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Large gas supplier awarded maximum statutory damages for passing off Passing off Israel - Reinhold Cohn Group

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In *American Israeli Gas Corporation Ltd v Abadu Gas Tamra Ltd* (Case 8443/05, October 29 2008), the Haifa Magistrates Court has awarded a large Israeli gas supplier the maximum statutory damages for passing off.

American Israeli Gas Corporation Ltd (Amisragas), a well-established gas supplier, brought an action for passing off, deception and false description against a competitor, Abadu Gas Tamra Ltd (which operates primarily in the Arab sector), and three of Amisragas's distributors. Two of the distributors reached a court-approved settlement before the court issued its decision.

Amisragas owns hundreds of thousands of gas cylinder containers (in two sizes) bearing the mark AMISRAGAS or the letters 'AIG', which it leases to its customers. The smaller-sized cylinder has also been registered as a trademark; its shape is distinct from the gas cylinders of other companies in that it has two upper handles, a blue plastic cap and a narrowed round end. According to Amisragas, the cylinders are expensive to manufacture due to their distinctiveness. After refilling, Amisragas applies to each cylinder a yellow label with its name and logo, as well as a piece of blue cardboard with its logo and safety instructions.

Before the court, Amisragas demonstrated that the distributors involved delivered Amisragas containers to Abadu, which then refilled them and sent them back to the distributors with the Amisragas labels and blue cardboard attached.

Analyzing the tort of passing off under the **Commercial Torts Law 1999**, the court found that Amisragas had goodwill in the field of gas supply in Israel. Furthermore, the court held that:

- Amisragas had owned registered trademarks for over 50 years;
- its name and logo were well known among the general public;
- it had an extensive customer base due to its long-standing presence in the marketplace and due to its being a financially sound company; and
- its distributors were licensed to bear its trademarks on their trucks.

The court pointed out that the defendants had admitted that Amisragas was one of the oldest-established gas suppliers in Israel and that they sought to cut into its market share.

The court noted that, to prove deception for the purposes of passing off, it suffices to show a likelihood of confusion, rather than actual confusion. In the present case, as the defendants delivered Amisragas containers (with the Amisragas labels, cardboards and caps) in trucks bearing Amisragas's trademarks, consumers were likely to believe that the gas containers had been filled by Amisragas. Therefore, Amisragas was entitled to statutory damages for passing off.

The court also found the defendants guilty of:

- false description of their goods and services under the Commercial Torts Law; and
- consumer deception under the **Consumer Protection Law**.

However, Amisragas was not entitled to statutory damages under either of these grounds.

In addition, the court held that the defendants were not guilty of unduly hindering access to the business, goods or services of another trader under the Commercial Torts Law, as the fact that the defendants passed themselves off as Amisragas did not hinder access to Amisragas's goods.

Noting that the maximum amount of statutory damages available is IS100,000 for each act of passing off, the court found Abadu and its managers liable for five different series of acts. In light of the gravity of the infringements, the court awarded the maximum amount for each series of acts (ie, IS500,000 in total). The remaining distributor was found liable for a single act of passing off and was ordered to pay damages in the amount of IS100,000. The aggregate damages thus amounted to IS600,000 (approximately €120,000).

The court also ordered Abadu to pay:

- Amisragas's costs in investigating the infringing acts (IS151,188); and
- attorneys' fees in the amount of 17% of the damage award.

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