

Implementation of Legal Protection in Preventing Brand Coffering in The SME's Sector

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Abstract

Small and Medium Enterprises (SME's) are highly susceptible to the risks posed by counterfeiting and unauthorized utilization of brands, akin to their larger counterparts. Primarily, the challenges encountered, particularly by SME's, stem from a lack of comprehensive comprehension regarding the essence of a brand and the repercussions of counterfeiting. Brand infringement typically transpires in environments of intense business rivalry within the product domain. The primary objective of this study is to explore the legal safeguards available for brands and strategies aimed at enhancing brand resilience. The employed methodology in this study encompasses normative juridical inquiry and interviews conducted with four SME's. The findings underscore that legal protection may be actualized through (1) fostering self-awareness among SMEs, (2) furnishing them with appropriate counsel and direction, and (3) facilitating the registration process, whether individually or collectively.

I. Introduction

Small and medium enterprises (SME's) are particularly at risk when it comes to the menace of counterfeiting (Ariani & Salain, 2016; Rusmana & Gunarto, 2018). This peril emerges in the context of established brands facing competition from imitation products in developing nations with inadequate trademark regulations. Building on a substantial network entrenched in the perceptions of consumers, a brand serves as a pivotal asset crucial for a company's continued existence. The issue of brand counterfeiting has currently become a focal point of research interest both domestically and internationally (Khelvin Risandi & Hari Sutra Disemadi, 2022). It is emphasized that brand safeguarding constitutes a measure implemented by legal authorities to offer defense against diverse forms of threats (Ko & Megehee, 2012; Lambkin & Tyndall, 2009)

In the realm of commerce, a brand serves as the distinctive identity or promotional instrument for a product or service, embodying its reputation and standard that distinguishes it within an organization (Kim, 2019). According to prevailing perspectives, the establishment of a valuable product necessitates the strategic utilization of a brand as a significant asset (Le Roux et al., 2016). Certain consumers may perceive a brand as symbolizing a lifestyle and a means to enhance social standing. Engaging with a product or service, particularly one bearing a recognized brand, engenders a sense of pride among consumers, particularly if the product or service is exclusive and distinguished. The significance of intellectual property in the advancement of information technology and competitiveness.

Intellectual Property Rights, also referred to as Intellectual Property Rights (Gautama. S, 1994), are categorized into two main segments: (1) copyright and, (2) industrial property right (Kraizberg, 2023; Ratnawati & Al Farizi, 2023). The rights associated with a brand constitute a significant aspect of the property rights related to a product and service (Lin & Wu, 2022). A brand can serve as a distinguishing factor for a product, representing its quality and identity. Both small and medium enterprises along with large corporations are highly susceptible to risks posed by counterfeiting activities. In response to this, a variety of approaches and tactics have been developed to combat counterfeiting (Kasztalska, 2018; Le et al., 2023). Le et al. (2023) advocate for the dissemination of information and awareness among the general public regarding the hazards

linked with counterfeit goods, whereas Mawaddah et al. (2023) propose the utilization of barcodes on all products. Nonetheless, these recommendations are predominantly applicable to large-scale enterprises, with limited focus on the implications for small and medium-sized businesses (SMEs).

Hence, this study aims to address the existing gap in brand protection through a research titled brand Protection and the Risk of Product Counterfeiting Encountered by Small and Medium Enterprises (SMEs) (Wilson & Grammich, 2020). The significance of labor is highly esteemed and revered by individuals in developed nations, particularly in Indonesia. Notably, the government has established longstanding regulations concerning intellectual property rights aimed at safeguarding creative works (Arifin & Iqbal, 2020). Although instances of product counterfeiting violations, notably within urban centers like counterfeit Eigers and cosmetics, are currently perceived as relatively minor, there remains a possibility of escalation and wider prevalence in the future. Consequently, drawing from the aforementioned context, the problem statement can be articulated as follows: 1. What are the principles of legal safeguarding against brand and product counterfeiting encountered by SME's in Bandung City? 2. What strategies can be implemented to support SME's in Bandung City up to the present time?

2. Research Method

This particular kind of research pertains to normative juridical research. The methodology involves the scrutiny and interpretation of theoretical concepts. According to Betlehn & Samosir (2018) and Nashir (2023), normative juridical research entails the examination of library resources or secondary data to serve as the foundation for investigating a specific issue. The primary data utilized in this study originates from sources such as data collected directly from the field through methods like interviews and observations, or data sourced from reliable sources such as documents, journals, and books. The data collection involved observations and interviews conducted with sources identified for this study. The interviews in this research were carried out using structured and unstructured techniques. Structured methods imply following guidelines that have been established for the sources, specifically: 1. Managers/owners of Small and Medium Enterprises (SME's) in Bandung city, and 2. Workers. In addition to primary data, secondary data was also incorporated into this study as a supplementary measure, comprising data sourced from reference materials found in libraries, including

manuscripts of primary, secondary, and tertiary legal sources.

To acquire data and information, this study employs qualitative analysis, specifically a non-quantitative approach. This analytical process elucidates the processed data, subsequently translating it into descriptive sentence structures. It is underpinned by empirical scrutiny, further enriched by normative assessment. Drawing upon the findings, a deductive conclusion can be ascertained through reasoning from general principles to specific outcomes.

3. Results and Discussion

Small and medium enterprises (SME's) encounter challenges related to safeguarding their brand integrity and mitigating the threats posed by counterfeit products.

Before delving into the topic of brand protection and the risks associated with product counterfeiting, it is essential to introduce a theoretical framework elucidating the essence of brand protection in a broader context. This will be achieved by drawing insights from expert opinions and scholarly articles. Purwaningsih et al. (2018) and Saputra et al. (2021) defines legal protection as the provision of rights and safeguards extended to marginalized individuals, ensuring their entitlements and privileges. Essentially, legal protection serves as a mechanism implemented by law enforcement agencies to instill a sense of security, shielding individuals from potential threats or infringements (Handayani et al., 2018). (PURWANINGSIH et al., 2018)emphasizes that legal protection within a society encompasses both preventative and punitive measures. Furthermore, Hasibuan et al. (2022) underscores that legal protection involves proactive measures aimed at safeguarding against arbitrary actions.

Meanwhile, brand protection entails the provision of safeguarding granted by the government to registered brand proprietors for a specific duration through utilization or authorization to external entities (Rachman & Hendrawan, 2021). As a means of identification and distinguishing factor for goods or services, brands are required to be distinct from one another in terms of characteristics. The term commonly used to denote a brand on a product is a trademark, typically attached to commodities exchanged by an individual or a corporation.

Legal safeguard for a brand serves as a mechanism to safeguard the rights of the owner and the general public from deception regarding the quality of specific products (Susanti et al., 2019). It can lead to consumer dissatisfaction when a brand perceived as high-quality is, in reality, manufactured by a different entity of lower quality. The legal protection of brands is of utmost significance to prevent their unauthorized utilization

by third parties, including counterfeiting and imitation, which may result in unfair competition (Sulastriet al., 2018). Consequently, trademark registration is essential to fortify the brand and deter other entities from exploiting it.

Legal safeguard for a brand serves as a mechanism to safeguard the rights of the owner and the general public from deception regarding the quality of specific products (Prawirayuda et al., 2020). It can lead to consumer dissatisfaction when a brand perceived as high-quality is, in reality, manufactured by a different entity of lower quality. The legal protection of brands is of utmost significance to prevent their unauthorized utilization by third parties, including counterfeiting and imitation, which may result in unfair competition. Consequently, trademark registration is essential to fortify the brand and deter other entities from exploiting it.

First, a microenterprise is a productive enterprise that is under the ownership of an individual or a business entity which satisfies the qualifications for being classified as a microenterprise. Additionally, it possesses a net value not exceeding Rp. 50,000,000 (fifty million rupiah) without accounting for land and structures, or alternatively generates an annual revenue of Rp. 300,000,000 (three hundred million rupiah).

secondly, a small business is a productive economic business that stands alone carried out by an individual or business entity that is not a subsidiary or branch of a company that is owned, controlled, or is part, either directly or indirectly, of a medium or large business that meets the business criteria. Small. Small Business Criteria are having net assets of more than IDR 50,000,000.00 (fifty million rupiah) up to a maximum of IDR 500,000,000.00 (five hundred million rupiah) excluding land and buildings where the business is located; or have annual sales proceeds of more than IDR 300,000,000.00 (three hundred million rupiah) up to a maximum of IDR 2,500,000,000.00 (two billion five hundred million rupiah).

Finally, Medium-sized enterprises are considered as efficient economic entities operating independently, established by individuals or corporate bodies not affiliated with Small or Large Businesses. The criteria for Medium Businesses include possessing net assets ranging from over IDR 500,000,000.00 to a maximum of IDR 10,000,000,000.00, excluding the value of land and structures in which the enterprise operates. Alternatively, they are characterized by annual sales exceeding IDR 2,500,000,000.00 up to a maximum of IDR 50,000,000,000.00.

Therefore, the importance of brand protection for small and medium enterprises (SMEs) cannot be overstated, necessitating concerted efforts to uphold business continuity and prevent the occurrence of counterfeiting activities that may lead to

detrimental consequences for either the companies themselves or the consumers. In the same vein, the 2016 BRAND Law, under Trademark Law No. 20 of 2016, extensively delves into the subject of brands, particularly underscored in the preamble of letter a of the aforementioned law, emphasizing the pivotal role of brands in the context of the contemporary global trade landscape, aligned with the international agreements endorsed by Indonesia. This underscores the critical significance of brands in safeguarding equitable business competition and ensuring domestic protection.

Efforts to safeguard small and medium-sized enterprise (SME) products.

In light of the provisions set forth in Law no. 20 of 2016, it is evident that the primary objective is to ensure legal certainty for stakeholders in the business sector, particularly Small and Medium Enterprises (SME's), as well as to safeguard the rights of consumers against counterfeit activities and economic harm. Strategies that may be implemented to combat counterfeiting encompass.

Research carried out in the field has focused on numerous Small and Medium Enterprises (SME's), particularly in the urban center of Bandung. The growth and advancement of SME's hinge on the perception of brands as a collective entity akin to other players in the business realm. These enterprises flourish and evolve through their ingenuity and groundbreaking ideas that lead to the creation of various products. Despite making efforts to safeguard the outcomes of their product development, SME's often exhibit reluctance in registering their brands due to a lack of familiarity with Intellectual Property Rights (IPR). Key barriers typically include a lack of awareness regarding the registration prerequisites, the associated fees, and the absence of training programs that impart knowledge on IPR.

The role of the government is crucial in providing guidance, facilities, and protection for SMEs. According to Law no. 20 of 2008, the government plays a key role in facilitating SME's, particularly in terms of branding. Legal protection is essential in this process, requiring a designated means of legal protection. Muchsin (2003) categorizes these facilities into two types: Preventive Legal Protection and Repressive Legal Protection. Furthermore, it is important to educate SME's on the necessary requirements. The 2013 decision of the Director General of Intellectual Property Rights of the Republic of Indonesia outlines the following requirements: 1. Submission of a statement letter affirming SME's status with a stamp. 2. Completion of an application form including: a. Form completion b. Photocopy of identity (3 sheets) c. 2 copies of notarized legal entity deed d. Example brand sizes ranging from 2x2 to 9x9 (28 strands) e. A stamped statement letters. Absence of previous assistance from other entities. 4. Compliance of produced work with intellectual property rights protection criteria and

societal benefit. 5. Inclusion of a cover letter from the Regional Office of the Ministry of Law and Human Rights, for submissions via HAM. 6. Submission of a letter of recommendation from the Ministry of Service, if applicable.

Collective registration follows in sequence. Essentially, Law no. 20 of 2016, enacted by the Government, offers facilities for the protection of collective brands. A collective mark denotes a mark applied to products or services sharing identical traits that will be traded jointly by multiple individuals or legal entities. In Indonesia, according to Betlehn and Samosir (2018), the regulations for collective trademark registration can be found in articles 46 to 51 of Law No. 20 of 2016 concerning Marks. For instance, in a scenario where there are five entrepreneurs, each engaged in their own production, they can collectively submit a registration request to safeguard their products. Even if the products share similar characteristics, they are eligible for collective registration. This approach proves advantageous for business proprietors by saving time, expenses, and effort during the registration procedure. Illustrations encompass traders specializing in paintings, batik, and other similar industries.

Finally, the significance of non-governmental organizations should be underscored. These non-governmental entities encompass science and technology institutions, which play a pivotal role in enhancing the competitiveness of the corporate realm. The linkage to Intellectual Property Rights (IPR) aims to furnish safeguarding measures for Small and Medium Enterprises (SME's) in ensuring the perpetuation of product sustainability through creative and innovative means.

4. Conclusion

Legal protection for a product, particularly for small and medium-sized enterprises (SMEs), serves as a safeguard against counterfeiting and fraudulent activities. The current landscape witnesses a rise in SME's introducing unique and valuable products to the market. In light of the aforementioned context, actions aimed at safeguarding SMEs involve the registration of trademarks. It is imperative for the government to play a pivotal role in elucidating the significance of trademark registration and the risks associated with counterfeiting and fraud. Given constraints pertaining to comprehension, financial resources, and resources, a viable approach entails collective registration for enterprises sharing similar product or service attributes. A notable limitation of this study is its geographical scope, which focused on interviewing selected SME's in Bandung City, particularly in the East Bandung region.

The recommendations that can be utilized as input, particularly for Small and Medium Enterprises (SME's), Government, and Non-Governmental Organizations are: 1. SME's

that have not yet completed the registration of a trademark should endeavor to enhance the brand to proactively mitigate threats from other entities. Furthermore, each product should be affixed with a barcode to mitigate the risk of counterfeit activities. 2. The government is tasked with establishing regulations, such as local ordinances, to effectively oversee the management of branded data that has been officially registered for documentation purposes, aiming to provide safeguarding measures and preemptive actions. 3. Non-Governmental Organizations are encouraged to offer guidance, education, and counsel to SME's, particularly those in their nascent stages, to facilitate comprehension of the concept of branding and the consequences, whether advantageous or disadvantageous, of failing to register a brand.

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