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Navigating Territoriality and International Harmonisation: A Comparative Study of Bank Trademark Protection Across Jurisdiction under the TRIPS Agreement

Anak Agung Ayu Ngurah Sri Rahayu Gorda[1], I Gede Agus Kurniawan[1], Putu Aras Samsithawrati[2], Fradhana Putra Disantara[3], Maia Kapanadze[4], Jan Alizea Sybelle[5]

[1]Faculty of Law, Universitas Pendidikan Nasional, Denpasar, Indonesia.
[2]Faculty of Law, Universitas Udayana, Denpasar, Indonesia.
[3]Faculty of Law, Universitas Jember, Jember, Indonesia.
[4]Caucasus International University, Tbilisi, Georgia.
[5]Faculty of Law, Stellenbosch University, South Africa.

**Corresponding author*: srigorda@undiknas.ac.id

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Abstract
Background: *The globalization of financial services and the rapid expansion digital banking have intensified trademark disputes in the banking sector. This development challenges the territoriality principle of trademark law, as banking brands increasingly operate across jurisdictions without maintaining a physical presence. Although international instruments, including TRIPS, the Paris Convention, and the Madrid Protocol, establish a harmonised framework for trademark protection, enforcement remains fragmented owing to national sovereignty and the coexistence of sector-specific banking regulation.* ***Methodology:*** *This study adopts a normative legal research methodology employing both a functional comparative approach alongside a conceptual approach. It examines the legal frameworks governing banking trademark protection in Indonesia, South Africa, and Georgia, each representing a distinct institutional and regulatory context. Primary legislation and international legal instruments are analysed qualitatively through deductive legal reasoning and cross-jurisdictional functional comparative analysis.* ***Objectives:*** *This research aims to examine the regulatory framework and enforcement mechanisms of banking trademark protection in the three countries and assess their consistency with the international trademark standards. It further seeks to formulate an integrated regulatory framework capable of balancing territorial sovereignty with international legal harmonisation.* ***Findings:*** *The findings indicate that all three countries have formally complied with international intellectual property instruments, significant institutional fragmentation and inadequate coordination between trademark authorities and banking regulators persist, particularly in relation to digital financial services. These shortcomings undermine the effectiveness of trademark protection and regulatory enforcement.* ***Originality/Novelty:*** *This research proposes an integrated model for banking trademark protection that incorporates a dual-gate verification system and digital brand monitoring as a preventive regulatory mechanism.*

Keywords*: banking regulatory challenges; global harmonisation; territorial sovereignty; trademark protection;.*

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uti_possidetis@unja.ac.id | online-journal.unja.ac.id/Utipossidetis

Abstrak
Latar Belakang: Globalisasi layanan keuangan dan pesatnya ekspansi perbankan digital meningkatkan sengketa merek dagang di sektor perbankan. Perkembangan ini menantang prinsip teritorialitas dalam hukum merek, mengingat merek-merek perbankan kini semakin banyak beroperasi lintas yurisdiksi tanpa kehadiran fisik. Meskipun berbagai instrumen internasional termasuk TRIPS, Konvensi Paris, dan Protokol Madrid telah menetapkan kerangka kerja yang harmonis untuk perlindungan merek, penegakan hukumnya masih terfragmentasi akibat kedaulatan nasional dan keberadaan regulasi perbankan yang bersifat sektoral. **Metodologi:** Penelitian ini menggunakan metodologi penelitian hukum normatif dengan menerapkan pendekatan perbandingan fungsional serta pendekatan konseptual. Studi ini mengkaji kerangka hukum yang mengatur perlindungan merek dagang perbankan di Indonesia, Afrika Selatan, dan Georgia, yang masing-masing mewakili konteks kelembagaan dan regulasi yang berbeda. Peraturan perundang-undangan utama dan instrumen hukum internasional dianalisis secara kualitatif melalui penalaran hukum deduktif dan analisis perbandingan fungsional lintas yurisdiksi. **Tujuan:** Penelitian ini bertujuan untuk mengkaji kerangka regulasi dan mekanisme penegakan hukum terkait perlindungan merek dagang perbankan di ketiga negara tersebut, serta menilai kesesuaiannya dengan standar internasional mengenai merek dagang. Selain itu, penelitian ini berupaya merumuskan kerangka regulasi terintegrasi yang mampu menyeimbangkan kedaulatan wilayah dengan harmonisasi hukum internasional. **Temuan:** Temuan menunjukkan bahwa meskipun ketiga negara tersebut telah secara resmi mematuhi instrumen kekayaan intelektual internasional, fragmentasi kelembagaan yang signifikan serta koordinasi yang tidak memadai antara otoritas merek dagang dan regulator perbankan masih terus terjadi, khususnya terkait layanan keuangan digital. Kekurangan-kekurangan ini melemahkan efektivitas perlindungan merek dagang dan penegakan regulasi. **Orisinalitas/Keunikan:** Penelitian ini mengusulkan model terintegrasi untuk perlindungan merek dagang perbankan yang mencakup sistem verifikasi dua tahap dan pemantauan merek digital sebagai mekanisme regulasi preventif.

Kata Kunci: tantangan regulasi perbankan; harmonisasi global; kedaulatan teritorial; perlindungan merek dagang.

A. Introduction

Economic globalisation and the increasing integration of international markets have created a growing need for trademark protection that transcends national jurisdictional boundaries.[1] According to the World Intellectual Property Organization's (WIPO) *World Intellectual Property Indicators 2024*, global trademark filings reached an estimated 11.6 million applications in 2023, with Class 36 (financial services) consistently ranking among the top ten trademark classes by number of applications.[2] The emergence of digital banking and cross-border fintech services has further accelerated this trend. In 2023, the global value of digital payment transactions exceeded US$9.4 trillion,[3]

[1] Lymmy Ogbidi and Benneth Oteh, "Advances in Hybrid Machine Learning and Physics-Based Models for Enhanced Reservoir Simulation," *International Journal of Scientific Research in Computer Science, Engineering and Information Technology* 10, no. 6 (December 25, 2024): 2533–43, https://doi.org/10.32628/IJSRCSEIT.

[2] Dona Budi Kharisma and Imam Dzaki Hidayad Assidiqi, "A Legal Viewpoint Scent as Trademark: Evidence from Indonesia and Global Approaches," *The Journal of World Intellectual Property* 29, no. 1 (March 21, 2026): 44–65, https://doi.org/10.1111/jwip.70001.

[3] Mayank Jindal, "Agile Management System with the Financial Technology: A Case from Emerging Economy," *International Journal of Agile Systems and Management* 17, no. 3 (2024): 396–419, https://doi.org/10.1504/IJASM.2024.140416.

increasing the exposure of banking brands to potential trademark infringement across multiple jurisdictions. This development gives rise to a fundamental tension between the principle of national territorial sovereignty, under which intellectual property rights are confined to the jurisdictions in which they are registered and protected, and the growing imperative for international legal harmonisation. Consequently, states face the increasingly complex task of reconciling their sovereign authority over trademark regulation and enforcement with the operational realities of an interconnected global financial system.

International instruments, most notably the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) 1994, establish minimum standards for trademark protection, including the definition and registrability of signs, as well as the exclusive rights of registered owners. TRIPS provisions require Member States to establish trademark registration systems and to recognise the exclusive rights of registered proprietors, while affording them discretion to determine specific registrability requirements and the scope of certain exceptions.[4] Similarly, Article 6bis (1) of the Paris Convention provides that the countries of the Union undertake "...to refuse or to cancel the registration... of a trademark which constitutes a reproduction, an imitation, or a translation liable to create confusion..." This provision reinforces the protection of well-known trademarks, although its implementation remains subject to domestic law. The Madrid International Registration System establishes an administrative framework for extending trademark protection across multiple jurisdictions.[5] Nevertheless, its practical effectiveness ultimately depends upon the substantive trademark laws of the designated jurisdictions and the institutional capacity of their competent authorities. Consequently, differences in the implementation of international standards within national legal systems continue to create gaps in trademark protection, thereby giving rise to legal uncertainty for businesses operating across borders.

In the banking sector, trademarks embody public trust, institutional stability, and systemic reputation, making the financial sector particularly vulnerable to trademark infringement and unfair competition.[6] However, prudential and sector-specific banking regulations in many jurisdictions are not coherently integrated with national trademark and broader intellectual property law regimes.[7] his regulatory fragmentation creates gaps in the resolution of trademark disputes involving banking institutions, particularly

[4] Putu Aras Samsithawrati et al., "Trademark Registration Incentive Regulation for Small Businesses in Tourism: Human Rights and Protection Systems Comparison," *Jurnal Suara Hukum* 7, no. 2 (September 3, 2025): 488–519, https://doi.org/10.26740/JSH.V7N2.P488-519.

[5] Ziad Mohammad Al Wahshat et al., "The Impact of Jordan's Accession to the Madrid Trademark Registration System," *Multidisciplinary Reviews* 7, no. 2 (November 21, 2023): 1–5, https://doi.org/10.31893/multirev.2024008.

[6] Bahriye Basaran-Brooks, "Money Laundering and Financial Stability: Does Adverse Publicity Matter?," *Journal of Financial Regulation and Compliance* 30, no. 2 (March 25, 2022): 196–214, https://doi.org/10.1108/JFRC-09-2021-0075.

[7] Anita Ama Sakumaa Yanney, "Cross-Border Financial Regulation and Its Influence on Multinational Business Operations, Tax Structures and Investment Flows," *World Journal of Advanced Research and Reviews* 26, no. 3 (June 30, 2025): 597–620, https://doi.org/10.30574/wjarr.2025.26.3.2225.

in relation to licensing arrangements, cross-border mergers and acquisitions, and the use of names and logos by fintech companies that closely resemble those of well-established banks. Trademark infringement in the banking sector can lead to brand confusion that affects customers' financial decisions.[8] Passing off through the use of names or logos that resemble well-known banks may facilitate fraudulent activities and undermine public confidence, potentially triggering panic withdrawals. Consequently, the enforcement of trademark law in the banking sector serves not only to protect private commercial interests but also to safeguard broader public interests in financial stability and market integrity.

The legal framework governing trademarks in Indonesia is primarily set out in Law Number 20 of 2016 on Trademarks and Geographical Indications (the MIG Law). Article 1 (5) of the MIG Law defines a trademark right as, "*…an exclusive right granted by the State to the owner of a registered Trademark*...". This provision affirms that trademark rights derive their legal validity from registration with the Directorate General of Intellectual Property (DGIP). However, in the banking sector, prudential regulation and institutional supervision fall within the jurisdiction of the Financial Services Authority (*Otoritas Jasa Keuangan* (OJK)).[9] Consequently, the use of bank names or commercial identities that resemble registered trademarks raises issues extending beyond the protection of private rights to encompass business licensing and the maintenance of public confidence in the financial system. The absence of an explicit coordination mechanism between DGIP and OJK may create jurisdictional uncertainty in trademark disputes involving banks. As a result, the enforcement of trademark law within Indonesia's banking sector continues to be characterised by significant institutional gaps.

South Africa presents a distinct regulatory landscape, with a legal system rooted in the common law tradition and trademark protection governed by the Trademarks Act No. 194 of 1993. Prudential supervision of the banking sector is undertaken by the South African Reserve Bank (SARB) and the Prudential Authority, both of which are primarily concerned with maintaining financial stability.[10] In the digital era, however, challenges have emerged as fintech companies increasingly adopt visual identities that closely resemble those of established banks in order to enhance consumer trust and market recognition. Although South Africa's common law system provides effective judicial remedies, including the availability of interim interdicts and other injunctive relief,[11]

[8] Javad Abbaszadeh and Mohammad Ali Kafaeifar, "Identifying Factors Affecting Trademark Infringement in the Field of Electronic Commerce with Delphi Method," *International Journal of Nonlinear Analysis and Applications* 17, no. 5 (2026): 61–78, https://doi.org/https://doi.org/10.22075/ijnaa.2024.33100.4926.

[9] Diana Wiyanti, Neni Sri Imaniyati, and Nurul Chotidjah, "Supervision Model of the Financial Services Authority (Otoritas Jasa Keuangan (OJK)) on the Indonesia Capital Market to Protect Investors," *KnE Social Sciences*, August 15, 2024, 350–63, https://doi.org/10.18502/kss.v9i24.16849.

[10] Ashley Batsirai Nyaude and Corlia Van Heerden, "Bank Resolution in South Africa: Recent Developments," *International Insolvency Review* 33, no. 2 (July 6, 2024): 182–204, https://doi.org/10.1002/iir.1524.

[11] Andrew Godwin, Risham Garg, and Debaranjan Goswami, "<scp>Cross-border</Scp> Insolvency Law in India: Are the Principles of Comity of Courts and Inherent Common Law Jurisdiction Relevant?," *International Insolvency Review* 32, no. 2 (June 2023): 228–52, https://doi.org/10.1002/iir.1500.

access to legal processes and the supervisory capacity of regulatory authorities continue to face significant constraints amid the rapid expansion of the fintech sector. Furthermore, prudential regulatory frameworks are not always effectively aligned with the enforcement of trademark law enforcement. As a consequence, limited inter-agency coordination may result in delayed responses to trademark infringements that adversely affect consumers and undermine confidence in the financial system.

As a post-Soviet transition state, Georgia offers a valuable perspective on legal reform through the process of harmonisation with the European Union pursuant to the EU-Georgia Association Agreement 2014.[12] Trademark protection is governed by the Law of Georgia on Trademarks, while the banking sector is regulated under the Law on Activities of Commercial Banks. These legislative reforms reflect Georgia's broader efforts to align its trademark regime with European Union standards while strengthening the regulatory framework governing the banking sector. Nevertheless, this harmonisation process continues to encounter challenges, as institutional transformation remains gradually. Against the backdrop of banking sector consolidation and the rapid expansion of digital financial services, the potential for trademark disputes is growing, particularly in relation to cross-border mergers and acquisitions and the adoption of similar commercial identities.[13] This experience illustrates that legal harmonisation is not invariably a linear process but is shaped by a country's political, economic, and institutional capacities.

Indonesia, South Africa, and Georgia are developing countries with distinct legal systems, yet each faces comparable challenges in balancing the sovereignty of its national banking regulatory framework with its obligations under international intellectual property law. All three are subject to legal and regulatory driven by their respective regional frameworks, namely: the Association of Southeast Asian Nations (ASEAN) framework for Indonesia, the African Continental Free Trade Area (AfCFTA) for South Africa, and European Union legal harmonisation for Georgia. These differences in legal traditions and regional contexts allow for the identifying both common patterns and context-specific variations in addressing substantively similar legal issues.

The urgency of this research arises from the increasing incidence for trademark disputes within the banking sector, driven by accelerated digitalisation following the COVID-19 pandemic and the proliferation of fintech companies adopting brand identities closely resemble established banks. According to the World Intellectual Property Organization's (WIPO) World Intellectual Property Indicators, Class 36 (financial services) has consistently ranked among the most active classes for trademark filings. This trend coincides with the rapid expansion of digital banking, with the global value of digital payment transactions exceeding US$9.4 trillion in 2023, thereby increasing the exposure

[12] Beka Chedia, "New Regional Alignment in the Post-Soviet Space: The EU as an Active Player in the Eastern Partnership Countries (Case of Georgia)," *Canadian Journal of European and Russian Studies* 18, no. 1 (April 1, 2025): 54–76, https://doi.org/10.22215/cjers.v18i1.4761.

[13] Muyanja Jameaba, "Digitalization, Emerging Technologies, and Financial Stability: Challenges and Opportunities for the Indonesian Banking Sector and Beyond," *SSRN Electronic Journal*, 2024, 1–57, https://doi.org/10.2139/ssrn.4808469.

of banking brands to cross-border infringements. This issue is exacerbated by the absence of a specialised international legal framework specifically governing the relationship between trademark protection and banking regulation beyond the general provisions of the TRIPS Agreement and other relevant WIPO-administered instruments. The lack of effective coordination between intellectual property authorities and banking regulators may give rise to regulatory gaps that not only prejudice trademark proprietors but also undermine broader public interests, including consumer protection and confidence in the financial system.

A comparative analysis of Indonesia, South Africa, and Georgia provides an opportunity to identify both common patterns and context-specific variations across civil law, common law, and transitional legal systems respectively. Accordingly, this study seeks to contribute to the development of recommendations for national legal reform and the design of more effective institutional coordination mechanisms to address trademark-related challenges in the contemporary banking sector.

This research pursues two principal objectives: (a) it seeks to analyse the regulatory frameworks and enforcement mechanisms governing trademark protection in the banking sector in Indonesia, South Africa, and Georgia, while assessing their consistency with international legal standards; and (b) it aims to formulate an intergrated trademark protection framework for the banking sector that effectively balances the principle of territoriality with the demands of global legal harmonisation, drawing upon the comparative findings from the three jurisdictions.

To achieve these objectives, this study addresses the following research questions: (1) How do Indonesia, South Africa, and Georgia regulate trademark protection in the banking sector, and to what extent are their domestic frameworks consistent with the international standards established under the TRIPS Agreement, the Paris Convention, and the Madrid Protocol? (2) How can an integrated framework for banking trademark protection be developed to reconcile the principle of territoriality with the demands of global legal harmonisation?

Ni Ketut Supasti Dharmawan et al., writing in the *Sriwijaya Law Review*, examined the effectiveness of the Madrid System as a mechanism for international trademark registration. However, their analysis is confinedto the Indonesian context and does not examine sectors-specific issues, particularly those arising in the banking sector, where trademark protection significant public interest implications.[14] Likewise, Tornike Merebashvili, writing in *Eximia*, highlights trademark-related challenges in the digital marketplace, including the increasing risk of online trademark infringement, but does not address the link between trademark protection and prudential regulation of the financial sector. Furthermore, Tran Vang-Phu and Duong Anh Son, in *Khazanah Hukum*, emphasise the importance of harmonising international trade law while preserving national

[14] Ni Ketut Supasti Dharmawan et al., "Beyond Territoriality: Assessing the Effectiveness of the Madrid System for Trademark Protection in Indonesia," *Sriwijaya Law Review*, January 31, 2026, 1–20, https://doi.org/10.28946/slrev.v10i1.5208.

sovereignty. Nevertheless, their discussion remains largely conceptual and does not propose a regulatory framework for trademark protection in strategically significant sectors such as banking.[15]

A limitation common to these studies is the absence of a comparative approach that systematically integrates trademark law with banking regulatory framework. This research seeks to address that gap by undertaking a comparative analysis of Indonesia, South Africa, and Georgia in order to identify deficiencies in institutional coordination and to develop a framework for banking trademark protection that is consistent with international legal standards while supporting the stability of the financial system. The originality of this study lies in its examination of trademark protection in the banking sector as a strategically significant are that extends beyond the protection of commercial interests to encompass broader concerns of public confidence and financial stability. Rather than merely analysing the effectiveness of international instruments such as the TRIPS Agreement, the Paris Convention, and the Madrid Protocol, this research also investigates how these instruments have been incorporated into the domestic legal systems of three jurisdictions with distinct legal traditions and institutional characteristics.

This study adopts a normative legal research methodology to examine the regulatory frameworks and enforcement mechanisms governing trademark protection in the banking sector, as well as their relationship with the principles of territoriality and international intellectual property law across Indonesia, South Africa, and Georgia. Methodologically, the research employs a functional comparative approach, following the framework developed by Zweigert and Kötz, in conjuction with a conceptual approach. The functional comparative method examines how these three distinct legal systems address a substantively similar problems, namely the intersection between trademark protection and banking regulation through their respective legal and institutional frameworks. Accordingly, this study further examines how the relevant international legal instruments have been incorporated into the domestic legal dan regulatory system governing the financial sectors in each of the selected jurisdictions.

Furthermore, the conceptual approach entails a systematic examination of the core legal principles underpinning this study, including the principle of territoriality, international legal harmonisation, passing off, and the protection of public interest within the financial sector. On this basis, this research develops an integrated analytical framework that brings together perspectives from trademark law, banking law, and international harmonisation to formulate a model of trademark protection capable of addressing the challenges of digitalisation and the expansion of fintech services.

The primary legal materials comprise Indonesia's Law Number 20 of 2016 on Trademarks and Geographical Indications, banking regulations governing the authority

[15] Tran Vang-Phu and Duong Anh Son, "The Concerns of Nation-State Sovereignty and International Commercial Law: A Path to Harmonisation," *Khazanah Hukum* 6, no. 1 (April 19, 2024): 34–45, https://doi.org/10.15575/kh.v6i1.33809.

of the Financial Services Authority (OJK), South Africa's Trade Marks Act No. 194 of 1993, provisions regarding the South African Reserve Bank and the Prudential Authority, Georgia's Law on Trademarks, Law on Activities of Commercial Banks, and international legal instruments, including the TRIPS Agreement 1994, the Paris Convention, and the Madrid Protocol. The secondary legal materials consist of national and international legal journal articles, academic books, prior scholarly research, and publication issued by the WIPO concerning developments in trademark protection, fintech, and trademark disputes within financial services sector. Tertiary legal materials comprise legal dictionaries, legal encyclopaedias, legislative and regulatory indexes, and other reference sources relevant to clarifying legal concepts and terminology. These legal materials are systematically identified, selected classified, and organised according to themes relating to banking trademark protection and international harmonisation within each of the selected jurisdictions. The data are analysed using qualitative legal research method, combining deductive legal reasoning and comparative legal argumentation. This approach facilitates the identification of similarities and differences among the three jurisdictions, and supports the development of a framework for banking trademark protection that is consistent with international legal standards while respecting the principle of territorial sovereignty.

B. Discussion

1. Regulations and Mechanisms for Trademark Protection within the Banking Sector in Indonesian, South African, and Georgian Legal Systems

The international legal framework governing trademarks is designed to establish minimum standards of protection applicable across jurisdictions. The TRIPS Agreement 1994 prescribes the minimum standards of trademark protection with which all Members of the WTO are required to comply. Article 15(1) of TRIPS Agreement states, "*any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark*." This provision confirms that any sign possessing distinctive character, including signs used in financial and banking services.

Furthermore, Article 16(1) of TRIPS Agreement provides that, "*the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs...*" This provision confers upon the proprietor of a registered trademark the exclusive right to prevent unauthorised use of identical or similar signs where such use is likely to give rise to a likelihood of confusion. These standards are of particular significance in the banking sector, where confusion as to the identity of a financial institution may facilitate fraudulent activities, undermine customer confidence and stability.[16] However, the TRIPS

[16] Mohd Afjal, Aidin Salamzadeh, and Léo-Paul Dana, "Financial Fraud and Credit Risk: Illicit Practices and Their Impact on Banking Stability," *Journal of Risk and Financial Management* 16, no. 9 (August 29, 2023): 386, https://doi.org/10.3390/jrfm16090386.

Agreement does not establish specific rules governing institutional coordination between trademark protection and financial sector regulation or supervision.

The Paris Convention 1883 complements the TRIPS Agreement by establishing fundamental principles that prescribe mandatory minimum standards of protection across the Union, thereby limiting the scope of national regulatory autonomy. Article 2(1) of the Paris Convention provides that: "*nationals of any country of the Union shall... enjoy in all the other countries of the Union the advantages that their respective laws now grant...*" This provision enshrines the principle of national treatment by requiring each Member State to accord nationals of other Union countries the same protection afforded to its own nationals. Furthermore, Article 4(A)(1) establishes for the right of priority, enabling trademark proprietors to claim priority for subsequent applications filed in other Union countries within six months of the initial filing.

The Convention also imposes binding obligations on Member States rather than merely providing optional flexibilities. In particular, Article 6bis (1) requires competent authorities, either ex-officio where permitted by domestic law or upon the request of an interested party, to refuse or cancel the registration, and to prohibit the use, of a trademark that constitute reproductions, imitations, or translations liable to create confusion with a well-known mark.[17] For multinational banking institutions, these internationally recognised minimum standards provide an essential foundation for cross-border trademark protection. Nevertheless, their practical effectiveness continues to depend upon the implementation of the Convention through domestic legal frameworks and the institutional capacity of national administrative systems.

The Madrid Protocol provides a procedural mechanism for the international registration of trademark through a centralised system administered by WIPO. This system enables trademark proprietors to file a single international application designating multiple Contracting Parties, thereby reducing both the cost and administrative burden associated with obtaining trademark protection in multiple jurisdictions.[18] For banking institutions operating across borders, the Madrid System essentially facilitates the expansion of trademark protection by eliminating the need to file separate national applications in each designated jurisdiction. However, it is important to emphasise that the Madrid System does not create a unitary or "global" trademark that automatically takes effect in all designated jurisdictions. Rather, the international registration remains subject to examination and protection in accordance with the domestic law of each designated Contracting Party. Consequently, although the Madrid System streamlines the administrative processes for obtaining international trademark protection, it does not address the substantive or institutional challenges associated with the enforcement of

[17] Lisa Jorgenson and Carsten Fink, "WIPO's Contributions to International Cooperation on Intellectual Property," *Journal of International Economic Law* 26, no. 1 (March 9, 2023): 30–34, https://doi.org/10.1093/jiel/jgac049.

[18] Satish Jayachandran and Alexander Krasnikov, "Trademark Rights: The Impact of Joining the Madrid Protocol on International Marketing Alliances," *Journal of International Marketing* 34, no. 2 (June 5, 2026): 52–60, https://doi.org/10.1177/1069031X261434589.

trademark rights in the banking sector. The absence of sector-specific governing banking trademarks within the Madrid System highlights a normative gap that has yet to be addressed by the existing international legal framework.

In Indonesia, trademark protection is governed by Law Number 20 of 2016 on Trademarks and Geographical Indications, which adopts the first-to-file principle. Article 1 (5) of Law 20/2016 defines a trademark right as "*…an exclusive right granted by the State to the owner of a registered Trademark…*" This provision affirms that trademark rights arise upon registration, constitutes the primary source from which trademark rights originate. Under the Indonesian Trademark Law, trademark protection is granted for a period of ten years and may be renewed indefinitely for successive ten-year periods.[19] Accordingly, Indonesia's trademark regime is, in principle, consistent with the minimum standards prescribed by the TRIPS Agreement standards. The Law also provides enhanced protection for well-known trademarks, recognising the brands' international reputations and goodwill.[20] Such protection is of particular importance in the banking sector, where internationally recognised banking institutions may already enjoy substantial public recognition before obtaining trademark registration in Indonesia. In practice, however, the enforcement of well-known trademark protection continues to present evidential challenges, as establishing the reputation and recognition of a mark often requires extensive and complex evidence during legal proceedings.

Indonesia has formally integrated its trademark regime into the international legal framework through the ratification and accession of several key instruments: the TRIPS Agreement ratified through Law Number 7 of 1994, the Paris Convention was acceded to by Presidential Decree Number 15 of 1997, and the Madrid Protocol was acceded to by Presidential Regulation Number 92 of 2017. From the perspective of legal harmonisation, these measures demonstrate Indonesia's formal compliance with the principal international instruments governing trademark protection. Nevertheless, formal harmonisation does not necessarily result in effective institutional harmonisation, particularly where trademark protection intersects with banking regulations. Responsibility for the administration of trademark law rests with the DGIP, whereas the banking sector is regulated and supervised by the OJK. This institutional separation creates the potential for regulatory fragmentation, as the bank licensing process is not systematically integrated with the national trademark registration system. Consequently, disputes concerning the use of banking names and trademarks may arise even after a banking institution has obtained the necessary regulatory authorisations to commence operations.

Indonesia's banking regulatory framework, comprising Law Number 7 of 1992 concerning Banking, as amended by Law Number 10 of 1998, and further strengthened by Law Number 4 of 2023 on the Development and Strengthening of the Financial Sector

[19] Henni Wijayanti and Dhiya Salma, "Bad Faith as a Reason for Cancellation of Trademarks Registered More Than Five Years According to Law Number 20 of 2016," *Journal of Social Research* 2, no. 8 (July 27, 2023): 2826–34, https://doi.org/10.55324/josr.v2i8.1358.

[20] Wijayanti and Salma.

(P2SK Law), does not explicitly regulate mechanisms for the protection of banks' trademarks. In practice, however, OJK conducts an administrative review of the proposed names of banking institutions during the licensing process.[21] This review is directed primarily towards assessing institutional eligibility and compliance with prudential regulatory requirements rather than ensuring trademark protection under the intellectual property regime. The initial verification of a proposed banking institution is undertaken through the Legal Entity Administration System (*Sistem Administrasi Badan Hukum* (SABH)) of the Ministry of Law.[22] However, this administrative process does not automatically incorporate the examination of trademark rights administered by DGIP. As a consequence, a bank or fintech entity may obtain administrative approvalfor its proposed name while remaining exposed to subsequent legal challenges on the ground that the name is substantially similar to an existing registered trademark. Accordingly, the banking licensing framework and the trademark registration system continue to operate as separate institutional regimes without an integrated coordination mechanism.

This institutional coordination gap is illustrated by dispute between PT. GoTo Gojek Tokopedia Tbk and PT. Terbit Financial Technology in 2021. Following the merger that established PT. GoTo Gojek Tokopedia Tbk, the company acquired legal status and commenced its business operations in accordance with the applicable regulatory framework.[23] However, the use of the name "GoTo" gave rise to a trademark dispute because of its similarity to the "GOTO" mark owned by PT. Terbit Financial Technology, which had previously been registered with the DGIP in Class 42.[24] This dispute demonstrates that the acquisition of corporate legal status does not automatically guarantee the availability or legal security of a trademark unless comprehensive trademark clearance searches are undertaken at an early stage. The consequences extend beyond potential economic losses to encompass legal uncertainty, reputational harm, and the costs associated with trademark litigation. Within the financial services sector, such disputes may also create consumer confusion, particularly where consumers mistakenly associate a fintech service with a larger and more established institution. Accordingly, this case underscores the need for more robust preventive mechanisms to coordinate trademark protection and regulatory approval within the banking and financial services sector.

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[21] Diana Fitriana and Dwi Seno Wijanarko, "Legal Urgence for Registration and Establishment of Legal Fintech Companies Based on Information Technology Authority Regulation Number 77/Pojk.01/2016 Concerning Money-Base Loan Services and Bank Indonesia Regulation Number 19/12/Pbi/2017 Concerning," *Journal of Law, Politic and Humanities* 3, no. 1 (January 20, 2023): 214–26, https://doi.org/10.38035/jlph.v3i1.143.

[22] Alfvino Juanito, "Juridical Analysis of Blocking Sabh Access In The RI Ministry of Minority Shareholders As a Form of Legal Protection of Minority Shareholders," *Journal of Law, Politic and Humanities* 4, no. 2 (February 28, 2024): 94–107, https://doi.org/10.38035/jlph.v4i2.322.

[23] Tarcisius Jassien Widihardimas and Surya Raharja, "Motives for Acquisition through Financial Performance: PT Goto Gojek Tokopedia Tbk," *Jurnal Ekonomi Dan Bisnis* 27, no. 2 (October 2, 2024): 103–24, https://doi.org/10.24914/jeb.v27i2.10985.

[24] Arrifah Amarya Putri and Ery Arifudin, "Legal Protection Over the 'GOTO' Trademark Ownership Dispute between PT Terbit Financial Technology and PT GoTo Gojek Tokopedia," *Journal of Private and Commercial Law* 1, no. 1 (June 12, 2024): 24–43, https://doi.org/10.20885/JPCOL.vol1.iss1.art2.

In Indonesia, trademark rights within the banking sector may be enforcedthrough civil, criminal, and administrative mechanisms. Civil proceedings may be instituted before the Commercial Court, including actions for trademark cancellation and claims for damages. Criminal liability may arise under Articles 100–102 of the Trademarks and Geographical Indications Law, which prescribe sanctions for unauthorized use of identical or confusingly similar trademarks. In addition, where a trademark infringements affects the institutional identity or regulatory integrity of a banking institution, the matter may be brought to the attention of OJK within the scope of institutional supervision functions. However, the OJK's supervisory role is confined to sector-specific regulatory oversight and does not extend to the determination of substantive trademark rights under the intellectual property regime. Consequently, disputes concerning trademark rights remain subject to the ordinary legal mechanisms provided under trademark law. Moreover, trademark disputes involving banking institutions in Indonesia are often protracted, thereby prolonging legal uncertainty. In the banking sector, delays in resolving such disputes may undermine public confidence in the affected institution and adversely affect its commercial reputation and credibility.

In South Africa, trademark protection is governed by the Trade Marks Act No. 194 of 1993, which also adopts a first-to-file system. The South African trademark regime is further distinguished by its common law tradition, particularly through the recognition of the doctrine of passing off.[25] Passing off protects traders against the the misrepresentation of goods or services in a manner that is likely to lead the public to believe that they originate from, or are associated with, another trader possessing an established reputation or goodwill.[26] Consequently, the doctrine affords protection to unregistered marks where the claimant can establish the existence of goodwill and a misrepresentation by the defendant, and the likelihood of public deception or confusion.[27] Within the context of the banking sector, the doctrine of passing off assumes particular significance because the commercial reputation and goodwill of a banking institution often constitute its most valuable assets. This common law remedy therefore provides an additional layer of protection against the unauthorized appropriation of names, logos, or other visual identitie that may mislead consumers into believing that a financial institution is affiliated with an established banks. Nevertheless, a successful passing off claim requires persuasive evidence of goodwill, misrepresentation, and resulting or likely damage, thereby imposing a substantial evidential burden on the claimant.

[25] Kudzayi Savious Tarisayi, "Lustre and Shadows: Unveiling the Gaps in South African University Plagiarism Policies amidst the Emergence of AI-Generated Content," *AI and Ethics* 5, no. 1 (February 2025): 245–51, https://doi.org/10.1007/s43681-023-00333-1.

[26] Jonathan Griffiths, "'Property in What?' – Goodwill, Unregistered Marks and the Law of Passing Off," *SSRN Electronic Journal*, 2025, 1–25, https://doi.org/10.2139/ssrn.5428158.

[27] Catherine W. Ng, "Extended Passing Off - Protecting Goodwill in Place Brands and Other Tales," in *Place-Branding Experiences* (Cheltenham: Edward Elgar Publishing, 2024), 251–75, https://doi.org/10.4337/9781035311071.00028.

As a Member of the World Trade Organization (WTO), South Africa is bound by the TRIPS Agreement and is also a party to the Paris Convention, including the obligations relating to the protection of well-known trademarks under Article 6bis of that Convention. However,, South Africa has not acceded to the Madrid Protocol. Consequently, foreign banking institutions seeking trademark protection must file national applications through the Companies and Intellectual Property Commission (CIPC). This requirement increases both the cost and the administrative burden of securing trademark protection for international trademark proprietors. Banking regulation in South Africa is governed principally by the Banks Act No. 94 of 1990, with prudential supervision undertaken by the Prudential Authority within the South African Reserve Bank (SARB).[28] As part of the licensing process, the Prudential Authority assesses the suitability of proposed names for banking institutions in order to minimise the risk of public confusion. However, no integrated electronic mechanism exists for the systemic exchange f trademark information between the Prudential Authority and the CIPC. As a result, the potential for trademark disputes remains, as prudential supervision is directed towards maintaining financial stability rather than determining or enforcing trademark rights under theintellectual property regime.

The protection of trademarks within South Africa's banking sector is further challenged by the rapid expansion of fintech services and the substantial informal financial sector. In some instances, non-bank entities adopt names, logos, or other visual identifiers that closely resemble those of established banking institutions, such as Absa, Standard Bank, or Capitec, in order to enhance their credibility and gain public confidence. Although trademark enforcement is generally more effective in major urban centres, including Johannesburg and Cape Town, its effectiveness is more limited in rural areas, where access to formal enforcement mechanisms may be constrained.[29] This disparity increases the risk that trademark infringement may also facilitate fraudulent conduct directed at consumers. From the perspective of consumer protection, identity confusion in financial service providers may result in harm extending beyond economic loss to include broader social consequences, particularly through the erosion of public confidence in the financial system. Furthermore, the absence of a formal and structured Memorandum of Understanding (MoU) between the CIPC and the Prudential Authority limits institutional cooperation, with enforcement activities generally undertaken independently by each authority. Consequently, although the necessary legal and regulatory framework is in place, its practical effectiveness continues to depend upon effective inter-agency coordination and the capacity of the relevant authorities to implement and enforce the applicable legal provisions.

[28] Howard Chitimira and Sharon Munedzi, "An Overview of the Roles and Functions of Selected Financial Role Players to Protect Financial Stability and Promote Market Integrity in South Africa," *Potchefstroom Electronic Law Journal* 27, no. 1 (August 26, 2024): 1–32, https://doi.org/10.17159/1727-3781/2024/v27i0a17255.

[29] Ajay K. Sharma and Dipa Dube, *Intellectual Property Rights and Sustainable Development Goals in Africa*, ed. Desmond Osaretin Oriakhogba, Charlene Tsitsi Musiza, and Sand Mba-Kalu (Boca Raton: CRC Press, 2025), https://doi.org/10.1201/9781003682240.

In South Africa, trademark rights are enforced through proceedings before the High Court, where remedies available under the *Trade Marks Act 194 of 1993* include interdicts, the cancellation of trademark registrations, and claims for damages.[30] The dispute between FirstRand (FNB) and First Abu Dhabi Bank (FAB) illustrates the approach adopted by the courts in assessing claims of passing-off claims. In determining the dispute, the court considered the visual and phonetic similarities between the respective marks, together with the likelihood that their concurrent use would give rise to consumer confusion. The court ultimately concluded that the marks "FAB" and "FNB" were sufficiently distinguishable and therefore declined to upholdthe passing-off claim.[31] This decision demonstrates that South African courts place considerable emphasis on market realities and consumer perception when determining whether trademark infringement or passing off has occurred. Nevertheless, judicial enforcement through litigation is often costly and time-consuming and may, therefore, be of limited effectiveness, particularly for smaller businesses and at the grassroots level.

Georgia, by contrast, regulates trademark protection under the Law of Georgia on Trademarks of 1999, as amended, which has undergone extensive reforms to achieve harmonisation with European Union law. This process has been driven by the EU-Georgia Association Agreement (2014), which requires the progressive approximation of Georgian trademark law to the standards established under the EU Trademark Directive 2015/2436 to approximate the laws of the Member States relating to trademarks and the EU Trademark Regulation 2017/1001. Trademark registration is administered by the National Intellectual Property Centre of Georgia (Sakpatenti), and Georgia is also a party to the Madrid Protocol.[32] From the perspective of formal legal harmonisation, Georgia has achieved a high degree of alignment with the principal international and regional trademark frameworks, including the TRIPS Agreement, the Paris Convention, and the Madrid Protocol. Nevertheless, formal legislative harmonisation has not yet been fully matched by corresponding institutional capacity or the development of a substantial body of judicial infrastructure. In particular, the limited number of reported decisions concerning trademark disputes in the banking sector restricts the availability of judicial precedents capable of providing clear guidance for the interpretation and application of the law.

[30] Chijioke Okorie et al., "Round-up of IP Decisions in Africa 2023," *Journal of Intellectual Property Law and Practice* 19, no. 4 (March 20, 2024): 310–17, https://doi.org/10.1093/jiplp/jpae020.

[31] Nhlanhla Sono, "Re-Examining the Constitutional Court's Approach to the Property Question Since First National Bank of SA Ltd T/A Wesbank v Commissioner, South African Revenue Service; First National Bank of SA Ltd T/A Wesbank v Minister of Finance 2002 4 SA 768 (CC)," *Potchefstroom Electronic Law Journal* 25, no. 1 (June 3, 2022): 1–30, https://doi.org/10.17159/1727-3781/2022/v25i0a11756.

[32] Amiran Dzabunidze and Guliko Kazhashvili, "Legislative Regulation of Legal Goodwill Protected by Geographical Indication and Trademark (Comparative Analysis)," *Journal of Law*, no. 1 (2022): 56–77, https://doi.org/https://doi.org/10.48614/jlaw.1.2022.4939.

Georgia's banking sector is regulated and supervised by the National Bank of Georgia (NBG) pursuant to the Law of Georgia on the Activities of Commercial Banks. The NBG exercises prudential regulatory and supervisory powers, including oversight of the corporate identity of banking institutions during the licensing process.[33] However, similar to Indonesia and South Africa, no explicit statutory framework governs institutional coordination between the NBG and Sakpatenti. This institutional separation creates the potential for complex trademark disputes, particularly in the context of the ongoing consolidation of Georgia's banking sector. Bank mergers and acquisitions frequently necessitate the transfers of trademark rights and the establishment or rebranding of corporate identities. Nevertheless, the existing legal framework does not provide detailed rules governing the transfer and management of trademark rights during banking restructuring. Consequently, disputes concerning banking trademarks are often resolved through negotiation other consensual mechanisms rather than judicial proceedings. This suggests that, although Georgia has achieved a significant degree of legislative harmonisation with international trademark standards, the practical development of its protection system continues to evolve, particularly in relation to the regulation of the banking sector.

Country	**Legal basis**	**Bank Brand Protection Mechanism**	**Challenge**
Indonesia	Law No. 20/2016; Law No. 7/1994 (TRIPS); Presidential Decree No. 15/1997 (Paris); Presidential Decree No. 92/2017 (Madrid); Banking Law & P2SK Law	DJKI Registration; Commercial Court lawsuits; criminal sanctions (Articles 100–102 of the MIG Law); sectoral supervision of the OJK	DJKI–OJK fragmentation; non-integrated brand verification; fintech/digital disputes; lengthy litigation processes
South Africa	Trade Marks Act No. 194/1993; Banks Act No. 94/1990; Financial Sector Regulation Act No. 9/2017; TRIPS & Paris (anggota WTO)	CIPC Registration; High Court (interdict, cancellation, damages); passing off (common law)	Not participating in Madrid; weak CIPC–PA coordination; fintech & informal sector; weak enforcement in rural areas
Georgia	Law on Trademarks 1999; Law on Activities of Commercial Banks; EU Association Agreement 2014; EU Trademark Directive/Regulation; TRIPS, Paris, Madrid	Patent registration; administrative cancellation; general court litigation; business negotiations	Limited institutional capacity; minimal IP precedent; weak NBG–Sakpatenti coordination; complex bank consolidation

[33] Goga Gelitashvili, Gocha Abutidze, and Medea Chelidze, "The Activities of the National Bank of Georgia in Ensuring the Long-Term Sustainable Development of the Banking System," *InterConf* 42, no. 189 (February 20, 2024): 82–89, https://doi.org/10.51582/interconf.19-20.02.2024.008.

Table 1. Comparison of Banking Trademark Protection Frameworks in Indonesia, South Africa, and Georgia

In Georgia, trademark rights may be enforced through both administrative and judicial mechanisms. Administrative remedies are available before the Sakpatenti, including proceedings relating to the refusal or cancellation of trademark registration, while civil proceedings before the general courts provide remedies such as injunctions and claims for damages.[34] These enforcement mechanisms have been progressively aligned with European Union standards, particularly with regard to procedural transparency, legal certainty, and access to justice. Nevertheless, the practical enforcement of trademark rights continues to face institutional challenges. In particular, Georgia has relatively limitatied experience in adjudicating complex intellectual property disputes, with commercial disagreements frequently being resolved through negotiation or other consensual means rather than litigation.[35] Although such approaches may be appropriate in ordinary commercial disputes, they are not always adequate in the banking sector, where trademark infringement may undermine consumer confidence and adversely affect the stability and reputation of financial institutions. This demonstrates that normative harmonisation alone is insufficient to ensure effective trademark protection without robust institutional capacity and consistent judicial enforcement. Accordingly, Georgia illustrates that a jurisdiction may achieve a high degree of regulatory alignment with international and European standards while continuing to encounter significant implementation challenges in their practical implementation.

A comparative analysis of Indonesia, South Africa, and Georgia demonstrates that the protection of trademarks within the banking sector extends beyond the substantive provisions of national trademark laws. A more fundamental challenge lies in the absence of systematic institutional coordination between intellectual property authorities and banking regulators across all three jurisdictions. In Indonesia, institutionalfragmentation exists between DGIP and OJK; in South Africa, between CIPC and the Prudential Authority; and in Georgia, between Sakpatenti and the NBG. From the perspective of institutional legal theory, this fragmentation represents a regulatory gap that arises when two legal regimes operate concurrently without an integrated legal and institutional framework. As a consequence, legal uncertainty may arise because the granting of a banking licence does not necessarily correspond with the legal status or validity of the associated trademark rights. In a sector that depends fundamentally upon public trust, such as banking, this disconnect may give rise to significant reputational risks, undermine consumer confidence, and ultimately weaken the effectiveness of consumer protection.

[34] Dzabunidze and Kazhashvili, "Legislative Regulation of Legal Goodwill Protected by Geographical Indication and Trademark (Comparative Analysis)."

[35] I Gede Agus Kurniawan, Rafika Amalia, and Maia Kapanadze, "From Colonial Legacy To Modern Intelectual Property Reform: A Comparative Study Of Intelectua Property In Indonesia And Georgia," *Journal Ilmu Hukum* 14, no. 5 (2026): 419–43, https://doi.org/https://doi.org/10.24843/KS.2026.v14.i05.p01.

The comparative analysis further demonstrates that international harmonisation remains largely confined to formal compliance with the TRIPS Agreement, the Paris Convention, and the Madrid Protocol. Among the three jurisdictions, Georgia has achieved the highest degree of legal harmonisation, having not only implemented the principal international trademark instruments but also undertaken extensive legislative reforms to align its legal framework with European Union law pursuant to the Deep and Comprehensive Free Trade Area (DCFTA). Indonesia occupies an intermediate position, possessing a comprehensive formal legal framework, although its implementation continues to be characterised by institutional fragmentation. South Africa, by contrast, maintains a well-developed common law doctrine of passing-off, but continues to face procedural limitations in international trademark registration owing to its non-accession to the Madrid Protocol. The comparison also reveals that all three jurisdictions face common challenges stemming from the digitalisation of banking services and the rapid expansion of fintech institutions, many of which rely heavily upon brand identity to establish market credibility and consumer trust. These developments illustrate that the traditional principle of territoriality is increasingly tested by the inherently cross-border nature of digital financial markets. Consequently, international legal harmonisation should be complemented by sector-specific regulatory guidelines for banking industry that integrate trademark protection with prudential regulation, thereby promoting greater legal certainty, consumer protection, and financial stability.

Trademark protection within the banking sector in Indonesia, South Africa, and Georgia is founded upon a comprehensive normative foundation framework that is broadly consistent with international standards. Nevertheless, its practical effectiveness remains constrained because the principal international trademark instruments do not establish sector-specific rules for banking industry, instead leaving such matters entirely to the discretion of domestic legal and regulatory frameworks. The principal weakness lies in the limited degree of institutional coordination between intellectual property authorities and banking regulators, with the result that preventive mechanisms designed to minimise trademark conflicts do not operate as effectively as intended. These findings demonstrate that trademark protection in the banking sector should be understood as a multidimensional legal issue that extends beyond the protection of private proprietary rights to encompass broader considerations of public interest, consumer protection, and the stability of the financial system. Accordingly, effective protection requires not only continued normative harmonisation but also the development of integrated institutional mechanisms capable of responding to the evolving challenges presented by fintech innovation and digital transformation of banking services.

2. Trademark Protection Framework within the Banking Sector Aligned with Territorial Sovereignty and Global Harmonisation

The principle of territoriality in trademark law provides that trademark rights arise and are enforceable only within the jurisdiction in which the trademark is registered or otherwise protected. Accordingly, trademark protection is inherently , with the

recognition and enforcement of such rights falling within the competence of national legal systems. However, developments within the modern banking sector have significantly challenged this traditional principle. Banking services are no longer confined to physical establishments or national borders but are increasingly delivered through cross-border operations, digital platforms, and global payment systems.[36] This transformation has created a structural tension between state sovereign authority of States to regulate trademark rights within their respective jurisdictions and the commercial reality that banking activities increasingly transcend national boundaries. This tension is particularly pronounced because bank trademarks perform functions that extend beyond distinguishing commercial origin; they also embody institutional reputation, consumer confidence, and market credibility, all of which are fundamental to the financial system. Accordingly, trademark protection in the banking sector cannot be regarded merely as a matter of private proprietary rights but must also be understood as serving broader public interests, including consumer protection and financial stability.

The tension between the principle of territoriality and the demands of an increasingly globalised marketplace has become more pronounced with the digital transformation of the banking sector. Mobile banking platforms, digital financial services, and neobanks enable a single banking brand to operate simultaneously across multiple jurisdictions without the establishment of a physical presence.[37] In this context, the traditional principle of territoriality is no longer sufficient, as trademark infringements may occur through digital applications and online services that are readily accessible across national borders. These developments also present significant evidential and jurisdictional challenges. Infringements increasingly manifests through the unauthorised use of digital trade dress, domain names, mobile applications, websites, and social media accounts, making the identification of the appropriate forum and the collection of admissible evidence considerably more complex.[38] Consequently, jurisdiction can no longer be determined solely by reference to geographical territory, but must also take account of digital and commercial activities that are directed towards consumers within a particular jurisdiction. Accordingly, effective protection of banking trademarks requires the development of legal norms capable of addressing cross-border digital activities. Without such adaptation, national trademark regimes risk providing only fragmented protection and may struggle to keep pace with the rapidly evolving dynamics of digital financial markets.

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[36] Philip Bruno, Olivier Denecker, and Gottfried Leibbrandt, "A Retrospective: Looking Back at 'A Vision for the Future of Cross-Border Payments,'" *Journal of Payments Strategy & Systems* 19, no. 2 (June 1, 2025): 103–13, https://doi.org/10.69554/GXBF2279.

[37] Emmanuel Mogaji and Nguyen Phong Nguyen, "High Street Banking on the App: Branding Strategies of Traditionally-Driven Neobanks," *International Journal of Bank Marketing* 42, no. 2 (March 19, 2024): 301–30, https://doi.org/10.1108/IJBM-12-2022-0529.

[38] Yasar Alhiniti, Mashael Abdul Salam Akhwarsheida, and Abdul Rahman Hamdan Alimat, "Legal Challenges of Protecting Trademarks in E-Commerce," in *Artificial Intelligence in the Digital Era*, ed. Nidal Al-Ramahi, Abdalmuttaleb M. A. Musleh Al-Sartawi, and Mohammad Kanan (Cham: Springer, 2026), 2295–2308, https://doi.org/10.1007/978-3-031-89771-9_166.

Global efforts to harmonise trademark protection have been advanced through three principal international instruments: the TRIPS Agreement, the Paris Convention, and the Madrid Protocol. The TRIPS Agreement 1994 requires Members of the WTO to grant exclusive rights upon proprietors of registered trademarks, enabling them to prevent the unauthorised use of signs that are likely to cause consumer confusion.[39] Nevertheless, the TRIPS Agreement does not establish specific rules or mechanism for addressing trademark disputes that may have prudential implications for the stability of the financial sector. The 1883 Paris Convention complements this framework by requiring Member States to accord national treatment to foreign trademark proprietors and by establishing the principle of priority for trademark applications.[40] The Madrid Protocol further facilitates the international protection of trademarks by enabling trademark proprietors, including banking institutions operating across multiple jurisdictions, to seek protection through a single international registration procedure, thereby reducing administrative complexity and transaction costs.[41] However, the Madrid System continues to reflect the principle of territoriality, as the grant and maintenance of trademark protection remain subject to the substantive examination and acceptance of each designated Contracting Party. Consequently, although these international instruments have significantly promoted the harmonisation, of trademark law, they do not fully address the the distinctive legal and regulatory issues associated with trademarks protection in the strategically important banking sector.

The experiences of Indonesia, South Africa, and Georgia demonstrate that the tension between territorial sovereignty and international legal harmonisation constitutes a fundamental issue of legal policy. States generally seek to preserve their regulatory autonomy over the banking sector, regarding it as an essential aspect of economic sovereignty, particularly in relation to monetary stability, financial supervision, and consumer protection.[42] At the same time, however, effective trademark protection for banking institution requires legal certainty across jurisdictions, as the reputation and commercial identity of bank increasingly extend beyond national borders. When trademark law and banking regulation are not effectively integrated, legal uncertainty may arise, potentially causing harm to both businesses and the public. This is evident where the use of a banking or fintech name has been approved by the relevant banking regulator, yet is subsequently challenged under the national trademark regime.

[39] Alif Muhammad Gultom and Dodik Setiawan Nur Heriyanto, "The Power of Legal Certainty in the Trademark Exhaustion Principle Governing Parallel Imports," *Audito Comparative Law Journal (ACLJ)* 4, no. 2 (May 15, 2023): 76–86, https://doi.org/10.22219/aclj.v4i2.25232.

[40] Olugbenga A. Olatunji, "Historical Account of Dwindling National Flexibilities from the Paris Convention to Post-TRIPS Era: What Implications for Access-to-medicines in Low-and-middle-income-countries?," *The Journal of World Intellectual Property* 25, no. 2 (July 31, 2022): 391–411, https://doi.org/10.1111/jwip.12228.

[41] Ismaeel Tharwat, Shahd Abou El Leil, and Dina Abdel Fattah, "Trademarks and Trade Concentration: Evidence from the Madrid System (1995–2022)," *Journal of Business and Socio-Economic Development*, April 29, 2026, 1–17, https://doi.org/10.1108/JBSED-10-2025-0484.

[42] Viacheslav M. Shavshukov and Natalia A. Zhuravleva, "National and International Financial Market Regulation and Supervision Systems: Challenges and Solutions," *Journal of Risk and Financial Management* 16, no. 6 (May 30, 2023): 289, https://doi.org/10.3390/jrfm16060289.

Accordingly, trademark conflicts within the banking sector cannot be addressed solely through the application of trademark law, but should instead be understood as matters of cross-sector regulatory governance.

The comparative analysis further reveals a common structural deficiency across all three jurisdictions: the absence of a dedicated legal framework governing the relationship between trademark protection and banking regulation. None of the three jurisdictions has enacted specific legislation, joint inter-agency regulations, or formal institutional coordination mechanisms linking intellectual property authorities with banking regulators. This institutional gap significantly limits the effectiveness of preventive measures designed to minimise trademark conflicts before they develop into legal disputes. In Indonesia, the division of regulatory authority between DGIP and OJK means that trademark registration and bank licensing are administered through separate processes, without a structured mechanism for institutional coordination or cross-referral. In South Africa, the absence of an effective procedural interface between the Trade Marks Act and the Banks Act creates a regulatory gap where trademark disputes carry prudential implications. In Georgia, institutional shortcomings persist because the country's extensive legislative harmonisation with European Union standards has not yet been fully matched by the institutional capacity and operational coordination of the Sakpatenti and the NBG. Furthermore, all three jurisdictions continue to face significant challenges in protecting banking trademarks within the digital environment, notwithstanding the fact that trademark disputes are emerging most rapidly within the fintech ecosystem. These findings demonstrate that the core issue does not lies in the absence of substantive trademark rules, but rather in the inadequate design of institutional coordination between the intellectual property and banking regulatory regimes.

In response to these regulatory shortcomings, an effective framework for the protection of trademarks in the banking sector should be founded upon the principle of an integrated regulatory approach. This principle recognizes that trademark protection should not be regarded solely as the responsibility of the trademark office or intellectual property authority, but rather as a regulatory function requiring close cooperation among relevant public institutions.[43] Within the banking sector, prudential regulators have a direct interest in the effective protection of trademarks, as trademark conflicts generate consumer confusion, undermine public confidence, and ultimately pose risks to financial system stability. The need for such an integrated approach is even more apparent in the context of digital banking, where a bank's commercial identity closely associated with mobile applications, domain names, websites, and digital communications infrastructure.[44] Effective protection therefore requires coordinated

[43] Neil Gunningham and Darren Sinclair, "Integrative Regulation: A Principle-Based Approach to Environmental Policy," *Law & Social Inquiry* 24, no. 04 (December 27, 1999): 853–96, https://doi.org/10.1111/j.1747-4469.1999.tb00407.x.

[44] Payam Hanafizadeh and Mojdeh Gerami Amin, "The Transformative Potential of Banking Service Domains with the Emergence of FinTechs," *Journal of Financial Services Marketing* 28, no. 3 (September 5, 2023): 411–47, https://doi.org/10.1057/s41264-022-00161-0.

action involving not only intellectual property authorities and banking regulators but also telecommunications and digital communications authorities, enabling timely intervention against online trademark infringement and other forms of digital identity misuse. From a theoretical perspective, this approach reflects the concept of regulatory convergence, where policy and regulatory frameworks across multiple sectors are progressively aligned to address the increasingly interconnected nature of modern economic activity.[45] Accordingly, an integrated regulatory approach provides an appropriate foundation for addressing the institutional fragmentation that has long characterised the relationship between trademark protection and banking regulation.

The principle of proportional sovereignty recognizes that, although States retain sovereign authority over the regulation and protection of trademark rights within their respective jurisdiction, such authority should not be exercised in a manner that unnecessarily impedes the effective protection of trademarks in cross-border commercial activities.[46] This principle aligns with the national treatment obligation under the TRIPS Agreement and the Paris Convention, both of which require foreign trademark proprietors to receive treatment no less favourable than that accorded to domestic proprietors. Within the banking sector, the principle of proportional sovereignty permits States to impose prudential regulatory requirements necessary to safeguard financial stability while ensuring that trademark protection mechanisms remain transparent, non-discriminatory, and equally accessible to domestic and foreign banking institutions. Closely related to this is the principle of legal certainty and predictability, which requires the establishment of a regulatory framework capable of providing legal certainty from the licensing stage onward, rather than only after disputes have arisen before the court. This principle is of particular importance in the banking and fintech sectors, where long-term investment in brand identity and reputations depends upon a stable and predictable legal environment. Furthermore, the principle of public interest primacy confirms that trademark protection within the banking sector serves purposes extending beyond the protection of private proprietary rights. Because confusion arising from the use of banking trademarks may directly affect consumer confidence and the integrity of the financial system, the protection of such trademarks must also promote broader public interests.[47] Accordingly, an effective regulatory framework should integrate the protection of rights with the promotion of consumer protection, public confidence, and financial system stability.

[45] Dea Malinda Azalia, "Pengaruh Institusi Regional T Engaruh Institusi Regional Terhadap K Erhadap Konvergensi K Gensi Kebijakan Ebijakan Antarnegara: Studi Kasus ASEAN Open Skies," *Jurnal Politik* 2, no. 2 (2017): 307–36, https://doi.org/10.7454/jp.v2i2.1114.

[46] Mariavittoria Catanzariti, *Disconnecting Sovereignty*, vol. 65, Law, Governance and Technology Series (Cham: Springer International Publishing, 2024), https://doi.org/10.1007/978-3-031-60734-9.

[47] Ntswaki Matlala, Knowledge Shumba, and Tendai Chimucheka, "The Roles of Brands in Consumer Protection," in *Brands, Branding, and Consumerism*, ed. Ayantunji Gbadamosi (Cham: Springer Nature Switzerland, 2025), 377–406, https://doi.org/10.1007/978-3-031-80859-3_10.

A framework for the protection of trademarks in the banking sector that is consistent with territorial sovereignty may be developed through the concept of a Dual-Gate Verification System. Unlike conventional models of institutional coordination or general regulatory flexibilities recognised under the TRIPS Agreement, which primarily operate post-registration and address broader public policy concerns such as public health or economic policy, the proposed Dual-Gate Verification System constitutes a sector-specific, preventive mechanism. It introduces a structural advancement beyond the operational risk principles promoted by the Basel Committee by integrating trademark clearance directly into the prudential licensing process for banking institutions. Under this model, the assessment of a financial institution's corporate identity is undertaken through two complementary institutional channels operating concurrently, with each stage forming an essential precondition for the grant of a banking licence. The first gate is administered by the banking regulator, which assesses the proposed corporate name from the perspective of prudential regulation, taking into account on systemic reputational risk, the potential for consumer or market confusion, and broader public interest considerations.[48] The second gate is administered by the national trademark authority, which conducts a comprehensive trademark clearance protocol against the national trademark registry database, including an assessment of prior registrations, well-known trademarks, and the relevant financial services classifications under Class 36 of the Nice Classification.[49] Under this integrated system, a final banking license should not be issued until the proposed brand identity has been certified as free from prior trademark conflicts. This model, therefore, strengthens legal certainty by preventing complex trademark disputes after banking operations have commenced, while simultaneously safeguarding the public interest through the early prevention of market confusion and the preservation of confidence in the financial system.

Although the TRIPS Agreement and Basel Committee guidelines encourage various forms of inter-agency cooperation, those frameworks remain predominantly reactive, addressing conflicts only after they have arises through dispute resolution mechanisms, supervisory intervention, or enforcement protocols.[50] The Dual-Gate model, by contrast, functions as a preventive regulatory mechanism. It incorporates trademark clearance as a mandatory precondition for the grant of a banking licence, thereby addressing potential regulatory conflicts before a banking institution commences commercial operations. Unlike the single-window administrative models adopted in certain jurisdictions, which

[48] Panagiotis Barkas, "Consumer Protection and Financial Innovation: Microeconomic, Policy, and Behavioral Considerations for the Digital Era," in *Finance, Growth and Democracy: Connections and Challenges in Europe and Latin America in the Era of Permacrisis*, ed. Dimitris Katsikas, Maria Antonieta Del Tedesco Lins, and Andrea Ribeiro Hoffmann (Cham: Springer, 2025), 263–85, https://doi.org/10.1007/978-3-031-68475-3_17.

[49] Chahata Cholkami, Hamza Ali Ahmed Al-Braisa, and Mohamad Albasha, "Protection of Trademarks in the Digital Space: A Legal Analysis of Domain Name Registration and Usage," in *Artificial Intelligence for Sustainable Innovation Management and Risk Management*, ed. Adel Sarea et al. (Cham: Springer, 2026), 831–44, https://doi.org/10.1007/978-3-031-95310-1_63.

[50] Henning Grosse Ruse-Khan and Axel Metzger, eds., "Implementing International IP Provisions," in *Intellectual Property Ordering beyond Borders* (Cambridge: Cambridge University Press, 2022), 309–10, https://doi.org/10.1017/9781009071338.015.

primarily consolidate existing administrative procedures without establishing legally binding obligations between participating authorities, the Dual-Gate System introduces a mutually dependent verification process. Under this framework, neither banking regulator nor the trademark authority may grant final approval independently. Instead, the issuance of a banking licence is contingent upon reciprocal institutional verification and clearance by both authorities. In this way, the model promotes legal certainty, strengthens regulatory coherence, and reduces the likelihood of trademark disputes arising after a banking institution has entered the market.

In the Indonesian context, the proposed Dual-Gate Verification System could be implemented through a Joint Regulation issued by the Minister of Law and Human Rights, acting in its supervisory capacity over the DGIP and the OJK. Such a regulation should establish a comprehensive framework governing institutional coordination, electronic data exchange, and procedures for resolving situations in which a proposed banking name is found to be substantially identical or confusingly similar to an existing registered trademark. Operational integration could be achieved through an Application Programming Interface (API)-based system linking DGIP trademark database with OJK's banking licensing platform, thereby enabling real-time verification during the licensing process .[51] From a normative perspective, this proposal is compatible with the Law on Trademarks and Geographical Indications, as it preserves the constitutive principle that trademark rights arise through registration while introducing an additional preventive safeguard applicable only within the banking sector. The proposed framework would also reduce the likelihood of disputes involving major financial institutions and other large corporations, which frequently emerge only after their corporate approval or licensing has been approved. From the perspective of administrative law, such institutional coordination reflects the principles of good governance by promoting transparency, regulatory coherence, and legal certainty. Consequently, the proposed reform could be implemented through secondary legislation and inter-agency cooperation without requiring amendments to existing primary legislation.

In the South African context, the proposed Dual-Gate Verification System could be implemented by introducing provisions into the Banks Act No. 94 of 1990 requiring trademark clearance as a mandatory precondition for the grant of a banking licence by the Prudential Authority. Such provisions should be complemented by formal information-sharing and institutional coordination mechanisms between the Companies and CIPC, acting as the national trademark authority and the Prudential Authority, within the South Africa's Twin Peaks regulatory framework. This integrated approach would strengthen regulatory oversight in circumstances where fintech providers or other financial service entities adopt names or branding that closely resemble those of licensed banking institutions, an area that has long presented regulatory challenges. In addition, enhanced institutional coordination would improve the effectiveness of preventive trademark protection across both urban and rural communities, where informal financial

[51] Janitra Haryanto, *The ASEAN Digital Economy*, ed. Paul Cheung and Xie Taojun (London: Routledge, 2023), https://doi.org/10.4324/9781003308751.

activities may increase the risk of consumer confusion and the misuse of banking identities. Although South African common law provides a flexible remedy through the doctrine of passing off, that remedy remains inherently reactive, as it depends upon legal proceedings after the alleged infringement has occurred. By contrast, the Dual-Gate Verification System adopts a preventive approach by requiring trademark verification before a banking licence is granted. Accordingly, South Africa could strengthen the internal coherence of its trademark and banking regulatory framework irrespective of its non-accession to the Madrid Protocol. Such reform would also reinforce consumer protection by reducing the risk of fraud and other deceptive practices arising from the unauthorised use of banking names and trademarks.

In the Georgian context, the proposed Dual-Gate Verification System may be developed by drawing upon institutional coordination models adopted within several Member States of the European Union, where financial regulators and intellectual property authorities operate through structured cooperation mechanisms. Georgia could establish formal coordination protocols between Sakpatenti and the National Bank of Georgia (NBG), providing for electronic data sharing, reciprocal notification procedures, and coordinated assessments whenever a proposed banking name gives rise to a potential trademark conflicts.[52] Such measures are particularly important in light of the continuing consolidation of Georgia's banking sector, where mergers, acquisitions and corporate restructuring frequently generate complex issues concerning trademark ownership and brand identity conflicts.

Moreover, Georgia's commitments under the DCFTA require not only legislative approximation to European Union law but also the effective implementation of harmonised regulatory standards. The adoption of an institutional coordination model broadly reflecting the EU practice would strengthen enforcement capacity by facilitating timely access to relevant information, improving inter-agency cooperation, and enabling the early identification and resolution of potential trademark conflicts. In doing so, Georgia would be better positioned to address the imbalance between its advanced legislative harmonisation and its comparatively limited institutional capacity. From a comparative law perspective, Georgia is well placed to serve as a model for other transition economies seeking to develop an integrated framework for trademark protection within the banking sector. Such an approach is also consistent with Georgia's broader programme of legal reform, which places particular emphasis on regulatory convergence with supranational standards and the strengthening of institutional governance. Within the digital financial ecosystem, the protection of banking trademark must extend beyond conventional identifiers such as names and logos to encompass the broader concept of digital identity. Such protection should cover domain names, official social media accounts, mobile application, application interfaces, websites, and digital trade dress all of which function as distinctive indicators of origin within contemporary

[52] LEVAN GOTUA, "Expansion of Georgian Financial Sector from Perspective of Association Agreement between EU and Georgia," *L'Europe Unie*, no. 22 (2025): 93–104.

banking services.[53] A key component of this framework is the establishment of an integrated digital brand monitoring system involving intellectual property authorities, banking regulators, and telecommunications and digital communications authorities.[54] Through coordinated real-time monitoring and information sharing, such a system would facilitate the early detection of trademark infringements and enable prompt regulatory responses, including the suspension of fraudulent applications, the removal of infringing online content, and the blocking of domains names used to impersonate banks licensed banking institutions.[55] The second essential component is the requirement for fintech entities to ensure brand differentiation as part of the licensing process, thereby preventing the adoption of names, logos, or other commercial identifiers that are likely to mislead consumers or create confusion with established banking institutions. In addition, harmonised administrative procedures should be developed to facilitate the efficient cancellation or removal of infringing digital trademark uses, thereby ensuring that enforcement mechanisms remain effective within rapidly evolving digital environments. In appropriate circumstances, the principle of limited extraterritoriality may also be applied, enabling domestic courts to grant injunctive relief against foreign-based digital platforms or applications that intentionally target local consumers within the forum State.[56] Accordingly, effective protection of banking trademark protection in digital era requires progressive, cross-sector legal reform integrating intellectual property law, banking regulation, telecommunications regulation, and digital governance.

The comparative analysis suggests three regulatory models that may be adapted from the experiences of Indonesia, South Africa, and Georgia. Indonesia is particularly well suited to the legislative integration model, under which trademark protection mechanisms specific to the banking sector are expressly incorporated into banking legislations or established through joint inter-agency regulation.[57] South Africa, by contrast, is better suited to the common law coordination model, which emphasises enhanced inter-agency cooperation between regulatory authorities and expanding the enforcement of passing-off principles through a preventive approach. It should be emphasised that while South Africa's non-accession to the Madrid Protocol does not affect the viability of the common law coordination model. The proposed Dual-Gate Verification System operates

[53] Rainer Alt and Thomas Puschmann, "The Rise of Customer-Oriented Banking - Electronic Markets Are Paving the Way for Change in the Financial Industry," *Electronic Markets* 22, no. 4 (December 1, 2012): 203–15, https://doi.org/10.1007/s12525-012-0106-2.

[54] Arfan Uzzaman et al., "Impact Of Gfmis-Driven Financial Transparency On Strategic Marketing Decisions In Government Agencies," *Review of Applied Science and Technology* 02, no. 01 (March 1, 2023): 85–112, https://doi.org/10.63125/8nqhhm56.

[55] Rajani P.K et al., "RETRACTED ARTICLE: Fraud Detection and Prevention by Face Recognition with and without Mask for Banking Application," *Multimedia Tools and Applications* 84, no. 2 (April 3, 2024): 781–804, https://doi.org/10.1007/s11042-024-19021-1.

[56] Hisashi Harata, "The Extraterritorial Application of Statutes and Regulations," in *Extraterritoriality in Comparative Perspective* (Leiden: Brill | Nijhoff, 2025), 229–63, https://doi.org/10.1163/9789004720183_010.

[57] Sepriyadi Adhan S, Ati Yuniati, and Anggun Nurfani, "Legal Reformulation of Banking Consumer Protection: Building A Justice-Oriented Regulatory System," *LITIGASI* 26, no. 1 (April 30, 2025): 546–64, https://doi.org/10.23969/litigasi.v26i1.19270.

independently of the Madrid System because it is founded upon domestic institutional coordination between the Prudential Authority and the CIPC, rather than upon international trademark registration procedures. Consequently, the absence of Madrid Protocol membership does not diminish the feasibility of incorporating preventive trademark clearance into South Africa's banking licensing framework. On the contrary, it reinforces the importance of strengthening domestic coordination to compensate for the absence of streamlined international trademark registration mechanism. Georgia, meanwhile, exemplifies the supranational harmonisation model, under which higher regional legal standards, particularly those of the European Union, serve as benchmarks for national legal reform. Although each model reflects different legal traditions and institutional structures, they share fundamental characteristics:: the need for formal coordination between intellectual property authorities and banking regulators, mandatory trademark clearance as a precondition for grant of a banking licence, explicit protection of trademarks within the digital environment, and efficient mechanisms for the prevention and resolution of trademark disputes.

Drawing upon from these comparative models, an integrated framework for the protection of trademark within the banking sector may be formulated around four interrelated pillars: institutional coordination, procedural integration, digital protection, and international legal harmonisation. Collectively, these pillars provide a coherent regulatory model capable of reconciling the principle of territorial sovereignty with the practical demands of an increasingly interconnected global harmonisation. By integrating intellectual property protection with prudential banking regulation, the proposed framework promotes legal certainty, consumer protection, and financial system stability while preserving the territorial foundations of national trademark law. Accordingly, the protection of trademark within the modern banking sector must evolve beyond fragmented, sector-specific regulatory approaches towards an integrated, preventive, and adaptive system of governance capable of responding to the legal and technological challenges presented by digital finance and cross-border banking activities.

C. Conclusion

The regulatory frameworks governing trademark protection within the banking sector in Indonesia, South Africa, and Georgia generally satisfy the minimum standards set by the TRIPS Agreement, the Paris Convention, and, where applicable, the Madrid Protocol. Nevertheless, the effectiveness of these frameworks remains constrained by institutional fragmentation and the absence of formal coordination mechanisms linking trademark regimes with banking regulation. These findings demonstrate that international legal harmonisation cannot be achieved through formal compliance with international instruments alone but also requires procedural integration within the banking licensing process to ensure that potential trademark conflicts are identified and resolved at the earliest stage. Accordingly, this study proposes the implementation of a Dual-Gate Verification System as its principal policy recommendation. The proposed system could be implemented through joint inter-agency regulations or by incorporating

specific provisions into national banking legislation, thereby making the grant of a banking licence conditional upon successful trademark clearance. Within the context of digital banking, the framework should be complemented by enhanced protection for trademarks used within the digital environment, supported by integrated online trademark monitoring systems and administrative powers enabling the prompt removal or suppression of digital trademark infringement, including online passing off and other forms of digital identity misuse. In practical terms, this proposed integrated framework provides a preventive regulatory strategy for mitigating reputational risks, strengthening consumer protection, and promoting confidence in the financial system. At the international level, it may also provide a conceptual foundation for the development international soft-law guidance through institutional collaboration between the WIPO and the Basel Committee on Banking Supervision. Such cooperation could facilitate the development of sector-specific principles capable of making trademark protection within the banking sector becomes more responsive to the evolving legal and technological challenges of the global financial ecosystem.

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