

# World Trademark Review Daily

## Supreme Court imposes contempt fine on online trader for infringing consent judgment

Court system

Israel - Gilat, Bareket & Co., Reinhold Cohn Group

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In *Fundacio Gala-Salvador Dali v VS Marketing (Israel 2005) Ltd* (LCA 3901/12, July 25 2012), the Supreme Court has reversed the district court's refusal to issue a contempt order against an online trader that had infringed a consent judgment reached in an action brought by the Dali Foundation against the unauthorised use of the name Dali and of one of the artist's works.

The appellants were the Spanish foundation that owns trademarks and other rights related to the artist Salvador Dali, and a Netherlands company that holds trademark registrations consisting of, or including, the name Salvador Dali.

In 2008 the appellants sued the defendants for using the name Salvador Dali and one of the artist's works for the promotion, marketing and sale of commercial products, including online.

In 2011 the parties reached a settlement agreement that was given the force of a judgment. The agreement:

- gave the defendants the authorisation to use the work at issue and its component drawings, subject to certain restrictions set forth in the agreement, provided that the work was properly attributed; and
- regulated the defendants' use of Dali's name.

Later in 2011 the appellants sought a contempt order for non-compliance with the terms of the judgment. The court subsequently held that the judgment had been breached in several respects, including the manner of displaying and attributing the work. However, the court held that there was no room for a contempt order because:

- the infringing publications had been removed from the defendants' website; and
- the parties had a *bona fide* and legitimate dispute with regard to the issue of attribution.

The district court further held that one of the defendants - who served as manager and held shares in the defendant companies - had been properly joined to the contempt action, as he had made a personal undertaking regarding compliance with the settlement agreement.

On appeal, the Supreme Court affirmed the district court's refusal to issue a contempt order insofar as it related to the alleged breach of those clauses of the consent judgment that had been found to be in genuine dispute. In this regard, the Supreme Court reiterated that the 'contempt of court' remedy is intended to ensure compliance with unambiguous orders.

However, in respect of those clauses that had been found to be breached (but regarding which the district court had refused to impose a contempt sanction because the infringing publications had been removed by the defendants after the filing of the motion for contempt), the Supreme Court held that, while a contempt sanction is not a penalty, there was room for imposing a conditional contempt sanction to deter future infringement.

Accordingly, the Supreme Court imposed a fine of IS500 for each day of future infringement of the consent judgment by the defendants, if committed.

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