



Interim Injunctions: Emergency Response

Any incident. Any time.



CMS Interim Injunctions

An interim injunction is a court order issued prior to or during proceedings that obliges the respondent either to do a specified act or to refrain from doing a specified act. They are used to protect a legal right that is being threatened, often in circumstances where speed is of the essence.

If obtained the interim injunction order will act as a “holding” measure to provide immediate relief until a full consideration of the situation by the court.

CMS has extensive experience in successfully advising both those on the receiving end of an interim injunction and those who need to obtain one.

When you need an interim injunction

Interim injunctions can be hugely effective in protecting rights, but can be costly and troublesome if handled badly. It is important for an applicant to understand the basis on which an application for injunctive relief can be made and the consequences of doing so, which may include having to give an undertaking to compensate the respondent for any loss suffered in the event the injunction is overturned.

Steps:

1. Seek legal advice as soon as possible.
2. Identify the threat that is being posed to you.
3. Provide your legal adviser with all material facts and documents.

Conversely, when an injunction has been threatened or granted against a respondent, it is important to receive swift and accurate legal advice on opposing the application or complying with the order until it can be challenged. Failure to comply with an injunction is a contempt of court and penalties can include imprisonment. It is therefore vital that respondents and third parties understand how to comply with the orders served on them.

Steps:

1. Request a copy of the order.
2. Refrain from doing anything that might contravene the order.
3. Seek legal advice as soon as possible.

Our specialist disputes teams dedicated to banking litigation, reputation management, employment, insurance, and commercial disputes are spread across our international network of offices. Our extensive geographic coverage and breadth of specialist teams allow us to protect our clients' interests quickly and effectively, wherever they are located.

CMS has a depth of experience both in obtaining and enforcing urgent interim injunctions on behalf of applicants and in advising on contesting and overturning injunctions on behalf of respondents. We also advise third parties, such as banks, that are served with injunctions and have experience in acting as the independent supervising solicitor to ensure that search and seizure orders are carried out fairly.

Freezing orders

A powerful tool that typically obliges a respondent to give disclosure of all of its assets and enables the applicant to prevent the respondent from dissipating them. A freezing order can be granted on a worldwide basis, enabling assets outside the jurisdiction to be preserved.

Search & Seizure orders

Allows the applicant's representatives to enter the respondent's premises, search for and remove certain documents or information relevant to its claim. Typically used in relation to intellectual property disputes, a search & seizure order is particularly useful where there is a risk that a defendant will seek to hide or destroy information relevant to a claim.

Norwich Pharmacal orders

Norwich Pharmacal orders require a respondent who is unlikely to be party to a substantive action to disclose certain information to the applicant. They are often used to obtain information from a third party so as to enable a claim to be brought.

Client profiles

Worldwide Freezing Order: enabled TMT clients to prevent the dissipation of fraudulently acquired assets: Two clients in the TMT sector had a fraud perpetrated against them causing losses in the region of US\$ 1.9 billion. As the fraudsters were holding assets in over 20 different jurisdictions, our clients required an urgent and global remedy in order to enable them to prevent the fraudsters from dissipating their assets. CMS, working as part of a team, successfully applied for what was at the time the world's largest Worldwide Freezing Order. The defendants breached the order in several respects, so CMS made an application for contempt of court against the defendants which ultimately resulted in them receiving prison sentences.

Norwich Pharmacal Order: assisted a client in the Energy sector in identifying a rogue blogger: A client in the Energy sector was undertaking exploratory drilling and saw that an anonymous blogger's negative reporting on the outcome was causing the company's share price to fall. The client required information that would enable it to identify the blogger and stop the reporting. CMS successfully secured a Norwich Pharmacal order against various ISPs, which enabled our client to identify the blogger and prevent him from causing share price fluctuations.

Prohibitive Injunction: successfully defended a former franchisee from an onerous injunction application brought by the franchisor: A client of CMS received an on notice application for an injunction restricting it from using the applicant's confidential information, operating the new franchise that it had established and dealing with key suppliers. CMS was able to react quickly to defend the application at the hearing, preventing the applicants from obtaining an order and securing a costs order in our client's favour.

Search & Seizure Order: appointed by the High Court to act as supervising solicitors at co-ordinated multiple domestic and office sites in London and the midlands: being searched by HMRC as part of its investigation of an alleged VAT invoicing fraud. A team of solicitors from CMS attended the various sites in order to ensure that the search and seizure order was carried out by the parties in accordance with their obligations. CMS then provided sworn evidence to court that all obligations were complied with in accordance with the terms of the order.

Protestor injunctions

Following the increasing trend of protests interfering with business and property rights, CMS is regularly instructed by its clients in various sectors including energy and waste management to protect their rights and enable them to continue to conduct their business by obtaining interim injunctive relief from the court.

Depending on the nature of the protests, a key consideration for clients is that the protests are likely to attract, local, national or international, press and media coverage, and this can increase if an interim injunction is ordered by the court as it may be necessary to advertise the existence of an interim injunction against persons unknown. CMS therefore engages with its clients' PR teams at an early stage in order to determine how reputational concerns can be managed alongside the application process.

Our recent experience of protestor injunctions include:

- Obtaining two separate interim injunctions to protect headquarter and terminal site respectively for international "super-major" energy company
- Assisting a multinational oil & gas company with planning and preparation for anticipated action by environmental protestors at their onshore sites.
- Obtaining interim injunction to protect all branded retail sites in England & Wales - *Shell UK Oil Products Ltd v Persons unknown [2022] EWHC 1215*
- Obtaining interim injunctions to protect access rights for a waste management company.
- Advising an independent operator on urgent steps over the course of one week to prevent disruption to a multi-billion pound project arising from claims of public property and fishing rights preventing the installation of key infrastructure.

Common issues that often need to be considered before applying for an interim injunction resulting from protestor action include:

- would damages be an adequate remedy to compensate for the wrongdoing?
- could lawful protest be facilitated so that it does not adversely affect your business activities or cause health & safety risks to your employees, contractors or the public.
- the obligation on the party applying for injunctive relief to identify possible Defendants where practicable. In those circumstances, review of social media and an analysis of a businesses own security systems, such as CCTV, is a key method by which a business can take proactive steps to identify persons unknown.
- what evidence of wrongdoing will form the basis of the application for an interim injunction? For example, in recent cases our clients have been able to obtain evidence of wrongdoing from social media and press reports.
- ensuring that the order you are applying for is sufficiently clear including a clear definition of persons unknown so that people who may not have a legal background will understand what is being ordered by the court including practicalities such as any geographical and temporal limits.
- effecting service on Defendants, including person unknown, who may be actively attempting to avoid being served. Consideration will also need to be given whether alternative means of service is appropriate.

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