

Attempt to rely on trademark law rejected in parallel trade case

Parallel imports

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In *Dead Sea Laboratories Ltd v JWG Ltd* (Case 8152/06, January 26 2009), the Jerusalem District Court has granted an injunction preventing the defendants from using marketing material from [Dead Sea Laboratories Ltd](#)'s catalogue and website on their own websites on the grounds that such use constituted copyright infringement.

Dead Sea is an Israeli company which manufactures and distributes cosmetics made from Dead Sea minerals under the trademark AHAVA. The defendants were not authorized distributors of Ahava products, but sold the products over the Internet. The defendants used pictures and text taken from Dead Sea's catalogues and website on their own websites.

The defendants argued that they were entitled to use Dead Sea's marketing material, since such use was impliedly authorized by the copyright owner. In particular, the defendants argued that the essence of their activities was to sell Dead Sea's products on the parallel market, which is allowed under trademark law. Therefore, Dead Sea's attempts to enforce its copyright against the defendants was against public policy. In addition, the defendants claimed that Dead Sea was not allowed to circumvent the fact that it could not sue for trademark infringement by filing a copyright infringement claim. Finally, the defendants argued that they were entitled to use Dead Sea's marketing material under the principle of trademark exhaustion.

The court distinguished the right to trade in goods on the parallel market and the use of copyrighted works that are not part of the products themselves. The court rejected the defendants' claim that online shops are no different from shops in the real world (in which shop owners are allowed to present original catalogues), since using marketing material on the Internet involved an act of copying (which is not allowed in the real world).

The court held that the textual description of products is in principle copyrightable, with the exception of idea/expression merger (ie, where the description does not go beyond a mere factual presentation of the product's quality, among other things). The court held that a description that includes non-essential details and puffery would be protectable. Applying this principle to the product descriptions at issue, the court found that most of them were protectable, as even a small degree of original creativity suffices to obtain copyright protection.

In *obiter*, the court noted that the copyright laws do not entitle trademark owners to prevent the parallel importation of trademarked goods or to forbid vendors from using trademarks if they are entitled to do so under the doctrine of exhaustion of trademark rights. However, the court pointed out that the case at hand dealt with the unauthorized use of copyrighted material, rather than the parallel importation of trademarked goods or the unauthorized use of trademarks.

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