



**Article No. 03/2017**

**Services of same description**

**Plaintiff: Jubilee Insurance Company Limited**

**Defendant: United Insurance Company of Pakistan Limited**

**Decision: Insurance business deemed to be similar to takaful business – temporary injunction allowed**

This case is one of the very few cases decided by the courts in relation to service marks. The Plaintiff filed a suit for permanent injunction contending that the Defendant's trade mark 'Amaan' is in violation of the Plaintiff's registered trade mark 'Amaan Plan' in respect of similar services.

The brief facts of the Plaintiff's case are that the Plaintiff is an insurance company and in order to distinguish its high quality insurance services from other insurance companies it adopted and coined number of distinctive service marks including the mark 'Amaan Plan', which is registered under the Trade Marks Law in Pakistan and that by virtue of prior adoption and continuous use, it is the bona fide owner of the mark, which by virtue of advertisement flyers, telemarketing, brochures on internet, electronic media and print media throughout Pakistan, has become popular amongst the general public, customers, companies and financial institutions. That after it came to its knowledge that the Defendant has started insurance policies under the Plaintiff's registered trade mark 'Amaan Plan', the Plaintiff sent a formal letter/notice to the Defendant which was replied and subsequently the Plaintiff informed the Defendant about its trade mark registration. The Defendant did not stop infringement of the Plaintiff's registered mark so it issued a legal notice.

The counsel for the Plaintiff submitted that the impugned mark was deceptively similar which was likely to mislead and cause confusion to innocent customers and general public and that unauthorized adoption and use of the Plaintiff's registered service mark was not honest and a deliberate attempt in pursuit of its malafide desires to cash on the goodwill and reputation of the Plaintiff's mark. He pleaded that the Defendant be restrained from using the Plaintiff's registered trade mark 'Amaan Plan' or 'Amaan' and sought declaration that the service mark 'Amaan' alone is deceptively similar and amounts to infringement of Plaintiff's registered service mark.

The Defendant's counsel submitted that there was a marked distinction between the business insurance that has been transacted by the Plaintiff and that of the Defendant who has been allowed by SECP (Securities and Exchange Commission of Pakistan) to transact classes of window takaful business (takaful is an insurance which is based on Sharia, Islamic religious law). The Defendant's counsel further submitted that both businesses according to their definitions are entirely different services and there could not be any confusion in the mind of the customers, as the Plaintiff deals in life insurance policies whereas, the Defendant deals in different kinds of takaful such as fire takaful, marine takaful, motor takaful, engineering takaful but not for life insurance hence the same were neither identical nor similar services as compared to the Plaintiff's services "Amaan Plan" and therefore the question of infringement did not arise.

The court observed that that there may not be any doubt that the takaful business may not be of conventional insurance but the question arises as to why a proprietary right of a registered mark could be allowed to be infringed by the Defendant who provide services of the same class, which may cause confusion in the mind of the customers. The words "Amaan Plan" of the Plaintiff have gained so much popularity that the customers who may wish to have other policies of the Plaintiff could be deceived by the mark of the Defendant as they may presume that the Plaintiff has also started dealing with other kind of policies. The Defendant has not shown any reason plausible at law as to why it had chosen an invented word of the Plaintiff which gained popularity which is not denied by the Defendant so by virtue of its adoption there is





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likelihood that it would cause confusion and deception to the customers of such class. Takaful service is not specifically mentioned as a service in the trade marks law. The license obtained from SECP is not meant to infringe the Plaintiff's mark. It was concluded that the Plaintiff had presented a prima facie case, balance of inconvenience was found to be in favour of the Plaintiff and it would have suffered irreparable loss unless injunction was allowed and accordingly injunction was granted to the Plaintiff.

