

Protection Intellectual Property To Well-Known Marks In Indonesia

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Abstract

Indonesia is a country that gives attention to Intellectual property which is incorporated in international organization that specifically handles about Intellectual Property of the organization is WIPO. The research method used by the author is using the Juridical Normative method, where the authors will use secondary data in the form of the rules of executing. The Government of Indonesia has been protecting the well-known brands located in Indonesia. The thing that is done is to adjust the legal rules relating to the Paris Convention and also the TRIPS agreement which is the basis for the countries under WTO. The government also provides a means of resolving the dispute in full with objection, through a lawsuit in a commercial court until a cassation.

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Copyright:

If referred to in Article 6bis the interested parties have a chance at least five years to request the cancellation of third party registration. If any sign of infringement is registered in bad faith, "no time limit is set to request cancellation". Famous signs need not be registered locally for protection against misuse of similar items under Article 6bis. In addition, the Paris Convention does not specify or explain how the mark is known in the country - that is, the convention does not require that the mark be actually used in the country, provided it is known.

Therefore, Article 6bis creates a basis for international protection for a well-known brand or service item against the use or registration of identical or similar goods and to a trade mark that is reproduction, imitation.

The setting up of a well-known brand issue other than in article 6bis is also governed in Article 10bis, this Article discusses aspects of unfair competition protection from well-known brands that may not be included in Article 6bis. Under Article 10bis members are bound to effective protection against unhealthy competition ". First, competitive action is contrary to honest practice. two competitive acts that are "natural to create confusion ... with the establishment, goods or industrial or commercial activity of competitors"; and three "Indications or Accusations ... are responsible for misleading the public such as the nature, the manufacturing process, the characteristics, the

substantive Examination, according to Article 23.

A substantive examination shall be an examination conducted by the Examiner of the Application for registration of Marks.

1. Any objection and / or rebuttal as referred to in Article 16 and Article 17 shall be considered in the substantive examination as referred to in paragraph (1).
2. In the event that there is no objection within 30 (thirty) days since the end of the announcement, a substantive examination of the Application shall be made.
3. In the event that there is an objection within 30 (thirty) days since the date of expiry of the time limit of the submission of disclaimer as referred to in Article 17, a substantive examination of the Application shall be made.
4. The substantive examination as referred to in paragraph (3) and paragraph (4) shall be settled within a period of no more than 150 (one hundred and fifty) Days.
5. Where it is necessary to conduct substantive examinations, Brand Experts may be determined outside the Examiner.
6. The results of a substantive examination conducted by a trademark examiner of a Trademark outside the Examiner as referred to in paragraph (6) shall be deemed to be similar to the result of a substantive examination conducted by the Examiner, with the approval of the Minister.
7. Further provisions concerning Brand examining experts outside the Examiner as referred to in paragraph (6) shall be regulated by a Ministerial Regulation.

Furthermore, the government through the minister of law and ham decides whether the petition of the petitioner can be accepted or rejected, according to Article 24:

If the Examiner decides the Application may be registered, the Minister:

- a. Register the Mark;
- b. Notify the registration of the Mark to the Applicant or its Attorney;
- c. Issuing Brand certificates; and
- d. To announce the registration of such marks in the Official Branding of Marks, electronic or non-electronic.

1. In the event that the Examiner decides the Application cannot be registered or rejected, the Minister shall notify the Applicant or his Attorney in writing by stating the reason.
2. Within 30 (thirty) days since the Submission Date of the notification letter as referred to in paragraph the Applicant or his Attorney may submit his / her response in writing by stating the reason.
3. In the event that the Petitioner or his Proxy does not submit the response as referred to in paragraph (3), the Minister rejects the Application.
4. In the event that the Applicant or his Proxy submits the response as referred to in paragraph
5. (3) and the Examiner decides that the response is acceptable, the Minister shall apply the provisions referred to in paragraph (1).

6. In the event that the Applicant or his Proxy submits the response referred to in paragraph (3) and the Examiner decides that the response is unacceptable, the Minister rejected the Application.
7. Rejection as referred to in paragraph (4) and paragraph (6) shall be notified in writing to the Applicant or his Proxy by stating the reason.
8. In the event of an objection as referred to in Article 16, the Minister shall deliver a copy of the registration or rejection notice to the complainant.

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

The owner of a registered Mark and / or a registered Marking licensee may file a lawsuit

against another person who unlawfully uses a Mark that has similarity in essence or in its entirety for similar goods and / or services in the form of:

- a. indemnification; and / or
- b. termination of all acts relating to the use of the Mark.

(2) The lawsuit as referred to in paragraph (1) may also be filed by the owner of a reputed Brand based on a court decision.

(3) The lawsuit as referred to in paragraph (1) shall be filed with the Commercial Court.

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

As long as it is under investigation and to prevent greater losses, the owner of the Marks and / or Licensee as a plaintiff may apply to the judge to stop the production, distribution, and / or trade in goods and / or services using the Marks without rights.

In the event that a defendant is required to deliver goods using the Mark without rights, the judge may order the delivery of goods or the value of the goods to be carried out after the court's decision has a permanent legal force. Procedures of Lawsuit on Commercial Courts.

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

1. A lawsuit as referred to in Article 30 paragraph (3), Article 68 Article 74, and Article 76 shall be filed with the Chairman of the Commercial Court within the jurisdiction of residence or domicile of the defendant.
2. In the event that one party resides outside the territory of the Unitary State of the Republic of Indonesia, the lawsuit shall be filed with the Chairman of the Central Jakarta Commercial Court.
3. The Registrar shall register the lawsuit on the date the lawsuit is filed and the plaintiff shall be given a written receipt signed by the clerk with the same date as the date of registration of the lawsuit.
4. The Clerk shall submit a lawsuit to the Chairman of the Commercial Court within a maximum period of 2 (two) days from the date the lawsuit is filed.
5. Within a maximum period of 3 (three) days from the date of the lawsuit submitted as referred to in paragraph (4), the chairman of the Commercial Court studied the lawsuit and appointed the judge to determine the day of the hearing.

6. The summoning of the parties shall be made by the bailiff at the latest 7 (seven) days after the lawsuit is filed.
7. The hearing until the decision on the lawsuit as referred to in paragraph (1) shall be completed no later than 90 (ninety) days after the case is received by the panel examining the case and may be extended by 30 (thirty) Supreme Court.
8. The decision on the lawsuit as referred to in paragraph (1) which contains the complete legal considerations underlying the decision shall be pronounced in the hearing open to the public.
9. The decision of the Commercial Court as referred to in paragraph (8) shall be delivered by the bailiff to the parties no later than 14 (fourteen) days after the decision on the lawsuit as referred to in paragraph (1) is pronounced

The decision of the Commercial Court as referred to in Article 85 paragraph (8) can only be filed an appeal.

The request for a cassation as referred to in Article 87 shall be filed no later than 14 (fourteen) days after the date on which the appeal is filed or notified to the parties by registering with the court clerk at the Commercial Court who has severed the lawsuit.

1. The Registrar shall register the request for a cassation on the date the application is filed and the applicant shall be given a written receipt signed by the clerk with the same date as the date of receipt of the registration.
2. The Clerk of the Court shall be obligated to notify the appeals of cassation as referred to in paragraph (2) to the party of the appellant of the cassation no later than 7 (seven) days after the request for the cassation is registered.
3. The applicant of the cassation must submit the memorandum of appeal to the clerk within 14 (fourteen) days at the latest from the date the request for a cassation is filed as referred to in paragraph (1).
4. The Clerk of the Court shall be obligated to submit the memorandum of appeal to the appellant of the cassation at the latest 2 (two) days after the cassation memorandum received by the clerk.
5. The Respondent may file a counter appeal to the clerk no later than 14 (fourteen) days after the date on which the appeal receives the cassation memory as referred to in paragraph (5) and the clerk shall submit the counter of appeal to the cassation applicant no later than 7 (seven) days after counter appeal received by the clerks.
6. The Clerk of the Court shall deliver the file of the cassation to the Supreme Court no later than 7 (seven) days after the expiration of the period referred to in paragraph (6).

7. The hearing and verdict, the application for a cassation shall be completed no later than 90 (ninety) days after the date of the request for a cassation received by the Cassation Assembly.
8. The decision on the request for a cassation as referred to in paragraph (8) which contains the complete legal considerations underlying the decision shall be pronounced in a session open to the public.
9. The Registrar of the Supreme Court shall submit the decision of the cassation to the clerk no later than 7 (seven) days after the date of the decision on the request for a cassation.
10. The cassation clerk shall deliver the decision of the cassation as referred to in paragraph.
11. To the applicant of the cassation and the appellant of the cassation no later than 2 (two) days after the decision of the cassation is received.
12. The judicial review of the decision on appeal as referred to in paragraph (8) shall be conducted in accordance with the provisions of laws and regulations.

Against a Commercial Court ruling having a legal force may still be subject to review

The Government of Indonesia has been protecting the well-known brands located in Indonesia. The thing that is done is to adjust the legal rules relating to the Paris Convention and also the TRIPS agreement which is the basis for the countries under WTO. The government also provides a means of resolving the dispute in full with objection, through a lawsuit in a commercial court until a cassation.

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