

World Trademark Review *Daily*

Supreme Court refuses to order Google Israel to disclose user's details
Israel - Gilat, Bareket & Co, Reinhold Cohn Group

Unfair use
Internet issues
Passing off

September 16 2010

In *Google Israel Ltd v Brokertov Ltd* (CA 1622/09, July 1 2010), the Supreme Court has overturned a district court decision ordering [Google Israel](#) to disclose the details of a Gmail user who had allegedly infringed the plaintiff's trademark.

[Brokertov Ltd](#) owns the registered trademark BROKER TOV (Hebrew for 'good broker', with a pun on the phrase '*boker tov*', which means 'good morning'). It provides financial consulting services through its websites at 'brokertov.net' and 'brokertov.co.il'. Brokertov alleged that the holder of a Gmail account had infringed its trademark through a financial services website maintained by proxy under the domain name 'brokertov.com'.

Brokertov petitioned the court to order Google Israel to disclose the identification details of the Gmail user, so that it could bring an infringement action against him or her. In its response, Google Israel argued, among other things, that it had no privity whatsoever with Brokertov because Gmail was operated by another entity, [Google Inc.](#)

The Tel Aviv District Court held that Brokertov had shown a *prima facie* cause of action for online trademark infringement and passing off. It found that the disclosure of an anonymous user's details is appropriate when there is a real apprehension that the user is committing a civil wrong or infringing another's IP rights (this would not be limited to situations where the infringement also gives rise to a criminal offence). The court was guided by the draft Electronic Commerce Act 2008, which was going through the legislative process at the time, but has since been abandoned.

The court also rejected the claim of lack of privity in light of its kinship with Google Inc, which operated the Gmail service, and ordered that Google Israel disclose the internet protocol address of the Gmail user (for further details please see "[Google Israel ordered to disclose user's identification details](#)").

The Supreme Court, sitting as a three-judge panel, accepted the appeal, without costs, and reversed the district court decision. It held that Google Israel was not the appropriate party and that its connection to Google Inc was insufficient.

With regard to the disclosure of anonymous tortfeasors' details, the judges expressed different opinions as to whether legislative intervention was required in order to permit pre-claim disclosure orders against third-party service providers. Citing a recent majority decision regarding the disclosure of internet users' identity in the defamation case of *Mor v Barak ETC (1995) International Telecommunications Services Company Ltd* (LCA 4447/07, March 25 2010), Justice Rivlin opined that, absent a procedural mechanism anchored in law, the court did not have the power to make a pre-claim order against a third party against whom the aggrieved party has no cause of action - either in defamation cases or in trademark infringement cases (where freedom of speech is not at stake). The absence of such procedure does not negate the existence of online infringement. Justice Handel further stated that legislative intervention to introduce a specific procedural mechanism may not be necessary where the appropriate party is sued.

Justice Rivlin also recognised the difficulty in identifying individuals based only on the identification details available to service providers, such as email operators.

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