

ROLE AND PROTECTION OF TRADEMARKS AS BUSINESS IDENTITY IN INTELLECTUAL PROPERTY RIGHTS

Warda Zakiya¹

Hamzah²

Fakultas Hukum Universitas Lampung

wardazakiya12@gmail.com

hamzah.1969@fh.unila.ac.id

Abstract

In addition to helping products or services stand out in the marketplace, trademarks also inform customers that a product is dependable and of excellent quality. Third parties are prohibited from using a trademark that is registered with the Directorate General of Intellectual Property (DJKI). It also grants the owner of the mark the sole right to use it. This article also covers the benefits of trademark protection, the registration process, and the challenges that companies have in defending their rights. Businesses that understand and use trademark rights effectively may safeguard innovation, increase competitiveness, and foster sustainable economic growth.

Keywords: *Business, Competitiveness, Trademark.*

A. INTRODUCTION

Indonesia is a country of great cultural, ethnic and tribal diversity, as well as a wealth of art and literature. The country has become a member of many international conventions and treaties as a result of economic growth, industry, and investment. Therefore, by maintaining the broad public interest of Intellectual Property Rights (IPR), For creations originating from human intellectual talents in the realms of art, literature, science, aesthetics, and technology to be

protected, creators and rights owners must have better protection. Ideas like innovations, literary and creative creations, names, symbols, and pictures utilized in trade are examples of such intangible works¹.

Trademark is a business identity in intellectual property rights and is very crucial in today's competitive business world, therefore trademark protection becomes a very important thing to prioritize because it concerns the company's image, authenticity of goods and consumer confidence in the products marketed. Legal protection of trademarks gives the owner the right to use and maintain the identity, thus preventing misuse or imitation by other parties that can harm the business². In addition, an officially registered trademark is also a valuable asset that increases business value and opens up expansion opportunities more easily. In the context of intellectual property rights, trademarks serve as a strategic tool that not only legally protects a business's identity, but also strengthens a business's position in the market through differentiation, effective marketing, and the formation of customer loyalty³. Therefore, understanding and managing trademarks well is a fundamental step for business continuity and success in this era. In this discussion, we will discuss the rights of famous marks, which is the most common potential infringement as it can be easily counterfeited especially if the mark owner does not register it for legal protection. A common motive is to lower the selling price of the original product which encourages customers to buy lower-priced products under the same brand. The most significant impact of a famous trademark being imitated or

¹ Ni Made Sukmasari, "Ragam Jenis Kekayaan Intelektual, Pahami Soal Hak Kekayaan Intelektual Atau HAKI", Artikel Tempo (27 April 2024), Ragam Jenis Kekayaan Intelektual, Pahami Soal Hak Kekayaan Intelektual Atau HAKI | Tempo.Co

² Admin, "Pengaruh Merek Dagang Terhadap Bisnis Anda", Artikel Bisnisindo.co.id (31 Oktober 2024), Pengaruh Merek Dagang Terhadap Bisnis Anda | PT Nusantara Business Indonesia

³ Mariska, "5 Fungsi Merek Bagi Bisnis, Bisa Tingkatkan Penjualan!", Artikel Kontrak Hukum (10 Juli 2023), 5 Fungsi Merek Bagi Bisnis, Bisa Tingkatkan Penjualan!

counterfeited by irresponsible parties is the bankruptcy of the company that owns the famous trademark⁴.

B. RESULTS AND DISCUSSION

Patents, copyrights, trademarks, industrial designs, geographical indications, trade secrets, and circuit layout designs are the seven types of intellectual property.

In this discussion, the author wants to focus more on trademarks. A trademark is a sign used in the trade of goods or services that has the power to distinguish goods or services produced by a company from other companies⁵. This mark has a distinguishing power and serves as a guarantee of its quality and to be said as a trademark must meet the absolute requirements, namely the existence of sufficient distinguishing power (*capable of distinguishing*).

Well-known brand products will be simpler to promote and make more money. A well-known mark occurs when a mark spreads from one region to another around the world, with relevant mark registrations in different countries. Therefore, there is a need for legal protection for well-known trademark rights to guarantee the legal stability of brand creators, brand owners, and trademark rights holders in order to instill confidence in product marketing and product quality also serves to prevent infringement and crime of trademark rights. So the facility of trademark registration in a business continues to be voiced in order to encourage people to make and supervise the registration of their business trademarks⁶.

From a business person's perspective, a trademark is their "face" to the world. Protecting a trademark means maintaining the image and efforts that have been made over the years. Because if it is misused by another party, it can be financially detrimental and destroy the customer trust they have built up. Legal protection of trademarks

⁴ PutuiEkaidaniDewaiGedei, "Perlindungan Hukum Terhadap Hak Merek Terkenal di Indonesia", *Kertha Semaya: Jurnal Ilmu Hukum* vol. 6, no. 11 (2018).

⁵ Sonny Johanes, Hendra Haryanto, Yessy Kusumadewi, "Perlindungan Hukum Terhadap Pemilik Hak Atas Merek", *Jurnal Krisna Law* vol 3, no. 2 (2021).

⁶ Iswi Hariyani, *Prosedur Mengurus HAKI yang Benar* (Yogyakarta: Pustaka Yustisia, 2010).

gives businesses a sense of security and confidence so that they can thrive and innovate without worrying that their brand will be stolen or misused. Conversely, customers benefit greatly from trademark protection. Protected brands make consumer choices easier and more confident as they know that the goods or services they are buying come from a trusted source and meet certain standards. This creates a healthy, reciprocal relationship between companies and consumers, where trust and quality matter most. Trademark protection in terms of intellectual property rights apart from involving strict laws is also a tribute to the effort, innovation, and human connection between a business and its consumers. In other words, trademarks serve as a link between the identity of a business, the minds and hearts of consumers. Protecting a brand means maintaining trust, innovation, and business sustainability, which will ultimately benefit society as a whole. The role of a trademark as a business identity includes:

1. As a distinguishing tool (Distinctive Function)

Customers can identify a company's goods or services by using trademarks.

2. As a quality assurance

Recognized brands will follow certain quality standards and consumers tend to be loyal to trusted brands.

3. As a marketing tool

A strong brand will automatically increase the attractiveness of the product and facilitate promotion.

4. As a business asset with economic value (Economic Value)

A brand can be licensed, used as collateral for debt, or even sold as a franchise.

A trademark application will be denied if it is significantly (well-known mark) for identical goods and/or services, as the Trademark Act protects well-known marks⁷.

Trademark is not only an identity but also a wealth. Trademark registration protects companies from infringement, such as plagiarism, use of the same name, profiteering, and builds consumer

⁷ Ni Ketut Supasti Dharmawan, dkk. *Buku Ajar Hak Kekayaan Intelektual* (Yogyakarta: Deepublish, 2016).

confidence⁸. A trademark is an identity that distinguishes a company's goods or services from its competitors in the market. Trademarks are essential for businesses as they play a vital role in marketing strategies and building consumer trust⁹. However, the fact is that there are still many business people who do not understand and register their trademarks properly. As a result, the legal protection of the trademark is quite weak, such as preventing claims from irresponsible parties or preventing the use of the trademark by others without permission. In terms of protection of well-known trademarks, refusal of registration must consider the existence of elements of bad faith, i.e. registrants who are not owners of well-known trademarks deliberately want to take advantage of the fame of other people's well-known trademarks or use the promotion of well-known trademarks for their personal gain at no cost, as protection is expressly granted to an individual in the event that the trademark's rights have been violated. Registered trademark owners are shielded from trademark infringement by a criminal lawsuit in court, a lawsuit for damages, and a cancellation of trademark registration. Cost or duration is one issue that frequently arises throughout the trademark registration procedure. The stages of trademark registration provided by the government are as follows¹⁰:

1. Trademark Research: the purpose is to ensure that the trademark does not conflict with any existing trademark. This will help prevent future legal issues and ensure the validity of the trademark registration.

2. Filing a trademark application with the authorized trademark registry office by including information about the trademark, such as the name, logo, description of the product or service, and the relevant trademark class.

3. Trademark Examination: Once the application is filed, the authorities will conduct an examination of the filed trademark. This

⁸ Tim Redaksi, "Menguak Arti Merek: Panduan Lengkap untuk Pemilik Bisnis", Artikel iPNOTE, (7 Februari 2024), Menguak Arti Merek: Panduan Lengkap untuk Pemilik Bisnis | iPNOTE

⁹ Sumirah, "Pentingnya Pendaftaran Merek Dagang untuk Pelaku Bisnis", Artikel Kontrak Hukum, (17 Juli 2024), Pentingnya Pendaftaran Merek Dagang untuk Pelaku Bisnis

¹⁰ Rifda, "Merek Dagang: Pentingnya Perlindungan dan Strategi Bisnis", Artikel Izin.co.id, (26 Juni 2023), Merek Dagang: Pentingnya Perlindungan dan Strategi Bisnis | IZIN.co.id Blog

examination includes further research into the existing trademark and ensures that the proposed trademark meets the requirements of the applicable law.

4. Registration and Protection: If the trademark application is approved, the trademark will be registered and will subsequently acquire exclusive rights to the use of the trademark in relation to its associated products or services. Trademark protection is generally valid for a certain period of time and may be renewed periodically.

In the registration procedure of a famous mark, First to File and First to Use are different from each other. The first registration system, also known as First to File, is when trademark rights are granted to the party who first registers through legal channels regardless of who the first founder is. Indonesia, China, France, and most civil law countries adhere to this concept as it has an objective process based on the date of registration, facilitates examination as it is data-driven, but this system runs the risk of Brandjacking or irresponsible individuals registering marks that are already in use by others by using “puns” on certain very famous marks. As for the First to Use system, trademark rights are granted to the person who first establishes or uses the mark, even though the mark has not been registered. The United States, Canada, and other countries that adopt this concept have specific characteristics and they guarantee that commercially used marks will be protected without the need for registration of the mark, so small and medium-sized businesses can use the mark easily. However, there must be written evidence justifying that he is the ultimate owner.

Law Number 20 Year 2016 on Trademarks and Geographical Indications, specifically Article 21 paragraph (1) letter b and c and Article 83 paragraph (2), guarantees the protection of well-known trademark rights in Indonesia. This is reinforced by the explanations of Article 21 paragraph (1) letter b, Article 76 paragraph (2), and Article 83 paragraph (2). Due to Indonesia's ratification of the Paris Convention and the TRIPS Agreement of the World Trade Organization, well-known trademarks that are not registered in Indonesia will still be protected. This is the case even if the country's

constitutive system for trademark registration is used. Since Indonesia passed the Trademark Law, issues pertaining to profiteering, appropriation, and use of well-known names or domains pose a great threat to the growth of the business industry¹¹.

The Trademark Law, which was amended by Law No. 15 of 2001 into Law No. 20 of 2016, regulates trademark protection consisting of preventive and repressive protection. Preventive protection is intended to prevent infringement of trademark rights before it occurs. The trademark registration process allows registered trademark owners to use their marks legally. According to Article 3 of the Trademark Law, trademark owners who register their marks in the public register have the exclusive right to use their marks legally¹². When the right to a mark is interfered with then repressive protection applies. The owner of a registered mark has the right to file a civil or criminal lawsuit against the person who infringed his rights. In these cases, the owner can seek damages or stop the use of the infringing mark¹³.

Piracy, counterfeiting, and imitation of labels or packaging are three types of trademark infringement. In Indonesia, infringement of well-known trademark rights can be considered a civil or criminal case. Owners of registered marks can sue others. They can be sued for damages for using trademark rights without the prior authorization and consent of the owner or right holder of the registered mark with the public also contributing to the law, the Indonesian legal system will work very well. This is because the trademark right holder suffers financial and business losses. According to Article 1365 of the Civil Code, which stipulates that a person who injures another person by his fault must make up for the loss, an individual who engages in such behavior may be classified as having committed an Unlawful Act (PMH). Furthermore, selling fake items with well-

¹¹ Usman dan Rachmadi, *Hukum Hak atas Kekayaan Intelektual* (Bandung: PT. Alumi, 2003).

¹² Enny Mirfa, "Perlindungan Hukum Terhadap Merek Terdaftar", *Jurnal Hukum Samudra Keadilan*, 2016.

¹³ Meli Hertati Gultom, "Perlindungan Hukum Bagi Pemegang Hak Merek Terdaftar Terhadap Pelanggaran Merek", *Jurnal Warta*, 2018.

known trademarks may be illegal under the Trademark Law and subject to criminal penalties. A person who sells counterfeit goods is guilty of a criminal offense and faces a maximum penalty of Rp2,000,000,000.00 (two billion rupiah) or five (five) years in prison, as stated in Articles 100–102 of Law Number 20 Year 2016 on Trademarks and Geographical Indications¹⁴.

C. CONCLUSION

As an intellectual property right, a registered mark receives preventive and repressive protection from the law. If certain goods or services are substantially similar to a well-known mark, the trademark application will be rejected by the trademark law. Law Number 20 Year 2016 on Trademarks and Geographical Indications regulates the protection of Indonesia's famous mark rights.

Infringers of trademark rights can be punished in the civil realm with damages for using trademark rights without the authorization and consent of the owner or holder of registered trademark rights. They can also be included in the category of violations of the Trademark Law that have criminal penalties for trading counterfeit goods under well-known names, as stipulated in Article 100-102 of Law Number 20 Year 2016 on Trademarks and Geographical Indications.

Based on the results of the analysis in this paper, the advice that can be given is to immediately utilize the brand as a business asset, build and manage it well and register the trademark officially through government agencies to get strong legal protection for the identity of the business being undertaken.

¹⁴ PutuiEkaidaniDewaiGedei, “Perlindungan Hukum Terhadap Hak Merek Terkenal di Indonesia”, *Kertha Semaya: Jurnal Ilmu Hukum* vol. 6, no. 11 (2018).

BIBLIOGRAPHY

- Admin, “Pengaruh Merek Dagang Terhadap Bisinis Anda”, Artikel [Bisnisindo.co.id](https://bisnisindo.co.id) (31 Oktober 2024), Pengaruh Merek Dagang Terhadap Bisnis Anda | PT Nusantara Business Indonesia
- Dharmawan, Ni Ketut Supasti, dkk. *Buku Ajar Hak Kekayaan Intelektual* (Yogyakarta: Deepublish, 2016).
- Eka, Putu dan Dewa Gede Rudy, “Perlindungan Hukum Terhadap Hak Merek Terkenal di Indonesia”, *Kertha Semaya: Jurnal Ilmu Hukum*, vol. 6, no. 11 (2018).
- Gultom, Meli Hertati, “Perlindungan Hukum Bagi Pemegang Hak Merek Terdaftar Terhadap Pelanggaran Merek”, *Jurnal Warta*, 2018.
- Hariyani, Iswi, *Prosedur Mengurus HAKI yang Benar* (Yogyakarta: Pustaka Yustisia, 2010).
- Mariska, “5 Fungsi Merek Bagi Bisnis, Bisa Tingkatkan Penjualan!”, Artikel Kontrak Hukum (10 Juli 2023), 5 Fungsi Merek Bagi Bisnis, Bisa Tingkatkan Penjualan!
- Mirfa, Enny, “Perlindungan Hukum Terhadap Merek Terdaftar”, *Jurnal Hukum Samudra Keadilan*, 2016.
- Redaksi, Tim, “Menguak Arti Merek: Panduan Lengkap untuk Pemilik Bisnis”, Artikel iPNote, (7 Februari 2024), Menguak Arti Merek: Panduan Lengkap untuk Pemilik Bisnis | iPNOTE
- Rifda, “Merek Dagang: Pentingnya Perlindungan dan Strategi Bisnis”, Artikel Izin.co.id, (26 Juni 2023), Merek Dagang: Pentingnya Perlindungan dan Strategi Bisnis | IZIN.co.id Blog
- Sonny Johanes, Hendra Haryanto, Yessy Kusumadewi, “Perlindungan Hukum Terhadap Pemilik Hak Atas Merek”, *Jurnal Krisna Law* vol 3, no. 2 (2021).

Sukmasari, Ni Made, “Ragam Jenis Kekayaan Intelektual, Pahami Soal Hak Kekayaan Intelektual Atau HAKI”, Artikel Tempo (27 April 2024), Ragam Jenis Kekayaan Intelektual, Pahami Soal Hak Kekayaan Intelektual Atau HAKI | Tempo.Co

Sumirah, “Pentingnya Pendaftaran Merek Dagang untuk Pelaku Bisnis”, Artikel Kontrak Hukum, (17 Juli 2024), Pentingnya Pendaftaran Merek Dagang untuk Pelaku Bisnis

Usman dan Rachmadi, *Hukum Hak atas Kekayaan Intelektual* (Bandung: PT. Alumni, 2003).