

Settlement Of Cosmetic Brand Dispute Between Ms Glow Vs Psglow (Case Study Decision NUMBER 2/PDT. SUS. IPR/BRAND/2022/PN. TR ADE. SBY)

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Abstract. Along with the pace of business development, brand disputes become complicated issues that must be resolved immediately. MS GLOW and PS GLOW brand disputes are no exception. The study aims to determine the resolution of trademark disputes between MS GLOW and PS GLOW and legal protection efforts against registered trademarks of MS GLOW and PS GLOW in the trade process in Indonesia. The method used in this study is normative juridical and statutory approach, case approach, then conceptual approach. The results showed that the settlement of this dispute was carried out in two Commercial Courts. MS GLOW won the lawsuit in PN Niaga Medan, while PS GLOW won the case in PN Niaga Surabaya. The verdict in PN Niaga Surabaya found that the MS GLOW brand used was not in line with the registered brand class. The first to file system is a preventive legal protection effort, while repressive legal remedies are provided through criminal sanctions.

Keywords: Brand Dispute, Cosmetics, MS Glow, PSGLOW.

1. Introduction

The Protected Innovation Regulation is remembered for investigating standard regulations since a part of the law is a part of private regulation. Confidential regulation is a regulation that controls connections between people, between one individual and someone else, by zeroing in on individual interests.[1] Confidential regulation is a regulation that manages the relationship between people in addressing the necessities of their lives.

Licensed innovation privileges have become a worldwide issue, particularly among advanced modern nations trading numerous inventive industry items because of licensed innovation freedoms. Brand as a protected innovation right is fundamentally a sign of distinguishing an organisation's beginning of labor and products (a sign of birth) from different organisations' merchandise and/or administrations. Brands are the lead in exchanging delivery and outcomes.[2]

With advances in technology and information and the number of works produced by humans, it is not uncommon for people to create a brand without paying attention to applicable legal provisions, so many violations related to the brand and many parties are harmed.[3] Everyone who wants to create a new brand, of course, must understand and know about the regulations or legal provisions set in the Indonesian state regarding the brand to minimise losses in the event of a dispute in the future. [4]

The brand dispute referred to in this study is a brand dispute between PT Kosmetika Cantik

Indonesia (PKCI), owned by Shandy, to produce the MS GLOW brand and PT Pstore Glow Bersinar Indonesia (PGBI) owned by Putra Siregar to create the PS GLOW brand. On March 15, 2022, Shandy Purnamasari, the owner of the MS GLOW trademark, filed a lawsuit against Putra Siregar as the party who owns the PS GLOW trademark at the Medan Commercial Court and registered case number 2/Pdt.SusHKI/TBrand/2022/PN Niaga Mdn. Shandy Purnamasari filed a lawsuit against Putra Siregar for alleged similarities or imitations of the PS GLOW trademark against MS GLOW. Putra Siregar, the owner of PS GLOW, did not want to lose regarding this matter, then filed a counterclaim against MS GLOW at the Surabaya Commercial Court on April 12, 2022, with case number 2/Pdt.SusHKI/TBrand/2022/PN Niaga Sby.[5]

Based on this, the formulation of the problem in this study is as follows:

1. How to resolve MS GLOW and PS GLOW trademark disputes related to Decision Number 2/Pdt.SusHKI/TBrand/2022/PN. Sby Commerce?
2. What are the legal protection efforts for MS GLOW and PS GLOW trademarks in the trade process in Indonesia?

2. Research Method

This exploration is arranged utilising the regulating juridical examination, research zeroed in on looking at the use of rules or standards in specific regulation, and the consequences of the analysis are introduced as a story containing a methodically organised depiction, meaning that the secondary data obtained will be connected under the problem studied, so that as a whole it is a unity following the needs of the study.[6]

3. Findings and Discussion

3.1 Settlement of MS GLOW and PS GLOW Trademark Disputes related to Decision Number 2/Pdt.SusHKI/TBrand/2022/PN. Sby Commerce

The brand dispute case between MS GLOW and PS GLOW began when Putra Siregar learned of Shandy Purnamasari's business, namely MS GLOW. Unsuspectingly, Shandy Purnamasari introduced Putra Siregar to how to produce and market his beauty products. However, Putra Siregar and his wife established a PS GLOW trademark a few months later. PS is an abbreviation of the name Putra Siregar. PS GLOW also produces various beauty products, such as MS GLOW. This triggered plagiarism accusations from PS GLOW against MS GLOW because the brand name and the resulting product are almost identical, and the product packaging for the two trademarks is similar.

MS Glow was laid out in 2013 and enrolled with the Directorate of Licensed Innovation Freedoms in 2016.[7] In the meantime, PS Shine was laid out in 2021 and enlisted with the Directorate of Licensed Innovation Privileges around the same time.[8] This debate was brought to court and went through two legal cycles in the Business Locale Court. MS Sparkle documented its most extraordinary claim for supposed counterfeiting or impersonation by PS Gleam at the Medan Business Locale Court with case number 2/Pdt.SusHKI/TBrand/2022/PN Niaga Mdn.

The trademark dispute between MS GLOW and PS GLOW is a preliminary dispute that occurred because MS GLOW felt PS GLOW copied the product owned by MS GLOW owned by Shandy Purnama Sari. The similarity of the name with the packaging of MS GLOW

products then registered in 2016, while PS GLOW was only registered in 2021. So one MS GLOW, MS GLOW, tried to contact PSGLOW and asked for an explanation and accountability. Still, no PS GLOW response followed by MS GLOW reported that PS GLOW filed a lawsuit at the Medan Commercial Court with brand similarity in terms of name, packaging, product type and system business model. MS Glow filed a case at the Medan Commercial Court on March 15, 2022, with registration number 2/Pdt.Sus.HKI/TBrand/2022/PNCommerce Mdn.

MS Glow and MS Glow for Men brands have been around since 2016, built and developed by the applicant, i.e. Shandy Purnamasari. When the plaintiff brings his action because he believes this is happening wrongful or unlawful conduct of the defendant, namely by PS Glow in a wrong way, namely by presenting an application for Trademark registration by searching for or exploiting the reputation of MS trademarks Glow.

The result of the judge's decision stated that the application was partially granted because in the legal considerations submitted by the defendant in his answer letter had filed an exception in essence, namely that MS Glow did not have Legal Standing on the trademark announcement on the website of the Directorate General of Licensed innovation Freedoms of the Service of Regulation and Common liberties that the genuine proprietor of MS Shine was PT. KOSMETIKA CANTIKA INDONESIA, Article 76 of Law Number 20 of 2016 that an interested party can file a trademark cancellation lawsuit. Thus, Shandy Purnamasari is not the owner of MS Glow because he is not the owner of MS Glow and does not pocket another trademark application from the ministry, so according to law, it is not an interested party. This is the reason why the plaintiff's lawsuit is declared inadmissible.

Because the MS Glow mark is the sole owner, registrant, and first user (first to use) as stated in the trademark certificate and has exclusive rights granted by the state to use the mark in Indonesia, the judge declared the plaintiff's claim partially granted and the registration of the defendant PS Glow mark was cancelled. PS GLOW did not accept the lawsuit and reported back to the Surabaya Commercial Court registered at the Registrar of the Commercial Court on April 5, 2022, with decision Number 2/Pdt.Sus.HKI/TBrand/2022/PN. Sby Commerce. In the lawsuit made by PS Glow, in which there is a case that the use of the PS Glow mark is under applicable law, the plaintiff, namely PS Glow, has never felt that he gave permission and/or approval for the use of the trademark "MS GLOW" which has similarities to the brands "PS STORE" and "PSTORE GLOW" based on permission from defendant IV, namely Shandy Purnamasari who has no rights to the trademark "MS GLOW" at all.

The result of the judge's decision was to grant the plaintiff's claim partly because, in the legal considerations submitted by the defendant in his answer letter had filed an exception in essence, namely about a vague and vague lawsuit (Exceptio Obscur Libel) because the plaintiff was unable to describe the use of the trademark "MS GLOW" without rights carried out by defendant I with the marks "PS GLOW" and "PSTORE GLOW" So that the plaintiff's claim is without legal basis and is not clear.

Because of giving the claim to some degree, the Surabaya Business Court expressed that PS Gleam had selective privileges to the execution of the brand name enrolled with the Directorate General of Protected innovation of the Service of Regulation and Common liberties for the sort of second rate class labor and products (beauty care products), the judge also ruled that the defendant, namely MS GLOW, had the same trademark principal with PS GLOW and the PSTORE GLOW trademark, The lawsuit was rejected because defendant I denied that the action said by the plaintiff that the defendant's motion was without the right to use the MS Glow trademark and had a principal resemblance to the PS Glow trademark which was felt to have harmed the plaintiff in advertising financing, therefore the argument of the lawsuit made

by the plaintiff was vague and obscure (obscure libel) on the legal grounds that the statement did not explain clearly and in detail including the claim for damages which must be borne by defendant I because it is not based on clear law and the plaintiff does not elaborate expressly and in detail in his suit.

They stated that the defendants all used the mark "MS GLOW" without permission or a legal basis, despite having similarities with the plaintiff's mark "PS GLOW" for class 3 products and services (cosmetics) enrolled with the Directorate General of Licensed Innovation of the Service of Regulation and Basic freedoms. The total amount of Rp 37,990,726,332 must be paid immediately in cash to the defendant. Septia Siregar's social media account, better known as the wife of Putra Siregar as the owner of PS Glow, conveyed the news of peace between MS GLOW and PS GLOW. In the letter, Siregar's son, who was then imprisoned, proposed that the matter be resolved. Putra has stated that he will close his PS Glow if necessary and will not demand payment of losses from MS Glow. The news of peace between the two sides between MS Glow and PS Glow shared a moment of closeness by hugging and shaking hands with each other which signified peace which was shared on Thursday, July 28, 2022

3.2 Legal Protection Efforts Against MS GLOW and PS GLOW Trademarks in the Trade Process in Indonesia

To register a trademark in Indonesia, you must first meet several requirements and go through the registration process at the Directorate General of Intellectual Property Rights. Applications must be made in good faith. A substantive examination is carried out after the announcement process and meeting the administrative requirements. If parties feel objections or are aggrieved, they can submit their objections. The party applying for registration of the mark is given the right to reject the statement of protest.

Once the substantive examination process is completed, the mark will be registered in the General Register of Marks. The applicant will receive a trademark certificate as a mark. The state grants the owner of the impact exclusive rights. A trademark certificate can also provide formal proof of ownership of trademark rights.

Exclusive rights to the mark are granted within 10 (ten) years and can be renewed every 10 (ten) years again, so in this case, it stipulates that the party who has registered the mark is then entitled to use the spot himself.[9] But here lies the error in applying one of the systems in the law regarding trademark registration in the Indonesian state. Law No. 20 of 2016 concerning Marks and Geographical Indications, a constitutive system adheres to the first-to-file plan principle. The constitutive system states that the authorised party for a particular mark is the party who has registered the spot at the Directorate of Intellectual Property Rights. So, registration then gives birth to a right to the spot. The constitutive system then adheres to the principle of *first to file plan*. *The first to file system* is a principle that states that whichever party registers his mark first is said to be the owner or holder of the spot. Through the application of this principle, it is seen that it can provide legal certainty for the community. However, it should be emphasised that the code of *first to file system* is not applied to the first party to use the mark but applies when a trademark owner has registered his trademark as the first at the Directorate General of Licensed Innovation Freedoms. So the one is legitimately pronounced as the holder of the imprint.

The owner of the mark can obtain legal protection from the state and ensure the exclusive use of his signature for a particular time by registering it. When trademark owners register their logos with the Directorate of Intellectual Property Rights, they are afforded legal protection for other trademarks.

Preventive Legal Protection is the type of legal protection for registered trademarks in Indonesia. Preventive legal protection is handed over from the government to the brand owner before a dispute or legal violation of the mark occurs. The government provides preventive legal protection related to this matter through trademark registration. In the case of trademark registration, the first registrant is the registrant who has the right to use or have exclusive rights to the mark (*first to file system*), which is carried out in good faith. Good faith related to this matter understands that the registered mark is the result of his ideas or works without plagiarism of other people's ideas or assignments and does not contradict the requirements outlined by law. Amid advances in technology and information, socialisation about the importance of trademark registration to obtain legal protection needs to be disseminated to the public. Because, in practice, there are still many people who are unfamiliar with the importance of registering a brand.

In repressive legal protection, a repressive legal guardian can be exercised in case of a dispute or trademark infringement. Conflicts are avoided with the use of coercive legal protections. Ordinary courts and special administrative courts handle legal protection in Indonesia. As we already know, the more competition in the business world increases, the more problems or violations related to the brand. Legal action is the path most often taken by brand owners in disputes. In this case, legal protection can be provided in the form of sanctions, be it payment of compensation or cancellation of trademark registration and deletion of registered marks.

4. Conclusion

Because of the things depicted in the past parts, it very well may be presumed that:

1. Trademark conflicts between MS GLOW and PS GLOW are resolved through legal processes. Initially, MS GLOW filed a lawsuit in PN. Niaga Medan and PS GLOW filed a lawsuit in PN. Commerce Surabaya. However, the two courts gave different rulings. The Medan Commercial Court declared that MS GLOW was the legal owner of the mark and decided to revoke the PS GLOW mark.
2. Meanwhile, the Surabaya Commercial District Court stated that Putra Siregar is the legal owner of the PS GLOW brand. Furthermore, it was found that the MS GLOW brand blocked by Shandy Purnamasari only applies to class 32 (instant powder drinks). In contrast, the registered brand for class 3 (skincare products and cosmetics) is "MS GLOW For Beautiful Skincare". Therefore, MS GLOW lost this case because the skin care products that market only use the MS GLOW brand, while BPOM regulations stipulate that the brand must be under the modified brand.
3. Legal protection of MS GLOW and PS GLOW trademarks follows applicable laws and regulations in Indonesia. The trademark registration system in Indonesia adheres to the principle of first to file, which means that the right to the mark is given to the party who first registers the spot with the Directorate of IPR. Registration of this mark is essential to obtain adequate legal protection and prevent infringement or infringement of the sport. Pattern protection can be controlled through trademark registration to get trademark exclusivity rights.

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