

Legal Protection for Registered Trademark Holders Against Trademark Infringement

¹Imayani, ²M.T Marbun, ³Riana Wulandari Ananto

¹ Undergraduate student in the Bachelor's Degree Program in Law, Universitas Tama Jagakarsa, Jakarta, Indonesia

^{2,3}Lecturer in the Bachelor's Degree Program in Law, Universitas Tama Jagakarsa, Jakarta, Indonesia

DOI: <https://dx.doi.org/10.47772/IJRISS.2024.801002>

Received: 02 January 2023; Revised: 09 January 2023; Accepted: 12 January 2023; Published: 22 January 2024

ABSTRACT

In the era of development aligned with international conventions, the role of brands has become crucial in maintaining business competition and must comply with existing trademark regulations. Legislation regarding trademarks in Indonesia has undergone numerous changes to adapt to the needs and developments of the times, starting with Law No. 14 of 1997 concerning Trademarks, amended by Law No. 15 of 2001 concerning Trademarks, and most recently, Law No. 20 of 2016 concerning Trademarks and Geographical Indications. For consumers, a brand not only facilitates identification but also serves as a symbol of self-esteem. Individuals accustomed to choosing products from a particular brand tend to continue using that brand for various reasons, such as familiarity, trustworthiness, product quality, and more. Thus, the function of a brand as a guarantee of quality becomes increasingly evident, especially concerning reputable products. This research adopts a normative juridical research approach. The findings of this study indicate that legal protection for trademarks is granted, whether foreign or local, famous or not, only to registered trademarks. Therefore, every brand owner is encouraged to register their trademark with the Directorate General of Intellectual Property Rights to obtain legal protection for their brand. Legal protection based on the first-to-file principle is provided to registered trademark holders with 'good faith' both in a preventive and repressive manner. Considerations by the judge in deciding trademark infringement cases, as in Decision Number: 1349 K/Pdt.Sus-HKI/2022, are as follows: The plaintiff alleges ownership of the ERG trademark (ERG logo) with Registration Number IDM000540156, dated March 8, 2014, in class 25 to protect footwear and apparel products. The naming of ERG is based on the plaintiff's idea to design and develop ergonomic products. Therefore, the translation information in the intellectual property database for the ERG trademark is ergonomic fashion products. The plaintiff claims that the defendants have infringed the trademark by using the ERG mark, which is substantially or entirely identical to the plaintiff's ERG mark, Registration Number IDM000540156 owned by Mr. Muhamad Adi Mulya Pranata without rights and unlawfully

Keywords: Intellectual Property Rights (HAKI), trademark, trademark infringement, annulment of decisions

INTRODUCTION

The development of intellectual property continues to increase along with advancing progress. Individuals in this era are rapidly expanding their thinking. Humans are highly creative in creating things that enrich our daily lives. One of the current and ongoing developments that receive significant attention is the increasing globalization in the realms of society, economy, culture, and other aspects of life. The advancements in

information technology and transportation have rapidly enhanced commercial sector activities, transforming the world into a single market.[\[1\]](#)

Intellectual property rights are divided into two groups: copyright and industrial property rights.[\[2\]](#) The scope of copyright encompasses creative works in the fields of science, art, and literature. Meanwhile, the scope of intellectual property rights includes patents, trademarks, geographical indications, industrial designs, integrated circuit layout designs (ICLDD), trade secrets, and plant variety protection (PVP).[\[3\]](#)

Several intellectual property rights include trademark rights. Indonesia, as a part or member of the WTO, has signed agreements regarding aspects of intellectual property trade, including the trade-related aspects of intellectual property rights (TRIPs). By signing this agreement, Indonesia is required to align copyright, patent, and trademark laws in accordance with the provisions of this agreement.[\[4\]](#)

The trademark law in Indonesia has undergone significant changes in response to the needs and developments of the times, starting with the amendment of Trademark Law Number 14 of 1997 to become Law Number 15 of 2001 concerning Trademarks, and most recently Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

In the effort to use trademarks, which serve as the primary weapon in brand identity, labels play a unique and strategic role, given their position in business competition, distinguishing them from similar products produced by different entities. Based on this fundamental idea, one must consider how manufacturers create products with similar shapes and types. However, due to brand differentiation, it also implies differences in quality and specifications, providing a distinguishing effect between the same products from different competing brands in the market. For consumers, a brand is not only easily recognizable but also a symbol of self-worth. People accustomed to choosing a specific brand's products tend to use them for various reasons, such as familiarity, trust, or the perceived quality of the products.[\[5\]](#)

Therefore, quality assurance becomes increasingly realistic, especially for genuine products. Trademark infringements always result in losses for registered trademark owners. Certainly, these trademark owners incur significant costs to obtain the rights as registered trademark owners and to introduce and promote their brands to the general public. Moreover, brand owners must also be able to maintain the quality of their business to retain the trust of the public, especially consumers. Therefore, when specific trademarks are violated, it can be highly disappointing and detrimental to entrepreneurs who have made sincere efforts to use those trademarks in their business.

Recently, intellectual property issues have gained more attention from the government, academia, and the general public. This is in line with the increasing awareness of providing special rights to them. Appreciation for intellectual works is necessary to encourage and develop the creativity and innovative attitudes of society. The spirit of creativity is crucial for the smooth progress of development, especially in efforts to meet the increasingly complex needs of modern society. Issues related to intellectual property involve various aspects such as technology, industry, society, and culture.

Currently, unlicensed trademarks are often used by manufacturing companies solely for profit. Irresponsible use of this situation results in losses for trademark owners, manufacturers, consumers, and the government. Therefore, appropriate regulations are needed to legally protect trademark owners from trademark infringements.

Like in the trademark infringement dispute in Decision Number No: 1349 K/Pdt.Sus-HKI/2022, the plaintiff, as the owner of the trademark "ERG," registered in the Intellectual Property Database since February 18, 2014, and protected until February 18, 2024. The plaintiff registered the ERG trademark in class 25 for footwear and apparel products. The naming of ERG is based on the plaintiff's idea to design and

develop ergonomic products. Therefore, the translation in the intellectual property database for the ERG trademark is “ergonomic fashion products.” Subsequently, Defendant I and Defendant II have produced clothing products and sold garments bearing and/or using the “ERG” trademark through the Shopee marketplace with the link www.shopee.co.id/erigostore using the name erigostore and the Tokopedia marketplace with the link www.tokopedia.com/erigo using the name.

The need for legal protection of trademarks is rapidly growing, especially after the imitation of trademarks. Trademarks, as part of intellectual property, play a significant role in the trade of goods and services, both nationally and internationally. In addition to serving as a differentiator for goods or services, trademarks are also used as a guarantee of the quality of a product and the image of the company.^[6] The trademark rights will arise and be protected by the law when the trademark is registered, and trademark registration is mandatory to obtain legal protection.

The existence of legal regulations in the field of trademarks plays a crucial role in Indonesian trade, both at the national and international levels. Since a trademark is a distinctive characteristic of a product that sets it apart from others and signifies the origin of the goods, the presence of legal rules is essential.^[7] Thus, the trademark of a product or service must undoubtedly have legal protection to avoid fraudulent activities that may cause harm.

In Indonesian legislation, the protection of trademark rights is stipulated in Article 35, paragraphs (1) and (2) of Law No. 20 of 2016 concerning Trademarks and Geographical Indications. However, in this law, despite acknowledging and protecting trademarks from their owners, there is a specified duration for legal protection, which is 10 years for their goods or services. This protection can only be obtained after registration and meeting other administrative requirements. The research questions in this study are: (1) How is the legal protection for registered trademark holders against trademark infringement according to Indonesian trademark law?; (2) What are the considerations of the judge in deciding a trademark infringement case in Decision Number No: 1349 K/Pdt.Sus-HKI/2022?.

RESEARCH METHOD

In this study, a normative juridical research method is employed. This normative juridical legal research refers to the norms of law found in regulations, literature, expert opinions, papers, and research results related to the evidence in a case. This legal research involves the use of secondary data, which are data obtained from library materials.^[8]

DISCUSSION

Legal Protection for Registered Trademark Holders Against Trademark Infringement According to Indonesian Trademark Law

Legal protection is a safeguard provided to legal subjects in the form of devices, both preventive and punitive, whether oral or written. In other words, legal protection can be seen as a separate representation of the legal function itself, which entails the concept that the law provides justice, order, certainty, utility, and peace.

The above above definition has prompted various experts to express their opinions on the concept of legal protection, including:

1. According to Satjipto Raharjo, legal protection is defined as providing shelter to human rights violated by others, and this protection is given to society so that they can enjoy all the rights granted by the law.

2. According to CST Kansil, legal protection involves various legal efforts that law enforcement agencies must undertake to provide a sense of security, both mentally and physically, from disturbances and various threats from any party.
3. According to Muktie, A. Fadjar, legal protection is a narrowing of the meaning of protection, specifically referring to protection through the law only. The legal protection provided is also related to rights and obligations, particularly those possessed by humans as legal subjects in their interactions with other humans and their environment. As legal subjects, humans have rights and obligations to carry out legal actions.[\[9\]](#)

In general, legal protection for trademarks is only applicable to registered trademarks. International protection is required for the trademarks of a product traded beyond and across national borders. As trademarks function as the identity of a specific product or company, consumers can distinguish between one product and another of the same type.[\[10\]](#)

A trademark serves the function of providing a distinctive mark for goods, distinguishing the products of one person or company from those of others. In addition, there are other purposes from the perspectives of producers, traders, and consumers. From the producer's standpoint, a trademark is used to ensure the value of the production, especially concerning quality, ease of use, or aspects generally related to its technology. For traders, a trademark is used to promote their merchandise in order to expand the market. From the consumer's standpoint, a trademark is necessary for making choices regarding the products to be purchased.[\[11\]](#)

Meanwhile, according to Law No. 15 of 2001, a trademark is defined as a sign in the form of an image, name, word, letters, numbers, color arrangements, or a combination of these elements, which is distinctive and used in the trade of goods or services. The change in the definition of a trademark according to the law is one of the efforts by legislators to anticipate the rapidly advancing technological developments in the 4.0 era. In this Industry 4.0 era, technology is utilized to create and develop brands. Manufacturers of electronic devices, for example, leverage technology in creating and developing their gadget brands through innovation and technology, using these as means and symbols to identify their products in society.

In the Industry 4.0 era, with the development of industries and trade, the role of trademarks related to industrial results and goods becomes increasingly important. By providing trademarks for their products, an easy way to market them arises. A trademark serves as an identifier in the trade of similar goods or services and simultaneously guarantees their quality when compared to similar products or services made by other parties. Trademarks can be either trademarks or service marks. Trademarks are intended to distinguish similar goods made by other companies, while service marks are intended to distinguish similar service trades. By looking, reading, or hearing a trademark, one can precisely determine the form and quality of a product or service to be traded by its creator.

Legal protection for trademarks follows a declarative system. In this declarative system, trademark registration is not a legal obligation. Anyone who owns a trademark and uses it may choose whether or not to register it. If the individual is not interested in registering their trademark, it is acceptable, and it is not a legal violation, with no associated penalties. The individual can still use the trademark and, as the first user, can claim the right to the trademark if they can prove that they are the first user entitled to the trademark they are using.

So, the declarative system principle grants rights to the trademark based on the first use in Indonesia, even if not registered. By registering it, the owner is considered the first user unless proven otherwise. If proven otherwise in court that the registered trademark owner is not the first user, then the assumption of being the first user becomes invalid, and the registration can be canceled.[\[12\]](#)

In the declarative system, the first user is the focal point of trademark law; the first user is considered the owner of the trademark, not the registration. Registration is viewed merely as a legal presumption or legal assumption that the registrant is the first user. Thus, registration only creates a legal presumption that those who register the trademark are considered by law as if they are recognized as the first user and, therefore, the owner of the respective trademark.

As previously explained, the declarative system, in practice, creates less certainty for the business world, as trademark registrations can be canceled on the grounds that others are the first users. In practice, proving the first use often raises issues, making the declarative system less effective in providing legal certainty.

The advantage of a registered trademark compared to an unregistered one lies in dispute resolution. A registered trademark is easier to prove in case of disputes compared to an unregistered one. For unregistered trademarks, the user may face difficulty proving themselves as the first user due to the absence of documents that can be presented as authentic evidence. In civil cases, written evidence (letters/certificates) is highly valued because legal events are more easily conveyed compared to testimony from witnesses.

As a consequence of legal protection for trademark rights, owners of registered trademarks have the right to file a civil lawsuit, seeking compensation if their trademark is used by others without proper authorization. The owner of a registered trademark can file a lawsuit against parties who wrongfully use a similar or identical trademark for similar goods or services. The lawsuit may seek compensation and/or the cessation of all actions related to the unauthorized use of the trademark. [\[13\]](#)

Compensation here can also take the form of material and immaterial compensation. Material compensation involves tangible and quantifiable losses in monetary terms. On the other hand, immaterial compensation involves claims for damages caused by the unauthorized use of the trademark, resulting in the rightful party suffering moral losses. [\[14\]](#)

A registered trademark infringement lawsuit is filed in the Commercial Court. This means that the authority to adjudicate disputes or cases of trademark infringement lawsuits lies with the Commercial Court as a specialized judicial body. The empowerment of the Commercial Court is intended to ensure that trademark disputes can be resolved relatively quickly. Considering that trademarks are a part of economic activities or business, the resolution of trademark disputes requires a specialized judicial body, namely the Commercial Court.

Legal protection for trademarks, whether foreign or local, famous or not, is only granted to registered trademarks. Therefore, every trademark owner is encouraged to register their trademark with the Directorate General of Intellectual Property to obtain legal protection for their trademark. Registered trademarks receive legal protection for a period of 10 (ten) years, effective retroactively from the date of acceptance of the relevant trademark application. Upon the owner's request, the protection period for a registered trademark can be extended each time for the same duration. Legal protection based on the first-to-file principle is given to the holder of a registered trademark who acts in 'good faith,' whether in a preventive or punitive manner. Preventive legal protection is carried out through trademark registration, while punitive legal protection is provided if trademark infringement occurs through civil lawsuits or criminal charges, reducing the possibility of alternative resolutions outside the court.

Such legal protection can take the form of either preventive or punitive measures, as follows:

Preventive legal protection

Preventive legal protection here refers to protection before any criminal act or legal violation against the trademark and famous trademark occurs. In this case, it heavily relies on the trademark owner to register

their trademark to obtain legal protection. Article 3 of the Trademark Law stipulates that the right to a trademark is an exclusive right granted by the state to the owner of the registered trademark in the general trademark register for a certain period by using the trademark personally or granting permission to others to use it. Furthermore, Article 28 of the Trademark Law states that a registered trademark receives legal protection for a period of 10 (ten) years, retroactively effective from the date of acceptance of the relevant trademark registration (filing date), and can be extended.

Therefore, if an individual/legal entity wishes their trademark to receive legal protection based on trademark law, the respective trademark must be registered first. An application for trademark registration will be accepted if it meets the formal and substantive requirements stipulated by the Trademark Law. A crucial requirement and main characteristic of a trademark are having sufficient distinctiveness. The trademark in use must be in a manner that has enough strength to distinguish the goods or services of one company from the goods or services produced by another company. Furthermore, according to the explanation in Article 6 paragraph (1) of the Trademark Law, 'substantially identical' with another registered trademark means having the same impression, including, among others, in terms of shape, placement method, writing style, or a combination of elements, as well as sounds or speech found in the respective trademark. Based on Article 6 paragraph (2), the provisions as stipulated in Article 6 paragraph (1) letter (b) (famous trademarks) can also be applied to goods or services that are not similar as long as certain requirements stipulated further by the Government Regulation are met. However, as of now, the Government Regulation referred to in Article 6 paragraph (2) has not been enacted. If the trademark registration application meets the formal requirements, substantive requirements, and the announcement period, a trademark certificate can be issued, and the trademark can then be registered in the general trademark register. Upon receiving the Trademark Certificate and registering the respective trademark in the General Trademark Register, the owner of the registered trademark has exclusive rights, which may include the exclusive right to exploit financial benefits. Thus, trademark protection is granted to the owner of the registered trademark.

Repressive legal protection

Repressive legal protection is implemented when there is a violation of trademark rights through civil lawsuits and/or criminal charges. Registered trademark owners receive legal protection against trademark rights violations, whether in the form of compensation claims or the cessation of all actions related to the use of the trademark, based on civil lawsuits or criminal charges filed by law enforcement agencies. Registered trademark owners also have the right to file a request for the cancellation of trademark registrations owned by others that have been registered without proper authorization.

Indonesia's participation in the era of globalization has led to increased levels of competition. In a highly competitive business environment, many dishonest practices are employed by business actors to undermine their competitors, such as trademark counterfeiting. The pseudo-prestige factor of consumers who take pride in using well-known brands, especially foreign products (label-minded), also significantly influences and benefits trademark counterfeiting. This is achieved by satisfying society's desire for genuine-looking but counterfeit (fake) brands, or brands that closely resemble well-known ones. The products are often deliberately adapted to match the budget constraints of consumers who want to wear prestigious brands but cannot afford them, so they opt for authentic-looking but fake brands to maintain a sense of prestige.

The unauthorized use of a brand similar to someone else's well-known brand can mislead consumers about the origin and/or quality of the goods. Unlawful use of a famous brand is classified as the use of a brand in bad faith. The utilization of products with specific brands goes beyond the good will associated with the brand. To avoid dishonest practices and provide legal protection to trademark owners or holders, as well as consumers, the State regulates trademark protection in trademark laws. These regulations are continually adjusted to developments in the international trade arena, aiming to accommodate all existing interests and

create comprehensive legal protection.

2. Considerations of the Judge in Deciding Trademark Infringement Case in Decision Number No: 1349 K/Pdt.Sus-HKI/2022

Violation of trademarks aims to easily gain personal benefits by attempting or engaging in actions, imitating, or counterfeiting well-known brands in society without considering the rights of others whose rights have been previously protected. The acquisition of trademark ownership allows trademark owners to prohibit others from using or registering the same or similar trademarks; only the trademark owner can use the trademark continuously.

According to Molegraf, unfair competition is an event in which someone, to attract the subscribers of others to their own company or for the expansion of their company's sales revenue, uses methods that contradict good faith and honesty in trade. Article 10 paragraph (2) of the Paris Convention specifies that any act contrary to "honest practices in industrial and commercial matters" is considered an act of unfair competition, and paragraph (3) prohibits all acts that can create confusion in any way regarding the origin or that relate to the industrial and commercial efforts of a business owner who confuses the public about the nature and origin of a product.

Regarding trademark infringement, Article 83 paragraph 1 of Law Number 20 of 2016 states that:

"The owner of a registered trademark may file a lawsuit against another party who, without the right, uses a trademark that is substantially or entirely similar for similar goods or services, in the form of a claim for damages and/or the cessation of all actions related to the use of the trademark".

Article 100-101 of Law Number 20 of 2016 fundamentally distinguishes types of trademark violations into 4 (four) categories, namely:

1. Intentional and unauthorized infringement by using an identical trademark entirely similar to the registered trademark of another party.
2. Infringement by using a trademark that is substantially similar to the registered trademark of another party.
3. Trademark infringement by using an identical sign entirely similar to the indications of geographical origin owned by another party.
4. Trademark infringement by using a sign that is substantially similar to the indications of geographical origin owned by another party.

The registered trademark can be canceled based on a decision from the commercial court which has the force of law on the lawsuit of interested parties, based on Article 20 and Article 21 of Law Number 20 of 2016. Cancellation lawsuits can be filed by interested parties except for the owner of an unregistered trademark or those whose objections or views have been rejected. An owner of an unregistered trademark can file a lawsuit after submitting an application to the Directorate General of Intellectual Property. A cancellation lawsuit against a trademark is filed with the Commercial Court within 5 (five) years from the date of trademark registration. A cancellation lawsuit can be filed without a time limit if the trademark in question contradicts morality, religion, decency, or public order

An owner of a trademark objecting to its removal by the Directorate General of Intellectual Property or a court decision must have evidence that the trademark is still in use. The burden of proof doctrine in civil procedural law can be utilized by a trademark owner objecting to the removal.

Efforts that can be made by a trademark owner objecting to the removal by the Directorate General of

Intellectual Property or the Commercial Court are part of the government's initiative to provide legal certainty, justice, and the rule of law, as well as respecting human rights. The national strength of a nation depends on the progress and ability to generate Intellectual Property Rights, including protecting Intellectual Property Rights.

In some countries, consumers do not need to stand to file a trademark infringement lawsuit. Instead, the plaintiff seeks to build a relevant consumer perspective through surveys and witness statements, which the court considers as direct evidence, even if only a small sample of the relevant consumer population.

Article 83 paragraph (1) of Law Number 20 of 2016 stipulates that the owner of a registered trademark and/or the recipient of a trademark license can file a lawsuit against another party who unlawfully uses a trademark that is substantially or entirely similar, for similar goods or services. The lawsuit as referred to in paragraph (1) is filed with the Commercial Court. A lawsuit for trademark infringement can be filed by the recipient of a registered trademark license, either independently or jointly with the owner of the relevant trademark. Article 84 paragraph (1) of Law Number 20 of 2016:

“During the examination to prevent greater losses, at the request of the owner of the trademark or the recipient of the license as the plaintiff, the judge may order the defendant to cease the production, circulation, and/or trade of goods or services using the trademark without permission.”

Related to the legal consequences that will befall the perpetrators, it is mentioned in Articles 100-103 of Law Number 20 of 2016 regarding criminal sanctions, namely: Article 100 (1) of Law Number 20 of 2016; Article 101 of Law Number 20 of 2016; Article 102 of Law Number 20 of 2016; Article 103 Offenses as referred to in Articles 100 to 102 are prosecutable offenses.

A third party can legitimately use a protected trademark if they receive authorization from the owner through licensing or assignment. While TRIPs discusses these two procedures, it does not provide a complete set of rules on trademark licensing and assignment, leaving member countries relatively unrestricted in determining the scope of licensing and assignment rules.

Before deciding a case/dispute, the judge must evaluate the admissibility of evidence presented in the trial by the parties and assess its probative value after evidence has been presented. Once the judge deems the disputed events proven, it means the judge can establish the disputed events and then determine the legal rules that are in dispute between the two parties, and the judge is considered to know the law (*ius curia novit*). In delivering any judgment, the judge must consider justice, legal certainty, and utility.^[15]

A cancellation lawsuit is filed with the Commercial Court against the owner of the registered Trademark as stipulated in Article 76 paragraph (3) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications. In Article 78 paragraph (1) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, it is mentioned that an appeal in cassation can be filed against the decision of the Commercial Court on the cancellation lawsuit as referred to in Article 76 paragraph (3).

Cassation proceedings are regulated in Articles 87 and 88 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, as follows: Article 87 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications: An appeal in cassation can only be filed against the decision of the Commercial Court as referred to in Article 85 paragraph (8). Article 88 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications is as follows:

- A cassation request as referred to in Article 87 must be submitted no later than 14 (fourteen) days after the date on which the cassation decision is pronounced or notified to the parties by registering it with the clerk at the Commercial Court that decided on the lawsuit.

- The clerk registers the cassation request on the date the request is submitted, and the cassation applicant is given a written receipt signed by the clerk on the same date as the registration acceptance.
- The clerk is obligated to inform the cassation request as referred to in paragraph (2) to the opposing party within a maximum of 7 (seven) days after the cassation request is registered.
- The cassation applicant must submit the cassation memorandum to the clerk within a maximum of 14 (fourteen) days from the date the cassation request is registered as referred to in paragraph (1).
- The clerk must deliver the cassation memorandum to the opposing party within a maximum of 2 (two) days after the cassation memorandum is received by the clerk.
- The opposing party may submit a counter cassation memorandum to the clerk no later than 14 (fourteen) days after the date the opposing party receives the cassation memorandum as referred to in paragraph (5), and the clerk must deliver the counter cassation memorandum to the cassation applicant within a maximum of 7 (seven) days after the counter cassation memorandum is received by the clerk.
- The clerk must deliver the case file of the relevant cassation to the Supreme Court within a maximum of 7 (seven) days after the expiration of the period as referred to in paragraph (6).
- The examination and decision session of the cassation request must be completed no later than 90 (ninety) days after the date the cassation request is received by the Cassation Panel.
- The decision on the cassation request as referred to in paragraph (8), which contains a complete legal reasoning underlying the decision, must be pronounced in an open session for the public.
- The Supreme Court clerk must deliver the content of the cassation decision to the clerk no later than 7 (seven) days after the date the decision on the cassation request is pronounced.
- The bailiff must deliver the content of the cassation decision as referred to in paragraph (10) to the cassation applicant and the opposing party no later than 2 (two) days after the cassation decision is received.
- The legal review against the cassation decision as referred to in paragraph (8) is carried out in accordance with the provisions of the legislation.

Considerations of the Judge in Deciding Trademark Violation Case in Decision Number No: 1349 K/Pdt.Sus-HKI/2022: The plaintiff asserts ownership of the ERG trademark (ERG logo):



With Registration Number IDM000540156, dated March 8, 2014, in class 25 (twenty-five) to protect types of goods for footwear and apparel products.

That the naming of ERG is based on the Plaintiff's idea to design and develop ergonomic products. Therefore, the translation information in the intellectual property database for the ERG trademark is ergonomic fashion products.

That the Plaintiff states that the Defendants have committed trademark infringement by using the ERG trademark, which is substantially or entirely similar to the ERG trademark, Registration Number IDM000540156 owned by the Plaintiff, Mr. Muhamad Adi Mulya Pranata, without authorization and unlawfully.

Based on evidence T1 and T2-2 in the form of Trademark Certificate with Registration Number IDM00507415 dated August 2, 2013, the trademark owned by the Defendants has been registered with Registration Number IDM00507415 dated August 2, 2013. Therefore, the Defendants, in using the

trademark based on valid rights, must be legally protected.

That with the registration of the defendants' erigo trademark based on evidence T1 and T2-2, the Defendants have not been proven to commit trademark infringement as stipulated in Article 83 and 84 paragraph (1) of Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

The Supreme Court believes that there are sufficient grounds to grant the cassation petition from the Cassation Applicants: Muhammad Sadad and colleagues, and annul the Decision of the Commercial Court at the Central Jakarta District Court Number 80/Pdt.Sus-Merek/2021/PN Niaga Jkt Pst dated June 21, 2022, and the Supreme Court adjudicates this case itself with the verdict as will be mentioned below;

Therefore, the cassation petition from the Cassation Applicants/Plaintiffs is granted, and the Cassation Respondent/Defendant must be sentenced to pay the litigation costs at all levels of the judiciary. Considering Law Number 15 of 2001 concerning Trademarks as amended by Law Number 20 of 2016 concerning Trademarks and Geographical Indications, Law Number 48 of 2009 concerning Judicial Authority, Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and the second amendment by Law Number 3 of 2009, and other relevant regulations.

In its consideration, the cassation judge stated that the Commercial Court at the Central Jakarta District Court misapplied the law regarding the assessment of evidentiary results, which can be considered in the cassation examination. This is because the cassation examination pertains to errors in the application of the law, violations of applicable laws, and negligence in fulfilling the requirements mandated by regulations, threatening the annulment of the relevant decision or if the court is not authorized or exceeds its jurisdiction, as stipulated in Article 30 of the Law on the Supreme Court (Law Number 14 of 1985).

The judge's considerations in the cassation decision, according to the Author, are correct because cassation is an action by the Supreme Court to uphold and correct the law if the law is challenged by decisions of judges at the highest level. The examination at the cassation level only examines the application of the law, namely whether the decision or determination of the court sought for cassation "violates the law" or "not."

The Supreme Court, as the last bastion in seeking justice, no longer examines facts (*judex facti*) but only examines the law (*judex juris*). This is in accordance with Article 30 of Law Number 14 of 1985, as amended by Law Number 5 of 2004 and further amended by Law Number 3 of 2009 concerning the Supreme Court, which states that the Supreme Court in the cassation level annuls decisions or determinations of courts from all levels of the judiciary because they are unauthorized or exceed their authority, misapply or violate applicable laws, neglect to fulfill the requirements mandated by regulations, and such negligence threatens the annulment of the relevant decision. Therefore, at the cassation level, the examination does not involve the substance of the case or its facts but focuses on its legal aspects, and whether the events are proven is not examined.

Judge's considerations in the trademark infringement case with decision number: 1349 K/Pdt.Sus-HKI/2022, the judge ruled:

Adjudicating:

1. Accepting the cassation petition from the Cassation Applicants: Muhammad Sadad and PT. Idea Solusi Indonesia;
2. Nullifying the Commercial Court Decision at the Central Jakarta District Court Number 80/Pdt. Sus-Merek/2021/PN Niaga Jkt Pst dated June 21, 2022.

Adjudicating on its own:

In the Exception:

1. Rejecting the exceptions of the Defendants,

In the Main Case:

1. Rejecting the Plaintiff's lawsuit in its entirety.
2. Sentencing the Appellee/Cassation Applicant/Plaintiff to pay the court costs at all levels of the judiciary, amounting to Rp5,000,000.00 (five million)

CONCLUSION

Legal protection for trademarks is granted to both foreign and local brands, whether well-known or not, but only to registered trademarks. Therefore, every trademark owner is encouraged to register their trademark with the Directorate General of Intellectual Property to obtain legal protection. Registered trademarks receive legal protection for a period of 10 (ten) years and are effective retroactively from the date of acceptance of the respective trademark application. Upon the owner's request, the protection period for a registered trademark can be extended each time for the same duration. Legal protection based on the first-to-file principle is provided to registered trademark holders who act in 'good faith' and is both preventive and repressive in nature.

Considerations of the Judge in Deciding Trademark Violation Cases in Decision Number: 1349 K/Pdt.Sus-HKI/2022: The plaintiff claims ownership of the ERG trademark (ERG logo) with Registration Number IDM000540156, accepted on March 8, 2014, in class 25 (twenty-five) to protect footwear and apparel/clothing products. The naming of ERG is based on the plaintiff's idea to design and develop ergonomic products. Therefore, the translated information in the intellectual property database for the ERG trademark is ergonomic fashion products. The plaintiff alleges that the defendants have violated the trademark by using the ERG trademark, which is substantially or entirely similar to the IDM000540156 trademark owned by the plaintiff, Mr. Muhamad Adi Mulya Pranata, without authorization and against the law.

REFERENCES

1. Ahmadi Miru, "Trademark Law: Easy Way to Learn Trademark Law," PT. Raja Grafindo Persada, Jakarta, 2005.
2. Definition of Legal Protection According to Experts, <http://tesishukum.com/pengertian-perlindungan-hukum-menurut-para-ahli/> accessed on December 21, 2023, at 20:00 WIB.
3. Muhammad Djumhana, "Development of Doctrine and Theory of Intellectual Property Protection," Citra Aditya Bakti, Bandung, 2006.
4. Ok Saidin, "Legal Aspects of Intellectual Property (Intellectual Property Right)," Raja Grafindo Persada. Jakarta, 2015.
5. OK Saidin, "Legal Aspects of Intellectual Property," Raja Grafindo Persada, Jakarta, 1995.
6. Rachmadi Usman, "Intellectual Property Rights Law, Protection, and Legal Dimensions in Indonesia," Alumni, Bandung, 2003.
7. Rachmadi Usman, "National Copyright Law Aspects," Faculty of Law, Lambung Mangkurat University, 1997.
8. Robert V. Kozinets, A. H, "Collective Innovation in the Age of Networked Marketing." Journal of

Macromarketing Volume 28, 2008.

9. Saidin. "Legal Aspects of Intellectual Property." Rajawali Press, Jakarta, 2015.
10. Sentosa Sembiring, "Procedures and Ways to Obtain Intellectual Property Rights in the Field of Copyright, Patents, and Trademarks." Yrama Widya. Bandung, 2002.
11. Soeparman, A, "Industrial Design Rights based on the Assessment of Industrial Design Novelty." PT. Alumni, Bandung, 2013.
12. Soerjono Soekanto, "Normative Legal Research: A Brief Overview," Rajagrafindo Persada, Jakarta, 2013.
13. Sudikno Mertokusumo, "Indonesian Civil Procedure Law," Liberty, Yogyakarta, 2002.
14. Sutedi, A, "Intellectual Property Rights." PT Alex Media Komputindo, Jakarta, 2009.

FOOTNOTE

[1] Sutedi, A, "Intellectual Property Rights." PT Alex Media Komputindo, Jakarta, 2009, p. 3.

[2] Saidin. "Legal Aspects of Intellectual Property." Rajawali Press, Jakarta, 2015, p. 10

[3] Soeparman, A, "Industrial Design Rights based on the Assessment of Industrial Design Novelty." PT. Alumni, Bandung, 2013.

[5] Muhammad Djumhana, "Development of Doctrine and Theory of Intellectual Property Protection," Citra Aditya Bakti, Bandung, 2006, p. 78.

[6] Robert V. Kozinets, A. H, "Collective Innovation in the Age of Networked Marketing." Journal of Macromarketing Volume 28, 2008, pp. 339-354

[7] Ok Saidin, "Legal Aspects of Intellectual Property (Intellectual Property Right)," Raja Grafindo Persada. Jakarta, 2015, p. 329.

[8] Soerjono Soekanto, "Normative Legal Research: A Brief Overview," Rajagrafindo Persada, Jakarta, 2013, p. 35.

[9] Definition of Legal Protection According to Experts, <http://tesishukum.com/pengertian-perlindungan-hukum-menurut-para-ahli/> accessed on December 21, 2023, at 20:00 WIB.

[10] Sentosa Sembiring, "Procedures and Ways to Obtain Intellectual Property Rights in the Field of Copyright, Patents, and Trademarks." Yrama Widya. Bandung, 2002, p. 32..

[11] Ahmadi Miru, "Trademark Law: Easy Way to Learn Trademark Law," PT. Raja Grafindo Persada, Jakarta, 2005, p. 5.

[12] Rachmadi Usman, "National Copyright Law Aspects," Faculty of Law, Lambung Mangkurat University, 1997, p. 16.

[13] Rachmadi Usman, "Intellectual Property Rights Law, Protection, and Legal Dimensions in Indonesia," Alumni, Bandung, 2003, p. 365

[14] OK Saidin, "Legal Aspects of Intellectual Property," Raja Grafindo Persada, Jakarta, 1995, pp. 304-305.

[15] Sudikno Mertokusumo, "Indonesian Civil Procedure Law," Liberty, Yogyakarta, 2002, p. 167.