



A Legal Review of the Use of the “Gudang Baru” Trademark as an Alleged Infringement and Unfair Competition Against Gudang Garam

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Abstract

This study examines the legal implications of the use of the “Gudang Baru” trademark as an alleged trademark infringement and form of unfair competition against the well established “Gudang Garam” trademark within the Indonesian legal system. The research adopts a non empirical normative juridical approach based on statutory analysis, case analysis, and conceptual legal reasoning. Primary legal materials consist of international intellectual property instruments, national trademark legislation, competition law regulations, trademark registration rules, and judicial decisions relevant to the dispute. The findings indicate that the legal assessment extends beyond visual similarity and requires consideration of consumer confusion, the protection of well known trademarks, good faith registration requirements, and broader principles of market fairness. The study further demonstrates that the status of Gudang Garam as a well known trademark strengthens its entitlement to enhanced legal protection under domestic and international legal frameworks. The analysis also reveals that the use of the Gudang Baru trademark raises concerns regarding passing off, free riding, and bad faith registration that may distort fair competition. Stronger integration between trademark law and competition law is necessary to preserve legal certainty, protect commercial goodwill, and promote equitable market competition.

Keywords : Trademark Infringement, Unfair Competition, Well Known Trademark, Passing Off, Bad Faith Registration.



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INTRODUCTION

The contemporary development of trademark law has increasingly been shaped by the intensification of global market competition, the expansion of transnational commerce, and the growing economic significance of brand identity as a strategic intangible asset. In an environment where consumer decisions are strongly influenced by brand reputation and symbolic association, trademarks no longer function merely as indicators of commercial origin but also as instruments for securing market power, consumer trust, and long term business sustainability. International legal frameworks such as the Paris Convention for the Protection of Industrial Property and the Agreement on Trade Related Aspects of Intellectual Property Rights establish the normative foundation for protecting trademark owners against unauthorized appropriation, consumer deception, and unfair competitive practices that exploit accumulated goodwill (World Intellectual Property Organization, 1967; World Trade Organization, 1994). Recent developments further demonstrate that trademark disputes are becoming increasingly complex because infringement is no longer limited to exact imitation but frequently involves sophisticated forms of similarity that operate through visual association, phonetic resemblance, and conceptual proximity, particularly in highly competitive industries where brand recognition constitutes a substantial source of commercial value. The growing relevance of these issues is reflected in contemporary scholarship emphasizing that trademark protection must adapt to evolving market realities in which consumer confusion can arise through indirect associations and strategic imitation rather than direct duplication (Pokrovskaya, 2024; Zhang & Cui, 2023).

Existing scholarship has generated substantial insights into the relationship between trademark infringement, consumer confusion, and unfair competition, yet these studies reveal a dynamic and increasingly contested legal landscape. Dinwoodie and Janis (2023) argue that modern trademark

protection has evolved beyond the traditional source identification function and now serves to safeguard investment in reputation and goodwill against free riding practices. Empirical studies have similarly demonstrated that judicial assessments of trademark infringement increasingly rely on holistic evaluations of market perception rather than formalistic comparisons of textual elements alone (Zhang & Cui, 2023). Within the Indonesian context, legal scholars have highlighted the importance of extending protection to well known marks because their commercial value and public recognition render them particularly vulnerable to imitation and reputational exploitation (Prakoso, 2024). Recent case based analyses further indicate that courts are increasingly willing to recognize broader forms of trademark harm, including dilution, association based confusion, and unfair competitive conduct that undermines the distinctiveness of established brands (Rosalind & Kansil, 2025). Collectively, these studies suggest that effective trademark protection requires an integrated understanding of consumer perception, market competition, and the economic functions of brand identity rather than a narrow focus on formal registration status.

Despite these advances, important conceptual and empirical limitations remain evident within the existing literature. A significant proportion of contemporary studies focus primarily on procedural aspects of trademark registration, doctrinal interpretations of statutory provisions, or general discussions concerning the protection of famous marks, while providing limited examination of how courts should evaluate substantial similarity when dominant trademark elements create overlapping commercial impressions among consumers (Prakoso, 2024; Rosalind & Kansil, 2025). Likewise, research addressing trademark infringement often treats consumer confusion as a largely abstract legal standard without sufficiently exploring its interaction with market structure, consumer behavior, and strategic brand positioning in highly competitive industries (Pokrovskaya, 2024; Zhang & Cui, 2023). The dispute involving “Gudang Garam” and “Gudang Baru” illustrates these unresolved issues because the controversy extends beyond questions of registration validity and raises broader concerns regarding the legal significance of dominant trademark elements, the evidentiary assessment of confusion, and the boundaries separating legitimate market competition from unlawful appropriation of commercial reputation. Existing scholarship has yet to provide a comprehensive analytical framework capable of integrating these dimensions within a coherent legal assessment.

The unresolved nature of these issues generates both scientific and practical urgency. From a legal perspective, uncertainty regarding the interpretation of substantial similarity and consumer confusion risks producing inconsistent judicial outcomes that undermine legal predictability and weaken the effectiveness of trademark protection. From an economic perspective, inadequate responses to reputation based imitation may encourage opportunistic market behavior that rewards imitation over innovation and investment in brand development. These concerns become particularly significant within the Indonesian tobacco industry, where market concentration, intense competition, and strong consumer attachment to established brands create conditions under which minor trademark variations may generate substantial commercial consequences. Recent discussions surrounding the Gudang Garam and Gudang Baru dispute demonstrate that questions concerning bad faith registration, passing off, and the protection of well known marks remain highly relevant for ensuring fair competition and preserving consumer autonomy in purchasing decisions (Yanuarto & Ferdinan, 2025). The persistence of such disputes indicates that existing legal doctrines continue to face practical challenges when applied to complex market realities characterized by overlapping commercial identities and strategic brand differentiation.

Against this background, the present study positions itself at the intersection of trademark infringement doctrine, unfair competition law, and consumer protection theory. Rather than approaching the dispute solely as a registration conflict, this research examines the broader legal implications of trademark similarity by focusing on the relationship between consumer confusion, substantial similarity, and the legal status of well known marks under Indonesian trademark law. Particular attention is directed toward assessing whether the use of the trademark “Gudang Baru” constitutes an infringement of the exclusive rights attached to “Gudang Garam” and whether such use may simultaneously be characterized as a form of unfair competition through the exploitation of an established commercial reputation. By situating the analysis within the framework of Law Number 20 of 2016 concerning Trademarks and Geographical Indications, this study seeks to contribute to ongoing scholarly debates concerning the scope of trademark protection and the legal standards governing the evaluation of trademark similarity (Republic of Indonesia, 2016).

This study aims to conduct a comprehensive legal examination of the alleged infringement and unfair competitive implications arising from the use of the “Gudang Baru” trademark in relation to the well established “Gudang Garam” trademark. The research specifically investigates the potential for consumer confusion, the existence of substantial similarity between the disputed marks, and the legal criteria governing the recognition and protection of well known trademarks within the Indonesian legal system. Theoretically, the study contributes to the development of a more integrated understanding of the relationship between trademark infringement and unfair competition by connecting doctrinal analysis with market based considerations of consumer perception. Methodologically, it advances the application of normative legal research through the combined use of statutory interpretation, case analysis, and conceptual evaluation, thereby offering a more comprehensive framework for assessing trademark disputes involving reputation based similarity and alleged free riding practices.

RESEARCH METHODS

This study employed a non empirical legal research design grounded in normative juridical inquiry to examine the legal implications of the use of the “Gudang Baru” trademark as an alleged infringement and form of unfair competition against “Gudang Garam”. The research relied exclusively on secondary legal materials consisting of primary legal sources, secondary legal sources, and tertiary legal sources. Primary legal materials included the Paris Convention for the Protection of Industrial Property, the Agreement on Trade Related Aspects of Intellectual Property Rights, Law Number 20 of 2016 concerning Trademarks and Geographical Indications, Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition, Regulation of the Minister of Law and Human Rights Number 67 of 2016 concerning Trademark Registration, and relevant judicial decisions relating to the Gudang Garam and Gudang Baru trademark dispute. Secondary legal materials comprised scholarly books, peer reviewed journal articles, and contemporary doctrinal analyses on trademark infringement, consumer confusion, well known marks, passing off, and unfair competition, particularly those developed by Dinwoodie and Janis (2023), McCarthy (2024), Gangjee (2018), and IRAC Academy (2024). The selection of legal materials was guided by their relevance to the research questions, their authority within trademark law scholarship, and their capacity to illuminate the legal standards governing substantial similarity, consumer confusion, and the protection of famous trademarks. The analytical framework combined a statute approach, a case approach, and a conceptual approach in order to assess the interaction between statutory provisions, judicial interpretation, and established legal doctrines.

The analysis was conducted through qualitative legal reasoning involving systematic interpretation, comparison, and synthesis of legal norms, judicial precedents, and doctrinal perspectives. Statutory provisions were examined through grammatical, systematic, and teleological interpretation to identify the legal meaning of substantial similarity, bad faith registration, consumer confusion, and unfair competition within the Indonesian trademark regime. Judicial decisions concerning the Gudang Garam and Gudang Baru dispute were analyzed to evaluate how courts applied these concepts in practice and to identify the underlying legal principles guiding adjudication. Analytical rigor was ensured through source triangulation across legislation, international legal instruments, case law, and authoritative scholarly literature, as well as through doctrinal consistency checks designed to minimize interpretive bias and strengthen the reliability of legal conclusions. The study did not involve human participants, personal data, or experimental procedures. Consequently, formal ethical approval was not required. Nevertheless, the research adhered to principles of academic integrity, transparency of sources, accurate legal interpretation, and objective scholarly analysis throughout the research process.

RESULTS AND DISCUSSION

Likelihood of Consumer Confusion and the Legal Assessment of Substantial Similarity Between “Gudang Baru” and “Gudang Garam”

The normative analysis indicates that consumer confusion constitutes the central legal benchmark for determining trademark infringement within contemporary trademark law. The concept extends beyond identical reproduction and encompasses circumstances in which consumers may incorrectly assume a commercial connection between two products because of similarities in branding elements. This approach is reflected in Indonesian trademark law through the doctrine of substantial similarity, which prioritizes the overall commercial impression generated by competing marks. The doctrinal

foundation of this standard aligns with international trademark theory that views consumer perception as the primary object of legal protection (Dinwoodie & Janis, 2023).

A statutory examination of Law Number 20 of 2016 demonstrates that the assessment of substantial similarity requires a comprehensive evaluation of visual, phonetic, and conceptual characteristics. The legal inquiry does not focus on isolated differences between words but instead evaluates whether the dominant elements of a mark create a similar impression in the minds of ordinary consumers. Judicial interpretation has consistently emphasized that trademark distinctiveness derives from the cumulative effect of its constituent features rather than from a literal comparison of individual terms. Such an approach is widely recognized in comparative trademark jurisprudence as an effective mechanism for preventing deceptive market practices (McCarthy, 2024).

The dispute involving “Gudang Baru” and “Gudang Garam” reveals the practical relevance of this doctrinal framework. Both marks employ the term “Gudang” as a prominent linguistic component and are used within the same product category, namely tobacco products. The recurrence of this dominant element creates a recognizable association that may influence consumer perception regarding product origin. Similar findings have been reported in comparative trademark disputes where courts identified dominant shared elements as a significant source of market confusion (Adenfa & Rasji, 2025).

The conceptual approach applied in this study further demonstrates that consumer confusion cannot be evaluated solely through textual comparison. Market context, product characteristics, and consumer purchasing behavior also influence the likelihood that consumers will associate one product with another. In highly competitive industries characterized by strong brand recognition, even moderate similarities may generate substantial confusion. This interpretation corresponds with contemporary scholarship emphasizing that trademark law protects informational efficiency within consumer markets (Dinwoodie, 2024).

The analysis of judicial reasoning in the Gudang Garam and Gudang Baru dispute reveals a multidimensional assessment of similarity. Courts considered not only the wording of the marks but also packaging design, visual presentation, and symbolic associations attached to the products. Such reasoning reflects a broader understanding of trademarks as commercial communication devices rather than mere identifiers. Similar judicial tendencies have emerged in several jurisdictions where courts increasingly recognize the cumulative influence of branding strategies on consumer decision making (Zhang & Cui, 2023).

Table 1. Normative Indicators of Consumer Confusion in the Gudang Garam and Gudang Baru Trademark Dispute

Analytical Dimension	Gudang Garam	Gudang Baru	Legal Relevance
Visual element	Dominant use of Gudang imagery	Dominant use of Gudang imagery	Potential visual association
Phonetic structure	Begins with Gudang	Begins with Gudang	Potential auditory similarity
Conceptual meaning	Warehouse related commercial identity	Warehouse related commercial identity	Potential conceptual overlap
Product category	Tobacco products	Tobacco products	Increased likelihood of confusion
Consumer market	Mass consumer segment	Mass consumer segment	Greater probability of mistaken association

Source: Synthesized by the author from Law Number 20 of 2016, Ministerial Regulation Number 67 of 2016, McCarthy (2024), Dinwoodie and Janis (2023), and Yanuarto and Ferdinan (2025).

The findings presented in Table 1 illustrate that similarity exists across multiple legally relevant dimensions rather than within a single characteristic. The cumulative presence of visual, phonetic, conceptual, and market related similarities strengthens the possibility that consumers may perceive an economic relationship between the two products. Trademark jurisprudence generally recognizes that confusion becomes more probable when similarities operate simultaneously across several dimensions.

This analytical pattern supports the proposition that the dispute extends beyond mere lexical resemblance (Yanuarto & Ferdinan, 2025).

From a doctrinal perspective, the shared use of the term “Gudang” acquires particular significance because dominant elements often shape consumer memory more strongly than secondary components. Research on trademark cognition suggests that consumers tend to rely on prominent features when identifying products in routine purchasing situations. Such behavior is especially relevant in markets where purchasing decisions are made rapidly and with limited information processing. Similar observations have been documented in studies examining trademark infringement and consumer behavior in developing economies (Amir et al., 2025).

The market structure of the Indonesian tobacco industry further amplifies the risk of confusion. Industry analyses indicate that tobacco consumers frequently rely on brand recognition as a shortcut for evaluating product quality and authenticity. When similar marks coexist within the same market segment, the probability of mistaken association increases because consumers may infer a shared commercial source. This condition is particularly relevant in sectors characterized by strong brand loyalty and extensive market penetration (Nitisaputra, 2025, Wiraraja, 2025).

The legal significance of consumer confusion extends beyond the protection of private trademark rights. Trademark law also serves a broader public function by preserving accurate information flows within competitive markets. Misleading similarities may distort consumer choice and undermine confidence in brand based purchasing decisions. Contemporary legal scholarship increasingly emphasizes this consumer welfare dimension as a central justification for trademark protection (Hardyansah et al., 2023).

The normative and conceptual analysis therefore supports the conclusion that the relationship between “Gudang Baru” and “Gudang Garam” satisfies several indicators commonly associated with consumer confusion. The convergence of visual resemblance, phonetic similarity, conceptual overlap, and identical market positioning creates a substantial basis for legal concern. Judicial attention to these factors reflects the broader objective of trademark law to safeguard both market fairness and consumer autonomy. Comparable principles have been recognized across international and domestic trademark scholarship as essential components of modern trademark protection regimes (Gangjee, 2018, World Intellectual Property Organization, 1967, World Trade Organization, 1994).

Well Known Trademark Protection and the Limits of the First to File Principle in Indonesian Trademark Law

The concept of a well known trademark occupies a distinctive position within contemporary trademark law because protection is grounded not only in registration but also in reputation, market recognition, and accumulated goodwill. International scholarship recognizes that famous trademarks perform broader economic and informational functions that extend beyond source identification and contribute to consumer trust in competitive markets (Gangjee, 2018). Legal protection for such marks reflects the understanding that substantial investments in reputation deserve enhanced safeguards against unauthorized appropriation. This normative approach has become a defining feature of modern intellectual property systems operating within globalized commercial environments.

The international legal foundation for protecting well known trademarks originates primarily from the Paris Convention and the TRIPS Agreement. Article 6bis of the Paris Convention requires member states to provide legal protection against the registration or use of marks that conflict with well known trademarks, even under circumstances where ordinary registration principles might suggest a different outcome (World Intellectual Property Organization, 1967). The TRIPS Agreement subsequently expanded the scope of protection by reinforcing obligations concerning famous marks and by encouraging broader recognition of trademark reputation as a legally relevant factor (World Trade Organization, 1994). These instruments demonstrate that international trademark law increasingly prioritizes substantive fairness alongside procedural registration requirements.

Indonesia has incorporated these international principles through Law Number 20 of 2016 concerning Trademarks and Geographical Indications. Article 21 establishes that trademark applications may be refused when they conflict with registered trademarks or with well known trademarks that possess established commercial recognition (Republic of Indonesia, 2016). The statutory framework reflects a departure from a purely formal registration system because legal assessment extends to reputation and market distinctiveness. Such an approach aligns Indonesian

trademark law with broader international developments concerning famous trademark protection (Prakoso, 2024).

The regulatory framework is further elaborated through Regulation of the Minister of Law and Human Rights Number 67 of 2016. Article 18 identifies several indicators for determining whether a trademark qualifies as well known, including public recognition, duration of use, market share, promotional intensity, international registration, and judicial acknowledgment (Ministry of Law and Human Rights of the Republic of Indonesia, 2016). These criteria reveal that trademark fame is evaluated through a multidimensional assessment rather than a single evidentiary benchmark. Legal certainty is strengthened because courts and administrative authorities possess structured guidance for determining trademark status.

The normative indicators established under Indonesian law strongly support the classification of Gudang Garam as a well known trademark. The mark has been used for decades, enjoys substantial market visibility, and has acquired extensive public recognition within the Indonesian tobacco industry (Yanuarto & Ferdinan, 2025). Its commercial reputation has been reinforced through sustained advertising activities and a significant presence across domestic and international markets. Judicial decisions addressing disputes involving Gudang Garam have also repeatedly acknowledged the strength and notoriety of the mark, reinforcing its legal standing as a famous trademark (Prakoso, 2024).

Table 2. Legal Criteria for Determining Well Known Trademark Status and Their Application to Gudang Garam

Criteria	Legal Source	Application to Gudang Garam
Public recognition	Permenkumham No. 67 of 2016	Fulfilled
Duration of use	Permenkumham No. 67 of 2016	Fulfilled
Market share	Permenkumham No. 67 of 2016	Fulfilled
Advertising intensity	Permenkumham No. 67 of 2016	Fulfilled
International registration	Paris Convention	Fulfilled
Legal recognition	Court decisions	Fulfilled

Source: Compiled by the author from Regulation of the Minister of Law and Human Rights Number 67 of 2016, Paris Convention for the Protection of Industrial Property, TRIPS Agreement, Prakoso (2024), and Yanuarto and Ferdinan (2025).

The findings presented in Table 2 indicate that Gudang Garam satisfies all principal legal indicators used to determine well known trademark status. Public recognition and long term commercial use demonstrate the existence of strong goodwill that has been cultivated over an extended period of market participation. International registration further strengthens legal recognition because trademark reputation extends beyond national boundaries (World Intellectual Property Organization, 1967). The convergence of these factors supports a robust legal basis for enhanced protection under both domestic and international trademark frameworks.

The protection of well known trademarks is closely connected to the principle of good faith in trademark registration. Good faith requires applicants to develop distinctive commercial identities rather than derive advantage from the reputation established by another market actor (Hakim & Suherman, 2026). Famous trademark protection therefore functions as a mechanism for preventing opportunistic registration practices that undermine fair competition. Similar conclusions have been reached in comparative studies emphasizing that good faith serves as a substantive limitation on formal registration rights (Alfalahi & Al Shibli, 2023).

This relationship becomes particularly important when tension arises between the first to file principle and the principle of good faith. While registration remains an essential mechanism for obtaining trademark rights, contemporary legal systems increasingly reject rigid formalism when registration is pursued for improper purposes (Rosalind & Kansil, 2025). Comparative scholarship

demonstrates that many jurisdictions permit the invalidation of registrations that exploit the reputation of famous marks despite procedural compliance with filing requirements (Huang et al., 2024). Such developments indicate that trademark law has evolved toward balancing administrative certainty with substantive justice.

Judicial treatment of the Gudang Baru dispute reflects this evolving legal orientation. The Supreme Court gave considerable weight to the established reputation of Gudang Garam and evaluated the contested registration through the lens of good faith and trademark fame rather than relying exclusively on filing chronology (Yanuarto & Ferdinan, 2025). This interpretive approach corresponds with broader doctrinal developments recognizing that famous trademarks require stronger legal safeguards against bad faith registration practices (Hakim & Suherman, 2026). The reasoning also reinforces the view that trademark law should protect market integrity and consumer confidence in addition to formal ownership claims.

The broader implication of protecting well known trademarks concerns the promotion of legal certainty within competitive markets. Businesses are more likely to invest in branding, innovation, and reputation building when legal institutions consistently recognize and defend established goodwill (Gangjee, 2018). Effective protection also reduces incentives for opportunistic behavior that could distort competition and weaken consumer trust in market signals (Prakoso, 2024). The Gudang Garam dispute illustrates how the integration of international norms, national legislation, and judicial interpretation contributes to a more coherent framework for trademark governance in Indonesia.

Passing Off, Bad Faith Registration, and Unfair Competition Implications of the Gudang Baru Trademark

The doctrine of unfair competition has developed as a legal mechanism designed to preserve market integrity and prevent commercial conduct that exploits the achievements of competitors without legitimate justification. Contemporary intellectual property scholarship recognizes that unfair competition extends beyond direct trademark infringement and encompasses broader forms of commercial misconduct that distort competitive conditions (Dinwoodie & Janis, 2023). The doctrine focuses on preserving fairness in market behavior rather than merely protecting exclusive proprietary rights. This perspective places economic ethics and competitive balance at the center of legal evaluation (Ding & Chen, 2023).

Passing off represents one of the most established manifestations of unfair competition within comparative trademark jurisprudence. The doctrine traditionally protects business goodwill against commercial activities that create a misleading association between competing market actors, even where formal infringement elements may not be completely established (McCarthy, 2024). Modern legal systems increasingly employ passing off principles to address sophisticated strategies of reputation appropriation that undermine honest commercial practices (Abdou, 2025). The doctrine therefore functions as an important complement to statutory trademark protection.

A related concept is free riding, which refers to attempts by economic actors to benefit from investments, reputation, and market recognition created by another undertaking without bearing equivalent commercial costs. Legal scholars characterize free riding as a form of market distortion because it permits a newcomer to capitalize upon accumulated goodwill that was generated through substantial investment and sustained business activity (Dinwoodie & Janis, 2023). The concern is particularly significant when the targeted reputation has been established through decades of commercial presence and extensive promotional efforts. Such conduct may weaken incentives for innovation and fair competition within the marketplace (Hardyansah et al., 2023).

The interaction between trademark law and competition law has become increasingly important in contemporary legal discourse. Trademark law primarily safeguards commercial identity and source indication, while competition law seeks to maintain equitable market structures and prevent anticompetitive conduct (Kusi Appiah & Dua Ansah, 2025). Several jurisdictions have recognized that intellectual property disputes may simultaneously involve concerns regarding competitive fairness and market integrity. This integrated perspective has gained prominence in comparative legal scholarship examining the intersection of proprietary rights and competition regulation (de Almeida Leite & Ramos Leite, 2025).

Within the Indonesian legal framework, bad faith registration constitutes a significant indicator when evaluating potentially unlawful trademark conduct. Law Number 5 of 1999 emphasizes the

importance of fair business competition, while trademark legislation similarly rejects registration practices that seek unjust commercial advantage through exploitation of existing market reputation (Republic of Indonesia, 1999). Normative legal analysis suggests that bad faith may be inferred when registration appears strategically designed to obtain economic benefits from another party's established commercial goodwill. Similar reasoning has emerged in international scholarship examining unfair competition disputes involving highly recognizable brands (Abdou, 2025).

Table 3. Legal Characteristics of Passing Off and Their Relevance to the Gudang Baru Trademark

Passing Off Element	Legal Meaning	Relevance to Gudang Baru
Reputation	Existing goodwill	Present
Misrepresentation	False association	Potentially present
Consumer diversion	Market displacement	Potentially present
Commercial advantage	Economic benefit	Present
Bad faith	Intent to exploit goodwill	Potentially present

Source: Adapted from Dinwoodie and Janis (2023), McCarthy (2024), Abdou (2025), Ding and Chen (2023), and Republic of Indonesia (1999).

The analytical framework presented in Table 3 demonstrates that passing off assessments focus on the commercial consequences of market conduct rather than solely on technical registration status. Reputation and commercial advantage appear particularly relevant because the economic value of a trademark often derives from accumulated goodwill rather than registration alone (McCarthy, 2024). The presence of potential misrepresentation and market diversion requires careful legal scrutiny to determine whether commercial benefits are derived from independent business efforts or from the appropriation of another undertaking's reputation. Such considerations align with broader unfair competition principles recognized in comparative intellectual property jurisprudence (Ding & Chen, 2023).

From a doctrinal perspective, the Gudang Baru dispute may be examined through the lens of passing off because the controversy concerns alleged appropriation of commercial goodwill rather than merely formal ownership rights. The normative issue centers on whether market recognition associated with Gudang Garam generated economic advantages for another market participant without proportional investment in reputation building. Passing off analysis therefore shifts attention toward commercial fairness and market ethics as central evaluative criteria (Dinwoodie & Janis, 2023). This approach broadens legal inquiry beyond conventional registration based assessments.

Comparative jurisprudence provides useful insight into the treatment of similar disputes in other jurisdictions. Chinese intellectual property decisions have increasingly employed unfair competition principles to address commercial conduct that exploits established goodwill despite variations in formal trademark elements (Guan, 2023). Similar developments can be observed in legal analyses concerning counterfeit products, domain name disputes, and indirect forms of reputation appropriation (Dhingra, 2023). These comparative experiences indicate a growing judicial willingness to examine the economic substance of commercial conduct rather than relying exclusively upon formalistic legal criteria.

The relationship between intellectual property law and competition law has become more pronounced in digital and transnational commercial environments. Market fairness increasingly requires coordinated application of trademark protection and competition principles because economic harm may arise through diverse mechanisms of reputation exploitation (de Almeida Leite & Ramos Leite, 2025). Scholars have argued that intellectual property rights should not function merely as exclusionary tools but also as instruments supporting transparent and fair market participation (Kusi Appiah & Dua Ansah, 2025). This integrated approach reflects broader developments in contemporary regulatory theory.

Future regulatory development may benefit from clearer standards concerning passing off, free riding, and bad faith registration within Indonesian trademark enforcement. Comparative studies suggest that stronger coordination between trademark authorities and competition regulators can improve legal certainty while preserving healthy market competition (Pokrovskaya, 2024). Emerging challenges associated with digital commerce, platform governance, artificial intelligence, and

commercial communication further strengthen the need for adaptive legal frameworks capable of addressing indirect forms of reputation exploitation (Kim & Grady, 2026; Chaudhary, 2026). Regulatory reform that explicitly integrates unfair competition principles into trademark adjudication could strengthen market fairness while preserving incentives for legitimate business innovation (Lemley & Tushnet, 2024).

CONCLUSION

The legal review demonstrates that the use of the “Gudang Baru” trademark raises substantial concerns under Indonesian trademark law and unfair competition principles. Normative analysis of statutory provisions, international legal instruments, judicial reasoning, and doctrinal scholarship indicates that the dispute involves not only questions of trademark similarity but also the protection of commercial goodwill, the legal status of well known trademarks, and the preservation of fair market competition. The findings show that Gudang Garam possesses characteristics that support recognition as a well known trademark under national and international legal standards, thereby justifying enhanced protection against registrations that may undermine its established reputation. The analysis further confirms that the principle of good faith functions as an essential limitation on the first to file system, particularly where trademark registration appears directed toward exploiting the economic value of an existing mark. Examination of unfair competition doctrines suggests that the Gudang Baru trademark may create conditions associated with passing off, free riding, and commercially opportunistic conduct that conflict with the objectives of market fairness protected under competition law. Effective coordination between trademark protection and competition regulation remains necessary to strengthen legal certainty, prevent reputational appropriation, and ensure a balanced framework that safeguards both intellectual property rights and fair commercial practices in Indonesia.

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