



### This Month Newsletter contains

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#### 1. Copyright Enforcement on Illegal Cable TV Broadcasting Rights in Pontianak, West Kalimantan



Civil Servant of Directorate General of Intellectual Property Rights (DGIP) together with the relevant authorities in Pontianak, West Kalimantan conducting actions on June 28, 2012 regarding the Broadcasting Rights of illegal cable TV based on a report of the Association of Indonesian Multimedia (APMI).

This type of infringement is the first kind of infringement that occurred in Indonesia, since usually the DGIP only

handle the Trademark, Industrial Designs and Patent cases. The seized goods are in the form of two pieces of Trueman receiver and important documents such as a customer list of Seven Vision and proof of financial transactions. Seven Vision subscribers around 300 customers and has been in operation for one year. The broadcasting rights were allegedly violated by the Seven Vision is Star Sport, ESPN, National Geographic, HBO, Star Movie, Cinemax, Celestial Movies, TV 5 Monde, Lotus Macao, MGM, Arirang, NHK, Lestv Movie, Al Akaas and Tevis. This Broadcasting Rights is violating Article 72 paragraph 1 Copyright Law No. 19 of 2002 and subject to imprisonment of at least 1 (one) month and / or a fine a minimum of Rp. 1,000,000.00 (one million Rupiah, or equivalent to USD 1.000) or a maximum imprisonment of 7 (seven) years and / or fines in the amount of Rp.5.000.000.000, 00 (five billion Rupiah, or equivalent to USD 500.000)

\*1 USD = Rp. 9,587 - Bank Indonesia rate on September 20, 2012 (source: DGIP)

## 2. Counterfeit Faber Castle's pencil, eraser and sharpener being seized in Bandung, West Java



On July 5, 2012 the DGIP's Civil Servant and local police took actions on the existence of counterfeit pencil, eraser and sharpener products belongs to Faber Castle using trademark "EXAM GRADE" in Bandung, West Java.

Enforcement was carried out in 3 (three) different places namely in a warehouse storage of warehousing complex in Caringin area and two stores in Cibadak and Pasir Kaliki named Trijaya. The said place was owned by local businessman name Kwe Ook a.k.a Siong Hook. According to the user (mainly students and other examinees), the fake pencils and erasers of "Exam Grade" cannot be read by a computer system, of course, this is very detrimental to the examinees who have prepared for the exam.

The total losses of this case approximately have reached into 3 billion Rupiah and counterfeiting is violated Article 90 of Law No. 15 of 2001 with a maximum penalty of 5 years imprisonment and a fine of Rp1.000.000.000. (one billion Rupiah, or equivalent to USD 100,000).

\*1 USD = Rp. 9,587 - Bank Indonesia rate on September 20, 2012

According to the Head of Sub Directorate General of IPR Enforcement and Monitoring, Ir. Johno Supriyanto, M.Hum said that the goods were confiscated since it is illegal and also counterfeiting the German trademark "Exam Grade". The seized goods are pencil and sharpener. Furthermore, the local businessman did not ask permission to the rightful owner of the trademark. Based on this prosecution, hopefully the consumer will be more careful in buying Stationery especially pencil, eraser and sharpener. (source: DGIP)

## 3. Law Enforcement on the "Jar Lid" Design in Jakarta and Tangerang, Banten



Civil Servant of Directorate General of Intellectual Property Rights (DGIP) with the National Police Criminal Investigation take actions on a fake "jar lid" Design at PT. Citra Perdana Maju located in Warehousing Complex, Tangerang on July 9, 2012.

In this action, they successfully confiscate 7.819 jar lids from 3 different places in Jakarta and Tangerang. The suspect who allegedly faked jar lid named Jonathan Simon will be subject to imprisonment for a maximum period of 4 (four) years and / or a maximum fine of Rp. 300.000.000,00 (three hundred million Rupiah) according to Article 9

and 54 of Law No.31 of 2000 regarding Industrial Design.

\*<sub>1</sub> USD = Rp. 9,587 - Bank Indonesia rate on September 20, 2012 (source: DGIP)

#### **4. Supreme Court Regulation concerning Temporary Suspension Order and Injunction**

On July 30, 2012 Indonesia Supreme Court issued a Supreme Court Regulation No. 4 of 2012 regarding Temporary Suspension Order and No. 5 of 2012 regarding Temporary Injunction.

##### **❑ Supreme Court Regulation No. 4 of 2012 regarding Temporary Suspension Order**

Temporary suspension order is a written order from the chief of commercial court to the local custom officer to conduct a temporary suspension of imported and exported goods, which is based on the proper evidences, presumed as the counterfeit goods of the copyright and trademark infringement in Indonesia.

The requirements to conduct Counterfeit goods' impound:

1. The copyright or trademark ownership evidence;
2. Supplementary evidence which shows the indication of the copyright or trademark infringement;
3. Description of suspension requested goods, namely: bill of lading, airway bill, ship number, classification and amount of goods, original port/harbor, original country;
4. Pay the warranty in the form of cash or bank guarantee equivalent with the amount of

suspended goods, including the fees incurred due to temporary suspension.

5. Pay the fees arose from the estimation of warehouse rent, demurrage, freight expenses.

##### **❑ Supreme Court Regulation No. 5 of 2012 regarding Temporary Injunction.**

Temporary injunction is an instruction issued by the Court that should be binding for all relevant parties based on the request of the applicant against an Intellectual Property Rights violation on Industrial Design, Patent, Trademark, and Copyrights to:

- a. Prevent imported goods, which presumed as the infringement goods that against intellectual property rights violations.
- b. Protect and prevent the evidence elimination by the suspected/offender.
- c. Stop the infringement to prevent the greater losses.

The applicant (the IPR owner) could request the temporary injunction by completed the requirement as below:

1. Intellectual Property Rights ownership evidence;
2. Evidence that proves there is a strong indication of intellectual property right's infringement;
3. Clear description regarding the goods/documents, which will be requested, sought, collected and protected for the evidentiary purposes.
4. Pay warranty in the form of cash or bank guarantee equivalent with the amount of suspended goods. (source: Supreme Court)



## 5. The Implementation of Industrial Property Administration System (IPAS)



As of August 1, 2012, the Directorate General of Intellectual Property Rights (DGIP) has done a soft launch applications using IPAS Information Technology (Industrial Property Administration System). IPAS is software that is built and developed by the World Intellectual Property Organization (WIPO) since 2000. So far it has more than 50 countries that implement IPAS. Bottom line is, this system will accommodate the administration of IPR system in a comprehensive and covers all activities from receipt to issuance of a

certificate of IPR. This system is going through some stages which are little different than before.

With the new system, DGIP is expected to improve their service quality in order to provide the best service to the filing of IPR. (source: DGIP)

## 6. Forum Group Discussion on the “Criminality in Indonesian Fine Art” and the launching of Inda Citraninda Noerhadi’s Book “Copyright History of Paintings”



As the sense of responsibility towards society, Biro Oktroi Roosseno (BOR) has designed social programs periodically especially in the field of copyright which still not widely understood by the public. The socialization event was spearheaded with the **"Discussion Forum on Photography and Copyright"** which was held on December 14, 2011. Then followed by the discussion on **"Criminality in Indonesian Fine Art"** and the launching of **Inda Citraninda Noerhadi's** book with the title of **"Copyright History of Paintings"** on August 9, 2012 at Oktroi Plaza, Kemang. This event is free and sponsored by Biro Oktroi Roosseno and Cemara 6 Gallery.

The background in holding this event is motivated by the needs of Indonesian Fine Art with other relevant instruments beside Copyright Law. The public awareness in protecting works of art by registering the “work” itself is necessary to avoid any violations on copyright.

In the said event, Inda Citraninda Noerhadi also launched her new book

with the title of **"Copyright History of Paintings"**. In the said book she stated the importance of protecting the Copyright on paintings, both in traditional and modern paintings.

Copyright become important in the area of arts, not only protecting the rights of artists in the field of painting in a climate culture that more commercial, but also keeping the existence of the artists. Copyright and Paint Art can improve our insights regarding Copyright law that becoming the rights of the artists.

This event was attended by observers of art, artists, legal practitioners, media and also public who care about the protection of works of art, especially the art of Indonesia. There are several speakers namely Inda C. Noerhadi (Archaeologist, Art Historian & Consultants IPRs); Eddy Soetiryo (Curator and art expert); Junus Satrio (Archaeologist); Aswin Nasution (Legal Practitioner); Rusharyanto (Criminal Division of Indonesian Police) moderated by Chandra Johan (Art Observer & Art Consultant).

(source: BOR)

#### **7. Counterfeit LACOSTE products were being seized from 2 Factory Outlet in Bandung, West Java.**



A total of 276 pieces of clothing of various kinds, under trademark LACOSTE were seized from a factory outlet (FO) in Bandung, West Java. This amount is only

1/4 of the total number of LACOSTE that were seized from 4 retailers in Bandung

and Jakarta. Total of 878 pieces of clothing consisting of a kind shirts, t-shirts, trousers and shorts were seized from retailers and was secured at the DGIP. The Civil Servant actions under coordination with Police Headquarters on September 6, 2012 in two cities were conducted almost simultaneously.

The action start at 11.00 a.m. in which the FO has just opened, it is intended so that the store operation still seen running normally. A witness initials EK, served as a Store Manager, cannot be evasive when Civil Servant showed the warrant. Cooperatively, store manager who has worked in the past 4 years ordered his men to cooperate with Civil Servant to gather all the evidence.

Suspect initials PTT, owner of one of FO in Bandung, has admitted his actions led to the loss of others. However, since there was no cease and desist letter from the owner/authorized distributor of LACOSTE, he still sells counterfeit cloths.

As the seller of counterfeit products, he also suffered with material loss. More or less total money lost by the seizure reached almost 55 million rupiah. This value is not comparable with the losses experienced by the official owner of LACOSTE. The original LACOSTE price can be worth 2 times the price of counterfeit products sold in the FO.

The person who sells the counterfeit product is subject to 1 year of imprisonment punishment or a fine of

Rp. 200,000,000.00 (two hundred million Rupiah, or equivalent to USD

200.000) according to Law No. 15 of 2001 regarding Trademark.

\*<sub>1</sub> USD = Rp. 9,587 - Bank Indonesia rate on September 20, 2012 (source: DGIP)

## 8. Supreme Court rejects BAJAJ's cassation



Bajaj registered a PCT patent application in Indonesia on April 28, 2006 under No. W 00200601181 with titled **"Internal Combustion Engine Improvement with 4 Strokes Principles"**. On December 30, 2009 DGIP rejected the said application. One of the rejections basis that use by DGIP is the US patent document No. US-

4534322 (owned by Honda Giken Kogyo Kabushiki Kaisha) as a prior art.

In accordance with Article 60 paragraph 1 of Law No. 14 of 2001 regarding Patent, Bajaj may file an appeal to the Patent Appeal Commission (PAC) if they are not satisfied with the rejection. Then on March 30, 2010, Bajaj file an Appeal to the PAC.

PAC examines the appeal and after a few hearings, PAC affirming the Patent Office decision that Bajaj's appeal was rejected. One of the reasons is the use of

the US document as prior art is correct. In accordance to the Patent Law, the parties that are not satisfied with the

PAC decision may file a lawsuit at the Commercial Court.

On April 19, 2011 Bajaj filed a Cancellation lawsuit against PAC decision to the Commercial Court of Central Jakarta, with the position that Bajaj Auto Limited as the Plaintiff and PAC as the Defendant.

Honda does not involved at all in this case. Despite Honda's patent documents is used in the process of rejection of Bajaj's patent application, Honda did not know that their patent document used as prior art in the Bajaj patent application process.

This situation is a common process in the patent system, which means that the use of the any patent document as a prior art, the owner of the document does not know about it because the information contained in a patent document is considered public domain.

In the decision of the Central Jakarta Commercial Court, the judge rejected Bajaj's lawsuit with the reason that the

time limit to file the lawsuit is already lapsed. Again, not satisfied with the said decision, Bajaj then file a cassation to the Supreme Court. On August 15, 2012 the Panel of Judges of the Supreme Court affirmed the Commercial Court Decision to reject the Bajaj petition for cassation. (source: detik.com)

## 9. Customer Satisfaction Survey of Biro Oktroi Roosseno

The management of Biro Oktroi Roosseno (BOR) plans to conduct a Customer Satisfaction Survey to the customers by way of online questionnaires in early October 2012. The survey will take less than 10 minutes

and its purpose is to obtain valuable inputs from the customers, and that will be used to improve BOR quality services to the customers. It is much appreciated for the customers to provide their valuable feedback to better service the

customers. We much appreciate the full support from our customer to complete the online questionnaires. *(source: BOR)*

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