

VIOLATIONS OF BUSINESS ETHICS DOMAIN NAME CORRUPTION AS A FORM OF TRADEMARK INFRINGEMENT

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ABSTRACT: *With the rapid development of communication technology, the phenomenon of unfair competition on the Internet is endless. The development of the internet is not only a communication tool, but also a very effective marketing tool for e-commerce activities to capture opportunities in the global market. In the e-commerce business model allows many actions that violate business ethics through fraudulent marketing activities on the Internet. Especially regarding the use of domain names on the Internet, which often uses company names, trademarks and services, as well as the names of public figures without the permission of the rights holder. With the development of companies using domain names on the Internet, it also causes trade violations in e-commerce. The perpetrators have a clever way of attracting the attention of shoppers so that they can buy their products that are indicated by trademark counterfeiting. Mostly, trademark infringement occurs when another party uses a trademark which causes "likelihood of confusion" or "confusing similarity" between items or between parties to create goods. It uses a "likelihood of confusion" violation strategy of name-like domains, as most people will assume that a trademark is the same as a domain name. It can be said that the use of domain names on the internet is considered the most important issue in trademark law.*

Keywords: Violation, Business Ethics, Trademarks.

INTRODUCTION

In line with advances in communication technology, the pattern of people's lives began to change. The internet, which was originally used as a means of communication in the military, has now expanded its function in various fields, such as in the fields of trade (electronic commerce), medicine (electronic health), banking (electronic banking), government (electronic government) etc. The broadening of this scope, especially e-commerce, will guarantee that e-commerce activities will continue to grow. In various activities on the Internet, the Legal Aspects of Intellectual Property (IPR), especially Trademark Law, need special attention. Brands as a form of intellectual property rights play an important role in the era of global trade, especially in maintaining healthy business competition. Therefore, a law is needed that can effectively protect the brand. Because in reality there are many violations that involve the misuse of trademark law. Mainly, it is related to the use of domain names on the Internet which often uses company names, trademarks and services, as well as the names of public figures without the permission of the rights owner. In line with the development of the use of domain names by companies on the internet network, also causes symptoms of trade violations in e-commerce. This violation occurs when other parties who are not related to the trademark will register the trademark as their domain name on the Internet.

Based on data from the Indonesian Internet Domain Name Manager (PANDI) as of May 2008 the number of domain name IDs was recorded at 28,184 . Each consists of 14,692 co.id domains,

6,185 web.id domains, 3,002 or.id domains, 108 ac.id domains, 1405 sch.id domains, 269 net.id domains, etc., with an annual domain growth rate of 15% . This condition is clearly very detrimental to the legitimate brand owner. In addition to the violation of the rights of the brand owner due to the unauthorized use of the mark by others. The owner of a legitimate brand also cannot brand it as a domain name in carrying out activities in cyberspace. In other words, the legitimate brand owner loses exclusive rights and the opportunity to use his brand on the internet with e-commerce, this clearly causes economic losses for the brand owner. The last case that attracted attention was the case of Mustika Ratu. The case of Mustika Ratu Ratu.com which was allegedly registered by a competitor of the Mustika Ratu company is one of the cases of the pillars of the domain name. In this case, it can be witnessed that even though the Ratu.com domain name has been voluntarily handed over, PT.Mustika Ratu continues to take other legal actions because they feel that there are other losses apart from the ownership of the domain name itself. In overcoming the crime of cybersquatting against domain names or brands, there is actually a code of ethics in the world of information technology, namely Intellectual Property Rights (IPR). Where everyone who owns the work has Intellectual Property Rights that are protected by the state. In Indonesia itself, there are rules in Law Number 11 of 2008 concerning Information and Electronic Transactions as amended in Law Number 19 of 2016 (hereinafter referred to as UU ITE) regarding cybersquatting which regulates domain names. This is emphasized in Article 23 paragraph (2) of the ITE Law which regulates domain names which must be based on good faith, do not violate the principle of fair business competition, and do not violate the rights of others. Even though a law has been enacted that regulates the use of internet media, an abuse still often occurs. This could be due to the lack of knowledge of resources regarding the law in the world of Information Technology or the lack of laws that can be more assertive in reaching out to such abuses.

Based on the description above, the formulation of the problem in this writing is:

1. What is the law regarding domain names as a type of trademark according to Indonesian law?
2. How is Cybersquatting Case Analysis related to trademark infringement?

RESEARCH AND METHOD

This research uses a normative juridical approach, namely tracing, researching, and reviewing trademark rights (domain name) through legal principles both through national legislation and other international conventions. The research specification uses descriptive analysis, which is a research method that aims to provide a systematic, factual and accurate description of the facts, in this case analyzing the importance of legal protection for online business users to find forms of legal protection for business ethics that are relevant to developments. IT. In addition, this research will also describe the facts and problems of the need for comprehensive online business protection, related to IT development. Then it will be analyzed in order to obtain a complete picture of the problems to be studied. Furthermore, various applicable laws and regulations will also be described and then linked to legal theories, and the practice of implementing legal protection. This research was conducted through: Literature Research. The first step in this library research, the data sought is secondary data to obtain primary legal materials in the form of binding legal materials such as national laws and regulations, international conventions, international agreements that are relevant to the problem being studied. Secondary legal materials which include legal and non-legal references in the form of Draft Laws, research results, workshops, seminars, and writings from legal circles. secondary legal material,

which consists of doctrines, expert opinions which can be seen in legal books and papers written by experts, results of legal research on laws and others that can provide explanations regarding primary legal materials. Besides that, tertiary legal materials are also collected, namely in the form of public opinions or opinions published in magazines, internet, dictionaries, encyclopedias that can provide instructions and explanations for primary and secondary legal materials. So that it can be used as a theoretical basis for studying primary data sources. The second step is conducting research activities by tracing legal theories, which are related to Intellectual Property Rights, cyber law, business ethics, economic law and government policies. The third step is to look at various legal regulations to understand the law by looking for the suitability of existing legal principles related to the problems in this research. The fourth step is to conduct a descriptive analysis of the related positive law through reasoning legal theories.

DISCUSSION

1. What is the law regarding domain names as a type of trademark according to Indonesian law?

Domain Name is the internet address of state administrators, people, business entities, and/or the public, which can be used to communicate via the internet, in the form of a unique code or character arrangement to indicate a certain location on the internet. Domain names were originally used to make it easier for users to remember web addresses on the internet. Domain names are preferred to be used instead of Internet Protocol Address (IP Address) because the IP Address consists of a set of numbers from 0 to 255 4 times (for IPv4). This causes the set of numbers to be difficult for people to remember, especially if the person is not very familiar with the IT world. Therefore, The Internet Assigned Numbers Authority (IANA) simplifies writing web addresses with alphanumeric characters so that internet users can memorize them easily. Currently, trade transactions are carried out cannot be separated from the internet with the existence of e-commerce. To support the marketing of a trademark online, sometimes the domain name is combined with the trademark name. This is done with the aim that consumers can easily find the products they offer. The brand itself is the identity or trademark of a product or service. The definition of a mark itself is contained in the provisions of Article 1 Paragraph 1 of Law Number 20 of 2016 concerning Marks, it is stated that a Mark is a "Sign in the form of pictures, names, words, letters, numbers, color composition, or a combination of these elements that have distinguishing features and are used in the activities of trading in goods and services". In general, there are 2 differences between trademark registration and domain, including:

a. The domain naming system doesn't care whether the name used is similar to anything else that confuses customers. This happens because in domain names, the names used cannot be the same in character, but for names that are only a few characters apart are still allowed. For example, in domain name registration, if the name "Jecorp.com" has been registered, then other users who register "Jejcorp.com" are still allowed. However, when registering a brand name, the similar naming must first be considered whether the similarity between the mark and an existing mark can be validly registered or not.

b. Unlike trademarks, domain name registrations are not tied to a classification system of goods and services that must be adhered to. This results in if there is a trademark that has a similar name, where both are different goods or services, then both can coexist when registering the trademark, each domain name is not the same and is usually owned by one owner. Consumers sometimes search for products on the internet for the first time by looking at the web address on www..com, this causes competition between trademark owners in registering a domain name that matches the name of the product they have, and registering a product's name by a company may result in lost sales opportunities as dissatisfied consumers

may switch to competing products because they cannot access the information on the product's web address. Domain names know no country restrictions. General high level domains / General TLDs can be registered and accessed by companies/organizations from different countries. Similar to general TLDs, there are also ccTLDs. ccTLD is a high-level domain that is created based on a country code and is generally registered by a company located in the country concerned. Although the original aim of the ccTLD was to facilitate companies in each country to have their own domain, but this still does not limit companies originating from outside the country to register themselves in the domain of that country. This raises a problem if a company wants to upgrade to an international scale company, they will compete for the right to get a domain that is in accordance with its trademark throughout the world.

2. How is Cybersquatting Case Analysis related to trademark infringement?

Initially the domain name (domain name) was developed solely as an address on the internet that indicates the location of a website. As a consequence of commercialization on the internet, the existence of a domain name is becoming increasingly important. Domain name (Domain name) is no longer solely as an address, but then also has economic value. With more and more companies realizing the potential of the internet as a global medium, the desire to create their own websites has also increased. The emergence of conflicts between trademark law and the use of domain names on the internet has not only been monopolized by developed countries such as the United States and Britain, but has also spread to Indonesia. For example, two cases that occurred in Indonesia related to brand protection on the internet network, namely the Mustikaratu case. com and Kontan.com. The domain name registration system is carried out by applying the first come first served principle, meaning that whoever registers first is the one who has the right to the domain name. Another system implemented is that domain name registration is carried out without going through a first inspection process, so to find out whether a domain name has been registered by another party or not, the registrant must first contact the domain name registrar's organization. In relation to brand protection, there are several factors that cause conflicts between Trademark Law and Domain Names on the internet, namely: Another system implemented is that domain name registration is carried out without going through a first inspection process, so to find out whether a domain name has been registered by another party or not, the registrant must first contact the domain name registrar's organization. In relation to brand protection, there are several factors that cause conflicts between Trademark Law and Domain Names on the internet, namely: Another system implemented is that domain name registration is carried out without going through a first inspection process, so to find out whether a domain name has been registered by another party or not, the registrant must first contact the domain name registrar's organization. In relation to brand protection, there are several factors that cause conflicts between Trademark Law and Domain Names on the internet, namely:

- 1). Disputes arise if a third party intentionally registers a domain name which he thinks will be of great interest to others. This method is widely used by someone who has no relationship at all with a brand registered as a domain name.
2. Disputes arise when a third party registers a domain name that is the same or similar to someone else's trademark with the intention of being used by the registrant himself.

3). Domain name registration is carried out by a third party based on the brand it owns and without realizing it has similarities with other company brands, but in a different category of goods and services class.

Of the three factors that trigger conflicts between brands and the use of Domain names on the internet, the following can be analyzed: The first category is a *modus operandi* that is often carried out by a person or legal entity with a profit motive. In the case of window 95, the Utah student's motive for registering the name was not for the purpose of promoting the company but rather a strategy to resell the registered domain name to Microsoft. This strategy was used because of the weakness in domain name registration 'first come first served' (whoever registers first is entitled to a domain name). As a consequence of this principle, the registration of windows95.com. by preempting the registration by Microsoft has closed the possibility for the Microsoft company to use the name as its domain name. This consequence was fully realized by the registrar, who had predicted that Microsoft would fail to register the domain. The best solution in solving conflicts which at that time had not been regulated in United States law was that the Microsoft company bought the domain name that had been registered by the student. Thus it turns out that in its development the domain name also plays a role in the economic coffers as a trademark, although the desire to use a trademark as a domain name does not always run smoothly, as in the case of window 95, Mc. Donalds. com.and others. Often companies encounter obstacles in the form of registering the relevant trademark as someone else's domain name. Siemens Multinational Companies must be willing to register their domain names and brands in many countries such as siemens.com., au siemens and so on. The act of registering the domain name of the names of well-known companies or products belonging to other parties without permission with the aim of reselling the registered domain name to the party who should own the domain name, is called Cyberquatting. People who do cyberquatting are called cyberquatters. The second category is way more refined than the first category. This is because the domain name registration itself has a purpose, namely to be used by the registrar for his own interests. This is very different from the first category whose purpose is not to be used, but to make a profit by selling it to the brand owner. The *modus operandi* is done by making a name that is almost the same by exchanging letters and the name or brand of a company so that it seems as if the domain name is the same as the brand or company name it imitates. The real purpose is to mislead consumers so that consumers can access more company information on the internet. This is inseparable from the fact that the more similar a domain name is to a company name or product name sold on the internet, the more internet users will access the domain name from the website. People who register domain names in this way are called typosquatters, the *modus operandi* is called the "typosquatting" strategy. The third category is a fairly complicated right because the registration itself is not intended to harm others. The emergence of conflict is more as a result of differences in the registration system applied by the Trademark Law with the registration adopted by the domain name registrar organization. Universally, the Trademark Law allows a person to register his or her trademark the same as someone else's as long as they are not in the same class of goods and services. This principle is adopted by many countries, including Indonesia. However, under certain circumstances, This regulation can be applied to goods and services that are not similar if they meet certain conditions which are further stipulated in a Government Regulation. On the other hand, in the domain name registration system, regulations apply that only one domain name may be registered regardless of the difference between classes of goods and services. Consequently, if someone has registered a trademark as a domain name for the same name in the same or different classes of goods and services, it is not allowed. In the context of cyberspace, most trademark infringement is known as 'cybersquatting'. Cybersquatter realizes that the use of trademarks as domain names will greatly assist businesses in strengthening their presence in the e-commerce business model. Cybersquatter is a party who has an illegal interest in a trademark and seeks to gain profit by

registering a trademark belonging to another person which is then used as his domain name, before the legal trademark owner registers it. Cybersquatters then resells, or licenses, the domain name to the company that owns the trademark, paying millions of dollars to expand the goodwill of the trademark. The trademark should be used by the owner. In general, the user community who does not know the exact company site, they will find the address of the site through the mention of the company's trademark. Because this is the easiest way to get information about the company. The biggest mistake is if the target site is not the original site, because this will harm consumers themselves in order to get authentic products and services. So, it is very important for trademark owners to use their trademark as a domain name. A trademark as a domain name cannot be said to be an infringement because it does not cause other people to feel confused, wrong access or experience fraud on the trademark itself. Therefore, the prevention of domain name infringement by cybersquatters is becoming increasingly important. For example, a company unrelated to the Harrods company (a well-known shop in Knightsbridge) registers 'harrods.com' as the domain name. They have registered domain names like 'bt.org', 'Sainsbury's.com' and 'marksandspencer.co.uk'. The defendants have written a letter to the well-known organization to offer the sale of the domain name in question. The judge judged that in this case there had been a threat of passing off and trademark infringement, then the judge ordered the defendant to transfer the domain name to the rightful owner (plaintiff). Passing off is a violation of tort in the common law system that can be used to enforce rights to registered trademarks. The unlawful creation of this passing off violation will protect the goodwill of a merchant from being misinterpreted thereby causing defamation of his goodwill. This law of protection against passing off violators seeks to prevent a person from "misrepresenting" his goods or services as goods or services belonging to the claimant, and also prevents a person from acknowledging his goods or services which are claimed to have a relationship or ownership relationship with the plaintiff even though this is not the case. correct. A case related to the infringement of a trademark that has been registered in Malaysia used as a domain name has occurred. The domain name in dispute is .www.ocbc.my •. The first plaintiff, Oversea-Chinese Banking Corporation Limited, is a leading commercial bank incorporated in Singapore that has been operating for many years in Singapore and Malaysia. second plaintiff, The panel stated that the defendant had registered the disputed domain name in bad faith. Problems with domain name registration, the system automatically processes the registration without looking at other domain name similarities. As a result, the system computer will automatically register either the domain name "businessclient.com" or "business-client.com" as two completely different domain names. Therefore, it is very important to register their trademark as a domain name by the owner. Typosquatting can easily be made for .com, .Net, names. Org as a domain and several other domains. Everyone is allowed to name a site whatever they like as a domain name as long as it's not owned by someone else. Then the buyer of the domain name that has the same resemblance will create a website name that is similar to the original website, as a result, someone who mistypes will access the wrong website. This crime would involve scenarios via 'mousetrapping'. The perpetrators hope that internet users will make spelling mistakes when typing the website address. In this case, it may occur between competing companies and so will lead to the creation of a website that has a similarity of confusion (likelihood of confusion) directly to consumers. The very dangerous thing is if this is done in online banking activities. Because typosquatter will try to get account number, PIN code and other personal data, which will be used to carry out illegal transactions. For example, in 2001 there was a case that occurred in Indonesia, on internet banking sites, Bank Central Asia (BCA), www.klikbca.com was duplicated with 5 (five) very similar domain names. This illegal site appears on the same site as the real one. This causes the user's PIN and password number to be copied on that site. This case used alternative dispute resolution because there were no specific regulations regarding cyber activity in Indonesia at that time, thus referring to the "legality principle" as the basic rule

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CONCLUSION

- (1) Implementation of e-commerce trade with law, ethics and other public policies. Legal issues Internet fraud cases are often difficult victims Get compensated for their losses, Including very high risk for consumer holders An account in the online banking system. Related legal issues Protect consumers from problems Need to make false statements about violations (fraud) Enforce the law so that consumers are not harmed This form of crime.
- (2) (2) Identity theft activities using the Cybersquatting strategy are very much against the principles of business ethics. That goes against business ethics. They must do healthy competition with positive behavior. Business ethics will involve honesty and goodwill Doing business. It must be admitted that Internet marketing is not an effective tool to expand the network.

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