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LEGAL ANALYSIS OF MISREPRESENTATION AND PASSING OFF IN FOOD BRANDING: A CASE REVIEW OF MCCURRY RESTAURANT (KL) SDN BHD V MCDONALDS CORPORATION (2009) 3 MLJ 774

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ABSTRACT

Brand names and visual presentation are very important in the modern food industry to attract consumers and build a strong business identity. This paper provides an academic case review of the famous legal dispute, *McCurry Restaurant (KL) Sdn Bhd v McDonalds Corporation* (2009) 3 MLJ 774. The main legal issue in this case was the common law tort of passing off. Specifically, the court had to decide if the local restaurant's use of the prefix "Mc" in its name "McCurry" was a form of misrepresentation that would confuse ordinary customers into thinking the business was linked to McDonald's global network. Although the High Court originally ruled in favor of McDonald's, the Court of Appeal reversed the decision, and this was later supported by the Federal Court. This study explores the key legal elements of passing off applied in the case, and explains why the huge differences in the logos, menu items, and dining environments prevented any real customer confusion. In addition, this review discusses why the court rejected the "family of marks" argument and analyzes the positive socio-economic impacts of this judgment in protecting local small and medium enterprises (SMEs) and Halal food brands from unfair corporate intimidation. Ultimately, this case shows that common law courts will not allow big corporations to control simple syllables or parts of speech unless there is clear proof of public deception.

Introduction

In the modern business world, especially in the food and beverage industry, brand names, logos, and symbols are very important. Companies spend a lot of money to build their reputation so that customers can recognize them easily (Boey, 2010). Under common law, when a business does not register its brand name as an official trademark, it can still protect its business reputation using a legal rule called the "tort of passing off." The main idea behind passing off is simple: no business is allowed to sell its products or services by pretending they belong to another business (Reckitt & Colman, 1990).

To win a passing off case in court, a plaintiff must usually prove three main things, which are known as the "Classical Trinity". These three elements were clearly set out in the famous English case of *Reckitt & Colman Products Ltd v Borden Inc* (1990). First, the plaintiff must prove that their business has goodwill or a strong reputation among the public. Second, the plaintiff must show that the defendant made a misrepresentation, which means the defendant used a name or logo that misleads or confuses customers into thinking the two businesses are connected. Third, the plaintiff must prove that this confusion has caused, or will likely cause, real damage to the plaintiff's business reputation and financial profits (Reckitt & Colman, 1990).

In Malaysian courts, this three-step test is strictly followed to solve business disputes (Ahmad et al., 2016). The legal battle between *McCurry Restaurant (KL) Sdn Bhd v McDonalds Corporation* (2009) is one of the most famous examples of a passing off case in Malaysia and internationally. This case became very popular because it tested whether a global fast-food giant could stop a small local restaurant from using just a prefix, which is the two letters "Mc," in its name (Moscato-Wolter, 2011).

Facts of the Case

The respondent in this case is McDonalds Corporation, the world-famous fast-food company known across the globe. McDonalds started a lawsuit in the High Court of Malaya against the appellant, McCurry Restaurant (KL) Sdn Bhd. McCurry is a local business that operates a traditional restaurant in Kuala Lumpur, serving popular Indian and Malaysian food like curry, naan bread, and rice (McCurry, 2009).

McDonalds was not happy because the local restaurant used the prefix "Mc" in its name, "McCurry." McDonalds argued that they have a huge, exclusive international and local reputation over the letters "Mc" because they use it for almost all their famous products, such as McChicken, McMuffin, McNuggets, and McFlurry. Therefore, McDonalds claimed that when McCurry used "Mc" in its name, it was a form of misrepresentation. They believed that ordinary consumers would get confused and think that McCurry was somehow connected to McDonalds, or that it was a new branch or an authorized franchise of the McDonalds company (Ibrahim & Nambiar, 2013).

The High Court Ruling

When the case was first heard in the High Court, the trial judge agreed with McDonalds Corporation. The High Court decided that because McDonalds is so famous, ordinary customers who see the name "McCurry" would automatically think that the restaurant has a corporate connection, a joint venture, or some business relationship with McDonalds (McCurry, 2009). The High Court judge also based this decision on an older court case called *McDonald's Corp v McIndians Fast Food Restaurant*, where another local restaurant was stopped from using the "Mc" prefix. Because of this, the High Court ruled that McCurry was guilty of passing off and ordered them to change their name (Moscato-Wolter, 2011).

Distinguishing McCurry from McDonald's Corp v McIndians Fast Food Restaurant

In assessing the issue of passing off at the High Court stage, a critical comparative analysis must be made between the present case and the precedent set in *McDonald's Corp v McIndians Fast Food Restaurant*. In McIndians, the court ruled in favour of McDonald's, establishing that the defendant's choice of name and presentation created a high probability of confusion among consumers. The prefix 'Mc' combined with a fast-food business model was deemed an infringement on the plaintiff's established goodwill. However, a strict distinction arises when applying this precedent to McCurry. Unlike McIndians, which replicated a fast-food concept, McCurry operated purely as a traditional Indian restaurant serving local dishes such as roti canai and tosai. Therefore, while the High Court initially heavily relied on the

McIndians ruling to find McCurry liable, it failed to sufficiently weigh the stark contrast in the nature of the food served, the targeted consumer base, and the overall get-up of the establishment. This misapplication formed the core ground of appeal that subsequently overturned the decision in the Court of Appeal.

The Court of Appeal Decision

McCurry was not satisfied with the High Court's decision, so they took the case to the Court of Appeal of Malaysia. On April 27, 2009, the Court of Appeal made a historic decision. Led by Justice Datuk Gopal Sri Ram, the three judges unanimously allowed McCurry's appeal and canceled the High Court's order (McCurry, 2009).

The Court of Appeal explained that the High Court judge made a big mistake because he did not look at the actual facts of the two businesses carefully. The appellate judges stated that if a person looks at the actual layout of the shop, the food served, and the logos used by both companies, it is very clear that there is no misrepresentation and customers will not be tricked or confused (Ibrahim & Nambiar, 2013). Later on, McDonalds tried to appeal this decision to the Federal Court, but the Federal Court rejected their application. This meant that the Court of Appeal's decision was final, and McCurry successfully won the case after eight years of legal battle.

Legal Analysis and Reasons for The Judgement

The main reason why the Court of Appeal ruled in favor of McCurry was because of a deep analysis of the second element of passing off: misrepresentation (McCurry, 2009). Justice Gopal Sri Ram pointed out that in a passing off case, a court cannot just look at one small part of a name, like the prefix "Mc," on its own. Instead, the court must look at the whole picture. This means looking at the entire name, the logos, the colors, and the overall "get-up" (visual presentation) of both businesses together to see if a normal customer would really get confused (Moscato-Wolter, 2011). When the Court of Appeal compared McDonalds and McCurry as a whole, they found several major differences that completely removed any chance of customer confusion:

Different Logos and Visual Looks

McCurry's shop signboard had a logo of a smiling cartoon chicken holding a plate of fish-head curry, with the word "McCurry" written in white letters on a black and grey background (McCurry, 2009). This looked completely different from McDonalds' extremely famous logo, which uses the big golden arches ("M") on a bright red and yellow background (Ibrahim & Nambiar, 2013). No reasonable customer would mistake one signboard for the other.

Different Style of Restaurant and Customers

The dining environment in both places was totally different. McDonalds operates as a fast-paced self-service outlet, where customers order at a counter and get their food in paper bags or boxes. McCurry, however, operates as a typical Malaysian sit-down coffee-shop or rest-house style restaurant where waiters take orders at the table (Moscato-Wolter, 2011). The target customers and expectations for both places were clearly distinct (McCurry, 2009).

Means of Evidence

Documentary Evidence

The documentary evidence in *McCurry Restaurant (KL) Sdn Bhd v McDonald's Corporation* (2009) 3 MLJ 774 consisted of trademark registration documents, business registration records, restaurant menus, advertising materials, photographs of signboards, and court documents submitted throughout the litigation process. These documents were essential in determining whether the appellant's use of the prefix "Mc" constituted a misrepresentation capable of creating confusion among consumers regarding a commercial association with McDonald's Corporation.

In assessing the evidence, the Court of Appeal examined the overall presentation of both businesses rather than focusing solely on the prefix "Mc". The documentary evidence demonstrated that McCurry operated as a local Indian-Muslim restaurant serving traditional Malaysian and Indian cuisine, whereas McDonald's operated as an international fast-food chain specializing in burgers, fries, and other Western food products. The evidence further showed substantial differences in branding strategies, business concepts, and consumer markets targeted by both parties.

Consequently, the court concluded that the documentary evidence did not establish any likelihood of consumer confusion sufficient to satisfy the element of misrepresentation required in an action for passing off (Ibrahim & Nambiar, 2013).

Physical Evidence

Upon comparison, the Court of Appeal found substantial visual differences between the two establishments. McDonald's utilized its globally recognized Golden Arches logo accompanied by distinctive red and yellow corporate colours. In contrast, McCurry used a cartoon chicken logo together with black and grey colour combinations that bore no resemblance to the respondent's branding. Furthermore, the menu offerings of both establishments differed considerably. While McDonald's specialized in Western fast food, McCurry focused on traditional Indian-Muslim dishes such as roti canai, briyani rice, tandoori chicken, and curry-based meals. The court also observed that McDonald's operated a self-service fast-food model, whereas McCurry functioned as a conventional sit-down restaurant. These differences collectively reduced any realistic possibility of consumer confusion and supported the court's finding that no actionable misrepresentation had occurred (Boey, 2010).

Expert Witnesses

Although the dispute primarily involved issues of trademark law and passing off, expert opinions relating to consumer perception, goodwill, and brand identity were relevant in understanding the legal principles applied by the court. The determination of passing off required an assessment of whether an ordinary and reasonable consumer would likely be misled into believing that McCurry had a commercial connection with McDonald's.

The Court of Appeal relied heavily on established legal principles governing passing off and consumer confusion. Particular emphasis was placed on the requirement that courts evaluate the overall impression created by a business rather than focusing on isolated components of a trade name. This approach enabled the court to conclude that the similarities between the parties were insufficient to establish misrepresentation, especially in light of the substantial differences in their branding, products, and commercial presentation (Moscato-Wolter, 2011).

Halal Forensic Issues Relating to Misrepresentation in Food Branding

From a halal forensic perspective, the McCurry dispute highlights important issues concerning commercial misrepresentation and consumer trust within the food industry. Although the case did not involve the presence of non-halal ingredients or halal certification fraud, it raised questions regarding the accuracy and legitimacy of representations communicated through food branding and business identity.

Halal forensic science encompasses not only laboratory analysis for the detection of prohibited substances but also the verification of claims made throughout the food supply chain. This includes evaluating whether representations made through product labels, trademarks, logos, advertisements, and business names accurately reflect the true nature of a product or service (Jaswir et al., 2016).

Consumer trust represents a fundamental element of the halal ecosystem. Muslim consumers frequently rely upon branding and commercial representations when making purchasing decisions. Consequently, misleading representations may undermine consumer confidence and negatively affect the integrity of the halal market. False or deceptive representations may also create uncertainty regarding the origin, ownership, or authenticity of food businesses, thereby affecting informed consumer choice (Ismail et al., 2018). Furthermore, Islamic commercial ethics emphasize the principles of honesty (*sidq*), trustworthiness (*amanah*), and transparency in business transactions. Any form of deception or concealment that may mislead consumers is contrary to these principles and may compromise market integrity. Although the Court of Appeal ultimately found that McCurry had not engaged in misrepresentation, the dispute nevertheless illustrates the importance of maintaining clear and truthful branding practices within the food industry to preserve consumer confidence and commercial fairness (Razak et al., 2019).

Halal Management, Standards and Regulations

The issues raised in the McCurry case are closely associated with broader principles of halal governance and consumer protection. Effective halal management requires food businesses to ensure that all forms of communication, including branding, advertising, labelling, and marketing activities, accurately represent the products and services being offered to consumers.

In Malaysia, consumer protection against misleading commercial practices is supported by several legislative frameworks, including the Trade Descriptions Act 2011 and regulations governing halal certification and halal-related representations. These legal instruments seek to prevent false trade descriptions, protect consumer interests, and promote transparency within the marketplace (Ahmad et al., 2016).

The findings of the Court of Appeal reinforce the principle that businesses should be evaluated based on their overall commercial conduct and presentation rather than isolated similarities in names or trademarks. At the same time, the case demonstrates that businesses bear a responsibility to ensure that their branding practices do not create misleading impressions capable of confusing consumers. Such measures are essential in preserving public confidence and maintaining the credibility of Malaysia’s halal industry.

Critical Discussion

Rejection of the “Family of Marks” Concept

During the court trial, one of the main arguments used by McDonalds was the concept of a “family of marks.” McDonalds argued that because they own many registered trademarks that start with “Mc” (such as McChicken, McMuffin, and McNuggets), they have created a “family” of brands. Because they own this brand family, McDonalds claimed that they should have the exclusive legal right to use the letters “Mc” in the food business, and no other food company should be allowed to use it (Moscato-Wolter, 2011).

However, the Court of Appeal strongly rejected this argument. Justice Gopal Sri Ram explained that even if a company has a family of brands, it does not mean they can monopolize or own a basic syllable or part of a regular language (Ibrahim & Nambiar, 2013). The court noted that the word “McCurry” was just a short and natural combination of words chosen by the local owners to mean “Malaysian Curry” or “Indian Curry.” It was not created to copy American fast-food names. The court made it clear that a “family of marks” cannot be used as an excuse to control ordinary language or to stop honest competitors from using common words, especially when the businesses are totally different (Moscato-Wolter, 2011). This ruling protected the public language from being unfairly controlled by large corporations.

Benefits and Protection for Local Food SMEs and Halal Brands

The decision in the McCurry case brought massive benefits and legal protection for small and medium enterprises (SMEs) and local Halal food brands in Malaysia (Ramli & Zakaria, 2022). Large multinational corporations often use aggressive legal actions and expensive lawsuits to scare away smaller local businesses. They use their huge financial power to force local companies to change their names or close down, even when the local businesses are not doing anything wrong (MoscatoWolter, 2011).

If the High Court’s original decision had been kept, it would have created a very dangerous environment for local entrepreneurs. PKS traders would always live in fear of being sued by global giants just because they accidentally chose a name or a design that had a slight similarity to a big brand. This would have damaged the growth of local businesses and local food supply chains (Boey, 2010).

Thanks to the Court of Appeal's ruling, a clear legal line has been drawn up. The case proves that as long as a local trader is honest and ensures their visual presentation, shop setup, and menu are totally separate and different from multinational brands, they are fully safe under the law (Ramli & Zakaria, 2022). This allows local entrepreneurs to safely build their own unique identities, promotes business diversity, and helps stabilize the Malaysian food and Halal logistics market without fear of unfair corporate intimidation.

Conlusion

In conclusion, the landmark case of *McCurry Restaurant (KL) Sdn Bhd v McDonalds Corporation* (2009) is a very important milestone in intellectual property and food branding law. This case sets a clear standard that courts will not allow large corporations to expand their trademark monopolies over simple letters or syllables unless there is clear proof that the public is actually being tricked or confused (Moscato-Wolter, 2011). For local entrepreneurs and food producers, this judgment shows that having a slight similarity in a prefix is perfectly legal, provided that the overall shop look, logo colors, and types of food served are completely distinct (Abdul Rahman et al., 2024). Ultimately, maintaining honesty, clear visual differences, and a unique cultural identity are the best ways for any food business to grow safely and avoid any legal issues regarding passing off in the competitive retail market.

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