



RECONSTRUCTING THE LIKELIHOOD OF CONFUSION PARAMETER IN INDONESIA'S FIRST-TO-FILE SYSTEM: A COMPARATIVE LEGAL ANALYSIS (EUIPO AND USPTO)

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ABSTRACT

This study aims to reconstruct the likelihood of confusion parameters within Indonesia's first-to-file trademark system. The main issue raised is the normative gap in Article 21 of the Trademark Law and Ministry of Law and Human Rights Regulation No. 67 of 2016 on Trademark Registration, which results in legal uncertainty and inconsistency in examiners' decisions when assessing "substantial similarity." This article employs doctrinal legal research using a comparative legal approach. The analysis compares Indonesian parameters with the EUIPO's sequential test and the USPTO's 13 DuPont factors. An emulation and hybridization approach is used to extract the best principles from both jurisdictions to design a new adaptive framework for Indonesia. The study found that the absence of a hierarchy for visual, phonetic, and conceptual assessments in Indonesian law creates excessive discretion that disadvantages applicants, particularly SMEs. Case studies of Y&N Skincare and LEGAWA Abon Gulong Premium demonstrate that vague parameters result in inconsistent rejections. Conversely, EUIPO and USPTO offer measurable and transparent assessment matrices. To strengthen legal certainty within the first-to-file system, Indonesia needs to transform the "substantial similarity" doctrine into a measurable likelihood-of-confusion parameter by hybridizing the European Union's sequential test approach with the United States' market-factor analysis. This restructuring is crucial for aligning national trademark registration practices with international protection standards.

Keywords: Likelihood of Confusion, Substantive Similarity, Legal Reconstruction, Trademark Registration, Comparative Law

1 INTRODUCTION

Trademarks are strategic assets for businesses, particularly Micro, Small, and Medium Enterprises (MSMEs), as they serve as a legal identity, a tool for product differentiation, and a guarantee of quality that builds consumer trust. Globally, *the World Intellectual Property Organization* (WIPO) notes that businesses with registered trademarks are 13% more likely to experience periods of high growth, and intellectual property ownership



generally increases the likelihood of becoming a high-growth company by up to 10%.¹ A trend of increasing awareness regarding the importance of trademarks is also occurring in Indonesia. At the same time, WIPO positions trademarks as a crucial *business tool* for small and medium sized enterprises (SMEs) because, through trademarks, business operators build visibility, market identity, and the continuity of commercial strategies.² From this perspective, trademark regulation should be viewed not merely as a registration process, but as an instrument that influences business protection and consumer behavior in commercial transactions.³

The Directorate General of Intellectual Property reports that trademark registration applications continue to rise each year. In 2020, there were 89,680 trademark applications, far exceeding the 10,469 patent applications filed during the same period.⁴ DJKI also emphasized that the number of trademark applicants currently stands at 300–350 applicants per day and will continue to grow over time. This increase reflects the legal awareness of business actors, particularly SMEs, regarding the importance of trademark protection as a tool to safeguard reputation, enhance competitiveness, and open access to broader markets.⁵

Although interest in trademark registration in Indonesia is growing rapidly, legal certainty in the substantive examination process remains a fundamental issue. Article 21(1)(a) of Law No. 20 of 2016 on Trademarks and Geographical Indications (Trademark Law) provides that an application shall be rejected if the trademark is “essentially or entirely similar” to a registered trademark owned by another party for similar goods and/or services. The Explanatory Notes to Article 21 define “substantial similarity” as a resemblance caused by the presence of a dominant element between one trademark and another, thereby creating the impression of similarity, whether regarding form, arrangement, spelling, combination of elements, or pronunciation. The essence of trademark infringement should lie in the confusion among consumers, whereas the research by Pithaloka and Roisah shows that substantial similarity, if not carefully examined, will lead to disputes, cancellations, and uncertainty for trademark holder.⁶ This highlights the first weakness of Indonesian trademark law: while the legal framework provides grounds for rejection, it has not yet established an adequate assessment matrix to distinguish formal similarity from legally relevant likelihood

¹ Sigit Wibowo, (郑实) Zheng Shi, and Le Thi Khanh Linh, “Application of the First-to-File System in Preventing Passing Off Actions against Registered Mark Holder,” *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 12, no. 1 (2023), <https://doi.org/10.14421/sh.v12i1.2988>.

² Riris Simatupang, Hisar Siregar, and Sovia Febrina Simamora, “INCREASING LEGAL AWARENESS OF MSME ENTREPRENEURS FOR TRADEMARK REGISTRATION AT DJKI,” *ANAYASA : Journal of Legal Studies* 2, no. 2 (2025), <https://doi.org/10.61397/ays.v2i2.332>.

³ Endang Purwaningsih, “Role of Trademark in Improving Legal and Competitive Awareness,” *Law Reform: Jurnal Pembaharuan Hukum* 16, no. 1 (2020), <https://doi.org/10.14710/lr.v16i1.30301>.

⁴ Simatupang, Siregar, and Simamora, “INCREASING LEGAL AWARENESS OF MSME ENTREPRENEURS FOR TRADEMARK REGISTRATION AT DJKI.”

⁵ Kristofer Oscar and Bambang Soesatyo, “Kebatalan Hukum Dalam Asas First to File Dalam Sistem Pendaftaran Merek Di Indonesia Dan Implikasinya Terhadap Sengketa Kepemilikan Merek,” *Asian Journal of Social and Humanities* 3, no. 9 (2025).

⁶ Ardlini Eta Pithaloka and Kholis Roisah, “Pembatalan Dan Penghapusan Merek Dagang Karena Ada Persamaan Pada Pokoknya,” *Notarius* 16, no. 2 (2023), <https://doi.org/10.14710/nts.v16i2.41566>.



of confusion.⁷

Trademark protection is based on a *first-to-file* system, meaning that trademark rights are acquired once the registration is granted.⁸ This system provides certainty regarding who the state recognizes as the rights holder, while also positioning the trademark office as the initial gatekeeper determining whether a mark is eligible for protection. However, the certainty arising from registration does not automatically resolve issues when a mark bears a resemblance to a pre-existing trademark, as that is precisely where substantive examination comes into play.⁹ The next limitation arises in Article 24, which governs the procedural pathway following substantive examination. This provision does indeed allow for an ex officio rejection proposal, a written response from the applicant within thirty days of the rejection proposal being sent, and the issuance of a decision if no response is submitted or if it is not accepted; administratively, this framework appears orderly and provides an opportunity to defend the applicant's interests.¹⁰ However, Article 24 does not require a structured form of examination reasoning, does not specify which factors must be weighed individually, and does not require an explanation regarding the weight of dominant elements, additional elements, or the relationship between goods or services.

Regulation of the Minister of Law and Human Rights No. 67 of 2016 on Trademark Registration, Article 17(1), stipulates that an assessment shall be conducted by considering the similarity resulting from the presence of a dominant element, while paragraph (2) provides seven criteria for determining similar goods and/or services, namely the nature of the goods/services, purpose and method of use, complementarity, competition, distribution channels, relevant consumers, and country of origin. However, these provisions do not establish a hierarchy of assessment among visual, phonetic, and conceptual elements. Consequently, trademark examiners at the DJKI possess broad discretion in determining which factor is most dominant, which has the potential to lead to inconsistent decisions.¹¹ Article 17(1) also does not provide adequate guidance on how examiners should weigh these three elements sequentially, making subjectivity in substantive examination inevitable.

In international trademark law, the doctrine of *likelihood of confusion* has become the primary standard for determining whether a trademark is registrable.¹² Article 16(1) of

⁷ Indirani Wauran and Titon Slamet Kurnia, "CONFUSION DAN PEMBATALAN MEREK OLEH PENGADILAN," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 27, no. 2 (2015), <https://doi.org/10.22146/jmh.15888>.

⁸ Nada Salshabilla Putri Hendrawan and Christian Andersen, "Legal Certainty and Justice in Trademark Protection: A Comparative Analysis of the First-to-File System in Indonesia and the First-to-Use System in Malaysia," *Journal of World Science* 4, no. 12 (2025), <https://doi.org/10.58344/jws.v4i12.1593>.

⁹ Lionita Putri Lobo and Indirani Wauran, "KEDUDUKAN ISTIMEWA MEREK TERKENAL (ASING) DALAM HUKUM MEREK INDONESIA," *Masalah-Masalah Hukum* 50, no. 1 (2021), <https://doi.org/10.14710/mmh.50.1.2021.70-83>.

¹⁰ Oscar and Soesatyo, "Kebatalan Hukum Dalam Asas First to File Dalam Sistem Pendaftaran Merek Di Indonesia Dan Implikasinya Terhadap Sengketa Kepemilikan Merek."

¹¹ Kevin Rayindra Arnanto and dan Hervina Puspitosari, "Perlindungan Hukum Atas Inkonsistensi Penerapan Unsur 'Persamaan Pada Pokoknya' Dalam Penegakan Hukum Sengketa Merek," *UNES Law Review* 6, no. 4 (2024).

¹² Robert A. Peterson, Isabella M. Cunningham, and Jeffrey A. Peterson, "Measuring Source, Affiliation, and Permission Likelihood of Consumer Confusion in Trademark Infringement Litigation," *International Journal of Applied Decision Sciences* 17, no. 2 (2024), <https://doi.org/10.1504/IJADS.2024.137010>.



the TRIPS Agreement stipulates that the owner of a registered trademark has the right to prevent a third party from using an identical or similar mark for identical or similar goods or services if such use results in a *likelihood of confusion*, and in the case of the use of an identical mark for identical goods or services, a *likelihood of confusion* must be deemed to have occurred. The two primary jurisdictions serving as references in the development of this doctrine are the European Union through the European Union Intellectual Property Office (EUIPO) and the United States through the United States Patent and Trademark Office (USPTO).¹³

The EUIPO applies a *sequential test* approach that requires examiners to compare trademarks in sequence: first visually, then phonetically, then conceptually, and finally through a *global appreciation*, taking into account *the average consumer* (a reasonably well-informed, observant, and circumspect consumer).¹⁴ In Singapore, the decision in *Staywell Hospitality Group Pty Ltd versus Starwood Hotels and Resorts Worldwide, Inc.* structured the examination in stages by separating the similarity of the marks, the similarity of the goods or services, and then the likelihood of confusion, which is assessed comprehensively.

In contrast, the USPTO employs a multi-factor test known as *the 13 DuPont factors*, under which examiners must comprehensively consider factors such as the similarity of the marks, the similarity of the goods, the channels of distribution, the level of consumer attention, and the fame of the prior mark, without a rigid hierarchy¹⁵. The difference in approach between the EUIPO and the USPTO reflects flexibility in the application of the likelihood-of-confusion doctrine across various legal systems, yet both have more structured parameters compared to the framework in Indonesia.¹⁶

The gap between Indonesia's vague parameters and more structured international practices represents a significant gap that has not been adequately addressed by previous research. The study conducted by Aisyah discusses the DJKI's liability for errors in the registration of similar trademarks, but has not analyzed the root causes of inconsistencies in substantive examinations. Arnanto & Puspitosari criticize the fundamental inconsistencies in the enforcement of similarity in trademark disputes, yet they do not propose structured and comparative parameters aligned with those of advanced jurisdictions.¹⁷ Meanwhile, a study on the "Ms Glow" vs. "Ps Glow" trademark dispute reveals that two distinct commercial court rulings (Medan District Court and Surabaya District Court) reached different conclusions for cases with similar underlying disputes, further confirming that the uncertainty in assessing

¹³ Gordon Humphreys, Nedim Malovic, and Stefan Martin, "Round-up of Non-Traditional EU Trade Mark Decisions 2024," *Journal of Intellectual Property Law and Practice* 20, no. 4 (2025), <https://doi.org/10.1093/jiplp/jpaf010>.

¹⁴ Daryl Lim, "TRADEMARK CONFUSION SIMPLIFIED: A NEW FRAMEWORK FOR MULTIFACTOR TESTS.," *Berkeley Technology Law Journal* 37, no. 2 (2022).

¹⁵ Loet Leydesdorff, Duncan Kushnir, and Ismael Rafols, "Interactive Overlay Maps for US Patent (USPTO) Data Based on International Patent Classification (IPC)," *Scientometrics* 98, no. 3 (2014), <https://doi.org/10.1007/s11192-012-0923-2>.

¹⁶ Neha Saini et al., "A Framework of Evolution and Potential Impact of Nanotechnology in USPTO: The SWOT Analysis," *International Journal of Intellectual Property Management* 14, no. 1 (2024), <https://doi.org/10.1504/IJIPM.2024.136119>.

¹⁷ Rayindra Arnanto and Hervina Puspitosari, "Perlindungan Hukum Atas Inkonsistensi Penerapan Unsur 'Persamaan Pada Pokoknya' Dalam Penegakan Hukum Sengketa Merek."



substantial similarity is systemic in nature, occurring not only at the administrative examination level of the DJKI but also extending to the judicial level.

In practice, the Y&N Skincare case filed by PT. DUA BUNGA BERKAH (Case No. DID2023100787) was definitively rejected by the Indonesian Intellectual Property Office (DJKI) on January 7, 2025, as it was deemed substantially similar to Dr. Yenni's YN Cosmetic trademark, while the YN BEAUTY trademark owned by Yeni Anita was actually registered. Similarly, the LEGAWA Abon Gulung Premium trademark application was proposed for rejection on April 13, 2026, as it was deemed similar to the LEGAWA trademark owned by PT BRONSON PRIMA INDUSTRI, which is registered for confectionery and chocolate products, even though the types of goods differ significantly. These two cases illustratively demonstrate that the absence of measurable parameters in Article 21 of the Trademark Law and Ministry of Law and Human Rights Regulation No. 67/2016 not only leads to inconsistencies at the examination stage but also undermines legal certainty for applicants, particularly SMEs that heavily rely on trademarks as their primary assets. However, this study is not intended to analyze these two cases in depth, but rather to use them as *prima facie evidence* that the regulatory gaps in Indonesia's legal framework have a tangible impact on trademark examination practices.

Based on the identification of regulatory gaps and inconsistencies in trademark examination practices in Indonesia, this study aims to reconstruct adaptive parameters for the *likelihood of confusion* within Indonesia's *first-to-file* system through a comparative legal analysis with the EUIPO and USPTO. Specifically, this study will identify normative gaps in Article 21 of the Trademark Law and Ministry of Law and Human Rights Regulation No. 67/2016, compare Indonesia's parameters with those of the EUIPO (*sequential test*) and the USPTO (*13 DuPont factors*), and reconstruct new parameters encompassing a substantive examination matrix, a standardized format for decision reasoning, and the utilization of AI-assisted systems.¹⁸ The development of AI will change how the market recognizes and processes signs, so trademark law must preserve the core of its protection while reorganizing the analytical tools used in practice.¹⁹ Through this reconstruction, this article is expected to contribute to enhancing legal certainty in trademark registration in Indonesia, while aligning national practices with more measurable international standards.

METHODS

This article are doctrinal legal research, which is research that treats the law as a norm to be analyzed through legal reasoning. Primary legal sources include Law No. 20 of 2016 on Trademarks and Geographical Indications (Trademark Law), Regulation of the Minister of Law and Human Rights No. 67 of 2016 on Trademark Registration, as well as decisions by the Directorate General of Intellectual Property (DJKI) and the Trademark Appeal Commission in the Y&N Skincare and LEGAWA cases. Comparative legal materials include the EUIPO Guidelines for Examination (2024) and Common Practice CP5 (2017), as

¹⁸ Hamidreza Habibollahi Najaf Abadi and Michael Pecht, "Artificial Intelligence Trends Based on the Patents Granted by the United States Patent and Trademark Office," *IEEE Access* 8 (2020), <https://doi.org/10.1109/ACCESS.2020.2988815>.

¹⁹ Alpana Roy and Althaf Marsoof, "Removing the Human from Trademark Law," *IIC International Review of Intellectual Property and Competition Law* 55, no. 5 (2024), <https://doi.org/10.1007/s40319-024-01466-4>.



well as the USPTO Trademark Manual of Examining Procedure (2023) along with the case law *In re E. I. DuPont de Nemours and Co.* Secondary legal materials consist of textbooks, international journal articles, and national literature regarding inconsistencies in trademark assessment. Using a comparative legal approach, an analysis was conducted of the parameters for likelihood of confusion in Indonesia, the EUIPO, and the USPTO to identify gaps in the legal framework, particularly regarding the hierarchy of visual, phonetic, and conceptual assessments, the treatment of descriptive elements, and the parameters for differences in classes of goods.

By combining the approaches of emulation (the imitation of effective policy or legal principles) and hybridization (the integration of various model inspirations). Emulation draws on the sequential test principles (visual, phonetic, conceptual, and global appreciation) from the EUIPO, as well as the principles of the “degree of purchaser care” and “bridging the gap” from the USPTO.²⁰ The hybridization focuses on the design of a substantive examination matrix (scoring 0–3 with a threshold), a standardized format for transparent decision reasoning, and a proposal to utilize AI-assisted systems (NLP-based similarity checkers and image recognition) as examiners’ tools.²¹ The novelty of this article lies in the integration of global assessment, market factors and commercial impression, and step-by-step examination into a single substantive examination matrix designed to clarify the basis for rejection, enhance the readability of decisions, and, in the long term, serve as a foundation for AI-assisted systems without entirely eliminating the adaptive nature of the DJKI’s considerations.²²

RESULTS AND DISCUSSION

The Likelihood of Confusion Parameter in the First-to-File System: A Theoretical Review and International Practices

The doctrine of likelihood of confusion is a cornerstone of trademark law, aimed at protecting consumers from misidentification of the origin of goods or services while preserving the integrity of the trademark’s function as an indicator of source.²³ By definition, likelihood of confusion tests whether there is a substantial risk that consumers will be misled regarding the source, identity, sponsorship, or origin of the goods or services of the party using the disputed mark.²⁴ In practice, this doctrine is applied both in the context of trademark infringement and in the rejection of trademark registrations based on third-party oppositions or *ex-officio* examinations.²⁵ It is important to understand that the likelihood of confusion

²⁰ Tunggal Ansari Setia Negara, “Normative Legal Research in Indonesia: Its Origin and Approaches,” *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (2023), <https://doi.org/10.22219/aclj.v4i1.24855>.

²¹ Lobo and Wauran, “KEDUDUKAN ISTIMEWA MEREK TERKENAL (ASING) DALAM HUKUM MEREK INDONESIA.”

²² Roy and Marsoof, “Removing the Human from Trademark Law.”

²³ J. Thomas McCarthy, “Commentary: Trademark Strength and Fame: The Federal Circuit Corrects the Trademark Trial and Appeal Board,” *SSRN Electronic Journal*, ahead of print, 2018, <https://doi.org/10.2139/ssrn.3266138>.

²⁴ Claudine McCarthy, “Understand Intersection of NIL and Logo Enforcement,” *College Athletics and the Law* 22, no. 4 (2025), <https://doi.org/10.1002/catl.31477>.

²⁵ Paul Torremans, “Ilana Fhima and Dev S. Gangjee, The Confusion Test in European Trade Mark Law, Oxford: Oxford University Press, 2019, 278 Pp, Hb £125.00.” *The Modern Law Review* 83, no. 5 (2020),



does not require actual confusion, but rather the probability of confusion among the relevant consumers.²⁶ This characteristic makes the doctrine of likelihood of confusion normative and prospective, unlike an empirical approach that requires proof of confusion that has already occurred.²⁷

Provisions regarding the likelihood of confusion are set forth in Article 16.1 of the TRIPS Agreement, which states that the owner of a registered trademark has the right to prevent the use of an identical or similar sign for identical or similar goods or services if such use gives rise to a likelihood of confusion and if the sign and the goods or services are identical, confusion is presumed to exist.²⁸ The WTO module on trademarks also explains that the assessment must be conducted by examining the mark, the goods or services, public perception, and relevant market factors on a case-by-case basis. Consequently, the likelihood of confusion at the international level has been accepted not as an additional criterion, but as the core of determining trademark infringement or refusal.²⁹

This provision establishes two levels of protection: *strong* protection for “identical mark identical goods” situations where confusion is presumed, and more flexible protection for “similar mark–similar goods” situations that require further proof.³⁰ The TRIPS Agreement itself does not specify in detail how the likelihood of confusion should be assessed, but leaves further regulation to individual WTO members, which has led to a variety of assessment approaches in various jurisdictions, including the sequential test approach in the European Union and the multi-factor test approach in the United States.³¹

In Europe, the assessment of likelihood of confusion is governed by Article 8(1)(b) of the European Union Trade Mark Regulation (EUTMR), which serves as the basis for the European Union Intellectual Property Office (EUIPO) when examining oppositions to trademark registrations.³² The EUIPO has developed an approach known as the sequential test or global appreciation test, which requires examiners to compare trademarks in stages: first a visual comparison, then a phonetic comparison, followed by a conceptual comparison, and concluding with a global assessment. This principle of global appreciation was affirmed by the Court of Justice of the European Union in the Sabel BV versus Puma AG decision,

<https://doi.org/10.1111/1468-2230.12542>.

²⁶ Ilanah Fhima and Dev S. Gangjee, “Similarity of Marks,” in *The Confusion Test in European Trade Mark Law* (2019), <https://doi.org/10.1093/oso/9780199674336.003.0002>.

²⁷ Graeme B. Dinwoodie, “ENSURING CONSUMERS ‘GET WHAT THEY WANT’: THE ROLE OF TRADEMARK LAW,” *Cambridge Law Journal* 83, no. 1 (2024), <https://doi.org/10.1017/S0008197323000636>.

²⁸ Dewi Sulistianingsih and Raden Muhammad Arvy Ilyasa, “THE IMPACT OF THE TRIPS AGREEMENT ON THE DEVELOPMENT OF INTELLECTUAL PROPERTY LAWS IN INDONESIA,” *Indonesia Private Law Review* 3, no. 2 (2022), <https://doi.org/10.25041/iplr.v3i2.2579>.

²⁹ Hong Huang and Zelin Wu, “Impact of the Implementation of TRIPS Agreement on International Trade Law and Intellectual Property Protection,” *Journal of Economics and Law* 1, no. 3 (2024), <https://doi.org/10.62517/jel.202414317>.

³⁰ Graeme Dinwoodie and Mark Janis, “REFORMING THE REGISTRATION PROCESS,” in *Research Handbook on Trademark Law Reform* (2021), <https://doi.org/10.4337/9781785366215.00006>.

³¹ Graeme B. Dinwoodie and Mark D. Janis, *Trademark Law and Theory: A Handbook of Contemporary Research*, in *Trademark Law and Theory: A Handbook of Contemporary Research* (2008), <https://doi.org/10.4337/9781848441316>.

³² Maria Markova, “Newest and Actual Basic Points Regarding the Legal Regulation of EU Trademarks,” *NTUT Journal of Intellectual Property Law and Management* 7, no. 2 (2019).



stating that “the likelihood of confusion must be assessed globally, taking into account all factors relevant to the circumstances of the case.” In its application, the EUIPO assumes the existence of an average consumer who is “reasonably well-informed, reasonably observant, and circumspect,” though the level of consumer attention varies depending on the category of goods or services in question.³³ EUIPO also emphasizes that “the more distinctive the earlier mark, the greater the likelihood of confusion”. This hierarchical sequential test approach provides procedural certainty for examiners and applicants, as each stage of the assessment is conducted sequentially with clear parameters.³⁴

Consumers are understood as the “average consumer”, someone considered reasonably discerning but who does not analyze signs in detail and operates with imperfect recollection. Lotte Anemaet demonstrates that the concept of the average consumer is not a factual portrait of a real individual, but rather a normative construct used to maintain a balance between brand protection and the need to ensure that reasonable signs remain available to other business operators.³⁵ The General Court of the European Union has shown that confusion is never found if the trademark and the goods or services are not similar to each other, so these two factors remain central to the entire assessment.³⁶ Europe has demonstrated that a comprehensive assessment does not imply a lenient approach, but rather remains grounded in core factors that are evaluated in a systematic manner.

Under the *first-to-file* system, this criterion becomes particularly important because the formal priority arising from registration does not, by itself, fully address the issue of similarity between trademarks.³⁷ The first applicant is indeed positioned as the party entitled to the basis of protection, but that protection only functions appropriately when it can be explained why the subsequent mark must be rejected or can still be distinguished from the prior trademark.³⁸ Therefore, *first-to-file* cannot be understood as a mechanism that merely examines the order of applications, as it still requires a substantive examination of the mark, goods or services, and consumer perception. This interpretation is crucial because if formal priority is detached from an assessment of likelihood of confusion, the registration system risks becoming a rigid procedure that is insensitive to the distinctive function the trademark law seeks to preserve.³⁹

³³ Joanna Sitko, “Barriers for the Strategy of Public Domain Works Protection Based on Trade Mark Registration in the Light of EU Case Law,” *Studia Iuridica Lublinensia* 34, no. 5 (2026), <https://doi.org/10.17951/sil.2025.34.5.231-252>.

³⁴ Til Todorski, “The Concept of ‘due Cause’ and Its Role in Safeguarding Fundamental Rights under EU Trade Mark Law: How Should the CJEU Rule in IKEA, C-298/23?,” *Journal of Intellectual Property Law and Practice* 19, no. 11 (2024), <https://doi.org/10.1093/jiplp/jpae071>.

³⁵ Lotte Anemaet, “The Many Faces of the Average Consumer: Is It Really So Difficult to Assess Whether Two Stripes Are Similar to Three?,” *IIC International Review of Intellectual Property and Competition Law* 51, no. 2 (2020), <https://doi.org/10.1007/s40319-020-00907-0>.

³⁶ Ilanah Fhima and Catrina Denvir, “An Empirical Analysis of the Likelihood of Confusion Factors in European Trade Mark Law,” *IIC International Review of Intellectual Property and Competition Law* 46, no. 3 (2015), <https://doi.org/10.1007/s40319-015-0311-6>.

³⁷ Ilanah Fhima and Dev S. Gangjee, *The Confusion Test in European Trade Mark Law*, in *The Confusion Test in European Trade Mark Law* (2019), <https://doi.org/10.1093/oso/9780199674336.001.0001>.

³⁸ Nuno Sousa E Silva, “Likelihood of Confusion between a Trade Mark and a Domain Name,” in *GRUR International*, vol. 71, no. 10, preprint, 2022, <https://doi.org/10.1093/grurint/ikac062>.

³⁹ Lobo and Wauran, “KEDUDUKAN ISTIMEWA MEREK TERKENAL (ASING) DALAM HUKUM MEREK



The *likelihood of confusion* is determined based on several factors that consistently emerge in the practices of various countries. These factors include visual similarity, phonetic similarity, conceptual similarity, the proximity of goods or services, the distinctiveness of the prior trademark, and the position of relevant consumers as recipients of the marks in the market.⁴⁰ Beyond that, distribution channels, purchasing methods, and the likelihood that the goods or services originate from the same business operator are also frequently included as factors that help explain whether the public will associate two marks with the same source of business. Therefore, confusion is never caused by a single element, but by the interrelationship of factors that must be considered comprehensively. The most important element in the theory of *likelihood of confusion* is the consumer's perspective.

In European Union practice, this framework is implemented through a *global assessment*. The EUIPO considers the similarity of goods or services, the similarity of the marks, dominant and distinctive elements, the relevant public, and the level of consumer attention as factors that must be assessed together within an interconnected framework.⁴¹ Findings regarding the decisions of the General Court of the European Union show that confusion is never found if the trademark and the goods or services are not both similar, so these two factors remain at the center of the entire assessment.⁴² This means that the European Union demonstrates that a comprehensive assessment does not imply a lenient approach, but rather remains grounded in core factors evaluated in a systematic manner. Phillip Johnson criticizes this tendency by pointing out that strengthening protection for *strong marks* (trademarks with very strong distinctiveness) is sometimes inconsistent with psychological and marketing realities, as highly recognized trademarks can actually be more easily distinguished by consumers than weak ones.⁴³

In the United States, likelihood of confusion is cited as the most common ground for refusing trademark registration. The USPTO explains that two trademarks do not need to be identical to be considered confusing, as similarity can arise from their sound, appearance, meaning, or the overall *commercial impression* they create.⁴⁴ Through this approach, word elements, graphic elements, and how consumers perceive the mark in the marketplace are viewed as a single chain of experience that does not always depend on an exact spelling. Therefore, assessments within the U.S. system tend to be more flexible in addressing various forms of similarity that could practically lead consumers to believe two goods or

INDONESIA."

⁴⁰ Xiaoyan Wang and Xinzhe Song, "Rethinking Coexistence Between Prior Trademarks and Later Geographical Indications," *Journal of World Trade* 56, no. 5 (2022), <https://doi.org/10.54648/trad2022034>.

⁴¹ Gordon Humphreys, Nedim Malovic, and Stefan Martin, "Round-up of Non-Traditional EU Trade Mark Decisions in 2022," *Journal of Intellectual Property Law and Practice* 18, no. 3 (2023), <https://doi.org/10.1093/jiplp/jpad020>.

⁴² Fhima and Denvir, "An Empirical Analysis of the Likelihood of Confusion Factors in European Trade Mark Law."

⁴³ Phillip Johnson, "Enhanced Distinctiveness and Why 'Strong Marks' Are Causing Us All Confusion," *IIC International Review of Intellectual Property and Competition Law* 55, no. 2 (2024), <https://doi.org/10.1007/s40319-023-01400-0>.

⁴⁴ Patrick Doran and Elizabeth Webster, "Who Influences USPTO Patent Examiners?," *World Patent Information* 56 (2019), <https://doi.org/10.1016/j.wpi.2019.01.005>.



services originate from the same business source.⁴⁵

When these three approaches are compared, it becomes clear that the fundamental difference does not lie in the presence or absence of the doctrine of likelihood of confusion, but rather in how the parameters are structured and their weighting considered. The European Union emphasizes a comprehensive evaluation (*global appreciation*), while the United States enriches its analysis with market factors and commercial impressions.⁴⁶ For Indonesia, the key lesson from this comparison is that the concept of similarity, in essence, cannot be maintained merely as a general formula, as it will only become an effective assessment tool when broken down into more detailed parameters regarding the mark, goods or services, and consumers.⁴⁷ In this context, the criticism that *the likelihood of confusion* in Indonesia has only been partially adopted becomes highly relevant, given that without more structured parameters, the *first-to-file* system risks becoming a formal procedure that is not yet fully capable of explaining the grounds for rejection in a measurable manner.⁴⁸

Normative Inconsistencies in Indonesian Trademark Law Regarding Trademark Similarity Assessments: Understanding the Indonesian Case from the Perspectives of the EUIPO and the USPTO

Indonesia cites substantial or overall similarity as grounds for refusal under Article 21(1) of Law No. 20 of 2016 on Trademarks and Geographical Indications.⁴⁹ The explanation of that article states that substantial similarity is a resemblance caused by the presence of a dominant element between one trademark and another, whether due to form, arrangement, spelling, combination of elements, or phonetic similarity. This formulation provides a basic guideline for examiners, but does not yet establish a detailed assessment sequence regarding how to weigh dominant elements, additional elements, the relationship between goods or services, and the relevant consumer perspective.⁵⁰ On the procedural side, Article 24 provides space for a proposal to reject, a written response, and the issuance of a decision; however, the form of the examination grounds that must be written is not regulated in detail.

Difficulties arise when the phrase “dominant element” is not accompanied by fixed

⁴⁵ Joseph Michael Levy, “The Confusion of Trademark Territoriality,” *Chicago-Kent Journal of Intellectual Property* 18, no. 3 (2019), <https://doi.org/10.2139/ssrn.3310978>.

⁴⁶ Gordon Humphreys, Nedim Malovic, and Stefan Martin, “Round-up of Non-Traditional EU Trade Mark Decisions 2023,” *Journal of Intellectual Property Law and Practice* 19, no. 5 (2024), <https://doi.org/10.1093/jiplp/jpae023>.

⁴⁷ Otom Mustomi et al., “Legal Protection of Intellectual Property Rights in the Field of Trademarks Registered in Indonesia,” *AMCA JOURNAL OF COMMUNITY DEVELOPMENT* 5, no. 1 (2025).

⁴⁸ Athariq Aqilla and Tatty Aryani Ramli, “Adaptasi Likelihood of Confusion Dalam Pengaturan Persamaan Pada Pokoknya Dalam Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis,” *Bandung Conference Series: Law Studies* 2, no. 2 (2022), <https://doi.org/10.29313/bcsls.v2i2.2903>; Wauran and Kurnia, “CONFUSION DAN PEMBATALAN MEREK OLEH PENGADILAN.”

⁴⁹ S. A. S. Putra, “Unsur Persamaan Pada Pokoknya Dalam Pendaftaran Merek Menurut Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis Dan ...,” in *Jurnal Aktualita*, preprint, 2019.

⁵⁰ Andrew Wijaya, “Analisis Yuridis Terhadap Persamaan Pada Pokoknya Dalam Sengketa Merek Berdasarkan Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis,” *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 6 (2025), <https://doi.org/10.38035/jihhp.v5i6.5213>.



criteria for determining the weight of the main word, additional words, graphic elements, and the relationship between the mark and the goods or services covered. Wauran and Kurnia note that the practice of assessing confusion in trademark cases in Indonesia often proceeds without a sufficiently measurable framework, so that legal reasoning easily shifts from one case to another even when the issues at stake are closely related.⁵¹ Similarly, Pithaloka and Roisah demonstrate that substantial similarity remains the basis for trademark cancellation and invalidation, yet the assessment of such similarity itself has not yet established uniform parameters in practice.⁵²

Based on the case data compiled by the author, there are groups of trademarks that were approved following a hearing, such as AYAM BAKAR HANG TUAH, Lukisan, and Es Teh Wong Solo, even though they contain word elements also present in the comparable trademarks. On the other hand, there are groups that were rejected or strongly indicated for rejection, such as Y&N skincare, LIMA BILLIARD & CAFE and Lukisan, MACHOS MACARONI, and LEGAWA Abon Gulung Premium, even though some of them also contain additional elements in the form of descriptive words, illustrations, or product specifications. This categorization is important because it demonstrates that the core issue does not lie solely in the presence or absence of additional elements, but rather in how those elements are weighted during the examination process.

The first case involves the trademark application for “Y&N skincare” by PT. DUA BUNGA BERKAH, which was definitively rejected by the Indonesian Intellectual Property Office (DJKI) on January 7, 2025, on the grounds that it was substantially similar to Dr. Yenni’s “YN Cosmetic and Logo” trademark. Ironically, the “YN BEAUTY” trademark owned by Yeni Anita was actually registered, even though it is visually and phonetically more similar to YN Cosmetic than to Y&N skincare. This inconsistency indicates that the examiner lacks clear criteria for determining whether the “&” symbol is sufficiently distinctive, whether the words “skincare” and “cosmetic” are sufficiently distinctive, and whether the logo and colors of YN Cosmetic should be considered as distinguishing features.

The second case involves the trademark application for “LEGAWA Abon Gulung Premium” by Joko Widodo, M.Pd., which was recommended for rejection on April 13, 2026, as it was deemed substantially similar to the “LEGAWA” trademark owned by PT BRONSON PRIMA INDUSTRI. In this case, although the word “LEGAWA” is the same, the type of goods applied for (rolled abon, savory snacks) differs significantly from the already registered goods (candy and chocolate, sweet snacks). DJKI proposed the rejection without conducting an analysis of complementarity or differences in distribution channels, which should be an important consideration in determining similar goods or services.

These two cases demonstrate that the first normative inconsistency lies in the determination of the dominant element. The explanation of Article 21 uses the term “dominant element,” but does not specify the method for determining it when a trademark consists of a main word, a descriptive word, an abbreviation, stylization, and graphic

⁵¹ Wauran and Kurnia, “CONFUSION DAN PEMBATALAN MEREK OLEH PENGADILAN.”

⁵² Pithaloka and Roisah, “Pembatalan Dan Penghapusan Merek Dagang Karena Ada Persamaan Pada Pokoknya.”



elements. Consequently, the same word in one case may be positioned as the focal point determining the outcome, whereas in another case the same word may still coexist with additional elements deemed sufficiently distinctive. At this point, the dominant element does not yet function as the result of a step-by-step test, but remains heavily dependent on the examiner's interpretation of the mark's structure. Second, regarding the status of additional elements, these are not always clearly distinguished between those that genuinely form the trade identity, those that merely describe the type of goods or services, and those that merely enhance the appearance. Cases accepted after a hearing demonstrate that additional elements can play a strong role in shaping the overall impression, whereas rejected cases show that similar elements may also be disregarded because they are deemed not to shift the core of similarity with the prior trademark.

The third inconsistency relates to similar goods or services. In the "Y&N Skincare" case, the similarity of the goods was clearly classified under Class 3, whereas in the "LEGAWA Abon Gulung Premium" case, the similarity was classified under Class 30. However, the term "similar" remains very broad unless further defined through the economic function of the goods, their intended use, distribution channels, and relevant consumer groups. Consequently, the interpretation of the relationship between goods or services tends to stop at the formal class rather than moving toward the actual market relationship that influences the likelihood of consumer confusion. Article 24 of the Trademark and Geographical Indications Law does provide room for objections, written responses, and decision-making, but it does not standardize the structure of reasoning required to distinguish between the similarity of marks, the proximity of goods or services, and the likelihood of consumer confusion.⁵³ In the Y&N skincare case, the response and appeal processes were utilized, yet the written grounds remained highly concise compared to the scope of analysis presented by the applicant regarding the visual, auditory, and product-specific aspects. In the LEGAWA Abon Gulung Premium case, a similar pattern emerged as the core of the reasoning focused on similarity to the prior trademark without adequate elaboration on the weight of the product's specifications.

According to the EUIPO Guidelines for Examination, examiners are required to first conduct a visual comparison, followed by a phonetic comparison, then a conceptual comparison, and conclude with a global assessment.⁵⁴ In the visual comparison, the "&" symbol in Y&N skincare creates a distinct graphic difference compared to YN Cosmetic, which lacks that symbol, even though both brands use the letters Y and N. EUIPO states that a difference of a single letter or punctuation mark can distinguish the marks if it alters the overall impression, especially if the difference also affects the sound.⁵⁵ In the phonetic comparison, "Y&N" is pronounced "Y and N" (three syllables) or "Y dan N" (two syllables in

⁵³ Tasya Nafiisah, Amirulloh Muhamad, and Tasya Safiranita, "Perlindungan Hukum Pada Merek Terdaftar Berdasarkan Persamaan Pada Pokoknya Ditinjau Dari Undang Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis," *Humani (Hukum Dan Masyarakat Madani)* 11, no. 2 (2021).

⁵⁴ Syifa S. Mukrimaa et al., "GUIDELINES FOR EXAMINATION EUIPO 2023," *Jurnal Penelitian Pendidikan Guru Sekolah Dasar* 6, no. August (2016).

⁵⁵ "Annex 5. GUIDELINES FOR EXAMINATION OF REGISTERED COMMUNITY DESIGNS EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE (EUIPO) REGISTERED COMMUNITY DESIGNS," in *Community Design Regulation* (2020), <https://doi.org/10.17104/9783406759086-1019>.



Indonesian), while “YN” can be pronounced “Y N” (two syllables) or “Yen” (one syllable), this difference in the number of syllables and stress is significant according to EUIPO standards. In a conceptual comparison, Y&N is understood as an abbreviation of the founders’ names “Yanti and Nunung,” whereas YN Cosmetic is assumed to be an abbreviation of “Yenni”; there is no semantic association between the two. In a global assessment, the low overall similarity (visual similarity is moderate, phonetic similarity is low, conceptual similarity is low) leads to the conclusion that the likelihood of confusion is low; therefore, the Y&N skincare application should be granted according to EUIPO parameters.

Application of USPTO Parameters to the LEGAWA Case, based on the 13 DuPont factors, the examiner must consider all relevant factors, with Factor 1 (similarity of the marks) and Factor 2 (similarity of the goods) being the most important. Under factor 1, the word “LEGAWA” in both trademarks is identical, so the degree of mark similarity is very high.

However, under factor 2 (similarity of goods), rolled abon (a savory food, typically classified in Class 29 for processed meat) differs significantly from confectionery and chocolate (Class 30 for sweet products) according to the Nice Classification.⁵⁶ In factor 3 (distribution channels), both can be sold in supermarkets, but the same distribution channels do not automatically make the goods similar if the product characteristics are very different. In factor 4 (level of consumer attention), snacks are considered goods with a low level of consumer attention; however, since factor 2 indicates significant differences between the goods, a low level of consumer attention does not automatically create a likelihood of confusion.⁵⁷ Under factor 5 (fame of the prior mark), there is no evidence that the LEGAWA mark owned by PT BRONSON PRIMA INDUSTRI is famous, so it cannot benefit from cross-class protection (the “bridging the gap” test). Thus, although factor 1 indicates a high degree of similarity, the dominant factor 2 (difference in goods) leads to the conclusion that the likelihood of confusion is low, so the LEGAWA application should be granted according to USPTO parameters.

The “likelihood of confusion” parameter in Indonesian trademark law specifically as set forth in Article 21 of the Trademark Law and Article 17 of Ministry of Law and Human Rights Regulation No. 67 of 2016 on Trademark Registration contains significant normative gaps regarding the hierarchy of assessment, the weight of descriptive elements, the parameter of differences in classes of goods, the level of consumer attention, and the fame of the prior trademark. This gap is not merely theoretical but has been shown to result in inconsistent rulings that disadvantage applicants, as illustrated in the cases of Y&N Skincare (rejected) versus YN Beauty (accepted) and the case of LEGAWA Abon Gulung Premium (proposed for rejection) for goods that are significantly different. In contrast, EUIPO and USPTO have more structured and measurable parameters.⁵⁸ EUIPO uses a hierarchical sequential test (visual, phonetic, conceptual, global appreciation), while USPTO employs 13

⁵⁶ Shuo Xu et al., “Performance Evaluation of Seven Multi-Label Classification Methods on Real-World Patent and Publication Datasets,” *Journal of Data and Information Science* 9, no. 2 (2024), <https://doi.org/10.2478/jdis-2024-0014>.

⁵⁷ 2024 Guidance Update on Patent Subject Matter Eligibility, Including on Artificial Intelligence, 2024-15377 (89 FR 58128) (2024).

⁵⁸ Samantha Passanante, “Underdogs Can Have It All: A Comparative Analysis Between the USPTO and the EUIPO on SMEs, Trademark Law, and Economics,” *Michigan Journal of Business* 12, no. 2 (2021).



comprehensive DuPont factors with clear weighting guidelines.⁵⁹

To facilitate understanding of the legal framework, the following table is provided:

Table 1.
Comparison of Likelihood of Confusion Parameters: Indonesia, EUIPO, and USPTO

Aspect	Indonesia	EUIPO	USPTO
Assessment hierarchy (visual, phonetic, conceptual)	Referred to as cumulative without a mandatory order in the Explanation of Article 21 of the Trademark Law and Article 17(1) of Ministry of Law and Human Rights Regulation No. 67/2016. There is no hierarchy, so the examiner may draw a conclusion directly from a single factor, leading to subjectivity and inconsistency.	Mandatory sequential test: visual, then phonetic, then conceptual, followed by a global assessment.	Two-step analysis using the 13 DuPont factors (non-hierarchical but requiring consideration of all relevant factors)
Handling of additional descriptive elements	The seven criteria in Article 17(2) of Ministry of Law and Human Rights Regulation No. 67/2016 are applied without guidance on how to weigh them if they conflict. Weakness: There is no default rule, so a refusal may occur even for goods that are clearly different (e.g., rolled abon versus chocolate).	CP5 Common Practice: non-distinctive or weak elements cannot form the basis for a likelihood of confusion unless they have secondary meaning	the addition of descriptive terms does not automatically avoid likelihood of confusion if the dominant elements are the same, but may distinguish them if it alters the commercial impression.
Parameters: difference in class of goods or complementarity	The seven criteria in Article 17(2) of Ministry of Law and Human Rights Regulation No. 67/2016 lack guidance on how to	Complementarity test: goods are complementary if one is necessary for the use of the other	Bridging the gap test and DuPont factors 2 and 3: if the trademark is not well-known,

⁵⁹ William M. Landes and Richard A. Posner, "The Economics of Trademark Law," in *The Economic Structure of Intellectual Property Law* (2021), <https://doi.org/10.2307/j.ctv1q3z2pn.10>.



	weigh them if they conflict. Weakness: There is no default rule, so rejection may occur for goods that are clearly different (e.g., rolled abon versus chocolate).	or consumers perceive them as coming from the same manufacturer	significant class differences may preclude likelihood of confusion
Level of consumer attention	Not mentioned in the Trademark Law or Ministry of Law and Human Rights Regulation No. 67/2016. Weakness: There is no differentiation between everyday goods (low attention) and specialty or high-end goods (high attention).	Average consumer: consumers are fairly savvy, observant, and cautious, with varying levels of attention depending on the product	DuPont factor 4: inexpensive or everyday goods tend to attract low attention (higher likelihood of confusion), while expensive or specialty goods attract high attention
Fame of prior mark	Not explicitly addressed in ex officio examination. Weakness: Famous and non-famous trademarks are treated equally; there is no additional protection for famous trademarks.	The higher the distinctiveness of a mark, the greater the protection against likelihood of confusion	DuPont factor 5: famous marks receive broader cross-class protection through bridging the gap
Form of the decision's reasoning	The grounds for rejection are very brief, merely citing the relevant article and the comparable trademark without providing details. The applicant does not clearly understand the grounds for rejection, making it difficult to respond or file an appeal, and reducing the examiner's accountability.	The decision's reasoning is structured and transparent, including the results of visual, phonetic, and conceptual comparisons, global appreciation, and an analysis of complementarity	The reasoning of the decision refers to the DuPont factors used, accompanied by an explanation of why certain factors are more decisive
Level of legal certainty	The examiner's discretion is too broad without measurable parameters, evidenced by inconsistent decisions (the Y&N and LEGAWA	Binding guidelines, published and supported by consistent case law, as well as	The TMEP is highly detailed (approximately 4,000 pages) and includes concrete case examples as



	cases) and a significant number of appeals	quality assurance mechanisms.	well as strong judicial precedents.
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Source: Author's Compilation and Analysis

Reconstruction of the Likelihood of Confusion Parameter for Indonesia: Substantive Examination, Form of Ruling Reasons, and AI Assistance System

The establishment of the *likelihood-of-confusion* parameter for Indonesia must be based on two fundamental principles.⁶⁰ First, the *first-to-file* system must be maintained as the basis for the creation of trademark rights. On the other hand, Article 21(1) and Article 24 of Law No. 20 of 2016 need to be operationalized through a more measurable examination framework so that the principle of similarity does not remain merely a general formulation. The reformulation required is not a replacement of the system, but rather a restructuring of how to assess the similarity of marks, the proximity of goods or services, and the likelihood of consumer confusion. This framework must be built upon parameters consistently used by other trademark offices, but must be adapted to the structure of Indonesian legal norms.⁶¹

The EUIPO incorporates trademark similarity, similarity of goods or services, the relevant public, the level of consumer attention, dominant elements, and distinctiveness into a comprehensive *global assessment*.⁶² The USPTO focuses on two main axes, the similarity of the trademarks and the connection between the goods or services, such that the public might assume both originate from the same source.⁶³ From these two approaches, a common requirement emerges, the assessment must progress from identifying factors to a final weighing of those factors, rather than jumping directly to a conclusion.⁶⁴

Second, it lies in the structure of the trademark elements. The dominant element must be determined based on its contribution to the overall impression, not merely because it appears at the beginning or because it is frequently mentioned by the applicant or the examiner.⁶⁵ Additional elements must also be distinguished between those that are descriptive, those that reinforce the trade identity, and those that merely enhance the appearance. In this way, additional words such as those describing the type of product, the location of the business, or the characteristics of the service are no longer treated uniformly, but are assessed according to their actual relationship to the source of the goods or services.

⁶⁰ Syifa Rahmatul Ummah Arif, "Pelindungan Hukum Merek Terkenal Atas Tindakan Passing Off Di Indonesia Berdasarkan Doktrin Likelihood of Confusion," *Khatulistiwa: Jurnal Pendidikan Dan Sosial Humaniora* 5, no. 1 (2025), <https://doi.org/10.55606/khatulistiwa.v5i1.6270>.

⁶¹ Hosiana Daniel Adrian Gultom et al., "PROBLEMS OF OBLIGATION TO USE INDONESIAN AS TRADEMARKS AGAINST INTERNATIONAL PRINCIPLES CONCERNING WORDS AS MARK," *Indonesian Journal of International Law* 22, no. 2 (2024), <https://doi.org/10.17304/ijil.vol22.2.1902>.

⁶² Kyriakos Drivas, "The Role of Technology and Relatedness in Regional Trademark Activity," *Regional Studies* 56, no. 2 (2022), <https://doi.org/10.1080/00343404.2020.1808883>.

⁶³ Irene Liansah and Heru Sugiyono, "Legal Certainty in Resolving Trademark Disputes Involving Substantial Similarities to Registered Trademarks of Other Parties," *Journal of Law, Politic and Humanities* 5, no. 5 (2025), <https://doi.org/10.38035/jlph.v5i5.1958>.

⁶⁴ Kyriakos Drivas, "Which Travels Farther? Knowledge or Rivalry?," *Annals of Regional Science* 67, no. 2 (2021), <https://doi.org/10.1007/s00168-021-01049-y>.

⁶⁵ Muhammad Rifqi Fauzi, "PELINDUNGAN HUKUM MEREK TERKENAL DALAM PRINSIP DILUSI MEREK," *El-Wasathiya: Jurnal Studi Agama* 9, no. 2 (2022), <https://doi.org/10.35888/el-wasathiya.v9i2.4608>.



Standardizing the reasoning behind decisions will have a direct impact on legal certainty. Petitioners will be able to clearly identify the aspects of similarity deemed problematic, which elements are considered dominant, and why additional elements are not deemed sufficient to distinguish the marks.⁶⁶ Judges also gain a more stable framework because every case must proceed through the same stages. Under this structure, variations in outcomes between cases remain possible, but such differences must stem from the distinct facts presented, not from changes in reasoning that cannot be traced.⁶⁷

One of the main shortcomings of the DJKI's current decisions is the lack of transparency regarding the grounds for rejection or acceptance. The rejection proposal letters and final rejection notices issued by the DJKI generally only mention the violated provisions and the cited trademark, without explaining how the examiner assessed the visual, phonetic, conceptual, or product complementarity aspects. This situation makes it difficult for applicants to understand why their application was rejected and how they should file a response or appeal. To address this issue, this study proposes a standardized format for decision reasoning that is structured and transparent, adapted from EUIPO practices which require examiners to explain each step of the comparison in their decisions.⁶⁸ The proposed standardized format requires examiners to include: (a) the results of the visual comparison accompanied by a description of the graphic elements being compared; (b) the results of the phonetic comparison accompanied by a phonetic transcription and the number of syllables; (c) the results of the conceptual comparison accompanied by an explanation of the meaning of each trademark; (d) an assessment of the complementarity of goods/services based on the 7 criteria in Ministry of Law and Human Rights Regulation No. 67/2016, Article 17(2); (e) consideration of the level of consumer attention; (f) consideration of the prior trademark's reputation (if relevant); and (g) a final conclusion referencing the established thresholds in the matrix. With this format, applicants can clearly understand the reasons for the rejection and can prepare a more targeted response or appeal.

WIPO states that a number of intellectual property offices have been using AI tools to support their services and examinations, including tools that assist in the validation of goods and services classifications as well as other analytical services that support the work of examiners.⁶⁹ Such use will only be beneficial if the legal parameters are standardized first, as AI cannot correct reasoning that was not structured properly from the outset. Therefore, AI should be positioned as a tool to assist with comparative searches, similarity grouping, and the drafting of preliminary analyses, while legal assessments must still be performed by

⁶⁶ Tati Sri Hardina, "LEGAL PROTECTION OF FAMOUS TRADEMARK DISPUTES REGISTERED UNDER THE LAW (CASE OF POLO BY RALPH LAUREN TRADEMARK DISPUTE)," *INTERNATIONAL JOURNAL OF SOCIAL, POLICY AND LAW* 4, no. 3 (2023).

⁶⁷ Anugrah Syahril et al., "Legal Certainty of Fulfilment of Registered Trademark Rights Owned by the Company for the Similarity of Trademarks in Principal," *Journal of Law, Politic and Humanities* 5, no. 2 (2025), <https://doi.org/10.38035/jlph.v5i2.1067>.

⁶⁸ Rika Ratna Permata, Tasya Safiranita Ramli, and Biondy Utama, "Similarity In Indonesia Trademark Law," *NTUT Journal of Intellectual Property Law and Management* 8, no. 1 (2019).

⁶⁹ Hayfa Alshowaish, Yousef Al-Ohali, and Abeer Al-Nafjan, "Trademark Image Similarity Detection Using Convolutional Neural Network," *Applied Sciences (Switzerland)* 12, no. 3 (2022), <https://doi.org/10.3390/app12031752>.



examiners.⁷⁰ This is based on the reality that the DJKI receives hundreds of thousands of trademark applications per year (136,794 in 2024), while the number of examiners is limited, making tools necessary to improve efficiency and consistency.⁷¹

AI is not intended to replace human examiners, but rather to serve as a *decision support system* that provides initial score recommendations for visual and phonetic dimensions, which are then verified and adjusted by the examiner.⁷² Technically, AI systems can be built using two approaches: (a) *natural language processing* (NLP) to compare brand sounds (phonetics) using *phonetic similarity* algorithms such as *Soundex* or *Levenshtein distance* on phonetic transcriptions; (b) *computer vision* using *convolutional neural networks* (CNNs) to compare logos, colors, and visual elements of trademarks. This system needs to be trained with anonymized historical DJKI decision data to learn the assessment patterns of human examiners, so that the resulting recommendations do not deviate significantly from existing practices. EUIPO itself is developing a similar AI tool.⁷³ The main advantages of this AI system are: (1) reducing examiners' workload by providing initial scores that can be immediately verified; (2) improving consistency since the AI will apply the same parameters to all cases; (3) providing a verifiable *audit trail* since every AI recommendation is stored and can be reviewed; and (4) helping less experienced junior examiners learn from AI recommendations.⁷⁴ However, it must be acknowledged that AI implementation faces challenges, including the need for large and representative training data, the risk of algorithmic bias if the training data contains inconsistencies, and the need for regulations regarding the use of AI in public administration. Therefore, the implementation of AI should be carried out gradually starting with a limited pilot in a single regional office, followed by an evaluation, and then expanded nationwide once proven effective.

CONCLUSION

This article argues that the fundamental weakness of Indonesia's trademark registration system lies in the normative gap regarding the interpretation of the "substantial similarity" doctrine as stipulated in Article 21 of the Trademark Law and Article 17 of Ministry of Law and Human Rights Regulation No. 67 of 2016. The absence of a hierarchy for visual, phonetic, and conceptual assessment, as well as the lack of guidance regarding the weight of dominant elements, the level of consumer attention, and the complementary relationship between goods and services, has created an excessively broad scope of discretion for examiners. This inconsistency is not merely a theoretical problem but is evident in practice, as illustrated by the rejection of Y&N Skincare in contrast to the acceptance of YN Beauty,

⁷⁰ Mahmud Rahat, Sagheer Abbas, and Iqbal Saujan, "Legal Challenges for the Use of AI in Trademarks," *Trends in Intellectual Property Research* 3, no. 1 (2025), <https://doi.org/10.69971/tipr.3.1.2025.86>.

⁷¹ Pokrovskaya Anna Vladimirovna, "The Application of AI Technologies: Enforcement of Trademark Rights on e-Commerce Marketplaces," *Journal of World Intellectual Property* 28, no. 2 (2025), <https://doi.org/10.1111/jwip.12352>.

⁷² Azmi Firdhausi, "Etika Dalam Artificial Intelligence," *ResearchGet*, no. March (2023).

⁷³ Onyinye Oditia, "The Role of WIPO in Regulating AI and IP at the Global Level," *GSC Advanced Research and Reviews* 21, no. 3 (2024), <https://doi.org/10.30574/gscarr.2024.21.3.0504>.

⁷⁴ Surya Viswanadha et al., "International Harmonization of AI and IP Law: Challenges and Prospects under WIPO and TRIPS," *International Journal For Multidisciplinary Research* 7, no. 5 (2025), <https://doi.org/10.36948/ijfmr.2025.v07i05.58382>.



as well as the proposed rejection of LEGAWA Abon Gulung Premium for goods that are substantively different. A comparative study with the EUIPO and USPTO confirms that Indonesia lags behind in providing a measurable and transparent assessment matrix, which in turn undermines legal certainty for applicants, particularly SMEs whose business survival depends on trademark protection.

To address this gap, this article proposes an adaptive reconstruction of the likelihood-of-confusion parameters for Indonesia's first-to-file system through a hybrid approach combining the EUIPO's sequential test with the USPTO's multi-factor principle. This reconstruction is embodied in three main instruments: first, a substantive examination model with a scoring system and clear thresholds to guide examiners through a tiered process, second, a standardized, structured format for decision reasoning to enhance accountability and the readability of decisions for applicants; and third, the utilization of an artificial intelligence (AI) based system as a decision support system to ensure consistency and efficiency without undermining human judgment. With this more measurable framework, the principle of distinctiveness essentially ceases to be merely an abstract formulation but transforms into an analytical tool capable of protecting the distinctive function of trademarks while aligning national practices with standards of legal certainty within the global intellectual property regime.

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