

Legal 500

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Indonesia

Trademark Disputes

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This country-specific Q&A provides an overview of trademark disputes laws and regulations applicable in Indonesia.

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Indonesia: Trademark Disputes

1. To represent a client before Court in respect of a potential trademark infringement matter, do you require a Power of Attorney – and if so, what are the execution formalities required by your courts?

A duly notarised and legalised/apostilled Specific Power of Attorney is required to represent a client before the court. The Power of Attorney, then, should be registered with the court in the course of filing the lawsuit and submitted to the Panel of Judges at the first hearing.

2. Is it a requirement in your jurisdiction to send a cease and desist letter to a potential infringer before commencing proceedings for infringement? What are the consequences for a trademark owner who chooses not to send a pre-action letter?

Although in Indonesia it is common practice to send a cease-and-desist letter to the alleged trademark infringer, it is not required by law. There are no legal consequences for a trademark owner who chooses not to send a cease-and-desist letter.

3. In your jurisdiction, is there a risk that a pre-action letter could give rise to claim against the trademark owner for unjustified threats? What steps should a trademark owner take to ensure any cease and desist letter does not expose the trademark owner to any liability.

A cease-and-desist letter may expose the trademark owner to potential legal claims if it is drafted or delivered improperly, such as no legal basis for delivering the cease-and-desist letter, no supporting evidence to show the alleged trademark infringement, or blatantly attempting to extort instead of resolving the dispute. The opposing party may attempt to file a civil lawsuit based on an unlawful act under Article 1365 of the Civil Code.

To mitigate such risk, trademark owners should take several precautionary legal steps before issuing a pre-action letter, such as 1) ensuring the trademark owners owns the trademark registration in Indonesia, covers the

relevant type of goods or services, 2) ensure factual and legal basis in sending the cease-and-desist letter including identifying similarity and the grounds for alleging infringement, 3) clear demands supported with evidence.

4. Is it mandatory for the parties to have attempted mediation or other alternative dispute resolution proceedings prior to commencing infringement proceedings? If so, what is the minimum expectation?

Similar to our response on No. 2 above, having mediation or other alternative dispute resolution is a common practice, but not mandatory. In Indonesia, the common practice is for the trademark owner to send a cease-and-desist letter to the alleged infringer and to negotiate with that party to settle the matter out of court.

5. Are claims for trademark infringements heard before a general commercial Court or a specialist Court focused on Intellectual Property disputes? Are trademark infringement claims decided by a judge or by a jury?

Trademark disputes are resolved through the general commercial courts and decided by a panel of judges comprising 1 chairman and 2 members.

There are only five Commercial Courts in Indonesia: the Commercial Court at the Central Jakarta District Court, the Commercial Court at the Surabaya District Court, the Commercial Court at the Semarang District Court, the Commercial Court at the Medan District Court, and the Commercial Court at the Makassar District Court. However, if the plaintiff and/or defendant is domiciled outside Indonesia, the case will be heard at the Commercial Court at the Central Jakarta District Court.

6. Is there a time limit for commencing trademark infringement proceedings once the facts giving rise to the infringement are known to the trademark owner. After how long would such a claim be time-barred? What action would a trade

mark owner have to know to give rise to such a claim being time-barred (for example, is it knowing that a mark in question is in use or is it knowing that a trade mark application has been filed and/or registered?)

The Law No. 20 of 2016 regarding Trademark and Geographical Indication ("Trademark law") does not stipulate a limitation for filing an infringement lawsuit.

On the other hand, the trademark cancellation lawsuit against a registered trademark as stipulated under Article 77 par. (1) of Trademark Law, must be filed within five years from the registration date of the challenged trademark. However, this five-year limitation does not apply (no time limit) where the registration was allegedly made in bad faith or where the trademark is contrary to morality, public order, or prevailing laws (Article 77 par. (2) of Trademark Law).

7. In your jurisdiction does the law protect unregistered trademarks of any kind, including by way of passing off, unfair competition or protection of trade dress. What are the criteria for their subsistence?

Indonesia holds the first-to-file principle, meaning that exclusive rights arise upon registration. Regardless of such principle, the Trademark Law still recognise form of protection for unregistered trademark under certain circumstances, especially when the trademark is well-known, considering Indonesian has recognised the protection of well-known trademark since ratifying the Paris Convention in 1979 through Presidential Decree No. 24 of 1979 concerning the Ratification of the Paris Convention for the Protection of Industrial Property and the Convention Establishing the World Intellectual Property Organization. The protection of Well-known Trademark as stated in Article 6 bis in conjunction with Article 4 of the Paris Convention is emphasized in Article 16 Paragraphs (2) and (3) of the Agreement on Trade Related Aspects of Intellectual Property Rights ("TRIPS Agreement") which essentially states that Article 6 bis of the Paris Convention must apply mutatis mutandis to goods and services of both the same and different types.

While filing a trademark application for the unregistered mark is necessary, the trademark holder shall also satisfy the following criteria when claiming the mark as well-known before the commercial court, as stipulated under Article 36 of the Minister of Law Regulation No. 5 of 2026 regarding Trademark Registration:

a. the level of public awareness or recognition of the Trademark in the relevant business sector as a well-known Trademark; b. the sales volume of goods and/or services and the profits derived from the use of the Trademark by its owner; c. the market share controlled by the Trademark in relation to the distribution of goods and/or services in the community; d. the extent of the Trademark's use; e. the duration of the Trademark's use; f. the intensity and promotion of the Trademark, including the investment value used for such promotion; g. Trademark registrations or applications in other countries; h. the level of success of law enforcement in the Trademark field, particularly regarding the recognition of the Trademark as a well-known Trademark by authorised institutions; or i. the inherent value of the Trademark obtained due to its reputation and the guaranteed quality of the goods and/or services protected by the Trademark.

8. In your jurisdiction will the Court hear claims for registered trademark infringement in parallel with claims for passing off, unfair competition, infringement of trade dress or other misleading advertising, or does a claimant need to bring such claims in a separate cause of action?

The plaintiff may need to bring such claims in a combined single lawsuit before the commercial court on the grounds of a trademark infringement lawsuit. Claims of passing off, unfair competition, infringement of trade dress, or other misleading advertising shall be grounds for bad faith and a basis for requesting compensation.

9. In your jurisdiction, do your Courts share jurisdiction with your Trade Mark Office, such that parties need to seek to seize the forum they prefer first in time, or does the Court take precedence and intervene to stay or transfer any live Registry proceedings (for example relating to invalidity or revocation of registered trade mark) which may overlap with an issued infringement claim and related counterclaim?

No. In Indonesia, the Directorate General of Intellectual Property Office ("DGIP Office") and the Courts operate as separate authorities with distinct functions. Trademark oppositions must be filed with the DGIP Office during the administrative examination process. By contrast, trademark infringement and trademark cancellation actions must be brought before the Commercial Court.

In particular, in a trademark cancellation lawsuit, the DGIP Office is typically named as a co-defendant. This is because the DGIP is the authority responsible for administratively cancelling the trademark registration in its official records once the court's decision becomes final and legally binding.

10. Where the defendant has a counterclaim for invalidity or cancellation of the registered trademark being asserted against it (either on the basis of earlier rights or as a result of non-use by the trademark proprietor), does the counterclaim become part of the infringement action, so that both issues are heard by the same Court within a single action, with the Court making a determination at its conclusion, or are the validity issues bifurcated and heard in separate parallel proceedings? If in your jurisdiction validity issues are bifurcated, what are the practical consequences of this from a timing perspective? For example, does this mean that a Court will stay the infringement claim and proceed with the validity attack first to avoid finding a trademark infringed, only to have a separate Court find the trademark invalid at a later date?

When a defendant has a counterclaim against the plaintiff, the commercial court will examine the case by the same panel of judges within a single action. The panel of judges will issue its consideration and decisions on both the lawsuit and the counter-lawsuit as one case.

11. In your jurisdiction, does a defendant have a defence of using a mark honestly and concurrently available to them?

Yes, in some cases, the defendant did not intend to imitate or infringe the other party's trademark when they can prove their business activities, appearance of the mark, despite having a similarity in pronunciation. On the other hand, a bad-faith applicant may claim that Indonesia upholds the first-to-file principle; hence, as the first applicant of the trademark in Indonesia, such an applicant shall have its trademark rights protected.

12. When considering the validity of a registered trade mark, does the Court consider whether the

trade mark has been registered in bad faith? If so, what actions would indicate this bad faith?

Yes, when a party files a trademark cancellation lawsuit, the plaintiff shall claim and prove that the applicant filed the trademark in bad faith to avoid the 5-year statute of limitation as stipulated under Article 77 par. (1) of Trademark Law.

According to the explanation of Article 21 par. (3) of the Trademark Law describes "bad faith applicant" as an applicant who is reasonably suspected of registering the trademark with the intention to imitate, plagiarise, or copy another party's trademark for the benefit of their business, thereby creating conditions of unfair business competition, deceiving, or misleading consumers.

13. If the main objective in commencing infringement proceedings is to secure an injunction, is a claimant required to state how much their claim is worth at the point their claim is issued?

Yes, when claiming for an injunction, the plaintiff must state their claim. When requesting compensation, our firm recommends calculating it based on loss of sales and distribution, unjust enrichment, and proof of consumer confusion as material loss. The plaintiff can also request immaterial compensation calculated based on the damage to reputation and promotional/investment costs incurred to repair and/or build the trademark value (goodwill).

14. Is it possible to seek a preliminary injunction in your jurisdiction? If so, what is the criteria a trademark owner needs to establish and is there a bond or other undertaking in damages payable to compensate the defendant if the Court finds no infringement following a substantive hearing?

Yes, a trademark owner may request a preliminary injunction to prevent the defendant from distributing or selling allegedly infringing or counterfeit goods (Article 94 of the Trademark Law).

Pursuant to Article 95 of the Trademark Law in conjunction with Article 2 of Supreme Court Regulation No. 5 of 2012 on Preliminary Injunctions ("SCR 5/2012"), the applicant is required to submit: (i) proof of ownership of a valid registered trademark (i.e., trademark certificate), (ii) sufficient preliminary evidence of infringement, and (iii) a clear and detailed description of the relevant goods

and/or supporting documents. The applicant must also request urgent measures, which may include:

- a. preventing the entry of goods suspected of being the result of trademark infringement into trade channels.
- b. storage of evidence relating to the trademark infringement.
- c. securing and preserving evidence.
- d. stopping the infringement to prevent greater losses.

In addition, the applicant is required to provide a deposit or bank guarantee equivalent to the value of the goods subject to the preliminary injunction. Under Article 7 of SCR 5/2012, such deposit will be returned if the court rejects the application.

However, pursuant to Article 97 par. 5 of the Trademark Law in conjunction with Article 12 of SCR 5/2012, if the preliminary injunction is granted but the applicant subsequently fails to substantiate the grounds for the injunction during the main proceedings, the court may revoke the injunction, either in whole or in part. In such circumstances, the respondent is entitled to receive the deposit in full if the injunction is entirely revoked, or on a pro rata basis if it is only partially revoked (amendment to the preliminary injunction).

To the extent that the deposit is insufficient to cover the respondent's losses, the respondent reserves the right to pursue a separate claim for damages against the applicant.

Given the significant financial risk of forfeiting the deposit if the injunction is later revoked by the court, it is generally advisable for a trademark owner to seek injunctive relief as part of the infringement lawsuit (i.e., as a provisional measure within the lawsuit), rather than through a standalone preliminary injunction application.

15. Is a licensee (whether exclusive or non-exclusive) of a registered trademark entitled to commence proceedings for trademark infringement? Does the trademark proprietor need to be joined as a party to the proceedings, and does it have an effect whether the licensee is registered before the local Trademark Registry?

Article 83 par. (1) of Trademark Law allows a licensee of a registered trademark to file a trademark infringement lawsuit against another party who unlawfully uses a trademark that is similar in substance or entirely for the similar type of goods and/or services in a form of compensation and/or termination of all activities in relation to the use of the trademark.

As stipulated under Article 42 par. (3) of the Trademark Law, the license agreement should be recorded with the DGIP Office.

16. Where the claim for trademark infringement is premised on similarity between the defendant's mark and the trademark owner's registered mark, does the proprietor need to demonstrate that confusion has occurred or simply that there is a risk of confusion? What is the minimum standard required to secure a finding of infringement?

Although there is no minimum standard required to establish a finding of infringement, the plaintiff must demonstrate the likelihood of confusion, indicating that the defendant's actions are negligent and unlawful. In one of our previous cases, we demonstrated actual consumer confusion, as complaints were mistakenly directed to our client even though the product was not our client's.

To further substantiate similarity between the trademark, plaintiffs commonly refer to the Article 35 par. 2 of the Minister of Law Regulation No. 5 of 2026 regarding Trademark Registration ("MoL 5/2026"). This provision outlines relevant criteria for assessing similarity, including:

- a. nature of goods and/or services;
- b. purpose and method of use of goods;
- c. complementarity of goods and/or services;
- d. competition for goods and/or services;
- e. distribution channels for goods and/or services;
- f. relevant consumers;
- or g. origin of production of goods and/or services.

17. In your jurisdiction is it possible to rely on post-sale confusion as a means of securing a finding of trade mark infringement?

The Trademark Law does not explicitly recognise the concept of post-sale confusion. The assessment of trademark infringement generally turns on whether the trademarks are sufficiently similar to cause consumer confusion as per Article 35 par. 2 of MoL 5/2026 (please see no. 16).

Under the Trademark Law, the likelihood of confusion is primarily evaluated in relation to the relevant consumers at the point of purchase. However, the law also aims to prevent misleading the public and to protect the goodwill attached to a registered trademark.

In this regard, although post-sale confusion is not expressly regulated, courts and authorities may, in practice, take into account broader forms of public confusion, including confusion arising after the sale, particularly where:

a. the use of a similar trademark may mislead the public at large; b. the reputation or distinctiveness of a well-known mark is exploited; or c. there is an element of unfair competition or bad faith.

Therefore, arguments based on such confusion may still be relevant and persuasive, especially in cases involving well-known marks or clear indications of bad faith.

18. In your jurisdiction what type of disclosure or discovery is typically ordered by the Court in respect of trademark infringement actions from both parties?

Unlike common law jurisdictions, Indonesia does not recognise a discovery or disclosure regime. Proceedings before the Commercial Court are governed by the Civil Procedure Law and rely primarily on the claims and evidence submitted by the parties. The burden of proof rests with the plaintiff to establish the alleged infringement, while the defendant bears the burden of rebutting such allegations by presenting counterevidence. In trademark disputes, the plaintiff is expected to demonstrate lawful ownership of the trademark (trademark certificate) and substantiate the defendant's infringing acts, including the circulation of infringing products and/or related commercial activities. Nevertheless, both parties are entitled to submit documentary and testimonial evidence, as well as to call fact and expert witnesses in support of their respective positions.

19. What type of expert evidence is permitted by the Court in your jurisdiction? Does the Court accept consumer surveys and are there specific rules about how consumer surveys are conducted. Do the parties need to request prior permission from the Court to adduce survey evidence?

In Indonesia, there is no formal restriction on the types of expert evidence that may be submitted in court proceedings. Accordingly, the court may admit consumer surveys, statistical analyses, and other supporting materials, including expert testimony, insofar as they are relevant to the issues in dispute. In trademark disputes, it

is common for parties to appoint not only consumer survey or statistical experts, but also trademark law experts. Given that trademark disputes are adjudicated before the (general) Commercial Court, expert testimony often serves to assist the judges in understanding the technical and legal complexities of the matter more comprehensively.

20. Does evidence submitted by your client in trademark infringement proceedings have to be accompanied with a statement of truth or other similar declaration? Which party is typically responsible for signing the statement of truth (or similar), the entity itself or the entity's representatives?

No, a statement of truth is not necessary. The current court system only requires soft-copy evidence submitted through e-court, while the original document is verified during the evidence verification hearing.

21. In your jurisdiction is it possible for a claimant to seek summary judgment and/or strike out of an infringement claim? What are the legal criteria for a Court to grant summary judgment?

The legal system does not recognise summary judgment and/or strike out. When a trademark infringement lawsuit is filed, the plaintiff must prove the defendant's unlawful act; conversely, the defendant must deny the accusation and move for a demurrer so that the lawsuit is deemed unacceptable.

22. How long does it typically take to reach judgment in a trademark infringement action from issue of the claim, through to first instance decision? What is the lower and upper range of legal costs for such an action?

According to Article 85 par. (7) of Trademark Law, the court hearing for trademark dispute (cancellation, invalidation, and infringement) shall be resolved within 90 (ninety) days and extendable for another 30 (thirty) days with the Chief of Supreme Court's approval. In case of a cassation (appeal), the Supreme Court should issue its judgment within 90 (ninety) days of the panel of judges receiving the cassation petition, as stipulated under Article 88 par. (8) of Trademark Law.

23. Following a first instance decision, is it possible for either party to appeal the decision? What are the grounds upon which an appeal can be lodged? Is it necessary to request permission to appeal, or are appeals automatically permissible? If either party file an appeal, is the enforcement of the first instance decision stayed pending the outcome of the appeal?

Yes, either party may file an appeal to the Supreme Court of the Republic of Indonesia (cassation) within 14 (fourteen) days from the date of the Commercial Court's decision by submitting a petition for cassation. The petitioner must subsequently file a Memorandum of Cassation (*Memori Kasasi*) within 14 (fourteen) days of the submission of the petition. Upon receipt of the Memorandum of Cassation, the opposing party has 14 (fourteen) days to submit a Counter-Memorandum of Cassation (*Kontra Memori Kasasi*).

The enforcement of the Commercial Court's decision is suspended if either party files a cassation. The decision will be final and binding after the Supreme Court issues its judgment.

24. If the parties have been involved in a dispute before the local Trademark Office, what relevance does this have on later infringement proceedings? For example where trademark owner (A) may have already sought to oppose the registration of a third party (B's) mark in proceedings before the local Trade Mark Office, is the trademark owner estopped from seeking invalidity of a registered trade mark where its opposition failed where the invalidity action is based on the same grounds as the unsuccessful opposition?

No, the trademark owner will not be estopped from seeking invalidity. Since Indonesia does not hold the "estoppel" principle, the trademark owner still has the right to file a trademark invalidation lawsuit before the Commercial Court.

25. In your jurisdiction, does the Court consider both liability and quantum within the same proceeding, or will any damages be assessed after the Court has reached a decision on

liability? How are damages for trademark infringement proceedings typically assessed in your jurisdiction?

In Indonesia, both liability and quantum are examined within the same proceeding. Upon submission of the lawsuit, the plaintiff shall put forward the claims they requested, typically requesting that the defendant is infringing the plaintiff's trademark right (for trademark infringement lawsuit), claiming a well-known mark, and requesting compensation of a certain amount (material and immaterial damages).

When requesting compensation, our firm recommends calculating damages based on the plaintiff's actual losses incurred over a specific period, including lost profits, unjust enrichment by the defendant, production costs, and other related expenses.

26. In addition to an injunction and damages, what other remedies are available in your jurisdiction?

Other remedies include:

a. Destruction of infringing goods; b. Handover of infringing goods to the trademark owner; c. Publication of the court's decision; d. Disclose the origin of the infringing goods; e. Stop the production, distribution and/or trade activities of the infringing goods.

27. Following a decision on the merits, is the winner entitled to recover all or a portion of its legal costs incurred in bringing or defending the proceedings. If legal costs are recoverable, what is the procedure involved and how does the Court assess the level of legal costs which should be reimbursed by the losing party.

In Indonesia, in civil court proceedings, the losing party bears the court fees; however, the recovery of legal costs (lawyer fees) is not recoverable.

28. Once the Court has issued a judgment, how long typically does the losing party have to comply with the Court's judgment including any final injunction issued? What are the consequences for failing to comply and how would the winning party seek enforcement of its

judgement.

The losing party is required to comply with the Court's judgment once the decision becomes final and legally binding. A decision of the Commercial Court becomes final and legally binding if no cassation (appeal) is filed within 14 (fourteen) days from the date the decision is rendered. Meanwhile, a decision of the Supreme Court becomes final and legally binding immediately upon its issuance.

In the event that the plaintiff prevails in a trademark infringement case and the defendant fails to voluntarily comply with the Court's decision, the plaintiff may submit a petition for execution to the Commercial Court. Upon receiving such a petition, the Court will issue a formal warning (*aanmaning*) ordering the defendant to comply

with the judgment, including payment of the awarded compensation (Article 196 HIR/207 RBg [Civil Procedural Law]). If the defendant fails to comply with the warning, the Court may proceed with the seizure of the defendant's assets for public auction. The proceeds from the auction will then be used to satisfy the plaintiff's compensation award (Article 197 HIR).

In a trademark cancellation case, if the lawsuit is granted and the decision becomes final and legally binding, the trademark will be cancelled and recorded by the DGIP Office. However, in certain circumstances where the DGIP Office does not attend the hearing, the plaintiff may submit a request to the DGIP to implement the cancellation of the defendant's trademark registration after the decision has become final and binding.

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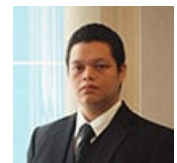
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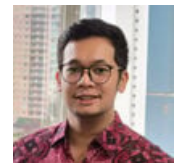
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