

"Haven For Counterfeit International Branded Bags": Challenges for Trademark Protection in Batam City, Indonesia

ORIGINALITY REPORT

22%
SIMILARITY INDEX

14%
INTERNET SOURCES

6%
PUBLICATIONS

17%
STUDENT PAPERS

PRIMARY SOURCES

1 Submitted to Universitas Internasional Batam 15%
Student Paper

2 lela.stiemj.ac.id 4%
Internet Source

3 Raden Murjiyanto. "Legal Protection of the Registered Trademark Owner in the Constitutive System (First to File) in Indonesia", SHS Web of Conferences, 2018 1%
Publication

4 lib.unnes.ac.id <1%
Internet Source

5 Submitted to Universitas Islam Indonesia <1%
Student Paper

6 download.atlantis-press.com <1%
Internet Source

7 www.atlantis-press.com <1%
Internet Source

8 gatenterprise.com
Internet Source

“Haven For Counterfeit International Branded Bags”: Challenges for Trademark Protection in Batam City, Indonesia

by Elza Syarief

Submission date: 21-Jun-2021 10:07AM (UTC+0700)

Submission ID: 1609791726

File name: IIB3_GCBSS_Thailand-15-21.pdf (663.65K)

Word count: 3023

Character count: 15674

“Haven For Counterfeit International Branded Bags”: Challenges for Trademark Protection in Batam City, Indonesia

Elza Syarief, Rina Shahriyani Shahrullah, Yenny Moniaga

¹⁾Universitas Internasional Batam, Jalan Gajah Mada, 29412, Batam, Indonesia

ABSTRACT

Batam City of the Riau Island Province is the Indonesian territory which is very closed to Singapore and Malaysia. Due this geographical proxy, imported goods, including international branded bags such as Chanel, Gucci, Prada, Hermes can be obtained easily from overseas in Batam City. Unfortunately, most of them are counterfeit bags which are commonly referred to the term “KW bags”. In 2016 the Indonesian Government has renewed the Trademark Law by enacting Law No.20 of 2016 concerning Trademark and Geographical Indications to replace the former Law No.15 of 2001. As a member of WIPO, Indonesia must not differentiate between the protection of national and international trademarks. However, KW bags from China have been circulated and sold in Batam City. This research analyses the effective implementation of the Trademark Law in Batam City. It found that KW bags have been legally imported into Batam City from China since 2005 because they have met all the required documents for import. Batam City police have no authority to investigate the KW bags because a trademark infringement is qualified as a warrant complaint under the Trademark Law. It also found that most respondents have bought the KW bags because their cheaper price and their appearance is very much the same as the original ones. Yet, they mostly understand that the KW bags violate the Trademark Law and disadvantage the owner of the marks.

Type of Paper: Empirical

Keywords: counterfeit goods; branded bags; trademark protection; Batam City; Indonesia.

5. Introduction

Batam City of the Riau Island Province is the Indonesian territory which is bordered to Singapore and Malaysia. Consequently, imported goods, including international well-known brands from overseas may be obtained easily in Batam City comparing to other cities in Indonesia. Unfortunately, Batam City is also famous as a haven for counterfeit goods, particularly bags with international well-known trademarks, such as Chanel, Gucci, Prada, Hermes, Louis Vuitton, etc. Counterfeit bags are commonly referred to the term KW products or KW bags in Batam City. This term is used by bag sellers in Batam City to distinguish the bags from the original ones. The KW bags have been openly circulated and sold in the shopping streets of Batam City, especially in the area of Nagoya, Juah, and Penuin. Similarly malls in Batam City, for example the BCS Mall, Nagoya Hill, DC Mall. This research question why counterfeit bags with international well-known trademarks can be freely circulated and sold in Batam City even though Indonesia has renewed its Trademark Law to provide better protection to trademark owners. It also aims to investigate what challenges are faced by the law

enforcers to effectively implement the Trademark Law in Batam City in relation to the sale of KW bags.

6. Literature Review

2.1 Conceptual Framework

The term 'mark' is defined by Article 1 point 1 of Law No.20 of 2016 concerning Trademark and Geographical Indications (the New Trademark Law) as 'a sign that may be displayed graphically in the form of pictures, logos, names, words, letters, figures, composition of colours, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of such elements to distinguish goods and/or services produced by persons or legal entities in the goods and/or service trade activities'.

R.M. Suryodinigrat in H.Ok. Saidin (2010) classifies trademark into the following types, namely:

The word trademarks which consist of words alone. Example : Good Year and Dunlop are trademark of car tires and bicycle tires.

Paint trademark is a trademark that consists of paintings or a combination of words and painting.

Hakam Online (<http://www.hakamonline.com>) points out that the main functions of trademark are:

to distinguish between the production of a person or persons jointly or a legal body with the production of another person or legal entity,

as a promotional tool, thus promoting a production by referring to the brands;

as a guarantee of the quality of the goods;

to show the origin of goods / services produced.

A well-known mark is generally given a high degree of recognition and reputation by Indonesian public. Hence, the Indonesian Supreme Court provided the criteria of a well known brand and under its decision Number 1485 K / PDT / 1991 which explicitly provides that 'a brand included in the definition of well-known marks in principle means that the brand has circulated out of its regions and its across the transnational borders, therefore if a brand has been registered in many countries in the world, it is qualified as a well-known brand because it has circulated to the borders outside its home country'.

Well-known marks are give protection against 'signs which are considered a reproduction, imitation or translation of the marks provided that they are likely to cause confusion to public' (WIPO). An exclusive right is given to trademark owners as it is provided by Article 1 point 5 of the New Trademark Law that 'mark right is an exclusive right granted by the state to the owner of a registered mark for a certain period of time by using the mark itself or granting the other party a permission to use it.'

2.2 Legal Framework

In order to provide more protection to trademarks in Indonesia, in 2016 the Government has renewed the Trademark Law by enacting Law No.20 of 2016 concerning Trademark and Geographical Indications (the New Trademark Law) to replace the former Law No.15 of 2001. This Law has a significant difference from the previous one pertaining to the protection of a well-know trademark.

Different from the previous Trademark Law, the new one renders a legal protection to owners of well-known trademarks even though they have registered their marks in Indonesia. (Am Baŕur and Partners, 2017).

2.3 Theoretical Framework

In order to answer the research questions, this research adopts the Legal Protection Theory by Philips M. Hadjon (2007) which asserts that there are two types of legal protection, namely Preventive Legal Protection and Repressive Legal Protection. The preventive legal protection aims to prevent conflicts by using the rules and regulations, while the repressive legal protection aims to prevent conflicts by using the agreement of the parties. In short, legal protection constitutes a protection given to a society or subject of law, according to the rules or regulations of law either written or unwritten in order to establish the rule of law.

7. Research Methodology

This research adopted a social-legal research method, which considers law as a social phenomenon with a structural approach (Wignyosoehroto, 1993). Socio-legal research constitutes an empirical research because it serves to examine how the law actually works in the community (Suekanto and Mamudji, 2003). Hence, it requires both primary and secondary data. The primary data was collected through observation in Nagoya, Permin, Jodoh area and malls (BCS Mall, Nagoya Hill, and DC Mall). Questionnaires were distributed to 150 respondents (15 sellers and 135 buyers) in Batam City as a sample of those who have or have not bought KW bags. This research applied the Guttman Scale (Scalogram analysis) whose objective is 'to establish a one-dimensional continuum for a concept that is measured' (<http://www.socialresearchmethods.net/kb/scalgutt.php>). This scale was used to determine the knowledge of respondents in Batam City regarding KW bags and the New Trademark Law. Secondary data were analysed by using the qualitative approach and the questionnaires were analysed statistically using the Chi square.

4. Results

Based on the observation in Batam City, it was found that high circulations of KW bags are in Nagoya areas compared to other locations such as Permin and Jodoh. The shops display more than 50 pieces of bags with well-known trademarks. However, 90% of them are KW bags. The KW bags are famous not only for Batam City people, but also for those from other parts of Indonesia including tourists from Singapore and Malaysia. In addition to offline selling, they are also sold online by using social media such as Instagram, Facebook, Whatsapp (WA) and Line. Figure 1 shows shops along Nagoya area which sells KW bags with well-known international brands.



Figure 1. The sales of KW bags with well know international brands

The results of questionnaires distributed to 135 buyers are shown by Table 1.

Table 1. Buyers' responses to KW bags

No	Questions	Scale
1	How often do you buy bags?	Below two times a month (31) Above two time a month (53) Not frequently (51)
2	Have you ever purchased counterfeit/KW bags with well-known brands/trademarks? (Such as Gucci, Chanel, LV, etc.)	a. Yes (32) b. No (103)
3	Where do you normally buy your KW Bags?	Fashion stores in Nagoya or Pekin (83) Mnl's (30) Online (22)
4	Do you know how to identify the differences of KW Bags from well-known brands/trademarks?	a. Yes (94) b. No (41)
5	How different is the price between KW bags and well-known brands/trademarks?	Below Rp.500.000,- (95) Above Rp.500.000,- (40)
6	Do you think the sale of KW bags in Batam City has been increasing?	a. Yes (89) b. No (46)
7	What makes you buy KW bags?	Cheaper (122) Not much different appearance from the original bags (23)
8	Do you know that KW bags violate the Trademark Law?	a. Yes (105) b. No (32)

Source: Data analyzed by the authors

The results of questionnaires distributed to 15 bag sellers are shown by Table 2.

Table 2. Sellers' responses to KW bags

No	Questions	Scale
1	Why do you sell KW bags?	Cheaper price (6) Lots of demands from customers (7) Good quality (2)
2	How different is the price of KW bags from the original ones?	KW bags are much cheaper than the original ones (12) KW bags are quite cheaper than the original ones (2) KW bags are a bit cheaper than the original ones (1)
3	Are KW bags' materials different from the original ones?	a. Yes (15) b. No (0)
4	Are selling KW bags more profitable than the original ones?	a. Yes (15) b. No (0)
5	Have your customers ever made complaints to KW bags?	a. Yes (1) b. No (14)
6	Do you feel ashamed to sell KW bags?	a. Yes (1) b. No (14)
7	Do you wear KW bags?	a. Yes (3) b. No (12)
8	Do you know that KW bags violate the Trademark Law?	a. Yes (14) b. No (1)

Source: Data analyzed by the authors

Based on the questionnaire results, it can be summarized that most respondents have bought KW bags and they are familiar with the differences between KW bags and the original bags with international well-known marks. They are willing to buy the KW bags because the prices of KW bags are much cheaper and their appearances are very much the same as the original ones. Customers of KW bags can purchase them in fashion stores, malls and online. Yet, they mostly understand that KW bags violate the Trademark Law.

5. Discussion

The research findings reveal that KW bags in Batam City are highly demanded by customers even though most of sellers and buyers are fully aware that they have infringed the New Trademark Law. The Law in principle protects the owner of international well-known marks as the Elucidation of Article 83 (2) of the Law, which points out that owner of well known marks may file a lawsuit even though the marks have not been registered in Indonesia. This approach is newly introduced by the

New Trademark Law; consequently it can be said that it has provided a legal protection platform (preventive protection) from the perspectives of the Legal Protection Theory. In addition, Article 100 of the New Trademark Law also provides legal protection since it imposes sanctions, namely fines from RP. 2,000,000,000.00 (two billion rupees) up to RP. 5,000,000,000.00 (five billion rupees) and imprisonment from 4 (four) years up to 5 (five) years depending the types of trademark infringement. Yet, it is arguable that legal protection under the New Trademark Law is not effective since up to the present, the sale of KW bags still occurs in Batam City. Even though it is a challenged faced by legal enforcers, they argue that the trademark infringement's qualifies as a warrant complaint (dilek aduan) under Article 103 of the New Trademark Law. This means that the legal enforcers can only process the case after the complaint has been submitted. In the late 2015 an investigation was conducted in Batam City due to the circulation and sale of 'Chanel' KW bags. This investigation was made because Chanel has been registered in Indonesia and its owner submitted a warrant complaint. It was submitted that KW Chanel bags were circulated in a number of fashion shops in Nagoya area of Batam City. In response to the complaint, approximately 400 KW bags of Chanel brand that were seized by the Batam police during the inspections.

The research results also reveal that the sale of KW bags is more profitable and buyers prefer to buy them because of their cheaper prices and their appearances are similar to the original ones. It is obvious that even if the enactment of the New Trademark Law has fulfilled its legal protection function for trademark owners, it still fails to stop the sale of KW bags. Due to the requirement of complaints from trademark owners, the authority of law enforcers to raid and seize KW bags is very limited. This situation is worsened since KW bags sellers have compelling arguments that the imports of KW bags have been permitted by the Office of Customs and Excise of Batam City.

Although the Office of Customs and Excise is in an entrance of imported goods to Batam City, it has no authority to check them in great details. It only conducts a regular physical check for imported goods. For example, it checks the amount, type and weight of goods based on the Regulation of Minister of Finance No. 47/Pmk.04/2012 concerning Procedure of Importing and Exporting Goods to and from the Area that has been Established as A Free Trade Area, Fcrt and Clean Exemption (Peraturan Menteri Keuangan No. 47/Pmk.04/2012 Tentang Tata Laksana Penasukan Dan Pengeluaran Barang Ke Dan Dari Kawasan Yang Telah Ditetapkan Sebagai Kawasan Perdagangan Bebas Dan Pelabuhan Bebas Dan Pembebasan Cukai). In relation to counterfeit goods, Article 54 of Law No.17 of 2005 concerning Customs only provides that 'upon the request of the owner of trademark or copyright rights, the Head of the Commercial Court may issue a written order to the Customs and Excise Authority to temporarily suspend the release of imported or exported goods from the customs zone on the basis of sufficient evidence alleged to be the result of a breach of the trademarks and copyright rights that protected in Indonesia.' It is clear here that in the absence of a written order from the Commercial Court, the Customs Office and Excise of Batam City cannot take any action. Up to the present, the actions to temporarily suspend KW bags with international well-know marks in Batam City have never been conducted by the Office.

6. Conclusion

It is obvious that even though the New Trademark Law provides legal protection, there is still a challenge to stop the sale of KW bags with international well-known marks in Batam City. The main challenge is because in the absence of complaints from owners of international well-known marks, legal enforcers cannot take any action at all. Similarly, in the absence of the Commercial Court's written order, the Customs and Excise Office of Batam City has no authority to temporarily suspend the release of imported KW bags from the customs zone. Hence, it can be concluded that legal protection for international well-known marks against KW bags in Batam City cannot be fully implemented because of the requirement of trademark owner's complaint and the Commercial Court's written order to legally take action against the bags.

References

- Am Bader and Partners. 'Comparison Between The Old Indonesian Trademark Law No. 15 Of 2001 And The New Indonesian Trademark And Geographical Indications Law No. 20 Of 2016'. Retrieved from <http://ambadar.co.id/knowledge-base/comparison-between-the-old-indonesian-trademark-law-no-15-of-2001-and-the-new-indonesian-trademark-and-geographical-indications-law-no-20-of-2016/>
- Hadjon, P.M. (2007). *Perlindungan Hukum Bagi Rakyat di Indonesia*. 1st edition, limited edition, Surabaya: Peradaban.
- Hukum Online. (2017). 'In Perbedaan Merek Biasa, Merek Terkenal, dan Merek Ternasyhur', Retrieved from http://www.hukumonline.com/klinik/kategori/5563e921ced12/in-perbedaan-merek-biasa-merek-terkenal-dan-merek-ternasyhur/_in4.
- Saidin, H.Ok. (2010). *Aspek Hukum Hak Kekayaan Intelektual*. Jakarta : RajaGrafindo Persada.
- Soekanto, S. and Mardjati, S. (2003). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, edisi 1, cetakan 6, Jakarta: PT Raja Grafindo Persada.
- Wignjosehroto, S. (1993). *Metodologi Penelitian Hukum*, Diklat (Kumpulan Tulisan), Program Pascasarjana UNAIR, Surabaya.
- WIPO. 'Well-known Marks'. Retrieved from http://www.wipo.int/sme/en/ip_business/marks/well_known_marks.htm

"Haven For Counterfeit International Branded Bags": Challenges for Trademark Protection in Batam City, Indonesia

ORIGINALITY REPORT

22%
SIMILARITY INDEX

14%
INTERNET SOURCES

6%
PUBLICATIONS

17%
STUDENT PAPERS

PRIMARY SOURCES

1 Submitted to Universitas Internasional Batam **15%**
Student Paper

2 lela.stiemj.ac.id **4%**
Internet Source

3 Raden Murjiyanto. "Legal Protection of the Registered Trademark Owner in the Constitutive System (First to File) in Indonesia", SHS Web of Conferences, 2018 **1%**
Publication

4 lib.unnes.ac.id **<1%**
Internet Source

5 Submitted to Universitas Islam Indonesia **<1%**
Student Paper

6 download.atlantis-press.com **<1%**
Internet Source

7 www.atlantis-press.com **<1%**
Internet Source

8 gatrenterprise.com
Internet Source

<1%



ambadar.co.id

Internet Source

<1%

Exclude quotes On

Exclude matches Off

Exclude bibliography On