



then. The plaintiff has provided a chart to demonstrate the number of policies issued on the yearly basis which is reproduced as under:-

YEAR	NUMBER OF POLICIES
2007	147
2008	3326
2009	7000
2010	9345
2011	18718
2012	30800
2013	39956
2014	28201

Learned Counsel submitted that by virtue of continuous and extensive use the service mark has earned reputation and goodwill. He contended that by virtue of prior adoption and continuous use of the mark since 2007 the plaintiff has presented himself as bonafide proprietor and owner of the service mark. He further added that by virtue of advertisement flyers, telemarketing, brochures on internet, electronic media and print media throughout Pakistan it has become popular amongst general public, customers, companies and financial institutions. It is argued that for the first time in September 2014 it came in the knowledge of the plaintiff that the defendant started insurance policies under the plaintiff's registration mark "Amaan Plan" hence formal letter was issued to them which was replied and they were subsequently informed that they have obtained registration of the trademark "Amaan Plan" in the form of logo. Learned Counsel submits that despite the notice/letters the defendant did not stop the infringement of the plaintiff's registration and hence they have issued a legal notice. It is argued that the impugned mark is deceptively similar which is likely to mislead and cause confusion to the innocent customers

and general public. He added that unauthorized adoption and use of the plaintiffs registered service mark is not honest and is indeed deliberate attempt in pursuit of their malafide desires to catch the good will and reputation of the plaintiff's mark. Thus learned Counsel submitted that the defendant be restrained from using plaintiff's registered service 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 defendants have filed their respective replies and at the very outset submitted that there is a mark distinction between the business that has been transacted by the plaintiff and that of defendants. Learned Counsel has taken me to a letter issued by the Securities & Exchange Commission of Pakistan wherein the SECP has allowed them to transact classes of window takaful business as specified. Learned Counsel has taken me to the definition of "insurance" and "takaful" and urged that there is huge difference between two services and hence there could not be a confusion in the minds of the customers since two products are different. Learned Counsel submitted that the plaintiff deals in the life insurance policies whereas the takaful is not at all meant for life insurance. Learned Counsel has relied upon the definition of conventional insurance business as provided under sub Rule (iv) of Rule 2 of the Takaful Rules, 2012. Learned Counsel has added that they deals in all kinds of takaful other than life insurance such as fire takaful, marine takaful, motor takaful, engineering takaful and miscellaneous takaful and none of the above is a conventional insurance either life or non-life and hence they are neither identical nor similar services as compare to the plaintiffs service "Amaan Plan" and the question of infringement does not arise.

Heard the learned Counsels and perused the record.

At the very outset the Counsel for the defendant does not object to the similarity of the mark and the only reason assigned to the use of such registered trademark is that the services provided by the plaintiff is dissimilar to the services in question trademark provided by the defendant. It is the case of the defendant that they are dealing with takaful whereas the plaintiff's service is limited to the extent of life insurance policies and hence the two customers are not common. The definition of "similar services" provided under the trademark laws are of importance while deciding the question under reference. Section 2 Subsection (xlv) of the Trade Marks Ordinance, 2001 provides definition of "similar service" which reads as under:-

**"S.40(xlv):** *"Similar services"* included services which are of the same description; ---- "

Section 39 of the Trademark Ordinance, 2001 relates to the rights conferred by registration whereas Section 40 of the Ordinance deals with the infringement of the registered trademark. In terms of Section 40 subsection 3(c) of the Ordinance a person shall infringe a registered trademark if the person uses in the course of a trade a mark which is identical with, or deceptively similar to, the trademark in relation to services of the same description as that of service in respect of which a trademark is registered. The proposition thus appears to be simple that service which is being dealt with by both the plaintiff and the defendant whether is of same description or otherwise to attract the provisions as referred above. I may refer to the international classification of goods and services and it seems that it is being dealt with by class-36 and there is no dispute in this regard as the defendant himself chooses to apply under the same class. The defence that they have been dealing with takaful business would not turn much as it is being dealt with by the same classification. 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 for a registered mark could be allowed to

infringe by the defendant who provide services of the same class i.e. class 36 which may cause confusion in the mind of the customers. Another answer to a question that the plaintiff is dealing with life insurance policies whereas defendant are not, the word “Amaan Plan” of the plaintiff has 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 would presume that the plaintiff has also started dealing with other kinds of policies. The provisions of section 40 of the Ordinance are thus clear insofar as the entitlement of the plaintiff is concerned. The defendant has not shown any reason plausible at law as to why they have chosen an invented word of the plaintiff which has gained popularity since 2007 which is not denied by the defendant. Considering the background of the plaintiff’s business, it seems that the adoption of the same trademark which is phonetically and visually similar and there is likelihood that it would create confusion and deception to the customers of such class. There is no specific provision available in the Trademark Ordinance for the registration of service mark as takaful service. The license obtained from SECP for takaful service does not mean for the infringement of the plaintiff’s registered mark nor does it allow the defendant to act in such manner.

In my view the defendants have failed to justify bonafide adoption of the word “Amaan Plan” and/or “Amaan” as they may have other choices instead of plaintiff’s registered mark which has already gained popularity and enjoying a goodwill in the market, hence I am of the view that the plaintiff has presented a prima facie case, balance of inconvenience is also in their favour and they would suffer irreparable loss unless the application is allowed as prayed. Accordingly the application is allowed.

Judge