

World Trademark Review *Daily*

'Shadow man' mark not infringed by 'fedora hat' logo
Israel - Gilat, Bareket & Co, Reinhold Cohn Group

Confusion
Dilution
Passing off

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In *Red Hat Inc v Start Commercial Ltd* (OM (TA) 3768-12-10, March 24 2011), the Tel Aviv District Court has rejected Red Hat Inc's claim that the respondent's logo, which includes a tilted fedora hat, infringed Red Hat's 'shadow man' trademark or constituted passing off.

Red Hat, a US distributor of open source programs, has been marketing its products in Israel since 2004. It sought to enjoin the respondent, which engages in the same business, from using a logo that was allegedly confusingly similar to Red Hat's registered 'shadow man' mark, which depicts a man wearing a fedora hat.



Red Hat's 'shadow man'



Respondent's logo

The court first noted that the parties offer services of the same description and target similar customers, and that the respondent indicates on its website that it offers services based on Red Hat's operation system. However, the court held that the two marks were not confusingly similar from a visual point of view, primarily due to the fact that Red Hat's mark depicts a human being wearing a hat, while the respondent's logo features a hat and a rectangle. The judge also noted the difference in colours, but did not address the fact that the mark is registered in black and white.



Noting the rule set forth in *Mul-T-Lock* regarding conceptual similarity (for further details please see "[Temporary injunction granted based on conceptual similarity of devices](#)"), the court held that the protection of Red Hat's mark did not extend to the hat by itself, especially given the fact that the shape of the hat in the two marks was not identical. Therefore, the respondent's logo did not to infringe Red Hat's registered trademark.

Red Hat also alleged that the respondent diluted its well-known mark, arguing that the fedora hat by itself was a well-known, albeit unregistered, trademark. Red Hat claimed that it was associated with hats in the minds of consumers and had an open source project called Fedora. The court held that Red Hat's fedora hat mark was not sufficiently known in Israel so as to be within judicial notice and thus relieve Red Hat of the need to prove that its mark was well known. Therefore, the court held that Red Hat had failed to meet its burden of proof.

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The claim of dilution also failed because, while Red Hat was admittedly a well-known distributor of open source programs, the fedora hat was not distinctive independently of the products.

Red Hat also complained that the respondent's founder used a photograph of himself wearing a fedora hat on his [blog](#). However, the court dismissed this claim.

Costs of IS10,000 were adjudged against Red Hat.

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

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