

No miracle for publisher of religious law code
Israel - Gilat, Bareket & Co, Reinhold Cohn Group
November 20 2008

Passing off

The Jerusalem District Court has dismissed various claims brought by a publisher against a yeshiva (a Jewish institute of learning where students study sacred texts) for infringement of the publisher's rights in an indexed edition of an important religious medieval work (Case 9056/07, October 5 2008).

Ketuvim Almog Ltd publishes a single-volume edition of Maimonides's *Mishneh Torah*, a classic code of Jewish religious law dating from 1180. Ketuvim brought suit against Or Vishua Yeshiva for copyright infringement, misappropriation, passing off, unjust enrichment and defamation, alleging that Or Vishua Yeshiva had copied the concept and form of the Ketuvim edition (including certain terms and indexes), which preceded the yeshiva's edition by 20 years.

Or Vishua denied the allegations, claiming that its edition had been developed independently. It also brought a counterclaim for injury to its reputation and for monetary damages as a consequence of the interim injunction obtained by Ketuvim in the Rabbinical Court. The parties agreed that the decision should be reached by way of settlement under Section 79A of the Courts Law (Consolidated Version) 1984.

The court rejected both Ketuvim's claim and Or Vishua's counterclaim. It held that the Ketuvim edition consisted of an exclusive and highly detailed index to the *Mishneh Torah*, to which Maimonides's text was appended. The index referred to certain pages of the Ketuvim edition, which made it difficult to use the index by itself.

By contrast, the originality of the Or Vishua edition lay not in its indexes (which were appended at the end), but in its accurate and researched publication of Maimonides's original text, without censorial revisions or speculative comments. Unlike the Ketuvim edition, the index of the Or Vishua edition was non-academic in nature and did not reference all the laws. Moreover, it was limited in scope (containing some 3,500 entries, as opposed to some 27,000 entries in the Ketuvim edition) and was far less detailed.

The court noted that, under the law, it should protect not only the private interest of the IP rights owner, but also the public interest in promoting creative work (which is often based on prior work). The court held that certain similarities between the two editions were inevitable given the nature of the work. However, such similarities were marginal both qualitatively and quantitatively, and the indexes were different in form, style, scope, purpose and content. The court thus found that Ketuvim had failed to meet its burden of proof.

Finally, the court rejected Or Vishua's counterclaim on the grounds that Ketuvim had not sought injunctive relief in bad faith. However, it awarded legal costs against Ketuvim.

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