

BRAND REGISTRATION AS A LEGAL PROTECTION MEANS AGAINST FRAUD COMPETITION PRACTICES

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Abstract

In the era of global trade and free markets, brands play a very important role which requires a more adequate regulatory system, because the era of global trade can only be maintained if there is a healthy business competition climate. The need for legal protection of brands is growing rapidly after the number of incidents of people imitating. This study uses a normative juridical research method, namely research that examines a statutory regulation associated with the problem under study. The results of this study are Law Number 20 of 2016 concerning Marks and Geographical Indications shows that the registration procedure for the protection of foreign trademarks with priority rights in Indonesia is mandatory through a registration application based on the first registration request to apply for legal protection. In order to avoid dishonest practices and provide legal protection to the owner or holder of the mark as well as consumers, the State regulates the protection of the mark in a trademark law and is always adapted to the developments taking place in the world of international trade.

A. INTRODUCTION

Intellectual property products essentially must obtain legal protection in order to obtain guarantees in the effort to produce them, giving differentiating marks or brands, trading and marketing, as well as the stage of purchasing and fulfilling the needs of consumers or the public. Legal protection efforts given to intellectual property rights can be seen from the side of four interests, namely individual creators and inventors, individuals and trade, science and technology, and society and civilization.

The situation as mentioned above in the end opens up more opportunities for entrepreneurs who do not have good intentions to use other people's brands, especially well-known brands and try to register them. This of course has an impact on the very large losses experienced by the owner. The same brand because its intellectual rights have been violated and indirectly also suffered enormous material losses because many consumers switch to similar but not the same goods.

In legal practice, legal uncertainty often arises in the implementation of business competition rights, this is occurs because there is a business interest among business

people, which is done by imitating or using the "similarity or resemblance" of an industrial design that already has an industrial design certificate, in addition to the fact that the government is less than optimal in realizing legal protection for industrial design rights holders. Therefore, in the end, it has created uncertainty about the implementation of the industrial design rights itself, it looks like there is government omission in the midst of rampant business competition, especially now that so many foreign products have been on the domestic market.

But with the omission from the government as mentioned above, in the domestic market there are so many violations of industrial design that we can find, this can make people fooled by the shape, configuration and composition of colors and lines on a product that is the same or at least similar, but sold with a low price, but in terms of quality there may be differences with products that already have an industrial design certificate. If this is left unchecked, it will be very detrimental to the community, the community has slowly been tricked by business people, by imitating or plagiarizing a product, for the sake of business interests. But strangely, our society seems passive to see such market phenomena, people seem to be silent by allowing violations of industrial design rights to run rampant in the domestic market, so that law enforcement on industrial design rights to realize legal certainty and legal protection for the interests of the community has not run optimally.

Problems with the implementation of registration carried out on a form of Intellectual Property will later have consequences in the form of protection in the territory of the country where the registration is carried out. Meanwhile, there will be no legal protection in another country for those who have not registered the KI. This situation can be anticipated by the existence of priority rights in the legal protection of intellectual property rights in other countries. After the amendment to the regulation regarding Marks, the new Law can provide certainty of legal protection for well-known Marks that are not registered. Considering that there are still many well-known brand owners who feel they already have a name in the international world, they do not register their trademarks in Indonesia.

B. RESEARCH METHOD

This research method uses normative juridical research, namely research that is focused on examining the application of positive legal rules or norms. Normative juridical is an approach that uses the concept of positivist legis. The concept that views law is identical to written norms made and promulgated by authorized institutions or officials. This conception views law as a normative system that is independent, closed and detached from real people's lives. With a descriptive analytical approach, namely research that only describes the object that is the subject of the problem and analyzes it with a view to drawing a conclusion. Because it is expected to be able to provide a detailed, systematic, and comprehensive description of the object of study to be studied.

C. RESULTS AND DISCUSSION

1. Understanding of Brands Based on Law no. 20 of 2016 concerning Geographical Indication Marks

Article 1 number (1) of Law No. 20 of 2016 concerning Marks and Geographical Indications ("Mark & GI Law") provides an understanding that a brand is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color arrangement, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by person or legal entity in the activity of trading goods and/or services. The definition stated in Article 1 point 1 of Law no. 20 of 2016 concerning Marks and Geographical Indications, it can be seen that in essence a brand is a sign. However, a sign will not simply be accepted as a brand if it does not have distinguishing features. What is meant by distinguishing power is having the ability to be used as a sign that can distinguish the results of one company from another. A sign that already has distinguishing features cannot be accepted as a mark if it is not used in goods or services trading activities. That's why the trademark office requires the mention of the type of goods when someone wants to register their trademark rights.

Broadly speaking, the use of a brand functions as follows:

1. Identification mark to distinguish the production results produced by a person or several people or legal entities with the production of other people or other legal entities;
2. As a promotional tool, so that it is enough to promote their products by mentioning the brand;
3. As a guarantee for the quality of the goods;
4. Shows the origin of the goods/services produced.²⁹

Brands can be classified into three groups based on the reputation and fame of a brand. Brands are distinguished as:

1. Regular brand (normal marks),
2. Well-known marks, and
3. Famous brand (famous marks).

As a sign used in trading activities, both goods and services, a mark is known and has a different level of consumer recognition in the jurisdiction of a particular brand or a particular field in trade or industry. Brands that do not have a high reputation are ordinary brands. In the current trademark law in Indonesia, which is regulated in Law no. 20 of

2016, the size of a brand can be said to be a well-known mark can be seen in the Elucidation of Article 6 paragraph (1) letter b of Law no. 20 of 2016 which states that, "... Well-known brands for similar goods and/or services are carried out by taking into account the general knowledge of the public regarding the mark in the relevant line of business. Intensive and massive investment, investments in several countries in the world carried out by the owner and accompanied by evidence of registration of the mark in several countries. If the above matters are not deemed sufficient, the Commercial Court may order an independent institution to conduct a survey in order to obtain conclusions regarding the popularity of the brand which is the basis for rejection."

From the description above it can be said that the definition of a well-known mark is not explicitly specified in Law No. 20 of 2016 concerning Marks. And also the use of products from m the crane by the community. What is meant by public knowledge of the brand is the extent to which the brand is known by the public, both in the territory of the country where the product of the brand is produced, or outside the territory of the country of manufacture of the brand product. The wider the public's knowledge of the brand and the products of the brand, the more it can be interpreted that the brand can be classified as a well-known brand.

Article 6 paragraph (1) letter b of Law no. 20 of 2016 concerning Marks regulates the provisions regarding the protection of well-known marks, namely that the application must be rejected by the Directorate General of Marks if the mark has similarities in principle or in its entirety with a well-known mark belonging to another party for similar goods and/or services. Elucidation of Article 6 paragraph (1) letter b of Law no. 20 of 2016 states that: Rejection of applications which have similarities in principle or in whole with well-known marks for goods and/or services of the same type shall be carried out by taking into account the general knowledge of the public regarding the mark in the relevant business field. Apart from that, the reputation of the well-known brand which is obtained due to intensive and massive promotion, investments in several countries in the world made by the owner, and accompanied by proof of registration of the mark in several countries is also taken into account.

If the above matters are not considered sufficient, the Commercial Court may order an independent institution to conduct a survey in order to obtain conclusions regarding the popularity of the mark as the basis for rejection. In Indonesian the foreign word "well-known" is translated into famous as well as the word "famous" so that the notion of a well-known mark does not distinguish the meaning or does not determine the level of meaning of "famous mark" and "well known". From this description, a well-known mark can be interpreted as a brand that is widely known by the public based on the reputation it has earned due to continuous promotion by the owner followed by proof of trademark registration in various countries.

In addition, the provisions for well-known marks are also contained in article 6 of the Paris Convention. The article stipulates that a well-known mark that has been used by a mark

user with bad intentions can always be requested for its cancellation or cancellation by the registration official. In Article 6 paragraph (3) it is stated that there is no specified time period for requesting the cancellation of the mark or prohibition from using the registered mark if it is used in bad faith, while the definition or criteria regarding well-known marks mark) shall be submitted to each member state of the Paris Convention.

The definition of well-known marks in Indonesia, apart from referring to the requirements regarding well-known marks contained in the Elucidation of Article 6 of Law No. 20 of 2016 concerning Marks also refers to the Jurisprudence of the Supreme Court of the Republic of Indonesia Number 1486 K/Pdt/1991 which states that: " The definition of a well-known mark is when a mark has circulated beyond regional boundaries to international boundaries, where it has circulated outside its country of origin and is proven by the registration of the mark concerned in various countries. In Law Number 20 of 2016 concerning Marks, regulations regarding well-known marks are not regulated and determined explicitly/firmly, but can be identified in several articles such as Article 6 paragraph (3), paragraph (4), General Elucidation and Elucidation of Article 6 of the Law. No. 20 of 2016 concerning the Brand.

As for the criteria for well-known marks, in addition to taking into account the general knowledge of the public, the determination is also based on the reputation of the mark in question obtained due to promotions carried out by the owner accompanied by proof of registration of the mark in several countries (if any). If the above matters are not considered sufficient, the judge may order an independent institution to conduct a survey in order to obtain conclusions regarding the popularity of the mark in question. In Law Number 20 of 2016, the regulation of well-known marks, although not explicitly stated, can be seen in Article 6 paragraph (1) letter b and paragraph (2) as well as in the explanation of the article. elucidation of Article 6 paragraph (1) letter b, which states that: Rejection of applications that have similarities in principle or in whole with well-known marks for goods and/or services of the same kind is carried out by taking into account the general knowledge of the public where the products of the mark are marketed and how well known the mark is. In the country of manufacture or outside the territory of the country of manufacture of the product of the mark.

2. Fraudulent Competition Arrangements in the Brand Legal System

In an act of trying to gain profit through shortcuts by all means and under the pretext of violating business ethics, moral and legal norms are usually called *passing offs*. This action occurs by piggybacking, imitating or mimicking the property of a party who already has a good reputation and this good will can occur in the fields of trademarks, patents, industrial designs and copyrights. The passing off arrangement arises when a reputable business does not have a trademark or cannot register its trademark (for example because the mark is too descriptive or the one being imitated does not include things protected by trademark law) but requires legal protection from the efforts of other parties who want to piggyback on the reputation. These efforts and the law of passing off are

aimed at protecting both consumers and business actors from business practices carried out by other parties to gain profits in ways that are detrimental or endanger the reputation of the original business actor.

Passing off is a common law right and is not defined by statute of Parliament but has been developed through case law since 1618 and can be used to stop others from benefiting from another entrepreneur's business reputation and used in connection with trademark infringement acts or to protect brands which has a reputation but is not protected as a registered trademark. An act of piggybacking on a reputation is said to be an unlawful act known in countries that adhere to the (common law system) such as Australia, England, Malaysia, the United States and others. In these countries, passing off has developed as a form of unfair competition practice in trade or commerce. To be declared as a passing off act, it must meet three elements, namely:

1. There is a reputation found in business actors, namely if a business actor has a good business reputation in the eyes of the public and his business is well known by the public.
2. There is a misrepresentation in this case the recognition of the brand owned by the business actor, so if there are other business actors carrying the same brand, the public will easily be misled or there will be confusion in choosing the desired product;
3. There are losses that arise as a result of an act of piggybacking or piggybacking carried out by entrepreneurs who in bad faith use a brand that is similar or similar to the known brand so that there is an error in choosing a product by the public (public misleading)

In the common law system the party who feels aggrieved can carry out an action commonly known as the action for passing off which according to Copinger as quoted by Djumhana and Djubaedillah,

“The action for passing off lies where the defendant has represented to the public that his goods or business are the goods or business of the plaintiff. A defendant may make himself liable to this action by publishing a work under the same title as the plaintiff's, or by publishing a work where 'get up' so resemble that of the plaintiff's work as to deceive the public into the belief that it is the plaintiff's work, or is associated or connected with the plaintiff'. (Free translation: The action against piggybacking on reputation is carried out when the defendant has shown to the public that his goods or business are the goods or business of the plaintiff. The defendant may be held responsible for his actions of producing a product with the same name as the plaintiff, or producing a product where the packaging resembles the plaintiff's product. Thereby deceiving the public into believing that this is the product of the plaintiff, or is related to or associated with the plaintiff).

Through a lawsuit over the existence of a passing off. the aggrieved party can sue the fraudulent party, namely the person who "piggybacks" on the fame of the name, brand, other person that has been created and formed with difficulty by the father and spends a lot of energy and funding for the promotion of the name or brand which is of high quality, so that it is widely known in the community. It is the party who is disadvantaged who must prove the existence of a passing off, the burden of proof lies with the plaintiff. This action for passing off is indeed difficult because the aggrieved party must be able to show his reputation from all that he has regarding things that cannot be registered, those that have been registered or that have not been registered and actions for passing off to protect the good name/reputation (goodwill), logically there is no action for passing off if there is no goodwill because goodwill does not stand alone from a business form.

In common law countries, what can be requested in a lawsuit on the basis of piggybacking on reputation is an injunction (judge's decision) which contains:

1. Termination of the defendant's misleading actions and a statement not to repeat the act, in the form of:
 - a. Withdrawal from circulation of goods or services that mislead the defendant to be surrendered or destroyed.
 - b. Requests for material compensation for actual losses suffered and a number of benefits that should have been obtained, including attorney fees and court fees.
2. Request for compensation that is immaterial due to damage to his reputation.

Based on the description above, the passing off arrangement in common law is actually used to protect unregistered/unregistered brand owners (who have a reputation from the actions of other parties who want to take economic advantage by piggybacking on reputation (followed up based on illegal acts/fraudulent competition). Passing off is often relied on when something that is not registered as a brand, for example a slogan or name, has not been registered as a trademark but has sufficient goodwill attached to it. The passing off arrangement prevents other parties from doing the following:

1. Presenting goods or services as if the goods/services belonged to someone else;
2. Running the product or service as if it has a relationship with the goods/services of another person.

Well-known marks are objects of passing off, especially those that are not registered because of a reputation or good name or goodwill in a well-known brand and reputation has economic value. Affected brands must be given legal protection from the actions of producers who use brands who are dishonest, fraudulent by piggybacking on the reputation of a well-known brand, displaying as if the goods are the goods of the famous brand they are riding.

The regulation regarding the passing off is contained in state regulations that adhere to the common law legal system, the law on fraudulent competition. However, the regulation regarding piggybacking on reputation that applies in a country with a common law system does not necessarily apply in Indonesia. This is because Indonesia adheres to a civil law system (also known as the Continental European legal system), namely the applicable law is in the form of written regulations made by legislators, not based on the opinion of judges (judges play an active role in finding the law of a case in court)

There are quite a number of passing off cases that have occurred in Indonesia. However, because there is no specific law regarding fraudulent competition, the Director General of Intellectual Property Rights only handles cases of passing off which also indicate trademark infringement. The term passing off or piggybacking on reputation it is not known in Indonesia, but that does not mean that such acts are not regulated in the existing regulations in Indonesia, only the rules. From the explanation of Article 6 paragraph (1) letter b of Law no. 20 of 2016 concerning Brands above, it can be seen that things related to well-known brands are as follows:

1. Public knowledge of the brand in the relevant business field.
2. Reputation of a famous brand which is earned due to vigorous and massive promotion.
3. Investments in several countries in the world made by the owner.
4. A well-known mark can be proven by the existence of proof of registration of the mark in several countries.

In addition, the Decree of the Minister of Justice of the Republic of Indonesia Number M. 03-Hc.02.01 of 1991 concerning Rejection of Applications for Registration of Famous Marks or Marks Similar to Famous Marks Belonging to Other People or Belonging to Other Entities Article 1 states that well-known marks are trademarks that are generally known and used on goods traded by a person or entity, both in the territory of Indonesia and abroad. As we know, the 2001 Trademark Law adheres to a constitutive system, meaning that it is the registered mark that will receive legal protection from the state in the form of granting exclusive rights to the owner/holder of the registered mark. The registration itself works:

As evidence for the owner who is entitled to the registered mark.

1. As a basis for rejection of a mark that is the same in its entirety or the same in essence that is applied for registration by another person for similar goods/services.
2. As a basis to prevent others from using the same brand in its entirety or essentially the same in circulation for similar goods/services.

Registration is the only way to get protection, but not all applications for trademark registration are granted by the Director General of Intellectual Property Rights because applications for trademark registration can face three possibilities, namely:

1. Cannot be registered;
2. Registration must be refused;
3. Received/registered.

These three possibilities can be identified during a substantive examination by the examiner at the Director General of Intellectual Property Rights against an applicant for registration of a mark. This substantive examination is carried out based on the provisions of Article 4, Article 5 and Article 6 within a maximum period of nine months. A trademark cannot be registered if:

1. The application is submitted by an applicant in bad faith. An applicant with good faith is an applicant who registers his mark properly and honestly without any intention to ride, imitate, or plagiarize the fame of another party's mark for his business interests which results in harm to the other party or creates conditions of fraudulent competition, deceiving or misleading consumers.
2. Contrary to applicable laws and regulations, religious morality, decency, or public order. Included in the definition of contrary to religious morality, decency or public order is if the use of the sign can offend the feelings, decency, tranquility, or religion of the general public or certain groups of people. For example, the brand of an item that is forbidden for a certain religion is actually given a sign in the form of symbols that are valued in that religion.
3. Has no distinguishing power. A sign is considered to have no distinguishing power if the sign is too simple, such as a line or a dot, or too complex so that it is not clear. For example, a brand may consist of irregular numbers in a particular field which contain the numbers from one to one hundred. These marks cannot be distinguished from other brands which also use the numbers one to one hundred even though they do not have the same number placement.
4. Signs that have become public property. An example of such a brand is the skull mark over two crossbones, which is generally recognized as a red flag. Such a sign is a sign that is general in nature and has become public property. Therefore, the mark cannot be used as a brand.
5. Is a description of or relating to goods or services for which registration is requested.

If we pay attention to the provisions regarding the criteria for marks that cannot be registered and those whose registration is refused, it can simply be said that the main difference between the criteria for marks that cannot be registered and those whose registration is refused registration lies with the party who is disadvantaged. If a mark is likely to cause harm to the public in general, it cannot be registered, meanwhile, if the mark can harm certain parties, the mark is refused registration or in other words that a mark that is not registered is can be registered, namely a mark that is not worthy of being used as a mark, while a rejected mark is a mark that will harm other parties.

Talking about brands that are detrimental to other parties, in this case brands that are passing off, Law no. 20 of 2016 concerning Marks has rules regarding lawsuits for cancellation of registered marks registered in bad faith and having similarities in principle or in whole with well-known marks belonging to other people, both for similar or not similar goods/services as stated in Article 68 paragraph 1. This can be filed either by the owner of a registered or unregistered well-known mark (after submitting an application to the Director General of Intellectual Property Rights) to the Commercial Court and against the decision of the Commercial Court, a cassation can only be submitted. A lawsuit for cancellation can only be filed within five years from the date of registration of a mark but can be filed indefinitely if the mark in question is contrary to religious morality, decency or public order (bad faith, including public order).

Then the owner of a registered well-known mark can file a lawsuit to the Commercial Court against other parties who unlawfully use a mark that has a similarity in principle for similar or dissimilar goods/services (because it is a well-known mark). As long as it is still under investigation and to prevent greater losses, at the request of the plaintiff, the judge may order the defendant to stop the production, distribution and/or trade of goods/services using the mark and the judge may also order that the delivery of the goods or the value of the goods is carried out after the decision is made. The court has permanent legal force. And based on Article 85 of Law no. 20 of 2016 concerning Marks, based on sufficient evidence the party whose rights have been impaired may ask the judge of the Commercial Court to issue a provisional determination letter regarding the prevention of the entry of goods related to the violation of Mark rights and the storage of evidence relating to the infringement of the mark

Law No. 20 of 2016 concerning Marks stipulates the criminal provisions in Article 90 for the owner of a mark who passes off a well-known registered mark entirely for similar goods and/or services produced and/or traded, shall be punished with imprisonment for a maximum of 5 (five) years and/or or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). Meanwhile, the owner of a mark who passes off a well-known registered mark is essentially the same for similar goods and/or services produced and/or traded, shall be sentenced to a maximum imprisonment of 4 (four) years and/or a maximum fine

of Rp. 800,000,000. 00 (eight hundred million rupiah) as stated in Article 91 of Law no. 20 of 2016 concerning Brands.

Regarding the act of passing off, it is not explicitly and specifically regulated in Law no. 15 of 2001 and Law no. 20 of 2016 concerning Marks as the latest law that regulates brands and geographical indications currently in force in Indonesia. Passing off act in Law no. 20 of 2016, is classified as a trademark infringement which is an act of registering a mark by another party that has similarities in principle or overall similarity which is carried out in bad faith by the other party with the intention of taking maximum personal gain at the expense of the holder of the mark which it imitates.

In the explanation of Article 21 paragraph 1 letter a of Law no. 20 of 2016 concerning marks which regulates the rejection of the registration of a mark which is stated, namely, "Rejection of the application for registration of a mark against a mark that has similarities in principle or is in general similarity to a registered mark belonging to another party or has been previously requested by another party for goods and/or services. Or similar services." In addition, the provisions of Article 21 paragraph (1) letter b of Law No. 20 of 2016 concerning Marks also regulates "Rejection of applications for registration of marks which have similarities in principle or in whole to well-known marks of other parties for goods and/or services. Or similar services". Article 21 paragraph (1) letter c of Law No. 20 of 2016 concerning Marks which regulates the rejection of applications for registration of marks which have similarities in principle or in whole with well-known marks belonging to other parties for goods and/or services not type that meets certain requirements. The Commercial Court may order glue independent charter to conduct a survey in order to obtain conclusions about the popularity or not of the brand that is the basis for the rejection".

3. Legal Protection Against Fraudulent Competition Practices Legal

Protection for registered trademark owners/holders for the actions of other parties who have bad intentions by piggybacking on the reputation of registered trademarks is contained in the provisions of Law no. 20 of 2016 concerning Brands and Geographical Indications. In principle, the legal protection given to the owner/holder of a registered mark is legal protection from other parties who deliberately ride the fame of the previously registered mark and are already known in the community with the aim of benefiting themselves by registering a trademark that has similarities in principle. Or the overall similarity to a well-known brand in the community.

Thus, it can be said that bad faith in a trademark registration can be classified as:

1. Actions/actions to imitate a previously registered brand, and in general are a well-known brand and have a selling value in the market
2. It is an act that is intentionally carried out to compete with a registered mark and has a selling value in the market with the aim that the trademark registrar

- with bad faith will obtain personal benefits regardless of the losses suffered by the owner of the previously registered trademark which he imitates.
3. The act of registering a mark in bad faith has intentionally committed an unlawful act, especially the basic principle of trademark registration in terms of good faith in registering a mark, so the consequence is that it is detrimental to a trademark that has been previously registered and already has fame and good selling points in the market.

Registration of a mark in bad faith in the registration of a mark is contrary to the conditions stipulated in Article 20 of Law no. 20 of 2016 concerning Brands and Geographical Indications, namely:

1. Has similarities in principle or in its entirety to a mark belonging to another party that has been previously registered for similar goods and/or services;
2. Has similarities in principle or in its entirety with a well-known mark belonging to another party for goods and/or the like; and
3. Have similarities in essence or in whole with known geographical indications.

The act of registering a mark in bad faith is a violation of Article 20 of Law no. 20 of 2016 concerning Brands and Geographical Indications, is actually a fraudulent act to piggyback on a well-known brand or something that is widely known to the public, so that by using such a brand, a product will also become known in the community. The act is not in accordance with the intellectual ethics that have been regulated by law. A work of another person cannot be imitated, but must first be with the permission of the owner. In addition, the notion of having bad faith which results in the registration of the mark must be rejected by the trademark registration office in accordance with the conditions stipulated in Article 20 of Law no. 20 of 2016 concerning Marks and Geographical Indications which reads as follows: "An application must also be rejected by the Directorate General if the Mark:

1. constitutes or resembles the name of a famous person, photo, or name of a legal entity owned by another person, except with the written consent of the entitled party;
2. is an imitation or resembling a name or abbreviation of a name, flag, symbol or symbol or emblem of a state or national or international institution, except with the written approval of the competent authority;
3. Constitutes an imitation or resembles an official sign or stamp or seal used by a state or government agency, except with the written approval of the competent authority."

Acts of bad faith which constitute a violation of Article 20 of Law no. 20 of 2016 concerning Brands and Geographical Indications, is actually a fraudulent act to piggyback on a well-known brand or something that is widely known to the public, so that by using such a

brand, a product will also become known in the community. Of course, this act is not in accordance with the intellectual ethics that have been regulated by law. A work of another person cannot be imitated, but must first be with the permission of the owner.

A trademark must be registered in good faith, meaning that if someone tries to register a mark which he realizes to be someone else's trademark or similar to someone else's, the mark cannot be registered. The requirement of good faith also means that in order to be registered, a mark must be used or intended to be used in the trade of goods and/or services as regulated in Article 74 paragraph (1) of Law no. 20 of 2016 concerning Marks and Geographical Indications which reads "Marks have not been used for 3 (three) consecutive years in the trade of goods and/or services from the date of registration or last use, unless there is a reason acceptable to the Directorate General" and Article 21 paragraph (3) of Law no. 20 of 2016 concerning Marks and Geographical Indications which reads "Marks cannot be registered on the basis of an application submitted by an applicant with bad intentions." If a mark is filed in Indonesia by someone who does not intend to use the mark and aims to prevent other parties from entering the local market, or prevent competitors from expanding their business networks, the mark cannot be registered in Indonesia. Trademark registration must be bona fide or done in good faith. Its use or the intention to use it must also be in good faith.

Bad faith in trademark registration will also arise if someone has used a mark in the previous period, but chooses not to register the mark. If a person can prove that he has used his trademark even though it has not been registered, the attempt to register the mark by another person can be prevented by calling the business a "bad faith". Indonesian law requires that a mark that is being applied for registration must be "used in the activity of trading in goods and/or services". This differs from a similar provision in Australia which only requires that a mark be "used or intended to be used to distinguish goods and/or services". There is a view that regulations regarding this matter in Indonesian law have the same meaning as those in Australia. This makes sense because literally, the provisions contained in the Indonesian law require the use of the mark in trade before being registered.

The abolition and cancellation of the registration of this mark is regulated in Article 72 to Article 79 of Law no. 20 of 2016 concerning Brands and Geographical Indications. In the Law on Marks and Geographical Indications, it is known as a claim for the abolition and cancellation of a mark which essentially has the same purpose, namely to cross out the mark in the general register of marks. The abolition of trademark registration, the burden of proof is related to the no longer being used for registered marks or being used inconsistently with the type of goods or services for which registration is being applied. So in detail, if the demand for the abolition of evidence is required, namely:

- a. The mark has not been used in a row for 3 years or more (Article 74 paragraph (1)); or

- b. Marks of goods/services used are not in accordance with those registered (Article 74 paragraph (2)).

Cancellation of trademark registration has a burden of proof relating to marks that should be rejected by the trademark office because they are contrary to the provisions of Article 20 and Article 21 of Law No. 20 of 2016 concerning Marks and Geographical Indications So the reasons for filing a claim for cancellation of trademark registration are:

1. Mark registration that is submitted/conducted in bad faith (Article 72 in conjunction with Article 20 of Law No. 20 of 2016 concerning Marks and Geographical Indications), or
2. The registered mark does not meet the requirements as a mark (Article 72 in conjunction with Article 21 paragraph (3) of Law No. 20 of 2016 concerning Marks and Geographical Indications), or
3. A registered mark is the same as someone else's trademark which is registered first for similar goods/services (Article 72 in conjunction with Article 21 paragraph (3) of Law No. 20 of 2016 concerning Marks and Geographical Indications), or
4. The registered mark does not get written approval from the rightful party. (Article 72 in conjunction with Article 21 paragraph (3) of Law No. 20 of 2016 concerning Marks and Geographical Indications).

Regulations regarding the cancellation of registered marks can be found in Articles 76 to 79 of Law no. 20 of 2016 concerning Brands and Geographical Indications. In the case of deletion, registration of a registered mark can only be filed by an interested party or the owner of the mark, either in the form of an application to the Directorate General of Intellectual Property Rights or a lawsuit to the Commercial Court or the Jakarta Commercial Court if the plaintiff or defendant resides outside the territory of the Republic of Indonesia, on the basis of reasons as referred to in Article 20, Article 21 of Law no. 20 of 2016 concerning Marks and Geographical Indications which regulates trademarks that cannot be registered and which are rejected. This provision is stated in Article 76 of Law no. 20 of 2016 concerning Brands and Geographical Indications which reads:

1. A lawsuit for the cancellation of a trademark registration may be filed by an interested party based on the reasons as referred to in Article 20 and Article 21.
2. The owner of an unregistered mark can file a lawsuit after submitting an application to the Directorate General.
 - a. The lawsuit for cancellation is filed with the Commercial Court.
 - b. In the event that the plaintiff or defendant resides outside the territory of the Republic of Indonesia, the lawsuit is submitted to the Minister of Law and Human Rights of the Republic of Indonesia.”

According to Article 78 of Law no. 20 of 2016 concerning Marks and Geographical Indications, the decision of the Commercial Court which decides the cancellation lawsuit can only be filed for cassation. The contents of the decision of the judicial body in question are immediately conveyed by the clerk concerned to the Directorate General of Intellectual Property Rights after the date the decision is pronounced. The Directorate General of Intellectual Property Rights will only cancel the relevant registered mark from the general register of marks and announce it in the official news mark after the decision of the judicial body is received and has permanent legal force.

Regarding how to cancel a registered mark, Article 79 of Law no. 20 of 2016 concerning Marks and Geographical Indications states that "Cancellation is carried out by the Directorate General of Intellectual Property Rights by crossing the mark in question from the general register of marks by giving notes on the reasons and date of cancellation and notifying in writing to the owner of the mark or his proxies". The notification letter must clearly state the reason for the cancellation and confirm that as of the date of deletion from the general register of marks, the trademark certificate is declared invalid. The said deletion must be announced in the official brand news. With the cancellation and deletion of a registered mark from the general register of marks, the legal consequence is the end of legal protection for the mark in question. Furthermore, in Article 77 of Law no. 20 of 2016 concerning Marks and Geographical Indications, it is stated that in addition to the reasons above, the cancellation of a collective mark may also be requested to the Commercial Court if the use of a collective mark is contrary to the provisions of Article 68 f Law no. 20 of 2016 concerning Marks and Geographical Indications, namely the requirements for applying for collective mark registration.

A lawsuit for cancellation can be filed with due observance of the time period if the mark in question is contrary to religious morality, decency and public order. A lawsuit for cancellation of trademark registration can only be filed at the Commercial Court at the District Court where the mark is registered within a period of 5 (five) years from the date of registration of the mark in accordance with the provisions of Article 77 paragraph (1) of Law no. 20 of 2016 concerning Brands and Geographical Indications. Then in Article 77 paragraph (2) of Law no. 20 of 2016 concerning Marks and Geographical Indications, it is stated that, "A lawsuit against a registered mark can be filed indefinitely if there is an element of bad faith and/or the mark in question is contrary to state ideology, laws and regulations, morality, religion, decency, or public order".

In the explanatory memory, see that the purpose of Law no. 20 of 2016 concerning Marks and Geographical Indications is to avoid any hidden intentions or bad faith / fraudulent actions to ride the fame of a registered mark that is well known in the community (passing off). So difficult is the condition of well-known brand owners who are domiciled abroad in supervising the use of their marks by other parties, especially (businessmen from Indonesia). 20 of 2016 concerning Marks and Geographical Indications, to be precise in Article 85 paragraph (4) and Article 92 paragraphs (1), (2) and (3) and Articles 99 to 102

of Law no. 20 of 2016 concerning Brands and Geographical Indications. In general, the formulations contained in the articles on legal protection of the marks and geographical indications mentioned above, which in principle provide legal protection to the owners / holders of registered trademarks who have been known to the public for fraudulent actions (passing off) from third parties who will register a mark that has similarities in principle or in general with trademarks that have been registered previously and are well known in the community.

As a consequence of the legal protection of trademark rights, the owner of a registered mark has the right to file a civil lawsuit in the form of compensation if the mark is used by another party without his rights or permission. In Article 83 paragraphs (1) and (2) of Law no. 20 of 2016 concerning Marks and Geographical Indications, it is stated that the owner of a registered mark can file a lawsuit against another party who unlawfully uses a mark that has similarities in principle or in its entirety for similar goods or services in the form of:

- a. Claim for compensation, and/or
- b. Termination of all actions related to the use of the mark.

From the sound of Article 83 paragraphs (1) and (2) of Law no. 20 of 2016 concerning Marks and Geographical Indications, it can be seen that there are types of lawsuits for infringement of registered marks, namely claims for compensation or termination of use of the violated mark. Compensation here can also be in the form of material compensation and immaterial compensation. Material compensation in the form of real losses and can be valued in money. For example, due to the use of a brand by an unauthorized party, it causes the product to be slightly sold because consumers buy goods using a fake brand produced by the unauthorized party. So the quantity of goods with the same brand into a lot of circulating in the market. Meanwhile, immaterial compensation is in the form of a claim for compensation caused by the use of a mark without rights, so that the entitled party suffers a loss morally. For example, a party who is not entitled to the brand produces goods with low quality, which then results in the consumer so that he does not consume the product issued by the owner of the brand concerned.

According to Article 83 paragraph (2) of Law no. 20 of 2016 concerning Marks and Geographical Indications, a lawsuit for infringement of registered marks was submitted to the Commercial Court. This means that the authority to adjudicate disputes or lawsuits for trademark infringement is in the hands of the Commercial Court as a special judicial body. Empowerment of commercial courts is intended so that trademark disputes can be resolved in a relatively fast time. This is because trademarks are part of economic activity or the business world, so that the settlement of trademark disputes requires a special judicial body, namely the Commercial Court. There is one thing that should be noted in the application of Article 83 of Law no. 20 of 2016 concerning Marks and Geographical Indications, that trademark rights are material rights, consequently these rights can be defended against anyone. A sign that the trademark rights have absolute rights is the

granting of lawsuits by law to the rights holders, in addition to the existence of criminal charges against people who violate these rights.

From the description above, it can be said that legal protection for trademarks is actually given to the owner / holder of the right to the mark and also the mark itself based on the first to file principle (a trademark that is registered first), must be protected from passing off actions from other parties who register it. Brand in bad faith). In terms of protection of well-known marks, if the owner of the famous mark can show evidence of the recognition of the mark, then the trademark law provides a mechanism for canceling trademark registration through the commercial and opposition courts (submitting objections), if the famous mark has already been registered or an application for registration has been submitted in Indonesia by other parties with bad intentions.

The trademark law allows the original well-known mark to file a trademark annulment lawsuit through the commercial court, even if it does not have a trademark registration. Owners of well-known marks who do not yet have a trademark registration may file a lawsuit for cancellation of registration after submitting an application for trademark registration to the Directorate General of Intellectual Property Rights. By submitting an application, the owner of a well-known mark is considered to have good faith to follow the applicable regulations by registering and using his mark in Indonesia.

Trademark registration is known by two systems, namely the declarative system and the constitutive system. The declarative registration system is a system where legal protection is obtained by the first user of the mark in question. This declarative trademark registration system is adopted in Law no. 21 of 1961 where the first user of a mark in Indonesia gives rise to the right to the mark, not the registration. Mark registration with a constitutive system, namely registration is a must in order to obtain rights to trademarks. Without state registration will not give the right to the mark to the owner of the mark. This means that without registering a mark, a person will not be given legal protection by the state if the mark is imitated by others. Mark registration with a constitutive system has been adopted since Law no. 1992 to Law no. 20 of 2016.

D. CONCLUSION

There are many violations of trademark rights. Violations of trademark rights have started to increase in Indonesia since the free market policy launched by the Indonesian government, in which foreign investors are given the opportunity to invest in Indonesia. To protect entrepreneurs or trademark rights holders from unlawful acts committed against registered trademark rights, it is necessary to provide legal protection for registered trademark rights. In order to avoid dishonest practices and provide legal protection to the owner or holder of the mark as well as consumers, the State regulates the protection of the mark in a trademark law and is always adapted to the developments that occur in the world of international trade whose aim is to accommodate all existing interests. In order to create a legal protection. The seriousness of the government in

efforts to protect intellectual property rights, especially trademark rights in Indonesia, has been proven by perfecting the applicable legal regulations. About Brands and Geographical Indications.

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