



## Legal Protection of the Umama Scarf Trademark Against Passing Off Actions by Shella Saukia

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<http://dx.doi.org/10.18415/ijmmu.v13i3.7348>

### **Abstract**

Trademarks are a form of intellectual property that plays an important role in commercial activities because they serve as an identity, a distinguishing feature, and a guarantee of the quality of a product or service. To provide legal certainty, trademark protection in Indonesia is regulated in Law No. 20 of 2016 concerning Trademarks and Geographical Indications, which aims to protect the rights of registered trademark owners from unauthorized use of their trademarks. This study examines the legal certainty of registered trademark protection against passing off with a case study of the use of Umama Scarf hijab products by other parties without the trademark owner's consent. Legal protection for trademarks is not only provided through civil mechanisms but also through criminal mechanisms as a form of external legal protection. The research method used is normative legal research with a regulatory and conceptual approach. The results of the study show that although the term passing off is not explicitly regulated in Indonesian positive law, its substance is reflected in the provisions concerning trademark infringement, bad faith, and unfair business competition. Registered trademark owners obtain legal protection both civilly and criminally, including the right to claim damages, cessation of trademark use, and the application of criminal sanctions. Thus, trademark registration provides legal certainty for trademark owners.

**Keywords:** *Trademark; Legal Protection; Passing Off; Intellectual Property*

### **Introduction**

The development of the fashion industry in Indonesia, particularly in the field of hijabs, has shown significant growth in line with increasing public awareness of fashion. One hijab brand that is well known among consumers is Umama Scarf, which has built its reputation and trust through product quality and distinctive designs. This reputation has given Umama Scarf high economic value and competitiveness amid fierce competition in the Muslim fashion industry. However, in commercial practice, there are often actions that potentially violate trademark rights, one of which is passing off.

Black's Law Dictionary defines passing off as an act or event in which a person deliberately presents their product as belonging to another party with the intention of deceiving potential buyers. This act can be sued as an unlawful act based on the provisions of unfair business competition law. In addition,

passing off can also potentially be the basis for a lawsuit for trademark infringement. This concept covers all forms of misleading representations that aim to take advantage of the reputation or commercial identity of another party (Kurniawati, Khoirina, Nelia, Pakpahan, & Maulana, 2025).

Passing off is a violation of both trademarks and consumer rights that is recognized in various international laws but is not specifically stipulated in Indonesian law. One case that reflects the practice of passing off in Indonesia can be seen in the dispute between the Umama Scarf brand and the Shella Saukia brand. In this case, there was an allegation of passing off by Shella Saukia against Umama Scarf's hijab products. Shella Saukia, an influencer and entrepreneur, allegedly used and covered the original Umama Scarf brand with beads and resold the products without permission. This allegation arose after a TikTok user discovered the Umama Scarf logo covered with beads on a hijab they purchased from Shella Saukia. In response, Umama Scarf stated that there was no official collaboration between them and Shella Saukia. Umama Scarf also emphasized that covering up the original brand identity and reselling products without permission constitutes a violation of trademark rights (Gemilang, 2025). Umama Scarf also emphasized that they have never collaborated with Shella Saukia and are committed to maintaining integrity and providing the best products for consumers (April, 2025).

The case study referenced in this research is found in a previous study compiled by Pradipa Saraswati Annafi'ah, et al. (2024), which examined passing off violations using the Hamlin and Rhodney brands as research objects in the context of intellectual property (IP) protection. The study shows that passing off not only has the potential to damage the reputation of well-known brands, but can also cause losses to their owners. The study also confirms that unauthorized imitation of well-known brands, including passing off, can result in a decline in consumer confidence in the original product (Annafi'Ah et al., 2024). Several other studies also explain that passing off is generally carried out with malicious intent, whereby the perpetrator deliberately piggybacks on the fame of a well-known brand to gain personal profit without regard for ethical principles in business (Pentakosta & Hernawati, 2020).

Based on the description above, the problems to be discussed in this paper can be formulated as follows: what form of legal protection does the Umama Scarf brand have against passing off by Shella Saukia? and what efforts can the Umama Scarf brand take to resolve the passing off committed by Shella Saukia? This study was conducted to determine and understand the form of legal protection for the Umama Scarf brand against passing off by Shella Saukia, as well as the settlement efforts that can be made by the Umama Scarf brand against the passing off committed by Shella Saukia.

## **Methods**

This study uses a normative legal research type, employing a statute approach, by examining all laws and regulations related to the legal issues discussed in this study, such as Law -Law Number 20 of 2016 concerning Trademarks and Geographical Indications, as well as other applicable regulations related to trademarks or intellectual property rights in Indonesia, and a conceptual approach, through the views and doctrines that have developed in legal science. By studying these views and doctrines, researchers will discover ideas that create understanding, concepts, and legal principles related to the issues being discussed. (Marzuki, 2021).

## **Results**

### **1. Forms of Legal Protection for the Umama Scarf Trademark Against Passing Off Actions by Shella Saukia**

Passing off is a form of trademark infringement that involves imitating, adapting, and displaying the distinctive characteristics of a trademark to make it appear to be associated with a well-known

trademark that has a reputation in the community. The purpose of this action is to take advantage of the trust and reputation of the trademark to obtain economic benefits without the permission of the original owner. From a legal perspective, passing off is often associated with unlawful acts because it can cause confusion among consumers and harm the legitimate trademark owner, both materially and immaterially.

Protection against passing off can be linked to the principles of fair competition and the prevention of unfair business practices. In this case, Rachmadi Usman argues that passing off occurs when there is the use of a sign or packaging that creates a misleading impression in the community, so that consumers think that the product being offered comes from the same source as a well-known brand that already exists. Therefore, to determine the existence of passing off, three main elements must be fulfilled, namely (Usman, 2003)

1. The existence of goodwill or reputation
2. The existence of misrepresentation
3. The occurrence of losses

Based on these three elements, it can be concluded that the actions taken by Shella Saukia against Umama Scarf's hijab products fulfill the elements of passing off. First, the Umama Scarf brand has strong goodwill or reputation among consumers as a producer of high-quality hijabs with distinctive designs and affordable prices. Consumer trust in this brand reflects its high goodwill, giving the Umama Scarf brand commercial value and an image that must be protected from misuse by other parties. Second, Shella Saukia's actions of covering the Umama Scarf brand or logo with beads and reselling the products as if they were her own production constitute misrepresentation, which has the potential to mislead consumers regarding the origin of the products. Third, Shella Saukia's actions have indirectly caused material and immaterial losses to Umama Scarf. Materially, unauthorized resale has the potential to reduce Umama Scarf's turnover and official market share, because products that should be marketed through official distribution channels are instead being sold independently by other parties. In addition, these actions also caused immaterial losses in the form of a decline in brand reputation, considering that Shella Saukia was previously involved in a dispute with another party that created a negative image in the public eye. This situation indirectly dragged Umama Scarf's good name into an unfavorable public perception, thereby affecting the commercial value and consumer confidence in the brand.

Regulations related to passing off are not explicitly regulated in Indonesian legislation. The term passing off originates from the common law system and is considered a form of unfair competition. Although it does not mention the term passing off directly, the TRIPs Agreement contains provisions related to unfair competition, as found in the Paris Convention, specifically Article 10 bis, which requires each member country to provide effective protection against all forms of unfair competition (Ferdian, 2019). The convention states that acts that cause confusion regarding the origin of goods or services, disparage the reputation of other businesses, or mislead the public about the characteristics of products are forms of unfair competition that are prohibited. Article 10 paragraph (3) point 1 of the Paris Convention is the core of the protection against passing off, which prohibits acts that create false representations that lead consumers to believe that the goods or services offered originate from another company with a better reputation. Furthermore, Article 6 paragraph (1) of the Paris Convention also gives member states the authority to refuse the registration of trademarks that resemble or imitate well-known trademarks if such resemblance could cause confusion among the public. Based on the above provisions, passing off can be understood as unfair competition committed by a person or legal entity with malicious intent to obtain profit by exploiting the reputation of a well-known trademark.

Indonesian law does not recognize the term “passing off” terminologically, but the concept of bad faith in trademark registration as regulated in Article 21 paragraph (3) of the MIG Law has a substance that is in line with the prohibition of passing off. This provision stipulates that a trademark registration application may be rejected if it is filed in bad faith, including if the applicant attempts to imitate or exploit the popularity of another trademark for profit, which could ultimately mislead consumers and create unfair business competition. Although there are no normative regulations that directly mention passing off, cases related to the exploitation of the reputation of well-known trademarks are quite common in Indonesia. In judicial practice in Indonesia, the term passing off is often used in legal arguments, both in cases involving foreign parties and fellow Indonesian citizens. This shows that the concept of passing off is recognized in legal practice even though it has not been codified in the form of positive rules (Michael & Kansil, 2021).

The state provides legal protection for trademark holders with the aim of protecting their trademarks. According to Mochammad Isnaeni, the legal protection provided is divided into two types, namely internal and external legal protection (Isnaeni, 2016).

### 1. Internal Legal Protection

Internal legal protection is legal protection that is directly arranged by the parties involved in a legal relationship, such as in an agreement or contract. In this process, both parties consciously and without coercion draft various clauses containing rules relating to rights, obligations, and how to deal with risks that may arise in the future (Isnaeni, 2016). Thus, both parties have the guarantee of balanced legal protection in accordance with the agreement that has been made.

Internal legal protection of trademark rights can essentially be realized through a trademark license agreement, which is a written agreement made between the trademark owner acting as the licensor and the party receiving the license to grant permission to use the trademark in economic activities to obtain profits, while still respecting the exclusive rights of the trademark owner. Based on Article 1 paragraph (18) of the MIG Law, which states that a license is a permit granted by the registered trademark owner to another party based on a written agreement in accordance with laws and regulations to use the registered trademark. This license agreement does not transfer ownership rights to the trademark, but only grants limited rights of use to another party in accordance with the agreement between the parties as set forth in the agreement.

Article 42 paragraph (1) of the MIG Law also explains that the owner of a registered trademark may grant a license to another party to use the trademark, either in part or in whole, for goods and/or services. Thus, licensing is a means for trademark owners to expand the scope of use of their trademarks without losing their exclusive ownership rights. In order for a license agreement to have binding legal effect on third parties, the agreement must be registered with the Ministry of Law and announced in the Official Trademark Gazette, as stipulated in Article 42 paragraph (4) of the MIG Law. This registration aims to provide legal certainty and transparency in the utilization of trademark rights, as well as to ensure that the use of the trademark by the licensee is lawful and in accordance with legal provisions.

Internal legal protection in the form of a license agreement is an important mechanism to ensure that the use of a trademark is lawful, controlled, and under the direct supervision of the trademark owner. License agreements provide a balance between the exclusive rights of the trademark owner and the interests of other parties who obtain permission to use the trademark, while also providing legal certainty through the obligation to register the license so that it has legal effect on third parties. In relation to the

passing off committed by Shella Saukia against Umama Scarf's hijab products, this internal legal protection mechanism was proven not to have been applied because Shella Saukia used Umama Scarf's hijab products for commercial purposes without permission or a license agreement from Umama Scarf as the brand owner. This is reinforced by an official clarification issued by Umama Scarf stating that there is no cooperative relationship with SS (Shella Saukia), thus clearly indicating that there is no legal relationship between the two parties and describing the occurrence of trademark abuse that violates the exclusive rights of the trademark owner. If Shella Saukia applied for and obtained a license, the use of the brand could be done legally and under the supervision of the brand owner, thereby preventing passing off or reputation piggybacking. This dispute highlights the strategic role of license agreements as a form of internal legal protection to prevent the misuse of registered brands and to strengthen the legal position of brand owners against parties who commit violations.

## 2. External Legal Protection

External legal protection is based on generally applicable laws and regulations that are binding on all parties. Through these laws and regulations, the state seeks to prevent unilateral actions and abuse of authority, as well as to maintain a balance of interests between parties (Isnaeni, 2016). This protection also encourages fair, proportional, and impartial decisions. That way, every individual facing legal issues still has the same opportunity to get protection for their rights. The main principle of external legal protection is to ensure the objective application of the law and provide a sense of security and justice for all parties involved.

Trademark registration with the Directorate General of Intellectual Property (DJKI) as stipulated in Article 3 of the MIG Law is a key requirement for obtaining exclusive rights to a trademark. Through the trademark registration process, trademark owners obtain legal recognition as legitimate rights holders. Once the registration application is accepted and approved, trademark owners are entitled to full legal protection for the use of the trademark. One of the main benefits of trademark registration is that the trademark registration certificate can be used as valid evidence in court in the event of a dispute, and if another party claims ownership of the same or similar trademark, that party has the burden of proof to demonstrate their rights. Thus, registered trademark holders no longer need to prove their ownership, as their rights have been legally recognized through the official registration process.

The Umama Scarf trademark, which has been officially registered in the General Trademark Register with registration number IDM001159940 in the name of Muhammad Shakeel at the Directorate General of Intellectual Property (DJKI), grants its owner exclusive rights to use the trademark. Shella Saukia's action of using Umama Scarf's hijab products by covering the original logo with beads without permission from the trademark owner can be categorized as a form of trademark infringement, specifically passing off. This action shows an attempt to take advantage of the reputation and popularity of the Umama Scarf brand for personal commercial gain by misleading consumers into thinking that the product is their own. Legally, Umama Scarf, as the holder of a legally registered trademark, is entitled to full legal protection as stipulated in the MIG Law and the Civil Code. This protection includes the right to demand the cessation of unauthorized use of the trademark, to enforce its exclusive rights, and to claim compensation for economic and reputational losses resulting from such actions. Thus, Shella Saukia's actions not only violate intellectual property rights but also reflect unfair business competition that contradicts the principles of fairness and ethics in the world of trade.

Article 83 of the MIG Law grants registered trademark owners the right to file a lawsuit for damages and/or cessation against any unauthorized use of the trademark by another party. This provision

serves as the legal basis for trademark holders to enforce their exclusive rights if another party uses the trademark, either in whole or in part, without permission. In this case, Umama, as the legitimate trademark holder, has a strong legal basis to enforce its exclusive rights against the passing off committed by Shella Saukia through the closure of the trademark logo and the resale of hijab products without permission, which not only eliminates the brand identity but also causes economic losses. Therefore, Umama Scarf has the right to claim compensation for the profits obtained by Shella Saukia from the sale of these products and to demand the cessation of all unauthorized use of the trademark. This provision also affirms the function of external legal protection, which aims to protect the exclusive rights of trademark owners from infringement and passing off.

External legal protection for trademarks is not only provided through civil mechanisms, which can be done by registering a trademark to obtain exclusive rights to that trademark and filing a lawsuit for damages or cessation of all acts related to the unauthorized use of the trademark, but also through criminal mechanisms. In this case, Umama Scarf also receives external legal protection under criminal law based on the provisions stipulated in Article 100 of the MIG Law. These provisions emphasize the role of the state in taking firm action against any form of trademark infringement, especially against actions that have the potential to harm registered trademark owners or mislead consumers. These provisions state that,

- (1) *Setiap Orang yang dengan tanpa hak menggunakan Merek yang sama pada keseluruhannya dengan Merek terdaftar milik pihak lain untuk barang dan/atau jasa sejenis yang diproduksi dan/atau diperdagangkan, dipidana dengan pidana penjara paling lama 5 (lima) tahun dan/atau pidana denda paling banyak Rp2.000.000.000,00 (dua miliar rupiah).*
- (2) *Setiap Orang yang dengan tanpa hak menggunakan Merek yang mempunyai persamaan pada pokoknya dengan Merek terdaftar milik pihak lain untuk barang dan/atau jasa sejenis yang diproduksi dan/atau diperdagangkan, dipidana dengan pidana penjara paling lama 4 (empat) tahun dan/atau denda paling banyak Rp2.000.000.000,00 (dua miliar rupiah).*
- (3) *Setiap Orang yang melanggar ketentuan sebagaimana dimaksud pada ayat (1) dan ayat (2), yang jenis barangnya mengakibatkan gangguan kesehatan, gangguan lingkungan hidup, dan/atau kematian manusia, dipidana dengan pidana penjara paling lama 10 (sepuluh) tahun dan/atau denda paling banyak Rp5.000.000.000,00 (lima miliar rupiah).*

This provision clearly states that any form of use of a registered trademark by another party without authorization, whether it is identical in its entirety or substantially similar, is a criminal offense that is subject to sanctions. In addition, the criminal provisions will be aggravated if the violation causes health hazards, environmental damage, or even death. Thus, the criminal provisions in this regulation serve as a form of repressive external legal protection, which not only deters perpetrators but also guarantees legal certainty for registered trademark owners and protects consumers from potential deception due to the unlawful use of trademarks. Therefore, this provision is one of the important pillars in the enforcement of intellectual property law, particularly trademark rights in Indonesia.

## **2. Remedies and dispute-resolution options available to Umama Scarf in respect of passing-off by Shella Saukia**

The passing off committed by Shella Saukia against Umama Scarf's hijab products is a clear example of trademark infringement in Indonesian trade practices. In this case, Shella Saukia is known to have used Umama Scarf's hijab products without permission, covering the logo or brand with beads, and reselling them as if the hijab products were her own. These actions indicate an attempt to piggyback on

the reputation and popularity of the Umama Scarf brand to obtain illegal economic gains. These actions not only harm Umama Scarf economically and reputationally, but also mislead consumers and violate the principles of honesty and ethics in commercial activities. These actions clearly reflect the element of passing off, which is piggybacking on the reputation of another party to attract consumer interest and obtain profits illegally. This case highlights the importance of legal protection for brands as a means of safeguarding the exclusive rights of legitimate brand owners. Effective legal protection plays a role in preventing the misuse of trade identities and upholding fairness in commercial activities.

The passing off committed by Shella Saukia against Umama Scarf's hijab products constitutes a violation of the exclusive rights of the registered brand owner. This action was carried out by using Umama Scarf's hijab products without permission, then covering the Umama Scarf logo or brand on the product with beads to make it appear as if it were their own product, and then reselling it to consumers. This action shows bad faith because it takes advantage of the reputation and popularity of the Umama Scarf brand for personal gain. In addition to violating the economic and moral rights of the brand owner, this action could also mislead consumers regarding the origin of the product. Umama Scarf, as the legitimate brand owner, has a legal basis to pursue dispute resolution to protect its trademark rights and uphold the principle of fairness in trade activities.

Dispute resolution for passing off against Umama Scarf's hijab products can be pursued through two legal channels, namely through litigation (through the courts) and non-litigation (outside the courts). Non-litigation dispute resolution is a settlement effort conducted outside of court and is closed to the public (close door session) so that the confidentiality of the parties is guaranteed. The purpose of out-of-court dispute resolution is for the disputing parties to resolve their dispute by reaching an agreement in the form of a settlement or finding a win-win solution (Tutuarima & Tuasikal, 2025). The process of dispute resolution through non-litigation channels tends to be faster and more efficient than resolution through litigation channels. In addition, the process of dispute resolution outside of court is carried out in order to avoid delays due to procedural and administrative matters, such as court proceedings. This process of dispute resolution outside of court is also known as Alternative Dispute Resolution (ADR). Article 1 point 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, hereinafter referred to as the AAPS Law, defines Alternative Dispute Resolution (ADR) as a dispute resolution or disagreement resolution institution carried out by agreement between the parties outside of court through various means such as consultation, negotiation, mediation, conciliation, or expert assessment.

Efforts to resolve disputes through non-litigation channels not only include alternative mechanisms such as consultation, negotiation, mediation, conciliation, and expert assessment, but can also be pursued through arbitration. Article 1 paragraph 1 of the AAPS Law states that arbitration is an effort to resolve civil disputes outside the general court system, based on a written arbitration agreement made by the parties, in which case the District Court has no authority to adjudicate the dispute between the parties. Provisions related to dispute resolution through arbitration are also regulated in Article 93 of the MIG Law, which confirms that trademark disputes can be resolved through arbitration and Alternative Dispute Resolution (ADR). Arbitration is essentially a dispute resolution mechanism carried out by submitting the authority to examine and decide on a case to an arbitrator in order to obtain a final and binding decision. Based on this definition, there are three main elements related to arbitration, namely: (Santoso & Aryono, 2021)

1. The existence of a dispute;
2. An agreement to submit the dispute to a third party (arbitrator) for resolution; and
3. A final and binding decision for the parties.

In practice, arbitration is divided into two forms, namely Ad Hoc Arbitration and Institutional Arbitration, both of which have the same authority to examine and decide on a dispute based on the

agreement of the parties (Kusuma & Sugama, 2020). The fundamental difference between the two lies in the institutional and coordination aspects of their implementation. Ad hoc arbitration is a form of arbitration that is not coordinated by a specific institution, is incidental in nature, and is formed specifically after a dispute arises. Unlike ad hoc arbitration, institutional arbitration is managed by a permanent and continuously organized arbitration institution, which remains in existence even when it is not handling a particular dispute. In general, this type of arbitration is agreed upon by the parties from the outset through an arbitration clause in the agreement, as a means of alternative dispute resolution outside of court.

Litigation is an attempt to resolve a dispute through the courts, whereby the disputing parties will face each other in court to defend and enforce their rights. The litigation process is carried out by filing a lawsuit by the party who feels aggrieved against the other party who is considered to have committed a violation. The outcome of this dispute resolution will be determined in the form of a court decision that is binding and has permanent legal force, which in this case will also determine which party is declared the winner or loser based on the facts and evidence presented at the trial (Rosalina, 2024). In its implementation, the court has an obligation to examine and adjudicate cases objectively based on valid evidence, so that the verdict reflects the values of truth and justice.

Efforts to resolve trademark disputes through litigation are a legal mechanism that is explicitly regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications. This provision provides a legal basis for registered trademark owners and official licensees to enforce their rights if another party uses the trademark without authorization, as stipulated in Article 83 paragraph (1), which states that,

*Pemegang suatu merek yang terdaftar atau individu/grup yang memiliki lisensi resmi dari Merek yang terdaftar memiliki hak dalam pengajuan gugatan terhadap pihak lain yang menggunakan Merek yang serupa dalam esensi atau keseluruhannya tanpa izin. Tuntutan ini dapat mencakup:*

- a) *Permintaan untuk mendapatkan kompensasi kerugian yang diakibatkan; dan/atau*
- b) *Upaya untuk menghentikan semua aktivitas terkait penggunaan Merek tersebut.*

Based on these provisions, the case involving Umama Scarf, which suffered losses due to passing off in the form of the use and use of beads, which were then resold to consumers by Shella Saukia, can file a lawsuit with the Commercial Court. Umama Scarf, as the trademark holder, has legal grounds to file a lawsuit with the Commercial Court as a form of protection of its rights. The lawsuit may include claims for damages or the cessation of all activities involving the use of the Umama Scarf trademark. Filing a lawsuit is an effort that can be made by trademark owners to prevent the unauthorized use of their trademarks and to prevent further losses. In this regard, while the examination process is still ongoing, the judge has the right to issue a temporary injunction against the defendant.

Article 84 of the MIG Law provides a strong legal basis for trademark owners or licensees to obtain protection of their rights while the dispute resolution process is still ongoing in court. This provision confirms that while the case is still under examination, the plaintiff has the right to file a request with the judge to temporarily stop the production, distribution, or trade of goods that use the trademark without authorization. This aims to prevent greater losses to the trademark owner, both in terms of economy and reputation, due to the continued circulation of goods that infringe on trademark rights before a final and binding decision is made. In addition, this provision also gives the judge the authority to order the defendant to surrender goods that use the trademark without rights, which can be enforced after the court decision has permanent legal force. This order is known as a temporary injunction, which serves as a form of preventive legal protection for trademark owners during the court proceedings.

Efforts to resolve the Umama Scarf trademark dispute resulting from passing off by Shella Saukia can be pursued through several stages of non-litigation settlement before proceeding to litigation. These stages are important to ensure that every settlement step taken is proportional, efficient, and in line with the principles of legal protection regulated in the intellectual property system in Indonesia.

The first step that can be taken is to consult with an intellectual property consultant or legal advisor. This consultation serves as an initial step in reviewing the extent to which Shella Saukia's actions constitute trademark infringement and in determining the strategy that Umama Scarf will take to resolve the dispute. Through the consultation process, Umama Scarf, as the trademark owner, can gain a comprehensive understanding of the law, prepare relevant evidence, and formulate alternative solutions that are in line with its legal and business interests. The results of this consultation process can serve as a basis for Umama Scarf in determining its next steps, whether through non-litigation or litigation.

The next step that can be taken is negotiation between Umama Scarf and Shella Saukia. Negotiation is a settlement effort carried out directly by the disputing parties without the intervention of a third party. This process is flexible and informal, allowing for a peaceful agreement to be reached in a shorter period of time. Through the negotiation process, Umama Scarf can convey its objections to the unauthorized use of the trademark, demand the cessation of the distribution of infringing products, and request compensation for material and immaterial losses incurred. In addition, negotiations also open up opportunities for the parties to establish new mutually beneficial business agreements without damaging the professional relationship between the parties.

The mediation process can be carried out if the negotiations have not reached the expected agreement. This mediation process involves the role of a neutral third party who acts as a mediator to help the parties reach an agreement. In the context of trademark disputes, mediation can be facilitated by the Directorate General of Intellectual Property (DJKI) or by a mutually agreed professional mediator. This mechanism has several advantages, including a faster process, lower costs, and the nature of maintaining confidentiality and good relations between the disputing parties. Mediation also provides space for the parties to reach a more equitable agreement that is oriented towards mutual interests without having to go through a lengthy court process.

The final step that Umama Scarf can take if all non-litigation settlement efforts fail to reach an agreement is through litigation. A lawsuit can be filed with the Commercial Court demanding the cessation of all unauthorized use of the trademark, payment of compensation for losses incurred, and restoration of exclusive rights to the infringed trademark. The sequence of dispute resolution carried out in stages through consultation, negotiation, mediation, and litigation demonstrates the application of the principle of multi-step dispute resolution, which emphasizes effectiveness, efficiency, and fairness as required in the intellectual property law system in Indonesia.

## ***Conclusion***

The actions taken by Shella Saukia against Umama Scarf's hijab products constitute passing off, namely the exploitation of the reputation (goodwill) of a registered trademark, misrepresentation through the concealment of the trademark logo, and the causing of both material and immaterial losses to the trademark owner. Although the term passing off is not explicitly regulated in Indonesian positive law, the concept is substantially in line with the principles of bad faith, prohibition of unfair business competition, and trademark protection as regulated in Law Number 20 of 2016 concerning Trademarks and Geographical Indications. Umama Scarf, as the registered trademark holder, obtains legal protection both internally through licensing mechanisms and externally through trademark registration, civil lawsuits, and criminal sanctions. In addition, the Indonesian legal system has provided various dispute resolution efforts, both through non-litigation and litigation channels, which can be used to enforce the exclusive

rights of trademark owners and maintain legal certainty and consumer protection. Thus, the trademark legal system in Indonesia has provided adequate instruments to protect trademark owners from reputation riding and unfair business competition practices.

The government and legislators are advised to consider more explicit regulations regarding the concept of passing off in Indonesian trademark law in order to strengthen legal certainty and the effectiveness of law enforcement against reputation riding practices. In addition, business actors are expected to better understand the importance of the legal use of trademarks through licensing mechanisms in order to avoid intellectual property rights violations. Trademark owners are advised to proactively register their trademarks, monitor the distribution of their products in the market, and prioritize the gradual resolution of disputes through non-litigation mechanisms before resorting to litigation, so that disputes can be resolved effectively, efficiently, and fairly.

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