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Legal Analysis of Product Use with Brand Name Riding in Ternate City, Indonesia

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Abstract: This paper is entitled “Legal Analysis of Product Use with Brand Name Riding in Ternate City”. The existence of a brand has a major impact on business competition as well as on improving economic standards. This research analyzes the use of products that piggyback on the names of well-known brands. This study uses socio-legal research which is a combination of two methods in the form of dogmatic legal research and empirical research. Results show that products that piggyback on well-known brand names is a manifestation of bad faith as well as damaging reputation and deceiving consumers. Several Indonesian regulations prohibit such actions. Although the ban on piracy, counterfeiting, and the commercialization of goods resulting from IPR violations, including trademark piggybacking, should serve as a deterrent against trademark infringement, issues like business actors' ignorance of the law and the imitation culture continue to impede effective law enforcement. The legal ramifications of trademark infringement by piggybacking on brand names then refer to different effects or outcomes that may occur as a result of breaking the law or committing illegal conduct.

Keyword: Product, Brand, Piggybacking, Ternate, Indonesia.

INTRODUCTION

Brands play an important role in the business world, because they not only function as an identifier, but also reflect the image, quality, and values associated with the product or service represented. In the classical sense, a brand is associated with the identification of a product and its differentiation from competitors' products, either in the form of using a certain name, a specific logo, a special design, or other visual signs and symbols (Casavera, 2019). With these indicators, brands are considered valuable and unique economic assets, thus ensuring that brand owners have exclusive rights to the use of their brands. Therefore, it is very important and crucial for brand owners to obtain protection of their rights attached to it.

The existence of a brand has a major impact on business competition as well as on improving economic standards. Looking at the positive aspects, it is certain that it will

encourage very rapid economic growth, but this will also have a negative impact on unhealthy business competition and cause many losses from various aspects and can affect the dynamics of social and economic life (Keller, 2020). Thus, a series of actions and efforts are needed through a policy and approach by several important elements, namely the government or other institutions to overcome the problems that arise due to the turmoil of economic competition that continues to develop along with the changing times. The legal policy in question is a concrete step to try to respond to global challenges, especially those related to economic and business competition by formulating a regulatory framework that facilitates innovation and investment, while still maintaining the principle of social justice (Siringoringo, 2022). Another hope is that the process can reflect the government's efforts to create a legal environment that supports economic growth while also strengthening the protection of individual rights.

In Indonesia itself, it has been quite a long time in the formation of regulations on brands. After determining the direction of legal policies on brands by following provisions based on international agreements or the WTO, a new law has been formulated which is now a guideline for the implementation of brand law in Indonesia, namely Law Number 20 of 2016 concerning Brands and Geographical Indications. One of the points in this regulation states that brand rights are exclusive rights granted by the State to the owner of a registered brand for a certain period of time by using own the brand or give permission to another party to use it (The Government of the Republic of Indonesia, 2016). Therefore, the rights to registered brands should receive strict supervision from the government to protect the legal interests of brand rights holders, so as to prevent or minimize the possibility of unethical business practices.

An influence on a brand is seen in its high reputation, because the standardization of the use and ownership of the product in question has a great impact on the hierarchy of social life. This factor is sensitive to be used as a trigger for acts of brand infringement both nationally and internationally. Violation of a brand, especially a well-known brand type (well-known or famous mark), can be done through piggybacking and piggybacking without permission or a license from the trademark holder, this violation is known as passing off. This action is also called goodwill or something inherent in the brand and is often interpreted as "bad faith" (Nugroho, 2016). The consequences of Passing Off can create confusion among consumers because the brands used are similar but different.

Defined by J. Thomas Mc. Carthy and Perreault Cannon that Passing Off is a trademark violation where the infringer intentionally misleads or deceives buyers, even though there is no evidence of deception in the trademark violation but it is likely to mislead and needs to be proven. In common law countries, this violation is an illegal act that is part of trademark law, namely by giving a false description to the public that the defendant's goods and services are competitors, usually by using a similar trademark (Thomas J. McCarthy & Cannon, 2008). This action is said to be an action that tries to gain profit through shortcuts in all kinds of ways and pretexts by violating business ethics, moral norms, and laws (Djumhana & Djubaedillah, 2003).

The rampant brand piggybacking is not only on the production side, but also easy to trace its circulation in the market that freely trades counterfeit products with famous brand labels, such as shoe products that piggyback on the brand names Adidas, Converse and Nike. The distribution of counterfeit products with famous brand labels on the market runs very smoothly without strict supervision. Its circulation is not only in a certain area, but in terms of expansion it is almost spread throughout Indonesia, one of which is Ternate City. We realize that this phenomenon occurs because of several strong reasons that influence everyone's mindset that this is no longer something that is considered contrary to morals and ethics in business, so that this practice is allowed to continue and legalizes these actions to continue to exist in business competition practices until now. Thus, the existence of counterfeit goods using famous brand names is sufficient to represent the weak supervision of the government at this time.

From the above perspective regarding the dynamics of business competition caused by the existence of products that have elements of Passing Off actions, researchers are very interested in raising a legal study by conducting research on the use of products that piggyback on the names of well-known brands.

METHOD

This study uses socio-legal research which is a combination of two methods in the form of dogmatic legal research and empirical research. (Wardiono, 2019). In this research method there are two aspects including the legal research aspect, namely the object of research in the form of law in the sense of "norms" of laws and regulations, (Arifin and Dimyati, 2021) then the socio-research aspect, namely the methods and theories of social sciences about law to help researchers in analyzing (Suteki & Galang, 2020).

The socio-legal approach is carried out to trace and examine the legal rules contained in legal sources that are relevant to the use of products that piggyback on famous brand names and conduct structured observations and interviews with sources in the field to obtain data related to community behavior patterns comprehensively. Furthermore, the data that has been obtained through field studies and literature studies will be collected and grouped systematically according to the facts and characteristics of the objects studied precisely and then analyzed qualitatively with the aim of obtaining a conclusion from the writing problem.

RESULTS AND DISCUSSION

Use of Products That Piggyback on Brand Names by Business Actors and Consumers

The law on product use refers to a set of rules and regulations that govern how a particular product can be used by consumers. These legal rules can cover several aspects including, product safety which means meeting safety standards set by the relevant authorities. The aspect of labeling and information, that a product must have a clear and informative label, this context relates to information about ingredients, how to use, expiration date, and other important warnings. The next aspect is to prioritize consumer rights to obtain safe and appropriate products and to receive compensation or replacement if the product is defective or not appropriate. In addition, the right rules can provide protection to the environment with provisions for restrictions on the use of hazardous chemicals or requirements for recycling, limitations and prohibitions on the use of certain products such as illegal drugs, explosives, or firearms, which require special permits for use (Howells, Hans-Wolfgang, & Schulte-Nölke, 2018).

The application of legal regulations in the use of products greatly influences the attitude of producer compliance with their legal responsibilities. Producers are required to ensure that the products they make meet all applicable regulations, including in terms of quality testing, safety, and the obligation to obtain certification and register Intellectual Property Rights (IPR). According to Satjipto Rahardjo, law is not only seen as a set of rigid rules, but also as a tool to direct people's behavior in achieving justice and social balance. Satjipto argues that law functions as a means of community development (social engineering), which can encourage producers' awareness of their legal responsibilities through effective enforcement of regulations (Rahardjo, 2009). So that the result of this compliance gives rise to awareness of legal responsibility. Thus, the existence of this legal regulation aims to protect consumers from harm and fraud and ensure fairness in transactions, maintaining a balance between industrial innovation and public safety.

Salim HS argues that the application of law must be directed at protecting consumer rights from harm and fraud. The legal rules on consumer protection are essentially to ensure fairness in transactions, as well as maintain a balance between industrial innovation and public safety (Salim, 2013b). This is in line with the main purpose of product-related regulations, which is

not only to create a competitive business environment, but also to protect the public from risks that may arise from the use of unsafe products.

In today's business strategy, an important issue that must be answered is how a brand of goods or services can be protected from other competitors. Therefore, competition in business is not only trying to win consumers, but also competing to immediately apply for brand registration for each product of goods or services (Arifin & Iqbal, 2020). Because in the current era of free trade, well-known brands are often the target of misuse by irresponsible parties. Thus, through registration as regulated by applicable law, it is necessary to protect brands from unauthorized use by business actors and consumers. The use of products that piggyback on brand names is known as brand piggybacking or Passing Off, a practice that can have an impact on violating a person's intellectual property rights. This Passing Off action is a manifestation of the scope of bad faith. This effort is carried out through the creation of works to the use of brand names that are based on dishonesty, whether it is piggybacking, imitating, or plagiarizing well-known brands, which ultimately creates a condition of unfair competition or business competition that is unhealthy (Sari, 2014).

The problems regarding this activity according to the Ternate City Industry and Trade Service as conveyed by Ahmad Saleh, are increasing even though the protection is quite adequate in terms of regulation. The important factor is certainly related to the lack of legal awareness, especially for business actors, who do not understand that the use of brands or business identities that are similar or identical to other parties can be considered a violation of the law.

On the other hand, the tight business competition in the market is so competitive that some business actors feel compelled to take shortcuts by imitating brands on the assumption that the legal risk is likely to be smaller compared to the potential profits that can be obtained. Another reason is that Indonesian society still has a strong culture of imitation. In some business communities, imitating or following the success of others may be considered normal or even a legitimate business strategy. This is bad and unnatural behavior because it tends to make the practice of Passing Off more difficult to eradicate (personal communication, July 9th, 2024).

As an example of piggybacking on famous brand names, it can be seen in the shoe industry in Indonesia which until now still continues to exist, such as the use of famous shoe product names, namely Converse, Adidas, Nike, Vans and others (Risandi & Disemadi, 2022). From these famous brand names, it has triggered several local shoe manufacturers and shoe retailers to make types of shoes using these famous brand names just to achieve the target of making a lot of profit.

The reason given by Indra as a consumer of these famous branded fake shoes was that with their existence we feel able to buy branded shoes but at affordable prices (personal communication, July 10th, 2024). The response given to this product was due to curiosity something new, because there is a drive to find a unique and interesting form that has never been encountered before. Because of course it is very difficult to reach the original goods, then counterfeit products can be an option. This is a depiction of the consumer behavior theory put forward by Blackwell Engel and Miniard who argue that price factors and perceived value are often the main considerations for consumers in making purchasing decisions, especially in the context of counterfeit goods that are much cheaper (Engel, Blackwell, & Miniard, 1995).

Different from the opinion of other consumers who said that the purchase of fake shoes of famous brands was influenced by information provided by colleagues or friends who had previously used them (personal communication, July 10th, 2024). This response illustrates the vulnerability of consumers in receiving new information which shows that their desire to buy is due to the influence of the social environment. This analysis shows that consumers have no concerns when buying fake shoes of famous brands. The existence of significant social influence in the consumer decision-making process regarding the theory of diffusion of innovation according to Everett M. Rogers, that information from the social environment either

from friends, colleagues, or social media can accelerate the adoption of a product, even if the product is illegal or of poor quality. This social influence can trigger consumers to participate in purchasing counterfeit goods, without considering the legality and quality aspects of the product (Rogers, 2003).

Some of the reasons stated by consumers above reflect a common phenomenon in today's society. This phenomenon is called "status consumption," which is consumption driven by the desire to gain social recognition, not merely functional needs (Ishida, 2021). Although consumers are aware that lower prices are usually directly proportional to lower quality, this is often not considered a major problem. This indicator suggests that consumers may be more focused on the aesthetic and symbolic aspects of the products they buy, rather than the functional aspects or long-term quality. According to research by Solomon, consumers often ignore product quality as long as the goods fulfill their psychological needs, such as the desire to appear fashionable or follow trends (Solomon, 2018).

According to Eugenia Mardanugraha, the distribution of counterfeit goods in Indonesia is considered very concerning. From the archives of the Indonesian Anti-Counterfeiting Society (MIAP), it is stated that there are around 12 industrial sectors and one of them is the shoe industry which results in a total loss of 4.4 trillion and tends to increase every year (Mardanugraha, Wardhani, Ismayadi, Bergkamp, & Yappy, n.d.).

The data is a research investigation in 2014, while in 2020 there was a very significant increase based on data collected again by MIAP, Indonesia suffered losses of up to IDR 291 trillion due to the existence of the production and circulation of counterfeit goods. Of the total circulation on the market, 38% of fashion products and leather goods are counterfeit goods, while 50% comes from the circulation of cosmetics that are not original products (Mayasari & Wijanarko, 2022). This means that there is an impression of tolerance for acts which leads to the act of Passing Off so that it can also be said that this act is a serious copyright violation because it involves massive piracy behavior, continuously with a scheme to create counterfeit goods that piggyback on the name of a famous brand.

The perspective in the Copyright Law states that anyone who is not authorized is prohibited from duplicating and/or using commercially (The Government of the Republic of Indonesia, 2014), the act of piggybacking on a well-known brand name if analyzed more deeply, this provision can apply because of the power to create goods that are similar to the original brand and at the same time attach it to the brand name without the official permission of the owner of the brand rights.

The following is also with the commercialization action, pirated goods cannot be distributed for sale. Article 10 of this Law states that "managers of trading places are prohibited from allowing the sale and/or duplication of goods resulting from violations of Copyright and/or Related Rights in the trading places they manage". The provisions of this article are sufficient to complement the previous paragraph, that the prohibition on its manufacture and distribution is quite clear, but with the existing real conditions, it can be said that the enforcement of this regulation is not yet effective.

To ensure that the use of symbols to be used as brands does not imitate or piggyback on other brands, it is necessary to pay attention to the provisions of the distinctiveness requirements as a material requirement so that the symbol can meet the protected elements. Conventionally, symbols can be in the form of images, names, words, letters, numbers or combinations thereof. In its development, the sign that becomes a symbol can be in the form of aroma (scent), sound (sound), color (colour), signature (signature), and shape (shape) (Marwiyah, 2011).

One of the most important elements in modern trade, a brand is very necessary, especially because of its function as an identity that distinguishes products or services from one entity to another. According to Kotler and Keller, a brand is not just a sign or name, but is an overall representation of the values and reputation built by a company for its products. With a brand,

consumers can recognize a product and put their trust in the quality of the products they buy (Kotler & Keller, 2012).

Considering the fulfillment of material requirements, then the effort to obtain exclusive rights from the state as stipulated in Article 3 of the Trademark and Geographical Indications Law, the owner of the trademark is required to register it in the General Trademark Register with a certain period of time. After obtaining trademark rights, the owner has the full right to use the trademark himself or can grant permission to use it to another party. This procedure legally provides legal certainty for the trademark rights holder as well as legal protection due to violations of the use of the trademark symbol/mark that has been registered.

Regarding this intent, Salim HS is of the opinion that legal protection for trademarks is very important in the context of fair trade. IPR regulations serve to ensure that copyright and trademark owners have exclusivity over their creations, so as to prevent violations, such as counterfeiting or misuse of trademarks by other parties (Salim, 2013a).

Regarding early protection efforts related to violations of the use of well-known brands, in Indonesia itself this is regulated through the provisions of Article 21 paragraph (1) and (2) of Law Number 20 of 2016 concerning Brands and Geographical Indications, that:

First, the application is rejected if the Mark is substantially or completely similar to: (a) The registered trademark belongs to another party or was previously applied for by another party for similar goods and/or services; (b) Well-known brands owned by other parties for similar goods and/or services; (c) A well-known brand owned by another party for goods and/or services of a different type that meet certain requirements; or (d) Registered Geographical Indication.

Second, an application will be rejected if the trademark: (a) constitutes or resembles 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 the written consent of the authorized party; (b) is an imitation or resembles the name or abbreviation of a name, flag, symbol or emblem of a country, or national or international institution, except with written approval from the authorized party; or (c) is an imitation or resembles an official mark or stamp or seal used by a state or government agency, except with written approval from the authorized party.

The explanation of the article above can be understood that the statement of rejection of an application for registration of a trademark that has similarities, either in principle or in its entirety, to a well-known Trademark for the trademark rights of another party, whether it is similar goods and/or services, must be made by considering the general knowledge of the wider community about the Trademark.

Likewise, the reputation of the well-known Trademark, whether it was obtained due to large-scale promotion, and the existence of investment reasons outside in several countries by its owner with the inclusion of evidence of registration of the Trademark in question. This argument can be an umbrella for the protection of the rights of trademark owners as well as an important foothold for the Commercial Court in examining cases of trademark use by ordering an independent institution to conduct a survey of a product suspected of being involved in piggybacking on the brand name in order to obtain a conclusion regarding whether or not the Trademark is well-known. Furthermore, it will be used as a basis for rejection if it is considered sufficient.

In another legal source, in the Supreme Court of the Republic of Indonesia Jurisprudence Number 022 K/N/HaKI/2002 dated 20 December 2002 it states:

"To determine the criteria for a well-known trademark, the Supreme Court is guided by the Supreme Court's Jurisprudence, namely that in addition to being based on general public knowledge, the determination is also based on the reputation of the trademark in question which has been obtained due to promotions carried out by its owner, accompanied by evidence of registration of the trademark in several countries if this exists, these things are one of the powerful tools of proof."

Other provisions that serve as references in determining whether a particular product meets the characteristics of a product with a well-known trademark are also mentioned in Article 18 of the Regulation of the Minister of Law and Human Rights Number 67 of 2016 concerning Trademark Registration (Setiawan, Sulistianingsih & Kusumaningtyas, 2013a), namely:

First, the criteria for determining a well-known trademark as referred to in Article 16 paragraph (2) letters b and c are carried out by taking into account the general knowledge of the public regarding the trademark in the relevant business sector.

Second, the community as referred to in paragraph (1) is the consumer community or the community in general who have good relations at the production, promotion, distribution and sales levels with respect to goods and/or services protected by the well-known trademark in question.

Third, in determining the criteria for a Trademark as a well-known Trademark as referred to in paragraph (1) carried out by considering: (a) the level of public knowledge or recognition of the Trademark in the relevant business sector as a well-known Trademark; (b) the volume of sales of goods and/or services and the profits obtained from the use of the brand by its owner; (c) the market share controlled by the Brand in relation to the circulation of goods and/or services in the community; (d) scope of use of the Trademark; (e) term of use of the Trademark; (f) intensity and promotion of the Brand, including the investment value used for such promotion; (g) Trademark registration or application for trademark registration in another country; (h) the level of success of law enforcement in the field of Trademarks, particularly regarding the recognition of the Trademark as a well-known Trademark by the authorized institution; or (i) the value attached to a brand that is obtained due to the reputation and quality assurance of the goods and/or services protected by the brand.

The classification of the characteristics of a well-known trademark as agreed in the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks issued by the World Intellectual Property Organizations (WIPO), also states that several factors below can be used to determine whether the trademark falls into the well-known category, namely (Amrikasari, 2019): (1) level of brand awareness or recognition in sectors relevant to the public; (2) duration, extent and geographical area of use of the Mark; (3) duration, extent and geographical area of the Brand promotion; (4) the duration and geographical area of any registration or application for registration of a Trademark; (5) record of successful fulfillment of rights to the Trademark; and (6) Brand value.

The discussion on products that piggyback on the name of a famous brand has become a fairly important national issue of concern, because it has a significant impact on the brand and the reputation of a legitimate business. Several important discussions in it relate to the use of famous brands as an element in business competition and its relationship to consumer protection against certain brands that allow for elements of counterfeiting.

From both aspects, according to Hendra Setiawan Boen, the basic logic is quite clear that consumers with good intentions must be protected from products that violate IPR because it can clearly harm consumers as buyers, because the quality of products resulting from IPR violations is often not good for use, let alone used in business competition. However, as experts argue, Law Number 8 of 1999 concerning Consumer Protection does not explicitly contain IPR, therefore interpretation is needed in reading article by article to determine whether there are provisions for consumer protection from business actors who trade products that violate IPR or are related to unfair business competition as well as consumer protection against activities that lead to Passing Off actions by business actors (Boen, 2009).

This Passing Off activity is a reputation-hijacking or piggybacking on a brand name trade that is already well-known. This is done to deceive the public in general and result in the wrong choice of goods that are actually or appropriate, so that business actors with Passing Off

products will gain profits but not for the party that is piggybacking on the brand name so that they experience no small loss (Harifaningsih, 2009).

The existence of a well-known brand is essentially able to revive the level of industrial productivity in creating new innovative works to meet market needs along with the development of the times, while also playing an important role in maintaining business competition so that it can run well and healthily. A brand is an instrument of explanation about the origin of a product that was created, also to determine the quality of the product, and the authenticity of a product.

Therefore, in order for the purpose of the existence of brands in Indonesia to become an important instrument in encouraging economic progress, especially in the field of healthy business competition, the form of legal protection for registered trademarks is absolutely given by the government to holders and users of brand rights, one of the important reasons is to guarantee (Firmansyah & Hery, 2011): (1) Certainty of business for producers; (2) Attracting investors for foreign brands, and (3) Legal protection for local trademarks is expected to develop widely in the international world in the future.

Legal Consequences of Trademark Infringement by Acts of Brand Name Piggybacking

In the legal system, there is the application of legal consequences as a function of the mechanism to maintain order, protect the rights of individuals or entities, and encourage compliance with applicable regulations. The concept of legal consequences refers to the various impacts or consequences that can arise as a result of a violation of the law or an unlawful act by a party. In the context of civil law, these consequences can be in the form of an obligation to pay compensation, in the context of criminal law, it can be in the form of imprisonment or a fine, and on the administrative side, the consequences obtained can be in the form of an order to stop activities or revocation of business licenses, all of which types of consequences are enforced by the legal authority holder against the perpetrator of the violation. The purpose of implementing a legal consequence based on several aspects is to correct, prevent, or provide justice for actions that violate the rights or interests of others (Jones & Cooper, 2021).

Against the act of piggybacking on a well-known brand name, it is considered an unlawful act because it is based on the use of a licensed brand name (registered with IPR) without the permission or knowledge of the owner of the brand rights for a new product made by resembling the original form of the brand. This action, as stipulated in the applicable Law, can include several violations, both civil, criminal and administrative. The following are the forms of legal consequences for the use of products that piggyback on a well-known brand name, including:

First, Trademark Infringement Lawsuit. Regarding the steps to prosecute trademark infringement, it is necessary to know the legal provisions on the burden of proof, where the party who feels aggrieved must be able to show strong and convincing evidence because there has been a violation of the rights to the trademark that he controls or has legally obtained. Thus, so that the position in the legal standing is fulfilled and can be processed legally. Therefore, people or individuals and legal entities cannot just enter without the necessary evidence and completeness. The person or individual will not obtain their rights even though it is actually true, before they can submit evidence that is acceptable by law. And other parties or those suspected of violating cannot be blamed unless there is a legal decision that says so (Mirfa, 2016).

Based on this statement, the burden of proof is explained by Munir Fuady that the burden of proof is a legal determination of who must prove a fact that is being questioned in court, to prove and convince any party that the fact actually happened as stated, with the legal consequence that if it cannot be proven by the party burdened with proof, the fact is deemed to have never happened as stated by the party submitting the fact in court (Fuady, 2017).

Likewise, regarding Trademark violations that are the object of legal issues. Achmad Santosa stated that trademark violations can cause confusion among consumers, which in turn

harms the original brand owner. Therefore, the law gives the brand owner the right to sue for damages and request an order to stop the use of the brand by the perpetrator of the violation (Santosa, 2020).

The statement if interpreted when one of the business actors uses a brand that is identical or very similar to a well-known brand without permission, then strong evidence of the violation is needed. So that the basis for the claim becomes clear and meets the elements in a strong burden of proof, as the requirements for a claim or lawsuit in a civil case that will be carried out. The actual brand owner can file a civil lawsuit regarding the claim for damages, stopping the use of the infringing brand, and requesting a court order (injunction) to prevent the business actor from using the brand for his interests.

The brand owner as the injured party has a strong legal standing to file a lawsuit if they can prove that the defendant's actions have caused real commercial losses. This must involve evidence in the form of documentation of brand ownership and evidence of violations committed by other parties. As Suhariyanto said, the brand owner must prove legal ownership of the brand and show the losses suffered due to the infringement. This evidence is important to ensure that the lawsuit can be accepted in court (Suhariyanto, 2019). To fulfill legal standing, the plaintiff must be able to show that they have a direct interest in the dispute and have been harmed by the actions of the defendant.

In addition, Llewelyn Cornish and Aplin stated that the plaintiff must prove three main elements so that the lawsuit against trademark infringement containing the act of Passing Off can be accepted, including (Cornish & Aplin, 2019): (1) Good will or reputation of the brand. This refers to the positive reputation that has been developed by the brand owner, and this is what is the object of protection in the case of Passing Off. Damage to this goodwill is the main basis for the lawsuit; (2) Misrepresentation or fraud that causes confusion among consumers. This happens when business actors use brands or identities that resemble other brands, so that consumers mistakenly assume that their products come from the same source as the original brand; and (3) Damage or loss caused by the actions of business actors. Damage or loss does not always have to be in the form of direct financial loss, but can also include loss to the brand owner's reputation or goodwill.

Second, Passing Off Claim. In addition to claims for trademark infringement, trademark holders can also file a passing off lawsuit, where the business actor intentionally or unintentionally causes confusion among consumers by piggybacking on the name or reputation of a well-known trademark. These consequences can be criminally enforced on the basis of counterfeiting in addition to claims for damages, as well as orders to stop the use of misleading trademarks. David Keeling added that trademark counterfeiting, in addition to civil claims, can also be subject to criminal sanctions if it is proven that the perpetrator intentionally used a counterfeit trademark to deceive consumers (Keeling, 2020).

Law Number 20 of 2016 concerning Trademarks and Geographical Indications regulates several forms of criminal sanctions for trademark violations, including:

The provisions of Article 100 state: (1) Any person who without the right uses a Trademark which is identical in its entirety to a registered Trademark belonging to another party for similar goods and/or services produced and/or traded, shall be punished with imprisonment for a maximum of 5 (five) years and/or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah); (2) Any person who without the right uses a Trademark which is essentially similar to a registered Trademark belonging to another party for similar goods and/or services produced and/or traded, shall be punished with imprisonment for a maximum of 4 (four) years and/or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah); and (3) Any person who violates the provisions referred to in paragraph (1) and paragraph (2), whose type of goods cause health problems, environmental problems and/or human death, shall be punished with a maximum imprisonment of 10 (ten) years and/or a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).

Furthermore, the provisions of Article 101 state: (1) Any person who without authorization uses a mark that is similar in its entirety to a Geographical Indication belonging to another party for goods and/or products that are the same or similar to the goods and/or products registered, shall be punished with imprisonment for a maximum of 4 (four) years and/or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah); and (2) Any person who without the right uses a mark which is essentially similar to a Geographical Indication belonging to another party for goods and/or products which are the same or similar to the goods and/or products registered, shall be punished with criminal penalties, imprisonment for a maximum of 4 (four) years and/or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah).

Finally, Article 102 states:

"Any person who trades goods and/or services and/or products that are known or reasonably suspected to be known that the goods and/or services and/or products are the result of a criminal act as referred to in Article 100 and Article 101 shall be punished with imprisonment for a maximum of 1 (one) year or a maximum fine of IDR 200,000,000.00 (two hundred million rupiah)"

Third, Financial Losses and Compensation. As a result of the legal violations caused by Passing Off, David I. Bainbridge said that significant trademark violations can result in severe legal consequences, including injunctions and financial compensation for the trademark owner (Bainbridge, 2021). Legal efforts to restore financial losses experienced by trademark rights holders can be taken through litigation (both criminal and civil). For civil disputes, the settlement uses a method of filing a lawsuit to cancel the use of the trademark in question and a lawsuit for compensation based on the amount of loss that has been experienced.

Based on Article 76 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, it is stated that "a lawsuit to cancel a registered trademark can be filed by an interested party based on the reasons as referred to in Article 20 and/or Article 21" and "a lawsuit to cancel is filed with the Commercial Court against the owner of the registered trademark". A request to cancel a trademark that is suspected of piggybacking on a previously existing trademark can be made by the owner of the trademark, whether registered or not, on the basis of the fulfillment of supporting evidence for the cancellation lawsuit request.

After the cancellation step, Article 83 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications further states that "the owner of a registered Trademark and/or recipient of a registered Trademark License may file a lawsuit against another party who unlawfully uses a Trademark that is essentially or wholly similar to it for similar goods and/or services in the form of: (a) a lawsuit for damages; and/or (b) termination of all acts related to the use of the Trademark." Furthermore, "the lawsuit as referred to in paragraph (1) is filed with the Commercial Court." With this provision, the trademark owner may include payment for damages according to the amount of profit obtained by the business actor from the use of the infringing trademark. Likewise, in some cases, the court may award additional damages (punitive damages) to punish the business actor for their actions.

Review of the imposition of sanctions for violations of brand use, if observed, is heavier on criminal sanctions compared to other sanctions. However, the burden of legal consequences borne certainly follows the severity of the error made by the violating party. Therefore, in order to minimize and avoid the trap of legal sanctions, the Head of the Intellectual Property Service Sub-Division of the Malut Kemenkumham Regional Office, Suhaemi Junaedi said that if someone has an idea or concept for a product or goods made, it is better to register it immediately.

As with IPR, some must be registered and some do not need to be registered. Likewise, brands, patents, and industrial designs must be registered to obtain protection from the state. The consequence is that if they are not registered, other people can imitate them and from a legal perspective it is difficult to obtain protection (personal communication, July 18th, 2024). With compliance on the existing provisions, it is no longer something important in terms of

legal protection but the economic improvement side can be felt its big impact, because the existence of registered IPR can be a source of increased income for creative economy actors. For example, the holder of the rights will receive royalties for the use of works or ideas by other parties. In other words, according to Suhaemi Junaedi, products or ideas that have been registered in Intellectual Property Rights will provide economic benefits for creators, designers, and investors.

Reported from the Public Relations Report of the Directorate General of Intellectual Property of the Ministry of Law & Human Rights of the Republic of Indonesia, that in the midst of the high creativity of creative economy actors and micro, small and medium enterprises (MSMEs) in the field of Intellectual Property, many of them still do not understand the potential of their IP.

That protection of Intellectual Property is very important to secure the creative work of an individual or group from misuse by other parties. In line with what was conveyed by the Expert Staff of the Mayor of Ternate, Mochammad Arif Abdul Gani that, Ternate City itself has many talents in the creative industry, where every day creative content appears from the nation's children (in Ternate City) and has not received protection. He added, this creative idea is actually an unlimited resource that has a very high economic value, for that we appeal to the public, especially creative economy actors and micro and small business actors to be aware of the importance of protecting Intellectual Property Rights (UHI, 2023).

Director of Brands and Geographical Indications, Kurniaman Telaumbanua conveyed the great potential for creative economic development in North Maluku that needs to be transformed into an economic power engine. However, the basis of this power must be aligned with a good understanding of the law, especially in actualizing the results of creative works with forms of legal protection such as registration of IPR and brands.

It is hoped that through the socialization activities that continue to be carried out by the Director General of IPR of the North Maluku Provincial Office in collaboration with certain institutions and community organizations that are carried out in the form of coaching and legal education related to brand protection and also through the development of Intellectual Property dissemination agents in the region, it can explain that the state is present in the midst of society to guarantee the protection of citizen rights, especially for those who have abilities in the fields of small and medium industries.

So far, the efforts often made by the Director General of IPR of North Maluku are to invite MSME actors who have not registered their brands to register immediately, and also to activists who have not registered their works of creation to immediately register their Copyright. Because the benefits of registering IPR are able to create space and become a great opportunity for MSMEs to control market share, increase income, as well as help the government in opening up employment opportunities, and become a role model for other business actors (personal communication, July 18th, 2024).

Consistency in law enforcement needs to be maintained and realized as a concrete step by the state in protecting property rights that have legality in the eyes of the law, one of which is by taking action against violators who clearly and explicitly make mistakes. The law enforcement process in Indonesia needs to be improved through stricter supervision and cooperation between related agencies, such as the Directorate General of Intellectual Property Rights, law enforcement officers, and the courts.

As conveyed by Mariam Darus Badruzaman, laws and regulations must be enforced firmly to provide a deterrent effect for violators (Badruzaman, 2014). With a firm attitude and consistency of the state then the wheels in the business world can run well because the competition that arises is healthy competition. From every aspect that is guarded by the state will have an impact on the sense of justice and protection, including the effects that develop will affect the optimal prevention of violations.

CONCLUSION

From the results of the analysis in the sub-discussion, it can be concluded that the use of products that piggyback on well-known brand names is a manifestation of bad faith as well as damaging reputation and deceiving consumers. This practice is known as Passing Off activities, involving the use of symbols or brands without permission from the legitimate owner, thus creating unfair business competition.

With several legal regulations such as in the provisions of Article 21 paragraph (1) and (2) concerning the rejection of trademark registration (counterfeit products), identification of well-known brands with the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 022 K/N/HaKI/2002 dated December 20, 2002 in conjunction with Article 18 of the Regulation of the Minister of Law and Human Rights Number 67 of 2016 concerning Trademark Registration, and the Copyright Law through Article 9 paragraph (3) in conjunction with Article 10 which states the prohibition on piracy, counterfeiting and commercialization of goods resulting from IPR violations including trademark piggybacking should be a protective force against acts of trademark violation, but challenges such as the lack of legal awareness among business actors and the culture of imitation are still obstacles to effective law enforcement.

Then, the legal consequences of trademark infringement by piggybacking on brand names refer to various impacts or consequences that can arise as a result of violations of the law or unlawful acts. The consequences include lawsuits for trademark infringement by business actors through criminal charges for alleged counterfeiting in accordance with Articles 100, 101 and 102 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications and lawsuits for financial losses or compensation based on Article 76 in conjunction with Article 83.

In order to minimize Passing Off actions, if someone has an idea or concept for a product or item that is made, they should immediately register it, as with IPR and Trademarks, patents, and industrial designs to obtain protection from the state. Because the consequences if not registered, will encourage others to imitate the work so that efforts to obtain legal protection are difficult to fulfill.

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