

Controversial Judgment on Religious Trademarks

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The Supreme Court found against a registered trademark in the UAE incorporating the word “MAKKAH” and found that the name MAKKAH represents a religious symbol which is incapable of registration and use.

This Court decision, which is binding on the lower Courts in the UAE, addressed for the first time in detail, a specific example for trademarks that represent or incorporate a religious symbol. For some brand owners, this judgment came as a shock after many years of using and commercializing trademarks incorporating the word mark “MAKKAH”. It was also a shock that such ruling was not issued by the Saudi Arabia courts nor by the Al Azhar Islamic Shari’a scholars in Egypt.

“MAKKAH” or “MECCA” is a city in the Kingdom of Saudi Arabia. Makkah refers to the name of the city where the holy sites including Al Haram Mosque and the Ka’ba are seated. The Al Haram mosque is the most sacred mosque for Muslims and surrounds the Ka’ba, a structure built by the Prophets Ibraheem and his son Ismaeel, representing a direction all Muslims around the world face towards during prayers and where pilgrims perform one of their pillars of Haj.

Prior to this judgment, the Trademarks Office and Courts have treated the word Makkah, when commercialized in a trademark, as a geographical indication that is not automatically protected without, either a justified link to the geographical indication and/or a disclaimer to the ownership of the name MAKKAH. No longer though are disclaimers acceptable in the UAE for the word MAKKAH.

The Ministry of Economy, representing the Trademarks Section and the Trademarks Committee contested the Court of Appeals judgment, finding in favor of the owner of a beverage brand named MAKKAH COLA, a soft drink sold in number of markets throughout the Arab states. The brand owner argued that “MAKKAH” as a geographical place in the Kingdom of Saudi Arabia does not represent a religious symbol as the religious symbols are manifested by the Ka’ba and the Al Haram Mosque rather than the entire city. This argument was supported by Fatwa, being a religious finding, that the place “MAKKAH” is not a holy site. However the Union Supreme Court reversed the appealed judgment which previously found “MAKKAH Cola” as capable of protection and had concluded that “MAKKAH” does not represent a religious symbol. The Supreme Court reasoned its reversal on the basis that the city of “MAKKAH” comprises of many religious sites apart from the Ka’ba where it hosts “Jebel Arafat” as well as Mina and Al Muzdalifa which are religious sites and combine together to add to the religious nature of “MAKKAH”. Accordingly, the Court found that “MAKKAH” is therefore considered a holy city and a religious symbol, prohibited from being registered as a trademark, pursuant to Article 3 of the UAE Trademarks Law No 37 for the year 1992.

This judgment is final and cannot be further appealed nor reversed except by a subsequent Union Supreme Court judgment. As such, the Trademarks Section in the Ministry of Economy will accordingly reject trademark applications incorporating the word “MAKKAH”. This judgment is very unique in that it is not aligned with findings of Courts in neighboring countries and therefore brand owners with “MAKKAH” brands sold in the Arab region will have to reconsider their branding for the UAE.