

Consumer Protection of False Halal Logo and Misleading Representation under the Consumer Protection Act 1999

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Abstract

The law is the most effective mechanism in imposing liability against a supplier or manufacturer in the issue of false halal logo and misleading representation. This is because the law puts the responsibility on the supplier or manufacturer to ensure that they supply a product that is halal as stated. However, the question arises as to whether the rights of the consumers regarding false halal logo and misleading representation were fully protected under the Consumer Protection Act 1999. Therefore, this article aims to analyze the liability of the supplier or manufacturer under the Consumer Protection Act 1999, concerning matters regarding consumers protection in the case of the false halal logo and misleading representation. The findings of this article revealed that the Part II, V, and X of the CPA 1999 are not sufficient to address the liabilities of the supplier or manufacturer on the issue of false halal logo and misleading representation. This study implies that the Consumer Protection Act 1999 should be reviewed in order to provide consumers with better protection. An effort needs to be done to improve the consumer protection laws in Malaysia, thus growing in tandem with the halal industry.

Keywords: consumer law, consumer protection, false halal logo, halal, misleading representation

1.0 Introduction

The halal industry is one of the most profitable and influential market arenas in today's business world. The global halal market is expected to increase between USD 3 trillion and USD 4 trillion over the next five years due to continuous demand from Islamic and non-Islamic countries (Yusof, 2018). The growth of the global halal industry has also affected the halal industry in Malaysia. Despite the growth of the

halal industry in Malaysia, the issue of the false halal logo and misleading representation haunt the consumers. The repeated incidence of false halal logo and misleading representation reported by the media have put the consumers at risk of consuming non-halal food. The Department of Islamic Development Malaysia (JAKIM) is responsible for the issuance of halal certificates and the execution of halal policy related to food and non-food products. Under the Trade Description Act 2011, JAKIM is empowered to carry out enforcement against traders who abuse the use of the halal logo on their products (Order 3 of the Trade Descriptions (Certification and Marketing of Halal) Order 2011). However, this action can only be taken if a person or a body abuse the halal expression as it is not compulsory to have the logo displayed (Nurhafilah & Faridah, 2012).

In Malaysia, the specific laws regulating halal issues are under the Trade Descriptions Act (TDA) 2011 and two orders, namely, Trade Descriptions (Definition of Halal) Order 2011 and the Trade Descriptions (Certification and Marking of Halal) Order 2011. Although TDA 2011 seems to provide a new feature for greater statutory protection and tighter enforcement against false halal description, it is still inadequate in protecting consumers, especially in providing an avenue for consumers to claim compensation in the case of false halal logo and misleading representation. This is because the TDA 2011 is criminal in nature with the objective of punishing the offender and this does not entitle the victim to get compensation in the case of false halal logo and misleading representation (Naemah & Norazlina, 2015). In fact, the TDA 2011 seems unable to handle the issue of false halal logo and misleading representation as there are still cases reported by the media. Table 1 shows the selected cases of false halal logo and misleading representation which were reported in Malaysia.

Table 1 : Reported cases of false halal logo and misleading representation

Year	Location	Item	References
2019	Ipoh	Snack Food	Bernama, 3 October 2019
2019	Penang	Dates	Bernama, 23 April 2019
2018	Ipoh	Prawn Cracker	The Star Online, 5 Jan 2018
2018	Chemor	Snack Food	New Straits Times, 27 July 2018
2017	Sitiawan	Chicken Slaughter	Bernama, 20 June 2017
2017	Puchong	Cooking Chocolate & White pepper powder	HMetro, 8 February 2017

From the reported cases, it shows that the TDA 2011 has weaknesses, so alternatives need to be sought to address the issues involving false halal logo and misleading representation. As such, there is a need to review existing laws, in particular to provide provisions for civil liability, such as the Consumer Protection Act (CPA) 1999 to control the issue of false halal logo and misleading representation. By enacting the Consumer Protection Act 1999, it is expected that more protection is given to consumers. The Consumer Protection Act (CPA) 1999 is the main legislation that provides protections for consumers. Consumer protection is designed to promote and protect the interests of consumers. A consumer always has weak bargaining power; thus, there is a need to protect them through adequate and effective laws (Zeti Zuryani et al., 2015). Therefore, the Tribunal for Consumer Claims (TCC) has been established under the Act, which provides a simple, speedy and cheap redress mechanism. Under the TCC, an aggrieved consumer may refer to any dispute of all kinds of products and services that are offered or supplied to the consumers. Adopting the content analysis method, this article aims to explore the CPA 1999, especially in terms of their adequacy in protecting consumers with respect to false halal logo and misleading representation. It first provides an overview of the halal product in the Islamic law perspective. This background knowledge is important in understanding the importance of halal products for Muslim consumers. The rest of the article is devoted to the discussion on the CPA 1999 specifically Part II, which deals with false and misleading statements, Part V which scrutinises the implied guarantee relating to the supply of goods, and Part X which deals with the strict liability regime.

2.0 Halal Product in Islamic Law Perspective

The term Halal is derived from the Arabic word which literally means permitted, allowed, lawful, or legal (Miskam et al., 2017). Al-Qardawi defined halal as that which is permitted by Islamic law and upon which no restriction exists and the doing of which Allah has allowed (Al-Qardawi, 2013). In contrast, haram is anything that is forbidden or prohibited by Allah (Roestamy, 2015). Thus, the meaning of halal refers to something that is allowed to be eaten, drunk, and done based on Islamic law.

Section 3 of Trade Descriptions (Definition of Halal) Order 2011 states that when food or goods are described as Halal or are described in any other expression to indicate that the food or goods can be

consumed or used by a Muslim, such expression means that the food or goods:

- (a) neither are nor consist of or contain any part or matter of an animal that is prohibited by Hukum Syarak for a Muslim to consume or that have not been slaughtered in accordance with Hukum Syarak;
- (b) do not contain anything which is impure according to Hukum Syarak;
- (c) do not intoxicate according to Hukum Syarak;
- (d) do not contain any part of a human being or its yield which are not allowed by Hukum Syarak;
- (e) are not poisonous or hazardous to health;
- (f) have not been prepared, processed, or manufactured using any instrument that is contaminated with impurities according to Hukum Syarak; and
- (g) have not in the course of preparing, processing, or storing been in contact with, mixed, or in close proximity to any food that fail to satisfy paragraph (a) and (b).

The definition represents that halal covers every aspect of the production in terms of cleanliness, free from 'contamination', and is healthy as prescribed by Islamic law (Rahman et al., 2018).

The primary basis that Islam has determined is that all creation by Allah is halal (permissible) and lawful (Man & Yahya, 2014). There are only a few verses in the Qur'an and Hadith concerning prohibition, thus, whatever that is not mentioned in the Qur'an and the Hadith is considered as halal and lawful. The followings are the mentioned verses:

In Surah: Al- Baqarah (2:168), Allah stated that;

“O' mankind! Eat of that which is lawful and wholesome in the earth, and follow not the footsteps of the devil; because, actually he is an open enemy for you”.

While in Surah Al-Maidah (5:3), Allah stated that;

“Forbidden to you are carrion, blood, the flesh of swine, the animal slaughtered in any name other than Allah's, the animal which has either been strangled, killed by blows, has died of a fall, by goring or that devoured by a beast of

prey - unless it be that which you yourselves might have slaughtered while it was still alive and that which was slaughtered at the altars..."

Halal element is important in the selection and consumption of products under Islamic law. This is because most wisdom is hidden behind Allah's command. As a Muslim, the selection and consumption of products are not just for mankind to meet the needs of life, but also to perform their duties and responsibilities of being the caliph and servant of Allah in this world (Sawari et al., 2015).

3.0 Methodology

The research methodology chosen for this article is qualitative. This study involves an analysis of Part II, Part V, and Part X of the CPA 1999. Besides, library research technique was also applied in this study to find relevant information in respect to consumer protection on false halal logo and misleading representation through primary and secondary sources. The primary sources include statutes and case law, while the secondary sources comprise of law textbooks, law journals, and newspapers. Internet sources and online database are also used because it is beneficial in providing the latest development of the law. The collected research data were then analyzed using the content analysis method in order to highlight the lacunae of the CPA 1999 relating to false halal logo and misleading representation.

4.0 Results and Discussion

The Consumer Protection Act 1999, which came into force on November 15th, 1999 with the main objectives to provide greater protection for consumers and its provisions and cover areas that are not covered by other prevailing laws. It consists of a total of 14 parts containing 150 legal provisions for consumer protection. However, only three parts of the CPA 1999 were analyzed in determining the adequacy of the CPA 1999 in providing compensation with respect to false halal logo and misleading representation.

4.1 Part II of the CPA 1999

Part II of the CPA 1999 prescribes various business or trade practices which are regarded as misleading, deceptive conduct, false representation, or unfair practice. Though this Part is on the criminal

offence, the TCC usually uses this Part to award damages to consumers. It can be seen in the case of *Chua Hong Yiah v MBF Cards (Malaysia) Sdn. Bhd.* (TTPM-SAB-(P)-232-2007), which the TCC award damages in the breach of section 14 of the CPA 1999. In this case, the respondent promised to give a 37-inch Samsung LCD TV to the cardholder who spent three times and fulfilled all the three terms and conditions listed in the brochure. The claimant made a claim for the gift because it was qualified, but the respondent rejected the claim on the grounds that the claimant did not meet all of the terms and conditions specified on the respondent's website. The TCC ruled that the claimant was entitled to the gift as it had complied with the terms and conditions contained in the brochure. Therefore, even though Part II is criminal in nature, it is still important to analyze in terms of false representation.

Section 8 (a) of the CPA 1999 defines false, misleading, or deceptive as capable of leading a consumer into error. This section is beneficial to consumers as false representation with respect towards goods is considered an offence (Elistina et al., 2014). However, the CPA 1999 is seen to not provide specific definitions of the word 'representation'. Based on the judgment by the President of the TCC, Puan Siti Naaishah Hambali in the case of *Gunalan a/l Subramaniam v Swiss Garden International Vacation Club Sdn. Bhd.* (TTPM-WP-(P)-1588-2010), representation is defined as a statement of fact made by one party to the contract (the representor) to the other party (the representee) which, while not forming a term of the contract, is yet one of the reasons that induced the representee to enter into the contract.

However, it is doubtful whether representation will also include oral statement because the section clearly put conduct and practice as part of the offences. For example, if the seller tells consumers orally that the product has been certified as halal by the relevant authorities such as JAKIM, does that amount to an offence if the statement is not true? In *Gunalan a/l Subramaniam v Swiss Garden International Vacation Club Sdn. Bhd.*, the TTC held that the claimant (consumer) could not just rely on the words of the sales personnel to prove misrepresentation on the part of the supplier. In this case, the TCC held that there was no misrepresentation since the consumer could easily refer to the company prospectus and the agreement. The fact that the consumer failed to read the written documents and solely relied on the promise made orally was a lesson to be learnt by the consumer. Thus,

it can be concluded that consumers cannot solely rely on the words of sellers when it comes to the conformity of halal products.

Comparing with the TDA 2011, the trade description also includes oral statements, which is clearly stated in section 10 (2). Therefore, to avoid any doubt and uncertainty, it was suggested for the word 'oral statement' to be put clearly in the CPA 1999.

Section 10 of the CPA 1999 enumerates situations in which the representation becomes false or misleading. The particular item that is related to the issue of halal is Item (h). Item (h) stated that representation includes approval and endorsement from a certified body. Thus, it is clear that it is an offence if the supplier or manufacturer to supply non-halal food with false trade description from JAKIM. However, the provision is very general, in which it only stated endorsement and approval from certified bodies. Does it mean it only becomes an offence if the person uses a false halal logo? What if the supplier or manufacturer uses phrases such as 'Halal', 'Halal for Muslim' or 'Muslim Product' without halal certification from JAKIM? Does that amount to representation under the CPA 1999 even though it is an offence under the TDA 2011? Compared with the TDA 2011, Section 3 of the Trade Description (Definition of Halal) Order 2010 clearly stated that it is an offence for anybody to use the word 'Halal' except if they already get the approval from a competent body and put the logo as being certified by the Order. The CPA 1999, nevertheless, is silent on this aspect.

Besides, the Ministry of Domestic Trade and Consumer Affairs (KPDNHEP) has also provided the *Garis Panduan Mengelakkan Iklan Palsu atau Mengelirukan* to provide guidelines for false and misleading advertisement in order to protect the interests of consumers from being misled by advertisement. One of the scenarios provided under the Guideline is "the advertiser is not allowed to misuse the Quranic verses that will mislead the consumers." The example given is the advertisement for Ramadan buffet, which does not serve halal food. However, this guideline is only set out in the Guideline and is not provided in the Act itself. Therefore, it is better to incorporate a representation of halal in one of the item under section 10 of the CPA 1999.

4.2 Part V of the CPA 1999

Part V of the CPA 1999 enumerates the guarantees that have to be complied with by the suppliers in the case of the supply of goods.

In Part V, consumers are entitled to claim civil remedies from the supplier, including damages in the event of a breach (Elistina et al., 2014). Part V is introduced with the objective to protect consumers when entering into a contract of supply of goods. There are seven implied guarantees, but the one that is related to the issue of halal is the implied guarantee that goods comply with the description.

Section 34 provides that where the goods are supplied by description to a consumer, there shall be an implied guarantee that the goods correspond with the description. This provision is generally provided because it intends to cover many cases related to sale by description. However, this section does not provide a clear definition of the word 'description'. There is no provision under the CPA 1999 explaining the definition of the word 'description'. The absence of the definition of the word 'description' has raised some questions on the issue of halal. For example, the product displays a halal logo not from JAKIM and the product is declared 'halal' but does not have a JAKIM certified halal logo. Is this situation included in the definition of the word 'description'?

Comparing with the TDA 2011 under the Trade Descriptions (Goods made from any part of pig or dog) Order 2013, the TDA provides that suppliers must display goods or parts of goods made from any part of a pig or a dog whether for sale or as samples for sale, shall display the goods at a separate place, or label, tag, or mark the goods or parts of the goods by using the expression "Made From Pig" or "Made From Dog" (Order 4).

The Order is good because it indirectly protects and prevents confusion among Muslim consumers from buying products that contain illegal substances. However, this law does not entitle the consumers to claim any compensation in the event that the supplier fails to comply with this Order. Therefore, it is proposed that in the CPA 1999 particularly Section 34, it provides that if the requirements of description are set by any law, regulation or order, the supplier must comply with those requirements. This is to ensure that consumers can claim compensation under the CPA 1999.

4.3 Part X of the CPA 1999

Part X introduces a strict civil liability in respect of death, personal injury, or property damage caused by defective products. It imposes liability directly to a manufacturer, those who put their name on the product and importers. Although the term 'strict liability' does not

appear anywhere in the CPA 1999, it can be inferred when Section 68 (1) explicitly states that the person who shall be liable where any damage is caused wholly or partly by a defect in the product is the manufacturer. Part X is seen as a major reform in the consumer protection arena in Malaysia. It is believed that it will ease the burden borne by the consumer as it will overcome the problems inherent in contract law and tort of negligence, and accordingly will give better protection to consumers (Rachagan, 1992). In other words, under part X, the liability can be imposed without a contractual relationship and proof of fault. Even though Part X seems to give better protection to consumers, it however does not guarantee that a consumer's legal action against the manufacturer, those who put his name on the product, and the importers will be trouble-free.

The problem faced by a consumer under Part X is the kind of damage that can be claimed. The kind of damage that can be claimed is a bit disappointing in which the definition of 'damage' in section 66 (1) limits the consumer to claim damages other than death, personal injury, and damage to property. The definition of 'damage' under the CPA 1999 is not comprehensive enough to cover all types of damage. In the halal issue, if consumers suffer some illnesses such as vomiting after consuming a product with a false halal logo, he may lodge claims under the product liability law. However, after consuming false halal logo products, the consumer rarely suffers from physical injury. Usually, in many cases, the consumers experience emotional injury, such as mental distress and feelings of disappointment, and discomfort after consuming the false halal logo product. Whether damage or injury can be extended to non-physical loss is arguable in the absence of a clear definition of 'personal injury' under the Malaysian Act (Naemah & Norazlina, 2015). If the existence of Part X aims to provide additional protection to consumers, it should allow the claim for damage from goods that do not cause bodily injury or other property damage. Part X should allow claims for a pure economic loss, a loss that cannot be claimed under the tort of negligence. Pure economic loss is a loss without any physical damage or injury. If the claim is not allowed for this loss, there is no difference between the type of loss that may be claimed under CPA 1999 and the tort of negligence.

Another major problem to a successful claim under Part X is to establish a causal link. The consumer has to prove that the injury or damage has been caused wholly or partly by the defect in the product (Section 68). The burden of proof rests on the consumer, and this

clearly benefits the manufacturer, those who put his name on the product, and importers (Naemah, 1999). In other words, the consumers bear the burden of proving the defect in the product. This can be seen in the case of *Hufford v Samsung Electronics (UK) Ltd case* [2014] EWHC 2956. This case involved a claim under the Consumer Protection Act 1987 for damage caused to property when a fridge freezer caught fire. In this case, the claimant was able to show that the damaging fire began from the fridge freezer but was unable to point the exact cause. The court held that there was insufficient evidence to discharge the claimant's burden to show that the product was defective and found in favor of the defendant. Notwithstanding this, the court highlighted that the burden of proof remains on the claimant to prove the existence of a defect which caused the fire. From the case, it can be seen that the manufacturer could relatively easily avoid their products being classed as defective.

Therefore, in matters relating to halal where the product may contain prohibited or unlawful ingredients, it is difficult for consumers to prove the defect of a complex product. To prove that the product has been contaminated, expert opinion and detailed research need to be done, and this will require a high cost. It is clear that proving the cause of defects and the occurrence of damage is not something that is easy to do and obviously puts the burden on the consumer. Part X with the objective to reduce the burden borne by the consumers in claims of product liability is not achieved on the issue of halal.

5.0 Conclusion and Implication

With the growth of the development of the halal industry in Malaysia, consumers should not be left out in terms of protecting their rights, especially in the issues of halal. Therefore, the law plays a crucial role in protecting the consumer. However, the law of consumer protection which is CPA 1999 fails in many ways to achieve its objective by providing adequate protection to consumers. The above discussion shows that Part II of the CPA 1999 which deals with false and misleading statement, Part V which provides for implied guarantee relating to supply of goods, and Part X relating to strict liability for defective products have the shortfalls that need of a major revamp to suit the current trends, especially in protecting consumers in the case of the false halal logo and misleading representation. The CPA 1999 needs to be amended to include 'oral statement', 'representation of halal', and the comprehensive definition of the word 'description' and

'damages' in the Act to avoid any doubt or uncertainty. Even though consumers today are more knowledgeable, it is pertinent to emphasize that consumers are always in a detrimental position and thus, are exposed to exploitation. Further improvement of existing law is needed to provide a baseline for consumer protection in the case of the false halal logo and misleading representation to ensure adequate protection for the consumer.

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