

# World Trademark Review Daily

**Maximum statutory damages awarded in counterfeit drugs case  
Israel - Gilat, Bareket & Co, Reinhold Cohn Group**

**Counterfeiting**

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In *Lilly Icos LLC v Finkelstein* (CC 1879-06, June 16 2011), the Tel Aviv District Court has awarded the maximum statutory damages against the principal wrongdoer.

Lilly Icos LLC and [Eli Lilly & Company](#) brought a civil action against 26 individuals who dealt in counterfeit Cialis medicine. Cialis is manufactured and marketed by the plaintiffs for the treatment of sexual dysfunction. The plaintiffs also brought criminal proceedings against all of the defendants. In the civil case, some of the defendants reached a settlement with the plaintiffs and were not included in the judgment.

Pursuant to an agreement between the parties, the Tel Aviv District Court awarded damages ranging from IS 15,000 to IS27,000 against four of the defendants. However, no such agreement was reached with the principal wrongdoer, who was convicted in the criminal proceedings in 2007 (for further details please see "[Longest-ever prison term handed down in drug counterfeiting case](#)").

The plaintiffs adduced affidavits showing that the defendant had been convicted, on his own admission, of distributing thousands of counterfeit Cialis tablets over the course of three years (including through the internet, newspaper advertisements and third parties), despite being aware of the fact that the counterfeit drugs posed a health risk to the public.

The defendant failed to submit evidence or cross-examine the plaintiffs' witnesses. The findings in the criminal proceedings, which were admissible as *prima facie* evidence in the civil proceedings, were not rebutted by the defendant. Therefore, the court adopted these findings as far as they related to the infringement of the plaintiffs' rights.

The plaintiffs sought the maximum statutory damages under:

- the Commercial Torts Law 1999, which provides for statutory damages of up to IS100,000 for each tort; and
- the Copyright Ordinance 1924 (which was applicable during the relevant period), which provided for statutory damages of no less than IS10,000 and no more than IS20,000 for each infringing act (the relevant provision of the Copyright Ordinance has since been replaced by a provision of the Copyright Act 2007, which provides for statutory damages of up to IS100,000).

The court noted that it had discretion to award statutory damages in full or in part depending on the circumstances of the case, and noted the defendant's argument regarding his bad financial situation.

The court held that the severity of the defendant's conduct - namely, the fact that he had marketed and distributed the counterfeit drugs over a prolonged period of time and, in particular, the fact that he had got others to market the drugs, thereby increasing the injury to the plaintiffs and harm to the public - tilted the balance towards awarding the maximum statutory damages. The court also noted that the criminal sentence took into account the fact that the defendant would be also liable for compensation in the civil case.

Taking into account the length of the infringing conduct, its gravity, the number of infringing acts, as well as the nature and scope of the infringing activities, the court awarded statutory damages in the amount of IS 200,000 (approximately \$57,500) and costs of IS20,000.

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