

Conference Paper

Licensed Rights of Well-known Brands: Legal Rules of Limited Partnership's (Commanditaire Venootschap) Position

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Abstract.

Trademarks are becoming extremely significant due to globalization of commerce. A brand's role in the realm of commerce is crucial since it serves as both a differentiation and a tool for out-competing rivals to capture the consumer market. Although it is still a common choice among business actors, limited partnerships (Commanditaire Venootschap) (CV) are not permitted to grant or receive licenses for well-known trademark rights. How is CV legally protected in this document as the owner or licensee of a well-known brand? This research uses normative research techniques in law, and data analysis used were prescriptive. The results of the research show that because CV as a business entity lacks the authority to act (*bevoegheid*), it will have consequences for the registration of a license agreement on the rights of the well-known mark if it assumes the position of making or receiving a license agreement, which under the Trademark Law can only be done by legal subjects, either *recht persoon* or *natuurlijk persoon*. The management of CV, namely its limited partners, must act as a person (individual person) if it wants to grant or receive a license for well-known brand rights. Greater benefits will result if legal status is granted to resumes submitted by legal entities.

Keywords: commanditaire venootschap, licence, well-known brand

1. INTRODUCTION

Legal regulations ought to, as naturally, be able to take into account the ideas that exist within the community itself in order for society to function properly. To do this, a concept of corporate entity commonly known as a company is created. Limited Partnerships (CV), a type of corporate entity that is still popular among small and medium-sized company actors, are governed by laws that are still based on the *Wetboek van Koophandel*, which has never been updated to reflect changes in the business landscape.

Intellectual property rights (IPR) are a significant concern that cannot be relinquished in today's society. IPR came by human reasoning in an endeavor to satisfy social life's requirements. Humans require the existence of intellectual property rights (IPR). For

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instance, in the commercial world, the appropriate and efficient sale of goods and/or services requires the usage of a brand.[1]

The role of a brand in the field of commerce is crucial since it serves as both a tool to win the competition and capture the consumer market and a means of differentiating identical goods and/or services from one another. A brand that has gained widespread recognition serves as goodwill and a priceless corporate asset.

There are licenses for numerous well-known brands in various nations. The license has benefited a nation's economic development. Sales of licensed products, for instance, total over US\$ 50 (fifty) billion annually in the US. Each year, licensed products include Nike, Coca-Cola, and other well-known brands, reaching more than 1,500 different categories.[2] Taxes paid by businesses that receive licenses and income taxes paid by the working population will also bring in money for the state.

From an additional perspective, licenses will increase employment and decrease unemployment. Obtaining a license also improves the workforce's knowledge and abilities, which is crucial for a nation's development. A country's economy can alter and expand when it has enough natural resources and labor to support it. By using a licensing agreement, one can raise the standard of human resources.

A long-term licensing in the field of brands will give the licensee knowledge and experience to adopt and expand an established company product, particularly if the licensed is a well-known brand. The IPR system is meant to "contribute to the promotion of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations," according to Article 7 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement. This demonstrates that there is a message that development also has a social dimension in addition to the mission of technology transfer.[3]

Due to well-known brands have many benefits, trademark license agreements for those brands are the most common. A well-known mark is not explicitly defined under the Geographical Indications or the Trademark Law. The characterization and defense of well-known marks are so muddled. The requirements for a well-known mark are based on the Supreme Court of the Republic of Indonesia's Jurisprudence Number 1486 K/pdt/1991, which states that a mark must have crossed regional and international boundaries to be considered well-known, meaning it must have spread outside of its country of origin. The author notes that there is still a lot of subjectivity in this interpretation and jurisprudence, nevertheless.

In light of the relationship between well-known brands and their reputation, which frequently tempts third parties with nefarious motives to take advantage of them by mimicking, copying, or otherwise resembling well-known brands, well-known brands are frequently the target of violations. It is intended that this reputation would help the brand develop a positive corporate reputation.

Utilizing licenses is one way to profit from IPR. In addition to being exploited by their owners through licensing agreements, brand rights are also considered IPR. These economic rights are expressed through the use of the associated trademark rights. Owners of brand rights profit significantly from licensing. Robert C. Megantz asserts that trademark owners can make money by selling their trademark rights in addition to licensing.[4] Unless prior consent from the mark's owner, often known as a license, a well-known brand cannot be indiscriminately used for different kinds of goods.[5]

The holders of trademark rights, including both natural persons and business companies, are the parties eligible to give licensing. Typically, licensing is spelled out in a contract or license agreement. In order to satisfy the interests of the parties in a contract, this agreement might offer protection for the parties who make promises within the parameters of contract law. But the license agreement, which serves as the foundation for the legal relationship (and the basis for rights) between the licensee and the licensor, is frequently broken, leading to disagreements over the rights and obligations that were outlined in the license agreement.

Problems emerge when CV does business because in order to do so, it must be able to engage in legal activity, such as granting or getting licenses for well-known brand rights. In actuality, both individuals and legal companies are qualified to apply for a license in accordance with rules and regulations. Therefore, in order to resolve this issue, someone with the legal authority must file a well-known brand rights license, either on behalf of the business entity's owner or management.

2. Methodology

The paper in question uses normative legal research as its methodology. Prescriptive or applied science underlies the character of research. This analysis was conducted using a statutory approach and comparative law. The source of legal materials is in the form of primary legal resources, which are non-official publications used as references, and secondary legal materials, which are laws and regulations and other rules connected to the discussion of topics.

3. RESULT AND DISCUSSION

Based on a number of sources, the definition of a well-known brand can be found. A well-known brand is described as “a trademark that, in view of its widespread reputation or recognition, may enjoy broader protection than an ordinary mark” by the International Trademark Association (hence referred to as INTA).[6]

Considering this understanding, it is clear that a well-known brand is one that enjoys greater protection than a regular mark because of its reputation. Given as compensation for the goodwill that has been developed by the owner of a well-known brand spending a lot of time and money, this well-known brand protection.

The criteria for determining whether a brand of goods or services is included in the category of a well-known mark are as follows, as stated in the Elucidation of Article 6 Paragraph 1 Letter B of Law Number 20 of 2016 Concerning Trademarks and Geographical Indications: (a) taking into account the public’s general knowledge of the mark; (b) taking into account the reputation of a well-known brand that is attained through vigorous and extensive promotions; and (c) investment.

The Law on Trademarks and Geographical Indications’ definition of license then explains that a trademark license’s nature is not to transfer trademark rights, but rather to give rights. A brand license is a component of a brand’s exclusive rights, including the ability to create products and/or services using the trademark in issue and the right to grant authorization to third parties to use the trademark in question. A license is issued as payment for the permit.

According to Black’s Law Dictionary, a license is defined as “a personal privilege to do some specific act or series of acts on land without possessing any estate or interest in the company, and is ordinarily revocable at the licensor’s will and is not assignable.” the consent of a competent authority to perform a task that would otherwise be unlawful, trespassing, tortious, or otherwise prohibited. certificate or the authorization-granting document itself. Permit to perform something that the licensor could forbid. Permission to carry out a specific act, exercise a specific right, run a certain business, or engage in a specific profession.

The business owner authorizes a third party to create the product to be sold through a license.[7] It costs money to obtain permission to produce certain goods. The business owner who grants the permit is compensated with a sum of money known as a royalty in exchange for producing the product and/or typically including the right to sell the goods produced. The amount of this royalty is always based on the volume of goods produced and/or sold during a specific time period.

A licensing agreement is, in the words of John Shijian Mo, “a contractual arrangement pursuant to which a party, commonly known as the licensor, grants unto another party, the licensee, the right to use the licensor’s patents, know-how, and/or trademarks in connection with the manufacturing and/or distribution of certain products.”[8]

The license agreement is a formal contract between the licensor and the licensee, as can be inferred from the aforementioned understanding. This agreement is evidence that the licensor gave the licensee consent to use the brand name. The Burgerlijk Wetboek (BW) legal principles, which govern agreements, are used to execute the license agreement.

Both the licensed party and the licensee must execute their goals in a balanced way for the license agreement to be put into effect. According to the general rules of contract law, a trademark license agreement can be revoked if it is created with the intention of exploiting the exclusive rights of a brand right.[9]

Abuse of these rights typically occurs when one of the contract’s legal requirements, as outlined in Article 1320 BW, is not met. The article controls the conditions of an agreement’s validity, including an agreement to commit oneself, the capacity to enter into agreements, a specific object, and a cause as a legal objective.

The contract’s purpose is crucial in ensuring that all expectations derived from the parties’ promises can be achieved and satisfied. If there is a violation, compensation must be given. Thus, the contract serves as a tool to ensure that the parties’ goals can be fulfilled. There are various provisions in the contract that must be agreed upon by the parties. In addition, the contract includes statements that result in duties. However, the promise creates rights for the opposing party. According to Atiyah, these legal rights and duties are nothing more than a means of exchanging goods and services for money.[10]

A commercial entity that isn’t a legal person (CV). Founded by one or more partners who are jointly and severally liable, as well as one or more partners who serve as money lenders, CV is a business that is formed by lending money. There are one or more complimentary partners and partners inside the CV organization.[11]

Limited partners, also known as passive partners, are partners who invest capital in the form of money or goods into the company (inbreng) and are entitled to the company’s profits. However, in terms of liability to third parties, the limited partners are only liable up to the assets included in the investment. Complementary partners have the authority to act for and on behalf of all partners and are liable to third parties jointly and severally up to personal assets. [12] The general public, particularly the business sector, is aware that limited partnerships exist as a type of company entity. The Commercial Code does not contain any unique or special regulations regarding the basis for setting a CV.

If the contents of the agreement do not conflict with the legal provisions that govern them, namely book III of the Civil Code and the IPR Law generally, licensing contracts that are motivated by the existence of international business development and are cross-national in nature can be more practically standardized. [13] Even though it is a cross-country transaction, the licensor must consider both its own and the licensor's mutual interests, including rights and obligations, to ensure that both parties are on the same page. This means that even though the transaction is cross-country, the licensor cannot simply include the country's laws in the license agreement it is offered. [14]

According to the Minister of Law and Human Rights' Order No. 17 of 2018 concerning the Registration of Limited Partnerships, Firm Partnerships, and Civil Partnerships, a Limited Partnership (LP) is a partnership formed by one or more limited partners with one or more complementary partners in order to operate a business continuously. Because CV has limited partners who are only accountable for the capital invested in the business while complementary partners are accountable for all of their personal assets, CV is frequently referred to as a special firm. Despite the fact that both organizations are categorized as commercial entities, what sets CV apart from a limited liability company is the position of a legal entity that is not controlled by CV. Because CV cannot be categorized as a recht person due to this difference in status, it is undoubtedly a consequence that CV is not a legal subject and cannot act alone in carrying out legal actions.

The requirements for consenting and being knowledgeable under Article 1320 BW are unquestionably intimately tied to the "legal subject" working as a contractor, which is why these two requirements are categorized as "subjective elements" in the context of the contract. The outcome is that the agreement established will be in a position that can be canceled (*vernietigbaar*) and not null and invalid (*nietig*), if the subjective element is not correctly fulfilled by the parties. The prerequisites for a particular topic and a permissible *causa* are categorized as objective conditions, and if they are not met, the agreement is void.

Legal authority is one of the elements of competence in Article 1320 BW, which means that the authority to support legal rights and obligations, which may, of course, only be exerted by the legal subjects themselves. The ability to act, also known as *bekwaamheid*, is distinct from the authority to act, or *bevoegdheid*. In Article 1320 BW, we can find elements of competence that must be satisfied as a condition for the validity of an agreement. However, *Burgerlijk Wetboek* stipulates that in order to independently bring legal action, a person must be at least 21 years old or married (see Article 330 BW). While authority (*bevoegdheid*) is referred to as legal power (*rechtsmacht*), marriage is

only permitted at the age of 18 if Law Number 1 of 1974 is referenced. Therefore, power and authority are related in the concept of public law.

The licensing agreement on the rights of the well-known brand will be affected if CV, a business entity that is not a legal entity, assumes the position of making or accepting a license agreement, which under the Trademark Law can only be carried out by legal subjects, either recht persons or natuurlijk persons. This is because CV, a business entity, lacks the authority to act (*bevoegheid*) and enter into agreements.

A legal entity has the characteristic that the owner's assets are typically separated from the assets of the body; as a result, a business entity with a legal entity can be sued in court just like a natural person, and the owner of a business entity with a legal entity is only responsible for the assets included in the legal entity within the company. Currently, there are three types of legal entities: cooperatives, foundations, and limited liability companies. Limited partnerships are not considered to be "recht persoon legal subjects" under Indonesian law, which significantly curtails CV's ability to file lawsuits in the same manner as a company with a legal identity.[15][16]

If a company is in debt and unable to pay its debts, the management is liable by including any personal assets they own. Managers or active partners are also responsible for the company's debts to shareholders. Because the individual is only a moneylender (*gegschieter*), or money giver that is, a person who entrusts his money to be used as company capital instead of a passive partner, who contributes a certain amount of capital and whose responsibility to the company is limited to that capital his responsibility to the company is different from that of a passive partner. Therefore, in order to address the issue, one must accept responsibility for the effects of their behavior. The same applies to the CV's members' positions.

4. CONCLUSION AND RECOMMENDATION

The legal system does not recognize the position of a Limited Partnership (*Commanditaire Venootschap*) to be granted a license for a well-known brand. The underwriting agreement will be affected because *Comanditaire Vennootschap*, as a business entity that is not a legal entity, assumes the role of being the recipient or licensor of well-known brand rights, which under the Trademark Law can only be carried out by legal subjects, either recht persons or natural persons. This is because CV lacks the authority to act (*bevoegheid*) and the guarantee agreement may be terminated (*vernietigbaar*) because it is CV cannot be the owner or the licensor of well-known brand rights. The requirement for legislative framework modifications so that Limited Partnerships (*Commanditaire*

Venootschap) may be granted licenses for well-known brands. Establishing CV legal status as a separate legal organization will give small and medium-sized firms more chances to register licenses for well-known trademark rights to CV.

References

- [1] Utomo TS. Intellectual property rights an introduction. Bandung: Alumni; 2017. p. 3.
- [2] The Apparent Anufacturer Doctrine, Trademark Licensors and the third restatement of Torts, *Case Western Reserve Law Review*, Summer 99, Vol. 49, Issue 4, p. 1.
- [3] Saidin OK. *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Right)*. Jakarta: PT Raja Grafindo Persada; 2013. pp. 357–78.
- [4] Megantz RC. *How to license technology*. Newyork: John Wiley & Sons, Inc; 1996. p. 11.
- [5] Gautama S. (1995). *Segi-Segi Hukum Hak Milik Intelektual*, (PT. Eresco:Bandung), p. 18.
- [6] International Trademark Association. 2015, Topic Portal: Famous Marks or Well-Known Marks, <http://www.inta.org/Advocacy/Pages/FamousMarksWell-knownMarks.aspx>, diakses terakhir pada tanggal 27 April, pukul 23.12 WIB).
- [7] Widjaya G. *Lisensi*. Jakarta: RajaGrafindo Persada; 2010. p. 23.
- [8] Mo JS. *International Commercial Law*. Australia: LexisNexis Butterworths; 2003. p. 193.
- [9] Jened R. *Hak Kekayaan Intelektual Penyalahgunaan Hak Eksklusif*. Surabaya: Penerbit Airlangga University Press; 2007. p. 236.
- [10] Atiyah PS. *An introduction to the law of contract*. Newyork: Oxford University Press; 1996. p. 3.
- [11] Black HC. *Black's Law Dictionary*. ST.Paul (Minn): West Publishing Co; 1990. p. 1133.
- [12] Badan PH. *Naskah Akademik Rancangan Undang-Undang Tentang Persekutuan Perdata Persekutuan Firma dan Persekutuan Komanditer (Jakarta;Kementerian Hukum dan Hak Asasi Manusia)*. 2013. p. 9-10.
- [13] Citra Rosa Budiman, "Perlindungan Hukum Terhadap Merek Terkenal (Well-Known) Di Indonesia," *Reformasi Hukum* 23, no. 1 (November 27, 2019): 1–18, <https://doi.org/10.46257/jrh.v23i1.54>. diakses terakhir pada tanggal 27 April, pukul 23.12 WIB).
- [14] Hertanti Pindayani, "Tanggung Jawab Direktorat Jenderal Hak Kekayaan Intelektual Terhadap Pemegang Hak Atas Merek Dalam Hal Ada Putusan Pembatalan Merek," *Authentica* 1, no. 1 (December 8, 2018): 42–50,

<https://doi.org/10.20884/1.atc.2018.1.1.8..> diakses terakhir pada tanggal 27 April, pukul 23.12 WIB).

- [15] Damanik D. Eksistensi Permenkumham No. 17 Tahun 2018 dalam Pelaksanaan Pendaftaran dan Pencatatan Persekutuan Komanditer di Indonesia. Jakarta: Rajawali Press; 2019. p. 86.
- [16] Indrawati S, Rachmawati AF. Edukasi Legalitas Usaha sebagai Upaya Perlindungan Hukum bagi Pemilik UMKM. *J Dedik Huk.* 2021 Nov;1(3):231–41.