

# Increase of Revenue among Small and Medium Entrepreneurs through Collective Ownership of Trademark

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**Keywords:** Collective mark, infringement, lawsuit, small and medium enterprise, revenue.

**Abstract:** Following the system of constitutive protection, the Law Number 20 Year of 2016 stipulates that trademark protection can only be obtained by registration, by which it is mandatory for a trademark owner to file application in order to have the trademark registered and thus protected. There are instances where many small and medium entrepreneurs who do not have their own trademark engage in unlicensed use of other party's registered trademark. This research aims to figure out and to analyse the use of collective mark for small and medium entrepreneurs in the Bags and Luggage Industry (INTAKO) of Tanggulangin, Sidoarjo, East Java. Deductive method is employed since it is appropriate for the legal issue, by examining basic norms that regulate collective marks against the empirical facts as found on site. It can be concluded that, the use of collective trademark may support the revenue of small and medium entrepreneurs, since they are using trademarks that are safe and free from threats of legal actions, which could waste their time, energy and money. Trademark infringement lawsuits shall incur significant costs beyond the means of small and medium entrepreneurs alike. Should they use their own trademark, such cost could therefore be avoided. Revenue and profit could also increase since they no longer needed to pay royalties to anyone, as they could legitimately be using their own legitimate collective trademark instead.

## 1 INTRODUCTION

According to The Act Number 20 Year of 2016 on Mark and Geographical Indications, the government has initiated an integrated brand registration system on line with several countries in the world by providing easy access to registration. Mark registration is an obligation considering the system adopted is the constitutive system (first to file principle). If unregistered, then the rights of the mark will not be protected by the State. In fact, there are many of small and medium entrepreneurs (SMEs) who have not registered their mark.

The right of the mark as one of the Intellectual Property Rights (IPR) has an important function in the world of commerce, it not only distinguishes between similar goods and or services but also serves as a means to win the competition in seizing the consumer market. In addition, a mark that has become a well-known mark also serves as a valuable corporate goodwill and asset.

For that reason mark rights need to be protected. The concept of legal protection of the trademark refers to the nature of exclusive rights. The material

rights of a monopoly can be used by others with the permission of the owner of the mark.

In accordance with The Act Number 20 Year of 2016 on Mark and Geographical Indications, mark certificates can be obtained through mark registration. Mark registration is an obligation for an individual / entrepreneur to have their brand rights which the rights are protected by the State. If the mark is not registered, then its mark does not have legal protection, which may result in legal issues with other parties. For that reason, SMEs in the field of creative economy of handicraft bag and suitcase, namely the Bags and Luggage Industrial Center (INTAKO) in Tanggulangin, Sidoarjo Regency, East Java, Indonesia, should have their own mark certificates, in order to carry out their business safely and legally. If an individual mark is not available to be registered, so that a collective mark can be a solution. The application of collective marks is possible because the business of the entrepreneurs in Tanggulangin Area, Sidoarjo, Sidoarjo Regency, East Java, Indonesia, in general has the same characteristics. It is suitable with the collective mark substance in The Act No. 20 of 2016 on Mark and Geographical Indications.

During this time many of Small and Medium Enterprises (SMEs) in of Bag and Luggage Industry at Industrial Bag and Luggage Center (INTAKO) Tanggulangin-Sidoarjo, East Java-Indonesia (hereinafter referred to as SMEs INTAKO Coop) are using illegal foreign mark. This situation has the potential of a lawsuit by the aggrieved mark owner. Application of collective mark which it is provided by law can be used as a trade mark solution in INTAKO-Tanggulangin Area. Collective mark have several advantages among parties and relatively easier handling and lower cost due to shared costs.

This research is very important due to based on existing data the registration or the ownership of mark certificates is still relatively little. This fact means that registration of mark required by law has not been well implemented by small and medium entrepreneurs in Indonesia, especially SMEs in Tanggulangin, Sidoarjo, East Java, Indonesia. This is due to various technical and juridical obstacles. The technical constraints include the ignorance of SMEs to know how the procedure of registration of the mark. Meanwhile the juridical constraints associated with the lack of legal awareness of the protection of mark rights law through registration. The purpose of this research is to support the strategic plan in human resources development related to the business of Bag and Luggage Industry at Industrial Bag and Luggage Center (INTAKO) Tanggulangin-Sidoarjo, East Java-Indonesia. The development of human resources is intended primarily for SMEs INTAKO Coop. Many of the entrepreneurs there still dependent to use well-known mark on their product without permission. It is illegal to use unauthorized use of famous mark. This illegal act clearly inhibits the government's performance program in development of human resource, especially for the SMEs INTAKO Coop. The application of collective mark is a solution for SMEs INTAKO Coop to develop their business in the future.

This paper will discuss the advantages and benefits of the application of collective mark in order to increase revenue and a secure tool for striving for small and medium entrepreneurs.

## 2 MATERIAL AND METHODS

The material on the main issues of this paper is an analysis of the application of collective marks for entrepreneurs, especially SMEs INTAKO Coop by using deductive method to identify problems and facts. The problem are the infringement of SMEs who unauthorized use foreign mark; and their product

need collective mark to increase the income. The deductive method is applied by outlining the rule of law of the mark within the The Act No. 20 of 2016 on Mark and Geographical Indications which it is associated with the facts.

## 3 RESULT AND DISCUSSION

The results of previous studies show many wellknown mark are found in some places, among SMEs INTAKO Coop and they use many well-known mark without their permission. The ego and desire to gain biggest profit of the entrepreneurs make them forget and close their eyes that what they are doing is a violation of the rights of other people's mark. Strangely, The Local Government has made the INTAKO-Tanggulangin Area as a target of area fostering to develop their product by use well known product without any permission from the owner mark. On the other hand law enforcement officials are also permissive, so the violations continue to this day. That fact indicates that a violation of a well-known mark is already a routine thing without any solution (Sujatmiko and Agung, 2016).

In accord with Article 1 point 4 The Act No. 20 of 2016 expressly states that collective marks are marks used on goods and / or services with similar characteristics regarding the nature, general characteristics, and quality of goods or services and their controls that will be traded by several persons or legal entities together to distinguish with other similar goods and / or services. In bags and luggage products manufactured by SMEs INTAKO Coop-Tanggulangin,Sidoarjo have opportunity to fulfill the requirement to get the collective mark. It can be seen from the characteristics of the goods, but the use of collective mark has not been applied there.

The right to the mark is the right to intangible property or also known as incorporeal property. The rights can have a high value if the mark has a well-known mark that has been widely known by consumers (Sujatmiko et.all, 2016). Popularity of a mark brings the impact that the mark is often subjected to a breach in the form of being used by unlawfully charged parties. Unauthorized use of the mark owner in the exactly the same or almost identical form. Such use is obviously detrimental to the owner of the mark, since it can reduce sales turnover resulting in reduced profits, and it will mislead the consumer of the mark concerned. Therefore, mark rights need to be protected so that the owner does not incur a greater loss in relation to the

violation. For instance, the protection is in the form of statutory provision.

Article 1 point 5 in The Act No. 20 of 2016 on Mark and Geographical Indications, clearly states that the right to a mark an exclusive right granted by the State to the owner of the Mark registered in the General Register of Marks for a certain period of time by using the Mark itself or granting the other party permission to use it. Such privileges are essentially exclusive in nature which can only be exercised by the rights owner, while others may not use them without their owner's permission (Fitzgerald and Fitzgerald, 2004). Therefore, the right needs protection. The concept that the special mark rights need to be protected, in line with the understanding of rights as proposed by **Soedikno Mertokusumo** that those rights are legally protected interests, while the interests are the individual or group demands that are expected to be fulfilled, (Mertokusumo, 1989). Also, this is in line with what **Achmad Zen Umar Purba** said that as part of Intellectual Property Rights, the right of the mark is part of property, and as a right, it is a property or asset (intangible asset), (Purba, 2005). According to **Keith E Mascus**, between the intangible and the tangible entity to a certain point, both two rights are the same. However, the prominent difference is in the aspect of exclusivity. It is the exclusivity that gives rise to rights and rights is nothing but compensation for all the efforts that the intellectual owner has incurred or sacrificed (Purba, 2005).

Since the rights of the marks has a special nature or character, the right may be preserved against any person, so that if any other person has a bad faith or intent to deceive (*mala fides*) to apply such rights without the consent of the holder of the right to the mark, there has been a violation of such special rights. In this case lies the urgency of legal protection of the rights to the brand. In general, acts that lead to mark impersonation befell the famous mark that have been known by a good reputation by consumers, (Holloway, 2004).

The above mention happens due to the famous mark has a good reputation among consumers. There are three reasons for violation of a well-known mark (Sulistyobudi, 2003).

- a. The offenders will gain material benefits quickly and surely without bothering to build a brand reputation;
- b. The offenders will not take the risk, if they have to create their own mark new, because the cost is too expensive;
- c. The difference in profits derived from the sale of goods with fake mark is much greater when

compared to the profits obtained when selling original goods with their own mark that is relatively new and not widely known by consumers, because counterfeiters do not have to pay research and development costs, advertising and promotion and taxes.

These three reasons are the main attraction for offenders to use other people's mark regardless of the risks they have to face if the trademark owner complains to law enforcement officials, on the grounds that there has been a breach of the mark.

Mark registration is an obligation by every single owner of the mark because the stelsel adopted in The Act No. 20 of 2016 on Mark and Geographical Indications is a constitutive system. In this system, the obligation to register the mark should not be distorted, and it is compulsory. If a trademark is not registered, it will not obtain protection from the State, meaning that if a mark is used by another party, and then the other party registers its mark and is declared accepted, the first owner of a mark does not obtain legal protection from the State. This is based on the *first to file principle system*, which means that the first registrar will get protection, not the first user.

If a person's trademark is used by another person without the consent of the owner, the trademark owner may file a claim of infringement to the Commercial Court (*Pengadilan Niaga*) with the demand that the offending activity be terminated and a request or claim for damages. In addition to the brand owner, the licensee may also file a lawsuit. In addition, the owner of a well-known mark may file a lawsuit based on a court decision.

On that basis the function of a trademark registration is to protect the interests of the trademark owner from acts of a trademark infringement committed by an irresponsible party. The interests of the mark owner are highly respected and respected in the law, as they are related to the economic rights attached to the mark. Economic rights provide income to the owner, so it must be protected from acts that lead to violations.

The INTAKO Coop craft products have gained recognition not only from local communities in Indonesia but also from the world. Some countries in Europe also like Italy also imports products made by INTAKO Coop. A sustainable improvement support and coaching by the local government has motivated the handicraftsmen bags, suitcases and the like to achieve good quality, so that it can penetrate the international market. Therefore, Industry based on home industry that needs to be developed in the future. But behind this success, many products of INTAKO Coop do not have their own mark. This is

certainly also detrimental to the craftsmen, because it can reduce their profits. Products have been sold without mark, of course these situation are low of value. For that, the craftsmen need to register and use the collective mark as their business solution.

In pursuance of Article 46 paragraph (1) Act Number 20 of 2016, The application for registration of Trademarks as a collective mark shall only be accepted if the application is clearly stated that the mark shall be used as a collective mark. Moreover, the provisions of paragraph (2) it is stipulated that the application shall be accompanied by a copy of the terms of use of the mark as a collective mark, which shall at least contain provisions concerning paragraph (3):

- a. The nature, general characteristics, or quality of goods and / or services to be produced and traded;
- b. Supervision over the use of collective marks;
- c. Sanction for violation of terms of use of Collective Marks.

In addition to the empowerment of Micro, Small and Medium Enterprises, the Government may register a collective mark designated for the development of the said business and / or public service (paragraph 4).

For collective trademark applications, an equipment examination is performed similarly to the regular/ ordinary mark (non-collective mark) contained in Articles 4 through 7 and 46. This means that procedures and processes shall be the same as those of regular/ ordinary mark (not collective marks). Similarly, the substantive examination should also be the same.

INTAKO bag entrepreneurs as SMEs craftsmen after becoming members of the INTAKO union/ coop, they are able to increase their income up to fifty percent (50%) of income before they become members of the coop, (Azqiyah, 2016).

Generally they sell their products using foreign mark without permission. They continuous error and should be stopped by using a collective mark. Against the frequent literacy of trademark by the apparatus, they are still reluctant to use collective mark, arguing that their products are so pouler among consumers and the quality of their products is also inferior to the quality of imported products, (Azqiyah, 2016).

In addition to the above reasons, the craftmen argue that it is very rare the literacy about collective mark, so that they do not know in detail how to administer and register a collective mark. Therefore they are reluctant to use a collective mark. According to Agus Sardjono, one of the reasons small and medium entrepreneurs do not want to register a mark due to a bureaucratic procedure and the mark is not

the main factor consumers to buy their products, (Sardjono et.all, 2013). In terms of using a collective mark, their business will be better known to consumers, because the collective mark will have a tremendous impact if advertised vigorously through the mass media.

If they want to use and apply a collective mark, profits and revenues will increase again, because the use of collective mark can be efficient and riskless if sued by others. Court fees can be reduced, as they use a collective mark that is legal and protected by the State.

Legal protection provided by the State to small and medium entrepreneurs is very useful to ensure legal certainty; prevent the occurrence of violations and crimes; so that justice is expected to be given to the parties who are entitled and provide benefits to the community, (Fathanudien, 2016). This is in line with the opinion Hayyan ul Haq which states, provide benefits and happiness for the wider community is the goal of the establishment of the State listed in the Constitution of the State, (Haq, 2014).

Therefore, the utilization of collective mark is highly recommended for SMEs in INTAKO Coop-Tanggulangin, so that they can work safely and legally in the future. On the other hand, local governments are doing literacy and fostering entrepreneurs to provide technical guidance for collective mark registration. The technical guidance is in the form of technical assistance in collective mark registration.

## 4 CONCLUSIONS

The Small, Medium Entrepenuers are reluctant to apply collective ownership of trademarks for several reasons, namely ignorance of the obligation to register the mark; difficulty of registration procedures; and the assumption that without using their own brand of business, their business have already been profitable. On the other hand, their reluctance to use a well-known foreign trademark belonging to another party, is prone to lawsuits in court that cost a lot. If they use a collective mark, their income will increase, which derives from benefits and expenses that are used for the benefit of the court can be saved as a form of net income. The use of the Collective Mark will be free from other parties' claims, so that they can work in a safe and legal manner.



## ACKNOWLEDGMENTS

Acknowledgments are conveyed to all parties who have assisted the implementation of this research, especially to the leaders of the Faculty of Law and University of Airlangga for the research funding provided.

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