

A Study on Application of False Trade Description towards Halal Food Products

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Abstract— This study elaborate the scenario of Halal industry and the importance of safeguarding the integrity of the Halal certification. Nowadays, it is common to have complaints on the misused of the halal logo. It appears that the Halal certification and logo in deed plays a role in adding value to the product which leads to its rampant abuse. The authors will discuss on the usage of the local law as a means of protection of the Halal food product. A comparison between the previous and current law will show the elaborative expansion of the new legislation to cover the scope of the abuse in the recent time.

Keywords— *halal, false trade description, halal product*

1. Introduction

The research study is a discussion of a reported case law on false trade description on the sale of halal food product. A further comparison between the old and the new Trade Description Act will show a wider scope to ensure protection of the Halal logo. The reason of interest in this matter is to prevent abuse of the logo in the local market.

Sale of food product is one of the area whereby seller can easily reproduce the Halal logo just for the sake of sale as reported on the sale of rice vermicelli which originally made in Indonesian company having proper Halal certification from Indonesia Ulama Council and recognised by Jakim [1]. The fake rice vermicelli was produced in an unhygienic and dirty preparation at a factory in Jalan Ipoh and the Halal logo used by the local company was of the logo issued by Jakim and also

used the same symbol as the one made by the Indonesian company. Clearly this is a violation of the false trade description against the misused of the halal logo.

As such, the problem or issue here is to prevent further abuse and misused of the Halal logo which will reflect negatively towards the billion ringgit industry. It is worth noting that there is very little academic research on this issue and the case law cited is an opportunity for the authors to expand the academic knowledge in this field. Therefore, it is the objective of the authors to study the application of the old Trade Description Act 1972 in the cited case law. This will in exchange enable the authors to reflect on the manner on which false trade descriptions comes into action in it effort to protect the Halal logo against future abuse.

2. Literature Review

2.1 Halal Industry. Government's intention in making Malaysia as a global Halal hub; has created a new playing field in which the participation of Muslims' SMEs is very much desired. The Halal hub will create opportunities for the Muslims SMEs to penetrate the Halal market such as the Middle East, the OIC countries and the rest of the world. A study done [2] shows that out of 136 SMEs, only 64.9 per cent of these SMEs have obtained Halal certification and 44.3 per cent of these entrepreneurs are Muslims. However, there are another 35.1 per cent of SME who still do not obtained halal certification. This is quite a big number since Malaysia is a Muslim country and being the first country to introduce Halal status and Halal logo in 1971 and halal standard MS1500 was first introduced in 2004. From this study, we can also see that non-Muslim entrepreneurs are more than the Muslim entrepreneurs. The concept of

halal is well accepted and adopted by the non-Muslim businesses since they can see the huge potential of business opportunity. Nevertheless, the non-Muslims are facing a huge challenge in adopting the halal standard [9]. This indicates that halal control is needed to ensure that the integrity of halal product is safeguarded. This is because non-Muslim entrepreneurs will not take halal as responsibility but more as business needs or to gain trust from Muslim customers. Therefore, a better control is needed to guarantee the wholesomeness of halal product.

2.2 Halal certification. World Halal market has reached 3 trillion USD and increasing rapidly. World industry has recognized the huge potential halal industry. Companies are starting to look at Halal as added value for their product and services. Malaysia Halal certification is the only certification that has the government controlling and monitoring the certification that made Malaysia's Halal brands much stronger than other [3]. Malaysia halal authority is called Malaysian Islamic Department (JAKIM). JAKIM halal certification and logo are well recognized worldwide. Due to trust that people has on JAKIM halal logo, there are companies that abuse and misused this JAKIM halal certification and logos to enable them to penetrated the Muslim market. This study shall discover the significant importance of protecting Halal Logo from abuse via the Trade Description Act 2011.

2.3 Definition of halal. In relation to the issue in hand, Halal under the Act [4] is when a food or goods described as halal or described in any other expression to show food or other foods that can be consumed or used by the Muslims, the expression means food or other goods that is not consisting any part of an animal or thing prohibited by Islamic Law for Muslims to eat or not slaughtered according to Islamic law. It does not contain unclean, intoxicant, limb or part of human limb or product, non-toxic according to Islamic law. Nor can it be injurious to health. It must also not been prepared, processed or manufactured using any faecal contaminated equipment and mixed near any food that is prohibited by Islamic law. The origin of halal principles derived from the words of God in the Quran. Among others are the following verses in surah Al-Baqarah, 2:168 which says "O ye people! Eat what is on earth, lawful (halal) and good (toyib)..." and surah (Al-Baqarah, 2:172-173) "O you who believe! Eat of the good things that we have provided to you, and be grateful to

God, if it is He ye worship. He hath only forbidden you dead meat, and blood, and the flesh of swine and that on which any other name hath been invoked besides that of God."

2.4 Case Law. In the reported case [5], A food product manufacturing company producing instant noodles has used the Halal logo without disclosing the fact that the soup powder contained some material of animal produce in nature. Instead, the instant noodles package state "EDIBLE VEGETABLE OIL". The food product manufacturing company producing 15,074 instant package noodles, has applied a false trade description namely "Halal" in their course of business when the soup powder actually contain "ANIMAL FATS/OIL"

The authors will be discussing on the second charge here which was whether the defendant had also apply a false trade description to a second batch of 8338 cartons x 30 x 85 gm. Curry Flavour "Horlic" Brand Instant Noodles, namely edible vegetable oil printed as one of the soup powder ingredients, without disclosing that the soup powder also contains animal fat/oils.

The prosecutor was successful in their appeal to charge the defendant on the second offence which was in violation of the Trade Description Act 1972 due to the following factors: The words "edible vegetable oil" does not reflect "animal fats or oils" which the result from the chemist actually in fact shows that it does contain animal or non-vegetarian fats. The said product were being sold to the public at large, not only to the non-muslim community in Sarawak.

A summary of the facts of the case worth noting is that on the appeal against the conviction of the second charge i.e. the defendant applied a false trade description namely "Edible vegetable oil" on packets of instant noodles whereas in fact the soup powder contained animal fat and thereby committed offences under the Act. Here the material facts that the description 'edible vegetable oil' is a false trade description. The learning Judge, Justice Tan Chiaw Thong held "The court found that by failure to disclose the fact that there were traces of animal oil or fat when in fact such an item forms part of its composition, and if such item of food is intended for sale to all sections of the community including Muslims, such an omission in the court view would amount to a false trade description to material degree".

It can be noted here that the Trade Description Act 1972 before the amendment was properly applied to protect the sanctity of the Halal Logo. It has the potential to ensure that all Halal Logo license holder will uphold the integrity of the said Logo and not merely using it as a marketing tools to gain profits. Based on the above example, a proper usage and application of Trade Description Act 2011 shall have the potential to safeguard the sanctity of the Halal Logo.

3. Methodology

The author refer to secondary data being reported case from Malaysian Law Journal, local legislation, online published journal and books that are Trade Descriptions Act 1975 and Trade Descriptions 2011.

4. Discussion

A good analysis on the old and the amended law is Trade Description Act is required to ensure proper application of the Act in as a tool to protect the Halal logo. Firstly by looking at the old Trade Descriptions Act 1975. In relation to the prohibition of false trade descriptions via Section 3. (1) which stated that any person who, in the course of a trade or business (a) applies a false trade description to any goods; or (b) supplies or offers to supply any goods to which a false trade description is applied, shall be guilty of an offence. Upon conviction of the offence shall be liable for punishment under Section 18 of the Act. Here the penalty for offences are against any individual person, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both and, for a second or subsequent offence, to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding six years or to both. On the other hand, any person being a body corporate guilty is liable to a fine not exceeding two hundred and fifty thousand ringgit and, for a second or subsequent offence to a fine not exceeding five thousand ringgit.

To compare with Section 5 (1) of the amended Trade Descriptions Act 2011 which states any person who (a) applies a false trade description to any goods; (b) supplies or offers to supply any goods to which a false trade description is applied; or (c) exposes for supply or has in his possession, custody or control for supply any goods to which a false trade description is applied.

The penalty imposed remains the same for the new Act except for the penalty against individual for a second or subsequent offence, to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both. It appear that the Act has reduce the number of imprisonment from six to five years for the second offence.

The similarity between the two Acts guarantee the protection of the trade marks of halal logo usage, as it can be noted that Section 3 of the old Act is now reflected in Section 5 of the new Trade Description Act 2011.

Here, a wider scope of the false trade description is given to make it easier to specify the offences. Under the new Act, now those who has in possession and control of fake halal logo product for purpose of supplying to others accountable for the illegal action under the Act.

This is extremely important as it has been reported [6] that the consumer nowadays seek information on the social conditions at the production sites despite the fact that they have very little voice to state their displeasure of the inconsistency of the licensed holder in observing the Halal practice. Moreover, the literature also raise the issue on the lack of policing has led to the abuse of the halal certification from the competent authority. Moreover, the journal also raise the issue on the lack of policing has led to the abuse of the halal certification from the competent authority. There is also a growing consciousness among the consumer on the status of halal pharmaceutical products as these also also part and parcel of food product. Again the consumer are demanding for information and verification of the status through the leaflet of the medicine which offers very little information, thus showing another section of the halal product that needs to be protected [7].

5. Conclusion

Our local consumer are very confident in purchasing food product that the non-Muslim restaurant or shop provided they company post the Halal logo sticker issued by Jakim. This warrant the fact that such logo and certification must be protected by the respective bodies even more so [8]. Without which, not only the Halal industry will be at loss but the end user that is the costumer will be at a disadvantage. A further discussion on the cited case needs to be address in the future as it relates to the first charge made in court against the defendant. This should also include the problem on limitation period to take action against the violator of the Halal logo.

Acknowledgments

The authors would like to thank all that were involved in the study of this research.

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