The Legitimacy of The CJEU In the Settlement of Trade Mark Disputes of Non-European Union Foreign Companies: A Case Study

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<table>
<thead>
<tr>
<th>Article Info</th>
<th>Abstract</th>
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<tbody>
<tr>
<td><strong>Keywords:</strong> Intellectual Property, The CJEU, and Trademark.</td>
<td>Protection of Intellectual Property Rights (IPR) in the industrial world is an urgency for companies to maintain popularity in the general public, especially on the use of trademarks that greatly affect consumer perceptions. One of the problems in trademark protection is the existence of dispute resolution through court under a supranational organization, namely The Court of Justice of The EU (CJEU), which adjudicates foreign companies originating from non-EU countries. The case is a trademark dispute between China Construction Bank Corp from China and Groupement des cartes bancaires from France. The purpose of this study is to determine the authority and legitimacy as well as the application of justice through The CJEU in resolving disputes of foreign companies. This research was a normative legal research method, which applied to statute approach, case study research, and library research. Based on the results of the research, the authority and legitimacy of The CJEU in resolving disputes with foreign companies has been regulated in the Maastricht treaty and the submission of foreign companies is also related to the opposing party which is a company flagged by a member state of the EU. The use of the CJEU in resolving disputes requires parties to maximize all judicial remedies available at the national level first before proceeding to the international level.</td>
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A. Introduction

The European Union (EU) has an important role as a supranational organization in establishing cooperation in various sectors to develop the running of the EU member states. One of the contributions of the EU in developing the dispute resolution system is the establishment of the European Court of Justice in 1952, which is now called The Court of Justice of The EU (CJEU).\textsuperscript{1} The establishment of The CJEU aims to ensure the interpretation and application of treaties and rules that have been established in EU law without infringing on the sovereign jurisdiction of member states.\textsuperscript{2} The General Court and some specialized courts are among the judicial institutions established by the EU to be responsible for the territorial jurisdiction of the EU, as stated in Article 19 paragraph (1) of the Treaty on EU (TEU).\textsuperscript{3}

The establishment of The CJEU in resolving disputes has become a matter of urgency in the implementation of the EU Treaty, characterized by the settlement of civil disputes at The CJEU which adjudicates foreign non-union companies. Based on Court reports-general: Court of Justice published by The CJEU, shows that the EU General Court has resolved 183 disputes in the first quarter of 2023.\textsuperscript{4} One of the cases tried at The CJEU was a civil case involving China Construction Bank Corp (hereinafter referred to as CCB). The CCB case is a civil case relating to IPR in the form of a trademark dispute between China Construction Bank Corp and Groupement des cartes bancaires (GIE CB). As the Plaintiff, CCB is a financial company established in 1954 in Beijing, China.\textsuperscript{5} Meanwhile, GIE CB is also a financial company founded in 1984 in France.

The choice of court in the trademark dispute between CCB and GIE CB was a strategic move in EU law. In this action, the financial company CCB expressly chose the CJEU as the institution that would handle its dispute with GIE CB by filing a lawsuit with the CJEU court. The choice had the legal effect that the parties chose the CJEU as the court to hear their case, placing themselves under the jurisdiction of the CJEU. This requires them to obey and submit to the decisions issued by the CJEU in the settlement of this trade mark dispute.\textsuperscript{6} The CJEU's decision will have binding legal force and will be the primary guide in resolving this dispute. The CJEU, as the highest institution in the EU legal system, has the responsibility to ensure consistency in the interpretation and application of EU law across EU members. Therefore, the

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\footnote{4}{The Court of Justice of The European Union, “Court Reports-General: Court of Justice,” Informational reports (Luxembourg: The Court of Justice of The European Union, 2023), https://curia.europa.eu/jcms/jcms/P_106311/en/}.
\end{footnotes}
use of the CJEU as the court of choice signifies that the parties consider this dispute to be closely related to EU law, and they want to ensure that the decision taken is aligned with the EU legal framework. In a CJEU court, the applicable law is EU law. Parties should refer to rules, principles, and precedents relating to EU law (choice of law) in their proceedings at the CJEU.\(^7\)

Based on previous research conducted by Carina Etta Siahaan, Arif, and Deni Purba with the title "The Role of the European Union in the Dispute Resolution Process for Member States and Non-Member States", in the study explained that the CJEU has the authority to make binding decisions in legal cases relating to European Union law. This means that CJEU decisions must be respected and applied by all EU member states, even if they conflict with the national laws of those states. This reflects the concept that the European Union is a legal entity with independent legal powers that are binding on all its members.\(^8\) In addition, the study also explains that the EU has a strong oversight function. This includes the ability to request reports from authorized officials in the handling of disputes. This shows that the EU has strict control and monitoring of the implementation of its policies and laws, both at the national level and at the EU level. As such, the EU can ensure that its laws and principles are applied consistently and effectively throughout its territory.\(^9\)

There is another study that also examines The CJEU, conducted by Boin and Schmidt with the title "The European Court of Justice" which explains that the main role of the CJEU is to ensure that EU law is applied uniformly throughout the EU. This means that when EU member states apply EU law, they must do so in accordance with the provisions and principles of EU law. The CJEU has the authority to resolve disputes involving the interpretation or implementation of EU law. If there is non-compliance or a difference in interpretation, member states, legal entities, or individuals can submit their case to the CJEU for a binding legal decision. This ensures that the EU has a consistent and harmonized legal framework across its territory.\(^10\) In addition, the CJEU also has an important function in sanctioning individuals or legal entities that violate EU law. If there are acts of administrative infringement committed by EU member states, EU institutions, or other legal entities, the CJEU may decide to impose appropriate sanctions or penalties. This includes possible fines or other legal action that can be taken against the offender. As such, the CJEU has an important role in maintaining discipline and compliance with EU law throughout the EU.\(^11\)

Besides previous research related to The CJEU, there is also previous research conducted by Wizna Gania Balqis and Budi Santoso with the title "The Importance of Registered Trademark Protection for the Creative Economy Product Producing Community". The research explains that trademark protection is an exclusive right granted to the owner of a registered trademark for a certain period of time. This right allows the owner of the mark to use and control


\(^9\) Boin dan Schmidt, Loc. Cit.


\(^11\) Ibid.
The Legitimacy of The...  Annas Rasid Musthafa, Satriya Aldi Putrazta, A’an Efendi

the mark in the trading activities of goods or services. A trademark is a visual representation or symbol used to identify a particular product or service originating from a company or manufacturer. It includes not only the brand name, but also logos, slogans, and other elements used to distinguish the product or service from others.\textsuperscript{12} The protection of a trademark gives its owner the exclusive right to use the mark, which means that others are not allowed to use or imitate the mark without permission. This helps protect the investment that the brand owner has made in building the brand image, reputation, and consumer loyalty to the brand. If someone or another company tries to use a similar or identical mark without permission, the brand owner can take legal action to protect their exclusive rights.\textsuperscript{13}

The other research also examines the trademark conducted by Adia Irvan, Rory Jeff Akyuwen, and Agustina Balik with the title "Legal Protection for Unregistered Trademark Owners". The study explains that trademark protection in Indonesia is limited to trademarks that have been officially registered through a declarative or constitutive system. The declarative system allows trademark owners to register their marks if the mark has been used in commerce, while the constitutive system allows the registration of marks that have not been used, but the owner has the intention to use the mark in commerce. Both these systems provide legal protection against the use of such marks by other parties without the permission of the owner.\textsuperscript{14}

Based on the background that has been presented, because there is no research that examines the legitimacy of The CJEU and its application in resolving trademark disputes involving non-EU foreign companies. So, this research is aimed at knowing the legitimacy of The CJEU and its application in resolving trademark disputes involving non-EU foreign companies with a case study of the CCB case.

The writing of the results of this study uses normative juridical research methods by examining issues regarding the legitimacy and application of trademark dispute resolution at the European Union General Court against disputes involving non-EU foreign companies. The writing of the research results uses 3 (three) research approach methods, namely the statute approach, case study research, and library research. The regulatory approach is done by reviewing the legislation relating to the regulation of trademarks and the European Union General Court. Meanwhile, the case study approach is carried out by examining a case through a decision that has permanent legal force. Finally, the library study approach is carried out by reviewing literature such as books, journals, theses and other scientific works related to the topic of the problem in the study. The data collected was then processed using data analysis techniques which included the stages of data reduction, data modeling and conclusion verification.\textsuperscript{15} First, data reduction is done by simplifying the data with the focus of the study. Second, the data model is carried out by systematically compiling the simplified data. Third, drawing conclusions from the data obtained.


\textsuperscript{13} Ibid.


B. Discussion
1. Legitimacy and Jurisdiction of The CJEU

The existence of the institution of The CJEU as stated in Article 13 of the Treaty on EU (Maastricht Treaty), which regulates the existence of The CJEU as one part of the EU institutions consisting of the European Parliament(EP), the European Council(Euco), the Council, the European Commission(EC), The CJEU, the European Central Bank(ECB), and the Court of Auditors(ECA). The creation of The CJEU aims to give legitimacy to the EU’s judicial power by imposing an obligation on the member EU to grant the Court the competence to ensure the interpretation, application, protection and enforcements of EU law in national legislation.

The acceptance of the existence of The CJEU in judicial power refers to the independence of The CJEU which has functionally positioned itself in the European rule of law. The legitimacy of The CJEU in resolving disputes is based on the fulfillment of 3 (three) criteria as a condition for the acceptance of The CJEU as an international court. These criteria include the independence, impartiality, and effectiveness of The CJEU in helping to produce fair decisions in the settlement of certain disputes.

The authority and legitimacy of the CJEU in adjudicating non-EU disputes has been regulated in the EU supranational treaty, as stated in Article 19 paragraph (3) of the Maastricht Treaty which regulates the authority of the EU General Court, namely deciding actions filed by individuals, legal entities, institutions, and member states of the EU, providing preliminary decisions at the request of EU member courts regarding the interpretation of the laws or the legality of actions applied by institutions, and the government in other matters regulated in the treaty. The existence of the CJEU in adjudicating non-EU foreign companies is strengthened by article 4 of Regulation The EU No 1215/2012 Of The Jurisdiction And The Recognition And Enforcement Of Judgments In Civil And Commercial Matters, which stipulates that the jurisdiction, recognition and enforcement of the CJEU applies to all persons or legal entities domiciled in member states. The jurisdiction and enforcement also applies to prosecutions from both member states and non-member states where a particular offence has been proven.

The involvement of non-EU foreign companies in dispute resolution at The CJEU defines the country as a non-party state (third state). A non-party state is a state which is not a state party in a treaty or international law because it does not meet the requirements to

become a party or a state that has ratified but is not fully bound by the treaty.\textsuperscript{22} The attachment of a non-party state to an international treaty can be expressed in 5 (five) forms, namely signing, ratification, acceptance, approval, and exchange of instruments that cause the state to be bound by international treaties adopted by certain countries.\textsuperscript{23} As stipulated in article 11 of the 1986 Vienna Convention which regulates the mechanism of consent to be bound to an international treaty.\textsuperscript{24}

In general, dispute resolution filed in The CJEU relates to 5 (five) issues which include the following:\textsuperscript{25}

a. Preliminary Rulings (PR)

The mechanism of the preliminary ruling procedure of collaboration between The CJEU and the national courts of the EU member to issue preliminary decisions on the interpretation of EU treaties as well as decisions on the interpretations of measures of an institution, body, office or association. The PR procedure applies when, in a case before a national court, a new interpretation arises and it is in the public interests for the unified application of EU law that the CJEU acts to provide an interpretation as a guide to the new legal situation.

b. Infringement Proceedings (IP)

Article 226 of the Treaty establishing the EC, infringement proceedings are pre-trial proceedings for non-compliance brought by the European Commission through its discretionary powers. Pre-trial proceedings authorize certain courts to examine and decide on pre-trial claims through procedures set out in the applicable statutory law.\textsuperscript{26}

c. Actions for Annulment

An annulment action is a legal process that The CJEU uses to make sure that individual acts, regulatory acts, and legislative acts all adhere to the higher standards of the EU legal system. The CJEU classifies applicants into three categories based on their rights: privileged candidates, semi-privileged candidates, and non-privileged candidates. The establishment of annulment actions attempts to preserve these applicants' rights.

d. Actions for Failure to Act

Taking action for failure refers to action or enforcement by The CJEU on claims concerning alleged breaches of law in the sense of treaty violations and failures to act by European institutions, bodies, offices or agencies.

e. Actions for Damages

Claims for damages are direct claims brought before The CJEU by individuals, legal entities or EU member states seeking compensation for damage or loss caused by the actions, administrative or legislative activities of the EU institutions and legal entities within.


\textsuperscript{26} Jaholden, Praperadilan dan Pembaharuan Hakum Pidana (Serang: CV AA Rizky, 2021), 3.
2. Settlement of Trademark Dispute Cases

One of the disputes resolved by a judgement of The CJEU was the civil case of China Construction Bank Corp (CCB). The settlement of the CCB case by The CJEU raises several questions regarding the authority, procedures and laws used by The CJEU in resolving disputes relating to non-EU foreign companies. In the CCB case, the problem stems from the refusal of CCB trade mark registration application with the EU Intellectual Property Office (EUIPO) filed by the company GIE CB.27

Based on the principle of exhaustion of domestic remedies, the resolution of CCB cases is required to use to the maximum extent possible all legal remedies available in the country that has jurisdiction to hear the case. The application of an international court, namely The CJEU, can be applied if the judicial mechanism at the national level is ineffective or does not provide satisfaction for the parties to the dispute.28 In relation to the CCB case, the national court in France was deemed ineffective and unsatisfactory for the disputing parties, so the case proceeded with the filing of a lawsuit at The CJEU. The authority of The CJEU to hear a lawsuit filed by CCB as a foreign company or non-EU flagged company, refers to article 19 paragraph (3) of the Maastricht treaty which regulates the authority of The CJEU to hear all cases relating to individuals, legal entities, institutions or states of the EU. The existence of The CJEU in accepting claims from foreign companies, indirectly subjects the foreign companies to all applicable regulations in the EU.

The CCB case is a case linked to intellectual property which is defined as an original creation, idea, invention and any creative expression of human intelligence such as artistic, literary, technical, or scientific creation which is the basis for the willingness of society to grant property status.29 Arrangements regarding intellectual property rights are classified in 2 (two) types, namely copyright and industrial property rights. Copyright is a privilege for creators and recipients of rights to distribute or replicate their creations or give permits for it without reducing the limitations according to applicable laws and regulations.30 While Industrial property rights are exclusive rights registered as industrial products commercialized or traded include Patents, Trade Secrets, Trademarks, Industrial Designs(ID), Plant Variety (PV), and Layout-designs of integrated Circuits(IC).31

The issue in the CCB case refers to the protection of the mark based on the similarity of the mark, namely 2 (two) consecutive letters, namely the letter C and the labour B in the Logo of both companies.32 Considerations in granting rights to trademarks as stipulated in Article 9 of Regulation of EU 2017/1001 of the EU trade mark, which stipulates that the

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27 The Court of Justice of The European Union, “Judgement of The Court C-115/19 P” (The Court of Justice of The European Union, 2019).
31 Ibid.
The protection of trademarks in the EU provides several rights to the owner including the exclusive rights, rights to prevent the use of trademarks, rights to transfer trademarks, and rights against the use of trademarks. The recognition of the trademark is inseparable from the definition of the trademark itself, which is defined as a sign that is able to distinguish goods or the value of services provided or produced by a company from another company. The mark includes any word, letter, number, image, label shape, logo, or combination used to distinguish goods or services that can be considered as a trademark. In general, trademarks are categorized into 3 (three) namely Trademarks, Service Marks, and Collective Marks. Trademark is defined as a mark or combination of marks used to distinguish goods traded by a company with other companies. While Service Marks are defined as Trademarks used on products in the form of services trafficked by a company or corporate entity to differentiate with other similar services. Lastly, Collective Trademarks are defined as Trademarks that are displayed on goods or services with substantially similar features regarding the mark, generic characteristics, nature, and quality traded by individuals.

The regulation of trademark classification applicable in the EU is guided by the Nice Classification (NCL) for trademark registration which is an international classification system used specifically in trademark registration to classify existing goods and services. NCL 12 Edition 2023 on List of Classes with Explanatory Notes explains the existence of 45 classes of goods and services as a reference for trademark protection applications. The NCL application in the CCB case, classified the trademarks belonging to CCB and GIE CB as class 36 trademarks described as banking, monetary and financial services; assurance services; real estate services. The application of NCL in both companies refers to the banking sector which is the main activity in the business of both companies.

Consideration in the granting of rights to the CCB case trademark becomes a special urgency in the protection of IPR due to the transfer of the assessment of the similarity of the sign or logo in question with the examination of the reputation of the brand which has previously gained a high reputation in France over the past 25 years. The existence of both brands in Europe does not cause significant harm and the similarity in the use of the logo is only limited to the similarity of the use of 2 letters, namely the letter C and the letter B. The statement is reinforced by the use of shapes in the logo that are not similar including the type of font or letter used. The override of the assessment of similarity of marks with the reputation of the brand refers more to the theory of brand reputation that classifies brands based on public or consumer perceptions that reflect the level of the general

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35 Ibid.
37 Ibid.
38 Ibid.
39 Ibid.
41 Humphreys, Malovic, dan Martin, “Round-up of EU Trade Mark Decisions in 2020.”
public's knowledge of the brand. The classification of brand reputation is divided into 3 (three) types, namely:42

a. Normal Marks
A type of brand that does not have a high reputation either at the national or international level. Ordinary brands refer to brands that have been registered in the national brand inventory, but do not have a high enough reputation in the community.

b. Well Known Marks
A well-known brand is a brand that is widely recognised in the public sector and has a relatively high reputation internationally.43 The existence of a well known mark is based on the length, breadth and scope of the area of utilization of the mark concerned including the publication and presentation of the goods or services using the mark.44

c. Famous Marks
Famous Marks is a mark that has a higher recognition than a well known mark or literally a well-known mark that is already known and has the highest reputation in several countries whose existence is even recognised before being registered as a mark in a country.45

Trademark protection is awarded by the state to the company or individual trademark, so that the regulation of trademark protection depends on the legislation in force in a country.46 The protection of trademarks in Indonesia regulations and international regulation provides a limitation of protection within a period of 10 (ten) years from the date of receipt and can be extended within the same period. Legal protection is provided through trademark registration to the authorized government agency. Trademark applications are made through 2 (two) systems, namely the constitutive system and the declarative system. In the Constitutive system, the right to the trademark is acquired through registration, which means that the exclusive right to a trademark is awarded because of the registration. Meanwhile, the declarative system, which is based on legal protection for those who use the Trademark first, in addition to lacking legal certainty, also creates problems and obstacles in the business world, especially for companies engaged in countries that adopt the constitutive system.47

C. Conclusion
The existence of The CJEU in resolving disputes has been stated in the Maastricht treaty which regulates the existence of the EU General Court or The CJEU as one part of the EU institutions. The legitimacy of The CJEU is strengthened by the existence of EU instruments

47 Ibid.
that provide jurisdiction, recognition, and enforcement of justice through The CJEU. The legitimacy and engagement of non-EU foreign companies in resolving disputes through The CJEU can be binding if the state or legal entity signs, ratifies, accepts, approves, or exchanges instruments that cause the state or legal entity to be bound by international treaties that refer to the recognition of The CJEU.

The application of the settlement of trademark disputes through The CJEU, as referred to the CCB case regarding trademark disputes, gives The CJEU the authority to hear the lawsuit that has been filed. The authority is strengthened by the submission of the CCB company as a foreign company to EU law, so that the court will use EU law fully to resolve the case. The application of dispute resolution in the CCB case applies the principle of exhaustion of domestic remedies, which explains that the settlement of CCB disputes must be pursued as much as possible at the national court level before proceeding to the CJEU. The application of regulation in the settlement of the CCB case subjects the CCB company, which is a non-EU foreign company, to the laws of the EU. The CCB company's attachment is based on the filing of a lawsuit submitted to The CJEU, so that indirectly with the filing of a lawsuit it agrees to be bound by EU law. The resolution of the CCB's trademark dispute granted rights in the mark to both companies. The granting of rights to both companies was based on the core of the issue relating to the similarity of the marks or logos used. The use of a logo has its own meaning in a product, but in this case the assessment of logo similarity is irrelevant because there is only a similarity in the use of 2 letters. The override of the assessment of the logo is based on public knowledge of the community or consumers who have considered the two brands as one of the famous brands in France.
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