

Consistency Of Judges' Decisions Regarding Trademark Disparity Disputes In Adhering To The Principle Of First To File In Indonesia

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Abstract

This study aims to analyze the consistency of the judge's decision in the trademark disparity dispute by referring to the first to file principle. Judges' decisions often leave the applicable "*First to File*" provisions and take into account the well-known factors and subjectivity of the Judges, so that in some decisions they often clash. This research method is designed with an analytical descriptive approach with a doctrinal approach. The theory used is trademark law, where in decision-making there must be a basis for constitutive principles, based on justice, brand benefits, and legal certainty. The results of this study show that Judges must have a similar perspective regarding equality in the main part of the Trademark Law. Then, the Judge must uphold legal certainty and brand protection in decision-making. This is related to the ability to check the application of the law. In addition, as a support for the Judge, it is necessary to provide the availability of data and facts so that the verdict does not harm the first registrant. The judge can also give a different decision in the cancellation of the trademark, if there is bad faith, former employees, and related to a well-known brand.

Keywords : Trademark Disputes; First to File Principle; Judges' Decisions; Legal Certainty; Trademark Protection.

A. Introduction

Trademark disputes are legal conflicts involving two or more business entities, usually the dispute contains the fight for exclusive rights to a name, logo, and trade symbol. In the midst of economic and digital developments, instruments (names, logos, and trade symbols) have become the identity of business entities. This encourages the importance of having legal recognition of this identity. By registering a trademark directly, business entities will get brand protection in Indonesia. Trademark rights are not obtained if you do not register, so trademark registration is an absolute prerequisite.¹

Article 28 H of the 1945 Constitution clearly regulates the conception of the right to trademarks. Article 28 H paragraph 4 explains as follows:

¹ Gresia Septina Sitohang et al., "Analysis of Trademark Disputes and Property Rights Protection According to Article 28 H Paragraph 4 of the 1945 Constitution," *Riggs: Journal Of Artificial Intelligence And Digital Business* 4, no. 2 (2025): 2164–69.

"Everyone has the right to have personal property rights and these property rights must not be arbitrarily taken away by anyone."

The above article is a guideline for the power of law to become a "legal protection" that is able to provide a solution to cases or disputes faced, especially in trademark rights issues. Therefore, it is important for every business entity to have recognition or Intellectual Property Rights (IPR). The goal is not to interfere with the existence of business actors, considering that legal disputes are unpredictable, so one way to prevent is to register trademarks in IPR. On the other hand, brands have an important function in the business world, especially to provide smoothness and increase trade in goods and services.²

Trademarks can also be identified as differentiators between goods and services and competitors, so the thing to watch out for is the situation of legal reports due to alleged similarities. In addition, a brand is not just a name, but is considered an intangible asset and reputation that becomes a dignity in a business entity. Therefore, the protection of the brand is a priority for business entities, considering that so far the identity has been an identifier and differentiator, so that this is the reason for often legal disputes.³ In addition, fines and costs that must be incurred can interfere with the operations of business entities. Infringement due to product similarity is regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications Article 100 paragraph (1) with the following contents:

"Every Person who without the right to use the same Trademark in its entirety as the registered Trademark belonging to another party for similar goods and/or services produced and/or traded, shall be sentenced to imprisonment for a maximum of 5 (five) years and/or a maximum fine of Rp2.000.000,000.00 (two billion rupiah)".

Based on the above article, the state guarantees the protection of trademark rights as long as the business entity follows the procedure by registering IPR. Therefore, the force of law will be on the side of those who register first. The use of *First to File* in Indonesia confirms the importance of legal certainty, especially for legal protection born due to the registration process, not the first use. The goal is clearly to ensure that the law goes to the party who holds the exclusive rights. With a validity period of 10 years from the receipt of registration with the option to be extended as long as the trademark is actively used. In addition, brand protection through *first to file* is a preventive function in preventing violations of the law,

² Indah Sari, "The Urgency and Function of Brands in the Business World for the Sake of Ensuring the Protection of Intellectual Property Rights (IPR)," *M-Progress Scientific Journal* 15 (2025): 23-36.

³ Zaenal Arifin And Muhammad Iqbal, "Legal Protection Of Registered Trademarks," *Jurnal Ius Constituendum* 5, No. 1 (2020): 47-65., <https://doi.org/10.26623/jic.V5i1.2117>.

such as damaging the reputation of the business and protecting consumers from misleading trade practices.⁴

Brand protection is a priority for business actors, so that there are no threats and actions with the motive of arbitrarily seizing personal property rights. These personal rights can be proven through the ownership of deeds and prioritizing the *First to File* system, meaning that trademark rights are prioritized to the party who first goes through the Directorate General of Intellectual Property (DJKI). The *First to File* system is considered more profitable because it meets the principles of rational choice, efficiency, value, and utility compared to other principles, such as *First to Use*.⁵

In the Indonesian legal corridor, the system adopted is *First to File*, meaning that rights are prioritized over those who come first or are born from registration. Although registration can be rejected later if it is proven that there is *bad faith* by following or riding a famous brand, then with the applicable process and conditions the trademark can be canceled. The application of this principle has three important aspects, first, the right case is proven by the date of submission, the system can provide a grace period related to technology, and the legal process must run practically and strictly.⁶

By prioritizing the use of *First to File*, where exclusive rights are given to the party who first submits a registration application. In fact, it has been regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications. The legal product provides certainty that the legal system in Indonesia does not recognize *First to Use*, meaning that as long as the product has not been registered, this needs to be done in total education because the *principle of First to File* has not been fully understood, so business actors tend to still use factual without registration action.⁷ This status is not legally strong, so it has not been recognized and has the potential to be harmed if there is a dispute. Article 1 paragraph 5 of Law 20/2016 emphasizes that:

"Trademark rights are exclusive rights granted by the state to registered trademark owners for a certain period of time by using the trademark themselves or giving permission to another party to use it".

The phrase "registered" in the above article is explained derivatively through Article 3, where it can be categorized as registered if it has carried out the application process through the process of formality, announcement, and substantive examination and obtained

⁴ Denya Sasmita et al., "Analysis of the Legal Protection Function and the Importance of Trademarks in Law," *Al-Zayn : Journal of Social Sciences & Law* 4, No. 3 (2026): 1526-1534, <https://doi.org/10.61104/Alz.V4i3.5479>.

⁵ Prisca Oktaviani Samosir And Aida Mustafa, "Legal Protection Implications On Trademark In Indonesia By Comparing The First To Use And First To File Principles," In *Proceedings Of The International Conference On Law Reform (Inclar 2019)* (Published By Atlantis Press., 2020), <https://doi.org/10.2991/Aebmr.K.200226.029>.

⁶ G. E Frost, "Patent Law Debate: First-To-Invent Vs. First-To-File," *Duke Law Journal*, 1987, 923-942.

⁷ M. Farhan, M. A. Zikri, and M. I. (2026). Ilham, "Analysis of the Application of the First to File Principle and Barriers to Trademark Registration and Potential Logo Copyright Infringement in Culinary MSMEs in Banjar Regency.," *Indonesian Journal Of Islamic Jurisprudence, Economic And Legal Theory* Vol. 4, No. 1 (2025): 595-608, <https://doi.org/10.62976/Ijijel.V4i1.1652>.

substantive and received the Minister's approval for the issuance of a certificate.⁸ However, in the midst of the certainty of the system adopted, there are often legal loopholes and *loopholes*, meaning weaknesses, ambiguities, and technical defects in regulations that have the potential to be manipulated without being violated. This situation occurs due to weaknesses in the system, one of which is the integration of data in the judiciary. Therefore, it is not surprising that legal products can be found to have the potential to be part of a failure of coordination in several parameters, so that this situation becomes unbalanced in the law.⁹ In addition, trademark infringement in Indonesia often occurs due to the public's lack of concern for trademark law, so disputes have the potential to occur with various motives, such as imitation and plagiarism of registered trademarks without the permission of the owner of the trademark and the imitated brand.¹⁰

Mistakes and mistakes in decision-making are inevitable, considering that it is within the full power of the judge. It is not surprising that in some records, judges gave different decisions in cases that looked similar. The cause is the doctrine of *good faith*, which can be the entrance to brand disparities, especially if it is proven that registration is carried out in bad good faith. Or when a brand wants to hitchhike the reputation of another brand or brand. Thus, errors in the form of inconsistencies have the potential to occur because they are subjective and depend on the assessment of facts in the field. Therefore, it is important to establish a standard and appropriate assessment that is transparent, consistent, and based on legal doctrine to ensure that trademark protection runs in a fair and balanced manner.¹¹

Apart from the above doctrine, equality is basically one of the causes. In this case, a similar budget to other brands often results in different interpretations. For example, the similarity of shapes, paintings, and colors. Then, phonetics with the similarity of speech sounds, and conceptual that indirectly have a meaning or message conveyed. In addition, judges often do not master the problem due to the complexity and handling of various cases, so that time constraints lead to errors in making decisions.

Furthermore, well-known brands, brand protection in going beyond similar types or services. In this case, judges often decide whether a brand is in the "famous" category or not, so the standard can change between decisions. In several legal cases in Indonesia, there are several cases that have attracted public attention due to the negligence of judges. A situation that is inversely proportional to the principle of *first to file*.

⁸ Justislari P Kusumah, "First To File Or First To Use, Which Indonesia Is Which?," *Hukumonline.Com*, 2022, <https://www.hukumonline.com/klinik/a/first-to-file-i-atau-first-to-use-i--indonesia-anut-yang-mana-lt62e7a7ed3521a/>.

⁹ Kim-Sau Chung And Lance Fortnow, "Loopholes," *The Economic Journal*, 2014, 1–24, <https://doi.org/10.1111/Ecoj.12203>.

¹⁰ Nurul Hidayati, "The Disparity of the Court's Decision on the Trademark Cancellation Dispute between Ms Glow vs Ps Glow and the Implications for the Existence of the Ms Glow & Ps Glow Brand" (Walisongo State Islamic University Semarang, 2023).

¹¹ Faiza Attallah Herlian et al., "Interpretation of the Subjective Intention of Trademark Registrants: The Role of Judges in Proving Bad Faith According to Trademark Law," *Al-Zayn : Journal of Social Sciences & Law* Vol. 4, No. 1 (2026): 415–422, <https://doi.org/10.61104/Alz.V4i1.3008>.

This research is interesting because problems related to the consistency of judges' decisions in certain moments are often inappropriate and detrimental. Not only that, the judge's decision is often taken based on a well-known brand, not the party who is the first to be "registered". This is proven in several cases, such as the conflict between PS Glow and MS Glow which became the national spotlight. The situation became complicated when two courts won both, prompting the Supreme Court to issue an appeal. This confirms that the Judge lost his consistency in issuing decisions, where the Judge should have paid attention to the *first-to-file element*. Therefore, the Judge does not carry out the *principle of first to file* in accordance with the applicable law. In fact, the case prompted the rebranding and revocation of the PS Glow brand, including the reasons and analysis surrounding the differences in court rulings that occurred. Remembering that the trademark cancellation was accepted after the Supreme Court issued an appeal.¹²

In addition to the MS Glow and PS Glow cases, the Eiger case is interchangeable, Ronny Lukito and Budiman Tjoh. The case began with the decision of the Central Jakarta Niaga District Court No. 41/Pdt.Sus-Merek/2019/PN. Commerce. Jkt. Pst Jo. MA No. 375 K/Pdt.Sus-HKI/2020 Jo. PK 20 PK/Pdt.Sus-HKI/2021. The case indicates the failure of the Judge to apply *the principle of first to file*. The judge canceled the registration of the Eiger trademark registered by another party, despite its status as the first registrant.

This research is similar to the research written by Rif'at Mumtaz Alrusydi, Kasmawati, Siti Nurhasanah, M Wendy Trijaya, and Dianne Eka with the title "Problems of Foreign Famous Brand Protection in Trademark Disputes in Indonesia". The results of the study show that trademark protection regulated in Law No. 20 of 2016, in recognition is included in the form of exceptions to the principle of first to file and the principle of territoriality. However, in practice there are still problems, especially related to the determination of well-known brands, complex burden of proof, and inconsistent court rulings.¹³

Another similar research is Ardian Selni, Muryanto Lanontji, and Rima Anggriyani with the title "First to File Principle and Trademark Rights Disputes in the Study of Legislation in Indonesia". The results of the study stated that the regulation of trademark rights registration requires synchronization between legal certainty and the importance of product protection. The goal is to prevent abuse of the registration system by parties who do not have good faith.¹⁴

The difference with the author's research is the focus of the research, first the author analyzes the consistency of the Judge in analyzing trademark disparity disputes which often come out of the principles adopted by law in Indonesia. So in this case, the author analyzes the extent to which the Judge's decision that deviates from the principle affects the legal certainty and protection of the trademark. The theory used by the author in this case is the

¹² Naufal Ilham Ramadhan et al., "Juridical Analysis of the Cancellation of the Ps Glow Brand Based on Law No. 20 of 2016 concerning Trademarks and Geographical Indications," *Maximal Journal : Scientific Journal in the Fields of Social, Economic, Cultural and Education* 2, no. 2 (2024): 219–28.

¹³ Mumtaz Rif'at Alrusydi et al., "The Problem of Foreign Famous Brand Protection in Trademark Disputes in Indonesia," *Al Zayn: Journal of Social Sciences and Law* 4, no. 2 (2026): 4665–73.

¹⁴ Selni Ardian, Muryanto Lanontji, And Rima Anggriyani, "First To File Principle And Trademark Rights Disputes In Indonesian Legislation Review," *Staatsrecht Journal of Islamic State Law and Politics* 5, No. 1 (2025).

theory of trademark law written by Hani Subagio, Muhamad Ridwan, and Vinsenisu Yonakolas Fiodian, where according to him there are three institutions in resolving disputes, namely the Alternative Dispute Resolution Institution, the Arbitration Institute, and the Court.¹⁵

In referring to the consistency of judges as well as the application of *First to File*, the first is balance or justice "*The Principle of Natural Justice*". This is important to discuss considering that capabilities and feasibility should be rewarded, such as brand safety. The law must be in the interest of the creator, have a basis, and be inherent¹⁶. Second, economic principles, intellectual property rights must provide benefits and contributions. The third principle discusses culture, namely that the product of creativity has a significant impact, so it is considered part of the growth of civilization and human dignity. So it is important to have intellectual property to provide enthusiasm and interest in innovation. Finally, social principles, where the law does not regulate the life of individuals, but is concerned with the general public.

B. Research Method

The research used by the author is descriptive analytical with a doctrinal approach. In this study, it emphasizes that law is placed as a system of norms, where law is an orderly order of rules that are coercive, but binding and hierarchical. The goal is to provide legal certainty and not to provide noise. This research emphasizes the object of legal study or cases that are conceptualized in accordance with applicable norms and rules. This research is part of the research where the author only utilizes secondary data and literature materials. Therefore, the heavy point of the use of library materials is a source of research which is a criterion with the form of legislation in theory in the literature materials.

This type of research is normative research by utilizing secondary literature sources. This data, such as court decisions, laws, books, journals, and other publications. Meanwhile, the approach used is a case study, which is used as material for tracing laws and regulations related to legal issues. In normative law research, the source of data is secondary data. Therefore, the researchers obtained from various literature and laws and regulations related to research problems. The data collection tool is carried out by literature study, related to research by looking at studying sources and reading materials, such as journals, books, documents, even scientific, and laws and regulations. Meanwhile, the data analysis method used is qualitative, this study discusses the overall data which is then processed and then analyzed by compiling the data systematically. Primary and secondary legal materials are described as a whole and sentences are formed in an orderly, concise, logical, and effective manner, so that during the process of data interpretation and understanding in accordance with legal rules and norms.

C. Results and Discussion

¹⁵ Hani Subagio, Muhamad Ridwan, And Vinsensius Yonakolas Fiodian, *Fair Brand Protection* (Brin Publishers, 2024).

¹⁶ Subagio, Ridwan, And Fiodian.

1. The Importance of Understanding the Equality Criteria in Jurisprudence

Understand the similarities of legal categories as well as criteria in understanding each discussion in legal products. This is related to interpretations that should not come out against the principles that have been set. Accuracy and compliance with the provisions are part of the inherent principles of the Judge. In this case, the judge is not allowed to make mistakes, let alone related to losses.

The discussion related to the main source of judges in resolving trademark disputes is contained in the discussion of Law 20/2016 on Trademarks and Geographical Indications, more precisely related to Article 21. So far, the consistency of the judge can be a measure of the extent to which the judge uses the same parameters in assessing disparity or difference in brand. Article 21 of Law 20/2016 states as follows:

- 1) The application is rejected if the Trademark has similarities in substance or in whole to:
 - a) Registered trademarks belonging to other parties or applied for in advance by other parties for similar goods and/or services;
 - b) A well-known brand belonging to another party for similar goods and/or services;
 - c) A well-known trademark belonging to another party for goods and/or services of a different kind that meets certain requirements; or
 - d) Geographical Indications are listed.

The judge should be fixated on the discussion of Article 21 paragraph (1), because there is a detailed explanation of the application that can be rejected even if the brand is famous, but there is already a previous product. This cannot be allowed, especially in the face of ongoing disputes. The above article is the spearhead and fundamental of the brand protection system in Indonesia. In fact, this article is part of preventive efforts, as well as prevention of confusion in society and protecting the exclusive rights of legitimate trademark owners. As part of the constitutive, the principle in Article 21 of Law 20/2016 is more than sufficient in understanding the owner of a trademark that is considered legitimate. This system guarantees legal certainty in the form of benefits for registrants. Or as part of the registrant with a trademark that is received in the form of a certificate as proof of the right to the trademark that is considered as the first user.¹⁷

Judges must also understand the latest regulations, such as Law Number 6 of 2023 related to the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law. Perpu No. 2 of 2022 concerning Job Creation, and Law No. 11 of 2020 concerning Job Creation.

The judge needs to understand the benchmark in rejecting a decision, first things include the overall equation. Starting from the absolute similarity in visual, sound, and

¹⁷ Dwi Seno Wijanarko And Slamet Pribadi, "Preventive Legal Protection of Trademarks in Indonesia Based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications," *Logic: Journal of Research of Kuningan University* 13 (2022): 192–201.

writing are identical. It is important to look at some cases that actually have a visual resemblance, even sound. Cases in Indonesia that are similar in this understanding are MS Glow and PS Glow. The object in question in this dispute contains a similarity of name, where there should be a follow-up and detailed examination before granting a trademark operational license. Apart from the negligence of the relevant Ministry / L, in the phenomenon of mutual reporting, the Judge went out of *the First to File route*, thus harming the brand.

Furthermore, the image of the disputed product leads to a legal precedent that highlights the picture of the phenomenon of disparity in decisions. The phenomenon of mutual reporting occurs between two beauty trademarks, but the situation that complicates the existence of the court is the filing of lawsuits between the two with content that collide with each other. The results encourage disparity in court decisions and legal uncertainty while testing the existence of the judiciary in Indonesia. In addition, public trust has the potential to decline in the quality and skepticism of the justice system in Indonesia.

The case of mutual reporting of the owners of MS Glow and PS Glow proves that the disparity in the judge's decision affects the legal uncertainty of the two trademarks. Not only that, the implications of inconsistencies in decisions are very significant, especially for the legal system in Indonesia, including legal costs for business actors, a competitive climate that is considered unhealthy, and disrupting the growth of the creative industry because they have to face legal disputes whose results cannot be ascertained.¹⁸

This condition clouds the results of significant differences between the decisions of one court and another, even though the substance of the cases has similarities. This disparity phenomenon shows that there is a very wide space of subjectivity for judges, especially in providing interpretations of legal facts. Although in principle the Judge has independence and independence that can be guaranteed by the constitution, the disparity created when two court decisions ultimately brings the legal dispute in a condition where there are extreme opposite results in a legal case.

In addition to the case of PS Glow and MS Glow, brand similarities have also occurred in the case of Ruben Onsu and Benny Sujono regarding the identification of Geprek Benu. Although the Judge rejected Ruben Onsu's lawsuit, this prolonged case hinted at the Judge's indirect and decisive failure in rejecting the lawsuit. It is important to see why Benny Sujono was the first party to register the name "Geprek Benu" and Benny got the right to the same name. So the Benu case became a blow and encouragement for the public to provide protection against trademark law as well as the consequences of copyright infringement in the context of the culinary business in Indonesia.¹⁹

Apart from these two cases, there is a Swedish Brand with a Local Brand, namely Equatorial Diamond Esa Abadi (IKEA). The judge in this case ruled in favor of IKEA Local

¹⁸ Calvin Hasiholan Gultom et al., "Analysis of the Gap in Legal Certainty Theory in the Disparity of Ms Glow and Ps Glow Brand Dispute Decisions in Indonesia," *Nusantara: Journal of Social Sciences* 12, no. 12 (2025): 4776–86.

¹⁹ Bulan Roma Tua et al., "Trademark Copyright Protection Dispute: A Case Study of the Dispute Between Geprek Benu Vs I Am Geprek Benu," *Source: Journal of Social Sciences and Humanities* 2, No. 1 (2025).

because IKEA Sweden did not use its brand for three years, even though they were the first party. The Judge's error in this case is reviewed through the phenomenon of rigidity and ignoring fundamental principles in the protection of wealth, such as ignoring the protection of well-known brands. In this case the Judge failed to provide protection to IKEA, the brand should have been protected by the desire to imitate and piggyback reputation, but in this case the Judge prioritized the criteria of *non-use administration*. Article 21 paragraph (1) explains that a registered trademark belongs to another party or is applied for first by another party for similar goods and/or services. Although the judge assessed that IKEA Sweden is no longer operating, but in some cases they still have operations disseminating products and services. In fact, IKEA Sweden should be protected from impersonation in accordance with international law (Paris Convention). Thus, the panel of judges tends to ignore good efforts, so it can set a bad precedent in efforts to provide brand protection in Indonesia.²⁰

In the case of IKEA, it is important for the Judge to pay attention to Article 21 paragraph (2) as follows:

2) The application is rejected if the Mark:

- a) is or resembles the name or abbreviation of a famous person's name, photograph, or legal entity name owned by another person, except in principle of the written consent of the rightful person;
- b) is an imitation of or resembles the name or abbreviation of the name, flag, emblem or symbol or emblem of a country, or national or international institution, except with the written consent of the competent authority; or
- c) is an imitation or resembles an official mark or stamp or stamp used by the state or Government agency, except with the written consent of the authorities.

If analyzed, the IKEA case is a failure, where indirectly there are attempts at similarity in phonetics or sounds. The judge failed to reject the application. In addition, the Judge did not encourage the examination of the registered application, register the trademark, notify the registration of the trademark to the applicant or proxies, and issue a trademark certificate and announce the registration of the trademark.

The process of understanding the criteria of similarity in jurisprudence specifically emphasizes the Judge on the importance of having knowledge about brands and geography. The truth sought in a legal case is material truth (*materiele waarheid*).²¹ With this, valid evidence can be submitted as a court hearing and also influenced by the Judge's beliefs.²²

Based on the above opinion, equality is basically part of a crucial aspect of intellectual property law. In the case of trademark disputes, what is tested as ordinary resemblance

²⁰ Thoyyibah Bafadhal, "Legal Protection of Famous Brands in Indonesia: The Case of Ikea A . Introduction" 1, No. 1 (2018): 21–41, <https://doi.org/10.22437/Ujh.1.1.21-41>.

²¹ Jerol Vandrixton Lintogareng, "Analysis of Judges' Confidence in Decision-Making in Criminal Cases in Court," *Lex Crime* VII, No. 3 (2013).

²² Lintogareng.

has the potential to become a problem, meaning that it is not just an ordinary resemblance, but a legal threshold that is considered to violate the rights of others, while also providing consumer confusion. So if in one decision the Judge causes a result that confuses consumers, then this situation occurs without being supported by *ration decidendi* or adequate *legal reasoning*.²³

The basic similarity criterion becomes very vital in the rule of jurisprudence due to several things. First, consumer protection. The goal is so that consumers are not in the stage of confusion due to brands that have similarities. For example, when the conflict between MS Glow and PS Glow which sounds and logos have similarities. This has the potential to encourage consumers to conclude that one company is not part of a competitor.

Figure 1. MS Glow and PS Glow logos.



Source: Kliklegal.id

The image above gives an idea if the two companies have similarities with relatively similar products. This situation encourages the momentum of "*likelihood of confusion*" in society. With these two relatively similar brands, consumers can push the product to come from the same manufacturer, while also having a licensing relationship within the legal corridor. This can be detrimental if there is consumer dissatisfaction with the product. So Jurisprudence is a limitation so that consumers are not deceived as part of different qualities, but are packaged with similar identities.

Through the above, if the Judge does not have an equation, he understands the criterion of "*Equality in Essence*" in the Jurisdiction. So the judge has the potential to be the main factor in causing losses to the brand owner, especially if the decision made is

²³ Mohammad Nauval Aulia Sakti et al., "Legal Qualification of Similarity in a Trademark That Can Be Filed in a Special Civil Lawsuit (Case Study of Decision Number 167 PK/Pdt.Sus-HKI/2018)," *Journal of Justice, Faculty of Law, University of Madura* 25, No. 2 (2018).

only based on evidence with some diversity and double potential in each source of evidence.

In addition to providing prevention for consumers who experience confusion. The importance of understanding the similarities in the main equation in order to maintain healthy business competition, means the action of preventing hitchhiking conditions due to the situation of fame or brand reputation that other parties already have. Jurisdiction must ensure that creative business actors can create their own identity, then prevent other parties from having bad faith to take advantage of the investments that have been made.

This ability of the Judge is necessary so that there are no inconsistencies in decision-making. The reason is that in some momentum the judge's decision can be a breath of fresh air for justice. Or the situation of *Judicium Dei*, a fundamental condition that positions judges as God's representatives to uphold justice, based on the head of the decision. Thus, if the Judge has the ability to understand the equation in essence, business actors can avoid prolonged disputes.

The above is crucial because if the Judge fails to provide legal protection for the brand with the use of *First to File*. Brand dispute situations should be preventable from the beginning because they can be detrimental. In fact, in some cases trademark civil disputes lead to losses, even company closures. Big names such as MS Glow and Geprek Bensu are now losing their consumers due to having to face the dispute process and interfere with production costs that should be done as they should.

2. Implementation of the Principles of Legal Certainty and Brand Protection

Legal certainty and brand protection are one of the concerns. The goal is so that there is no interference through bad faith coming from external parties of goods/services. The implementation of the principles of legal certainty and protection should be the fundamental basis for judges in making decisions on disparity disputes. Therefore, legal certainty is a principle with the function of creating order, predictability, and clarity in the application of the law.²⁴

Legal certainty provides assurance that the applicable law can act and work more objectively. In several cases in Indonesia, there are civil law cases that cause uproar, starting from Geprek Bensu and Benny Sudjono, then MS Glow and PS Glow, even to IKEA with the Swedish IKEA Company. The details of the data are as follows:

Table 1. Civil Law Cases related to Trademark Disputes

NO	Case	Verdict	Context	First to File Implementation
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²⁴ Tiara Putri Basyra and Rika Ratna Permata, "The Application of the Principle of Legal Certainty and Justice in the Decision of the Semarang Commercial Court Number 3 / Pdt . Sus-Hki- Brand / 2024 / Pn Niaga Smg" 3, No. 3 (2025).

1.	MS Glow and PS Glow	Surabaya District Court Number 2/Pdt. Sus- HKI/Brands/2022/PN. Business.Sby	There are two different rulings with two courts, the situation is mutually reported. Although it led to victory for MS Glow, the company had to implement several strategies to anticipate the inequality of information circulating in the community as a disadvantaged party. ²⁵	Not fulfilling.
2.	Inter IKEA Sweden and PT Ratania Equator (IKEA Local)	Supreme Court Decision Rejects Inter IKEA's Cassation and Grants PT Ratania's Lawsuit	The judge ruled in favor of the local side because the Swedish IKEA brand was not used for three years in Indonesia. The disparity arose because Hakim ignored the process by which IKEA Sweden was building a physical store. This case damaged Indonesia's good name in the eyes of Sweden as a country that is continuing its image and is	Not fulfilling.

²⁵ A Alamsyah, D Nurdiana, And F Nur Januarizky, "Ms Glow Strategy After Ps Glow Lawsuit Regarding Trademarks.," *Educationist: Journal Of Educational And Cultural Studies*, 1, No. 3 (2023): 240-44, <https://doi.org/https://jurnal.litnuspublisher.com/index.php/jecs/article/view/46>.

			sustainable and integrated at the same time. ²⁶	
3.	PT Terbit Financia Vs Gojek & Tokopedia "GOTO"	Decision Number 71/Pdt.Sus-HKI/Memerk/2021/PN Niaga Jkt.Pst	The Central Jakarta Commercial Court failed to comply with the principle of first to file related to PT Terbit Financial Teknologi lawsuit related to large companies (Gojek & Tokopedia). Based on the principle of first to file, the first party is PT Terbit Financial Teknologi, but the Judge considers that the two companies have no similarities in the field of business.	Not fulfilling.
4.	Starbucks and Sumatra Tobacco	Decision of PN Niaga (Losing): Decision Number 51/Pdt.Sus/Memerk/2021/PN Niaga Jkt.Pst and Cassation Decision: Decision of the Supreme Court Number 836 K/Pdt.Sus-HK/2022	Starbucks sued PT Sumatra Tobacco for using the Starbucks name for cigarette brands. Starting from the Central Jakarta Niaga District Court rejected Starbucks' lawsuit, but at the Supreme Court of	Not fulfilling..

²⁶ A Anjani, Sari S. D., and R Benarrivo, "Swedish Diplomacy to Indonesia through Ikea's Business Expansion in 2020-2023," *Global Insights Journal: International Relations Student Journal* 1, No. 2 (2025).

			Cassation level granted Starbucks' request. This encourages Sumatra Tobacco Doing brand endorsement is not based on good faith even though the registered one is of a different class. ²⁷	
5.	Ronny Lukito and Budiman Tjoh	Supreme Court Cassation Decision (Rejection of Budiman's Cassation): Number 375 K/Pdt.Sus.HKI/2020,	Ronny Lukito and Budiman Tjoh. On First to File, Budiman Tjoh had registered first, but Hakim won Ronny Lukito on the grounds that Eiger had become a well-known outdoor brand. This situation states that the system adopted by law in Indonesia is constitutive. ²⁸	Not fulfilling.

Source: Data managed.

Based on these five cases, it confirms the Judge's failure to understand the importance of First to File in referring to decision-making. This is clearly detrimental to those who should have earned their rights, although in some cases there has been a victory in the Supreme Court through Cassation. However, in cases like Eiger Budiman Tjoh is considered a loss and has bad faith efforts. In addition to these five cases, cases

²⁷ F. Al'uzma et al., "Analysis of the Judge's Decision and Considerations in the Trademark Dispute Case Between Starbucks Corporation and Sumatra Tobacco Trading Company: (Study of the Supreme Court's Decision Number 836 K/Pdt.Sus-HKI/2022)," *Locus Journal Of Academic Literature Review*, 2, No. 4 (2023): 355-364, <https://doi.org/https://doi.org/10.56128/Ljoalr.V2i4.154>.

²⁸ S Matippana, "Legal Certainty of Registered Trademark 'Eiger' on Equality with Famous Trademarks" ((Doctoral Dissertation, Hasanuddin University), 2023).

such as the BMW Case with the Women's Red Body, where the BMW company initially lost, then the Supreme Court issued an Cassation by winning it.

Furthermore, the case of Monster Energy with Andrawan, this case shows that the rigidity of the First to File principle is detrimental to brands or brands originating from outside Indonesia. Furthermore, the case of GS Yuasa with PT Garuda Sakti related to the use of "GS" which in that case led to GS Yuasa canceling the local brand because it was considered to have elements of bad faith and misleading to consumers. Then the case of Tupperware with Tulipware, in this case Tulipware survived because the Judge considered that there were significant visual differences and differences in market segments. Finally, the case of L'Oreal (France) with PT Loreal Indonesia (Local) in this case the judge made a mistake by having won over a local company and ignoring the fact that L'Oreal France is a world-famous brand. Not only that, the Judge was also considered a failure because he did not apply the articles in Law 20/2016.

Based on several of these cases, it is important to provide legal certainty, one of which stems from the role of the Supreme Court as a *Judex Juris*. This can be interpreted as a judge who examines the application of the law, with the mistake that in the court the two terms are interpreted as a judge who examines the facts and a judge who examines the elements of the law. Or it can be interpreted as a judge who examines the application that has been carried out by the court of first instance and appeal.²⁹

The application of the Supreme Court as a *juris judex* must be carried out fully and maximally. This encourages the importance of uniting different legal interpretations, so the Supreme Court must use the supervisory function with the aim that there are no double standards in assessing the principal equations. Furthermore, after understanding the mechanism of the importance of the Supreme Court working as a *jurex juris*, the Supreme Court must carry out the principle of legal certainty by implementing it through an explanation of interpretation in the Trademark Law. This should be about the permissible similarities, then the similarities in essence. Finally, the Supreme Court must provide standard criteria followed by Judges including in disputes with trademarks originating from outside Indonesia.

The principle of legal certainty and brand protection can be applied by the Judge as part of consistency in giving a verdict. So the protection for brand owners is not just who registers first (*First to File*). However, protection of investment and reputation, given that several cases in Indonesia, such as MS Glow and Geprek Bensu have lost their investment and reputation. It is therefore important for the Supreme Court to ensure that *the First to File* system is not abused by applicants in bad faith. In addition, the Supreme Court must have the courage to cancel a brand that only intends to pigsack the reputation of another brand or *free riding*.

²⁹ Luthfi Novianto Syuhada and Bambang Santoso, "Study of Judex Juris Considerations in Imposing Criminal Charges Exceeding the Public Prosecutor's Demands on the Basis of Dissenting Opinion in Corruption Cases (Study of Supreme Court Decision Number 1756 K/Pid.Sus/2017)," *Journal of Verstek Vol. 9 No. 1 (January – April 2021)* 9, no. 1 (2017): 150–56.

3. Objective and Subjective Factors Influencing the Judge's Consideration

Objective and subjective factors influence the Judge's consideration in giving a decision. This is due to the availability of data in the field, including the process in registration which in several moments is related to the Ministry of Ministries and Agencies issuing certificates for two products that are similar in nature. One example is the case of MS Glow and PS Glow, both of which have registered product certificates, but the similarities make them have to enter the dispute hearing stage.

In the dispute, brand disparity is greatly influenced by objective factors, meaning that data is in the field. Objective factors emerged in the trial as evidence for the Judge to issue a verdict on the petitum issued by the complainant against the reported person. With this, objective data is very vital, such as registration documents from the Directorate General of Intellectual Property and expert testimony to provide technical analysis regarding visual and phonetic similarities. In this case, the Judge often provides an explanation as to whether the administrative evidence determines a trademark violation of Article 21 of Law No. 20 of 2016. However, reliance on formal evidence is ultimately insufficient if the document is not capable of providing real consumer perception support in the market. Considering that in the *First to File concept*, brands must have economic and social value, so that their relationship with society is very close. In some moments, there was also a cancellation of registration that had previously been issued by the Directorate General of Intellectual Property. It is therefore important for *stakeholders* involved in forming inspection guidelines, and improving the accuracy of substantive checks on brand registration.³⁰

Meanwhile, subjective factors as well as the ability of judges to understand disputes are no less important. The discretion of the Judge is given is an important judgment in the termination of disputes. The assessment of bad faith is a subjective domain. Or a situation where someone just wants to disrupt the sales process, thus bringing the case to the legal realm. Therefore, the Judge in this case must dig up the hidden intentions of the registrant and the complainant/reported.

In Law 20/2016, the assessment related to trademarks does not provide a single and rigid definition, especially related to bad faith. Judges have a wide range of interpretation as well as determining whether an entrepreneur intentionally gives and follows a brand reputation or simply inadvertently related to the similarity of ideas. In addition, the judge's scientific background and experience in handling cases are one of the things that are very influential. Judges who have specialization or experience are more consistent in using testing methods.

Meanwhile, on the contrary, there is no in-depth understanding of consumer psychology and brand protection as a non-tangible asset. The Judge's consideration is only limited to not being trapped by similarities, thus ignoring the broader aspect of business protection. In addition, external factors through market trends and technological

³⁰ A Arnold, M. E Mustofa, and B Basuki, "Proof of Elements of Similarity in Principle and Bad Faith in Efforts to Cancel Registered Trademarks," *Synergy : Journal of Scientific Research* 3, No. 2 (2026): 820–32, <https://doi.org/10.62335/Sinergi.V3i2.2405>.

advancements provide additional challenges to the subjectivity of the Judge. In this case, the Judge is asked to interpret brand disparity in the digital space, but it remains within the corridor of what is regulated by the Trademark Law, which is equality in essence. In addition, the Judge must pay attention to the principle of registration that cannot be obtained based on the registration formalities, but considers the element of good faith in order to create justice and legal protection for the parties.³¹

Consistency in this case is tested when judges have to balance between static legal texts with the development of precedents and the development of increasingly complex modes of trademark infringement. In closing, synchronization between objective and subjective requires clear guidance, especially in more detailed technical guidelines. Given that there is no uniformity of parameters in assessing, legal certainty for trademark owners is difficult to achieve. Therefore, it unites assessment standards so that the resulting decisions are predictable, which will ultimately increase business actors' confidence in the investment climate and legal protection in Indonesia.

4. Judge's Consideration Regarding the Decision Granted or Not Granted on First to File

The principle of *first to file* in Indonesia is a handle for Judges in making decisions related to ongoing trademark disputes. The focus of the Judge refers to the first party to make the registration. However, besides this, the judge's decision regarding First to File often refers to two considerations, namely granted or not granted. In fact, the Judge made a decision with several considerations, such as facts in the field, evidence, evidence from the plaintiff, and Law 20/2016 with reference to *first to file* in Indonesia.³² There are several things that are considered by the Judge regarding the implementation of First to File even though the party is the first registrant, but it can be canceled.

First, there is bad *faith*, this is related to trademark cancellation which is often carried out by Judges even though they adhere to *First to File*. The case of IKEA Sweden and IKEA Indonesia gives the answer that the first party has suffered defeat, then the Pierre Cardin brand, the case became a debate because the Pierre Cardin brand has been registered since the 1970s, long before the original designer Pierre Cardin officially entered the Indonesian market. This confirmed that the local registrant, namely Alexander Satryo, lost the trial. Despite being the first applicant, the winner was France's Pierre Cardin. The main reason is that the use of names is considered global, as well as considered a form of reputation and bad faith.

Apart from bad faith, cancellation can be done if there is an attempt to imitate the intention. If the registrant is proven to have knowledge (cognition) of the existence of other well-known brands, in this case it can potentially be a world brand. However, still

³¹ R. D Habeahan And H Sulistiyantoro, "Balancing The Principle Of Legal Certainty And The Principle Of Justice In The Application Of The First To File Principle In Trademark Disputes: A Study Of The Ms Glow And Ps Glow Cases," *Jurnal Meta-Yuridis* 9, no. 1 (2026): 111-120.

³² A Stella, "Removal of Registered Trademark 'Mogu-Mogu' Based on the First To File Principle (Study of Decision Number 37/Pdt. Sus-Memer/2023/Pn Niaga Jkt. Pst)." (University of Lampung, 2026).

registering it to get the value and selling price, then the Judge can cancel the trademark. This is due to the efforts to hitchhike in terms of reputation.

Furthermore, cancellation can also be done if there is a previous legal relationship, the Judge can usually cancel if the registrant is a former worker or distributor, agent, and employee of the original brand owner. This encourages the principle of First to File to be defeated by the obligation to maintain honesty in trying or carrying out trading activities. Then, the cancellation can be attributed if it is related to a well-known brand. A judge can invalidate the first registrant's trademark to prevent misleading consumers. On the other hand, the judge can refuse the cancellation and still win the first registrant for several reasons. First, the difference in the type of goods/services. If the registered trademark bears similarities, but is in a different class of goods and does not have the potential to confuse consumers, the registrant is still protected. This happened accidentally, without any bad faith efforts. Second, the plaintiff failed to prove priority, this relates to the first legal owner or could not prove that their brand already had significant economic value before the first registrant entered. So as long as the plaintiff has not been able to provide evidence that the trademark that is considered similar has economic value, the cancellation will be rejected by the Judge. Finally, the lawsuit filed has expired, if the lawsuit lasts for more than five years from the date of trademark registration, then cancellation cannot be made. This is different from the violation of public order and morality committed by the brand. This means that cancellation cannot be done if the lawsuit has expired.

Based on this, the situation and the decision of the Judge are unpredictable. This refers to the evidence in the trial whether it is able to cancel the trademark registration or the Judge rejects it. Especially if the two parties who are in dispute are not satisfied and get what they want, then the situation shows that the brand is a common name. This is ideal with identical coffee and drinks, so the Judge cannot cancel it. Then the lack of discriminating power, so the two brands are considered to have no strong differentiator to be protected exclusively. Therefore, in this situation, the Judge cannot give a verdict regarding the cancellation of the trademark.

D. Conclusion and Recommendations

The consistency of the judge in giving the verdict must provide justice and a breath of fresh air for the party who should have earned his rights. The judge must understand the criteria of equality in the main case in the Jurisprudence. A complete understanding of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, the Judge must master, especially related to article 21 which discusses the equation in its principal as well as its derivatives. In addition, it is important to uphold the principles of legal certainty and brand protection in making decisions. In this case, it is important to examine the application of the law by providing the portion and role of the Supreme Court as *Judex Juris* as the party that examines the first level and the Judge's appeal, in this case it is necessary to be given the availability of data and facts at the trial so that the decision that comes out does not harm the first registrant. Furthermore, the Judge can also give a different decision even though he

is the first registrant. Trademark cancellation can always occur if the owner is acting in bad faith, is a former employee, and is related to a well-known brand.

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