

Longest-ever prison term handed down in drug counterfeiting case Counterfeiting
Israel - Reinhold Cohn & Partners and Gilat Bareket & Co
January 18 2008

In *State of Israel v Benjamin* (Case 004687/07, December 10 2007), the Tel Aviv Magistrates Court has issued a sentence of two years' imprisonment followed by a suspended 12-month sentence against Haim Benjamin for dealing in counterfeit drugs. Benjamin was also ordered to pay a fine of IS50,000. This prison sentence is the longest ever imposed in a drug counterfeiting case.

Benjamin pleaded guilty and was convicted, as part of a plea bargain, of several charges of distributing counterfeit drugs (mainly Viagra and Cialis). The charges included:

- offences under the Pharmacists Ordinance;
- offences under the [Trademarks Ordinance](#); and
- criminal offences of fraud and counterfeiting under aggravating circumstances.

The offences were committed over a period of three years in Israel and abroad, and resulted in millions of new shekels in profit for Benjamin and his two partners.

Benjamin was also convicted of criminal negligence and recklessness under the Penal Law insofar as he was aware that the counterfeit drugs distributed by him were liable to cause health damage to users. Viagra and Cialis are prescription drugs which require medical advice; counterfeit drugs pose an increased risk as their composition and the proportion of active ingredients is unknown.

In determining the sentence, the court took into account the following factors:

- the gravity of the offences;
- the monetary damage suffered by the rights owners; and
- the damage to Israel's reputation.

The court further stated that this type of offence on such a large scale was without precedent in Israel. In *State of Israel v Perach* (Case 8842/04, April 1 2007, unpublished), the defendant pleaded guilty to smuggling 160,000 Viagra pills into Israel. The defendant was also accused of fraudulent misrepresentation to the customs authorities in order to avoid tax. Taking into account mitigating factors, the court sentenced the defendant to 15 months in prison followed by a 12-month suspended sentence. The defendant was also ordered to pay a fine of IS70,000.

In the present case, the court noted that the sentences imposed by other courts with respect to similar offences did not represent a sufficient deterrent. Considering the risks to public health, the damage to public interest and the loss suffered by the international

companies involved, the court concluded that heavier penalties should be imposed. It stated that only long prison terms (measured in years, not months) and a heavy fine (exceeding the financial benefits reaped by Benjamin) would be appropriate in this case.

However, in the plea bargain arrangement reached by the parties, the prosecution (with Benjamin's consent) requested a prison term of 24 months followed by a 12-month suspended sentence, as well as a fine of IS50,000. The court pointed out that it was not bound to follow the sentence recommended in the plea bargain arrangement and stated that the proposed sentence was too lenient. Nevertheless, the court decided to endorse the arrangement for the following reasons:

- Benjamin pleaded guilty and thus saved judicial time.
- Benjamin was 60 years old and had never been sentenced to prison.
- Benjamin had only one prior conviction (for possession of drugs for personal use).
- Most importantly, Benjamin was being sued (along with others) by [Eli Lilly and Company](#) - which owns the rights in the CIALIS trademark - for approximately IS1 million in damages for the offences with which Benjamin was charged in the criminal proceedings. Moreover, it was anticipated that [Pfizer](#), the owner of the rights in the VIAGRA trademark, would file a similar suit against Benjamin. Therefore, the court considered that the public interest would be served.

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