

Legal Analysis of Trademark Patent Dispute i AM Geprek Benu Against Geprek Benu

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Abstract

Patents guarantee the presence of a mark of ownership. This patent is granted to patent holders who are entitled on the basis of ownership of a name, item or product. This patent holder gets treatment for his right to prevent other parties from imitating, simulating, and making a similar product name for a certain period of time. In essence, this patent is granted on the basis of the inventor of an idea who is motivated by his innovation in making and bringing out a new invention that can be applied industrially based on research results from experience. The acceptance of this patent gives rise to a special treatment because of the honor of having made a new invention which will later be considered as a property that cannot be used, shared, and imitated by others.

Keywords: Disputes, Patents, Trade



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INTRODUCTION

Patents and trademarks are two different forms of intellectual property rights. A patent is a legal right granted by a state to a patent holder to prevent other parties from using, making or selling the same or a similar product for a certain period of time (usually 20 years) in the territory of the country that granted the patent. Patents are granted to inventors who have developed an innovation or new invention that can be applied industrially or is the result of research and development activities.

A trademark, on the other hand, is a symbol or sign that is used to differentiate the products or services of one company from those of other companies. Trademarks can be brand names, logos, slogans or a combination of these, and give the brand owner the exclusive right to use the mark in their business and prevent others from using a similar or identical mark in the same or a similar market. Trademarks are granted by the government and are valid for a certain period of time (usually 10 years) which can be renewed continuously as long as the mark is still in active use and registered.

Both forms of intellectual property rights play an important role in the protection of a company's innovation and brand identity. Patents protect new technologies or products, while trademarks protect the brand of a company. These two types of rights can also provide significant economic value for the owner, because they can be used to protect and monopolize certain products or brands in the market, which can increase the value of these brands or products in the eyes of consumers. I am Geprek Benu and Geprek Benu are two similar trademarks used by food businesses in Indonesia. I Am Geprek Benu was registered as a trademark in 2017, while Geprek Benu was registered in 2018.

In 2019, the owner of I Am Geprek Benu filed a lawsuit against the owner of Geprek Benu because he was accused of violating a trademark patent. I Am Geprek Benu claims that their trademark has been used before and is widely known by the public, so Geprek Benu has no right to use a similar trademark.

On the other hand, the owners of Geprek Benu are of the opinion that their trademark does not imitate I Am Geprek Benu and they have obtained permission from the Intellectual Property Rights Agency to register their trademark. They also claim that the I Am Geprek Benu trademark lacks authenticity and is too general to be legally protected. This dispute has become a topic of debate on social media and has attracted the attention of the public and businessmen in Indonesia. This shows the importance of understanding patents and trademarks in business and the importance of protecting intellectual property rights.

A trademark is a symbol or combination that has the power to distinguish one trademark from another. This complies with Article 1 sec. 1 Law Number 20 of 2016 concerning Trademarks and Geographical Indications (UU MIG), according to him a brand is a designation that can be represented graphically in the form of images, logos, names, words, letters, numbers, provisions, colors, in the form of 2 (two) and/or three dimensions, clay. Holograms or a combination of 2 (two) or more of these elements that identify goods and/or services produced by individuals or legal entities in connection with trade in goods and/or services. Meanwhile in art.

According to TRIPS 15, a trademark is any symbol or combination of symbols that distinguishes the goods or services of a company from others and which can be used as a trademark. In principle, trademarks must be registered to obtain protection. Article 20 of the MIG Law states that there are certain conditions under which a mark cannot be registered. Among them is that the mark is contrary to state ideology, laws and regulations, morality, religion, decency, or public order, or only mentions the goods and/or services for which registration is applied; contains elements that can mislead the public about the origin, quality, type, size, type, purpose of using the goods and or services being applied for registration or are names of protected plant varieties for similar goods and/or services; contains information that is inconsistent with the quality, benefits, or efficacy of the goods and/or services produced; does not have discrimination; and/or is a public name and/or symbol of public property.

It is further regulated in Article 21 paragraph (1) that an application is rejected if the mark has similarities in principle or in whole with a registered mark belonging to another party or was applied for in advance by another party for similar goods and/or services; well-known mark owned by another party for similar goods and/or services; well-known marks belonging to other parties for goods and/or services that are not of the same type that meet certain requirements; or a registered Geographical Indication.

The brand is claimed to be similar to the Benu trademark (Ruben Onsu), a well-known public figure or artist in Indonesia who will register his brand at the Directorate General of Intellectual Property (DJKI) and the process is hampered because the name Benu has already been registered by Jessy Hamdalim who is registered in class 43 which includes bar services, cafes, canteens, catering, and others. Petitioner Ruben Onsu filed an appeal to the Commercial Court with case number 48/PDT.SUS/Merek/2018/PN.Niaga.Jkt.Pst. In its decision, the arbitral tribunal decided NO (Niet Ontvankelijke Verklaard) and allowed the defendant to appeal and reject the plaintiff's claim in its entirety. In this context, this study aims to determine the legal protection of trademarks and analyze the judge's considerations in the NO decision on a person's brand name lawsuit. famous.

Problem Formulation: What is the result of the decision Based on Decision No. 196/G/2020/PTUN-JKT regarding the benu trademark patent? What is the juridical study of trademark protection regarding the trademark patent dispute i am geprek benu against geprek benu?

RESULTS AND DISCUSSION

Trademark rights are special rights of the international community that are registered by the trademark owner. Everyone who wants to register their trademark can first sign a license agreement, then register it with the government office of the Director of the Intellectual Property Office. Based on Decree No. 57/Pdt.Sus-Merek/2019/PN Niaga Jkt.Pst. There is a problem with the Geprek Benu token and I am Geprek Benu. As the plaintiff, Ruben Samuel Onsu strongly opposed the registration of the mark by Defendant I who used the word "BENSU". The mark has shown a fundamental similarity with the plaintiff's mark, that the registered mark "BENSU" has been registered since September 3, 2015, attached. And registered on June 7 2018 and received protection until September 3 2025, it is reasonable and legal that the applicant is the first registrant (the first to submit) and the only legal owner, he also has the right to 'Use the trademark for the BENSU brand in Indonesia.

Trademark rights are exclusive rights granted by the state to owners of registered marks for a certain period of time, either by using them themselves or by allowing others to use them. The defendant Benny Sujono did not want to use the name Ruben Onsu to market his company, even though the company name is identical to the actor Ruben Onsu's name, which the public often hears on television, is an abbreviation of his name.

In this case the judge decided that the case was declared NO (Niet Ontvankelijk). In the event that the counterclaim includes the plaintiff's counterclaim against PT AYAM GEPREK BENNY SUJONO. Trademark application in the name of RUBEN SAMUEL ONSU, which must show basic or complete similarity with PT "I AM GEPREK BENSU SEDEP BENEERRR" trademark. GEPREK CHICKEN BENNY SUJONO, abbreviated as GEPREK BENSU CHICKEN, registration number IDM000643531, class 43, registration date May 3 2017, registration date May 24 2019, owner name PT. AYAM GEPREK BENNY SUJONO is or sounds like the name or abbreviation of the legal entity of the Plaintiff which is the target of the counterclaim, namely PT. AYAM GEPREK BENNY SUJONO in short CHICKEN GEPREK BENSU. Criminal plaintiff/defendant counterclaim to pay court costs of Rp. 1,911,000.00 (one million nine hundred and eleven thousand rupiah).

Protection of registered marks is regulated by several conventions. Article 16 paragraph (1) Trade Related Aspects of Intellectual Property Right (TRIPs Agreement) stipulates that the owner of a registered mark has the exclusive right to prohibit other parties without the consent of the owner of the mark concerned from using the same or similar mark for goods and services for trading, to be used has been registered.

The use of the mark must not cause confusion in the community regarding the origin of the said goods. Legal protection and use of the mark has the same duration as the protection of a registered mark. The term of protection for a registered mark is based on the principle of fairness, where a reasonable period of use is at least 7 years. In addition to the conventions mentioned above, there is also a Trademark Law Treaty (TLT), which is an agreement to protect brands.

Compared to the provisions of the Trademark Law Treaty (TLT), the initial registration period and the extension period for trademark registration are ten years. Service marks get the same protection as brands based on the Paris Convention (Novianti, 2016). The Nice Classification is an international classification system used to classify goods and services for registration of marks. The brand classification is based on the Nice Classification which includes 34 categories of goods and 11 categories of services, where the class of goods is class (1-34) and the class of services is (34-45). 43 which includes the provision of food and drink for temporary accommodation.

CONCLUSION

Patents and trademarks are two different forms of intellectual property rights. A patent is a legal right granted by a state to a patent holder to prevent other parties from using, making or selling the same or a similar product for a certain period of time (usually 20 years) in the territory of the country that granted the patent. Patents are granted to inventors who have developed an innovation or new invention that can be applied industrially or is the result of research and development activities. Trademark rights are special rights of the international community that are registered by the trademark owner. Everyone who wants to register their trademark can first sign a license agreement, then register it with the government office of the Director of the Intellectual Property Office. The use of the mark must not cause confusion in the community regarding the origin of the said goods. Legal protection and use of the mark has the same duration as the protection of a registered mark. The term of protection for a registered mark is based on the principle of fairness, where a reasonable period of use is at least 7 years.

Suggestion: In registering trademark rights, you must pay close attention to matters relating to the provisions and check similarities with other brands so that there are no similarities and misunderstandings between trademarks. In addition, with the existence of provisions and regulations that are made to be understood and it is hoped that someone will read and understand the contents of the existing provisions and regulations.

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