

USE OF INJUNCTIONS IN COMMERCIAL DISPUTE

An injunction is an interim remedy which becomes necessary in circumstances where a party wishes to preserve the status quo pending final determination of the issues in dispute. We have successfully obtained injunctions to restrain the infringement of intellectual property rights, the use of confidential information / trade secrets and the breach of restrictive covenants.

A restraining injunction is a discretionary remedy and the Court will only exercise its discretion in the Applicant's favour if the Applicant can demonstrate he/she has a serious issue to be determined. The Court will not pre-judge the litigation and will need to be convinced the Applicant has a strong arguable case. As an injunction restrains a party's conduct / rights prior to the full merits of the case being heard, the Court will usually require the Applicant to undertake to compensate the other party if it subsequently transpires the injunction was wrongly granted. The undertaking can also extend to the other side's legal costs. The Court will balance the risk of injustice and inconvenience if the injunction is granted against the risk of damage or inconvenience which would be suffered by the Applicant if the injunction is refused. If the Court takes the view any potential inconvenience to the Applicant would be adequately compensated by damages the Court is likely to refuse the injunction. The Court is also likely to refuse an injunction if the Applicant delays making an application without reasonable explanation.

An emergency injunction can be obtained without giving notice to the other party if there is a danger the other party would take advantage if aware of the Application or if delay could lead to more extensive damage.

Breach of an injunction will be contempt of Court and can lead to a fine and/or imprisonment. An injunction may also include a "penal notice" and any failure to obey could result in committal proceedings leading to imprisonment.

An application for an injunction must be supported by detailed witness evidence or an affidavit. This evidence will set out the facts relied upon and attach all relevant documents. In the case of an emergency injunction (without notice to the other party) the Court is reliant on the Applicant to be full and frank in its evidence and not mislead the Court. Given the nature of injunctions and the urgency that usually accompanies the application, the costs involved are high even in relatively straight

forward cases. The costs are also increased due to the necessity for a Court Hearing.

For further information or advice on the use of injunctions or dispute resolution, contact Harminder Sandhu on 01384 216840 or hsandhu@hawkinshatton.co.uk