Jurnal Ilmiah Kebijakan Hukum

Volume 20 Number 1, March 2026: 17-30
p-ISSN: 1978-2292 (print) e-ISSN: 2579-7425 (online)
Karya ini dipublikasikan di bawah lesensi Creative Commons Attribution-NonCommercial 4.0 International License

Preventing Abuse of Trademark Registration Through Speculative Filings in Indonesia

Brian Valentino Lates Cal Cariver, Mieke Yustia Ayu Ratna Sari

Faculty of Law, Universitas Negeri Surabaya, Surabaya, Indonesia

✉ **brian.23175@mhs.unesa.ac.id**

Submitted:
04-12-2025
Accepted:
26-02-2026
DOI:
https://doi.org/10.30641/kebijakan.2026.V20.17-30

Copyrights © 2026: Brian Valentino Lates Cal Cariver, Mieke Yustia Ayu Ratna Sari

Keywords:
Bad Faith; First-to-File; Speculative Trademark Applications; Trademark Registration.

How to Cite:

Brian Valentino Lates Cal Cariver, Mieke Yustia Ayu Ratna Sari. "Preventing Abuse of Trademark Registration Through Speculative Filings in Indonesia". Jurnal JIKH. Vol. 20 Number 1, March 2026, 17-30, https://doi.org/10.30641/kebijakan.2026.V20.17-30

Abstract

The practice of blocking and speculative trademark applications exploits administrative gaps in the first-to-file system to secure advantages without genuine commercial intent. This article employs statutory, conceptual, case-law, and comparative doctrinal approaches. Drawing on the jurisprudence of the Court of Justice of the European Union, this article shows that bad faith is primarily assessed through intention to use. However, the Indonesian normative framework has not operationalized the notion of "unfair business competition" into objective and verifiable standards, as it lacks measurable indicators to assess the applicant's intent at filing. Consequently, examination remains largely formalistic and reactive, rendering the system vulnerable to speculative applications. This article conceptualizes blocking and speculative applications as manifestations of bad faith and recommends proportionate administrative reforms, including the introduction of an intention-to-use declaration, the development of a red-flag checklist based on operational indicators such as chains of applications, offers to sell, and absence of genuine use, as well as cross-border database verification for early detection. These measures aim to strengthen preventive mechanisms at the registration stage without undermining the first-to-file principle.

1. INTRODUCTION

The first-to-file principle, while central to legal certainty in trademark registration, creates structural vulnerabilities when applications are submitted without genuine commercial intent. In such circumstances, trademark registration may function not as an instrument of market identification, but as a strategic tool to block competitors or secure speculative leverage.

These practices, commonly described as blocking and speculative trademark applications, pose a significant threat to market fairness and the effectiveness of trademark registration systems across jurisdictions.[1] Their defining characteristic is the absence of a genuine intention to use the mark at the time of filing.[2] Rather than facilitating participation in the marketplace, such applications aim at resale, portfolio inflation, or competitive obstruction. Contemporary trademark research has adopted a conceptual framework that interprets these practices as manifestations of bad faith within registration systems that prioritize procedural formalities over substantive intent.[3]

The jurisprudence of the Court of Justice of the European Union has developed a structured doctrinal test for determining bad faith in trademark applications.[4] Beginning with Lindt, the Court established that bad faith requires a global assessment of the applicant's intention at the filing date.[5] This assessment is conducted through objective and verifiable circumstances and rests on three cumulative analytical elements. First, the applicant's knowledge of prior or third-party use. Second, the intention to prevent that party from entering or continuing in the market. Third, the absence of a genuine intention to use the mark for legitimate commercial purposes. The decisive inquiry is therefore not mere awareness of earlier use, but whether the filing reflects an abusive commercial strategy.

Subsequent rulings, including cases addressing chains of applications and strategic portfolio expansion such as *LUCEO v LUCEA LED*, further clarified that intention to use operates as a central benchmark in distinguishing legitimate registration strategy from opportunistic conduct.[6] Under this approach, subjective intention is inferred from objective indicators, including patterns of serial filings, lack of commercial activity, or evidence of resale strategy. EU jurisprudence thus translates the abstract concept of bad faith into operational criteria capable of administrative scrutiny, offering a substantive safeguard against speculative trademark applications.

In Indonesia, bad faith is regulated under Law No. 20 of 2016 on Trademarks and Geographical Indications, particularly Articles 21, 76, and 77, which provide grounds for refusal and cancellation. However, the statute does not formulate a structured legal test for assessing the applicant's intention at the filing date, instead referring broadly to bad faith and unfair business competition without operational indicators. The Supreme Court has clarified that trademarks registered in bad faith are not subject to the five-year limitation period under Article 77 paragraph (2),[7] emphasizing that rights obtained dishonestly cannot rely on legal certainty. Yet judicial assessment remains largely retrospective and case-specific, focusing on evidentiary circumstances revealed during litigation rather than applying a consolidated ex ante doctrinal standard. At the administrative level, examination by the Directorate General of Intellectual Property is predominantly formalistic and centered on similarity analysis, with no publicly codified checklist or measurable criteria to detect speculative or blocking intent at the registration stage. Consequently, the Indonesian framework addresses bad faith primarily through reactive adjudication rather than preventive and intention-based evaluation.

---

[1] Joanna Sitko, "The Significance of Bad-Faith Premises for the Strategy of Trade Mark Protection in the Light of the Latest EU Case-Law," *IIC - International Review of Intellectual Property and Competition Law* 54, no. 9 (October 2023): 1381–1406, https://doi.org/10.1007/s40319-023-01374-z.

[2] Richard Arnold, "Broad Specifications and Intent to Use: Is the EU Trade Mark System Credible?," *GRUR International* 70, no. 7 (July 2021): 656–661, https://doi.org/10.1093/grurint/ikaa193.

[3] Jennifer Davis and Łukasz Żelechowski, "Bad Faith, Public Policy and Morality: How Open Concepts Shape Trade Mark Protection," *IIC - International Review of Intellectual Property and Competition Law* 54, no. 6 (July 2023): 859–890, https://doi.org/10.1007/s40319-023-01350-7.

[4] Michal Bohaczewski, "Abusive Trade Mark Filings: Some Recent Applications of the Concept of Bad Faith in the Case Law of the Court of Justice and General Court," *IIC - International Review of Intellectual Property and Competition Law* 54, no. 8 (September 2023): 1203–1225, https://doi.org/10.1007/s40319-023-01362-3.

[5] *Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH*, Case C-529/07, Court of Justice of the European Union, June 11, 2009.

[6] *Copernicus-Trademarks Ltd v. EUIPO (LUCEO)*, Case T-82/14, General Court of the European Union, July 7, 2016.

[7] *Lewis Banks Ltd v. Ng Tiong Sew*, Putusan Kasasi No. 425 K/Pdt.Sus-HKI/2025, Mahkamah Agung Republik Indonesia, May 19, 2025.

According to an official report from the DJKI Ministry of Law and Human Rights, there have been 296 cases of intellectual property infringement over the past seven years, of which 163 concern trademarks.[8] Although these figures do not specifically classify cases as speculative or blocking applications, the predominance of trademark disputes indicates structural pressure within the registration system. The data suggests that conflicts frequently emerge only after registration, implying that problematic filings are not filtered adequately at the examination phase. This pattern reflects a systemic vulnerability, administrative review remains focused on formal compliance and similarity assessment, while the applicant's commercial intention at the filing date is neither systematically scrutinized nor supported by measurable indicators. As a result, potential speculative or blocking motives are typically addressed reactively through opposition or litigation rather than prevented ex ante through structured examination standards, thereby increasing transactional costs and legal uncertainty within the first-to-file framework.

This regulatory gap gives rise to two interrelated policy questions. First, whether the substantive framework of Indonesian trademark law is conceptually equipped to address speculative and blocking applications. Second, whether the administrative mechanisms of the DJKI provide sufficient ex ante safeguards against opportunistic filings within a first-to-file system. In light of the evolution of European Union jurisprudence, which provides empirical criteria and indicators for assessing bad faith, this study employs a structured comparative method combining doctrinal comparison and functional analysis. Doctrinally, it reconstructs the legal test for bad faith as developed in the jurisprudence of the Court of Justice of the European Union, particularly the emphasis on intention to use and objective indicia of abusive conduct. Functionally, it examines how those doctrinal standards operate as preventive tools within the EU registration system. The purpose is not legal transplantation, but policy benchmarking identifying principles and operational indicators that may be contextually adapted to strengthen Indonesia's preventive framework while preserving the integrity of the first-to-file principle and enhancing the credibility of its trademark system.

Building on the regulatory and doctrinal gaps outlined above, it is essential to situate this discussion within the broader landscape of Indonesian trademark scholarship. Within this scholarship, several previous studies have provided a conceptual and policy foundation, though they have not specifically addressed speculative and blocking trademark applications. Masnun et al,[9] emphasize the alignment of trademark administration with principles of good governance to ensure substantive justice, particularly in preventing administrative abuse. Similarly, Michelle Nathania highlights structural vulnerabilities inherent in the first-to-file principle and argues that procedural refinement and strengthened examination standards are more pragmatic solutions than altering the foundational registration model.[10] In a more technical dimension, Inge Dwisvimiar et al,[11] stress the need for clearer examiner guidelines, especially concerning similarity assessment, reputation evidence, and indicators of bad faith. Complementing this perspective, Darwance and Sudarto identify regulatory inconsistency and politicization within trademark administration as factors that exacerbate disputes and create space for opportunistic filings.[12] Meanwhile, Artija and Purwaningsih demonstrate that strict adherence to the first-to-file system exposes both domestic and foreign brand owners to strategic appropriation, despite multilayered protection under international and national frameworks.[13]

[8]CRZ, "Pelanggaran Kekayaan Intelektual Capai 296 Kasus Dalam Tujuh Tahun, DJKI Perkuat Langkah Penegakan Hukum," accessed September 23, 2025, https://www.dgip.go.id/index.php/artikel/detail-artikel-berita/pelanggaran-kekayaan-intelektual-capai-296-kasus-dalam-tujuh-tahun-djki-perkuat-langkah-penegakan hukum?kategori=Berita%20Resmi%20Desain%20Industri.

[9]Muh. Ali Masnun et al., "Reconstructing Indonesia's Trademark Registration System through the Lens of General Principles of Good Governance to Realize Substantive Justice," *Journal of Law and Legal Reform* 5, no. 3 (October 2024): 891–912, https://doi.org/10.15294/jllr.v5i3.7547.

[10]Michelle Nathania, "First to File, Trademark Squatting, Fairness, Famous Marks and Law Reform.," *International Journal of Educational Research & Social Sciences* 6, no. 1 (February 2025): 19–26, https://doi.org/10.51601/ijersc.v6i1.953.

[11]Inge Dwisvimiar and Deshinta Elfira, "Merancang Konsep Standar Pemeriksaan Substantif Merek: Belajar Dari Kasus Merek M&G," *Jurnal Hukum Ius Quia Iustum* 31, no. 1 (January 2024): 151–178, https://doi.org/10.20885/iustum.vol31.iss1.art7.

[12]Darwance Darwance and Sudarto Sudarto, "The Legal Politic Of Regulation For Trademark Registratiom Systems In Indonesia," *Berumpun: International Journal of Social, Politics, and Humanities* 4, no. 1 (March 2021): 70–81, https://doi.org/10.33019/berumpun.v4i1.47.

[13]Arfiansyah Dewa Artija and Sri Budi Purwaningsih, "Legal Safeguards for Owners of Untapped Foreign Brands Under Indonesia's First-to-File Principle," *Indonesian Journal of Law and Economics Review* 19, no. 2 (May 2024): 6–15, https://doi.org/10.21070/ijler.v19i2.1013.

Although these studies collectively highlight governance deficiencies, doctrinal ambiguity, and procedural weaknesses, their analytical orientation remains largely consistent bad faith is predominantly examined in the context of post-registration disputes, most often through cancellation or litigation. Speculative and blocking applications are discussed indirectly within broader debates on squatting or unfair competition, yet they are not systematically conceptualized as structured strategies requiring targeted preventive screening at the filing stage. Accordingly, this study advances three core objectives: First, how has the jurisprudence of the Court of Justice of the European Union doctrinally constructed the legal test for bad faith in cases involving speculative and blocking trademark applications? Second, to what extent does Indonesian Trademark Law provide objective and administratively workable standards for detecting abusive intent at the filing stage within its first-to-file system? Third, how can comparative doctrinal insights be translated into proportionate preventive mechanisms that strengthen Indonesia's trademark registration framework without undermining legal certainty?

2. METHOD

This study employs a structured doctrinal legal research method to evaluate the adequacy of Indonesia's regulation of bad faith in trademark registration. This type of research is also often referred to as library research or doctrinal studies.[14] The analysis proceeds in three stages. First, Indonesian trademark law is analyzed through Law No. 20 of 2016 on Trademarks and Geographical Indications (Articles 21, 76, 77) and Permenkumham No. 12 of 2021 to assess whether comparable standards and administrative criteria exist for detecting abusive intent at the filing stage. Second, EU case law is examined to reconstruct the doctrinal test for bad faith, focusing on *Lindt* (C-529/07) is a landmark decision that first articulated the requirement of a global assessment of intention at the filing date and *LUCEO v LUCEA LED* (T-82/14) clarified objective indicators such as serial filings and strategic portfolio expansion. Together, these rulings provide representative doctrinal benchmarks for identifying bad faith in speculative and blocking applications. Third, a conceptual and comparative functional approach is employed. Conceptually, key notions such as bad faith, speculative applications, blocking applications, and intention to use are operationalized as evaluative categories in assessing regulatory adequacy. Comparatively, the study benchmarks Indonesian law against the reconstructed EU doctrinal standards to identify proportionate principles that may be contextually adapted to strengthen preventive mechanisms within Indonesia's first-to-file regime. Through this structure, the study clarifies how doctrinal elements are derived from EU jurisprudence, how Indonesian law is assessed against those benchmarks, and how comparative insights can inform proportionate reforms.

3. FINDINGS AND DISCUSSION

3.1. The Phenomenon of Blocking and Speculative Trademark Applications, Concepts and Jurisprudence

The utilization of blocking trademark applications and speculative applications represents a substantial deviation from the legitimate objectives of trademark registration. These applications have emerged as strategic instruments employed to secure market dominance rather than to identify authentic goods or services within the commercial sector. According to Black's Law Dictionary, bad faith is defined as involving "actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or contractual obligation, not prompted by an honest mistake but by some interested or sinister motive.[15] While this general definition provides a linguistic starting point, in trademark law the concept must be doctrinally grounded in statutory interpretation and judicial reasoning. Article 59(1)(b) of the EU Trade Mark Regulation establishes bad faith as a ground for invalidity, and the Court of Justice of the European Union has clarified its meaning through case law, notably in *Lindt* (C-529/07) and *LUCEO* (T-82/14), where the Court emphasized a global assessment of the applicant's intention and identified objective indicators such as knowledge of prior use, blocking intent, and patterns of speculative filings.

[14]Jonaedi Efendi Johnny Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris*, Pertama (Depok: Prenadamedia Group, 2016). 124.

[15]Henry Campbell Black, "Bad Faith," Academic Dictionaries and Encyclopedias, accessed November 7, 2025, https://blacks_law.en-academic.com/2695/bad_faith

The term "speculative applications" is used to describe trademark registrations that are filed without any genuine intention to use the mark in commerce. Instead, applicants seek to acquire ownership rights for the purpose of later reselling the mark, extracting licensing fees, or creating bargaining leverage.[16] Blocking applications involve registrations designed to prevent market entry by competitors, often through broad class coverage or repetitive filings. Although descriptively distinct, both practices converge doctrinally in their absence of legitimate commercial rationale and in the instrumentalization of registration procedures for exclusionary purposes. EU jurisprudence provides a structured analytical framework for identifying such conduct. In *Lindt* (C-529/07), the CJEU held that bad faith must be assessed globally, considering all relevant factors at the filing date. The Court highlighted objective elements such as the applicant's knowledge of prior third-party use, the intention to obstruct that party, and the degree of legal protection enjoyed by the earlier sign.[17] Intention is not presumed but inferred from objective, consistent, and verifiable circumstances, making evidentiary indicators central to the assessment.

Subsequent General Court jurisprudence, including *Copernicus/LUCEO v. LUCEA LED* (T-82/14), refined the doctrine by emphasizing contextual analysis of filing strategies. Extensive multi-class filings without corresponding economic activity, serial applications aimed at maintaining exclusivity without use, and defensive registrations lacking plausible commercial justification collectively support an inference of dishonest intent.[18] The absence of genuine intention to use is not treated as an autonomous ground but as a decisive evidentiary factor when combined with blocking behavior or strategic opposition practices. From these decisions, several doctrinal benchmarks emerge: prior knowledge of third-party use; demonstrable intention to exclude or obstruct competitors; absence of plausible commercial rationale at the filing date; filing patterns indicating strategic accumulation rather than market participation; and post-registration conduct consistent with rent-extractive or obstructionist objectives.

These benchmarks reflect the broader principle that trademark rights must not be exercised in a manner that distorts competition or undermines the origin function of the mark. Blocking and speculative filings are therefore doctrinally understood as manifestations of abuse of rights within the trademark system.[19] Rather than protecting market identity, such registrations instrumentalize administrative procedures to secure artificial exclusivity detached from genuine economic activity.[20] By transforming descriptive characteristics into structured legal indicators grounded in EU jurisprudence, speculative and blocking applications are analyzed not merely as unethical conduct but as legally cognizable bad faith under a contextual and evidence-based test. This doctrinal synthesis provides the analytical benchmark necessary for evaluating whether other legal systems particularly Indonesia's first-to-file regime possess equivalent mechanisms for identifying abusive intent at the filing stage.

The European Union has been at the forefront of developing comprehensive legal frameworks to address these abuses. The CJEU and the EUIPO have undergone a significant interpretive shift regarding bad faith in trademark registration.[21] Rather than limiting their assessment to formal similarity or imitation, these institutions now evaluate the applicant's contextual intent and motivation whether the applicant possesses a genuine intention to use the mark or is pursuing speculative or blocking objectives.[22] This expanded interpretation recognizes that abuse of the trademark system is not confined to deceptive imitation but encompasses strategic misuse of administrative processes themselves. In doctrinal terms, such practices amount to an abuse of rights, distort competition, and undermine the origin function of trademarks, thereby justifying invalidity under EU law.

[16]Sitko, Op.cit.

[17]*Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH*. Case C-529/07, Court of Justice of the European Union, June 11, 2009.

[18]Martin Senftleben, "The Unproductive 'Overconstitutionalization' of EU Copyright and Trademark Law – Fundamental Rights Rhetoric and Reality in CJEU Jurisprudence," *IIC - International Review of Intellectual Property and Competition Law* 55, no. 9 (October 2024): 1471–1514, https://doi.org/10.1007/s40319-024-01527-8.

[19] Bohaczewski, Op.cit.

[20]Tamar Khuchua, "Facing the 'Bad Faith': The Challenges and Tools to Combat the Blocking Strategies of the Firms in the EU Trade Mark Law," *Nordic Journal of European Law* 3, no. 1 (July 2020): 107–127, https://doi.org/10.36969/njel.v3i1.21994.

[21]Giuseppe Sanseverino, "Bad Faith in EU Trade Mark Law: The Impact of *SkyKick* Post-Brexit," *Journal Of Intellectual Property Law and Practice* 20, no. 6 (July 2025): 369–376, https://doi.org/10.1093/jiplp/jpaf004.

[22]Dev S. Gangjee, "The Sky's the Limit? *SkyKick* v *Sky* and Speculative Trade Mark Registration," *The Modern Law Review* 88, no. 6 (November 2025): 1205–1225, https://doi.org/10.1111/1468-2230.12973.

3.1.1. *Copernicus* Case (*LUCEO v LUCEA LED*, T-82/14)

The General Court's decision in Copernicus (*LUCEO v LUCEA LED*, T-82/14) provides a structured illustration of how "chains of applications" may constitute evidence of bad faith when assessed under Article 59(1)(b) EUTMR.[23] Rather than treating repeated filings as inherently unlawful, the Court conducted a global assessment of all relevant circumstances at the filing date. Bad faith was not inferred from a single act, but from the cumulative interaction of objective factors demonstrating that the application was detached from legitimate commercial objectives.

Factually, Copernicus had filed LUCEO marks at regular six-month intervals, alternating between Germany and Austria. This pattern enabled the applicant to preserve procedural standing to oppose later applications and to maintain strategic control over the sign. The Court did not consider the frequency of filings alone as decisive; instead, it examined whether this filing strategy corresponded to a plausible economic rationale. The absence of evidence of genuine commercial activity such as marketing preparation, product development, distribution channels, or identifiable customers was treated as a significant contextual element. The decisive evidentiary moment arose when the manufacturer using the LUCEA LED sign filed an EU trademark application. Copernicus immediately opposed the application and subsequently offered to sell the LUCEO mark for €75,000.[24] The General Court treated this post-filing conduct not as an independent ground of invalidity, but as corroborative evidence capable of illuminating the applicant's intention at the time of filing. In doctrinal terms, intention to use was not framed as an autonomous statutory requirement; rather, the absence of intention, when combined with obstructionist conduct and monetization attempts, supported an inference of dishonest intent.

From the Court's reasoning, several doctrinal criteria can be distilled. First, serial or cyclical filings may indicate bad faith when they serve no discernible commercial purpose and instead function to maintain procedural leverage. Second, offers to sell the mark at a substantial price immediately following third-party applications may constitute objective evidence of a blocking strategy. Third, the absence of preparatory or actual use in the marketplace reinforces the conclusion that the filing lacked bona fide commercial rationale. Crucially, these factors operate cumulatively within a global assessment framework; none is independently determinative.

The jurisprudential significance of Copernicus therefore lies not merely in its factual narrative, but in its methodological contribution. The decision demonstrates that a formal examination limited to similarity analysis is insufficient to detect abusive filings. Instead, EU law permits examiners and courts to consider historical filing patterns, contextual commercial evidence, and post-filing conduct as part of a structured evidentiary evaluation. Framed doctrinally, the case contributes to the development of objective indicators for identifying blocking strategies within the broader principle that trademark rights must not be exercised in a manner that undermines fair competition or the origin function of the mark.

3.1.2. Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH Case (C-529-07)

The judgment in Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH (C-529/07) constitutes the doctrinal foundation of the European Union's bad faith test under Article 51(1)(b) of Regulation No. 40/94 (now Article 59(1)(b) EUTMR). Rather than defining bad faith abstractly, the Court articulated a structured method of assessment based on a global evaluation of all relevant factors existing at the time of filing.[25]

The Court rejected any automatic presumption of bad faith based solely on the applicant's knowledge of prior use by a third party. Knowledge was treated as a relevant but insufficient element. Instead, the legal test requires a cumulative assessment of objective circumstances capable of revealing the applicant's intention at the filing date. The Court identified three interrelated analytical elements. First, the applicant's knowledge of third-party use of an identical or similar sign. Second, the intention to prevent that third party from continuing to use such a sign and the degree of legal protection enjoyed by the competing signs.[26] These elements are not independent conditions, but components of a holistic inquiry aimed at determining whether the application reflects honest commercial practice or an abusive strategy.

[23]*Copernicus-Trademarks Ltd v. EUIPO (LUCEO)*, Case T-82/14, General Court of the European Union, July 7, 2016.
[24]*Copernicus-Trademarks Ltd v. EUIPO (LUCEO)*, Case T-82/14, General Court of the European Union, July 7, 2016.
[25]*Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH*, Case C-529/07, Court of Justice of the European Union, June 11, 2009.
[26]*Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH*, Case C-529/07, Court of Justice of the European Union, June 11, 2009.

Crucially, intention to use was not formulated as a formal statutory requirement under EU law. However, the absence of a genuine commercial rationale may serve as a decisive contextual indicator when combined with obstructive intent.[27] In other words, lack of intention to use is not autonomously determinative, but it reinforces an inference of bad faith when it reveals that the filing was primarily designed to hinder competitors rather than to participate in the market. The Court thus positioned subjective intention as the central inquiry, to be inferred from objective and verifiable circumstances.

The Lindt ruling therefore establishes two methodological principles. First, bad faith must be assessed ex ante, at the filing date, not retrospectively based on later conduct alone. Second, the determination rests on cumulative evidentiary evaluation rather than isolated factual triggers. Subsequent EU jurisprudence has operationalized this framework by identifying objective indicators capable of evidencing dishonest intent, including strategic filing patterns, absence of commercial preparation, offers to sell the mark shortly after filing, and registration strategies disconnected from economic activity. These indicators function not as automatic grounds of invalidity, but as doctrinal criteria within the global assessment test first articulated in Lindt. The significance of Lindt lies in its transformation of bad faith from a moral abstraction into a structured legal standard grounded in abuse of rights and distortion of the trademark's origin function. The decision clarifies that trademark law protects genuine market participation, not strategic exclusion detached from commercial activity. As such, it provides a coherent analytical benchmark for evaluating speculative or blocking filings in comparative contexts.

3.2. Analysis of Provisions on Bad Faith in the Indonesian Trademark Law Against Blocking and Speculative Applications

The growing phenomenon of speculative and blocking trademark applications in the European Union reveals a new pattern of trademark registration system abuse. Unlike classic infringements involving direct imitation, this practice exploits administrative loopholes in the first-to-file system to gain economic advantage or prevent competitors from entering the market.[28] Although Indonesian trademark law does not explicitly regulate this phenomenon, this issue is relevant to the explanation of Article 21 paragraph (3) of Law No. 20 of 2016 on Trademarks and Geographical Indications, which states that an applicant acting in bad faith is a party who registers a trademark with "the intention to imitate, copy, or follow another party's trademark for the benefit of their business, which creates unfair business competition and deceives or misleads consumers".[29]

However, the phrase *"*creating unfair business competition*"* is not sufficiently objective. Its weakness lies in the absence of clear operational guidelines and the fact that judicial interpretation remains partial and case-specific. Courts have tended to equate bad faith narrowly with imitation or consumer deception, without extending the analysis to broader abusive practices such as speculative filings or blocking strategies. This lack of doctrinal synthesis makes the provision vulnerable to inconsistent application, as judges may rely on subjective assessments rather than structured indicators of dishonest intent. In contrast, EU jurisprudence has developed a more systematic framework, identifying objective evidentiary elements such as prior knowledge of third-party use, filing patterns, and absence of plausible commercial rationale.

To understand the essence of this phrase more deeply, a teleological interpretation method is needed, namely an interpretation that traces the objectives of the legislators and the social function of legal norms.[30] This approach does not stop at the text, but explores the protection intended by the legislators to balance the private rights of business actors and the public interest in maintaining fair competition.[31] Through a teleological approach, the phrase "creating conditions of unfair business competition" can be interpreted not only as a prohibition of unfair competition between business actors, but also as a prevention of the use of the trademark legal system as an instrument to manipulate the market, as reflected in speculative and blocking filings practices in the European Union.[32]

[27]Sanseverino, Op.cit.
[28]Sitko, Op.cit.
[29]Law No. 20 of 2016 on Trademarks and Geographical Indications, Article 21(3): "The application shall be rejected if filed by an applicant acting in bad faith."
[30]Aditya Yuli Sulistyawan, *Argumentasi Hukum* (Semarang: Yoga Pratama, 2021). 72.
[31]*Ibid*.
[32]Davis and Żelechowski, Op.cit.

In European practice, two main cases form the basis for the doctrine of bad faith, namely the Copernicus case (*LUCEO v LUCEA LED*) and *Lindt & Sprüngli AG v Hauswirth GmbH*. In the Copernicus case, the applicant engaged in a practice known as chains of applications, repeatedly filing *LUCEO* trademark registrations every six months in several jurisdictions, such as Germany and Austria, to maintain its strategic position in opposing or reselling the trademark to other parties that might register similar marks.[33] When the surgical lamp manufacturer applied to register the trademark "*LUCEA LED*," Copernicus immediately filed a notice of opposition and offered to sell the "*LUCEO*" trademark to the party for €75,000. The court found that Copernicus never intended to use the trademark commercially, but only to prevent others from entering the market. The recurring pattern, lack of evidence of use, and the offer to sell were considered strong indicators of bad faith.

Conversely, the Lindt case (C-529/07) has been interpreted as expanding the scope of the intent test by underscoring that the mere awareness of another party's utilization of a comparable trademark does not inherently imply bad faith. The pivotal consideration is the applicant's intention at the time of filing, determining whether there was a genuine intention to utilize the trademark in trade or an intent to hinder competitors. The Court determined that bad faith can only be inferred if the registration was intended to unfairly hinder another party or to profit from another party's reputation without any real intention of use.[34] This ruling also rejected the view that a strong reputation or market position can justify dishonest defensive actions, because trademark protection must serve the public purpose of supporting fair competition and preventing administrative monopolies.

When these principles are examined in relation to Article 21 paragraph (3) of Law No. 20 of 2016 on Trademarks and Geographical Indications, it becomes evident that they are in alignment with the legislators' objective of preserving a fair competitive environment and preventing the exploitation of the trademark registration mechanism. A teleological approach to the phrase "creating conditions of unfair business competition" reveals its potential to encompass any trademark registration action that deliberately establishes artificial barriers to the activities of other business actors, without demonstrating a genuine intention to utilize the trademark. Consequently, speculative registrations intended to sell, hold, or imitate the reputation of another party should be regarded as a violation of the spirit of the law, even if they formally meet the administrative requirements.

Furthermore, Article 21 paragraph (3) is pertinent to the preventive function against potential public confusion. In a teleological context, consumer protection is not only directed at the visual or phonetic aspects of a trademark, but also at the integrity of business actors in using the legal system. Consequently, speculative and blocking registrations have the potential to not only cause harm to the original trademark owner but also to mislead the public by bestowing a semblance of legal legitimacy upon trademarks that are never utilized as intended. The teleological approach necessitates a harmonization of legal certainty for registrants and the safeguarding of market interests. The responsibility of demonstrating bad faith lies with the party seeking cancellation or filing an objection.[35] However, from a teleological perspective, the legal system must facilitate administrative efforts to identify indications of dishonest intent at an early stage. Such efforts may include requests for declarations of bona fide intention to use or historical searches of registrations in international databases. This mechanism does not modify the first-to-file principle. Rather, it serves to reinforce its purpose, thereby ensuring that trademark rights are exclusively granted to parties who possess the genuine intention of utilizing the trademark in bona fide commercial activities.

Therefore, a teleological approach to Article 21 paragraph (3) allows for strengthening preventive policies without systemic revisions. The objective is not to alter the legal structure but to reaffirm its normative goals such as protecting trademarks as identifiers, preventing pseudo-monopolies, and promoting fair competition. When interpreted in this manner, speculative and blocking applications, as developed in EU jurisprudence, provide a normative foundation. They highlight that Indonesia's trademark system should not remain merely administrative but must reflect substantive values of justice. To achieve this, the phrase "creating unfair business competition" requires doctrinal clarification either through judicial synthesis or administrative guidelines so that bad faith can be consistently identified as abuse of rights, rather than left to partial and subjective interpretation.

[33]*Copernicus-Trademarks Ltd v. EUIPO (LUCEO)*, Case T-82/14, General Court of the European Union, July 7, 2016.
[34]*Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH*, Case C-529/07, Court of Justice of the European Union, June 11, 2009.
[35]Zakki Adlhiyati and Achmad Achmad, "Legal Reasoning: How Well-Known Marks Are Positioned Through Legal Positivism," *Jurnal Ilmiah Kebijakan Hukum* 17, no. 1 (March 2023): 55–68, https://doi.org/10.30641/kebijakan.2023.V17.55-68.

3.3. Implications for Indonesian Trademark Law

Through landmark CJEU cases and EUIPO guidelines, particularly through Common Practice CP13 on trademark applications made in bad faith, several objective indicators have been identified to establish speculative or blocking intent.[36] These include knowledge of competitors market entry, registration of marks substantially similar to those of known participants without corresponding activity, and filing patterns showing serial applications across numerous classes. EU jurisprudence emphasizes that bad faith is not confined to deceptive imitation but encompasses abuse of the administrative system itself.[37] A mark may be formally distinct yet still registered in bad faith if the applicant's motivation is obstruction rather than genuine commerce. These findings are relevant to examining the scope of the phrase "causing unfair business competition, deceiving, or misleading consumers" in the explanation Article 21 paragraph (3) of Law No. 20 of 2016 on Trademarks and Geographical Indications because the teleology of the norm is protection of market functions, not merely technical protection of the form of the mark.

Normatively, Law No. 20 of 2016 on Trademarks and Geographical Indications provides the basis for rejecting or canceling registrations made in bad faith. Article 21 paragraph (3) explains who is considered an applicant acting in bad faith, and Article 77 paragraph (2) provides room for filing for cancellation without a time limit in cases of bad faith. However, there is a clear gap at the administrative operational level.[38] Current administrative examination (Permenkumham No. 12/2021) focuses on procedures, acceleration mechanisms, and formal aspects of registration, and therefore does not regulate teleological indicators that can help identify speculative registrations at an early stage. Consequently, speculative or blocking registrations can only be challenged in court, creating costly and uncertain remedial processes. Moreover, Indonesian law does not explicitly authorize ex officio examination of applicant intent. The DJKI) lacks a mechanism to assess whether an applicant genuinely intends to use the mark, therefore many cases can only be resolved through remedial measures in court a process that is time-consuming, costly, and creates market uncertainty.[39]

From a teleological perspective, the phrase "unfair business competition" must be operationalized to capture behavior that undermines market function, such as registrations that deliberately create artificial barriers, exploit reputation without contribution, or mislead consumers. Operational indicators developed in EU jurisprudence chain registration patterns, offers for sale, absence of genuine use, suspicious transfers are consistent with the objectives of Article 21(3) and can serve as a basis for substantive examination guidelines oriented toward prevention. Importantly, integrating such indicators does not conflict with the first-to-file principle. The principle remains intact, but administrative requirements such as declarations of bona fide intention to use and examiner checklists of risk indicators ensure that rights are granted only to applicants acting in good faith.

The first implication that must be considered is the strengthening of administrative prevention functions in the trademark registration system without changing the first to file principle. This principle can be maintained with the application of administrative requirements and mechanisms that can proportionally assess the applicant's intentions.[40] Technically, this can be achieved by adding declarative requirements, such as a declaration of bona fide intention to use the trademark, and the application of a checklist of risk indicators by examiners. In addition, there needs to be a legal basis for the application of temporary administrative measures, such as postponing the issuance of certificates or placing them under review, if there are indications of speculative registration. This step is in line with the objectives of the law in protecting fair business competition while providing legal certainty for applicants acting in good faith.

The second implication relates to the burden of proof and verification mechanisms. Although the judicial burden of proof of bad faith lies with the party requesting cancellation, the teleology of the norm requires that intellectual property administrative agencies have the tools to collect and verify preliminary evidence. Therefore, the registration procedure must accommodate mechanisms for requesting clarification and additional documentation, such as marketing plans, proof of distribution, and agent or distributor contracts. The provision of such evidence will strengthen the evidentiary process in court and reduce the risk of failure to prove due to a lack

[36] Khuchua, Op.cit.
[37] Bohaczewski, Op.cit
[38] Dwisvimiar and Elfira, Op.cit.
[39] Theresia N.A Narwadan and Ahmadi Miru Oky Deviani Burhamzah Winner Sitorus, "Well-Known Trademark Protection in Indonesia: The Essence of Good Faith and Legal Practices," *Scholars International Journal of Law, Crime and Justice* 4, no. 7 (July 2021): 451–457, https://doi.org/10.36348/sijlcj.2021.v04i07.003.
[40] Masnun et al., Op.cit.

of preliminary data.

The third implication is the development of capacity and supporting technology for trademark registration administration. Verifying the intent of use and checking the reputation of trademarks internationally requires access to global databases, such as the WIPO Global Brand Database, TMview, and EUIPO, along with the implementation of automated searches to identify risk indicators such as significant similarities and unusual registration patterns. Investment in technology and the addition of specialist human resources, such as analysts or forensic examiners are technical prerequisites for enabling enhanced substantive examinations to be carried out without creating detrimental administrative delays.

Finally, the role of the judiciary remains crucial as the final arbiter of bad faith when administrative evidence is inconclusive. Relevant Supreme Court decisions, including those affirming the exception to the statute of limitations for cancellations in cases of bad faith, serve as important precedents that guide teleological interpretation at the national level. Therefore, the administrative guidelines formulated must be consistent with judicial interpretations so as not to give rise to differences in interpretation between the administration and the judiciary.

3.4. Recommendations to Strengthen the Prevention of Bad Faith Trademark Registrations in the Indonesian Legal System

The European Union's experience shows that effective prevention of speculative and blocking trademark applications does not only depend on post-certificate enforcement, but also on an early detection system based on an assessment of the applicant's intent and behavior. This principle is manifested in the legal framework of the European Union Trade Mark Regulation (EUTMR), specifically Article 59(1)(b), which states that registration can be revoked if it is proven to have been made in bad faith at the time of filing. The Court of Justice of the European Union, through its ruling in *Lindt & Sprüngli AG v. Hauswirth GmbH (C-529/07)*, clarified that the assessment of bad faith is not sufficient based solely on the applicant's knowledge of the use of the trademark by another party, but must also assess the intention at the time of filing, namely the commercial motive and purpose behind the registration.

Based on this experience, the first step that needs to be taken in the Indonesian context is to broaden the administrative understanding of good faith, which has tended to be narrowly interpreted as the absence of imitation or plagiarism.[41] Instead, the trademark legal system should interpret the concept of good faith more substantively, namely by assessing the genuine intention to use the trademark reasonably in trade. The European Union, through the European Union Intellectual Property Office (EUIPO), has developed an intention test using behavioral indicators such as chains of applications, the absence of evidence of actual use, and evidence of offers to sell the trademark to other parties, as seen in the Copernicus case *(LUCEO v. LUCEA LED, T-82/14*). A similar approach could serve as a reference for the Directorate General of Intellectual Property to strengthen the parameters for examining potentially speculative applications.

In addition to the assessment of intent, a reasonable administrative measure to consider is the implementation of an intention-to-use declaration requirement in every trademark registration application. Several jurisdictions in Europe, such as the United Kingdom and Ireland, have implemented this system, whereby applicants are required to confirm that the registered trademark will indeed be used for legitimate commercial purposes. The implementation of a similar mechanism in Indonesia does not necessarily change the first-to-file principle, but it does strengthen the accountability of applicants and provides a legal basis for administrative cancellation if the declaration is proven to be false or misleading. Administrative policy reformulation also needs to be directed towards optimizing technological instruments. The European Union, through TMview and the WIPO Global Brand Database, has integrated an automatic detection system to check for brand similarities across jurisdictions. This collaborative model allows examiners to identify potential conflicting marks and analyze the registration history of specific entities, including repeated registration patterns.

In Indonesia, strengthening a similar system could enrich the verification process and reduce dependence on third-party opposition systems, which have thus far been reactive in their approach.[42] To ensure effective implementation, internal guidelines should be developed for trademark examiners that emphasize administrative parameters for preventing bad faith registration. These guidelines should adopt the principles used by EUIPO,

[41] Sitko, Op.cit.
[42] Dwisvimiar and Elfira, Op.cit.

which take into account behavioral evidence such as electronic mail offering to sell, delayed use of the trademark, or suspicious changes in ownership. In addition, a proportional administrative sanction mechanism needs to be designed to deter registrants who are proven to have made speculative registrations, for example through automatic cancellation, administrative fines, or restrictions on the right to file applications for a certain period of time.

The above recommendations are designed to be adopted through Ministerial Regulation on trademark registration and internal guidelines Directorate General of Intellectual Property without fundamentally changing the structure of the law. The aim is to provide an early prevention mechanism that is administrative, proportional, and in accordance with the teleology of Article 21 paragraph (3) Law No. 20 of 2016 on Trademarks and Geographical Indications, maintaining fair business competition, protecting consumers, and preserving the integrity of the Indonesian trademark registration system.

4. CONCLUSION

Blocking and speculative trademark applications constitute forms of bad-faith registration that, while already addressed in principle under Article 21(3) of Indonesia's Trademark Law, remain insufficiently defined due to the absence of objective operational criteria. European Union jurisprudence, particularly *Lindt* and *Copernicus*, demonstrates that intention to use is a central contextual factor in assessing bad faith, evaluated cumulatively alongside objective indicators such as chain filings, offers for sale, and lack of genuine commercial activity. A teleological interpretation of Article 21 paragraph (3) of Law No. 20 of 2016 on Trademarks and Geographical Indications, clarifies that its purpose extends beyond protecting prior trademark owners to preventing systemic abuse of the registration mechanism, thereby safeguarding market function and consumer trust. To operationalize this purpose, administrative reform should be incorporated into the Ministerial Regulation on trademark registration. Practical measures include introducing a declaration of bona fide intention to use and embedding risk-based screening indicators into examiner guidelines indicators issued by the Directorate General of Intellectual Property. Crucially, such a declaration should be maintained and emphasized as a procedural evidentiary tool, rather than a substantive requirement, thereby ensuring compatibility with the first-to-file principle. Reform must also incorporate safeguards to avoid over-regulation that burdens bona fide applicants and to constrain examiner discretion through clear checklists and review mechanisms. With these calibrations, Indonesia's trademark system can strengthen legal certainty, promote fair competition, and prevent speculative practices at the earliest stage of registration.

5. ACKNOWLEDGMENT

I would like to convey my deepest appreciation to my lecturer at Faculty of Law Universitas Negeri Surabaya, Dr. Mieke Yustia Ayu Ratna Sari, S.H., M.H. for the generous guidance, thoughtful critiques, and unwavering support received throughout the course of this research and Faculty of Law Universitas Negeri Surabaya. These contributions have played a vital role in enhancing the quality and clarity of this research. I also gratefully acknowledge all individuals who contributed through suggestions, discussions, and assistance in shaping this research, despite not being listed as co-authors. Their involvement has been genuinely significant in bringing this research to completion.

6. CONFLICT OF INTEREST

This statement is to certify that all Authors have seen and approved the manuscript being submitted. We warrant that the article is the Authors' original work. We warrant that the article has not received prior publication and is not under consideration for publication elsewhere. On behalf of all Co-Authors, the corresponding Author shall bear full responsibility for the submission.

REFERENCES

Aditya Yuli Sulistyawan. *Argumentasi Hukum*. Semarang: Yoga Pratama, 2021.

Adlhiyati, Zakki, and Achmad Achmad. "Legal Reasoning: How Well-Known Marks Are Positioned Through Legal Positivism." *Jurnal Ilmiah Kebijakan Hukum* 17, no. 1 (March 2023): 55–68. https://doi.org/10.30641/kebijakan.2023.V17.55-68.

Arnold, Richard. "Broad Specifications and Intent to Use: Is the EU Trade Mark System Credible?" *GRUR International* 70, no. 7 (July 2021): 656–661. https://doi.org/10.1093/grurint/ikaa193.

Artija, Arfiansyah Dewa, and Sri Budi Purwaningsih. "Legal Safeguards for Owners of Untapped Foreign Brands Under Indonesia's First-to-File Principle." *Indonesian Journal of Law and Economics Review* 19, no. 2 (May 2024): 6–15. https://doi.org/10.21070/ijler.v19i2.1013.

Bohaczewski, Michal. "Abusive Trade Mark Filings: Some Recent Applications of the Concept of Bad Faith in the Case Law of the Court of Justice and General Court." *IIC - International Review of Intellectual Property and Competition Law* 54, no. 8 (September 2023):1203–1225.https://doi.org/10.1007/s40319-023-01362-3.

Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH, C-529/07 (CJEU June 11, 2009).

Copernicus-Trademarks Ltd v. EUIPO (LUCEO)., T-82/14 (General Court July 7, 2016).

CRZ. "Pelanggaran Kekayaan Intelektual Capai 296 Kasus Dalam Tujuh Tahun, DJKI Perkuat Langkah Penegakan Hukum."Accessed September 23, 2025. https://www.dgip.go.id/index.php/artikel/detail-artikel-berita/pelanggaran-kekayaan-intelektual-capai-296-kasus-dalam-tujuh-tahun-djki-perkuat-langkah-penegakan hukum?kategori=Berita%20Resmi%20Desain%20Industri.

Darwance, Darwance, and Sudarto Sudarto. "The Legal Politic Of Regulation For Trademark Registratiom Systems In Indonesia." *Berumpun: International Journal of Social, Politics, and Humanities* 4, no. 1 (March 2021): 70–81. https://doi.org/10.33019/berumpun.v4i1.47.

Davis, Jennifer, and Łukasz Żelechowski. "Bad Faith, Public Policy and Morality: How Open Concepts Shape Trade Mark Protection." *IIC - International Review of Intellectual Property and Competition Law* 54, no. 6 (July 2023): 859–890. https://doi.org/10.1007/s40319-023-01350-7.

Dwisvimiar, Inge, and Deshinta Elfira. "Merancang Konsep Standar Pemeriksaan Substantif Merek: Belajar Dari Kasus Merek M&G." *Jurnal Hukum Ius Quia Iustum* 31, no. 1 (January 2024): 151–178. https://doi.org/10.20885/iustum.vol31.iss1.art7.

Gangjee, Dev S. "The Sky's the Limit? SkyKick v Sky and Speculative Trade Mark Registration." *The Modern Law Review* 88, no. 6 (November 2025): 1205–1225. https://doi.org/10.1111/1468-2230.12973.

Henry Campbell Black. "Bad Faith." Academic Dictionaries and Encyclopedias. Accessed November 7, 2025. https://blacks_law.en-academic.com/2695/bad_faith

Johnny Ibrahim, Jonaedi Efendi. *Metode Penelitian Hukum Normatif Dan Empiris*. Pertama. Depok: Prenadamedia Group, 2016.

Khuchua, Tamar. "Facing the 'Bad Faith': The Challenges and Tools to Combat the Blocking Strategies of the Firms in the EU Trade Mark Law." *Nordic Journal of European Law* 3, no. 1 (July 2020): 107–127. https://doi.org/10.36969/njel.v3i1.21994.

Lewis Banks Ltd v. Ng Tiong Sew, Putusan Kasasi No. 425 K/Pdt.Sus-HKI/2025, Mahkamah Agung Republik Indonesia, May 19, 2025.

Masnun, Muh. Ali, Dicky Eko Prasetio, Mohd Badrol Awang, and Eny Sulistyowati. "Reconstructing Indonesia's Trademark Registration System through the Lens of General Principles of Good Governance to Realize Substantive Justice." *Journal of Law and Legal Reform* 5, no. 3 (October 2024): 891–912. https://doi.org/10.15294/jllr.v5i3.7547.

Nathania, Michelle. "First to File, Trademark Squatting, Fairness, Famous Marks and Law Reform." *International Journal of Educational Research & Social Sciences* 6, no. 1 (February 2025): 19–26. https://doi.org/10.51601/ijersc.v6i1.953.

Sanseverino, Giuseppe. "Bad Faith in EU Trade Mark Law: The Impact of SkyKick Post-Brexit." *Journal Of Intellectual Property Law and Practice* 20, no. 6 (July 2025): 369–376. https://doi.org/10.1093/jiplp/jpaf004.

Senftleben, Martin. "The Unproductive 'Overconstitutionalization' of EU Copyright and Trademark Law – Fundamental Rights Rhetoric and Reality in CJEU Jurisprudence." *IIC - International Review of Intellectual Property and Competition Law* 55, no. 9 (October 2024): 1471–1514. https://doi.org/10.1007/s40319-024-01527-8.

Sitko, Joanna. "The Significance of Bad-Faith Premises for the Strategy of Trade Mark Protection in the Light of the Latest EU Case-Law." *IIC - International Review of Intellectual Property and Competition Law* 54, no. 9 (October 2023): 1381–1406. https://doi.org/10.1007/s40319-023-01374-z.

Theresia N.A Narwadan and Ahmadi Miru Oky Deviani Burhamzah Winner Sitorus. "Well-Known Trademark Protection in Indonesia: The Essence of Good Faith and Legal Practices." *Scholars International Journal of Law, Crime and Justice* 4, no. 7 (July 2021): 451–457. https://doi.org/10.36348/sijlcj.2021.v04i07.003.

Undang-Undang Republik Indonesia No. 20 Tahun 2016 tentang Merek dan Indikasi Geografis, § Lembaran Negara Republik Indonesia Tahun 2016 Nomor 252 (2016).

Peraturan Menteri Hukum dan HAM Nomor 12 Tahun 2021 tentang Perubahan atas Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 67 Tahun 2016 Tentang Pendaftaran Merek.