

Supreme Court refuses leave to appeal in *CARGO* Case
Israel - Gilat, Bareket & Co, Reinhold Cohn Group
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Confusion
 Unfair use
 Passing off

In *New Jeans Co v Renuar Fashion Manufacturing and Marketing (1993) Ltd* (Case 8055/08, April 2 2009), the Israeli Supreme Court has decided not to intervene in a decision of the district court in which the latter had refused to enjoin the use of the word 'cargo' for trousers.

The plaintiff, the owner of the figurative and word mark CARGO (in Latin characters) for clothing, brought an action against three large retail chains for unauthorized use of its mark. The plaintiff alleged trademark infringement, passing off and various other grounds, and requested an interim injunction.

The district court refused to grant the interim injunction on the grounds that the action had a low chance of success. The court took into account the defendants' argument that the word 'cargo' is customary and descriptive in the clothing industry, particularly with regard to a type of trousers. The court held that there was no risk of consumer confusion if the word 'cargo' was accompanied by the retailer's name. In addition, the court noted that the plaintiff had failed to demonstrate that it had suffered any injury.

Relying on the general rule that an appellate court will not normally intervene in a trial court's decision in respect of interim relief, the Supreme Court refused to grant leave to appeal the lower court's decision.

The Supreme Court held that the lower court was justified in relying on *prima facie* findings of descriptiveness in assessing:

- whether the infringement action was likely to succeed; and
- the scope of protection afforded to the CARGO mark.

The Supreme Court pointed out that a descriptive mark is not entitled to the same protection as a non-descriptive mark due to consumer protection and free speech considerations. The Supreme Court did not address the plaintiff's argument that the word 'cargo' is not descriptive and customary in Israel, where a Hebrew word is generally used to designate cargo trousers.

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