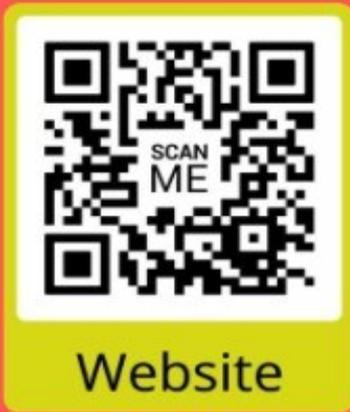


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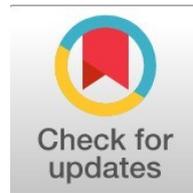
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International Brand Chanel's Opposition to the Dacosta + DC Painting Brand

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Abstract

General Background: Trademark protection under Law Number 20 of 2016 concerning Trademarks and Geographical Indications constitutes a central pillar of intellectual property law in Indonesia, ensuring legal certainty, fair competition, and consumer protection within the international registration framework, including the Madrid Protocol. **Specific Background:** This study examines the opposition filed by CHANEL SARL against the registration of the DACOSTA + DC Painting trademark before the Directorate General of Intellectual Property (DGIP), based on alleged substantial similarity and claims related to well-known mark protection. **Knowledge Gap:** Although opposition mechanisms are formally available to international trademark owners, limited doctrinal analysis addresses how Indonesian authorities assess formal and substantive requirements in determining similarity and bad faith. **Aims:** This research aims to analyze the legal basis of the opposition, the rebuttal submitted by the DACOSTA applicant, and the juridical considerations underlying the DGIP decision to accept the application. **Results:** The findings demonstrate that the objection did not satisfy the formal and material requirements stipulated under Article 21 of Law Number 20 of 2016, as no dominant similarity or evidence of bad faith was proven; consequently, the DGIP lawfully registered DACOSTA + DC Painting in Class 18. **Novelty:** This article provides a focused normative legal examination of an international trademark opposition resolved in favor of a domestic applicant within Indonesia's constitutive registration system. **Implications:** The decision confirms that opposition by a global brand does not automatically preclude national registration absent substantiated similarity and reputational proof, reinforcing legal certainty in Indonesian trademark law.

Highlights:

- The objection failed to establish dominant resemblance under Article 21 of Law Number 20 of 2016.
- No proof of bad faith or reputational appropriation was demonstrated in the proceedings.
- The authority confirmed lawful acceptance of the Class 18 application under the constitutive registration regime.

Keywords: Chanel, Dacosta, Objection, Intellectual Property, Brand

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Introduction

A brand is a name or symbol used by consumers to identify a product/service among others, and also provides assurance of the quality of that product or service [1]. Brands can prevent unhealthy business competition; their purpose is that with a brand, the origin, quality, and assurance that a product is original can be distinguished.[2].

Well-known marks in Indonesia are regulated under Law No. 20 of 2016 on Marks, particularly through Article 4 in conjunction with Article 6 Paragraph (1) letter b and Paragraph (2) [3]. Internationally, the protection of well-known trademarks is regulated under the Paris Convention and the TRIPs Agreement. Industries may take advantage of well-known trademarks to use them without permission on their products. One reason is to make them easier to sell.[4]. By using a well-known brand, new products or services do not need to bother with registering a number with the Directorate General of Intellectual Property or spending millions of rupiah to build their product image (brand image). [5]. They don't need to bother setting up a research and development division to produce products that are always up to date, because they can just copy other people's products, and for marketing there is usually a 'group' ready to accept these imitation products. Furthermore, the flourishing of this 'illegal' practice is also supported by the high purchasing power of consumers who have limited means but want to appear trendy. [6].

Trademark protection as part of the Intellectual Property regime plays an important role in maintaining legal certainty, healthy business competition, and consumer protection. [7]. In the era of globalization and the international trademark registration system through the Madrid Protocol, the potential for disputes between national and foreign trademarks is increasing. In Indonesia, IP protection still faces serious challenges. [8]. One of the purposes of using a brand is as a process aimed at providing a certain quality assurance and prestige to consumers so that they feel confident. [9].

Various legal instruments, both international and national, have attempted to formulate the protection of Trademarks as part of Intellectual Property Rights, both concerning exclusive rights for Trademark owners and for consumers [10]. This convention and legislation aim to ensure a balance between the interests of the parties, namely producers, consumers, and business actors. National law will not be separate from the influence of international law, as is the case in the regulation of Trademarks in Indonesia. [11]. Since 2009 until now, Indonesia has remained on the priority watch list issued by the United States Trade Representative (USTR) through the Special 301 Report. This list includes countries that are considered to have high levels of intellectual property rights violations and inadequate protection systems. [12]. In the 2024 report, Indonesia is the only country in Southeast Asia that still remains on this list, while other countries like Thailand have successfully exited since 2019. [13].

Therefore, regulations regarding trademarks were established. Regulations concerning trademarks were first included in Law Number 21 of 1961 concerning Company Trademarks and Business Trademarks. [14]. Regulations regarding trademarks have undergone several changes, with the most recent change occurring in 2016 marked by the enactment of Law Number 20 of 2016 on Trademarks and Geographical Indications. This law is still in effect today and serves as a reference for trademark regulations. This is done to prevent imitation in trademark claims. [15].

The Pierre Cardin trademark case in the study by Krishandri et al. (2016) [16] raising the issue of trademark protection as a foreign trademark that has been protected in Indonesia in the decision No.15/Pdt.Sus.Merek/2015/PN.Niaga.Jkt.Pst [17]. However, the research results state that Pierre Cardin is not a well-known foreign brand protected in Indonesia due to the inability of Manufacturer I to provide evidence in their argument. [18].

In this study, the form of dispute is an opposition filed by the owner of an international trademark against the application for registration of a national trademark. This article discusses an opposition case filed by CHANEL SARM against the trademark "DACOSTA + Lukisan DC" applied for by an Indonesian citizen. Although CHANEL is a widely recognized international brand, the opposition was ultimately rejected, and the DACOSTA + Lukisan DC trademark was approved and registered by the Ministry of Law, Directorate General of Intellectual Property (DGIP). [19].

A product released by a company needs to have a brand with the purpose that customers can identify products created by the industry. A brand is the beginning of a product's life. A brand plays a significant role in the product's identity to consumers. A brand that has unique characteristics and can be easily recognized and identified by customers is a brand that effectively positions itself in the buyer's mind. In other words, the brand has successfully established its presence as a product desired by consumers. As a result, there is buyer expertise in a product, and customer behavior may be influenced and decided with the help of the brand image. [20].

Method

This research is a normative legal study with a statutory approach and a case approach. The primary legal materials include Law Number 20 of 2016 concerning Trademarks and Geographical Indications, Presidential Regulation of the Republic of Indonesia Number 92 of 2017 concerning the Ratification of the Madrid Protocol, as well as administrative provisions from the Directorate General of Intellectual Property. Secondary legal materials are obtained from legal literature, doctrines, and scientific journals in the field of trademark law. In this study, the data and legal materials used are as follows: Primary legal materials are authoritative, meaning they have legal authority. Primary legal materials consist of legislation, official notes or records in the making of regulations, and court decisions. Secondary legal materials consist of all publications about law that constitute official documents.

Results and Discussion

A. Legal Basis for International Trademark Objections

The objection submitted by CHANEL SARL is based on its status as the owner of the international trademark with Application Number RO02003003975 and Registration Number IDMO00004006 for Class 18. The legal basis for filing the objection comes from the Presidential Regulation of the Republic of Indonesia Number 92 of 2017 on the Ratification of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, 1989, which provides recognition and protection for international trademarks in Indonesia. The objection was filed following the announcement of the trademark application DACOSTA + DC Painting in the Official Trademark Gazette Series A Number 07/P-M/I/A/2024, as regulated in Article 16 paragraph (1) of Law Number 20 of 2016 on Trademarks and Geographical Indications.

Registration with a constitutive system is a model of e-registration for inventions in order to obtain rights over the intellectual property. This serves as a global recognition that without registration, the state will not acknowledge or grant rights to the invention to the registering party. Therefore, in this case, if a work does not have legal protection and is copied by others, the state is not responsible for it. The basis used initially comes from Law Number 19 of 1992 regarding the constitutive system, which in this regulation emphasizes that legal protection for intellectual works is based on the first registrant acting in good faith.[21]

In the event that a request for the extension of the protection period of a registered trademark as referred to in Article 23 (1) and Article 24 is approved by the Trademark Office, legal protection is granted for a period of ten years and applies retroactively from the date of expiration of the protection of the relevant trademark based on Law Number 21 of 1961 concerning Company Trademarks and Trade Marks.

B. CHANEL SARL Objection Position

In the event that a request for the extension of the protection period of a registered trademark as referred to in Article 23 (1) and Article 24 is approved by the Trademark Office, legal protection is granted for a period of ten years and applies retroactively from the date of expiration of the protection of the relevant trademark based on Law Number 21 of 1961 concerning Company Trademarks and Trade Marks. [22].

CHANEL SARL argues that the DACOSTA + DC Painting trademark fundamentally resembles the CHANEL trademark, particularly in the elements of the logo or painting. This argument refers to Article 21 paragraph (1) letters (a) and (b) of Law Number 20 of 2016, which regulates the rejection of trademark applications if there is a fundamental or overall similarity with a registered trademark or a well-known trademark owned by another party.

Explicitly, in the MIG Law, famous trademarks are not mentioned, but they can be implicitly seen in the explanation of Article 21 paragraph (1) letter b of the MIG Law, which states: *"The refusal of an application that has similarities in essence or entirely with a famous trademark owned by another party for similar goods and/or services is carried out by taking into account the general public's knowledge of that trademark in the relevant business field. In addition, the reputation of the trademark is also considered, which is obtained through extensive and intensive promotion, investment in several countries worldwide by the owner, and accompanied by evidence of trademark registration in several countries. If this is still considered insufficient, the Commercial Court may order an independent institution to conduct a survey to reach a conclusion on whether the trademark in question is famous or not, which forms the basis for the refusal."*

C. Objection of Applicant for the DACOSTA Trademark

On May 27, 2024, the owner of the DACOSTA + DC Painting brand appointed Dr. Henky Solihin MZ, S.H., M.H., as Intellectual Property Consultant and Advocate, to file a rebuttal against the objection from CHANEL SARL. In his rebuttal, it was stated that the objection did not meet either formal or substantive requirements. The rebuttal emphasized that the concept of "substantial similarity" as referred to in Article 21 paragraph (1) letter (a) of the Trademark Law must be based on the presence of dominant elements that create a similar overall impression, whether in terms of shape, placement method, writing style, combination of elements, or similarity in pronunciation. In this case, the DACOSTA + DC Painting brand has dominant elements, visual character, and conceptual impression that are significantly different from the CHANEL logo brand.

Intellectual Property Rights protection is a legal instrument that recognizes and protects the exclusive rights granted by law over an individual's intellectual creations in the fields of science, art, literature, and technology, aimed at enhancing creativity and innovation to gain recognition and economic benefits. [23]. One of them is in creating a company logo.

A logo is a graphic element in the form of an ideogram, symbol, emblem, icon, or sign used as a representation of a brand [24]. The application of Article 21 paragraph (1) letter (b) concerning well-known trademarks must be accompanied by proof of reputation, public recognition, as well as relevance to similar types of goods and/or services. In addition, Article 21 paragraph (3) regarding bad faith is also not fulfilled, as there is no evidence of the applicant's intention to imitate, copy, or ride on the reputation of the CHANEL logo brand.

D. Considerations and Decisions of DJKI

The next stage is the announcement of the Geographical Indication application. The announcement of a Geographical Indication application is a critical stage in the process of registering a Geographical Indication in Indonesia. The announcement aims to inform the public about the submission of a Geographical Indication registration, including details such as the product name, the area of origin, and its unique characteristics. This ensures that the registration process is carried out openly and is accessible to the public.

After considering the objections and responses of the parties, DJKI is of the opinion that the arguments of CHANEL SARL are insufficient to prove the existence of a similarity in substance or bad faith on the part of the applicant. Therefore, the objection is rejected, and the trademark application for DACOSTA + DC Painting with Application Number DID2024008430 in Class 18, submitted on January 26, 2024, is declared accepted. As a legal consequence, DJKI issues Trademark Certificate Number IDM001258893, granting exclusive rights to the owner of the DACOSTA + DC Painting trademark in accordance with the provisions of the legislation under Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

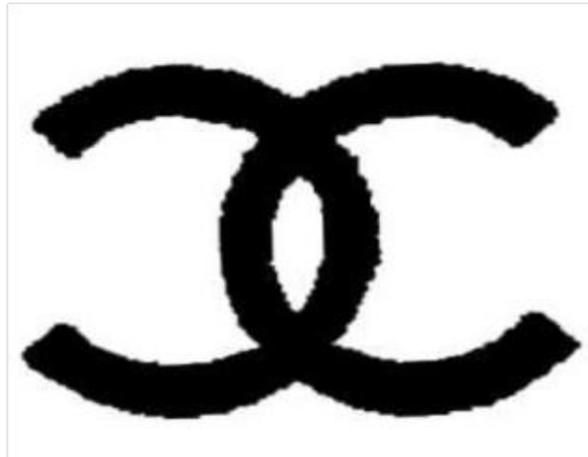


Figure 1. Chanel Logo



Figure 2. Dacosta Logo

Using the aforementioned legal basis and juridical arguments, the Directorate General of Intellectual Property rejects the opposition filed by CHANEL SARL and accepts the application for the registration of the trademark “DACOSTA + Lukisan DC.” A trademark, as one type of intellectual property, plays a very important role in the development of trade investment in goods or services. A trademark can meet consumer needs with its distinguishing power in providing guarantees of quality for goods or services in free competition. A trademark is an important asset for its owner; therefore, legal protection for a trademark is attached to the rights of individuals or legal entities. [25].

Conclusion

An opposition submitted by the proprietor of an international trademark does not automatically lead to the refusal of a domestic trademark application. In the matter of CHANEL SARL’s objection to the DACOSTA + Lukisan DC mark, no proof was presented demonstrating substantive similarity or bad faith as required under Law Number 20 of 2016. The Directorate General of Intellectual Property (DJKI) acted lawfully and appropriately in approving and registering the DACOSTA + Lukisan DC mark, thereby rendering it validly registered and entitled to legal protection in Indonesia.

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