

Analysis of Cases of Theft of Product Packaging Trademark Names of PT. Sinda Budi Sentosa Against Wen Ken Drug Co (PTE) LTD

Cindy Alisia Sinaga

Faculty of Law, Universitas Tarumanagara, West Jakarta, Province of DKI Jakarta, Indonesia^{1,2,3}

Email: cindyalisiasinaga@gmail.com

Abstract

This article reviews the dispute over the Brand Cap Rhino and Cap Kaki Tiga. The background to this incident is the dispute over the Brand, between Budi Yuwono, from PT. Sinda Budi Sentosa, the owner of the Cap Badak Brand, and Wen Ken Drug Co., Pte Ltd, the owner of the Cap Kaki Tiga product, which had the initial Brand of the Cap Kaki Tiga refreshing solution. The dispute arose because of a lawsuit from Wen Ken Drug because Cap Rhino imitated Cap Kaki Tiga. The Cap Kaki Tiga brand was won by the Commercial Court and Budi Yuwono made an appeal to the Supreme Court and in the Supreme Court decision, Budi Yuwono won over Wen Ken Drug. (Pte) Ltd.

Keywords: Theft, Trademarks



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INTRODUCTION

The development of globalization and the development of information technology have had a major impact on the world economic market. More and more companies are innovating and developing products. In this case, goods and services produced by individuals or legal entities receive a special identifier that differentiates the products and services of the product, which is usually referred to as a trademark. Then, as time goes by and more and more products are made, similarities and similarities arise between products.

Article 2 of Law Number 15 of 2001 concerning Laws states that the laws regulated in this law include trademarks and service marks. In this case the parties have an interest in the similarity of brand use, namely the similarity of cans and bottles between the two products. This brand cancellation event was experienced by PT. Sinda Budi Sentosa (Cap Badak) against Wen Ken Drug Co (PTE) LTD (Cap Kaki Tiga). In this case PT. Sinda Budi Sentosa registered a trademark in 2008, but for the Cap Badak product owned by PT. Sinda Budi Sentosa himself found that there were several similarities in form with the Cap Kaki Tiga product, where this became a trademark infringement.

RESEARCH METHODS

The method used in this study uses a normative legal approach. Analyze based on positive law/statutory regulations. In addition, this legal research uses a conceptual approach that refers to the views and doctrines in the science of law according to the issues discussed.

RESEARCH RESULTS AND DISCUSSION

In 1978 PT. Sinda Budi Sentosa obtained a license from Wen Ken Drug Co (Pte) Ltd to use the Cap Kaki Tiga brand. The agreement is based on the agreement of the parties. Cap Kaki Tiga is a trademark of refreshing solution which was first introduced in the 1980s. Refreshing solution produced by PT. Sinda Budi Sentosa is a pioneer of refreshing or hot drinks in Indonesia. Initially, the brand licensee company was Wen Ken Drug Co, Pte. Ltd. as the holder of a Cap Kaki Tiga license from Singapore. This company is the copyright holder of the disputed triple cap painting. The Cap Kaki Tiga logo has been advertised by Wen Ken Drug since 1937.

Wen Ken Drug has not registered the copyright yet. This is based on the premise that copyright does not need to be registered according to Indonesian law. Copyright protection arises from the point at which copyright arises. Thus, the copyright on the mark exists since the relevant mark is registered in that country. Functionality in Indonesia is a form of market share that continues to grow, of course also in other countries. Indonesia adheres to the first to file principle, not first come, first out. Trademark ownership is recognized when the brand holder registers the mark concerned. However, in Law Number 15 of 2001 Article 5 it is stated that a mark cannot be registered if the mark has no distinguishing features. The dispute arose in 2000. PT, Sinda Budi Sentosa felt that there was a change in requirements from Wen Ken Drug Co (Pte) Ltd which was very burdensome from a legal perspective. So that PT. Sinda Budi Sentosa decided to change the logo from Cap Kaki Tiga to Cap Rhino.

If we look closely, the Cap Kaki Tiga solution and the Rhino Cap have similarities in their packaging. In this case PT. Sinda Budi Sentosa is not supposed to register the brand of its products because they have that resemblance. There are several similarities in these products, namely; blue bottle cap, bottle shape, placement of the logo and the words "refreshing solution", placement, images of flavors, Arabic writing. Based on the above, indirectly Cap Badak has similarities and similarities with Cap Kaki Tiga. But in 2004 PT. Sinda Budi Sentosa successfully passed making an application to the Directorate General of Intellectual Property Rights with the brand Badak Cap Freshener Solution. PT. Sinda Budi Sentosa managed to qualify because in 2004 Wen Ken Drug Co (Pte) Ltd. Only registered the trademark rights to the Director General of Intellectual Property Rights in 2008.

In 2008, PT. Sinda Budi Sentosa sued Wen Ken Drug Co (Pte) Ltd. PT Sinda Budi Sentosa sued Wen Ken Drug Co (Pte) Ltd. because Wen Ken Drug Co (Pte) Ltd. unilaterally terminated the agreement effective from February 7, 2008 and intends to transfer the license for the Cap Kaki Tiga brand to another party. In decision number: 29/Merek/2010/PN.Niaga.Jkt.Pst, 16 July 2010 Wen Ken Drug won this case, but then the owner of PT. Sinda Budi Sentosa, Budi Yuwono filed an appeal to the supreme court. In the decision number 767 K/Pdt.Sus/2010 it was decided in the Supreme Court deliberative meeting on Tuesday 30 November 2010, granting Budi Yuwono's cassation. Which means there was no trademark violation as claimed by Wen Ken Drug. Budi Yuwono remains the winner of the Mark he has registered. Meanwhile, Juridically, Wen Ken Drug still adheres to the ownership of the brand, with different concrete. Wen Ken Drug terminated the agreement with PT Sinda Budi Sentosa unilaterally and transferred the license to use the Cap Kaki Tiga trademark to another party in 2008. The transfer of the license occurred because one of them, PT. Sinda Budi Sentosa could not fulfill the agreement that had been agreed upon. Basically, legal disputes, especially trademark disputes, are indeed complex. This dispute may have an indirect effect on other matters. These rights become a problem in itself when the Trademark Law cannot legally provide a comprehensive solution to solve this problem.

Legal Perspective

A mark has a function and purpose, namely as an identification and as a differentiator for the products of a person, company or other legal entity. A mark cannot be registered on the basis of an application submitted by an applicant with bad intentions and with the intention of deliberately imitating, or plagiarizing, another mark. Juridically, what is meant by a mark is in Article 1 paragraph (1) of the 2001 Trademark Law which reads: A mark is a sign in the form of an image, name, word, letters, numbers. The arrangement of colors, or a combination of these elements which has a distinguishing power and is used in trading activities of goods or services.

What is meant by applicant is the party submitting the application, namely the application for mark registration submitted in writing to the Directorate General. The Directorate General is the Directorate General of Intellectual Property rights which is under a department headed by a Minister. Mark owners can sue people who without permission use a mark that has similarities with the mark that operates in the same trade or service sector (Article 76 paragraph (1) in conjunction with article 77). As a normative basis, Article 3 of the 2001 Trademark Law states that: Right to a Mark is an exclusive right granted by the state to owners of Marks registered in the General Register of Marks for a certain period by using the Mark themselves or giving permission to other parties to use it. The foregoing then becomes the basis for legal protection for Mark owners who register their Mark in good faith. This provision also creates problems caused by different interpretations between the disputing parties.

CONCLUSION

The conclusion from the problems discussed above is that, PT. Sinda Budi Sentosa does indeed have similarities in the product packaging for Cap Badak with Cap Kaki Tiga. PT. Sinda Budi Sentosa successfully registered his Cap Badak product brand with the Director General of Intellectual Property Rights in 2004. PT. Sinda Budi was able to qualify for registering its trademark because in 2004 the Cap Kaki Tiga product had not been registered by Wen Ken Drug Co (Pte) Ltd. to the Director General of Intellectual Property Rights. The Directorate General of Intellectual Property Rights must be more careful in selecting requests for registration of marks and services so as not to harm other parties.

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