

## **Trademark Non-Use Cancellation in Indonesia: Navigating the Legal Maze**

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Non-use cancellation is a legal remedy available to concerned parties seeking the removal of a registered trademark from the trademark register due to its non-usage within a specified time frame. In the Indonesian context, the provisions pertaining to trademark non-use cancellation can be found in Article 74, Paragraph (1) of Law No. 20 of 2016 on Trademarks and Geographical Indications (the “Trademark Law”):

“The deletion of a registered Mark may also be submitted by a third party who has an interest in the form of a lawsuit to the Commercial Court based on the ground that the Mark has not been used for 3 (three) consecutive years in the trade of goods and/or services from the registration date or the last use.”

While the aforementioned provision appears straightforward, the complexity lies in the details. Notably, the Indonesian trademark law lacks a clear and precise definition of the term 'use.' This ambiguity is further compounded by Indonesia's adoption of the civil law legal system, which grants judges the freedom to exercise their discretion independently. As a result, 'use' can be subject to varying interpretations by judges in different cases.

To illustrate the intricacies, it's important to note that a non-use cancellation proceeding in Indonesia is a comprehensive litigation process, typically involving approximately ten (10) court hearings in the Indonesian commercial court. This underlines the significance of a precise and consistent interpretation of 'use' in trademark matters.

In practice, it's a common strategy for plaintiffs to strengthen their case by presenting surveys conducted by independent surveyors as evidence of the non-use of the trademark in question. Additionally, in cases where the trademark is associated with goods or services requiring specific licenses for distribution, for example BPOM (the Indonesian FDA) licenses, the absence of such licenses can serve as additional supporting evidence.

However, it's crucial to emphasize that the acceptance of such evidence ultimately lies at the discretion of the judges overseeing the case. In some instances, judges may choose not to admit this evidence.

Complicating matters further, there are instances where 'token use' or minimal/superficial use of a trademark solely for the purpose of maintaining registration is accepted. In summary, the Indonesian commercial court often exhibits unpredictability in its decisions.

When faced with such situations, seeking recourse through cassation to the Supreme Court becomes an available option, as the Supreme Court may offer a different perspective and interpretation of the case.

Given this inherent uncertainty, it is imperative for litigants to approach the evidence preparation, drafting and litigation of their cases with meticulous care to increase the chances of achieving a favorable outcome. Additionally, being well-prepared for the potential need to pursue cassation with the Supreme Court is essential. This consideration must also be taken into account by trademark holders in Indonesia who aim to protect and assert their interests effectively through the legal realm.

*Note: This article does not constitute as a legal advice. Should you need any legal assistances, please reach out to [dlp@dlplawoffices.com](mailto:dlp@dlplawoffices.com).*