
Juridical Review of Supreme Court Ruling Number 7/Pdt.Sus.HAKI/2021/PN Smg

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ABSTRACT

The importance of brands as a differentiator to avoid imitation is growing as a result of the increasing number of imitations that occur as a result of increasingly advanced trade and wider marketing reach, so that legal protection for brands is increasing. The analytical method uses a literature study. The discussion of the findings of this study is based on the opinions of legal experts and relevant academic journals. This study shows that in a declarative system, the priority of brand rights is determined based on the date of first use. Consequently, the system provides protection even to those who do not officially register their trademarks, allowing them to claim the first use at any time. As stated in its previous ruling, the Tribunal concluded that the two marks have disconcerting similarities in form, composition, combination, elements, sound, sound and appearance. Because PT Surabaya Top and Teh conveyed identical visual, phonetic and conceptual impressions, the group decided that the two were basically identical. The conclusion of this study is that the judge's a quo decision was based on the fact that all elements of similarity exist in the principal and the entire JAGUAR brand which causes harm to the plaintiff, even though his business processes and work are in conflict with the company he named himself which cannot be taken carelessly by others.

Keywords: Legal Considerations, Brand Rights, Decisions

INTRODUCTION

Since many years ago, brands have been used as a tool to identify the origin and use of a particular product and as a benchmark for other similar products. (Desak Made D 2020) Legal protection for brands is growing after the increasing number of imitations that occur due to increasingly advanced trade and expanding marketing reach, so the importance of brands as a differentiator to avoid imitation. (Agus M, 2010)

Brands, which are considered the single most important intellectual asset, have an important ability to advance and grow trade in goods or services in Indonesia.(Indriyani W, 2015) Apart from that, work on national building projects in general and economic building projects in particular.(Thoyyibah B, 2018) Brands are a means used to standardize certain businesses. (Meli Hertati G, 2018) Identifying the source, then the goods or services can be benchmarked for similar ones. Besides that, customers can also express the potential of the goods and services they buy. However, in practice or actual use, it is not uncommon for legal violations of trademark rights on registered goods to occur, resulting in the use of unlawful business practices such as counterfeiting or use of trademarks without considering the relevant trademark rights. (Afifia N, 2018)

If there is cancellation of the brand owner, they will receive legal protection. 4 As a right to move without good intentions, material rights in brand rights determine the freedom of the owner. This component is seen in the main definition close to the seal. In Indonesia, there is a principle known as "first to file" that governs the legal system of legal representation. This principle is the first registration method, which requires that a person must register while maintaining their status. The application of this principle must be carried out by the applicant for trademark registration, and is provided through a request. However, due to the possibility of a trademark cancellation lawsuit, the current situation does not guarantee absolute status.

If law enforcement officials warn of the possibility of piracy of a brand that has received public

recognition, this will clearly dampen the enthusiasm of business owners who have been operating with a strong commitment to using the brand for their business. Such as being used for high-quality products and services, having a sense of care and using them responsibly, or even being quite well-known. First and foremost, piracy will harm not only the entrepreneurs who own or hold brand rights, but also the consumer community. Entrepreneurship will decline and become more difficult to sustain if the organization's core values are not upheld, and if it continues to be promoted, publicized, and funded with significant amounts of money, it may be difficult to gain the public's trust and confidence to be seen as legitimate.

However, this remains problematic if the cancellation of the mark is not accompanied by concrete measures prohibiting the reuse of the canceled mark. This study will focus on the challenges in analyzing the movements of judges in determining alleged decisions to terminate trademark registrations.

Brand cancellation only occurs in situations where the brand is involved in a dispute over the use of certain brand rights, as opposed to other situations. In fact, the brand's cancellation request does not have a deadline of the following day. The application of repressive law takes the form of legal protection for brand rights, but its application can only be applied when there is a violation of brand rights. Brand invalidation is defined in Articles 72 to 79 of the United States Trademark Act 2016, and is only possible for active brand owners and various other organizations to dig up or stir it up.

Legal considerations are steps or techniques used by judges in making decisions in accordance with judicial authority, and must adhere to the legal principle of *nullum delictum, nullum poena sine praevia legi* (no violation, no crime without regulations). Legal considerations are considered to be the soul and essence of decisions in every decision given. Legal opinions include analysis, arguments, decisions, or other legal evidence from the Panel of Judges that refer to a particular case.

Saidin stated, after the trademark cancellation lawsuit is confirmed and the mark has permanent legal force, the Joint Intelligence Directorate will register the mark based on the General Register of Trademarks and publish it in the Official Marks. According to Rachmadi Usman, he will be in charge of registering brands based on other parties' guidelines for doing so. Saidin finally concluded that since the day he submitted his application, the Mark Certificate which was indicated to be valid no longer existed. By using Deregistration, individuals can prevent hooking into the legal system.

The purpose of this article is to strengthen the argument in the paragraph above. It can be stated as follows. First, the author will discuss the importance of confusion as a key indicator in systematic brand cancellation. Second, the author will explain the existing legal and ethical issues and how they are applied in Indonesian assistance. Fourth, the author will explain that the implied meaning of this argument is that there will be amendments or changes to the US regarding the Mark and how the judge will appropriately handle the issue of trademark infringement.

The occurrence of problems with brand components, such as copying, copying, falsifying, copying, translating or joining in the hustle and bustle of other people's brands, is supported by the willingness to provide solutions to gain large profits while not breaking the law. This can happen when users use legal loopholes, or when Trademark Directorate officers register several well-known but unregistered marks, many of which are then successfully registered there by Indonesian business actors.(Eco Y, 2020)

The factor that causes the problem of infringement in the field of brands is that there is no tool that filters out the irregular components of brands, specifically well-known brands, by the Directorate of Brands or brand law consultants, this component is a component that hinders brand legal actors who have no connection to well-known brands that obtain general and broad legal protection.(Cokorde Wife Dian Laksmi D, 2021)

Marks which according to general agreement cannot be registered or must be permanently registered but are still registered by the Directorate of Trademarks, can be registered by those who own them, provided that the marks are law-abiding, in which case they can ask the Directorate of Trademarks to register them. Owners of such businesses can also request that the Trademark Directorate register them if they are legally compliant.(Dewi Rosanti, 2021)

RESEARCH METHODS

The analysis method uses library research. The discussion of this research is based on the opinions of legal experts and research journals related to this research.

RESULTS AND DISCUSSION

1. Legal Considerations in Decisions in Accordance with the Law

The Commercial Court at the District Court examined and decided on the rights (trademark) lawsuit cases. In the first step, decision Number 7/Pdt.Sus.HAKI/2021/PN Smg was handed down. According to the Trademark Registration Cancellation Lawsuit: Mark "JAGUAR+ Logo" Class 29, No. IDM registration 000772909 & mark "JAGUAR" Class 30, No. IDM Registration 000828435 Case A quo Defendant has a problem that is not related to formal provisions but is related to material provisions because it does not match the actual content of the law that occurs with the claim, which causes if someone forms a lawsuit that is not based on the provisions, then the impact is that this lawsuit is said to be a lawsuit which is incorrect, resulting in an "Unacceptable" claim. It can be concluded that the Defendant is asking for the lack of clarity in the Claim for Cancellation of Trademark Registration: Mark "JAGUAR+ Logo" Class 29, No. IDM registration 000772909 & Mah mark "JAGUAR" Class 30, No. Registration of IDM 000828435 in the a quo case to be decided Unacceptable.

In accordance with the provisions of Article 76 paragraph (1) of Law Number 20 of 2016 concerning Cancellation of Trademarks and Elements of Legal Considerations, people who have legal requirements as intended in Article 20 and Article 21 can file a lawsuit regarding the cancellation of a registered mark by submitting an application to the Minister. What is meant by "unregistered trademark owners" are those who own a trademark in good faith but do not register it. (Afifia N, 2018) Article 76 paragraphs (1) and (2) of the 2016 Trademark Law gives rise to trademark disputes between unregistered trademark owners and registered trademark owners. Settlement of this trademark dispute 90) or alternative dispute resolution methods (2016 Trademark Law article 93) can be carried out in the Commercial Court (2016 Trademark Law article 85 –. Cancellation of a registered mark (first to file) due to receipt of a lawsuit from the first user (first to use) by paying attention to the laws and regulations that form the legal basis, especially the 2016 Trademark Law.

Even though the Directorate of Trademarks and Geographical Indications has confirmed that the owner of a registered mark has the exclusive right to use the mark, Decision Number 7/Pdt.Sus.HKI/2021/PN Smg which this thesis contains can be revoked due to the element of bad faith arising from the lawsuit filed. by the first user of the mark who has not registered the mark. The original complainant who used the mark on the packaging of the trade product also applied for the design as a trademark. When the defendant, the trademark owner, agrees to this action, it creates legal uncertainty for him. Decision Number 7/Pdt.Sus.HKI/2021/PN Smg states that Article 3 of the 2016 Trademark Law adheres to a constitutive system where trademark rights are issued after registration, not the other way around, where trademark registration does not issue rights but only provides a refutation or allegation that it is valid that the party whose mark is registered is the party who actually uses or utilizes the mark.

In contrast, in a declarative system, first use is used to establish priority for establishing trademark rights. As a result, the system provides some protection even to those who have not officially registered their trademarks, allowing them to claim first use of the mark at any time.

2. Factors Concerning Legal Considerations in Trademark Cancellation

Article 69 paragraph (1) of the Trademark Law states that a request for cancellation of a registered mark must be submitted within 5 (five) years from the date of cancellation, however in paragraph 2 it is explained that a request for cancellation can be granted without a time limit if the mark in question is in conflict with each other and morals. religion on morality or public order. A peaceful and harmonious public atmosphere is threatened every time Article 69 is proposed because of the assumption that there

are dishonest people in the world (Yusuf G, 2022)

Looking back at the legal considerations in the decision to cancel a trademark that was previously a legal entity, it is not specifically regulated in Law no. 15 of 2001 concerning brands. Therefore, the legal event that needs to be reviewed goes back to UU MA, namely UU no. 14 of 1985 jo. UU no. 5 of 2004 (lex generalis), translated into law no. 14.

Tabel 1 kriteria merek terkenal pada UU Merek Tahun 2001, UU Merek Tahun 2016, dan yurisprudensi

UU Merek Tahun 2001	UU Merek Tahun 2016	Yurisprudensi
Penjelasan Pasal 6 ayat (1) huruf b: - pengetahuan umum masyarakat mengenai merek tersebut di bidang usaha yang bersangkutan - reputasi merek tersebut yang diperoleh karena promosi yang gencar dan besar-besaran, investasi dari beberapa negara di dunia yang dilakukan oleh pemiliknya dan disertai bukti pendaftaran merek tersebut di beberapa negara - survei oleh lembaga yang bersifat mandiri berkaitan dengan merek tersebut.	Penjelasan Pasal 21 ayat (1) huruf b: - pengetahuan umum masyarakat mengenai merek tersebut di bidang usaha yang bersangkutan - reputasi merek tersebut yang diperoleh karena promosi yang gencar dan besar-besaran, investasi dari beberapa negara di dunia yang dilakukan oleh pemiliknya dan disertai bukti pendaftaran merek tersebut di beberapa negara - survei oleh lembaga yang bersifat mandiri berkaitan dengan merek tersebut.	Putusan Mahkamah Agung Nomor 274 PK/Pdt/2003: - merek telah terdaftar dan dijumpai tokonya di banyak negara - jangka waktu pemakaian merek yang telah lama - reputasi merek tersebut sebagai berkualitas Putusan Mahkamah Agung RI Nomor 1486 K/PDT/1991: - merek telah beredar keluar dari batas-batas regional malahan sampai kepada batas-batas transnasional. - merek telah didaftar di banyak negara dunia sehingga telah beredar sampai ke batas-batas di luar negara asalnya

Factors that influence the formation of legal considerations in trademark cancellation:

- 1) If the above-mentioned mark has similarities with other similar marks listed on the website of another organization or is given more time to be approved by such organization for the purchase of specific goods and/or services.
- 2) If the mark mentioned above has similarities with other marks that are recognized as belonging to a particular organization as a whole or as a whole.
- 3) If the above-mentioned brands have a history of cooperation or recognition with other brands employed by the organization specifically covered by the above-mentioned requirements, then so be it.
- 4) If the subject in question has similarities with the surrounding area or the entire map with available geographic information.
- 5) If the mark contains, or is intended to contain, the name, nickname, photo or name of a legal entity belonging to another person, unless it is for the benefit of a person with a good reputation.

The Tribunal concluded that the two marks had confusing similarities in form, composition, combination, elements, sound, sound and appearance, as stated in the a quo decision. Because the

brands PT Surabaya Top and Therefore Teh convey identical visual, phonetic and conceptual impressions, the tribunal concluded that the two were essentially the same. Prior to Defendant's use, Plaintiff was a JAGUAR user. Since 2007, the plaintiff has been actively promoting the JAGUAR brand in Indonesia to increase sales of JAGUAR brand snacks, including by including various door prize vouchers on its snack items as a form of advertising. Gift certificates for motorbikes, mobile phone gift certificates and recharges, toys, cash, roller skates, books, and so on are among the many forms that plaintiffs take.

CONCLUSION AND SUGGESTION

Conclusion

Judge 7/Pdt.Sus.HKI/2021/PN Smg granted all of the plaintiff's claims. The judge reasoned that the plaintiff could prove his argument as the first user, so that the defendant's mark, the first registrant, was invalid. The First To File principle in resolving trademark issues submitted by first users in Indonesian courts is intended to provide legal certainty; However, the publication of this lawsuit creates legal ambiguity for brand rights holders.

The factor that caused the judge's consideration in the a quo decision was that all the elements of equality in the principal and entirety of the JAGUAR brand had been fulfilled, which caused losses to the plaintiff even though the business process and work for the company which he named himself could not be taken arbitrarily by other people.

Suggestion

The public certainly does not consider the issue of trademarks to be trivial because the law regulates the responsibility for trademark rights if they are imitated by other people either in principle or in whole, so this also requires several parties to regulate and carry out easy and affordable cooperation with the government with the provisions of the available laws. , people who check brands, people who enforce the law, citizens at large, and entrepreneurs who can use a brand for their products.

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