

FICPI

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SEARCH ORDERS AND EFFECTIVE CO-OPERATION WITH STATE AUTHORITIES

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INTRODUCTION

- Ireland is a common law jurisdiction similar to England and Australia;
- Ex parte seizures orders are permissible at common law;
- Various pieces of legislation also provide for ex parte seizures;
- They may be obtained by rights holders in certain circumstances or they may be obtained by the police force;
- Customs Authorities, the police and e.g. Food Safety Authority also have powers of seizure and detention;

INTRODUCTION CONT'D

- In executing civil seizure orders obtained by the rights holder, the presence of the police not necessary;
- In practice you may tell the local police station what is happening;
- In executing civil seizure orders, usually accompanied by an independent or supervising solicitor;

TYPES OF SEIZURE ORDERS

- Anton Piller Orders
 - Order directing the defendant to permit the plaintiff to enter upon and search the defendant's premises and take evidence;
 - Developed as a means of dealing with cases where there is a serious risk that a defendant may conceal or destroy material in its possession;
 - Usually ex parte and after full and frank disclosure of all pertinent facts to the court;
 - Not automatically in camera:

TYPES OF SEIZURE ORDERS

- Anton Piller Orders Cont'd.,
 - The applicant (known as the plaintiff) and its solicitor must give the court certain undertakings:-
 - by the plaintiff - as to damages (sometimes with security);
 - by the plaintiff - to issue the proceedings and serve the order;
 - by the plaintiff - to use the information obtained only for the purpose of the proceedings;
 - by the plaintiff's solicitor - to return all original documents to the defendant as soon as possible;

TYPES OF SEIZURE ORDERS

- Anton Piller Orders Cont'd.,
 - by the plaintiff's solicitor – to return any disputed item for safekeeping to the defendant's solicitor;
 - by the plaintiff's solicitor or the independent solicitor - to explain the meaning of the order;

TYPES OF SEIZURE ORDERS

- Anton Piller Orders Cont'd.,
 - Orders are very detailed and specify the people who may attend and during what time;
 - Plaintiff must establish:
 - Strong prima facia case;
 - Likelihood of serious damage (potential or actual);
 - Evidence that incriminating documents or articles will be destroyed;
 - Need for proportionality and recognition of the privilege of the defendant against self incrimination and the defendant's pre-compliance opportunity to seek legal advice;

TYPES OF SEIZURE ORDERS

- Statutory Anton Piller Orders
 - Trade Marks Act 1996
 - High Court - general power to order delivery up and disposal of infringing goods;
 - District Court - authorise the seizure without warrant , delivery up and destruction of infringing goods;
 - District Court – may grant a warrant authorising entry into premises and the seizure of infringing goods – may be accompanied by the rights holder or its representative;

TYPES OF SEIZURE ORDERS

- Statutory Anton Piller Orders Cont'd.,
 - Industrial Designs Act 2001
 - Court – general power to order the delivery up and disposal of infringing products;
 - District Court - authorise the seizure without warrant , delivery up and destruction of products– police may be accompanied by such persons as the police think proper;
 - District Court – entitled to hear hearsay evidence and source need not be indicated;

TYPES OF SEIZURE ORDERS

- Statutory Anton Piller Orders Cont'd.,
 - Industrial Designs Act 2001
 - Damages may be awarded to persons aggrieved by the implementation of an order;
 - Court may order delivery up and search and seizure in criminal proceedings (without warrant) – police may be accompanied by the rights holder or its representative;
 - Obstruction is an offence;
 - Court may order the disposal of infringing products;

TYPES OF SEIZURE ORDERS

- Statutory Anton Piller Orders Cont'd.,
 - Copyright and Related Rights Act 2000
 - Court – general power to order delivery up and disposal of infringing copies;
 - District Court - authorise the seizure without warrant, delivery up and destruction of infringing copies;
 - District Court - entitled to hear hearsay evidence and source need not be indicated;

TYPES OF SEIZURE ORDERS

- Statutory Anton Piller Orders Cont'd.,
 - Copyright and Related Rights Act 2000
 - Damages may be awarded to person aggrieved by implementation of an order;
 - Where impractical for copyright owner to apply to the District Court, it or its representative may seize an infringing copy but:-
 - Must apply to the District Court for an order as to its disposal within 30 days of seizure;

TYPES OF SEIZURE ORDERS

- Statutory Anton Piller Orders Cont'd.,
 - Copyright and Related Rights Act 2000
 - Must give notice of the proposed seizure to local police;
 - The right of entry to premises is limited;
 - Must notify the person from whom the work seized of the right to apply to the District Court for its return;
 - Damages may be awarded to a person aggrieved by the exercise of the right;

TYPES OF SEIZURE ORDERS

- Statutory Anton Piller Orders Cont'd.,
 - Copyright and Related Rights Act 2000
 - Court may order delivery up in criminal proceedings:
 - District Court – may grant a warrant authorising the entry into premises and the seizure of infringing copies – police may be accompanied by the rights holder or its representative :

TYPES OF SEIZURE ORDERS

- Other Legislation
 - Police have powers of seizure under tobacco legislation, street trading, illicit use of drugs and customs legislation;
 - Food Safety Authority have powers of seizure under food safety legislation:

TYPES OF SEIZURE ORDERS

- Detention of goods by Customs pursuant to a Border Control Application;
 - Continuation of the detention if rights holder institutes proceedings:

INTERACTION BETWEEN CIVIL AND CRIMINAL PROCEEDINGS

- Evidence not used by police could be given to rights holder;
- Leave of the Court could be sought;
- Evidence obtained by rights holder may be used as intelligence by the police;
- Divergence of interests of rights holders and police – e.g. police might not wish to prosecute an informer;
- Advantage - reduces costs, disadvantage – lose control;

EFFECTIVE STRATEGIES FOR ENSURING CO-OPERATION

- Communicate – build up good channels of communication with the police;
- Contact tends to be informal;
- The more information you give – the more the police may be able to assist;