

**Analysis of Decision Number:
2/Pdt.Sus.HKI/Merek/2022/PN.Niaga Mdn Regarding the
Dispute over the MS Glow and PS Glow Brands, Which
Have Essential Similarities for Similar Goods**

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ABSTRACT

In the contemporary era of digital trade, with Indonesia's adherence to international conventions, the significance of brands and geographical indications cannot be overstated. These factors play a crucial role in upholding a fair and healthy business competition environment and safeguarding consumer interests. One particular instance that highlights the importance of these aspects is the brand dispute case involving MS Glow and PS Glow. The decision rendered by the Medan Commercial Court, which favored MS Glow, emphasized the significance of prior brand registration in conferring exclusive rights to the concerned party. The main objective of this research is to analyze the factors that judges take into account and the legal implications that arise from their decisions in court. The research methodology employed for this study is normative legal research, utilizing a combination of statutory analysis and case studies. Upon conducting this research, it has become apparent that the judgment made by the Medan Commercial Court in the trademark dispute between MS Glow and PS Glow was deemed unjust. This is primarily because the judge failed to consider certain crucial aspects in the decision-making process, specifically the fact that the MS Glow trademark was registered for class 32, which pertains to tea powder drinks, and not for cosmetic products. As a result, it was determined that PS Glow holds the exclusive rights to utilize the trademark. It is important to note that PS Glow's trademark registration with the Directorate General of Intellectual Property, under the Ministry of Law and Human Rights of the Republic of Indonesia, specifically covers class 3 goods and services, which includes cosmetics.

Keywords: *Brand Dispute, Trademark, Dispute Resolution.*

1. INTRODUCTION

The protection of trademarks is governed by Articles 100 to 103 of Law Number 20 of 2016 on Trademarks and Geographical Indications, commonly referred to as the Trademark Law. These articles outline the legal provisions and consequences for individuals or businesses that engage in acts such as copying or imitating a well-known brand owned by another party. With the rapid

advancements in information technology and the business landscape, competition among companies and business actors has intensified, particularly in the realm of intellectual property rights (IPR).

There are two main categories under Intellectual Property Rights, which are Copy Rights and Industrial Property Rights. Within the category of Industrial Property Rights, there are several subcategories including Patent Rights, Trademark Rights, Industrial Design Rights, Trade Secret Rights, and Integrated Circuit Layout Design Rights.¹ Trademarks are a range of Intellectual Property Rights which must have distinctive power. As stated in the Trademark Law, Article 1 number 1 states:

"A brand is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to differentiate goods and/or services produced by individuals or legal entities in goods and/or services trading activities."

A brand is a tangible representation of the creative, intellectual, and intentional efforts put forth by individuals. It is a result of their sacrifice in terms of energy, thought, time, and financial resources, all aimed at elevating the brand to a higher level of quality. However, it is crucial to understand that a brand is not merely a standalone entity. It is intricately tied to a business company's reputation within the competitive realm of trade. In fact, a brand's commercial value can be immense, often dictating the price and perceived worth of a product, surpassing even the value of the company itself.²

The registration of trademarks is governed by the Trademark Law, which means that not all trademarks are eligible to be registered with the Directorate General of Intellectual Property. Furthermore, Article 21 paragraph (2) letter b of the Trademark Law expands upon this provision, stating that the regulations outlined in Article 21 paragraph (1) do not solely apply to well-known marks for similar goods and/or services, but also extend to similar goods and/or services as long as they meet specific requirements.

The dispute revolves around accusations of plagiarism in the production of two beauty products: PT Kosmetika Global Indonesia (PKG I) and PT Kosmetika Cantik Indonesia (PKCI), owned by Shandy, which produces the MS GLOW brand, and PT Pstore Glow Bersinar Indonesia (PGBI), owned by Putra Siregar, which creates the PS Glow brand. On March 15, 2022, Shandy Purnamasari, the owner of the MS Glow trademark, filed a lawsuit against Putra Siregar, who owns the PS Glow trademark, at the Medan Commercial Court. The case was registered under the number 2/Pdt.Sus.HKI/Merek/2022/PN Mdn Commerce. Shandy Purnamasari accused Putra Siregar of trademark infringement by alleging that the PS Glow trademark bears a resemblance or imitates the MS Glow trademark. The court ultimately decided to cancel the trademark registration in the name of Putra Siregar or PS Glow.³

According to Article 4 paragraph (2) letter f of Law Number 20 of 2016, which deals with Marks and Geographical Indications, it is required to include the class of goods or services and a description of the type of goods or services in the application for trademark registration. However, the judge's assessment in this particular case was flawed because it was discovered that the registered brand, MS Glow, belonged to class 32, which pertains to instant powder drinks. On the other hand, the brand "MS GLOW For Cantik Skincare" was registered under class 3, which encompasses beauty products or cosmetics. This discrepancy goes against the policy set by the BPOM (Food and Drug Supervisory Agency), which mandates that brands used on products must align with the products registered with the Director General of Intellectual Property Rights.

¹ Saidin, H, OK, *Aspek Hukum HakKekayaanIntelektual (Intellectual Property Rights)*. (Jakarta, Rajawali Press, 2008).

² Hasyim, Farida, *Hukum Dagang* (Jakarta, PT. SinarGrafika, 2009).

³ Ni Wiyon Sukalandari, dkk, *Sengketa Plagiasi Merek Dagang antara Ms Glow dan Ps Glow*, *Jurnal Analogi Hukum*, (Universitas Warmadewa, Bali, 2022).

Based on this background, the author is interested in conducting research and discussing further regarding the juridical analysis of brand disputes which are essentially similar to similar goods in writing a thesis entitled "Analysis of Decision Number: 2/Pdt.Sus.HKI/Merek/2022/PN.Niaga Mdn Regarding the Dispute over the MS Glow and PS Glow Brands, Which Have Essential Similarities for Similar Goods".

2. RESEARCH METHOD

In the process of writing this thesis, a qualitative research method was employed. This particular method involves gathering data in a real-life environment, with the primary objective of comprehending and deciphering the various phenomena that manifest within it.⁴ This research will delve into the examination of the conflict between MS Glow and PS Glow, which revolves around brands that are remarkably alike in terms of their products.

3. RESULTS AND DISCUSSION OF RESEARCH

The analysis of Decision Number 2/Pdt.Sus.HKI/Merek/2022/PN.Niaga Mdn, which pertains to the dispute over the MS Glow and PS Glow brands, focuses on the judge's considerations in ruling on the trademark dispute. This ruling specifically addresses the brands' essential similarities in relation to similar goods. Additionally, the legal consequences of Decision Number 2/Pdt.Sus.HKI/Merek/2022/PN.Niaga Mdn in the MS Glow brand dispute with PS Glow are examined, highlighting the brands' fundamental similarities in relation to similar goods.

3.1 Judge's Consideration In Ruling Number: 2/Pdt.Sus.Hki/Merek/2022/Pn.Niaga Mdn In The Trademark Dispute Ms Glow And Ps Glow Regarding Brands Which Have Basic Similarity To Similar Goods

The legal battle surrounding the trademark dispute between MS Glow and PS Glow first arose when Putra Siregar's inquisitiveness about Shandy Purnamasari's business, specifically MS Glow, piqued his interest. Unbeknownst to Purnamasari, Siregar was introduced to the intricate operations and marketing strategies behind the production of the latter's beauty products. Unexpectedly, a mere few months later, Siregar and his spouse took the initiative to establish their own brand, named PS Glow, utilizing the abbreviation of their own surname.

In addition to manufacturing a wide array of beauty products such as MS Glow, PS Glow is also renowned for its range of beauty offerings. It is worth mentioning that these offerings have led to accusations of plagiarism from PS Glow against MS Glow. Beyond the strikingly similar brand names and the products they offer, there is also a noticeable resemblance in the packaging of these two trademarks. Notably, MS Glow was established in 2013 and officially registered with the Directorate of Intellectual Property Rights in 2016, solidifying its presence in the industry.⁵

In the year 2021, PS Glow was established and officially registered with the Directorate of Intellectual Property Rights. A legal dispute emerged when Shandy Purnamasari accused Putra Siregar of imitating a brand that closely resembled similar products. This case was taken to the Medan Commercial District Court under the dispute decision number: 2/Pdt.Sus.HKI/Merek/2022/PN.Niaga Mdn. The plaintiff, Sandy Purnamasari, who owns the MS Glow trademark, was unsatisfied with the defendant, Putra Siregar, who owns the PS Glow trademark, claiming that although the brands were different, the products were essentially

⁴ Albi Anggito Dan Johan Setiawan, *Metodologi Penelitian Kualitatif*, (CV Jejak, Sukabumi, 2018).

⁵ Putusan Negeri Niaga Medang, *Terkait sengketa Merek Persama pada Pokoknya Untuk Barang Sejenis*, Putusan Nomor 2/Pdt.Sus.HKI/Merek/2022/PN.Niaga Mdn, Medan, 2022.

identical. Despite being warned beforehand, PS Glow failed to acknowledge the summons from Shandy Purnamasari, leading to the lawsuit being filed at the Medan Commercial District Court.⁶

In addition to seeking compensation for the unauthorized usage of trademarks that closely resemble those used by PT. Indonesian Beautiful Cosmetics, it would also be appropriate and reasonable for PT. Cosmetika Cantik Indonesia to demand the cessation of all activities related to the PS Glow trademark. This includes but is not limited to the production, distribution, and trade of all cosmetic products bearing the PS GLOW brand within the jurisdiction of the Republic of Indonesia. Failure to comply with this demand should result in a fine of IDR 1,000,000,000 (one billion rupiah). Hence, in cases where PT. Indonesian Beautiful Cosmetics experiences violations through the unauthorized usage of the PS Glow brand, which bears a striking resemblance to their own brand, it would be both reasonable and appropriate for PT. Cosmetika Cantik Indonesia to demand compensation from PT. PS Glow Kosmetik Indonesia. This compensation should amount to IDR. 360,000,000,000,- (three hundred and sixty billion rupiah) in cash, which represents 10% (ten percent) of the turnover generated over a six-month period. This amount is calculated as a fee for the benefits derived from using a trademark that has been extensively promoted by PT. Indonesian Beautiful Cosmetics, incurring significant expenses.

The dispute over the PS Glow trademark ultimately resulted in its cancellation. The reason behind its invalidation was the lack of legal protection, as it was found to be in violation of Article 21 paragraph (1) due to its significant resemblance to the pre-existing MS Glow trademark. The MS Glow trademark had already been registered by Shandy Purnamasari, who holds the ownership rights, with the Directorate General. Thus, the Medan Commercial Court made the final decision on June 10, 2022, bringing an end to this contentious case.

The striking resemblance in the trademarks of MS Glow and PS Glow can easily be observed through the shared usage of the term "Glow", with the only distinguishing factor being the inclusion of the initials "MS" in one and "PS" in the other. It is worth noting that the trademark registration of MS Glow specifically pertains to class 32, which encompasses tea powder drinks and does not extend to cover cosmetic products. Consequently, this implies that PS Glow holds the exclusive rights to utilize the trademark.

PS Glow has obtained registration with the Directorate General of Intellectual Property under the Ministry of Law and Human Rights of the Republic of Indonesia for class 3 goods and services, specifically in the cosmetics industry. It is important to note that the registration does not provide complete protection for the MS Glow brand, as per the regulations set by BPOM. These regulations require that the use of the brand on skincare products must align with the officially registered brand.

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3.2 Legal Consequences of Decision Number: 2/Pdt.Sus.HKI/Merek/2022/PN.Niaga Mdn In the MS Glow Brand Dispute with PS Glow Regarding Brands That Have Essential Similarities to Similar Goods

The legal battle between MS Glow and PS Glow, two brands that share certain similarities, reached a verdict when the judge acknowledged that Shandy Purnamasari was indeed the original user and registrant of the MS Glow trademark at the Directorate of Intellectual Property Rights. Additionally, it was established in this case that there are undeniably fundamental resemblances between the MS GLOW and PS Glow trademarks. Consequently, the Medan

⁶ Putusan Negeri Niaga Medang, *Terkait sengketa Merek Persama pada Pokoknya Untuk Barang Sejenis*, Putusan Nomor 2/Pdt.Sus.HKI/Merek/2022/PN.Niaga Mdn, Medan, 2022

⁷ Aludi, *Sengketa Merek MS Glow vs PS Glow: Pentingnya Pengetahuan Mengenai Persyaratan Pendaftaran Merek*, (Jakarta Pusat, 2022).

Commercial District Court ruled that PS Glow must revoke its trademark registration and remove any mention of the registered trademark PS Glow and its associated variations.

However, the case does not end here as Putra Siregar recently filed a counterclaim in the Surabaya Niaga District Court (case number 2/Pdt.Sus-HKI/Merek/2022/PN Niaga Sby). In this counterclaim, Putra Siregar alleges that Shandy Purnamasari unlawfully produced a beauty product under the MS Glow trademark. Before reaching a final decision, both parties engaged in a mediation process. During this mediation, MS Glow demanded compensation of Rp. 60,000,000,000.00,- (sixty billion rupiah) from PS Glow. However, PS Glow refused to comply with this request and only offered an apology to MS Glow. Consequently, the mediation failed to resolve the dispute between the parties.

Following the unsuccessful mediation attempts between MS Glow and PS Glow, an ultimate verdict was finally announced by the Surabaya Commercial District Court, contradicting the previous ruling made by the Medan Commercial District Court. Consequently, Putra Siregar emerged victorious in this legal battle as he was duly recognized as the rightful proprietor and possessor of the trademark for PS Glow, enjoying the exclusive rights associated with it.

During the proceedings at the Surabaya Commercial District Court, it was uncovered that Shandy Purnamasari, the proprietor of the MS Glow trademark, had committed violations or engaged in unlawful activities. Through an extensive examination of the MS Glow brand, it became evident that Shandy Purnamasari had suffered a setback as the registered MS Glow brand fell under class 32, which specifically pertains to the instant powder drink category. Conversely, the brand registered under class 3, encompassing beauty products and cosmetics, was labeled as "MS Glow For Cantik Skincare". However, it is noteworthy to mention that Shandy Purnamasari had solely utilized or incorporated the term MS GLOW on the skincare products she manufactured, without the inclusion of "For Beautiful Skincare".

This statement directly contradicts the policy set forth by the BPOM (Food and Drug Supervisory Agency), which mandates that the branding of products must align with the registered products listed with the Director General of Intellectual Property Rights. As per the provisions mentioned in Article 4 paragraph (2) letter f of the Trademark Law, applications for trademark registration must clearly indicate the specific class of goods or services. Therefore, it can be inferred from this explanation that the utilization of a brand on manufactured goods must adhere to the registered brand and correspond to the specific class of the brand. This measure is implemented with the intention of ensuring legal certainty, not only for the brand owners themselves, but also for all parties involved.

On the other hand, it is crucial to emphasize that the objective of this measure is not only to ensure stability and peace of mind for the general public, but also to instill a sense of trust and reliability in consumers. Additionally, it is worth mentioning that Shandy Purnamasari, who serves as the proprietor of MS Glow, has been ordered by the court to provide compensation to PS Glow, totaling an astounding amount of Rp. 37,990,726,332,- (thirty-seven billion nine hundred ninety million seven hundred twenty-six thousand three hundred thirty-two rupiah). This substantial payment serves as a tangible manifestation of her accountability for both tangible and intangible damages inflicted.⁸

4. CONCLUSION

The judge's decision in Decision Number: 2/Pdt.Sus.HKI/Merek/2022/PN.Niaga Mdn is being criticized for its lack of consideration regarding the registration of the MS Glow brand by Shandy Purnamasari. It is important to note that the brand was registered specifically in class 32, which pertains to the beverage class instant powder. However, the judge failed to acknowledge this fact and instead focused on the registration of the brand in class 3, which is related to skincare and cosmetic products, specifically the "MS Glow For Cantik Skincare" brand. It is worth mentioning that the skincare products being traded solely include the MS Glow brand, highlighting the discrepancy in the judge's decision. This situation clearly indicates that the MS Glow brand does not have complete

⁸ Ni Wayan Sukalandari, dkk, *Sengketa Plagiasi Merek Dagang antara MS Glow dan PS Glow, Jurnal Analogi Hukum*, Universitas Warmadewa, (Denpasar-Bali, 2023).

protection, as per the regulations set by BPOM. According to these regulations, the usage of a brand on skincare products should align with the registered brand. Due to the verdict of the Medan Commercial Court in the MS Glow trademark dispute with PS Glow, the registration of the PS Glow trademark, which was owned by Putra Siregar, was revoked as it was considered to be an imitation of the MS Glow brand owned by Shandy Purnamasari. Consequently, Putra Siregar initiated another legal proceeding against the Surabaya Commercial Court in relation to the Trademarks matter.

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