

Motions to strike claim dismissed in keyword advertising case

Online ads

Israel - Gilat, Bareket & Co, Reinhold Cohn Group

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In *Klein v Klalit Medical Fund Ltd*, the Tel Aviv District Court has dismissed the defendants' motion to strike the plaintiff's complaint *in limine* on the grounds of lack of privity and lack of cause of action (Case 2621/07, March 5 2008).

Dr Dov Klein, a plastic surgeon, sued Klalit Medical Fund Ltd, a major Israeli medical fund, and [Google Israel](#) for copyright and trademark infringement and misappropriation of his goodwill. According to Klein, Klalit bought an advertisement on Google Israel that was keyed to Klein's name (alone or in combination with other words). The advertisement delivered in response to searches using this keyword directed users to Klalit's website. Klein alleged that such use exploited his goodwill and infringed his copyright and trademark rights.

Google Israel and Klalit filed motions to strike the complaint, alleging lack of privity and lack of cause of action. Google Israel asserted that no privity existed between itself and Klein, as the [Google AdWords](#) program was not provided by Google Israel itself. On the other hand, Klein argued that Google Israel had failed to refute the statement that Klalit had bought Klein's name as a keyword. Klein further argued that Google AdWords is advertised on Google Israel, which contradicted the lack of privity claim.

In addition, Google Israel and Klalit, relying on *Mat'im Li Fashion Chains for Large Sizes Limited v Crazy Line Ltd* (Case 8774/06), alleged that Klein lacked a cause of action. In *Mat'im Li* (which also involved Google Israel), the court dismissed a complaint based on similar factual assertions on the grounds that the plaintiff had failed to prove a cause of action. However, the issue of Google's liability with regard to unlawful use of trademarks by its customers remained unresolved (for further details please see "[Use of marks to generate sponsored links not infringing](#)").

In the present case, the court held that Google Israel and Klalit could not rely on the decision in *Mat'im Li* as *res judicata*. Moreover, the court pointed out that in another case involving Klein and Google Israel, *Klein v Proportia PMC Ltd* (Case 48511/07), the court had dismissed Google Israel's motion to strike Klein's complaint.

Finally, the court noted that following the Supreme Court's lead, the courts have tended not to strike a complaint without a hearing.

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