

## **Application of the Principle of Good Faith in the Implementation of Trademark Registration in Indonesia Based on the Supreme Court Decision Number 1051 K / PDT. SUS-HKI / 2023**

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### **ABSTRACT**

Brands contain a manufacturer's promise to consistently provide certain characteristics, benefits, and services to consumers. Economically, brands have a price that motivates producers in various ways so that the brand can compete and become popular among the public. The existence of legal rules on the protection of well-known trademarks can be applied to avoid losses to holders of trademark rights and for consumer protection against the purchase of counterfeit branded goods. The case contained in the Supreme Court Decision Number 1051 K/Pdt.Sus-HKI/2023 between Jolla and Jolla. Sus-HKI/2023 between Jollibee Food Corporation against Karsino in the "JOLLIBEE" trademark dispute is one example of bad faith in trademark registration in Indonesia. This research uses normative juridical method by using Statute Approach. The form of legal protection is in the form of cancellation of the Defendant's "JOLLIBEE" trademark from the General Register of Trademarks of the Directorate General of Intellectual Property Rights. The cancellation of the Defendant's "JOLLIBEE" trademark because there are similarities in essence with the Plaintiff's "JOLLIBEE" trademark.

### **Keywords:**

Trademark; Bad Faith; Trademark Cancellation

### **INTRODUCTION**

In existence will certainly meet the brand, be it a brand of merchandise or benefit brands. Trademark may be a sign forced by business people (industrial facilities, producers, and so on) on the merchandise created as an distinguishing check, a stamp (sign) that gets to be an identifier to state the name.(Kamus Besar Bahasa Indonesia / Departemen Pendidikan Nasional, 2008) A brand is an recognizing stamp that distinguishes one's property from that of others.(Adisumarto, 1989) Trademark as portion of Mental Property (IP) may be a item or result of mental forms or exercises carried out by humans.(Kurnia, 2011)

Trademarks are separated into two, specifically benefit marks and trademarks. Agreeing to Article 1 Section (3) of Trademark Law No. 20/2016, Benefit Marks are marks utilized on administrations exchanged by a individual or a few people together or legitimate substances to recognize with other comparable administrations. Agreeing to Article 1 Passage (2) of Trademark Law No. 20 /2016, Trademarks are marks utilized on merchandise exchanged by a individual or a few people mutually or legitimate substances to recognize with other comparative merchandise. Concurring to Article 1 Section (4) Law No. 20/2016, Collective Trademarks are marks utilized on merchandise and/or administrations with indistinguishable characteristics with respect to the nature, common characteristics, and quality of the products or administrations as well as their supervision to be exchanged by a few people or legal entities mutually to recognize with other comparable products and/or administrations.

In this cutting edge time, the advancement of science and innovation is closely related to the improvement of Mental Property (IP). This advancement gets to be indeed quicker together with the advancement of international exchange. Mental property could be a property right, the correct to something that comes from the work

of the brain, the work of the proportion, the result of the work of the human proportion that reason.(Saidin, 2006) Within the time of free exchange because it is presently, the brand could be a base in cutting edge exchange. It is said to be the premise, since the brand can be the premise of the advancement of cutting edge exchange that can be utilized as goodwill, a image of quality, quality guidelines, a implies of entering all sorts of markets, and exchanged with ensures to produce huge benefits. The presence of the brand can make it easier for consumers to distinguish the product to be purchased by the purpose of using the brand is to establish the responsibility of the producer for the quality of goods traded. Apart from that, intended to oversee the territorial limits of trade of a type of goods.(Rizaldi, 2009).

Brands are exceptionally vital within the commerce world, since individuals feel more comfortable to utilize a brand of products and / or administrations that as of now have a reputation compared to employing a brand of products and / or services that don't have a notoriety. Usually since the open as shoppers expect that a brand that's quality, secure, and quality for utilization is due to the notoriety of the brand. Brands that as of now have a notoriety have more devotees within the showcase. This certainly tends to goad other makers to compete with the brand.(Rizaldi, 2009).

A item without an personality or brand can certainly experience troubles in showcasing, since the brand is the "beginning dealer" for a item to be sold to customers. Buyers purchase certain items by looking at the brand, since agreeing to consumers the brand acquired is of high quality and secure for utilization due to the notoriety of the brand. Within the time of free exchange because it is presently, the brand may be a base in present day exchange. It is said to be the premise, since the brand can be the premise for the improvement of advanced exchange that can be utilized as goodwill, a symbol of quality, quality measures, a implies of entering all sorts of markets, and exchanged with ensures to produce expansive benefits. The presence of the brand can make it simpler for shoppers to recognize the items to be acquired by buyers with other items with regard to both quality, fulfillment, pride, and other attributes joined to the brand.(Rizaldi, 2009).

Indonesia follows to the primary to record framework which implies that to have the proper to a trademark required enlistment. In agreement with Article 13 Juncto Serve of Law and Human Rights Control No. 67/2016 on Trademark Enrollment Article 4 Paragraph (1) Trademark applications that have completed the least necessities of trademark enrollment, to be specific within the frame of a completed trademark enrollment frame, trademark name and verification of installment of expenses, it'll be given a date of receipt. Inside a most extreme period of 15 (fifteen) days from the date of receipt, the Directorate Common will conduct an examination of the completeness of the archives required for trademark registration or frequently alluded to as a custom examination.

As a matter of fact, the rule of great confidence is more troublesome to actualize within the component of trademark enlistment based on the revelatory framework, since, in agreement with the framework, a individual can at any time pronounce themselves as the proprietor of the trademark without the control component of the legitimacy of proprietorship of the trademark. Indonesia's encounter for 30 a long time utilizing the explanatory framework records a parcel of unauthorized statements of trademark possession. Trademarks that are announced to be recognized as his trademark turns out to belong to somebody else. Possessed by foreigners overseas. They get around the law, since, the explanatory framework recognizes who to begin

with enlisted his trademark in Indonesia, he will be recognized as the proprietor. Property rights to such a check are advance affirmed through a ask for enlistment at the Trademark Office.(Soelistyo, 2017).

A brand that incorporates a notoriety orwell-known stamp, can trigger acts of trademark encroachment both broadly and globally. In case a stamp has gotten to be a well-known check, of course, it can cause a legitimate issue, such as the emergence of competitors who have awful eagerly to mimic or indeed seize a well-known check. In expansion to hurting shoppers, trademark encroachment can too be hindering to the makers who are casualties of impersonation of the trademark.(Rizaldi, 2009).

The rise of trademark encroachment cases that happen due to the progressively exacting level of trade competition, one of the trademark encroachments that happen is trademark encroachment of well-known remote trademarks. This kind of encroachment can happen since a outside trademark has not been enlisted at the Directorate Common of IP, which is then enrolled by a competitor who has awful confidence. This comes about within the enrollment of the real trademark proprietor being disturbed or indeed rejected by the Directorate Common of IP since it is considered comparative to a already enlisted trademark.

Cases like this have happened in Indonesia in court choice No. 9/Pdt.Sus-Merek/2023/PN.Niaga.Jkt. Pst, which happened within the trademark "JOLLIBEE as a quick nourishment eatery mascot possessed by Jollibee Nourishments Organization, a company from the Philippines found at10th Floor, Jollibee Square Building 10 F, Ortigas Center, Pasig City 1605, Metro Manila, Philippines which has been enlisted for the primary time in Indonesia on April 19, 2004 with enlistment number IDM000004618 at that point in Indonesia there are likenesses and similitudes of "Jollibee" trademark enlistment with Enrollment No. IDM000475954 claimed by Karsino called the Litigant which was enlisted on May 19, 2015.

In this way, Jollibee Nourishments Enterprise recorded a claim to the Central Jakarta Commercial Court to sue Karsino for utilizing the check "Jollibee" which is by and large the same. but the Commercial Court Choice rejected the claim recorded by the Offended party. After that, the Offended party recorded an request to the Incomparable Court and the Incomparable Court Choice allowed the Plaintiff's application.

Investigate conducted by I Nyoman Putu Budiarta, and Ni Made Puspa Sutari Ujianti with the title Assurance of Popular Trademarks Related to Unjustifiable Trade Competition, has likenesses with the researcher's investigate that talks about the assurance of trademarks, but features a contrast that examines the lawful assurance of enrolled trademark rights proprietors and lawful cures that can be taken, does not examine the case straightforwardly through the examination of court choices such as the author's research.(Prasetia et al., 2020) Proposition investigate conducted by Zaenal Arifin and Muhammad Iqbal with the title Lawful Assurance of Enrolled Trademark has similitudes with the researcher's investigate that examines the security of trademarks. The distinction lies in as it were investigating the law and uncovering universally on the endeavors of the frame of trademark assurance, among others, by enrolling a trademark, trademark security amid the term of the enlisted trademark for 10 (ten) a long time and can be expanded with the same period, the presence of both gracious claims, criminal indictment and authoritative measures within the frame of refusal of enlistment of trademarks and trademark evacuation does not examine the case specifically through the investigation of court choices and judges' contemplations

as the creator examines.(Arifin & Iqbal, 2020) In spite of the fact that both analyzed the Incomparable Court Choice on the Celebrated Universal Trademark dispute, there are contrasts within the Preeminent Court choice analyzed and the creator emphasizes the investigation of the urgency of the guideline of terrible confidence based on Law No. 20/2016 and the lawful consequences of the Preeminent Court Choice Number 1051K/PDT.SUS-HKI/2023. Within the case of a trademark debate between Jollibee Nourishments Organization and Karsino, where it is suspected that the hone of trademark impersonation happened in 2015 with the occurrence of likenesses between the two brands in elocution and likenesses within the sorts of merchandise and administrations. Hence, based on the case itself, the analyst has an intrigued in conducting assist investigate.

Based on the background of the problem above, two (2) issues can be formulated as below: How is the analysis and application of the principle of good faith in the implementation of the registration of the famous "JOLLIBEE" trademark in Indonesia based on Law No. 20 /2016 on Trademark How is the judge's consideration of the lawsuit of Jollibee Food Corporation as the holder of the famous trademark rights against the bad faith registration of trademarks by other parties as regulated in Law No. 20 /2016 concerning Trademarks?

## METHOD

This article utilizes a standardizing juridical article sort within the frame of a case approach, through an examination of Preeminent Court Choice Number 1051 K/PDT.SUS- HKI/2023.(Ashofa, 2004) The determination is expressive explanatory, the sort of information for this article is auxiliary information. This sort of data is information that's gotten in a roundabout way not from the question of the article but through other sources. With respect to its collection, analysts get information collected by other parties by strategies or implies either non-commercially or commercially. Cases:controls, reports, daily papers, magazines, diaries, reading material, enactment, and so on.(Suteki, & Taufani, 2020) The comes about of the research will be displayed by the researcher within the shape of an clarification which can be organized employing a systematic/logical elucidation strategy where the auxiliary information that has been gotten by the analyst is at that point related with legitimate controls and the whole lawful system which is at that point harmonized with the issues in this research.(Soekanto, 2003) The information examination strategy utilized is the qualitative-analytical strategy. The information from the following article within the investigation organize is prepared which is able afterward get the comes about of articles related to Preeminent Court Choice Number 1051 K/PDT.SUS-HKI/2023 clearly.

## RESULTS AND DISCUSSION

### 1. Description of "JOLLIBEE" Trademark owned by Jollibee Food Corporation (Plaintiff)

Jollibee Food Corporation is a fast food company from the Philippines that has been established since 1978 with its main brand "JOLLIBEE" and has grown rapidly as one of the world's leading fast food restaurants with a presence in more than 5,800 restaurant outlets in at least 34 countries in the world by presenting various variations of the "JOLLIBEE" brand,

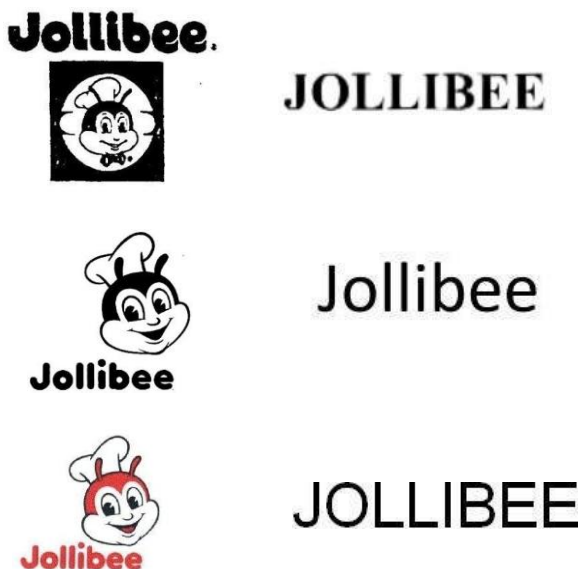
- a. Promotion of "JOLLIBEE" brand on Instagram social media account with more than 400,000 (four hundred thousand) followers;



- b. Promotion of "JOLLIBEE" brand on Youtube social media account with more than 700,000 (seven hundred thousand) followers with the highest number of views reaching 38,000,000 (thirty-eight million) views.
- c. The "JOLLIBEE" mark can also be proven when searching for the word "JOLLIBEE" on a leading browser engine in Indonesia such as Google, where the search results for the word "JOLLIBEE" will show 21,000,000 (twenty one million) results.

Thus, the "JOLLIBEE" mark is a matter of public knowledge (*notoir feiten*) that the "JOLLIBEE" mark is wholly owned by Jollibee Food Corporation. In Indonesia, the Plaintiff has owned the registration of the mark "JOLLIBEE" and its variations which have been registered with the office of the Ministry of Law and Human Rights of the Republic of Indonesia with Registration No. IDM000004618 which was first registered in Indonesia since April 19, 2004 which is still valid, which was renewed lastly with registration number DID2022090518 on November 10, 2022.

A description of the logo and variations of the Plaintiff's "JOLLIBEE" mark are shown below, among others



**Figure 1.** The Logo and Variations of The Plaintiff's "JOLLIBEE"

Examples of product variations of goods using the Plaintiff's "JOLLIBEE" mark



**Picture 2** Product Variations Of Goods Using The Plaintiff's "JOLLIBEE"

## 2. Description of "JOLLIBEE" Trademark owned by Karsino (Defendant)

An Indonesian citizen who registered a trademark containing a similarity to a well-known trademark owned by Jollibee Food Corporation, namely the "JOLLIBEE" trademark. The Defendant's "Jollibee" mark was registered on May 19, 2015 with Registration No. IDM000475954 covering the same type of goods i.e. plastic bags, PP, PE, crackle-HO used for various types of goods and services in connection with fast food restaurants with the Plaintiff's "JOLLIBEE" mark.

**Table 1** Types Of Goods And Services In Relation To Fast Food Restaurants Under The Plaintiff's "JOLLIBEE" Brand.

No.	Merek	Nomor Pendaftaran	Tanggal Pendaftaran
1.	<b>Jollibee</b> ("Jollibee")	IDM000475954	19 Mei 2015
	Kelas / Jenis barang:  16 / Kantong plastik , PP, PE, kresek-HO		

Source: Decision Number 9/Pdt.Sus-Merek/2023/PN.Niaga.Jkt.Pst.

## 3. Dispute between "JOLLIBEE" Trademark owned by Jollibee Food Corporation and "JOLLIBEE" Trademark owned by Karsino

Jollibee Food Corporation applied for registration of the mark "JOLLIBEE" to protect the type of goods and services with registration number DID2022090518 for class 16 then the Plaintiff realized the Defendant has registration of the mark "Jollibee" with the same class for class 16 for the type of goods Plastic bags, PP, PE, crackle-HO with registration number IDM000475954 with the mark "JOLLIBEE" on May 19, 2015. Then the plaintiff, Jollibee Food Corporation, filed a lawsuit to cancel the registration of each trademark that has similarities in its entirety or similarities in essence with the "JOLLIBEE" trademark owned by the plaintiff which has been published and registered for the first time since April 19, 2004.

The similarities of the Defendant's "Jollibee" trademark registration with Registration No. IDM000475954 with the Plaintiff's "JOLLIBEE" trademark are as follows.

- Word composition, visual and phonetic similarities

**Table 1.** Comparison of The Mark "JOLLIBEE" Owned by The Plaintiff And The Defendant

The mark "Jollibee" with registration number IDM000475954 owned by the defendant		"JOLLIBEE" trademark owned by the Plaintiff	
<b>Jollibee</b>		<b>JOLLIBEE</b>	

Source: Decision Number 9/Pdt.Sus-Merek/2023/PN.Niaga.Jkt.Pst.

Both marks have identical dominant elements, namely the word element "JOLLIBEE" which is composed of a combination of the letter's "J"- "O"- "L"- "L"- "I"- "B"- "E"- "E".

Based on the above, if the Defendant's "Jollibee" mark with Registration No. IDM000475954 is compared to the variations of the Plaintiff's "JOLLIBEE" mark above, it is clear that the Defendant's "Jollibee" mark with Registration No. IDM000475954 is identical to the Plaintiff's "JOLLIBEE" mark given the identical writing style and font selection in both marks.

**b. Similarity in the type of goods**

The type of goods covered by the Defendant's "Jollibee" mark is closely related to the Plaintiff's primary business as a fast-food restaurant service provider.

**Table 2** Comparison of The Mark "JOLLIBEE" Owned by The Plaintiff And The Defendant

Type of goods under the registration of the Defendant's "Jollibee" mark with registration number IDM000475954	Type of goods in the Trademark " JOLLIBEE" of the Offended party which has been enlisted in different nations "
Plastic bags, PP, PE, crackle-HO	Paper bags and containers for packaging, plastic sheets, films and bags for wrapping and packaging and printed matter and paper materials

*Source: Decision Number 9/Pdt.Sus-Merek/2023/PN.Niaga.Jkt.Pst.*

The Defendant's "Jollibee" mark with Registration No. IDM000475954 in Class 16 which principally covers various types of food packaging goods, gives the impression of identical resemblance or at least has similarities in essence with the Plaintiff's "JOLLIBEE" mark which is primarily used for various types of goods and services in connection with fast food restaurants. The registration of the Defendant's "Jollibee" mark with Registration No. IDM000475954 is similar to the Plaintiff's "JOLLIBEE" mark in terms of similarity of elements, visual and phonetic sounds and covers the same type of goods in Class 16. Karsino who registered the "JOLLIBEE" trademark without rights in Indonesia which is a well-known trademark of Jollibee Food Corporation which has previously been registered in several countries in the world and registered in Indonesia in April 2004 without the permission and knowledge of Jollibee Food Corporation is an act based on bad faith, therefore the "JOLLIBEE" trademark No. IDM000475954 must be canceled.

**4. Analysis of the regulation of the principle of good faith in the registration of the Trademark "JOLLIBEE" owned by Jollibee Food Corporation Based on Law No. 20 / 2016 concerning Trademarks and Geographical Indications**

Indonesia adheres to the constitutive system or referred to as First to file that is the right to trademark created or obtained due to registration. Indonesia does not adhere to the Declarative system which means that the rights to the trademark is obtained based on the holder or the first maker of a trademark. Both systems have their own weaknesses and advantages. The constitutive system has the advantage of being more accurate for trademark owners who want to register their trademarks to be given legal protection by the Trademark Act, while the disadvantage is that many parties deliberately register trademarks just to benefit and get protection from the Trademark Act. The Declarative system has the advantage that the first holder can be protected as long as he can prove that he is the first holder, but the disadvantage is

that for today's era it is very difficult to prove it because it takes a lot of time to prove it. (Muhammad, 2001)

Judging from the system adopted by Indonesia, many parties have bad faith in registering because in the Trademark Law, protection is given to parties who have registered the trademark. Of course, it will open up opportunities for parties who have bad faith to register, especially if the party knows that there are brands that have begun to develop that have not been registered at the trademark office.

In Law No. 20 /2016 is not explained in detail about the registration that has good faith. The Trademark Law only explains the requirements and procedures for applications listed in Article 4 Paragraph (2) in conjunction with Minister of Law and Human Rights Regulation No. 67 / 2016, Article 3 Paragraph (2) trademark applications filed either electronically or non-electronically must include the required supporting documents, which are as follows:

- a. Date, month and year of the trademark application
- b. Full name, nationality, and address of the applicant;
- c. Full name and address of the proxy if the trademark application is filed through a proxy;
- d. Color if the mark applied for registration uses color elements;
- e. The name of the country and date of the first request for the mark in the case of an application filed with Priority Rights; and
- f. Class of goods and/or services and description of the type of goods and/or type of services.

With the above provisions, there is a provision for the correct registration filing mechanism. If each requirement along with the correct filing mechanism has been fulfilled by the Trademark Owner, then the registrant can be considered to have made good faith in the registration process. Law No. 20/2016 also only regulates good faith implicitly, that the provisions of acceptance or rejection of the application have been based through article 20 on trademark registration.

The primary to record rule is the guideline used in trademark enrollment within the region of Indonesia, on this guideline the party who to begin with recorded an application for trademark enlistment is at that point given need to be pronounced a trademark owner. (Utomo, 2010) Be that as it may, based on Article 21 section (3) of Law No. 20 / 2016, "The application is rejected in the event that recorded by an candidate who is in great confidence", it can moreover be concluded that Indonesia too gives security to candidates who enroll their trademarks in great confidence, since candidates who are not in great confidence will be denied enrollment Hence, an examination is required in an application for enrollment. The examination of the application for enlistment is planning to see whether the trademark is in agreement with the arrangements and does not damage the rules appropriate in Indonesia. (Lasut, 2019)

In this case the offended party of trademark cancellation which states within the claim that the offended party is in awful confidence, must be able to demonstrate that the enrolled trademark has truly been done by the candidate who connected for enrollment in terrible confidence. So that at that point the security of the government or the giving of rights to the trademark can be canceled to the proprietor of the trademark that has been enlisted if the claim to the commercial court or cassation to the incomparable court with respect to the nonattendance of great confidence can be demonstrated and legitimized by the board of judges. With respect to the cancellation



of trademarks controlled in article 76 of Law No. 20 /2016 concerning trademarks and geological signs states that "the claim for cancellation of a enlisted trademark may be recorded by an interested party based on the reasons alluded to in article 20 and / or 21", the creator looks at the article, meaning that one of the things that can be the reason for the cancellation of a trademark is the presence of awful confidence of the enlisted trademark proprietor. The presence of terrible confidence in a trademark cancellation claim can now not be done by looking at the nearness or nonattendance of rejection of the directorate common of mental property against the trademark or the passing of a trademark on substantive examination by the directorate common of mental property.(Rahmah, 2016).

Concurring to the Gracious Code, great confidence in a subjective sense is directed within the field of property law (Book II of the Respectful Code), specifically Articles 529 to 532 of the Respectful Code, separately as takes after: Article 529 of the Respectful Code: "The so-called position of control is the position of a individual who controls a property, either by himself, or through the middle person of another individual, and who keeps up or appreciates it as the individual who possesses the property." Article 530 of the Respectful Code: "Such a position may be in great confidence or in awful confidence." Article 531 of the Gracious Code: "Such a position is in great confidence, when the individual holding it procured the property by implies of a title, in which he was not mindful of the absconds contained in that." Article 532 of the Respectful Code: "Awful confidence is the position, when the one who holds it knows that he isn't the proprietor of the property." In the interim, the rule of great confidence is really an thought utilized to avoid terrible confidence behavior and untrustworthiness and can be done from other parties. Terrible confidence itself is called "terrible confidence" in English.

The issue of awful confidence in trademark enlistment ought to get supervision by the government. The part of the government to avoid the event of trademark enlistment with the rationale of terrible confidence gets to be exceptionally vital, since this prepare will be checked on trademark enrollment to decide the issuance of trademark possession certificate. Where the holder of the trademark certificate is the as it were verification of proprietorship that's lawfully substantial and solid. The government in this case the Chief Common of IPR is the primary and final entryway of the legalization of trademark possession. Hence, the supervisory work gets to be exceptionally critical to dispense with the event of trademark similitude some time recently getting lawful drive at the time of issuance of the certificate.(Permana et al., 2020)

Based on Act No. 20 Year 2016 with the rule of To begin with To Record Framework which depicts as it were the trademarks that are in great faith and enlisted that get legitimate security. Within the case of the "JOLLIBEE" trademark, the shown infringement of great confidence is carried out by Karsino by enrolling a comparative "JOLLIBEE" trademark and its variations with the same lesson for course 16 for the sort of products Plastic sacks, PP, PE, crackle-HO which are clearly well-known brands. The creator is of the supposition that such activities are profoundly deluding to clients. Karsino ought to not have utilized the word "Jollibee" for the merchandise it was exchanging. This activity is certainly not in line with the mental morals that have been directed within the enactment.

In this case, Jollibee Nourishment Enterprise has done the terms and methods of Trademark applications recorded in great confidence in understanding with Article

4 passage (2) of Law No. 20 / 2016 jo. article 3 passage (2) Serve of Law and Human Rights Control No. 67 /2016.(Afif & Sugiyono, 2021) Great confidence conducted by Jollibee Nourishment Enterprise isn't containing similitudes in frame and similitude both in vital and in entire on the trademark of another proprietor. The great confidence of Jollibee Nourishment Organization can moreover be demonstrated by Jollibee Nourishment Enterprise has enrolled the "JOLLIBEE" trademark and its varieties in Indonesia on April 19, 2004. In expansion to the trademark enrollment Jollibee Nourishment Organization has connected for enrollment of the "JOLLIBEE" trademark to secure the sort of products and administrations of lesson 16 specifically Packs and holders of paper for bundling, plastic sheets, movies and packs for wrapping and bundling and printed matter and paper materials on November 10, 2022. Another great confidence exertion made by Jollibee Nourishment Enterprise is to join certificates in a few nations that "JOLLIBEE" has a place to Jollibee Nourishment Enterprise with the presence of such prove can be said to be in great confidence since Jollibee Nourishment Enterprise enlisted its trademark as a immaculate proprietor of its manifestations and enlisted truly and appropriately without the scarcest purposeful to copy, mimic, piggyback, or plagiarize the notoriety of the trademark of another party or welcome a circumstance of competition that's false. deceiving, or misdirecting shoppers. Not as it were that, the "JOLLIBEE" trademark owned by Jollibee Food Organization is additionally enlisted in different nations, showcased goal in different nations since 1978 so that in this case Jollibee claimed by Jollibee Nourishment Enterprise is recognized as a well-known trademark.

Law No. 20 /2016 has too contained rules on the security of well-known trademarks through Article 21 section (1) letter b of the Law, expressing that: "the application is rejected in the event that the check is considerably or entirely comparable to a well-known stamp claimed by another party for comparable merchandise and/or administrations that meet certain necessities."

The creator opposes this idea with the choice of the Locale Court which considers that the "JOLLIBEE" trademark isn't a well-known trademark since the "JOLLIBEE" trademark has met a few components or criteria of a well-known trademark. The creator contends that the mark "JOLLIBEE" may be a well-known check so that the litigant has enrolled in awful confidence and it is fitting for the DJKI to dismiss the application for enlistment made by Karsino as the litigant. Trademarks have a close relationship with unjustifiable competition. This out of line competition can be within the shape of an endeavor to seize the acclaim of a well-known trademark. This activity will affect the proprietor of the trademark or popular stamp. The clarification of awful confidence can too be deciphered as the inverse of the idea of great confidence. The quality of the component of great confidence within the usage of enrollment in Indonesia is exceptionally powerless since the trademark office cannot dismiss the application of the trademark registrant on the off chance that it has satisfied all the terms and conditions in Article 4. (Assa, 2019)In terms of law, great confidence within the usage of trademark registration is as it were directed within the Clarification of Article 4 of Trademark Law Number 15 Year 2001 in conjunction with the modern Trademark Law which is found in Article 21 Section (3) Law No. 20 / 2016. So the quality of the component of one's great confidence can not be proven when enlisting a trademark but can be demonstrated when there are other parties who need to enroll the trademark, at that point it'll be proceeded by giving a claim to the Central Jakarta Area Court. (Ananda & Bustani, 2022).

**5. The judge's consideration of the lawsuit of Jollibee Food Corporation as the right holder of a well-known trademark against bad faith trademark registration by other parties as regulated in Law No. 20 / 2016 concerning Trademarks.**

Based on the choice of the primary level of this case, specifically the choice of the board of judges of the Central Jakarta Commercial Court, in choice Number:9/Pdt.SUS- Merek/2023/PN.Niaga.Jkt.Pst., at that point the Jollibee Nourishment Organization felt abused so that Daru Lukiantono, S.H. spoken to by his lawyer recorded a cassation to the Preeminent Court. At the cassation level in this preeminent court, the board of judges chosen the decision or trial by giving the cassation application from the Cassation Solicitor Daru Lukiantono, S.H. and canceling the choice of the Commercial Court at the Central Jakarta Locale Court Number: 9/Pdt.SUS-Merek/2023/PN.Niaga.Jkt.Pst., Thursday, October 5, 2023. Coupled with trial by itself:

- a. Grant the Plaintiff's claim in its entirety;
- b. Declare the Plaintiff as the first user and the sole legal owner of the mark "JOLLIBEE" to distinguish the Plaintiff's goods and services from those of other parties;
- c. Declare that the Plaintiff's "JOLLIBEE" mark is a well-known mark;
- d. Declare that the mark "Jollibee" with Registration Number IDM000475954 owned by the Defendant in Class 16 was applied for in bad faith;
- e. Cancel or declare null and void the mark "Jollibee" with Registration Number IDM000475954 owned by the Defendant in Class 16 of the General Register of Trademarks;
- f. Ordering the Defendant to cancel the mark "Jollibee" with Registration Number IDM000475954 owned by the Defendant in Class 16 from the General Register of Trademarks;

The choice of the Preeminent Court in this cassation level agreeing to the creator is rectify. The board of judges considered that there are similitudes, resemblances, and unmistakable components between the Jollibee trademark possessed by Jollibee Nourishment Enterprise and Karsino's Jollibee trademark. Since the two brands both have names which in truth the title has been utilized by Jollibee Nourishment Enterprise since 1978. In this manner, the lawyer of Jollibee Nourishment Organization considers the utilize of Karsino's Jollibee to be based on terrible confidence and tries to capture the notoriety and trap buyers of the plaintiff's trademark which he claims to be a well-known trademark. This will clearly advantage the Respondent excessive, but will clearly hurt the offended party. Concurring to the creator, the legitimate endeavors made by the offended party have gotten favorable comes about for the candidate, since the offer recorded by the offended party was acknowledged by the Incomparable Court and chosen to cancel the past choice, to be specific canceling the choice of the Commercial Court with Choice Number:9/Pdt.SUS-Merek/2023/PN.Niaga.Jkt.Pst.(Mahkamah Agung Republik Indonesia, 2023a)

The Incomparable Court judge in his administering attempted alone to acknowledge and allow the Plaintiff's claim in its aggregate. In this way, this

cassation choice has been won by the Offended party since in its choice the board of judges has chosen the cancellation of the enlisted trademark of the litigant and expressed that the trademark possessed by the Plaintiff/Case Solicitor could be a well-known trademark and the Defendant/Case Applicant has awful confidence. On the thought of judges and the elucidation of the Preeminent Court with respect to awful confidence in this case is as takes after:

That concurring to the board of judges of the Incomparable Court, the reason for the cassation applicant can be defended, since after the board of judges of the Incomparable Court carefully inspected the cassation notice dated November 18, 2019 associated with the thought of the Judex Facti in this case the Commercial Court at the Central Jakarta Locale Court, the Preeminent Court is of the conclusion that the Judex Facti's choice has misapplied the law since it applies the rule of To begin with to Record completely without respect to the terrible confidence of the Respondent / Cassation Solicitor and without any substantial reason to abrogate the status of the well-known trademark claimed by the Offended party / Cassation Solicitor. That agreeing to the board of judges of the Preeminent Court, the enrollment of the Jollibee trademark Enlist Number IDM000475954 in Course 16, on sake of the Respondent was recorded on the premise of awful confidence and has likenesses in quintessence with the trademark and exchange title Jollibee Nourishment Corporation owned by and on sake of the Offended party.

Within the primary claim, Daru Lukiantoro as the Offended party spoken to by his lawyer expressed that the enrolled Jollibee trademark claimed by Respondent Karsino has similitudes with the popular trademark claimed by the offended party and recorded by the Litigant in awful confidence, so at that point since of the claim, the enlistment application made by the litigant to the co-defendant is at that point addressed, whether it has been exhausted great confidence or clearly not in great confidence. The plaintiff in his claim expressed that his Jollibee trademark may be a well-known trademark, this has been demonstrated within the trial by the offended party with respect to the popularity of his trademark, by posting the enlistment table of the Jollibee trademark and its varieties possessed by the offended party which was enrolled much prior in different nations such as the Philippines, South Korea, Qatar, Joined together Middle easterner Emirates, compared to the enlisted trademark possessed by the respondent in Indonesia and has recorded its items on the Plaintiff's official site page with the taking after connect <https://www.jollibeefoods.com/>. (Mahkamah Agung Republik Indonesia, 2023a).

Advance, the utilize of the Plaintiff's "JOLLIBEE" stamp can too be watched in different articles found as a result of looking for the word "JOLLIBEE" on driving Indonesian browser motors such as Google, where the look comes about for the word "JOLLIBEE" will appear 21,000.000 (twenty one million) comes about where the beat comes about of the look will reliably allude to the Plaintiff's "JOLLIBEE" brand and proceed to be created through different driving social media stages such as the most recent, the Offended party has carried out gigantic advancement of the "JOLLIBEE" brand on Tiktok social media which as of now has 23,000 (twenty three thousand) devotees and its substance has gotten a add up to of 225,000 (two hundred twenty five thousand) likes so that it is demonstrated that its brand could be a well-known brand that features a notoriety known to shoppers. The Offended party in this case spoken to by Daru Lukiantono can too demonstrate the presence of similitudes



between his trademark and the litigant, to be specific within the shape of plan, strategy of composing, sound of discourse and color combination between the trademark behavior of the Defendant's Enlisted Trademark and the Plaintiff's well-known trademark behavior. (Mahkamah Agung Republik Indonesia, 2023a)

Based on this, it can be seen that the Litigant in this case has certainly imitated or encroached the Plaintiff's trademark since of the closeness with the trademark which is broadly known to be possessed by Daru Lukiantono, as a result it has been enrolled in different nations. In this case the Plaintiff has been able to demonstrate that his trademark may be a well-known trademark in agreement with the criteria of a well-known trademark. Concurring to the creator, due to the ease of the web and the ubiquity of site pages on the web or the internet nowadays, in this case the Respondent ought to have known of the similitude of the trademark that it wanted to apply for enlistment with the Plaintiff's well-known trademark which has been recorded on the multilingual site.

From the portrayal over, the creator concludes that the terrible confidence of Karsino as a litigant certainly existed from the starting of the application for enlistment of the trademark to the Directorate Common of Mental Property of the Republic of Indonesia, since from the starting Litigant Karsino planning to misdirect shoppers by enlisting a trademark that has likenesses in terms of plan frame, way of composing, sound of discourse and color combinations in this case all have likenesses with well-known trademarks claimed by the respondent that have been enlisted in different nations so that in this case the Plaintiff's trademark has an universal notoriety, and overlooks the notoriety of the Plaintiff's trademark items. The Litigant recorded the Jollibee trademark on an data look location that's too broadly known to the open or customers in Indonesia, to be specific Google, which ought to have been due to the noticeable quality of the brand and the simple accessibility of data around the Plaintiff's trademark, the respondent would have known the presence of the Plaintiff's trademark and knew of the similitudes with the plaintiff's trademark but with awful eagerly still enlisted it so as to hurt the notoriety of the plaintiff's trademark which is known to the open and hoodwink customers, hence demonstrating the presence of awful confidence by the Litigant.

Juridically, it was demonstrated that when the litigant Karsino connected for trademark enrollment, the litigant had abused Article 21 passage (3) of Law No. 20. The board of judges was of the see that based on article 21 section (1) letter (b) the stamp "JOLLIBEE" could be a well-known stamp so that the claim is acknowledged. Whereas in article 21 section (2) letter (a) the board of judges was of the see that a few components such as the composing of the brand title and symbol having a place to the litigant Karsino had similitudes with the offended party Jollibee Food Corporation so that the defendant seem now not utilize the "JOLLIBEE" brand. Alluding to the over depiction, it can be said that trade on-screen characters cannot enlist a trademark with the deliberate of mimicking popularity that comes about in hurt to other parties, causing conditions of false competition, misdirecting, or deceiving customers, as the creator has already expressed. A uncommon highlight with respect to the rules of trademark impersonation in this article is the presence of a association between trademark impersonation and the concept of likeness in quintessence or in its aggregate.

Trademark catching a ride conducted by Karsino is an act done by way of capturing, plagiarizing or taking after the pre-existing trademark of Jollibee Nourishment Organization. The act appears that Karsino as the respondent has

terrible confidence in building a commerce. Other parties who need to enlist their trademarks with the same trademark as the commerce on-screen characters who have enrolled their trademarks, at that point the enrollment of the trademark ought to be rejected by the Directorate Common of Mental Property since it has been demonstrated that there's an component of awful confidence in it and there are likenesses in substance or in entire.

With respect to the assurance of well-known trademarks, the creator contends that in spite of the fact that Indonesia adheres to the primary to record framework, but to ensure well-known trademarks for well-known trademarks that have not been enrolled in Indonesia still get security, since Indonesia has confirmed the Paris Tradition and the WTO - TRIPS Assention. Based on Article 16 (2) TRIPS Understanding, it can be known that the security of well-known trademarks, specifically:

"In deciding whether a trademark is well-known, Individuals should take account of the information of the trademark within the pertinent segment of the public, counting information within the Part concerned which has been gotten as a result of the advancement of the trademark." In quintessence, a trademark must get assurance indeed in spite of the fact that it has not been enrolled in Indonesia on the off chance that it meets the criteria of a well-known trademark by taking under consideration the information of the open, enrolled in several nations within the world, and made ventures in a few nations by the proprietor. (Laela, 2020)Efforts can be made to avoid encroachment of well-known trademarks by conducting socialization on an continuous basis both conducted by the Directorate Common of IPR organizations and exterior the Directorate Common of HKI such as scholastics and other IPR eyewitnesses. In this way it is an examination conducted by the creator with respect to the reasons for the thought of judges related to great confidence in Choice Number 1051 K/Pdt.Sus-HKI/2023.(Mahkamah Agung Republik Indonesia, 2023b).

## CONCLUSIONS

The relationship between the cancellation of a enrolled trademark with awful confidence is found within the application for a trademark enlistment since the reason for canceling the trademark with respect to awful confidence is seen from the starting of the enlistment application prepare. So that the Board of Judges in choosing a choice to see whether the component of terrible confidence has without a doubt existed since the starting of the application for enrollment. Within the case of choice No. 1051 K/Pdt.Sus-HKI/2023 on the JOLLIBEE trademark debate. The juridical investigation concurring to the creator is that the Defendant's JOLLIBEE trademark has been enlisted with likenesses in terms of plan frame, composing strategy, discourse sound and color combination which in this case the entire is with the Plaintiff's celebrated trademark which has been enlisted in different nations and recorded on a well-known browser in Indonesia, specifically Google and other social media such as Tiktok and Youtube. since of the notoriety and simple data of the Offended party, Due to the ubiquity and ease of data of the Plaintiff's trademark, it is simple to know the presence of the Plaintiff's trademark, so that the Litigant thusly has terrible eagerly or terrible confidence since from the starting it enlisted a trademark that has likenesses with the Offended party so as to hurt the reputation of the Plaintiff's trademark which is known to the open and betray buyers, so it is demonstrated that there's awful confidence by

the Respondent. So that juridically has damaged Article 21 passage (3) of Law No. 20/2016 on Trademarks and Geological Signs.

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