

Legal Protection of Famous Foreign Brands on Goods with Brand Dilution Which are Sold and Bought in E-Commerce

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ABSTRACT

and dilution carried out by unscrupulous sellers of a product or brand on an e-commerce platform by utilizing a foreign brand that is already well-known is a form of violation of intellectual property rights by utilizing a well-known foreign brand to increase profits from product sales that are carried out by brand dilution other than that. This is a form of fraud or lying to consumers so that consumers think as if the product they are purchasing is a brand or part of a foreign brand that has undergone brand dilution. The legal research method used in this research is normative juridical research which is research carried out or aimed only at written regulations with the nature of descriptive analysis research which is a method that functions to describe or provide an overview of the object being studied. The data source used is secondary data with quantitative data analysis. The results of this research are that the legal status of well-known foreign brands in Indonesia is recognized as brands that were previously registered and have legal standing, which in the Trademark Law has priority rights to register brands in Indonesia. Indonesia's legal policy regarding the dilution of foreign brands traded on e-commerce has not been specifically regulated in the Trademark Law, but in order to protect well-known foreign brands from brand dilution, Indonesia can use International Intellectual Property Legal Instruments through the Paris Convention, Madrid Protocol.

Keywords: Brand Dilution, E-commerce, Foreign Brands

INTRODUCTION

Brands in the world of trade and business which are a differentiator or identity for a product are one of the areas of intellectual property regulated in Law Number 20 of 2016 concerning Intellectual Property Brands. rights called Intellectual Property Rights. Due to their exclusive nature, Intellectual Property Rights need to be protected in this case, namely trademarks. Intellectual Property Rights themselves are broadly divided into Copyright and Industrial Property Rights, where one form of Intellectual Property Rights which is classified as Industrial Property Rights which is often found in business activities is brands. As an exclusive right, ownership or acquisition of a brand must be registered. This is a form of recognition by the state of industrial ownership and exclusive rights owned by the brand.

Each brand must have unique qualities that differentiate it from one brand to another. The distinguishing power of a well-known brand can be reduced or decreased due to contamination or obscuration. This concept is known as trademark dilution. Brand dilution is a form of misuse of a brand by certain individuals who do not have exclusive rights to the brand by obscuring the distinctiveness of the brand or creating a brand that resembles a previously known brand to make it look like a different product. The trade is a part or derivative of a previously known product

Currently, brand dilution of previously well-known brands, especially in this case foreign brands, is often found on electronic buying and selling or trading platforms or better known as e-commerce. With the rise of buying and selling via e-commerce, there is brand competition between sellers on e-commerce, so that sellers of products

or goods on e-commerce are able to gain large profits, some sellers of certain goods or products often carry out brand dilution by using well-known foreign brands. For example, if we currently open an e-commerce platform, we will see lots of products that dilute the brand with foreign products, such as Ventela shoe products that resemble the foreign brand Converse, or Ikema products that resemble the foreign brand Ikea, or the fashion brand Pumada which resembles the foreign brand Converse. resembles the foreign brand Puma. An example of a case or form of brand dilution is a brand violation that we often encounter on e-commerce platforms.

Brand dilution carried out by unscrupulous sellers of a product or brand on an e-commerce platform by utilizing a foreign brand that is already well-known is a form of violation of intellectual property rights by utilizing a well-known foreign brand to increase profits from product sales that are carried out by brand dilution other than that. This is a form of fraud or lying to consumers so that consumers think as if the product they are purchasing is a brand or part of a foreign brand that has undergone brand dilution. Brands as intellectual property are related to violations of intellectual property in the form of brand dilution, so legal protection is needed so that intellectual property rights that previously existed or which are the work of someone's intellectual reasoning can be protected and respected as an exclusive right resulting from intellectual work.

METHOD

This research uses normative juridical research and the nature of this thesis's research method is descriptive analysis, namely research that describes, examines, explains and analyzes a legal regulation, in this case related to Legal Protection Of Famous Foreign Brands On Goods With Brand Dilution Which Are Sold And Bought In E-Commerce, Source The legal materials used in this research are secondary data which is data obtained from official documents, books or any form of research related to research objects and research results in the form of reports, journals, theses, dissertations and statutory regulations. The data analysis technique used is qualitative data analysis, namely a research procedure that produces analytical descriptive data, namely by collecting materials and data as well as applicable regulations and legislation which are then analyzed using logical legal thinking.

RESULTS AND DISCUSSION

Currently, trademarks are used to preserve the uniqueness/distinctive character of a sign from use by competitors who have the potential to reduce the uniqueness of a trademark sign. A new concept called "dilution" is related to the field of trademark law which provides protection for the distinctive character of a well-known brand. or well-known brands from unauthorized commercial use which can reduce the uniqueness and damage a brand's reputation. In some jurisdictions the concept of "dilution" is used to provide protection for investments made by brand owners who have established and promoted the strength of their trademarks.

Dilution relates to losses because a well-known/famous brand loses its unique distinguishing power. In the Black Law Dictionary, dilution is a decrease in the value of a brand (differentiating power/uniqueness) in a well-known brand in the form of blurring or tarnishing as a result of using the brand without permission. by other parties on products of different classes and types, without considering any confusion about the origin of a product among consumers and the existence of unfair or unfair

competition in the market. In its development, two types of dilution were known, namely blurring and tarnishment. Dogan said, "Dilution, as originally conceived, refers to the harm that occurs when a famous, distinctive mark loses its singular meaning."

In America, regulations regarding brand dilution were first regulated in the Federal Trademark Dilution Act of 1995 and were then changed to the Trademark Dilution Revision Act in 2006. Brand dilution can occur through "blurring" or "tarnishment". According to the Trademark Dilution Revision Act (hereinafter referred to as "TDRA") section 43(2b) dilution by blurring is an association that arises from similarities between a well-known mark and another party's mark so that the association destroys the distinguishing power of the well-known mark.

The definition of Dilution according to United States Trademark Law is: "Dilution refers to that conduct that lessens the distinctiveness and value of a Mark. It includes several types of conduct, what is known as tarnishment and blurring, which may have devastating effects for everyone involved but, most alarmingly, on consumers and the public." Based on the definition above, it can be seen what is meant by Dilution according to United States Trademark Law, namely : behavior that reduces the characteristics and value of a sign. Often known as Tarnishment and Blurring it may have detrimental effects for everyone involved

Brand dilution according to INTA (International Trademark Association) is "Dilution is the unauthorized use of a highly distinctive mark by another in a manner which tends to blur its distinctiveness or tarnish its image even without any likelihood of confusion. Dilution is when the unauthorized use of a famous mark reduces the public's perception that the mark signifies something unique, singular, or particular." Brand dilution is a situation where an unauthorized party uses a well-known brand on another brand which tends to obscure the distinctiveness or tarnish the image of the well-known brand even without any confusion. Dilution occurs when the unauthorized use of a well-known mark reduces the public's perception that the mark signifies something unique, singular, or particular. Brand dilution can arise when a brand is used on goods that are not competitive or of different types, do not cause confusion, and there is no business link between the two.

Brajendu Bhaskar stated that the brand dilution doctrine is a principle in brand law that allows owners of well-known brands to prohibit other parties from using their marks in a way that threatens the uniqueness of the brand. When a party uses a brand that is the same or identical to a brand belonging to another party in non-competing goods (goods that are not similar), this can reduce the strength of the brand, resulting in consumer confusion regarding the source of the brand. This is the result that the brand has been diluted. Brand dilution is different from the more familiar intellectual property legal concept of trademark infringement doctrine. Trademark infringement occurs when a competing party (i.e., a junior brand) uses an identical or substantially similar mark (e.g., brand name, slogan, symbol) that is already in use by an existing party (i.e., a senior brand) so that consumers may be confused, mistaken, or deceived about the source of the goods being sold. However, infringement can extend beyond competing brands Chris Pullig states Brand dilution is a reduction in the capacity of a well-known mark to identify and differentiate goods or services, regardless of the existence or absence of competition between the owner of the well-known mark and other parties or the possibility of confusion, error, or for the purpose of consumer fraud

The Indonesian Trademark Law regulated in the Trademark Law and its amendments in the Job Creation Law do not explicitly regulate what is meant by

distinctiveness. The explanation of article 20 letter e in article 108 of the Job Creation Law only explains that a brand is considered to have no distinguishing power if it is too simple, such as one line or one dot, or too complicated so that it is not clear. The distinguishing power of a brand is the character or characteristic of a sign that can be recognized by consumers to indicate the origin of goods and/or services between one producer and another. Amendments to Article 20 of the Trademark Law, letter b in Article 108 of the Job Creation Law, emphasize that a mark cannot be registered if it is the same as, related to or only mentions the goods and/services for which registration is requested. Then next, changes to article 20 letter f UUMIG in article 108 of the Job Creation Law confirm that a brand cannot be registered if it is a common name. From the provisions of article 20 letters b and f of UUMIG and the amendments to article 108 of the Job Creation Law, the public will judge that marks that use general words and descriptive words cannot be registered. However, this raises the question, why in practice are brands with descriptive words such as "Aqua", "Supernie" and brands with general words such as "Crocodile" and "Apple" can be registered. Until now, regulations regarding differentiating power and levels of differentiating power have not been specifically regulated in UUMIG and the Job Creation Law. However, regulations regarding the criteria for the level of differentiating power are needed to ensure legal certainty in determining brands that have differentiating power. For comparison, America's other countries share differentiating power levels into 5 categories, namely arbitrary or fanciful, suggestive, descriptive, and generic.

Legal protection against brand dilution in e-commerce itself has not been specifically regulated in the Trademark Law, but regarding law enforcement against brand dilution in Indonesia, brand protection policies related to distinctiveness are still based on Article 21 of the Trademark Law and Article 18 of Permenkumham Number 67 of 2016 Concerning Trademark Registration which regulates the rejection of trademark registration for marks that have similarities in whole or in essence, but sometimes marks that have similarities in the brand in whole or in essence are still accepted even though they have the same brand in whole or in essence because they are in different classes of goods, as for example in the case of Cristian Dior and Baby Dior where the district court stated that there was no similarity in the marks due to differences in the class of goods or the class of use of the mark, this was certainly detrimental to the Christian Dior brand which was registered overseas since 1946 and registered in Indonesia in 1997. Regulation of brand dilution is important as part of brand protection even though currently Indonesia has not specifically regulated brand dilution. However, in the context of brand protection from stakeholder brand dilution efforts, in this case the government or law enforcement can use legal protection with international legal instruments related to intellectual property such as Trips, the Paris Convention and the Madrid Protocol which have been ratified by Indonesia through Presidential Decree No. 24 of 1979 concerning ratification. Paris Convention For The Protection Of Industrial Property and Presidential Decree no. 92 of 2017 concerning Ratification of Protocol Relating To The Madrid Agreement Concerning The International Registration of Mark can be an instrument of legal protection for foreign brands that have been diluted in order to protect brands that have previously been registered and/or known abroad by using intellectual property legal instruments international.

Discussion

The advantage of applying the brand dilution doctrine is to provide additional protection to well-known brands from brand dilution which can result in weakening the differentiating power of the famous brand, even though to build this differentiating power the owner of the famous brand has spent time, money and energy. Brand protection is in line with labor theory, that the State has an obligation to guarantee the protection of brand owners who have devoted time, energy, thought and money to creating and building a brand's reputation in the eyes of the public. Therefore, in line with reward theory, the efforts and sacrifices of the owners of famous brands must be rewarded by the state in the form of legal protection. Opportunities for regulating brand dilution in Indonesia can refer to Article 16(3) TRIPs which mention Article 6 bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services and the owner of the registered trademark is likely to be damaged by such use

CONCLUSION

The legal status of well-known foreign brands in Indonesia is recognized as brands that were previously registered and have legal standing based on Article 9 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications, which states that brands that have been registered abroad have priority rights to be recognized and registered in Indonesia. Recognition of well-known foreign brands is also based on Article 16 of Minister of Law and Human Rights Regulation No. 67 of 2016 concerning Trademark Registration. Indonesian legal policy regarding the dilution of foreign brands traded on e-commerce has not been specifically regulated in the Trademark Law, but in order to protect foreign brands that have known for brand dilution, Indonesia can use International Intellectual Property Legal Instruments, one of which is through the Paris Convention and the Madrid Protocol which have been ratified through Presidential Decree No. 24 of 1979 concerning ratification of the Paris Convention for the Protection of Industrial Property and Presidential Decree No. 92 of 2017 concerning Ratification of Protocol Relating To The Madrid Agreement Concerning The International Registration of Mark

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