LEGAL PROTECTION FOR BRAND RIGHT OWNER FAMOUS FOR HIS BRAND IMMEDIATE
(Analysis of Supreme Court Decision Number 7 K/pdt.sus-HKI/2016 between Sheraton International and PT. Graha Tunas Mekar)

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Abstract
Brand equality can cause harm to brand owners. Therefore, the legal protection of trademarks is very important. In this study, the authors will analyze the Supreme Court Decision No. 7K/pdt.sus-HKI/2016 whose purpose is that the consequences of the law of imitation of famous brands can be known and know the legal protection for owners of well-known brands if their brands are imitated. This research is descriptive and classified as normative legal research and uses existing data. Based on research, the famous brand ST. REGIS belonging to the plaintiff entered the list of registrants in Indonesia first, therefore the defendant's mark REGIS@the Peak at Sudirman has been registered with unfavorable conditions. The defendant's mark is essentially the same as the plaintiff's mark for similar and dissimilar services, as a result, the defendant's mark must be removed from the general register of marks. According to the law, Sheraton Internasional as the owner of the famous ST.REGIS brand won against REGIS@the Peak at Sudirman.

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I. INTRODUCTION

Creators/inventors have exclusive (special) rights from the results of their creativity or the results of thought processes that are unique and new which are known among the public as Intellectual Property Rights (HAKI) or Intellectual Property (Hariyani, 2010). IPR is contained in industrial property rights and copyrights.

Each creator has patent authority after his creation is realized in a tangible form which is usually called a copyright (Riswandi, 2017). Industrial property rights in IPR are: (1) The government has exclusive rights to every individual, (2) Trade Marks and Geographical Indications, (3) Industrial Designs, (4) Circuit Layout Strategies Integrated (DTLST), (5) Trade Secrets (TradeSecret), (6) Plant Variety Protection (PVT) (Hariyani, 2010).

Trademarks according to Law no. 15 of 2001 is a sign that is combined with various elements such as pictures / names / words and so on which are composed of various designs so that they can be distinguished when trading goods or services are carried out (Mark Law No. 15, 2001).
In supporting national development in the field of business and economy, Intellectual Property Rights cannot be avoided to enter into our legal system because trade and industry need these rights (Saidin, 1997).

In the brand there is a difference in the division, namely branded trade can be in the form of goods that use the mark in every trade by a legal entity or other person. Meanwhile, for every service that is used by a person simultaneously or a certain legal entity uses each of its trade marks, it is known as a service mark. Likewise with collective brands where every goods and services traded by the owner of the product/service has the same characteristics so that goods or services of the exact same type can be distinguished by the owner of the goods or services (Hariyani, 2010).

In creating a brand, the thing that needs to be done is to register the mark in advance so that it can be legally protected as described in Law no. 15 of 2001 article 28, the protection of a mark will take effect within a period of 10 (ten) years starting from the date of receipt or the extension of the period of protection (Mark Law No. 15, 2001).

Not all trademarks can be registered and taken for granted. According to Law no. 15 of 2001 Article 5 regarding marks states that if the label is recorded in a form that is contrary to established legal regulations such as the absence of distinguishing power and so on, or it can be owned in general or the goods and services are related to those requested by the registrant (Isnaini, 2001). (2010).

One form of case that has occurred in a trademark dispute is the Hotel Sheraton International IP, LLC., Starwood Hotels & Resorts World Wide, INC brand as the plaintiff with PT Graha Tunas Mekar as the defendant. The hotel brand belonging to the plaintiff is "ST.REGIS" with the defendant's hotel brand, namely "REGIS@The Peak at Sudirman" there are similarities, namely that both brands have the dominant element, namely REGIS. However, previously this case was won by PT Graha Tunas Mekar in a Commercial Court Decision at the Central Jakarta District Court Number 29/Pdt.Sus-Merek/2015/PN Niaga Jkt Pst on 6 October 2015, so Sheraton filed an appeal.

The dispute regarding this brand is very interesting to study in order to find out how the rights of the owner to the mark can be legally protected, thus the author is interested in studying the case of a trademark dispute entitled "LEGAL PROTECTION FOR FAMOUS BRAND RIGHTS OWNER AGAINST IMMEDIATE OF HIS MARK (Analysis of Supreme Court Decision Number 7K/pdt.sus-HKI/2016 between Sheraton International and PT. Graha Tunas Mekar)"

Based on the description of the background above, the problem in this research is how the juridical analysis of the imitation of well-known marks in the Supreme Court decision Number 7K/pdt.sus-HKI/2016, the legal consequences of imitation of famous trademarks in the Supreme Court decision Number 7K/pdt.sus -HKI/2016, and legal protection for owners of well-known trademark rights based on the Supreme Court decision Number 7K/pdt.sus-HKI/2016.
II. RESEARCH METHOD

The research has a normative juridical type. This research is descriptive, so interpretation or analysis is needed (Waluya, 2007). Sources of legal materials in the form of secondary data. Legal materials can be in the form of regulations relating to trademarks and geographical indications of Law No. 15 of 2001 and Supreme Court Decision No. 7K/pdt.sus-HKI/2016, as well as using several books, dictionaries and the internet. Secondary data collection techniques such as using books and analyzing previous decisions. Data analysis was carried out qualitatively.

III. RESULTS AND DISCUSSION

3.1. Juridical Analysis of Mark Imitation in the Supreme Court Decision Number 7K/PDT.SUS-HKI/2016

Civil matters handled by the Supreme Court, in particular the issue of IPR (Marks) have been decided at the cassation level that the case between Sheraton International, LLC., represented by the Vice President and Assistant Secretary Marshall Donat, the power of attorney was given to Nanang Setiawan, SH, and his staff, the Advocates, based on the Special Power of Attorney dated 15 May 2015; Sheraton International IP, LLC., represented by the Vice President and Assistant Secretary Marshall Donat, the power of attorney in this matter was given to Nanang Setiawan, SH, and his friends, advocates, and based on the Special Power of Attorney for Substitution transferred their powers to Felix Marcel Tambunan, SH, M.ComLaw., Advocate, based on a Special Power of Attorney dated 8 July 2015; and Starwood Hotels & Resorts Worldwide, INC., hereinafter referred to as the plaintiffs.

Against PT Graha Tunas Mekar, which was represented by President Director Trihatma Kusuma Haliman and by Director Harry Gunawan Ho, the power of attorney was given to Utama Wijaya, SH, and Paulus Hersutanta, SH, according to a certain Power of Attorney dated November 23, 2015; then it is said that the infringing party is represented by the Director of Brand Bambang Iriana Djajaatmadja, SH, LL.M., then the power is given to Adi Supanto, SH, MH and friends, civil servants at the Directorate of Trademarks, the Directorate General of Intellectual Property Rights, the Ministry of Law and Human Rights of the Republic of Indonesia, based on the Special Power of Attorney dated June 15, 2015; known as the defendant.

In the Commercial Court, a lawsuit is filed against the defendant. In its decision, the Supreme Court granted all of the plaintiffs’ claims and the verdict was annulled at the Central Jakarta District Court. Law No. 15 of 2001 concerning Marks is used as the spearhead in the settlement of trademark disputes.

The power to use the ST.REGIS label will be the authority of the first registrant as plaintiff I. The ST.REGIS brand is a well-known brand that has been around for a long time. The similarity of brands owned by the plaintiff with the defendant, has similarities in visuals, pronunciation, and
similarities in types of services. As stated in Article 5 of the Trademark Law No. 15 of 2001, the symbol will not be registered if the mark examines the following elements: (1) Always opposes religious morality, current laws and regulations, and so on, (2) There is no difference, (3) Globally owned, (4) Goods/services registered by the applicant are interconnected (Mark Law No. 15, 2001).

The defendant's mark has been filed in bad faith because the defendant should have stopped using the REGIS@ The Peak at Sudirman mark. There is a distinguishing factor of a trademark that cannot be registered with a rejected label. An unregistered mark is a brand that has an inadequacy of the brand, while a rejected brand is a brand status that can cause harm to other parties (Miru, 2005).

The reason for the cancellation of the trademark registration lawsuit by the defendant is that the plaintiff’s ST.REGIS mark is a well-known mark. Plaintiff I owns the ST.REGIS brand which was previously registered in Indonesia for similar services. Meanwhile, the defendant's mark REGIS@ The Peak at Sudirman which has been registered has bad intentions. The plaintiff received a court decision and official recognition of the protection of the word REGIS in ST.REGIS from Singapore and ST.REGIS is a well-known mark that has complied with the Law on Marks article 6 paragraph 1 letter (b) regarding the requirements for superior labels.

Because of these various things, the plaintiffs submitted an application to the Commercial Court at the Central Jakarta District Court in order to justify all the claims filed by the plaintiff, but the defendant felt that the decision was detrimental to him, so the defendant filed an exception where the plaintiffs were not entitled to file a lawsuit, because the plaintiffs' lawsuits have expired, the lawsuits are vague, and the lawsuits are premature. According to HIR, after the trial in court was opened by the presiding judge of the trial, legal resistance or verweer could immediately be carried out by the defendant or his legal advisor in the form of an expedition (Anarchy, 2016). The content of the plaintiff's lawsuit contains a formal violation, thus the Commercial Court at the Central Jakarta District Court must reject the claim filed by the plaintiff.

The cassation request together with the objections must be submitted in accordance with the time procedure specified in the law so that the cassation request can be formally accepted. The request for filing a cassation can be made within 14 days after the court's decision notifies the defendant regarding the notification of his cassation. Each mandatory cassation memorandum submitted by the applicant, which includes various kinds of information explaining the reasons for the applicant and within 14 days after the application is completed, immediately submits it to the clerk of the court of first instance who has decided the case (Ignatius, 2014).

After carefully examining the submission of a cassation objection by the Cassation Applicant contained in the memorandum of cassation that Judex Facti in fulfilling every requirement that has been required by the laws and regulations has experienced negligence so that the decision is immediately annulled by the party concerned. Judex Facti ignores and draws different conclusions and decides negligently and without sufficient legal consideration. As a result of this negligence, the
plaintiffs always adhered to the arguments and opinions as expressed in their lawsuits, replicas, and conclusions when examined at the first level at the Commercial Court. Based on his considerations, Commercial Court No.29/Pdt.Sus-Merek/2015/PN Niaga Jkt.Pst dated October 6, 2015. Therefore, any sanctions will be imposed on the defendant with the condition that he must pay court fees at all levels of the judiciary.

3.2. Legal Consequences of Imitation of Famous Marks in Supreme Court Decision Number 7K/pdt.sus-HKI/2016

In a subsequent decision, the Supreme Court Judge will automatically judge: (1) Approving every claim filed by the plaintiff, (2) Plaintiff I is always declared the owner, the first registrant and the ST mark. REGIS and other variations in Indonesia are the rights of the plaintiff, (3) The plaintiffs are declared to have ownership rights to the ST mark. REGIS as a well-known brand, (4) Stating that the brand REGIS@ the Peak at Sudirman List Number IDM000249855 owned by the defendant has the main similarities in terms of the same type of service as the superior brand ST. REGIS belongs to the plaintiff, (5) Describes that the label REGIS@ the Peak at Sudirman List Number IDM000249855 owned by the defendant has a special similarity with the famous brand ST. REGIS is like a different/different type of service that is owned by the plaintiff, (6) The defendant has bad faith when submitting a request for registration of the REGIS brand @the Peak at Sudirman List Number IDM000249855 can be stated that any similarities they have by the famous brand ST. REGIS in his office will also be sued for being detected as imitating or imitating the well-known brand ST. REGIS owned by the plaintiff, (7) registration number IDM000249855 owned by the defendant will be canceled from the public register, (8) To carry out the cancellation of registration of the REGIS@ the peak at Sudirman mark, the defendant is ordered to remove the registered mark from the global label register. as well as providing an official announcement regarding the mark in line with the provisions stipulated in the trademark law, (9) Punishing each defendant by paying the case at all levels of justice in the amount of Rp. 5,000,000.00 (five million rupiah).

In the deliberations of the Supreme Court Panel of Judges it was decided that every statutory regulation that is in line with this case needs to be considered (MA Decision No. 7/pdt.sus-HKI/2016, 2016). According to Ahmad M Ramli and Muhamad Amirulloh, if each brand has a basic similarity, then the main similarities have been realized (identical), or the brand used by others is slightly similar (nearly resembles) their own brand. Therefore, the most basic things in reviewing each of these similarities are: (1) There is a similarity in terms of images (logos), (2) Has a slight resemblance to the arrangement of words, sounds, or colors, (3) The item factor is not always the same. enforced absolutely the same kind, and make a certain class as a benchmark, but this factor can develop based on the relationship of goods that are always related,
Thus, in the doctrine of identical or nearly resembles, the basic thing to observe is the goal or desire to complement the glory and excellence of other entrepreneurs' brands. When the label used is the same as someone else's then this can be said as a bad act (bad faith) because the profits that have been taken are carried out in an unhealthy manner. For example, there is jurisprudence of the GUCCI and HITACHI types of brands (Ramli & Amirulloh, 2002).

Various kinds of cases of trademark infringement in general very much occur because the similarities they have are at the main point or as a whole. Every violation that occurs can be carried out by the general inspection apparatus and sometimes it does not mean that the violators always make these mistakes. A trademark registration should be rejected, but the trademark inspection officers are still registered, because that can harm the real trademark owner (Khairandi, 1994).

Therefore, according to the decision in the deliberation meeting of the Panel of Judges of the Supreme Court, the imitation of the mark will result in legal consequences of canceling the registration of the REGIS@ the Peak at Sudirman mark as decided by the Supreme Court Number 7K/pdt.sus-HKI/2016, the registration of the mark is abolished. from the general list of brands.

3.3. Legal Protection for Owners of Famous Mark Rights based on Supreme Court Decision Number 7K/pdt.sus-HKI/2016

A well-known brand in the Supreme Court decision Number 7K/pdt.sus-HKI/2016 that there is a similarity of the core name of the brand, where the brand ST. REGIS with REGIS@ The Peak at Sudirman. The owner of a well-known mark will get legal protection if it has been registered, but experts still do not agree on the meaning of the well-known mark, a brand is said to be well-known or not, it is known from how many people at large recognize it. In essence, if the brand is widely recognized by the public, it can be decided that the brand is already well known.

As we have read in the decision, there are similarities in the subject of certain brands, then later proves the impression or similarity in terms of form or a combination of several elements contained therein.

Article 6 (1) letter (a) of the Trademark Law; "The point of the existence of similarity is basically that the brand of the product is exactly the same as the product whose brand is prominently the same in terms of its elements, so that this seems to be the same in terms of shape or similarity of speech sounds, and others in each brand are also exactly the same".

With the proof that Judex Facti in considering the results of the examination of the defendant due to an error in applying the provisions on the basic similarities, it clearly violates the principle of the judge's freedom to decide a case on the decision that has been decided, in other words the plaintiffs who were originally the petitioners cassation requesting the panel of judges at the cassation level to state their right to be given the authority to cancel each Judex Facti decision and conduct an independent examination of the a quo case that rejected the applicants when filing their lawsuit.
Regarding the Judex Facti, legal considerations did not provide a reason for the lawsuit regarding the ST brand's fame. REGIS and its protection against similar and dissimilar services, in accordance with what is written in Article 6 (1) letter (b) of the Trademark Law. Where the previous decision gave a decision, Judex Facti first provided a description of the legal considerations on pages 75 to 76, including:

"Considering that the main petitum of the Plaintiffs is rejected, as a juridical consequence, other petitums which are accessories or complementary to the main petitums must automatically be rejected regarding other petitions";

Judex Facti clearly in its decision it only considers the similarities in principle, without giving consideration to the principle of the lawsuit contained in the original petition for Cassation by the Plaintiffs. Whereas in its consideration, Judex Facti expressly rejects the arguments of the original Cassation Petitioners of the Plaintiffs, including the arguments of the Plaintiff's original Cassation claim regarding the fame of the ST mark. REGIS and its protection against similar and dissimilar services, are in line with the provisions of the trademark law. So it can be proven that Judex Facti is famous for the ST label. REGIS cannot be considered legally and its protection against similar and dissimilar services.

A protection in law will only be obtained by certain people such as those who always show good behavior in terms of the family environment and the environment around that person. Article 4 of the trademark law states that "the good faith of each applicant cannot be used as a guarantee in registering the label proposed by the applicant". Along with the article stated where the registration made by the defendant cannot be registered. Furthermore, the trademark that has been registered by the defendant must be canceled due to the incompatibility of the trademark registrar in good faith as stipulated in the trademark registration.

IV. CONCLUSION

PT. Graha Tunas Mekar as the owner of the REGIS@ the Peak at Sudirman brand lost against Sheraton Internasional. PT. Graha Tunas and proven to have imitated the brand as written in Article 5 of Law no. 15 of 2001 concerning Brands.

The legal consequence of impersonation of the mark in the Supreme Court decision Number 7K/pdt.sus-HKI/2016 is the cancellation of registration of the REGIS@ the Peak at Sudirman mark by deleting the recorded mark from the General Register of Marks.

Everyone who has good intentions will always be given legal protection such as good behavior implied in Article 4 of the Trademark Law.
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