

CONTACT DETAIL



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ARISE+ IPR

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IP ENFORCEMENT

What should I do when I realise that my IP rights have been violated?

When it is confirmed that your IP rights have been violated, you may consider the option of sending a cease-and-desist (C&D) letter and/or starting an infringement lawsuit.

Most IP owners send a C&D letter before proceeding with an infringement lawsuit to minimize the cost. If you do not obtain compliance from the infringer, you may then proceed with the lawsuit.

What enforcement agencies are responsible to protect IP rights in Indonesia?

An infringement complaint can be submitted through:

- the Indonesian National Police or a civil servant investigator of the Directorate General of Intellectual Property;
- the commercial court.

An IP owner may bring criminal charges against an infringer either by submitting a complaint directly to the commercial court, or by lodging a complaint with the police authorities or the civil servant investigator.

All infringement lawsuits must be submitted to the commercial court.

What enforcement measures can be taken to prevent or stop IP infringement?

An IP owner can attempt to prevent IP infringement by periodically educating consumers about the genuineness of their products and conducting product monitoring either by online checks or checking at physical stores.

To stop IP infringement, the IP owner can actively send cease-and-desist letters to infringers or take legal action through the court against infringers. An IP owner may also consider publicising their past favourable IP cases, so the public is aware of their concern about IP infringement.



What legal remedies are available to IPR holders whose rights have been infringed?

IP owners can:

- file a claim for compensation against the infringer;
- file a claim for a preliminary injunction to the commercial court to prevent the entry of any goods suspected to be the result of an infringement; to prevent the elimination of evidence by the infringer, and to cease the infringement to prevent further loss and damage.

What procedures should be followed to request the handling of IP infringement?

If the IP owner does not choose an amicable settlement through sending a cease-and-desist letter, the IP owner may proceed with an infringement lawsuit at the commercial court.

The parties in dispute may settle their disputes by means of arbitration or alternative dispute resolution.

What evidence is needed to demonstrate IP infringement?

In general, the basic evidence that will be required includes:

- Samples of the infringing product;
- Proof of valid IP registration;
- Samples of the genuine product;
- A power of attorney if the complaint is filed through a representative.

What alternative dispute resolution options are available, besides the court?

In addition to the settlement of the lawsuit through the court, the parties can resolve disputes through arbitration or alternative dispute resolution. The Indonesian IP Law does not specifically stipulate the procedure or timeline for arbitration or alternative dispute resolution. Arbitration would follow procedures provided in the Arbitration and Alternative Dispute Resolution Law.

There are several arbitration boards in Indonesia, including the Indonesian National Arbitration Agency (BANI) and the Intellectual Property Rights Mediation and Arbitration Board (BAMHKI).



TRADE MARKS

What is a trade mark?

Any sign that can be represented graphically in pictures, logos, names, words, letters, numerals, or a series of colours, in two or three dimensions; sounds; holograms; or a combination of two or more of those elements to distinguish the goods or services produced by a person or legal entity trading in goods or services.



How can you protect your trade mark in Indonesia, and what rights are conferred on the owner of a registered trade mark?

The protection of a mark in Indonesia can only be obtained through a registration. The owner of the registered mark will have the exclusive rights to use the mark or authorize others to use, the mark.

It is possible for a trade mark owner to use a mark in Indonesia without registration. However, without registration, the trade mark owner would not be able to take any legal action against other parties using a similar mark.

A trade mark cannot be protected if:

- It does not have distinguishing features;
- It is a general name or public symbol;
- It violates existing laws and regulations, morals, religion, decency, or public order;
- It is descriptive of or related to the goods or services being registered;
- It contains elements that can mislead the public as to the origin, quality, or purpose of use of the goods or services being registered, or it is a protected plant variety of similar goods or services.

What acts are considered trade mark infringements?

A trade mark infringement is considered to be the unauthorised use of a mark that is similar or identical to a registered mark for similar goods/services. Therefore, any use of a similar mark for similar goods without the registered owner's consent will be considered a trade mark infringement.

What constitutes "use" of a trade mark?

Indonesian trade mark law does not provide a specific definition of 'trade mark use'. However, based on further provisions relating to criminal sanctions, it appears that "use" may refer to the **production or trading** of goods or services bearing the mark.

What types of contract exist for the use of trade marks?

Trade marks can be used under a licence agreement, which is a written contract between a licensor and a licensee granting permission to use a registered mark.

The use of a registered mark by a licensee in Indonesia is deemed to be the same as the use of the mark by the trade mark owner, provided the licence agreement is recorded at the Trade Mark Office. If the licence agreement is not recorded, it does not have any legal implications on any third party.

INDUSTRIAL DESIGNS

What is an industrial design?

An industrial design is defined as a creation of the shape, configuration, or the composition of lines or colours, or lines and colours, or the combination of those in a two- or three-dimensional form which gives aesthetic impression and can be realised in a two- or three-dimensional pattern and used to produce a product, good, industrial commodity or handicraft.

How can you protect your industrial design in Indonesia?

To protect your industrial design in Indonesia, you need to file an application for registration with the Directorate General of Intellectual Property. When you hold an industrial design registration certificate, you will have the exclusive right to exploit your industrial design and to prohibit others who, without your consent, make, use, sell, import, export and/or distribute the products that have been registered as an industrial design.



Which objects can and cannot be registered as industrial designs?

Objects or creations to be registered as industrial designs must be:

- Visible in a two- or three-dimensional form;
- A combination of technical and aesthetic aspects as a unit that forms a product;
- Applied to a product; and
- New (not the same as any previous disclosures).

Objects which cannot be registered as industrial designs are as follows:

- Natural products;
- Ideas, methods, processes;
- Purely functional objects; (patent);
- Purely aesthetic objects (copyright);
- Smells and fragrances;
- Music and sound;
- Creations that are contrary to the prevailing laws and regulation, public order, religion, or morality.

What acts are considered industrial design infringements?

An industrial design infringement occurs when a person or business entity makes, uses, sells, imports, exports or distributes goods that are granted industrial design rights without the approval of the holder of those industrial design rights.

GEOGRAPHICAL INDICATIONS

What is a geographical indication?

A geographical indication (GI) is any indication which identifies goods or products as originating from a particular region of which its geographical environment factors, including nature, labour or a combination of both factors are attributable to a given reputation, quality, and characteristics of the produced goods or products.



What are the differences between geographical indications and trade marks?

A trade mark distinguishes the goods or services of one entity from those of another, without referring to geographical factors. A trade mark is owned by a person or legal entity with a definite but renewable protection period and can be traded or licensed.

A GI is a sign distinguishing the area of origin of goods or products, and is owned communally. A GI is protected as long as the reputation, quality, and characteristic that are the grounds of the protection are maintained.



When does a geographical indication become a generic name?

A GI becomes a generic name when the goods or products become public property because they are often used in everyday language and are therefore not protected, e.g. **jeruk Bali** and **pisang Ambon** in which, the regional names 'Bali' and 'Ambon' no longer indicate the origin of the product.

What acts are considered geographical indication infringements?

GI infringements include:

- The direct or indirect commercial use of a GI that is not compliant with the GI Descriptive Document;
- The direct or indirect commercial use of a GI that is protected or unprotected for the purpose of indicating a quality equal to the GI-protected goods and generating profit from the usage and reputation of the GI;
- The use of a GI that potentially misleads the public concerning the geographical origin of the product;
- The use of a GI by someone other than a registered user;
- Imitation or other potentially misleading abuse related to the origin of the object or quality of the object based on a statement on the wrapping or container, information in an advertisement, information in a document related to the object, or misleading information on the packaging in a container;
- Other actions that could mislead the general public as to the product's actual origins.