

## **Consequences And Resolutions Of The Ms Glow Vs Ps Glow Trade Brand Dispute**

**(Study Of Decision Number 2/Pdt.Sus.Hki/Merek/2022/Pn Niaga Sby  
Jo. MA Decision Number 161 K/Pdt.Sus-Hki/2023)**

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### **Abstract**

*Trademarks are in the form of images, logos, names, words, letters, numbers, color schemes, two and/or three dimensions, sounds, holograms, or a combination of them. The above factors are to distinguish goods and/or services produced by individuals or legal entities in order to trade goods and/or services. The existence of the trademark system aims to prevent the occurrence of trademark disputes between trademark owners. This study aims to explain the settlement of trademark disputes analyze the legal consequences of the decision number 2/Pdt.Sus.HKI/Merek/2022/PN Niaga Sby Jo. Supreme Court Decision Number 161 K/Pdt.sus-HKI/2023. The type of research used is normative juridical research and uses qualitative data analysis techniques to interpret research findings based on research data and implications obtained from relevant literature, laws and regulations, documents, books, and other library materials, as well as the author's research questions. In this research, the author explains that a mark can be said to have similarities in principle with other marks when the general public cannot be distinguished due to similarities in appearance, letters, numbers, colors, smell and pronunciation. Similarity of marks basically has a very close relationship with malice. Protect marks from inherently egalitarian and malicious business actors. The rise of trademark disputes in Indonesia, in the process of trademark registration, Indonesia applies the first to file principle, that is, trademark registration is only granted to businesses that first register their trademarks, and the state does not register/approve the registration of trademarks that are similar to the first registered trademark to others. On other similar products/services.*

**Keywords: Similarity; PS GLOW; MS GLOW; Trademark Dispute.**

### **EDUCATION**

The development of information technology has led to a rapid increase in activities in the trading sector, giving rise to new trading businesses with various brands. Outlined in Article 1(1) of Law Number 20 Year 2016 on Trademarks and Geographical Indications, a trademark is a sign that can be displayed graphically in

the form of images, signs, names, words, letters, numbers, color arrangements, etc., which can be used to distinguish goods and/or services. 2 dimensions and/or 3 (dimensions), sound, hologram or a combination of 2 or more elements to distinguish goods and/or services a.<sup>1</sup> According to American scholar Essel R. Dillavou, in general, a brand is a ritualized form of symbols, signs, words or sentences quoted and used by businesses or distributors to mark their goods, others have no right to use designs or trademarks to show their authenticity, but are now used as an advertising mechanism.<sup>2</sup>

Trademark rights are one part of intellectual property rights where trademark rights are one whose presence is endlessly recognized and known by people in general, by business owners, students, and professionals.<sup>3</sup> Trademarks must be registered with the Intellectual Property Office, in order for a trademark to complete the registration qualifications, the trademark needs to be sufficient to be distinguishable, meaning that a trademark has the ability to be able to distinguish its own trademark from other similar trademarks.<sup>4</sup> Trademark registration also aims to ensure the protection of businesses from competitors who conduct unfair competition in its management.<sup>5</sup> In the Trademark Law, there is an application of the First to File principle, that is, a trademark registered in good faith and according to the procedure will be protected by law.<sup>6</sup> However, if it is found that the registered trademark has similarities with previously registered trademarks that cause the previous trademark to cause substantial or insignificant losses, it can be investigated for compensation claims for trademark cancellation, trademark removal or violation of the principle of good faith as in Article 76 of the Trademark Law of 2016 stipulates that the aggrieved party can take action to cancel the

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<sup>1</sup> Republic of Indonesia, Law No. 20 of 2016 on trademarks and geographical indications, 2016 State Gazette No. 4, State Secretariat, Jakarta.

<sup>2</sup> Saidin, 2007, *Legal aspects of intellectual property rights*, Jakarta: PT Raja Grafindo Persada, Ed. Revised, Cet. 6, p. 344.

<sup>3</sup> Haura Jauza Hafizah and Rani Apriani, 2022, Settlement of Brand Dispute (Case Study of Pepsodent Strong us Formula Strong), *Wajah Hukum*, Volume 6[2]. Page 227. Accessed at <http://wajahhukum.unbari.ac.id/index.php/wjhkm/article/view/879/232>

<sup>4</sup> Budi Agus Riswandi and Syamsudin, 2004, *Intellectual Property Rights and Legal Culture*, Jakarta. PT Raja Grafindo Persada, p. 83.

<sup>5</sup> ndiera Fortuna Gracia, Kurniawan, Eduardus Bayo Sili, 2023, Analysis of Intellectual Property Rights Disputes Between PS Glow and MS Glow in View of Law No. 20 of 2016 Concerning Marks and Geographical Indications (Analysis of Decision of Case Number: 2/Pdt. Sus HKI/Merek/2022/PN. Niaga Sby), *International Journal of Social Science Research and Review*, Volume 6 No 3, p. 90.

<sup>6</sup> Azzahra Alamsyah, Dina Nurdiana, Fira Nur Januarizky, 2023, Ms Glow Strategy After Ps Glow Lawsuit Regarding Trademarks, *EDUCATIONIST Journal of Educational and Cultural Studies*, Volume 1 No 3, p. 242.

trademark on the grounds set out in Articles 20 and 21 of Trademark Law No. 20 of 2016.<sup>7</sup>

Of the many legal cases related to IPR in the scope of trade/industry, the author would like to highlight the dispute case between the MS Glow and PS Glow trademarks. The PS Glow trademark has similarities with the MS Glow trademark name. Because the owner of the MS Glow trademark felt aggrieved, the owner of the trademark registered the filing of a trademark cancellation lawsuit to the Medan Commercial Court on March 15, 2022 by suing Putra Siregar as the owner of PS GLOW which produces cosmetics branded PS GLOW. In the case, it has been proven that there is a registration without good faith made by PS Glow. The registration of the PS Glow brand was carried out in 2021 after the MS Glow brand was known by the general public. The operation of the cosmetics or Skincare factory under the name "MS Glow" since 2016 and can be proven by the existence of a Tax Payment Slip at the Regional Revenue Office since 2018.

Then, PS GLOW represented by Samputri Agelina, filed the same lawsuit at the Surabaya District Court, based on the Surabaya District Court Decision No. 2/Pdt.Sus.HKI/Merek/2022/PN Niaga Sby, the PS GLOW trademark clearly does not have a similar nature and does not have bad faith because it wants to improve the reputation of MS GLOW in contrast to the use of the MS GLOW brand for class 3 cosmetics is basically the same as the PS GLOW brand.<sup>8</sup>

Based on the problems described in the background above, the author in this article will discuss the legal consequences arising from Decision Number 2/Pdt.Sus.HKI/Merek/2022/PN Niaga Sby Jo. Supreme Court Decision Number 161 K/Pdt.sus-HKI/2023 and the Settlement of Trademark Disputes between MS Glow vs PS glow Based on of Decision Similarities (Study Number 2/Pdt. Sus.HKI/Merek/2022/PN Niaga Sby Jo. Supreme Court Decision Number 161 K/Pdt.sus-HKI/2023)".

## RESEARCH METHODS

The method used in this research is the juridical-normative method, the data used is secondary data formed from primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal materials used are the 1945 Constitution, Law Number 20 of 2016 and Supreme Court Decision Number 2/Pdt.Sus.HKI/Merck/2022/PN Niaga Sby. Secondary legal materials used consist of legal scientific works, books and legal journals related to the settlement of trademark disputes. Tertiary legal materials used are the Big Indonesian Dictionary

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<sup>7</sup> Muhammad Ikbal Hajizi, 2019, Thesis: Juridical Analysis of the Settlement of Gudang Garam and Gudang Baru Brand Disputes (Case Study of Decision Number 104 PK/Pid. Sus/2015). Jakarta: Syard Hidayatullah State Islamic University, p. 8.

<sup>8</sup> Supreme Court Decision Number: 2/Pdt.Sus HKI/Merek/2022/PN.Niaga Sby, dated July 7, 2022

(KBBI), the internet, and legal encyclopedias. This research uses qualitative data analysis techniques by explaining the results of research in accordance with the research data and meanings obtained from literature, laws and regulations, files, books and other library materials related to the problems studied by the author.

## **RESULTS AND DISCUSSION**

### **Legal Effects of MS GLOW Trademark Dispute with PS GLOW Trademark**

As emphasized, registration of a mark can only be done at the request of a good faith owner, as in the case of misuse of another party's mark, hence strict rules and regulations are laid down in the current law to protect trademarks from piracy.

Registration of a trademark in good faith is required when a person wishes to apply for registration of a particular trademark, if the trademark is registered based on a trademark owned by another person or a similar trademark, then the trademark is allowed to be registered. The requirement for good faith also means that the mark can be used in business and/or services. Article 21(3) of Law No. 20 Year 2016 regulates the requirements for registration of a trademark in good faith and states that "An application (for registration of a trademark) shall be refused if filed by an applicant in bad faith".<sup>9</sup>

In the Supreme Court Decision No. 2/Pdt.Sus.HKI/Merck/2022/PN Niaga Sby it has been established that the privilege of registered trademarks at the Directorate General of IPR, even if there is similarity, the trademark of the Republic of Indonesia will be subject to legal protection. Consideration of Judges in the Supreme Court Decision No. 2/Pdt.Sus.HKI/Merek/2022/PN Niaga Sby is that the PS GLOW trademark has followed all procedures to obtain a registered trademark and obtained a substantive assessment of the trademark.

The case regarding the trademark was won by the PS GLOW trademark because PS GLOW has registered the trademark to the directorate general of haki and has had special (exclusive) rights to the trademark that has received legal protection as described in Article 83 paragraph (1) letter b of Law number 20 of 2016 concerning Trademarks and Geographical Indications, the plaintiff can demand a complete or partial cessation of the use of the trademark that has similarities with the registered trademark. In the case between MS GLOW and PS GLOW, it has been proven that both have similarities in essence to the MS GLOW mark and PS GLOW has exclusive rights to the PS GLOW mark. Therefore, based on Article 83 paragraph (1) letter b of Law number 20 of 2016 concerning Trademarks and Geographical Indications, the MS GLOW party must stop all

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<sup>9</sup> Retno Yuniarti, Juridical Analysis of Trademark Imitation Disputes (Study of Supreme Court Decision Number 502 K/Pdt.Sus-HKI/2013), *Scientific Journal*, Faculty of Law, University of Mataram, 2018, p. 7.

activities related to the MS GLOW brand, including production, marketing, and others. As well as in the Supreme Court Decision Number 2/Pdt.Sus-HKI/Merek/2022/PN Niaga Sby stipulates that the MS GLOW trademark is unlawfully using the trademark, in which the MS GLOW trademark has similarities in essence with the PS GLOW trademark.

In addition to PS GLOW as the exclusive rights holder of the trademark, the legal consequences arising are related to compensation that must be fulfilled by MS GLOW as the Defendant, as stipulated in Article 83 paragraph (1) letter a of Law Number 20 Year 2016 on Trademarks and Geographical Indications. The plaintiff can claim compensation to the defendant based on the article. A person has the right to get money as compensation.<sup>10</sup> So that in verdict No. 2/Pdt.Sus-HKI/Merek/2022/PN Niaga Sby MS GLOW was ordered to compensate Rp37,990,726.332 to PS GLOW.

MS GLOW filed an appeal to the Supreme Court. With the cassation decision number 161K/Pdt.Sus-HKI/2023 won by MS GLOW. Cassation verdict issued by the Supreme Court which argues that there are similarities, similarities both regarding the form, the way of placement, the way of writing or a combination of elements or similarities in the sound of speech contained in these trademarks, so that this will be deceptive, confusing and misleading. The registration of the mark on behalf of PS GLOW is also based on bad faith, because it has piggybacked, imitated and plagiarized the fame of the MS GLOW mark. Based on the above considerations, the Supreme Court is in line with the Medan Commercial Court Decision and canceled the Surabaya Commercial Court Decision.<sup>11</sup>

According to the verdict Number 161K/Pdt.Sus-HKI/2023, MS Glow has permanent legal force and won the dispute case that occurred at the discretion of the judge. As such, MS Glow remains entitled to use the MS Glow trademark for beautiful skincare + LOGO and the MS Glow brand for men. In contrast, the legal actions taken by PS Glow and PS Glow Men include paying the court fees at all levels of court, halting the production, sale, and recall of all PS Glow cosmetic products.

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<sup>10</sup> Zalfa Aliya Nadzifah, Maya Ruhtiani, Marlia Halny Afrilies, 2023, Analysis of Decision Number 02/Pdt.sus.HKI/Merek/2022/PN Niaga SBY on Trademark Dispute Between MS GLOW and PS GLOW Relating to Law Number 20 Year 2016 on Trademarks and Geographical Indications, *Lontar Merah*, Volume 6 Number 2, p. 733.

<sup>11</sup> Bagas Kristian Joenata, Dr. Hj. Rika Ratna Permata, Rai Mantili, 2024, Juridical Review of the Supreme Court Cassation Decision Number 161 K/PDT.SUS-HKI/2023 Regarding the Trademark Dispute between PS GLOW and MS GLOW, Attorney: *Journal of Legal and Political Science Studies*, Volume 2 Number 1, p. 247.



**Resolving Dispute between MS GLOW Trademark and PS GLOW Trademark based on Similarity in Principal**

Brands with similarities are basically brands that confuse consumers, because two brands look similar, and we can see if there are similarities. Brand appearance can be reviewed from the brand image, letters, numbers, colors, etc. Similar pronunciation may occur despite differences in spelling and appearance.

In some cases, pronunciation is a fundamental element. Consumers may abandon or lose interest in a brand because of its meaning. A mark can be considered similar to another mark, even though it is pronounced and pronounced differently, but can have the same meaning. If the mark is substantially or identically similar to another mark previously registered for similar goods and/or services, the application for registration of the mark will not be accepted by the Directorate General of Intellectual Property.

To resolve a case of similarity in essence must be based on true and strong evidence, not because the parties have a well known trademark considering that in this case the MS GLOW trademark is a well known trademark. Related to the similarity in essence, the trademark must be seen as a whole, if the assessment on the whole has been seen there is a similarity then there has been a trademark infringement.<sup>12</sup>

Similarity is not all elements of a mark are exactly the same, but having a similar or almost similar impression can be considered as essential similarity. Based on article 21 paragraph 1 of Law No. 20 Year 2016, equivalence is similarity. It refers to words that are similar. In the Big Indonesian Dictionary (KBBI), similar means almost the same or similar.<sup>13</sup>

Law No. 20 of 2016 on Trademarks and Geographical Indications applies the principle of first to register, which means the registrant receives rights to the mark early. However, this is not absolute as the registration of the first registrant can be canceled if it violates the law. An interested party or the owner of a registered mark can apply for cancellation of the registered mark to the Directorate General of Intellectual Property or a lawsuit to the Commercial Court, as regulated by Law No. 20 of 2016 on Trademarks. Article 66 of the Trademark and Geographical Indications Act provides for this, The owner of a registered mark has the right to file a civil suit in the Commercial Court in the case of a trademark dispute as a result of the protection of rights to the mark granted by the Trademark and Geographical Indications Act. Owners of registered marks also have the right to

<sup>12</sup> Sudargo Gautama, 1998, *Indonesian Trademark Law*, Bandung, Citra Aditya Bakti, p. 102.

<sup>13</sup> Selly Marcelina, Sujana Donandi, Dispute Settlement on The Ownership of Trademark With Similarity (Case Study Between Gudang Garam Vs Gudang Baru), President University, *Legal Prolematics*, VOL 3, NO.1, 2018, p. 88.

file a civil suit to seek damages if others use their marks without their permission or to stop all acts that use their marks.

Law Number 20 Year 2016 on Trademarks and Geographical Indications in Article 76 has been regulated regarding the cancellation of trademarks. (1) A lawsuit for the cancellation of a registered trademark may be filed by an interested party based on the reasons 13 Law Number 20 Year 2016 on Trademarks and Geographical Indications Article 83 Paragraph (1). 14 Law Number 20 Year 2016 on Trademarks and Geographical Indications Article 76 as referred to in Article 20 and/or Article 21.

There is also Law Number 20 Year 2016 on Trademarks and Geographical Indications in Article 77 that: (1) Trademark registration cancellation lawsuit can only be filed within a period of 5 (five) years from the date of Trademark registration. (2) The cancellation lawsuit can be filed without a time limit if there is an element of bad faith and/or the Trademark in question is contrary to the state ideology, laws and regulations, morality, religion, decency, and public order.

In the HIR the filing of a lawsuit is regulated in Article 118 paragraph (1) HIR filing a civil lawsuit Registration of the lawsuit can be done at the Registrar's office of the local District Court. That in the Trademark and Geographical Indications Act there are five kinds of lawsuits known as the trademark removal lawsuit, the trademark cancellation lawsuit, the lawsuit for compensation for trademark infringement against other parties who unlawfully use the trademark that has similarities in essence or in its entirety for goods or services owned by the registered trademark owner, the lawsuit to stop all acts related to the use of trademarks by other parties that have similarities in essence or in its entirety for similar goods or services by the registered trademark owner, and the lawsuit on the decision to reject the appeal by the Trademark Appeal Commission.<sup>14</sup>

In the Supreme Court decision No. 2/Pdt.Sus-HKI/Merek/2022/PN Niaga Sby, the trademark case between MS GLOW and PS GLOW was won by PS GLOW trademark because PS GLOW registration has met the applicable procedures. And in his decision, the judge stated that MS GLOW has no right and unlawfully uses the MS GLOW trademark which is basically similar to the PS GLOW trademark.

However, there are differences between the lawsuit filed by PS GLOW to Surabaya Commercial Court, Supreme Court Decision No. 2/Pdt.Sus-HKI/Merck/2022/PN Niaga Sby, and MS GLOW's lawsuit to Medan Commercial Court with Supreme Court Decision No. 2/Pdt.Sus.HKI/Merek/2022/PN Niaga Mdn. In the Medan District Court decision, it is stated that the PS GLOW and MS

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<sup>14</sup> M. Yusuf Habiby, Kurniawan, Lalu Muhammad Hayyanul Haq, 2023, Systematic Settlement of Trademark Disputes Containing Similarities in Principal in Creating Business Certainty Based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications, *Indonesia Berdaya*, Volume 4 Number 3, p. 1251.

GLOW trademarks are similar in principle and PS GLOW has bad faith. From the color combination with gray packaging color and the color of the text used is black, there in a picture of a woman with a picture next to the writing MS GLOW and PS GLOW although it looks different the author believes the picture has the same elements as the MS GLOW trademark. Slightly different, it can make consumers judge that the public image of the brand is as if the goods/services produced are the same as other brands.

Explained in Article 20 of Law No. 20 of 2016 on trademarks and geographical indications, that the elements of a trademark that cannot be registered if it is contrary to the ideology of the state, legislation, morality, religion, decency, public order, contains elements that mislead consumers, makes information that is not in accordance with the product, the absence of differentiation, and the similarity with the name or symbol of public property. And in Article 21 of Law No. 20 of 2016 concerning trademarks and geographical indications, explains the refusal of trademark registration if the trademark is substantially or wholly similar to a trademark that has been registered in advance for similar goods or services, there are similarities with well-known trademarks owned by other parties for similar and non-similar goods or services that meet the requirements, there are similarities in geographical indications with registered trademarks, and registration applicants who are not in good faith.

Based on the above Laws and Regulations, the author states that the MS GLOW and PS GLOW trademarks are similar in nature. PS GLOW creates some distinct elements as a strategy and hence does not have overall similarity with the MS GLOW trademark. The MS GLOW trademark is a well-known cosmetic trademark. Judging from the public awareness of this trademark and the numerous advertisements promoting the MS GLOW trademark. Therefore, it can be said that the PS GLOW trademark is a well-meaning MS GLOW trademark that wants to ride the wind and waves and be the first to become a well-known mark. Conclusion The author agrees with the Medan District Court Decision, Supreme Court Decision No. 2 /Pdt.Sus.HKI/Merek/2022/PN Niaga Mdn Winning MS GLOW MS GLOW Party and PS GLOW Dishonesty There is an element of essential similarity between PS GLOW trademarks.

In addition, the author agrees with the decision of the Surabaya District Court, as well as the Supreme Court decision No. 2/Pdt.Sus-HKI/Merek/2022/PN Niaga Sby in favor of PS GLOW over MS GLOW's fault. Actually there is no registered trademark for the category of goods/services Class 3 (Cosmetics), registration of MS GLOW trademark with registration number IDM0007031102 in the name of CV. KOSMETIK CANTIK brand is appropriate for category 32, namely tea powder beverage products are not suitable for use as a cosmetic brand, the results of the use of the MS GLOW logo are exactly the same as the logo applied for



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registration registered at the Directorate General of Intellectual Property Rights No. D002017050649, but the registration application was rejected.

Trademark registration in Indonesia follows the Constitutive Stele, which is guided by the first to file principle, i.e. trademark registration is only granted to those who apply for trademark registration first, and the state does not approve it. he. Registering a trademark similar to the first registered trademark with a third party. registered trademark of another similar product/service. The first registrant to acquire rights to a trademark will be deemed to be the rightful holder of the trademark, regardless of whether the party uses the registered trademark or not. This First to file principle is an implementation of Article 3 of Law No. 20 Year 2016 on Trademarks and Geographical Indications.

Therefore, PS GLOW has the privilege (exclusive) to use the trademark PS GLOW which has previously been registered at the Directorate General of Intellectual Property Rights, Ministry of Law and Human Rights of the Republic of Indonesia on Goods/Services Category 3 (Cosmetics), and since the goods / services are Category 3 services (Cosmetics) Registration of the MS GLOW trademark was rejected by the Directorate General of Intellectual Property, while the category of powdered tea drinks is registered in class 32, MS GLOW's claim was completely rejected.

At the cassation level the Court ruled that there were no sufficient grounds to grant the application made by PS Glow, so the lawsuit should be rejected. The Surabaya Commercial Court granted the lawsuit because it was an exception, not a rebuttal, and there was no evidence. In addition, it decided that granting MS GLOW's cassation petition and annulling the decision of the Commercial Court made at the Surabaya District Court No. 2/Pdt.Sus/HKI/Merek/2022/PN.Niaga.S on July 12, 2022. In addition, it ruled that PS Glow must pay court costs at all levels of court. The judge determined that the Cassation Respondent must pay Rp. 5,000,000 (five million rupiah) in the convention and counterclaim. With the Supreme Court decision No. 161 K/PDT.SUS-HKI/2023 MS Glow remains entitled to use the MS Glow trademark and LOGO Instead, the legal actions taken for PS Glow include paying court costs at all judicial levels, halting production, sales, and recalling all PS Glow cosmetic products.

## CLOSING

### Summary

The legal consequences of the MS GLOW and PS GLOW trademark disputes as stated in Law number 20 of 2016 concerning Trademarks and Geographical Indications, namely compensation or trademark cancellation. Thus, the previous decisions of both the Medan Commercial Court and the Surabaya Commercial Court no longer have permanent legal force after the decision at the cassation level. Conversely, the cancellation of the trademark will result in the loss of legal

protection of the trademark. MS Glow still has the right to use the MS Glow trademark. Meanwhile, PS Glow received administrative sanctions by paying court costs at all judicial levels, as well as PS GLOW experiencing brand cancellation, stopping production, sales, and withdrawing all cosmetic products owned by PS Glow.

The existence of Legal Protection of Trademarks or Trademark Rights is an exclusive way of resolving trademark disputes granted by the state to the owner of the trademark registered in the trademark register. Thus, the legal protection of the mark will provide legal security over the registered mark and business security. It is suitable to be used, extended, and sent as evidence of infringement of a registered mark.

### **Advice**

Preferably, as a business actor, before registering a trademark must first conduct in-depth research in advance related to existing trademarks with the aim that it does not conflict with the laws and regulations that have been determined. Make a trademark that will be registered to avoid similarities with other brands.

In the implementation of business activities, there are still many perpetrators of fraud in business operations. Therefore, the government must provide social and legal guidance to all business actors in order to run the business in accordance with the rules of branding that apply and must be obeyed. Protection of the trademark is a right that will be obtained if the trademark is registered to the Director General of IPR. In the stage of registration of trademarks Director General of IPR should be more careful and cautious so as to create legal certainty against the trademark and in order to minimize trademark disputes in the future.

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