

Injunctions: using nuclear weapons in the courtroom.

In recent months, the word “injunction” might only mean one thing to most of us – some celebrity footballer or other famous person has taken exception to a proposed publication in the media of matters that they feel should not be for public consumption. A new form of injunction has subsequently developed known as a “super-injunction”.

It is a form of gagging order in which the press is prohibited from reporting even the existence of the injunction, or any details of it. The purpose of these super-injunctions is the source of much debate at the moment in the UK, particularly in the Libel Courts of England and Wales.

Whilst we may not have a celebrity status to protect, businesses should be aware that injunctions can be powerful weapons in your legal artillery when there is a serious threat to the business imposed by another party. There is great benefit to be drawn from securing an emergency order for relief within days or, in some very urgent cases, hours of the act that is the subject matter of the complaint. Injunctions can also sometimes be made without putting the other party on notice of the application and thus not giving them the opportunity to do anything to compromise your company interests by being made aware of the claim you are making against them.

Injunctions usually take one of two forms: mandatory injunctions compel a person to act in a particular way and prohibitory injunctions prevent a person from acting in a particular way. Breach of an injunction is a contempt of court and in extreme cases a person who breaches an injunction may

be sent to prison. Consequently, the grant of an injunction is an extremely powerful order of the court and for this very reason they are not easily obtained.

When to consider an injunction.

Several businesses have had the unfortunate situation of a former employee moving to a competitor or starting up a business in direct competition with his former employer and thereby ignoring the careful and ornate drafting skills of the lawyer who made sure that the contract of employment contained appropriate restrictions on what the former employee could and could not do if he were to part company with the business. When it comes to the issue of enforcement of these restrictions, injunctive relief or even the threat of an injunction can be of very significant benefit to the company.

Or what about the case where there is a threat to the business that a party will dissipate company assets and this is likely to frustrate a potential judgment in your favour in the future? A “freezing” order, known in the courts as a Mareva injunction, would be a remedy to seriously consider. Equally important are situations where there is a risk that significant evidence will be destroyed unless an emergency order is made. A “search and seizure”



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order (Anton Piller injunction) may be the only appropriate remedy available to the client.

These types of situation illustrate the point that in some cases monetary compensation is not the appropriate remedy. However, it is important also to consider the fact that interim injunctions make a ruling on a case that may eventually be overturned at the final trial hearing on a later date. Consequently, there are a number of hurdles the applicant must get over to satisfy the Judge that, in making his decision, the basic rule of justice is more likely to be upheld.

Guidelines were set out in the case of **American Cyanamid Co v Ethicom Ltd [1975] AC 396** to establish whether an applicant has an adequate case for the granting of an interlocutory injunction.

First, the claimant must establish that it has a strong rather than a merely arguable case. The second consideration is the adequacy of damages as a remedy. The court must be satisfied that an injunction is an appropriate remedy to the case. If a claim for damages is equally or more appropriate then an injunction order will not be made. The third hurdle to get over is known as the ‘balance of convenience’ test. A claimant will be expected to demonstrate to the court that irreparable loss and damage will

be sustained if an injunction is not granted. If all these hurdles can be passed the court will closely consider all the circumstances before finally determining whether or not the grant of an injunction is appropriate.

Is it worth it?

Legal costs are a serious consideration in deciding to apply for an injunction. Cases are dealt with very quickly but they are extremely work and time intensive. Furthermore, a claimant will almost always have to give a cross-undertaking in damages, that is you must demonstrate to the court that you will be able to pay any loss suffered by the defendant party should you lose the case at the final trial.

There is no doubt however that, once granted, an injunction can be extremely effective in bringing about a quick resolution of your claim. If the matter is sufficiently serious and you cannot be adequately compensated in money for any losses then you should certainly obtain urgent advice on pursuing this powerhouse remedy.

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