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HALAL CERTIFICATION MISUSE AND SUPPLY CHAIN FRAUD: THE CASE OF TAN KIMHOCK TONG SENG FOOD INDUSTRY SDN BHD V TAN KIM HOCK PRODUCT CENTRE & ANOR [2016] 7 MLJ 561

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ABSTRACT

This case study examines the Malaysian High Court case, Tan Kimhock Tong Seng Food Industry Sdn Bhd v Tan Kim Hock Product Centre & Anor [2016] 7 MLJ 561, through the lens of Halal Forensics. The core legal dispute involved an application for a Trade Description Order (TDO) under Section 9(1) and (2) of the Trade Description Act 2011 to address the disappearance of similar dodol products using counterfeit trademarks. Although traditionally viewed as an intellectual property conflict, this case exposed a critical weakness in the integrity of the Halal supply chain: the fraudulent misuse of the Halal certification mark permitted on products manufactured by non-certified third parties. By examining the legal framework, halal certification standard operating procedures, and the court's strong rebuke of halal misrepresentation, this study highlights how commercial fraud undermines the halal and toyyiban aspects. Lastly, this article highlights the critical role that Halal Forensics which includes laboratory analysis and regulatory enforcement plays in protecting consumer rights and preserving the legitimacy of the worldwide halal market.

Introduction

Halal is a require concept in Islam. In Islam, "halal" refers to "authorized" or "not banned" consumption. The Quran states that all wholesome food is halal. Muslims must base their dietary decisions on two requirements: halal and tayyib. In terms of language, halal means permissible while in terms of terminology, halal means anything that is permitted, permitted and exempt from prohibitions in Islamic law. Halal certification is a system that confirms that a product, whether food or non-food, meets the standards or guidelines set either from a sharia or technical perspective.

A brand’s reputation is built on years of consistent quality, trust and compliance with national standards including halal certification. In Malaysia, Tan Kim Hock is a household name, well-known both locally and internationally for its traditional delicacies such as Dodol Durian, Dodol Kelapa and coconut biscuits. Over the decades, the original manufacturer, Tan Kimhock Tong Seng Food Industry Sdn Bhd (the applicant), has built up considerable market goodwill and has successfully obtained official Halal certification for its manufacturing process.

However, a commercial rift occurred when a separate retail entity, Tan Kim Hock Product Centre Sdn Bhd which was the intervenor, stopped sourcing genuine products from the applicant’s factory. Instead, the retail centre started purchasing similar dodol products from third party manufacturers while continuing to package and sell them under a confusingly similar trademark to the applicant’s distinctive red and white coconut tree logo. Importantly, the defendant also retained the applicant’s legitimate Halal certification mark on the unauthorized packaging, leading to legal action under the Trade Descriptions Act 2011. Forensics is the application of science to criminal and civil laws enforced by police agencies in the criminal justice system. The same is true of halal forensics. Halal forensics is a field of science and investigation that uses laboratory analysis technology to verify the halal status of a product. It combines modern science (such as DNA or chemical detection) and Islamic law to detect whether food, cosmetics, or medicines are contaminated with illegal substances.

False Trade Description

Any mislabeling or inaccurate information about a product's halal status could lead consumers to believe it satisfies halal dietary requirements while it does not is referred to as a fraudulent trade description. False trade descriptions in Malaysia are governed by the Trade Description Act 2011. According to TDA 2011, any representation that is misleading to consumers but is not false is considered a false trade description. Additionally, the TDA 2011 forbids using inaccurate trade descriptions for products and making false claims regarding their ingredients or costs. One example of a deceptive trade description is the misuse of the halal emblem. To the best of our knowledge, the product's higher value appears to be influenced by the Halal certification and branding, which leads to widespread exploitation (Ahmad, F., M. Z. Hussein, N. F. Roslan, Z. J. Husny, A. Rahim N. S & M.Ramzi., 2016).

For instance, in false trade description is misuse of halal logo, which is the products were confusingly similar. This situation may cause consumers to think that Tan Kim Hock Product Centre Sdn Bhd products are genuine products manufactured by Tan Kim Hock Tong Seng Food Industry Sdn Bhd, when in fact the products are not manufactured by Tan Kim Hock Tong Seng Food Industry Sdn Bhd. In addition, the issue of using halal certification associated with Tan Kim Hock Product Centre Sdn Bhd products may also increase consumer confusion regarding the origin and authenticity of the products. According to Section 9 of the Trade Descriptions Act 2011, a registered trademark owner may apply to the High Court for a Trade Description Order where another party uses a mark or get-up that is not identical but is capable of being passed off as the registered trademark. In this case, Tan Kim Hock Tong Seng Food Industry applied for a TDO against Pihak B because Tan Kim Hock Product Centre dodol products used a mark that was confusingly similar to Tan Kim Hock Tong Seng Food Industry registered trademark.

For instance, in the 2011 Trade Description (Certification and Marking of Halal) Order, according to this regulation, a product may only be certified as halal by JAKIM or the appropriate State Islamic Religious Councils (MAIN). It is a serious statutory violation to affix, display, or use an existing halal mark on a product for which it was not specifically granted. This "abuse of the halal certification" by the interveners was expressly acknowledged and denounced by the High Court.

Fact of the Case

The applicant, Tan Kim Hock Tong Seng Food Industry Sdn Bhd, is a company engaged in the manufacture, processing, distribution and sale of dodol products under its registered trademark. The applicant has established a reputation and goodwill in its trademark, which consists of the "T" logo, a red and white coconut tree, and the stylized letter "S".

In 2001, Tan Kim Hock Product Centre Sdn Bhd was incorporated to sell and market dodol products manufactured by Tan Kim Hock Tong Seng Food Industry Sdn Bhd. However, after the founder of Tan Kim Hock Tong Seng Food Industry Sdn Bhd sold his interest in Tan Kim Hock Product Centre Sdn Bhd, Tan Kim Hock Product Centre Sdn Bhd subsequently continued to sell dodol products independently.

In 2013, Tan Kim Hock Tong Seng Food Industry Sdn Bhd found that Tan Kim Hock Product Centre Sdn Bhd was selling dodol products that were not manufactured by Tan Kim Hock Tong Seng Food Industry Sdn Bhd but were using a mark that was confusingly similar to the registered trademark of Tan Kim Hock Tong Seng Food Industry Sdn Bhd. This raises the possibility of confusion among consumers, as they may believe that the product comes from Tan Kim Hock Tong Seng Food Industry Sdn Bhd.

Summary of the Case

Tan Kim Hock Tong Seng Food Industry Sdn Bhd and Tan Kim Hock Product Center Sdn Bhd are at conflict regarding the use of a trademark on dodol products in this case. Tan Kim Hock Product Centre Sdn Bhd was accused by Tan Kim Hock Tong Seng Food Industry Sdn Bhd, the registered owner of a trademark, of using a mark that was confusingly similar to its trademark on products that Tan Kim Hock Tong Seng Food Industry Sdn Bhd did not manufacture.

According to Tan Kim Hock Tong Seng Food Industry Sdn Bhd's application for a Trade Description Order (TDO) under Section 9 of the Trade Descriptions Act 2011, the use of the similar mark amounted to a false trade description and could deceive customers into thinking that the products were made by Tan Kim Hock Tong Seng Food Industry Sdn Bhd.

Tan Kim Hock Product Centre Sdn Bhd's dodol products bearing the infringing mark were determined to be counterfeit or copycat goods by the High Court, who granted the TDO. Tan Kim Hock Product Center Sdn Bhd's appeal was denied. The Federal Court further affirmed that the High Court had the authority to designate products with a misleading trade description as imitation or counterfeit goods and that a TDO could be requested ex parte.

Issues

The key issue presented to the Malaysian High Court was whether the defendants had engaged in passing off by using a trademark that was confusingly similar to the applicant's registered red and white coconut tree logo to market and sell dodol products from an unapproved, third-party source. The court had to decide if the retail center's physical design, color scheme, and prominent package elements would result in structural deception and mislead customers into thinking they were purchasing the applicant's genuine, reliable products. The court had to consider the interveners' claim that the applicant had abandoned their original mark through non-use since they had left out the precise term "CAP POKOK KELAPA" on more recent package versions. This was directly related to a secondary trademark issue about abandonment.

From a thorough Halal Forensics standpoint, the primary concern goes beyond intellectual property ownership to include a serious violation of supply chain and regulatory integrity. The crucial question is whether it is a clear violation of Malaysian halal standards to unlawfully place and display a genuine Halal certification mark on goods produced by an unreliable third-party business. Because a Halal certificate is legally connected to a specific, verified manufacturing plant and its restricted raw ingredients, the court had to confront the repercussions of this identity deceit. Thus, the primary forensic concern is how the defendants' commercial manipulation broke the established chain of custody, thereby depriving the product of its verifiable Halalan Toyyiban status and putting Muslim customers at risk of food fraud and possible Syubhah (doubtful) consumption.

Court Decision

The court held that the plaintiff had successfully proven its case on the balance of probabilities, whereas the defendants failed to adduce sufficient and reasonable evidence to refute the plaintiff's claim or to establish their defence. The court found that a contractual relationship existed between the parties through the appointment of the defendants as the transportation company and a guarantee had also been given that the goods would be delivered in a clean and safe condition. The court further found that the defendants had breached their contractual obligations and duty of care by failing to cover the goods with canvas, failing to ensure that the delivery was carried out in a clean condition and also transporting it together with chemical substances. Such negligence caused the entire shipment to be rejected by the customer and resulted in losses to the plaintiff. Accordingly, the plaintiff's claim for special damages amounting to RM119,491.06, which comprised the value of the products and the SST costs incurred by the plaintiff, was allowed by the court. In addition, the court only awarded nominal general damages of RM2000 as the plaintiff failed to provide strong and sufficient evidence to support its other claim for losses. The court also allowed the interest as claimed, as well as costs of the action amounting RM13,000, which are to be paid by the defendants to the plaintiff.

Forensics Halal Elements

If we examine the Tan Kim hock Tong Seng Food Industry Sdn Bhd case, the most significant halal forensic issue involves violations of halal marking standards and regulations in Malaysia. According to the MS 1500 guidelines and the Trade Description (Halal Certification and Marking) Order 2011, the halal logo is not given in bulk to brand names but is specifically tied to processing factories that have passed the audit. In this case, the halal guarantee chain (chain of custody) was further broken when the defendant changed their dodol supplier to a third party whose cleanliness status is unknown, but still carelessly used the halal logo of the applicant factory. In fact, the High Court itself firmly stated in its judgment that the defendant's tactics were a form of abuse of halal certification to make easy profits and mislead consumers, especially Muslim consumers.

This act of manipulation is closely related to the principles of sharia and the general fatwa view on food integrity, especially in the issue of muamalat fraud. From the point of view of sharia law, the act of misleading Muslim buyers by imitating the identity of another brand is called Al-Ghash, which is cheating in business which is clearly forbidden by the Prophet SAW. When dodol from an illegal factory is marketed using the halal logo of another entity, the status of the food changes to Syubhah, which is doubtful. Muslim consumers have been denied their right to obtain food that is not only halal in its ingredients, but also Tayyiban, which is pure and traceable from where it was made.

Although this court case was settled under civil law, laboratory analysis remains the most logical forensic step if the counterfeit product is seized for further investigation. Since the food product came from a mystery factory that has never been audited by JAKIM or JAIN, scientific testing is essential for physical verification. Among the main tests that can be carried out is Real-Time PCR to detect if there is any residual pig DNA due to cross-contamination at the third-party factory. In addition, GC-MS methods can be used to check the fat profile in the dodol to ensure that the illegal manufacturer is not using a mixture of impure gelatin or animal oil. This combination of legal documeareary evidence and laboratory testing is the backbone of the field of halal forensics in protecting consumers.

By using these scientific techniques, halal forensics changes the way food fraud is challenged in court by shifting the burden of evidence from speculation to actual data. Forensic scientists can find concealed adulterations that are totally undetectable to the unaided eye or a typical paper audit by using sophisticated analytical tools. This combination of chemical profiling and molecular biology guarantees that a product's molecular blueprint will disclose the truth even if its packaging is exactly like the original recognized brand. In the end, this exacting scientific method fortifies the whole halal ecosystem by offering indisputable, impartial proof to uphold public confidence and help regulatory enforcement.

Halal forensics changes the burden of evidence from conjecture to actual molecular data by using these proven scientific techniques, which is essential for establishing food fraud cases in court (Irwandi &

Ramli, 2020). Any covert adulteration or violation in the halal supply chain may be objectively confirmed and legally defended thanks to this meticulous analytical method.

Fatwa & Shariah Aspects

The violation of halal integrity in this case is closely related to the general Islamic law view on business ethics and marketing, as explained in Irsyad al-Fatwa Series 263 by the Federal Territories Mufti Office. According to the fatwa, any form of fraud, manipulation of information, or brand exploitation to increase sales or better known as false marketing tactics is strictly prohibited and the law is haram. In the context of the Tan Kim Hock case, the defendant's action of changing the dodol supplier to a third party but still maintaining the applicant's halal logo and original packaging is a clear form of trade manipulation to mislead buyers. From a Shariah perspective, this fraud falls under the concept of Al-Ghash, which is cheating in muamalat. The fatwa emphasizes that the property or profit obtained because of such marketing fraud is not blessed and is not Tayyiban. The concept of toyyiban refers to something that is good, pure, clean, safe, and of quality. Therefore, the act of misusing the halal identity of another entity for commercial gain not only violates civil law but also contradicts sharia principles because it denies Muslim consumers the right to obtain products whose manufacturing process is believed to be pure.

Conclusion

Overall, the case of Tan Kimhock Tong Seng Food Industry Sdn Bhd v Tan Kim Hock Product Centre & Anor [2016] proves that halal integrity cannot be separated from the legal aspects and transparency of the supply chain. The High Court's decision in favour of the applicant not only protected the intellectual property rights of a brand, but also indirectly saved Muslim consumers from becoming victims of food fraud. This case is a stark reminder to industry players that the halal logo has a very high accountability value, it is not just to sell sales, but a syara' guarantee that specifically binds the manufacturer, premises, and product. From a halal forensics perspective, this case clearly shows that threats to the halal status of a product do not necessarily come from issues of contamination of raw materials in the laboratory alone but can occur through identity manipulation and distribution chain. When the integrity of documents and certification rights are abused, the entire Halal Toyyiban ecosystem for the product collapses immediately. Therefore, synergy between civil law enforcement (such as the Trade Descriptions Act) and the application of halal forensic science is very important to ensure that the halal product market in Malaysia remains clean, authentic, and trusted without any doubt. Therefore, maintaining the purity of halal is not the responsibility of one party or placed on the shoulders of an authority such as JAKIM alone. The industry must be honest in doing business, traders must not manipulate brands, and consumers must be aware of their rights. A strong halal ecosystem will only be achieved when all parties work together to safeguard our food chain.

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