

Obstacle Factors For Legal Protection Of Nike Brand Holders

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ABSTRACT

The existence of the Ministry of Law and Human Rights as an institution in the registration of trademarks and the Department of Industry and Trade as a supervisory agency in the circulation of goods in Indonesia and needs to be optimized related to the functions of supervision, guidance and enforcement. This is done because the functions of supervision, guidance and prosecution are not optimal for traders who sell counterfeit goods. This study aims to determine the factors that hinder the implementation of legal protection for Nike trademark holders on counterfeit shoes in the Klithikan Pakuncen market in Yogyakarta. This research was normative research. The results of the study show that there are three inhibiting factors for the implementation of legal protection, namely the Law Factor, the Government Factor, and the Community Factor. First, Law no. 20 of 2016 concerning Marks and Geographical Indications does not explicitly regulate the Mark Holder but regulates the goods of the brand. Second, the Department of Industry and Commerce and the Ministry of Law and Human Rights are still lacking in personnel or expert staff in the field of trademarks within the Department of Industry and Commerce recognized as an obstacle in the process of fostering or socializing business actors who cheat in the trading process which is considered not only detrimental to the Trademark Rights Holder but also including the consumers in it. Third, consumers or buyers who prefer imitation brand goods at low prices for the sake of a lifestyle.

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PRELIMINARY

In the current era, people are becoming more consumptive, like men and women who are competing to buy or have goods with well-known brands such as Nike for collection or for everyday use. Starting from the lower middle class or the upper-middle-class, they all want to have some items with the famous Nike brand.¹ Experts also think of consumptive behavior as a willingness to consume goods that are actually not needed excessively to achieve optimal satisfaction. A consumptive attitude is an act of buying goods not to meet needs but to fulfill desires that are tried too much to create a waste of payment inefficiency.²

¹ Adelia Fyzia, *Gaya Hidup Perilaku Konsumtif*, 2018. www.kompasiana.com/adelia_fryzia21/gaya-hidup-remaja-konsumtif (accessed 09 13, 2019).

² Engel F. James, Blackwell R. D, and Miniard. P. W, (1994), *Perilaku Konsumen*. Budiayanto, Trans, Jakarta: Binarupa Aksara, 34.

Because, the author's analysis that a brand becomes a well-known brand can further trigger actions both national and international. Brand infringement that occurs in Indonesia is still quite high, illegal use or trademarks are not only targeted at domestic brands but also foreign brands. The issue of well-known brands is not easy to decide, because the adjective "famous" makes the brand different from other brands in general, for example the Nike brand circulating in Indonesia. It is widely understood that trademark infringement and piracy have a deleterious effect on society. Another destructive aspect of trademark infringement and piracy is the reduction in quality.³

For the expert comments above, when it comes to research on current problems regarding Nike shoes, it can be said that consumptive behavior is only virtual or pseudo-characteristic to satisfy people's pleasures without thinking about the benefits and positive or negative consequences afterward. Many young people are carried away by advertisements and offer from the mass media and influence the lifestyle in their immediate environment.⁴ The positive impact of buying counterfeit goods for consumers is that it can increase self-confidence in making friends in all groups of citizens. On the contrary, the negative result of using counterfeit branded goods is of non-original quality, causing the use of these goods to be damaged quickly due to poor quality.⁵

Foreign well-known brands are often imitated (or at least business actors often ride the fame of the famous brand) because of their very high economic value. As a result, the legitimate brand owner of a well-known brand loses its interests by reducing market share, fading goodwill, or brand reputation that has been built with great difficulty and quite high costs.⁶ However, it is not only the interests of well-known brand owners who are harmed. Consumers are also harmed because they buy products that do not meet their expectations in return for payments that have been made.⁷

In Indonesia, cases of infringement of well-known marks that occurred in Indonesia can be found from street vendors along the sidewalks, shopping centers to shopping centers located in luxury malls that display their merchandise in beautiful windows.⁸ Nike has been operating in Indonesia since 1988, and now nearly a third of its shoes are manufactured there. Nike's coordinator in Indonesia is Azam Fatoni. Although Nike is far from the United States, Nike's activities in Indonesia are tightly controlled. Nike factories in Indonesia test quality and manufacturing processes to meet Nike's own standards. Therefore, there is no need to worry about a drop in quality compared to the situation in the United States. Consumers will find Nike factories in areas where certain industries are still thriving. As light as in Tangerang, Serang, and West Jakarta. Registered and Protected In addition to around countries around the world, the Nike trademark is registered with the Indonesian Trademark Office, the General Department of Intellectual Property, and the Ministry of Human Rights. Rights of the Republic of Indonesia February 20, 2001, Protection of Goods Type 25, Application Number D002000018579 and Registration Number IDM000018994.⁹ Legal protection Trademarks granted to foreign or local marks, known or unknown

³ Tomi Khoyron Nasir dan Imam Haryanto, (2021), *Perlindungan Hukum Merek Terkenal Aqua Terhadap Pelanggaran Mereknya Selama Kurun Tahun 2017 Sampai Masa Pandemi Covid-19*, *Widya Yuridika: Jurnal Hukum*. 4(1), 113. DOI: <https://doi.org/10.31328/wy.v4i1.2135>.

⁴ Cita Yustisia Serfiyanti, Iswi Hariyani, and R. Serfianto, (2017), *Buku Pintar HAKI dan Warisan Budaya*, Yogyakarta: Gadjah Mada University Press Hasibuan, 87.

⁵ Kelik Wediono, (2016), *Hukum Perlindungan Konsumen*, Yogyakarta: Ombak, 8.

⁶ Rifky Ardian Nugroho, Budi Santoso dan Siti Mahmudah, (2016), *Perlindungan Hukum Pemegang Hak Merek Dagang Terkenal Asing (Well Known Mark) Dari Tindakan Passing Off (Studi Sengketa GS Atas Nama GS Yuasa Corporation)*, *Diponegoro Law Journal*. 5(3), 40.

⁷ Titon Slamet Kurnia, (2011), *Perlindungan Hukum Terhadap Merek Terkenal di Indonesia Pasca Perjanjian TRIP's*, Bandung: PT, Alumni, 99.

⁸ Siti Marwiyah, (2010), *Perlindungan Hukum atas Merek Terkenal*, *Jurnal Syariah dan Hukum*. 2(1), 44. DOI: <https://doi.org/10.18860/j-fsh.v2i1.50>.

⁹ Dirjen HKI, Nomor Merek Nike di Indonesia, 2020, <https://pdkiindonesia.dgip.go.id/index.php/merek/ZnV4b1ErWjMwWjVvWGJlZkloNWZTd09? q=Nike%2C+Inc.dantype=1danskip=0> (accessed 11 24, 2020).

trademarks are registered trademarks only. Therefore, every trademark owner is expected to register his trademark with the Directorate General of Intellectual Property Rights to obtain legal protection for his trademark. Based on Article 35 of the Trademark Law, legal protection is also provided for 10 (ten) years and is effective from the date the request for the mark is received. At the request of the trademark owner, the term of protection of the registered mark may be extended for the same period.

The case that will be raised in this paper is the phenomenon that is happening in the Klithikan Pakuncen market in Yogyakarta related to the circulation of foreign famous branded goods (luxury goods), but the goods circulating are imitation foreign famous branded goods such as clothes (Zara, Hermes, Polo), bags (Channel, Furla, Gucci, Louis Vuitton, Zara), sandals/shoes (Nike, Adidas, Converse), watches (Nike, G-Shock, Rolex, Alba, Rip Curl), pants (Wrangler, Hermes), jackets (Adidas, Nike) and various other accessories that are widely circulated in the Klithikan Pakuncen market in Yogyakarta. The number of enthusiasts for imitation branded products lies in the much lower price of around 50,000 IDR - 350,000 IDR compared to the original price, which is around 4,000,000 IDR - 20,000,000 IDR from each sale. This trader gets a profit of about 50 percent of the capital issued.¹⁰

Pasar Klithikan Pakuncen provides counterfeit foreign branded goods with a wide selection of brands, models of goods, and low prices that attract many enthusiasts from the middle to lower classes, the circulation of counterfeit goods is considered to be able to meet people's lifestyle needs regardless of the quality of the goods. The number of requests that continue to grow will result in increased sales of counterfeit famous brand products and make brand holders more anxious.¹¹

According to Article 1 of Law Number 20 of 2016 concerning Marks and Geographical Indications, a mark is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by persons or legal entities in goods trading activities. From the definition stated in Law Number 20 of 2016 of the Law on Marks and Geographical Indications above, it can be seen that, in essence, a brand is a sign. However, a sign will not simply be accepted as a brand if it does not have distinguishing features.¹²

Law Number 20 of 2016 concerning Marks and Geographical Indications also contains a formulation on the definition of brands such as Trademarks and Service Marks.¹³ Trademark is a mark used on goods that are traded by a person or several people together or a legal entity to distinguish them from other similar goods, and a service mark is used on services traded by a person or several people together or an entity. These laws are to distinguish it from other similar services.

Based on these facts, it can be said that there are still many loopholes for committing brand infringement in Indonesia,¹⁴ especially in the city of Yogyakarta, especially in the Klithikan Pakuncen market in Yogyakarta. Therefore it is necessary to conduct research related to legal protection issues, especially the famous Nike brand, in the hope that if it is known the factors involved factors that cause an infringement of the Nike brand, preventive

¹⁰Dwi Mukti Wibowo. Pasar Klithikan: Menawar Bebas dan Kualitas Kadang Berkelas, 2019, <https://www.wartaekonomi.co.id/read193582/pasar-klithikan-menawar-bebas-dan-kualitas-kadang-berkelas> (accessed 09 28, 2020).

¹¹Lam Sa. Pasar Klithikan Jogja, 2017, <https://www.inibaru.id/adventurial/berburu-barang-antik-dan-unik-di-pasar-klitikan> (accessed 11 05, 2020).

¹²Sudjana Sudjana, (2018), Implikasi Perlindungan Indikasi Geografis Berdasarkan Undang-Undang Nomor 20 Tahun 2016 Terhadap Pengembangan Ekonomi Lokal, *Veritas et Justitia*, 4(1), 50. DOI: <https://doi.org/10.25123/vej.2915>.

¹³Winda Risna Yessiningrum. (2015), Perlindungan Hukum Indikasi Geografis Sebagai Bagian Dari Hak Kekayaan Intelektual, *Jurnal IUS Kajian Hukum Dan Keadilan*, 3(1), 73. DOI: <https://doi.org/http://dx.doi.org/10.12345/ius.v3i1.198>.

¹⁴Gatot Supramono, (2008), *Menyelesaikan Sengketa Merek Menurut Hukum Indonesia*, Jakarta: Rineka Cipta, 27.

measures will be taken to prevent similar violations in the future. For this reason, the author writes with the title: Inhibiting Factors Of Legal Protection Against Nike Brand Holders (Study In The Klithikan Market, Yogyakarta). This study aims to determine the obstacles in law enforcement or protection by law enforcement in protecting well-known brands such as Nike circulating in the Klithikan Pakuncen market, Yogyakarta.

METHOD

This type of research was normative research. Normative research stems from written positive legal provisions that are applied to in concreto legal events in society so that in research, there is always a combination of two stages of study such as application to in concreto events in order to achieve the stated goals.¹⁵ The application can be realized through concrete actions and legal documents. The implementation results might create an understanding of the realization of the implementation of the normative legal provisions that have been studied properly. The approach relevant to this legal research was the approach to laws and regulations by reviewing the relevant laws and regulations to the problem being discussed. The conceptual analysis examines the views of experts related to the discussed subject matter. Data were collected from two sources: primary sources and secondary sources. Primary data sources were obtained directly from traders and buyers. Primary data in this study was obtained through observation and interviews, and the answers were from real respondents and according to the research focus. Secondary data sources are all publications on the law that are not official documents.¹⁶ Publications on law included textbooks, legal dictionaries, legal journals, and seminars organized by the Ministry of Law and Human Rights, the Yogyakarta Special Region Office, and the Yogyakarta City Department of Industry and Trade. Secondary data in this study was in the form of readings relevant to the studied material. After the research data was collected, the next step was to process the data, started with classifying facts, classifying legal issues under study, and conducting legal analysis. Data analysis in this study was conducted by organizing the information obtained from interviews, field notes, and documentation. The analysis resulted in conclusions that provided a legal view on the factors that inhibit legal protection for trademark holders.¹⁷

RESULT AND DISCUSSION

The inhibiting factor for fundamental legal protection for Nike brand holders at the Klithikan Pakuncen Market in Yogyakarta is the party who does not have the authority or duty to take action against goods circulating in the market or street vendors unless there is a complaint from the holder of the Nike brand license. The parties involved in this case are the Ministry of Law and Human Rights and the Department of Industry and Trade. This party only provides socialization to traders who sell fake Nike brand goods without any output. Parties who do not have sophisticated tools in identifying whether an item is categorized as fake or genuine, therefore until now, the party has never taken firm action against traders in the Klithikan Pakuncen market in Yogyakarta. At least if we look in detail, the result of weak legal protection for Nike trademark holders does not only lie in the authorized enforcers, but also in the legal and cultural factors that exist in Indonesia, especially in the city of Yogyakarta. Therefore, the author tries to provide 3 factors that cause obstacles to legal protection for Nike trademark holders in the Klithikan Pakuncen market, Yogyakarta. Almost all of the existing laws and regulations in Indonesia apply criminal sanctions for perpetrators of violations or crimes. The crime itself is intended so that someone who commits a violation or crime is expected to realize and not repeat his mistakes and change into a better person.¹⁸

¹⁵ Abdulkadir Muhammad. (2004), *Hukum dan Penelitian Hukum*, Bandung: PT. Citra Aditya Bakti, 52.

¹⁶ Sugiyono. (2015), *Metode Penelitian Kombinasi (Mix Methods)*, Bandung: Alfabeta, 187.

¹⁷ Bambang Sunggono. (2007), *Metodologi Penelitian Hukum*, Jakarta: Raja Grafindo Persada, 10.

¹⁸ Nopiana dan Hari Sutra Disemadi, (2021), *Perlindungan Hukum Terhadap Pemegang Hak Merek: Suatu Kajian Komparatif Antara Jepang Dan Indonesia*, *Widya Yuridika: Jurnal Hukum*. 4(2), 394. DOI: <https://doi.org/10.31328/wy.v4i2.2283>.

The author will explain the first factor regarding the existing laws and regulations in Indonesia regarding the repressive efforts made by the government for violations of the Nike brand in the klithikanpakuncen market, yogyakarta. Criminal provisions regarding marks are regulated in Law no. 20 of 2016, specifically the issue of the penal provisions on marks as stated in chapter XVIII article 102,¹⁹ which reads, "Everyone who trades goods and/or services and/or products that are known or reasonably suspected to know that the goods and/or services and/or products are the result of a criminal act shall be punished with imprisonment for a maximum of 1 (one) year or a maximum fine of 200,000,000 IDR (two hundred million rupiahs)". We need to know that trademark infringement which is regulated in accordance with Article 102 of Law No. 20 of 2016, is a complaint offense that is emphasized in Article 103. A complaint offense means an offense that can only be processed if there is a complaint or report from a person who is a victim of a criminal act. According to E Utrecht in his book Criminal Law II, in the case of a complaint, the prosecution of the offense depends on the consent of the injured party (the victim). In this complaint offense, the victim of a crime can withdraw his report to the competent authority if there has been a reconciliation between them. The aggrieved party referred to here is the holder of the trademark rights. The complaint offense must have special attention from the brand owner to continue to monitor the use of the mark. Without a complaint from the brand owner, it will be difficult to prevent the sale of counterfeit products on the market circulating in the community.

After the existing laws and regulations in Indonesia are not very clear in the preventive efforts made by law enforcement to inhibit the imitation of the Nike trademark in the Klithikan Pakuncen Market in Yogyakarta, it will have implications for the government in law enforcement. Such as the Ministry of Law and Human Rights and the Department of Industry and Trade cannot take firm action against trademark infringement because the existing legislation does not guarantee legal protection for Nike trademark holders. The Department of Industry and Trade has a crucial role as a trade supervisory agency. The role of the Department of Industry and Trade is to provide legal protection for well-known brand holders by providing guidance to traders who sell counterfeit famous brand goods.²⁰ Conduct training on Brands regularly and periodically to each trader. Coaching is intended to provide information, knowledge/education, insight about brands, types of brands, brand violations, or brand sanctions which are expected to raise awareness of traders so as not to violate brands. Specifically, the sanctions material will be emphasized so that business actors understand and create fear in committing acts of brand infringement. The inhibiting factor from the Department of Industry and Trade is the lack of skilled staff or staff in the field of trademarks within the Department of Industry and Trade which is recognized as an obstacle in the process of fostering or socializing business actors who commit fraud in the trading process which is considered not only detrimental to the Trademark Rights Holder but also including the consumers in it. The lack of regular or periodic supervision is also a factor inhibiting the legal protection process for trademarks.²¹

The Department of Industry and Trade of the City of Yogyakarta has the task of supervising industry and trade throughout the City of Yogyakarta in accordance with the Regional Regulation of the City of Yogyakarta Number 5 of 2016 concerning the Establishment and Composition of the Regional Apparatus of the City of Yogyakarta and continued with the Regulation of the Mayor of Yogyakarta Number 63 of 2016 concerning the Establishment of the Organizational Structure, Position, Duties, Functions and Work Procedures of the Department of Industry and Trade of the City of Yogyakarta is the

¹⁹ Undang- Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis, No. Lembaran Negara Republik Indonesia, No. 252, (2016).

²⁰ Evelyn Larissa Florentia Wijaya, (2020), Perlindungan Hukum Konsumen Atas Kesamaan Bunyi Merek Terhadap Barang Yang Tidak Sejenis, *JCH (Jurnal Cendekia Hukum)*, 5(2),174 . DOI: <https://doi.org/10.33760/jch.v5i2.187>.

²¹ Nur Hidayati, (2011), Perlindungan Hukum Bagi Merek yang Terdaftar, *Ragam Jurnal Pengembangan Humanivora*, 11(3), 23.

implementing elements of the regional government in industrial and trade affairs. The office has the task of carrying out regional government affairs based on autonomy and assistance in the field of Industry and Trade.

The Department of Industry and Trade of the City of Yogyakarta realizes that in Yogyakarta, there are many brand violations, especially in the Klithikan Pakuncen Market, Yogyakarta. This has become a discourse and will receive special attention in order to minimize similar types of violations. The lack of skilled personnel/staff in the field of trademarks within the Department of Industry and Trade is recognized as an obstacle in the process of fostering/socializing business actors who commit fraud in the trade process, which is considered not only detrimental to the Trademark Rights Holders but also to the consumers in them. The lack of regular or periodic supervision is also a factor inhibiting the legal protection process for trademarks.²²

The Department of Industry and Trade of the City of Yogyakarta is aware that in the City of Yogyakarta, there are many cases of brand infringement, especially Nike in the Klithikan Pakuncen Market Yogyakarta. A real case occurred in 2019 at the Malioboro Market for a well-known brand of clothing, namely Harley Davidson, which was sold freely at the Malioboro Market. The party holding the Harley Davidson license gives a subpoena or reprimand to the merchant to stop the trade in clothing with a well-known brand, namely Harley Davidson, and notify the infringement of the mark to the Ministry of Law and Human Rights of the Yogyakarta Regional Office.

The Ministry of Law and Human Rights of the Yogyakarta Regional Office created a team with the Yogyakarta City Industry and Trade Office to directly come to the location where the Harley Davidson brand is circulating at the Malioboro Market. The team created by the Ministry of Law and Human Rights immediately went to the place and immediately ordered traders who were selling the Harley Davidson dummy brand to stop trading.

Based on the research results obtained from interviews, the Department of Industry and Trade, through Mrs. Yudit Nitriasari as a resource person for the BPSK Secretariat Staff, said that well-known brands have a great appeal to be violated. Well-known brands are certainly familiar among the public, so if you fake goods using well-known brands, it will undoubtedly be easier to sell to the market, and this will affect the profits that the sellers will obtain.

Thus, over time, more and more types of similar violations will occur in society. Sellers do not only make mistakes of counterfeit goods, but manufacturers also have a critical role in the process of violations like this. The Department of Industry and Trade, in responding to this case, admitted that they had conducted inspections which were also assisted by other agencies such as PPNS (Civil Servant Investigator), LIPI (Institution of Civil Servants). Indonesian Education Sciences), YKCI (Yayasan Karya Cipta Indonesia), and the Police but have not obtained maximum results. The inspection effect only lasts a few weeks, but then in the following weeks, the violations reappear. Weak or lack of strict supervision on a regular basis or periodically, the ease of granting a business license without proper qualifications as a parameter, and the lack of legal awareness for business actors are recognized by the Department of Industry and Trade as factors that also influence mark infringement.

The Ministry of Law and Human Rights also has a vital role in trademark registration.²³ The role of the Ministry of Law and Human Rights in the protection of well-known brands is to follow up on Complaints with Police Investigators if there are complaints from trademark holders against traders suspected of violating trademarks. Based on the research results obtained from interviews, the Ministry of Law and Human Rights, through Mr. Panji Wiratmoko as a resource person for the Analysis of Intellectual Property Applications, said

²² Zaenal Arifin and Muhammad Iqbal, (2020), Perlindungan Hukum Terhadap Merek Yang Terdaftar, *Jurnal Ius Constituendum*, 5(1),50 . DOI: <http://dx.doi.org/10.26623/jic.v5i1.2117>.

²³ Mieke Yustia dan Ayu Ratna Sari, (2014), Passing Off Dalam Pendaftaran Merek, *Kajian Putusan Mahkamah Agung Nomor 224 K/Pdt.Sus-HKI/2014*, *Jurnal Yudisial*, 7(3),256 . DOI: 10.29313/sh.v16i1.5133.

that well-known brands are very easy to imitate and trade. Because well-known foreign brands already have a high branding reputation and branding promotion throughout the country.

The Ministry of Law and Human Rights of the Yogyakarta Regional Office has the task of registering trademarks throughout the City of Yogyakarta in accordance with the Regulation of the Minister of Law and Human Rights Number 67 of 2016 concerning Trademark Registration. The Trademark Holders often ignore the traders who trade counterfeit trademarks of the Brand Holders because Mark Holder will not carry out criminal proceedings or subpoena small traders in the Market.²⁴

After knowing the inhibiting factors from existing law enforcers, therefore the author tries to conduct interviews with traders and buyers of Nike goods at the klithikan pakuncen market, yogyakarata. Society as a legal subject certainly has a critical role in the process of achieving legal goals. Bringing up the nature of society that is aware of the law is certainly not an easy process. Here, the community has a significant role in the circulation of counterfeit goods traded in the Klithikan Pakuncen Market, Yogyakarta. From the questions and questionnaires to 100 consumers, the results were as follows:

²⁴ Sudaryat, Sudjana, dan Rika Ratna Permata, (2010), *Hak Kekayaan Intelektual*, Bandung: Oase Media, 70.

Table 1. Consumer Responce Regarding The Circulation of Goods Using Correct Brand

No	Question	Result/ Amount	
1	Have you ever bought a counterfeit?	Yes(81)	Never(19)
2	Do you prefer real/fake goods?	Original(21)	Fake(79)
3	Benefit from buying counterfeits?	Yes(76)	No(24)
4	Can you tell the difference between the original and the counterfeit?	Yes (77)	No(23)
5	Know about trademark law?	Yes(21)	No(79)
6	Have you ever run into legal trouble when buying counterfeit goods?	Yes(0)	No(100)
7	Do you agree that the circulation of counterfeit goods should be stopped?	Agree(21)	Disagree(79)
8	How often do you buy counterfeits?	Often(83)	Sometimes(17)

Source: *Interview from buyers at Pasar Klithikan Pakuncen Yogyakarta.*

From the table above, it can be explained again from each question asked to consumers who are shopping at Pasar Klithikan Pakuncen Yogyakarta. From the first question, it can be concluded that almost all respondents have bought counterfeit goods. Of the questions asked to 100 respondents, 81 respondents admitted that they had purchased counterfeit goods, and only 19 respondents admitted that they had never purchased genuine goods from this violation. This means that it shows that the interest from consumers is very high in the demand for counterfeit goods, which is directly proportional to the sale of counterfeit goods. The higher the demand for an item, the seller automatically tries to provide the goods desired by consumers for the purpose of seeking profit (profit-oriented).

This is then emphasized in the next question, namely that buyers prefer genuine or imitation goods. The answer is that 79 respondents tend to prefer counterfeit goods compared to only 21 people who choose genuine goods. Thus, it is difficult to prevent traders from stopping selling counterfeit goods because, on the other hand, consumer demand for counterfeit goods remains high. The seller also argues that the sale of counterfeit goods using other people's brands is a mutually beneficial action (mutualism symbiosis), where consumers want the goods and they (the seller) provide the goods without thinking that the original brand owner may feel aggrieved. The price difference that is far adrift between counterfeit goods and genuine goods is the main factor for consumers to choose counterfeit goods over buying genuine goods.

The answers from respondents, which amounted to 76 out of 100 respondents, claimed to benefit from the existence of counterfeit goods resulting from brand infringement traded in the Klithikan Pakuncen Market, Yogyakarta. Those who are mostly consumers who have a lower-middle-class economy feel that with the existence of counterfeit goods, which of course have a lower price than the original goods, they can still follow the lifestyle of today's

society which tends to be oriented towards famous brands without questioning the quality of the goods.²⁵ They also argue that wearing well-known branded goods will increase their confidence in socializing without making a problem with the goods being fake or genuine. Therefore, consumers are more concerned with price than the quality of an item in order to be able to follow the current trend of life.

Almost all respondents claimed to feel the positive impact of the existence of counterfeit goods/goods resulting from brand infringement circulating in the Klithikan Pakuncen Market, Yogyakarta, such as being more confident in using well-known branded goods. Most of the respondents do not agree if the circulation of counterfeit goods is stopped. For people who have a lower-middle economy, it is certainly difficult to buy genuine goods, which in fact are at very high prices for the reach of the community. Price is still the main reason that causes people to have a dependence on counterfeit goods. Using well-known branded goods is certainly a matter of pride that is felt by the community regardless of whether the goods are genuine or imitations.

The role of the community as consumers is critical with regard to law enforcement in cases of brand infringement.²⁶ Based on the facts in the field, there are various responses regarding instances of brand infringement, both in the form of positive responses and negative responses, which are certainly influenced by the level of education, level of welfare/social economy, environment, and knowledge in the field of brands. The positive response or supportive nature of the community is the attitude/view/opinion of the community that the sale of counterfeit goods is a violation of the law that must be dealt with firmly and its circulation suppressed. The public emphasizes that the sale of counterfeit products will not only damage the brand image that has been painstakingly built by the brand rights holder but will also harm consumers' socioeconomic status. For certain consumers, they will find it difficult to choose goods, and there will be many cases of fraud related to counterfeit goods, which over time are increasing in number.

Negative responses or inhibiting attitudes from the public are among others: people's views that brand infringement is a common thing, brand infringement does not always harm consumers, sometimes brand violations actually benefit consumers where consumers can use well-known branded goods at low prices. In this case, the negative response is more dominant than the positive-minded people, and of course, it is very unfortunate. The consumptive nature of society, oriented to well-known brands and not supported by an adequate economy, is one of the inhibiting factors in the law enforcement process related to trademark infringement cases. Sometimes consumers who have middle and upper economies tend to buy counterfeit goods compared to buying original/original goods. They argue why they buy more expensive items when there are cheaper ones. Thoughts like this should be changed, and the public can respect each other so that harmonization occurs and the implementation of legal protection can run in accordance with the objectives.²⁷

The brand holder, apart from being burdened with obligations, certainly has rights that must be protected by applicable law as a reciprocal process in order to actually realize the rights and obligations that are carried out and obtained by the brand holder. In the process of the legal protection of the mark given by the state to the applicant because it has fulfilled all the registration requirements, of course, there are obstacles in its implementation in the field. The following three parties are a factor in the obstruction of brand protection at the Klithikan Pakuncen Market in Yogyakarta:

1. Education, knowledge, insight, and information are very important factors that every seller must have in order to create a trade in accordance with

²⁵ Julius Rizaldi, (2009), *Perlindungan Kemasan Produk Merek Terkenal Terhadap Persaingan Curang*, Bandung: PT.Alumni, 3.

²⁶ Ade Maman Suherman, (2004), Penegakan Hukum Atas Hak Kekayaan Intelektual Di Indoensia, *Jurnal Hukum Bisnis*, 23(1), 59.

²⁷ Nadya Valerie dan Edbert Seligshan Horman, (2019), Perlindungan Hukum Terhadap Merek Terkenal *Christian Dior* Ditinjau Dari Konsep Trademark Dilution, *Jurnal Cendekia Hukum*, 4(2),29 . DOI: <https://doi.org/10.3376/jch.v4i2.132>.

applicable laws and regulations (positive law). There are still sellers/traders at Pasar Klithikan Pakuncen Yogyakarta who do not know that selling counterfeit/pirated goods violates the law, which is punishable by criminal sanctions. They argued that if they did violate the regulations, the penalized ones were the producers, not the sellers. They (the sellers) assume that they are only small traders who only provide the goods that consumers need/search for survival without thinking they are harming the original brand rights holders. Lack of knowledge/insight and limited information regarding brand infringement causes similar violations to still occur frequently. In addition, the principle of seeking maximum profit with small capital is another factor that tends to cause traders to continue to provide counterfeit goods using well-known brands. In addition, the factor of traders who are reluctant to use their own brand is also an obstacle to their relationship in an effort to suppress the circulation of trade in counterfeit goods.

2. Counterfeit/imitation/pirated goods are increasingly being circulated in the community. For some consumers who have positive thoughts to support the process of the legal protection of trademarks, of course, they will face difficulties in determining that an item is an original or an imitation because as technology develops, it is difficult to distinguish between genuine and counterfeit goods. Meanwhile, this is only an acknowledgment from traders that becomes a benchmark for consumers to know that the goods to be purchased are genuine goods or counterfeit goods. The results from the field conclude that there are 3 (three) types of traders in the community, namely: traders who do sell genuine goods, traders who sell counterfeit goods, and traders who sell counterfeit goods but admit that the goods they sell are genuine goods. Thus, of course, there will be difficulties in choosing an item. On the other hand, there are many people/consumers/buyers who even continue to support the process of the occurrence of brand infringement by continuing to buy counterfeit branded goods where counterfeit branded goods should not be allowed to circulate. People/consumers/buyers of this type are usually the lower middle class of the economy who fulfill their prestige, current trends, and to be accepted in society. Thus, they prefer imitation goods that have a much lower price than the original branded goods with much higher adrift prices. With this kind of attitude, where people tend to choose outside brands (label-minded) that do not pay attention to the origin of the goods even though the goods are counterfeit goods, it will certainly become an obstacle in the process of brand law enforcement. The high demand for counterfeit goods from the public will make brand violations continue to occur. If it continues like this, it will clearly be detrimental to the imitation of the original brand rights where they have struggled to make their brand famous through promotions that have been carried out, which they certainly cannot in a short time.

Trademark rights holders are parties who are greatly disadvantaged from acts of trademark infringement, especially with the commercial purpose of trading counterfeit goods in the community. It is difficult to find the perpetrators of violations because, in the process of circulating counterfeit goods, the perpetrators do not include their identities in the counterfeit products they make. The problem of funds is also a serious problem because to process a trademark infringement must be followed by filing a lawsuit, while the judicial process is not cheap.²⁸ This sometimes leads to a reluctance to extend the case. In addition, brand owners tend to think that the brands, in this case, will only create a negative image among the public/consumers. Time efficiency also affects the process of controlling brand infringement cases. Brand infringement which is a complaint offense, requires extra supervision from the brand holder who should not be passive law enforcers. The activeness of the parties will certainly be able to minimize and reduce the number of brand violations.

²⁸ Tommy Hendro Trisdiharto, (2017), *Pengaruh Faktor Sosial dan Personal terhadap Sikap dan Niat Beli Konsumen untuk Barang Palsu di Kota Denpasar dan Kabupaten Badung*, Denpasar: Universitas Udayana, 83.

CLOSING

Barriers to the Implementation of Legal Protection for Nike Trademark Holders on shoe goods in the Klithikan market are caused by the existence of legal factors, government factors, and community & cultural factors. The first factor of the law that we need to know is that the infringement of the mark regulated in accordance with Law No. 20 of 2016 is a complaint offense which in the law is not explicitly regulated against the Mark Holder, but the goods of the mark. Second, the government factor from the Department of Industry and Trade and Ministry of Law and Human Rights where the lack of skilled or expert staff in the field of trademarks within the Department of Industry and Trade is recognized as an obstacle in the process of fostering or socializing fraudulent business actors in the trade process which is considered not only detrimental to the owner of the Mark Rights but also including consumers in it. The lack of regular or periodic supervision is also a factor inhibiting the legal protection process for trademarks. Third, Community and Cultural Factors from consumers or buyers who prefer imitation brand goods at low prices for the sake of a lifestyle, rather than buying goods with original quality. The active role of the Nike brand holder and cooperation with the government through the police and the Ministry of Law and Human Rights against brand violations by reporting brand violations due to the nature of complaints and the public need to be encouraged to use domestic products so that local products can compete with foreign products and consumers are encouraged to be smart consumers in buying or using goods.

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