

**HALAL FORENSICS AND BRAND PROTECTION: SAFEGUARDING THE
SUSTAINABILITY OF THE HALAL FOOD INDUSTRY-TAN KIM HOCK TONG SENG
FOOD INDUSTRY SDN BHD V TAN KIM HOCK PRODUCT CENTRE SDN BHD & ANOR.
(2016) 7 MLJ 561**

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ABSTRACT

Integrity of halal certification, consumer trust and effective legal protection are all essential for the sustainability of the halal food industry. The case of Tan Kim Hock Tong Seng Food Industry Sdn Bhd v Tan Kim Hock Product Centre Sdn Bhd & Anor [2016] 7 MLJ 561 illustrates the legal ramifications of using trademarks and representations in relation to halal products. The case was resolved largely by the doctrine of passing-off, but it raises issues about the field of halal forensics, consumer protection and brand integrity. The research method used in this study is doctrinal legal research. The doctrine is used to analyze the judicial decisions, legal principles, and scholarly literature related to halal governance and trademark protection. The results suggest that improper usage of branding with halal certified products can have a negative impact on consumer trust, business reputation and even the sustainability of the halal industry. The study also shows how halal forensics can be a significant tool in identifying fraudulent activities and ensuring the integrity of the halal product category. Because of this, the author argues that the enforcement needs to be enhanced, technology needs to be developed, and Maqasid al-Shariah should be taken into account in the governance of the halal food industry, the article concludes that these are necessary to safeguard the halal brands and to achieve halal food industry sustainable development.

Introduction

The halal food industry is not only one of the largest industries globally, but it is also one of the fastest-growing industries in the world today (Abu Hussin et al., 2026). The government of Malaysia has established itself as a leading hub for halal products by providing strong support for halal products in the form of a comprehensive halal certification system, a regulatory framework and institutional support (JAKIM, 2020). In this context, halal certification is not only a business instrument but also a religious assurance instrument ensuring compliance with the Islamic principles.

Consumer confidence is a foundation of halal industry success. Consumers use halal logos, certification marks and brand reputation as a basis to make their purchasing decisions (Halim et.al, 2019). Therefore, any improper use of halal representations can lead to confusion, deception and loss of confidence in halal certification systems.

The case of Tan Kim Hock Tong Seng Food Industry Sdn Bhd v Tan Kim Hock Product Centre Sdn Bhd & Anor [2016] 7 MLJ 561 is an important case to consider when discussing the intersection between trademark protection and halal governance. It was originally heard as a passing off case, but the facts demonstrate concerns about the misuse of branding with reference to products carrying halal certification. The case is hence useful in understanding the importance of halal forensics in safeguarding halal brands and the viability of halal food industry (Halim et.al, 2019)

Literature Review

Concept of Halal Forensics

Halal Forensics is the use of scientific, legal, and investigative methods to ensure authenticity of halal claims and the detection of fraudulent practices in the halal supply chain. It is related to laboratory testing, documentation verification, audit of supply chains, digital traceability, and regulatory investigation (JAKIM, 2020).

With the development of complex global supply chains, the risk of fraudulent activities with halal products has also arisen. Consequently, halal forensics has become an integral part of halal governance, as it guarantees that the products are in accordance with halal requirements and at the same time preventing consumers from misled claims (Department of Standards Malaysia, 2019).

Brand Protection in the Halal Industry

Brand protection is the legal action that protects trademarks, goodwill, reputation and IP rights. Halal brand protection is particularly crucial in the halal industry due to the perception by consumers that brands are synonymous with halal certification and authenticity of the product (Halim et.al, 2019).

Halim et.al (2019) reported that if the halal logos and branding are misused and misapplied, it is a violation of consumer rights and a loss of confidence in the halal certification systems. Hence, proper legal safeguards are essential to maintain the trust of businesses that are certified by Halal.

Sustainability of the Halal Industry

Sustainability of halal products is not just economic. It involves ethical governance, consumer trust, transparency, and adherence to Islamic values (Hashim et al., 2023). Some scholars believe that integrity and accountability must be maintained to ensure the sustainability of halal markets in the long run.

In the view of Hashim et al (2023), Islamic concepts support good business practices that are in line with the goal of sustainability. Thus, the protection of halal brands is a direct way of contributing to the sustainable development of the halal industry.

Case Review

Issues

In reviewing the case, the court had to consider a number of related, and complex, legal questions with important implications for both the law of intellectual property and the law of consumer protection at large, including in the context of the halal industry (Tan Kim Hock Tong Seng Food Industry Sdn Bhd v Tan Kim Hock Product Centre Sdn Bhd & Anor [2016] 7 MLJ 561).

The first involved the use of packaging, trademarks and branding remarkably similar to the plaintiff's, with the defendants accused of passing them off. The practice gave rise to concern that this could be considered an illegal misrepresentation that would mislead consumers into thinking that the defendants' products were somehow linked to or attributed to the plaintiff.

The second concern was about the misuses of halal representations. This was a very sensitive issue, as the halal representations are not only commercial signs, but also religious trust and compliance with Shariah principles.

The third concern related to abandonment of trademark rights, in which the defendants contended that the plaintiff did not use its registered trademarks, and thus lost its trademark rights under the Trademarks Act 2019.

Facts of the Case

The registered owner of the trademark 'CAP POKOK KELAPA' was the plaintiff, Tan Kim Hock Tong Seng Food Industry Sdn Bhd, which was represented by a distinctive coconut tree logo (Tan Kim Hock Tong Seng Food Industry Sdn Bhd v Tan Kim Hock Product Centre Sdn Bhd & Anor [2016] 7 MLJ 561). The trademark had been established on the basis of a considerable amount of goodwill and reputation for traditional food products, especially dodol.

At first, the plaintiff provided the defendants with dodol products which were then provided to Tan Kim Hock Product Centre. Throughout this business relationship, the products offered by the defendants were sourced from the plaintiff and these products included the plaintiff's brand and halal claims.

After the commercial relationship was terminated, the plaintiff stopped selling products to the defendants. The defendants, however, marketed and sold the Dodol products under packaging and branding nearly identical to plaintiff's trademark and trade dress.

Plaintiff contended that this was likely to mislead consumers to think that the products came from or were endorsed by the plaintiff. Furthermore, the plaintiff contended that the defendants' actions jeopardized its reputation as a trusted halal food manufacturer.

Discussion

Halal Forensics Perspective

This case also stresses the need for the authentication of halal branding and product claims for products certified as halal from a halal forensics standpoint. The dispute was about passing off but the defendants' actions caused concerns about the integrity of the halal related claims (Tan Kim Hock Tong Seng Food Industry Sdn Bhd v Tan Kim Hock Product Centre Sdn Bhd & Anor [2016] 7 MLJ 561).

Halal forensics is a key element in the detection and investigation of unlawful trademark usage, packaging and representation of certification. Forensic mechanisms are to assist regulators in identifying fraudulent activities, maintain halal integrity and safeguard consumers from deceit (JAKIM, 2020; Department of Standards Malaysia, 2019). The case shows that the verification of a forensic nature should not only be done in the laboratory but also it must also be the verification of a trademark, document, and supply chain (Mohd et al,2020).

Consumer Protection and Public Trust

Consumer confidence is an essential part of the halal industry. Trademark, certification mark and the reputation of the brand are all considered as indicators that consumers rely upon to check the halal compliance of the product (Halim et.al, 2019).

Defendants' actions could have led consumers to believe that the products were from a different source or that they were not genuine. This fake may lead to a loss of trust in the halal certification system and have detrimental consequences on the trustworthiness of the genuine businesses who invest a lot of effort to maintain the halal standards (Abu-Hussin et al., 2026).

The court's finding is consistent with the doctrine that consumers must not be misled by representations and misled commercial practices (Tan Kim Hock Tong Seng Food Industry Sdn Bhd v Tan Kim Hock Product Centre Sdn Bhd & Anor [2016] 7 MLJ 561).

Shariah Perspective

The protection of halal integrity is firmly rooted in Islamic teachings.

Allah SWT states in Surah al-Baqarah (2:172):

Translation: "O you who have believed, eat from the good things which We have provided for you."

Al-Baqarah (2:172)

Similarly, Allah SWT commands in Surah al-Nahl (16:114):

Translation: "So eat of the lawful and good food which Allah has provided for you."

Al-Nahl (16:114)

These verses lay down the duty to eat "halal" food which is lawful and wholesome, and motivate the producers to make sure of the authenticity of halal products.

The Prophet Muhammad SAW also said:

"Every flesh nourished by unlawful earnings, the Fire is more deserving of it."

(Mishkat al-Masabih Hadith No: 2825)

This hadith emphasizes the moral obligation of business to not deceive or engage in illegal practices.

From the perspective of Maqasid al-Shariah, the case promotes:

Hifz al-Din (Protection of Religion) by safeguarding Muslims' ability to consume halal products.

Hifz al-Nafs (Protection of Life) through ensuring food integrity and safety.

Hifz al-Mal (Protection of Property) by protecting intellectual property rights and business goodwill.

Legal Significance

In this case, intellectual property law is shown to be an important tool to be used in the governance of halal. Passing off is a good remedy for businesses that try to benefit from the reputation of existing halal brands (Tan Kim Hock Tong Seng Food Industry Sdn Bhd v Tan Kim Hock Product Centre Sdn Bhd & Anor [2016] 7 MLJ 561).

The decision also demonstrates that the protection of trademarks is not limited to commercial interests but also protects the general public interests, such as consumer protection and market integrity (Halim et.al, 2019).

As such, the case has its own significance in the construction of a legal framework for the growth of the halal industry in accordance with sustainable principles (Hashim et al., 2023).

Comparative Framework: Conventional Trademark Protection vs. Halal Forensics

Dimension	Conventional Trademark Protection	Halal Forensics
Primary Objective	Help to preserve commercial goodwill, avoid consumer confusion and protect intellectual property rights.	Maintains authenticity of halal claims, safeguards religious obligations, and prevents fraudulent practices
Scope of Enforcement	Specializes in Misrepresentation, Passing Off and Infringement of Registered Marks.	Applies to laboratory testing, auditing the supply chain, document verification, and digital traceability.
Consumer Protection	Defends consumers against being deceived in the marketplace.	Safeguards consumers against the sale of non-halal and misrepresented products and thus strengthens their trust in religion
Legal Remedies	Awards in civil litigation for injunctions, damages and costs.	Sanctions and withdrawal of certification, forensic investigations by halal authorities
Underlying Principles	based on intellectual property and business.	Based on the principle of Maqasid al-Shariah which prioritizes protection and safeguards of religion, life and property

It is clear from this comparison that whilst conventional trademark protection is focused on protection of commercial goodwill and consumer confusion, the halal forensics adds an extra dimension of ethical, religious and forensic considerations. This, in a nutshell, is where halal forensics not only fits into the remit of intellectual property law but also extends to halal compliance, consumer confidence and transparency in supply chains.

The incorporation of halal forensics into the brand protection strategies brings about the sanctification of halal certification in accordance with Islamic principles, which is not a mere marketing tool. Coordinating legal and forensic tools can help establish a comprehensive governance structure that ensures IP rights are upheld while maintaining the sanctity of halal consumption.

Additionally, this two-level approach underscores the importance of implementing technological advancements like blockchain-based traceability solutions that can offer an unalterable record of halal certification in international supply chains. These innovations help to reinforce consumer confidence as halal claims are verifiable and transparent and are not manipulated.

Recommendations

Based on the findings of this study, several recommendations are proposed.

Strengthening Halal Forensics Framework

Malaysia should develop a comprehensive framework of Halal forensic system which combines scientific analysis, legal investigation, auditing system and digital verification system. Such a system would help in early identification of any fraudulent practices relating to halal certification and branding.

Enhancing Enforcement Mechanisms

The regulatory bodies should take tougher measures to punish the companies that are using halal logos, trademarks or halal certification-related representations inappropriately. Implementing tougher punishment could discourage repeat offenses and improve conformity.

Adoption of Blockchain and Digital Traceability

To improve transparency in the halal supply chain, blockchain technology and digital traceability systems should be used. These technologies could help consumers and regulators to verify the authenticity of the products and the halal status.

Consumer Awareness Programmes

Government agencies and industry stakeholders need to conduct educational programmes to educate the public about the procedure of halal certification and verification. With informed consumers, they can play a big role in the fight against fraud in the halal marketplace.

Strengthening Corporate Governance

Compliance programmes should be developed internally for halal certified businesses, which should include regular audits, employee training and IP protection strategies. This would help to minimize the chances of misuse of trademarks and representations relating to halal.

Promoting Maqasid al-Shariah-Based Governance

The approach of Maqasid al-Shariah in the protection of religion, life and property should be established in the future halal governance policies. This would keep the halal standards in line with both religious standards and industry demand.

Conclusion

The case of Tan Kim Hock Tong Seng Food Industry Sdn Bhd v Tan Kim Hock Product Centre Sdn Bhd & Anor [2016] 7 MLJ 561 is an example of how protection of the ‘halal’ brand can go beyond the conventional approach of trademark litigations. The case emphasizes the significance of protecting consumers' trust, avoiding any fraudulent acts, and ensuring the integrity of the halal certification systems (Halim et.al, 2019).

The court's recognition of the plaintiff's goodwill and trademark rights is in line with the principle that “halal” is an economic value and religious responsibility. Consumers' trust is lost if the sale of halal products is accompanied with the use of unauthorized trademarks, which will make the halal industry unsustainable (Hashim et al., 2023).

The case highlights the importance of proper verification, monitoring, and enforcement practices in the context of halal forensics (JAKIM, 2020). In the future, the combination of legal protection, forensic investigation and technological innovations will play a vital role in the growth and sustainability of the halal food industry in Malaysia (Mohd et al,2020).

Ultimately, the protection of halal brands is a direct contributor towards the objectives of Maqasid al-Shariah; namely to safeguard the religion, the life and the property, as well as transparency, integrity and trust within the halal ecosystem (Hashim et al., 2023).

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