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More leeway given in passing-off cases involving two large companies
Israel - Gilat, Bareket & Co, Reinhold Cohn Group

Confusion
Passing off

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In *Shlomo A Angel Ltd v Y & T Berman Ltd* (CC (Tel Aviv) 1663-06, April 25 2010), the district court has held that **Berman Bakery** did not infringe **Angel Bakeries'** registered trademark EYNAN by using the mark LA'INYAN for identical goods.

Angel Bakeries, a major manufacturer of bread and baked goods, has been producing pre-germinated whole wheat bread under the registered trademark EYNAN for some 20 years. The bread is marketed under the name *Lechem Eynan* ('Eynan bread') in cellophane packaging, half of which is transparent, using the colours brown, gold, black and white. The method for producing the bread is not protected by patent or trade secret.

Another large bread manufacturer, Berman Bakery, started manufacturing the same kind of bread in 2006. The bread is marketed under the name *Berman La'Inyan* ('la'inyan' meaning 'to the point' in Hebrew) in cellophane packaging, half of which is transparent, using similar colours. Berman Bakery applied to register the marks BERMAN LA'INYAN and LECHEM LA'INYAN ('bread to the point') in 2006, and the marks were registered in 2008.

Angel Bakeries brought suit against Berman Bakery, claiming:

- infringement of the registered trademark EYNAN and the well-known mark LECHEM EYNAN;
- passing off; and
- unjust enrichment.

The court held that the word '*la'inyan*' and the mark BERMAN LA'INYAN were not sufficiently similar to the marks EYNAN and LECHEM EYNAN to constitute infringement. The court further held that, due to the lack of confusing similarity between the marks at issue, the registration of Berman Bakery's marks was not improper.

With regard to passing off, the court was prepared to assume that Angel Bakeries had acquired goodwill in its Eynan product. However, it held that consumer confusion had not been established due to, among other things, the prominent display of the name Berman on Berman Bakery's products - and this despite the existence of advertisements by third-party retailers that combined elements of both parties' marks. The district court noted that the Israeli courts tend to give more leeway in cases involving two large manufacturers than in typical passing-off cases, in which copycats seek to free-ride on the reputation of large companies.

The court also rejected the claim of unjust enrichment. Costs of IS50,000 were awarded against Angel Bakeries.

David Gilat and Sonia Shnyder, Gilat Bareket & Co, Reinhold Cohn Group, Tel Aviv

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