

# World Trademark Review Daily

**Trademark owner not liable for storage and destruction costs**  
**Israel - Gilat, Bareket & Co, Reinhold Cohn Group**

**Counterfeiting**

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In *Levi Strauss & Co v Algamal* (CC 3261-03-10, January 2 2011), the district court has held that the trademark owner could not be held liable for the storage and destruction costs of counterfeit goods seized by Customs.

In an action for trademark infringement brought pursuant to a seizure made by the Customs Authority, a judgment was issued in favour of the plaintiff, [Levi Strauss & Co](#), the owner of well-known marks for jeans, against two importers of counterfeit jeans. The plaintiff reached a settlement with one of the infringers, who undertook not to import or distribute infringing products and, among other things, to bear the costs of the storage and destruction of the seized goods. However, the first defendant did not appear in court and a default judgment was issued against him.

Since the plaintiff refused to pay the storage costs of the seized goods for the first defendant, the court had to decide whether, as argued by the Customs Authority (the third defendant), the costs should be borne by the plaintiff, by way of deduction from the bank guarantee deposited by the latter pursuant to the requirements of the Customs Ordinance. In contrast, the plaintiff argued that the costs should be borne by the defendant.

The district court ruled that the trademark owner should not bear the detention costs, as it had committed no wrong and was not necessarily the initiator of the seizure under Section 200A of the Customs Ordinance. The court held that the provisions of the ordinance, enacted to implement the [Agreement on Trade-Related Aspects of Intellectual Property Rights](#) (TRIPs), did not support the Customs Authority's interpretation, under which the bank guarantee covers, among other things, the storage and destruction costs.

The court analysed the provisions of Section 200B of the ordinance, according to which the customs commissioner must return the bank guarantee to the trademark owner in the event that:

- the detention is cancelled by Customs; or
- the trademark owner's claim is rejected by the court and the importer fails to bring an action to obtain compensation for the damage caused by the detention.

The court stressed that the enforcement of IP rights is a state interest, reinforced by the state's undertakings under the TRIPs Agreement, and is not a service rendered to trademark owners to protect their commercial interests. The court emphasised that the customs commissioner's powers under Section 200A of the ordinance include the power to seize counterfeit goods without involving the trademark owner. The court held that the trademark owner's obligation to provide a bank guarantee did not create liability on the owner's part to guarantee payment by an infringer or to bear the storage and destruction costs - the bank guarantee is intended solely to compensate the importer if the goods are found to have been detained without cause.

The Customs Authority was ordered to restore the bank guarantee to the trademark owner and to bear its costs in the amount of IS10,000 (approximately €2,000). The case is currently under appeal.

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