

Trade Names and Trademarks in the Context of Shariah

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Abstract-

This important issue has arisen since the last few centuries when countries have been interconnected as if the whole world were like a house or a village and there has been strong commercial development all over the world and national companies have come into existence which are unprecedented in human history. It so happened that the goods offered to human beings differed in their excellence, characteristics and even in rates. It became difficult for every man to distinguish between good, inferior, best quality and low quality. Choose a method that allows the customer to distinguish between different quality items. The best way to do this is to use trade names and trademarks. In the early twentieth century, trade names began to be used¹. This is why we often hear that "something sells in its own name". The significance of this can be gauged from the fact that if a non-alcoholic beverage named Pepsi is removed from it, consumers will be reluctant to buy it as a normal drink, because it is trusted.

Keywords: trademarks, products, intellectual property rights, goods, trade name, contracts, buying and selling.

Definition of Trade Name

A trade name is a special name that indicates the commercial company of the item and distinguishes it from other company's products and indicates the characteristics of the item enter trade names on².

The company uses this trade name not only on its products but also in correspondence, pads, contracts and transactions. It is also used in advertising and advertising³.

Definition of Trademarks

Trademarks are specific signs that merchants and companies put up as symbols of their products to distinguish them from other companies' products and make it easier for consumers to recognize the company's products and the beauty of the products. Be that which attracts customers⁴.

It is a collection of trademarks, designs, words, numbers, colors, shapes.

Differences between trade names and trademarks

There are several differences between trade names and trademarks

[1] The company must have a trade name, while trademarks do not require a trademark

[2] A trade name is intended to distinguish a company from other companies, while a trademark and trademark are intended to distinguish a product

[3] The trade name of a company can be the same, while trademarks and trademarks can be multiple⁵.

The importance of trade names and trademarks

Some trading companies have a place and status in the manufacture of goods. They produce excellent and good goods which makes their goods sold more. Buyers are more likely to be attracted to it than other companies. When consumers see that the goods manufactured by such and such company have a good reputation in the market, they buy it as soon as they hear the name of the company or see its trademark on the goods but if the goods belong to a particular company but If the trademark is not listed on it, consumers will be reluctant to buy it as normal.

Trade name and trademark registration

Whenever a business person creates something unique and brings it to the market in order to make a profit, at the same time he is afraid that he will not start a business with his name and trademark. The business will be affected and it will also deceive the public, so in order to protect its unique product, it registers trade names and trademarks with the government so that its name and identity can be preserved as the business expands. People should not be deceived, of course, in any country, the protection of investment rights must be fully protected. Because unless rights are protected, investors are afraid to invest, which makes the country's economy unstable and the graph of investment goes down. The biggest obstacle to foreign investment in Pakistan is the lack of protection of intellectual property rights.

Legal status of registration

After registration, legally no other company can manufacture any goods on this trademark and no other person can open any company or institution on it. If other people use this name, it is very commercially There is great arrogance and deceit and there is deception with the buyers and an important principle in the legal matters of Shariah is that nothing should be done that would cause deception to others. Therefore, if a person preserves a name or trademark in his favor to protect people from deception, then it is strictly Shari'ah and it is not permissible for another person or institution to use it because of deception, such as a person. It is forbidden for another person to make a seal of the name, and what could be the reason for its prohibition?

Price in trade name and trademark alias

As the trade name and trademark on the product has become more and more unattractive to the customers in the present times, the trade name and trademark has become valuable after registration in the name of the traders, and every trade name that Having a good reputation among the people will bring a lot of benefits and value. Because they expect from these trade names and trademarks that they will attract more people to buy their products. But it takes a lot of time, money and so on.

Having the right to a trade name and trademark

Is the trade name or trademark an exclusive right of the individual company or entity, ie can any other individual or company use that name and trademark without its permission? There are two opinions about this

First statement: Some people say that trade name or trademark is not a right but it is all through oppression and deception.

So the mysteries of the world are written

A trademark is not a similar right or benefit that is proven by reason, nor is it like a right established in a material thing, but it is the most important source of oppression and deception⁶.

The second statement: According to most contemporary jurists, everyone has the right to have a name for their business and to have a trademark on their product if a person has a business name or a trademark. His interest became associated with this trade name and trademark, that is, there was a demand for something with that name, etc., so now this special name and special trademark became his right. The right to set the symbol is no more

Maulana Ashraf Ali Thanwi used to write

Everyone has the right to name his business, but if one person names his business Attaristan or Gulshan-e-Adab and his commercial interest is attached to it, then the other person does not have

the right to have that name. If the future tehsil is for goods and trade with a special name, then it is permissible to take compensation for goodwill.⁷

Trade name and trademark compensation

Is the trade name and trademark a trademark property or not and is it permissible to take compensation for it if it is permissible to take compensation in case of buying and selling or in case of deduction and withdrawal?

There are two views on this: The first statement: According to some jurists, the trade name and trade mark are not rights at all. According to them, this is not property, and it is not permissible to take compensation for it in any case, neither in the case of buying and selling nor in the case of withdrawal.

Abu Umar writes: This right is not wealth and it is not permissible to exchange it. This statement will be in accordance with the religion of the Hanafis who do not believe in the value of profit⁸.

Second opinion: According to most contemporary jurists, it is permissible to take compensation for this right, but then they have two opinions

{ 1 } The opinion of some jurists is that trade names and trademarks are in the order of property and like property, their disposal and their purchase and sale are permissible.

This right has been declared as wealth and this is the requirement of the religion of the majority scholars [Malikiyyah, Shafiyyah, Hanbalah, some contemporaries of Hanaf] and those scholars who consider profit as wealth⁹.

Mufti Mohammad Taqi Osmani writes

Akhtar's view is that the right to a trade name and the right to trademarks are actually discrete rights which are not evidenced in any tangible thing, but the government registration for which one has to run a long race and spend a lot of money and after which the legality of the trademark on the name is expressed by the written certificate that the registrant gets after registration in the government papers. And in the name of traders, this right became in the order of Ayan (material objects). Therefore, it should be permissible to exchange it through a pledge and there is no doubt that ``arf" has a great influence in entering some items into the ``Ayaan" because according to the statement of Allama Ibn Abidin, the value is proved by the creation of people's wealth. An example of this is electricity and gas, which in the past were not considered as the property of ``Wa'yaan" because these two are not material things that are permanent and it was not in the power of man to possess them. There is no doubt because these two things have a degree of profit and it is also possible to achieve them¹⁰.

There are two conditions for their sale and purchase to be valid:

[1] The first condition is that the trade name or trademark is legally registered with the government because the name or trademark that is not registered is not considered as property of the traders.

[2] The second condition is that the sale of the trade name or trademark should not lead to deception and fraud in favor of consumers. For example, it may be the case that the buyer declares that the person making the goods is no longer the company that used to manufacture the goods under that name and the buyer of the name or trademark buys it with the intention that he will try as much as possible to ensure that the product will be of equal or better quality than the previous product.

Therefore, transfer of the trade name or trademark to another person without this declaration will lead to fraud and deception on the part of consumers, and fraud and deception are forbidden and are not permissible under any circumstances¹¹.

Maulana Muhammad Junaid Alam Nadvi Qasmi writes: "The trade name and trademark has become a valuable thing for the businessmen and it is bought and sold".¹²

Maulana Khalid Saifullah Rahmani writes: "Since it is a reserved right and because of the fame of this name, economic interest has also been attached to it, therefore it is in the order of wealth and its purchase and sale should also be valid."¹³

{2}: Some jurists of Hanaf contemporaries are of the opinion that trade name and trademark is a separate right and it is not even related to the owner, so it is not permissible to buy and sell it, but it is permissible to take compensation for it as a waiver.

So Maulana Ashraf Ali Thanvi writes: "The name [of the factories] is a mere right which is not the Shariah of the people, and it is not permissible to take it in exchange for it. But Allama Shami has supported the legitimacy of taking certain rights in exchange from Hamwi with some branches, and the name of the factory is also similar to the right of inheritance, that it is proven for the reason of originality, not for the prevention of harm, and both are actually additional matters, and in the future, both are means of tehsil wealth. Therefore, there is scope for giving it in return, although there is piety for the recipient, but it is necessary. I will allow that too"¹⁴

Mufti Muhammad Afzal Hussain Basti writes: "The sale of a trademark and trade name is not permissible either before or after registration, because it is neither exact nor does the right belong to the beneficiary, and for the sale to be valid, it must be exact or at least the right must be exact, but it is permissible to take it in exchange for it in the form of a waiver, because these trademarks and trade names are like gifts, and it is permissible to take a gift in return by way of waiver, so it is also permissible to take it in return by way of a waiver"¹⁵.

Maulana Anwar Ali Azmi writes: "In some cases, it would be correct to take the exchange of the firm and trademark as a descent [withdrawal], for example, one of the two partners wants to

separate from the joint business. The firm and the trademark have become quite famous. The person doing business under the name of the same firm will benefit from all the good until now. If he leaves it idle, a useful thing will be wasted, and if he transfers this right to another, he will save his money and labor from being wasted And the other will also get some benefit from it, however, accepting a right and giving it up in some cases is correct¹⁶.

However, according to the public jurists, it is permissible to take compensation for it, according to some, as a purchase and sale, and according to others, as a relinquishment, but it is generally necessary that when transferring a trade name or trademark to another, it should be announced that the owner and manufacturer of this company and commercial products have changed, and the previous standard should also be maintained so that there is no need for fraud and falsification.

Decision of Majma Fiqh al-Islami

In its fifth meeting held in Kuwait from 1st Jumadi al-Awli to 6th Jumadi al-Awli 1409 A.H., after a thorough discussion and research, the Majmaal al-Fiqh al-Islami decided that the possession of rights to trade names, trademarks, copyrights, inventions, etc., will be permissible to transact with concerned position.¹⁷.

Conclusion

The bottom line of the entire discussion is that the scholars do not consider trademarks and trade names to be valuable, nor do they believe in compensation. Similarly, their buying and selling are also just like. They are also not convinced of inheritance etc. On the other hand, those who are convinced of wealth because of its name, because a person makes something but someone else makes it without permission, it is a loss and loss of his right. Some conditions should be put so that it can be considered as his own right by subjecting him to the exact thing, like the business of gas etc. These two things are among the most important valuable assets, for which there is no doubt about the justification of buying and selling, because there is a limit of profit in both of these things and it is also possible to achieve them. And this is the saying so that people can have confidence in buying and selling, get the benefit of their product and avoid fraud.

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