

CHAPTER V

CLOSING

A. Conclusion

Based on the discussion of the research data, it can be concluded that the Commercial Court and the Supreme Court in this case do not provide repressive legal protection against the foreign famous brand "PUMA" from violations in the form of reputational harassment / *goodwill (passing off)* carried out by the "PUMADA" brand as stipulated in the provisions of Article 21 paragraph (1) letter (b) and explanation of Law No. 20 of 2016 concerning Brands and Geographical Indications *jo.* Article 18 paragraph (3) of Permenkumham No. 67 of 2016 concerning Trademark Registration regarding the criteria for famous marks, Article 21 paragraph (1) and its explanation of the similarities in essence, as well as Article 21 paragraph (3) and its Explanation of bad faith. In addition the Directorate General of Intellectual Property *cq.* The Directorate of Trademarks as a Co-Defendant also does not provide preventive protection as a preventive measure by continuing to accept the registration of "PUMADA", so that it becomes the cause of disputes between the two marks, as stipulated in the provisions of Article 3 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications regarding the Indonesian trademark registration system.

The legal considerations taken by the Commercial Court and the Supreme Court are improper or erroneous in applying the doctrine of equality in essence and the principle of bad faith to the registration and use of the "PUMADA" mark.

Although Law No. 20 of 2016 adheres to the doctrine of *similarity* which requires the possibility of consumer confusion, the Panel of Judges should dig up and find its own law (*rechtsvinding*) based on other doctrines known in brand law such as *dilution*, when encountering legality deadlocks, overcoming the vacancy or vagueness of the rules that result in the creation of mere formal justice. Thus, it would be wiser if the Panel of Judges analyzed the defendant's actions by returning them to the basic legal values of justice and honesty, including morals and ethics. As a matter that is contrary to moral justice or good morals and violations of the principles of fair trade that must be upheld by every business actor, in order to produce a verdict that also meets material justice and provides legal protection only to parties in good faith.

B. Suggestion

The developments that have occurred in the practice of brand justice in Indonesia show the weakness of the doctrine of *similarity* (equality) and *passing off*, especially for owners of foreign well-known brands whose brands are exploited for different goods/services that do not compete with each other or for similar goods/services but there are circumstances where their use does not cause consumer confusion. Brand dilution protection depends on a completely different premise, which is based on the quality of distinguishing power and the protection of the reputation/*goodwill* of those who can tarnish a well-known brand, without regard to the factor of consumer confusion over the origin/source of the product or the competition between the two. Therefore, the doctrine of *dilution* can be included in the amendment of Law No. 20 of 2016 to further increase its

effectiveness in handling cases of violations of foreign famous brands that cannot be handled or reached by relying solely on the doctrine of *similarity*. In addition to revisions to the Trademark Law, the doctrine of *dilution* can also be accommodated into the Law on Fraudulent Competition that the State of Indonesia does not yet have.

