



BMW Car Company versus BMW Clothing Company

After 15 years, the government of Indonesia through Ministry of Law and Human Rights does not make a clear rule about brand / trademark. In general, Indonesia only has Law Number 15, 2001 Article 6 (2) and explained about brands / trademark. The result of this unclarity Act, there are several legal actions related to brand / trademark in Indonesia. One of interesting cases is the legal actions about BMW. There are two different classes which using BMW as their brand. The first product is luxury car from German namely BMW which its notoriety has been noted by most people around the world. The second product is T-shirt which also namely BMW from Indonesia. This duality brand triggers serious case from the popular luxury car, BMW.

BMW Brand Duality Case

As the first owner of BMW, this company does not accept the other existances and filed a lawsuit againts it. At the first instance, on December 10th, 2015, the Comercial Court has granted the plaintiff's lawsuit, i.e., to otated that BMW is a well known mark and instructed defendant to revoke the mark BMW in market of goods and services due to having basic similarity with the plaintatiff's mark. However, defendant doesn't accepted and submit an appeal to Comercial Court . Finally, the result has been resolved by the Supreme Court of Indonesia. The Supreme Court of Indonesia decides to accepted the plaintiff's petition in appeal where the Supreme Court rejected the lawsuit BMW from German. The reason is of course related to the law itself. The Law stated that the claim can be rejected if the product is different although the brand is same. As the result, for BMW (the clothing brand) to continue their business by using BMW brand although there is a different product using the same brand. Related to this result, BMW, the car company is asking for Judicial Review. Unfortunately, there is no significant result of this effort since Judicial Review the Supreme Court only change the decision from "rejected" to "not accepted". From this result, it means the clothing brand is allowed to continue their business by using the same brand Body Men Wear in Indonesia.

The Beginning of BMW Duality Case

This case was started when BMW as one of popular car companies in the world claim a cancellation lawsuit againts namely Henrywo Yuwijono from Indonesia. The lawsuit is about the using of BMW brand for his clothing business. Henrywo Yuwijono is using BMW as an abbreviation of Body Men Wear on his clothing brand. On the other hand, Yuwijono said that his BMW is covering different classes since it related to the car company. BMW which is the clothing brand is the abbreviation of Body Man Wear. There is no relation between both companies in these businesses. The car company claimed that they are the owner of BMW and using the same brand without any permission is considered as violation of law. BMW is the abbreviation of Beyerische Motoreen Werke and this company is concentrating on producing luxurious car. If it is analyzed in the history of the brand, most people know that the car company is the first owner.

BMW has been made since 1917 for motorcycle products and 1928 for car product. BMW is also has been legalized for more than 150 countries worldwide. This car company also has different product to support their brand such as sport products and including official clothing. On the other hand, BMW made by Henrywo Yuwijono is a new brand which is created in 2004. During the first instance, the car company won the lawsuit, it was stated that the Commercial Court of Jakarta accepted the claim on December 10th 2013. The case was continued by Yuwijono. In this case, the owner of Body Man Wear was filed for cassation. in the cassation stage, the Supreme Court rejected the claim from BMW Car Company. Of course, BWM the car company is trying to defend their rights by making the last law action i.e., by filling the Judicial Review. However, the final result is only changing the “rejection decision to be “not accepted”. Since there is unclear rule to strength the law number 15 2001 Article 6 (2) regarding the rule of brand / trademark, and no Government regulation covering this well-known mark.

Why Should Company Use Specific Name

Why does BMW Car Company strives to get their brand back or why does Yuwijono want to keep his BMW? The answer is because brand is a kind of identity of your product. Just imagine if your identity is used by the other party. In the sense of business, it is very important especially for promotion, branding, and attract the right customers. A brand is also showing the reputation of the business or the company. Building reputation is hard and in the long term, good reputation can achieve more customers. Through hardwork of building its brand and reputation, a company like BMW can stand until today and grab attention from people around the world. On the other hand, there is a case that Yuwijono sees an opportunity by using BMW as the name of his clothing business. By using BMW as the brand name eventhough for his clothing product, it seems that people will easily notice. Whether Yuwijono is considered breaking the law or not it depends on the implementation of the Law or the regulation of the country itself. In this case, the law in Indonesia stated that it is allowed to use the same brand as long as it is covering the different classes of goods/services, unless for a well-known mark of which there's no supporting Government regulation for implementation of this matter. Just like BMW which is offering cars and BMW which is offering clothes. Moreover, it is different in meaning side. The first BMW is known as abbreviation of Body Man Wear and the second BMW is known as abbreviation of Beyerische Motoreen Werke. But of course it seems there will be a problem in the future especially related to confusion of their customers.

The Opinion about BMW Legal Action

There are several things you can learn from this BMW legal action case. The interesting one is on the decision made by the Comercial Court and by the Supreme Court in Indonesia. There are also two decisions. The first thing is that the court is accepting the legal claim made by BMW Car Company. The main reason is because BMW has been used for many years and has been registered legally. Meanwhile, BMW or Body Man Wear is a new product and has only been registered in 2014.

The second decision is after the Body Man Wear taking cassation. The court was rejected the claim from the BMW Car Company. The main reason is related to the Law about brand / trademark in Indonesia. It is said that it is allow to use the same mark as long as the product is covering different classes, despite of its notoriety. In this case, the Law in Indonesia has to be clear first. Imagine if you find more than one with the same brand but in different product. Definitely, it makes people assume that these two products are related. The existance of mark BMW clothing is clearly offended the reputation of BMW which identically with the first class car, and offended the prestigious of BMW which bing down the price of BMW in international market.

Moreover, the court has to follow the general rule of brand / trademark registration. Definitely, the court has to use the registration data to make sure which one of the company is the first register. In this case, the BMW Car Company has registering their brand previously so they can claim to protect their brand because BMW is being used by different kind of product without any licencing or legal contract or business cooperation. In the case of BMW, BMW Car Company is the first company who registers the brand so this company has their rights to proceed the legal action againts the BMW clothing brand. The Supreme Court also has given decision to allow Body Man Wear registration for their clothing business in Indonesia.

The Government of Indonesia has to revise the Law Number 15 2001 of Law article 6 (2) regarding brand / tardemarks and to implement a Government regulation related to well-known marks. The government has to decide clearly about the certain requirements. Of course, the clarity of the Law will definately help the Comercial Court and Supreme Court to decide which one is considered as the legal users of the brand name. For example, certain requirement is including whether the name has been registered or not. The more detail the requirement included on the Law, it will be better because the rules are clear. The positive impact is of course there will be less business which used the same name illegally.

In conclusion, the Comercial court and Supreme Court or court has to make clear analysis first along with legal data which they have before making any decision. At the same time, both of the parties whether the one who filed a lawsuit and defendant have to include all the related and real data. They should do it to support the Supreme Court to finish the case. Based on the facts on the court whether the facts found by the Supreme Court or the facts from the both parties, the result has to be decided clearly. The Supreme Court has to include all the Law which strength their decision. As the final result, both of the companies have to implement the law as in its decision for the party who are proved to be using the name of the brand without permission. The court has to find the motif of the business and the bad faith intention to use the name of the brand without permission. If it is about taking advantage from the legal and popular brand, the criminal sunction stated in the Trademark Law is to be jailed up to 5 years and pay up to one billion rupiahs.

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