

## **An Analysis of Trademark Disputes Between MS Glow and PS Glow**

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### **Abstract**

Some time ago there was a dispute between the skincare brands MS Glow and PS Glow. In this dispute, the thing that is disputed is the similarity of the brands of the two products. According to Law No. 20 of 2016 article 1, a mark is a sign that can be displayed graphically in the form of an image, logo, word name, letter, number, color arrangement in the form of 2. (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to differentiate goods and/or services produced by persons or legal entities in the activity of trading goods and/or services. Furthermore, the article also mentions the matter of trademarks. A trademark is a brand that is used on goods that are traded by a person or several people together or a legal entity to differentiate them from similar goods. Collective Mark is a mark used for trading activities of goods and/or services with the same characteristics which are traded by several persons or legal entities together to differentiate goods and/or services of other types. Trademark rights are a form of IPR protection in which the brand owner registered are given an exclusive right to use their own mark that has been registered for trading activities of goods and/or services, or give permission to other parties to use the mark in question by means of a license. Trademark rights are regulated in Law NO. 20 of 2016 concerning brands and geographical indications.

**Keywords:** Brand, Dispute, Trademark, PS Glow, MS Glow



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### **INTRODUCTION**

According to Law No. 20 of 2016 article 1, a mark is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement in the form of 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to differentiate goods and/or services produced by persons or legal entities in the activities of trading in goods and/or services. Furthermore, the article also mentions the matter of trademarks. A trademark is a brand that is used on goods that are traded by a person or several people together or a legal entity to differentiate them from similar goods. Collective Mark is a mark used for trading activities of goods and/or services with the same characteristics which are traded by several persons or legal entities together to differentiate goods and/or services of other types. Trademarks are classified as intellectual property rights. Intellectual Property is a right that arises from the results of thinking that produces a product or process that is useful for humans. In essence, Intellectual Property is an exclusive right granted by the state to creators, inventors, designers and creators related to their creations or intellectual works.

In this era, many people are starting to compete to become business people by building their own businesses to produce goods or offer services to consumers. In this business activity, producers need an identity for the goods or services they offer, which is nothing but a brand. In this era, one of the most popular businesses is skincare products. Nowadays, more and more people are starting to realize that they need to take care of their facial appearance, both men and women, so they can look healthy and fresh. Skincare manufacturers are also competing to create a skincare product brand to compete with manufacturers who produce similar products.

It is important for producers of goods and services to determine the brand in order to differentiate their products or services from other brands. Manufacturers usually want to create a brand that is unique, easy to remember and related to the products and services that the brand will offer. However, in making and choosing a brand, it can also experience problems, namely when there is a brand that is identical or even exactly the same as other brands. Resemblance in this brand can occur due to an intention, but also not. Resemblance or similarity in terms of these brands can certainly cause problems. One example of a case regarding a brand is the case of a brand problem that occurred between Ms. Glow and Ps. glow.

MS Glow is a brand owned by Shandy Purnamasari which was founded in 2013. MS Glow is a brand that focuses on skincare and bodycare products. A beauty product brand which is one of the lines under the auspices of PT. This Indonesian Beauty Cosmetic was registered with the Directorate General of Intellectual Property Rights on September 20 2016. On the other hand, PS Glow is a skincare brand owned by Putra Siregar which was just established and registered in August 2021. The beginning of this dispute occurred when Shandy Purnamasari as the owner of Ms Glow filed a lawsuit against Medan Commercial Court on March 15, 2022. The lawsuit filed by Shandy Purnamasari was directed against Putra Siregar as the owner of PS Glow. MS Glow considers that PS Glow is counterfeiting the brand. PS Glow on the other hand said that it had registered its trademark and then filed a counterclaim against Ms Glow at the Surabaya Commercial Court. The purpose of this study is how to find out what efforts to resolve disputes and what legal protection efforts are obtained.

## **RESEARCH METHOD**

The research method that will be used in this study is the normative research method. The approaches used in this study are the statue approach, conceptual approach and analytical approach. Normative Legal Research is research that examines document studies using secondary data such as laws and regulations, court decisions, legal theory, and can be in the form of opinions of scholars. Normative legal research uses qualitative analysis by explaining existing data with statements not with numbers.

## **RESEARCH RESULTS AND DISCUSSION**

The root of the problem of this feud began when Putra Siregar asked Shandy Purnamasari, the owner of MS Glow, for help and to teach him about skincare business issues. Shandy also taught Putera the processes in skincare business matters. However, after Putera got the knowledge he had learned he founded PS Glow, where the products were accused of being similar in terms of the type of business as well as the shape and color of the packaging to MS Glow. Due to the incident above, the feud between MS Glow and PS Glow began.

Shandy Purnamasari, who felt that PS Glow had forged the brand, went to the Medan Commercial Court with case registration number 2/Pdt.Sus-HKI/Merek/2022/PN Niaga Mdn. Shandy Purnamasari demanded that Putra Siregar's PS Glow brand, which bears a resemblance to his MS Glow, be withdrawn and also demanded sixty billion rupiah in compensation. The lawsuit filed by Shandy Purnamasari resulted in the final result in which Shandy Purnamasari won. The judge at the court said that Shandy Purnamasari was the party who first registered the MS Glow brand at the Directorate of Intellectual Property Rights. The Medan Commercial Court's decision ordered PS Glow to declare its registration cancelled. Putra Siregar, who did not accept it, then sued Shanday Purnamasari back at the Surabaya Commercial Court with case registration number 2/PDT.Sus-HKI/Merek/2022/PN Niaga Sby. In his lawsuit, Putra Siregar considered that Shandy Purnamasari had committed an unlawful act against the law because he used the MS Glow trademark.

The two parties had mediated but the mediation failed because they could not find a final solution to this dispute. A decision from the Surabaya Commercial Court was also issued in which there was an indication that Shandy Purnamasari had committed an unlawful violation against the law. It is known that the thing that caused Shandy Purnamasari as MS Glow to lose was the MS Glow brand which was registered as class 32, namely the instant powder drink class. For brands registered in class 3, namely the class of beauty or cosmetic products, it is "MS Glow For Cantik Skincare". The problem with MS Glow here is that Shandy Purnamasari doesn't include "For Beauty Skincare" and only "MS Glow" in her skincare products. This of course raises a problem because it is not in accordance with BPOM (Food and Drug Supervisory Agency) policy.

Legal protection can be said to be protection if it is given legal subjects with legal subjects in the form of legal instruments. Legal protection is given by the state as a form of protection to someone where this protection aims to protect the rights of the person in question so that they are not blamed by other parties. Brand protection provided by the state also includes domestic and foreign protection. Brand owners can get legal protection from the state and can ensure the exclusive use of their mark for a certain period of time by registering it. When a person has registered his trademark with the Directorate of Intellectual Property Rights, in terms of legal protection, the First to file system principle is the principle used in the trademark registration system in Indonesia. The purpose of this principle is the right to a mark to the Directorate of Intellectual Property Rights. Registering a mark with the Directorate of Intellectual Property Rights is of course very important in order to get legal protection and avoid disputes over marks.

There are two kinds of legal protection in Indonesia, namely Preventive Legal Protection and Repressive Legal Protection. Preventive Legal Protection is legal protection provided by the government to brand owners to prevent violations. Repressive legal protection is legal protection given when a violation has occurred. This legal protection can be in the form of fines, imprisonment or additional punishment and these penalties have been regulated in law.

## **CONCLUSION**

Based on the research that has been done above, it can be seen that the settlement of disputes that occurred between MS Glow and PS Glow was by court efforts. Starting from Ms Glow, namely Shandy Purnamasari, who filed a lawsuit with the Medan Commercial Court, which was subsequently issued by the Medan Commercial Court which decided that MS Glow was the first to register its brand at the Directorate of Intellectual Property Rights. Apart from that, the decision was also decided to cancel the registration of the PS Glow brand. On the other hand, PS glow filed a lawsuit with the Surabaya Commercial Court where the Surabaya Commercial Court issued a decision in which it was revealed that the MS Glow brand was registered in class 32, namely the instant fiber drink class, while the brands registered in class 3, namely the skincare and cosmetic class, were "MS Glow For Beauty Skincare". The factor that caused MS Glow to lose was because it violated BPOM regulations because the products being traded only listed MS glow. Legal protection that can be applied in this dispute is preventive legal protection and repressive legal protection. Preventive Legal Protection is provided to prevent violations from occurring, which can be done by registering a mark with the Directorate of Intellectual Property Rights to obtain legal protection. The second legal protection is repressive legal protection where this legal protection is carried out when a dispute has occurred.

Suggestion: Individuals and corporate legal entities who become business people must know how important it is to register a trademark in order to obtain legal protection for their

brand and obtain trademark exclusivity rights and legal certainty. Business people must be careful in selecting brands for their products so that plagiarism does not occur which can cause problems.

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