

16.46x26.96	1	18 עמוד	THE JERUSALEM POST - FRONT	27/09/2011	29025898-3
עמי טביר עורך די - 23860					

# Legal gunslingers go at it – online

## DIGITAL WORLD

• By DAVID SHAMAH

**B**ack in the Wild West days, a cified pansy venturing onto the Ponderosa was as good as dead, unless he packed a pistol – or better, hired an experienced gunslinger to accompany him through the Badlands, protected from the highwaymen and tribal mercenaries out for quick cash or revenge on the white man.

The West isn't so wild anymore, but the Internet is. And to navigate the wasteland of the Internet, where it seems there is a predator or scam artist behind every other website, you may have to avail yourself of the services of the modern-day gunslinger – a lawyer!

As it happens, Israel is "blessed" with more lawyers – one per 170 residents – than any other country in the world. Once, we worried about finding them enough work, but thanks to the Internet, lawyers are busier than ever.

That's because the Internet is, daily, providing new legal challenges, with many situations that previous generations of lawmakers may never have even fathomed. Like the Case of the Stolen Reputation, in which Dr. Dov Klein of Tel Aviv won a NIS 50,000 award from Google and a plastic-surgery clinic (Proporzia) for the theft of his – name!?!?

Yes indeed, that is exactly what happened to Klein. In 2007, Klein, one of the leading plastic surgeons in Israel, noticed that a Google search of his name led to results featuring the websites of other plastic-surgery outfits (notably Proporzia, named in the lawsuit) and to display ads for them.

Apparently, Klein discovered, these outfits had decided to capitalize on his name and reputation. Using Google Adwords, the competitors, instead of purchasing terms like "plastic surgery" or "liposuction," as one would expect, instead purchased the term "Dr. Dov Klein," ensuring that whoever searched for that name would come across their ads!

Adwords, of course, is the genius system Google uses to monetize everyday words and terms, with clients bidding for the rights to those terms; for example, if you operated a travel agency, you might want your text-box ads (on the right side and/or top of the search-results page) to appear on pages where Google users search for "Airlines," "Vacations" and the like. The more popular the term, the more expensive it is. And while you probably wouldn't think of it, apparently one can purchase an individual's name as an Adword!

This is exactly what happened to Klein, who was understandably miffed: not so much because his competitors appeared in the search results for his name, but that they had actual-



DR. DOV KLEIN, one of the leading plastic surgeons in Israel, noticed that a Google search of his name led to results featuring the websites of other plastic-surgery outfits and to display ads for them. (Courtesy)

ly used his name as an Adword to get those ads on the results page. So, taking advantage of the plethora of lawyers in Israel, he sued, hiring attorney Ami Savir to represent him against Google and Proporzia.

The litigation process in the case was just as interesting as the results, Savir said.

"The court called this 'parasitical behavior,' and that's exactly what it is," he said. "Dr. Klein has spent years building his reputation, using his own hands. A search for Dr. Klein resulted in parasite sites showing up in the search results, illicitly using his reputation, because of the use of Adwords. We sued, and the court saw it our way."

The case revolved around the search for the Hebrew spelling of Dr. Dov Klein. But it emerged in court that the search algorithm used to determine which ads should appear on which search-result page is the same in all languages. In fact, according to the case protocols, Google Israel tried to shield itself from the case by claiming that the search engine was owned by Google Ireland. But the court ruled that, as far as it was concerned, all Google search engines were the same.

In its defense, Proporzia said while they might have purchased Klein's name as a keyword, it didn't do them much good, resulting in just a few hundred clickthroughs – and just 15 new customers – for the year, plus they had used Dr. Dov Klein as a keyword. Nevertheless, the court said, an individual has a right to his or her reputation, and it awarded Klein NIS 50,000 for his trouble, plus NIS 10,000 in court costs.

While there have been similar cases in other countries, Savir said, Klein's case is the first to take on the use of a personal name, instead of a brand, as an Adword. A lengthy case in the French courts was resolved this year in

favor of Louis Vuitton, which sued Google because the company sold that brand name on Adwords to retailers who were hustling Louis Vuitton replica purses online.

But Klein's case was worse, Savir said. It's bad enough stealing the reputation of a brand, he said, but it wouldn't surprise anyone, for example, if one soft-drink company were to buy the name of another company on Adwords just so they could place ads in front of customers. But stealing an individual's reputation and name is something else altogether, he said.

As "cloudy" as the rights a person has to their reputation is on Google's search algorithms, the legal questions on data in the Internet cloud are even more complicated. One reason for that, said attorney Miriam Wugmeister, is because of the different rules each jurisdiction has regarding the privacy of data.

"Many companies have their own Internet, with heavy security, and servers accessible only to specific groups," she said. "But more and more companies – even very large ones – have come to rely on the public cloud, the server network operated by companies like Google and Amazon," to the extent that some companies even use services like Gmail for their corporate e-mail.

"That data could be spread out and stored on servers around the world," she said, "and if there is a breach – as is not uncommon – the question of what laws apply to the data becomes more complicated."

So far, there have been no breaches of sensitive corporate secrets from the public cloud, but Wugmeister said it's just a matter of time.

"Companies are less focused on security than they are on low-cost solutions," she said. "That goes for both the providers and customers. And the service providers admit that they are not up to the challenge."

The true legal test, she said, will come when a breach occurs and the clients try to sue – at which point the service providers will pull out the agreements the clients signed, which exonerate the providers in advance from any responsibility for leaked data.

Of course, large corporations have more than enough lawyers on staff to give as good as they get. And if there are any holes in those agreements, you can be sure that some corporate lawyer out there will figure out a way to abrogate those agreements.

After all, the cloud may be ephemeral, but the damage that may result from a data breach will be very real. Imagine – we thought we had more than enough lawyers, but it may turn out that we don't have enough!