

Culinary MSMEs Fail to Protect Their Brands Due to Delays in Registration

Decision Number 79/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst

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Abstract

Micro, Small, and Medium Enterprises (MSMEs) in the culinary sector are a key pillar of the Indonesian economy; however, many business owners neglect the legal protection of their intellectual assets, particularly trademarks. This paper examines the legal impact of the failure of culinary MSMEs to register their trademarks in a timely manner, which leads to disputes and financial losses. Using a qualitative case study of the Commercial Court Decision Number 79/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst, this research analyzes how Indonesia's trademark law system, which adheres to the first-to-file principle, grants supremacy of rights to the first registrant. The analysis shows that exclusive rights to a trademark arise from registration, not from prior use. The court rejected the arguments of "well-known mark" and "bad faith" submitted by the prior user due to a failure to present strong evidence in accordance with the procedural law of evidence. This ruling confirms that without registration, a business's legal standing is weak, even if it has built a brand reputation over a long time. In conclusion, legal certainty is only granted to parties who proactively register their trademarks with the Directorate General of Intellectual Property (DJKI). Therefore, early trademark registration is a crucial preventive step for culinary MSMEs to secure assets, avoid disputes, and strengthen their market position.

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1. INTRODUCTION

Micro, Small, and Medium Enterprises (MSMEs), also known as MSMEs, are a sector that significantly contributes to the Indonesian economy. The culinary sector not only reflects cultural richness but also holds tremendous economic potential. Furthermore, in recent years, this sector has experienced rapid growth, both nationally and internationally. The increasing number of culinary businesses has undoubtedly intensified competition. One way to differentiate one culinary product from another is with a distinctive brand. A brand serves not only as an identity but also as a tool to strengthen a business's position in a highly competitive marketplace.

However, in practice, many culinary MSMEs ignore the importance of protecting their trademarks. In fact, trademarks registered with the Directorate General of Intellectual Property (DJKI) enjoy clear legal protection, which protects the trademark owner from unauthorized use of the same or a similar trademark by others. Unfortunately, not all MSMEs are aware of this, and they often only realize the importance of trademark registration after a legal dispute arises regarding trademark use.

A concrete example of this problem can be found in decision No. 79/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst, which demonstrates how failure to protect a trademark due to late registration can result in significant losses for MSMEs. In this case, a culinary business failed to protect its trademark due to late registration, leading to a legal dispute that ultimately harmed the parties involved.

The culinary MSME sector is highly dynamic and full of challenges. As public awareness of the importance of consuming diverse and high-quality culinary products increases, more and more businesses are entering this industry. With such a wide range of culinary products available, businesses need to create clear differentiation to ensure their products are recognized and remembered by consumers. One of the most effective ways to differentiate is through branding.

A registered trademark will create a distinct identity for a culinary business. A trademark can be a major draw for consumers, not only because of the quality of the product, but also because of the consistency and reputation built by the business owner. Brands provide consumers with assurance that the products they purchase are of guaranteed quality and taste. Therefore, protecting a brand is a crucial step for every culinary entrepreneur.

However, despite the obvious importance of trademark protection, many MSMEs remain unaware of or even neglect the legal steps required to register their trademarks. One common reason cited is a lack of understanding of the trademark registration procedure with the Directorate General of Intellectual Property Rights (DJKI), as well as a lack of understanding of the legal protection afforded by a registered trademark. On the other hand, some MSMEs find the trademark registration process complicated and expensive, leading them to opt out of registering their trademarks.

However, if a trademark is not registered, businesses are vulnerable to potential infringement by others who can easily copy or use the same or a similar trademark without permission. In this situation, culinary business owners cannot sue parties who infringe their trademarks because there is no legally binding evidence regarding the rights to the trademark. This is what happened in the legal case faced by culinary MSMEs in Decision Number 79/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst.

The case used as an example in this article focuses on the failure of a culinary MSME to protect its trademark due to delays in registering the trademark. Based on decision No. 79/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst, it can be seen that the party involved in this case is a culinary entrepreneur who has developed their business with a certain trademark but failed to register the trademark with the Directorate General of Intellectual Property Rights (DJKI) promptly. This resulted in a dispute with another party claiming the same or a similar trademark.

In this case, the culinary entrepreneur only had evidence of trademark use, but did not have legally recognized rights to the trademark because it was not registered. When another party applied for trademark registration with a similar or identical name, the culinary entrepreneur could not defend the rights to the trademark they used. Even though the entrepreneur had been using the trademark for a long time and the trademark was well-known to consumers, because it was not registered, the entrepreneur did not have a strong legal position in this dispute.

The court in this case ruled that the legitimate rights to a trademark belong only to the party that first registered the trademark with the DJKI, even if the party claiming the trademark had previously used the same trademark. In this case, the culinary entrepreneur's delay in registering the trademark was a determining factor in the unfavorable legal decision.

Delays in trademark registration can result in significant legal losses for culinary MSMEs. In the Indonesian legal system, trademarks registered with the Directorate General of Intellectual Property (DJKI) enjoy stronger legal protection than trademarks used only *de facto* (based solely on unregistered use). Protection for registered trademarks includes the exclusive right to use the trademark and the right to sue others who use the same or a similar trademark without permission.

However, if a trademark is unregistered, the trademark owner can only rely on evidence of everyday use to defend their claim. This leaves them vulnerable to claims from other parties who also use similar trademarks or even those who registered the same trademark first. If a dispute arises, culinary MSMEs are at a disadvantage, unable to prove that the trademark is legally theirs.

Furthermore, if culinary MSMEs register their trademarks late and another party successfully obtains the trademark, they may lose their right to use the trademark, even if they were the first to use it. This is certainly very detrimental, especially for MSMEs that rely on the reputation and consumer trust they have built through their brands.

This shows how important it is for culinary MSMEs to immediately register their brands after creating a business identity. A registered trademark provides clear legal protection and protects entrepreneurs from potentially costly disputes. The trademark registration process is not complicated, and with the help of a legal expert or intellectual property consultant, culinary MSMEs can navigate the process smoothly.

Trademark registration also provides entrepreneurs with the opportunity to protect their businesses from plagiarism or imitation by competitors. Furthermore, a registered trademark can be a valuable asset for MSMEs, enabling them to increase their business's market value, secure funding, or even expand their network.

2. RESEARCH METHODS

Normative legal research is a fundamental research method in legal studies, focusing on the analysis of legal norms, rules, and principles. The following is an in-depth explanation of this research method.

1. Definitions and Basic Concepts

Normative legal research, often called doctrinal legal research or library research, is a process of discovering legal rules, principles, and doctrines to address the legal issues at hand. Its primary focus is on the law in text form, or what is written in statutory regulations (*law in books*).

This method examines the internal aspects of positive law and views law as an autonomous institution. This research aims to generate new arguments, theories, or concepts as solutions to legal problems.

2. Main Characteristics

Some characteristics that distinguish normative legal research are:

- **Doctrinal in nature:** This research was developed based on a doctrine that examines law from the level of norms, rules, principles, and theories.
- **Literature Study:** This research relies entirely on secondary data derived from library materials, without requiring field research.
- **Focus on Norms:** The main study is law, which is conceptualized as norms or rules that apply in society and become a reference for behavior.
- **Qualitative Analysis:** The collected data is analyzed qualitatively using deductive thinking logic, namely, concluding from the general to the specific.

3. Data Sources

Normative legal research exclusively uses secondary data, which is classified into three types:

- **Primary Legal Materials:** This is legal material that is authoritative and binding. Examples include:
 - Legislation (from the constitution to regional regulations).
 - Court decisions (jurisprudence).
 - International treaties or agreements.
- **Secondary Legal Materials:** This material explains primary legal materials. Examples are:
 - Scientific works from legal circles (books, journals, articles).
 - Results of previous legal research.
 - Legal plan.
- **Tertiary Legal Materials:** This material serves to provide guidance or further explanation of primary and secondary legal materials. Examples include:
 - Legal dictionary.
 - Encyclopedia.
 - Cumulative index.
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4. Research Approach

In practice, normative legal research uses various approaches to comprehensively analyze legal issues. Some commonly used approaches include:

- **Legislative Approach (*Statute Approach*):** Analyze all rules and regulations related to the legal issue being researched.
- **Case Approach (*Case Approach*):** Studying and analyzing legal cases that already have a court decision with permanent legal force (*inkracht*) that are relevant to the research issue.
- **Historical Approach (*Historical Approach*):** Examine the historical background and philosophical development of a legal regulation to understand its meaning.
- **Comparative Approach (*Comparative Approach*):** Comparing the legal system in one country with another country regarding the same legal issue to find similarities and differences as evaluation material.
- **Conceptual Approach (*Conceptual Approach*):** Analyze legal concepts relevant to the issue being researched to clarify their meaning and scope.

5. Data Analysis

Data analysis in normative research is conducted by interpreting and discussing the collected legal materials. This process uses logic and legal reasoning to conclude. A frequently used analytical method is the deductive syllogism, in which legal norms serve as the major premise, legal facts as the minor premise, and the result is a legal conclusion (*conclusion*). Legal interpretation techniques, such as grammatical (based on grammar) and systematic (connecting with other regulations) interpretation, are also often used in the analysis process.

3. RESEARCH RESULTS AND DISCUSSION

The Supremacy of the First-to-File Principle as a Basis for Legal Certainty

Based on the Trademark Law, which has undergone several amendments to the Law until now officially using Law Number 20 of 2016 concerning Trademarks and Geographical Indications, the Law explains that the Republic of Indonesia has adopted the First to File Principle in the concept of Trademark Registration for both Trademarks and Service Marks.

Article 1 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications (Trademark Law) defines Trademark Rights as exclusive rights granted by the state to the owner of a registered Trademark for a certain period of time by using the Trademark himself or granting permission to another party to use it, so that in the case of obtaining rights to a trademark, the trademark must first be registered as mandated by Article 3 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications (Trademark Law).

Based on Decision Number 79/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst, this case began when PT. TikTok wanted to expand its brand to various product classes, but when PT.TikTok Ltd wanted to register, but it was discovered that the brand with the name "TikTok" had already been registered first by TikTok Bandung, owned by Fenfiana Saputra. The brand used by Fenfiana is a Class 25 brand. Apart from that, the TikTok brand used by Fenfiana has not been used for 5 (five) consecutive years.

The panel of judges' decision to reject TikTok Ltd.'s lawsuit directly implements the constitutive principle of Indonesian trademark law, which states that trademark rights arise based on who registers first, not on the duration of use. This is regulated in Article 3 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications (the Trademark Law), which states that trademark rights are obtained after the trademark is registered.

Essentially, this article affirms that the state only recognizes and grants exclusive rights to the party that is the first to successfully register their trademark with the Directorate General of Intellectual Property (DJKI). The trademark certificate registered by Fenfiana Saputra's baby clothes brand "Tik Tok" has fulfilled these formal obligations, thus providing her with legal (de jure) proof of ownership. The court's ruling in favor of the first registrant provides legal certainty and demonstrates that proper registration procedures will be protected by the state, regardless of the registrant's business scale.

Burden of Proof on Well-Known Trademark and Bad Faith Claims

The primary factor leading to the dismissal of TikTok Ltd.'s application was its failure to meet the burden of proof (*actori incumbit probatio*) for its claims. In this case, the judge dismissed the lawsuit not because the law doesn't protect well-known and global trademarks, but because the plaintiff failed to present sufficient evidence to support its claims.

The lawsuit for cancellation on the grounds of a "well-known" brand refers to Article 21 paragraph (1) letter b of Law Number 20 of 2016 concerning Trademarks and Geographical Indications (Trademark Law), where the Application is rejected if the Trademark has similarities in principle or in its entirety with a well-known Trademark owned by another party for similar goods and/or services. However, to be able to use this article, the Plaintiff must prove the "well-known" status according to the criteria in the Explanation of the Article. The inability to prove that the brand was already well-known, specifically in the Indonesian jurisdiction at the time the first applicant applied, proves the judge's rejection. The principle of territoriality requires proof of fame that is relevant to the local market, not just global reputation.

The judge's rejection of the TikTok Ltd. trademark raises indications of bad faith allegations from TikTok Bandung, owned by Fenfiana Saputra. The bad faith argument refers to Article 21 paragraph (3) of the Trademark Law, where an application is rejected if it is submitted by an applicant with bad faith. However, in judicial practice, the legal logic against a party not acting in good faith is difficult to prove, especially by simply imitating the fame of a brand, where the brand is well-known in the same jurisdiction at the relevant time. Because the main premise regarding the status of a well-known brand failed to be proven, the accusation of bad faith lost its factual and legal basis, so that the argument was declared unproven by the judge.

Overall, this decision demonstrates that the court carefully applied the law of evidentiary procedure. Without strong and relevant evidence to support the legal exceptions (well-known trademarks and bad faith), the first-to-file principle will be upheld absolutely.

The Importance of the First-to-File Principle

The first-to-file principle plays a crucial role in Indonesia's trademark legal system, serving as the primary foundation for creating legal certainty for businesses. The importance of this principle lies in its ability to provide objective, clear, and state-recognized proof of ownership. By registering a trademark first, a business owner legally obtains exclusive rights to use the trademark and prohibits others from using it without permission. This transforms a trademark from a mere idea or reputation into a concrete and protected legal asset. This system encourages businesses to be proactive and preventative in protecting their intellectual assets early on, thus avoiding costly and complex disputes later due to claims from third parties. Without this principle, trademark ownership would be ambiguous and difficult to prove, ultimately hampering investment and healthy business competition.

4. CONCLUSION

Indonesia adheres to the first-to-file principle as stipulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications, which stipulates that trademark rights are granted to the party who first registers the trademark with the DJKI. Delays in registration cause MSMEs to lose their legal rights to the trademark, even if it has been in use for a long time. Commercial Court Decision Number 79/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst shows that legal certainty is only given to the first registrant, while the arguments regarding “well-known trademarks” and “bad faith” cannot override the first-to-file principle without strong evidence.

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