

LEGAL PROTECTION AGAINST HOLDERS OF REGISTERED BRAND "PUMA AND CAT JUMPING" FOR SIMILARITY TO FAMOUS BRANDS

Sabrina Dewi Putri Wibowo^{1,*}, Lia Amaliya², Muhamad Abas³

^{1,2,3}Faculty of Law, Buana Perjuangan University, Karawang, Indonesia
hk20.sabrinadewiputriwibowo@mhs.ubpkarawang.ac.id^{1,*}, lia.amaliya@ubpkarawang.ac.id²,
muhamad.abas@ubpkarawang.ac.id³

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Abstract

This research focuses on two important aspects: The research will delve deeply into laws related to well-known brands in Indonesia and the research will analyze specific cases that have been decided by the courts, such as case Number 16/Pdt.Sus-HKI/Brand/2023/PN Niaga Jkt.Pst. Well-known brands are usually highly valued because they spend money on advertising and promotion, and become more popular around the world. In addition, it obtains legal protection through trademark registration in different countries, which gives them exclusive rights to their trademarks and allows others to use them illegally. The Trademark Law in Indonesia provides special protection for well-known brands. However, trademark infringement still occurs in Indonesia. Normative juridical research, with legislation and case approaches on legal protection of well-known brands in Indonesia. Result: The Trademark Law provides a clear framework for the legal protection of well-known trademarks in Indonesia, both *preventively* and *restrictively*, in particular Article 21, Article 83 and Explanation of Article 76 paragraph (2). In decision Number 16/Pdt.Sus-HKI/Brand/2023/PN Niaga Jkt.Pst, the Commercial Court considered evidence showing that the Defendant deliberately took advantage of the reputation of the "PUMA and Jumping Cat" brand without permission or license. The Commercial Court decided to cancel the registration of the Defendant's trademark "PUMA and Jumping Cats" because the action infringed the Plaintiff's trademark rights. This decision was made to protect the Claimant from its legitimate trademark rights.

Keywords: Indonesia, Famous Brands, Legal Protection

INTRODUCTION

Intellectual Property Rights (IPR), which is regulated by Law Number 7 of 1994 concerning the Ratification of the World Trade Organization (*Agreement Establishing the World Trade Organization*), refers to the right to intellectual property of a person over his intellectual thinking ability, which is related to human rights. How far a nation masters science, technology, and creativity to produce high-quality intellectual works, such as valuable literary and research works, as well as the appreciation of valuable arts and culture, determines its intellectual intelligence. Each product sold in the market has a special name as a distinguishing point from one another. This name is known as a brand. (Utomo, 2010, p. 1) (Candra, 2012, p. 47) (Rangkuti, 2004, p. 139)

According to Law No. 20 of 2016 concerning Trademarks and Geographical Indications (Trademark Law), specifically Article 1 letter a, a Trademark is a symbol used as a differentiator of goods/services from certain manufacturers or service providers available in the market. This definition provides a clear foundation of what is considered a brand in the legal context in Indonesia. As such, brands not only serve as an important marketing tool, but they are also valuable assets for businesses as they affect customer perception and the company's overall reputation. As a result, companies are essential to maintain the brand and maintain it. Therefore, brand protection is an important priority to maintain its brand reputation for companies in running their businesses. According to Article 3 of the Trademark Law, the right to a trademark is obtained after the trademark is registered. This means that the trademark is officially registered with an authorized institution, such as the Directorate General of Intellectual Property (DJKI) in Indonesia.

Legal protection is an integral part of the legal function which aims to provide a sense of justice for all parties involved, ensure legal certainty, and provide real benefits to society. In the context of a registered trademark, this means ensuring that trademark rights are recognized, respected, and fairly protected by the legal system. (Arifin & Iqbal, *Perlindungan Hukum Terhadap Merek Yang Terdaftar*, 2020, p. 59) Therefore, registered trademark protection ensures fairness and legal certainty as well as promotes economic growth and attracts investment to Indonesia. This shows how important the implementation of regulations and legal protections is to advance sustainable economic growth. (Arifin & Iqbal, *Perlindungan Hukum Terhadap Merek Yang Terdaftar*, 2020, p. 60)

A well-known trademark mark, as described in the Explanatory Section of Article 21 paragraph (1) b of the Trademark Law, is defined as the general public knowledge of the mark in the business field concerned. In addition, brand reputation is considered, through promotion, brand owner investment in different countries, as well as the inclusion of proof of registration. In addition, the brand reputation is noted, which is obtained through extensive promotion, the investment of brand owners in several countries, and the inclusion of proof of registration. Parties who follow, cheat, or imitate well-known brands to gain huge and easy profits, this can result in losses to individuals, businesses, and countries. (Syafira, 2021, p. 94)

Well-known brands are often the main target of businesses *illegal* who want to leverage the brand's reputation and popularity for their own benefit. Owners of well-known brands can suffer huge losses due to these counterfeiting or imitation practices, both due to a decline in sales due to competition with cheaper counterfeit goods and due to the unauthorized use of the brand. (Purwaka, 2017, p. 5)

Bad faith can damage the reputation of well-known brands and how the Trademark Law in Indonesia has evolved to address this problem. Bad faith practices, such as counterfeiting or brand imitation, can damage a brand's reputation notoriously because it confuses customers and reduces their trust in the brand. This can lead to decreased sales, financial losses, and damage to the brand's reputation in the long run. (ND & dkk, 2018, p. 220)

The decline in the number of product sales from well-known brands is one of the main consequences of brand imitation by unauthorized business actors. Consumers may choose counterfeit goods that are cheaper or find it difficult to distinguish the original from the fake, which can lead to a decrease in revenue for well-known brand owners. Article 6 of Presidential Decree No. 15 of 1997 emphasizes how important it is to provide strong legal protection for well-known brands against acts of bad faith, including imitation of brands that cause confusion and uncertainty. This legal protection is important to avoid losses due to these harmful practices.

Article 16 paragraph (2) of the *TRIPs Agreement (Agreement on Trade Related Aspects of Intellectual Property Rights)*, is an international agreement regulating IPR elements, one of which is a trademark. This agreement takes into account what the public knows about international brands. This article provides guidance on the determination of well-known brands. In the *TRIPs Agreement*, the legal protection of well-known brands shows international recognition of how important it is to protect well-known brands from bad faith practices that can harm brand owners and undermine market integrity.

Member States that have ratified the *TRIPs* Agreement must implement these provisions in their legal systems.

Trips as amended by Presidential Decree of the Republic of Indonesia No. 15 of 1997 concerning Amendments to Presidential Decree of the Republic of Indonesia No. 24 of 1979 concerning Ratification *Paris Convention for the Protection of Industrial Property* and *Convention Establishing The World Intellectual Property Organization* and the Famous Brands Act, regulating the protection of well-known marks. (Bafadhal, 2018, p. 28)

The intellectual property rights (IPR) case between PUMA SE and Reno Mustopoh and the government of the Republic of Indonesia involving the "PUMA and Cat Jump" brand has attracted attention because it involves a trademark rights dispute involving local individuals and international companies. The strong reason for PUMA SE to object and file a lawsuit against the Defendant over the registration of trademark No. IDM000229381 is because it has a factual similarity with its trademark which is very well-known in various countries, and because it is similar to the name of the Plaintiff's legal entity, namely PUMA SE.

The main focus of this study is: How is the legal protection of well-known trademarks based on Law No. 20 of 2016 concerning Trademarks and Geographical Indications? and How do judges consider in deciding trademark dispute cases in Case Number 16/Pdt.Sus-HKI/Brand/2023/PN Niaga Jkt.Pst?

RESEARCH METHODS

The method used is normative juridical, through legislation, to review the legal protection of registered trademark holders of "PUMA and Jumping Cats" in the context of Law No. 20 of 2016 concerning Trademarks and Geographical Indications. (Amaliya, Abas, & Akbar, 2022, p. 4)

The author uses a descriptive approach, to describe this research systematically, factually, and accurately (Abas, Dewi, & Rizki, 2021, p. 29) about the legal protection of well-known trademarks registered in Indonesia, as well as the judge's considerations in deciding trademark dispute cases in Case Number 16/Pdt.Sus-HKI/Brand/2023/PN Niaga Jkt.Pst.

RESULTS AND DISCUSSION

Legal Protection of Well-Known Trademarks Based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications

Legal protection is a set of rules, decisions, and practices made by governments/other legal authorities to safeguard the rights of individuals or legal entities and regulate the relationship between individuals and legal entities in society. Trademark protection means giving the brand owner exclusive rights to use the trademark, as well as preventing the use or theft of the trademark. Brand protection aims to encourage new initiatives and to ensure that brand owners feel legally protected. Therefore, trademark legal protection includes not only creating laws governing trademarks, but also ensuring that governments and other legal institutions implement such laws to protect trademark rights fairly. (Tesis Hukum, n.d., p. 20).

Philip M. Hadjon explained legal protection as an attempt to collect rules and regulations aimed at protecting something from harm or misuse by others. In the case of consumers, legal protection refers to a set of laws and regulations that protect consumer rights and ensure that others do not neglect or violate their rights. Legal protection, according to Satjipto Rahardjo, is an effort to protect a person's interests by giving him the right and power to act in accordance with his own interests. Thus, legal protection gives individuals or legal entities the legal force to defend and enforce their rights in order to achieve their desired goals or interests. (Tesis Hukum, n.d., p. 21)

The protection of well-known brands is essential to ensure legal certainty and create a good business environment. Unfair business competition, such as counterfeiting or imitation of well-known brands, can harm not only well-known brand owners but also consumers and the general public. Products with well-known brands will be easier to sell and profitable. A well-known brand occurs when a brand is spread across the globe with relevant trademark registrations. Therefore, legal protection of Famous Trademark Rights is needed to ensure that brand inventors, brand owners, as well as trademark rights holders are under legal protection, prevent infringement of brand rights, and encourage the public to create and supervise the registration of their business trademarks. (Hariyani, 2010, p. 89)

Legal protection for well-known brands can be done through two approaches: *Preventive* and *Repressive*. The purpose of preventive legal protection is to stop infringement of a well-known brand before it occurs. Refusing to register a new brand that is almost identical to an existing well-known brand is one of the main ways to achieve this. This can be done by the relevant brand office during the trademark registration process. Legal protection *Repressive* committed after a well-known trademark infringement occurred. This involves legal action such as filing a lawsuit or lawsuit against the party

who are suspected of infringing on well-known brands. This action can be a legal remedy for brand cancellation, a claim for damages, or any other action aimed at recovering the rights of a well-known brand that was infringed. (Dharmawan & dkk, 2016, p. 58)

According to Law No. 20 of 2016 concerning Trademarks and Geographical Indications, especially Article 21 paragraph (1) letters b and c, and Article 83 paragraph (2), which is strengthened by the Explanation of Article 21 paragraph (1) letter b, the Explanation of Article 76 paragraph (2), and the Explanation of Article 83 paragraph (2), the rights of well-known trademarks are protected by Indonesian law.

The party registering the trademark, not the first to use the mark in trade, the constitutive trademark registration system, also known as the "*first to file*" system. This means that in order to obtain strong legal protection for a brand, trademark registration is essential. Although Indonesia has a constitutive registration system, unregistered international trademarks are still legally protected. This is due to the fact that Indonesia has ratified two treaties established by the *WTO*, Trade rights related to the Paris Convention on the Protection of Industrial Property as well as the *TRIPS* Agreement. *WTO* member states must protect well-known and unregistered trademarks. Therefore, well-known brand owners can still claim their rights in Indonesia even though they have not been registered in the country due to international provisions that have been ratified by the country. This provision is important to maintain brand integrity and provide legal certainty for brand owners in an increasingly unified global market.

An application for trademark registration can be rejected according to Article 21 paragraph (1) letters b and c of the Trademark Law, if the trademark has significant similarities with other parties, either for similar or non-similar goods/services. This is part of preventive protection/preventive efforts to protect well-known brands so that others who do not own the brand do not take advantage of it illegally. For rejected trademark registrations, the element of bad faith must be considered. Bad faith is defined as the applicant's clear intention to leverage the fame of another person's well-known brand for personal gain. As such, this is an important step to maintain the brand's reputation and prevent abuse that can harm the brand owner, as registrants intentionally/illegally use the brand.

Registered trademark owners receive protection on a *Repressive* of the Trademark Act when there is a violation of trademark rights. Registered trademark owners can protect their trademarks from infringement by civil lawsuits (such as damages or cancellation of trademark registration) or criminal penalties from law enforcement. Infringement of trademark rights can include profiteering (*Counterfeiting*), Leaderboard (*Infringement*), the use of the name or *domain name* without permission, or other acts that are detrimental to the registered trademark owner. In order to maintain a brand's reputation, prevent financial losses, and ensure that customers can obtain goods/services that meet the expected quality standards, it is essential to protect a legally properly registered trademark. (Usman, 2003, p. 45)

The main purpose of the Trademark Law is to provide strong trademark protection to prevent acts that infringe on trademark rights, such as *plagiarism*. As a result, by providing effective protection, the Trademark Law encourages economic and industrial growth by creating an environment that supports innovation, investment, and trade as it gives business actors a sense of legal security and security. (Hidayati, 2011, p. 180)

Judge's Considerations in Deciding Trademark Dispute Cases in Case Number 16/Pdt.Sus-HKI/Brand/2023/PN Niaga Jkt.Pst

Unfair business competition seeking to capitalize on the reputation, identity, and quality associated with well-known brands is a major cause of brand infringement. A brand, as the identity of a product or service, reflects the image and reputation of the company in the eyes of consumers. Therefore, well-known brands are often targeted for infringement due to their strong reputation and public recognition. In addition, brand infringement is also associated with the financial gains generated by well-known brands. This is because well-known brands have a large market share and loyal customers, so goods or services produced with well-known brands tend to have higher economic value. As a result, unscrupulous people seek to take advantage of the reputation of well-known brands for illicit profits.

In the Trademark Law, the terms "imitated" and "equalized" are comprehensively defined and explained. In the protection of well-known trademarks, these two terms are important to understand because they set out what standards and criteria are used in determining whether a brand has been imitated or equated with a well-known mark so that legal action can be taken to protect the rights of the well-known trademark. (Ferdian, 2019, p. 88)

In this case, there is a common ground between the well-known brand PUMA SE which has been registered since 1948 and has a strong reputation all over the world. The similarities on this subject may elicit the same impression or association with customers, especially considering that the famous brand PUMA SE has become more recognizable than Reno Mustopoh's "PUMA and Jumping Cat" brand. PUMA SE has a solid basis for filing for the cancellation of the "PUMA and Jumping Cat" brand registered by Reno Mustopoh in this regard. If there is a similarity between the two brands, it can be considered an equalized or imitated use of the brand. This is especially true in cases where trademark registration is done incorrectly.

PUMA SE (Plaintiff) has a strong reason to sue the Defendant's brand. The fact is that the Defendant's trademark bears a resemblance to the Plaintiff's trademark. In addition, there is evidence that the Defendant registered its brand with bad intentions, namely taking advantage of the fame of the PUMA SE brand. Therefore, the similarity of the brand can be detrimental to the Plaintiff as the owner of a well-known brand.

It is possible that the trademark registered by the Defendant and the trademark belonging to the Plaintiff are similar, indicating the existence of imitation or counterfeiting of the brand. Striking similarities in such brand names, images, or appearances may mislead consumers and create the assumption that the Defendant's brand is related to the Plaintiff's brand. This will be considered by the court as evidence that the Defendant had bad faith in registering the trademark, especially since the name and image of the brand have become a widely known trademark as PUMA SE. The court's decision in this case tends to support PUMA SE's trademark cancellation lawsuit against the Defendant's brand. The Commercial Court stated in Case Number 16/Pdt.Sus-HKI/Brand/2023/PN Niaga Jkt.Pst:

1. Courts in various countries recognized PUMA SE as the owner and first registrant of the global brand "PUMA and Jumping Cat".
2. The PUMA SE brand is declared a well-known brand worldwide.
3. The Defendant's trademark registration bears a substantial resemblance to the Plaintiff's trademark.
4. It is considered that the Defendant registered his trademark in bad faith.
5. This decision states that the trademark belonging to the Defendant registration number IDM000229381 is legally canceled.
6. Implementation of the decision: On behalf of the Defendant, the Ministry of Law and Human Rights of the Republic of Indonesia is requested to revoke the trademark "PUMA and Jumping Cat" from the General Register of Trademarks with Registration No. IDM000229381. (Putusan Mahkamah Agung, 2023)

This decision confirms PUMA SE's objection to the registration of a similar trademark by the Defendant and provides legal protection to PUMA SE as a well-known trademark holder. In the author's opinion, the decision made by the judge in Case Number 16/Pdt.Sus-HKI/Brand/2023/PN Niaga Jkt.Pst has been based on strong legal considerations, especially referring to the Trademark Law. The Commercial Court rejected the Defendant's trademark because of its similarity with the Plaintiff's trademark, according to Article 21 paragraph (1) of the Trademark Law, this similarity can mislead consumers and harm the Plaintiff. Therefore, the cancellation of registration of the Defendant's trademark is the right step to maintain the integrity of the well-known trademark and provide appropriate legal protection. The decision reflects the court's efforts to maintain justice and provide legal certainty for brand holders. The Plaintiff filed a lawsuit with the Commercial Court, and the ruling was that the registration of the Defendant's trademark "PUMA and Jumping Cat" was cancelled in accordance with Article 76 of the Trademark Act stipulating this cancellation.

The author's opinion regarding the registration of the trademark "PUMA and Jumping Cat" by the Defendant is that the action was carried out in bad faith, by taking advantage of the fame of a trademark belonging to the Plaintiff. This is considered to be a violation of Article 21 paragraph (3) of the Trademark Law, if the application for trademark registration in good faith is not good, the application must be rejected. In this context, the action of canceling the trademark registration carried out by the Commercial Court is considered a form of legal protection to the Plaintiff. This decision provides legal certainty that the practice of registering trademarks in bad faith will not be accepted in the legal system, so that the rights of registered trademarks are still protected from adverse actions.

As a result of the Commercial Court's decision, the PUMA SE brand is given the right to use the well-known brand "PUMA and Jumping Cats". Reno Mustopoh (Defendant) owns the trademark "PUMA and Jumping Cats" which is considered invalid and removed from the General Register of Brands. Therefore, this decision ensures that only PUMA SE can use the well-known brand "PUMA and Jumping Cats".

CONCLUSION

The Trademark Act is intended to protect well-known brand owners from *plagiarism*. The unauthorized use of a well-known brand is considered to be a bad faith. There is no deadline to file a lawsuit regarding this cancellation. This shows a commitment to protecting well-known brands consistently. In addition, it ensures fair and efficient protection of brand rights. Therefore, the Act has become an important tool to promote fairness in the business environment and maintain the integrity of well-known brands.

In the ruling, it shows how important it is to protect legally well-known brands and shows the consequences of actions that are contrary to business ethics and the law. The Court stated that the Defendant's bad faith was carried out because it registered the trademark "PUMA and Jumping Cats" to mislead customers and take advantage of the brand's well-known reputation. The Court ruled that the Defendant's trademark registration was inadmissible and should be cancelled under the various clauses of the Trademark Act. This ruling legally protects the Plaintiff's intellectual property. Therefore, this decision confirms that unethical and harmful use of trademarks will not be allowed, and the law will be applied to protect the rights of well-known brand owners.

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