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## Protection Of Rights Of Exclusive Right Owners Based On Law Number 20 Of 2016 Concerning Marks And Geographical Indications

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**Abstract:** A brand is more than just a product, because it has a dimension that differentiates it from other similar products. The differentiation must be rational and tangible with the performance of a product from a brand or more symbolic, emotional, and invisible that represents a brand. Based on Trademark and Indication Law Geographically, the State has provided 2 (two) legal protections for owners of exclusive trademark rights, namely preventive protection and repressive protection. Preventive protection, namely protection before a criminal act or violation of law occurs against a brand and a well-known mark. Repressive protection is legal protection for brands when there is a trademark crime or violation of trademark rights. A brand will only be valuable if it has exclusive rights. Without exclusive rights, people will be free to imitate and counterfeit other people's brands. This situation will be detrimental to both parties, namely brand owners on the one hand and at the same time the wider community. Thus, one of the main functions of granting exclusive rights by law to brand owners is for the upbuilding and refreshing role system trading free Which clean as well as competition business honest and healthy, so that the interests of the wider community (consumers) can be protected from fraudulent acts and bad faith. Several things can cause legal problems in the field of marks due to the use of domain names on the internet network. First, due to third parties Which in a manner on purpose register A Name domain Which he thinks it will be in great demand by other people. It can be stated that there are three forms of trademark infringement, namely *Trademark piracy* (brand piracy), *Counterfeiting* (counterfeiting), And *Imitations of labels and packaging* (imitation label And a packaging product). To violation brand in on party Which harmed can file a civil lawsuit with the Commercial Court or by non-litigation means, namely alternative dispute resolution institutions and can make a close approach criminal.

### Introduction

Intellectual property rights (hereinafter referred to as HKI) are attracting attention at legal academics, especially in the field of S studies Legal Studies, so that the perspective of legal aspects of intellectual property rights becomes more dominant among legal scientists. This dominance can be seen in the science education curriculum law in Faculty Law. Right riches intellectual This entered as a mandatory curriculum. The study of intellectual property rights covers many things, ranging from copyrights, patents, brands, industrial designs, circuit layout designs and circuits. integrated into varieties plant. Intellectual products whose "ownership" is not registered, often bring polemics. Thus, in order to overcome emergence This polemic requires public knowledge in the form of protection law. Regarding brands, basically brands function as a differentiator between a certain product or service with other goods or services. This function becomes one of the elements of existing brand understanding. Right ec lucif \_ on something brand will arise And given by country to mark owners who have submitted applications for registration and then approved for registration by the Directorate of Marks and Geographical Indications Intellectual Property Directorate Ministry of Law and Human Rights.

### Method Study

The type of research used is normative legal research. Normative legal research or library research, namely reviewing document studies, using various secondary data such as legal theory, statutory regulations, court decisions, legal principles, and in the form of expert opinions law.

## RESULTS AND DISCUSSION

### A. Overview About Brand

The definition of a brand in Article 1 point 1 of Law Number 20 of 2016 concerning Marks and Geographical Indications (hereinafter referred to as the Trademark and GI Law) is: "A brand is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, arrangement of colors, in form 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination from 2 (two) or more element the For differentiate goods and/or services produced by persons or legal entities in trading activities of goods and/or services".

According to Keller: "A brand is more than just a product, because it has a dimension that differentiates it from other similar products. This differentiation must be rational and visible with the performance of a product from a brand or more symbolic, emotional and invisible that represents a brand. Indonesia currently adheres to a constitutive system or *first to file* in giving registration something brand. System *firsts to files* is registration a mark will only be given to the party who first applied for the registration of a mark, and the state will not grant registration for a mark which is similar in principle or in its entirety to the mark Which more formerly register. System *firsts to files* based on Chapter 3 Brand Law and IG ie : "Brand rights are obtained after the mark is registered". Licensing is the granting of permission or rights to other people to use their registered mark. Some things that need to be considered related to trademark licensing, among others:

- a. The license agreement applies throughout the territory of the Republic of Indonesia, unless otherwise agreed;
- b. Agreement licence No can more long from period time protection registered mark;
- c. The license agreement must be recorded at the Directorate General of Intellectual Property (DJKI) in the General Register of Marks and announced in the Official Mark Gazette;
- d. Registered trademark owners can still use it themselves or provide licenses to other third parties. except when agreed other:
- e. Agreement licence forbidden load provision Good Which direct nor may indirectly have negative consequences for the economy country;
- f. The license agreement is also prohibited from containing any restrictions that impede the ability of the Indonesian people to master and develop technology in general;
- g. The recording of the license agreement must be rejected by the Directorate General of Intellectual Property, and notified in writing to the brand owner or licensee. if the license agreement referred to contains the provisions as stated in points five and six in on;
- h. The license agreement that has been recorded and announced in the Official Mark Gazette is binding on the parties. and to parties third;
- i. If happen cancellation Which hooked up with brand Which has licensed, the licensee is still entitled to use the mark until limit the time specified in the agreement, and royalty payments must be transferred to the rightful owner of the licensed mark

Article 83 of the Law on Marks and GI states that owners of registered marks can file a lawsuit against other parties who unlawfully use a mark that is similar in principle or in its entirety for similar goods or services in the form of a claim for compensation, and/or termination of all actions related to use of the mark .<sup>3</sup>

According to Chapter 93 UU Brand And IG, settlement dispute can alternative dispute resolution is carried out : "In addition to the settlement of lawsuits as referred to in Article 83 the parties may resolve disputes through arbitration or alternative dispute resolution". Based on Article 100 and Article 102 of the Law on Marks and GI, they provide threats law criminal to Who just Which with on purpose And or without the right to use someone else 's brand registered.

### B. The Protection Provided by the State of Indonesia Against Owners of Exclusive Trademark Rights According to the Law Number 20 Years 2016

Based on the Law on Trademarks and GIs, the State has provided 2 (two) legal protections for owners of exclusive trademark rights, namely preventive protection and repressive protection . Preventive protection is protection before a crime occurs violation law to brand And brand famous. In matter This rely heavily on trademark owners to register their trademarks in order to receive legal protection (system constitution if). Protection repressive is Protection law to brand when there is a trademark crime or violation of trademark rights. The legal protection repressive This given if has happen violation brand (including brand famous). In matter This role institution Justice And apparatus enforcer other laws such as the police, civil servant

investigators (PPNS), and the prosecutor's office are urgently needed. Registered trademark owners receive legal protection for trademark infringement either in the form of claims for damages or based on criminal lawsuits through law enforcement officials law . The state has also provided a period of protection for brand exclusive rights based on the provisions of Article 35 of the Trademark Law and GI, owners of brand exclusive rights. registered get protection law For period time ten years from the date of receipt and that period can be extended. This is what distinguishes it from other IPRs which cannot be extended. Philosophically, a brand as part of a company's *goodwill* has high economic value, so it should be given an extension regarding its legal protection. Conversely , when a mark cannot be used for three consecutive years it can be considered that the mark has been deleted in the list of marks submitted by the party concerned interested. Another protection from the state for exclusive trademark rights is that exclusive trademark rights can only be obtained by being registered on the basis of a request submitted by a good faith brand owner. This is confirmed in the provisions of Article 21 paragraph (3) of the Trademark and GI Law which reads : "Application is rejected if submitted by an applicant with the intention not good".

In the elucidation section of Article 21 paragraph (3) of the Trademark and GI Law it is emphasized that: "Which meant with "Applicant Which have faith No Good" is an Applicant who should be suspected in registering his mark has the intention to imitate, plagiarize, or follow another party's mark for the sake of his business causing conditions of unfair business competition, to deceive, or to mislead consumer". Trademark protection is not only limited to ordinary marks but applies to all types of marks, giving rise to so many questions that arise in connection with the term well-known mark, what is meant by a well-known mark, is there a definition of a well-known mark, what are the criteria for a well-known mark, and how is legal protection for famous brand owners. A well-known brand is a brand that has a high reputation, has great appeal to society, has influence and high suggestive power because of Already known in a manner wide go beyond boundaries country so that have high value. To reach the level as a well-known brand requires a process Which No short And must through series Work hard, study and development ( *research and development* ) in various fields such as development And modification product goods And service, field studies marketing products, finance, production technology, consumer behavior research, distribution and other related fields . The arrangement of well-known marks in Article 21 paragraph (1) letters b and c of Law Number 20 of 2016 concerning Marks and Geographical Indications, stipulates that:

"Pleading rejected If Brand the have equality in essence or in its entirety with:

- b. Famous brand owned by another party for similar goods and/or services;
- c. Well-known marks belonging to other parties for goods and/or services that are not of the same type that meet certain requirements.

In the Law on Trademarks and GI, what is meant by equality in essence is a similarity caused by the presence of a dominant element between one brand and another. with other brands, giving rise to the impression of similarities, either regarding the form, method of placement, method of writing or combination of elements, as well as similarities in speech sounds, contained in the brand. Application rejection Which have equality on the main thing is or whole with brand famous owned by party other For goods and/or service Which kind carried out by taking into account the general knowledge of the public regarding the mark in the field of business concerned. In addition, the brand reputation is also considered the Which obtained Because promotion Which intense And massive, investment in a number of country in world Which done by owner, And accompanied by proof of trademark registration in several countries. If this is not considered sufficient, the Commercial Court may order an independent institution For do survey To use obtain conclusion about whether or not the brand is the basis for rejection. Regarding the possibility of doing so survey by something institution Which characteristic independent ( *independent* ) to obtain conclusions about whether or not the brand in question is known

Furthermore, Article 21 paragraph (2) letter a of the Trademark and GI Law regulates: "Pleading rejected If Brand the is or resembling the name or abbreviation of a famous person's name, a photo, or the name of a legal entity owned by another person, except with written approval from that person entitled".

### **C. Analysis of Decision Number 78/Pdt.Sus-Merek/2019/PN.Niaga.Jkt.Pst.**

The aggrieved party filed a trademark infringement suit against the Defendant I And Defendant II Which has do violation brand that is by selling and distributing products branded “ *Dream Color I* ” which are similar in principle or in whole to the brand “ *Dream Color I* ” which was registered by the plaintiff since November 7, 2016 until the case going on. In the case above, the brand “ *Dream Color I* ” sold and distributed by the defendants has similarities in principle or in whole with the registered brand “ *Dream Color I* ” owned by the Plaintiff based on the evidence and statements submitted by the parties.

Whereas according to Exhibit P-1 in the form of Brand Certificate “ *Dream Color I* ” Registration Number IDMO00644336 it is proven that the Plaintiff has exclusive rights as the legal owner of the brand, “ *Dream Color I* ” No. IDMO00644336, class of goods 9: *contact lenses* (eye lenses); *contact lens* case (eye lens); eyeglass frames; glasses's case. So that the brand “ *Dream Color I* ” has been protected by the Trademark and GI Act, since November 7, 2016. It can be seen that the plaintiff managed to prove that the mark has been registered so that it has exclusive rights to the brand “ *Dream Color I* ” and therefore petitum number 2 The Plaintiff deserves to be granted by “Declaring that the Plaintiff is the legal owner of the brand “ *Dream Color I* ”, which is registered under number IDMO00644336 in class 9 goods: *contact lenses* (eye lenses); *contact lens* case (eye lens); eyeglass frames; glasses's case.

That because the plaintiff has exclusive rights as the legal owner of brand “ *Dreams color I* ”, so from That plaintiff own *legal standing* and can file a lawsuit for damages based on Article 83 paragraph (1) of Law Number 20 of 2016 concerning Marks and IG : “Registered brand owners and/or registered trademark licensees can file lawsuits against other parties without rights use a brand that is substantially or entirely similar for similar goods and/or services in the form of:

- a. indemnity lawsuit, and/or
- b. Cessation of all actions related to the use of the mark the”.

Related Which has done by Defendant I And Defendant II with sells and/or distributes commercially eye lenses of the “ *Dream Color I* ” brand, the Panel of Judges considers that based on the Plaintiff's code evidence Exhibit P-6 to P-8 and supported by the testimony of the Plaintiff's witnesses Willy and Andreas Tua Sitompul, the facts that the Defendants have sold and/or commercially distributed “ *Dream Color I* ” *eye lenses* . Where this was also acknowledged by Defendant I in his response letter.

Based on the considerations above, the defendants have committed trademark infringement in Indonesia where the trademark infringement has caused economic losses to the brand owner, misled the public by selling and distributing unregistered branded products that can deceive the public and based on this, several petitions of the plaintiff will granted. Based on the theory of legal protection, the form or form of legal protection in the above case is the registration of the brand “ *Dream Color* ”.I” in Indonesia belongs to the Plaintiff and the lawsuit filed by the Plaintiff to the Court Niaga at the Central Jakarta District Court for the occurrence of violations brand.

Based on the case above, the subject of legal protection is the owner of the “ *Dream Color I* ” brand registered in Indonesia owned by the Plaintiff. The object of legal protection in the case above, namely the rights owned by the Plaintiff as the owner of the exclusive rights to the “ *Dream Color I* ” brand in Indonesia. Therefore, the plaintiff has the right to legal protection and is entitled to compensation from the defendants based on the theory of legal protection.

Based on the theory of legal effectiveness, which is a success in implementation law on case in on, is that Plaintiff realize how important it is to register a trademark , so that if there is a trademark dispute, then the Plaintiff's trademark is protected by the Trademark and GI Act. The Panel of Judges in the case above, showed justice by giving the fairest decision based on the Trademark Law and IG.

Failure in implementation law on case in on, that has trademark infringement was committed by the defendants. The factors that influenced the occurrence of the trademark infringement, that the defendants considered that the “ *Dream Color I* ” brand registered in Thailand was a well-known brand which turned out to be basically no , so that the defendants' ignorance that the brand “ *Dream Color I* ” had been registered in Indonesia by the Plaintiff and continued to sell and distribute branded products “ *Dream Color I* ” by the the defendant.

## Conclusion

Based on the results of the research on the description of the previous chapters conducted by the author, the following conclusions can be drawn: Legal protection for owners of exclusive trademark rights is protection that is repressive or resolving and preventive in nature based on Articles 3, 83, 84, 100 and 102 of the Trademark and GI Law. Another protection is that exclusive rights cannot be obtained based on the registration the petitioner has bad faith based on Article 21 paragraph (3) of the Trademark and GI Law. The state has also provided a period of exclusive rights protection under Article 35 of the Trademark Law and IG. Decision Number 78/Pdt.Sus-Merek/2019/PN.Niaga.Jkt.Pst. What the author examines is that the plaintiff has exclusive rights as the legal owner of the “*Dream Color I*” brand based on the registration of the mark with the Director General of KI. Based on this, the plaintiff can file a lawsuit for damages against trademark infringement committed by the defendants.

### **Suggestion**

There are suggestions that can be given from the author, namely to minimize trademark infringement, brand owners, especially MSMEs, must know how important it is to register a trademark, lack of understanding of its registration, a brand because of society who do not understand the importance of the application registration brand to Director General of IP to obtain legal protection for trademarks.

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