

**LEGAL PROTECTION OF WELL-KNOWN TRADEMARKS:
REASONS WHY FAMOUS TRADEMARKS HAVE THEIR
PROTECTION EXPANDED**

Agung Sujatmiko ¹

¹ Department of Privat Law, Faculty of Law, Universitas Airlangga, Surabaya, Indonesia
Corresponding Author: Agung Sujatmiko, Email: agung.sujatmiko@fh.unair.ac.id

Abstract

A trademark constitutes one of the key forms of Intellectual Property Rights (IPR) and plays a strategic role in the trade of goods and services. Among the various categories of trademarks, well-known trademarks possess significant economic value due to their reputation, quality, and widespread public recognition. However, this high economic value also makes well-known trademarks particularly vulnerable to infringement, including imitation, counterfeiting, and unauthorized use by irresponsible parties. This study aims to analyze the criteria of well-known trademarks within the trademark law system in Indonesia and to examine the rationale for granting broader legal protection to well-known trademarks compared to ordinary trademarks. This research employs a normative legal research method using both conceptual and statutory approaches. The analysis focuses on the concepts of well-known trademarks and the legal provisions governing their protection under Indonesian legislation. The findings reveal that well-known trademarks receive special protection under Law Number 20 of 2016 concerning Trademarks and Geographical Indications. Such protection extends beyond the use of similar goods and/or services and may also apply to dissimilar goods and/or services under certain conditions. The expansion of protection is justified by the substantial investments made by trademark owners in building brand reputation, conducting promotional activities, and registering their trademarks across multiple jurisdictions. Accordingly, this study recommends strengthening the legal criteria for determining well-known trademark status and enhancing the effectiveness of law enforcement mechanisms to provide greater legal certainty and prevent infringements against well-known trademarks.

Keywords: Intellectual Property Rights; Famous Brands; Protection in Special.

Abstrak

Merek merupakan salah satu bentuk Hak Kekayaan Intelektual (HKI) yang memiliki peran strategis dalam kegiatan perdagangan barang dan jasa. Di antara berbagai jenis merek, merek terkenal memiliki nilai ekonomi yang tinggi karena reputasi, kualitas, dan tingkat pengenalannya yang luas di masyarakat. Namun, tingginya nilai ekonomi tersebut juga menjadikan merek terkenal rentan terhadap berbagai bentuk pelanggaran, seperti peniruan, pemalsuan, dan penggunaan tanpa hak oleh pihak yang tidak bertanggung jawab. Penelitian ini bertujuan untuk menganalisis kriteria merek terkenal dalam sistem hukum merek di Indonesia serta mengkaji alasan perlunya pemberian perlindungan hukum yang lebih luas terhadap merek terkenal dibandingkan merek pada umumnya. Metode penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan konseptual (*conceptual approach*) dan

pendekatan perundang-undangan (*statute approach*). Analisis dilakukan terhadap berbagai konsep mengenai merek terkenal serta ketentuan hukum yang mengatur perlindungannya dalam peraturan perundang-undangan Indonesia. Hasil penelitian menunjukkan bahwa merek terkenal memperoleh perlindungan khusus berdasarkan Undang-Undang Nomor 20 Tahun 2016 tentang Merek dan Indikasi Geografis. Perlindungan tersebut tidak hanya diberikan terhadap penggunaan pada barang dan/atau jasa sejenis, tetapi juga dapat diperluas pada barang dan/atau jasa tidak sejenis sepanjang memenuhi persyaratan tertentu. Perluasan perlindungan ini didasarkan pada besarnya investasi yang dikeluarkan pemilik merek dalam membangun reputasi, melakukan promosi, serta mendaftarkan mereknya di berbagai negara. Oleh karena itu, penelitian ini merekomendasikan penguatan parameter penentuan merek terkenal dan peningkatan efektivitas penegakan hukum guna memberikan kepastian hukum serta mencegah terjadinya pelanggaran terhadap merek terkenal.

Katakunci: Hak Kekayaan Intelektual; Merek Terkenal; Perlindungan secara Khusus.

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1. Introduction

Well-known trademarks constitute one of the most valuable intangible assets in the modern global economy.^{1, 2} The World Intellectual Property Organization (WIPO) recognizes trademarks as strategic business assets that embody reputation, consumer trust, goodwill^{3, 4}, and market recognition accumulated through years of investment and commercial activities^{5, 6}. In contemporary business environments, the value of a company is increasingly determined by its

intangible assets, including brands and trademarks.^{7, 8} WIPO reports that intangible assets account for approximately 90 percent of the value of companies listed in the S&P 500, illustrating the growing economic significance of brands and intellectual property in the global marketplace^{9, 10}. Consequently, trademark protection has become an essential component of commercial law and economic development.¹¹

The economic value attached to well-known trademarks has made them frequent

¹ Agung Sujatmiko et al., "Critical Legal Analysis on Medicine or Vaccine License for Strengthening Access to Justice in Indonesia: A Case of Corona Vaccine Licensing," *Jurnal IUS Kajian Hukum dan Keadilan* 13, no. 3 (2025): 791–806, <https://doi.org/10.29303/ius.v13i3.1759>.

² Chen Zhou, "Can Intellectual Property Rights within Climate Technology Transfer Work for the UNFCCC and the Paris Agreement?," *International Environmental Agreements: Politics, Law and Economics* 19, no. 1 (2019): 107–22, <https://doi.org/10.1007/s10784-018-09427-2>.

³ Defid Tri Rizky and Mochamad Kevin Romadhona, "Prinsip Pembuktian Perkara Tindak Pidana Pencucian Yang Berdiri Sendiri (Stand Alone Money Laundering)," *Media Iuris* 5, no. 3 (2022): 381–400, <https://doi.org/10.20473/mi.v5i3.36098>.

⁴ Caterina Sganga, "Right to culture and copyright: Participation and access," in *Research Handbook on Human Rights and Intellectual Property*, ed. by Christophe Geiger (Edward Elgar Publishing, 2015), <https://doi.org/10.4337/9781783472420.00044>.

⁵ WIPO, *Trademarks: Valuable Assets in a Changing World* (World Intellectual Property Organization, 2009).

⁶ Ahmed Abdel-Latif, "The Rise of Public–Private Partnerships in Green Technologies and the Role of Intellectual Property Rights," in *The Cambridge Handbook of Public-Private Partnerships*,

Intellectual Property Governance, and Sustainable Development, 1st ed., ed. by Margaret Chon et al. (Cambridge University Press, 2018), <https://doi.org/10.1017/9781316809587.014>.

⁷ Aktieva Tri Tjitrawati et al., "The Palu Disaster and Indonesia's Obligation to Ensure the Right of Adequate Housing and Land Rights: Mission Accomplished?," in *The Asian Yearbook of Human Rights and Humanitarian Law*, ed. by Matthias Vanhullebusch et al. (Brill | Nijhoff, 2024), https://doi.org/10.1163/9789004706477_011.

⁸ Audrey R. Chapman, "Approaching intellectual property as a human right: obligations related to Article 15 (1) (c)," *Copyright Bulletin* (Paris) 35, no. 3 (2001).

⁹ WIPO, *Intangible Assets and Intellectual Property* (World Intellectual Property Organization, 2024).

¹⁰ Laurence R. Helfer, "Human Rights and Intellectual Property: Conflict or Co-Existence?," *Netherlands Quarterly of Human Rights* 22, no. 2 (2004): 167–79, <https://doi.org/10.1177/016934410402200202>.

¹¹ Agung Sujatmiko et al., "Pierre Cardin and the Legal Battle for Well-Known Marks: Insights from Indonesia and the Netherlands," *Hasanuddin Law Review* 10, no. 3 (2024): 240, <https://doi.org/10.20956/halrev.v10i3.5583>.

targets of unauthorized use, trademark piracy, free-riding, dilution, and unfair competition. Consumers often associate famous trademarks with quality, reliability, prestige, and social identity, making such trademarks highly attractive to imitators seeking to capitalize on established reputations.¹² Trademarks not only distinguish goods and services from those of competitors but also influence purchasing decisions and create long-term consumer loyalty¹³. As a result, unauthorized parties frequently attempt to exploit the goodwill attached to famous trademarks without bearing the substantial costs required to build such reputations.¹⁴

The concept of goodwill is central to understanding the need for enhanced protection of well-known trademarks.¹⁵ According to the International Trademark Association (INTA), the value of a trademark lies primarily in the goodwill associated with it, which constitutes an intangible asset capable of generating substantial economic returns through licensing, franchising, and other commercial arrangements^{16, 17}. The goodwill embodied in a well-known trademark is often the result of decades of investment in product quality, advertising, market development, and consumer

relationship management.¹⁸ Consequently, unauthorized use of a famous trademark may diminish its distinctiveness and commercial value, even when such use occurs in relation to goods or services that are not directly competing with those of the trademark owner.¹⁹

Historically, trademark law was based on the principle of specialty, whereby trademark protection was limited to identical or similar goods and services. Under this traditional approach, infringement depended primarily upon the likelihood of consumer confusion.²⁰ However, the increasing commercial significance of famous trademarks has challenged the adequacy of this framework. Consumers frequently associate well-known trademarks with a particular business source regardless of the category of goods or services involved.²¹ Therefore, the use of a famous trademark on unrelated products may create an impression of sponsorship, endorsement, or affiliation, thereby causing reputational harm to the trademark owner and weakening the trademark's distinctiveness.²²

¹² Aktieva Tri Tjitrawati et al., "Integrative Social-Health security for Indonesian migrant workers: does fully covered and protected?," *Malaysian Journal of Medicine & Health Sciences* 19 (2023).

¹³ WIPO, *Why Trademarks Matter to SMEs* (World Intellectual Property Organization, 2025).

¹⁴ Mochamad Kevin Romadhona, "Does the Pandemic Affect Unemployment Rate in East Java? (A Study of Pre and Post COVID-19 Pandemic in 2016 to 2021)," *The Journal of Indonesia Sustainable Development Planning* 3, no. 2 (2022): 164–76, <https://doi.org/10.46456/jisdep.v3i2.308>.

¹⁵ Mochamad Kevin Romadhona et al., "Time to Travel: Climate Migration in the Course of History," *Cogent Social Sciences* 12, no. 1 (2026): 2656564, <https://doi.org/10.1080/23311886.2026.2656564>.

¹⁶ INTA, *Assignments, Licensing, and Valuation of Trademarks* (International Trademark Association, 2023).

¹⁷ Sri Endah Kinasih et al., "Climate Migration and Local Conflicts: The State of Internally Displaced Persons in Mount Semeru Lumajang, East Java, Indonesia," *GeoJournal* 91, no. 2 (2026): 75, <https://doi.org/10.1007/s10708-026-11624-5>.

¹⁸ Irfan Wahyudi et al., "Biosecurity Infectious Diseases of the Returning Indonesian Migrant Workers," *Global Security: Health, Science and Policy* 9, no. 1 (2024): 2358756, <https://doi.org/10.1080/23779497.2024.2358756>.

¹⁹ Agung Sujatmiko et al., "Merek Logo Halal dalam Rangka Menjamin Kehalalan suatu Produk dan Meningkatkan Nilai Tambah bagi Pelaku Usaha untuk memproduksi dan Menjual Halal," *Jurnal Pengabdian Masyarakat: Pemberdayaan, Inovasi dan Perubahan* 5, no. 3 (2025).

²⁰ Sri Endah Kinasih et al., "Culture, Tourism and Migration in Bintan Borderland – Legal Anthropology Perspective," *Cogent Arts & Humanities* 12, no. 1 (2025): 2602382, <https://doi.org/10.1080/23311983.2025.2602382>.

²¹ Sri Endah Kinasih et al., "Menuju Kesetaraan Gender di Surabaya, Indonesia," *Jurnal Registratie* 7, no. 2 (2025): 158–75, <https://doi.org/10.33701/jurnalregistratie.v7i2.5564>.

²² Mochamad Kevin Romadhona et al., "Palestine Under Attack: Humanitarian Principles in Case of Armed Conflict," *Journal of Law and Legal Reform* 6, no. 2 (2025): 693–756, <https://doi.org/10.15294/jllr.v6i2.19692>.

Numerous examples illustrate this phenomenon.²³ A well-known trademark such as Toyota is universally recognized as identifying a particular source of automobiles.^{24,25} If an unrelated party were permitted to register or use the Toyota trademark for clothing, footwear, or other unrelated products, consumers might reasonably assume a commercial connection with the automobile manufacturer.²⁶ Such use could dilute the uniqueness of the trademark and unfairly exploit the reputation that Toyota has built through substantial investment over many decades. Similar concerns have arisen in relation to other globally recognized trademarks such as Rolex, McDonald's, Apple, and Starbucks, where courts in many jurisdictions have acknowledged that the economic value of a famous trademark extends beyond the specific goods and services for which it was originally registered.²⁷

International trademark law has responded to these developments by extending protection for well-known trademarks beyond the traditional principle of specialty.²⁸ Article 6bis of the Paris Convention for the Protection of Industrial Property requires member states to refuse or cancel the registration and prohibit the use of trademarks that reproduce or imitate well-

known marks in a manner likely to create confusion²⁹. Furthermore, Article 16(2) and Article 16(3) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) broaden the protection of well-known trademarks and extend such protection to dissimilar goods and services where the use of the mark would suggest a connection with the trademark owner and is likely to damage the owner's interests³⁰. These provisions demonstrate the international recognition that famous trademarks deserve a broader scope of legal protection than ordinary trademarks.³¹

The expansion of protection for well-known trademarks is also justified by the substantial costs required to establish and maintain trademark reputation. Building a famous trademark requires extensive investments in advertising, product development, quality assurance, market expansion, and trademark registration across multiple jurisdictions. WIPO emphasizes that trademarks play a pivotal role in business competitiveness and that securing trademark rights internationally often requires considerable financial resources³². Without adequate legal protection, third parties could unfairly benefit from these investments by appropriating the reputation of famous trademarks without incurring comparable

²³ Sri Endah Kinasih et al., "Gender-based Education to Addressing Child Marriage," *Jurnal Pengabdian Hukum Indonesia (Indonesian Journal of Legal Community Engagement) JPHI* 8, no. 2 (2025): 569–616, <https://doi.org/10.15294/jphi.v8i2.23633>.

²⁴ Toetik Koesbardiati et al., "Reforming 'Merariq': Towards Harmonized Approach – Socio-culture, Islamic Law, and Biological Consequences," *Journal of Law and Legal Reform* 6, no. 1 (2025): 357–90, <https://doi.org/10.15294/jllr.v6i1.19642>.

²⁵ Hartoyo Hartoyo et al., "Driving Success: A Segmentation of Customer Admiration in Automotive Industry," *Journal of Open Innovation: Technology, Market, and Complexity* 9, no. 2 (2023): 100031, <https://doi.org/10.1016/j.joitmc.2023.100031>.

²⁶ Mochamad Kevin Romadhona et al., "Examining Sustainability Dimension in Corporate Social Responsibility of ExxonMobil Cepu: An Overview of Socio-Cultural and Economic Aspects," *Journal of Social Development Studies* 3, no. 2 (2022), <https://doi.org/10.22146/jsds.5038>.

²⁷ Cameron Shackell, "Is Genericness Still Adequately Defined? Internet Search Firms and the Economic

Rationale for Trademarks," *Science, Technology, & Human Values* 48, no. 3 (2023): 582–605, <https://doi.org/10.1177/01622439211055482>.

²⁸ Wathsala Ravihari Samaranayake, "Well-Known Marks: Jettisoning the 'Domestic Registration Requirement' Vis-à-Vis Dissimilar Goods and Services," *GRUR International* 74, no. 6 (2025): 507–24, <https://doi.org/10.1093/grurint/ikaf054>.

²⁹ R. Yahdi Ramadani et al., "Humanitarian commitment: Indonesia's policy on refugees' rights to health," *Healthcare in Low-resource Settings* 12, no. s2 (2025), <https://doi.org/10.4081/hls.2024.12603>.

³⁰ WTO, *TRIPS Agreement Article 16: Rights Conferred* (World Trade Organization, 1994).

³¹ Aktieva Tri Tjitrawati and Mochamad Kevin Romadhona, "Re-assessing Human Rights Issues in Palu Disaster Management: An International Legal Foundation," *Journal of Southeast Asian Human Rights* 9, no. 1 (2025): 81–121, <https://doi.org/10.19184/jseahr.v9i1.46166>.

³² WIPO, *Trademarks: Valuable Assets in a Changing World*.

costs.³³ Such conduct would undermine incentives for innovation, investment, and fair competition.³⁴

In Indonesia, the issue of protecting well-known trademarks has become increasingly important due to the country's growing participation in international trade and its obligations under various international intellectual property agreements. Indonesian trademark law recognizes the special status of well-known trademarks and provides protection against unauthorized registrations and uses that may exploit their reputation. Nevertheless,³⁵ legal challenges remain regarding the determination of well-known status, evidentiary standards, and the scope of protection afforded to famous marks, particularly in relation to dissimilar goods and services.³⁶

Against this background, the expansion of protection for well-known trademarks is both legally and economically justified.³⁷ Such protection is necessary not only to prevent consumer confusion but also to safeguard the substantial goodwill, reputation, and commercial value embodied in famous trademarks.^{38,39} Accordingly, this paper examines the legal foundations and rationale for the broader protection of well-known trademarks and analyzes the

implications of such protection within contemporary trademark law.

2. Research Methodology

All legal materials, supporting documents, data sources, and research procedures must be described clearly and concisely. Authors should explain the research method employed and provide a justification for its selection in relation to the research objectives and the results achieved. The methodology is not limited to the normative juridical approach. Other legal and socio-legal research methods may also be used as appropriate. The methodology section should specify the techniques used for data collection (e.g., document analysis, interviews, observations, surveys, or other relevant methods) and the data analysis techniques applied to interpret the findings. For empirical or socio-legal research, authors should also indicate the time and location of the study (where applicable), the research subjects or objects, and the scope or focus of the investigation.⁴⁰

3. Results and Discussion

Criteria for Affected Trademarks

The criteria for well-known brands are still under long debate, and there is no single unified standard.⁴¹ There are several criteria

³³ Rachmah Ida et al., "Media-induced anxiety and cultural coping mechanisms during COVID-19 in Surabaya," *Interaksi: Jurnal Ilmu Komunikasi* 14, no. 1 (2025): 206–21, <https://doi.org/10.14710/interaksi.14.1.206-221>.

³⁴ Rachmah Ida et al., "Women's Involvements in Communication Forum for Disaster Management and Resilience in Eruption of Mount Semeru, Lumajang, East Java," *Discover Social Science and Health* 5, no. 1 (2025): 152, <https://doi.org/10.1007/s44155-025-00307-0>.

³⁵ Rachmah Ida et al., "COVID-19 Vaccine Rumour and Resistance in Indonesia: Analysing Vaccine Hesitancy and Cultural Myths Circulated on Online Platforms," *Vacunas* 25, no. 3 (2024): 313–22, <https://doi.org/10.1016/j.vacun.2024.03.002>.

³⁶ Mochamad Kevin Romadhona et al., "Preventing Employee Turnover in Hospital Management—Preliminary Study," *Clinical Practices and Hospital Management* 1, no. 1 (2025).

³⁷ Rachmah Ida et al., "Empowering youth as vaccine advocates: Harnessing the power of educational

videos," *Jurnal Pembelajaran Pemberdayaan Masyarakat (JP2M)* 5, no. 1 (2024): 86–95, <https://doi.org/10.33474/jp2m.v5i1.21423>.

³⁸ Rachmah Ida et al., "A Holistic Inquiry Into Risk Communication Dynamics: Youth-Led Initiatives And Societal Engagement In Surabaya's Rural Landscapes," *Kumawula: Jurnal Pengabdian Kepada Masyarakat* 7, no. 2 (2024), <https://doi.org/10.24198/kumawula.v7i2.52052>.

³⁹ Siti Suraya Abd Razak and Saiful Izwan Abd Razak, "Intellectual Property Rights for 3D Bioprinting in Malaysia," *UUM Journal of Legal Studies* 14, no. 2 (2023): 709–33, <https://doi.org/10.32890/uujls2023.14.2.12>.

⁴⁰ Rachmah Ida et al., "Multiculturalism in Singkawang: Tolerance and Inter-Ethnic Communications Practices among the Diasporic Communities," *Globalisation, Societies and Education*, July 3, 2025, 1–17, <https://doi.org/10.1080/14767724.2025.2523360>.

⁴¹ Bambang Sugeng Ariadi Subagyono et al., "Regulatory Framework on Ocean Threats –

provided by various parties and based on Law Number 20 of 2016 concerning Trademarks (hereinafter abbreviated as UUM). The criteria for well-known brands in UUM are regulated in the Explanation of Article 21 paragraph (1) letter b, which states:

“Rejection of an application that is essentially or entirely similar to a well-known Trademark for similar goods and/or services is carried out by taking into account the general knowledge of the public regarding the Trademark in the relevant business sector. In addition, attention is also paid to the reputation of the well-known Trademark obtained due to intensive and large-scale promotion, investments in several countries in the world made by the owner, and accompanied by evidence of registration of the Trademark in several countries. If the above matters are not considered sufficient, the Commercial Court may order an independent institution to conduct a survey to obtain a conclusion regarding the well-known or not of the Trademark that is the basis for rejection.”

based on the explanation of Article 21 paragraph (1) letter b, the criteria for a well-known brand are:

1. Based on public knowledge of the brand in the relevant business sector;
2. Famous Brand Reputation gained due to intensive and large-scale promotion;
3. Investments in several countries in the world made by the owner, accompanied by proof of registration of the brand in several countries (if any);
4. Based on a survey conducted by the institution, independent of the orders of the commercial court

Meanwhile, in Article 16, number 2 of TRIPs, the criteria regarding well-known brands are based on the Paris Convention, which provides the following criteria:

“Article 6 bis of the Paris Convention (1967) shall apply, mutatis mutandis to services. In determining whether a trademark is well-known, Members shall take into account the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.”

What is stated in TRIPs regarding the criteria for well-known brands is the basis for the criteria for well-known brands as contained in the Explanation of Article 21 paragraph (1) letter b of the UUM.⁴² Based on the provisions of TRIPs, Art 6 to Paris Convention regarding famous brands (well-known marks) applies to goods or services that are not the same as the goods for which the trademark is registered, with the provision that the use of the trademark in relation to the goods or services is the same as the goods brand the trademark is registered and provided that the interests of the registered trademark owner are not affected by the use.⁴³ Next, in determining whether a brand is well-known, one must take into account the knowledge of the well-known trademark among a particular public, including knowledge in member countries as a result of the promotion of the trademark.^{44,45}

According to Ahmad Zen Umar, understanding well-known is still a topic that continues to be discussed, because until now there has been no definition about well-known marks, and it is up to the respective

Transportation Law Analysis to Multiple Oil-Spill Cases in Indonesia,” *Transactions on Maritime Science* 13, no. 2 (2024), <https://doi.org/10.7225/toms.v13.n02.w08>.

⁴² Mochamad Kevin Romadhona and Rachmat Dimas Oktafenanda, “The Hidden Harvest: Unlocking Efficiency in East Java’s Farming Sector,” *Journal of Urban Sociology* 1, no. 1 (2025): 59, <https://doi.org/10.30742/jus.v1i1.4220>.

⁴³ Carlos Correa, *Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS*

Agreement, 2nd ed, Oxford Commentaries on International Law (Oxford University press, 2020).

⁴⁴ Bryan C. Mercurio, *The Regulation of Services and Intellectual Property*, 1st ed., ed. by Markus Krajewski and Bryan C. Mercurio (Routledge, 2017), <https://doi.org/10.4324/9781315085463>.

⁴⁵ Mochamad Kevin Romadhona et al., “Riding the Wave of Innovation: A Qualitative Analysis of Public Transport Drivers’ Adaptation to Online-Based Transportation Services,” *Biokultur* 13, no. 1 (2024): 16–25, <https://doi.org/10.20473/bk.v13i1.54162>.

member states.⁴⁶ However, there have been guidelines issued by WIPO, the essence of which concerns the factors in considering whether a brand is well-known or not. The authorities must consider, among other things, the following:

1. The level of knowledge or recognition of the brand within the relevant public sector;
2. Period, scope, and geographical area of use of the mark;
3. The duration, scope, and geographical area of brand promotion, including advertising and publicity, and presentation at exhibitions of the brand's goods or services;
4. The period and geographical area of each registration and each application for registration to the extent that it reflects the use or recognition of the mark;
5. A record of successful legal enforcement of the rights attached to a trademark to the extent that the trademark is recognized as a well-known trademark by the relevant authorities;
6. values associated with the brand.

Temporary Frederick Aunt provides the following criteria for well-known brands:⁴⁷

1. Degrees of brand recognition/ recognition is primarily seen from the perspective of high demand directly from the license applicant, distributor, importers, etc.;
2. The extent and duration of brand announcements, the size of sales figures, and Marketing reach can be used as proof of the brand in question.
3. The extent and duration of advertising and publicity are modern and sophisticated Information technology can help build the reputation of the brand in question.
4. The extent to which the mark is known, used, advertised, registered, and maintained in a particular territory, or other factors that indicate the extent of the

mark's local, regional, and international recognition;

5. Degrees differentiating power. Differentiating power can grow due to the nature of the brand or due to use.
6. Degree of exclusivity of the brand and the nature and extent of use of the same or similar brand by third parties. Use of the same brand by several parties or for different types of goods;
7. The nature of goods or services and trade routes, protection does not only cover similar goods/services, but also dissimilar ones
8. Commercial value of the brand.

Rahmi Jened stated that to be called a well-known brand, several elements must be fulfilled, namely:⁴⁸

1. The term, scope, and area of use of the brand;
2. Market;
3. Level of discriminating power;
4. Quality must be good (*image*);
5. Widespread use in the world;
6. Characteristic exclusivity use in the world;
7. The brand's trading value in the world;
8. Record of protection achieved;
9. The results of litigation in determining whether the brand is well-known or not;
10. The intensity of registration of other brands that are similar to the brand in question.

The criteria for a well-known trademark are universal in many countries, such as in China, which are contained in the China Trademark Law 2001. The criteria are as follows:

1. Reputation of the mark to the relevant public;
2. Time for continued use of the mark;
3. Consecutive time, extent, and geographical area of advertisement of the mark;

⁴⁶ Achmad Zen Umar Purba, *Perjanjian TRIP's dan beberapa isu strategis* (Penerbit Alumni, 2022).

⁴⁷ Arviana Eka KW, "Perlindungan Hukum Merek Pada Kasus Extra Joss Dan Enerjos" (Thesis, Universitas Airlangga, 2008).

⁴⁸ Rahmi Jened Parinduri Nasution, *Interface hukum kekayaan intelektual dan hukum persaingan (Penyalahgunaan Hukum I)*, 1st ed., Hukum-Hak Kekayaan Intelektual (Raja Grafindo Persada, 2013).

4. Records of protection of the mark as a well-known mark; and
5. any other factors relevant to the reputation of the mark.⁴⁹

These criteria are used by courts in China as a basis for deciding well-known trademark disputes, such as in the case of Starbucks vs Shang Copycat.⁵⁰ Likewise, several criteria for well-known brands in Indonesia are also used as a basis for the courts to decide on well-known brand disputes.⁵¹ Article 21, paragraph (1), letter b of the UUM, expressly states that well-known brands receive special protection.^{52,53} The special thing is that this protection is not only applied to similar goods and/ or services, but also to dissimilar goods and/ or services.^{54,55} This provision is a special form of protection, because basically brands are used to differentiate similar goods and/ or services.⁵⁶

This special protection means that a well-known brand has a function not only to differentiate similar goods, but also other functions. Insan Budi Maulana's states that a brand is the "spirit" of a product or service.⁵⁷ The spirit said here has an important meaning when linked to the continuity of the product or service in question.⁵⁸ A product can

survive or die depending on the brand in question, because within the brand itself, the quality and reputation of the goods and or services are embodied.⁵⁹ Therefore, a brand that has become well-known can also function as asset And goodwill for entrepreneurs as owners, even in its development, Maulana's said that nowadays in developed Asian countries such as Japan, South Korea and Singapore, famous brands are considered as "new gods".⁶⁰ This is because the success of economic development in the country and region has changed the lifestyle of its population, so it is not surprising that the total trade in luxury products with famous brands worldwide has reached US\$80 billion. Of that amount, America reached 24% of the total trade, Europe 35%, and Asia reached 37%. Of that amount, 62% came from Japan, Hong Kong 12%, and South Korea 8%, the rest were from India, Southeast Asia, Taiwan, and China. Furthermore, Maulana's stated that the cult of luxury goods and famous brands has unwittingly made them the "new gods" in Asian countries, both those with established economies like Japan, South Korea, and Singapore, and those with impressive economic growth rates like China and India.

⁴⁹ Brad Luo and Shubha Ghosh, "Protection and Enforcement of Well-Known Mark Rights in China: History, Theory, and Future," *Northwestern Journal of Technology and Intellectual Property*, advance online publication, 2009, <https://doi.org/10.2139/ssrn.1326398>.

⁵⁰ Luo and Ghosh, "Protection and Enforcement of Well-Known Mark Rights in China."

⁵¹ Mochamad Kevin Romadhona and Rachmat Dimas Oktafenanda, "Ethics And Governance of AI in Healthcare: Case Indonesia, EU, and the US," *Jurnal Ilmiah Administrasi Pemerintahan Daerah* 17, no. 2 (2025): 201–23.

⁵² Mochamad Kevin Romadhona et al., "Assessing Corporate Social Responsibility From the Perspective of the Local Community," *ASEAN Journal of Community Engagement* 8, no. 1 (2024), <https://doi.org/10.7454/ajce.v8i1.1196>.

⁵³ W. R. Cornish and David Llewelyn, *Intellectual property: patents, copyright, trade marks and allied rights*, 6th ed (Sweet & Maxwell, 2007).

⁵⁴ Bambang Sugeng Ariadi Subagyo et al., "Can Indonesia's Laws Keep Up? Protecting Consumer Rights in Digital Transactions," *Journal of Law and Legal Reform* 5, no. 3 (2024): 869–90, <https://doi.org/10.15294/jllr.v5i3.4202>.

⁵⁵ Suyud Margono, *Hak kekayaan intelektual: komentar atas undang-undang rahasia dagang, desain industri, desain tata letak sirkuit terpadu*, Cet. 1 (Novindo Pustaka Mandiri, 2001).

⁵⁶ Agung Sujatmiko et al., "Patents at the Crossroads: Legal Pathways for Advancing Technology Transfer in Indonesia," *LAW REFORM* 21, no. 1 (2025): 94–119, <https://doi.org/10.14710/lr.v21i1.64666>.

⁵⁷ Insan Budi Maulana, *Perlindungan Merek Terkenal di Indonesia dari Masa ke Masa* (PT Citra Aditya Bakti, 2018).

⁵⁸ Muhammad Gaidy Wiratama et al., "Implementation of Legal Efforts Consumer Protection and Dispute Settlement of Social – Health Insurance Participants for Indonesian Migrant Workers," *Malaysian Journal of Medicine and Health Sciences* 19 (2023): 9–17, Scopus.

⁵⁹ Mochamad Kevin Romadhona and Rachmat Dimas Oktafenanda, "Bridging the Poverty Gap: Innovative-Based Policy Approaches in East Java," *Jurnal Pembangunan Daerah* 1, no. 2 (2025): 21–38, <https://doi.org/10.36762/jpd.v1i2.1177>.

⁶⁰ Insan Budi Maulana, *Merek Terkenal Sebagai Dewa Baru* (Bisnis Indonesia, 2007).

This also includes more modest ones like Thailand, the Philippines, and Indonesia.⁶¹ Well-known brands are often counterfeited and registered first by local entrepreneurs.⁶² Therefore, based on the frequent occurrence of infringements of well-known trademarks, well-known trademarks need to be protected and safeguarded from acts that lead to unfair competition that harm their owners. This is because well-known trademarks are highly vulnerable to infringement, even though their function is so vital to the continuity of the production and marketing of goods or services.

Legal protection for well-known brands is very urgent, because they not only serve to differentiate similar goods and/or services, but also have an economic function.⁶³ Both of these functions are very important and vital for brand owners. The function as a differentiator is something that is important, essential for brands in marketing goods and/or services. Goods and/or services sold without a brand will not be able to compete in the market. Conversely, if a good or service has a brand that is well-known to consumers, due to its reputation or quality, it will easily win the competition in the market. Economically, the function of a brand is related to wealth (property), which provides income for the owner. As a source of income, brand rights need to be protected from acts that lead to violations and crimes, because they will harm the owner. As a property, trademark rights are basically a part of wealth (asset) for the owner; he must receive protection from the state, which is his obligation.

According to Yahya Harahap, the scope of legal protection provided to brand owners includes the use or exploitation of brands, which includes:⁶⁴

- a. Protecting the use of exclusive brand rights, which include:

1. Using a brand mark as a logo, label, or image in correspondence, on goods or services, on packaging in advertising or promotion;
2. Enjoy exclusively the manifestations born of the brand, includes goodwill or well-known, high reputation, indication of origin/geographical source, cultural touch (cultural attachment), and familiar touch (familiar attachment).
- b. Protecting exclusive rights to use the brand as exploitation tools to gain profits in trade, includes:
 1. Marketing goods or services in national, regional, and global trade;
 2. Storing goods protected by a brand, as long as it does not conflict with monopoly provisions and speculation to increase prices;
 3. Supply goods;
 4. Exporting goods.
- c. Protecting the right to expand marketing areas and segments, in accordance with the market system or free trade, and carried out in accordance with the principles of free, fair, healthy, and honest competition.
- d. Protecting the transfer or assignment of a brand in the form of:
 1. Transfer based on the general title in accordance with the provisions inheritance law;
 2. Transfers in all forms of transactions permitted by laws (selling, pledging, donating);
 3. In the form of a license, permitting other people or legal entity to use it.

Based on the above description, besides being a means of providing brand protection, licensing agreements also serve to make a brand well-known. If a brand is licensed in multiple countries, it will naturally become known to many consumers. This is a significant initial capital to boost a

⁶¹ Maulana, *Merek Terkenal Sebagai Dewa Baru*.

⁶² Maulana, *Merek Terkenal Sebagai Dewa Baru*.

⁶³ Agung Sujatmiko et al., "The legal reform of trademark protection and dispute mitigation: Lessons from licensing well-established brands in Indonesia," *Journal of Law and Legal Reform* 5, no. 2 (2024):

459–94, <https://doi.org/10.15294/jllr.vol5i2.3467>.

⁶⁴ Gatot Ismono, "Perlindungan Hukum Hak Atas Merek Terdaftar Dalam Persaingan Usaha Tidak Sehat" (Universitas Diponegoro, 2005).

brand's recognition. Consumer use worldwide is a concrete and practical step towards brand recognition and recognition by the wider community. Long-term use ultimately leads consumers to acknowledge the quality of a brand, ultimately preventing them from switching to another brand. This recognition is crucial for achieving and winning competition in the market. Ultimately, consumers will choose brands with good quality. This consumer choice will persist if the brand in question can maintain its reputation for quality. It's not uncommon for consumers to become fanatical and *brand-loyal* towards brands that are recognized as good quality. This is in accordance with the opinion of Casavera, that the role of brands continues to develop over time. These developments include:⁶⁵

The first time the brand was formulated as an unbranded product, which is characterized by the fact that the quality of one commodity is difficult to distinguish from another, the price is the primary purchasing criterion. Then, the brand serves as a reference; in this case, the brand is also used as the company name. Furthermore, the brand serves as a personality, which is expected to stand alone, where marketing communications are designed. Forgiving meaning to the brand in question according to the context desired by the brand owner. Equally important is the subsequent development of the brand into an icon. The brand is not only a property of producers, but on the other hand, they also belong to consumers. Brands have become part of the daily lives of consumers and the general public. Further developments for the brand as a company. In this case, the brand reflects a

complex situation, so the brand owner must be able to focus on the benefits of the company name for various customer segments. Furthermore, in the final stage of development, the brand can become a brand as policy, which depicts the alignment between companies, brands, and other social issues.

The development of these brands demonstrates that brands play a crucial role in company development and support trade, ultimately contributing to state revenue, especially if the brand is a well-known one. Therefore, the regulation of well-known brands contained in the UUM needs to be supplemented by a Government Regulation (PP) as mandated in the UUM.⁶⁶ The existence of this PP is crucial considering the increasing number of cases of infringement of well-known brands and the sometimes disagreement of judges regarding the definition of a well-known brand.⁶⁷ This is evident in court decisions in trademark cases. Intel And Extra If. Trademark case: Intel and Extra Joss. This could be an example of how there is no consensus among judges in deciding a case related to a well-known trademark.⁶⁸ The Commercial Court once rejected a lawsuit. Intel Corporation *is to* cancel a trademark Intel Jeans based on the consideration that Intel is not a well-known trademark. However, at the cassation level, the Supreme Court (MA) overturned the Commercial Court's decision and cancelled the trademark registration.⁶⁹ Intel Jeans. In addition, the Supreme Court also determined that Intel is a well-known trademark, so its protection is not limited to the same product. However, the case with local brands is different. Extra Joss. Initially, the

⁶⁵ Casavera, *15 kasus sengketa merek di Indonesia* (Graha Ilmu, 2009).

⁶⁶ Mochamad Kevin Romadhona et al., "The Indonesia's Paradox of Refugees Rights to Health," *International Journal on Minority and Group Rights*, April 16, 2026, 1–32, <https://doi.org/10.1163/15718115-bja10279>.

⁶⁷ Mochamad Kevin Romadhona et al., "Labor Migration Policy in ASEAN States," *International Law Discourse in Southeast Asia* 4, no. 1 (2025): 81–128, <https://doi.org/10.15294/ildisea.v4i1.23485>.

⁶⁸ Aktieva Tri Tjitrawati and Mochamad Kevin Romadhona, "Living beyond Borders: The International Legal Framework to Protecting Rights to Health of Indonesian Illegal Migrant Workers in Malaysia," *International Journal of Migration, Health and Social Care* 20, no. 2 (2024): 227–45, <https://doi.org/10.1108/IJMHSC-04-2023-0038>.

⁶⁹ Eni Sugiarti et al., "Contesting Sovereignty: The State-Indigenous Relations at the Indonesia - Timor-Leste Borderlands," *JAS (Journal of ASEAN Studies)* 12, no. 2 (2024): 439–60, <https://doi.org/10.21512/jas.v12i2.11467>.

Commercial Court granted the lawsuit for the cancellation of trademark registration. Energy and acknowledge Extra Joss is a well-known brand. However, at the cassation level, the Supreme Court overturned the Jakarta Commercial Court's decision, considering, among other things, Extra Joss is not a well-known brand.⁷⁰ These two cases provide evidence that at the court level, there is no common language and understanding of well-known trademarks, so that the existence of a PP on well-known trademarks can be used as a guideline for judges; besides that, it is also beneficial for the brand owners themselves, whether the brand they own is a well-known brand or not. The existence of the PP in the field of well-known trademarks is to provide legal protection for a brand owned by someone, because so far violations of well-known trademarks have been increasing, which will be detrimental to the brand holder because the sales volume decreases, or if the goods produced by the counterfeiter are of inadequate quality, so that in the end the brand's good name will be tarnished.⁷¹ Likewise, consumers will lose assurance (trust) in the quality of the goods they buy. For this reason, the government should issue a PP on well-known trademarks. The need for this PP can not only be proof of the government's seriousness in providing protection for intellectual property rights holders, but also as a government effort to create conducive conditions for business actors. It is hoped that the PP will become a guideline for law enforcement in interpreting well-known trademarks. In addition, Commercial Court judges and Supreme Court judges need to have sufficient knowledge of trademarks, so that there is a common ground in making decisions (predictability). This is important because

judges in Indonesia are not bound by previous decisions (case law), because Indonesia does not adhere to a precedent system. Providing legal instruments in the trademark sector, supported by reliable human resources, is a necessity that the government must always maintain. Legal protection for well-known trademarks also guarantees legal certainty in the economic sector, which must be continuously prioritized to maintain Indonesia's international relations. Achieving legal certainty will encourage a healthy investment and business climate, thereby achieving the government's recommendation to invest and do business in Indonesia. This situation will clearly increase international confidence in law enforcement in Indonesia, which in turn will boost the trade sector in particular and national businesses in general. Overall, the Indonesian economy will improve when there is legal certainty.⁷²

The Urgency of Legal Protection for Well-Knows Marks Article 1, number (5) of the UUM clearly states that the right to a trademark is an exclusive right granted by the State to the owner of a trademark registered in the General Register of Trademarks for a certain period of time by using the trademark themselves or giving permission to another party to use it. This special right is basically nature-exclusive, which can only be implemented by the rights owner, while others are not allowed to use it without the owner's permission.⁷³ Therefore, these rights need to be protected. The concept that these special trademark rights need to be protected is in line with the understanding of rights as stated by Soedikno Mertokusumoto that rights are interests protected by law, while interests are demands of individuals or groups that are expected to be fulfilled.⁷⁴

⁷⁰ Suwantin Umar, *Menunggu Lahirnya PP Merek Terkenal* (Bisnis Indonesia, 2007).

⁷¹ Zahry Vandawati Chumaida et al., "Beyond Maritime Research: Export Under the Indonesian Transportation Law," *Transactions on Maritime Science* 14, no. 3 (2025), <https://doi.org/10.7225/toms.v14.n03.012>.

⁷² Agung Sujatmiko, *Perlindungan Hukum Merek Terkenal*, 2014.

⁷³ Brian Fitzgerald and Anne Fitzgerald, "Intellectual Property Rights in Digital Architecture (including Software): The Question of Digital Diversity in Cyberspace?," *International Intellectual Property Law* 6 (2001): 1.

⁷⁴ Sudikno Mertokusumo, *Mengenal Hukum* (Liberty, 1986).

This is in line with what was said by Achmad Zen Umar Purba that as part of IPR, trademark rights are part of the property, and as a right, he is property or asset in the form of an intangible object (intangible asset)⁷⁵. According to Keith E Maskus, between intangible and tangible objects, up to a certain point, the two rights are equal. However, the striking difference lies in the aspect of exclusivity. Exclusivity Lahwhich gives rise to rights, and these rights are nothing other than compensation for all the efforts that have been made or sacrificed by the owner of the intellectual work.⁷⁶ Given the specific nature of trademark rights, they can be defended against anyone. Therefore, if someone else maliciously exercises these rights without the permission of the trademark holder, a violation of those specific rights has occurred. This is where legal protection for trademark rights becomes crucial. In general, acts leading to trademark imitation involve well-known brands that are already well-known and well-reputed by consumers.⁷⁷

This happens because famous brands have a good reputation among consumers. There are three reasons why violations of well-known brands occur, namely:⁷⁸

1. The infringer will gain material benefits quickly and certainly without the hassle of building a brand reputation.
2. The infringer does not want to take the risk of having to create his own new brand, because the costs are too high.
3. The difference in profits obtained from selling counterfeit branded goods is much greater when compared to the profits obtained from selling genuine goods with their own brand, which is

relatively new and not yet widely known by consumers, because counterfeiters do not need to pay research and development costs, advertising and promotion costs, and taxes.

These three reasons are a special attraction for violators to use other people's brands without considering the risks they will face if the brand owner reports them to law enforcement officials, because a brand infringement has occurred.

Protection of Well-Knowns Trademark in Several Conutries

In some countries, legal protection for well-known brands also receives significant attention. For example, in Australia, this is regulated by the Australian Trademarks Act of 1995. Essentially, the registration and legal protection granted by the state to well-known brands is defensive in nature, with the primary objective being to prevent and protect well-known brands from unfair competition (passing off).⁷⁹ Provisions for the protection of well-known brands from unfair competition (passing off). This is indeed very appropriate, considering that violations of the law against well-known trademarks are generally based on unfair competition. Even in Japan, the legal protection of well-known trademarks is regulated by two laws: the Trademark Law and the Anti-Unfair Competition Law, both of which complement each other.⁸⁰ Protection of well-known trademarks in Japan is primarily administrative. In cases of infringement of well-known trademarks that are copied and circulated to the public, legal regulation and protection are based on provisions of unfair competition laws.⁸¹ This

⁷⁵ Purba, *Perjanjian TRIP's dan beberapa isu strategis*.

⁷⁶ Keith Eugene Maskus, *Intellectual Property Rights in the Global Economy* (Peterson Institute, 2000).

⁷⁷ James J. Holloway, "The Protection of Trademark Goodwill in Canada, Where We Were, Where We Are and Where We Should Be Going," *Intellectual Property Journal* 17, no. 2 (2004).

⁷⁸ Bambang Sulistyobudi, "Aspek Hukum Dalam Persaingan Usaha Tidak Sehat Atas Hak Merek (Khusus Kemasan Merek)" (Thesis, Universitas Diponegoro, 2003).

⁷⁹ M. Ilham Surya Dirja, "Perlindungan Merek Terkenal Kemasan Produk Tiga Dimensi di Indonesia (Studi Perbandingan Hukum Ketentuan UU Merek di Amerika Serikat dan Indonesia)" (Universitas Indonesia, 2012).

⁸⁰ Dirja, "Perlindungan Merek Terkenal Kemasan Produk Tiga Dimensi di Indonesia (Studi Perbandingan Hukum Ketentuan UU Merek di Amerika Serikat dan Indonesia)."

⁸¹ Dirja, "Perlindungan Merek Terkenal Kemasan Produk Tiga Dimensi di Indonesia (Studi

differs from Indonesia, where legal regulation and protection are still based on trademark law. Indonesia does not yet have a law on unfair competition specifically addressing unfair competition in the intellectual property rights (IP) and other business sectors. Such legislation needs to be considered in the future to complement existing related laws and provide greater legal certainty. Meanwhile, in Lanham Act, the legal protection of well-known trademarks in the United States is associated with dilution actions (dilution). This means that in the United States, a well-known trademark owner makes every effort to prevent other traders from using its trademark, even extending that protection to products that are not competitors (non-competing).⁸² In relation to the regulation of protection of well-known trademarks associated with dilution, the aim is to provide protection to consumers or the wider community from fraud and brand imitation.

Meanwhile, legal protection for well-known brands in Indonesia is regulated in UUM Article 21, paragraph (1 b and 1 c). Both articles in principle emphasize that a trademark registration application must be rejected if the trademark to be registered has similarities in principle or in its entirety with a well-known trademark owned by another party for similar goods and/or services. Protection of the well-known trademark according to the provisions of Article 21 paragraph 1c) is extended not only to apply to similar goods and/or services but also to dissimilar goods and/or services. The expansion of the application shows that the legislators have an interest in protecting well-known trademarks that have been registered. Upon closer inspection, protection for well-known trademarks is preventative in nature, meaning that lawmakers protect well-known trademarks from the outset when a trademark is to be registered, intending to ensure that prospective trademark registrants are aware

and aware that trademark registration must not conflict with existing well-known trademarks. This demonstrates respect for well-known trademarks that have been registered. The recognition of a trademark ultimately provides not only financial benefits, but also legal benefits.

Reasons for Extending the Protection of Well-Known Trademarks

The criteria for determining a well-known trademark have evolved and developed over time. Under the Decree of the Indonesian Minister of Justice No. M-02-HC.01.01 of 1987 concerning the Rejection of Trademark Registration Applications Similar to Well-Known Trademarks Owned by Others, a well-known trademark was defined as a trademark that had long been recognized and used within the territory of Indonesia by an individual or legal entity for certain types of goods. The protection granted to well-known trademarks at that time was limited only to similar goods.

This Ministerial Decree was subsequently revised in 1991 through the Decree of the Minister of Justice of the Republic of Indonesia No. M.03-HC.02.01 of 1991 concerning the Rejection of Applications for the Registration of Well-Known Trademarks or Trademarks Similar to Well-Known Trademarks Owned by Other Persons or Legal Entities. The protection of well-known trademarks under this decree was expanded by modifying the definition of a well-known trademark to include marks that are “recognized and used” both within Indonesia and abroad. Furthermore, the criteria concerning similarity to a well-known trademark were broadened by introducing the concept of “essential similarity” or “substantial resemblance.” More significantly, the protection was extended to cover not only similar goods but also dissimilar goods.

These criteria were later incorporated into the Elucidation of Law No. 15 of 2001,

Perbandingan Hukum Ketentuan UU Merek di Amerika Serikat dan Indonesia).”

⁸² Dirja, “Perlindungan Merek Terkenal Kemasan Produk Tiga Dimensi di Indonesia (Studi

Perbandingan Hukum Ketentuan UU Merek di Amerika Serikat dan Indonesia).”

as amended by Law No. 20 of 2016 on Trademarks and Geographical Indications (hereinafter referred to as the Trademark Law). Additional considerations were introduced, including the level of public recognition of the trademark within the relevant business sector. Other relevant factors include the trademark's reputation resulting from intensive promotion, investments made in various countries, and registration in multiple jurisdictions. The determination of a trademark's well-known status may also be supported by surveys conducted by independent institutions upon the order of a judge. These criteria are consistent with those provided in Article 6bis of the Paris Convention, which were subsequently adopted into Article 16 paragraphs (2) and (3) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). TRIPS forms one of the annexes to the agreement establishing the World Trade Organization (WTO).

Through extensive advertising, the economic value of a trademark becomes increasingly significant in the eyes of consumers. As Robert P. Merges observed, *"When the advertising is effective, consumers strongly associate the trademarks with the producer's product. The trademark comes to embody all of the firm's informational investments."*

According to Gunawan, the factors mentioned above serve merely as guidelines for competent authorities in determining whether a trademark is well-known and should not be regarded as strict prerequisites. Each case must be evaluated based on its specific circumstances. In certain cases, all of these factors may be relevant; in others, only some may be applicable. There may even be situations where these factors are irrelevant, and the decision must be based on additional considerations not included in the list. The key consideration is whether there exists a strong association between the goods bearing the trademark and their producer, such that the use or registration of the same or a similar trademark by another party—even for dissimilar goods—would harm the interests of the owner of the well-known trademark.

This is commonly referred to as the confusion of business connection factor.

For a trademark to attain the status of a well-known mark capable of signifying the quality assurance or reputation of a particular product is neither easy nor inexpensive. It requires substantial time and financial resources. For example, Coca-Cola, a soft drink brand from the United States, reportedly required approximately one hundred years to achieve well-known status, while Toyota and McDonald's required around thirty and forty years, respectively. Once a trademark becomes well-known, it constitutes a highly valuable corporate asset, commonly referred to as goodwill. However, such fame often attracts dishonest competitors who seek to imitate or appropriate the mark. This conduct is typically motivated by bad faith, with the intention of obtaining substantial profits at the expense of the owner of the well-known trademark.

Therefore, the rationale for extending the protection of well-known trademarks beyond similar goods to include dissimilar goods lies in the substantial investments required to build and maintain a well-known trademark. Such investments include the costs of trademark registration in multiple countries, extensive advertising expenditures, investments in overseas manufacturing facilities, and other related expenses. On this basis, legislators have chosen to provide broader protection for well-known trademarks. This expansion of protection represents a legislative policy decision and a form of legal discretion aimed at safeguarding the significant economic value and goodwill embodied in well-known trademarks.

4. Conclusion

Legal protection for well-known brands is applied specifically because making a brand famous requires a lot of time, energy, and money to promote the brand in various media in many countries. Likewise, the brand in question must be registered in many countries. If a brand is registered and promoted intensively over a long period of

time, it will become a well-known brand. Ultimately, well-known brands receive special attention from lawmakers because they have value. economical, which is significant for its owner. Furthermore, well-known brands are also vulnerable to infringement in any form.

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