

**CASE NO. 3
INDUSTRIAL DESIGN CASE
“MULTICOLOUR FLOWER AND YELLOW-GREEN PACKAGING”**

**THE RULING OF JAKARTA COMMERCIAL COURT
AND
THE RULING OF THE SUPREME COURT OF THE REPUBLIC OF INDONESIA**

Case Title	Multicolour Flower and Yellow-Green Packaging
Summary Of Verdict	<p>At the Commercial Court Level</p> <ol style="list-style-type: none"> 1. Rejected the lawsuit from the Plaintiff entirely; 2. Punished the Plaintiff to pay the case cost as much as Rp.516.000,- (Five Hundred Sixteen Thousand Rupiah) <p>At the Supreme Court Level (Cassation)</p> <ol style="list-style-type: none"> 1. Granted the application of cassation from the Cassation Applicant partly; 2. Punished the Cassation Applicant/the Defendant to pay the case cost as much as Rp5.000.000 (Five Million Rupiah)
Case Number	<p>Commercial Court:</p> <p>74/Pdt-Sus.Desain.Industri/2014/PN.Niaga.Jkt.Pst.</p> <p>Supreme Court Level (Cassation) :</p> <p>554 K/Pdt. Sus-HKI/2015</p>
Regulation References	Article 2 jo. Article 38 Paragraph 1 of Law Number 31 of 2000 Concerning Industrial Design
Keyword	Originality; Use; Register

A. CASE FACTS

The parties who involve in this case are Soefianto Leonard as the Plaintiff and Bhawna Fidwani as Defendant. Plaintiff is an underwear producer and trader with a company name PT. Agree Progress International which uses Agree as trademark and put on Multicolor Flower and Yellow-Green packaging as industrial design. Those packaging have been traded overseas and Plaintiff's company had held promotion including exhibition in Dubai, Uni Emirat Arab in 2009. On August 26, 2013 Defendant has filed the request of industrial design registration with Multicolour Flower and Yellow-Green packaging and two of those packaging has been listed on the General Register of Industrial Designs, which is preceding used and registered by Plaintiff since 2008 for Multicolor Flower packaging and 2003 for Yellow-Green packaging.

Plaintiff stated that the registration of Multicolor Flower and Yellow-Green packaging on behalf of Defendant has imitated Plaintiff's industrial design and do not comply Article 2 of Law Number 31 of 2000 Concerning Industrial Design, which are:

1. The Right to an Industrial Design shall be granted for an Industrial Design that is new.
2. An Industrial Design shall be deemed new if on the Filing date such an Industrial Design is not the same as any previous disclosures.
3. The previous disclosure as referred to in paragraph (2) shall be one which before:
 - a. the Filing Date; or
 - b. the priority date, if the Application is filed with Priority Right has been announced or used in Indonesia or outside Indonesia.

Defendant also used Plaintiff's trademark which is Agree without any rights and Plaintiff reported this case to police yet this case has been settled by reconciliation with Agreement Letter signed by Plaintiff and Defendant.

B. JUDGES CONSIDERATION

At The Commercial Court Level

In order to determine such problems, the judges considered the following factors:

1. Whether it is correct that packaging industrial design that was listed by Defendant profoundly imitates Multicolor Flower and Yellow-Green packaging that preceding used by Plaintiff. According to Defendant's claim, Defendant stated that Defendant has used Multicolor Flower and Yellow-Green packaging since 2000 or at least 2005. Judge considered Plaintiff is still not able to prove if Defendant has imitated Plaintiff's Multicolor Flower and Yellow-Green packaging industrial design due to not similar evidence between Plaintiff's industrial design packaging and Defendant's industrial design packaging possession.
2. Whether the registration of industrial design on behalf of Defendant that was proposed to be recorded on August 26, 2013 is not an original industrial design. According to Drs. Achmad Hossan SH as expert witness stated that the original definition of industrial design is industrial design that has not been used by anyone and shall be concealed prior registration yet it would be public domain if it has been circulated to public prior registration. According to Defendant's fact, Multicolor Flower and Yellow-Green packaging are no longer original because Defendant has used and recorded Multicolor Flower and Yellow-Green packaging since 13 years or at least 8 years ago.
3. Whether Plaintiff has authority in order to file the request industrial design for cancellation. Multicolor Flower and Yellow-Green packaging have been used and traded by Plaintiff since 2003 and 2009 but considering expert testimony from Drs. Achmad Hossan SH, those packaging are no longer original and public may make use of them. Therefore, Defendant shall not be concluded as the party who has interest to file the request industrial design for cancellation belongs to Defendant.

At the Supreme Court Level (Cassation)

Due to rejection lawsuit in commercial court, Plaintiff filed cassation to Supreme Court. Hereby the following consideration made by Judges in Cassation Level:

1. Judex Facti has determined the registration of industrial design on behalf of Cassation Recipient, which is Multicolor Flower and Yellow-Green packaging, are no longer original design industry. On this case, Judex Facti shall determine to cancel

the registration of Multicolor Flower and Yellow-Green packaging on behalf of Cassation Recipient.

2. Cassation Recipient has registered two industrial designs after 13 years or at least 8 years those industrial designs are used. Therefore, those industrial designs, which were filed by Cassation Recipient, have no originality and innovation elements.
3. Cassation Applicant also uses industrial design with Multicolor Flower and Yellow-Green packaging and is being traded since 2003 and 2009.
4. Since industrial design with Multicolor Flower and Yellow-Green packaging are being in published and traded in long term, those industrial design are categorized as unoriginal and public could make of use for them yet possession not allowed.
5. Either Cassation Applicant or Cassation Recipient do not comply originality pursuant to Article 2 Paragraph 1 of Law Industrial Design since two of those are being used before registration, so that Multicolor Flower and Yellow-Green packaging shall be declared cancel with all law consequences

C. THE VERDICT

At the Commercial Court Level

1. Rejected the lawsuit from the Plaintiff entirely;
2. Punished the Plaintiff to pay the case cost as much as Rp.516.000,- (Five Hundred Sixteen Thousand Rupiah)

At the Supreme Court Level (Cassation)

1. Granted the application of cassation from the Cassation Applicant partly;
2. Declared Multicolor Flower and Yellow-Green packaging on behalf of Defendant are not original industrial design because those have been public domain;
3. Declared to cancel Multicolor Flower and Yellow-Green packaging on behalf of Defendant according to law, by all the law consequences;
4. Commanded the Ministry of Law and Human Right of RI cq. Directorate of Intellectual Property Rights to cancel Multicolor Flower and Yellow-Green packaging on behalf of Defendant.