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The Legal Reform of Trademark Protection and Dispute Mitigation: Lessons from Licensing Well-Established Brands in Indonesia

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Abstract

Trademarks are part of Intellectual Property Rights and can be well-known due to their widespread advertising and registration in various countries. These well-known brands have high economic value and reputation, but they also face infringement, which harms both the owner and the state. To address this, license agreements can be formed between the brand owner and a licensee, based on contract law. These agreements require parties to comply with terms, payment of royalties, and termination. To overcome these issues, the principle of

strengthening freedom of contract and good faith can be implemented. This approach uses legislation, context, and cases to draw specific conclusions.

Keywords

Well-known brand, License Agreement, IPR, Freedom of Contract

Introduction

One of the essential issues that cannot be released in today's life is the issue of Intellectual Property Rights (IPR).[1] IPR was created from human thinking as a human effort to meet the needs of social life.[2] Humans urgently need records of intellectual works as a form of Intellectual Property Rights. In the field of trade, for example, for goods and/or services to be sold properly and smoothly, a brand must be used. The function of a brand in world trade is so vital.[3] It is a differentiator between similar goods and/or services and a tool to win the competition in seizing market consumers. In addition, a brand that has become a well-known brand also functions as a goodwill and asset.[4] An invaluable corporate example of these well-known brands is the Siemens brand. Siemens produced by Siemens AG, the world's largest electronics company.[5] Its international headquarters are in Berlin and Munich, Germany. Worldwide, Siemens and its subsidiaries employ 461,000 people (2005) in 190 countries.[6] Siemens has been licensed in various

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1 Richard Stim, *Patent, Copyright & Trademark: An Intellectual Property Desk Reference* (Nolo, 2024).

2 Stim.

3 Ivan Montiel et al., "Implementing the United Nations' Sustainable Development Goals in International Business," *Journal of International Business Studies* 52, no. 5 (2021): 999–1030.

4 Putri Rumondang Siagian, Budiman Ginting, and Jelly Leviza, "Licensed Rights of Well-Known Brands: Legal Rules of Limited Partnership's (Commanditaire Venootschap) Position," *KnE Social Sciences*, 2024, 460–68.

5 Diana Claudia Cozmiuc and Ioan I Petrisor, "Innovation in the Age of Digital Disruption: The Case of Siemens," in *Disruptive Technology: Concepts, Methodologies, Tools, and Applications* (IGI Global, 2020), 1124–44.

6 Hartmut Berghoff, "'Organised Irresponsibility'? The Siemens Corruption Scandal of the 1990s and 2000s," *Business History* 60, no. 3 (2018): 423–45.

countries with substantial investment. At the same time, Siemens reported global sales of €85 billion.[7]

The description of Siemens, with its huge sales value, proves how big the brand's role is, both from an economic and another perspective.[8] The brand has a significant and strategic role. The function of a brand is not only as a differentiator of similar goods or services but also as an invaluable asset corporate this is proven by the Mercedes–Benz cars,[9] which various circles have widely recognized because of their reliable quality and well-known brand. Mercedes-Benz is a car brand from the Daimler Chrysler company known as Mercedes.[10] Mercedes-Benz is the oldest car company in the world.[11] The company's origins date back to the early 1880s when Gottlieb Daimler and Carl Benz invented cars separately in Southern Germany.[12] Daimler and Wilhelm Maybach invented the four-stroke engine, working together in Cansttat (city district in Stuttgart),[13] Benz owned a shop in Mannheim near Heidelberg.[14] In the early 1990s, Daimler built-in *Untertiumkheim* (in Stuttgart) sold successfully by an Austrian dealer named Emil Jellinek, who supplied the cars named after his daughter, Mercedes.

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7 Muhamad Shafwan Afif and Heru Sugiyono, "Perlindungan Hukum Bagi Pemegang Merek Terkenal Di Indonesia," *Jurnal USM Law Review* 4, no. 2 (2021): 565–85.

8 Jennifer Christie Siemens et al., "Sizing up without Selling out: The Role of Authenticity in Maintaining Long-Run Consumer Support for Successful Underdog Brands," *Journal of Advertising* 49, no. 1 (2020): 78–97.

9 Lopo Rego et al., "Brand Response to Environmental Turbulence: A Framework and Propositions for Resistance, Recovery and Reinvention," *International Journal of Research in Marketing* 39, no. 2 (2022): 583–602.

10 Maria Vernuccio, Michela Patrizi, and Alberto Pastore, "Developing Voice-Based Branding: Insights from the Mercedes Case," *Journal of Product & Brand Management* 30, no. 5 (2021): 726–39.

11 Rodolfo Schöneburg and Karl-Heinz Baumann, "What the Car Industry Can Do: Mercedes-Benz'View," in *The Vision Zero Handbook: Theory, Technology and Management for a Zero Casualty Policy* (Springer, 2022), 727–54.

12 Gijs Mom, *The Evolution of Automotive Technology: A Handbook* (SAE International, 2023).

13 Wolfgang Sachs, *For Love of the Automobile: Looking Back into the History of Our Desires* (Univ of California Press, 2023).

14 Penny Haw, *The Woman at the Wheel: A Novel* (Sourcebooks, Inc., 2023).

A brand that becomes a well-known brand becomes a mainstay of entrepreneurs in winning an increasingly fierce competition.[15] That fact causes well-known brands to become targets of counterfeiting and secures parties with bad intentions. As part of IPR, trademark rights are special rights. Those privileges exclusively exercised by the right owner, while other people cannot use them without the owner's permission. The concept that these special trademark rights need to be protected follows the definition of rights[16] that rights are interests that are protected by law, while interests are individual or group detentions that expected to be fulfilled. Brand rights are part of the rights of property objects, and as rights, brand rights are property or assets in the form of intangible assets.[17]

Even though trademarks have been regulated in Law no. 15/2001 concerning Marks (hereinafter abbreviated as UUM), in reality, trademark violations continue.[18] The violation of well-known marks has spread, even in trade practices in Indonesia today, from street vendors to plazas, one can easily find various kinds of products using well-known brands, which are mere imitations. For example, it can be stated that there are well-known brands such as Levi's, Yves Saint Laurent, Valino, Guy, and Piere Cardin for pants and shirt products. For this type of bag, there are famous brands such as Gucci, Guess, Eintene Aigner, Calvin Klein, and Charles Jordan. These items are sold at a much cheaper price than the original goods. Disputes caused by violations of well-known marks in the world of trade are inseparable from the bad intentions of business actors to win the competition in seizing the market. The competition was dishonest and unfair. As a result, brand owners suffer losses. Some actions that lead to unfair competition are using the same

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[15] Sita Dewi Kusumaningrum, "Destination Brand Equity: A Perspective of Generation Z on A World Heritage Site in Indonesia," *The Journal of Asian Finance, Economics and Business* 8, no. 2 (2021): 1071–78.

[16] Dian Ety Mayasari, "Protection of Geographical Indications as a Form of Consumer Rights Protection," *Yuridika* 35, no. 1 (2020): 41–54.

[17] Alexander Krasnikov and Satish Jayachandran, "Building Brand Assets: The Role of Trademark Rights," *Journal of Marketing Research* 59, no. 5 (2022): 1059–82.

[18] Donny Agus Prakoso, "Protection of Famous Brands Based on Law Number 20 of 2016 Concerning Brands and Geographic and Trip's Indications Case Study Hakubaku. Ltd. Co," *Riwayat: Educational Journal of History and Humanities* 6, no. 4 (2023): 2930–45.

brand in principle or the same in its entirety, passing off, and blatant plagiarism 4 (enslaved person/slave imitation nabosting) and so on.

For this reason, trademark rights need to be protected. The concept of legal protection for trademark rights refers to the special (exclusive) nature of trademark rights.[19] Other people with the brand owner's permission can use these monopoly property rights. In practice, the permit is in the form of granting a license through a license agreement. A license, according to Article 1 letter 13 UUM, is a permit granted by the owner of a registered mark to another party through an agreement based on the granting of rights (not a softening of rights) to use the mark, either for all or part of the type of goods and/or services that yield within a certain period. and certain conditions.[20] The trademark license is a means for legal protection of the mark, in addition to going through law[21]. The license reveals the exclusivity of brand rights so that other people can use a brand safely and legally.[22] Licensing is also a form of the free will of the brand owner in exploiting his exclusive rights.[23] The creation and execution of licenses are based on the principles of agreement in legal contracts.[24] These principles form the foundation and legal basis for creating and implementing corporate licenses.[25] Therefore, the principles of contract law have an important

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[19] Carlos Correa, *Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement* (Oxford University Press, 2020).

[20] Putri Ayi Winarsasi et al., "Legal Protection of Marks in the Perspective of Property Rights Law," *Al-Mizan (e-Journal)* 19, no. 2 (2023): 341–62.

[21] Anne Fitzgerald and Brian Fitzgerald, *Intellectual Property: In Principle* (Sy: Lawbook Co., 2004).

[22] Mochamad Kevin Romadhona, "Does the Pandemic Affect Unemployment Rate in East Java? (A Study of Pre and Post COVID-19 Pandemic in 2016 to 2021)," *The Journal of Indonesia Sustainable Development Planning* 3, no. 2 SE-Policy Paper (August 30, 2022): 164–76, https://doi.org/10.46456/jisdep.v3i2.308.

[23] Jay Dratler, *Licensing of Intellectual Property* (Law Journal Press, 2023).

[24] Rahmanisa Purnamasari Faujura, Elisatris Gultom, and Sudjana Sudjana, "The Monopoly Practice and Unfair Business Competition in the Technology Transfer Activity through the Foreign Patent in Indonesia," *UUM Journal of Legal Studies* 12, no. 1 (2021): 69–91.

[25] Mochamad Kevin Romadhona, Bambang Sugeng Ariadi Subagyono, and Dwi Agustin, "Examining Sustainability Dimension in Corporate Social Responsibility of ExxonMobil Cepu: An Overview of Socio-Cultural and Economic Aspects," *Journal of Social Development Studies* 3, no. 2 (2022): 130.

role, and it is decided to settle the license agreement[26]. However, the facts show that often the source of problems that occur is because the parties do not comply with the principles contained in the contents of the contract[27].

One thing that is quite fundamental related to the signing of the trademark license is that the mark in question must be legally registered at the Office of the Directorate General of Intellectual Property Rights. In contrast, an unregistered mark cannot be licensed. This is because trademark protection in Indonesia is only given to registered marks. In connection with this requirement, according to Ridwan Khairandi, it is suspected that there are many well-known brands originating from abroad, some of which have not been registered but have been licensed to others in Indonesia.[28] This situation is, of course, very unfavorable for brand owners and licensees because seen from the aspect of legal protection.

Licensing agreements that form the basis of legally binding (reasons of rights) between licensors and licensees are often violated,[29] resulting in disputes regarding the rights and obligations they have agreed to in the license contract.[30] Therefore, the principle of good faith mandated by contract law is neglected.[31] This is similar to what happened in the license for the well-known brand *Cap Kaki Tiga* is currently being tried at the Central Jakarta Commercial Court[32]. This

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[26] Bambang Sugeng Ariadi Subagyono, Zahry Vandawati Chumaida, and Mochamad Kevin Romadhona, "Enforcement of Consumer Rights Through Dispute Settlement Resolution Agency to Improve the Consumer Satisfaction Index In Indonesia," *Yuridika* 37, no. 3 SE-Civil Law (September 1, 2022): 673–96, https://doi.org/10.20473/ydk.v37i3.34943.

[27] Dina Sunyowati et al., "Can Big Data Achieve Environmental Justice?," *Indonesian Journal of International Law* 19, no. 3 (2022): 6.

[28] Agung Sujatmiko, *Perjanjian Lisensi Merek* (Qiara Media, 2020).

[29] Robert Gomulkiewicz, Xuan-Thao Nguyen, and Danielle M Conway, *Licensing Intellectual Property: Law and Application* (Aspen Publishing, 2023).

[30] Jacques de Werra, "Transplanting Equitable Remedies in Contracts Governed by Civil Law? The Case of Clauses on Equitable Remedies in Intellectual Property License Agreements," in *Kreation Innovation Märkte-Creation Innovation Markets: Festschrift Reto M. Hilty* (Springer, 2024), 1179–88.

[31] Charles L Knapp et al., *Problems in Contract Law: Cases and Materials* (Aspen Publishing, 2023).

[32] Deity Yuningsih, "The Legal Protection for Trademark Rights in the Judge's Decision of Indonesia," *JL Pol'y & Globalization* 61 (2017): 19.

dispute was caused because the parties did not make a complete and clear agreement, causing disputes between the parties. The main issue in dispute is because the defendant's licensee did not pay royalties continuously, did not submit reports on the production and or sales of products using the *Cap Kaki Tiga* brand, and removed the *Kaki Tiga* image or logo from the *Cap Kaki Tiga* product packaging. Because the licensee did not fulfill the principal obligation, the licensor filed a lawsuit. Each party has reciprocal rights and obligations in the famous trademark license agreement. Each party must exercise these rights and obligations following the principle of good faith, which forms the basis of the agreement. In this case, the license contract, which forms the basis of the legal bond (reasons of rights) between the licensor and the licensee, is violated, resulting in a dispute between them regarding the rights and obligations that they have granted the license in the license contract, as well as the principle of good faith mandated by neglected contract law.

In the case of the Good Year, the problem that arose in this case, was because the term of the license agreement was not made clear, so an objection was filed. Because there is no time limit for when the license agreement will take effect, the defendant can use the Good Year indefinitely, which is then disputed by the plaintiff[33]. The two cases prove that the trademark license agreement must be made in full and in detail regarding the rights and obligations of the parties so that it becomes clear and does not lead to different findings. For this reason, it is necessary to have the principles of contract law, which form the basis for enforcing famous brand license agreements. The contract law principles must be obeyed by the parties so that the license agreement they make does not cause disputes. This paper will discuss the problem of licenses for well-known brands in Indonesia and their solutions.

This research using three problem approaches the statutory approach, the case approach, and the case approach. The deductive method analyzes general theoretical concepts and existing cases, leading to specific conclusions.

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[33] Mochamad Kevin Romadhona et al., *Improving Digital Platform As Tourism Development: A Economic Beneficial For Umbul Ponggok Community, Klaten, Central Java*, 4 J. PENDIDIK. SOSIOL. UNDIKSHA 102 (2022).

Trademark Rights: Licensing Agreements and Contractual Principles

Licensing is one of the strategies to exploit IPRs.[34] Their owners can also exploit trademark rights as part of IPR through licensing agreements. The exploitation of these trademark rights is a manifestation of the economic rights contained therein.[35] Through licensing, the owner of the right earns a significant profit. Apart from the license, the owner of the brand rights can also make a profit by selling the rights to the brand.[36]

However, there is a difference between the two; that is, through a license, the owner of the trademark rights can still use his trademark rights to produce goods or services, whereas if he sells them, he can no longer use his trademark rights. The trademark rights have passed to the buyer. Based on the above understanding, it can be concluded that a license agreement involves an agreement (written contract) between the licensor and licensee. This agreement is, at the same time, proof of the granting of permission from the licensor to the licensee to use trade names, patents, or other proprietary rights (Intellectual Property Rights)[37]. The license agreement was implemented based on the legal principles of the agreement set out in the *Burgerlijk Wetboek* (BW).

As one of the business contracts, the brand license agreement contains several principles of legal contracts, which are the basis for the parties to make and implement it. The principles of contract law are contained in the Civil Code (*Burgerljik Wetboek*), hereinafter referred to as BW. The principles of contract law are the basis that must be obeyed

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[34] Elisabetta Gentile, "Intellectual Property Rights and Foreign Technology Licensing in Developing Countries: An Empirical Investigation," *Economic Development and Cultural Change* 68, no. 2 (2020): 655–98.

[35] Prasetyo Hadi Purwandoko, Adi Sulistiyono, and M Hawin, "The Implementation of the Traditional Cultural Expression (TCE) Protection Indonesia Based on Article 38 Law Number 28 of 2014 Regarding Copyright," *Indonesian J. Int'l L.* 18 (2020): 543.

[36] Norma Eka Safitri et al., "Virtual Objects Trading in Indonesia: Legal Issues on Ownership and Copyright," in *International Conference on Intellectuals' Global Responsibility (ICIGR 2022)* (Atlantis Press, 2023), 713–21.

[37] Gunawan Widjaja, "Intellectual Rights Protection Law in the Technology Era: Academialogy Integrity Studies," *LEGAL BRIEF* 11, no. 2 (2022): 1412–20.

by the parties so that the license agreement does not harm either party and can be implemented fairly.

Resolving Disputes and Ensuring Equity in Trademark Licensing: Legal Frameworks and Best Practices

The principle of good faith, which is the basis for implementing a trademark license agreement, cannot guarantee that the agreement will take place safely and smoothly. The principle of *pacta sun servant* in Article 1338 paragraph (1) of the Civil Code (*Burgerlijk Wetboek*), hereinafter abbreviated as (BW), expressly states that "*all agreements made legally apply as laws for those who make them*". This principle mandates that a license agreement, as an agreement, is a rule that must be obeyed by the parties who make it. These rules are coercive because if they are not complied with, they will lead to legal disputes between the parties. This is reaffirmed in Article 1338 paragraph (2) BW, which states that "*the agreement cannot be revoked, except with the mutual consent of both parties or for reasons deemed sufficient by law*".

The parties sometimes ignore the principle that agreements apply as laws to those who make them. The parties made mistakes that resulted in losses for the other party. The error occurs intentionally, which is triggered by several factors. Mistakes made intentionally cause the principle of good faith as mandated by Article 1338 paragraph (3) BW to be ignored. Several reasons result in problems in famous brand licensing agreements. Some of them are as follows:

The first problem inevitably occurs when one of the parties terminates the agreement in the middle of the term of the agreement. This situation gave rise to a lawsuit filed by the opposing party because a unilateral termination would be detrimental to him, mainly if the licensor carried it out.

Several reasons for the licensor unilaterally terminating the license agreement include: the licensee does not pay royalties according to the agreement; the license holder produces goods over the amount agreed upon; permit holders to produce goods outside the specified area, and the licensee continues to produce goods or services even though the license contract has expired. Several reasons for the licensee requesting the termination of the license agreement, among others, include: the

licensor unilaterally increases the agreed amount of royalties; the licensor limits the number of products produced by the licensee, and the licensor limits the area of application of the license agreement.

When the licensor terminates the license agreement, the licensee loses out because he has spent much money setting up a new factory and other costs. The investment he made will be lost before turning a profit. Apart from suffering material losses, the licensee also loses the opportunity to use and produce goods and/or services under the mark in question. This immaterial loss often has a more excellent value than material loss because it is a matter of pride for the licensee to use the trademark in question. The pride in a licensed trademark is priceless.

The draft Presidential Decree governing trademark licensing also stipulates the right of the licensee to demand revocation of the license agreement because one of the parties has not adequately implemented the agreement. This right indicates an equal standing between the licensor and the licensee, although it is rare to terminate an agreement by the licensee. In general, the termination of the agreement is carried out by the licensor. This shows the substantial domination of the licensor, causing losses to the licensee.

Some of these possibilities are likely to occur in practice. Therefore, the parties must anticipate it. Such anticipation is crucial for the continuity of a mutually beneficial license agreement. For example, the implementation of license contracts in the United States and European Union countries always includes provisions regarding termination of the agreement midway through the term of the agreement so that each party knows about it.[38] When the licensee terminates the agreement in the middle of the contract period, it must be notified in advance to the licensor, and vice versa.[39] The termination will take effect a month later

[38] Jean-Frédéric Morin and Madison Cartwright, "The US and EU's Intellectual Property Initiatives in Asia: Competition, Coordination or Replication?," *Global Policy* 11, no. 5 (2020): 557–68; Fredrik Erixon et al., "The Benefits of Intellectual Property Rights in EU Free Trade Agreements: Full Report" (ECIPE Occasional Paper, 2022); Jacques de Werra, "Contract Law and Intellectual Property Transactions: Research Perspectives," *Handbook of Intellectual Property Research*, 2021; Kamal Saggi and Olena Ivus, "The Protection of Intellectual Property in the Global Economy," in *Oxford Research Encyclopedia of Economics and Finance*, 2020.

[39] Terrence Dunn, "The Tripartite Relationship," *Franchise Law Journal* 39, no. 3 (2020): 403–24; Jeremey de Beer, Jules Belanger, and Mohit Sethi, "Consumer

so that the company's operations can be carried out accordingly. Some of the stoppages may take effect in the next 60 days. This is solely intended to prevent significant losses from occurring. This is a good thing because, in a brand-licensing contract, the investment made by the licensee is substantial and involves much manpower.

In the European Union and United State, based on examples of existing licensing contracts, unilateral termination of the agreement can be made for some reasons, among others, the licensee does not consistently use the licensed brand; the licensee does not pay royalties according to the agreement, and licensees do not maintain the quality of the products produced. When the licensee terminates the agreement, must be notified to the licensor in advance. Such notification must be made 3 (three) months before the end of the agreement. Once the termination takes effect, the licensee may no longer use the relevant trademark. These provisions are very good and need attention to be implemented in the implementation of license agreements in Indonesia, bearing in mind that problems often occur regarding the termination of license agreements in the middle of the agreement period.

The second problem arises when amid a license agreement the licensee uses a new brand. A new brand is a brand owned by the licensee that is used for business expansion. Having a new trademark used for the same product can reduce sales of goods or services using the licensed mark to the detriment of the licensor. To solve this problem, the license agreement must decide whether or not it is permissible to use the new mark. The use of a new brand is very likely to occur, so the parties must anticipate it. It is recommended that if the licensee uses a new trademark, he must first consult with the licensor to anticipate the licensing contract that will be made. This is sole to protect the licensor's interests because, as a trademark owner, the licensor does not want to be harmed by possible actions that are detrimental to the licensee. The new mark must be consulted and approved by the licensor because it is very likely that the new mark will become a threat or a competitor of the licensed brand.

The third problem that may also occur is a dispute caused by a former licensee producing goods or services using another brand, but

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Contracts, Copyright Licensing, and Control over Data on the Internet of Things," *Canadian Journal of Law and Technology* 18, no. 2 (2020): 161.

the quality is the same as the brand licensed before. This condition will cause the former licensor as the brand owner to suffer losses because it will reduce the number of product or service sales. The trademark owner will have a new competitor who is the former licensee of the trademark. To overcome this possibility, it would be nice if the license contract stipulated that after the license agreement ends, the licensee may no longer work in the same field as the brand owner.

The fourth problem may arise when the court revokes the brand due to a third-party lawsuit that is harmed. This is possible because Article 76 Paragraph 1 of Law Number 20 of 2016 concerning Marks and Geographical Indications states that a lawsuit for revocation of mark registration can be filed by the party concerned because the mark contradicts the formal and material requirements as stipulated. In Articles 20 and 21. Articles 21 and 22 of Law Number 20 of 2016 concerning Marks and Geographical Indications must be fulfilled so the Trademark Office can accept that trademark application. Violation of either of these will result in the trademark application being rejected. Therefore, these two articles contain conditions that applicants must comply with for trademark registration.

If it turns out that a mark does not comply with these two articles, but is registered due to human error, then the interested party can demand its revocation at a later date through the commercial court. The lawsuit for revocation is aimed at revoking the mark and then removing it from the general register of marks because it has violated the provisions, which can be caused by having similarities in principle or whole with the marks of other parties that have been registered.

Therefore, before registering a mark, the applicant must know that the mark does not conflict with the contents of Articles 20 and 21 of Law Number 20 of 2016. This is so that the registration goes smoothly and there are no lawsuits from interested parties. Interested parties refer to brand owners, attorneys, consumer associations, and religious institutions. Brand owners have legally registered their mark in the General Register of Marks, whose names are listed in the mark certificate. The prosecutor, in this case, can represent the State. Foundations are consumer organizations that represent disadvantaged consumers, while religious institutions are involved in cases where the brand in question violates religious norms.

The deadline for filing a lawsuit is five years after the mark is registered. Claims can be submitted without a time limit if the mark is contrary to good faith, state ideology, laws and regulations, decency, religion, and public order. When the commercial court grants the lawsuit, the mark concerned will, of course, be removed from the General Register of Marks (DUM); as a consequence, it cannot be used as a trademark. Under these conditions, the licensee will incur huge losses because they cannot produce the goods. In addition, losses can occur because permit holders have incurred large costs for investment, including costs for buying land, constructing buildings, purchasing factory machinery, etc.

Other losses were caused by the cessation of the goods production process, which caused the loss of expected profits. Profits cannot be enjoyed because of the cessation of production. On the other hand, brand owners as licensors also experience considerable losses. To overcome this problem, it is necessary to include a clause in the license agreement that in the event of a trademark revocation due to a claim by an interested party, the licensor, as the brand owner, is obliged to compensate for losses to the licensee. This is because the brand owner must be responsible for the brand's authenticity. The responsibility for ensuring that the trademark is genuine and free from third-party claims rests with the trademark owner and not with the licensee. Therefore, it is only natural that the brand owner, as the licensor is responsible for the losses suffered by the licensee. This is solely to reduce the loss of the licensee. This reflects the principle of justice that must be upheld in a trademark license agreement because the licensee also has an equal position with the licensor. This equal position must be considered by the licensor, meaning that the licensee also provides benefits and services to the licensor. Given that the famous brand license agreement is vulnerable to various problems, it is necessary to strengthen the main principles of contract law, which form the basis of the agreement. These principles are the principle of freedom of contract and good faith

Freedom of Contract in Trademark Licensing Agreements: Legal Implications and Constraints in Indonesian Law

Article 42 Paragraph 1 of Law Number 20 of 2016 concerning Marks and Geographical Indications states that the owner of a registered mark can grant a license to other parties to use the mark in part or in whole.[40] The license grant must be made in a written agreement because it must be registered with the Ministry of Law and Human Rights of the Republic of Indonesia. Otherwise, the agreement does not apply to third parties. The principle of freedom of contract plays an important role in the making and implementing of trademark licensing agreements. This principle gives freedom to the parties to carry out the contents of their agreement.

The principle of freedom of contract emphasizes that a brand license agreement is based on freedom of contract. Based on the provisions of Article 1 number 18 of Law no. 20 of 2016, the parties' freedom to agree is limited by the provision that the agreement must be made in writing. In addition, the provisions of Article 42, paragraph 3, require the registration of agreements with the Ministry of Law and Human Rights. That is, the agreement must be made in writing to facilitate registration. An agreement made verbally will complicate registration and make it more difficult in the event of a dispute in court. The parties will find it difficult to prove the existence of the agreement. Thus, the principle of freedom of contract in making a written agreement limited by Article 1 point 18 and Article 42 paragraph 3. The principle of freedom of contract is carried out in the freedom given to the parties to formulate the contents of the permit. Agreement following each wish regarding the number of royalties paid, time of payment of royalties, settlement of disputes, and the end of the license agreement.

Based on the principle of freedom of contract, the parties are expected to obtain the expected benefits. The Trademark owners as licensors will reap huge economic benefits, and so will the licensee. Freedom of contract is necessary to support the interests of economic actors. The contents of the contract are generally related to economic exchanges. Furthermore, the contract law is a legal instrument that

[40] Andrea Zappalaglio, "Getting Article 22 (1) TRIPS Right: A Commentary on the Definition of 'Geographical Indication'from a European Union Perspective with a Focus on Wines," *The Journal of World Investment & Trade* 23, no. 2 (2022): 180–217.

regulates such exchanges and simultaneously provides protection for the aggrieved party.[41]

The development of the principle of freedom of contract was inspired by the teachings of natural law and the philosophy of laissez faire.[42] Based on natural law theory, the judges at that time understood that everyone had the right to own property and therefore had the right to carry out legal acts of buying and selling or other actions related to his property and to make their contracts.[43] The principle of freedom of contract is based on individualism that was born in the Greek era, which was then continued by the Epicureans and developed rapidly during the Renaissance through the teachings of Hugo de Groot, Thomas Hobbes, John Locke, and Rousseau.[44] Individualism is the freedom of each individual to get what he wants.[45] Based on this definition, individualism is embodied in contract law in the form of freedom of contract.[46]

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41 Vanessa Mak, *Legal Pluralism in European Contract Law* (Oxford University Press, USA, 2020).

42 Mark Olssen, "Globalisation, Neoliberalism and Laissez-Faire: The Retreat from Naturalism," *Globalisation, Ideology and Neo-Liberal Higher Education Reforms*, 2020, 121–40; Karl Farmer, "Free-Market Economy, Free Trade, Autocrats, and Natural Law: An Elementary Neo-Austrian View," *Modern Economy* 14, no. 12 (2023): 1701–21; Z A Istianah et al., "Freedom of Contract and Judicial Intervention: Does the Court Have the Right?," *Revista Opinião Jurídica (Fortaleza)* 21, no. 36 (2023): 205–21.

43 Billy Christmas, *Property and Justice: A Liberal Theory of Natural Rights* (Routledge, 2021); Joseph William Singer, *Property* (Aspen Publishing, 2022).

44 Bradley Bowden, "Freedom, Democracy and Individualism: Cause of Business Success or Mere Correlation?," in *Slavery, Freedom and Business Endeavor: The Reforging of Western Civilization and the Transformation of Everyday Life* (Springer, 2022), 167–202; Charles Peck Jr, "Historical Synergies: Mannheim's Paradox, Gasset, Nietzsche, Voltaire Sumer Temple Economy, Hunter Gatherers, Greek Patriarchal Gods, & David Hay-Extreme Individualism-Hobbes & Political Concept of Rational (Independent) Individualism," 2024; Mehmet Kanatli, *Private Property, Freedom, and Order: Social Contract Theories from Hobbes to Rawls* (Routledge India, 2021); David Campbell, *Contractual Relations: A Contribution to the Critique of the Classical Law of Contract* (Oxford University Press, 2022).

45 Peter L Callero, *The Myth of Individualism: How Social Forces Shape Our Lives* (Rowman & Littlefield, 2023); Erich Fromm, *The Fear of Freedom* (Routledge, 2021).

46 Surbhi Arora, Sahil Agrawal, and Mritunjay Kumar, "Dialectics of Individualism and Communitarianism in Gandhian Thought," in *Relevance of Duties in the*

The principle of freedom of contract is also known in English law.[47] As Anson puts it, "a promise is more than a statement of intent because it imports the willingness of the promisor to bond with the person to whom the promise is made." On that basis, the principle of freedom of contract applies universally.[48] The principle of freedom of contract gives freedom to the parties to make an agreement in any form or format (written, oral, scriptless, paperless, authentic, inauthentic, unilateral (*eenzijdig*), adhesive, standard, etc.), and with contents or substance desired by the parties. In the principle of freedom of contract, in general, a person is free to choose to agree.[49] The Principles of International Trade Contracts (UNIDROIT), the principle of freedom of contract is realized in the form:[50]

Contemporary World: With Special Emphasis on Gandhian Thought (Springer, 2023), 83–100; Guillermo M Jodra, *On Hellenism, Judaism, Individualism, and Early Christian Theories of the Subject* (Bloomsbury Publishing, 2022).

47 Richard D Taylor, Richard Taylor, and Damian Taylor, *Contract Law Directions* (oxford university press, 2023); Halberda Jan, "The Principle of Good Faith and Fair Dealing in English Contract Law," *Правоведение* 64, no. 3 (2020): 312–25.

48 Nicolas Cornell, "Third Parties," in *Research Handbook on the Philosophy of Contract Law*, ed. Chen-Wishart; Saprai, 2023; David Winterton, "Prioritising Proof over Speculation: Resolving the Prospective Inability Problem in Contract Damages," *The Modern Law Review* 86, no. 4 (2023): 843–71.

49 Daniel Markovits and Emad H Atiq, "Philosophy of Contract Law," *Stanford Encyclopedia of Philosophy (Winter, 2021)*, 2021; Masitah Pohan, "Conception of Franchise Agreement in Protecting the Legal Interests of Parties Based on Indonesian Civil Law," *International Journal Reglement & Society (IJRS)* 1, no. 2 (2020): 103–12; Taylor, Taylor, and Taylor, *Contract Law Directions*; Janet O'Sullivan, *O'Sullivan and Hilliard's the Law of Contract* (Core Texts Series, 2020).

50 Wiwik Sri Widiarty, "Application of the Principles of Freedom of Contracting in Import Trade: Business Legal Perspective," *Russian Law Journal* 11, no. 5 (2023): 879–83; Eckart Brödermann, *UNIDROIT Principles of International Commercial Contracts. An Article-by-Article Commentary* (Kluwer Law International BV, 2023); Thomas Krebs, "The UNIDROIT Principles of International Commercial Contracts," in *Research Handbook on International Commercial Contracts* (Edward Elgar Publishing, 2020), 132–57; Isabel Lopez Pito, Pablo Castro Quintero, and Sebastian Camayo Ortiz, "The Judicial Courts Understanding of the United Nations Convention on Contracts for the International Sale of Goods and the UNIDROIT Principles of International Commercial Contracts: Analysis of the Colombian Case and Its High Courts," *Cuadernos Derecho Transnacional* 13 (2021): 408.

a. Freedom to determine the contents of the contract;
b. Freedom to determine the form of the contract;
c. Legally binding contracts;
d. Mandatory rules as an exception; and
e. Consideration of the international nature and purpose of the UNIDROIT principles in the interpretation of contracts.

The principle of freedom of contract according to Indonesian contract law includes the following scope:[51]

a. Freedom to make or not to make agreements;
b. Freedom to choose with whom he wants to make a deal;
c. Freedom to determine or choose the cause of the agreement to be made;
d. Freedom to determine the object of the agreement;
e. Freedom to determine the form of the agreement;
f. Freedom to agree to or deviate from the optional provisions of the law.

From the understandings described above, there is a spirit of freedom to make agreements. In principle, the spirit of freedom can be achieved if the parties have equality, both in terms of rights and obligations as well as bargaining positions. Otherwise, it will be challenging to make it happen. The principle of freedom of contract is implemented in the content/substance of the agreement, which involves, among other things, royalty payments, the validity period of license agreements, dispute resolution, and so on. Articles 42 to 45 of Law No. 20 2016, it does not specify the amount of royalties that must be paid by the licensee to the licensor. Additionally, they do not include the payment method; whether it is monthly or yearly, it is left to the parties to arrange it in the agreement. It is also true concerning the expiration of the agreement. However, in Article 19 of the draft Presidential Decree on Trademark Licensing, the expiration of a licensing agreement can be due, among others, to an agreement by both parties. This means that the parties can regulate the licensing contract's expiration in their agreement. This reflects the freedom of contract that

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[51] Dhaniswara K Harjono, "Standard Agreements in the Concept of Freedom of Contract," *Russian Law Journal* 11, no. 3 (2023): 652–57; Suhadi Herdianto and Faisal Santiago, "Legal Principles of Agreements: A Foundation in Contract Establishment," in *Proceedings of the 2nd International Conference on Law, Social Science, Economics, and Education, ICLSSEE* (Semarang, 2022).

the parties can make rules regarding the expiration of the licensing contract.

Another aspect the parties can also regulate is the aspect of dispute resolution. As a rule, in any contract, including licensing contracts, the dispute resolution aspect is regulated in a separate article, and the provisions concerning its contents are based on the parties' freedom and desires about existing dispute resolution aspects, for example, through court, arbitration or other alternative dispute resolutions. Several aspects that the parties may agree upon in a licensing agreement represent freedom conducive to the parties to implement the agreement they make. However, freedom is not absolute since the counterparty's will and statements constrain it. In other words, this freedom is also constrained by the principle of consensual. Furthermore, the freedom of contract must not conflict with the law, public order, and morality.

There are notions stating that the principle of freedom of contract also has restrictions. The contract restrictions are affected by:

a. The development of the doctrine of good faith;
b. The development of the doctrine of circumstance abuse;
c. The increasing number of standard contracts;
d. The development of economic law.

In the further, Patrik argues that restrictions on freedom of contract are caused by:

a. The economic developments which form trade alliances, legal entities or corporations, and other community groups, such as groups of workers and peasants;
b. Dissemination (*vermaatschappelijking*) of the desire for inter-individual and community balance aimed at social justice;
c. Emergence of agreement formalism;
d. Increasing number of regulations in state administrative law.

In line with Patrik, Sofwan argues that restrictions on freedom of contract are due to:

a. Socio-economic developments within society (eg, company mergers or centralization);
b. Government interference to protect the interests of the public or disadvantaged parties;
c. Social welfare movements within the society.

The above notions regarding restrictions on freedom of contract are related to the implementation of trademark licensing agreements.

Despite the basis of trademark licensing agreements on freedom of contract, in certain cases, it is also constrained by law because there are statutory provisions that cannot be violated. This is set out in the provisions of Article 4 paragraph (6) of Law No. 20 of 2016 that licensing agreements are prohibited from containing provisions that, either directly or indirectly, can cause consequences detrimental to the Indonesian economy or from containing restrictions that hinder the ability of the Indonesian nation to master and develop technology in general.

The provisions of Article 42 paragraph (6) are restrictive; thus, must be obeyed by the parties. The agreement cannot be registered with the Indonesian Ministry of Law and Human Rights when the parties violate them. The ministry would reject the registration of licensing agreements that violate the provisions of Article 42, paragraph (6). Registration of a licensing agreement is among the parties' obligations as mandated in Article 42 paragraph (3). If not registered, the licensing agreement would not apply to third parties.

Trademark licensing agreements are closely related to economic aspects.[52] Economic benefits represent the parties' ultimate purpose. On the other hand, trademark-licensing agreements also bring economic benefits to the State.[53] Trademark licensing agreements would be followed by such other business activities as the establishment of new factories (new investments), and recruitment of new workers.[54] The

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[52] Suma Athreye, Lucia Piscitello, and Kenneth C Shadlen, "Twenty-Five Years since TRIPS: Patent Policy and International Business," *Journal of International Business Policy* 3 (2020): 315–28; Federico Caviggioli et al., "The Licensing and Selling of Inventions by US Universities," *Technological Forecasting and Social Change* 159 (2020): 120189; Dominika Bochańczyk-Kupka, "Intangibles, Information Goods, and Intellectual Property Goods in Modern Economics," in *The Elgar Companion to Information Economics* (Edward Elgar Publishing, 2024), 301–14; Antony Taubman, Hannu Wager, and Jayashree Watal, *A Handbook on the WTO TRIPS Agreement* (Cambridge University Press, 2020).

[53] Jay Dratler Jr and Stephen M McJohn, *Intellectual Property Law: Commercial, Creative and Industrial Property* (Law Journal Press, 2023); Robert Howse, "Making the WTO (Not so) Great Again: The Case against Responding to the Trump Trade Agenda through Reform of WTO Rules on Subsidies and State Enterprises," *Journal of International Economic Law* 23, no. 2 (2020): 371–89.

[54] Nishant Kumar, Reetu Gour, and Navneet Sharma, "Intellectual Property Rights and Economical Development: A Brief Overview," *Journal of Scientific Research and Reports* 30, no. 5 (2024): 145–62.

State country would benefit from tax payment since every business activity shall pay taxes. When economic activities last for a long time, it would increase the country's economic growth in the long run. This aspect indicates trademark-licensing agreements strongly support the State in driving economic growth. Hence, the State has an interest in preventing licensing agreements in Indonesia from harming the Indonesian economy or hindering technological progress. On the contrary, the existence of licensing agreements should be able to support the government in enhancing the economy and developing the technology. This can be done, for example, by using local raw materials, local labor, and so on. Concerning the aspect of technology development, brand-licensing agreements that use new machines for the production of goods should be able to provide added value to the State in terms of technology transfer.

The principle of freedom of contract in trademark licensing agreements is also implemented in terms of royalty payments.[55] The royalties to be paid by the licensee to the trademark owner as the licensor are entirely dependent on their agreement. The parties freely determine the time and amount of payment. Law Number 20 of 2016 does not specify it. Hence, there are royalties paid every six months or every year. If it is paid every six months, the amount is calculated based on each unit of goods produced or sold within six months. If it is paid every year, the amount is calculated based on each unit of goods produced or sold within one year. The amount of royalty payments is generally determined based on the licensee's total sales. Under such models, the parties are free to determine royalty payment in trademark licensing agreements. In the United States the royalty payment models are as follows:

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[55] Radwa Elsaman, "Licensing the Use of Intellectual Property: The Tale of the Two Franchising Market Tycoons," *IDEA* 64 (2023): 1; Jorge L Contreras, "Financial Terms in License Agreements," in *Intellectual Property Licensing and Transactions: Theory and Practice* (University of Utah College of Law Research, 2020); Gomulkiewicz, Nguyen, and Conway, *Licensing Intellectual Property: Law and Application*; Stojan Arnerstål, *International Trademark Licensing* (Kluwer Law International BV, 2021); Alan Rachman and Daniel Hendrawan, "Legal Protection of Brand Rights for Franchise Agreements in Indonesia," *Journal of Advances in Humanities and Social Sciences* 7, no. 3 (2021): 71–81.

a. Paid up license: Royalties paid in full at the commencement of the license;
b. Running royalty: Most commonly structured as a percentage of shipments or sales. If based on sales, the license should specify how sales will be calculated (eg, gross sales, net sales, units shipped) and what deductions will be allowable. Consult with appropriate business people early to determine what royalty structure makes sense for the particular business involved;
c. Minimum royalties: A fixed dollar amount or guarantee that may or may not be credited against a royalty based on sales. If the license contains a minimum or guarantee, the licensee must pay this amount regardless of the level of sales of the licensed product. Minimum royalties or guarantees should be large enough to incentivize the licensee to diligently exploit the license. On the other hand, they should not be so large that the licensee is unlikely to sell sufficient quantities of the licensed products to recoup the minimum payments.

In the end, the principle of freedom of contract adopted in the licensing contracts is following Peter Gillis' notion that the common law system is strongly influenced by the laissez-faire philosophy, where judges tend to implement freedom of contract, which emphasizes the free will of the parties.[56] This can be seen in the case of Printing and Numerical Registering Co *v.* Simpson (1875), LR 19 eq, 465, in which judge Sir George Jessel MR expressed his extreme statement: "It must not be forgotten that you are not to extend arbitrarily those rules which say that a given contract is void as being against public policy, because if there is one thing which more than another public policy requires it is that men of full age and competent understanding shall have the utmost liberty of contracting, and their contract when entered into freely and voluntarily shall be held sacred and shall be enforced by a court of justice. Therefore, you have this paramount public policy to consider—that you are not lightly interfering with this freedom of

[56] Yehuda Adar and Shmuel I Becher, "Ending the License to Exploit: Administrative Oversight of Consumer Contracts," *BCL Rev.* 62 (2021): 2405; William Fox and Ylli Dautaj, *International Commercial Agreements* (Kluwer Law International BV, 2023).

contract. Sir George Jessel MR also stated this in the Bennet *v.* Bennet (1876) 43 LT. 246n, 247.

Strengthening Good Faith in Trademark License Agreements: Necessity, Implementation, and Legal Implications

Strengthening the principle of good faith is absolutely necessary because it is difficult for the parties to guess what is in each other's hearts. Therefore it is necessary to have the awareness to carry out the contents of the agreement as best as possible. The principle of good faith has a very important function in contract law. The principle of good faith does not only apply at the implementation stage but also at the signing stage and before closing a contract (15). Furthermore, there are two meanings of good faith. First, in relation to the implementation of the contract as specified in article 1338 paragraph (3) BW.[57] In this regard, good faith or *bona fides* is defined as proper and proper behavior

[57] Hendra Gunawan, Zainul Daulay, and Ulfa Nora, "The Application of Void Contions Clauses in Business Contracts That Do Not Rule Out Article 1266 in Any Civil Law (Study at Agency Agreement PT Sriwijaya Air with PT. Denisa Mitra Wisata)," *International Journal of Multicultural and Multireligious Understanding* 7, no. 1 (2020): 821–28; Yapiter Marpi, Bakti Toni Endaryono, and Krismayu Noviani, "Legal Effective of Putting" Business as Usual" Clause in Agreements," *International Journal of Criminology and Sociology* 10 (2021): 58–70; Irma Shintia Kumaralo and Risdalina Risdalina, "The Legal Force of the Cooperation Agreement Letter in a Cooperation Agreement Is Reviewed According to Article 1320 of the Civil Code," *Journal of Social Research* 2, no. 3 (2023): 917–23; Made Sukereni, Muhammad Noor Ingratubun, and Johannes Ibrahim Kosasih, "Legal Forcement Cancellation Clause of the Agreement Made on the Basis Principle of Freedom of Contract," *EPRA International Journal of Research and Development (IJRD)* 8, no. 5 (2023): 351–56; Herdianto and Santiago, "Legal Principles of Agreements: A Foundation in Contract Establishment"; Puji Setyowati, I Gusti Ayu Ketut Rachmi Handayani, and Hartiwiningsih Hartiwiningsih, "Legal Construction of a Sale and Purchase Agreement in the Property Industry Based on the Good Faith Principle," in *International Conference On Law, Economic & Good Governance (IC-LAW 2023)* (Atlantis Press, 2024), 217–21; Dardiri Hasyim, "A Reconstruction of the Civil Code Article Based on the Value of Contractual Justice," *Jurnal Hukum Volkgeist* 4, no. 2 (2020): 139–47.

between the two parties (*redelijkheid en billijkheid*).[58] Testing whether a behavior is proper and fair is based on unwritten objective norms. Second, good faith is also interpreted as a state of not knowing there is a defect, such as payment in good faith as stipulated in Article 1386 BW.[59]

The principle of good faith is essential thing in the implementation of the agreement.[60] The emergence of a dispute in an agreement, usually also stems from the good faith of the parties in carrying out the agreement they made together. The mandate given by Article 1338 paragraph (3) BW is clear that the parties are required to be honest in carrying out the agreements they have previously made in good faith. Good faith is not only in implementing the agreement but also in making the agreement.

The principle of good faith in the trademark license agreement is carried out based on the values that live in society and the demands of the contents of the agreement itself. Good faith is implemented on the rights and obligations of each party in a balanced manner and must be carried out properly by the parties. Each party has rights and obligations

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[58] Rizky Febri Dewanti, Pujiyono Pujiyono, and Yudho Taruno Muryanto, "The Application of Good Faith Principle of Precontract in Common Law and Civil Law Contry," *Research, Society and Development* 10, no. 16 (2021): e139101623621–e139101623621; Sudjana Sudjana, "Principle of Good Faith in Confidentiality Agreements of Trade Secret Information," *Dialogia Iuridica* 14, no. 1 (2022): 52–76; Theresia N A Narwadan, "Well-Known Trademark Protection in Indonesia: The Essence of Good Faith and Legal Practices," *Sch Int J Law Crime Justice* 4, no. 7 (2021): 451–57; Yuliya Chernykh, "National Laws and Contract Interpretation," in *Contract Interpretation in Investment Treaty Arbitration* (Brill Nijhoff, 2022), 73–110; Rosa Yonatan; Agustina, "The Feud of Nemo plus Iuris Ad Alium Transferre Potest Quam Ipse Habet and Nemo Dat Quad Non Habet (Nemo Dat Rule) Legal Principles against the Legal Principle of Good Faith (Bona Fides) in Indonesian Courts," *Indon. L. Rev.* 12 (2022): 101; Yudhi Herianto Zebua and Maidin Gultom, "Legal Protection of Partiesin International Contracts," in *International Conference of Omnibus Omnia*, vol. 1, 2023, 9–15.

[59] Fajar Rachmad Dwi Miarsa et al., "Comparative Study of The Good Faith Concept between Indonesia and The Netherlands in Civil Law," *Yuris (Journal of Court and Justice)*, 2024, 1–17.

[60] M H Shubhan, "Legal Protection of Solvent Companies from Bankruptcy Abuse in Indonesian Legal System," *Academic Journal of Interdisciplinary Studies* 9, no. 2 (2020): 142–48, https://doi.org/10.36941/ajis-2020-0031.

that must be implemented in good faith so as not to harm the other party. Neither licensor nor licensee may violate the agreements they have previously made. In the stage of implementing these rights and obligations, the parties are required to implement the clauses that have become a mutual agreement, which among other things regarding rights and obligations, payment of royalties, termination of license agreements, and so on. Therefore, the principle of good faith in a trademark license agreement requires honesty as its operational basis.

The principle of good faith is very important because one of the disputes that arise in the contract is caused by a dispute resulting from a breach of the IPRs license agreement contract22. This is proven by Commercial Court decision No. 14/Merek/2008/PN.Niaga Jkt.Pst and Supreme Court Decision No. 440/K/Pdt.Sus/2008 concerning Cancellation of the ALAIA Mark. In this case, both the Commercial Court and the Supreme Court were of the opinion that based on Article 69 paragraph (2) of the UUM, a lawsuit for annulment could be filed indefinitely if the mark in question conflicted with religious morality, decency or public order. According to the elucidation of Article 69, paragraph (2) included in the meaning of contrary to public order is bad faith. In that case, the defendant registered the ALAIA mark, which contained similarities in principle or whole with the plaintiff's ALAIA mark. Defendant's trademark was registered on May 2, 2008, while Plaintiff filed a lawsuit for annulment on March 10, 2009. The Court thinks that even though the lawsuit for cancellation has exceeded the deadline because Defendant registered the ALAIA trademark in bad faith, the lawsuit can still be accepted. The court believes that Defendant had bad intentions because he registered a mark that was similar in principle or in whole to Plaintiff's mark. Likewise, in the Decision of the Supreme Court Number 274 PK/Pdt/2003 concerning the Cancellation of the Registration of the PRADA Famous Mark. In both cases, good faith is the main requirement, especially in the case of trademark registration, as well as in the implementation of well-known trademark licensing agreements. Therefore, the trademark license agreement must be implemented based on the principle of good faith so that disputes do not arise in the future. The principle of good faith in the trademark license agreement is also implied in Article 72 paragraph (3) of the Trademark Law No. 20 of 2016, which states that in the case of deleting a mark by the brand owner if a license agreement still binds

it, deletion can only be carried out if it has been approved in writing by the licensee.

Likewise, Article 48 paragraph (2) of the Trademark Law No. 15 of 2001 concerning trademark cancellation states that a licensee in good faith remains entitled to use a trademark that a court has canceled because it contains similarities in principle or its entirety to other registered marks. The good faith of the licensee, in this case, was in the form of ignorance that it turned out that the brand he was using would have problems in the future, but at the time the agreement was made he did not know about it. Furthermore, Article 48, paragraphs (2) and (3) of the Trademark Law No. 15 of 2001 state that as a person with good faith, he is not obliged to pay royalties to the owner of the canceled mark but to the actual owner of the mark. Suppose the royalty payment in advance has been paid all at once to the licensor. In that case, the licensor must transfer part of the royalties to the trademark owner, which is not canceled in the amount equal to the remaining term of the license agreement. What is contained in the provisions above is proof that the principle of good faith has become one of the requirements for making a trademark license agreement. The parties must uphold this principle so that the license agreement can run well and not cause problems in the future.

Therefore, to support the implementation of a trademark license agreement that is safe and profitable for the parties, it is necessary to have awareness and honesty for the parties to implement the principles of freedom of contract and good faith. Awareness and honesty are ultimately a means of strengthening these two principles. On the other hand, if a dispute arises related to these two principles, the parties are required to be consistent and honest about the substance of the agreement so that, in the end, the agreement that has been made can be used as a means to comply with and implement the agreement with a sense of full responsibility

Conclusion

Some problems that may arise inevitably indicate that licensing contracts are prone to disputes if not drawn up completely and openly. Each party must understand and comprehend the contents and

purposes of the contract. After the contract is signed, the parties must execute it in good faith. Therefore, for the licensing contract to run smoothly and not harm either party, the contract should be drawn up fairly and openly and approved by each party voluntarily and without coercion. Prior to making and signing a licensing contract, it is necessary for the parties to think about drawing up a humanist licensing contract that benefits all parties. This merely demands that a licensing agreement be made based on the principles of consensus and good faith. Strengthening the principles of freedom of contract and good faith as the basis for making and implementing a brand license agreement is necessary, considering that the sustainability of the implementation of a brand license agreement is highly dependent on the good intentions of the parties to carry out the contents of the agreement properly and consistently. Strengthening of these two principles can be achieved when the parties honestly and responsibly carry out the contents of the agreement they have mutually agreed upon. If a dispute occurs between them, the parties must take the mutually agreed settlement method either through court or other alternative dispute resolution. Execution of well-known trademark licensing agreements requires good faith from the parties to be continuously honest and not deviating from the agreement reached at the time of drawing up the contract as an implementation of the principle of freedom of contract. For the agreement to be executed properly, it is necessary for the parties to be aware and honest so that the principles of freedom of contract and good faith can be implemented in accordance with the expected benefits. Implementation of a well-known brand license agreement requires good faith from the parties to act honestly and not deviate from the agreement reached at the time of making the contract as an implementation of the principle of freedom of contract. For the agreement to be carried out properly, it is necessary to have awareness and honesty from the parties so that the principle of freedom of contract and good faith can work according to the expected benefits.

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