



AL-MISBAH

RESEARCH JOURNAL

Recognized in "Y" Category Journal by HEC

ISSN (Online): 2790-8828. ISSN (Print): 2790-881X.

Volume IV, Issue III

Homepage: <https://reinci.com/ojs3308/index.php/almisbah/index>

Category

Y^{*}

Link: https://hjs.hec.gov.pk/index.php?r=site%2Fresult&id=1089437#journal_result

Article: PROTECTION OF TRADEMARKS IN ISLAMIC LAW AND ITS VIOLATIONS IN PAKISTAN

Authors & ¹ Yasir Arfat

Affiliations: Lecturer, School of Law, University of Gujrat.

² Naveed Hussain

Assistant Professor, School of Law, University of Gujrat.

Email Add: ¹ yasir.arfat@uog.edu.pk

² Naveed.hussain@uog.edu.pk

ORCID ID:

Published: 2024-07-19

Article DOI: <https://doi.org/10.5281/zenodo.14455144>

Citation: Yasir Arfat, and Naveed Hussain. 2024. "PROTECTION OF TRADEMARKS IN ISLAMIC LAW AND ITS VIOLATIONS IN PAKISTAN". *AL MISBAH RESEARCH JOURNAL* 4 (03). <https://reinci.com/ojs3308/index.php/almisbah/article/view/286>.

Copyright's info: Copyright (c) 2023 AL MISBAH RESEARCH JOURNAL






This work is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/).



EuroPub



 Published by Institute of Culture and Ideology, Islamabad.
 +92-313-305-2561, +92-300-030-9933
 www.almisbah.info



PROTECTION OF TRADEMARKS IN ISLAMIC LAW AND ITS VIOLATIONS IN PAKISTAN

* Yasir Arfat

** Naveed Hussain

Abstract

This article highlights several issues not only in regard to importance of trademark but also its impact on growth of economy and consumer protection. Trademark protection law is facing great challenges in Pakistan as it has failed to provide an adequate remedy to the victims. Its violations become more often when there is confusion in masses that whether under Islamic Law it falls in the definition of asset or not? Violation of intellectual property rights (IPRs) as a whole and specially trademark is one of the major reasons behind low foreign direct investment in Pakistan and also low spending on research and development in trade and business. Some sectors bear more losses and some comparatively less but overall these laws are less effective in Pakistan due to many reasons. Strong protection of trademark can lead toward a confident business environment where not only traders but also consumers will enjoy the confidence. Trustworthy situation will attract more enterprises as well as multinational firms in the country and ultimately result in growth of business and ballooning of economy. Violation of trademark casts human lives sometime. According to CNN almost 45 to 50% of the total medicines in Pakistan are counterfeited with the fake packaging. We still remember when 120 people died together by taking such fake heart medications at Punjab Institute of Cardiology Lahore in 2012. Supreme Court of Pakistan had also observed in a case *The Seven-UP Company vs. Kohinoor Thread Ball Factory* etc. that this is not so to merely protect the proprietor of registered trade mark but to safeguard the interest of public. Fake culture promotes dishonesty and mistrust in the society which shakes the moral values and believe upon principled life so government should play a vibrant role to curb this menace.

Keywords: Islamic Law, Trademark, Intellectual Property Rights, Consumer Protection, counterfeited products.

* Lecturer, School of Law, University of Gujrat.

** Assistant Professor, School of Law, University of Gujrat.

PROTECTION OF TRADEMARKS IN ISLAMIC LAW AND ITS VIOLATIONS IN PAKISTAN

Introduction:

It is evident from history that trademark and consumer laws were evolved with the prime objective to safeguard the consumer's interests. The spirit of both laws is same to protect the buyers from fraud and misrepresentation. Consumers are the main focus of trademark law. There are scholarly discussions regarding whether trademark law benefits producers or consumers in practice, or whether it serves some combination of the two goals of safeguarding both property and customers. However, as the key question in any trademark infringement case is whether the defendant's actions are likely to lead to confusion, trademark proceedings also need to take into account consumers' expectations and perceptions after encountering the infringing marks. According to Barton Beebe, trademark law necessitates the mandate that to see with the eyes of consumer and consider the market as it is considered by an ordinary consumer.¹

The scope of trademark and consumer regulations is indescribably broad because it affects everyone worldwide. Because every individual consumes products and services, the terms "consumer" and "human being" are essentially interchangeable. Legally all individuals are considered consumers throughout their life as they are directly or indirectly involved in consumption of goods or services provided by other legal persons acting within any specific legal system. Factual situations, being the dominant factor, however decides that which services and products are required more often as compared to many other and those more often required goods and services are subject of trademarks as they are being used by a vast community and legal rights of many subjects are associated with those goods and services. By putting specific obligations on producers and suppliers of products and services toward customers, consumer laws help the consumers in protecting their rights. The objective of the concept of consumer protection is to safeguard the interests of customers. As a result, consumer protection laws serve to defend consumers' rights by outlawing unethical business activities.

Similar to this, trademark law also seeks to safeguard consumers by limiting market deception in a variety of ways. A trademark's primary purpose is to serve as a badge of origin. A trademark serves the purpose of distinguishing the products of a specific manufacturer and creating a link during the course of commerce. A trademark can serve other purposes as well, like advertisement and goodwill etc. A trademark promotes the goods and imprints an image in the customer's head. The aura or sensation that consumers associate with these marks is related to the trademark's advertising function. By guaranteeing the quality of the goods and serving as a sign of the company's goodwill, the trademark reduces the cost of the search. Therefore, the fundamental tenet of both trademark and consumer law is to advance consumer welfare. This article discovers the problems relating to intellectual property rights in Pakistan as a general and specially trade mark violations which affect to consumer protection specifically. It is also aimed that whether concept of protection of such rights has been commanded under Islamic Law? If such a concept finds a space under Islamic Legal System, then how it can play a vital role to

advance the economic activities within the territories of states who have taken Islam as a state religion and Laws have mandated that nothing can be done within the state's legal system which is against the Injunctions of Quran and Sunnah. Further, it aims to draw attention to difficulties with intellectual property rights that may deter foreign companies from setting up shops in Pakistan, resulting in fewer options for consumers. It also discusses how these restrictions negatively affect local enterprises' ability to innovate. An example of Singapore can be shared how strong IPR regime plays an important role in growth of GDP. Singapore was declared or resembled ironically that it is playing the role of capital of piracy for the world by International Intellectual Property Alliance in 1985. The amount of FDI in 1985 was \$56 billion. The amount of FDI has increased by three times as much to \$2.04 trillion since the Singapore Copyrights Act was passed in 1987. The GDP per capita has risen as a result. Experts have linked this tendency to the Singaporean government's robust policy structure and political commitment to the IP system.²

Existence of the Concept in Islamic Law:

Verses of Holy Quran and Sunnah do focus on the protection and promotion of legitimate trade services. As already discussed trademark is well recognized component of a wider net of Intellectual Property and it enjoys a complete Protection as per Islamic Law. Islamic Law is undoubtedly based on the teachings of the Holy Prophet which he gave for the welfare of mankind. For having a deeper grasp of the concept it is pertinent to look into the Sources of Islamic Law. Primarily Sources of Islamic Law are divided into two types i.e. transmitted and rational sources. Furthermore, each rational source is considered part of a larger doctrine that is doctrine of Maslahah and it is considered the most important and effective tool for the purpose of Ijtihad. Literally Maslahah means seeking the benefit and repelling the harm. It does have some nexus with the principle of utility as expounded by Gerny Bentham as it states that the purpose of the legal system is to seek maximum happiness for maximum people. As per majority of Muslim jurists Maslahah means seeking the benefit and repelling the harm as directed by Shariah. The seeking of utility is not dependent on human choice or desire. Al-Ghizali defines Maslahah as "it is essentially an expression for the acquisition of *Manfahah* (profit/benefit) and repulsion of *madarrah* (Injury, harm) but that is not what we mean by it, because acquisition of it represent human goals and welfare of man by securing these goals. Attainment of Maslahah can be directly associated with securing the goals which have been suggested to be preserved by Shariah.³ These are generally known as purposes of Shariah in various text books of Shariah. Jurists do agree on the point that attainment of Maslahah is well associated with the purposes of Shariah which are required to be fulfilled in this world. It also includes a top priority or religious goal and that is protection of religion. The order of the purposes is to protect religion, life, family, intellect and wealth respectively.

It is admitted fact that preservation and protection of wealth is one of the purposes of Shariah. The question arises that whether signs such as trademarks are to be considered property irrespective of the fact not being in tangible form. Classical jurists of Islamic law were of

PROTECTION OF TRADEMARKS IN ISLAMIC LAW AND ITS VIOLATIONS IN PAKISTAN

considered opinion that property only includes something capable of being physically touched, possessed and delivered. As per strict interpretation of this approach it becomes difficult to bring intellectual property under the umbrella of property and consequently it would become difficult to apply the principles of preservation and protection to these rights. It is not restricted to this extent but it would further lead to absence of remedies or strict measures by the Islamic legal system in case of violation of such rights. Such a situation leads to many problems in modern times if such rights are not protected by Islamic legal system and no remedies are provided to owners of such rights. Hanfi School of thought also believe that property is something which is capable of being delivered and possessed which can be stored and used during the hours of need. The same stance has been taken by Majjallah. Modern Jurists like Zaydan property has been defined as something capable of being controlled and whose usufruct can be utilized like houses, vehicle and buildings etc. Keeping in mind aforesaid discussion it can be safely inferred that under the umbrella of Shariah it has its own dynamics which are mandatory as per classical jurists for a thing to be considered as property. These fundamental features can be summarized below:

- a. An asset cannot be considered as *Mal* or property unless it can be controlled and benefitted from.
- b. A thing which cannot be used cannot be considered property.
- c. An asset cannot be considered as property though it can be controlled and used but if it is forbidden by Islamic Law.

An asset is also not a lawful property if it is controlled by a specific group of persons like production of alcohol is mostly controlled by non-Muslims in Islamic states.⁴

After the above discussion it is obvious that properties or characteristic assigned to the definition of property were not based on the intellectual or intangible grounds but they focused only on the physical characteristics and assigned the conditions accordingly. As per Turner⁵ this concept of intellectual property and subsequently trademarks arose few decades ago and that could be the major reason that it has not been discussed by classical jurists of Islamic Law. Now it is very critical that how a right associated with intellectual property rights can be assigned the meaning of property? Modern jurists like Al Durayni⁶ has tried to get some space for such kinds of rights and they are of the view that right to get benefit is available in Islamic Law. But here they also agree that right to get benefit is associated with some tangible assets and these rights extinguish on destruction or elimination of tangible asset. Some classical jurists like Ibn Urfa,⁷ a Maliki jurist opined that like many other tangible assets intellectual property can be considered Mal. He exemplifies that writing an article in the book or newspaper that is supposed to enjoy the protection of rights associated with it. Though Classical Hanfi Jurists didn't allow the intangible assets to be considered as Mal but modern Jurists like Abu Umar Farooq Ahmad (2007)⁸ opine that intellectual property rights can enjoy protection it is to be considered mal because of complexities of modern times.

Jurists like AL Zuhayli⁹ have considerable strict opinion that theft of such rights amounts to theft like other cases and person stealing these assets shall be given Hadd Punishment. Keeping in mind all the classical interpretations and modern interpretations different bodies across Islamic world have validated the existence of these rights and they have stressed on protection of such rights. It has been acknowledged on the basis of protection of mal or financial rights. It is never aimed that these rights are there to put a barrier on new research and innovation. Some examples have been given below where different bodies have opined, acknowledged or stressed on the existence and protection of intellectual property rights:

- a. Sheikh Salih Al-Husayyin who is the executive chairman of Al-Harain (two holy places) and Dr. Fathi Ad-Durayni made a research in this area and acknowledged the ownership of intellectual property rights by the creators of the knowledge and intellectuals who authored various literatures in different areas. These scholars focused and opined that creator or author is owner of these rights and any person who wishes to use or cite the created content must seek permission from the creator. Its sole purpose is to extend the deserved credit to the original creator.
- b. Seconding the earlier established opinion Sheikh Mohammad Bazmul of Umul Qura university in Makkah also opined that it is neither permissible nor recommended to publish any material which is already subject of copyright except with the permission of the owner. Furthermore, he also opined that this act is associated with theft and he held the view that subsequent to such theft no blessings can be expected from the lawgiver. While establishing this opinion he relied upon the views of Abu Ubaid Al Qasim who once said that blessings of knowledge can only be expected if that is acknowledged if quoted even a single word from someone else.
- c. Sheikh Abd Al Aziz has taken a strict and penal view and opined that if stealing of these rights is associated with deception and it amounts to crime and it is presumed that offence has been committed against the creator of the knowledge.
- d. None was authorized to violate intellectual property rights as it was concluded by end of a meeting by the Council of Islamic Jurisprudence in 1988.
- e. Majlis Ulma of Indonesia issued a judgment that stealing or misappropriation of intellectual property rights amounts to Haram. It stressed that any asset obtained by deceitful means is haram and using of material without prior consent of the creator is also haram and that is not lawful for anyone. It is such an asset that it cannot be validated unless the consent is obtained thereto.

Importance of Trademark Protection in the Eyes of Islam, Morality or Fair Play Principles:

PROTECTION OF TRADEMARKS IN ISLAMIC LAW AND ITS VIOLATIONS IN PAKISTAN

It is not only question of consumer protection but it is also question of building public ethics and morality. It is how a society looks toward right or wrong. If any wrong is prevailed at large scale it will get acceptance so it will attract more wrongs. Pakistan is an Islamic State and the people follow Islamic Injunctions with more care than toward even State Laws here. Although the word trademark has not been used in Islamic Law it has been given huge stress upon fair trade so therefore trademark also used to serve such purpose. It has been clearly contemplated in the Holy Quran that nobody is allowed to eat the asset belonging to someone else by unlawful means. According to this injunction of Allah Almighty we have been strongly prohibited from misappropriating property in any form whatsoever, and the word property does not only restricted to only immoveable property but it includes everything which have its monetary value. Trademark has been recognized as a property worldwide in every legal system, so it can be safely inferred that using someone's trademark without permission of lawful owner is disobedience of Injunction of Islam also.

Trademark is an Intellectual Property (IP) right of an individual, which he creates by his tireless efforts, skills and investment and after all he gets benefit and profit ultimately through its use. Proprietary rights and trade activities have great importance in Islam and there are also various Quranic verses and sayings of Holy Prophet on this subject. At one place as narrated by Aisha (Prophet's wife) "He who cultivates land that does not belong to any body is more rightful (to own it).¹⁰ This Tradition of Holy Prophet indicates that the person who put his labor and effort and investment has prior right to cultivate it and others are being prohibited. The same case is of trademark because the person who starts business by making huge investment of time and money takes great risk because at that time his products are nothing more than to a barren land. When he succeeds in gaining fame and goodwill and people start trusting him that is the time when barren land has been fertile. Similarly, others cannot use his trademark or trade name without his permission. In my opinion this is more sensitive in terms of loss is being received by two parties i.e. trademark owner as well as consumers.

The earlier mentioned rule of Holy Quran regarding eating of property belonging to someone else has been interpreted as "do not eat assets belonging to someone else unjustly". The word unjustly is a broader term which can be subject to many possible interpretations. The word unjustly is also very important and very clearly indicates that when we use someone's trademark without his permission it is like eating someone's property unjustly. According to Islamic law, a person who has acquired property lawfully has a fully protected intellectual property right, and no one else has the right to infringe on that right or trespass upon that person's lawful property. A legitimate owner is entitled to all potential profits from his property, and the owner's trademark is lawfully his property. The owner of a trademark is entitled to use it in commerce to identify his products or services. He also has the right to give it to someone else whole or in part. It is forbidden to copy another person's work, sell it under his or her name,

and then keep the proceeds. Apart from all Islamic Injunctions and the laws of the land the protection of trademark is also very important from another aspect which is morality and public character. A strong trademark protection will get manifold benefits for the people at all. It will not only encourage entrepreneurs, boost of businesses, attracting foreign investment and increasing of state revenues but also promote honesty and fairness in the society.

Trademark infringement in Pakistan:

In Pakistan, trademark infringement is so widespread and common it looks the violators are doing with the belief that they are doing nothing wrong or illegal. Every successful trademark or trade name will bring flood of fake similar marks and names that have nothing to do with the original. Who is original becomes very difficult question for a consumer to find and most probably consumer will fail to identify or locate the original which he wants to find. Mostly, the owners do not bother to file cases against infringers because they don't have sufficient time and also they do not hope for speedy and adequate remedy.

Trademarks Ordinance of 2001 and the Pakistan Penal Code, 1860 (PPC) contain penalties for trademark infringement. The Trademarks Ordinance primarily penalizes those who apply a fraudulent trademark, not necessarily those who intentionally sell goods with false trademarks, in contrast to the Copyright Ordinance, which punishes those who violate copyright for financial gain. The Trademarks Ordinance states in Section 40(8) that "any person who sells, offers, exposes goods for sale, puts them on the market, or has in possession for sale or any purpose of trade or manufacture any goods bearing a mark which infringes a registered trade mark" "shall be treated as a party to infringement of a registered trade mark." It is ambiguous whether the punishments provided in Chapter XIII would apply in this case or not. Selling items that are known to contain fraudulent trademarks is punishable under Section 486 of the PPC, which also specifies the appropriate penalty. To strengthen the intellectual property legal system and lessen rampant infringement, the Trademarks Ordinance should be changed to remedy this gap, even though the PPC does offer some legal protection.

Furthermore, it is worldwide accepted principle of trade that there must be elimination of unfair competition practices. Competition laws have been promulgated to serve this purpose including Pakistan's Competition Commission Act 2010. Examples of actions that are deemed to be unfair competition are provided in article 10 bis (3) of the Paris Convention. There are three types: confusing the public, smearing rivals, and confusing competitors. The attempt by the business owner to succeed in business without using his own achievements in terms of price and quality of his products, but rather by taking unfair advantage of the work of another or by influencing consumer demand with false or misleading statements, is a common aspect of these significant examples of unfair competition.

In Pakistan, protection against violation of trademarks, service marks or trade name is very weak or even ignored. Currently, Pakistan stands at 108 among 129 in world and 18/19 in Asia in International Property Rights Index (IPRI). Pakistan will lose a sizable amount of foreign

PROTECTION OF TRADEMARKS IN ISLAMIC LAW AND ITS VIOLATIONS IN PAKISTAN

direct investment if this situation persists. Issues of intellectual property rights have become vital to our development plans, especially now that Pakistan expects a huge inflow of foreign investment as a result of the CPEC and when our economy is contracting.

Nations have been referred to by name expressly since 1993 in terms of IP protection on a 301 Watch List.¹¹ Due to alleged trademark and copyright violations, notably with relation to textile designs, Pakistan was put on the Watch List that year. It remained on this list until 2003 as a result of numerous reported violations. In 2004, the US put Pakistan to the Priority Watch List; however, in 2006, it was again demoted to the Watch List. Pakistan was reinstated to the Priority Watch List in the 2008 Report, where it remained until 2015. As a result, the country has been on one of the two lists for the entire period of the 301 process and it is still on the list of 2023. The Report asserts that Pakistan's trademark law also deviates from international standards.¹²

How Trademark Protection Promotes Economy and Consumer Protection:

Trademark protection works better in growing societies in which consumers have the capacity to make conscious choices over how they spend their daily lives. A society which encourages expansion of its markets and businesses creation of employment and promotion of new products for needy consumers cannot ignore strong protection of its economic signs. A trademark's social worth and economic value are closely related to one another. However, as "commercial icons," trademarks or "brands" are only of economic worth. Other categories of social symbols, such as religious icons, heraldry, or political symbols, may also be pregnant with economic meaning. We the humans (consumers) are interconnected and cannot grow in isolation. Every man has to rely upon others in one or other way to meet their daily needs. So trust and faith is an important element for a strong connection and growth between the consumers and traders. Accurate market information is as important for market growth as a soul for a body to live and fuel for machine to run.

How market accurate information is important can be visualized through different situations. Suppose a simple market economy where all the goods come from anonymous source. In this situation the purchaser will rely upon his own skill and information for buying under the principle of 'caveat emptor' where he has to be aware. The buyer can sample the goods by tasting the bread or looking at the glassware in the case of foods or simple utensils like glassware. The buyer may be so confident that the information about the goods is accurate that they may buy with confidence, even without the seller's praise to persuade them. What about buying a tube of toothpaste, though? How can the vendor inspect the item in the marketplace without first cleansing his teeth? However, I promise that the toothpaste is of the greatest quality. Let's imagine the merchant states, "You cannot open the package but must buy or not buy without

trying out the goods." Am I about to be duped? Is the data accurate? The seller's information is accurate? What makes the vendor confident that the toothpaste is secure? Does he or she know that it works? Does it have a medicinal flavor? Like sweets? If a vendor gives the buyer false or misleading information in the majority of everyday transactions, the buyer is unlikely to ever return. If the buyer is pleased with the item once the sale is complete, he or she will keep doing business with the seller up until another location offers a better deal or the item is deemed to be undesirable. "Loyalty to the shopkeeper is called "custom," because the purchaser becomes "accustomed" to shopping at a reliable shop, and hence becomes a customer." The traditional consumer economy was built on the goodwill of the seller since market information was unreliable and consumers had to rely on the retailer's good reputation (or "goodwill") for accurate market information. The vendor, who the consumer must rely on, has received the "goodwill" that was once attached to the products themselves. If the customer feels duped or unsatisfied once the transaction is through, he or she may never go back to the vendor.¹³

The preservation of intellectual property rights (IPRs) is crucial for a nation's economic development, particularly in contemporary knowledge-based economies. The IP regime deals with granting patents, protecting trademarks and copyrights, and other related issues. Before opening a business, foreign companies analyze the country's intellectual property laws.

More on, Trademark serves to consumers as a time saving instrument through a built-in confidence in the modern efficient economy where consumers are too busy. Suppose if all the products are sold under the same name the shoppers will be unable to identify their desire quality products without spending much time and experiences. Similarly, if consumers are not able to find their products of intended quality easily, how the products can enjoy better sale. Trademark law promotes brand competition which ultimately grows economy through a healthy competition and building confidence in the society.

The system of precise market information that supports a market economy is the first and most significant victim of a legal system in a developing country that permits inexpensive imitations of foreign goods. All market information is questionable in a culture where some market information is blatantly false or fraudulent. The quick decisions made by individual buyers reduce economic efficiencies, which is lost. Government revenue is the second victim of the "counterfeit economy". Counterfeiters do not register trademarks or pay taxes like real firms do since they operate in the "informal" sector. The informal economy's sale of counterfeit goods may result in significant tax losses.

The third casualty is the waste of money of the buyers when they prefer cheap option but all it go to vain. For example, if you buy a fake copy of mobile phone of 50-dollar but after one month it stop working. Sometimes risk goes to beyond the money in case of compromising of your health when you purchase fake and counterfeited food. You will get illness along with the waste of money when you spend a week in the hospital and away from productive employment recovering from the illness. Risk can also lead toward death in case of fake medicines. According

PROTECTION OF TRADEMARKS IN ISLAMIC LAW AND ITS VIOLATIONS IN PAKISTAN

to CNN almost 45 to 50% of the total medicines in Pakistan are counterfeited with the fake packaging. We still remember when 120 people died together by taking such fake heart medications at Punjab Institute of Cardiology Lahore in 2012. Similarly, in Pakistan fake engine lubricant oil is a big issue in the market and according to INCPak survey almost 50% of engine oils available in the market today are fake and being sold with the well-known brand names.¹⁴

Supreme Court of Pakistan had also observed in a case *The Seven-UP Company vs. Kohinoor Thread Ball Factory* etc. that this is not so to merely protect the proprietor of registered trade mark but to safeguard the interest of public which should be protected from deception and confusion. Fake culture promotes dishonesty and mistrust in the society which shakes the moral values and believes upon principled life so government should play a vibrant role to curb this menace.

RECOMMENDATIONS

- **Violations of Trademarks**

It is obvious that violation of trademarks amounts to dishonest means under the law of the land as well Islamic Law. It amounts to appropriation of an asset which primarily belongs to someone else and Islam strictly prohibits such appropriation. In the aforesaid instances we have seen multiple occasions where violations are taking place in Pakistan. Resultantly we need multi-tier system to deal with such violations. It is evident from the discussion that protection of rights related to trademarks and intellectual property rights are not only religiously protected but that is a rule and requirement of prudence. It is only aimed to safeguard the interest of the creator but this is vested interest of public at large. People and especially consumers of the products are deceived by the people who are not having any specialty or expertise. It is the major fact that has this need has been realized globally. In the perspective of Pakistan, it is not only religious duty but it is a social, economic as well as international obligation to be fulfilled. Furthermore, taking it in the perspective of Islamic duty it is well established constitutional principle that nothing shall be legislated in Pakistan which is against the injunctions of Islam. It has also been contemplated in Principles of Policy that to achieve the values in line with Islamic Injunctions is foremost duty of the state. In a broader sense Islamic Law does focus on the fulfillment of promises. If it is observed in global scenario, when any convention or treaty is signed by the state that is supposed to be fulfilled. Hence further recommendations with respect to legislative and other reforms are need of the time and fulfillment of all aforesaid duties.

- **New Provision for Consumers:**

The current trademark law in Pakistan does not give customers a just recourse. Consumers are unable to lodge complaints on their own. In order to provide customers with a strong trademark protection strategy, the author believes that amending the existing law within a section of that Act to grant them the ability to register a complaint would be a good idea. Currently, the Trademark Act's primary goal is to provide protection to the trademark owner, who is the only party who has suffered harm; nevertheless, legislators should remember that consumers have also suffered harm and are a proper party to claim their grievances. Under

trademark law, only the trademark owner's protection has any bearing on the consumer's protection.

- **Proposing the Establishment of New Organization:**

It is well established principle that connected legal issues are to be dealt collectively to achieve the maximum utility as well as avoiding conflicting opinion of judicial authorities over the issue. Unlike many mature jurisdictions in the world we have been unable to handle all the matters of this area collectively. A main reason of this lack of harmonization is that these laws were legislated in various times not to secure the rights of masses but to satisfy the requirements of various national pressure and international laws such as treaties and conventions sponsored by various international organizations. We have various special laws which directly affect the protection of rights associated with intellectual property. These laws include but not limited to Intellectual property laws, Competition laws and Consumer protection laws. Respectively Intellectual Property laws seen by Intellectual Property Organization of Pakistan and on the other hand Competition laws are under supervision of Competition Commission of Pakistan and the rights of consumers are tried to be protected by Consumer Protection Counsels at federal and provincial level. It has further been observed that there is lack of coordination among these institution as that is biggest dilemma of developing nations. Resultantly it leads to violation of rights associated in all these areas where the losers are innocent masses. The practical example which can be given in this regard Federal Trade Commission of American which deals with all these areas i.e. Competition laws, Consumer Protection Law and intellectual property laws. It is the most effective way to safeguard the interest of public at large that arises due to lack of institutional coordination. If such an authority like America's FTC is in Pakistan that can effectively play a vital role to secure the interest of public at large.

- **Policy Board under IPO Act 2012**

A Policy Board with a Chairman is also required under the legislation establishing IPO Pakistan. Unfortunately, they still do not exist. It is a dilemma because one of the Board's main responsibilities is to propose regulations "ensuring implementation of intellectual property rights in Pakistan in coordination with concerned agencies." The Policy Board met from 2005 to 2010, however there have been no sessions since then. It is a statutory duty of the Board to conduct its at least two times meetings in one calendar year under section 8 of the above said Act¹⁵. As a result, over the course of its life, this institution's potential usefulness, as originally intended, has somewhat diminished.

- **IP Tribunals under IPO Act 2012**

IPO Pakistan mandates the creation of Intellectual Property Tribunals in addition to the Policy Board. According to the Act, "[A]n accused shall be tried and prosecuted for an offence in the Tribunal"; in these particular courts, the case must be concluded within ninety days. Additionally, "All suits and other civil proceedings regarding infringement of intellectual property laws" are covered by the jurisdiction of the Tribunals, and the Tribunal has the only authority to trial any offense under the general and special laws of the land. As an example it can be quoted that the Trade Marks ordinance 2001 is a special law dealing with requirements and violations thereof. Likewise, there are general provisions of Pakistan Penal Code dealing with such offences. It gives rise to very important question that when such violations are to be dealt under various

PROTECTION OF TRADEMARKS IN ISLAMIC LAW AND ITS VIOLATIONS IN PAKISTAN

laws that leads to issues of jurisdiction and jurisdictional ambiguity. Such jurisdictional ambiguities provide a breathing space to violators.

- **Legislative Measures**

Although Pakistan has updated their IP laws after the TRIPS Agreement to harmonizing with the international obligations but breach is still at same scale. The appropriate legislation may be changed to raise the fines associated with penalties to an amount that could have a more deterrent effect, such by using minimum fines and sentencing guidelines. Targeting criminal businesses that violate domestic intellectual property rules requires cooperation between law enforcement agencies and customs employees, who must obtain training in the identification of counterfeit items. Any inconsistencies in domestic legislation must be corrected right away by passing new laws, regulations, or modifications to existing ones. To ensure system improvement, rules created under current intellectual property laws must be evaluated in light of recurrent implementation problems.

- **Capacity Building & Public Awareness:**

The widespread lack of capacity among the agencies responsible for enforcing these rights and the general public is one of the main obstacles standing in Pakistan's way of doing so. Currently, security-related concerns predominate the national conversation and are the Government's highest priorities, both politically and monetarily. The protection of intellectual property rights is further down the list, among issues with less immediate repercussions. For instance, the Patent and Trademark Office in the United States, which has a staff of more than 3,000 specialists and an annual budget of around \$1 billion, is able to provide a more comprehensive system of intellectual property rights.

In terms of judicial capacity, there are around 600 judges who have received specialized training to preside over disputes involving intellectual property. In sharp contrast, Pakistan's whole federal budget, which includes about \$7 billion for defense, is about \$43 billion.

Defense spending is a direct investment in the interests of the nation, but financing for a system of intellectual property that is more regulated and protected may be seen as "benefiting primarily foreign interests." One view is that "Copyright piracy and trademark counterfeiting are allowed to proliferate on the theory that they are minor offenses against wealthy multinational concerns that can easily afford the loss." This viewpoint is typical of the relative value judgment that the expense of more strictly enforcing intellectual property rights is more than the potential return on such multinationals' foreign direct investment.

Such an evaluation looks at the potential victims of infringement far too narrowly. Negative effects of a lack of enforcement of intellectual property rights may also be felt by consumers. Such arbitrary treatment of intellectual property rights may instead result in direct harm to consumers in the sale and distribution of infringing goods and services, rather than producing an economically favorable environment for foreign investment that enables the state to partake in the economic prosperity enjoyed by developed states.

Conclusion:

After the above discussion it is safely concluded that undoubtedly as per interpretations and commentaries of Modern jurists on Fiqh and Islamic Jurisprudence Trademark is such an

asset if that is preserved and protected that can benefit public at large. It has multidimensional effect on trade and business. It is well established principle of Islamic Law of contract that out of many aspects one purpose is ensure certainty in contracts. Registration of trademarks is an effort to ensure for the end users that product is of a certain level and quality.

Trademarks law has dual effect on the business enterprises and the consumers. Though states are keen to showcase their interest in favor of consumers but on the other hand state also wants to protect the commercialism and discourage the corrupt commercial practices. In the first aspect it is to save people from deception and on the other hand it is an effort to prevent customers buying inferior or fake products by believing that they belong to certain brand or person having expertise or goodwill in that area. It is also an effort to provide healthy and safe commercial environment to original producers of different products and services. It is secured by considering a registered trademark is a secured property. Furthermore, with the passage of time and as well described above that it is now recognized by Islamic law that such rights are to be considered as mal and they are entitled to be protected by various legislative measures including civil and criminal penalties. It is worthy to mention that this question is still debatable that what level of worthiness is to be attached to such assets as ordinarily a person who steals something valuable is liable to Hudood laws but in case of intellectual theft whether it amounts to same level or not.

Interest of consumers is also seen by another angle that they associate products and services with some people who have expertise and they use special signs or monograms to differentiate themselves from the rest. Sometimes it is tried to be achieved by using the name of origin etc. it acts as guide for consumers so that they can choose a product originating from a special or specific origin. It can be rightly said that products originating at a particular place can come special characteristics or benefits which could be the ultimate goal of the consumer. If the legal action is taken by the owner of trademark, then it leads to elimination of confusion of consumer that who is the real and original owner of the trademark and resultantly the product that is to be consumed by the owner. Hence protection of this right provide bilayer support i.e. for the producer as well as consumer. The importance of this area cannot be denied by both aspects.

By giving proprietors of trademarks exclusive rights while conveniently neglecting the rights of consumers, trademark law has recently been on the rise in efforts to increase competition on the worldwide market. The fundamental goal of trademark law is to shield customers from deception and confusion. Any departure from this planned goal constitutes a clear violation of the law. Because the trademark is meant to indicate that the goods come from a single source only, the concurrent use of the trademark by two or more parties for the same goods is quite opposed to the fundamentals of trademark law. It must convince consumers that the products or services are what they need and cannot be confused with a trademark for a comparable good that is already registered or has been in use for a considerable amount of time.

PROTECTION OF TRADEMARKS IN ISLAMIC LAW AND ITS VIOLATIONS IN PAKISTAN

While weighing the competing interests of consumers and trademark owners, legislators, trademark examiners, registrars, and the court must place a strong emphasis on the interests of consumers, realizing that trademark protection is essentially for consumer welfare.

References:

- ¹ Beebe, Barton . "Search and Persuasion in Trademark Law." *Michigan Law Review* 103, no. 8 (2022).
- ² Prime Analytical Reports. "Trademark of Growth: Inquiring Pakistan's Intellectual Property Rights Regime." *Inquiring Pakistan's Intellectual Property Rights Regime* 1, no. 12 (July 2016): 7.
- ³ Al-Ghazali. *Al- Mustafa Min al Ilm-UI-Usul*. Vol. 1. Baghdad: Dar-ul-Thaqafat, 1294.
- ⁴ Mohd Izzat Amsyar Mohd Arif, "The Concept of Intellectual Property as al Mal: An Islamic Perspective Approach ," *International Journal of Educational Best Practices* 1, no. 1 (April 2017): 104–4.
- ⁵ Colin Turner, *The Information E-Conomy: Strategic Impact and Commercial Challenges*, Kagan Page Limited London, 1st ed., vol. 1 (London, 2000), 10–20.
- ⁶ Mohd Izzat Amsyar Mohd Arif, "The Concept of Intellectual Property as al Mal: An Islamic Perspective Approach ," *International Journal of Educational Best Practices* 1, no. 1 (April 2017): 105–5.
- ⁷ *ibid*
- ⁸ Abu Umar Faruq Ahmad, " Law and Practice of Modern Islamic Finance in Australia" (Dissertation, 2007), <https://researchdirect.westernsydney.edu.au/islandora/object/uws:6376>.
- ⁹ Wahbah Al-Zuhayli, *Al-Fiqh Al-Islami Wa-Adillatuh*, vol. 4 (Damascus: Dar Al-Fikr Al-Mouaser, 1989).
- ¹⁰ *Sahih Bukhari*. 39th ed. Vol. 3, n.d.
- ¹¹ Executive office of the president of United States, "2023 Special 301 Report," *United States Trade Representative* (USA: Office of the United States Trade representative, 2023), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/april/ustr-releases-2023-special-301-report-intellectual-property-protection-and-enforcement>.
- ¹² *Ibid*
- ¹³ Prof William O Hennessy, "Role of Trademark in the Economic Development and Competitiveness ," 2023, https://www.ipmall.info/sites/default/files/hosted_resources/Hennessey_Content/RoleofTrademarksinEconomicDevelopmentandCompetitiveness.pdf.
- ¹⁴ Federal Investigation Agency, "Beware of Fake Engine Motor Lubricant Oil in Pakistan," Independent News Coverage Pakistan (Independent News Coverage Pakistan - INCPAK, April 10, 2021), <https://www.incpak.com/auto/beware-of-fake-engine-motor-lubricant-oil-in-pakistan/>.
- ¹⁵ "Meetings of the Board"
 - (1) The meetings of the Board shall be convened by and under the directions of the Chairman.
 - (2) The Board shall meet as often as may be necessary for the performance of its functions but it shall meet not less than two times in a calendar year."