[IE] Court Restricts Release of Information to Media

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Recently, the High Court restricted the parties' use of the media while proceedings were still ongoing. The plaintiffs were Microsoft Corporation and Symantec Corporation, companies incorporated in the USA, involved in publishing, developing and producing computer software programs, and Business Software Alliance, a trade association of software publishers incorporated in the USA. The defendant was Brightpoint Ireland Ltd., a company incorporated in Ireland, engaged in distributing, incorporating and installing telephones.

The plaintiffs began proceedings for copyright infringement, trademark infringement and passing off against the defendant. They alleged that the defendant was unlawfully copying, using, distributing and networking the plaintiffs' software.

When the plaintiffs made their ex parte application in June 2000, there were no members of the press or media present, although the application was not heard in camera. In Ireland, the courts are open to the public (including the media), except in very limited circumstances.

The plaintiffs were granted a number of temporary orders, including that the defendant should stop the alleged infringements and passing off, and deliver up all copies of the plaintiffs' computer programmes. In addition, by way of what is known as an "Anton Piller order", representatives of the plaintiffs were to be allowed to enter the defendant's premises to inspect, detain and preserve the allegedly infringing computer programs and any related documents. The Anton Piller order is particularly useful in cases of software piracy. To be effective, it is necessary to have an element of surprise, so that any incriminating materials cannot be destroyed before the order can be carried out. However, the Court said that it was not essential that the application for an Anton Piller order be held in camera.

After the plaintiffs had carried out the Anton Piller order, details of it appeared in the print and broadcast media and on the plaintiffs' websites. The defendant then succeeded in preventing the plaintiffs from referring in any way to the Anton Piller order, or to the information thus obtained, in the print or broadcasting media.

In July 2000, the plaintiffs sought a continuation of the original temporary orders until the full hearing of the case. They succeeded, except in relation to the use of

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the print and broadcast media. The Court held that, although the release of information to the media regarding the execution of the Anton Piller order did not constitute contempt of court, the parties would not be permitted to communicate directly or indirectly with the media concerning the proceedings until after the case was finally decided, and also ordered that any such information already on the parties' websites should be erased. This was to ensure that the parties did not litigate their case through the media.

Microsoft Corporation and Symantec Corporation v Brightpoint Ireland Ltd.; Decision of the High Court of 12 July 2000, [2001] 1 ILRM 540

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