

Google Israel ordered to disclose user's identification details Israel - Reinhold Cohn Group

Unfair use
Passing off

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In *Brokertov Ltd v Google Israel Ltd* (Case 250/08, January 7 2009), the Tel Aviv District Court has ordered that [Google Israel Ltd](#) disclose the internet protocol address of an anonymous internet user.

[Brokertov Ltd](#), an Israeli company that provides financial consulting and training services, owns the registered trademark BROKER TOV (Hebrew for 'good broker') and maintains websites attached to the domain names 'brokertov.net' and 'brokertov.co.il'. Brokertov became aware of the existence of a website that provided and advertised financial services under the domain name 'brokertov.com'. Brokertov alleged that the website infringed its trademark and other IP rights and diverted clients from its own website.

Brokertov petitioned the court to order Google Israel and other internet service providers to disclose the identification details of the infringing website and of the email accounts (including [Gmail](#)) linked to the infringement. Further, Brokertov sought disclosure from certain vendors with regard to advertisements made on the infringing website.

The court granted the requested orders and all the respondents - except Google Israel - agreed to abide by the orders. Google Israel claimed that:

- no privity existed between itself and Brokertov; and
- at best, Brokertov had privity with [Google Inc](#), the operator of the Gmail service.

The court rejected the lack of privity claim. Further, it held that although Google Israel was under an obligation of confidentiality towards its users, it could not allow them to infringe third-party IP rights under the cover of anonymity.

The court ruled that the disclosure of a user's identification details may be necessary where there is a "real apprehension" that another party's IP rights are being infringed (this would not be limited to situations where the infringement also gives rise to a criminal offence). The court thus adopted the approach of the draft Electronic Commerce Act 2008, which is currently going through the legislative process.

The court held that a "real apprehension" (ie, not a "near certainty", but more than a "reasonable apprehension") will exist where there is a *prima facie* case of infringement.

Here, the court found that Brokertov had a *prima facie* cause of action for passing off and trademark infringement. Therefore, it ordered that Google Israel disclose the requested information.

Due to the novelty and importance of the legal issue involved, each party was ordered to bear its own costs.

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