

# Protection Against Trademark Holders In The Case of Jolibi Trademark PT Tatalogam Lestari

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**Abstract**—The development of a business in a country. Brands have an important role as a differentiator in the midst of goods and service activities in society. For business actors, a brand is an image and a good name for a company. The presence of Law Number 20 of 2016 concerning Marks and Geographical Indications aims to provide legal certainty for registered marks and have legal protection for registered marks, as well as to resolve disputes related to marks. One example in the research is the case study of decision number 39/Pdt.Sus-Merek/2023.PN.Niaga.Jkt.Pst between Jollibee Foods Corporation and PT Tatalogam Lestari. This research aims to examine issues related to the position and legal power of patented brand holders in Indonesia in accordance with the MIG Law and the form of legal protection for patented brand holders related to the lawsuit process in commercial courts. The research method used in this research is normative juridical research with a statutory and analytical approach that uses primary legal materials. The research results show that in the case of a brand dispute between Jollibee, owned by Jollibee Foods Corporation, and Jolibi, owned by PT Tatalogam Lestari, the brand registered first (first to file) has legal force because it is registered in the Intellectual Property Database of the Ministry of Law and Human Rights. Registered trademarks are entitled to protection for ten years and can be extended if the trademark in question is still used and circulating in Indonesia, as well as the form of legal protection for trademark holders in the study of decision number 39/Pdt.Sus-Merek/2023.PN.Niaga.Jkt.Pst. The panel of judges at the court of first instance decided that they rejected the plaintiff's claim in its entirety because the plaintiff could not prove the argument that it was a well-known mark, the form of legal protection for registered marks, namely, the protected mark of the party who registered the essentially the same or similar mark would definitely not be able to be registered, protection from applicants who have bad intentions, and protection by being able to file a lawsuit to cancel the deletion of a mark for a brand that has bad intentions.

**Keywords:** brand; famous brand; legal protection

## Introduction

Economic globalization has opened up the widest opportunities for trade in goods and services that penetrate regional boundaries. This is a sign of the start of the era of free trade. The products offered in the free trade era have many substitutes, causing the expansion of movement between each party in business competition. The expansion of transaction flow causes consumers to have many choices of goods, which allows for free competition between each product (Andi Fahmi Lubis, 2017).

In the era of free trade, brands are the basis for modern trade. It is said to be a basis because a brand can be the basis for the development of modern trade, which can be used as a symbol of goodwill, a quality standard, a means of penetrating all types of markets, and traded with guarantees to generate large profits. The existence of a brand can make it easier for consumers to differentiate the products they buy from others in terms of quality, satisfaction, pride, and other attributes attached to the brand. Brands are part of intellectual property rights as a right that is born from human thinking abilities and is valued by the state by protecting their ownership so that not just anyone can have intellectual property rights.

The creation of a brand results in rights that have economic benefits for the creator of the brand. This is because a brand is an investment in the good name of the person, goods, or services involved in it, so this gives rise to the state's obligation to protect the rights of a person's brand that has been registered in a country. sheltered by him. Business competition is increasing along with advances in technology and the development of society. Trade transactions in goods and services are a form of business activity that must be carried out in accordance with the applicable laws and regulations in Indonesia. One form of legal violation in product marketing activities is the use of another company's registered trademark for a similar type of product, especially a trademark that is of good quality and known to the public. In connection with the above, a legal instrument is needed from state institutions that can provide protection for registered trademark holders from trademark counterfeiting by other parties (Fajar Nurcahya & Dwi Putra, 2014).

The state protects registered trademarks for 10 years from the date of trademark registration at DJKI RI. If a brand is not registered, it will not be protected by the state. Therefore, the brand can be used by other parties (Sulastri DKK, 2018). According to Law Number 20 of 2016, the right to a trademark is an exclusive right granted by the state to the owner of a registered trademark for a certain period of time by using the trademark himself or giving permission to another party to use it.

Well-known trademarks have a good reputation and appeal; any product under a well-known brand will immediately create friendliness and have a different level of consumer recognition for a particular brand or certain field in trade or industry (Rika Amrikasari, 2023) Well-known trademarks are often used by malicious parties to counterfeit well-known trademarks. Trademark counterfeiting can be done on similar or different products; similar products can be easily identified by comparing the quality and shape of the product itself, but this identification will be difficult to do on different products.

PT Tatalogam Lestari is a company that produces light steel frames and roofs with various brands that are registered with the Directorate General of Intellectual Property (DJKI) of the Ministry of Law and Human Rights (Kemenkumham). One of the brands that is owned and officially registered is Jolibi. The Jolibi brand has received protection from DJKI since September 23, 2021, with a period of protection for brand rights until September 23, 2031, with application number IDM000999583. So PT Tatalogam Lestari has exclusive rights granted by the state to registered trademark owners for a certain period of time.

With the registered trademark belonging to PT Tatalogam Lestari. So the Jolibi brand receives protection from the Republic of Indonesia, in this case by the Ministry of Law and Human Rights of the Republic of Indonesia through the DJKI, so that when there is a violation of the law, other parties who are irresponsible in unfair industrial competition are using the Jolibi brand and are only pursuing big profits and misleading the brand. it in society. Then the Jolibi brand will be protected, and legal action can be taken

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according to applicable procedures to guarantee that the Jolibi brand gets definite protection.

Over time, the Jolibi brand belonging to PT Tatalogam Lestari was sued for cancellation of the registered mark by Jollibee Foods Corporation, a company founded in the Philippines with its address at Pasig City, 1605 Metro Manila, at the Commercial Court at the Central Jakarta District Court in case number 39/Pdt.Sus-HKI/ Brand/2023/PN.Niaga Jkt Pst. The plaintiff considers that his Jollibee brand is a well-known brand with claims to exist in more than 5,800 restaurant outlets in at least 34 countries in the world. The Jolibi brand owned by PT Tatalogam is considered to be completely similar, or at least substantially similar, to Jollibee owned by the plaintiff, which in fact is a well-known brand. In its decision, the panel decided to reject the plaintiff's claim in its entirety. Based on this description, the author is interested in studying the Legal Protection of the Lawsuit Process in the Commercial Court Against the Jolibi Brand Holder, PT Tatalogam Lestari.

## Method

This research is normative legal research, namely legal research carried out through library research. This research is descriptive in nature and aims to provide an overview of the legal basis for brand rights according to Indonesian positive law and legal protection for PT. Tatalogam Lestari as the registered brand holder for light steel products with the JOLIBI brand from any violations committed by other parties. Data was obtained from secondary data, namely statutory regulations (primary legal materials), books, academic journals, seminar results, newspapers (secondary legal materials), and legal dictionaries (tertiary legal materials). Information and data collection uses library research techniques. After data collection, the data will be processed and analyzed qualitatively through three (3) stages, namely data reduction, presentation, and drawing conclusions. (Sugiyono, 2017) Drawing conclusions using deductive logic.

## Result And Discussion

### Position and Legal Power of Patented Trademark Holders in Indonesia in accordance with the Trademark and Geographical Indications Law

Legal standing, or *locus standi*, is a situation in which a party is deemed to meet the requirements to submit a request for dispute resolution in court. Usually, legal position can be demonstrated in the following way (R. Soeroso, 2018):

A party is directly harmed by the law or act at issue, and this harm will continue unless a court intervenes by ordering compensation, determining that the law at issue does not apply to that party, or declaring the law null and void. law;

The claimant was not directly harmed, but they had a reasonable connection to the situation that caused the harm, and if left unchecked, the harm could befall other people who cannot seek relief from the court;

A party is given legal standing by law;

Legal position means understanding where a legal subject or legal object is located. By having a position, legal subjects or legal objects can carry out actions and authority according to their status. In Latin terms, legal position is called *locus standi*, which means a situation when a legal subject or legal object is deemed to fulfill the requirements for submitting a request for resolution of a dispute that has occurred. The existence of regulations and legal standing, namely providing legal certainty in the form of protection for justice seekers regarding brand protection issues, means that the constitutive system requires that intellectual property rights be registered. Registration that meets statutory requirements is recognition and justification for a person's intellectual property rights as proven by a registration certificate so that they can obtain legal protection and legal certainty. Legal status is useful for knowing the position of each party so that the

disadvantaged and advantageous positions can be seen.

That's where legal protection comes in as a step from the state to restore the legal position of each party somewhat in line with their respective positions. Law Number 20 of 2016 concerning Marks and Geographical Indications (UU MIG), the MIG Law was issued, one of which aims to improve services and provide legal certainty for the world of industry, trade, and investment in facing local, national, regional, and international economic developments, as well as the development of information and communication technology, and needs to be supported by more adequate legislation in the field of Marks and Geographical Indications. The content of the MIG Law is to provide legal certainty.

In line with Darji Darmodiharjo, the law must be implemented and enforced. Everyone hopes that the law can be applied in the event of a concrete incident. For this reason, the MIG Law is expected to provide legal certainty if there are violations of registered marks. Registered marks have exclusive rights. Exclusive rights in the MIG Law are rights to marks, which are exclusive rights granted by the state to the owner of a registered mark for a certain period of time by using the mark himself or giving permission to another party to use it.

The holder of a trademark that has been registered in Indonesia has the exclusive right to use the trademark within the territory of Indonesia. These exclusive rights include:

Right to use a mark: the mark holder has the right to use the mark in commerce to indicate the goods and/or services he produces or trades.

The right to prohibit other parties: the mark holder has the right to prohibit other parties from using the same or similar mark as theirs for similar goods and/or services.

Right to claim compensation: The brand holder has the right to demand compensation from other parties who violate their exclusive rights.

In terms of legal force, trademarks that have been registered in Indonesia have strong legal force. This is proven by:

Brand Certificate: The holder of a patented brand will receive a brand certificate, which is proof of ownership of the brand.

Legal protection: Patented brands receive legal protection from the Indonesian government.

Dispute resolution: disputes related to patented marks can be resolved through court.

In the Commercial Court Decision at the Central Jakarta District Court Number 39/Pdt.Sus-Merek/2023/PN.Niaga.Jkt.Pst between Jollibee Foods Corporation versus PT Tatalogam Lestari and the Ministry of Law and Human Rights. In the lawsuit, the plaintiff essentially demands to cancel or declare invalid the mark "JOLIBI" with registration number IDM000999583 belonging to the defendant in class 6 of the general register of marks because it is completely similar, or at least substantially similar, to the mark "JOLLIBEE" belonging to the plaintiff.

The Defendant's JOLIBI mark in class 6 is a mark that has been registered earlier compared to the Plaintiff's mark in class 6 which is still in the registration process, with acceptance on 23 September 2021, IDM registration number 00009999583 with a protection period for brand rights until 23 September 2031 which are the types of goods in class 6, namely light steel roof frames, metal/iron/steel panels, metal supports, metal internal doors, metal gutter pipes, metal layers for building, metal loading pallets, barbed wire, metal locks, steel wire, uninsulated copper wire, aluminum welding wire, metal welding wire, wire mesh, metal bolts, metal nuts, metal roof trusses, light steel roof trusses, metal clamps, metal cable connections (non-electric), nails, metal roof tiles, metal frames for buildings, aluminum foil. Trademark rights are special rights granted by the state to the owner to use the mark himself or to give permission to others to use it. The granting of special rights by the state has the legal impact that to obtain them, you must

go through the stages of a registration procedure so that the nature of registration becomes mandatory. So that the mark receives protection and recognition from the state, the mark owner is obliged to register it (Jisia Mamahit, 2013).

Based on exclusive rights, trademark registration provides a legal position that must be protected by the state. This is in line with the opinion of Philipus M. Hadjon that the state must protect the rights of its citizens as part of efforts to protect the legal position of each party; in this case, registered marks must be protected to suit that purpose. Trademark registration is registered administratively, and the state is obliged to protect the rights of the trademark registrant as part of efforts to carry out preventive protection, as in the opinion of Philipus M. Hadjon, but if there is a violation of the trademark, then legal protection of the trademark appears as a repressive means or part of trademark law enforcement. From this, we can see that the legal position of trademark holders must obtain approval from the state through a registration procedure so that the state can be present in enforcing trademark law if a violation occurs. This is in line with the aim of the law, namely to provide the widest possible protection to citizens of countries that comply with applicable laws.

So based on this, the JOLIBI brand belongs to PT Tatalogam Lestari, which was registered on September 23, 2021, with IDM registration number 0000999583 and a rights protection period for the brand until September 23, 2031, so the JOLIBI brand owned by PT Tatalogam Lestari has legal status as a registered mark. First of all, based on the MIG Law, the party entitled to a brand must register the brand first. This is done to ensure legal certainty because the owner or registrant of the mark is given a certificate as proof of registration and proof of rights to the mark. Trademarks are entitled to protection for ten years, and brands are also obliged to extend it if the validity period of the trademark expires, provided that the trademark in question is still used on goods or services.

### Forms of Legal Protection for Patented Trademark Holders Study Decision Number 39/Pdt.Sus-Merek/2023.PN.Niaga.Jkt.Pst

Law is not a goal, but as a means or tool to achieve goals that are non-juridical in nature and develop due to designs from outside the law. These legal factors are what make law dynamic, in an effort to regulate the law to adapt individual interests to the interests of society as well as possible and try to find a middle point between giving individual freedom and protecting society itself from conflicts that occur in the midst of community interactions (Muhammad Ferdian, 2019) Sudikno Mertokusumo's opinion is that law is the entire collection of rules or rules in a shared life, the entire rules regarding behavior that apply in a shared life, whose implementation can be enforced with sanctions (Sudikno Mertokusumo, 2010).

Legal protection according to H. Salim and Erlies Septina Nurbani, legal protection is an effort or form of service provided by law to legal subjects as well as things that are objects that are protected from irresponsible actions of legal subjects. The elements listed in the theory of legal protection include (H Salim, 2014).

There is a form of protection or protection objectives.

Legal subject; and

Object of legal protection.

This opinion is in line with the opinion expressed by Philipus M. Hadjon that legal protection for the people is a preventive and repressive government action. Preventive legal protection aims to prevent disputes from occurring, which directs government actions to be careful in making decisions based on discretion, and repressive protection aims to resolve disputes, including handling them in judicial institutions (Phillipus M. Hadjon, 1987).

The legal protection provided by the state is not only limited to brand owners but also to consumers

who want to be safe, comfortable, and guaranteed to get genuine brands so that they are not fooled into buying goods with fake brands. The legal protection given to brand owners is for brand owners who have good faith, meaning that even if they have a certificate as proof of ownership of a brand, they can request the removal or cancellation of the brand if the owner is proven to have bad faith. Legal protection for brands only applies to brands that have been registered. Trademark registration will provide stronger protection, especially if it conflicts with identical or similar marks. Although most business people are aware of the importance of using a brand to differentiate their products from those of their competitors, not all parties are aware of the importance of protecting brands through registration (Tommy Hendra Purwaka, 2017).

The existence of this protection shows that the state is obliged to enforce trademark law. Therefore, if there is a registered violation, the trademark owner can file a lawsuit with the competent court. With this protection, justice will be realized, which is the aim of the law. One of the goals of law is to realize social justice. With legal protection, the legal brand owner's rights are protected (Haryono, 2012). The existence of legal protection is a form of legal function that must provide justice, benefit, and legal certainty. The implementation of legal protection for registered brands will encourage investment and increase investor confidence in running their businesses in Indonesia. If legal protection for registered brands does not work, investors' interest in investing capital and running their businesses in Indonesia will weaken, and this is not very beneficial for the Indonesian economy. According to Zen Umar Purba (2015), the reasons why intellectual work rights (IPR) need to be protected by law are as follows:

The "non-economic" reason states that legal protection will encourage those who produce intellectual works to continue carrying out intellectual creativity. This will increase self-actualization in humans. For the community, this will be useful for improving the development of their lives.

The "economic" reason is to protect those who produce the intellectual work, meaning that those who produce the work receive material benefits from their works. On the other hand, it protects them from imitation, piracy, plagiarism, or other fraudulent acts committed by other people on their entitled works.

One example of a trademark dispute at the time of this writing occurred in early 2022. PT Tatalogam Lestari, a local company with an address in West Jakarta, is a light steel company that was sued by Jollibee Foods Corporation from the Philippines with Commercial Court Decision Number 39/Pdt.Sus-Brand/2023/PN.Niaga.Jkt.Pst. This case began in March 2023, when Jollibee Foods Corporation filed a lawsuit to cancel the JOLIBI brand with registration number IDM000999583 belonging to PT Tatalogam Lestari in class 6 of the General Register of Trademarks. The panel of judges at the court of first instance decided to reject the plaintiff's lawsuit in its entirety and sentenced the plaintiff to pay the costs incurred in the case. The plaintiff argued that when the defendant registered the JOLLIBEE mark in 2013, it was done in bad faith, assuming that the defendant had imitated or was inspired by the JOLLIBEE mark and the plaintiff's image, thereby demanding that the defendant's JOLIBE mark be canceled in class 6 of the General Register of Trademarks. Under the MIG Law, someone can file a trademark cancellation lawsuit based on the following reasons:

Marks registered on the basis of an application submitted by an applicant in bad faith;

The registered mark is in conflict with applicable laws and regulations, religious morality, or public order;

The mark has become public property;

The mark is a description of or relates to the goods or services for which registration is requested;

The mark is similar in essence or in its entirety to a mark belonging to another party that has been previously registered for similar goods and/or services;

The mark is similar in essence or in its entirety to a well-known mark belonging to another party for

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similar goods and/or services;

The mark is similar in essence or in its entirety to a known geographical indication;

The mark is or resembles the name of a famous person, photograph, or name of a legal entity owned by another person, unless with written approval from the rightful person;

The mark is an imitation or resembles the name or abbreviation of a name, flag, symbol, or emblem of a country or national or international institution, unless with written approval from the authorized party;

The mark is an imitation of or resembles an official mark or stamp used by the state or government agency, unless with written approval from the authorized party. In the lawsuit filed by Jolibee Foods Corporation, it is considered that the defendant's JOLIBI brand is completely similar, or at least substantially similar, to the plaintiff's JOLLIBEE brand, and the plaintiff assumes that the plaintiff's brand is a well-known brand. Based on the description of the posita and petitum of the lawsuit, the panel of judges considered that, based on all legal considerations, the reasons or arguments put forward by the plaintiff in his lawsuit were considered insufficient as a basis for argumentation to prove that when the defendant registered the JOLIBI mark in 2013, he did so in bad faith. good, so that the basis for the trademark cancellation claim is declared rejected so that the plaintiff's claim is rejected in its entirety. Regulations regarding the cancellation of registered marks can be found in Articles 76 to 79 of the MIG Law. In contrast to deletion, registration of a registered trademark can only be submitted by an interested party or brand owner, either in the form of an application to the Directorate General of Intellectual Property Rights or a lawsuit to the Commercial Court or Jakarta Commercial Court if the plaintiff or defendant resides outside the territory of the Republic of Indonesia. Cancellation and invalidation of a trademark registration have legal consequences and end legal protection for the trademark. After the owner of an unregistered trademark submits an application to the Directorate General, an application for cancellation of the trademark can be made by filing a lawsuit with the commercial court.

A trademark application must be rejected by the Directorate of Trademarks if the mark resembles the name of a famous person, flag, national symbol, or official state seal unless written approval from the competent authority. A lawsuit to cancel a trademark registration can only be filed within 5 years from the date of the trademark registration. A lawsuit for cancellation can be filed without a time limit if the mark is contrary to morals and decency, including the definition of elements that are contrary to public order. Regarding the commercial court's decision, which requires that this type of cancellation claim can only be submitted to the Supreme Court for cassation. The contents of the decision are immediately conveyed by the registrar of the court to the Directorate General after the date the decision is pronounced. Cancellation of a trademark registration is carried out by the Directorate General by crossing out the mark in question from the General Register of Trademarks and providing a note of the reason and date of the cancellation. A cancellation of registration is notified in writing to the mark owner or his or her attorney by stating the reasons for the cancellation and confirming that, as of the date of deletion from the General Register of Marks, the relevant mark certificate is no longer valid.

For brand owners who object to having their brand removed either by the Trademark Directorate or by a third party, there are legal remedies that can be taken. If a mark is removed by the Directorate of Trademarks, the owner of the mark whose mark is removed can file a lawsuit for brand deletion with the Commercial Court, while the owner of a mark whose mark is removed by a third party based on a Commercial Court decision can file an appeal against the Commercial Court's decision. Trademark owners who object to having their trademark removed either by the Trademark Directorate or by a court decision must have proof that the mark is still in use. The existence of legal action that can be taken by brand owners who object to having their brand removed either by the Directorate of Trademarks or by third parties is the government's effort to provide guarantees of legal certainty, justice, and supremacy of law, as well as respect for human rights, because the national strength of a nation depends on progress. and its ability to produce intellectual property, including protecting intellectual property, which can ultimately provide welfare and prosperity for the nation.

In the Central Jakarta District Court Decision Number 39/Pdt.Sus-Merek/2023/PN.Niaga.Jkt.Pst between Jollibee Foods Corporation against PT Tatalogam Lestari and the Ministry of Law and Human Rights. PT Tatalogam Lestari with the JOLIBI brand can prove and convince the judge that the JOLLIBEE brand is not a well-known brand and has no similarities in its entirety, or at least is substantially similar to the plaintiff's JOLLIBEE brand. The considerations of the panel of judges in Decision Number 39/Pdt.Sus-Merek/2023/PN.Niaga.Jkt.Pst to meet the criteria as a well-known brand must comply with Article 21 paragraph (1) letter (b) of the MIG Law in conjunction with Article 18 paragraph (3) Minister of Law and Human Rights Regulation 12 of 2021.

So the form of legal protection that can be carried out by brand owners is first to file, especially in Central Jakarta District Court Decision Number 39/Pdt.Sus-Merek/2023/PN.Niaga.Jkt.Pst, namely that the defendant as first to file is protected from other parties who register marks that are essentially the same or similar and definitely cannot be registered; secondly, they are protected from applicants who have bad intentions; and thirdly, they are protected by being able to sue for the cancellation or removal of the mark. Because in this case the brand owner is registered as the defendant, the defendant must prove that it has no similarities in its entirety, or at least no similarities in essence, with the plaintiff's JOLLIBEE brand and prove that the JOLLIBEE brand is not a well-known brand.

## Conclusion

Based on the research results and discussion above, it can be concluded that:

The position and legal power of the holder of a trademark that has been patented in Indonesia are in accordance with the Trademark and Geographical Indications Law. The position of a trademark that has been previously registered based on what applies in the MIG Law requires that the person entitled to a trademark is the party who registered the trademark, and the position of the trademark that has been registered first has rights to a brand. This is done to ensure legal certainty because registered marks are given a certificate as proof of registration and proof of rights to the mark. Registered marks are entitled to protection for ten years, and the mark is also obliged to extend its validity if the term expires, provided that the mark in question is still used and circulating in Indonesia.

Form of legal protection for trademark holders who have been patented in the study of decision number 39/Pdt.Sus-Merek/2023.PN.Niaga.Jkt.Pst, the panel of judges in the court of first instance decided to reject the plaintiff's lawsuit in its entirety and sentence the plaintiff to pay costs arising in the case. The panel of judges considered that, based on all legal considerations, the reasons or arguments put forward by the plaintiff in his lawsuit were considered insufficient as a basis for argumentation to prove that when the defendant registered the JOLIBI mark in 2013, it was done in bad faith so that it was used as the basis for the cancellation claim. The mark was declared rejected, so the plaintiff's lawsuit was rejected in its entirety. The form of legal protection for registered marks is that first, the mark is protected from other parties who register essentially the same or similar marks, which definitely cannot be registered. Second, protection from applicants who have bad intentions. Third, it is protected by being able to sue for the cancellation or removal of the brand.

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