JURIDICAL REVIEW ON THE FAMOUS BRAND VIOLATION

(Case Study Decision Number:39/Merek/2011/PN.Jkt.Pst)

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ABSTRACT

The rapid economic development has given rise to various types of goods and services produced by various manufacturers according their respective expertise. A product of goods and services made by a person or legal entity is given a mark that serves as a differentiator in products and services similar so-called brand. The more well-known brand,a consequence of the violations related to the brand fame and deeds contrary to the law due to greater competition. Protection for owners of rights to the brand, especially the famous brand more closely watched by other brands before registered in the public register of the brand so that it will not be detrimental to the legitimate owner of a brand. The research used normative legal research methods with the approach of the Act, the conceptual approach, and the analysis of the case. Data analysis used the qualitative methods, associated with the District Court's Decision No. 39/Merek/2011/PN. Niaga.Jkt.Pst.The results of the analysis indicate that Inter IKEA Systems BV is the only rightful owner of the IKEA brand and combinations and a renowned brand. Strength of legal protection for registered and well-known brand IKEA contained in Law No. 20 2016 with the amendment of Law No. 15 of 2001 on Marks and Article 3 of the Decree of the Minister of Justice No. M.03-HC.02.01 1991.

Keywords: Juridical Review, Famous Brand Violation

I. INTRODUCTION

In general, a product of goods and services made by a person or legal entity by a certain sign that serves as a differentiator with other goods and services were similar. Here is a specific mark of identification for goods and services in question, commonly called the brand.

Brands as part of intellectual property rights play an important role in the trade of goods and services, both nationally and internationally as distinguishing features in distinguishing goods or services of similar companies. Also included as a guarantee of the quality of goods or services traded, so that people are able to assess and distinguish the goods or services in accordance with the respective levels of satisfaction by brand. This function will be widened when people use the goods or services as a form of prestige for buying, using branded goods or services even with a relatively high price. An important case in legal protection of the brand is well-known brands.

Specific features of famous brands are that the reputation of the brand name is not limited to a particular product or a particular type. The more well-known brand, bring about legal consequences against pemboncengan and rearguard of the brand fame and deeds are against the law. Potential competition is greater when the parties are interested in seeing the success of a brand, which has a very high reputation that makes others trade with a shortcut (free riding) that is trying to make, imitate or emulate (memiripkan) a brand of goods or services for piggybacking fame a brand. Trademark infringement action by piggybacking on brand fame of others unlawfully, resulting in a loss on brand owners to the company's reputation, declining sales and the demands of the customers because they feel good or service in use is not appropriate. Therefore, it is necessary to protect the legal tools brand as human intellectual work.

The existence of legal institutions in the form of legislation in the field of intellectual property rights opportunities for owners to obtain legal certainty for the rights arising from intellectual property that can be an asset for individuals and companies who need to get legal protection in order to foster and develop creativity for employers and society in general.

Trademark Law provides protection for brand owners against registration or use by other parties for brands that contain equations substantially or entirely to goods or services identical or almost identical whether intentional or not. Own brand of aggrieved can do a lawsuit against the party unlawfully using the trademark containing the equation substantially or entirely. State gives exclusive rights to the owner of the mark registered is registered in the

General Register of Marks. Thus requires the registration to prove their legal certainty with certificates.

Exposure above is a brief overview of the issues to be raised in this study were in general is the brand of law enforcement, while specifically regarding trademark infringement action in a brand due to the similarity in principle.

II. RESEARCH METHOD

The method used in this research is a normative legal research methods with the approach of the Act, the conceptual approach, and the analysis of the case. Data analysis was performed using qualitative methods, associated with the District Court's Decision No. 39 / Merek / 2011 / PN. Niaga.Jkt.Pst,

III. FINDINGS AND DISCUSSIONS

PT. Inter Ikea Systems BV is a company engaged in the production of equipment and home appliances and office supplies originating from Turkey are sold in retail / ecer on an international scale by using IKEA brand as well as their combinations by its creator is Ingvar KAMPVRAD. PT. Power goose is a company engaged in the field of building supplies selling of goods of all kinds of ceramic tiles and wall, located in the Trade Center Building Materials, Mangga Dua, Jakarta, Indonesia using Ikema brand.

PT. Inter Ikea Systems BV sued PT. Power geese in case the suit is a form of cancellation request registration of the trademark owned by PT. Power goose that Ikema brands are perceived to have similarity in principle or in whole. The lawsuit request the cancellation of a trademark registration in accordance with the motif contained in Article 76 of Law No. 20 of 2016 on Marks and Geographical Indications (Law MIG), namely, the lawsuit registered mark may be submitted by interested parties based reasons as the purpose of Article 20 and / or 21 of the Act brands. The lawsuit filed by PT. Inter Ikea Systems BV essentially contains four (4) at issue, namely, first, whether the suit filed by PT. Inter Ikea Systems BV is premature and is entitled to file a lawsuit in perkaran quo. Second, if the rights to the brand owned by PT. Inter Ikea Systems BV are a well-known brand. Third, similarity in principle and / or in its entirety between the IKEA brands owned by PT. Inter Ikea Systems BV with Ikema brand owned by PT. Power geese. Fourth, faith is not well done by PT. Power goose which according to PT. Inter Ikea Systems BV deliberately piggybacking fame (goodwill) brand IKEA to boost the value of sales of products of PT. Power geese and aims to

confuse consumers. V deliberately piggybacking fame (goodwill) brand IKEA to boost the value of sales of products of PT. Power geese and aims to confuse consumers. V deliberately piggybacking fame (goodwill) brand IKEA to boost the value of sales of products of PT. Power geese and aims to confuse consumers.

The first problem in the lawsuit case a quo under Article 76 paragraph (1) where PT. Inter Ikea Systems BV can apply for cancellation of the registered trademark on the grounds in accordance with Article 20 and / or 21 of the Act No. 20 of 2016 and the response exception of PT. Power goose that the lawsuit filed by PT. Inter Ikea Systems BV is premature. Because, at the time of the lawsuit filed by PT. Inter Ikea Systems BV has not and / or do not apply for Brand to the Directorate General of Intellectual Property in accordance to Article 76 paragraph (2) of the Act MIG. IKEA brand registered in Indonesia is a brand with 24 items class, grade 11, grade 21, grade 35 and grade 42. As for the class 19 goods in question has been registered in another country is not in Indonesia. Based on the provisions of the judges in this case stated that the lawsuit PT. Inter Ikea Systems BV of the lawsuit is premature and unacceptable (*niet ontvankelijke verklaard / NO)*,

In the application of the constitutive system adopted by Law No. 20 of 2016 on Marks and Geographical Indications, a new mark rights can be created after the registration in accordance with Article 3 of Law MIG mentioning mark rights acquired after the trademark has been registered. With the registration, the trademark owner will obtain the right to use a particular brand or to give permission to another to use it for a certain period of time as well as get legal protection from the state.

Subject-matter of the second is based on that brand IKEA is a world famous brand. PT. Inter Ikea Systems BV feel Ikema trademark registration owned by PT. Power goose is to ride the brand fame PT. Inter Ikea Systems BV which has been used for about 68 years. If a lawsuit filed by PT. Inter Ikea Systems BV based arguments of well-known brand, PT. Inter Ikea Systems BV reserves the right to file a lawsuit against trademark owned by PT. Power geese. Filing this lawsuit must be based on strong evidence of fame IKEA brand owned by PT. Inter Ikea Systems BV In accordance with Article 18 of the Regulation of the Minister of Law and Human Rights (Permenkumham) Number 67 of 2016 to mengkatergorikan a brand is a famous brand, it must be proven on the public's knowledge about the brand, The brand's reputation in the eyes of the public, the investment made by the owner of rights to the brand in various countries until proof of registration of the brand in various countries. This is

consistent with the evidence attached PT. Inter Ikea Systems BV (Exhibit P-1 to P-181), which explains that PT. Inter Ikea Systems BV is the owner of brands that meet the criteria to be called a well-known brands, as well as the reference to Article 6, paragraph (1) letter b jo. Article 21 paragraph (1) of Law No. 20 Tahun2016 on Marks and Geographical Indications. Inter Ikea Systems BV is the owner of brands that meet the criteria to be called a well-known brands, as well as the reference to Article 6, paragraph (1) letter b jo. Article 21 paragraph (1) of Law No. 20 Tahun2016 on Marks and Geographical Indications. Inter Ikea Systems BV is the owner of brands that meet the criteria to be called a well-known brands, as well as the reference to Article 6, paragraph (1) letter b jo. Article 21 paragraph (1) of Law No. 20 Tahun2016 on Marks and Geographical Indications.

PT. Power geese also attach evidence to explain that the brand Ikema been registered since May 14, 2010 on behalf of the Power PT.Angsa including evidence of a trademark registration request Ikema number DOO2006-040592 agenda dated 13 December 2009, as well as evidence of the trademark certificate dated Ikema May 14, 2010 No. IDM000247161. Based on the evidence attached, PT. Inter Ikea Systems BV turns has registered its brand in the office of the Directorate General of Intellectual Property and tort quo 'argument is based on the well-known brand, then according to the judges of the lawsuit quo is not premature and are entitled to file a lawsuit and stated that the IKEA brand is well-known brands.

The fame of a brand recognition should be accompanied by efforts to protect other famous brands well against similar goods or similar are not the actions of an applicant who is not good intentioned. In Indonesia, the rights to the brand based on the first use of the brand. For those who register his trademark considered by law as a user of the brand's first brand unless other provable and considered as entitled to the mark concerned. The purpose of registration of the mark is to provide protection for the trademark registration which by law is considered as the first user against unauthorized use by other parties.

The next problem, PT. Inter Ikea Systems BV to mention that the brand Ikema have similarities in whole or similarity in principle with IKEA. This is indicated by the similarity caused by the elements that stand between one brand to another brand, which can give the impression of a similarity shape, placement, ways of writing, a combination of elements or sound equation. PT. Inter Ikea Systems BV feels that PT. Power registering Ikema goose brand is based on good faith not by copying, plagiarizing and ride the IKEA brand fame. As for the resemblance or similarity exists between the IKEA brand with this Ikema must have at least a similarity in

principle to do a cancellation in accordance with Article 21 paragraph (1) of Law No. 20 of 2016 and according to the jurisprudence of the Supreme Court in its Decision No. 279 PK / Pdt / 1992 dated January 6, 1992. In essence similarity in principle in question is a similarity caused by elements that stand between one brand to another brand, which can give the impression of a similarity either on the form, placement means, way of writing, a combination of elements from the equation in sound, appearance equations, and equations on the elements of the element.

Refusal of requests that have a similarity in principle or in whole with famous brands for goods and / or services of the kind conducted with respect to the general public knowledge about the brand in the field of business concerned. Famous or not a brand, it needs to be measured based on the reputation of the brands acquired for a vigorous campaign and massive, the promotion of various world and proof of registration in different countries. If the above matters have not been considered enough, the Commercial Court may order the institution that is independent to conduct a survey in order to obtain a conclusion about whether or not the brand famous.

Selection and use of brands that have similarity in principle with the brand owned by someone else (especially the famous brand) showed their good faith of the applicant not to ride the brand's reputation even though the Directorate General of Intellectual Property Rights to grant the request. The issue of the brand in Indonesia can not be separated from the responsibility of the Directorate General of Intellectual Property as a filter against trademark violations that occurred in Indonesia and businessmen who will register the brand. A person or entity that will register the brand is supposed to perform in-depth searches related to your brand that will be the registration. Do have something in common with another brand or not.in accordance with Article 21 paragraph (3) of Law No. 20 of 2016 on Marks and Geographical Indications mentioning that, the application is rejected if submitted by the applicant are not well intentioned. It is said that the first run on a brand is the first user who has good intentions (honestly). Legal protection of the mark is only given to the parties in good faith to register its brand. Therefore the parties who apply for the brand based on the faith is not good (bad faith), for example by plowing, brand fame mimic or bum the other party will not be given legal protection.

As a result of court cases such as this will affect the brand to the consumer. When consumers have to trust a quality of an item then onwards he will be using the product from the manufacturer. If there is a similarity in principle that the brand of PT. Inter Ikea Systems BV and PT. Power geese will cause confusion to consumers. Where consumers will think whether Ikema brand owned by PT. Power goose is a derivative of the IKEA brand owned by

PT. Inter Ikea Systems BV that if consumers perceive it correctly it will encourage consumers to buy such products which will harm and benefit one party and bring unfair competition. It mejadikan the judges at the Commercial Court decided to declare that PT. Inter Ikea Systems B. V is the only rightful owner of the IKEA brand and kombinas thereof and a famous brand in accordance with the attached evidence and refers to the legislation in force, case law and some expert opinion. Southwestern states PT.Angsa registering Ikema brand by having faith is not good because it has similarities in whole or at least in principle and declared void on Ikema trademark registration from the General Register's Brand Directorate General of Intellectual Property Rights and charge cases to the PT. Power geese. Power registering Ikema goose brand by having faith is not good because it has similarities in whole or at least in principle and declared void on Ikema trademark registration from the General Register's Brand Directorate General of Intellectual Property Rights and charge cases to the PT. Power geese. Power registering Ikema goose brand by having faith is not good because it has similarities in whole or at least in principle and declared void on Ikema trademark registration from the General Register's Brand Directorate General of Intellectual Property Rights and charge cases to the PT. Power geese.

IV. CONCLUSIONS AND SUGGESTIONS

1. The provision of a brand to be registered is the decision of the owner of the brand. Trade of goods and / or services with the widest possible market share is the desire of businesses. With this registration of a mark is necessary if do not want to run into plagiarism, pemboncengan, impersonation and other illegal acts in terms of brand. By registering a trademark to the Minister of Human Rights of the owner of the rights to the brand is definitely for trademark protection in case something that is considered detrimental to the owner of the rights to the brand. Reasons for brand protected particularly well-known brand, specifically compared with other brands as well as well-known brand dikarena brands have economic value as an object, the existence of acquired goodwill or reputation to make a brand become a famous brand requires hard work and great effort and sacrifice is not small. For that is an appropriate function of the law to protect the business and the rights of others (in this case the well-known brand) to exploit and take maximum advantage of the brand as a thing. The second reason is the position of a well-known brand is a brand owned foreign subjects / citizens of a foreign country where, as a country that upholds the world order and peace, and friendship

advance of the nation is selayaknyalah Indonesia give the same treatment and protection to foreign citizens,

2. The judges in deciding the case between PT. Inter Ikea Systems BV and PT. Power geese is based on Law Number. 20 Year 2016 on Marks and Geographical Indications Act amendments of 2001 regarding Mark Nomor.15. Careful explanation of Act Number. 15 of 2001 on Trademarks, andThe jurisprudence of the Supreme Court in its Decision Number. 279 PK / Pdt / 1992.Granted part of the overall Plaintiff and declared void on the Defendant's trademark registration because they have similarities in whole or at least in principle with the IKEA brand owned by the Plaintiff and Plaintiff stated as brand Famous brand.

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