

Using “Batikmark” as a First Step to Extend Protection of Indonesian Javanese-batik Patterned Textile in Foreign Countries

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After tensions with Malaysia and others on ownership of traditional heritage, the Indonesian Government appears to have become assertive in protecting its heritage. Indonesia perceived that Malaysia claimed ownership to expressions of traditional Indonesian heritage, such as Javanese batik-patterned textiles, wayang shadow puppets and the folk song *Rasa Sayange* (a song believed to have originated from the island of Maluku, Indonesia).

One of the Indonesian government’s ways of protecting its traditional Indonesian heritage takes place in the field of batik textiles. One goal is to establish the world’s perception that Javanese batik-patterned textile, which includes the traditional practice of dying cloth through wax-resist methods, originates from Indonesia. Thus, the Indonesian government has nominated Javanese batik-patterned textile to the United Nations Educational, Scientific and Cultural Organization (UNESCO)’s list of intangible cultural heritage. The nomination will be officially listed in May 2009. In furtherance of this nomination, the government now issues a certification mark, called “Batikmark”, through its Department of Industry (Departemen Perindustrian RI) that can be applied to properly certified Indonesian batik products.

“Batikmark” was introduced by the Indonesian Department of Industry through its Ministerial Decree (Peraturan Menteri Perindustrian RI) No. 74/M-IND/PER/9/2007. The government’s step of establishing a regulatory framework for registration and protection of Batik-pattern textile using a mark is not a new step. Similar practice has already been acknowledged by international treaties and is practiced by the states. Under article *7bis(2)* of the Paris Convention, each country is entitled to be the judge of the particular conditions under which a collective mark should be protected. This article in the Paris

Convention is the force that drives India's "SILK MARK" collective mark. In a similar manner, "WOOLMARK" is a world-renown private certification mark.

With "Batikmark", Indonesia somewhat combines the concepts of collective and certification marks. Under the Indonesian Ministerial Decree, only batik manufacturers who already sell their products under a registered trademark can obtain a "Batikmark" certification. The manufacturer's products also must pass a series of tests conducted by the National Standardization Agency (Badan Standardisasi Nasional). Products that pass their tests are considered to conform to the "Indonesian National Standard" (Standar Nasional Indonesia). The manufacturer receives a certification upon passing the tests. If the manufacturer is eligible, they can then file a written request, attached with its company profile, to the head of the Yogyakarta Grand Handicraft and Batik House (Balai Besar Kerajinan dan Batik). Yogyakarta Grand Handicraft and Batik House is an institution authorized by the Ministerial Decree to perform additional tests on the batik-patterned textile. The Batik Institution will then perform tests in their laboratories. The aim of the tests is to assure that the textile meets the certification standards of the batik-patterned textile. The qualifications include reviewing: the materials applied to the textile, the pattern, the dyeing technique, and the textile quality. If the batik-patterned textiles pass the tests then the manufacturer will be eligible to obtain a numbered "Batikmark" certification. This certification is valid for three years and can be renewed. The certification is in the form of a label printed "Batik Indonesia" that is placed in every single product of batik-patterned textile that has been certified. This label has been copyrighted in the Indonesian Copyright Office.



Fig. 1. Picture of “Batikmark” label certification

(note: “Batik Tulis” means “hand batiked”)

The first purpose of having “Batikmark” certification is to assert Javanese batik-patterned textile as an Indonesian traditional cultural heritage. Further, the “Batikmark” certification also serves as a quality assurance label for batik-patterned textile that originates from Indonesia. This helps protect consumers of Javanese batik-patterned textiles by assuring that the consumers are indeed purchasing an original Indonesian Javanese-batik patterned textile that has been certified by an authorized national institution. Lastly, “Batikmark” certification is meant to face competition of other similar or almost identical products on the market and to overcome the threat of unauthorized copying of Indonesian Javanese batik-patterned textile by foreign textile manufacturers. These practices have been ongoing, as many Asian and African countries have been copying Indonesian batik patterns.

Manufacturers who obtain a “Batikmark” certification automatically get protection in Indonesia but not necessarily in other countries. The manufacturers must apply for intellectual property rights in another country in order to secure greater protection. These rights can be in a form of design patents, copyrights, and/or trademarks. Even though a batik-patterned textile has been granted certification by the Indonesian government, the manufacturer must independently secure intellectual property protection in their foreign countries of interest. Until the Indonesian government globalizes their portfolio of intellectual property protection for batik textiles and other products of cultural

heritage, the manufacturer's international protection will generally be limited to their own protection efforts.

A word, name, symbol, device or any combination of these can be approved as a trademark as long as they are used to identify and distinguish a manufacturer's goods from those manufactured or sold by others; it is an indicator of the source of the goods. Thus, a trademark is defined by three important elements: (1) the actual word, symbol or device, (2) the use of the symbol as a mark on goods and services, and (3) the ability of the mark to identify and distinguish a source of goods and/or services. A "Batikmark" trademark certification from the Indonesian government guarantees that the product has certain traits that make it different from other batik-patterns. It assures the uniqueness of the textile, the pattern, the dyeing technique, and the textile quality. These traits establish the identity of the product and distinguish them from other batik-patterned textiles. Thus, a trademark provides protection for consumers from confusion as to the source and quality of a manufactured object.

	Design Patent	Copyright	Trademark
Rationale	Limited monopoly to encourage ornamental aspects of utilitarian works	Limited monopoly to encourage creativity	Perpetual protection to protect consumers and improve quality of goods/services
Subject matter	Designs: ornamental aspects of items of manufacture	Literary, musical, choreographic, dramatic, architectural works and artistic works, including jewelry designs and textile patterns	Word, name, symbol, device or combination of them Sound, smells, colors, textum, etc. in some jurisdiction
Standard of protection	Novelty (some countries include non-obviousness)	Originality and fixation in a tangible medium	Distinctiveness
Scope of protection	Exclusive rights to make, use, sell innovation of the appearance	Rights of performance, display, reproduction, derivative works	Exclusive rights in the country of registration
Period of protection	5-25 years	Typically life of the author plus 50 years after his or her death	Perpetual, subject to abandonment and renewal requirements

Fig. 2. Comparison table between design patent, copyright, and trademark

Other forms of intellectual property protection that can be sought are design patent and trademark. An Indonesian manufacturer who applies for a design patent has to prove that their batik ornamental design on the product is novel. A manufacturer who applies for copyright protection has to prove that their batik pattern is original. A “Batikmark” certification can help establish the manufacturer’s credibility and, as a consequence, help prove that their design is original. This is especially true if the Yogyakarta Grand Handicraft and Batik House, the institution that is authorized by the Ministerial Decree, were given the authority to issue affidavits acknowledging the originality of the batik pattern. An affidavit from the Yogyakarta Grand Handicraft and Batik House would be credible since they have the historical knowledge and expertise to determine whether the particular pattern is original.

All three intellectual property protections are potentially attainable by a batik-pattern designer or manufacturer. A batik manufacturer should apply for trademark protection of those patterns that they use as a source identifier for their goods. One benefit of trademark protection is the potential for perpetual intellectual property protection. They should also apply for copyright registration, both in Indonesia and in other key countries, for their original batik patterns. This is especially true in countries where their products are being distributed. They can then protect the patterns from being copied, stolen or subject to unauthorized use. They should seek design patents for newly invented designs to protect the ornamental appearance as applied on products. A design patent gives the manufacturer the right to exclude others from making, using, selling, offering to sell or importing the particular design of an article without permission. One special characteristic of design patent protection is that the owner does not have to show that the infringing item was copied from the original. Thus, different from copyright, even a design that was created independently, and not copied, can potentially still infringe a design patent.

In conclusion, “Batikmark” is a solid first step towards intellectual property protection of expressions of national cultural heritage. However, more must be done to globalize and expand these protections internationally. In the meantime, individual designers and manufacturers have a variety of international protections they can pursue to protect their own intellectual assets.

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