

Parallel import of genuine goods does not constitute infringement Parallel imports
Israel - Gilat, Bareket & Co, Reinhold Cohn Group
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In *Dyson Ltd v Y Shalom Ltd* (Case 1089/05, November 14 2007), the District Court of Haifa has confirmed that the parallel importation of genuine goods does not constitute infringement, even though the importer provided an unauthorized translation of the manufacturer's user manual into the local language. In addition to confirming established case law, the court held that a foreign manufacturer and its exclusive agent in Israel cannot prevent the parallel importation of genuine goods into Israel under the laws on copyright, consumer protection or unfair interference.

Dyson Ltd manufactures and sells vacuum cleaners, which are sold in Israel through Dyson's exclusive agent (the second plaintiff). The defendants import and market in Israel vacuum cleaners manufactured by Dyson, independently of Dyson's exclusive agent and without authorization from Dyson. Some of the vacuum cleaners have been protected by a registered design since 2001.

Recognizing that Israeli case law allows the parallel importation of trademarked products, Dyson sued the defendants alleging:

- infringement of its registered designs under the Patents and Designs Ordinance 1924;
- infringement of its copyright in the vacuum cleaners and in the user manuals under the Copyright Act 1911 and the Copyright Ordinance 1924;
- false description and unfair interference under the Commercial Wrongs Law 1999;
- misrepresentation under the Consumer Protection Law 1981; and
- unjust enrichment.

The court held that under the IP legislation, rights owners benefit from a monopoly that is limited to a certain territory and is subject to the principle of exhaustion of rights. This principle prevents a rights owner from prohibiting the subsequent use and/or resale of its products after placing them on the market. The court reiterated that under Israeli case law, the distribution of genuine goods does not constitute trademark infringement (see *Geigy v Pazchim* (Case 471/70) and *Leibovitch v Eliyahu* (Case 371/89)). The court held that because the importation of legitimately trademarked goods is exempted from criminal liability under the **Trademarks Ordinance 1972**, a wider scope of civil liability cannot be imposed.

In addition, the court rejected Dyson's claims of copyright infringement. The court reiterated that under the copyright legislation, the parallel importation of genuine goods does not constitute infringement. With regard to the copyright in the user manuals (which had been translated into Hebrew), the court held that the right to parallel import genuine goods

included the right to supply explanatory materials in the local language.

Moreover, the court opined that the basic principle of exhaustion of rights should apply to neighbouring areas of IP law (eg, designs). Therefore, previous case law on the issue - under which the parallel importation of goods does not constitute trademark infringement or unjust enrichment - applied to the facts of the present case. The court held that Dyson had failed to prove misrepresentation and a likelihood of confusion, as required by the Commercial Wrongs Law and the Consumer Protection Law.

Therefore, the court rejected Dyson's claims and awarded legal costs to the defendants in the amount of IS30,000.

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