

Legal Analysis Of The Resolution of The Trademark Plagiarisme Dispute Between MS Glow And PS Glow

Sulasno¹, Cindi Nur Febriani², Nada Salsabila Kusuma³, Hasuri⁴, Rethorika Berthanila⁵

¹Sulasno, Law Study Program, Serang Raya University

²Cindi Nur Febriani, Law Study Program, Serang Raya University

³Nada Salsabila Kusuma, Law Study Program, Serang Raya University

⁴Hasuri, Prodi Ilmu Hukum Universitas Serang Raya

⁵Rethorika Berthanila, Public Administration Study Program, Serang Raya
University

Email: sulasno1971@gmail.com, nurfebrianicindi@gmail.com, nadasalsabilak@gmail.com,
majalah.assaadah@gmail.com, rethorikaberthanila@gmail.com

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Abstract

A brand is an identification mark that is used to specifically differentiate between one product and another product. Trademarks are in the form of images, logos, names, words, letters, numbers, color schemes, two and/or three dimensions, sounds, holograms, or a combination of both. The factors above are to differentiate goods and/or services produced by individuals or legal entities in the context of trading goods and/or services. As technology and information develop, there are many disputes regarding brands. Like the MS Glow and PS Glow brand trophies which are widely discussed due to brand plagiarism trophies. The aim of this research is to find out how the Ms Glow and Ps Glow Trademark Dispute is resolved and legal protection efforts for the MS Glow and PS Glow trademarks. This research uses qualitative research methods and a normative type of research with a literature approach. Data search was carried out by reviewing and tracing related laws and regulations, books, literature, articles and documents regarding the study of trade secret issues. The results of this research were that settlements were carried out in two Commercial Courts. The lawsuit at the Medan Niaga District Court was won by Ms Glow, while the lawsuit at the Surabaya Niaga District Court was won by Ms Glow. The decision at the Surabaya Niaga District Court found that the Ms Glow brand used did not comply with the registered brand class.

Keywords: Trademark, Dispute, Ms Glow and Ps glow

A. INTRODUCTION

Intellectual property closely related to trademarks examines legal, economic, and political perspectives. The diversity of trademarks in Indonesia is balanced by a society that is increasingly savvy in choosing product brands and searching for information about desired products. Therefore, entrepreneurs or brand owners strive to attract the attention of the public as users of goods (consumers). A brand is a distinctive feature or marker of goods produced by a business entity that manufactures a product. Increasingly fierce competition in the world of goods and services makes brands very important for the recognition and identification of a product and for distinguishing it from other products (Rahmi, 2017).

Law Number 20 of 2016 concerning Trademarks and Geographical Indications, after the law came into effect, the government immediately revised everything related to trademarks, including the system and several requirements for filing a trademark application and the procedures involved. This provides services to traders so that they have adequate legal protection for the ideas and thoughts of entrepreneurs in the form of trademarks.

A trademark is an identifying mark used to distinguish one product from another in a specific way. With the development of technology and information, disputes related to trademarks have become more common. One example of a trademark plagiarism dispute is between MS Glow and PS Glow. The two brands were involved in a dispute because of the similarities between them (Purwaka, 2017).

The right to obtain protection for a trademark that has commercial value in accordance with existing regulations in legislation is referred to as Intellectual Property Rights (IPR). Law Number 20 of 2016 concerning Trademarks and Geographical Indications states in Article 35 paragraph 1 that "Registered trademarks shall receive legal protection for a period of 10 years from the date of registration", which can be extended up to six months before the end of the protection period.

MS Glow filed a lawsuit against PS Glow because similarities were found between the two. The court in Medan ruled that MS Glow had exclusive rights to the brand because it was registered first. However, in a counterclaim in Surabaya, the court ruled that PS Glow had exclusive rights because MS Glow was deemed to be similar to the PS Glow brand. There is a difference in the verdicts between the courts in the two cities. The issue to be examined is the trademark regulations regarding similarities in essence and the considerations of the judges in each verdict, which led to the difference in decisions between the two courts. This study uses a normative legal research method with a legislative and case study approach. A legal analysis of trademarks that are essentially similar for similar classes of goods (a study of the MS Glow vs. PS Glow trademark dispute) will help to understand how trademark regulations and the judges' considerations in their decisions influence the outcome of disputes (Purwaka, 2019).

The dispute over alleged plagiarism of two beauty products, namely PT Kosmetika Global Indonesia (PKGI) and PT Kosmetika Cantik Indonesia (PKCI) owned by Shandy, which produced the MS GLOW brand, and PT Pstore Glow Bersinar Indonesia (PGBI) owned by Putra Siregar, which created the PS GLOW brand. The purpose of this study is to determine how trademark plagiarism is resolved and what legal protection measures are available (Nugroho, 2022). Based on the background of the issue, it can be formulated as follows:

1. How can the dispute over the MS GLOW and PS GLOW trademarks be resolved?
2. How can legal protection be sought for the MS GLOW and PS GLOW trademarks?

B. RESEARCH METHODS

This study uses qualitative methods, which involve selecting, sorting, and organizing data collected from field notes, observations, in-depth interviews, and documentation to obtain a deep, meaningful, and unique understanding, as well as new findings that are descriptive in nature, categorization, and/or patterns of relationships between categories of the objects studied (Nasution, 2023). This type of research is normative. Normative research involves selecting or sorting all legal materials and data that have been collected, then reviewing and analyzing them in accordance with the legal issues at hand, in order to draw conclusions (Muhaimin, 2023). It uses a regulatory approach and is a type of literature research. Data collection is carried out by reviewing and searching books, literature, articles, journals, and documents related to intellectual property (IP) issues. The data analysis technique used in this study is descriptive analysis, which is a method that serves to describe or provide an overview of the object being studied through the data or samples that have been collected as they are, without conducting analysis and making conclusions that apply to the general public (Sugiyono, 2019).

C. RESULTS AND DISCUSSIONS

Resolution of the MS GLOW and PS GLOW Trademark Dispute

Trademarks include logos, words, images, names, numbers, letters, color schemes, two-dimensional/three-dimensional designs, sounds, holograms, or combinations of two dimensions. Based on these factors, trademarks are used to distinguish goods/services produced by individuals or legal entities in the context of trading goods and/or services. Trademarks, on the other hand, are marks used by individuals or legal entities to differentiate their traded goods from other similar goods. Trademarks also serve as a promotional tool, so that people who see or buy them can remember the distinctive characteristics of the brand.

The trademark dispute between MS GLOW and PS GLOW initially arose because MS GLOW felt that PS GLOW had copied MS GLOW's products, which belong to Shandy Purnama Sari, and that there were similarities between the names and packaging of the products. MS GLOW has been registered since 2016, while PS GLOW was only registered

in 2021. Therefore, MS GLOW MS GLOW has attempted to contact PS GLOW to request clarification and accountability, but there has been no response or answer from PS GLOW. After that, MS GLOW reported PS GLOW and filed a lawsuit with the Medan Commercial Court regarding the similarity of trademarks in terms of name, packaging, product type, and business model system (Satrio, 1995).

In this dispute, the two lawsuits filed by MS GLOW and PS GLOW resulted in different final decisions. The lawsuit filed by Shandy Purnamasari or MS GLOW was won. The judge stated that it was true that Shandy Purnamasari was the first party to use and register the MS GLOW trademark with the Directorate of Intellectual Property. Furthermore, in this case, it was also explained that there were indeed similarities between the MS GLOW and PS GLOW trademarks. In addition, the similarity between the trademarks could cause confusion in the sale of cosmetics and result in significant economic losses, considering the violation of the unauthorized use of the MS Glow trademark and the significant similarities between the trademarks.

The MS Glow and MS Glow For Men trademarks have been established and developed since 2016 by the plaintiff, Shandy Purnamasari, until the plaintiff filed a lawsuit for alleged trademark counterfeiting or unlawful acts committed by the defendant, PS Glow, by improperly applying for trademark registration by imitating or exploiting the popularity of the MS Glow trademark. ow. The judge's decision stated that the petition was partially granted, because in the legal considerations submitted by the defendant in their 5th response, they had filed an exception to the main point, namely that MS Glow did not have legal standing because the trademark announcement on the website of the Directorate General of Intellectual Property Rights of the Ministry of Law and Human Rights stated that the actual owner of MS Glow was PT. KOSMETIKA CANTIKA INDONESIA, Article 76 of Law Law Number 20 of 2016, a trademark cancellation lawsuit can be filed by an interested party. Thus, Shandy Purnamasari is not the owner of MS Glow because she is not the owner of MS Glow and does not hold any other trademark applications from the ministry. Therefore, according to the law, she is not an interested party, which is the reason why the plaintiff's lawsuit was declared inadmissible (Wibawanti, 2013).

In the current dispute over trademark plagiarism between MS Glow and Ps Glow, it began with Putra Siregar's desire to learn more about Shandy Purnamasari's business activities, particularly At that time, they had a close relationship and there was no suspicion between them. Shandy Purnamasari introduced Putra Siregar to her cosmetics company during its establishment. This suspicion led to a trademark dispute between Ms Glow and Ps Glow. Several years later, Putra Siregar and his wife established a product similar to Shandy Purnamasari's cosmetics company under the name Ps Glow, signed by Putra Siregar. In addition, this dispute also led to similarities in the products produced. Ms Glow itself was founded in 2013 and registered with the Intellectual Property Office in 2016. Meanwhile, Ps Glow was founded in 2021 and registered with the Intellectual Property Office in the same year. In this case, both brands are dissatisfied with the similarity of the brands and products, leading them to take the case to court (Betlehen, 2018)

The trademark dispute between Ms Glow and Ps Glow went through two different Commercial Court proceedings. The first lawsuit filed by Ms Glow against Ps Glow for plagiarism was registered at the Medan Commercial Court under case number 2/Pdt.Sus HKI/Merek/2022/PN Niaga Mdn. In her lawsuit, Shandy Purnamasari demanded the withdrawal of trademarks owned by Putra Siregar that were essentially similar to the MS GLOW trademark, including: PS GLOW, PSTORE GLOW, PS GLOW MEN, PSTORE GLOW MEN, and PS GLOW FOR MEN.

Furthermore, Shandy Purnamasari is demanding compensation in the amount of Rp. 60,000,000,000.00 (sixty billion rupiah). The case did not stop there. Putra Siregar then filed a counterclaim against Shandy Purnasari at the Surabaya Commercial Court, registered under case number 2/Pdt.Sus-HKI/Merek/2022/PN Niaga Sby. The counterclaim did not stop there; Putra Siregar also sued Shandy Purnamasari for unlawful acts (Denny, 2022).

In this dispute, two lawsuits filed by MS GLOW and PS GLOW resulted in different final decisions. Shandy Purnamasari, or MS GLOW, won the case at the Medan District Court. The judge ruled that Shandy Purnamasari was indeed the first party to use and register the MS GLOW trademark with the Department of Intellectual Property. Furthermore, it was also explained that there were fundamental similarities between the MS GLOW and PS GLOW trademarks. The registration of the PS GLOW trademark and its derivatives and the amortization of the registered trademark. However, in reality, the problem did not stop there. This is because, not long ago, Putra Siregar filed a counterclaim with the Surabaya Commercial District Court, registered under number 2/Pdt.Sus-HKI/Merek/2022/PN Niaga Surabaya. In this case, Putra Siregar claimed that Shandy Purnamasari had committed a criminal offense by unlawfully producing MS GLOW-branded beauty products. Before the case reached a final decision, both parties also underwent mediation proceedings. As part of this resolution, MS GLOW requested compensation from PS GLOW in the amount of Rp 1,000,000,000.00. However, PS GLOW did not accept this request and only apologized to MS GLOW. Therefore, the mediation did not find a solution or resolution to the dispute between the two parties (Denny, 2022).

With the failure of the mediation process between MS GLOW and PS GLOW, the final decision was made by the Surabaya Commercial Court, which contradicted the previous ruling of the Medan Commercial Court. The lawsuit was won by Putra Siregar, who was declared the legal and exclusive owner of the PS GLOW trademark. In the Surabaya Commercial Court's ruling, Shandy Purnamasari, the owner of the MS GLOW trademark, was found to have committed a violation or breach of the law. After investigating the MS GLOW trademark, Shandy Purnamasari was found to be in error because it was discovered that the registered MS GLOW trademark was included in Class 32, namely the Instant Powdered Beverages Class. Meanwhile, the trademark registered in Class 3, namely the class for beauty or cosmetic products, is the "MS GLOW For Cantik Skincare" trademark. The treatments it produces do not include "Beautiful Skin Care". This

is certainly contrary to the policy of the POM Agency (Food and Drug Supervisory Agency), which states that the use of trademarks on manufactured products must be in accordance with the products registered with the General Assembly.¹⁶ From this explanation, we can understand that the use of trademarks for manufactured products must be in accordance with registered trademarks and in accordance with the classification of trademark types. . The purpose is to provide legal certainty not only to the trademark owner but also to provide certainty, assurance, and security to the public as consumers. Furthermore, Shandy Purnamasari, as the owner of MS GLOW, was ordered to compensate PS GLOW in the amount of Rp 37,990,726,332. This was introduced as a form of responsibility for material and immaterial losses (Lindsey, 2019).

The resolution of this dispute shows that the “first to file” system (the principle adopted in the trademark registration system in Indonesia) plays an important role in the resolution of trademark disputes. This system grants trademark rights to the party that registers the trademark first. This system gives priority to the first registrant. It is important to understand that with the first-to-file principle, it is important to register your trademark immediately if you want to protect your trademark rights. Otherwise, someone else who registers a similar trademark first may have exclusive rights to that trademark. The trademark registration process in Indonesia includes a good faith examination, notification, substantive examination, and possible rejection as mentioned above.

Legal Protection Efforts for the MS GLOW and PS GLOW Trademarks

Trademark registration applications in Indonesia must first meet several requirements, after which the registration process is carried out at the Directorate General of Intellectual Property Rights. Once the publication process has been completed and the administrative requirements have been deemed to have been met, a substantive review will be conducted. During the substantive review, parties who object to or feel aggrieved by the announcement of the establishment of a particular trademark may submit their objections.

In addition, the applicant has the right to reject any objections. After the substantive examination is complete, the trademark will be registered in the General Trademark Register. In this case, the party applying for trademark registration must obtain a Trademark Certificate, which is legal proof that they are the owner of the trademark and have obtained the exclusive right to use the registered trademark from the state (Betlehen, 2018).

The merger system stipulates that the party that owns a particular trademark is the party that has registered the trademark with the Directorate General of Intellectual Property Rights. Therefore, the composition system follows the first-to-file principle. The first-to-file principle is the principle that the first person to register a trademark is considered the owner of that trademark. We have shown that the application of this principle can provide legal certainty to the public (Lindsey, 2019). However, it should be emphasized that the “first to file” principle does not apply to those who are using the trademark for the first time, but rather when the trademark owner first registers the trademark with the Directorate

General of Intellectual Property Rights. In other words, he or she is legally declared the owner of the trademark (Betlehn, 2018)

By registering a trademark, the trademark owner can obtain legal protection from the state and gain exclusive use for a certain period of time. When a trademark owner registers their logo with the Directorate General of Intellectual Property Rights, they receive the same legal protection afforded to other trademarks. Trademarks registered in Indonesia have a type of legal protection called preventive legal protection. In addition, as a guide, a Trademark Certificate can officially prove ownership of a trademark. Exclusive rights to a trademark are granted for 10 years and can be renewed every 10 years.

In this case, it is determined that the person who registered the trademark is the person who has the right to use the trademark. However, the mistake here lies in the application of one of the trademark registration legal systems in Indonesia. Law Number 20 of 2016 concerning Trademarks and Geographical Indications implements a constitutive system that adheres to the first-to-file principle. The combination system stipulates that the party that owns a particular trademark is the party that has registered the trademark with the Directorate General of Intellectual Property. Registration creates rights to the trademark. Therefore, the composition system follows the first-to-file principle, which is the principle that the first person to register a trademark is considered the owner of that trademark. We have shown that the application of this principle can provide legal certainty to the public. However, it should be emphasized that the “first to file” principle does not apply to those who are using their trademark for the first time, but rather when the trademark owner first registers their trademark with the Directorate General of Intellectual Property. In other words, they are legally declared as the owner of the trademark (Nugroho, 2022).

registering a trademark, the trademark owner can obtain legal protection from the state and gain exclusive use for a certain period of time. When a trademark owner registers their logo with the Directorate General of Intellectual Property Rights, they receive the same legal protection afforded to other trademarks. Trademarks registered in Indonesia have a type of legal protection called preventive legal protection. Preventive legal protection in this case is provided by the government through trademark registration. In terms of trademark registration, the first registrant is the person authorized to use the trademark or the person who has exclusive rights to the trademark (first-to-file principle), which is implemented in good faith (Rahmi, 2017).

Good faith in this case means that the registered trademark is the result of one's own ideas and work, without plagiarizing the ideas and work of others, and does not conflict with the requirements set forth in the law. Given the advances in technology and information, it is necessary to raise public awareness about the importance of trademark the importance of registering trademarks (Betlehn, 2018). The trademark registration process in Indonesia, as mentioned, involves a good faith test, announcement, substantive examination, and the possibility of objections. Once this process is complete, the trademark will be recorded in the General Trademark Register, and the trademark owner will receive

a trademark certificate granting exclusive rights to the trademark. Preventive legal protection refers to measures taken before a dispute or legal violation related to a trademark occurs. In the context of trademark protection, this usually includes the registration of a trademark by the trademark owner before the trademark is widely used. Preventive legal protection gives trademark owners exclusive rights to their trademarks and protects the trademarks from unauthorized use by other parties. This is a proactive approach to protecting trademark rights (Purwaka, 2017).

Trademark registration is an example of preventative legal protection. By registering their trademark, the trademark owner obtains exclusive rights to use it in their business, and this helps prevent others from using the same or similar trademark. Furthermore, trademark registration also demonstrates the trademark owner's good faith, namely that the registered trademark is their own work, and they have not plagiarized or infringed on the copyright of others. Preventive legal protection through trademark registration is important because it provides legal certainty to the trademark owner and prevents potential disputes in the future. It also allows the trademark owner to take legal action if there is a violation of trademark rights. Meanwhile, repressive legal protection is the steps taken after a dispute or violation of trademark rights occurs.

This includes legal processes, such as court proceedings, used by brand owners to enforce their rights and obtain compensation or sanctions for trademark infringement. It is important to realize that in a competitive business environment, preventive legal protection in the form of trademark registration is crucial to prevent disputes and protect brand rights. Repressive legal protection is used if disputes do occur, and in this case, the brand owner can seek sanctions or compensation from the party infringing the trademark rights. These are important steps to protect your brand rights and prevent others from using them without your permission. In the context of trademark law in Indonesia, Law No. 20 of 2016 is the guideline that must be followed to protect trademarks.

D. CONCLUSION

Based on the background of the problem and the discussion, the following conclusions can be drawn:

1. The dispute between the MS GLOW and PS GLOW trademarks will be resolved through legal means. The original lawsuit filed by MS GLOW with the Medan Commercial District Court and the lawsuit filed by PS GLOW with the Surabaya District Court resulted in different final decisions. The Medan Commercial District Court's decision declared that MS GLOW was the first party to register the trademark legally. Meanwhile, the Surabaya Commercial District Court's final decision declared that Putra Siregar legally owned the PS GLOW trademark. In this case, the MS GLOW trademark registered by Shandy Purnamasari is registered in Class 32 (Instant Drink Powder Class) or the trademark registered in Class 3 (Skin Care and Cosmetic Class) is "MS GLOW For Cantik Skincare," but MS GLOW only sells skin care products, not cosmetics or beverages. This is certainly detrimental to MS GLOW, as according to

BPOM regulations, the use of branded skincare products must be in accordance with the brands registered with BPOM.

2. Legal protection for the MS GLOW and PS GLOW trademarks is carried out in accordance with applicable laws and regulations. First-to-file is the principle adopted in the trademark registration system in Indonesia. This principle stipulates that the rights to a trademark are granted by the party who precedes the trademark or the party who first registers the trademark with the Directorate General of Intellectual Property Rights. Of course, trademark registration is very important in order to obtain adequate legal protection. To avoid disputes and trademark infringement. Legal protection for trademarks can be divided into two types of protection: preventive law, which legally obtains exclusive rights to a trademark before a dispute or infringement occurs through trademark registration; This law stipulates that trademark owners can use their trademarks. Maintain the trademark for a certain period and allow others to use it. Second, protection that applies in the event of a dispute or violation of the rights of the registered trademark owner, namely the law of oppression (last resort). This is achieved through the payment of compensation and the imposition of criminal sanctions in accordance with the provisions of laws and regulations. Number 20 of 2016 concerning Trademarks and Geographical Indications.

Based on the discussion presented, the following suggestions can be made:

1. Business actors are expected to be more careful and understand the importance of registering protected trademarks to ensure legal certainty. Furthermore, economic actors should avoid plagiarizing third-party trademarks or using anything unauthorized for their trademarks. This is crucial to prevent future conflicts.
2. The government is expected to reinforce the importance of trademark registration according to trademark class. Furthermore, the government needs to emphasize the scope of "essential equivalence" in more detail and concretely, as this can easily lead to misunderstandings and misconceptions. Furthermore, the government is expected to review trademark registration applications more thoroughly before accepting them.

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