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1. **Judicial Review on Law No. 20 of 2016 concerning Trademarks and Geographical Indications**

The Decision on the Judicial Review of the Trademark Law with the 1945 Constitution is Indonesia's recent "crown jewel" of Trademark practice. A local Businessman filed this constitutional case along with his legal counsel.

The case was initiated by a lawsuit received by a local businessman from a Chinese company called Dahua Technology Co, Ltd.

This Chinese company as a Plaintiff requested the Central Jakarta Commercial Court to cancel a local businessman's trademark, namely the "HDCVI & LOGO" trademark, registered at the Ministry of Law and Human Rights. The lawsuit was filed based on Article 74 Paragraph (1) of the Trademark and Geographical Indications Law.

Moreover, the Defendant filed a lawsuit for judicial review of Article 74 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications to the

Constitutional Court. After a series of hearings, the decision has been reached, which is Decision No. 144/PUU-XXI/2023, with the following ruling:

- Provision of the Phrase in Article 74 Paragraph (1):

Through the review process, the Court declared that the phrase "3 (three) years" in Article 74 Paragraph (1) of Law No. 20 of 2016 is in conflict with the 1945 Constitution. This phrase does not have binding legal force unless it is interpreted as "5 (five) years." Therefore, this article now reads: "Cancellation of a registered trademark may also be filed by a concerned third party in the form of a lawsuit to the Commercial Court on the grounds that the trademark has not been used for 5 (five) consecutive years in the trade of goods and/or services since the date of registration or last use."

- Provision of the Phrase in Article 74 Paragraph (2) Letter c:

The Court also stated that the phrase "other similar prohibitions" in the norm of Article 74 Paragraph (2) Letter c is contrary to the 1945 Constitution. This phrase does not have binding legal force unless it includes "including in cases of force majeure." Thus, the content of the article changes to: "c. other similar prohibitions, including in cases of force majeure as stipulated by Government Regulation."

- Publication of the Decision:

The Court ordered that this decision be published in the State Gazette of the Republic of Indonesia, ensuring that the ruling is accessible to the public.

Overall, we should view this development positively. The Constitutional Court emphasized that the previous three-year period, which has remained unchanged since the enactment of Law No. 19 of 1992, is no longer aligned with the current economic landscape of Indonesia, particularly considering the growth of micro, small, and medium enterprises (MSMEs) since the pandemic. Furthermore, the Court expanded the scope of "other similar prohibitions" in Article 74 Paragraph (2) to include force majeure conditions, with further regulations to be detailed through government regulation.



These changes have permanent legal force, as the Constitutional Court's decision is final and binding. Through this ruling, MSMEs, small businesses, and original trademark owners can enjoy a longer period to legally market their new goods and services under their trademark, thereby avoiding the potential cancellation of their trademarks.

However, on the other hand, we must also highlight the issue of "infringers" who own counterfeit brands and register trademarks or services without producing the corresponding products or services, which clearly harms the original trademark owners, who must wait longer before initiating cancellation actions against these infringers.

(source: <https://tracking.mkri.id/>)

2. Indonesia Trademark Update: Who Owns The FUELCELL Trademark in Indonesia?

New Balance Athletics, Inc., founded in 1906 and headquartered in Boston, Massachusetts, USA, is a multinational Company that provides athletic footwear. It also offers clothing, sports, and footwear products for men, women, and children. The company sells its footwear in stores and at retailers around the world. The company maintains a manufacturing presence in the United States and the United Kingdom for the European market, producing some of its popular models.



In Indonesia, New Balance Athletics, Inc. was surprised by a person who used a trademark similar to the Company's FUELCELL trademark for his product. According to the Company, this violated their exclusive trademark rights, the provisions of Article 1 paragraph 5 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications. Pursuant to this matter, on August 5, 2024, New Balance Athletics, Inc. filed a cancellation lawsuit to the Jakarta Commercial Court with case number 77/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst.

The FUELCELL trademark belongs to New Balance Athletics, Inc., a Plaintiff who has been filed at DGIP with Application No. DID2024058408. Meanwhile, another person's trademark, FUELCELL, has been registered at DGIP with Registration No. IDM000718031. Both trademarks were filed in class 25.

Goods in class 25 include footwear, slippers, upper shoes made of leather, clothing, hats, long socks, sportswear, children's clothing, baby clothes, gymnastic clothes, waterproof clothing, sportswear, gloves, shawls, ski boots, sports boots, boots between knee and ankle height, wooden boots, rubber outsole, beach shoes, gymnastic shoes, soccer shoes, etc.

The company stated that FUELCELL's trademark, which Plaintiff owns, is well-known. They also noted that Defendant acted in bad faith when submitting an application to register the FUELCELL trademark with Registration No. IDM000718031 has similarities in principle with the FUELCELL's trademark belonging to the Plaintiff. The Plaintiff also requested the panel of Judges to cancel the FUELCELL's trademark in class 25, with Registration No. IDM000718031 belongs to the Defendant and has all legal consequences.

Currently, this case is still at the early court examination stages and awaiting the verdict of the Court.

(source: <http://sipp.pn-jakartapusat.go.id/>
<https://www.newbalance.com>
<https://www.bloomberq.com/profile/company>)

3. Indonesia Trademark Update: Tensions Between Momentive Performance Materials Inc. vs Local Business in the SILWET Dispute

Momentive Performance Materials Inc. is a global leader in advanced materials and specialty chemicals, with a more than 80-year heritage rooted in innovation. The company has evolved into a prominent entity in the production of silicone-based products, offering solutions across various industries, including automotive, electronics, and consumer goods. Known for its commitment to quality and sustainability, Momentive has established itself as a trusted partner for businesses worldwide.

Headquartered in Niskayuna, New York, USA, Momentive is a network of more than 40 locations in 20-plus countries around the world. The locations span from urban to suburban to rural. This global breadth positions the company to serve a diverse customer base of over 4,000 customers in several countries.

SILWET is an essential part of Momentive's product portfolio, representing a series of advanced silicone-based surfactants renowned for their unique chemical properties. SILWET surfactants are particularly valued in the agricultural sector for their ability to improve pesticide efficacy. By enhancing the wetting and spreading of formulations on plant surfaces, SILWET products contribute to more effective pest and disease management, thereby supporting agricultural productivity.

Momentive Performance Materials Inc. recently commenced a legal battle over the SILWET trademark in Indonesia. The dispute arises between the company and a local businessman who has registered a similar

trademark. Pursuant to this matter, Momentive has filed a cancellation lawsuit with the Jakarta Commercial Court with case number 88/Pdt.Sus-HKI/Merek/2024/PN Niaga Jkt.Pst on August 30, 2024.

Momentive requested the Court to grant their claim against the Defendants in its entirety. The company also asserts its position internationally as the first owner and registrant of the SILWET trademark. They aim for the SILWET trademark to be recognized as a well-known mark internationally, underlining its significance in the market.



Plaintiff argued that Defendant's trademark, registered as IDM000985419 in Class 5, is essentially similar to its SILWET trademark and that Defendant's registration application for the SILWET trademark was made in bad faith. Therefore, Plaintiff requests the Court to remove the registration of the SILWET mark in the name of Defendant from the General Register of Trademarks with all its legal consequences. Lastly, Momentive requested that the Defendant be responsible for the costs incurred in this legal process.

This case is still in the early court examination stages and is awaiting the verdict of the Court.

This legal action reflects Momentive's commitment to protecting its Intellectual Property and ensuring that its brand reputation remains intact. As the case unfolds, it highlights businesses' ongoing challenges in safeguarding their trademarks in a competitive marketplace.

(source: <http://sipp.pn-jakartapusat.go.id/>
<https://www.momentive.com>
<https://www.silwetbymomentive.com>)

4. Singapore Trademark Update: Amazon Technologies Inc v Survivalverse Pte Ltd [2024] SGIPOS 6: A Landmark Decision on Trademark Opposition

Introduction

The recent decision by the Intellectual Property Office of Singapore (IPOS) in *Amazon Technologies Inc v Survivalverse Pte Ltd* [2024] SGIPOS 6 has significant implications for trademark law in Singapore. This case involved a trademark opposition between the tech giants Amazon and Survivalverse, shedding light on the key considerations when assessing trademark similarity and likelihood of confusion.

Background

Amazon Technologies Inc, the parent company of Amazon.com, opposed Survivalverse Pte Ltd's trademark application



for the mark "AMAZON SURVIVAL". Amazon argued that this mark was confusingly similar to its well-known "AMAZON" mark, leading to a potential likelihood of consumer confusion.

The IPOS Decision

In its decision, IPOS found in favor of Amazon, concluding that the "AMAZON SURVIVAL" mark was indeed confusingly similar to the "AMAZON" mark.



The decision highlighted several key factors that contributed to this finding:

- **Similarity of the marks:** The IPOS noted that the marks shared a common element, "AMAZON," which is a significant portion of both marks. This similarity was deemed sufficient to create a risk of confusion.
- **Similarity of the goods and services:** Both Amazon and Survivalverse operate in the technology and online services sectors, offering a range of products and services that could potentially overlap. This similarity increased the likelihood of consumers associating the



"AMAZON SURVIVAL" mark with Amazon.

- **Strength of the "AMAZON" mark:** The IPOS recognized the strength of the "AMAZON" mark, noting its widespread recognition and association with Amazon's extensive range of products and services. This strength made it more susceptible to being diluted or confused by similar marks.

- **Likelihood of confusion:** Based on the factors considered, IPOS concluded that there was a real likelihood of consumer confusion between the "



" and "AMAZON" marks. This likelihood was deemed sufficient to justify the opposition.

Implications for Trademark Owners

The *Amazon Technologies Inc v Survivalverse Pte Ltd* decision provides valuable guidance for trademark owners in Singapore.

Key Takeaways

1. **Similarity Matters:** Even if your brand name is not identical to another, similarities can still lead to confusion. The IPOS decision underscores the importance of considering the overall looks and feels of a mark, including its sound and appearance.
2. **Consider the Goods and Services:** The nature of your business and the products or services you offer can also influence the likelihood of confusion. If your goods or services are similar to those of another brand, it's even more crucial to ensure that your brand names are distinct.
3. **The Strength of Your Brand Matters:** A strong brand with a well-established reputation is more likely to be protected from infringement. Building brand awareness and recognition is essential

for safeguarding your intellectual property rights.

4. **Conduct Thorough Trademark Searches:** Before adopting a new brand name, it's imperative to conduct a comprehensive trademark search to identify any existing marks that might be similar. This can help prevent costly legal disputes and protect your brand.

Conclusion

The IPOS decision in *Amazon Technologies Inc v Survivalverse Pte Ltd* is a landmark case that will likely have a lasting impact on trademark law in Singapore. It serves as a reminder of the need for businesses to carefully evaluate the potential consequences of their trademark choices and to take proactive steps to protect their intellectual property rights

(source: Biro Oktroi Roosseno Singapore)

5. DGIP: Introducing Premium Quality Indonesian Agricultural Products at WIPO 65th General Assembly Session

In order to promote high-quality agricultural and plantation products, the Directorate General of Intellectual Property (DGIP) held an exhibition themed "Experience the Premium Quality of Indonesia's Geographical Indication Agricultural Product". The event took place at the World Intellectual Property Organization (WIPO) Saloon Apollon Lobby, as part of WIPO's 65th General Assembly Session in Geneva, Switzerland, on July 9-17, 2024.

The expo displayed 138 geographical indication (GI) products from Indonesia, illustrating the natural resources and

diversity of the country's plantation and agricultural products. Products such as Java Preanger Tea, Bareh Solok, and various other commodities represent a great potential to be recognized and appreciated in the global market.



DGIP is committed to forging strategic partnerships with various parties, including governments, industry practitioners, and international organizations, to strengthen the protection and promotion of these products. On this occasion, the Minister of Tourism and Creative Economy also participated.

His visit was triggered by a project on communal IP established between the Ministry of Tourism and WIPO in 2023. Two brands from Bali, Bali Craft and Bali Spa, are being used as pilot collective brands, with the hope that each region will have one brand that maintains quality according to set standards.

During the event, the Minister also held meetings with DGIP and WIPO. The meeting aimed to discuss strategic steps in strengthening the protection and promotion of Indonesian GI products, so that it can bring a positive impact on the local economy and the preservation of local traditions and knowledge that have existed for centuries.

With this exhibition, Indonesia seeks to emphasize its position as a country with extraordinary natural resources, as well as increase the economic value and global recognition of its unique and quality agricultural and plantation products.

(source: <http://www.dgip.go.id>)

6. DGIP: Learns IP Law Enforcement Strategy from the Philippines

The Director of Investigation and Dispute Resolution of the Directorate General of Intellectual Property (DGIP) held a meeting with the Philippine Police Team in order to improve the effectiveness of Intellectual Property (IP) protection and enforcement in Indonesia.

The meeting was held at the DGIP Office and aimed to learn the strategies implemented by the Philippines, which has successfully exited the Priority Watch List (PWL) by the United States Trade Representative (USTR) in 2019.



DGIP is committed to learning best practices from the Philippines, hoping to implement successful strategies from them in order to emerge from the PWL immediately and strengthen the IP enforcement system in Indonesia.

The DGIP Director explained, "Our aim is to benchmark, i.e. identify aspects that can be adapted and applied in Indonesia. We want to strengthen the IP law enforcement system in our country to make it more effective and efficient."

In order to better understand the Philippines' success, DGIP planned visits to several key institutions, including the Intellectual Property Office of the Philippines (IPOP), Intellectual Property Rights Enforcement Office, Philippine E-Commerce Association (PECA), and Philippine National Police (PNP). The visit aimed to gain insights into how collaboration between various stakeholders in the Philippines has contributed to the reduction of IP infringement.

One of the Philippine representatives revealed, "We made it out of PWL because of the strong collaboration between IP stakeholders in the Philippines. We involve all parties to jointly fight IP violations. We hope that Indonesia's visit to the Philippines can bring insights into the best practices that exist here."

Collaboration between the government, private sector, and law enforcement agencies in the Philippines has been key in addressing IP infringement issues. By involving various stakeholders, the Philippines have created an ecosystem that supports innovation and protects intellectual property rights. This is a valuable lesson for Indonesia, which is trying to emerge from the PWL.

DGIP's visit to the Philippines is expected to bring positive changes in the IP protection system in Indonesia. By implementing strategies and best practices obtained from the Philippines, it is expected that the

effectiveness of IP law enforcement in Indonesia can improve. This will not only provide better protection for local innovations and creations, but also increase the confidence of international investors and trading partners in the Indonesian market.

(source: <http://www.dgip.go.id>)

7. DGIP: Bilateral Meeting with USPTO to Strengthening Intellectual Property Cooperation

The Directorate General of Intellectual Property (DGIP) held a bilateral meeting with the United States Patent and Trademark Office (USPTO) on Wednesday, September 4, 2024 in Bandar Seri Begawan, Brunei Darussalam. This meeting took place on the sidelines of the ASEAN Working Group on Intellectual Property Cooperation (AWGIPC).



One of the important highlights of the meeting was the signing of a document renewing bilateral cooperation in the form of a Memorandum of Understanding on Bilateral Cooperation (MoU) by the USPTO leadership. This MoU was previously signed by the Director General of Intellectual Property in August 2024 in Jakarta and will be valid for the next five years. With this

renewal, it is expected that the cooperative relationship between the two institutions will be closer and more productive.

The Head of the Overseas Cooperation Team, who was present at the meeting, explained that the scope of cooperation covers various important aspects of intellectual property management. "The scope of cooperation consists of exchanging intellectual property data; information and documentation; collaboration in providing capacity building programs to improve office administration; and human resource development," he said.

In this meeting, several important points that are the focus of cooperation between DGIP and USPTO were also discussed. First, the examination of patents, industrial designs, and trademarks is one of the areas that need to be strengthened. This cooperation is important to ensure that Indonesia has an effective and efficient system in the management and protection of Intellectual Property (IP).

Further, the protection, utilization, and enforcement of IP laws are also in the spotlight. In the era of globalization and technological advancement, the protection of local innovations and creations is very important to prevent copyright infringement and unauthorized use by certain parties.

The promotion of the role of IP protection in innovation, technology transfer, and product commercialization was also an essential point of discussion. By promoting the importance of IP, it is hoped that there will be an increase in investment and industrial development in Indonesia which will support national economic growth.

This renewal of cooperation is expected to have a positive impact on the development

of IP system in Indonesia. With the exchange of information and collaboration in capacity building, it is expected that human resources in the field of IP can improve, so that they are able to better manage and protect IP rights.

Moreover, this cooperation is expected to encourage innovation and creativity among local industry players and entrepreneurs. When they feel that their innovations are legally protected, they will be more motivated to develop new products and services, which in turn will contribute to economic growth.

(source: <http://www.dgip.go.id>)



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