

THE ROLE OF TRADEMARK FOR COMMERCIAL EXPLOITATION FOR THE
PRIVATE LIMITED COMPANY IN MELAKA AND JOHOR

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THE ROLE OF TRADEMARK FOR COMMERCIAL EXPLOITATION FOR THE
PRIVATE LIMITED COMPANY IN MELAKA AND JOHOR

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This Report Submitted In Partial Fulfillment of The Requirement For The Award
Bachelor of Technology Management (Technology Innovation) With Honors

Faculty of Technology Management and Technopreneurship
Universiti Teknikal Malaysia Melaka

JUNE 2016

APPROVAL

“I hereby acknowledge that I have read this works and in my opinion this works is sufficient in terms of scope and quality for the submission and award of a Bachelor Degree of Management Technology (Innovation) with Honors”

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DECLARATION

I hereby declare that this thesis entitle ‘THE ROLE OF TRADEMARK FOR COMMERCIAL EXPLOITATION FOR THE PRIVATE LIMITED COMPANY IN MELAKA AND JOHOR’ is my own work expect for the quotations summaries that have been duty acknowledged”

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ACKNOWLEDGEMENT

First, I was hereby sincerely to express my sincere appreciation to my supervisor Dr. Norain binti Ismail for her guidance, encouragement and did not hesitate on giving advices within the timeframe of completing this bachelor degree dissertation. The appreciation also goes to my presentation panel Mr. Budiono Hardjono for his sincere and valuable comments upon Seminar Undergraduate I and II.

Gratefully, I would like to thank to the respondents from three different private limited companies in Melaka and Johor who were spending their precious time on sharing their opinions and views during the interview session. Furthermore, I would like to give my appreciation to my families and friend whom are giving fully spiritual and financial support in the journey of completing this bachelor degree dissertation.

As the end, I once again thank to those who had guided me directly or indirectly in this research and wish that the efforts can be continued by the future researchers.

ABSTRACT

Trademark is the legal term which represents brand of product. Trademark can be a word, mark, slogan, label, drawing and signature which purposely to distinguish among themselves and competitors in the similar industry. This research discusses about the roles of trademark for commercial exploitation for the private limited company in Melaka and Johor.. In addition, the obstacles and solution to overcome obstacles of commercial exploitation are discussed in this research in order to justify the importance of trademark. In this study, the researcher will conduct this study through qualitative research method by conducting semi-structured interview with the selected respondents; this is purposely to collect the expert opinions and rich related and supportive of this study. The primary and secondary data will be analyzed and conclusions will be made at the end of this study. On the other hand, this project will propose the suggestions and the best way to increase the trademark value in the business practices. In conclusion, the role of trademark is significant in commercial exploitation and the efforts to increase the trademark value could increase the chance of success commercial exploitation in the new market especially for private limited company.

ABSTRAK

Cap dagangan merupakan istilah undang-undang yang mewakili jenama product. Cap Dagangan boleh didaftarkan dalam bentuk perkataan, tanda, slogan, label, lukisan dan tandatangan yang terutamanya untuk membezakan antara syarikat sendiri dengan pesaing-pesaing dalam industri yang sama. Kajian ini membincangkan perkara yang mengenai peranan cap dagangan bagi eksploitasi komersial terhadap syarikat sendirian berhad di Melaka dan Johor. Di samping itu, rintangan dan penyelesaian untuk mengatasi halangan-halangan eksploitasi komersial dibincangkan dalam kajian ini demi menunjukkan kepentingan cap dagangan. Dalam kajian ini, penyelidik akan menjalankan kajian ini melalui kaedah penyelidikan kualitatif dengan mengadakan temu bual separa berstruktur dengan responden-responden yang terpilih; ini adalah untuk mengumpul pendapat pakar-pakar dan data yang lumayan dan berkaitan serta bersokong kepada kajian ini. Data-data akan dianalisis sementara kesimpulan akan dibuat di akhir kajian ini. Sebaliknya, kajian ini akan memberikan cadangan serta cara terbaik untuk meningkatkan nilai dagangan dalam aktiviti perniagaan. Kesimpulannya, peranan cap dagangan adalah penting dalam eksploitasi komersial dan usaha-usaha meningkatkan nilai cap dagangan boleh meningkatkan peluang kejayaan eksploitasi komersial di pasaran baru terutamanya bagi syarikat sendirian berhad

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CHAPTER 1

Introduction

1.1 Background of Study

According to World Intellectual Property Organization (WIPO), “intellectual property (IP) refers to new inventions; literary and artistic works; and symbols, names and images used in commerce”. World Intellectual Property Organization explained that: “Intellectual property is comprises of two categories which are industrial property and copyright and the trademark is under the category of industrial property”. In general, trademark is the one of the diverged elements of intellectual property. It is the representation of a commercial organization or product which is legally registered. Symbol, marks, languages, words, drawing or pictures are able to be registered as trademark which significantly to represent a unique company or product. The existence of trademark is mainly to differentiate the business entities all over the world and provides clear indication or pattern recognition of a particular company or product for consumers. The applications of brand names, or trademark which are registered with the government, have become an important part of business. Non-brand names, known as "generic" products, are usually less attractive and low value. Yet brand names remain popular because they offer a guarantee of quality that generic products often cannot match (Johnson .D, 2015).

In the modern day, there are a lot of brand names and the name of specific products or services that we can see in any places in the crowded areas. The role of trademark has become visible and more common in human's life; the branded products are the indication of trademark such as the Colgate toothpaste and toothbrush, the Mercedes Benz car, and Apple iPhone 6s. The trademark had been used in 5000 years and it is traceable in the history record. B.C, David Johnson (2015) stated that: "ownership symbols have ancient past which is Bison painted on the walls of the Lascaux Caves in southern France contain marks that scholars say indicate ownership and the paintings were made around 5,000 years B.C"

As the time goes, the role of brand is not merely an indication of ownership and quality but also an intangible asset of the owner. The rise of intellectual property awareness has twisted the role of brand to a higher extent as trademark. Technically, the registration of brand name as a trademark is to seek for legal protection, but, at the same time the trademark which is registered will be able to be licensed to gain profits from others by giving permission to business partners for selling through franchise or sell it as an asset. According to International Trademark Association (INTA), the trademark can be sold or transferred to other parties through trademark assignment or allow another party to use your trademark in commerce while still retaining ownership, by entering into a license agreement such as merchandising, franchising and distribution agreements with that person or entity (Rubinstein, (2014). In this way, the trademark is added with certain value backed by public acknowledgement. The value of a brand often is defined as the sum of agreed money by another party to pay and buy to obtain the permission of utilizing trademark and the variables of brand valuation include sustainability of the brand, competitive threats and uncertain risks in the marketplace, opportunities for growth and sustainability of profits will be considered (INTA, 2015).

In Malaysia, apparently, the role of trademark is significant in securing the benefits of private limited company and even creating values. The trademark protects the brand reputation, brand value and brand quality of certain private limited company from infringement. Thus, this research studies the role of trademark for

private limited company in two particular states in Malaysia which are Melaka and Johor and focuses on how the trademark secures the benefits of owner and creates values for the tech-based company. Furthermore, the research focuses on the study of what is the role of trademark in defending the competitive advantage of tech-based company in order to survive in the highly competitive business market. In addition, the researcher finds out how the trademark acts as the tool in protecting the company owner's right.

1.2 Problem statement.

In Malaysia, the awareness of business owners toward the important of intellectual property right is probably low. Most of the owners do not able to foresee the potential threats that will be caused by neglecting in the management of the intellectual property right. Majority of the business owners do not realize the function of the trademark and using the trademark as a powerful tool to protect and even expand their business. The complexity of the procedure in registering the trademark has become one of the barriers to resist the owner to seek for legal protection. On the other hand, the high cost of registration and maintaining fee of getting the legal protecting further obstruct the owner's initiative to seek for long term protection to company name and brand. The low level of understanding and trust of owners toward the way of intellectual property right organization in protecting the trademark by merely registering brand is one of the barriers. In addition, some of the owners do not intent to pay so much to seek for legal protection because the business model is not comparable to the big international enterprise such as Coca Cola, Nike, Chanel, and Nestle.

Brand infringement is a serious issue which could corrode the benefits of the private limited company owner's business in a competitive environment. The purposely action of other known or unknown party utilizes the brand to sell own made or other cheaper product which the quality is not match with the original

branded one merely for gaining profit could cause damages in company image. The infringement causes the loyal consumer in recognition confusion toward the particular brand or product, slowly the SME is losing the trust from consumer. Consequently, the reputation of owner's brand will drops over a dangerous threshold which influences the brand and product unique. Therefore, the SME requires the legal brand protection by certain organization to prevent the potential threat which can dilute the owner's business benefits. Technically, the registration of brand to be a trademark will be a wise action to sustain competitive advantages and market share of SME. According to Sherpa, (2011), if trademarks were not registered to acquire protection from legal authority, a trademark holder would be under the constant risk of diluting their reputation but when if the company federally register trademark, it becomes possible to take back the damages which is three times more from the trademark infringer and even the opposing parties will be hook for the attorney fees.

In terms of business enlargement, the absent of legal protection on brand image could lead to obstacles in company expansion. The opportunity to expand business to overseas or bigger market place through licensing agreement may cease due to the exile of legal protection to counter the issue of brand infringement. Trademarks provide value beyond your core business. Trademarks can lead the way for expansion from one industry to another, such as from food industry to clothing or cosmetic. Furthermore, the increment of trademark value can lead to acquisition by other bigger corporation.

1.3 Research Questions

Based on the research topic, in order to find out the role of trademark to private limited company, the researcher has defined several research questions as below:

1. What is the role of trademark for branding purpose of private limited company?
2. What is the role of trademark for gaining the competitive advantage for private limited company?
3. What is the role of trademark in protecting the private limited company owner's right?

1.4 Research Objectives

According to the research questions, the research consists of several objectives as to answer the questions such as:

1. To study the role of trademark for branding purpose in the private limited company.
2. To study the role of trademark as a competitive advantage for private limited company.
3. To study the role of trademark in protecting the owner's right in the private limited company.

1.5 Scope and limitation

The researcher had limited time to carry out this research and limited cost for researcher as an undergraduate student to collect costly information for this research. The research will focus on identifying the role of trademark in the private limited company. This research will cover the private limited company in Melaka and Johor only in Malaysia due to the limitation of accessibility. The researcher will study on how the trademark acts as the important tool in building up, securing, and strengthening the reputation of private limited company and the role trademark in

protecting the welfare of private limited company as well as gaining the strength and opportunity for private limited company. The limitation includes the cost needed to obtain certain academic resources and the skill on selecting the respondents with full particular knowledge to answer the researcher's questions.

1.6 Significant of the study

This research is significant to examine the role of trademark in the private limited company. The research will determine whether the research question answers the research objective based on the theories generated by the researcher. This research method will be used to collect data and information that support the theories and to see the correctness between the theories and problems.

The significant of this research is to improve the knowledge and skill on how to construct a research in correct manner and expose the researcher to the real world learning through data collection for the study of research topic as well as provides a learning opportunity to researcher through the research process. The researcher will gain experiences on doing research and learn new knowledge from the interview with experts to reach the research outcomes.

The role of trademark is significantly protecting the intangible assets of private limited companies. Trademark creates a fair competition environment for world economy or specifically Malaysia economy and eliminates the negative action such as trademark infringement which could harm the owners' benefits from the aspect of business. This could enhance the growth of GDP of Malaysia by securing the competitive advantage and unique of Malaysia based company to stand well in the world economy stage.

Furthermore, the significant of this study could contribute to the welfare of social. The consumers of Malaysia will not confuse on certain branded product when

there is a solution to counter the brand infringement cases occur within Malaysia. People will be ensured by the enforcement of Trade Mark Law that the entire branded product is originated from the real producers.

Politically, the trademark prevents the born of stealing culture within the Malaysia society. According to Intellectual Property Corporation of Malaysia, the Trade Mark Act and Regulation enforce the protection of trademark within Malaysia since 1983. Thus, it promote the respectful culture toward every hard work and contribution been done by a person or a group of person. Through this, the Malaysia politic will remain stable due to the systematic economy and strong social framework. Therefore, Malaysia creates a stable economy environment to encourage the foreign investors to invest their resources in Malaysia to facilitate the country growth and development.

1.7 Summary

Basically, the trademark is the mark or brand which registered to seek for protection from Trade Mart Act in Malaysia. The secured trademark in long-term business could cumulate the brand value and reputation for private limited company. The brand value acts as the intangible asset of a company that can increase the market value or share price of private limited company. The registered trademark ensures the benefits of owner that gained from that particular trademark even will not harmed by the trademark infringement. Furthermore, the trademark acts as a tool to secure the local market territory, customer's loyalty and quality reputation. The outspread of reputation over the boundaries of market territory will directly lead to company expansion. The points of view above indicate that the trademark will positively secure the benefits of private limited company. Thus, the study of this research is about the role of trademark to private limited company and how it protects the benefits of private limited company.

CHAPTER 2

LITERATURE REVIEW

2.1 Introduction

Literature review is the writing of the knowledge including substantive findings and theories which related to the research topic and objectives based on the secondary sources such as the journal and article, the book and newspaper. The literature review of this research includes the Trade Mark Act in Malaysia, the role of trademark for private limited company, and the theoretical framework.

2.2 Trademark Act and Trademark Registration in Malaysia

According to Intellectual Property Corporation of Malaysia (MyIPO), the royal assent and publication of Act 175 Trade Mark Act 1976(TMA) is on 21 and 24 June 1976 respectively and came into force on 1 September 1983. The Trade Mark Regulations 1997(TMR) was coming into force on 1 December 1997. The Trade Mark Act replaced the Trade Mark Ordinance 1950.

According to Intellectual Property Corporation of Malaysia, after the publication of Trade Mark Act 1976, there are 3 consecutive amendment of Act such as Trade Mark (amendment) Act 1994, 2000, and 2002 on particular sections.

Furthermore, the Trade Mark Regulations 1997 had 3 consecutive amendments of regulations which are Trade Mark (amendment) Regulation 2001, 2007 and 2011. The amendment aims to rewrite the existing section, deleting sections and regulation or adding new section and regulation to counter the current issues that arise new circumstance or condition that indicate the weakness of current Trade Mark Act such as Trade Mark Act amendment which compliance with Trade in Counterfeit Goods (TRIPS) Agreement, introduction of service marks, trade mark registration period increased to 10 years and renewable for additional periods of 10 years and the Trade Mark Act amendment which delete the Part A and Part B, protection of well-known marks and border measures.

Trade mark registration is aim to obtain exclusive to use their marks in trade. The owner has the right to take legal action for infringement under the Trade Marks Act 1976 against infringers who use their marks without consent. Owner can also lodge complaints to the Enforcement Division of Ministry of Domestic Trade and Consumer Affairs (MDTCA) for appropriate actions under the Trade Description Act 1972. Registration Conclusive - Registration Certificate issued by the Registrar is conclusive evidence of trade mark ownership in the court of law. Furthermore the certificate is an important document of trade mark ownership in the course of trade or business.

Registration of trade mark is indeed important to obtain exclusive rights for purposes of exploitation and commencing infringement actions. However, registration is not compulsory. The owner cannot commence any action under the provisions of the Trade Marks Act 1976 if the trade mark is not registered. However, actions may be instituted under the common law principals whereby the trade mark owner has a duty to convince the court that the infringing act had mislead the public and the infringing goods or services may be mistaken as his goods or services. In fact, this action is contentious and costly.

2.3 Trademark Concept

According to Hennessey, P (2015), a trademark is a distinctive mark that identifies certain goods or services which are supplied by sellers, producers or manufacturers. The distinctiveness of trademark distinguishes themselves among the competitors. For examples, the words Coca-Cola, Walkman, Channel and the Nike "swoosh" logo (Ramello .G .B, 2006).

Generally, a sign must fulfill two main requirements in order to be registered as a trademark which are distinctiveness of the sign and no possible harmful effects (Hennessey, P. 2015). The meaning of distinctiveness is that the consumers can differentiate it from other trademarks of similar products and recognize the sign as a trademark of a specific owner (Hennessey .P, 2015). The registering of trademarks is optional in any regions or countries. However, the registered trademark has advantages of restraining the exclusive rights of using the trademark in business activity with regard to the enforcement of legal rights. The application of any sign that is identical or similar to a particular registered trademark will be treated as illegal and prohibited to be used by other parties who have no permission from owner (Hennessey .P, 2015). Moreover, World Intellectual Property Organization also states that once the filing for trademark registration is done, the trademark owner obtains a right to ownership and the right to prohibit others from using a similar mark without the official permission though the registration is not completed. Based on the nature of trademark, the distinctiveness of each trademark could gains advantage in marketing activities for private limited company. The registered trademark offers the owner an exclusive right to fully utilize the trademark in advertising the company products, selling of relative products, franchising its business and business product commercialization to new market. The linkage or relation between the product quality and the brand that involuntarily recognized by customers from post purchasing will affects to the brand equity of certain private limited company. Therefore, the quality such as reliability, compatibility, safety and functionality of product that felt, observed and analyzed by consumers will alter the