



LEGAL PROTECTION OF FAMOUS TRADEMARKS AGAINST COUNTERFEIT DANIEL WELLINGTON AND LONGCHAMP BRANDS ON E-COMMERCE

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Abstract

A trademark is a form of intellectual property. As a work of human thought, it deserves to be appreciated and its rights protected. Trademark rights are limited to the use of products that are sold and have economic value, as trademark rights are exclusive rights granted by the state to the owner of a registered trademark. for a certain period of time by using the brand yourself or giving permission to another party to use it. Protection law for holder legitimate brand aim give right exclusive to owner brand so as not to There is other parties who may use similar signs or identical For the same product or almost similar. Exclusive rights This nature monopoly, which means only holder entitled brand use it. The owner brand own freedom For utilise the brand throughout comply applicable regulations, as well as own right For prohibit others from using the brand or give permission use. Research This discuss two main points problem namely First , What are the forms of trademark violations in E-Commerce against the famous brands Daniel Wellington and Longchamp?; Second, How is the protection of famous brands in E-Commerce according to Law Number 20 of 2016 regarding the existence of Counterfeit Brands of Famous Brands? methods used in study This is juridical normative with approach legislation , theory law , document law , approach cases and approaches conceptual . Research results This conclude that First, there is form violation trademark rights in e-commerce against well-known brands like Daniel Wellington and Longchamp. Second, protection law

against famous brands in e-commerce based on Law No.20 of 2016 is related with the presence of fake brands from famous brands.

Keywords

Brand, E-commerce, Legal Protection

Introduction

Rapid economic development, globalization and free trade, as well as advances in telecommunications and information technology have expanded the range of goods and/or services that can be offered, both locally and imported. ¹The presence of technology in the world of commerce has shifted conventional buying and selling to online transactions or electronic commerce (e-commerce). services being traded through e-commerce is necessary given sign as differentiator with other items as it should be goods and or services sold buy in a way conventional.

Differentiator goods and or one of the services traded is is a Brand. A brand is one of the Intellectual Property Rights, as a work of human thinking ability, which needs to be appreciated and given protection for its rights. Because the brand has a value that is able to explain the quality of goods and or services traded. The legal regulations regarding brands initially referred to Law Number 21 of 1961 concerning Trademarks and Commerce then significant changes occurred with the issuance of Law Number 19 of 1992 concerning Trademarks. Subsequently, the government issued Law Number 14 of 1997 then refined again with the issuance of Law Number 15 of 2001 concerning Trademarks and the most recent amendment is Law Number 20 of 2016.

Trademark rights protection does not comply with what is stipulated by law, resulting in losses for trademark rights holders . By exploiting well-known brands to gain profits. by imitating or counterfeiting the brand.² The development of changes in trade principles from traditional, monopoly and protection is a reflection of the growth of thinking towards modernizing relations between nations.³

Legal protection for legitimate trademark holders is intended to provide exclusive rights (special) to trademark holders so that other parties do not use the same or nearly the same goods. These rights tend

¹Muhammad, Djumhana and R Djubaedilla, Intellectual Property Rights, History, Theory and Practice in Indonesia, Citra Aditya Bakti, Bandung, 2003.

²Panjaitan, M , Legal Analysis of Law Enforcement Against the Use of Goods Using Counterfeit Brands (A Review of the Legal Culture Aspect of the Community of Users) , Tanjungpura Law Journal, 2017, p. 26.

³ Erman Rajagukguk, Consumer Protection Law, Mandar Maju, Bandung, 2000

to be monopolistic. Trademark holders can use their trademarks as long as they do not violate existing regulations on trademark use, while also prohibiting other parties from using their trademarks or granting permission.⁴

Legal protection is explained in Articles 20, 21, and 22 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which is a revision of the previous Law. Meanwhile, repressive protection is emphasized in criminal provisions and Articles 90 to 95 of Law Number 15 of 2001, which are now continued in Articles 100 to 103 of Law Number 20 of 2016. If a trademark infringement occurs, the trademark owner will receive legal protection in accordance with the provisions of the Law on Trademarks. Through this protection, the rights of legitimate trademark owners will be guaranteed and protected in accordance with applicable legal provisions.

Basically, violations against counterfeit goods circulating in e-commerce are the responsibility of the intermediary provider, in this case the marketplace, but in reality this does not work as expected.⁵

Method

In line with the description above, this research This study was conducted to analyze in depth the legal protection of well-known brands in dealing with counterfeit brands in e-commerce. reviewed from Law No. 20 of 2016 concerning trademarks and indications geographical.

By using a juridical-normative approach, the researcher conducted an analysis Laws referring to statutory regulations, specifically Law Number 20 of 2016 concerning Trademarks and Geographical Indications and Law Number 11 of 2008 concerning Electronic Information and Transactions as amended. This aims to examine and explain existing legal provisions and how these laws are applied in the context of e-commerce, particularly in the protection of well-known brands.

Results And Discussion

⁴Fazar Nurcahya Dwi Putra, Legal Protection for Trademark Rights Against Trademark Infringement Acts, *Mimbar Keadilan*, Journal of Legal Studies, January-June 2014 Edition, p. 98

⁵Government Regulation No. 80 of 2019 concerning Trade Through Electronic Systems. 2019, No. 80, Article (22)

1. How form protection and violation Trademark rights in E-Commerce against brand famous Daniel Wellington and Longchamp?

Legal protection, which is a manifestation of the function of law, aims to provide justice, benefits, and legal certainty. Therefore, legal protection only applies to registered brands.⁶ In the digital era, brand protection has become increasingly complex due to rapid technological developments and the rise of e-commerce. Platforms like Shopee and Tokopedia have become key platforms for online buying and selling, presenting new challenges in protecting brand rights.⁷

E-commerce transactions are regulated by laws and regulations and elements of agreements, which are regulated in Article 1233 of the Civil Code concerning contracts, Article 1320 of the Civil Code concerning the conditions for the validity of the agreement.⁸ E-commerce, reviewed from Article 25 of the ITE Law, can protect various types of intellectual property in elements related to electronic information.

A well-known brand is a sign of recognition of a product that can bring trust from the public, can increase self-confidence in someone if they use a brand or goods that are original products from the first brand owner, consumers will recognize goods or services from the brand is also used as an identity of goods or services, it can be said that the brand is a determinant in a trade. The brand must have a single rational basis which is interpreted as a guardian of the uniqueness of the brand itself.

A well-known brand can be considered a valuable asset for a company, meaning that the more well-known a brand is, the more rapidly it attracts buyers due to the fast-paced market trading system, namely word of mouth and social media. ⁹The use of brands in trading activities has been shown to create... taking advantage of unfair business actors (Unfair Competition).¹⁰

It is acknowledged by the Commercial Advisory Foundation in Indonesia (CAFI) that trademark issues in Indonesia play an important role in the Indonesian economy, especially regarding the development

⁶Haedah Faradz, Trademark Rights Protection, Jurnal Dinamika Hukum Vol. 8 No. 1 January, 2008, p. 40

⁷Semaun, S. (2016). Legal Protection of Trademarks for Goods and Services. Diktum Law Journal, 14(1). 107-109.

⁸Sanjoto, Liany Dewi. Legal Protection for Consumers Using Electronic Services in Transactions Through Marketplaces. Scientific Journal of the World of Law. Vol. 3 No. 2. (2019) p. 100

⁹Rahmi Jenned, Trademark Law in the Era of Globalization & Economic Integration, Prenamedia Group, Jarkta, 2015, p. 241 .

¹⁰Sudargo, New Trademark Law of 2001, Bandung, Citra Aditya Bakti 2002, p. 33

of industrial businesses in the context of capital investment. ¹¹It is concluded that trademark violations are carried out by irresponsible business actors by using other people's brands who are motivated to gain large profits and do not need to promote the products to be offered because the brand of the product offered is already known by the wider community and the products offered do not match the quality and quality so that in this case the community as consumers and producers as owners of the original brand feel used .

A violation of similarity in its entirety can clearly be interpreted as the existence of similarities between genuine and counterfeit brands. The meaning of "similarity in essence" is outlined in Article 21 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, with the following provisions:

"similarities caused by the presence of dominant elements between one brand and another brand, thus giving the impression of similarities, whether in terms of form, placement, writing method or combination of elements, or sound similarities"

What is meant by "similarity in essence" can be equated with "trademark piracy " and "similarity in its entirety" can be equated with "trademark counterfeiting " . Trademark infringement usually includes unauthorized use of a brand or violating the exclusive rights of the brand owner. Here are some of the most common types of trademark infringement that occur through E-Commerce:

a. Counterfeiting

The use of a trademark that is identical or very similar to a registered trademark is usually referred to as counterfeit goods.¹² Counterfeiting of a brand's goods can damage the brand's image, patents, trademarks, and copyrights ¹³. As of 2007, the trade in counterfeit goods was estimated at approximately \$250 billion, representing nearly two percent of global trade.¹⁴

b. Unauthorized Use

¹¹Ida Bagus Wyasa Putra, Aspects of International Civil Law in International Business Transactions, Bandung: Refika Aditama, 2000, page 23

¹²Grossman, GM & Sahpiro, C. 1998, Counterfeit-product Trade, American Economic Review. 78, pp59-75

¹³ Monica Margaret, Alrizq Athallah Sulung Esa "Rational Choice of Sellers and Buyers in Counterfeit Goods Trading at Taman Puring Market, Jakarta", Jurnal IKRAITH-HUMANIORA Vol6 No 2 July 2022, p. 10

¹⁴ Brands. In: Plangger, K. (eds) Thriving in a New World Economy. Developments in Marketing Science: Proceedings of the Academy of Marketing Science Durham, K., Nevins-Henson, J. (2016). Brand Compromises: An Examination of Cultural Influences on Consumer Complicity with Counterfeit. Springer, Cham. https://doi.org/10.1007/978-3-319-24148-7_90, Accessed 19 November 2024

Unauthorized access is often associated with illegal access, both of which are actually the same and replace each other. The use of a brand without permission from the owner in the context of advertising, promotion, or product distribution as well as the use of design elements such as fonts or illustrations without permission including network security. This can happen when someone gains access to enter the network, system, application, data to the organization's devices without permission (*illegal*). This activity is quite disturbing in the world of information systems because what is accessed is generally the type of data and important information that is sensitive and private.

c. Passing Off

Passing Off can be interpreted as piggybacking on a well-known brand or judges usually interpret passing off as similarity or confusion as in Supreme Court Decision No. 815 K/PDT.SUS/2012. Passing Off itself is a legal institution produced by case law, not statutory regulations, and according to case law, passing off can only be sued by the brand holder, not the public.¹⁵

d. Cybersquatting

Cybersquatting is the practice of brand hijacking through domain names.¹⁶ Companies with established and widely recognized reputations will undoubtedly be particularly concerned, as this is related to the company's reputation and reputation. Furthermore, cybersquatting crimes typically involve misusing the names of important or well-known individuals, with the clear intent of harming them. Cybersquatting occurs when an individual or entity registers a domain name similar to a well-known brand without permission, with the malicious intent of gaining financial gain.

Trademark counterfeiting is carried out by parties with bad intentions in order to gain as much profit as possible in unfair and unhealthy competition using registered trademarks belonging to other parties.¹⁷

Based on Trademark Law No. 15 of 2001, there are several classifications regarding trademark counterfeiting, namely using the

¹⁵Online law, "Can the Doctrine of Passing Off Be Applied in Indonesia", accessed on March 1, 2017 "<http://www.hukumonline.com/berita/baca/hol20887/dapatkahdoktrin-passing-off-diaplikasikan-diindonesia>", accessed on November 19, 2024

¹⁶Abi Jam'an Kurnia, "Legal Protection in Indonesia for Cybersquatting Actions", <https://m.hukumonline.com/klinik/detail/ulasan/cl6560/perlindungan-hukum-di-indonesia-atas-aksiicybersquatting-i/>, accessed on November 19, 2024

¹⁷Subekti, R and Tjitrosoedibio, Civil Code, (Jakarta, Pradnya Paramita, 1978), p. 28

same brand in its entirety, using the same brand in essence, using the same mark, using the same mark in essence with a geographical indication. In addition to the four classifications above, there is another classification that constitutes trademark counterfeiting, namely trading goods or services with a fake brand.

In the context of the Longchamp case, the Directorate General of Intellectual Property (DJKI) has taken action against suspected counterfeit goods, including Longchamp bags seized from several locations. This action is based on Articles 100 and 102 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which prohibit the unauthorized use of trademarks on similar goods. If products sold on e-commerce directly imitate the designs or brands of Daniel Wellington and Longchamp, this constitutes a counterfeiting offense. On the other hand, the focus is more on protecting brand reputation and preventing consumer confusion. Businesses using similar brands or packaging that resembles the original well-known brand with the aim of deceiving consumers into believing they are purchasing products from Daniel Wellington or Longchamp are referred to as passing off.

Legal protection, which is a manifestation of the function of law, aims to provide justice, benefits, and legal certainty. Therefore, legal protection only applies to registered brands.¹⁸ As an international issue, trademark infringement continues to occur. Therefore, it is important to recognize the need for legal protection for trademarks.²⁰ Trademark owners who conduct online buying and selling transactions through Shopee and Tokopedia are also protected by Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems (PP PMSE). "Trading Through Electronic Systems, hereinafter abbreviated as PMSE, is trading whose transactions are carried out through a series of electronic procedures," reads Article 1 paragraph 2 as the definition of online trading through TikTok Shop as a medium for buying and selling.

As is known, trademark registration is carried out in two ways: declarative and constitutive. This is intended to provide maximum protection for a trademark, as explained below:

Trademark Registration with a declarative system

¹⁸Alvio Ardianto Wicaksono, Budi Santoso, Rinitami Njatrijani, et. All. (2021) Implementation of Legal Protection for Foreign Trademarks from Reputation-Rider Actions (Passing-Off) in Brand Naming in Indonesia. <https://ejournal3.undip.ac.id/index.php/dlr/article/view/15750> P. 5.

¹⁹Haedah Faradz, Trademark Rights Protection, Jurnal Dinamika Hukum Vol. 8 No. 1 January, 2008, p. 40

²⁰Sudaryat, Sudjana, Raka Ratna Permata, 2010, Intellectual Property Rights: Understanding the Basic Principles of Scope and Applicable Laws, Oase Media, Bandung p. 5

According to Law Number 21 of 1961 concerning Company Trademarks and Trademarks, the "first to use" declarative system implies that legal protection is granted to the first user of a trademark. Therefore, if someone uses a trademark for the first time without registering it, they receive legal protection.

Trademark Registration with a constitutive system

Meanwhile, this system adheres to Law Number 19 of 1992 concerning Trademarks and Law Number 15 of 2001, and was updated to Law Number 20 of 2016 concerning Trademarks and Geographical Indications which is currently in effect.²¹

Protection also means the protection provided by someone. Thus, legal protection can be defined as all government efforts to ensure legal certainty and protect its citizens, ensuring their rights are not violated, and that violators are subject to sanctions in accordance with applicable regulations.²²

Trademark owners who conduct online buying and selling transactions through Shopee and Tokopedia are also protected by Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems (PP PMSE). "Trading Through Electronic Systems, hereinafter abbreviated as PMSE, is trading whose transactions are carried out through a series of electronic procedures," reads Article 1 paragraph 2 as the definition of online trading through TikTok Shop as the buying and selling medium.

2. Longchamp Counterfeit Brand Infringements on Tokopedia and Shopee

Daniel Wellington Swedish brand founded in 2011 by Filip Tysander and made in China.²³ With Using a minimalist design and quartz movement designed by Miyota from Japan, since it was first established, it has started to establish... collaboration with Tokopedia to protect its brand on January 17, 2025. In this collaboration, Daniel Wellington opened an official store on Tokopedia.

The company's "Classic" product line is named after the British city. ²⁴In February 2017, Daniel Wellington was named the fastest-

²¹Lidya Hendrawati, (2004) "Legal Protection of Trademark Rights Based on the Declarative System and the Constitutive System in Relation to Trademark Law Enforcement", Masters thesis, Postgraduate Program, Diponegoro University, p. 63

²²"Patent Holders Need Legal Protection", *Republika*, May 24, 2004, p. 24

²³ Indonesian Wikipedia, Daniel Wellington, https://id.wikipedia.org/wiki/Daniel_Wellington accessed January 4, 2025

²⁴ "Classic" watches webpage Archived 2019-04-07 at [the Wayback Machine](https://www.webcitation.org/6QWw0w0w0). on the official Daniel Wellington website; last modified 2019. (Accessed 4 January 2025.)

growing private company in Europe. ²⁵The company recorded revenues of \$230 million and profits of \$111.5 million in 2016. Over the three years, the company also claimed growth of 4.7%.

Meanwhile Longchamp is The company was founded in Paris in 1948 by Jean Cassegrain. ²⁶The countries where this brand is registered for sale are: France, the United States, Indonesia, China, Germany, the United Kingdom, Italy, Spain, and the Netherlands. ²⁷

Because they Having an iconic design that is not only attractive but also practical makes this brand a favorite choice among fashionistas around the world.

The level of consumer satisfaction is not determined by quality alone but also by consumer satisfaction in using the well-known brand.²⁸ Condition this is what often happens exploited by certain individuals Business actors so that Lots deceived consumers with use brand fake. So The Daniel Wellington Brand includes a statement about the authenticity of Daniel Wellington products and DW continues to monitor and take action to prevent counterfeiting and to protect the intellectual property rights of its products. Whereas from Longchamp still Not yet There is information clear about matter This. Trademark infringement is generally committed against well-known brands that previously had high sales value, allowing consumers to recognize the product's advantages. Therefore, this infringement is often used against brands with a high reputation and value, such as Longchamp and Daniel Wellington.

There is also a decision Number 59/Merek/2005/PN.Niaga.Jkt Pst relating to a trademark dispute involving Longchamp. In this case, the Plaintiff is the owner of the Longchamp brand who claims that there is a violation of the brand with the main reason being similarity or identical to his brand, bad faith actions, losses for the Brand owner, namely Longchamp without permission, causing confusion among consumers by the Defendant. With a summary of the contents of the decision, the Central Jakarta Commercial Court decided to grant the Plaintiff's lawsuit by stating that the Defendant's use of the brand violates the rights to the registered

²⁵ " [Daniel Wellington the fastest growing private company in Europe — six Nordic rockets in the 'Top 10'.](#) ". nordic.businessinsider.com . Archived from [the original](#) on 2019-01-04. Retrieved 4 January 2025.

²⁶Graham Rudick, 2013 "Handbag maker Longchamp launches Regent Street store " <https://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/10309677/Handbag-maker-Longchamp-launches-Regent-Street-store.html>, accessed January 4, 2025

²⁷Business Inside, 2015 Jean Cassegrain, CEO, Longchamp" in <https://mercuar.uzone.id/> accessed on January 4, 2025

²⁸ Tommy Hendra Purwaka, Brand Protection (Jakarta: Yayasan Pustaka Obor Indonesia, 2017), p. 36

brand. And the Defendant was ordered to stop using the infringing brand and cancel the registration of the brand that is similar to Longchamp.

The impact of the decision is increased scrutiny in trademark registration, high legal risks for companies registering trademarks that infringe trademark rights, stricter supervision by the Trademark Directorate, strict legal consequences including cancellation of registration, and additional costs that must be incurred. Overall, the decision Number 59/Merek/2005/PN Niaga.Jkt.Pst. includes an important role in shaping trademark policy in Indonesia by strengthening the principle of good faith, protection of well-known trademarks, strict law enforcement, registration policy reform, and providing legal certainty for trademark owners.

Trademark Registration includes Well-Known Trademarks According to the Regulation of the Minister of Law and Human Rights Number 67 of 2016 concerning Trademark Registration. In the Trademark Registration Regulation of the Minister of Law and Human Rights Number 67 of 2016 concerning Trademark Registration, the trademark registration application includes: Trademark Registration Application Fee or. This registration is through a predetermined fee and contributes to non-tax state revenue. and this is important in supporting the management and improvement of public services in the field of law and Human Rights (HAM).

Because the current Indonesian Trademark Law adheres to the first-to-file principle, generally any person, organization, or company can apply for Trademark Registration, meaning trademark rights are acquired through registration. Well-known trademarks receive special protection, even if they are not yet registered, under international provisions such as the Paris Convention and TRIPs.²⁹ Trademark Registration filed in bad faith. Article 21 paragraph (3) stipulates that an application will be rejected if it is filed by an applicant acting in bad faith. Although this article can be applied to applications that are similar to existing and well-known Trademarks, in practice it is quite difficult to determine whether an application is filed in bad faith or not.

Trademark registration itself serves to legally protect entrepreneurs and their trademarks from individuals who wish to exploit or take advantage of the benefits of the trademark itself. It should be remembered that business competition itself can use various methods to bring down its opponents or competitors in the market,

²⁹Ambadar (2021), "Legal Protection of Famous Trademarks in Indonesia" in <https://ambadar.com/id/insights/trademark/perindungan-hukum-atas-merek-terkenal-di-indonesia/>, accessed on January 11, 2025

one of which is by damaging the brand or good name of the trademark itself. With the registration of a trademark based on the Regulation of the Minister of Law and Human Rights Number 67 of 2016 provides legal protection to the trademark owner from unauthorized use by other parties. By following the established procedures and fulfilling all requirements, applicants can ensure that their trademark is legally protected in Indonesia. By fulfilling several requirements, the trademark registration process can run more smoothly and increase the possibility of the registered product being accepted.

Overall, the Regulation of the Minister of Law and Human Rights Number 67 of 2016 provides an important framework for the registration and protection of well-known trademarks in Indonesia, ensuring that the rights of their owners are protected from infringement and misuse.

Conclusion

Trademark infringement in e-commerce in Indonesia, particularly on platforms like Shopee and Tokopedia, creates losses for both brand owners and consumers. Violations such as counterfeiting and passing off practices are common, damaging the reputations of well-known brands. Although the Directorate General of Intellectual Property (DJKI) is actively confiscating counterfeit products, measures taken by Shopee and Tokopedia remain inadequate. The Brand Alliance program is expected to improve protection of Intellectual Property Rights, while the court ruling No. 59/Merek/2005/PN Niaga.Jkt.Pst. can serve as a reference in strengthening law enforcement in Indonesia regarding counterfeit trademark violations.

Trademark Registration as stated in the Regulation of the Minister of Law and Human Rights Number 67 of 2016 in Indonesia which currently uses a constitutive system, where the right to a trademark is obtained through Trademark Registration even though it is a Famous Trademark, as regulated in Law Number 20 of 2016 and there is a link with the Regulation of the Minister of Law and Human Rights Number 67 of 2016. Despite having a legal framework, its implementation is still lacking in facing challenges, including violations and violations of Counterfeit Trademarks. The need for collaboration between the government, brand owners, and the Shopee and Tokopedia platforms is very important to raise awareness of trademark registration and protection of intellectual property rights. With these steps, it is hoped that a safer and healthier business environment will be created for all parties.

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