

ANALYSIS OF THE PROTECTION OF THE ECONOMIC RIGHTS OF OWNERS OF FAMOUS TRADEMARKS

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Abstract: Trademark is an identifying mark attached to a good and/or service as well as being a differentiator between one good and/or service with another. Trademark provides exclusive rights in the form of moral rights and economic rights. In this research, the discussion is about the infringement of economic rights that occur in the case of trademark disputes between starbucks which is a coffee franchise company from America with STTC which is a cigarette company from Pematangsiantar. In short, STTC uses the starbucks brand for its cigarette products without any good faith when clearly starbucks is a well-known brand. Unfortunately, the Director General of IPR granted permission for the use of the starbucks brand and registered as the owner of the starbucks brand with IDM000342818 dated September 10, 2012 until September 10, 2012. For the economic losses suffered, starbucks decided to file a lawsuit to the Central Jakarta Commercial Court but the lawsuit was rejected by the judge. This research uses a normative method with a statutory and conceptual approach that bases its analysis on Law No. 20 of 2016. The results show that the Supreme Court judge's decision has been able to provide protection for the economic rights of starbucks by accepting the entire starbucks lawsuit and asking the Director General of IPR to eliminate the ownership of STTC as the owner of the brand. Starbucks was then also designated as a well-known trademark.

Keywords: Trademark, Economic Rights, Legal Protection

I. INTRODUCTION

Every goods and/or services that are traded must have an identifying mark to distinguish between one goods and/or services with another which can then be called a trademark. Not only on a national scale, international trade also needs to have a trademark. Trademark ownership by business actors in addition to bringing economic benefits also prevents the emergence of unfair business competition because trademark ownership can only be owned by one business actor (Semaun, 2016). In addition, the trademark is also a means of advertising a good and/or service where through its trademark, business actors can provide information to consumers about the products produced. One trademark name will only be owned by one business actor, which means that other business actors should not take advantage by using similar or even the same trademark. This problem often occurs in the world of trade, many business actors hijack the success of one brand by making a brand resembling or even the same as a well-known brand that has its consumers. Sometimes many consumers are deceived by the existence of similar brands so if it has happened the disadvantaged is the business owner of the original brand.

Considering that the trademark is a differentiator between one another, there are several elements that must be met by business actors, namely the trademark must be a differentiator with other goods and / or services so that the trademark is required to have a distinguishing power and the mark contained in the trademark must be used in trading activities. Trademark acts as a thing that provides legal protection to businesses, where if there are other businesses that use the trademark without showing the ownership of a legitimate trademark then the law will provide protection to the business actors (Afif & Sugiyono, 2021). Unlike copyrights whose acquisition is directly attached, to have rights to a trademark, businesses must first register it with the Directorate General of Intellectual Property Rights. Only later the Director General of IPR if the trademark has never been registered can approve it, otherwise if it turns out that the registered trademark has similarities with the trademark that has been registered before then the Director General of IPR should reject the application. This rejection is certainly the goal is to prevent disputes over trademark imitation.

But in fact, there are still many cases of brand imitation, especially against brands that are declared as well-known brands. Of course, the main purpose of this imitation is to gain the same popularity as the famous trademark. Trademark imitation is also intended to obtain certain economic benefits from the sale of goods and / or services by hijacking a well-known trademark which of course has gained its own trust in the community (Mukhlis & Rahayu, 2023). In Indonesia itself, such cases are rampant, even not only with fellow domestic brands, imitation also often involves trademarks originating from abroad. One of them is a case that occurred between Starbucks, a coffee franchise company from the United States, and a cigarette entrepreneur from Pematangsiantar, South Sumatra, namely Sumatra Tobacco Trading Company (STTC). STTC uses the Starbucks trademark to sell the cigarettes it produces. Because they felt disadvantaged, Starbucks finally filed a lawsuit to the Central Jakarta Commercial Court but unfortunately the Central Jakarta District Court Judges stated that Starbucks' lawsuit was completely rejected. Until finally Starbucks filed a cassation to the Supreme Court to fight for its rights. With the issuance of Cassation Decision No. 836K/Pdt.Sus-HKI/2022, the Supreme Court officially asked the Director General of IPR to cancel the trademark registration that has been done by STTC.

II. RESEARCH METHOD

The type of research used in this research is normative research. Normative legal research is research that explores a legal problem through various aspects of written law along with legal theories put forward by experts (Amiruddin & Asikin, 2010). The explanation of the interweaving of articles in the laws and regulations is the main legal source

in this type of research. Then the research approach used is a statutory approach and conceptual approach. The statutory approach is an approach that tries to examine the meaning of article by article in the legislation which is then used to analyze a legal problem. Then the conceptual approach is an approach whose source comes from the theory of concepts put forward by legal experts (Irwansyah, 2020). Legal theory certainly continues to change along with the development of human life, for this reason the legal theory used also needs to be adjusted to the conditions of the community that is the object of research. Later these legal theories will provide views, understanding, understanding, or any legal material that is not clearly regulated in the legislation.

In normative research, the data sources used are secondary data sources which are further divided into two types, namely primary legal materials and secondary legal materials. Primary legal materials come from a hierarchy of laws and regulations starting from the constitutional basis, namely the 1945 Constitution of the Republic of Indonesia to written regulations relating to the issues discussed. This research uses Law No. 20 of 2016 concerning Trademarks and Geographical Indications as primary legal material supported by the Paris Convention and the TRIPS Agreement which are sources of international law. Then the secondary legal material is any type of source that is written, starting from books, journals, previous research or reports, magazines, newspapers, or any written sources that can certainly be accounted for the truth of the data contained therein.

The data collection method used is a literature review by inventorying one by one laws and legal theories that are suitable to be used as an analysis knife in the problem under study. Only then after all legal materials have been collected in full, data analysis is carried out descriptively analytically using the deductive method (Hardani et al., 2020). That means the logic of the analysis will be drawn from one thing that is general, namely the Trademark Law and related legal theories and then draw a conclusion regarding the case study raised, namely the Supreme Court Decision No. 836K/Pdt.Sus-HKI/2022.

III. RESULT OF THE RESEARCH

Famous Trademark Dispute Position Case Between Starbucks and STTC

Sumatera Tobacco Trading Company is a company engaged in cigarette trading. On September 10, 2012 STTC registered a cigarette trademark with the name Starbucks to the Director General of IPR and the Director General of IPR legally granted permission to STTC to use the trademark because there is no such trademark in Indonesia. The registration of the mark was made in class 34 which covers a wide range of cigarettes, clove cigarettes, white cigarettes, klobot cigarettes, cigarette papers, tobacco, and lighters. After obtaining legal ownership of the mark, STTC decided to export the Starbucks brand cigarettes.

Starbucks is a well-known American franchise company that sells various variants of coffee that has been established since March 30, 1971. That means that long before STTC registered its trademark with the Director General of IPR, STTC should have known that the Starbucks trademark was already owned by the American franchise company. And STTC should not have attempted to register its trademark under the name Starbucks in good faith. But unfortunately, STTC still registered the mark under class 34 and the Director General of IPR still approved it. It is not known for sure why the Director General of IPR gave approval to the application. Actually, there is no normative prohibition for business actors to register their trademarks, but the Director General of IPR should be more careful in selecting trademark applications in order to avoid trademark hijacking as happened between Starbucks and STTC.

STTC after obtaining the approval of the brand finally sold the cigarettes it produced in the international arena and in a period of more than 10 years continued to benefit from using the Starbucks brand. Until Starbucks finally found out about the existence of the same

cigarette brand and due to the losses it received, starbucks finally filed a lawsuit at the Central Jakarta District Court in 2022. Against the lawsuit, STTC certainly rejected the entire argument of the lawsuit because in their view, they have legally obtained approval from the Director General of IPR and registered as the owner of the starbucks brand with IDM000342818 dated September 10, 2012 until September 10, 2012. STTC wondered why starbucks only felt aggrieved after almost ten years and STTC did not feel that it was hijacking the starbucks brand because the brand was legally owned by STTC. The omission for 10 years committed by starbucks is certainly the main consideration for the judges of the Central Jakarta District Court so that finally the judges gave a decision to reject the lawsuit from starbucks and still stated that the starbucks brand is legally owned by STTC (Al'Uzma et al., 2023).

Protection of Economic Rights of Owners of Famous Marks

In concept, Intellectual Property Rights provide two types of exclusive rights that can only be owned by the owner, namely moral rights and economic rights (Sufiarina, 2019). Moral rights are rights owned by each creator that aim to protect the personal interests of the owner such as protection of the reputation of the goods and / or services he created. Meanwhile, economic rights are rights owned by every IPR owner to obtain material benefits of economic value, namely in the form of money for the goods and / or services he owns (Hayuningrum & Roisah, 2015). In the dispute that occurred between starbucks and STTC, there are economic rights violated by STTC where STTC by using the name starbucks on the cigarette brand it sells gets material benefits. For this violation, starbucks is entitled to protection of its economic rights. The purpose of the protection is to provide legal certainty actually who is the owner of the trademark is done by ensuring which party has first registered the trademark. However, legal protection for the trademark can only be given when the trademark already has a registration certificate, considering that the trademark is not a copyright whose ownership nature is attached once the artwork is created. Trademarks must first be registered to get protection (Asmara et al., 2009). Protection is based on who first registered the trademark to the Directorate General of IPR. Protection of trademarks can be given to brands that have a good image and quality in the community as well as brands that have been promoted by the owner widely so that the public knows the existence of the brand (Margono, 2010).

A trade dispute is a legal event where there is a party who feels economically disadvantaged by a legal act committed by another party. In this case, starbucks feels aggrieved over the use of its brand by STTC for the sale of cigarette products in the national or international arena, even though starbucks is clearly an American franchise that sells various variants of coffee, not cigarettes. After suing STTC to the Central Jakarta District Court and getting the verdict that the lawsuit was rejected, Starbucks did not give up with the verdict. Starbucks then filed an appeal to the Supreme Court to fight for its economic rights.

Actually, there are two ways to resolve trade disputes, namely through out-of-court dispute resolution efforts and through the court or litigation route. Out-of-court dispute resolution efforts can be pursued through negotiation, conciliation, or arbitration. The condition is that both parties must agree to settle the case out of court. However, if these efforts fail or there is no agreement between the two parties, one of the parties who feels that their rights have been harmed can file a lawsuit at the local district court in accordance with the domicile of the Defendant. That is why even though starbucks is an American franchise company, the lawsuit was still filed at the Central Jakarta District Court because the Jakarta District Court is a court whose jurisdiction can handle cases on an international scale involving outside parties.

The filing of a lawsuit by starbucks is a form of legal protection of economic rights violated by the STTC because without the permission of starbucks, STTC uses the starbucks brand, even though the brand has not been registered in Indonesia but still should have known that starbucks is a well-known brand that has been widely recognized by the public. The trademark registration system owned by Indonesia is a constitutive system where the trademark that has been registered at the Directorate General of IPR is a trademark that is entitled to protection because it is considered as the legal owner of the trademark (Alexander, 2022). So what about the protection of well-known trademarks that are not necessarily registered in the country where trademark infringement occurs? Of course, well-known trademarks will still get protection because Indonesia has ratified the Paris Convention and the TRIPS Agreement which will be explained later (Supasti, 2016). So that to file a lawsuit as a form of repressive legal protection, it must be ascertained in advance the intention of the party who hijacked. The intention referred to here is the knowledge of the party who is not the owner of the famous trademark on the famous trademark. It is said to be in bad faith if it turns out that the party who is not the owner of a well-known trademark deliberately uses a well-known trademark to hijack his fame in the community so that the promotion carried out on the product of goods and / or services is carried out consciously. (Bafadhal, 2018).

For this bad faith from STTC, starbucks as the brand owner has the right to file a lawsuit against STTC. Article 83 paragraph (1) of Law No. 20 Year 2016 on Trademarks and Geographical Indications states that:

"The owner of a registered trademark and/or the licensee of a registered trademark may file a lawsuit against any other party who unlawfully uses a trademark that is substantially or wholly similar for similar goods and/or services:

- a. Lawsuit for compensation; and/or
- b. Cessation of all acts relating to the use of the mark".

The right to sue is also owned by the owner of a famous mark as mentioned in Article 83 paragraph (2) of the Trademark Law which says that "the lawsuit as referred to in paragraph (1) may also be filed by the owner of a famous mark based on a court decision". The lawsuit for compensation as referred to in letter (a) is a form of protection provided by the realm of civil law. Civil law provides more protection to economic rights that are violated so as to cause material losses to the owner of a well-known trademark (Sanjaya & Rudy, 2018). The act that causes compensation in civil law is referred to as a tort which is regulated in Article 1365 of the Civil Code which reads "that a person who causes damage to another person through his fault is obliged to compensate for the loss" (Arifin & Iqbal, 2020).

Not only the realm of civil law that provides protection to the owner of a famous trademark, criminal law also provides protection with the regulation of Article 100 paragraph (1) of the Trademark Law which reads:

"Any person who without right uses the same mark in its entirety as a registered mark owned by another party for similar goods and/or services produced and/or traded, shall be punished with imprisonment of 5 (five) years and/or a maximum fine of Rp 2,000,000,000.00 (two billion rupiah)".

Of the two types of legal protection, starbucks chose the civil law trial route because its main focus is to request compensation for violated economic rights and ask STTC to stop using the starbucks brand on the products it sells. Both civil law and criminal law are legal protection measures that are repressive in nature, in other words, they can only be done when a violation has occurred. In addition to repressive legal protection, there is also preventive legal protection that prevents an offense from occurring. Preventive protection is in the realm of policy makers and laws that have the authority to issue binding policies or laws and regulations that contain prohibited acts along with the types of penalties, so as to provide fear

to those who want to commit violations (Prasetia et al., 2020). The purpose of preventive protection is to prevent economic loss to the owner of a famous mark.

Before filing an appeal to the Supreme Court, Starbucks first filed a lawsuit at the Central Jakarta District Court and issued Decision No. 51/Pdt.Sus/Merek/2021/PN Jkt. Pst with the following rulings:

1. Reject the plaintiff's claim in its entirety;
2. Punish the plaintiff to pay the costs incurred in the case which are set at Rp 4,490,000.00 (four million four hundred ninety thousand rupiah).

The plaintiff's lawsuit was rejected because the judge considered the expiration of the case. The judge considered that the filing of the lawsuit by Starbucks had passed its time. Starbucks only filed a lawsuit in 2021 even though STTC has been using the brand and obtained the brand since 2012 and even the ownership period of the brand will expire in 2022. The omission that occurred for almost 10 years gives the assumption that Starbucks did not feel harmed by the actions taken by STTC. After all, in 2012 there was no trademark in Indonesia registered with the name Starbucks, so the Director General of IPR has the right to grant trademark ownership to STTC. Unfortunately, the panel of judges, according to the author, ignored the fact that Starbucks is a well-known trademark. A well-known brand is a brand that has a high reputation, has a high appeal in the community so that when making a purchase of goods and / or services the community has certain suggestions that can be directly about the product.

The definition of a trademark is generally regulated in Article 1 number 1 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications where what is meant by a trademark is *"a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color arrangements, in the form of 2 (two) dimensions and / or 3 (three) dimensions, sound, holograms, or a combination of 2 (two) or more of these elements to distinguish goods and / or services produced by persons or legal entities in the trading activities of goods and / or services"*. It is clear from the sound of the article that the main function of the trademark is as a distinguishing mark between one good and/or service with one another. Broadly speaking, the functions of the trademark are as follows:

1. To distinguish goods and/or services from one entity to another. Where the brand will help consumers to better recognize the goods they will buy;
2. To distinguish goods and/or services from a source of manufacture, again the goal is to help consumers recognize the products they buy;
3. To distinguish the quality of goods and/or services from one another. Buyers will certainly consider the quality of the products they buy, with a brand, buyers will find it easy to maintain consistency when they have found a product that matches the quality they want;
4. For means of promotion and marketing for a product and / or service. With the brand, buyers will more easily recognize the product and make potential buyers curious about a particular product (Disemadi & Mustamin, 2020).

The legal basis used by the Supreme Court Judge to resolve this case is Article 21 paragraph (1) letter C of Law No. 20 Year 2016 on Trademarks and Geographical Indications, where it is stated that *"the application will be rejected if the registered trademark has similarities in essence with a well-known trademark, even though the goods or services registered are not similar but meet certain requirements."* For this reason, it needs to be proven whether Starbucks is a well-known trademark or not. A well-known brand has a very high reputation in the community, where when the brand is mentioned, people can immediately identify it and create a familiar impression in the minds of consumers.

In addition to being regulated in Law No. 20 Year 2016, the regulation of well-known trademarks is also regulated in the Paris Convention for the Protection of Industrial Property

and The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Both international agreements clearly provide protection to well-known trademarks even if the trademark is not registered or used in the country (Felano, 2021). This principle also invalidates the legal considerations of the Central Jakarta Judges, who mentioned that in 2012, in Indonesia, the Starbucks brand had never been registered at the Directorate General of IPR. Even though it has not been registered, Starbucks, which is a well-known trademark, should not be given to other business actors. Both international agreements provide different types of legal protection, whereas the Paris Convention protection can only be given to goods and/or services that are similar or identical to a well-known trademark and must cause confusion to consumers. While the TRIPS Agreement provides a broader scope of protection, namely, protection can also be given to goods and/or services that even have different types as long as the owner of a well-known trademark suffers losses due to market confusion caused by trademark infringement. If analyzed using the principle in the TRIPS Agreement that when a trademark is not used in a country, as long as the trademark is declared a well-known trademark, it can be prevented from being used by third parties. It is appropriate that the Director General of IPR consider such matters by rejecting the application of STTC.

World Intellectual Property Organizationz (WIPO) provides specific characteristics that must be met by a brand to be said to be a well-known brand, including:

1. The mark has recognition that is relevant to the sector traded by the mark in the community. This is evidenced by the fact that many people recognize that starbuks are coffee and not cigarettes as the products marketed by STTC;
2. Duration, extent, and geographical area of use, promotion, and registration of the mark. Starbucks itself has been established since 1971, which means that there is a very long duration when compared to STTC, which only registered its trademark in 2012. Then for the geographical area, Starbucks has franchises in almost all corners of the world while STTC has only marketed its products in Indonesia and several countries. Starbucks has registered its trademark in several countries, but it has not been registered in Indonesia, while STTC has only just registered its products at the Directorate General of IPR Indonesia;
3. Records of successful fulfillment of rights to the trademark; and
4. The value of the trademark (Sari & Ratnawati, 2023).

Then in Indonesian normative law, the characteristics of well-known trademarks are also regulated in Article 18 of the Minister of Law and Human Rights Regulation No. 67/2016 on Trademark Registration which mentions the following:

"(1) Criteria for determining well-known trademarks as referred to in Article 16 paragraph (2) letter b and c is done by taking into account the general knowledge of the public about the trademark in the field of business concerned.

(2) The public as referred to in paragraph (1) is the consumer community or the public in general who have a good relationship at the level of production, promotion, distribution, and sales of goods and/or services protected by the well-known trademark.

(3) In determining the criteria of trademarks as well-known trademarks as referred to in paragraph (1) is done by considering:

- a. The level of public knowledge or recognition of the trademark in the field of business concerned as a well-known trademark;*
- b. The volume of sales of goods and/or services and profits derived from the use of the mark by its owner;*
- c. The market share controlled by the mark in relation to the circulation of goods and/or services in the community;*
- d. Regional coverage of the use of the mark;*

- e. *The period of use of the trademark;*
- f. *The intensity and promotion of the brand, including the value of investment used for such promotion;*
- g. *Registration of the mark or application for registration of the mark in another country;*
- h. *The degree of success of law enforcement in the field of trademarks, particularly regarding the recognition of the trademark as a well-known trademark by the authorized agency; or*
- i. *The value attached to the mark is obtained due to the reputation and quality assurance of the goods and/or services protected by the mark".*

For the consideration to state that starbucks is a well-known brand and it has been proven that starbucks is better known by the public as a coffee brand and not cigarettes, then the longer duration of use of the brand used by starbucks not to mention the breadth of the geographical range of marketing, promotion, and use of starbucks brand for coffee products has been enough to make the Supreme Court Justices state that starbucks is a well-known brand. So that on the appeal filed by starbucks, the Supreme Court decided to hear the case itself with the verdict is:

In exception:

Reject the defendant's exception in its entirety

In the main case:

1. Grant the Plaintiff's claim in its entirety;
2. Declare that the Defendant acted in bad faith when applying for Starbucks Trademark Registration Number IDM000342818 in Class 34 belonging to the Defendant;
3. Cancel the Starbucks Trademark Registration Number IDM000342818 in Class 34 owned by the Defendant from the General Register of Trademarks with all legal consequences;
4. Declare the Plaintiff's starbucks mark as a well-known mark;
5. Ordering the Defendant to submit and obey the decision of the Court in this case by implementing the cancellation of the registration of Starbucks Trademark Registration Number IDM000342818 in class 34 belonging to the Defendant by crossing out the registration of the trademark from the General Register of Trademarks and announcing it in the Trademark Official Gazette in accordance with the provisions of the applicable Trademark Law;
6. Punish the Cassation Respondent to pay the court costs in all levels of judicial proceedings, which in the cassation level amounted to Rp 5,000,000.00 (five million rupiah).

The decision of the Supreme Court is the end of the settlement of the case between starbucks and STTC which was successfully won by starbucks.

IV. CONCLUSION

Based on the analysis that has been explained above, the author can conclude that it is appropriate if the Supreme Court declares starbucks as a well-known trademark and accepts the plaintiff's lawsuit in full because STTC's actions using the starbucks trademark can be said to be a trademark activity for certain benefits. STTC should have known that starbucks is a well-known coffee franchise brand and did not register it with the Director General of IPR just because the brand name has not been registered in Indonesia. Even if it has not been registered in Indonesia, according to the Paris Convention and TRIPS Agreement, well-known trademarks are still entitled to protection from being used by third parties. The Supreme Court's decision has successfully provided legal protection to starbucks as the original owner of the famous trademark.

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