO Ltd ntiyakwitwaza urubanza RCOMA 00194/2016/HC/HCC, rwaciwe ku rwego rwa nyuma n'Urukiko Rukuru rw'Ubucuruzi, ngo ivuge ko ikirego yarezwe na MININTCO Ltd kitagombaga kwakirwa, kuko ababuranyi n'ikiburanwa atari bimwe.

2. Kugira ngo hamenyekane niba ibirango bisa ku buryo bitera urujijo, si ngombwa ko biba bisa ijana kw'ijana ahubwo harebwa ubwiganze bwo gusa (dominant test of similarity) kuri ibyo birango byombi ku buryo byateza urujijo ku muguzi.

Ubujurire nta shingiro bufite.
Amagarama ahwanye n'ibyakozwe mu rubanza.

Amategeko yashingiweho:

Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi, ingingo ya 111
Itegeko Nº 31/2009 ryo ku wa 26/10/2009 rigamije kurengera umutungo bwite mu by'ubwenge, ingingo ya 178, 180 n'iya 258.
Itegeko Nº15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 76

Nta manza zifashishijwe.

Inyandiko z'abahanga:
DEBORAH E. BOUCHOUX, La propriété intellectuelle, le droit des marques, le droit d'auteur, le droit des brevets d'invention et des secrets commerciaux, Nouveaux Horizons, p. 97.
Serge GUINCHARD, Droit et pratique de la procédure civile, Dalloz, cinquième édition, p.864.

Urubanza

I. IMITERERE Y'URUBANZA

[1] MININTCO Ltd yareze DRESOCECO Ltd mu Rukiko rw'Ubucuruzi rwa Nyarugenge isaba guhagarika ikwirakwizwa ry'ibicuruzwa itumiza mu Bushinwa biriho ikirango " Wild Olive" ivuga ko gitera urujijo ku bicurizwa byayo bifite ikirango kizwi nka "Kanta Brand" , isobanura ko DRESOCECO Ltd yiganye icyo kirango, kuko iyo urebye imiterere y'ibyo birango usanga nta tandukaniro bifite harebwe imiterere y'udukarito, ingano yatwo, imiterere y'amabara, imiterere y'ibindi bigize ikirango cya " Kanta Brand" (iminzani), amagambo agize ikirango, n'umwanya amagambo agize ikirango yanditsemo, ku buryo nta tandukaniro rihari mu maso y'abaguzi, ko kandi bibangamiye uburenganzira ku mutungo mu by'ubwenge bwa MININTCO Ltd, ndetse n'imicururize yayo kuko biyihombya, isaba ko ibicuruzwa bya DRESOCECO Ltd byafatiriwe muri Gasutamo bisenywa kandi igategekwa kutazongera kubyinjiza mu Rwanda, no gutanga indishyi zingana na 50.000.000Frw n'amafaranga y'ibyo yatanze ku rubanza.

[2] DRESOCECO Ltd yo yireguye ivuga ko nta kimenyetso MININTCO Ltd itanga kigaragaza ko yiganye ikirango cyayo cya " KANTA Brand" , kuko atari yo ikora ibicuruzwa (produits) bya "Wild olive" , kuko yabiguze nk'uko yari kugura n'ibya MININTCO Ltd, ko rero yo nta gihangano ifite cy'ibyo yaguze, ndetse atari yo yandikishije ikirango cya " Wild olive" ku Mwanditsi Mukuru wa RDB, ikaba mu rwego rw'amategeko n'urw'ibimenyetso nta kosa yakoze, ko ahubwo MININTCO Ltd ikwiye kurega uruganda rukora " Wild olive" mu gihe haba hari ibyo rwiganye ku kirango cya " Kanta Brand" , uretse ko n'ibyo birango byombi bitandukanye ku buryo abaguzi badashobora kubyitiranya, haba ku mabara, ibyanditseho n'ibishushanyijeho, ko ikirango " Wild olive" cyari gutera urujijo mu gihe ahanditse "Kanta Brand" handitswe amagambo ahuye n'iryo jambo, ko ahubwo icyo MININTCO Ltd igamije ari ukwikubira isoko yonyine kandi bitemewe mu rwego rw'ubucuruzi. Nayo yasabye ko MININTCO Ltd itegekwa kuyishyura 50.000.000Frw y'indishyi, 18.750.000Frw y'igihombo yayiteje ifatira ibicuruzwa byayo ikabuzwa kubicuruza, n'amafaranga y'ibyo yatanze ku rubanza.

[3] Urwo rukiko rwaciye urubanza RCOM 00385/2017/TC/Nyge ku wa 20/04/2017, rwemeza ko ikirango " Wild olive" n'icya "Kanta Brand" bitandukanye, kandi icya "Wild olive" kitigana icya "Kanta Brand", ndetse kidatera urujijo mu baguzi, rutegeka MININTCO Ltd kwishyura DRESOCECO Ltd 500.000Frw y'igihembo cya Avoka na 200.000Frw y'ikurikiranarubanza.

[4] MININTCO Ltd yajuririye Urukiko Rukuru rw'Ubucuruzi ivuga ko Urukiko rw'Ubucuruzi rwa Nyarugenge rutitaye ku bishingirwaho mu gupima ikirango kigana ikindi, ko rwemeje ko itagombaga kurega DRESOCECO Ltd kuko atari uruganda rukora "Wild olive" kandi ntaho rubishingiye, ahubwo runyuranya n'ibiteganywa n'ingingo ya 258 y'Itegeko nº 31/2009 ryo ku wa 26/10/2009 rigamije kurengera umutungo bwite mu by'ubwenge, ko ndetse rutasuzumye ikibazo cyo kumenya niba ikirango " Wild olive" kidashobora kwifashishwa mu ihiganwa ririmo uburiganya ugereranyije n'icya " Kanta Brand" .

[5] Urukiko Rukuru rw'Ubucuruzi rwaciye urubanza RCOMA 00236/2017/CHC/HCC ku wa 16/11/2017, rwemeza ko ubujurire bwa MININTCO Ltd bufite ishingiro, ko imikirize y'urubanza rwajuririwe ihindutse mu ngingo zarwo zose, rutegeka ko ibicuruzwa bya " Wild olive" bizanwa mu Rwanda na DRESOCECO Ltd bihagarikwa kuhacururizwa, kuko birangwa n'ikirango gitera urujijo mu bicuruzwa mu buryo butubahiriza amategeko.

[6] DRESOCECO Ltd yajuriye mu Rukiko rw'Ikirenga urubanza ruhabwa nº RCOMAA 00014/2018/SC, nyuma ruza koherezwa mu Rukiko rw'Ubujurire hashingiwe ku biteganywa n'ingingo ya 105 y'Itegeko Nº30/2018 ryo ku wa 02/06/2018 rigena ububasha bw'inkiko, ruhabwa no RCOMAA 00086/2018/CA.

[7] Mu bujurire bwayo DRESOCECO Ltd ivuga ko ikirego cya MININTCO Ltd kijyanye no kuba ikirango cya "Wild olive" kigana cyangwa se kitigana icya " Kanta Brand" kitagombaga kwakirwa, kuko cyasuzumwe mu rubanza RCOMA 00194/2016/HC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 12/10/2016 rwabaye itegeko, ko Urukiko Rukuru rw'Ubucuruzi rwirengagije amategeko n'ibimenyetso yatanze bigaragaza ko ikirango cyayo kitigana icya MININTCO Ltd, ikaba ikwiye guhabwa ibicuruzwa byayo byafatiriwe na Gasutamo, ikanahabwa indishyi z'igihombo yagize, naho MININTCO Ltd ikavuga ko ubujurire bwa DRESOCECO Ltd nta shingiro bufite.

[8] Habanje gusuzumwa inzitizi y'iburabubasha bw'Urukiko rwajuririwe yatanzwe na MININTCO Ltd ishingiye ku gaciro k'ikiburanwa, maze mu rubanza rubanziriza urundi rwaciwe ku wa 05/04/2019, Urukiko rwemeje ko ubujurire bwa DRESOCECO Ltd buri mu bubasha bw'Urukiko rw'Ubujurire, iburanisha mu mizi y'urubanza rikomeza ku wa 08/05/2019 no ku wa 30/04/2019, DRESOCECO Ltd ihagarariwe n'Umuyobozi wayo Sagatwa Anastase yunganiwe na Me Mutarindwa Félix afatanyije na Me Butare Godefrey, naho MININTCO Ltd ihagarariwe n'Umuyobozi wayo Rahul Gulab Jham yunganiwe na Me Nsengumuremyi Cyridion.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

a. Kumenya niba ikirego cya MININTCO Ltd kitaragombaga kwakirwa n'inkiko zabanje kubera ko mu rubanza RCOMA 00194/2016/CHC/HCC rwabaye itegeko, Urukiko Rukuru rw'Ubucuruzi rwemejemo ko ikirango cya " Wild olive " kitigana icya "KANTA Brand"

[9] Ababuranira DRESOCECO Ltd bavuga ko Urukiko Rukuru rw'Ubucuruzi rwirengagije gusuzuma ikibazo rwashyikirijwe kijyanye n'uko ikirego cyatanzwe na MININTCO Ltd kitagombaga kwakirwa ngo gisuzumwe ku rwego rwa mbere, kubera ko hari urundi rubanza RCOMA 00194/2016/HC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 12/10/2016 (mbere y'uru rwaciwe ku wa 16/11/2017), haburana MININTCO Ltd na Unitex Rwanda Ltd, rwemeje ko ikirango cya " Wild olive" gikoreshwa na Unitex Rwanda Ltd kidatera urujijo, kuko gifite byinshi bigitandukanya n'ikirango cya "KANTA Brand" cya MININTCO Ltd, ko rero urwo rubanza rwabaye itegeko, kuko rutigeze rujuririrwa mu Rukiko rw'Ikirenga rwari rufite ububasha icyo gihe, ko ndetse rutigeze rusubirwamo ku mpamvu z'akarengane, n'ubu rukaba rukiriho.

[10] Bavuga ko bashingiye ku ngingo ya 151 y'Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu mwaka wa 2003 nk'uko ryavuguruwe kugeza ubu, iteganya ko "ibyemezo by'ubucamanza bigomba kubahirizwa n'abo bireba bose, zaba inzego z'ubutegetsi bwa Leta cyangwa abantu ku giti cyabo. Ntibishobora kuvuguruzwa keretse binyuze mu nzira no mu buryo buteganywa n'amategeko (...)", basaba ko icyemezo cyafashwe kivuga ko ibyo birango byombi bidasa cyakubahirizwa, ko niba MININTCO Ltd ibona kibangamye, igomba kunyura mu nzira zemewe n'amategeko igasaba ko kivaho, ko ariko mu gihe kikiriho ntacyabuza abacuruzi kurangura ibyo bicuruzwa bifite ikirango cya "Wild olive" kubikora, ko kandi nayo yabiranguye ari uko imaze kubona urwo rubanza, ikaba rero igomba kurengerwa nk'uko byakorewe Unitex Rwanda Ltd, kuko ingingo ya 15 y'iryo Tegeko Nshinga ivuga ko abantu bose bareshya.

[11] Bakomeza bavuga ko ubusanzwe urubanza rwaciwe ku rwego rwa nyuma rudashobora kongera kuburanishwa bundi bushya ku mpamvu zimwe no ku kiburanwa kimwe hagati y'ababuranyi bamwe baburana ikirego kimwe, ko ariko mu birebana na bene ibi birego (class action cases), harebwa icyaburanwaga gusa, kuko bitabaye ibyo, impaka ku birebana no gusa cyangwa kudasa kw'ibicuruzwa zazajya zihoraho ntizirangire, kuko buri muntu wese yajya atanga ikirego atitaye ku rubanza rwabanje.

[12] Ibyo bavuga banabishyigikiza ibyanditswe na Yves FAURE mu gitabo yanditse asoza amashuri y'icyiciro cy'ikirenga (Thèse de doctorat) cyitwa "Le contentieux de la contrefaçon. La réponse du droit français à l'atteinte aux droits de propriété intellectuelle", ku rupapuro rwa 403[1], banavuga ko urukiko rwa "TGI Paris" rwanze kwakira ikirego, ku mpamvu y'uko igicuruzwa kimwe (produit) cyari cyongeye kuburanwaho (voir TGI Paris, 23 févr.2007: PIBD 2007, nº 858,

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[1] Bavuga ko muri icyo gitabo, Yves FAURE yavuze ko*: "L'autorité de la chose jugée constitue également une fin de non-recevoir tout à fait commune et n'est donc pas spécifique aux droits de la propriété intellectuelle, mais s'y intéresser spécialement est ici nécessaire car il se trouve également là une application particulière à la matière. De rappeler tout d'abord que le principe gouvernant l'autorité de la chose jugée est donné par l'article 1351 du code civil, il s'agit d'une présomption légale qui entraîne l'impossibilité d'un nouveau jugement sur une demande lorsque celle-ci a déjà tranchée du fait qu'il existe une identité de parties, d'objet et de la cause. Les conditions administrant la notion de l'autorité de la chose jugée sont donc restrictives mais se trouvent bien à s'appliquer en matière de contentieux de la contrefaçon. C'est ainsi qu'il faut s'apercevoir que c'est autour d'une problématique relative à l'objet que se cristallisent les difficultés, les questions d'identité de parties et des causes sont plus facilement expurgées du fait de l'objectivité de leur appréciation, là où les aspects relatifs à l'objet sont plus à même d'appeler à une interprétation. Il existe ainsi une identité d'objet ayant entrainé la reconnaissance de l'autorité de la chose jugée et conséquemment un fin de non-recevoir, lorsqu'il a déjà été statué une action en contrefaçon sur le même bien (…)".*

p.551 en matière de marque). Batanga na none urugero ku rubanza rwaciwe n'Urukiko Rusesa Imanza rwo mu gihugu cy'Ubufaransa haburana sosiyete "Merk Shap et Dhome".

[13] Me Nsengumuremyi Cyridion, uburanira MININTCO Ltd, avuga ko ibyo DRESOCECO Ltd ivuga ko ikirego cyayo kitagombaga kwakirwa kubera ko hari urubanza rwabaye itegeko nta shingiro bifite, kubera ko itagaragaza ko "autorité de la chose jugée" ivuga ari "absolue" cyangwa "relative".

[14] Akomeza avuga ko inyandiko DRESOCECO Ltd yashyize muri dosiye zijyanye n'amategeko y'Ubufaransa, nyamara ikibazo cy'urubanza rwabaye itegeko (autorité de la chose jugée) kirebwa n'uru rubanza giteganyijwe mu ngingo ya 14 y'Itegeko ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko ikibazo cyaciweho imanza n'inkiko kitongera kugaruka mu rukiko iyo ababuranyi ari bamwe, ikiburanwa ari kimwe kandi n'impamvu z'imiburanire akaba ari zimwe.

[15] Asanga rero urubanza RCOMA 00194/2016/HC/HCC rutarabaye hagati y'ababuranyi bamwe n'ababurana ubu mu Rukiko rw'Ubujurire, kuko icyo gihe haburanaga MININTCO Ltd na Unitex Rwanda Ltd, naho ubu hakaba haburana MININTCO Ltd na DRESOCECO Ltd.

[16] Ku bijyanye n'urubanza rwa "Merk Shap et Dhome" rushingirwaho na DRESOCECO Ltd, Me Nsengumuremyi Cyridion avuga ko rwari rwerekeranye no gusaba gukuraho icyemezo cya "brevet d'invention" cyari cyatanzwe n'Urwego rwa Leta rubifitiye ububasha, gukuraho icyo cyemezo akaba ari ukwambura ubwo burenganzira uwari yagihawe, bisobanuye ko urubanza rwabaye itegeko rwagize agaciro ku bantu bose (autorité de la chose jugée absolue), atari gusa ku barubayemo ababuranyi (autorité de la chose jugée relative), ko nyamara atari cyo kiburanwa hagati ya MININTCO Ltd na DRESOCECO Ltd muri uru rubanza kuko MININTCO Ltd isaba ko hubahirizwa uburenganzira ku mutungo bwite mu by'ubwenge kubera icyemezo yahawe na RDB mu mwaka wa 2012.

UKO URUKIKO RUBIBONA

[17] Ku byerekeye agaciro k'urubanza rwaciwe ku rwego rwa nyuma (autorité de la chose jugée), ingingo ya 14 y'Itegeko N°22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y'imanza z'imbonezamubano, iz'ubucuruzi, iz'umurimo n'iz'ubutegetsi iteganya ko *" Urubanza rwaciwe ku rwego rwa nyuma ntirushobora kongera kuburanishwa bundi bushya ku mpamvu zimwe no ku kiburanwa kimwe hagati y'ababuranyi bamwe baburana ikirego kimwe"* .

[18] Nk'uko binasobanurwa n'umuhanga mu mategeko Serge GUINCHARD, avuga ko kugira ngo umuburanyi asabe ko ikirego kitakirwa ashingiye ku mpamvu y'uko hari urubanza rwaciwe ku rwego rwa nyuma, ibintu bitatu bigomba kuba byuzuye, ni ukuvuga: *impamvu zimwe, ikiburanwa kimwe, hagati y'ababuranyi bamwe baburana ikirego kimwe,* haba hari kimwe kibura, ikirego kigashobora kwakirwa, ko abacamanza baregewe bagomba kubisuzuma kugira ngo inzitizi yo kutakira ikirego ishingiye kuri iyo mpamvu ihabwe cyangwa se ibure ishingiro, bitaba ibyo urubanza rukaba rwashobora guseswa kubera kutagira aho rushingiye mu mategeko[2]. Ibyo uwo

[2] *"Pour que l'intéressé puisse opposer à la nouvelle demande la fin de non-recevoir tirée de l'autorité de la chose jugée, les trois éléments prévus par l'article 1351 du Code civil doivent être cumulativement réunis: si l'une d'entre*

muhanga yasobanuye yabishingiye ku biteganywa n'ingingo ya 1351 Code civil y'Ubufaransa bihuye n'ibiteganywa n'ingingo ya 14 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuze haruguru.

[19] Bigaragara rero mu rubanza RCOMA 00194/2016/HC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 12/10/2016, haburana MININTCO Ltd irega Unitex Rwanda Ltd, ko ikiburanwa cyari *"*Kwemeza ko sosiyete Unitex Rwanda Ltd yakoresheje mu Bushinwa ndetse yinjiza mu Rwanda ibicuruzwa bya "Wild olive black hair dye" byigana ku buryo bugaragara ibicuruzwa by'ikirango cya "KANTA Brand" cya sosiyete MININTCO Ltd, bityo Unitex Rwanda Ltd ikaba yarakoze ibikorwa bibujijwe by'ipiganwa mu bucuruzi burimo uburiganya binyuranyije n'imigirire y'ubunyangamugayo kandi bihungabanya uburenganzira bwa MININTCO Ltd nyiri ikirango *"KANTA Brand". (...)",* urwo Rukiko rwemeza ko ubujurire bwa MININTCO Ltd nta shingiro bufite, hagumaho imikirize y'urubanza RCOM 1105/TC/NYGE rwaciwe ku wa 16/02/2016 n'Urukiko rw'Ubucuruzi rwa Nyarugenge, rwemeje ko ikirego cya MININTCO Ltd nta shingiro gifite, rukayitegeka guha indishyi Unitex Rwanda Ltd.

[20] Naho muri uru rubanza MININTCO Ltd yareze DRESOCECO Ltd isaba urukiko "Guhagarika ikwirakwizwa ry'ibicuruzwa byatumijwe n'uregwa biriho ikirango " Wild Olive" gitera urujijo ku bicurizwa bifite ikirango cy'urega kizwi nka " KANTA Brand" , ikaba yo itaregwa kuba yarakoresheje mu Bushinwa ibyo bicuruzwa nk'uko biri mu rubanza RCOMA 00194/2016/HC/HCC .

[21] Urukiko rurasanga, hashingiwe ku biteganywa n'ingingo ya 14 y'Itegeko N° 22/2018 ryo ku wa 29/04/2018 ryavuzwe haruguru, DRESOCECO Ltd itakwitwaza ko hari urubanza Nº RCOMA 00194/2016/HC/HCC rwavuzwe haruguru, rwaciwe ku rwego rwa nyuma n'Urukiko Rukuru rw'Ubucuruzi, ngo ivuge ko ikirego yarezwe na MININTCO Ltd kitagombaga kwakirwa, kuko ababuranyi atari bamwe n'ikiburanwa atari kimwe mu ngingo zacyo zose, bityo kuba ikirego MININTCO Ltd yareze DRESOCECO Ltd cyarakiriwe kigasuzumwa n'inkiko zabanje bifite ishingiro. Ikigaragara ahubwo n'uko muri izo manza zombi, Urukiko Rukuru rw'Ubucuruzi rwasesenguye mu buryo butandukanye ikibazo cyo kumenya niba ibicuruzwa bifite ikirango cya "Wild Olive" gitera urujijo ku bifite ikirango cya "KANTA Brand", uru rukiko rukaba rero rukwiye gutanga umurongo kuri iki kibazo.

[22] Ku birebana n'ibyo abahagarariye DRESOCECO Ltd baburanisha bavuga ko ihame ry'agaciro k'urubanza rwabaye itegeko ridakurikizwa mu manza zerekeye umutungo bwite mu by'ubwenge, Urukiko rurasanga umwanditsi Yves FAURE bashingiraho mu gika cya 12 cy'uru rubanza, nawe yarashimangiye iryo hame, avuga kandi ko rikurikizwa no mu manza zerekeye umutungo bwite mu by'ubwenge, asobanura ko muri izo manza ikigorana kugaragaza ari ikibazo kijyanye no gusobanura ikiburanwa (objet), naho ibyerekeye ababuranyi bamwe n'impamvu zimwe byo bitagoye gusesengura. Atanga urugero rw'igihe ikiburanwa aba ari kimwe ku buryo gishobora gutuma ikirego kitakirwa hashingiwe kuri iryo hame, avuga ko iyo hari urubanza rwemeje ko habayeho kwigana ikirango cy'undi ku gicuruzwa rwabaye itegeko, ntibyemewe ko

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eux est modifié, la demande pourra faire l'objet d'un jugement. Les juges saisis de la nouvelle demande sont dans l'obligation de constater l'existence ou l'absence de ces trois éléments pour admettre ou rejeter la fin de non-recevoir, à peine de casation pour manqué de base légale". Serge GUINCHARD, Droit et pratique de la procédure civile, Dalloz, cinquième édition, p.864.

hagira umuburanyi utanga ikindi kirego bundi bushya cyerekeranye no kuba hatarabayeho kwigana icyo kirango ku gicuruzwa kimwe, ko ibyo binashoboka ku rubanza rw'inshinjabyaha n'urw'imbonezamubano zerekeye kwigana ibirango[3].

[23] Urukiko rurasanga rero, kuba uyu mwanditsi yaratanze ingero ku kiburanwa kimwe, bitavuze ko nk'uko nawe abisobanura haruguru, iyo ikiburanwa ari kimwe, bitaba ngombwa no gusuzuma niba n'ababuranyi ari bamwe, ko kandi n'impamvu ikirego gishingiyeho ari zimwe.

[24] Ku byerekeye urubanza rwaciwe na "TGI Paris, 23 févr.2007" n'urubanza rwa "Merk Shap et Dhome", DRESOCECO Ltd iburanisha ishaka kugaragaza ko ihame ry'agaciro k'urubanza rwabaye itegeko ridakurikizwa mu manza zerekeye umutungo bwite, Urukiko rurasanga, uretse kuzivuga gusa, ntazo yashyikirije uru Rukiko ku buryo hamenyekana inkiko zaziciye n'ibyemezo zazifashemo, kandi nta sesengura yazikoreye ngo igaragaze ibitekerezo izikuramo, rukaba rero ntaho rwahera ruzishingiraho muri uru rubanza.

[25] Hashingiwe ku bimaze gusobanurwa, Urukiko rurasanga ubujurire bwa DRESOCECO Ltd bugamije kugaragaza ko ikirego cya MININTCO Ltd kitagomba kwakirwa nta shingiro bufite.

b. Kumenya niba Urukiko Rukuru rw'Ubucuruzi rwaremeje ko ibicuruzwa bifite ikirango cya " Wild olive" bitera urujijo ku bicuruzwa bifite ikirango cya "KANTA Brand" mu buryo budahura n'ibiteganywa n'ingingo z'Itegeko Nº 31/2009 ryo ku wa 26/10/2009 rigamije kurengera umutungo bwite mu by'ubwenge rwashingiyeho

[26] Ababuranira DRESOCECO Ltd bavuga ko mu Rukiko rw'Ubucuruzi rwa Nyarugenge basobanuye neza ko ibicuruzwa byayo bifite ikirango cya "Wild Olive" bitigana iby'ikirango cya "KANTA Brand", kubera ko n'ubwo MININTCO Ltd ivuga ko mu miterere yabyo nta tandukaniro bifite (signes distinctifs), nyamara siko bimeze, ko n'ubwo Urukiko Rukuru rw'Ubucuruzi rwemeje ko bisa, nyamara nta sano bifitanye, kuko bidateye kimwe, ndetse n'amagambo agiye yanditseho si amwe nk'uko Urukiko rw'Ubucuruzi rwa Nyarugenge rwari rwabibonye mu gace ka 6 k'urubanza RCOM 00385/2017/TC/Nyge.

[27] Bavuga na none ko ibyo MININTCO Ltd ivuga ko ku ikarito ya " Kanta Brand" hariho umunzani, ariko kuri "Wild olive" hariho ishami rifite imbuto ebyiri naryo rijya kumera nk'umunzani ari ugucishiriza, naho ku bijyanye n'amabara, bakavuga ko n'ubwo hari amwe ajya kumera kimwe, ariko atari yose, ko kandi hari amabara abantu kimwe n'inganda bakunze kwifashisha agaragara neza, ko rero ibicuruzwa bifite ikirango cya " Wild olive" bidatera urujijo mu baguzi ku buryo babyitiranya n'ibifite icya " Kanta Brand" .

[28] Basanga rero Urukiko Rukuru rw'Ubucuruzi rutaragombaga gushingira ku biteganywa n'ingingo ya 1, iya 3, iya 4 n'iya 5 z'Itegeko nº 31/2009 ryo ku wa 26/10/2009 rigamije kurengera umutungo bwite mu by'ubwenge, kuko isura z'ibirango byombi zidahuye, ko n'ubuhamya bwatanzwe n'umukozi wa RDB nta kuri kurimo. Bongeraho ko no mu rubanza RCOMA 00194/2016/CHC/HCC haburana MININTCO Ltd yaregaga Unitex Rwanda Ltd nayo yaranguye ibicuruzwa bya "Wild Olive" mu gihugu cy'Ubushinwa rwavuzwe haruguru, urwo Rukiko rwemeje ko ibirango byombi ntaho bihuriye, ko amavuta ya " Wild olive" adatera urujijo ku

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[3] Ibyo Yves FAURE yanditse bigaragara hasi ku rupapuro rwa 4.

kirango cya “ KANTA Brand” , ariko mu rubanza rujuririrwa umucamanza ntiyagaragaje impamvu yanze gushingira ku byemejwe muri urwo rubanza.

[29] Bavuga na none ko kuba abahagarariye MININTCO Ltd biyemereye ko ikiburanwa atari igicuruzwa (produit), kuko n’izindi sosiyete nka SULFO RWANDA nayo y’Abahinde zikora amavuta ahindura umusatsi umukara, ko ikiburanwa ari ikirango (trade mark), nta kimenyetso batanga kigaragaza ko bataburana ibicuruzwa, kimwe gikorerwa mu Buhinde n’ikindi gikorerwa mu Bushinwa, ko ahubwo ikirego cyayo kigamije kwiharira isoko mu bucuruzi, ibyo bikaba binyuranyije n’ibiteganywa n’ingingo za 2, 4, 6 na 7 z’Itegeko Nº 31/2009 ryo ku wa 26/10/2009 rigamije kurengera umutungo bwite mu by’ubwenge.

[30] Ku byerekeye urubanza HCT-00-CC-CS-0829-2007 rwaciwe n’Urukiko Rukuru rwa Uganda ku wa 16/05/2008, MININTCO Ltd ivuga ko rwemeje ko ikirango “ Smart Look” ari urwiganwa rw’ikirango “ KANTA brand” , ababuranira DRESOCECO Ltd bavuga ko nta sano rufitanye n’ibiburanwa muri uru rubanza by’ikirango hagati ya “ Wild olive” na “ KANTA Brand” .

[31] Uhagarariye MININTCO Ltd avuga ko ingingo z’amategeko Urukiko Rukuru rw’Ubucuruzi rwashingiye mu guca urubanza zijyanye n’icyaburanwaga, ko rwagaragaje ikiba kigamijwe mu kurengera umutungo bwite mu by’ubwenge nk’uko kigaragara mu ngingo za 1 - 5, z’Itegeko N° 31/2009 ryo ku wa 26/10/2009 rigamije kurengera umutungo bwite mu by’ubwenge, runagaragaza impamvu hakwiye gukumirwa ihiganwa ririmo uburiganya rikorwa na DRESOCECO Ltd (ingingo ya 178) rugendeye mu bikorwa byayo byo gutera urujijo mu bucuruzi bwa MININTCO Ltd bw’amavuta asigwa mu musatsi kugira ngo ube umukara (ingingo ya 180).

[32] Avuga ko ibyo DRESOCECO Ltd ivuga ko atariyo yakoze “Wild olive” ahubwo ko yayiranguye gusa, bityo ikaba idakwiye kuregwa, ko itigeze yandikisha ikirango cyigana “KANTA Brand” nta shingiro bifite, kubera impamvu zikurikira:

- Iki kirego cya MININTCO Ltd kigamije gusaba urukiko kubahiriza umutungo bwite mu by’ubwenge wandikishijwe (enforcement of IPRS), kandi DRESOCECO Ltd yafatanywe ibicuruzwa bifite ikirango cyigana ikirango “KANTA Brand” ikaba itagaragaza ingingo n’imwe y’amategeko iyirengera ibuza ko yakurikiranwa.

- Kuba DRESOCECO Ltd ivuga ko itigeze yandikisha ikirango cyigana “KANTA Brand” ni impamvu ikomeye ishimangira ikirego cya MININTCO Ltd, ko kandi bitumvikana ukuntu DRESOCECO Ltd idashobora kwandikisha ikirango “Wild olive” ku rwego rubifitiye ububasha, ariko igaca ku ruhande ikagikoresha mu bucuruzi bwayo.

[33] Uhagarariye MININTCO Ltd akomeza avuga ko n’ubwo DRESOCECO Ltd ivuga ko ikirango “Wild olive” kitigana ikirango “KANTA Brand”, ingingo ya 136 y’Itegeko N° 31/2009 ryo ku wa 26/10/2009 ryavuzwe haruguru, ivuga ko ikirango kiba kigana ikindi iyo: 1° “gifite isura ihwanye, cyangwa isura isa ku buryo butera urujijo, n’iy’ikirango cyangwa izina ry’ubucuruzi, bisanzwe byaramamaye ku butaka bw’u Rwanda”; 2° “gifite isura ihwanye, cyangwa isura isa n’iy’ikirango cyanditswe undi muntu atunze (…) kikaba kiranga ibikorwa bimwe cyangwa imirimo imwe (…) ku buryo gishobora gutuma kwibeshya bishoboka, cyangwa kigatera urujijo”.

[34] Umuyobozi wa MININTCO Ltd avuga ko yatanze ibimenyetso by’uko amavuta asigwa mu musatsi kugirango ube umukara afite “KANTA Brand” akorerwa mu gihugu cy’Ubuhinde mu ruganda rwashinzwe na Sekuruza witwa NANOOMAL ISSADRAS MOTIWALA mu mwaka wa 1929, rukaba rufite ibyangombwa kuri icyo kirango muri icyo gihugu, ko rwatangiye rufite izina ry’uwarushinze NANOOMAL ISSADRAS MOTIWALA, ariko nyuma ruza guhindura izina rwitwa RRG, izi akaba ari impine z’amazina ya ba nyiri imigabane barwo aribo sekuru (RAMCHAND Nanoomal Jham), se (GULAB RAMCHAND Jham), na nyina (Usha GULAB Jham), ko ayo mavuta yageze muri Afrika y’Iburasirazuba n’u Rwanda rurimo mu myaka ya 1960, ko ababyeyi be bamuhaye ububasha bwo gukora ibyo amategeko yo muri ibi bihugu ateganya mu gusigasira ubucuruzi bw’ayo amavuta ubwo byari bimaze kugaragara ko butangiye gusubira inyuma kubera abayigana, maze ashinga sosiyete MININTCO Ltd yandikisha n’ikirango “KANTA Brand” mu Rwanda.

[35] Ku byerekeranye n’uko ikirango “Wild olive” cyaba kigana ikirango “KANTA Brand”, Umuyobozi wa MININTCO Ltd yifashishije agakarito k’amavuta afite ikirango cya “Wild olive” akakagereranya n’akazamo amavuta afite icya “KANTA Brand”, agaragaza ko ikirango “Wild olive” ari urwiganwa rukabije rw’ikirango “KANTA Brand” ku buryo abaguzi b’amavuta ahindura umusatsi umukara bashobora kwibeshya byoroshye bakagura aya “Wild olive” bakeka ko ari aya “KANTA Brand”, kubera impamvu zikurikira:

> Ku bijyanye n’imiterere n’amabara by’udukarito duto tubamo utundi dukarito duto cyane cumi na tubiri (12):
>
> “Wild olive” ipfunyitse mu dukarito dufite imisusire (forme) n’ingano bimwe n’ibyo udukarito twa “KANTA Brand” dupfunyitsemo;
>
> Ku dukarito twa “Wild olive” n’utwa “KANTA Brand” usangaho amabara y’umutuku, ubururu, umweru n’umuhondo kandi ayo mabara ateye ku buryo bumwe (imisusire);
>
> amagambo “KANTA Brand” afite ibara ry’umutuku yanditse mu buso (background) bw’umuhondo, ibi ni nako bimeze kuri “Wild olive”;
>
> amagambo BLACK HAIR DYE afite ibara ry’ubururu yanditse mu buso (background) bw’umweru haba kuri “KANTA Brand” no kuri “Wild olive”;
>
> amagambo MADE IN INDIA kuri “KANTA Brand” na MADE IN CHINA kuri “Wild olive” yanditse mu ibara ry’ubururu mu buso (background) bw’umuhondo;
>
> Ikirango cya “KANTA Brand” kigaragara mu buso bw’umweru kikaba kiri hagati mu ruhande rwo hejuru;
>
> kuri “KANTA Brand” no kuri “Wild olive” uhasanga amagambo “BUY ORIGINAL” y’ibara ry’ubururu yanditse mu buso bw’umuhondo, mu nguni y’ibumoso hejuru.
>
> Ku bijyanye n’imiterere n’amabara by’udukarito duto cyane tubamo agacupa kamwe kamwe

Ku ruhande rumwe:

> kuri “KANTA Brand” no kuri “Wild olive” uhasanga amagambo “BUY ORIGINAL” y’ibara ry’ubururu yanditse mu buso bw’umuhondo, mu nguni y’ibumoso hejuru;

Amagambo “KANTA Brand” afite ibara ry’umutuku ryanditse mu buso (background) bw’umuhondo, ibi ni nako bimeze kuri “Wild olive”;

Amagambo BLACK HAIR DYE afite ibara ry’ubururu bwanditse mu buso (background) bw’umweru haba kuri “KANTA Brand” no kuri “Wild olive”;

Ikirango cya “KANTA Brand” kigaragara mu buso bw’umweru kikaba kiri hagati, ni nako bimeze kuri “Wild olive”;

Kuri “Wild olive” uhasanga “NET: 4.5 g” mu mwanya umwe n’uwo usangaho “Nt: 4.5 g” kuri “KANTA Brand”, ibyo kandi biri mu ibara ry’ubururu ku dukarito twombi;

Ku misozo yo hasi y’udukarito twa “KANTA Brand” n’utwa “Wild olive” uhasanga amagambo yanditse mu ibara ry’ubururu agize imirongo ibiri kandi ayo magambo ari mu buso bw’ubururu;

Ku rundi ruhande:

[36] Kuri “KANTA Brand” no kuri “Wild olive” uhasanga amagambo “NEW PACK” afite ibara ry’umuhondo yanditse mu buso bw’ubururu bufite ishusho y’inyenyeri;

uruhande ruteganye n’ururiho amagambo “Gives your grey Hair a Youthful & Natural Black Shine” yandikishijwe ibara ry’umuhondo

Ku bijyanye n’imiterere y’uducupa: uducupa twa “Wild olive” duteye ijana ku ijana nk’uducupa twa “KANTA Brand” ndetse n’ibirango biriho (étiquettes) birasa nk’uko bigaragara ku dukarito twatwo.

[37] Uhagarariye MININTCO Ltd avuga ko abahanga mu mategeko yerekeye umutungo bwite mu by’ubwenge M. F. Maraiss, na T. Lachacinski, mu gitabo cyabo “Application des droits de propriété intellectuelle”, in OMPI, Recueil de jurisprudence, 2008, p. 65, bagaragaza ko ufite uburenganzira ku kirango yandikishije ku rwego rubifitiye ububasha ari we wenyine wemerewe gucuruza ibicuruzwa bigaragazwa n’icyo kirango mu ifasi yacyandikishijemo (principe de territorialité).

[38] Yongeraho ko n’urubanza HCT-00-CC-CS-0829-2007 rwaciwe n’Urukiko Rukuru rwa Uganda ku wa 16/05/2008, rwemeje ko ikirango “Smart Look” ari urwiganwa rw’ikirango “KANTA Brand”, kuko n’ubwo amazina agize ibyo birango atandukanye, imisusire yabyo isa (aspect visuel).

[39] Ku byo abahagarariye DRESOCECO Ltd bavuga ko MININTCO Ltd idashaka ihiganwa, ko ishaka kwiharira isoko ryo gucuruza amavuta asigwa mu musatsi ngo ube umukara, ngo kuko ihiganwa ririmo uburiganya rigaragazwa na “imitation, parasitisme, dénigrement”, cyangwa “désorganisation de l’entreprise”, ngo ikaba kandi itumva niba iki kirego cyerekeye kwigana ikirango (action en contrefaçon) cyangwa ubucuruzi burimo uburiganya (action en concurence déloyale), Me Nsengumuremyi Cyridion avuga ko MININTCO Ltd idashaka kwiharira isoko, ko n’ikimenyimenyi hari abandi bacuruza amavuta ahindura umusatsi umukara ku isoko ry’u Rwanda, hakaba nta kibazo na kimwe bigeze bagirana nayo, barimo Sulfo Rwanda Industries ikoresheje ibirango byayo ”BEAUTE” na ”BLACK PEARL” byagaragarijwe uru Rukiko, kuko hagati y’aya masosiyete yombi hakorwa ihiganwa riciye mu mucyo ritarimo uburiganya, naho ihiganwa DRESOCECO Ltd yo yifuza ari iririmo uburiganya, kuko ibirango by’ibicuruzwa byayo

ari urwiganwa rw'icya MININTCO Ltd ku bicuruzwa bimwe ku isoko rimwe, ikaba ishaka kuyuririraho mu buryo bw'uburiganya kugira ngo yigarurire isoko ryayo igendeye ku mabara n'ibindi bigize ikirango "KANTA Brand".

UKO URUKIKO RUBIBONA

[40] Uru rubanza rukomoka ku bicuruzwa by'amavuta ahindura umusatsi umukara DRESOCECO Ltd yatumije mu Bushinwa bifite ikirango cya "Wild olive", bifatirwa muri Gasutamo kubera ko MININTCO Ltd ivuga ko icyo kirango gitera urujijo ku mavuta ahindura umusatsi umukara icuruza ava mu gihugu cy'Ubuhinde afite ikirango cya "KANTA Brand" ifiteho uburenganzira bwihariye ihabwa n'uko yacyandikishije muri RDB, ko rero DRESOCECO Ltd ikora ubucuruzi burimo uburiganya, igasaba ko urukiko rwayitegeka guhagarika ikwirakwizwa ry'ibyo bicurizwa, ibyafatiriwe bigasenywa.

[41] Ingingo ya 178 y'Itegeko Nº 31/2009 ryo ku wa 26/10/2009 rigamije kurengera umutungo bwite mu by'ubwenge iteganya ko "Hejuru y'uburindwe bw'umutungo bwite mu by'ubwenge buteganywa n'iri tegeko, igikorwa cyose cy'ubucuruzi, cy'inganda, cyangwa cy'ubukorikori kirindwa ipiganwa ririmo uburiganya".

[42] Ku byerekeye ibikorwa by'ipiganwa birimo uburiganya, ingingo ya 180 y'iryo Tegeko iteganya ko "Gifatwa nk'igikorwa cy'ipiganwa ririmo uburiganya igikorwa cyangwa imigenzereze mu mirimo y'inganda cyangwa y'ubucuruzi, bitera cyangwa bikaba bishobora gutera urujijo, mu buryo ubwo ari bwo bwose, mu kigo cy'ukora imirimo imwe cyangwa ibicuruzwa bimwe nk'iby'undi cyangwa umuntu cyangwa ibikorwa bye cyane cyane mu rwego rw'ibyatunganyijwe cyangwa imirimo itangwa n'ikigo.

Urujijo rushobora kuba kuri ibi bikurikira:

1º ikirango cyandikishijwe cyangwa kitandikishijwe ;

2º izina ry'ubucuruzi ;

3º ikimenyetso cyihariye cy'ubucuruzi ;

4º isura y'icyatunganyijwe cyangwa y'umurimo ;

5º imiterere y'icyatunganyijwe ;

6º ukwamamara cyangwa ukumenyekana kw'akarango mpisho ; "

[43] Na none ingingo ya 179 y'iryo Tegeko iteganya ko "Umuntu wese urenganyijwe cyangwa ushobora kurenganywa n'igikorwa cy'ipiganwa ririmo uburiganya ashobora kuregera urukiko rubifitiye ububasha, iyo habaye ibikorwa by'ubuhemu mu rwego rw'inganda n'ubucuruzi, aho umunyenganda, umucuruzi, ukora imirimo yo gutunganya, umunyabukorikori, amutesha agaciro, amwambura abaguzi cyangwa se akabangamira ubushobozi bwe bwo gupiganwa. Urukiko rubifitiye ububasha ruhagarika icyo gikorwa kandi byaba ngombwa rukagena indishyi".

[44] Izi ngingo zumvikanisha ko hejuru y'uburindwe bw'umutungo bwite mu by'ubwenge, igikorwa cyose cy'ubucuruzi, cy'inganda, cyangwa cy'ubukorikori kirindwa ipiganwa ririmo uburiganya, ko umuntu wese urenganyijwe cyangwa ushobora kurenganywa n'igikorwa

cy'ipiganwa ririmo uburiganya ashobora kuregera urukiko rubifitiye ububasha kugira ngo ruhagarike icyo gikorwa.

[45] Ku byerekeye ibishingirwaho kugira ngo hamenyekane niba hari urujijo hagati y'ibirango bibiri, umuhanga mu mategeko Deborah E.Bouchoux, avuga ko inkiko zimwe zo muri Leta Zunze Ubumwe z'Amerika zagiye zishyiraho ibigomba gushingirwaho mu kugaragaza ko hashobora kuba harabayeho kwica amategeko hagati y'ibirango bibiri, ko muri rusange ikintu kimwe kitihagije ubwacyo kugira ngo hamenyekane ko harimo koko urujijo, ko ahubwo inkiko zigerageza gusesengura zikareba niba hari impamvu yaba ituma haba urujijo. Zimwe muri izo mpamvu ni izi[4]

- Ugusa kw'ibirango ku buryo bugaragara, mu buryo byumvikana mu majwi no mu buryo byanditswe mu bucuruzi ;
- Ugusa kw'ibicuruzwa na servisi zitangwa hashingiwe ku birango ;
- Ugusa kw'imimiyoboro ikoreshwa mu bucuruzi ;
- Uburyo bukoreshwa mu bucuruzi: hari abagura batabanje gushishoza cyane, hari n'abagura biturutse ku bumenyi bafite ku bicuruzwa runaka ;
- Ingufu ikirango gisanganywe ;
- Kuba hari ubundi higeze kubaho urujijo ku kirango ;
- Umubare n'ubwoko buhari bw'ibirango bisa cyangwa se ibicuruzwa bisa ;
- Igihe ibirango bimaze bikoreshwa hamwe bidatera urujijo.

[46] Nk'uko bigaragara mu buhamya bwatanzwe ku wa 19/07/2017 na Mbaraga Blaise, impuguke ya RDB, yagaragaje ibyo bashingiraho mu gusuzuma ikirango mbere y'uko cyandikwa ari byo: kureba uwandikishije bwa mbere ikirango, akaba ari we ufite uburenganzira ku kirango cy'ubucuruzi (first to file principle), ihame ry'itandukanya ry'ibirango (distinctivness principle), ihame ry'uburiganya (not imitativeness principle), ihame ryo gutera urujijo (not confucting principle) n'icyiciro cy'ikirango gikoresha mu bikorwa bitandukanye, harimo ibicuruzwa cyangwa sevisi (nice classification of good and service).

[47] Iyo mpuguke yasesenguye kandi ikirango cya "Wild Olive" n'icya "KANTA Brand", isanga "Wild Olive" itanditswe mu magambo cyangwa mu isura muri RDB, ariko "KANTA Brand" yaranditswe ku wa 15/02/2012 kuri RW-M100004413 yahinduwe ikaba RW/T/2012/413.

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[4] *"Divers tribunaux, dans différentes circonscriptions judiciaires ont établi des tests pour déterminer la probabilité de confusion entre deux marques. En général, aucun facteur n'est à lui seul déterminant; les tribunaux examinant toutes les circonstances en tentant de déterminer l'existence éventuelle d'une violation. Généralement, pour déterminer s'il y a contrefaçon, ils prennent en considération les facteurs suivants: - la similitude des marques quant à l'apparence, au son, à la connotation et à l'impression commerciale; - la similitude des biens ou services proposés au titre des marques; - la similitude des réseaux commerciaux par lesquels transitent les biens ou services proposés; - les conditions de réalisations de ventes, à savoir: les achats sont-ils faits sur une impulsion ou après un examen approfondi par les acheteurs éclairés? - la force de la marque antérieure; - l'existence de la confusion antérieure effective; - le nombre et la nature des marques similaires sur des biens similaires; - la durée pendant laquelle l'exploitation des marques a été comcomittante sans confusion", DEBORAH E.BOUCHOUX, La propriété intellectuelle, le droit des marques, le droit d'auteur, le droit des brevets d'invention et des secrets commerciaux, Nouveaux Horizons, p. 97.*

Ku byerekeye amagambo akubiye mu birango, yavuze ko “KANTA Brand" na “Wild Olive“ zitandukanye kandi zombi zishobora gukoreshwa ku isoko kandi “Wild“ ikanakirwa muri Ofisi y’Umwanditsi mu magambo gusa ariko “Olive“ ikangirwa kuko ari izina rusange.

[48] Ku byerekeye amagambo “black hair dye“, yasobanuye ko ari amagambo rusange umuntu wese ashobora gukoresha kandi atemewe kwandikishwa nk’ikirango, naho ku isura y’ibirango avuga ko byombi bisa hakurikijwe imirongo, amabara n’imimerere yabyo, ko “dominant test of similarity“ iri hejuru cyane kuko byombi bifite imirongo isa 100%, n’amabara asa 100%, ko ukuyeho amagambo hagasigara isura (appearence), bigora umuguzi uwari wese kubitandukanya, ko kandi ibyo birango byombi biri mu byiciro bimwe ari byo *“bleaching preparation and other substances for laundry use, cleaning, polishing, scouring and abrasive preparation, soaps, perfumery, essential oil, cosmetics, hair lotions, dentifrices“,* cyane cyane ko ari “hair dye“.

[49] Urukiko Rukuru rw’Ubucuruzi, rushingiye kuri iri sesengura ry’impuguke ya RDB, rwemeje ko ikirango “Wild Olive“ kiri ku bicuruzwa byatumijwe na DRESOCECO Ltd ari urwiganwa rw’ikirango cya “KANTA Brand” cyandikishijwe muri RDB na MININTCO Ltd, kubera ko ibicuruzwa byombi bifite isura isa (appearence) ndetse n’ibirango bifite isura zisa cyane (dominant test of similarity), ko kandi imirongo igize ikirango cya “KANTA Brand” imaze kwamamara cyane nk’akarango mpisho (a celebrity or well-known fictional mark), bityo ko nta wundi ugifiteho uburenganzira atari MININTCO Ltd, ko n’amabara y’umuhondo, ubururu n’umutuku ari ku birango byombi asa cyane (appearence and positionning) kandi bitagomba gusa.

[50] Urukiko rurasanga kuba Urukiko Rukuru rw’Ubucuruzi rwarashingiye kuri ubwo buhamya bw’umuhanga nta kosa rwakoze, kuko ari ikimenyetso cyemewe n’ingingo ya 76 y’Itegeko Nº15/2004 ryo ku wa 12/06/2004 ryerekeye ibimenyetso mu manza n’itangwa ryabyo, iteganya ko *“ubuhamya bw’abahanga ni ubugamije guha urukiko ibisobanuro bishingiye ku bumenyi kimwe n’umwanzuro urenze ubumenyi busanzwe bw’umucamanza mu kazi ke bitewe n’uko ibiburanwa bishingiye ku buhanga bwihariye“.*

[51] Urukiko rurasanga kandi umwanzuro wagezweho n’impuguke ya RDB uhuje n’ukuri, hanashingiwe ku byo rwagaragarijwe n’Umuyobozi wa MININTCO Ltd igihe cy’iburanisha, kuko narwo rwiboneye ko udukarito turimo amavuta ahindura umusatsi dufite ikirango cya “Wild Olive“ acuruzwa na DRESOCECO Ltd dusa cyane n’utw’amavuta nk’ayo afite ikirango cya “KANTA Brand” acuruzwa na MININTCO Ltd, haba ku mabara y’umuhondo, ubururu n’umutuku, amagambo yanditseho n’uburyo yanditse, n’imirongo ishushanyijeho, ku buryo umuguzi udasobanukiwe neza yakwitiranya ibicuruzwa bifite ibyo birango byombi.

[52] Urukiko rurasanga rero kuba DRESOCECO Ltd itumiza mu Bushinwa ibicuruzwa bifite ikirango cya “Wild Olive“ kigaragara ko ari urwiganwa rw’ikirango cya “KANTA Brand” cyandikishijwe muri RDB na MININTCO Ltd, ikabicuruza mu Rwanda aho MININTCO Ltd yemerewe gucururiza ku kirango cya “KANTA Brand”, bigize igikorwa cy’ipiganwa ririmo uburiganya mu mirimo y’ubucuruzi bwa MININTCO Ltd, kuko gitera urujijo ku kirango kimenyerewe cya “KANTA Brand” ku buryo abaguzi bashobora kwitiranya ibyo bicuruzwa byombi, bikaba bibangamiye ubucuruzi bwayo.

[53] Urukiko rurasanga ibyo DRESOCECO Ltd ivuga ko itiganye ikirango cya “ KANTA Brand” nta shingiro bifite, kubera ko yarezwe ko ikwirakwiza ibicuruzwa itumiza mu mahanga

biriho ikirango “ Wild Olive” gitera urujijo ku bicuruzwa bya MININTCO Ltd bifite ikirango cya “ KANTA Brand” , ntabwo yarezwe ko ari yo yacyiganye, ndetse n’ibyo ivuga ko yaranguye ibicuruzwa mu Bushinwa atari yo ibikora nta gaciro byahabwa, kuko ibyo ikora byo gutumiza ibicuruzwa bifite ikirango cya “ Wild Olive” kigana icya “ KANTA Brand” ni byo biteganywa n’itegeko ko bigize ipiganwa ririmo uburiganya.

[54] Urukiko rurasanga na none kuba DRESOCECO Ltd ivuga ko yatumije ibicuruzwa bifite ikirango cya “ Wild Olive” ari uko imaze kubona urubanza RCOMA 00194/2016/HC/HCC rwaciwe n’Urukiko Rukuru rw’Ubucuruzi rwavuzwe haruguru rwemeje ko ikirango cya “ Wild Olive” kidatera urujijo ku cya “ ’KANTA Brand” , ikanabishingiraho isaba kurenganurwa nk’uko Unitex Rwanda Ltd yarenganuwe, bitafatwaho ukuri kubera ko, nk’uko bigaragazwa n’amasezerano y’ubuguzi (order contract) ari muri dosiye, DRESOCECO Ltd yaranguye ibyo bicuruzwa ku wa 29/09/2016, urubanza rucibwa ku wa 12/10/2016, bikaba rero bigaragara ko yabiguze mbere y’urwo rubanza, kandi nk’uko byagaragajwe haruguru “ Wild Olive” ni urwiganwa rwa “ KANTA Brand” nk’uko byemejwe mu rubanza rwajuririwe.

[55] Urukiko rurasanga, hejuru yo kuba MININTCO Ltd ifite uburenganzira bwihariye ku kirango cyayo “KANTA Brand” ihabwa n’Itegeko Nº 31/2009 ryo ku wa 26/10/2009 ryavuzwe haruguru, igomba no kurindwa ipiganwa ririmo uburiganya, bityo DRESOCECO Ltd ikaba igomba guhagarika itumizwa ry’ibicuruzwa bifite ikirango cya “ Wild Olive” no kubicururiza mu Rwanda nk’uko byemejwe n’Urukiko Rukuru rw’Ubucuruzi.

[56] Harebwe imanza zaciwe mu bindi bihugu, icyemezo nk’iki cyafashwe mu rubanza rwaciwe ku wa 11/04/2018 n’Urukiko rw’ubucuruzi rwa Versaille, urugereko rwa kabiri, mu gihugu cy’ubufaransa aho sosiyete 3DVIA yahindutse Dassault Systemes yareze sosiyete La SAS Wanadev, urwo rukiko rwemeza ko ibikorwa bya La SAS Wanadev bigize ipiganwa ririmo uburiganya ryakorewe Dassault Systemes kuri “Logiciel” yakoze yitwa “HomeByMe”, kuko yayiganye imikorere, ishusho ndetse n’ibiyigize ku buryo bitera urujijo ikora iyayo yitwa “Wanaplan” yagurishije sosiyete Adéo, maze rwemeza ko iyo migenzereze igize ihiganwa ririmo uburiganya (concurrence déloyale), rutegeka La SAS Wanadev kwishyura Société Dassault Systemes indishyi zingana na 50.000 Euros, runayitegeka guhagarika gukoresha iyo “logiciel” itera urujijo, itabikora mu gihe cy’iminsi 30 urubanza rusomwe, igacibwa 1.000 euros buri munsi y’igihano, kandi urubanza rugashyirwa ku rubuga (website) rwa Dessault Systemes.

[57] Hashingiwe ku ngingo za 178-180 z’Itegeko Nº 31/2009 ryo ku wa 26/10/2009 ryavuzwe haruguru no kubimaze gusobanurwa, Urukiko rurasanga ubujurire bwa MININTCO Ltd kuri iyi ngingo nta shingiro bufite, bikaba rero atari ngombwa gusuzuma niba yahabwa indishyi z’igihombo ivuga ko yagize.

c. Kumenya niba ibicuruzwa bya DRESOCECO Ltd byafatiriwe na Gasutamo byasenywa

[58] Abahagarariye MININTCO Ltd bavuga ko uru Rukiko rukwiye kwemeza ko ubujurire bwa DRESOCECO Ltd nta shingiro bufite, ko ikirango “Wild olive” ari urwiganwa rw’icya “KANTA Brand”, maze rugategeka ko ibicuruzwa bifite ikirango cya “Wild olive” bitera urujijo mu baguzi mu kubitandukanya n’ibicuruzwa by’amavuta asigwa mu misatsi kugira ngo ube umukara bifite ikirango cya “KANTA Brand” bya MININTCO Ltd, rukanemeza ko bitemewe gucururizwa ku butaka bw’u Rwanda, rugategeka ko ibyafatiriwe muri Gasutamo bisenywa.

[59] Ababuranira DRESOCECO Ltd bavuga ko irimo gukorerwa akarengane, kuko yaranguye amavuta afite ikirango cya “Wild Olive“yumva ko nta kosa irimo gukora, ko kandi n’iyo urukiko rwasanga icyo gicuruzwa ari urwiganwa rutera urujijo, uretse ko atari byo, yahabwa ibyo bicuruzwa byafatiriwe muri Gasutamo, kuko nta mugambi wo kubangamira MININTCO Ltd yari ifite.

UKO URUKIKO RUBIBONA

[60] Urukiko rurasanga ibyo MININTCO Ltd isaba ko ibicuruzwa bya DRESOCECO Ltd byafatiriwe na Gasutamo byasenywa, no mu Rukiko Rukuru rw’Ubucuruzi yari yabisabye ibishingiye ku ngingo ya 258 y’Itegeko Nº 31/2009 ryo ku wa 26/10/2009 ryavuzwe haruguru, ariko iyi ngingo yerekeranye no *“gusaba no gufata ibyemezo bikosora birebana n’umutungo mu by’inganda“*, kandi nk’uko byasobanuwe haruguru, icyo MININTCO Ltd ikurikiranye kuri DRESOCECO Ltd si uko ifite uruganda rukora ibiciruzwa byiganye ikirango cyayo ikwirakwiza (action en contrefaçon), ahubwo iyikurikiranyeho ibikorwa by’ipiganwa ririmo uburiganya (concurrence déloyale), ikaba rero ntaho yahera isaba ko ibicuruzwa byayo bisenywa, kubera ko ingingo ya 179 y’Itegeko Nº 31/2009 ryo ku wa 26/10/2009 yibukijwe haruguru iyemerera gusa gusaba guhagarikisha igikorwa cy’ipiganwa ririmo uburiganya, no kuba yagenerwa indishyi mu gihe izisabye, ariko muri uru rubanza ntazo MININTCO Ltd yasabye.

[61] Urukiko rurasanga rero, kuba DRESOCECO Ltd icururiza mu Rwanda ibicuruzwa byayo bifite ikirango cya “Wild Olive“, bigize igikorwa cy’ipiganwa ririmo uburiganya, kubera ko bitera urujijo ku bicuruzwa bya MININTCO Ltd bifite ikirango cya “KANTA Brand”, ikaba rero igomba guhagarika ubwo bucuruzi nk’uko Urukiko Rukuru rw’Ubucuruzi rwabyemeje mu rubanza rwajuririwe.

d. Ku byerekeye amafaranga yo gukurikirana urubanza n’igihembo cya Avoka

[62] Ababuranira DRESOCECO Ltd bavuga ko bashingiye ku ngingo ya 111 y’Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, MININTCO Ltd igomba kuyishyura amafaranga y’igihembo cya Avoka angana na 5.000.000Frw n’andi 6.000.000Frw yishyuwe umuhanga yiyambaje ngo ayikorere raporo ku gihombo yagize.

[63] Uhagarariye MININTCO Ltd avuga ko amafaranga asabwa na DRESOCECO Ltd nta shingiro afite**.**

UKO URUKIKO RUBIBONA

[64] Ingingo ya 111 y’Itegeko Nº 22/2018 ryo ku wa 29/04/2018 ryerekeye imiburanishirize y’imanza z’imbonezamubano, iz’ubucuruzi, iz’umurimo n’iz’ubutegetsi, iteganya ko ikirego cy’amafaranga y’ikurikiranarubanza ari igishamikiye ku kirego cy’iremezo kigamije kwishyuza ibyakoreshejwe mu rubanza, ko kiburanishwa rimwe n’ikirego cy’iremezo.

[65] Urukiko rurasanga nta mafaranga y’igihembo cy’Avoka cyangwa ay’ikurikiranarubanza DRESOCECO Ltd igomba kugenerwa, kuko ubujurire bwayo nta shingiro bufite.

III. ICYEMEZO CY’URUKIKO

[66] Rwemeje ko ubujurire bwa DRESOCECO Ltd nta shingiro bufite ;

[67] Rwemeje ko imikirize y’urubanza RCOMA 00236/2017/CHC/HCC rwaciwe n’Urukiko Rukuru rw’Ubucuruzi ku wa 16/11/2017 idahindutse;

[68] Ruvuze ko amafaranga y’ingwate y’amagarama yatanzwe na DRESOCECO Ltd ahwanye n’ibyakozwe mu rubanza