

Injunctions

The top 10 cases of 2016

OLSWANG



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Introduction

Two years ago we started our Injunctions Blog to monitor every significant judgment relating to injunctions. In this note we include reports on what we consider to be the top ten injunction cases of 2016. Also, given the profusion of injunction cases in the year, we have set out summaries of a further seven cases we consider to be interesting and important.

Of our top ten cases:

- three are from the Court of Justice of the European Union, one is from the Supreme Court, one is from the Court of Appeal, four are from the High Court and one is from Commercial Court; and
- five relate to broadly commercial matters, three broadly to tech and two are privacy injunctions,

showing once again the diverse range in the development of the law of injunctions.

Perhaps most importantly, the Court of Appeal considered and upheld the decision of Mr Justice Arnold in *Cartier International others v BSB and others* (our case 1), emphatically extending the jurisdiction of the court to granted injunctions. The decision of Mr Justice Nugee in *Holyoake v Candy* (case 2) not to grant a substantive order restraining the conduct in question, but instead an order requiring the defendant to notify the claimant of his intention to carry out such conduct may herald a new form of injunctive relief granted at a lower threshold.

The year also saw something of a return of privacy cases, with five privacy injunctions granted: *PJS v NGN*, *ERY v Associated Newspapers*, *Middleton v Persons Unknown*, *DMK v NGN* and *TRK and another v ICM*. The first two of these are included in our top ten cases: *PJS v NGN* where the Supreme Court granted an injunction to restrain the traditional media disclosing private matters despite them being widely available on the internet; and *ERY v Associated Newspapers*, where Mr Justice Nicol recognised a reasonable expectation of privacy in a police investigation on the part of the person being investigated.

We also held our first dedicated injunctions event, entitled "*Injunctions in the digital age*". This cross-disciplinary seminar, chaired by High Court judge Mr Justice Birss, considered the changing face of injunctions in the age of the internet and mass data. For more details, see our review of the event [here](#).

So what is next in the law of injunctions? This month will bring the advent of the European Account Preservation Order ("EAPO"), with the EAPO Regulation applying in EU Member States except the UK and Denmark from 18 January 2017. Although the UK's opt-out from the Regulation means that bank accounts in the UK will not be subject to EAPOs, it will still be possible for a creditor in a participating Member State to apply for an EAPO against the bank account of a British entity which is located in another participating Member State. See our blog post [here](#).

We will continue to follow closely cases and other developments relating to injunctions in 2017, which is likely to be another extremely interesting year.

The Injunctions Blog

The Injunctions Blog reports on developments in the law as it relates to injunctions. We post on the blog a report of every significant case concerning injunctions in England and Wales as well as reports of other legal developments in this area and similar news and developments from other jurisdictions around the world.

Users can sign up for email alerts for posts on the blog. The blog is available at: www.theinjunctionsblog.com

Case 1 - *Cartier International AG v British Sky Broadcasting Limited*

Cartier International AG and others v British Sky Broadcasting Limited and others [2016] EWCA Civ 658: Court of Appeal upholds website blocking injunction against internet service providers

The Court of Appeal refused an appeal against an order requiring internet service providers (“ISPs”) to block websites offering counterfeit goods. The claimants sought an injunction against the five main ISPs in the UK, requiring them to block access to certain websites that were being used by their operators to infringe their trade mark rights.

Whilst the ISPs had not themselves infringed the claimants’ trade marks, the court’s wide jurisdiction to grant an injunction and Article 11 of the Enforcement Directive provided a principled basis for extending the court’s general power to grant injunctions. The court recognised that it was duty-bound to construe section 37(1) of the Senior Courts Act 1981 in this manner by the *Marleasing* principle.

The court refused to draw any distinction between websites disseminating copyright-infringing material and those advertising counterfeit goods. In both cases, the ISP was an “essential actor” enabling its customers to access offending material on the internet. The court noted that Article 11 was clearly intended to ensure that holders of IP rights other than copyright should be entitled to seek an injunction against ISPs.

The court found that the orders made were proportionate on the following basis:

- It was not necessary for the blocking order to lead to a complete cessation of the infringing activity, provided that it at least made access to the target website difficult to achieve, and seriously discouraged internet users from accessing it.
- The costs of implementing a blocking order could be borne by the ISP, provided the measures they had to take were not unnecessarily costly or difficult.
- It was economically more efficient to require ISPs to take action to prevent infringements occurring using their services than to require rights holders to take action directly against infringers.
- Alternative measures, particularly “notice and take-down” strategies, were unlikely to achieve anything more than short-term disruption of the target websites and accordingly did not provide an equally effective remedy.

This decision has authoritatively endorsed the approach of the courts to grant injunctive relief not only against legal wrongdoers as such, but more generally where it is appropriate to do so. It also serves as a reminder of the impact of EU legislation and CJEU jurisprudence on the interpretation and application of domestic law and reflects a wide judicial imperative to bring domestic law in line with European law by all means reasonably possible.

The judgment is [here](#) and the full blog post is [here](#).

Case 2 - *Holyoake v Candy*

Holyoake and another v Candy and others [2016] EWHC 970 (Ch) and [2016] EWHC B12 (Ch): High Court grants first stand-alone notification injunction

The High Court granted the first stand-alone “notification injunction” (or notification order), which can be viewed as a less invasive alternative to a freezing injunction. A notification injunction requires a defendant to give notice to a claimant before disposing of or dealing with particular assets where there is concern that the defendant may dissipate these assets so as to frustrate the enforcement of a future judgment. This gives the claimant the opportunity to apply to freeze the assets before the disposal or dealing takes place.

Mr Justice Nugee considered there was clearly power under section 37 of the Senior Courts Act 1981 to grant a notification injunction even if a freezing injunction was not sought. The threshold which needed to be met for a notification injunction was the same as for a freezing injunction, namely that the claimant had to demonstrate a “good arguable case”.

Notification injunctions have two potential advantages over freezing injunctions, and therefore may prove to be an attractive alternative for claimants. Firstly, Nugee J found that the degree of risk of dissipation of assets that a claimant needs to demonstrate in order to obtain a notification injunction is less than it would be for a freezing injunction. Secondly, where the claimant can show that the notification requirement is less likely to cause serious damage than freezing the defendant’s assets, the level of the cross-undertaking in damages which the claimant has to provide as the “cost” of obtaining the injunction may well be lower.

Although the notification injunction is not strictly new (such injunctions have previously been granted as ancillary remedies to freezing injunctions), it is a novel form of relief which provides a claimant with notice of a defendant’s intention to divest itself of assets without the claimant having to bear all the burdens that attach to a standard freezing injunction. As such, it is another instance of the recent trend of the courts developing forms of injunctive relief to meet the demands of the modern world.

It will be interesting to see whether pure notification injunctions will become available outside the area of freezing injunctions. There appears to be no reason in principle why they should not. For example, a claimant might seek a notification order against a newspaper in relation to whether it was proposing to publish private information about him or her, where there was insufficient evidence that there would be publication to justify a prohibitory injunction. That would be a significant - and arguably useful - extension to injunctive relief.

The first judgment is [here](#) and the second judgment is available on Westlaw and LexisNexis. The full blog post is [here](#).

Case 3 - *PJS v News Group Newspapers Limited*

PJS v News Group Newspapers Limited [2016] UKSC 26 and [2016] EWHC 2770 (QB): Supreme Court upholds “celebrity threesome” injunction and High Court makes final order as parties agree settlement

In the most high-profile injunction case of the year, the Supreme Court upheld the *PJS* injunction preventing the media from naming the celebrity involved in an alleged threesome at the end of 2011. It was alleged that *PJS* had an extramarital affair with another couple four years ago. In January 2016, the couple approached the “*Sun on Sunday*”, following which the editor notified *PJS* that he proposed to publish the story. *PJS* applied for an urgent interim injunction to prevent the publication which was refused, but the High Court granted permission for *PJS* to appeal. The Court of Appeal granted an injunction to restrain the publication of the relevant names and details of their relationship.

However, following publication of the story in the US, Canada and Scotland, as well as on numerous websites and social media, News Group Newspapers (“NGN”) applied to the Court of Appeal to set aside the interim injunction on the basis that the protected information was now in the public domain. The Court of Appeal handed down judgment discharging the injunction. In the Supreme Court the decision of the Court of Appeal was overturned, with the court holding that despite the “*existing invasions of privacy being perpetuated on the internet*”, the interim injunction should be continued until trial to protect the rights of *PJS*, his partner and their children.

The *PJS* saga ignited heated public debate in relation to privacy, press freedom and the value of media injunctions in the internet age. The judgment is likely to be criticised by many who will not consider the court’s distinction between publications on different mediums to reflect reality. We live in a digital age where the public routinely relies on international websites as a primary for news and information. Many are unlikely to consider a story in a newspaper to have “*greater influence, credibility and reach, as well as greater potential for intrusion, than the same story on the internet*”.

Following the Supreme Court’s decision, the High Court approved, without a hearing, an agreed final order in the action for breach of confidence and misuse of private information. The order provided that NGN pay a specified, confidential sum in settlement of *PJS*’s claim for damages and for costs. NGN also undertook not to use, disclose or publish certain information and to remove and not republish certain existing articles. Allied provisions restricted access to statements of case and confidential schedules and exhibits. The anonymity of *PJS*, *PJS*’s partner and several third parties *AB*, *CD*, and *EF* was also maintained.

From kiss and tell to kiss and make up, this agreement attracted less ferocious levels of public interest; nonetheless the result remains important. The theme of Mr Justice Warby’s judgment may be one of balance, but maintaining anonymisation when a simple online search could reveal the parties details suggests a nod to privacy over the right to freedom of expression.

The judgments are [here](#) and [here](#) and the full blog posts are [here](#) and [here](#).

Case 4 - *Gerald Metals SA v The Trustees of the Timis Trust*

Gerald Metals SA v The Trustees of the Timis Trust and others [2016] EWHC 2327: Court cannot grant urgent relief in support of arbitration where emergency arbitrator could grant

The High Court held that the court did not have power to grant emergency relief in support of arbitration (here, a freezing order), where effective relief could have been granted by an emergency arbitrator or expedited tribunal under the London Court of International Arbitration ("LCIA") Arbitration Rules.

Section 44(3) of the Arbitration Act 1996 gives the English courts powers to make orders in support of arbitration proceedings which include making orders to preserve evidence or freeze assets. However section 44(5) limits these powers and states that the court may only do so to the extent that the arbitral tribunal has no power or is unable for the time being to act effectively.

Emergency arbitration provisions in the LCIA Rules permit parties to apply for the immediate appointment of a temporary arbitrator to conduct emergency proceedings pending the formal formation of the tribunal, or for the expedited formation of a tribunal in cases of exceptional urgency. Here, the claimant had applied to the LCIA for the appointment of an emergency arbitrator, but the application had been refused due to undertakings given on behalf of the defendant.

The claimant then applied to the court for a freezing order. The court dismissed the application. It held that if an emergency arbitrator could be appointed within the relevant timescale, and could grant effective relief, the test for "urgency" in section 44(3) had not been met and the court was unable to intervene. Here, the LCIA had declined to appoint an emergency arbitrator, and if the situation was insufficiently urgent to satisfy the requirements of the LCIA rules, it failed to meet the "urgency" test in section 44(3).

This ruling effectively limits the scope of the court's jurisdiction to grant interim relief in support of arbitration. It will only have the power to do so where either there is insufficient time to appoint an emergency arbitrator or expedited tribunal, or the arbitrator/tribunal is unable to exercise the necessary powers. It has caused concern in the arbitration community, because the emergency provisions in institutional arbitration rules were generally understood to supplement the parties' ability to apply to the courts for urgent relief under section 44, not to restrict that right.

The decision is also an important reminder to parties to consider at time of entering into contracts what dispute resolution clauses they adopt. Whilst the importance of arbitration cannot be underestimated in the resolution of disputes, parties should consider if they should amend standard form arbitration clauses to provide that they can seek urgent relief from the court in certain circumstances (for example, to protect proprietary information). Although such provisions are untested, they may assist parties in demonstrating to the court that the parties agreed they could seek urgent court relief rather than adopt emergency arbitration procedures at the outset of the contract.

The judgment is available on Westlaw and LexisNexis. The full blog post is [here](#).

Case 5 - *ERY v Associated Newspapers Limited*

[ERY v Associated Newspapers Limited \[2016\] EWHC 2760 \(QB\): High Court extends privacy injunction to prevent publication of information regarding police investigation](#)

This case focused on two important issues: first, the necessary likelihood of the matters sought to be restrained by an injunction, and second, the extent to which police investigations into individuals give rise to a reasonable expectation of privacy and thus the reporting of them can be subject to legal restraint. The judgment continued an injunction preventing the publication by Associated Newspapers Limited (the publisher of the *Daily Mail*, *Mail on Sunday* and *Mail Online*) of any information regarding a police investigation into the claimant.

The claimant's company ("Company A") was in a business arrangement with another Company ("Company B"). Suspecting financial crimes, the police raided the premises of both companies. The police then informed the claimant's solicitors that they wished to interview the claimant under caution. Despite the police assuring the claimant that the voluntary interview would remain confidential, a journalist from the Mail on Sunday contacted the claimant and indicated that the paper proposed to report the fact that Company A was involved in the police investigation.

Although the defendant gave an assurance not to mention the claimant's interview in order to stop an injunction from going ahead, the claimant's counsel said that this was insufficient as a breach of the assurance would have no significant legal consequence (unlike a breach of an injunction, which would constitute a contempt of court). Although Mr Justice Nicol did not accept this, he considered that there was a sufficient risk that the newspaper would publish material suggesting that the claimant was the subject of an investigation by the police, and there was a reasonable expectation of privacy on the part of the claimant in this information.

Accordingly, Mr Justice Nicol agreed to grant the injunction sought. The terms of the injunction did not extend to the publication of information regarding the police's investigation into Company A but the close relationship between the claimant and the company meant that this would be difficult to do without infringing the terms of the order.

There has been much discussion as to whether the arrest of an individual will usually give rise to a reasonable expectation of privacy. In this case, the injunction went beyond the question of any arrest or questioning by the police and held that even the fact that the police were investigating the claimant was potentially private.

This is the first time that such a wide injunction has been granted regarding a police investigation into an individual and this claimant-friendly decision is likely to have a far-reaching impact on how the press reports police investigations. The Mail on Sunday has described the judgment as an "*alarming restriction on press freedom*" and, given the importance of the issues decided in the case, it is likely to be appealed.

The judgment is [here](#) and the full blog post is [here](#).

Case 6 - *Rudolfs Meroni v Recoletos Limited*

Rudolfs Meroni v Recoletos Limited (Case C-559/14): CJEU considers whether freezing injunctions affecting third parties are contrary to public policy

The Court of Justice of the European Union (“CJEU”) considered whether an English freezing injunction affecting third parties was contrary to public policy under the 2001 Brussels Regulation (Regulation 44/2001) and therefore unenforceable. Under Article 34 of the Regulation, a judgment of an EU Member State court (which includes an interim protective measure, such as a freezing injunction) will not be recognised and enforced in another Member State if to do so is manifestly contrary to public policy in the Member State of enforcement. The CJEU held that this public policy defence did not prevent the enforcement of a freezing injunction which had been granted without hearing from third parties whose rights might be affected, providing the third parties had the right to apply to the original court to vary or discharge the order.

In this case, any third party would not be affected by the freezing injunction until it received notice of it. Under the terms of the freezing injunction, it was for the applicant to notify any third parties and to prove that such notification had been made. Once notified, the third party then had the right to apply to the English court to have the injunction varied or set aside. Enforcement of the injunction was therefore not precluded under Article 34.

The CJEU's decision confirms that the public policy defence in Article 34 is to be narrowly interpreted, and can only be relied on in exceptional circumstances. The same will be the case for the equivalent provision in the Recast Brussels Regulation (Article 45). The judgment also clarifies that freezing injunctions which affect the rights of third parties who were not involved in the original proceedings, but who hold interests in assets affected by the injunction, are unlikely to offend the public policy of the Member State where the injunction is to be enforced or to infringe the third parties' right to a fair trial, where such parties are given a genuine opportunity to challenge the relevant order.

The judgment is [here](#) and the full blog post is [here](#).

Case 7 - *McFadden v Sony Music Entertainment Germany GmbH*

McFadden v Sony Music Entertainment Germany GmbH (Case C-484/14): CJEU rules provider of free WiFi not liable for copyright infringement by network users

The Court of Justice of the European Union (“CJEU”) ruled that providers of free WiFi networks are not liable for copyright infringement committed by third parties using their network. In doing so, the CJEU clarified the “mere conduit” defence to intermediary liability under Article 12(1) of the E-Commerce Directive (2000/31/EC).

The CJEU held that the operation of a free, public WiFi network could constitute an “information society service” within the scope of Article 12(1) when read in conjunction with Directive 98/34 and Article 57 of the Treaty on the Functioning of the European Union. It was accepted that the term “services” in the Directive means services provided for remuneration; however, a service of an economic nature performed free of charge may also fall within the scope of the definition. Offering free WiFi in order to advertise goods and services (thus driving traffic to the website and shop of that business) constituted an “information society service”. As a result, the business owner was able to rely on the mere conduit defence.

The CJEU then considered the limitation of liability for intermediary service providers. If providers are able to rely on Article 12(1), rightsholders cannot claim compensation or the reimbursement of costs if that network is used by a third party to infringe its rights. However, the CJEU held that Article 12(1) does not prevent rightsholders from seeking an injunction to prevent further infringement.

It stated that, when determining the extent of the injunction, the courts must ensure that a balance is struck between the rights of the copyright owner and the service provider. The Directive precludes imposing a requirement on the service provider to monitor information transmitted via a given network. Similarly, a measure which would terminate the internet connection without considering less restrictive alternatives would not strike a fair balance. Requiring a service provider to password-protect the internet connection, ensuring that users reveal their identity before they obtain the password, would be an effective way of deterring potential infringement.

This decision provides some comfort to WiFi providers, such as owners of cafés, restaurants and shops, whose free services might be used by third parties to infringe the rights of copyright owners.

The judgment is [here](#) and the full blog post is [here](#).

Case 8 - *Cyprus Popular Bank Public Co Ltd v Vgenopoulos*

Cyprus Popular Bank Public Co Ltd v Vgenopoulos and others [2016] EWHC 1442 (QB): Foreign freezing order cannot be enforced within the jurisdiction until any appeal against registration of the order is determined

The High Court held that a freezing order granted by another EU Member State does not become immediately fully effective and enforceable once a registration order is made by the English court. It becomes enforceable only if no appeal is brought in respect of the registration order within two months of its being made, or on determination of any such appeal. The court also held that service of the freezing order on, and/or notice of its terms to third parties (in order to give effect to the terms of the order as a judgment of the English court) amounted to “measures of enforcement” of the freezing order, which were prohibited from being taken while an appeal was possible or pending by Article 47(3) of the 2001 Brussels Regulation.

In this case, the claimant had effectively enforced the terms of a worldwide freezing order granted by a Cypriot court and a registration order made by the English High Court by serving those orders on a bank with whom the defendants held accounts and seeking its compliance with them – in effect, insisting on the immediate freezing of the accounts in the face of immediate proceedings for contempt. As the underlying “judgment” was a worldwide freezing order, what the claimant had done amounted to a measure of enforcement as defined in Article 47(3). It was “*artificial and wrong*” to limit the meaning of measures of enforcement to measures which involved obtaining further orders from the court.

Mr Justice Picken noted that although Article 47(3) prohibited a claimant from taking measures of enforcement pending an appeal, it expressly permitted the taking of “protective measures” against the property of the party against whom enforcement was sought, for example, applying to the English court for a freezing order. This meant that the claimant had an “*appropriate level of protection*” pending an appeal, and could safeguard its position - provided, of course, that the claimant could persuade the court to grant it the protective relief. Given this, there could be no justification for a claimant using the registration procedure under Article 38 as a “*short cut*” to obtaining a freezing order from the English court. It could not be right for a claimant to be able to achieve the immediate freezing of UK bank accounts by obtaining a registration order without, pending an appeal, having to persuade the English court that it ought itself to grant a freezing order on conventional grounds.

This case demonstrates the limited effect of worldwide freezing orders and the importance, where the defendant has assets in other EU Member States, of seeking additional relief from the courts of those Member States in the form of “protective measures”. As Picken J clearly states in his judgment, the claimant in this case would have been better off seeking separate relief from the English court rather than seeking to enforce the original Cypriot worldwide freezing injunction.

The judgment is [here](#) and the full blog post is [here](#).

Case 9 - *AB Bank Ltd v Abu Dhabi Commercial Bank PJSC*

AB Bank Ltd v Abu Dhabi Commercial Bank PJSC [2016] EWHC 2082 (Comm): Commercial Court refuses to permit service of *Norwich Pharmacal* Order out of the jurisdiction

The Commercial Court set aside a *Norwich Pharmacal* Order (“NPO”) made against a bank in the UAE on the basis that the court had no jurisdiction to serve the order on the bank out of the jurisdiction because none of the permitted jurisdictional gateways under Practice Direction 6B to the Civil Procedure Rules were applicable.

The claimant, a Bangladeshi bank, alleged that it was the victim of a fraud after having paid US\$20 million into an account with the defendant, a UAE bank, which was subsequently paid out to an unknown party. An NPO was granted so that the claimant could see who the money had been paid to in order to determine against whom an action could be brought. The defendant then sought to have the order set aside on the grounds that the court had no jurisdiction to permit service of the order on the defendant out of the jurisdiction. If a respondent third party is resident outside the jurisdiction, an NPO applicant must seek the court’s permission to serve the NPO on them. To obtain such permission, the applicant must show that there is a good arguable case that the claim falls within one of the jurisdictional gateways listed in paragraph 3.1 of Practice Direction (“PD”) 6B.

Mr Justice Teare considered the claimant’s arguments in relation to three jurisdictional gateways but rejected each gateway as applicable as follows:

1. an application for an NPO is not “an interim remedy” within the meaning of paragraph 3.1(5) of PD 6B because the third party from whom information is sought will not be the defendant to the substantive proceedings. *Norwich Pharmacal* relief is therefore the final relief being sought against that third party;
2. the supply of information would occur outside of the jurisdiction (paragraph 3.1(2) of PD 6B); and
3. as no allegation of fraud was being made against the defendant, and the claimant did not wish to serve a claim form on the defendant, it was not a “necessary or proper party” to that claim (paragraph 3.1(3)(b) of PD 6B).

Even if any of the above gateways were available, the judge observed that the court should exercise restraint before deciding to exercise an “*exorbitant*” jurisdiction over a foreign bank, and it would be “*far more appropriate*” for the claimant and defendant to cooperate than for the court to seek to exercise such a jurisdiction over the defendant.

This decision casts doubt on earlier authorities permitting service of an NPO outside the jurisdiction. Following the judge’s comments, it may be more appropriate for parties seeking information from a third party outside the jurisdiction to look to local law for assistance.

The judgment is [here](#) and the full blog post is [here](#).

Case 10 - *Tommy Hilfiger Licensing LLC and others v Delta Center a.s.*

Tommy Hilfiger Licensing LLC and others v Delta Center a.s. (Case C-494/15): CJEU rules injunctions to apply to physical marketplaces

The Court of Justice of the European Union (“CJEU”) ruled that injunctions available against intermediaries under the Enforcement Directive (Directive 2004/48 on the enforcement of intellectual property rights) can apply to physical marketplaces in the same way as online marketplaces.

The defendant, Delta Center, owns a series of Prague market halls, which are sublet to various market traders. The rental contracts included a provision prohibiting the market traders selling counterfeit goods. Despite this, various manufacturers and distributors of legitimate branded goods became aware of the sale of counterfeit goods at these markets. Tommy Hilfiger and others applied to the Czech courts to prevent Delta Center from renting the market stall areas to people who persistently sold trade mark infringing goods.

Both applications for injunctive relief failed at both the City Court and the High Court in Prague, and the applicants brought an appeal before the Czech Supreme Court. The Czech Supreme Court stayed the proceedings and referred various questions on the interpretation of the Enforcement Directive to the CJEU.

The CJEU held that an operator which provides to third parties a service relating to the letting or subletting of pitches in a marketplace, must be classified as an “*intermediary whose services are being used by a third party to infringe an intellectual property right*” within the meaning of Article 11 of the Enforcement Directive. The CJEU also clarified that whether the sale takes place in an online or offline context is irrelevant because the scope of the Directive is not limited to electronic commerce.

The CJEU also stated that the conditions for imposing an injunction under the Directive against an intermediary who provides a service relating to the letting of sales points in market halls are identical to those for injunctions which may be addressed to intermediaries in an online marketplace. As the same rules apply, the injunctions must be both effective and dissuasive but also equitable and proportionate.

This judgment is excellent news for brand owners as they may now have the opportunity to take action against numerous traders of physical counterfeit goods by seeking a sole injunction against the marketplace operators. However, it must be borne in mind that it cannot be expected that market traders/owners will be able to exercise general and permanent oversight over their customers.

The judgment is [here](#) and the full blog post is [here](#).

Other significant cases from 2016

There have been so many important decisions about injunctions in 2016, we found it difficult to select just 10. Here is a brief round-up of some of the other significant cases of the year:

Case 11: *Cyprus Popular Bank Public Co Ltd v Vgenopoulos and others* [2016] EWHC 1695 (QB): No absolute entitlement to domestic freezing order as protective measure when appeal pending against registration of foreign judgment

The High Court held that a claimant who had obtained an order for the registration of a foreign judgment had no absolute entitlement to protective measures (in the form of a domestic freezing order) under Article 47 of the 2001 Brussels Regulation. Conventional principles should apply to the grant of protective measures, so the court had a discretion whether to grant a freezing order. The judgment is [here](#) and the full blog post is [here](#).

Case 12: *Fiona Trust & Holding Corporation v Privalov and others* [2016] EWHC 2163 (Comm): Cross undertaking in damages: assessment of loss

The High Court discussed the approach to assessing loss resulting from an incorrectly granted freezing order, for the purpose of enforcing the claimant's cross-undertaking in damages. The decision confirms that the court should make a "liberal assessment" of the defendant's damages, to reflect the "inherent imprecision" of calculating damages suffered as a result of a freezing order, and that damages may be awarded for loss of profits, even if the defendant might have used its funds in a way which could have resulted in a loss. The judgment is [here](#) and the full blog post is [here](#).

Case 13: *PJSC Tatneft v Bogolyubov and others* [2016] EWHC 2816 (Comm): Meaning of a "good arguable case" in the context of a worldwide freezing order

The Commercial Court confirmed that a claimant may sufficiently satisfy the "good arguable case" test in the context of an application for a freezing order even where both sides have a good arguable case on the material available to the court at the time of the application. The claimant does not have to prove a better than 50% chance of success. In addition, the court confirmed that a claimant may rely on allegations of dishonesty against the defendant in establishing a sufficient "risk of dissipation" of assets. The judgment is [here](#) and the full blog post is [here](#).

Case 14: *Kazakhstan Kagazy plc and others v Zhunus and others* [2016] EWCA Civ 1036: Court of Appeal decides that freezing injunction can be granted in aid of a contribution notice

The Court of Appeal held that a freezing injunction may be granted in cases where a cause of action does not yet exist, provided it is possible to issue proceedings for the relief in aid of which the injunction is sought (as it is with contribution notices). Alternatively, if a co-defendant is entitled to issue and serve a contribution notice, that must mean that he has a cause of action for doing so, and a freezing injunction may be issued in support of the contribution notice. The Court of Appeal also held that, although it is necessary for an applicant for equitable relief to come to court with "clean hands", this does not stop the court from granting a freezing order or making orders for equitable contributions between fraudsters. The judgment is [here](#) and the full blog post is [here](#).

**Case 15: *R (Interim Executive Board of X) v Ofsted* [2016] EWHC 2004 (Admin):
Injunction preventing the publication of Ofsted report upheld pending judicial review
application**

The Administrative Court upheld an interim injunction restraining the publication of a negative Ofsted school report, finding there was plausible evidence it could cause widespread and irreparable damage. The claimant had established pressing grounds and a pressing social need in exceptional circumstances requiring the preservation of the interim injunction until the question of permission to bring judicial review proceedings had been determined or until further order. The decision provides useful clarity for public authorities and claimants involved in public law injunctions, confirming that the hurdles a claimant must overcome in obtaining interim relief are much higher than those in private law cases. The judgment is [here](#) and the full blog post is [here](#).

Case 16: *Sports Direct International plc v Rangers International Football Club plc and another* [2016] EWHC 85 (Ch): A level playing field for contempt

Mr Justice Peter Smith's refusal to commit the respondent, the Chairman of Rangers FC, for contempt for alleged breach of an injunction shows the caution that the court will sometimes show when it comes to seeking to enforce injunctive relief. His reasons included that: (1) the injunction bound only Rangers FC and its Chairman was not acting in that capacity when he gave a "lifestyle interview" which was alleged to breach the injunction; (2) the injunction had not been personally served on the Chairman; (3) he was not satisfied that the terms of the injunction had in fact been breached; (4) the application for committal amounted to a vendetta and an abuse of process. The judgment is [here](#) and the full blog post is [here](#).

Case 17: *Shipowners Mutual Protection And Indemnity Association (Luxembourg) v Containerships Denizcilik Nakliyat Ve Ticaret A.S.* [2016] EWCA Civ 386: Court of Appeal upholds anti-suit injunction granted against "victim" attempting to take advantage of foreign direct action laws

The Court of Appeal confirmed that in circumstances where a third party seeks to enforce rights granted under an agreement containing an arbitration or jurisdiction clause, such enforcement should be in accordance with those contractual requirements. The court will seek to restrain proceedings brought in breach of such clauses, save in circumstances where there is good reason for the clause to be avoided. The judgment is [here](#) and the full blog post is [here](#).

The top 10 cases of 2016

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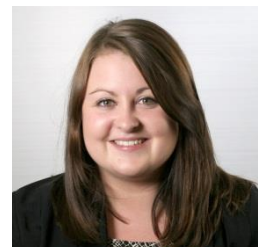
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