

Research Article

The Principle of Legal Certainty of Registration Motion Marks Based on Law Number 20 of 2016 Concerning Trademarks and Geographical Indications

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Abstract: In the development of information and technology, there are motion marks circulating in Indonesia in the trade of goods or services. In fact, the moving brand has not received legal protection because moving brands are not regulated as one of the signs regulated in Law Number 20 Year 2016 on Trademarks and Geographical Indications (Trademark Act) so that there is a legal vacuum and a motion marks can not be applied for registration which results in the absence of legal certainty for the community, but other Southeast Asian countries such as Singapore have protected motion marks. It is important to be considered by Indonesia, given the existence of free trade in the Southeast Asian region, namely the ASEAN Free Trade Area (AFTA). This research uses normative juridical research method that analyses the legislation with literature study using comparative and conceptual approaches and analysed with descriptive analytical legal materials. The results of this study found that the regulation of the registration of motion marks in Indonesia is not regulated in the Trademark Act and the trademark registration application does not accommodate the registration of motion marks so that the registration of moving trademarks can not be filed in Indonesia and motion marks also do not get legal protection in Indonesia which results in legal uncertainty. If the motion marks in Indonesia get a legal protection and can be applied for registration, then the Trademark Act should be made changes related to the concept of the definition of trademark, the scope of the protected trademark, and trademark labels in the application for registration of trademarks so that the public get legal certainty related to the registration of motion marks.

Keywords: Legal Certainty; Legal Protection; Motion Marks.

1. Introduction

Intellectual Property Rights (IPRs), known in Indonesian as Hak atas Kekayaan Intelektual (HKI), refer to economic rights granted by law to individuals who invent or create works resulting from intellectual effort or human thought. According to the World Intellectual Property Organization (WIPO), intellectual property encompasses creations of the mind, such as inventions, artistic and literary works, designs, names, images, and symbols used in commerce. HKI is classified as intangible movable property, a concept first recognized in countries with the Anglo-Saxon (common law) legal system, and may also be regarded as an object (zaak) within the context of civil law [1].

Intellectual Property Rights (IPR) fundamentally consist of exclusive rights conferred by law on creations resulting from intellectual effort or creativity, which possess economic value. These rights serve as legal recognition and incentives for creators and inventors, encouraging the development of innovative works that benefit society across diverse sectors. The primary aim of the IPR system is to protect such works by providing legal safeguards and sanctions

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against unauthorized use. Over time, IPR has evolved into a significant economic asset, especially for developed countries that dominate intellectual property production, thereby establishing IPR as a crucial element of the global trade system [2].

Intellectual property rights (IPR) encompass several categories, one of which is trademarks. A trademark is a sign that functions primarily as an indication of origin, distinguishing the goods or services of one party from those of others in commercial activities. The essential function of a trademark is to serve as a source identifier, enabling consumers to differentiate products or services based on their origin. If a sign fails to distinguish goods or services in the marketplace, it cannot fulfill the legal function of a trademark. Furthermore, trademarks play a crucial role in indicating the origin of goods, as they allow consumers to associate specific characteristics and quality with a particular producer, thereby protecting the identity and reputation of the business behind the mark [3].

A trademark functions primarily as a guarantee of product quality, as consumers associate a particular mark with goods or services produced by the same manufacturer and thus expect consistent quality. Although a trademark does not legally guarantee quality, it obliges producers to maintain or improve their products to retain consumer trust. In addition, a trademark serves as a promotional tool, providing consumers with distinctive choices in the marketplace. Recognizing the significance of trademarks in commercial activities, the Indonesian government regulates trademarks under Law Number 20 of 2016 on Trademarks and Geographical Indications. According to Article 1(1) of this law, a trademark is defined as a sign capable of being represented graphically such as logos, images, words, names, numbers, letters, color arrangements in two or three dimensions, holograms, sounds, or combinations thereof used to distinguish goods or services produced by one party from those of others in trade. Thus, a valid trademark must be a sign, graphically representable, and possess distinguishing power for goods or services in commerce [3].

Based on Article 1 point 1 of the Indonesian Trademark Law, a trademark is defined as a sign that can be graphically represented, including logos, images, words, names, numbers, letters, color arrangements in two or three dimensions, holograms, sounds, or combinations thereof. However, in practice, certain signs not explicitly regulated by this provision, such as motion marks, are also used as trademarks in Indonesia. Although motion marks are not expressly recognized under the Indonesian Trademark Law, several motion marks have been registered and utilized in commerce, including those owned by prominent entities such as Nokia Corporation, PT Bank Negara Indonesia (Persero) Tbk with the "Wondr" mark, PT Garuda Indonesia (Persero) Tbk, and PT Reska Multi Usaha with the "Loko Café" mark. Other notable motion marks in Indonesia include those owned by Castrol, Transjakarta Academy, Kompas Gramedia, Detikcom, Eiger, Commuterline, UPN Veteran Jakarta, Universitas Jenderal Soedirman, Universitas Islam Indonesia, Universitas Muhammadiyah (Jakarta, Purwokerto, Yogyakarta), Universitas Insan Cita Indonesia, LRT Jabodebek, R2M, CitraGarden Serpong, Alfamart, BTN, QLola by BRI, BRImo, HK, PLN, MIND ID, Bulog, Citilink, and Pelita Air. This demonstrates the evolving scope of trademarks in Indonesia, where motion marks are increasingly recognized and utilized despite the absence of explicit statutory regulation.

In Indonesia, moving trademarks do not receive legal protection due to their absence from the list of signs regulated under Article 1(1) of the Trademark Law, resulting in a legal vacuum regarding their registration. Consequently, moving trademarks cannot be registered, as legal protection and exclusive rights are only granted to registered marks under Article 3 of the Trademark Law, which adopts a first-to-file system. Therefore, unregistered moving trademarks are not entitled to legal protection [3].

In contrast to Indonesia, Singapore also a member of the Association of Southeast Asian Nations (ASEAN) has already provided legal protection for moving trademarks under its Trade Marks Act. This regulatory approach is particularly relevant for Indonesia in light of the ASEAN Free Trade Area (AFTA), which facilitates regional economic integration. AFTA's implementation has significantly influenced the development and reform of Indonesian economic law, necessitating the enactment of new economic and financial statutes to ensure Indonesia's competitive participation without political coercion. Consequently, Indonesia must establish autonomous and responsive legal frameworks to address the challenges posed by AFTA and globalization. This requires a comprehensive understanding of foreign legal systems to harmonize domestic law with rational legal principles, thereby supporting smooth economic relations among ASEAN member states [4].

In light of AFTA, Indonesia should harmonize its Trademark Law with those of other member states, such as Singapore, which already provides legal protection for motion marks

under its Trade Mark Act. Legal harmonization is essential in a free market to prevent regulatory disparities between countries and to ensure that foreign investors marketing their products in Indonesia are afforded adequate legal protection, as is the case in jurisdictions like Singapore. The regulation of motion mark registration in Indonesia is crucial, not only because such marks are already present in domestic commerce, but also to anticipate and resolve potential future disputes, as evidenced by cases in other jurisdictions, such as *The Automobili Lamborghini Holding S.P.A's Application vs. OHIM* (Case R 772/2001-1) before the European Union, where the registration of a motion mark for Lamborghini's 'scissor' car doors was contested [5].

A motion mark consisting of sport car doors opening upwards by rotating around a horizontally aligned axis was refused registration by OHIM, which considered such upward-rotating doors a characteristic feature of sports cars rather than a trademark of a specific manufacturer. The Automobili Lamborghini Holding S.P.A.'s legal challenge was rejected by the Board of Appeal, which found that the applied-for motion mark lacked distinctiveness, differed from its description, and was of a technical nature [6]. This case highlights the urgent need to regulate motion mark registration in Indonesia's Trademark Law, especially given the AFTA framework and the legal harmonization already undertaken by countries such as Singapore. Without such regulation, there is a risk that foreign investors' motion marks will not be protected in Indonesia, leading to legal uncertainty. As motion marks become increasingly prevalent in Indonesian commerce, the absence of clear legal provisions may also result in future disputes, as seen in the European Union. Accordingly, this research examines: first, the registration of motion marks under Law No. 20 of 2016 on Trademarks and Geographical Indications; and second, how such registration should be structured to provide optimal protection for trademark owners.

2. Literature Review

Legal Protection Theory: The theory of legal protection according to Philipus M. Hadjon is based on two main principles: the recognition and protection of human rights, and the rule of law principle, which provides the foundation for legal protection. Legal protection can take the form of preventive measures, aimed at preventing violations or conflicts before they occur, and repressive measures, which are intended to resolve disputes that have already arisen. Satjipto Rahardjo adds that legal protection is an effort to safeguard an individual's interests through the recognition of human rights to obtain justice, while also protecting individuals from arbitrary actions and ensuring justice as the primary goal of law. In the context of intellectual property, legal protection is individual in nature but still takes into account the interests of society by applying principles such as the protection of intellectual works, the balance of rights and obligations, justice, economic and moral protection, territoriality, utility, and morality [7].

Legal Certainty Theory: The theory of legal certainty, according to Hans Kelsen, views law as a system of norms referring to statements that focus on the aspect of "ought to be" or *das sollen*, which contain rules regarding what should be done. Gustav Radbruch, in his theory, outlines four important elements of legal certainty: (1) law is a set of positive norms based on statutory regulations; (2) law must be grounded in facts or social realities; (3) the facts serving as the basis of law need to be clearly formulated to avoid misunderstanding; and (4) positive law should not be changed easily or arbitrarily. Sudikno Mertokusumo defines legal certainty as protection for justice seekers from arbitrary actions, meaning that a person can obtain what is expected in a particular situation. Peter Mahmud Marzuki explains that legal certainty encompasses two main dimensions: the existence of general rules that provide guidance to individuals about what actions are permitted or prohibited, and the presence of legal security that protects individuals from arbitrary actions by the government [8].

3. Research Method

The research employs a normative juridical method, also known as library-based legal research, which focuses on the analysis of secondary data derived from literature sources. The objective is to identify and analyze legal issues and formulate solutions based on the study of relevant laws and regulations, particularly regarding the comparative regulation of motion mark registration between Indonesia and Singapore. The approaches utilized include a comparative approach, which examines the statutory regulations of both countries to identify similarities and differences, as well as a conceptual approach that explores legal doctrines and

concepts related to the protection of motion marks. This research is qualitative in nature, using a descriptive-analytical approach aimed at systematically describing and analyzing statutory regulations and relevant legal theories. Data are collected through literature study, involving primary, secondary, and tertiary legal materials, and are analyzed using descriptive-analytical techniques and authentic interpretation to obtain comprehensive answers to the legal issues concerning the registration of motion marks.

4. Results and Discussion

4.1 Registration of Motion Marks under Law Number 20 of 2016 on Marks and Geographical Indications

The Concept of Trademark According to Law Number 20 of 2016

The definition of a trademark is stipulated in Article 1 point 1 of Law Number 20 of 2016 on Trademarks and Geographical Indications, which provides that a trademark is a sign capable of being represented graphically, such as logos, images, words, names, numbers, letters, color arrangements, in two or three dimensions, holograms, sounds, or any combination thereof, used to distinguish goods or services produced by individuals or legal entities in trade. Although the law requires graphical representation, it does not elaborate on its meaning; however, according to the Indonesian Dictionary, "graphical" refers to symbols visually represented by letters, lines, or fields. Article 2(3) of the same law further clarifies that protected trademarks may consist of the aforementioned elements or their combinations. Thus, only signs that can be graphically represented in these forms are eligible for trademark protection and registration under the law, as stated in Article 1 point 1 in conjunction with Article 2(3). According to Marni Emmy Mustafa, the scope of trademarks under this law encompasses both traditional marks such as words, images, logos, letters, numbers, colors, and two-dimensional marks and non-traditional marks, including three-dimensional marks, sound marks, and holograms, with applications for non-traditional marks requiring explicit identification of their nature [9].

The Trademark Law stipulates that trademark protection is granted on a first-to-file basis, requiring applicants to submit a registration application accompanied by a trademark label, as mandated by Article 4(4) and its elucidation. For three-dimensional marks, the label must depict the mark's characteristics through images from multiple perspectives (front, side, top, and bottom), while for sound marks, the label must include musical notation and a sound recording. Although the Trademark Law does not specifically regulate hologram mark labels, Regulation of the Minister of Law and Human Rights No. 67 of 2016, Article 3(7), requires that applications for hologram marks include a visual representation of the mark from various angles.

According to Article 1 point 1 of the Indonesian Trademark Law, a trademark is defined as a legally protected sign in Indonesia, which may consist of logos, images, words, names, numbers, letters, color arrangements in two or three dimensions, holograms, sounds, or any combination of two or more of these elements:

- A logo trademark, such as trademark Registration Number IDM000824501 owned by Apple Inc., is used to protect goods in class 20.



- Figurative mark, such as the trademark with Registration Number IDM000565833 owned by Lofthouse of Fleetwood Limited for the protection of goods in class 5 and class 30.



- Word marks, such as trademark Registration Number IDM000815026 owned by PT GoTo Gojek Tokopedia, to protect the type of services in class 35.

GOJEK

- Name trademarks, such as trademark Registration Number IDM001211505 owned by Dr. Hotman Paris Hutapea S.H. M.Hum., to protect goods in Class 3.

HOTMAN PARIS

- Numeric trademarks, such as the trademark Registration Number IDM000585255 owned by Irawan Alwin Sumampow, to protect the type of goods in class 16.



- Letter marks, such as Trademark Registration Number IDM000102375 owned by PT Heinz ABC Indonesia, are used to protect goods in class 30.



- Trademark of color arrangement, such as Trademark Registration Number IDM000806305 owned by Haleon US Holdings LLC to protect goods in class 32.



- Trademarks in the form of two (2) dimensions, such as the trademark (Heptahedron Geometric Design 2D) Registration Number IDM000749204 owned by BULLISH GLOBAL, are intended to protect services in class 35.



- A trademark may be a combination of two (2) or more elements, such as Trademark Registration Number IDM000410942 owned by PT Kompas Media Nusantara, which protects goods in Class 21.



- Three-dimensional trademarks, such as the trademark (3D Gillette Razor) with Registration Number IDM001128284, owned by The Gillette Company LLC, for the protection of goods in class 8.



- A hologram mark, such as the hologram mark with Registration Number IDM001192031 belonging to PT. Panca Pratama Indonesia, is intended to protect goods in class 34.



- Sound marks, such as trademarks (the Tokopedia sound mark) Registration Number IDM000895897 owned by PT Tokopedia, are used to protect the types of services in class 36.



Legal protection for trademarks in Indonesia is granted exclusively to registered marks, ensuring that the legitimate rights of trademark owners are safeguarded. Under Article 20 of the Trademark Law, marks cannot be registered if they contravene statutory regulations, state ideology, morality, religion, public order, or if they merely describe the goods or services, mislead the public, lack distinctiveness, or constitute generic terms or public symbols. Article 21(1) stipulates that trademark applications are refused if they are essentially or wholly identical to previously registered marks, well-known marks for similar or dissimilar goods or services under certain conditions, or registered geographical indications. Furthermore, Article 21(2) prohibits registration of marks that imitate or resemble the names, abbreviations, photographs of famous persons, state or international symbols, or official signs, unless authorized in writing by the rightful party. Article 21(3) also rejects applications filed in bad faith, defined as those intended to imitate or exploit another party's mark for unfair business advantage, thereby distorting fair competition or misleading consumers. The Indonesian trademark regime adopts a constitutive system (first to file principle) as stipulated in Article 3, whereby trademark rights are acquired only upon registration. Good faith is a fundamental requirement for registration, and only marks that are registered and filed in good faith are afforded legal protection. Consequently, trademark registration is imperative in Indonesia, as unregistered marks are not protected by law [10].

Registration of Motion Marks Based on Law Number 20 of 2016 Concerning Trademarks and Geographical Indications

The legal framework for trademark protection in Indonesia originated during the Dutch colonial era with the enactment of the Reglement Industriële Eigendom (RIE) under Staatblad 1912 No. 545 jo Staatblad 1913 No. 214, which continued to apply after independence. During the Japanese occupation, trademark regulation was governed by Osamu Seirei No. 30 on Trademark Registration, while pre-existing laws remained valid as long as they did not conflict with military regulations. Indonesia's first national trademark law was Law No. 21 of 1961 on Company and Commercial Trademarks, which replaced colonial-era legislation and marked the country's initial effort to establish its own intellectual property regime. This law was subsequently replaced by Law No. 19 of 1992 on Trademarks, which expanded the scope of protection and introduced new legal mechanisms. In response to Indonesia's accession to the World Trade Organization and the TRIPS Agreement, the trademark law was amended by Law No. 14 of 1997 and later replaced by Law No. 15 of 2001 to harmonize with international standards. The most recent development is Law No. 20 of 2016 on Trademarks and Geographical Indications, which further modernizes and consolidates trademark protection in Indonesia [11].

According to Article 1 of the Indonesian Trademark Law, a trademark is defined as a sign that can be graphically represented, such as logos, images, words, names, numbers, letters, color arrangements in two or three-dimensional forms, holograms, sounds, or any combination of these elements, which serve to distinguish the goods or services produced by individuals or legal entities in commercial activities. This definition, as further explained by Agung Indriyanto, establishes an exhaustive list of registrable signs, meaning that only those elements explicitly mentioned in the law such as color arrangements, images, logos, two- or three-dimensional forms, sounds, and holograms, or their combinations are eligible for legal protection as trademarks in Indonesia, while signs outside this definition cannot be registered [12].

The current Indonesian Trademark Law, Law No. 20 of 2016, adopts a broader definition of a trademark compared to the previous Law No. 15 of 2001. The earlier law defined a trademark as a sign in the form of a name, image, letters, words, numbers, color composition, or a combination thereof, possessing distinguishing power and used in the trade of goods or services. The new law expands this definition by explicitly requiring that a mark be "capable of being represented graphically" and by including additional protected signs such as sound, holograms, and three-dimensional forms. Article 2(3) of the current law further specifies that protected marks include logos, images, words, names, numbers, letters, color arrangements, in two or three-dimensional forms, holograms, sounds, or any combination of

two or more of these elements, provided they distinguish goods or services produced by a person or legal entity in trade.

Trademark registration in Indonesia is entirely governed by statutory law, reflecting the civil law tradition, where written legislation is the primary legal authority. Consequently, only signs that meet the criteria set out in the law namely, those that can be graphically represented and serve to distinguish goods or services are eligible for registration and legal protection. While the legislative intent behind the current law was initially to protect nontraditional marks such as sound, hologram, and three-dimensional marks, the definition's reference to signs "capable of being represented graphically" allows for the potential registration and protection of other nontraditional marks, such as motion or position marks, as long as they can be graphically depicted. Thus, the scope of registrable and protectable nontraditional marks in Indonesia is not limited to those expressly mentioned in the statute, but may extend to any sign that can be graphically represented and distinguishes goods or services.

Moving marks (motion trademarks) are not explicitly regulated under Indonesian Trademark Law, and thus, there is currently no legal framework for their registration or protection. Despite the absence of clear statutory provisions, various moving marks such as those used by Wondr, Garuda Indonesia, Loko Café, Castrol, Transjakarta Academy, Kompas Gramedia, Detikcom, Eiger, Commuterline, several universities, LRT Jabodebek, Alfamart, BRI Mo, PLN, Mind ID, Citilink, and others are utilized in trade and services within Indonesia. However, these marks are not afforded legal protection, as they do not fall within the definition of a trademark under Article 1(1) of the Trademark Law, nor are they recognized as protectable signs under Article 2(3). Consequently, moving marks cannot be registered or protected in Indonesia. This position is reinforced by Agung Indriyanto, Head of the Trademark Examination Team at the Directorate of Trademarks and Geographical Indications, who confirms that moving marks were intentionally excluded from the scope of protection during the legislative process. Furthermore, the Directorate's database indicates that no moving marks have been filed for registration, partly due to the lack of supporting infrastructure within the registration system. Therefore, there is an urgent need for regulatory reform to provide legal certainty and protection for moving marks in Indonesia [13].

The legal position regarding the protection of motion marks in Indonesia is reinforced by Erick Siagian, Head of the Application, Classification, and Formality Examination Administration Working Group at the Directorate of Trademarks and Geographical Indications, who stated that motion marks cannot be granted legal protection nor submitted for registration due to the current limitations of the Directorate's application infrastructure. Furthermore, neither the Trademark Law nor its implementing regulations provide legal protection for motion marks in Indonesia [14].

This position is reinforced by Intellectual Property Consultant Mr. Bagus Satrio Lestanto (Consultant No. 0754-2014) of SKC Law, who asserts that motion trademark registration is not possible in Indonesia. Under current Indonesian Trademark Law, only specific non-traditional marks namely sound marks, holograms, and three-dimensional marks are eligible for registration and legal protection, while other forms such as motion marks are excluded. In practice, the Directorate of Trademarks and Geographical Indications' registration system does not facilitate motion trademark applications. Consequently, registering motion trademarks in Indonesia would require an amendment to the Trademark Law to explicitly include such marks, followed by corresponding updates to the registration system to accommodate these changes [15].

According to Christian Hamonangan Ponto, an Intellectual Property Consultant (No. 1005-2020) at Satvana Law Office, motion marks cannot be registered in Indonesia because they are not recognized within the definition of a trademark under Article 1(1) of the Trademark Law, nor are they included in the scope of protection stipulated in Article 2(3) of the same law. Furthermore, relevant implementing regulations, such as Minister of Law and Human Rights Regulation No. 12 of 2021 and No. 67 of 2016 on Trademark Registration, do not provide for the registration of motion marks. The Directorate General of Trademarks and Geographical Indications' online application system also lacks a dedicated feature for motion mark registration, unlike other non-traditional marks such as sound, hologram, and three-dimensional marks. Consequently, motion marks are not eligible for legal protection or registration in Indonesia due to the absence of legal and administrative provisions. Ponto suggests that to allow motion mark registration, the Trademark Law must be amended to accommodate such marks, which would then prompt the Directorate to update its registration system accordingly. He notes that motion marks cannot be protected under other intellectual

property regimes, such as copyright, and should be included within trademark protection, as is the case in Singapore, where motion marks are legally recognized and registrable [16].

According to Felix Marcel Tambunan, an intellectual property consultant at Silitonga & Tambunan Law Firm (HKI Consultant No. 0601-2012), the current Trademark Law in Indonesia does not provide legal protection or registration mechanisms for motion marks, as neither the law nor its implementing regulations address such marks. Furthermore, the Directorate of Trademarks and Geographical Indications' registration system lacks a specific feature for filing motion marks. Tambunan suggests that to enable the registration of motion marks, the registration system must introduce a dedicated feature, and the Trademark Law itself must be amended to explicitly protect motion marks, which fall within the scope of trademark protection and are not covered by other intellectual property regimes. Future amendments should not only accommodate motion marks but also other non-traditional marks, such as position marks and scent marks. Additionally, the revised law should establish clear criteria for determining substantial similarity between registered motion marks and new applications, ensuring legal certainty in the event of future disputes [17].

According to Peter Mahmud Marzuki, the theory of legal certainty encompasses two principal dimensions: first, the existence of general rules provides individuals with guidance regarding permissible and impermissible actions; second, legal certainty ensures protection against arbitrary state actions, as these general rules enable individuals to comprehend the boundaries imposed by the state [18].

In the context of moving trademark registration under Indonesian Trademark Law, analysis through the lens of legal certainty theory reveals that the current legislation does not provide legal certainty for applicants seeking to register moving trademarks. This is because Indonesian Trademark Law does not regulate moving trademarks, despite their practical use in trade of goods and services. Consequently, there is an urgent need to amend the law to accommodate moving trademark registration and ensure legal protection for trademark owners. The primary objectives of such protection are to provide legal certainty to trademark owners, prevent trademark infringements and crimes, and encourage registration to safeguard owners' rights. In summary, the absence of regulation and registration mechanisms for moving trademarks in Indonesia results in a lack of legal protection and legal certainty for such trademarks [19].

4.2 The Registration of Motion Marks Should Provide Protection for Trademark Owners

The Concept of a Sign as a Trademark

A trademark is a sign that functions to identify the origin of goods or services and serves as a distinguishing mark between products. According to Article 15(1) of the TRIPS Agreement, any sign, or combination of signs, capable of distinguishing the goods or services of one undertaking from those of others may constitute a trademark. Such signs may include words, personal names, letters, numerals, figurative elements, and combinations of colors, or any combination thereof, and must be eligible for registration as trademarks. If a sign is not inherently distinctive, registrability may depend on distinctiveness acquired through use. Members may also require that signs be visually perceptible as a condition of registration [3].

According to Article 15(1) of the TRIPS Agreement, a trademark is defined as any sign, or combination of signs, capable of distinguishing the goods or services of one undertaking from those of others, including words (such as personal names), letters, numerals, figurative elements, color combinations, or combinations thereof, provided they are visually perceptible and eligible for registration. The essential element in this definition is distinctiveness, which is the substantive requirement for trademark protection under the TRIPs Agreement; a mark lacking distinctiveness may be refused registration. Justice Friendly in the United States categorized distinctiveness into five types: (a) generic marks, which merely denote the common name of the goods or services; (b) descriptive marks, which describe the characteristics of the goods or services; (c) suggestive marks, which imply qualities or characteristics requiring consumer imagination; (d) arbitrary marks, which use common words unrelated to the goods or services; and (e) fanciful marks, which consist of invented terms. Fundamentally, a trademark serves as a distinctive sign guaranteeing the individuality and reputation of goods or services in commerce, assuring producers of product quality and supporting marketing efforts to expand market reach [20].

In promoting and expanding their market, producers create distinctive signs as trademarks to differentiate their goods and services from those of others. Words, letters, numbers, images, photographs, shapes, colors, logos, labels, or combinations thereof may

serve as trademarks. In some jurisdictions, advertising slogans are also recognized and registrable as trademarks. An increasing number of countries permit the registration of unconventional marks, such as single colors, three-dimensional shapes, sounds, or scents. Nevertheless, most countries impose limitations, generally requiring that trademarks be visually perceptible or representable by images or writing. Accordingly, trademarks are classified as traditional marks, such as words or specific designs, and non-traditional marks, such as motion marks or sound marks [21].

Traditional marks such as letters, words, and logos have long been used to distinguish goods. However, other signs beyond these traditional forms also serve to identify the source of goods or services, thus functioning as trademarks. These non-traditional marks differ from traditional marks in scope, characteristics, nature, and economic potential. The evolution of commerce and technology has encouraged producers to experiment with new types of marks, such as sound marks, color marks, motion marks, and scent marks, collectively known as non-traditional trademarks. In the 21st century, these non-traditional marks have emerged as a growing product branding strategy [22].

Non-traditional marks, generally understood as distinguishing signs for goods or services that do not fit within the traditional definition of trademarks, encompass a broad and often ambiguous category. To address this, the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) under WIPO has analyzed and classified non-traditional marks into two groups: (a) visual non-traditional marks, including three-dimensional marks, color marks, holograms, slogans, titles of films and books, multimedia and motion marks, position marks, and gesture marks; and (b) non-visual non-traditional marks, such as sound marks, olfactory marks, taste marks, and texture marks. Among these, motion marks have received legal protection in several jurisdictions, including Singapore, where their regulation and registration are governed by the Singapore Trade Marks Act [23].

Regulation of the Registration of Moving/Animated Trademarks in Singapore under the Singapore Trade Marks Act

The legal regulation and protection of trademarks in Singapore are governed by the Singapore Trade Marks Act 1998, Revised Edition 2020 ("The Singapore TM Act"). Singapore adopts a dual system for trademark protection: the "first to file" principle under statutory law and the "first to use" principle under common law, particularly in relation to the tort of passing off and unfair competition. These systems operate independently.

Under Section 4(1) of the Singapore TM Act, trademark rights are acquired upon registration. Section 8(3) provides that an application for registration will be refused if the mark is identical or similar, in whole or in essence, to a well-known mark (whether registered or unregistered) or to a previously registered mark in Singapore.

Legal protection is granted upon registration with the Registry of Trade Marks at the Intellectual Property Office of Singapore (IPOS). However, special protection is afforded to well-known marks regardless of registration status. Owners of unregistered well-known marks may, by court order, prevent the use of marks that would dilute or unfairly benefit from the distinctive character of their well-known marks. Registration will also be refused if the mark is substantially identical or similar to a registered or well-known mark in Singapore.

The Singapore TM Act defines a trademark as any sign capable of being represented graphically and capable of distinguishing the goods or services of one person from those of others in the course of trade [24]. According to the Singapore Trade Marks Act, a mark eligible for registration must (a) be capable of graphical representation, and (b) possess distinctiveness to differentiate the goods or services of one party from those of another. The Act provides an open-ended definition of "mark," encompassing letters, words, names, signatures, numerals, devices, brands, headings, labels, tickets, shapes, colors, aspects of packaging, or combinations thereof. No type of sign is automatically excluded from registration unless it clearly falls outside the statutory definition of a trade mark. Section 2(1) of the Act stipulates that a trade mark is any sign capable of graphical representation, requiring the sign to be presented in a clear, precise, self-contained, easily accessible, intelligible, durable, and objective manner. While graphical representation generally implies visual depiction, it may also include non-visual representations, such as sound marks, where a relevant sound can be represented by musical notation even if the sound itself is not visually perceptible [25].

A sign cannot be registered as a trademark if it consists solely of: (a) the shape resulting from the inherent nature of the goods themselves; (b) the shape of goods necessary to obtain a technical result; or (c) the shape that gives substantial value to the goods. Under the

Singapore Trade Marks Act, signs that cannot be registered include: (a) signs that do not meet the definition of a trademark under Section 2(1); (b) marks lacking distinctiveness; (c) marks consisting exclusively of signs or indications that serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, production time, or other characteristics of goods or services; and (d) marks consisting exclusively of signs or indications customary in the current language or in bona fide and established practices of the trade.

The Singapore Trade Marks Work Manual clarifies that a moving mark may be accepted as a trademark, provided it can be graphically represented as required by Section 2(1) of the Act. Types of registrable and protected trademarks in Singapore include: traditional marks (word marks, figurative marks, and composite marks); non-traditional marks (packaging, sound, motion, hologram, color, and three-dimensional marks, all requiring graphic representation); and collective or certification marks, which distinguish goods or services certified or provided by association members from those of non-members.

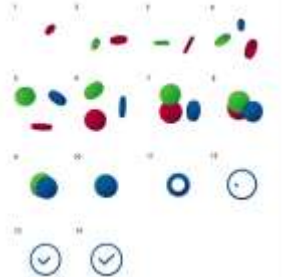



Moving marks are legally protected in Singapore as they may be registered if they meet the following criteria: (a) the sign is capable of graphic representation; (b) the sign is distinctive; (c) the sign is used in trade; and (d) the mark does not fall under the absolute grounds for refusal under Section 7, such as lack of distinctiveness or being purely descriptive. A moving mark must be represented by a sequence of still images in the correct order, accompanied by a written description explaining that the mark is a moving image, what is depicted, the number and sequence of images, and that there is a single movement sequence. There are registered moving marks in Singapore that enjoy legal protection under these provisions [25].




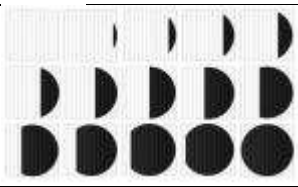
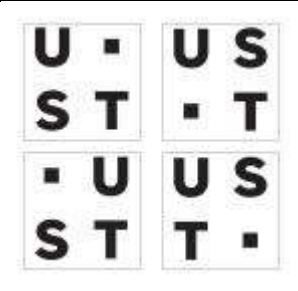



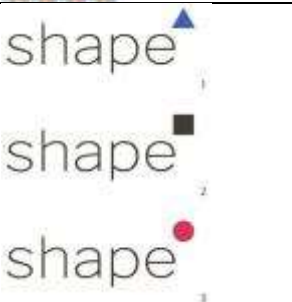

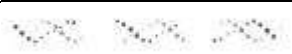





Figure 1. Types of Trademarks in Singapore

There are registered motion trademarks that have obtained legal protection in Singapore, as can be seen in the following table:

Table 1. Registered Motion Marks in Singapore

No.	Marks	Number Marks	Owner	Class
1.		40202327972Y	JCB Co., Ltd.	36
2.		40202325847X	GREYTT PTE. LTD.	42
3.		40202317545U	Veiovia Limited	09, 35, 36, 41, 42
4.		40202300444V	Meso Scale Diagnostics, LLC	09, 42

5.		40202300443X	Meso Scale Diagnostics, LLC	09, 42
6.		40202250612Y	Block, Inc.	35, 36
7.		40202250611M	Block, Inc.	09, 42
8.		40202208936P	Qlocktwo License GmbH	14
9.		40202113556Y	UST Global Inc	09, 35, 42

10.		40202103255V	Lim Mei Ling	35, 41, 42
11.		40202016411Q	Shape Pte. Ltd.	35, 42
12.		40201911765S	Hopper, Inc.	09
13.		40201822413X	Illumina Inc.	42
14.		40201812299R	Citigroup Inc.	36
15.		40201722557R	HAPPWHY BRANDS PTE. LTD.	09, 41
16.		40201708908Y	The Procter & Gamble Company	03
17.		T1306683B	Hisamitsu Pharmaceutical CO., INC.	05
18.		T1111928I	The Procter & Gamble Company	03, 05

19.		T1004337H	The Procter & Gamble Company	03
20.		T1000854H	Hisamitsu Pharmaceutical CO., INC.	05

Based on the explanation above, moving trademarks in Singapore are regulated under The Singapore Trade Marks Act as stipulated in Section 2(1). The Singapore Trade Marks Act defines a trademark as any sign capable of being graphically represented, and the Trade Marks Work Manual in Singapore clarifies that one form of acceptable graphical representation of a trademark is a moving trademark. Therefore, moving trademarks have obtained legal protection in Singapore, and applications for the registration of moving trademarks can be submitted in Singapore. An example of a registered moving trademark is the trademark



with registration number T1000854H, owned by Hisamitsu Pharmaceutical CO., INC., which protects goods in class 5.

The Registration of Moving Trademarks Should Provide Protection for Trademark Owners

A trademark right is an exclusive right granted by the state to the owner to use the mark or to authorize others to use it. This exclusive right is obtained through a compulsory registration process with the state, specifically the Directorate General of Intellectual Property. Registration is mandatory for legal protection and recognition; without registration, the mark remains in the public domain and is not protected by law, allowing any party to use it without the owner's consent. Only upon registration does the mark become private property and enjoy legal protection against unauthorized use [26].

A trademark must be regulated under the Trademark Law, which currently recognizes marks such as word marks, letter marks, and sound marks. However, Indonesian Trademark Law does not yet provide for the registration and protection of motion marks. Therefore, legislative amendments are necessary to extend legal protection to motion marks, as has been implemented in Singapore under The Singapore Trade Marks Act. Motion marks, characterized by their dynamic and innovative nature, serve to attract consumer attention more effectively than traditional static marks. These marks, which consist of moving images or animations, are particularly suited for use in digital advertising, cinemas, and television. Recognizing and protecting motion marks would align Indonesia with international developments and ensure adequate legal safeguards for this emerging category of trademarks [27].

The concept of a motion trademark is defined by WIPO and EUIPO as a type of mark comprised of movement. According to WIPO Standard ST.69, a motion mark is a mark formed by motion, while EUTMIR No. 2018/626 defines it as a trademark consisting of, or extending to, movement or change in the position of its elements. Motion marks may be registered provided they are visually perceptible and capable of graphic representation, typically through video clips or sequences of images distinguishing goods or services, especially in digital or internet-based contexts. Under trademark law, marks must be graphically represented to ensure clarity for both applicants and the public, facilitating legal certainty and publication. Registration of motion marks follows the general procedures for trademark applications but requires a sequence of images depicting the movement from start to finish, accompanied by a detailed description of the motion and its duration. Motion marks are classified as non-traditional marks enhanced by movement, and their registration must include a declaration and graphic representation supported by a clear, coherent description. The number of images depends on the complexity of the motion, with no fixed limit, ensuring the mark is accurately and objectively represented for legal protection [28].

Textually, Indonesia's Trademark Law does not regulate or provide legal protection for motion marks. However, Agung Indriyanto argues that, contextually, the protection of non-traditional marks in Indonesia could be extended to include motion marks, since their inherent characteristics fulfill the definition of a mark namely, a sign that can be graphically represented in two or three dimensions. Therefore, to ensure legal certainty, future amendments to the Trademark Law should revise the definition and scope of trademark protection to explicitly include motion marks. As the sovereign, the State is obligated to provide legal protection to its citizens, which is reflected in legislative instruments and policies, including statutory regulations [10].

The revision of Indonesia's Trademark Law, as outlined in the Academic Draft Bill, introduces significant changes to the definition and scope of trademark protection to accommodate and legally recognize moving marks. The definition of a trademark is broadened by removing specific examples, thereby allowing for a more open-ended interpretation and aligning with international developments, particularly to enable the protection of moving marks. Similarly, the scope of trademark protection is expanded by deleting enumerative examples, with further details on eligible graphic representations including moving marks to be regulated through a Ministerial Regulation. Furthermore, the requirements for trademark registration are amended so that the submission of a trademark label, including for moving marks, will be governed by Ministerial Regulation. This includes the use of moving images (video or image sequences) and a description explicitly identifying the mark as a moving mark. Collectively, these amendments ensure legal certainty and protection for moving marks in Indonesia.

The amendment of substantive provisions in the Academic Draft Bill on Trademarks provides legal certainty for owners of motion marks, in line with the theory of legal certainty. This theory encompasses two main dimensions: first, the existence of general rules guides individuals regarding permissible and prohibited actions, ensuring that the registration of motion marks is possible in Indonesia. Second, legal certainty protects individuals from arbitrary government actions by clearly defining the boundaries imposed by the state. Accordingly, the revised provisions grant motion mark owners exclusive rights to use, authorize, or prohibit the use of their marks by others, thus safeguarding their legal interests [18].

5. Conclusions

Based on the formulation of the problem and the discussion presented, it can be concluded that the registration of moving trademarks in Indonesia is currently not regulated under Law Number 20 of 2016 concerning Trademarks and Geographical Indications. Moreover, the registration system at the Directorate of Trademarks and Geographical Indications does not accommodate this type of trademark, thus registration and legal protection for moving trademarks cannot yet be carried out. Consequently, there is no legal certainty for the public or business actors who wish to register moving trademarks in Indonesia. Legal protection for moving trademarks can only be realized if amendments are made to the Trademark Law, particularly regarding the definition of trademarks, the scope of trademark protection, and the regulation of trademark labels in implementing regulations.

Based on these conclusions, the author recommends that the Indonesian government promptly amend the prevailing Trademark Law to accommodate the registration and legal protection of moving trademarks. The proposed amendments include adjusting the definition of trademarks to encompass marks that can be displayed graphically, expanding the scope of protected trademarks, and further regulating trademark labels through Ministerial Regulations. With these changes, it is expected that legal certainty will be established for the public and business actors in registering and protecting moving trademarks in Indonesia.

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