
The Urgency Of Trademark Protection For A Musician Name

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Abstract: This article traces the urgency of trademark protection for a musician name. The result of the discussion shows that people may be deceived if new musicians hitch a ride on the name of famous musicians to perform their songs or any other form of artistic works on a concert or performance. Similarities on the name may lead to reputation damage or goodwill of the previous musician. Every person or group intends to use the names of existing name of a musician in productions other than songs or albums and performances shall obtain permission from the concerned musician to receive benefit sharing on the utilization of the name as a means to prevent adverse conducts of unauthorized party. Such measures are aimed to conduct production and trading services in the form of entertainment services as classified in class 41 of the Nice Agreement. The process of registering the name of a musician is generally equivalent with trademark registration stipulated in the Law Number 15 of 2001 concerning Trademark

Keywords: Musician Name Registration, Legal Protection, Trademark

INTRODUCTION

The globalization has urged Indonesia to an intersection between need and reality. This circumstance occurs in the fields of law, particularly the Intellectual Property Rights. Intellectual Property Rights (hereinafter referred to as IPR) refer to the rights (authority/power) to conduct action related to intellectual property in the form of creation of minds such as technology, knowledge, art, literature, song compositions, written works, caricatures, and so on. Essentially, Intellectual Property Rights are classified as intangible private property rights. From another point of view, Intellectual Property Rights denote a legal monopoly right granted to the creators, limited to the prevailing laws and regulations.

Intellectual Property Rights are a section of business law which performs important role in the development of the national and international economy. Indonesia as a developing country shall take necessary measures to prepare adjustment to any changes and global developments in order to achieve national goals. Promoting and protecting Intellectual Property Rights are important measures to be conducted. One of the efforts is increasing the growth intellectual property rights application in the sector of research and development institutions (R&D), higher educations, industries, and various other sectors. However, these efforts have not achieved the expectation. The awareness of the society regarding the importance of IPR protection remains low, unless a case concerning violation of Intellectual Property Rights occurred and lead to dispute, thereafter the awareness on the importance of IPR protection emerges. Such dispute shall be prevented due to the consequences which require the owner of the creation to take measure to protect the creation, however such protection shall be granted to the creation since the first discovery which prevent other party to take advantage of the creation. This form of legal protection is granted by registering the creation to the authorized institution which administers IPR.

The law stipulates and protects several types of intellectual property owned by a person or a legal entity. The protection is granted with the purpose of appreciating a valuable creation made by the creator, besides the morality, the economic value may also emerge from the creations. There are various qualifications for these rights, however this article will emphasize the sector of trademark rights.

Trademark is the characteristic of goods and services products in the sector of marketing in the world. The forms of trademark encompass a picture, name, word, letters, figures, composition of colours, or a combination of said elements. Products shall have a trademark as a means of identification, as a distinguishing feature, as a means of promotion, as a guarantee on the quality, and shows the disclosure of the products. Subsequently, the owner of the trademark shall enjoy the rights such as legal protection, prohibiting other parties from using their trademark without permission (filing a civil law suit or making a criminal complaint), granting permission to other parties to use a license, and transferring the rights.

The rapid improvement of information technology and transportation encourages the globalization of IPR. The production of goods and services in one State can easily be duplicated in another State. Therefore, the goods or services by which the production process have contained IPR, thus simultaneously emerging IPR when the goods or services concerned are marketed. The need to protect IPR thus arises along with the need to protect goods or services as a trading commodity. The need to protect goods or services from possible counterfeiting or

from unfair competition (fraudulent) implies the need to protect IPR used during the production of concerned goods or services. Such IPR also includes the trademark. The need to protect trademark, including well-known trademark is significantly important since violations on trademark right frequently occurred during the trading of goods or services and cause harms to all parties, including the owner of the trademark and consumers as the users of goods or services.

In this case, musicians in the form of singers, band groups, disk jockeys (DJs) and others who create or produce other intellectual works besides trademark, such as copyright in the form of songs, arrangements, and others, shall have distinguishing features with other musicians. Such creations and various other works produced by each musician contain an amount of benefit or economic value, moreover the musician shall build reputation to the name which requires efforts and money in order to obtain popularity. The name is the sign of the musician and the main asset of its production. The production enables each musician to draw interests of the public and initiate the establishment of a fanbase as regular consumers of the production, or other people who enjoy the work of the musician.

According to the importance of name as a distinguishing feature, the owner of the name shall enjoy legal protection as a means to prevent violation. It is inevitable that a big name obtained with effort and costs will ignite competitors or other parties using the name to gain benefit. Such actions may be emerged in the form of hitching on the names of popular musicians or with the goodwill of the new musicians who have not been popular with subsequent result of consumer confusion, or using the name without rights or permission from the original name owners for various production activities. Such actions will cause loss to the real musician, for instance the goodwill will be damaged or ruined the reputation of the musician, or the other unauthorized forms of action.

However, the authors assert that many musicians use the same name, particularly in the international field, either as a whole or in essence. In addition, the awareness of musicians, especially in Indonesia, to protect the name as a trademark remains low. The number of musicians who have registered their names as trademark to obtain legal protection is less than those who have not registered. Legal protection over name of musicians may be granted by conducting registration procedure as service trademark at the Directorate General of Intellectual Property under the Ministry of Law and Human Rights. Since many musicians appear to join the entertainment industry, the possibility of more than one musician use the same name is plausibly high, for example Cakra Khan with Cakka Khan, or Trio Macan with Tiga Macan and many others. Therefore, the authors are compelled to conduct research regarding this issue. The authors will address the importance of registering the name of musicians and the process of trademark registration application. In addition, some related cases will be conferred to portray clear framework. Based on the foregoing description, two main issues are emerged. First, the urgency of registering name of musician as a trademark. Second, the process of trademark registration application on the name of musician as a trademark with the related dispute over violation of the name of musician as a trademark.

The urgency of Registering the name of musician as trademark

According to the Large Dictionary of the Indonesian Language, a musician is a person who composes, conducts, or performs music; music creator or player. On the other words, a musician is a person who works in the field of music by producing various musical works, either in the form of Solo Duo, Trio, Group Band, Orchestra, Disk Jockey (DJ), and others. Musicians carry out a production activity from composing song, making albums, performing shows or concerts, and various musical production resulting to substantial economic value. Therefore, the form of production of copyrighted works, such as music, songs, arrangements, and others shall be protected by the law under the Copyrights.

In addition, musicians use a name as a distinguishing feature from other musicians. Distinguishing feature of name can be in the form of words of the musician's real name, other names or nicknames of the musicians, abbreviations of the names of several musicians in a group, names or words that are purposely made for the musician, and other things which lead to the identity of the musicians. The names or words are the identity of each musician to distinguish from other musicians in one music genre or different music genres.

The names of the musicians frequently contain philosophical meanings, for example the Indonesian band Padi refers to the philosophy of rice which gets stooped as it gets contained or the Samson band which uses the name Samson because it symbolizes courage, and many other musicians who struggle to come up with a name using the knowledge they have. The name obtained by such effort shall take into considerations and assessments to create the identity of the musician. Thereafter, musicians shall have a name as an identity to build popularity from local, national and international. Such object requires efforts and money to be achieved by the musicians. Therefore, appreciation in the form of protection is granted to the musicians.

In a music project, a name may be valuable, or it can even be something prized. A name enables musicians to represent various things such as image, character and vision of the musicians which catch the attention of listeners and persists in their memory. Everlasting, legends and so on. The name of a band may be inspired by anything, some represent bravery, evil, scary, funny, strange or even unique image. The unique feature of names

is the alternative method to quickly gain public attention and make it easy to remember. Names may represent profound message, containing high expectations or even meaningless at all. A name is the prominent part of a band or other musical project's face, as it will be remembered, recorded, and mentioned by many.

Each musician has conducted difficult efforts to build reputation. However, several musicians intentionally have the same name nowadays. Occasionally, the musicians shall add the origin of the word to distinguish it. For example, two bands with the same name "Mono" may be distinguished by adding the places of their origin, in this case are Japanese and English. Moreover, bands with the same name frequently discovered. It may raise a discomfort when a popularity is gained by a musician but the other musician with the same name is the party who enjoy the popularity and resulted to the listeners get misled in buying or enjoying the products of the concerned musician. Besides, a singular name enables the owner to raise the pride. Furthermore, a competition to seize the name may occur.

A violation of trademark occurs in the event a party uses a registered name. Based on above discussion, the first violation is the use of same name which induces confusion amongst the consumers in enjoying or buying products of the musicians. In this case, new musicians may hitch on popular musicians or has goodwill. Such action is generally conducted by using the same name in essence or the same as a whole in order to draw public assumption that the new musician is the popular one. The repetition of such violation will remain happened.

In addition to buying albums or songs as products of the musicians, people can also be deceived if new musicians hitch on the names of popular musicians hold a concert or show. For example, a case of concert held by Tiga Macan, newcomer dangdut singers in a city. The people of that city interested to come and watch the concert because they believe that the concert would be presenting Trio Macan, the famous dangdut singers. However, when the concert was held, the audience got disappointed because their expected artists Trio Macan did not present, but Tiga Macan who resembles Trio Macan was the artists that performed in the concert. This case implies a fact that similarity of names may lead to public confusion as the consumers of the entertainment industry.

The similarity of more than one musician's name can also ruin the reputation or goodwill of the popular musicians. Musicians with high reputation will manage to show the best performance in all aspects, including the sound, lighting, event concept, and others. On the other hand, new musicians using the same name may hold a show without proper preparation, and the people come to the show expect that the show is the popular one's, such situation lead to damage the reputation of the popular musicians. Furthermore, the similarity can damage the reputation or other established goodwill, for example a popular dangdut singer will manage to prioritize th performance by properly preparing the quality of the sound to be enjoyed by the audience. Instead, the new dangdut musician who use the same name as the popular one prefers to wear exposing dress and does erotic dances during the performance with the aim to amuse the audience. This situation leads to damage the goodwill or reputation of the popular singer who have put efforts and money to be famous.

The use of registered musician names in other productions other than songs or albums and performances shall obtain permission to protect the rights of the musicians such as entitle to the benefit sharing of the production activities as granted by the law. For example, the production of merchandise by parties other than the musician concerned in the form of clothes, hats, shoes, accessories, etc. using the name of popular musician name shall obtain permission to conduct production which enables them to earn benefits. In the event a registered musician name used in any form of products without permission of the concerned musician, shall be deemed violation as stipulated by the law. Therefore, any party intends to conduct production activities using a registered musician name shall submit a permit beforehand, by which the production activities shall not deem violation.

The theory of brand equity in marketing emphasizes this issue which defines the theory as the added value given to the products of goods and services. Another definition of brand equity is a set of brand assets and liabilities associated with a trademark, name and symbol, enables it to increase or decrease the value provided by a product or service to companies or customers. Assets and liabilities that affect brand equity include brand loyalty, brand awareness, perceived quality, various other brand associations, and privately owned brand assets (for example, the patents). For example, the prize of a plain t-shirt is around Rp. 50,000 (fifty thousand rupiah), in a week the sale of the t-shirt may reach 50 pieces. On the other hand, if the t-shirt has the picture of popular musician such as Bon Jovi, the prize will be doubled into Rp. 100.000 (one hundred thousand rupiah) because the reputation of International musician will attract more consumers because the popularity of Bon Jovi has been well-established since long ago.

The musicians entitle to enjoy the merchandising rights of their copyrighted work. In general, the merchandising rights may arise from all works and intellectual property, meaning that merchandising rights may arise from intellectual property rights in the form of copyrights, trademark, industrial designs, and other rights which may be gained in the form of trinkets for souvenirs, merchandise, or other forms of valuable products, including products related to promotional and marketing means, for example the use of musical works. However, the law or other related regulation have not provided elucidation regarding the permission to produce merchandise made by parties other than the musicians with commercial purpose, does not include promotion or marketing means of the musicians. Notwithstanding, the production of merchandise by parties other than the musicians shall obtain

permission from the concerned musician, therefore it indirectly implies that the musicians shall register the name to enjoy exclusive rights.

A conflict may arise between members of a band or musicians gathered in a group where more than one person created the name which led them become popular and has goodwill. The conflict may not be solved and results in the split of the band. In such case, it is necessary to perceive the ownership of the band as a means to determine the use of the name for the band after the split. This conflict may be resolved by conducting agreements between the members after the name of the band is registered to enjoy protection. Registration of name is required to ascertain the owner of the name. Furthermore, other agreements may be concluded to determine to use of the name in the future.

The application of registration of musicians' names as marks

Robert C Sherwood asserts as quoted by Ranti Fauza Mayana in the book *Protection of Industrial Design in Indonesia in the Era of Free Trade in Intellectual Property Rights (IPR): Understanding the Basic Principles, Scope and Applicable Laws*, it is stated that there are 5 basic theories IPR protection, as follows :

1. Reward Theory, is a recognition of intellectual works produced by the inventor/creator/designer that shall be appreciated as a reward the efforts in finding/creating the intellectual works.
2. Recovery Theory, defines that the inventor/creator/designer who have put efforts in time, money, and energy to produce his intellectual work must recover what he has made.
3. Incentive Theory, relates to the development of creativity by providing incentives to inventor/creator/designer. This theory enables the inventor/creator/designer to enjoy the right of incentives as a means to promote favourable research activities.
4. Risk Theory, describes that any work contains risks. IPR as the result of research contains risks of prior discovery of other people or improve the work. Therefore, legal protection for efforts or activities containing such risk shall be granted.
5. Economic Growth Stimulus Theory, emphasizes that protection of IPR is a tool of economic development. Economic development is the main objective of establishing an effective IPR protection system.

Based on the theories, it is necessary to protect the name of musicians as a feature or trademark due to these reasons; First, according to the Reward Theory, it is necessary to recognize the works made by musicians, and the name of the musician as a feature to identify the owner of the work. On other words, the name of the musician is the main asset to be recognized by the public, to indicate the works he has made. Therefore, the name of the musician requires protection as a reward. Moreover, the Recovery Theory, asserts that the musicians who have created the name with certain meaning or not, be appropriate as the name used in the products, such as songs, albums, arrangements, music, and other products as well as the effort of building the reputation of the name since its first appearance in local, national or international level. In addition, the Risk Theory emphasizes that there is a possibility that the name has been used by other people or irresponsible competitors using the same name. Therefore, the name of the musician shall be protected to prevent violation by other people or competitors aimed to obtain personal benefit by hitching on popular musician with good reputation or goodwill.

The name of a musician is categorized as trademark according to Article 1 of Law Number 15 of 2001 concerning Trademark, which stipulates that trademark shall mean a sign in the form of a picture, name, word, letters, figures, composition of colours, or a combination of said elements, having distinguishing features and used in the activities of trade in goods or services. The use of names by musicians is the distinguishing feature which generally including the form of letters or words, either in one music genre or a different music genre. Thereafter, the name may be used in commercial activities or production of songs, albums, arrangements, merchandise and others to show the public that the products belong to the musicians.

To obtain legal protection, musicians shall register the name as a trademark to the Directorate General of Intellectual Property under Ministry of Law and Human Rights. In other States, the government grants protection to the names of musicians based on the name of the group as provided to logo or trademark, for example in the United Kingdom and the United States. The name of a musician is the distinguishing feature of the musicians to identify the character of the. Law Number 15 of 2001 concerning Trademark stipulates the criteria for a mark can be divided into three, as follows:

1. Trade Mark shall mean a Mark that is used on goods traded by a person or by several persons jointly or a legal entity to distinguish the goods from other goods of the same kind.
2. Service Mark shall mean a Mark that is used for services traded by a person or by several persons jointly or a legal entity to distinguish the services from other services of the same kind.
3. Collective Mark shall mean a Mark that is used on goods and/or services having the same characteristics that are traded jointly by several persons or legal entities to distinguish the goods and/or services from others of the same kind.

The name of a musician is a feature used by a person or several people who conduct services trading with the community, therefore the name of the musicians is categorized as Service Mark. Musicians conducting

production activities or trade services in the form of entertainment services are classified as class 41 in the Nice Agreement or Government Regulation Number 24 of 1993 concerning Classification of Goods or Services for the Registration of Marks.

The process to register the name of musicians is in the same way with trademark registration in general as stipulated in Law Number 15 of 2001 concerning Trademark. The process begins with the application for trademark registration to the Director General of Intellectual Property, completing the requirements, fulfilling substantive examination, until the application is approved and the Trademark Certificate is given. The protection to the work begins after the trademark certificate in the form of the name of the musician is issued and given to the musician or even since the filing date of the registration. The musicians may also entitle various exclusive rights and any conducts of other parties using the name shall obtain permission from the concerned musicians.

Therefore, Indonesian musicians are expected to be aware of the importance of registering the names in order to obtain legal protection. The registered name will prevent any violation of the rights granted by the Law. Musicians will be pleasant to develop the creativities in the production process. The registered name will prevent other parties using the name for personal benefit or hitching on the popular musicians. Moreover, the musicians may continue to enjoy the rights granted by the law and become noteworthy to the public, even though the musician have not been actively producing works or has died.

CONCLUSION

Based on the foregoing discussion, the authors will provide conclusions to answer the main problems as follows:

1. In a music project, the name is valuable or even more valuable. Musicians have a name as a distinguishing feature from other musicians. There are many similar names of musicians in the world. The same names will lead to confusion of the consumers in enjoying or buying products of the musicians. New musicians may hitch on the popular musicians or have goodwill. New musicians may use the name of popular musicians in essence or the as a whole aim to attract the public interest to consume the products. Meanwhile, the popular musicians who have built reputation or goodwill with efforts, money, and time will experience loss. The public can also be deceived if new musicians hitch on the names of popular musicians hold a concert or performance. Similarity can also damage the reputation or goodwill of the popular musicians. The use of names in other productions other than songs or albums and performances that use the musician's name shall also obtain permission from the musicians as a means of benefit sharing in the commercialization of the products.
2. The name of musicians may become the trademark according to Article 1 of Law Number 15 of 2001. Musicians use names as a distinguishing feature in the form of letters or words, both in one genre music or different musical genres. The name of musicians is used in trading activities or the production of songs, albums, arrangements, merchandise and others to show the public that the products belong to the concerned musicians. To obtain legal protection, musicians shall register the name as a trademark with the Directorate General of Intellectual Property. Musicians carry out production activities or trade services in the form of entertainment services are classified as class 41 in the Nice Agreement. The process of registering the name of musicians is in the same way with the process of registering trademark in general as stipulated in Law Number 15 of 2001 concerning Trademark.

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