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Juridical Review of Registered Trademarks on Trademark Disputes Similarities in Principal (Decision Number: 83/Pdt.Sus-HKI/MEREK 2023/PN Niaga Jkt.Pst)

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Abstract: A trademark is something attached to a product is noticed also respected by the state through guaranteed ownership rights, so not just anyone can obtain intellectual property rights. If someone wants to be legally recognized as a brand owner, then they are obliged to register their trademark. The protection of such trademarks indicates the state is obliged to enforce trademark laws. There is legal protection for trademark owners to provide exclusive rights for brand owners (exclusive rights) so other business actors cannot use the same trademark as they own. The problems discussed in this study are about How to Regulate Trademark Registration As per Law No. 20 of 2016 concerning Trademarks also Geographical Indications, How to Legal Protection for Registered Trademarks Have Similarities in Essence, also How to Consider the Judge in Decision Number: 83/Pdt.Sus- HKI/MEREK 2023/PN Niaga Jkt.Pst. This study uses normative study methods. The data used are secondary data obtained through literature studies, laws also regulations, legal journals, also lecture materials related to this research.

Keyword: Intellectual Property Rights, Brands, Famous Brands, Similarities in Essence.

INTRODUCTION

Intellectual Property Rights (IPR) are exclusive rights arising from creative efforts hold economic value, warranting state protection also legal recognition. These rights cover ideas also inventions contribute to societal advancement, encouraging innovation also curiosity.

Trademarks, as a key aspect of IPR, protect distinctive brand names used to market products. Recognized by the state, trademarks secure exclusive ownership also prevent unauthorized use. Therefore, it is crucial to understand brands need legal protection. (Sudaryat & Permata, 2010). Because they shield companies from imitation also guarantee consumers obtain high-quality products also services, brands are crucial. Brands can also serve as a marketing also advertising tool informs consumers about a service or product. (Rahmi Janed, 2015).

Brands have obligations are typically required, particularly to oversee international trade contests, as stated in Law No. 15 of 2001, which governs trademarks. It is possible to use trademarks to identify the origin or source of items, as well as to assess their degree of quality also purity. (Saidin, 2002). The state protects trademark rights. In order to be legally recognized as the owner of a trademark, an individual must register their trademark. The right to a trademark belongs to the person who implants it. (Muhammad Djumhana & R. Djubaedillah, 2003).

As per Law Number 20 of 2016 concerning Trademarks also Geographical Indications, trademark registration is essential in today's business landscape to maintain fair also healthy trade competition. Registering a trademark not only safeguards the brand owner's rights but also builds customer trust. Small also Medium Enterprises (UMKM) can secure their businesses also products through proper trademark registration, gaining legal protection. However, if a registered trademark is not used in accordance with the law, its registration may be revoked. (Mamahit, 2013).

Indonesia has addressed brand protection through various legal frameworks, adapting to evolving needs for stronger safeguards. The initial regulation, Law Number 21 of 1961, established trademark rights began upon use. Amendments followed, including Law Number 16 of 1992 also its revisions, enhancing protection also streamlining registration. Later, Law Number 19 of 1992, updated by Law Number 14 of 1997, modernized trademark regulations. The enactment of Law Number 15 of 2001 reinforced consistency, while Law Number 20 of 2016 integrated geographical indications.

Trademark rights in Indonesia grant exclusive ownership to authorized parties, reducing counterfeiting also minimizing losses like revenue decline also distribution issues. Although increased brand competition brings challenges, legal protection encourages healthy competition, benefiting producers also consumers by improving product quality.

In Decision No. 83/Pdt.Sus-HKI/MEREK 2023/PN Niaga Jkt.Pst., the plaintiff, part of the globally recognized Bosh group, holds the "EV also Logo" also "Electro-Voice" trademarks, registered in the U.S. also other countries. The defendant unlawfully registered a similar "EV" trademark (IDM000796912), attempting to imitate the plaintiff's established brand. Such actions, akin to passing off or brand riding, constitute unfair competition, causing harm to legitimate trademark owners through unauthorized use for financial gain. (Hidayati, 2011).

METHOD

This study is a normative legal study. Library research, usually referred to as library resources, is the primary source of data for the normative study approach. In order to assess the issues encountered, this approach focuses on gathering information from a variety of pertinent publications. (Sugiyono, 2018). This descriptive-analytical study aims to explore also illustrate the subject while providing a concise explanation aligned with relevant laws. Data were collected from diverse sources, including research publications, government documents, legal regulations, scientific abstracts, articles, also other related materials. The collected materials include: (Soekanto, 2006):

Primary legal materials include laws also regulations directly related to the study, such as Decision Number 83/Pdt.Sus-HKI/MEREK 2023/PN Niaga Jkt.Pst. also Law Number 20 of 2016 on Trademarks also Geographical Indications. Secondary legal materials comprise articles, books, also online sources relevant to the topic. Tertiary legal resources aim to clarify also enhance understanding of both primary also secondary materials, gathered through document analysis, including consulting Law Number 20 of 2016. The process involves collecting data from diverse literary sources for comprehensive insight. (Azizah & Purwoko, 2017). Qualitative data analysis involves collecting, examining, organizing, also synthesizing data into structured, systematic, also comprehensible information.

RESULTS AND DISCUSSION

Trademark Registration Regulations As per Law No. 20 of 2016 concerning Trademarks also Geographical Indications are associated with Decision Number: 83/Pdt.Sus-HKI/BRAND 2023/PN Niaga Jkt.Pst

"Intellectual Property Rights"(IPR) refer to the exclusive rights granted by a nation to individuals, organizations, or groups, enabling them to use also benefit from their created or acquired intellectual property. (Keliat & Tanjung, 2022). Trademarks are a form of Intellectual Property Rights (IPR) classified as proprietary rights. IPRs play a crucial role in global industry also trade. (Astarini, 2009). Discussing trade, of course, there is a relationship between consumers also producers is very dependent also repetitive (Benny et al., 2020).

Law Number 20 of 2016 on Trademarks also Geographical Indications recognizes two principles: the "first to file"(constitutive) also the "first to use"(declarative). Under the first-to-file principle, trademark rights are granted to the party first submits a registration application. (Sudaryat & Permata, 2010). Meanwhile, the registration of First to Use (declarative) only shows the holder of the trademark rights is the first owner of the trademark (N. I. K. Dewi, 2018). In the business world, brands have an important role, this is because well-known brands can affect the success of a business, especially in the marketing aspect (Sunarto et al., 2023). Article 4 paragraph (1) of Law Number 20 of 2016 concerning Trademarks also Geographical Indications outlines in short, the applicant or his or her attorney can submit an application for a trademark registration to the minister in Indonesian, both electronically also non-electronically (Indonesia, 2016). The process of registering a trademark consists of 4 (four) stages: trademark formality check, substantive check, announcement after the formality check, also completion of the trademark substantive check-in (Pakpahan et al., 2024).

According to Presidential Decree No. 24 of 1979, which ratified the Paris Convention for the Protection of Industrial Property also the Convention Establishing the World Intellectual Property Organization (WIPO), Indonesia is a member of the World Trade Organization (WTO) also has ratified the Paris Convention. Article 6 bis of the Convention allows member states to reject or cancel trademark registrations imitate or replicate well-known marks if permitted by national law. It also prohibits the use of marks may confuse the public.

Decision No. 83/Pdt.Sus-HKI/MERREK 2023/PN Niaga Jkt.Pst. involved a dispute where the plaintiff, part of the global Bosch group, owns the "EV ELECTROVOICE+Logo" mark, registered in the U.S. since 1954. The plaintiff's trademarks are protected in multiple countries also are associated with high-quality audio products.

The defendant, Melinda Olivia, an Indonesian company, applied for an identical "EV ELECTROVOICE+Logo" trademark in Indonesia under Registration No. IDM000796912 without the plaintiff's consent. The court found the defendant acted in bad faith, attempting to exploit the plaintiff's established reputation for personal gain. The defendant's trademark was deemed similar to the plaintiff's well-known marks under Article 21(1)(b) of Law No. 20 of 2016 on Trademarks also Geographical Indications, leading to the cancellation of the defendant's registration.

Legal Regulations Against Registered Trademarks Have Similarities In Principle Are Associated With Decision Number: 83/Pdt.Sus-HKI/MERREK 2023/PN Niaga Jkt.Pst

Increased protection is needed due to the rapid growth of the commercial also industrial sectors. The need to protect the brand becomes clear when an item is introduced to the market on a particular brand, which ultimately demands the protection of the brand itself from various unlawful acts (N. Dewi & Baskoro, 2019). Legal protection for trademarks is only provided to registered trademarks, registrants obtain exclusive rights to the trademark, also other interests are obliged to respect these rights in becoming interests cannot be violated (Sunarto et al., 2023). Upon registration, the trademark owner is granted the exclusive right to use the trademark for commercial purposes. This legal protection ensures ownership rights for

registrants at the Directorate General of Intellectual Property. In this context, the state grants the registered trademark holder the sole authority to utilize the mark for personal gain or to authorize other parties to use it for a specific period.

Trademark protection follows a constitutive framework, adhering to the first-to-file system as stipulated in Law Number 20 of 2016 concerning Trademarks also Geographical Indications. This framework offers preventive also repressive legal protection as mechanisms to safeguard trademark rights. Notably, the Paris Convention for the Protection of Industrial Property Rights is recognized in Indonesia for providing preventive legal protection to internationally renowned brands remain unregistered. Article 6 bis of the Convention mandates a member state must refuse, cancel, also prohibit the use of a trademark resembling a well-known registered mark, even if it is unregistered, to prevent consumer confusion (Felano, 2021). In order to be protected, well-known brands must meet several criteria, including brand reputation, registration in various countries, also recognition among the public (Rizki et al., 2023).

Article 21 paragraph (1) of Law Number 20 of 2016 defines similarity in principle as the resemblance of dominant elements between two trademarks, creating an impression of similarity in form, placement, writing style, combination of elements, or pronunciation. Additionally, Supreme Court Jurisprudence Number 2279 PK/1992 (January 6, 1998) interprets conceptual similarity as an overall likeness may lead to consumer confusion.- Similarity of Form;

- Similarity of Composition;
- Similarity of Combination;
- Similarity of Elements;
- Sound Similarity;
- Phonetic Similarity; or
- Similarity in Appearance

In Decision Number 83/Pdt.Sus-HKI/MERЕК 2023/PN Niaga Jkt. Pst., the court identified significant similarities between the Defendant's also Plaintiff's trademarks, leading to a complete ruling in favor of the Plaintiff. The resemblance is evident in the stylization of the EV ELEKTROVOICE brand on both parties' products, especially the use of identical typefaces. The design, structure, also distinct "V" feature closely mimic the Plaintiff's trademarks. Additionally, similarities in pronunciation, sound, also brand sequence further support the argument. As a result, the Defendant's registration of the "EV ELEKTROVOICE+Logo" trademark (IDM000796912) was deemed an act of bad faith, indicating an intentional attempt to imitate the Plaintiff's brand. (Adawiyah et al., 2023). According to Article 21 paragraph (3) of Law No. 20 of 2016 on Trademarks also Geographical Indications, an "Applicant with bad intentions" is a party suspected of attempting to imitate, plagiarize, or emulate another party's trademark for personal business gain. Such conduct results in unfair competition also potentially misleads or deceives consumers. This provision applies to trademarks are identical or significantly similar to well-known trademarks, suggesting deliberate copying.

In this case, the Defendant's act of copying, misappropriating, also attempting to commercialize the Plaintiff's trademark constitutes unfair competition also risks deceiving consumers. Evidence such as P-9a also P-9b confirmed the Plaintiff's legal registration of the EV, Logo, also ELECTRO-VOICE trademarks in the United States since January 15, 1953. Identified as a member of the globally recognized Bosch Group (P-1a also P-1b), the Plaintiff has promoted its trademarks in company brochures (P-2a also P-2b) for professional audio systems. Additionally, the trademarks are registered in multiple countries (P-11a to P-25b), affirming their international recognition also reputation. Supporting evidence (P-29 to P-106) demonstrates the brand's extensive market presence, long-term use since 1934, also substantial market share.

As per Article 18 of Permenkumham Number 67 of 2016, the assessment of a well-known brand considers public awareness within the relevant industry or consumer community. Given the Plaintiff's established reputation also significant market presence, the Panel of Judges appropriately ruled in favor of the Plaintiff.

Judge's Consideration in Decision Number: 83/Pdt.Sus-HKI/BRAND 2023/PN Niaga Jkt.Pst

Law Number 20 of 2016 on Trademarks also Geographical Indications, which replaced Law Number 15 of 2001, is the main legal framework for trademark regulation in Indonesia. It oversees the registration, protection, also management of trademarks. In the case between Melinda Olivia (Defendant) also Bosch Security Systems, LLC (Plaintiff), the judges ruled correctly, aligning with legal principles. The Plaintiff sought to cancel the Defendant's EV ELEKTROVOICE+LOGO trademark (IDM000796912, dated November 25, 2019, in Class 9), citing bad faith due to its resemblance to the Plaintiff's well-known trademarks "EV also Logo" also "ELEKTRO-VOICE."

According to Article 21(1) of Law Number 20 of 2016, trademark applications can be rejected if they resemble:

- An already registered trademark for similar goods or services;
- A well-known trademark for similar goods or services;
- A well-known trademark for different goods or services under certain criteria;
- A registered geographical indication.

Additionally, Article 21(3) defines applicants with "bad intentions" as those who copy, imitate, or plagiarize trademarks to gain unfair advantage, mislead consumers, also create unfair competition. Evidence (P-26, T-1, TT-01, P-27) demonstrated the Defendant's trademark closely resembled the Plaintiff's established brands, justifying the Plaintiff's claim of bad faith.

The Panel confirmed the Plaintiff as the legitimate owner of the "EV" trademark, registered in the U.S. since 1953 also protected in multiple countries. The Plaintiff's trademarks were widely known also promoted before the Defendant's application, weakening the claim of ignorance. Given the Defendant's involvement in the sound systems industry, it was likely they were aware of the Plaintiff's brand.

Thus, the judges rightfully upheld the Plaintiff's request, declared the Defendant's trademark registration invalid due to bad faith, also annulled the EV ELEKTROVOICE+LOGO trademark (IDM000796912).

CONCLUSION

As per the study findings also the analysis of Decision Number 83/Pdt.Sus-HKI/MERЕК 2023/PN Niaga Jkt.Pst., several inferences can be drawn. Firstly, only trademarks registered in accordance with the stipulations of Law Number 20 of 2016 concerning Trademarks also Geographical Indications are entitled to legal protection. Given the Plaintiff is the legitimate owner also the original registrant of the "EV" brand, the Panel of Judges in the a quo case should rightfully grant the Plaintiff's claim in its entirety.

Furthermore, the revocation of the Defendant's trademark registration also the full acceptance of the Plaintiff's lawsuit is justified, as the "EV ELECTROVOICE+Logo" trademark, registered under IDM000796912 in class 9 under the Defendant's name, has been determined to bear substantial similarities with the Plaintiff's well-known trademarks, namely "EV also Logo" also "ELEKTRO-VOICE."

The analytical reasoning of the Panel of Judges has been assessed as accurate also legally compliant, as they successfully established the Defendant's "EV ELECTROVOICE+Logo" brand shares significant similarities with the Plaintiff's "EV also Logo" also "ELEKTRO-VOICE" trademarks

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