

## **No damages awarded for shipment of fake watches made in error**

**Israel - Reinhold Cohn Group**

February 11 2009

Counterfeiting  
Unfair use  
Passing off

In *Rolex SA v Balloons and Entertainment Ltd* (Case 2573/04, December 17 2008), the Tel Aviv District Court has refused to award damages to **Rolex SA** against an Israeli importer of counterfeit Rolex watches, holding that the latter had successfully demonstrated that the shipment of watches had been made in error.

Following the seizure by Customs of a shipment of 750 counterfeit Rolex 'Oyster Perpetual Date' watches, Rolex brought an action against the designated recipient of the shipment, seeking a permanent injunction and damages for trademark infringement, passing off, injury to goodwill and unjust enrichment.

The importer claimed that:

- the shipment resulted from an error by its Chinese supplier; and
- it had agreed to the destruction of the seized goods upon being notified by Customs.

The court pointed out that the importer did not dispute that the shipment contained counterfeit goods that infringed Rolex's trademarks. Confirming that the burden of proof rested on the importer, the court held that the latter had discharged its burden of proof by providing an affidavit made by the manager of the Chinese supplier, in which it was stated that the importer had ordered unbranded goods and that the shipment had been made in error. The court thus rejected Rolex's claim for damages.

This finding seems to contradict an earlier case in which the court had reached a similar decision despite the fact that no affidavit had been submitted. In the present case, the court's decision was unaffected by the parties' dispute as to the authenticity of an email in which the Chinese supplier acknowledged its error (which was presented as evidence by the importer, but was not supported by the affidavit).

The court nevertheless enjoined the importer from using Rolex's trademarks without the latter's consent.

*David Gilat and Sonia Shnyder, Reinhold Cohn Group, Tel Aviv*

© Copyright 2003-2009 Globe Business Publishing Ltd