**Academic publication, Algorithms, Car immobilisers and the Internet – when Chancery stops you publishing**

**The (unreported) case of Volkswagen v Garcia – Chancery Division 25 June 2013: Before Justice Birss**

The use of interim injunctions to restrain the publication of academic papers

The above case is ‘unreported’; and only a brief note of it is obtainable from the Lawtel legal news service; if and when a full judgment is handed down, or matters go to trial, the sparse exploration (below) might require correction; however in the interim it serves to show when the Courts will grant injunctions to restrain academic publication.

The parties

The Claimants were a well-known car manufacturer (Volkswagen), and a second Claimant (applicant) company engaged in developing, producing and selling security systems. The Defendants were academics and their academic institutions (identities unknown), seeking to publish an academic paper concerned with the technology behind car and vehicle ‘immobilisers’. The academics and their institutions had considerable expertise in cryptography – presumably including the relevant technological field for which the applicants were seeking the injunction.

The Claimants claim for an interim injunction

The Claimants (first applicants) were seeking an injunction to restrain publication of the academic paper.

Why Volkswagen were seeking an interim injunction (the general facts)

The academics had obtained a software programme from the Internet, which contained algorithms (some of which was encrypted) but had been devised by the second (applicant) Claimant company, which was used in the car immobilisers fitted into Volkswagen’s cars. The academics had identified a weakness in the algorithm and intended to publish their findings about the algorithm in an academic conference paper. Volkswagen and the second Claimant company initially sought redaction of certain parts of the conference paper on the basis that it contained confidential information – and that the academics had obtained the algorithm in circumstances in which their consciences were affected (according to the legal tests in confidence); and any subsequent use of the software programme obtained from the Internet was likely to be an unauthorised use in breach of confidence.

There appears to have been argument that the obtaining of the algorithm could have been achieved by reverse engineering; but the Claimants denied in the present case that this was likely to have occurred. The academics argued (among other matters) that there was a strong public interest in the security field in academics exposing security flaws, and that the public had a right to know about the lack of security and the weakness in the car immobiliser. The academics made an argument on the basis of freedom of expression pursuant to Article 10 of the European Convention on Human Rights. They argued that redaction would inevitably require a further peer review, and that the argument that the academic paper could facilitate crime was an exaggeration.

Criminals, according to the academics, would still need a car, a key, and at least two days to run a computer programme, in order to defeat the immobiliser and steal a car.

 Did Volkswagen (and the second applicant company) succeed in obtaining an injunction?

Yes, Volkswagen’s application for an injunction (and in favour of the second applicant company) against the academics was granted on an interim basis.

The reasoning of Justice Birss

Justice Birss considered that the second Claimant (applicant) company would also succeed at trial in showing that they owned the algorithm and should be joined as a party to forthcoming proceedings.

It was plainly right in his view that Volkswagen should be joined as Co-Claimant as their products depended on the secrecy of the information. Secondly, a claim for breach of confidence, in the *Coco v Clark [1969] FSR 415* sense, required cogent evidence that the information was confidential in quality, had been imparted in circumstances that imported an obligation of confidence, and that there had been unauthorised use of that information. Justice Birss considered the Article 10 freedom of expression defence to disclosure, unfortunately the report (being unreported and brief) only indicates that in applying that right (employing the machinery of section 12(3) of the Human Rights Act 1998), a Court should be slow to grant an interim order (such as an injunction, as in the present case) where it was not satisfied that that the Claimant would not succeed at trial.

However, in Justice Birss’ view he was more than satisfied that Volkswagen and the Second Claimant company were likely to succeed at trial, and an injunction was granted. The Second claimant company had much more than a ‘merely arguable case’, sufficient to trump an application to exercise freedom of expression. The balance of public interest was in favour of an interim injunction; although it was possible to overstate the risk of car theft if the information were published (by the academics) a new way of stealing cars would be put in to the public domain, and in light of the sophisticated nature of criminal gangs, there was no reason why they would not use it.

On the evidence, the software programme had not been obtained from a legitimate source, and the academics had been on notice that its origins were ‘at best murky’. The academics had not attempted to show that the programme was legitimate and had (apparently) taken a reckless approach to its probity. In Justice Birss’ view, when told of Volkswagen’s concerns, a ‘responsible academic’ would have delayed publication.