

Brand Dilution: An Analysis of The IKEA Versus IKEMA Dispute

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ABSTRACT

This study is aimed to provide a different analysis related to dispute of trademark or brand of IKEA against Ikema. IKEA in the Judicial Review Verdict of Indonesia Supreme Court of (Peninjauan Kembali Mahkamah Agung), was asserted not having similarity with Ikema. On the other hand, the author views this case is potentially presumed as as a dilution case. Regarding this, the analysis employs theory that proposed by Shuy (2002) to uncover the identical similarity between the two trademarks. Graphemic and Phonetic analysis are used to establish the feature similarity, for analysis of public perception upon the both trademarks, psycholinguistic has been practiced. The result is the both trademarks are similar in terms of dilution.

Keywords: *dispute, dilution, linguistic analysis*

1. Introduction

Trademark is a distinguishing or distinctive identity of a product or services produced by a company (manufacturer). Butters states Trademarks are words, phrases, and images, possessions used in commerce as a differentiator of products and services offered to the

public, which is different from ownership of others (Gibbons & Teresa Turell, 2008). To market a product to the public, companies need a trademark or name, as a product identifying identity, to be easily recognized by consumers. In Indonesia, for example, several trademarks for sachet-packaged

teabag products are widely known by the public, for example Teh Sosro, Teh Prenjak, Teh Sumatera, Teh 2Tang, and others. The provision of this name or trademark is intended so that people can easily distinguish one tea product from another. Where, it is believed by the manufacturer of the product, that the tea product they produce has certain peculiarities, such as aroma, taste, color and or logo attached to the packaging of the product. Also for the owner of the brand, it will facilitate its promotion and marketing efforts to the wider community.

Some trademarks that have existed in advance, and have been known for its quality certainly need a long time in promoting their products to the public. This is why a trademark that has long existed, or was previously known, often disputes with a new trademark, that allegedly imitates, plagiarizes on the fame of its brand. As stated in this paper, the dispute over the

trademark IKEA whose owner is from Sweden, and Ikema the trademark comes from Indonesia. This case has received a verdict that is *Inkracht van Gewijs* (permanent legal force), through the decision of the Judicial Review (JR) of the Supreme Court of the Republic of Indonesia, on January 18, 2018. The content of this ruling won the JR application of the Ikema trademark, that the Ikema brand is not exactly the same or seeks to resemble the IKEA trademark that has been widely known by the public.

A trademark is an economic identity in the context of trade. The brand of the product usually sought to be widely known by the public in marketing objectives (Rai et al., 2020). Therefore, the knowledge of this trademark name is very significant to study, because it is related to the essence of the economy.

2. Research Methods

Trademarks

Legally, it is not easy to determine the distinction or peculiarity of a trademark, but one of the requirements that must be met in this case is that it cannot be purely descriptively meaningful or generic (Sanderson, 2007). There are four general categories, also referred to as Abercombe Classification, that must be fulfilled in a trademark, namely; 1) the principle of arbitrator or *fatastis*; 2) suggestive; 3) descriptive; and 4) generic. From a semiotic point of view, this classification ranks brands by degree, or how far the mark is motivated by its reference, i.e. the more motivated the marker, the less distinctive the source (Hu, 2014).

A trademark must be legally registered in the eyes of the law to protect the intellectual and commercial rights of the owner of

the mark. Therefore, each country regulates the registration of trademarks in a special law. In China, trademark law, regulating trademarks is any sign, including words, graphics, letters, numbers, three dimensions consisting of symbols, color combinations, sounds, or other fusions of combinations, capable of distinguishing the goods of a person, legal entity or organization from which it can be listed as a trademark (Sadi-Makangila & Sabira, 2021). Meanwhile, in the trademark law of southern Africa, a trademark may be defined as a mark used for the purpose of distinguishing goods or services in relation to the mark being used or filed from the same type of goods and services, in trade. A brand identifies a product that belongs to a company and ownership of that company (Belarbi, 2020).

The brand can be any graphicly represented sign,

including a name, word, letter, number, shape, configuration, pattern, etc. (Sanderson, 2007). Furthermore, McCarthy in Tiersma and Solan, says that in all jurisdictions, trademark law is based on the use of ownership of product names, services, logos, and slogans, using generic, descriptive, suggestive, fantastic and arbitrator categories (Tiersma & Solan, 2012).

The Role of Linguistics in Trademarks

Trademark disputes usually occur between the owner of a well-known brand that has already existed (senior user's mark), versus junior user's mark. Usually the senior brand suspects that the junior brand is imitating or trying to be similar to the brand, so that consumers will feel confused, or suspect that the junior brand is hitchhiking to the senior brand's fame. According to the linguist's perspective on similarities or looks similar among senior or junior brands, it can be seen from

the linguistic components, namely syntax, morphology, and graphemics, namely the study of letters and symbols. As for the sounds analysis, it is a matter of phonetics and phonology (the study of sounds and their structure). While the issue of 'means the same', or whether it is interpreted the same or not, is a semantic and pragmatic study (Shuy, 2002).

Linguists have acted as consultants in trademark proceedings on three issues namely; confusion of likeness (likelihood of confusion), brand strength (strength of the mark), and brand ownership (propriety of the mark). Then Butters emphasized that so far linguists have never acted as an expert witness directly on the fourth area of interest, namely brand dilution (Butters, 2008). Dilution is a decrease in the quality of the fame of a brand to identify and

distinguish its goods and services, regardless of whether or not there is competition between the brand owner and other parties, confusing similarities, whether in the form of errors or lies. For this part, a linguist can professionally measure the relative importance of a word and its meaning in various social domains, of course, the lexicographer must measure the relative "fame" of the words in determining which words are vague, and or in particular can safely without having to open the dictionary on a computer.

Trademarks in Indonesia

In Indonesia, trademarks are regulated in regulation number 20 of 2016, article 1 paragraphs 1, 2, and 3. In paragraph 1, what is meant by a Brand, is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color arrangements, in the form of 2

(two) dimensions and / or 3 (three) dimensions, sounds, holograms, or a combination of 2 (two) or more of these elements to distinguish goods and or services produced by people or legal entities in the activities of trading goods and / or services. In paragraph 2, it is explained that a trademark is a mark used in the trade of goods either by a person, several persons, or legal entities. And in paragraph 3 contains the definition of a service mark, which is a brand used in a service trade by a person, several people, or by a legal entity. Trademark and service disputes are resolved in the Commercial Court or through arbitration efforts. In the author's note, in Indonesia there are several cases of trademark and service disputes, such as the Gudang Garam cigarette brand versus Gudang Baru, Ayam Geprek Bensu, Goto versus Gojek, the Herbal Tea brand Wong Lao Ji,

Wafer brand Superman, The Trump Case and IKEA.

Brand Dilution: The case of IKEA versus Ikema

The IKEA versus Ikema case is the case of a brand from Sweden, which is claimed to be a long-standing brand, not only in Sweden and Europe, but also around the world. An Indonesian company in Indonesia, PT Angsa Daya, the owner of the Ikema brand, has been sued by Inter IKEA System B.V., a company based in Amsterdam, the Netherlands. In the first instance ruling, the panel of judges concluded that there were similarities between IKEA and Ikema, so that the Ikema brand was cancelled. This ruling, further corroborated at the level of cassation. However, at the level of judicial review i.e. case No. 165 PK/Pdt.Sus/2012, the tribunal decided differently, and won Ikema. Some of the reasons are; a)

the IKEA brand has no similarities in essence with the IKEMA as an explanation of the origin and pronunciation of the IKEMA which comes from the Chinese language; b) the IKEA and Ikema brands are not similar goods, IKEMA produces ceramics and tiles, while IKEA is a household appliance and tools; and c) the application of Article 6 paragraph 2 regarding "well-known marks" related to Government Regulations that require brand requirements or dilution, has not been regulated (Permata et al., 2019).

Brand dilution occurs when a person or company uses an identical or substantial brand that is the same as the brand that first exists, triggering a mental association from the customer about the two brands, thus eroding the original mark. Dilution can take several forms, including dilution of defocusing, blasphemy, and brand name-

breaking, for example Kodak Pianos and Dupont shoes (McCabe, 2000). In its development, a brand is said to be delegated if someone wears a famous brand on a product in a completely different market, just like the Kodak brand attached to a piano (Hunter et al., 2016). As it is known that Violation of a trademark can lead the first owner to a loss of revenue, reduced profits, and additional costs in an effort to maintain his brand (Setchi & Anuar, 2016).

This paper reveals a linguistic analysis, namely brand delusions, that occurred in the case of IKEA versus Ikema. To test the similarities between the two brands, the author uses Shuy's theory (2002), namely; 1) to look similar or not, the components used are syntax, morphology, and graphemic; 2) to prove whether it sounds similar or not, phonetic and phonological linguistic components

are used, then 3) to find out if they have the same meaning, then semantic and pragmatic components are used.

Similarity of the brand, in the form of brand and slogan can change the arrangement of sentence elements, phrase repetitions, lexical units, words and sounds (Musté et al., 2015) However, based on the data to be analyzed, the psycholinguistic component is also applied in this study. The data analysis framework in this paper is as follows;

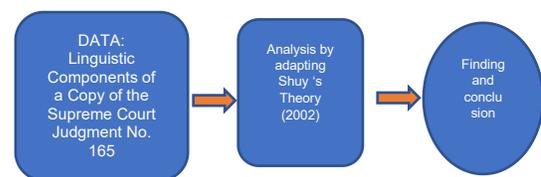


Figure 1. Conceptual framework and methods

3. Discussion and Result

The findings are the linguistic components of the review ruling copy related to the IKEA versus Ikema case. Here is a presentation of

the language component data derived from a copy of the JR ruling;

Table 1 IKEA Brand Textual Data

Linguistic Component	Sub-Linguistic Studies
1. The arrangement of letters that make up ikea and ikema is different. i, k, e, and a versus i, k, e, m, and a.	Graphology
2. The sounds of IKEA /ike (y) a/and Ikema /i'kema/ are completely different.	Phonology
3. IKEA is an acronym for the initials of the name of the person who medicated IKEA, namely Ingvard (first name), Kampard (last name), Elymtard (residential name), and Agunnaryd (Church group) While Ikema is a combination of syllables /ike/ meaning sekelebat or fast, and /ma/ meaning horse, Chinese Han script	Morphology and Lexicography
4. The IKEA brand is not known in Indonesia, because it is not registered directly in Indonesia, so buyers will not feel confused when they are going to buy Ikema because they do not have any link with IKEA	---

Trademarks are closely related to the creation of the name of the trademark product. The naming must be unique and attractive so that it is easy to be recognized by consumers. To create a unique and attractive product name, sometimes it can be

obtained taking into account linguistic aspects, which is certainly not an easy job (Dwi Hastuti et al., 2014) .

In this section, the Author will outline data analysis based on the components of textual and contextual linguistics. It starts with graphemics, then proceeds with phonetics, morphology, lexicology, and semantics.

a. Graphemic

The graphemic review is focused on the use of letters and symbols. As is known, almost the entire trademark is labeling or naming, which is definitely a word or phrase. Then the graphemic analysis will be explained as follows;

Table 2. Graphemic Analysis

Graphemic Data	Analysis	Interpretation
IKEA versus Ikema (Page 36)	IKEA and Ikema have similarities in four letter elements, namely i, k, e, and a,	In terms of graphemic appearance these two words look similar. If these two words are printed with the same size and type of font on a billboard,

it is likely to cause the reader's perception, that this brand is the same or comes from the same company. For example written IKEA vs IKEMA

this ikea is pronounced /ike'a/ with a gliding sound of /ai'ki:a/ **just like the word idea in English.** /y/ between the sounds of /e/ and /a/. In other words, IKEA is pronounced the same as in Indonesian.

IKEMA
Phonetically reads or is pronounced /ikema/

b. Phonetics and pronunciation

Phonetics is the study of sounds and the production of sounds (phonemes), these are closely related to how certain sounds or combinations of sounds are pronounced. Then the phonetic analysis in this case is as below;

Table 3. Phonetic Analysis

Phonetic Data	Analysis	Interpretation
IKEA (p 42) Phonetically /ike'a/, in the pronunciation of Indonesian, there is a launcher sound of /y/ between the sounds /e/ and /a/. IKEA is a brand from Sweden, so in novum, it says that on the IKEA website,	For an explanation of the pronunciation of /ike'a/ which is equated with the word idea, the author has a different view. Because IKEA, in its native Sweden and some countries in Europe such as the United Kingdom, will be pronounced	With this explanation, it is recommended that linguists be more careful in conveying their analysis, and there is no need to include this explanation in the examination.

The likelihood confusion of the two brands can be identified based on the sight category and the conceptual category (Sadi Makangila & Sabira, 2020). It can then be said that graphemic and phonetic analyses are in the area of the 'apparition category'

C. Psycholinguistics

Perception within this case is the implementation of psycholinguistics. Psycholinguistics explain what they evoke, how easily the called and most beautiful perception of the sign that a brand gives, and how a sign is viewed as similar to another, the association of similarities and the interrelationship of the two, that is, a topic can arise relevantly in the

context of the additional functions embedded in a brand, as well as its relationship with the slogan (Durant & Davis, 2018).

Table 4. Psycholinguistics Analysis

Semantics Data	Analysis	Interpretation
IKEA is not marketed directly, and is not registered in Indonesia, so it is concluded that IKEA is not a well-known brand in Indonesia	Psycholinguistics and How the IKEA brand cannot inspire consumer perceptions, when presented by the Ikema brand.	The reasons given by Ikema's side, should be traceable first from the psycholinguistic aspect

The analysis in this article is seen as an attempt by the Ikema brand to tarnish the existing IKEA brand. As it is understood that this will certainly have the potential to damage the IKEA brand. Brand dilution, one of the definitions is, trademark desecration. This is in the form of a second-person act that damages or tarnishes the reputation of substantial similarity to a senior brand, by associating it with something misguided or deviant even though consumers know that both brands come from different sources (Bedi et al., 2020).

4. Conclusion

Graphemic, phonetic, morphological and psycholinguistics (implicit) analyses, according to researchers, are not enough to reveal the similarities of the IKEA and Ikema brands. The author proposes a graphemic, phonetic, and psycholinguistic analysis that differs from what is outlined in the copy of the review decision. Then this case is a case of brand dilution, where this has not been regulated in brand law in Indonesia, so researchers see the need to include brand dilution in it.

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