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Law Protection Towards Trademark of PT. Viona Duta Samudra through Trademark Registration Accompaniment

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Abstract

Indonesian people have realized how important it is to register a trademark for their business. Because, the brand is an identity of a business which means the brand serves as a differentiator for a product or service which is intended to show the characteristics and origin of a product or service. Therefore, it is necessary to register the Mark with the Directorate General of Intellectual Property in order to obtain rights to the Mark. Meanwhile, the registration process for Marks can be found in Law no. 20 of 2016 concerning Brands and Geographical Indications. With the regulation on this mark, a registered mark can have legal protection from the state. The protection referred to in this context is in the form of legal protection where the registered mark cannot be used by other parties without being known and without the permission of the Mark owner. Thus, by having a certificate of right to a mark, directly the party who registered the mark or in other words the applicant for the registration of the mark has become the legal owner of the mark for the goods and/or services. In addition to functioning as property rights, trademark certificates can also serve as proof of legal ownership of goods and/or services when in court. PT. Viona Duta Samudra is a company engaged in the service sector where the main focus of its business is the processing of legal documents for Foreign Workers (TKA) but it is known that PT. Viona Duta Samudra has not registered its trademark with the Directorate General of Intellectual Property (DJKI). So, the author tries to help the company to register the trademark so that the company can avoid disputes and actions by persons who do not have good faith related to the owner's mark. The research method implemented by the author in this study is an empirical legal research methodology, where the author uses primary data in the form of face-to-face interviews and observations supported by secondary data in the form of library research. Meanwhile, the receipt of the application for trademark registration is the result of the trademark registration process of PT. Viona Duta Samudra.

Keywords: Assistance, Registration, Trademark, Directorate General of Intellectual Property.

Background

In recent times, Indonesian citizen are increasingly aware of the importance of registering a trademark for their business. Because, the brand acts as an identity of a business. Identity in this context means that the brand serves as a differentiator for a product or service which is intended to show the characteristics and origin of a product or service. Of course, the image of a company will be affected in the eyes of consumers if their brand is displayed on the products or services they offer. So, if a company that has given a brand to a product or service they offer and the product or service also has high quality and customer loyalty, of course through the brand, the company's image will also be good. Also, with the granting of a brand, the product or service can be avoided from the potential for imitation, duplication and piracy from other parties who have bad intentions such as producing similar products or services (Maulidia, 2016) .

Coupled with the method of using advertising media that is increasingly varied where currently advertising can be disseminated both nationally and internationally so that the quality of the brand is also increasing. Because, companies can stimulate customer demand and also maintain their customer loyalty by utilizing advertising using brands as the identity of the products they offer. Therefore, with a brand, a company can have a competitive advantage and ownership in order to compete in the global market (Simbolon, 2013).

A product or service must also have a characteristic or at least a differentiator that can distinguish the product or service from others. If the product or service already has a characteristic, then the brand acts as an identifier or identity of the product. So, in addition to being the identity of a business, a brand also makes it easy for consumers to distinguish between one product and another. So, the benefit of making a brand is that consumers can easily identify an item or service that they want to have (Prawiranegara & Sardjono, 2014) .

Therefore, it is necessary to have a regulation that specifically regulates the regulation of trademarks which is then adjusted to its development so that Law no. 15 of 2001 concerning Brands. The law is enacted in order to provide legal certainty for cases involving trademark disputes. The purpose of the mark is described in the Trademark Law no. 15 of 2001, namely a mark is a sign in the form of an image, name, word, letters, numbers, color arrangement, or a combination of these elements that have distinguishing features and are used in the activities of trading goods or services. So, it is necessary to have a sign that has sufficient distinguishing power to distinguish one product or service from another so that it can only be declared as a brand (Yusnita, 2020).

However, in the practice of trade, it was found that there were still many companies, both in the services and goods sectors, had not registered their trademarks at the Directorate General of Intellectual Property (DJKI) (Indrawati & Setiawan, 2020). Some of the reasons include they do not know how and the process of trademark registration. Then also many of them feel that there is no urgency to register their business marks, especially in the service sector, to the Directorate General of Intellectual Property (DJKI). So based on the arguments as already mentioned, it is important for a brand to be registered in order to get legal protection. In addition to providing an identity, a brand is also needed as protection

from the legal aspects that are present in order to prevent and avoid the occurrence of plagiarism and fraudulent or unfair business competition.

So, in carrying out the Community Service program or commonly referred to by the abbreviation PKM where the author himself collaborates with PT. Viona Duta Samudra which is a company engaged in the service sector where the main focus of its business is the processing of legal documents for Foreign Workers (TKA) domiciled in Bengkong Indah II Block F No.24 Kav 25 c, Bengkong Indah, Kec. Bengkong, Batam City, Riau Archipelago 29457. In addition, through the implementation of trademark registration assistance, it begins with the delivery of information regarding the registration of a Business Mark of PT. Viona Duta Samudra. One of the urgencies is to ensure legal certainty for brand owners in accordance with the provisions contained in the Trademark Law no. 15 of 2001. After that, assistance was carried out for partners to apply for registration of PT. Viona Duta Samudra to DJKI in the context of this Community Service activity. The assistance starts from the document preparation stage to registering the PT. Viona Duta Samudra online to DJKI. With the implementation of this Community Service activity, it is hoped that it can contribute to DJKI in preventing plagiarism of marks by other parties on the registration of Business Marks that have similarities with those of PT. Viona Duta Samudra where Community Service activities are carried out.

Method

The research method implemented by the author in this study is an empirical legal research methodology, where the author uses primary data in the form of face-to-face interviews and observations supported by secondary data in the form of library research. The data collection technique that the researcher applies in the implementation of this Community Service activity is through primary data and secondary data where this primary data is in the form of data obtained directly through the interview process and observation activities. Through routine observation of operational activities carried out at PT. Viona Duta Samudra, is expected to be useful for identifying legal problems that are currently being experienced or may be faced. Meanwhile, with the interview process, it is hoped that further analysis results can be found in relation to legal issues that will be, are currently and may be faced by PT. Viona Duta Samudra. Meanwhile, secondary data used in this research is to study documents or library materials such as Law no. 20/2016. The purpose of utilizing data collection techniques through the study of documents or library materials is to answer in order to identify legal problems that are being experienced or may be faced, to answer questions that will be asked by partners and other matters that have relevance to the activity. The author also makes an output design process in the context of implementing this PKM activity which begins with finding location information, partner identities, and legal problems experienced. Furthermore, the search for information related to the procedures for trademark registration is carried out and continued with data collection needed for output design, data presentation, and data compilation. The implementation of this PKM activity begins with providing an explanation to partners regarding the procedure for submitting a Mark registration online, the

formal and material requirements that must be met, as well as the cost of submitting a Mark registration application. Then proceed to submit recommendations that are deemed to be able to assist PKM partners in registering their Marks, for example related to the appropriate class classification, examination of Mark applications regarding the presence or absence of registered Marks that have similarities, and so on while still being guided by the Trademark Law no. 15 of 2001. Furthermore, monitoring of the status of Mark registration is carried out periodically and updated to partners.

This Community Service . Through this Community Service activity , the author guides partners of PT. Viona Duta Samudra conducts the registration of the Mark which the implementation period is for 3 (three) months.

Discussion

In the process of implementing Community Service (PKM) activities, namely guiding PT. Viona Duta Samudra conducts the registration of the Marks in which the process begins by collecting applicant data, which includes the Partner's ID card; Partner's email address; TIN; Logo and information regarding the business mark; Partner's signature; Business License Number (NIB); NPWP (Taxpayer Identification Number) belonging to the company; applicant's digital signature; and Company Business License. Then proceed with preparing a business mark registration application fee online by the partner, which is Rp. 1,800,000.- (one million eight hundred thousand rupiah) for submission by the public.

At the mark registration stage, all processes are carried out *online* , in other words, the trademark registration process is carried out online *via* the official website of the Directorate General of Intellectual Property. Meanwhile, the purpose of conducting the interview was to request information to register an account prior to registration as well.

After the data acquisition process is carried out, it is then continued by submitting an online application for trademark registration where the stages begin by registering on the trademark.dgip.go.id account. Registration is done by filling in the applicant's data, and the required data includes the e-mail address that will be the username; password (password); type of applicant and attachment of supporting documents; Name according to ID Card; ID card number; gender; date of birth; citizenship; mobile phone number; province; regency/city; address according to ID card; Postal code; and tick the statement that the account creation was made with the correct data. Then, partners will receive an email for the verification process and activation of the brand account via e-mail sent by petition.online@dgip.go.id .

After the verification process is complete, partners will be directed to the main page to *login* as an applicant on the Brand Application. The application will display a *pop up dialog* informing you of successful *login* and contact for complaints and questions about the Brand. Then, the next step is to log in as an applicant on the Brand Application. The application will display a pop up dialog informing you of successful login and contact for complaints and questions about the Brand. The applicant then clicks 'online application' to submit an electronic

trademark registration application, then clicks 'add' to make a new application. Next, a pop up confirmation dialog will appear, click the button yet to place an order for the billing code. A pop up dialog for ordering billing codes will appear and the required data include the type of application; type of application; and class choices. In the next stage, to determine the choice of class for which the rights to trademark rights are registered, the trademark owner looks at the list of class classifications of marks on the website <http://skm.dgip.go.id/> as a reference. The Service Mark of PT. Viona Duta Samudra is registered in class 35. After all the data is filled in then click the 'Order Billing Code' button. The applicant will be redirected to the Simpaki page with the application type data; type of application; and class choices that have been filled in, then complete the address, e-mail and cellphone number data. Then click the 'Process' button and Simpaki will issue a Payment Order. For general business types, per class will be charged a fee of Rp. 1.800.000,-. The applicant makes payments to DJKI in accordance with the instructions contained in the Payment Order. Order the billing code by filling in the type, type, and class selection. Make payments according to the bill on the SIMPAKI application. Re-login on the Brand Application and perform the online application steps as in points 6 and 7. Then click the 'already' button to place an order for the billing code after the confirmation pop up dialog appears. The applicant fills in the data to submit an application for trademark registration through 8 (eight) tabs that will appear after confirmation that the billing code order has been ordered. The tabs include general data; applicant; power; priority; brand; class; attachment; and resumes. The applicant must also upload the required supporting files, including a brand label file and the applicant's digital signature. The applicant checks again the data that has been inputted on the resume tab. If you feel that everything has been filled in correctly, then click 'finish'. A confirmation dialog pop up will appear stating that the applicant states that the data entered is correct and does not need to be changed again. Click the 'yes' button.

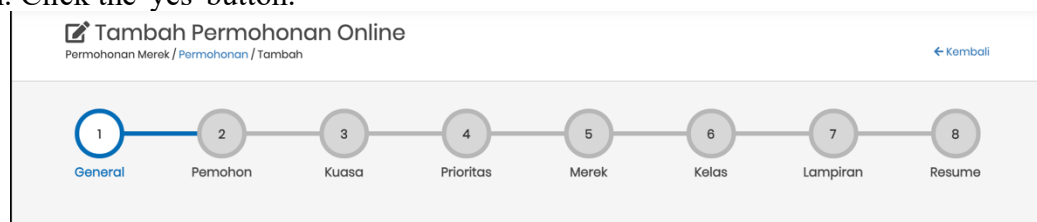


Figure 1. Display of Online Application Stages

After that, the system will display the online application page again and the Brand Application Data Preview. Applicants can download the application receipt and affidavit on the online application page.

| No. | Nomor Transaksi | Tanggal Pengajuan | Tipe Merek | Merek | Kelas | Nomor Permohonan | Tipe Permohonan | Jenis Permohonan | Status | |
|-----|-----------------|--------------------|---------------|------------------------|-------|------------------|-----------------|------------------|----------------------------|--|
| 1 | [REDACTED] | 07/10/2021 9:16:32 | Merek Lukisan | PT. VIONA DUTA SAMUDRA | 35 | JID2021067388 | Merek Jasa | Umum | (TM) Masa Pengumuman (BRM) | Tanda Terima Surat Pernyataan |

Figure 2. Main Page of PT. Viona Duta Iswara

The application that has been received by the DJKI based on Article 14 of the Trademark Law and GI will be followed up with a formality examination within a

period of no later than 15 (fifteen) days. If the formal brand requirements are complete, it will be continued at the announcement stage for a period of 2 (two) months.

Meanwhile, during the process of implementing this Community Service Activity, the authors found that there were advantages and disadvantages in the trademark registration process. When viewed from the superior side of the trademark registration process, the stages of the process are now easier and faster and simpler because the applicant is not required to register manually by visiting the office of the Directorate General of Intellectual Property but can register online. This will also save more costs, especially for applicants whose domicile is not in the central area. In addition, there are also weaknesses in registering trademarks. Due to the lack of information, lack of knowledge and understanding regarding online trademark registration, it is difficult for many people to carry out and use the facilities provided by the DJKI. Then, there is also another weakness where the process to obtain the trademark certificate is also relatively long, which is calculated from the process of checking the data for the registered trademark until the issuance of the trademark certificate, which takes about 1 (one) year.

Conclusion

- (1) The target that the author wants to achieve in Community Service Activities is to get a receipt for a trademark registration application. The author has carried out 3 (three) stages during this Community Service process, starting from the Pre-executive stage where at this stage, the author carried out the process of observing and interviewing partners. Then proceed with the registration process for the Partner's Mark until the receipt of the Mark registration application is received.
- (2) Through the implementation of this registration, it was found that there were impacts and benefits felt by both the authors and partners. From the author, the author can understand and implement the theory that the author has collected and put it into practice in real situations. Meanwhile, for partners, partners can obtain guarantees of protection from the state for registered Marks, as evidence of ownership of Mark Rights, and as weapons to face lawsuits against Marks and Mark abuse, even though the impacts and benefits cannot be felt directly.
- (3) The author hopes that the implementation of this Community Service activity can provide knowledge to people who want to register trademarks. With the explanation that the author describes, it is hoped that it can become a basic material for knowledge for people who lack knowledge of the procedures for registering trademarks due to limited sources of information. Also, the author hopes that the public will understand how important this trademark registration is. Because, trademark registration has a significant role in the identity of a business that can distinguish one business from another.
- (4) The authors would like to thank the author of the Advisory Lecturer, namely Tantimin SH, MH, who has assisted the author in compiling this report.

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Laws and Regulations

Law of the Republic of Indonesia Number 20 of 2016 concerning Marks and Geographical Indications.