








LEX JOURNAL: KAJIAN HUKUM DAN KEADILAN

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**Strengthening the Legal Protection of Collective Trademark Ownership of Micro,
Small, and Medium Enterprises (MSMEs)**

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ABSTRACT

This research aims to analyze the essence of collective trademark rights ownership according to trademark law in Indonesia, analyze how the legal implications in the protection of collective trademark rights ownership in Indonesia, as well as to analyze how the strategy of strengthening the legal protection of collective trademark rights so that it can be optimized by MSMEs. The type of research used is normative law or can be called doctrinal law, using the approach of legislation and conceptual approach. The essence of collective trademark ownership lies in the case of registration that is registered jointly accompanied by the rules of use that have been agreed upon by all members, as well as the responsibility of the costs borne together. Legal implications in the protection of ownership of collective trademark rights in Indonesia, by providing protection to protect the registered or recognized trademark owners from the use of similar or identical trademarks. Collective trademark optimization strategies can be done through increased brand awareness, promotion (word of mouth), development of special educational programs for Micro, Small, and Medium Enterprises (MSMEs), facilitation of collective trademark registration at an affordable cost or subsidy, capacity building of supervisory agencies and related parties. Collective trademark regulations in Indonesia are regulated in Law Number 20 Year 2016 on Trademarks and Geographical Indications in Article 46 to Article 51.

Keywords: Legal Protection, Rights Ownership, Collective Trademark, MSMEs

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1. INTRODUCTION

The development of the world economy is currently taking place very rapidly, the existence of free industry, trade flows and the emergence of advances in telecommunications, technology, and information make the space for movement in the transaction of goods and/or services wider, both in import and export. Therefore, it can lead to Intellectual Property Rights (IPR) itself, where Intellectual Property Rights (IPR) at this time in society we have often encountered and are well known, but not many also understand the meaning of IPR itself.

Indeed, IPR is an exclusive right that is given legal protection, and has been regulated in the Law, namely in Law No. 20 of 2016 concerning Trademarks and Geographical Indications, which is divided into two fields, namely Copyright in the form of Created Works and Industrial Rights which include Trademarks, Patents, Industrial Designs, Layout Designs and Trade Secrets. This exclusive right can be owned personally or communally (Lopulalan, 2021).

In Article 1 point 1 of Law Number 20 Year 2016 on Trademarks, provides a definition of a trademark as a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, color arrangements, in 2-dimensional and or 3-dimensional form, sound, holograms, or a combination of 2 or more of these elements to distinguish goods and or services produced by persons or legal entities in the activities of trading goods and/or services.

The developments that occur in science and technology at this time provide problems for IPR itself, where in the competitive business world issues surrounding IPR can be unnatural and can cause harm to other parties either directly or indirectly, this is what states that the importance of legal protection.

The purpose of IPR protection itself is to protect wealth that arises from human intellectual abilities, which can be in the form of various works in the fields of

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technology, science, art and literature. The close relationship between IPR protection and the increase in domestic economic growth of a country shows that the protection of IPR law contributes to economic development (Utomo, 2014).

In Industrial Rights, especially Trademark Rights, it is clarified that Trademark is part of IPR, where this trademark is not a little used by entrepreneurs, because it is considered an asset of high value because with the trademark a product can be recognized among the public. Trademark Rights is a distinguishing mark used by a business entity as a marker of its identity and the products of goods or services it produces to consumers, as well as to distinguish it from the goods or services it produces from other business entities (Munawar & Sitanggang, 2008). Apart from the positive things that arise, there are also negative things, namely the trademark is often a dispute between two or more parties, where the culprit tries to use the product's trademark that has previously owned it, therefore it is considered invalid if used without official permission or license itself.

The role of a trademark itself is important for the smoothness and improvement of activities in the trade and investment sector in the development of the current globalization era, it is associated with legal protection that is on an object to the rights of individuals or legal entities that have been regulated in the Act. One alternative way in trademark protection is to develop a brand together also called collective trademark. Provisions in Article 1 number 4 of the Trademark Law and Geographical Indications, collective trademark is a trademark used on goods and or services with the same characteristics regarding the nature, general characteristics, and quality of goods or services as well as its supervision to be traded by several persons or legal entities together to distinguish with other similar goods and or services (Saidin, 2013).

Collective trademark registration is intended to provide a basis for effective legal protection to prevent various violations that are detrimental to various parties such as

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plagiarism, piracy or trademark imitation. A request for registration of a trademark or service mark as a collective mark can only be accepted if the registration request clearly states that the mark will be used as a collective mark. The registration request must also include a copy of the regulations for the use of the mark.

Regarding the current trade sector in Indonesia, it is very influential, especially in brand development, it should not only be carried out by large-scale industries, but also Micro, Small and Medium Enterprises (MSMEs). MSMEs themselves are small-scale independent populist economic activities whose management is carried out by community groups, families or individuals (Suryati, 2021). This enormous role has resulted in MSMEs can be said to be the backbone of the economy because they play a role in sustaining the national economy and providing jobs for the majority of the workforce in Indonesia. MSMEs have high potential with good and rapid development to be marketed both at home and abroad because MSMEs are said to be able to survive and be relatively stable from the threat of a global economic recession.

MSMEs also have difficulties in marketing due to the absence of a brand or brand of the product, even though the brand is a characteristic of the MSME itself. MSME players should realize that the brand is an asset that is quite important for the continuity of business or trade because the brand must be a priority for an investment and is expected to provide benefits for MSME players.

The number of existing MSME actors is not proportional to the number of MSMEs that have taken care of their trademarks, currently there are no business actors who have brand protection facilities, this is due to limitations in business capital, product promotion and lack of awareness of the importance of having a brand on their product, if the products produced by MSME actors do not have a special brand, it will make it difficult for consumers to recognize and search when consumers want to buy

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again. Consumers will also find it very easy to recognize, search for and distinguish one product from another if there is no brand on MSME products.

Social facts that arise increasingly require MSMEs to have a legal protection of Intellectual Property Rights (IPR), one of which is Trademark Rights. The protection of trademark rights in Indonesia currently follows the constitutive or registration principle, which means that the trademark only obtains protection if registration is made to the government through the Ministry of Law and Human Rights and in this case is at the Directorate of Intellectual Property, and if MSMEs have products in the form of objects or services using trademark products but are not registered, then MSME businesses will lose their trademark legal protection.

The protection of trademark rights to an MSME product has good benefits for the creator, in order to get definite legal protection. If there is a dispute later, the proof will be easier because it has authentic evidence in the form of trademark rights. The rise of globalization in the trade sector of goods and/or services that cause business competition that continues to exist, the role of trademark rights is very important. The existence of MSMEs as a pillar of the nation's economy should continue to be developed by supporting legal policies that favor the perpetrators of MSMEs and accompanied by the compliance of the perpetrators of the legal instruments that facilitate it.

In building synergy between the government and business actors, the government plays a role in issuing a policy by empowering MSMEs through development and empowerment, but in fact it does not escape the challenges that arise so that not a few MSME actors do not have licenses and legal entities.

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2. RESEARCH METHODS

The type of research used in this research is normative law or can be called doctrinal law. This type of research examines related legislation (law in books) or law is conceptualized as a rule or norm that is a benchmark for human behavior that is considered appropriate (Amiruddin & Asikin, 2006). The approaches used are statutory and conceptual approaches. The statutory approach is an approach that is carried out by reviewing and reviewing legislation and regulations related to the problem or issue being studied by researchers (Marzuki, 2014). While the conceptual approach is from the views and doctrines that develop in legal science, by studying those related to the problem under , it is hoped that later researchers will find ideas that give birth to notions, concepts and legal principles that are relevant to the issue at hand.

3. DISCUSSION

Strategies for Strengthening the Legal Protection of Collective Trademark Rights so that it can be Optimized by MSMEs

In the current era of trade, large and small entrepreneurs in Indonesia must seek market opportunities and protect the market they already have from competitors. The small business industry is currently facing increasingly fierce competition, so it is important for them to be able to produce the products or services needed to improve their competitiveness. For this reason, appropriate development for small and medium enterprises is needed, through improved performance that can strengthen competitiveness and marketing in accordance with the characteristics of MSMEs, MSMEs (Micro, Small and Medium Enterprises) are economic entities that cannot be ignored in the process of economic development in Indonesia (Ambarini, 2016).

MSMEs as one of the economic actors that has a real contribution to the country's economy is in line with the provisions in Law Number 20 of 2008 concerning Micro,

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Small and Medium Enterprises that the empowerment of MSMEs is organized as a whole, one of which is protection so as to be able to improve the position, role and potential of MSMEs in realizing economic growth, equity and increase in people's income, job creation, and poverty alleviation (Masnun, 2019). Meanwhile, to take part in the local market with the consumption patterns of people who prefer foreign products is one of the factors for the lack of development of MSMEs. This needs to get attention from all parties so that MSMEs are precisely able to survive in the face of global competition, considering that MSMEs are able to save the economy from the economic crisis (Gunartin, 2017).

Given all the limitations that exist. Small businesses often experience various obstacles, both in terms of capital and business development. In this context, brand utilization can be one of the solutions for entrepreneurs to improve their business. A brand on a product can be interpreted as a sign or symbol that gives a good impression in the eyes of consumers.

The use of collective trademarks is an alternative to trademark protection that is widely supported by MSME players (Kharis, 2015), the potential to utilize collective trademarks is very large, especially for owners of micro, small and medium enterprises (MSMEs). In Indonesia, many large-scale business activities have stagnated and some have even stopped, but Micro, Small and Medium Enterprises (MSMEs) have proven that they are more resilient in facing the problems that occur because they also have a considerable role as national economic actors in economic development in Indonesia.

MSMEs generally rely on their own capital to run their businesses because MSMEs are businesses that usually start small, not all the products they produce and trade are widely recognized by the public, especially for businesses that are just starting out. In developing their business, MSMEs often experience a lack of capital, which impacts the scope of marketing their products. As a result, not all MSMEs benefit

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equally, with some earning large profits and others only making small profits. If these MSMEs want to register their marks individually, it will certainly be difficult for them to bear the high cost of registering such marks. In this case, collective trademark registration could be an attractive alternative solution for MSMEs.

The concept of Brand plays an important role for product owners. MSME business actors engaged in trade understand the need for branding on their products because branding is a marker that distinguishes a product from other products. A brand can form a recognizable identity for a product or business, allowing potential customers to find it easily. In addition, having a brand can also increase the confidence of potential consumers in the quality of the products offered, especially if it is juxtaposed with a brand that is lacking. MSME is an innovation-driven sector that creates imaginative products or services.

This can indeed provide benefits such as reduced costs associated with acquiring trademark rights, as those filing for a collective trademark can divide the costs amongst themselves for filing their trademark applications collectively. If associated with the recognition of small and medium enterprises, then the recognition of collective trademarks in Law No. 20 of 2016 on Trademarks and Geographical Indications has significant strategic significance, as it can alleviate the huge challenges for such businesses in the trademark application process, particularly in relation to the costs associated with legally securing the trademark. Simply put, collective trademarks offer a viable solution to protect the identity of small and medium enterprises.

Given the important function of MSMEs in the national economy, the protection of intellectual property rights, especially as a brand that must be utilized by MSMEs efficiently and effectively, because without realizing it, many products produced by MSMEs have high economic value and are unique, especially if they have entered the trade market (Jened, 2015). The large number of MSME actors who are not legally

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incorporated is due to the fact that the MSME sector is still very synonymous with various traditional businesses.

The legal consequences that arise if the UMKM brand has not been registered or not registered then the brand does not get legal protection by the State. Legal protection itself has a very important role to minimize the occurrence of unlawful acts such as counterfeiting of products produced with lower quality goods than original products with the main purpose of obtaining profits quickly, and imitation in business or trade competition so as to cause harm to the brand owner itself (Prawreti & Indrawati, 2022). If there is a counterfeit trademark, the court will only refer to the trademark certificate as evidence of ownership of the rights to the trademark, unless there is a cancellation of rights to the trademark based on a lawsuit filed by one party in the Commercial Court.

MSME players must understand that they are already in a modern business, where the identity of a business is linked to a trademark or service because a brand is the identity of the product being traded. Brands serve as a distinguishing feature that distinguishes similar offerings provided by various businesses. Through a brand, customers can easily make the right decision. By simplifying the decision-making process for consumers, this aspect will make them more familiar with the MSME product itself.

Trademark registration system in Indonesia basically adheres to the Constitutive System that has been listed in article 21 paragraph 1 of Act No. 20 Year 2016 on Trademarks and Geographical Indications (MIG Act), namely the principle adopted by the constitutive system is the principle of "first to file" which means that someone who first registered the trademark then the party will have or recognized the existence of the trademark, and for brands that have similarities with the earlier registered then the state should not accept the registration of the trademark (Djumhana & Djubaedillah, 2014).

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Trademark registration is also closely related to trade in goods and services, especially for Micro, Small, and Medium Enterprises (MSMEs), the Law of the Republic of Indonesia Article 1 Number 20 of 2008 concerning MSMEs, states that micro-enterprises are productive businesses owned by both individuals and legal entities that meet the criteria of micro-enterprises detailed in the legislation. Small businesses are defined as businesses run by individuals or entities that are not subsidiaries or controlled by, or part of, large or medium-sized enterprises that meet the definition of small businesses. In general, MSMEs make a significant contribution to the national economy by performing important functions such as providing employment, driving economic activities, as well as playing an important role in the local economy, and encouraging the development of new markets, as well as community empowerment.

Government Regulation No. 7 of 2021 on the Ease, Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises (PP UMKM). The PP UMKM amends several provisions that were previously regulated in Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises (UMKM Law). One of them is the rules related to the criteria of UMKM itself. For comparison, here are the differences:

MSME LAW	PP MSME
MSMEs are categorized based on net worth or annual sales. Net worth is the sum of assets after deducting debts or liabilities.	MSMEs are categorized based on the criteria of business capital or annual sales. Business capital is own capital and borrowed capital to run business activities.

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<ol style="list-style-type: none">1. Micro Business: IDR 50 million at most2. Small Business: more than IDR 50 million - maximum IDR 500 million3. Medium Enterprises: more than Rp500 million, at most Rp10 billion excluding land and building of the place of business	<ol style="list-style-type: none">1. Micro Business: maximum IDR 1 billion2. Small Business: more than IDR 1 billion, maximum IDR 5 billion3. Medium Enterprises: more than IDR5 billion, at most IDR10 billion excluding land and building of the place of business
<ol style="list-style-type: none">1. Microenterprise: most	<ol style="list-style-type: none">1. Micro Business: IDR 2,000 at most

When viewed from its enormous capabilities and position, MSMEs are expected to develop as much as possible, it can be as an effort to improve the welfare of the community and economic growth, therefore it requires legal protection. Products that are given the protection of trademark rights can only be made by the holder of the rights to the product (exclusive). So there are other parties who want to produce the same product is obliged to obtain a license in advance from the right holder and make payments on royalties from the use. The act of production of an item that has been granted trademark protection without the permission of the right holder is an offense that can cause legal consequences (Indrawati & Setiawan, 2020).

The presence of the Trademark Law of 2016 can be one of the government's strategies to safeguard MSMEs by securing their intellectual property through trademark protection. There is an established recognition of the brands associated with MSME entrepreneurs. Even if a large company or business conducts unethical practices, there is no guarantee that they can claim the intellectual property of MSME entrepreneurs, as long as the brand has been registered and protected by government regulations. If issues arise regarding trademark ownership, the government only recognizes the trademark certificate as proof of ownership of the rights to the trademark.

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This remains true unless a lawsuit against the trademark right is filed through the Commercial Court, which may result in the cancellation of the right. Further actions are taken to provide legal protection to trademarks related to the MSME sector in Indonesia.

The reinforcement strategy can be done by:

- a. Brand awareness through public education is one of the efforts to increase brand popularity in the market and emphasize the positioning of business products. Branding can also be associated as a process of interacting symbols that are manifested in the form of language, sound (intonation), gesture, and visualization to construct a meaning which then becomes the identity or characteristic of an object, be it an individual, product, or institution. This is done considering that similar products in the market are relatively abundant. In addition, visual forms such as brand logos, are also able to bring out the advantages of the products produced. Most MSMEs do not prioritize increasing brand awareness, MSME players only focus on the aspect of product sales not on their business brand. If the product sells well, then MSME actors can remain in the market, that product and sales orientation are prioritized over orientation to marketing (Nugraha et al., 2017).
- b. Word-of-mouth communication or word of mouth strategy is widely practiced by small and medium entrepreneurs. Apart from not requiring much cost and effort, this strategy is really effective. However, this pattern is certainly less effective, because in the market there are many competitors who also offer products with all their advantages. In fact, to find out what consumers want, it is necessary to develop a market survey. Where market information can also be obtained in cyberspace (internet) whose scope is not only local, but already national and even global (Nofiandri, 2006).
- c. Development of IPR education programs specifically for MSMEs, Intellectual Property Rights (IPR) training curriculum is needed that is simple, applicable, and

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easily understood by MSME actors. This program can be developed by the Directorate General of Intellectual Property (DJKI) in collaboration with regional offices and local business associations.

- d. Facilitating collective brand registration at an affordable cost or subsidizing financial assistance for MSME brand registration as compared to large brands, by applying much lower fees as compared to brand registration fees at large entities, serves as an incentive for brand registration.
- e. Increase the capacity of supervisory and law enforcement agencies in dealing with infringement of collective trademarks, given special training on infringement of collective trademarks, including early detection and dispute resolution procedures. This is important so that the legal protection of collective trademarks does not only stop at registration, but also applies effectively in the field.
- f. Strengthen collaboration or cooperation between the government, MSME associations, and the private sector in building and organizing an effective brand protection ecosystem. This collaboration can take the form of providing technical assistance, joint promotion platforms, and community-based dispute resolution mechanisms.

Against the differences of opinion whether collective marks can be licensed or not, researchers argue that the actual use of licenses in collective marks depends on how each Local Government interprets the use of collective marks. As long as the goal is to provide convenience to MSME players and provide a guarantee of protection to regional products then it is all allowed.

MSME products that do not have trademark or service mark registrations are highly vulnerable to imitation, especially when the branding of the MSME offering is distinctive and not found in other regions. This situation fosters healthy competition

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among MSME Food Product participants and helps reduce potential consumer confusion regarding the brands of similar MSME offerings.

Some of the main advantages of registering a brand in MSMEs include the following:

a. Legal safeguards

Goods produced by MSMEs are distinctive and have significant value. Therefore, legal protection is essential to prevent misuse by irresponsible individuals. Without official state trademark registration, there is no protection for the trademark currently in use. If the mark of an MSME is transferred by another party, the state will not provide any protective measures to the original owner. A brand only receives legal protection after it has been officially registered with the Director General of Intellectual Property Rights. This registration is confirmed through the issuance of a trademark certificate that is valid for a certain period of time.

b. Serves as a Unique Identifier

Trademarks guarantee the identity and prestige of the products and services that a business promotes. Because the brand functions as a differentiator, so that people or consumers can easily recognize marketed products and distinguish them from other similar goods on the market.

c. Obtaining Trademark Rights Through registration

A trademark, the owner acquires exclusive rights to the mark. The right holder of the mark can utilize the mark for his purposes or authorize others to use it, which means that any outside party who wants to manufacture products under the mark must obtain permission from the right holder. Moreover, the right holder can require such third parties to pay royalties in exchange for a license agreement.

The importance of brands for MSMEs is that brands are embedded in the minds of consumers, brands are assets, brands evoke the emotional side of consumers, brands

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create totality in business services, brands make it easier for customers to find business entrepreneurs, brands create personality, brands have the power to attract consumers, brands will save business costs, brands influence purchasing behavior.

The use of collective marks also certainly has a positive impact on the costs incurred to obtain rights to the mark, because collective mark applicants can share the costs of filing an application together. This is because the main burden faced by MSMEs in brand management is the cost of applying for a brand, especially if they want their brand to be legally protected. In short, collective branding can be a viable alternative in protecting MSME brands.

Differences in Collective Brand Usage

Collective Brand of the Product Same	Collective Brand of Different Products
Same Class of Goods/Services	Different Class of Goods/Services
Entering into an association of food products of the same type and is specific to only 1 (one) product	Belonging to a food product association that is different in type and common to a wide range of products
One brand for products same food	One brand for products different foods
There should be regulations on the use of collective brands by members of the association regarding quality standards, product quality and sanctions for misusing collective brands.	There should be regulations on the use of collective brands by members of the association related to quality standards, product quality, classification rules for different types of goods/services as well as sanctions for misuse of the brand. collective.

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The government also plays a role in providing legal protection to MSMEs, the government through the Director General of Intellectual Property at the Ministry of Law and Human Rights has made various efforts, including:

- a. Conducting dissemination related to intellectual property rights, especially regarding trademark protection for the general public, professionals, universities, including MSMEs. The Director General of IP also coordinates and cooperates with the Regional Office of the Ministry of Law and Human Rights, the Intellectual Property Center and related agencies to conduct socialization and dissemination activities in the region. It is hoped that this activity can increase the awareness of small businesses to register their trademarks.
- b. Providing financing facilities provided by relevant ministries and agencies, such as the Ministry of Tourism and Creative Economy (Kemenparekraf) and the Ministry of Cooperatives and Small and Medium Enterprises (KemenKopUKM) and Regency/City/Provincial Governments. The scope of the trademark incentive covers the application for trademark registration for a maximum of 3 (three) kinds of goods or services in 1 (one) class per application. The provision of incentives is intended for Micro and Small Enterprises. This effort is made to eliminate the assumption that trademark registration requires expensive costs.
- c. Providing special treatment for the MSME industry in supporting the MSME industry to register trademarks by differentiating the price of registration that is cheaper than the general business actors. For MSMEs that register trademarks electronically (online) the registration fee rate is Rp.500,000, - while for non-MSMEs is Rp.1,800,000, - and for MSMEs that register trademarks electronically the registration fee is Rp. 600,000, - and for non-MSMEs the cost of non-electronic registration is Rp.2,000,000, -. Not only to the application for trademark registration, but also to the cost of renewal of trademark protection or registered collective

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trademark the difference between MSME trademarks and non-MSME trademarks
For MSMEs registration of trademark renewal electronically (online) Rp.1,000,000, -
and non-MSMEs registration of trademark renewal electronically (online)
Rp.2,250,000, - For MSMEs registration of trademark renewal non-electronically
(manual) Rp.1,200,000, - and For non-MSMEs registration of trademark renewal
non-electronically (manual) Rp.2,500,000, -.

- d. Enforce collective trademark registration for the MSME industry. MSME players often trade goods or services with the same characteristics by several other MSME players. Thus, the government through Law No. 20 of 2016 on Trademarks and Geographical Indications facilitates collective trademark protection, to simplify the completion of registration requests. For example, if ten entrepreneurs each produce a type of goods or services, then they must submit a registration request to protect each of the goods or services in question. Whereas each of the goods or services produced and traded has the same characteristics, it is possible to use only one trademark in that case. Against all types of goods or services, it is enough to submit one request for registration of the trademark for their use collectively. Thus, entrepreneurs, especially small businesses can save costs, time and energy to process requests for trademark registration (Krisnamurti, 2021).

4. CONCLUSION

Strategies that can be done for optimization can be in several ways including, *Brand awareness*, *word of mouth*, development of IPR education programs specifically for MSMEs, facilitating collective trademark registration at an affordable cost or providing financial assistance subsidies, increasing the capacity of supervisory and law enforcement agencies in handling violations of collective trademarks, as well as strengthening collaboration or cooperation between the government, MSME

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associations, and the private sector in building and organizing an effective brand protection ecosystem.

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