

# World Trademark Review Daily

**No likelihood of confusion between SMALLTALK and BIG TALK  
Israel - Gilat, Bareket & Co, Reinhold Cohn Group**

**Examination/opposition  
National procedures**

December 10 2009

In *Gamcom Ltd v Orange Personal Communications Services Ltd* (October 11 2009), the Israeli registrar of trademarks has dismissed an opposition against the registration of the stylized mark SMALLTALK for services in Class 38 of the [Nice Classification](#).

Israeli company [Gamcom Ltd](#) sought to register the mark SMALLTALK for telecommunication and telephone services in Class 38. [Orange Personal Communications Services Ltd](#) holds two registrations for the word mark BIG TALK for telecommunication and telephone devices and services in Classes 9 and 38, subject to a disclaimer for the words 'big' and 'talk'. Orange opposed the registration of SMALLTALK on the grounds that there was a likelihood of confusion with its BIG TALK mark.

The BIG TALK mark is used in respect of prepaid phone cards marketed to individuals who do not have a mobile phone subscription. The phone cards are sold in kiosks or similar points of sale. In contrast, the SMALLTALK mark is used in respect of a device and supporting services that allow the use of a mobile phone for conversations carried out via a regular phone line. The SmallTalk device is marketed to corporate and business clients via direct sales.

The registrar analyzed the likelihood of confusion between the marks under Section 11(9) of the Israeli [Trademarks Ordinance 1972](#) (New Version). Section 11(9) states that a mark will be ineligible for registration if it is confusingly similar to a third-party mark covering the same goods or description of goods. The similarity of the goods will be determined based on the comparison of the goods for which each mark is registered, rather than those for which the marks are actually in use. The registrar concluded that both marks related to telecommunications services. Therefore, the services covered by the marks were "of the same description".

However, the registrar held that the marks were not confusingly similar from a visual and phonetic point of view due to the fact that:

- the first words of the marks ('big' and 'small') - to which consumers generally pay greater attention - were different; and
- the targeted clienteles (which are assessed based on actual use of the marks) were different.

From a conceptual point of view, the registrar ruled that the idiomatic meaning of 'small talk', combined with the need to keep the word 'talk' free for use by competitors in the telecommunications sector, outweighed the similarity between the marks.

The registrar further noted that Orange's actual use of its mark – in conjunction with the trademark ORANGE and the colour orange - reduced the likelihood of confusion with the stylized SMALLTALK mark, which contains the colours red and blue.

Because the marks were found to be dissimilar, the issue of whether the BIG TALK mark was well known in Israel was moot.

The opposition was thus dismissed and the SMALLTALK mark proceeded to registration.

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