

Research Article

Implementation of Trademarks as Intellectual Property in Packaging

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Abstract.

Trademarks are intellectual property that needs to be protected. In some previous studies, more at the normative juridical level, no research has been able to examine in depth the application of brand element. This research is important considering the fact that the use of brands has strategic value in business competition. This study aims to describe the use of brand elements as intellectual property according to the Trademark Law and by its application in the field, namely on the product packaging. The research method used is descriptive qualitative analysis by combining a normative juridical approach and analyzing the form and application of the brand on the packaging. The research stage begins by conducting a study of the Trademark Law, and then observing the form and application of the brand on the packaging of food and beverage products. The samples used in this qualitative study were 50 packages of various foods and beverages where each packaging had its registered trademark, so that it could be checked on the database of the Directorate General of Intellectual Property and also be observed on the selected packaging. The period of the data collection was June to November 2021. The results obtained indicated that according to the trademark law, the brand elements used can be either conventional or non-conventional brands. However, in its application, the majority of the brands attached to packaging are conventional brands in the form of a combination brand of several brand elements mentioned in the Trademark Law, namely a combination of elements of images, colors, logos, names, words, and numbers.

Keywords: trademark law, brand elements, intellectual property, packaging

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1. Introduction

Brands are needed to create healthy business competition and provide protection to consumers. In order to provide legal certainty, it is necessary to support adequate laws and regulations in the field of marks. The product brand visually begins to be recognized by consumers when the brand is attached to a product and/or product packaging. Attractive packaging designs can generate visual memories which will eventually result in reminder buying [1]. Products are easy for consumers to choose through branding on the product, where the application of branding focuses on the packaging and product

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label design [2]. Therefore, the use of a brand requires its own strategy and graphic creativity so that it has high competitiveness in the market and needs to be protected as intellectual property.

In order for brands to get guaranteed legal protection in trading activities of goods and services, brands must be registered [3,4]. However, the use of visual elements on some packaging fulfills the criteria of equality in essence, where this can deceive the public. Legal disputes often result in the use of brand elements that are similar in principle to other parties' brands [5,6] and the most important indicator of trademark registration is similarity in principle so that there is no trademark violation [7]. Thus, preliminary research is needed before using the brand. The trademark value lies in their selling power that is determined by consumer's perception of the product quality and the product itself and the differentiation from other marks determine the degree of the afforded protection [8].

Packaging design can maximize the selling power of a product, the aesthetics contained in the packaging is an added value that functions as a very powerful "emotional trap" to attract consumers [9]. The psychology of each individual can be born because of personal contact between producers and consumers through graphic designs on labels and packaging. Consumer perception of a product is influenced by color, text, and product visualization elements. In a few seconds, consumers' attention is centered on the packaging, so that the appearance of the brand, color and illustrations on the packaging are important things to pay attention to [10-13].

Information and company identity can be visualized through packaging, so that packaging is not only useful as a place and product protector but also to promote the company [14,15]. One of the elements that need to be considered in packaging graphic design is the brand. With a brand, product identity can be distinguished from one packaging to another, besides that products in non-product form can also be introduced to the public [16]. The brand on the packaging has an important role as an element that influences market competition. A quality brand can occupy a position in the minds of consumers and become an advantage for the brand [17-19].

The mark is protected by the ability of the brand element as a sign that is used to be able to distinguish goods or services. Signs with distinguishing to be protected as a mark, theoretically can be categorized into signs that inherently have distinguishing power need to be protected immediately through use, signs that have the ability to be differentiator, can be protected only after the development of consumer associations

and signs that do not have the ability to differentiate cannot be protected as a brand even though it has been used for a long time [20].

In previous studies, research on trademark law was still concentrated at the normative juridical level, no one has studied in depth how the application of brand elements as intellectual property attached to packaging where brands as one of the elements on packaging has strategic value in business competition. So that the problems in this research are: 1) how trademark law regulates the use of brand elements as intellectual property; 2) how brand elements implement on product packaging. The purpose of this study is to describe the use of brand elements as intellectual property both according to the Trademark Law and its application in the field, namely on the packaging of a product. The results obtained will illustrate the use of brand elements on packaging as intellectual property that businesses need to pay attention to.

2. Methodology

The research method used is descriptive qualitative analysis by combining normative juridical approaches and analyzing the application of brand elements as intellectual property on product packaging. The steps taken are to conduct a study of the Trademark Law and observe the application of the mark on product packaging and also on the Intellectual Property Brand database of the Directorate General of IP. As for the object of research is the packaging of food and beverage products that have been registered at the Directorate General of KI. The data obtained is processed, then analyzed to then draw conclusions.

3. Result and Discussion

3.1. Review of the trademark law

Brand is a product identity, which can reflect the image as well as product quality. So that in practice, business actors compete to apply brands that can hit the hearts of consumers. Various elements of the brand are used, some apply by first doing initial research, thinking about strategies and other things related to the brand used, but there are also those who are careless. Far more important than all that is legal certainty and protection for the brand used. How the mark is used in accordance with applicable legal

provisions in order to obtain legal protection. What elements can be used as a brand and how are the forms of a brand recognized and protected by trademark law.

In Indonesia, the law governing Mark has undergone several amendments. From Law No. 21 of 1961 concerning Company Marks and Commercial Marks, then Law no. 19 of 1992 concerning Trademarks, Law no. 14 of 1997 concerning Trademarks, Law no. 15 of 2001 concerning Brands. and finally at this time is Law no. 20 of 2016 concerning Brands and Geographical Indications.

How the development of the use of brand elements from year to year can be seen from several definitions of marks according to the laws that are in force. When the enactment of Law no. 21 of 1961 concerning Corporate Marks and Commercial Marks, does not specifically mention the definition of a brand and what elements can be used as a brand sign. However, Article 5 states which signs may not be used as a mark, namely paintings or sayings that have become public property, or which are contrary to decency, or public order. Then signs that have no distinguishing features or only contain numbers, letters, or words that only describe the time or place of manufacture, quantity, shape, purpose, size, price or weight of goods; or a sign resembling a flag or national symbol, the abbreviated name of an international institution or the symbols of local government bodies in the country, unless obtaining approval from the right; or a sign of validation or an official guarantee mark from a government agency unless obtaining proper approval.

In Law no. 19 of 1992 and Law no. 14 of 1997 concerning Brands, mentions the same understanding of brands and the elements that can be used as brands. Both of these laws both state in Article 1 that “a mark is a sign in the form of an image, name, word, letters, numbers, arrangement of colors or a combination of these elements that have differentiating power. and used in trading activities of goods or services”. In fact, we still find the definition of the mark in the provisions of Article 1 of Law No. 15 of 2001. Thus, from 1992-2001 the signs or elements that can be used as brands are in the form of images, names, words, letters, numbers, arrangement of colors or a combination of these elements. Where the sign used must be able to distinguish products, both goods and just between the property of one person/business entity and another person/business entity. Having differences means not having similarities either in principle or as a whole with the registered mark of another person or legal entity.

Meanwhile, according to Law no. 20 of 2016 concerning Marks and Geographical Indications (UUMIG), brands have developments, as stated in Article 1 paragraph 1, that

“a mark is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to differentiate goods and/or services produced by persons or legal entities in trading activities of goods and and/or services”.

Based on this understanding of the brand, we can see that in UUMIG the use of brand elements does not only apply signs in the form of images, logos, names, words, letters, numbers, color arrangements or combinations of these elements which are often referred to as conventional brands, but there is a novelty, namely the mention that these signs can take the form of 2 (two) and/or 3 (three) dimensions which was not mentioned in the 4 (four) previous laws. In addition to mentioning 2 (two) and 3 (three) dimensional shapes, UUMIG also states that a sign that can be used as a brand can be in the form of a sound, hologram, or a combination of 2 (two) or more of these elements which function as a differentiator with goods/services. These signs are often referred to as non-conventional brands, namely 3 (three) dimensional brands, sound, and holograms.

The use of elements on packaging makes it possible to use conventional brands as well as non-conventional brands except for those in the form of sound. So far no sound sign has been found attached to the packaging. Signs in the form of sounds, holograms and 3 (three) dimensional shapes are new things in Indonesia. However, a detailed explanation of the 3 (three) dimensional brand is not found in the law that gave birth to it, namely Law no. 20 of 2016 (UUMIG).

In order to obtain legal protection, a mark must be registered at the Directorate of Marks of the Directorate General of IP. According to Article 21 of the MIG Law, an application for registration of a mark will be rejected if the mark has similarities in substance or in its entirety with:

- a. Registered marks belonging to other parties or previously applied for by other parties for similar goods and/or services,
- b. Famous brand owned by another party for similar goods and/or services,
- c. Well-known marks belonging to other parties for goods and/or services that are not of the same type that meet certain requirements, or
- d. Registered geographical indication

The size of “similarity in essence” can be seen by looking at the similarities in the elements that stand out from one brand to another, giving rise to the same impression because they have similar appearances, both in terms of shape, method of placement,

method of writing or a combination of these elements. these elements, the similarity in sound of speech or the similarity of meaning contained in the mark so that it can deceive and mislead buyers about the intended brand (explanation of Article 21 of the MIG Law). To determine similarities in principle or in its entirety, it must pay attention to the criteria for similarities in appearance or appearance, sound, meaning or connotation, and similarities in trade routes (hukum.online.com).

3.2. Application of brand on packaging

To see the application of the brand on the packaging, 50 packages of various food and beverage products have been selected. Where each packaging has registered its trademark so that it can be checked on the database of the Directorate General of Intellectual Property and also observations on the selected packaging.

The selected packages are packaging for several products, namely Instant Noodles, drinks in bottles and tetrapacks (mineral water, juice, milk etc.) various types of beverage ingredients in boxes/tetrapacks, biscuits, snacks, and ready-to-eat processed foods.

Based on observations of the 50 observed packaging samples, there was no application of 3-dimensional branding, sound, and holograms. 100% of brands researched are 2-dimensional. The application of the elements used in packaging can be seen in the table below:

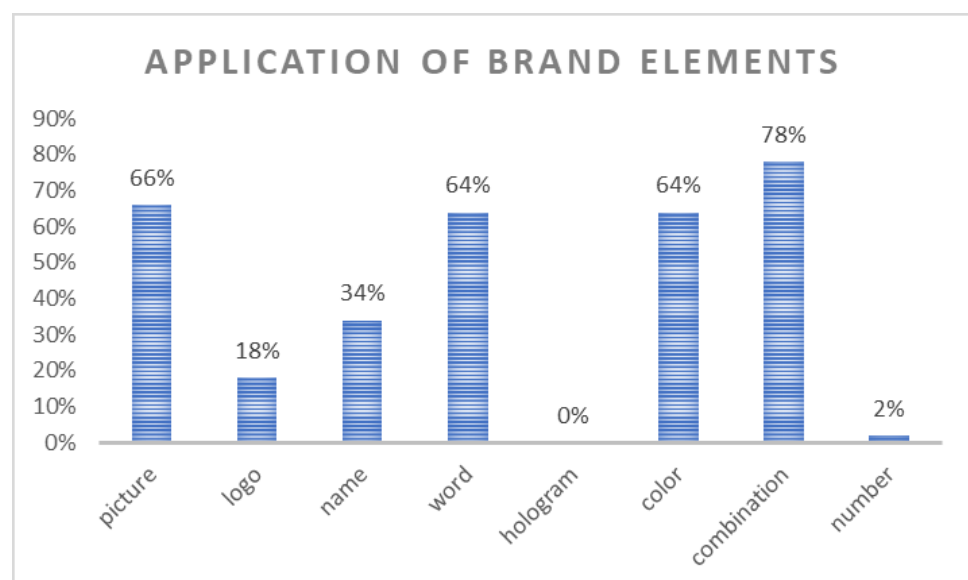


Figure 1: Application of brand elements chart.

Based on the chart 1, the majority of packages use combination brands, by 78%. The combination is a combination of images, colors, words, numbers, names and logos. The majority of composition applies image elements as much as 66%, then the use of word elements and color elements has the same tendency, as much as 64%, then the use of names is 34%, logos are 18%, numbers are 2% while holograms are 0%.

The details of the combination of these various elements are as follows:

TABLE 1: Application of brand elemen combinations.

No	Brand Element	Total	Percentage
1	Image, word, color	13	26%
2	Image, word, color	10	20%
3	Word, color	5	10%
4	Word	4	8%
5	Image, word	4	8%
6	Image, name	3	6%
7	Logos, word	2	4%
8	Logos, name	2	4%
9	Name, color	2	4%
10	Image, logos, word	2	4%
11	Number, logos, word	1	2%
12	Logos, word, color	1	2%
13	Image, logos, word, color	1	2%
	TOTAL	50	100%

Based on the table of application of brand element combinations above (table 1), it can be seen that the combination of image, word, and color elements as brands is the most common (26%) or the majority are used in packaging. then below it uses a combination of image, name and color elements of 20%, after that a combination of words and colors is 10%, the use of single words without a combination is 4%, has the same rank as the combination of the use of image and word elements of 4%. After that, the combination of two combinations of logo and word elements, logo and name, as well as name and color elements each has 4%, this is also found in the use of a combination of image, logo and word elements, as much as 4%. While the least was found in the combination of using the elements of numbers, logos and words, then logos, words and colors, and combinations of images, logos, words and colors, as much as 2% each.

In the use of brand elements, that in the first place, the majority of the brands used on the selected packaging were in the form of a combination mark of 78% and only 22%

used a single element, namely the word. The rest is a combination of image elements, logos, names, words, colors and numbers. The use of image elements dominates branding, with 66% of brands using image elements. The use of image elements does not stand alone but is combined with other elements, namely:

1. Images, words, colors
2. Images, names, colors
3. Images, words
4. Images, name
5. Images, logos, words, and
6. Images, logos, words, and colors.

After images, in second place, the elements most used are word and color elements which both have a percentage of 64%. As with image elements, the use of word and color elements does not stand alone but is also combined with other elements.

The application of a brand with a combination of word elements, is as follows:

1. Words, images, colors
2. Word, color
3. Words, images
4. Words, logos
5. Words, logos, images
6. Words, logos, numbers
7. Words, logos, images and colors.

While the application of a brand with a combination of color elements, is as follow:

1. Color, image, word
2. Color, image, name
3. Color, word
4. Color, name
5. Color, logos, word
6. Color, image, logo, word.

In third place, the element that is often used is the name of 34%, while the use of a brand with a combination of name elements, is as follow:

1. Name, image, color.
2. Name, image

3. Name, logo

4. Name, color

In fourth place is the use of a brand by applying a logo element of 18%, where the application of a logo combination, is as follow:

1. Logo, word

2. Logo, name

3. Logo, image, word

4. Logos, words, numbers

5. Logo, word, color

6. Logo, image, word, color

In the last sequence, namely the application of a brand using a number element of 2%, where the use of a number element is combined with logo and word elements. This research has not found the use of holograms, 3-dimensional brands, and sound in registered trademark selected samples. Even though all three are protected as brands, researchers have difficulty finding the packaging. This is because most people still use two-dimensional dimension in their packaging. However, more visual effects can be brought to packaging through the application of computer virtual reality technology [21]. A three-dimensional trademark can be worthy to protect because the packaging design is becoming more important to distinguish the products from different manufacturers [22].

4. Conclusion

Based on the explanation above, it can be concluded that: According to the Trademark Law, elements that can be used as brands can be conventional brands and non-conventional brands. Conventional brands can be in the form of images, logos, names, words, letters, numbers, color arrangements, or a combination of these elements (in the form of two dimensions), while non-conventional brands can be in the form of 3 (three) dimensional brands, sounds, holograms, or a combination of two or more of these elements. The majority of the application of brand elements to packaging apply conventional brands, in the form of combinations, namely a combination of images, colors, words, numbers, names, and logos. As for non-conventional brands in the form of holograms and 3-dimensional brands, it is assumed that they are new brands, so their application has not been found much, as well as voice brands.

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