

Contempt of court order issued against importer of Colgate products

Other issues

Israel - Gilat, Bareket & Co, Reinhold Cohn Group

Parallel imports

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In *Colgate-Palmolive Co v Einstein-Tzur Int'l Import-Export and Trade Ltd* (Case 2171/00, September 9 2009), the Tel Aviv District Court has issued an order of contempt of court against a parallel importer of Colgate products.

In 2000 **Colgate-Palmolive Co** and its local subsidiary (collectively Colgate) sued the defendant, a parallel importer, alleging that the latter was importing Colgate's products based on fraudulently obtained licences from the **Ministry of Health** (MOH).

In 2003 the parties reached a settlement, which led to a permanent injunction preventing the defendant from importing goods bearing the trademark COLGATE without valid MOH licences.

In 2006 the defendant obtained a MOH licence to import Colgate Propolis toothpaste. The defendant sought to prevent disclosure of the documents submitted to the MOH to obtain a licence (which purportedly originated from Colgate), but was unsuccessful. Upon inspection, Colgate alleged that the defendant had used falsified documents and sought a contempt of court order. The defendant requested that the court dismiss the motion for contempt on the grounds that:

- the licence for the Colgate Propolis product had since been revoked;
- Colgate had filed a civil action in addition to its motion and the contempt proceedings were thus unnecessary; and
- it had not been proven that the documents had been falsified and that the Colgate Propolis licence was invalid.

In support of its motion, Colgate argued that the revocation of the Colgate Propolis licence did not affect the contempt proceedings, as the injunction was not limited to the Colgate Propolis product. Colgate argued that the fact that the defendant had twice relied on falsified documents to obtain MOH licences, as well as its continued dealing in Colgate products, combined to create a risk of future infringement.

First, the court reiterated that contempt proceedings are non-punitive in nature and aim to ensure the enforcement of a court order. Therefore, contempt proceedings were appropriate to ensure the enforcement of the settlement between the parties. In contrast, the civil action sought damages for breach of the settlement.

The court agreed with Colgate that the revocation of the Colgate Propolis licence did not render the contempt proceedings redundant, as the injunction related to all products bearing the COLGATE mark, and remained potentially relevant for additional MOH licences.

Second, the court held that there was a real risk that the defendant would continue to

breach the injunction in light of the fact that:

- the defendant had opposed Colgate's inspection of the documents on which the MOH licences were based; and
- the defendant had falsified documents in the past.

The court noted that although the MOH had not positively determined that the documents were falsified, the fact that Colgate had stated that they did not originate from it was sufficient.

The court imposed a conditional fine of IS1,000 per day of violation of the injunction.

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