

World Trademark Review *Daily*

**Supreme Court affirms refusal of interim injunction against former distributor
Israel - Gilat, Baret & Co, Reinhold Cohn Group**

**Confusion
Passing off**

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In *Anton Huebner GmbH & Co KG v Super Medic (Medic Light) Ltd* (LCA 636/11, April 26 2011), the Supreme Court has refused an application for leave to appeal the district court's refusal to grant the owner of the trademark ORIGINAL SILICEA an interim injunction against use of the mark SILICA+D by a former distributor.

Anton Huebner GmbH & Co KG, a manufacturer of natural health products, holds a registration for a device trademark including the words 'original silicea' in Class 3 of the [Nice Classification](#) for various cosmetic preparations.

Anton Huebner sought to enjoin, by way of an interim injunction, a former distributor from, among other things, marketing products under the trademark SILICA+D. Anton Huebner alleged infringement of the ORIGINAL SILICEA mark and passing off. The district court refused to grant an interim injunction.

The Supreme Court noted that the existence of trademark infringement and passing off hinges on the question of whether the defendant's use of the mark creates a reasonable apprehension of consumer confusion. It further noted that, for the purposes of passing off, the likelihood of confusion is examined based on the defendant's overall conduct. The Supreme Court did not see fit to intervene in the district court's finding of an absence of likelihood of confusion, which followed a careful examination of the facts.

The court further noted that, for the purposes of determining trademark infringement, the comparison is different in that:

- it takes into account the similarities between the two marks without regard to the defendant's overall conduct and without necessarily comparing the products' get-up; and
- it takes into account the possibility that consumers will not be exposed to both marks side by side.

Hence, the court was less hesitant to opine on the similarities between the registered mark ORIGINAL SILICEA and the allegedly infringing mark SILICA+D.

The Supreme Court noted that there were visual and phonetic similarities between SILICEA and SILICA+D that could lead to confusion. Nonetheless, the court held that there was no room for an interim injunction due to the potentially descriptive nature of 'Silica' for silicon-containing products, which could significantly limit the scope of protection of SILICEA. It deferred the determination of this issue to the trial itself.

The defendant-respondent was awarded costs in the amount of IS25,000.

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