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Legal Protection of Unregistered Foreign Trademarks in Indonesia

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Abstract. *This study aims to analyze legal protection for trademarks in Indonesia and the available recovery measures for owners of foreign marks that are not yet registered in Indonesia when similar marks are registered by other parties in bad faith. The research method used is normative juridical legal research employing a statutory approach, conceptual approach, and case study approach, with the dispute over the ARC'TERYX mark as the main case. The novelty of this research lies in its focused formulation of practical legal strategies for unregistered foreign trademark owners facing registrations by third parties, by mapping the relevant legal bases under Indonesian Trademark Law and translating them into step-by-step recovery options (registration plus litigation) specifically in the ARC'TERYX dispute context. The results show: (1) Trademark protection in Indonesia follows the territorial principle and a constitutive registration system, where rights are generally granted to the first registrant acting in good faith. Exclusive trademark rights encompass economic and moral dimensions, including the right to use, license, and transfer trademark rights. Protection is limited for marks that conflict with morality, religion, and decency, and for marks consisting of generic terms. Violations can be direct or indirect, with remedies through civil claims, criminal proceedings, and alternative dispute resolution. (2) For the ARC'TERYX (Canada) owner, recovery may be pursued by registering the mark in Indonesia and simultaneously filing a civil lawsuit to cancel the registration IDM000731218 ARCTERYX (China) on relative grounds of bad faith under Article 76(1)(2) in conjunction with Article 21(3) of Law No. 20 of 2016. Alternatively, cancellation may be sought based on infringement of a well-known mark under Article 76(1)(2) in conjunction with Article 21(1)(b) and (c) of Law No. 20 of 2016.*

Keywords: *Cancellation Lawsuits; Foreign Trademarks; Legal Protection; Unregistered Trademarks.*

1. INTRODUCTION

Indonesia ratified the Agreement Establishing World Trade Organization (WTO) by Law No. 7/1994 with the schedule of commitment January 2000.(Jened, 2006, 2013) The ultimate goal of the WTO is Fair Competition that can be reached through three legal instrument:

1) Intellectual Property Rights (IPR) Law to protect intellectual creation toward counterfeiting and privacy;

2) Anti-Monopoly/Competition Law to ensure market existence;

3) Unfair Competition Prevention Law that in industrial and business matter businessman should conduct fairly.

Related this regulation there is a new case about ARC'TERYX (Canada) and ARC'TERYX (China) illustrates the practical challenges. In this case, a trademark originating from Canada, which had acquired substantial goodwill and international recognition, was registered in Indonesia by a China entity prior to registration by the original Canadian owner.

One of the WTO agenda is Agreement Trade Related Aspects of Intellectual Property Rights (TRIPs). IPR consists two main branches:(Jened, 2024)

1) Copyright and Related Rights; and

2) Industrial Property Rights, including:

a. Patents;

b. Protection of Plant Varieties;

c. Trademarks and Geographical Indications;

d. Industrial Designs;

e. Layout Design of Integrated Circuits,

f. Proprietary Information.

One of the most widely discussed fields of Intellectual Property Rights is Trademarks. The provisions concerning trademarks within the TRIPs Agreement are detailed from Article 15-Article 21. Article 15(1) arrange the definition of Trademark and Article 16 stipulated about Trademark right that can be acquired through use or register. Article 15 TRIPs Agreement: "Any sign, or any combination of signs capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs shall be eligible for registration of trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, members may make registrability depend on distinctiveness acquired through use. Members may require as a condition of registration that signs be visually perceptible."

Article 16 TRIPs Agreement: "The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use."

In Indonesia, the trademark protection regime is currently governed by Law No. 20 of 2016 on Trademarks and Geographical Indications (here in after referred to as Law No. 20/2016). Pursuant to Article 1(1) of Law No. 20/2016, a trademark is defined as: "A Trademark is a sign capable of being represented graphically in the form of images, logos, names, words, letters, numerals, color compositions, in two-dimensional and/or three-dimensional forms, sounds, holograms, or a combination of two or more of such elements, which serves to distinguish goods and/or services produced by an individual or a legal entity in the course of trade in goods and/or services." The legal characteristics and the substantive criteria that defines a trademark as provided is that the sign must have distinctiveness in trade of goods or services.(Jened, 2017) Pursuant to Law No. 20 of 2016, this particular character is a necessary feature in order for any marks to be registered as trademarks, so that the use of the mark can sufficiently distinguish financial and commercial origin.(Jened, 2017) In addition, TRIPs and domestic laws provide that such elements must not be used in a way contrary to public order or bad faith at the registration stage.(Jened, 2013) Basic components of a trademark Even further the basic elements of a trademark are listed below:

In the case of ARC'TERYX (Canada),(AmerSports. (n.d.). ARC'TERYX., n.d.) although the party from China has tried to lock an administrative first-to-file position in 2019, it can still be disputed under Law No. 20/2016 with regards to bad faith filing or contradicts with the refusal elements as mentioned Articles 20 and Article 21. Although first to file and territoriality typically demand local registration of a trade mark as a requisite for protection, some exceptions (that is the "well-known marks" under Article 6 bis in Paris convention and safeguarding public against "likelihood of confusion" concerning the origin of goods) such as (TRIPs Agreement, n.d.), verification that may lend support to invalidate the legal status of those registrations. Accordingly, although a registered owner is granted a ten-year sole right to use or authorize the use of trademark, this proprietary interest is neither absolute nor unconditional and may be curtailed if it constitutes an infringement on fair competition or public policy.(Jened, 2013) As is illustrated by the case of ARC'TERYX: a Canadian company established in 1988 and registered with the Canadian Intellectual Property Office (CIPO) that found its name already taken up by a Chinese party in Indonesia before being able to file its own application.(Government of Canada, n.d.) Class 18 and 25 rights in the ARC'TERYX (Canada) mark which is synonymous with premium outdoor as well as "gorpcore" streetwear is reportedly among leading marks worldwide.(Ross, 2025) In spite of its international reputation, the previous Shenzhen ARCTERYX registered (in China) which in turn opened its retail stores in Bali providing indigenous replicas of the Canadian company which has given a legal challenge to the real owner.(RRI, 2025) This situation illustrates a normative tension between the territorial registration system and the protection of well-known marks in Indonesia only because of Indonesia's blind law and policy implementing first-to-file administrative system.

To counter the alleged infringement, Amer Sport Canada Inc., owner of ARC'TERYX (Canada), filed a lawsuit at Central Jakarta Commercial Court for annulment of the Chinese entity's mark registration. This research is conducted to examine the types of trademarks protection in Indonesia and the extent or particular legal measures/ rights to recovery that may be performed by foreign trademark owners who have not already registered their marks in Indonesia. Using the case of ARC'TERYX, this article examines how Indonesian law mediates between administrative certain.

2. RESEARCH METHODS

Normative legal research is conducted, and the text pays attention to the theory in discussing rules, principles and doctrines. The problem-solving approach is based on a quali-tative-normative analysis with three different methodological variants.(Marzuki, 2013) Statue Approach, The statue approach is carried out by analyzing the various statutes and laws in regard to the legal matters at hand. Among other things to note is the systematic analysis of the Constitution of The Republic of Indonesia in 1945, Law No. 20/2016 on Trademarks and Geographical Indications, and Law No. 7/1994 ratification agreement WTO. It also adopts the international legal instruments on trademarks as well, including TRIPs Agreement, Paris Convention and Madrid Protocol to illustrate protect foreign unregistered marks.(Marzuki, 2013) Conceptual Approach, The conceptual approach The concept grows out of the thoughts or system established in jurisprudence. The technique is employed to ascertain legal principles reported upon by experts alongside this supports a theoretical basis of the study.(Marzuki, 2013) The analysis of secondary legal sources such as, 'legal treatises, law reviews and commentaries' clarifies the substantive requirements related to trademarks, which evidently include such terms as "distinctive character" or "good faith' in registration. Such sources make for a much-needed supplement and interpretation of the bases, without which one cannot hope to gain an understanding of trademark sovereignty. Case Study Approach, the approach of case study (*studi kasus*) is applied to examine the relevant background facts of claims at stake in the case ARC'TERYX. While it not always depend on the final court decision (inkracht), the analysis is through studying the facts of this case by applying positive legal norms and judicial consideration in similar cases.(Marzuki, 2013) The legal texts are inventoried and categorized in a systematic library- and digital desk-research to arrive at a prescriptive conclusion, delivering clear-cut legal advice with respect to restoring the rights of foreign trademark proprietors under the laws in force in Indonesia.

3. RESULTS AND DISCUSSION

3.1. Legal Protection of Unregistered Foreign Trademarks in Indonesia

Under the TRIPs Agreement, particularly Article 15, a trademark is defined as any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of others, thereby affirming the essential function of trademarks as distinctive signs in trade. This international standard has been incorporated into Indonesian trademark law through Law No. 20 of 2016 on Trademarks and Geographical Indications. Article 1 paragraph (1) of the Law defines a trademark as a sign capable of graphical representation, including images, logos, names, words, letters, numerals, color compositions, two-dimensional and/or three-dimensional forms, sounds, holograms, or a combination of two or more of such elements, provided that the sign possesses distinctiveness and is used in the course of trade. Accordingly, the concept of trademarks under Indonesian law reflects both conventional and non-conventional marks, aligning national regulation with the minimum standards established under the TRIPs Agreement.

The system of trademark protection in Indonesia is fundamentally based on the territorial principle and the first-to-file doctrine. Under this framework, exclusive rights over a trademark arise only upon registration and are limited to the jurisdiction in which the registration is granted. Trademark rights are conferred upon the first applicant acting in good faith, emphasizing the importance of formal registration as the primary means of acquiring legal protection. Upon registration, the trademark owner obtains exclusive rights of an economic nature, including the right to use the trademark, to authorize its use through licensing agreements, and to transfer ownership of the trademark. These exclusive rights serve to protect the commercial value, reputation, and goodwill associated with the trademark, while simultaneously providing legal certainty in the marketplace.

Nevertheless, trademark protection under Indonesian law is not absolute and is subject to substantive limitations aimed at maintaining fair competition and safeguarding public interests. Marks that are generic, deceptive, or contrary to morality, religion, or public order are excluded from protection and may not be registered. Furthermore, trademark infringement occurs when a third party, without authorization, uses an identical or substantially similar sign for identical or similar goods and/or services, where such use is likely to result in a likelihood of confusion among consumers. To address such violations, Indonesian trademark law provides various legal remedies, including civil actions for damages and injunctive relief, criminal sanctions for certain forms of infringement, and alternative dispute resolution mechanisms. This enforcement framework demonstrates Indonesia's commitment to ensuring effective protection of trademark rights in accordance with both national legislation and international intellectual property norms.

While the normative framework of trademark protection in Indonesia is clearly established through statutory provisions and international obligations under the TRIPs Agreement, the practical effectiveness of such protection becomes contentious when applied to foreign trademarks that remain unregistered within the Indonesian jurisdiction. The strict application of the territorial principle and the first-to-file doctrine, although aimed at ensuring legal certainty, may inadvertently disadvantage legitimate foreign trademark owners whose marks have acquired reputation and goodwill through prior use in international markets. This normative tension raises critical legal questions concerning access to remedies, legal standing, and the role of good faith within trademark registration and enforcement.

In this context, the discussion necessarily shifts from the general framework of trademark protection to the specific legal mechanisms available for resolving disputes involving unregistered foreign trademarks. The following chapter therefore examines the legal remedies that may be pursued by foreign trademark owners who have not secured registration in Indonesia, with particular emphasis on cancellation actions based on bad faith registration and the protection afforded to well-known trademarks. Through an analysis of doctrinal principles and case-based reasoning, this chapter seeks to assess the extent to which Indonesian trademark law provides effective legal recourse for unregistered foreign trademark owners.

3.2. Legal Remedies For Unregistered ARC'TERYX (Canada) TOWARD ARCTERYX (China)

ARC'TERYX is an internationally recognized outdoor company owned by Amer Sports Canada Inc. Born from the lineage of Rock Solid Manufacturing – a custom safety harness business established in 1989, and Pivotal Equipment- makers of climbing gear that happened to make their own down products. The mark name and logo (which transpired from the Archaeopteryx fossil as a symbol of innovation) became an official trademark in 1991, and is now internationally registered outside Canada including with

CIPO at registration no TMA921807.(AmerSports. (n.d.). ARC'TERYX., n.d.) Focusing in high performance apparel and climbing gear, covered under NICE Classification Classes 18 and 25, ARC'TERYX has developed a significant worldwide reputation for quality of product and technical innovation. Nonetheless, this positive perception was violated in Indonesia when a Chinese company secured the "ARCTERYX" mark (IDM000731218), prompting unauthorized distributors to spring up in Bali and Jakarta by 2025 selling pirated goods. This is a classic case of trademark infringement in which a third party utilized the "goodwill" of a known foreign mark to mislead consumers, and called for stringent legal enforcement before Indonesian courts despite the fact that the original owner did not have local registration at the time of ceaseless use.(Investing.com, n.d.)

According to Indonesian legislation, Amer Sports Canada Inc. has the legal right for an appeal to these registrations pursuant of principle point d'intérêt, point d'action which provides a concept of point d'intérêt and entitles any party with direct interest as well as concrete in real law.(Jened, 2017; Purwendah, 2013) Such status is explicitly set out in Article 76 of Law No. 20/2016 on Trademarks and Geographical Indication, whereas the owner of an unregistered mark can institute a case for cancellation against a registered mark further to claim their own right by applying initially with the Ministry. An "interested party" is defined as having rights that are based on a legitimate personal interest, including but not limited to, an intellectual property right.(Jened, 2017)

To regain its rights, ARC'TERYX (Canada) has recourse to Article 77 of Law No. 20 of 2016 that provides for the possibility to file a cancellation action before at the Commercial Court. As in other types of action, such actions are normally subject to a five-year time limitation period starting from the date of registration; however, that deadline does not apply when there is bad faith behind the registration or if it contravenes state ideological beliefs, public morals and order. In addition, kasasi (appeal to the Supreme Court), under Article 78 is available in relation to cancellation claims. The original owner seeks to reclaim its exclusive rights and safeguard Indonesian consumers from the spread of fake products that give the international trademark system "a bad name".(Jened, 2017)

In Indonesia, a second and final chance for cancellation is provided by the provision on claim reduction lawsuits as stated in Article 76-79 of Law No. 20/2016 stipulates:

Article 76 of Law No. 20/2016:

1) Any interested party has standing to claim a Trademark registration invalid based on the grounds set forth in Articles 20 and/or 21.

2) The possessor of an unregistered Mark may institute the lawsuit mentioned in clause (1) after submitting an Application to the Minister.

3) The Cancellation Action will be brought before the Commercial Court against the registered Trademark owner.

Article 77 of Law No. 20/2016:

1) A lawsuit to invalidate a Trademark registration can be brought within 5 (five) years from the date of registration of the results has passed.

2) The lawsuit on invalidation may be filed may be filed without any statute of limitation when there is an element of bad faith and/or the Mark is in contradiction to the state ideology, laws and regulations, morality, religion, decency or public order.

Article 78 of Law No 20/2016:

1) A cassation (kasasi) against the decision of the Commercial Court on a cancellation lawsuit as referred to in Article 76 paragraph (3) can be filed by parties in dispute.

2) The decision shall be communicated by the Registry without delay to the parties in dispute.

Article 79 of Law No. 20/2016 shall be applied mutatis mutandis for the provision relating to the filing of cancellation lawsuit stipulated under Article 76 in relation with registered Collective Marks

The owner of ARC'TERYX (Canada) is an "interested party" within the meaning of the legal doctrine. The term is not defined in any one statute and 'interested person' must be dealt with having recourse to the context, nature of rights and other circumstances.According to Black's Law Dictionary Interested Party means:-

"Concerned people, for the purposes of a hearing before an administrative agency, mean those having more than a remote interest or mere general concern in the subject matter involved with it having been held that they must have some legally recognized private right as distinguished from one which is merely of common or public interest or even only such as may be claimed by anyone."

And also, the word Interest will be as follows:

"The most comprehensive term which can be used to denote a right, demand, title, or legal share. When applied to real estate, or things real, it is often synonymous with 'estate,' 'right and title. More specifically, it means a right to profit by something; any such interest as may be transferred, not being an absolute property in the thing itself, but a right collateral to the ownership."

3.3. Legal Analysis of Trademark Similarity, Bad Faith, and Well-Known Mark Protection

The theory of trademark infringement encompasses several categories, including "double identity," where identical marks are used for identical products; "likelihood of confusion," arising from substantial similarities; "dilution," which harms the reputation of well-known marks; and unauthorized use with more than local significance. In legal practice, "total similarity" or "entirely similar" refers to an exhaustive reproduction of all elements forming a trademark. According to Harahap, such total similarity indicates that the infringing mark is essentially a copy or reproduction of the original, which in a criminal context is classified as counterfeiting—the circulation of counterfeit goods designed to mirror protected marks and identical product classes.(Jened, 2017)

The scale is taken as copying, if that it presents characteristics of the object, such as: identity in its elements (ex. product classes, segments and user type), among other aspects(metric). Apart from the requirements for identicality, a basic element of refusing trademark registration under Article 21 of Law No. 20/2016 is substantial similarity (similarity in principle). This similarity is mainly attributable to four sources: phonolexical, semantolexical, morphological and graphic character resemblance. With reference to ARC'TERYX specifically, the "ark-ti-rex"-like pronunciation of that Canadian name and its similarity phonetically to the Chinese registration is apparent. The fact that the apostrophe (’) doesn’t exist in the Chinese, doesn’t change the oral sound), and it’s easy for consumers to remember.

The trouble with the phonetic similarity grows when further identical product categories have been applied (here, in particular, the identical NICE Classes 18 and 25). A consumer in Bali or Jakarta would have a good reason to believe that the "ARCTERYX" products which they are buying in that country are the products that are directly associated with, licensed by, or distributed by Amer Sports Canada Inc. This causes the fooled public to mistake one for the true origin of the goods. Thus, the existence both of phonetic similarity and of the same class of goods is, "per se," as the ideal basis for invoking in order to strike an analogy of principle, which enjoys a class of legal protection, so the identity of the principle is the strongest foundation for a cancellation action under the current trademark rules.

The processor by which the cancellation must be pleads is found in Article 76 of Law No. 20 of 2016, which, in a first stage, must be located in the holder of the mark in international registration, in this case Amer Sports Canada Inc. Owing to the fact that the Canadian owner has not been registered in Indonesia, it has to file its own mark application simultaneously along with filing the cancellation lawsuit against the Chinese registration (IDM000731218) separately at the Central Jakarta Commercial Court. It is also important to show that the owner has the intent to possess and protect its mark within the territory of Indonesia (Law No. 20 of 2016) to meet the requirements of legal standing.

The core of the cancellation law suit rests on the proof of "bad faith" which should be based on Article 21 paragraph (3) of law no. 20 of 2016. Once filed, a mark can be challenged by a third party with evidence that that the mark was filed in bad faith, meaning that the applicant intended to copy, plagiarize or follow another party's mark for the purpose of unfair competition or to mislead or misdirect consumers. Should the Ministry deny the Canadian owner's application on the basis of the existing Chinese registration, that refusal letter is powerful evidence of the original mark's inherent distinctiveness, and the Chinese party's bad faith order of it. These registrations are usually accompanied by and sets of "first originality," which are themselves consistent with the character of intentional deception and bad faith when found to be false (Jened, 2017; 2024).

By demonstrating bad faith, the original owner can get around the usual five-year limitation for cancellation lawsuits. Those marks registered with bad faith and at the same time extends upon the marks which runs counter to the ideology of the state and public order does not get any legal protection and third party can challenge such mark at any time, this as per article 77 of Law No.20 of 2016. The signs of bad faith are obvious in ARC’TERYX same classes of products, nearly identical logos, similar outlet look, and free-riding on a world wide reputation without any licensing or collaboration agreement. Such behavior is referred to as "free-riding" and indicates that the Chinese registration represented not a bona fide effort at creation, but merely an effort to cash in on prior international goodwill.

Additionally, the recognition of ARC’TERYX as a "well-known" is based on Article 6 bis of the Paris Convention which obliges all member states to refuse and/or cancel registrations that constitute reproductions, imitations or translations that are likely to cause confusion. This is in line with the law n0 20 of 2016 that stipulates the criteria for the well-known mark focuses on the knowledge of the society, the intensity of promotion and also the registration in several countries. Where administrative evidence is lacking, the Commercial Court may even direct expert surveys to corroborate the reputation of the mark within the appropriate consumer base. This is why this framework protects even the well-known marks even though they are not registered from the harm caused by imitation and dilution.(Jened, 2017)

Unlike ordinary infringement, which requires a showing of confusion in the minds of consumers as to the source of the goods (and similarity of marks and goods), trademark dilution is concerned with mere "blurring" or "tarnishment" of the fame of the mark. A well-known mark can still be abused, however, which is where dilution comes in—overuse to the point where the mark's ability to identify its source is impaired when put to other uses. Dilution is frequently employed in developing countries to protect the criminalization of world-renowned reputations. To prove dilution, it has to be proven that the mark is well-known, that there is a relevant similarity despite potentially different goods and that the unauthorized use will cause actual dilution of the distinctive quality of the mark without justification.(Jened, 2017)

In conclusion, what the ARC'TERYX case shows us is that trademark registration should be used to guard innovation and not to cut from the mark's goodwill. On the legal front, Amer Sports Canada Inc. was able to "jump the queue" with proactive simultaneous filing, and also pursued a strong cancellation claim based on bad faith and on the basis that the mark is well-known (Articles 21 and 76 of Law No. 20 of 2016). If the rightful owner can establish that the Chinese registration was a free-riding effort meant to take advantage of years' worth (over three decades) of Canadian innovation, exclusive rights can be restored in addition to a correction in the trade deception before Indonesian, circa 2017.(Jened, 2017)

4. CONCLUSION

To sum up, the ARC'TERYX (Canada) case exemplifies a dual dispute between the first-to-file and bad-faith protection of foreign marks. Given the substantial similarity in principle, especially in terms of identical phonetic delivery and identical classes of products, which gives rise to a high likelihood of confusion in the Indonesian marketplace, Defendants are clearly injunctive to cease manufacturing high tenor and other music production software. Amer Sports Canada Inc. (the parent) does not have any domestic registration as Canadain, however, pursuant to the principle of point d'intérêt, point d'action it has a standing right to commence the cancellation action directly with the Commercial Court Support for this legal position can be found in Article 76 of Law No. 20/2016, which states that the original owner can claim rights back to a trademark, on the condition that a new trademark application must be filed simultaneously. In addition, the evidence of "free-riding" as well as the Chinese registrant's bad faith are further ceremonials to.

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