

Muhammad Yusuf Ibrahim

by Turnitin Afri Prayudi

Submission date: 20-Oct-2020 02:49PM (UTC+1100)

Submission ID: 1420613474

File name: demarks_for_Products_of_UMKM_Products_in_Situbondo_District.docx (38.67K)

Word count: 2001

Character count: 14750

Legal Protection for Trademarks for Products of UMKM Products in Situbondo District

Muhammad Yusuf Ibrahim¹

Lecturer Faculty of Law
Universitas Abdurachman Saleh Situbondo
INDONESIA
Email: yus_bramuz@yahoo.co.id

ABSTRACT

Brand is a sign of a product and service. Brand can also provide information for consumers about a product of goods and services produced by the manufacturer, even the brand can show the quality of a product goods and services. To acquire a legal protection of Marks, the owner of the Mark shall register its Marks as set forth in article 3 of Act Number 15 of 2001 Concerning Trademarks, namely the right to Trademark is an exclusive right granted by the state to the owner of the Mark registered in the General Register of Marks for A period of time by using the Mark's own or permitting others to use it.

UMKM Currently in Situbondo District has grown very rapidly. As a business wheel in the region, many UMKM start a business by focusing on the development of goods and services without regard to the legal protection of the brand that has been made, so many brands made by business actors in areas that are still not registered at the Directorate General of Intellectual Property Rights. The lack of information and knowledge of IPR in the regions increasingly makes the business actors in the regions do not pay attention to the Intellectual Property owned. So if in the future there are products of the same goods and services as those made by other business actors with registered trademarks then business actors will be harmed. To avoid this then research on intellectual property rights is created.

Keywords: IPR, Brand, UMKM.

INTRODUCTION

The general principle of IPR is to protect intellectual enterprises that are creative based on registration. In general, registration is one of the intellectual property conditions generated by a person. Some branches of IPR requiring someone to register are Brand, Patent, Industrial Design, Layout Design of Integrated Circuit, and Plant Variety Protection. Whereas the other two IPR branches, namely Copyright and Trade Secret are not required to be registered for legal protection.

Brand has the ability as a sign that can distinguish the results of one UMKM with other UMKM in the market, for goods or services of the same or unlike. The function of the brand is not only to distinguish a product from another product but also to act as an invaluable asset of a company, as it is an intellectual property, especially for a well-known brand. Because through a product brand of goods or services of a kind can be distinguished origin, quality and security that a product is genuine. Through the brand, a UMKM has built a character to its products, which is expected to create an increasing reputation for the use of the brand.

¹ Lecturer Faculty Of Law Universitas Abdurachman Saleh Situbondo

From that background, the brand can be used as an asset for the company, therefore the employer must know about how a brand gets legal protection as well as how its registration process, its transfer, and the removal of legal protection of the brand in the trade of goods and services.³

LITERATURE REVIEW

Brand Definition

The definition of a brand is formulated in Article 1 paragraph (1) of the Trademark Number 15 of 2001 which reads, Brand is a sign in the form of pictures, names, words of letters, numbers, arrangement of colors, or combination of these elements Which has a differentiating power and is used in trading activities of goods and services. To distinguish between goods or services with each other. According to Article 3 of Law No. 15 of 2001 on Marks, a right to a mark is a special right granted by a state to a trademark owner registered on the general register of a mark for a certain period of time by itself or giving consent to a person or persons jointly, The same legal entity to use it.

Brand for producers of goods and services is very important, because it serves to distinguish between goods or services with each other and serves as a sign to distinguish the origin, reputation image and bonafiditas among companies with one another similar. Brand function also as a sign to connect a particular product with the source at once used because it can differentiate from other goods producers. For consumers with the increasing variety of goods and services that are marketed through the brand can be known the quality and origin of these goods and services.

Brand Registration

The procedure for the acquisition of a right to a trademark is governed by the provisions of Article 7 of Law Number 15 Year 2001 regarding Trademark, granted on the basis of the application, the registration must contain:

- a. Date, Month and Year.
- b. The full name, nationality, and address of the applicant.
- c. Full name and power of attorney's address, if the application is submitted by power.
- d. Colors if the brand applied for registration by using color elements.
- e. The name of the country and the date of the first request for the mark in the case of the application is filed with priority right.

The principle of brand registration in Indonesia uses the first to file system. First to file is the principle of registration based on who first registered a creation either personal or legal entity either in the form of industrial company.

Brand Redirection

Article 40 of the Trademark Law describes ways to transfer the rights to a registered mark, is:

1. Inheritance,
2. Testament,
3. Grants,
4. Agreement,
5. Other causes justified by legislation.

The transfer of rights to the mark shall be requested by the Director General of IPR to be recorded in the general register of the mark accompanied by documents proving it. The transfer of rights has the legal power of a third party only if it has been recorded in the general daftra of

the mark. A transfer of the mark may be accompanied by a transfer of name or otherwise associated with the mark.

Brands as immaterial material can also be switched and diverted, the refore as the material immaterial brand must be respected as the personal rights of the wearer. Property rights as a perfect material right when we compare with other material rights provide perfect enjoyment to the owner. The right to a trademark may be granted to another party by the owner of a registered mark to another party through an agreement in which it contains the right to use the mark, whether for all or part of the type of goods or services registered within a specified time and condition.

Brand licensing through an agreement is basically a matter of granting the right to enjoy the economic benefits of a brand within a period of time and on certain conditions as well. The license agreement shall be registered with the Directorate General of Intellectual Property Rights or recorded in the general register of the mark and published in the official news of the mark.

The transfer of inheritance law, grant and testament, nothing has been applied uniformly, still different for each class of the population. Some are subject to customary law, some are subject to Islamic law, and some are subject to civil law. The transfer of a trademark registered with the agreement shall be set forth in the form of the deed of agreement and accompanied by supporting documents such as a brand certificate that supports the ownership of the mark.

Brand Removal

Trademarks registered with the Directorate General of IPR may be removed in the general register of the mark, as contained in Law Number 15 Year 2001 on Marks, is:

- a. Article 61, Removal of a trademark registration from the general register of a mark may be made on the initiative of the Directorate General of IPR or based on the request of the owner of the mark concerned.
- b. Article 63, the abolition of a trademark registration may also be filed by a third party in the form of a lawsuit to the commercial court.
- c. Article 67, the abolition of collective trademark registration may also be filed by a third party in the form of a lawsuit to the commercial court.

The Directorate General of Intellectual Property Rights may initiate the removal of a trademark registration if:

- a. Marks shall not be used for 3 (three) consecutive years in the trade of goods or services since the date of registration or last resort, unless there is a reason that may be accepted by the Directorate General of Intellectual Property Rights. The last use is the use of such marks on the production of traded goods or services. When the last use is calculated from the last date of use even after that the goods are still circulating in the community.
- b. Marks are used for the type of goods or services that are inconsistent with the type of goods or services applied for registration, including the use of unsuitable trademarks in the form of wording or letters or non-compliance in the use of different marks.

Article 63 and Article 64 of the Trademark Law Number 15 Year 2001 Concerning Trademarks stipulates that the abolition of the registration of a mark for the above reasons may also be filed by a third party in the form of a lawsuit to the Commercial Court and to a Commercial Court Judgment may only be filed an appeal to the Supreme Court. Regarding the abolition of the registration of collective trademarks, Article 66 of the Trademark of Branding Number 15 of 2001 on Marks, states that the Directorate General of Intellectual Property Rights may remove the registration of a collective mark on the basis of:

- a. Own solicitation of collective brand owners with the written consent of all users of the collective brand.
- b. Sufficient evidence that the collective mark is not used for 3 (three) consecutive years from the date of its registration or the last use unless there is reason to be accepted by the Directorate General of Intellectual Property Rights.
- c. Sufficient evidence that a collective mark is used for a type of goods or service that is inconsistent with the type of goods or services applied for registration.
- d. Sufficient evidence that such collective marks are not used in accordance with collective brand usage rules. Removal of brand registration is recorded in the general list of brands and announced in official brand news. An objection to the removal of a trademark registration may be filed with the Commercial Court.

RESULT AND DISCUSSION

Protection of famous Brands

Famous Brand is a brand that becomes a symbol of pride that can be relied upon by consumers even though consumers do not know or do not realize who the owner of the brand. The brand issue becomes very important, with respect to the issue of legal protection and legal certainty for the owner or the holder of the mark and the legal protection of the public as the consumer of a good or service that uses a brand to avoid being fooled by other brands. Can not be denied again that the problem of the use of famous brands by unauthorized parties, is still a lot happening in Indonesia and the fact is really realized by government.

If viewed from the side of the law it can not be tolerated anymore because the State of Indonesia has ratified the International Covenant on TRIP'S and WTO that has been in accordance with international agreements. It is undeniable that in the world of commerce today the brand is a manifestation of the intellectual work of human beings who have a decisive role because of the use or use of the brand in the company, but also contains a wide legal aspect both for the owner or holder of the rights to the brand as well as for Society as consumers who use or exploit goods or services of a particular brand.

The famous Brand Criteria can be formulated as follows:

- a. So long brand upgrading.
- b. Brand appearance that has its own characteristics that are attached to the memories of the community.
- c. Brand registration in many countries.
- d. Good brand reputation because the products or services produced have excellent quality and aesthetic value and high commercial value.
- e. Marketing and product distribution with a wide reach in almost all the world.

Protection of Brand rights

Protection of Trademarks or Rights on Marks is an exclusive right granted by the State to registered mark owners in the General Marks Register. For a period of time the holder of the rights to the mark may use the mark himself or permit a person, some persons together or a legal entity to use it. Protection of Registered Marks is the legal certainty of Registered Marks, whether for extended use or as evidence in case of dispute over the implementation of Registered Marks.

Article 76 paragraph (1) of Law Number 15 Year 2001 regarding Trademark, stating that the registered trademark owner may file a lawsuit against another party who unlawfully uses a

marking brand in common or in whole for similar goods or services in the form of a claim of indemnity Or termination of all deeds associated with the use of such marks. Article 76 paragraph (2) of Law Number 15 Year 2001 regarding Trademark, a registered trademark infringement lawsuit is filed with the Commercial Court. This means that the jurisdiction of adjudicating disputes or litigation lawsuits lies with the Commercial Court as a special judicial body.

Legal protection internationally

Legal protection of registered trademarks is absolutely granted by the government to the holder and user of the right to the mark to ensure:

- a. Certainty strives for producers.
- b. Attract investors to foreign trademarks, while the legal protection afforded to local trademarks is expected to eventually expand widely in the international world.

The national legislation on brand, society is also bound by international brand rules such as the Paris Union Convention held on March 20, 1883, which is specifically designed to provide protection to industrial property. Indonesia still has the freedom to govern its own Brand Law, as long as Not contrary to the provisions already standardized in the paris Convention.

Repressive Protection

Understanding of repressive law protection is protection done to solve or overcome an event or event that has happened, that is in the form of violation of right to brand. In repressive protection this has a greater role to the judiciary and other law enforcement agencies such as the Police, Civil Service Officials and the prosecutor's office to take action against brand violations.

Repressive legal protection is exercised in the event of a violation of the right to the mark through civil suits and/or criminal charges. That the owner of a registered mark obtains legal protection for violation of the right to the mark either in the form of a claim of compensation or the cessation of all acts relating to the use of such marks or based on criminal lawsuits through law enforcement officers.

CONCLUSION

Legal protection of the Trademark holder of the trade in goods and services in Indonesia is very necessary because to prevent and avoid dishonesty of Trademarks, such as counterfeiting and piracy of Trademarks. Not only that, but also to obtain legal certainty from the government to the holder of a well-meaning Brand. For that the state regulates the legal provisions to create legal protection.

Registration procedures, transfer and removal of legal protection on Trademarks in the trade in goods and services have been regulated by the government in Law No. 15 of 2001 on Marks. Registration is one of the requirements to obtain legal protection, but registration in Indonesia uses a fist to file system for registration. Likewise with the transfer and removal of Brand protection can be done if it has complied with the provisions of the legislation.

REFERENCES

Abdulkadir Muhammad, 1994. *Hukum Harta Kekayaan*, Citra Aditia Bakti: Bandung.

Andrian Sutedi, 2009. *Hak Atas Kekayaan Intelektual*, Sinar Grafika: Jakarta.

- Djulaeka. 2014. *Konsep Perlindungan Hak Kekayaan Intelektual: Perspektif Kajian Filosofis HAKI Kolektif-Komunal*. Setara Press: Malang.
- Ermansyah Djaja. 2009. *Hukum Hak kekayaan Intelektual*. SinarGrafika: Jakarta.
- Hariyani Iswi, *prosedur mengurus HAKI yang benar*, Pustaka Yustisia, Yogyakarta, 2010
- Hery Firmansyah, *Perlindungan Hukum Terhadap Merek*, Pustaka Yustisia, Yogyakarta 2011
- Much. Nurachmad. 2012. *Segala Tentang HAKI Indonesia*. BukuBiru: Jogjakarta.
- Muhammad Djumhani dan R. Djubaidillah, *Hak Milik intelektual*, Citra Aditia Bakti, Bandung, 1993
- Rachmadi Usman. 2003. *Hukum Hak Atas Kekayaan Intelektual: Perlindungan dan Dimensi Hukumnya di Indonesia*. PT. Alumni: Bandung.
- Saidin. 2010. *Aspek Hukum Hak Kekayaan Intelektual: Intellectual Property Rights*. PT. raja Grafindo Persada: Jakarta.
- Sudaryat, 2010. *Hak Kekayaan Intelektual: Memahami Prinsip Dasar, Cakupan, Dan Undang-Undang Yang Berlaku*, Oase Media: Bandung.

Muhammad Yusuf Ibrahim

ORIGINALITY REPORT

20%

SIMILARITY INDEX

20%

INTERNET SOURCES

3%

PUBLICATIONS

2%

STUDENT PAPERS

PRIMARY SOURCES

1

icoen.org

Internet Source

20%

Exclude quotes Off

Exclude matches Off

Exclude bibliography Off