

# Intellectual Property Bulletin

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## TRADE MARKS

# Can an unsuccessful trade mark opponent subsequently challenge the validity of the registration?

By David L Yates, Senior Associate

**If a person unsuccessfully opposes registration of a trade mark, and that trade mark is registered, can that person subsequently apply for the trade mark registration to be cancelled on grounds of invalidity?**

## Recent UK case

According to the UK Court of Appeal (12 January 2007), the answer under UK trade mark legislation is 'yes': *Special Effects Limited v L'Oreal SA* [2007] EWCA Civ 1.

Mr and Mrs Jones had applied on 30 June 2000 to register 'SPECIAL EFFECTS' for goods in class 3 and services in class 42. In November 2000, L'Oreal opposed that application on various grounds, including that the words were not distinctive as they would be understood to mean 'make-up', and/or they were laudatory; L'Oreal had used 'FX' and 'SPECIAL FX' in relation to hair care products, acquiring reputation and goodwill; and 'FX' in the letters is phonetically similar to 'EFFECTS'. On 22 August 2002, the UK Trade Marks Office rejected the opposition and the 'SPECIAL EFFECTS' trade mark was registered. L'Oreal did not appeal that decision.

However, on 9 August 2002, the day after the opposition was heard, L'Oreal applied to register 'SPECIAL FX' as a community trade mark. Special Effects

Limited, which now owned the 'SPECIAL EFFECTS' UK trade mark registration, opposed this application, but the opposition was unsuccessful and L'Oreal's 'SPECIAL FX' mark proceeded to registration. As Lord Justice Lloyd observed, '*This situation was bound to lead to conflict.*'

In May 2005, Special Effects Limited sued L'Oreal, seeking an order restraining L'Oreal from infringing the 'SPECIAL EFFECTS' trade mark by using the words 'SPECIAL FX' or otherwise. L'Oreal counter-claimed against the validity of the 'SPECIAL EFFECTS' registration on essentially the same grounds upon which it had unsuccessfully opposed that registration in the first place. In considering L'Oreal's challenge to validity, the UK Court of Appeal concluded that the opposition decision had *not* created a 'cause of action estoppel' or an 'issue estoppel' precluding L'Oreal from challenging the validity of the mark, nor did the claim of validity otherwise amount to an abuse of process. The result of the opposition proceedings had not been '*intrinsically final*'.

## The Australian position

A similar conclusion was reached by the Australian Federal Court under the Australian trade mark legislation in May 2006: *Health World Ltd v Shin-Sun Australia Pty Ltd* (2006) 68 IPR 557.

Health World, the owner of the 'INNER HEALTH PLUS' trade mark, opposed registration by Shin-Sun of the trade mark, 'HEALTHPLUS'. The opposition was unsuccessful, and Health World appealed that decision to the Federal Court under s56 of the *Trade Marks Act 1995* (Cth) (under which such an appeal may be made without the leave of the court). Health World relied upon essentially the same grounds as it did in the opposition proceedings, but the appeal was dismissed by the Federal Court: (2005) 64 IPR 495.

Health World subsequently applied to the Federal Court for an order under s88 of the Trade Marks Act rectifying the Register by cancelling Shin-Sun's 'HEALTHPLUS' mark. Health World relied upon, among other things, the same grounds upon which it had sought to oppose registration of that mark before the Trade Marks Office, and before the Federal Court on appeal.

In a determination of preliminary questions, the Federal Court concluded that Health World was *not* estopped by the Federal Court's decision on the opposition appeal: from alleging in the rectification proceedings that the trade mark 'HEALTHPLUS' was substantially identical with or deceptively similar to Health World's 'INNER HEALTH PLUS' trade mark, nor from relying on the grounds upon which Health World had sought to oppose registration of that trade mark. The decision

by the Federal Court on an appeal under s56 of the Act is not a final decision.

## Standard of proof in an opposition

A related issue considered by the Federal Court in a number of recent decisions has been the standard of proof for an opponent in opposition proceedings. Some Federal Court decisions have suggested that an opponent is required to show that a trade mark 'should clearly not be registered', rather than showing that on the balance of probabilities a ground of opposition has been established. In the s56 opposition appeal in *Health World v Shin-Sun*, the court agreed with the analysis and reasoning as to the application of a special, higher onus in *Torpedos Sportswear Pty Ltd v Thorpedo Enterprises Pty Ltd* (2003) 132 FCR 326, but it was satisfied that the opponent did not make out its grounds of objection on the balance of probabilities and thus it was not necessary to apply the higher standard.

However, as we discuss in further detail below, in *Pfizer Products Inc v Karam* [2006] FCA 1663, decided on 1 December 2006, the Federal Court clearly stated that such a special, high onus of proof is not to be found in the wording of the Trade Marks Act. Accepting that there is a 'presumption of registrability' says nothing as to the standard of proof in respect of a ground of opposition and does not carry with it an obligation to 'clearly establish' such a ground of opposition.



David Yates  
Senior Associate

## TRADE MARKS

# Pfizer successful in VIAGRA v HERBAGRA appeal

*By Andrew Butler, Partner, and Peter Ryan, Trade Marks Attorney*

**The recent judgment of Justice Gyles in *Pfizer Products Inc v Karam* [2006] FCA 1663, concerning the similarity of VIAGRA and HERBAGRA, deals with the related and important issue of the standard of proof in trade mark oppositions.**

## Background

Joseph Karam filed an application in 2002 for HERBAGRA as a series trade mark for goods in class 5, including herbal medicines used to aid sexuality. The application was accepted, and Pfizer opposed on the basis of prior registrations and reputation in its well-known VIAGRA trade marks for goods in class 5 in relation to sexual dysfunction. A Delegate of the Registrar of Trade Marks decided the matter on written submissions and dismissed all grounds of the opposition, finding that HERBAGRA and VIAGRA were neither substantially identical nor deceptively similar. Pfizer appealed to the Federal Court.

## The appeal decision

Justice Gyles allowed the appeal and reversed the decision of the delegate. His Honour found that HERBAGRA, in respect of the goods concerned, would be deceptively similar to VIAGRA, and that VIAGRA had acquired a reputation in Australia prior to Karam's application for HERBAGRA. Because of that reputation, the use of HERBAGRA would be likely to deceive or cause confusion.

Of particular interest in the appeal are submissions made by Karam in relation to the standard of proof required in trade mark oppositions. Karam submitted that there is authority for the proposition that the standard of proof required is that a delegate or judge must be 'clearly' satisfied, or satisfied 'beyond doubt', that there are grounds for rejecting an application, or deciding an opposition.

Karam's submissions were therefore contrary to the well-established principle under the *Trade Marks Act 1995* (Cth) as confirmed in the OREGON case of *Blount Inc v Registrar of Trade Marks* (1998) 83 FCR 50, that the presumption of registrability under s33 of the Act means that a delegate need only be satisfied 'on the balance of probabilities' (ie more probably than not) that there are grounds for rejecting an application. Pfizer therefore submitted that there is no proper basis for transposing the presumption of registrability at the acceptance stage with a higher onus of proof at the opposition or appeal stage.

His Honour agreed with Pfizer, finding that a court on appeal must apply the same legal principles as a delegate of the registrar. Accordingly, Justice Gyles upheld the established principle that the standard of proof in opposition proceedings is that a delegate of the registrar or a court need only be satisfied 'on the balance of probabilities' that there are grounds for rejecting an application, and/or upholding the grounds of opposition.

## Implications

The decision serves as a timely reminder and confirms the standard of proof required in trade mark matters is 'on the balance of probabilities' and that the higher standard of 'beyond doubt' does not apply.



Andrew Butler  
Partner



Peter Ryan  
Trade Marks  
Attorney

## TRADE PRACTICES

# Tanning lotion: the difficulties with comparative advertising

**Another case has demonstrated the care that must be taken with comparative advertising, this time in respect of tanning lotions: *Johnson & Johnson Pacific Pty Limited v Unilever Australia Limited (No 2)* [2006] FCA 1646.**

*By David L Yates, Senior Associate*

Johnson & Johnson created a new product called 'JOHNSON'S HOLIDAY SKIN BODY LOTION' which worked as both a moisturiser and a tanning lotion. The product became very successful. Unilever launched a competing product, 'DOVE SUMMER GLOW BODY LOTION', in March 2006. Unilever's advertising and promotion for its new product was based upon a comparison between its product and the Johnson & Johnson product. That comparison was said to be supported by market research that established that users of 'HOLIDAY SKIN' preferred 'SUMMER GLOW'. Johnson & Johnson alleged that, in advertising its product in this way, Unilever engaged in conduct that contravened s52 of the *Trade Practices Act 1974* (Cth). Johnson & Johnson applied for, and was granted, interlocutory orders restraining Unilever from advertising 'SUMMER GLOW' in this manner. The proceedings then came before the court for a final determination.

The case primarily concerned Unilever's television and print advertisements. Johnson & Johnson alleged that the representations in each advertisement included: that seven out of 10 users of 'HOLIDAY SKIN' preferred 'SUMMER GLOW' to

'HOLIDAY SKIN' for its tanning attributes; and, that 'SUMMER GLOW' is the best tanning body lotion available. Johnson & Johnson complained that the study did not justify the representations because:

- at face value, the study did not show that seven out of 10 users preferred 'SUMMER GLOW' to 'HOLIDAY SKIN' for its tanning attributes;
- the study only tested the respective Dove and Johnson light variants; and
- deficiencies inherent in the study methodology meant that no general preference claim was justified.

The court upheld Johnson & Johnson's complaint and found that each of the representations was misleading and deceptive. The case provides a useful discussion of the nature and scope of representations that may be made on the basis of a study comparing limited product variants among a specific participant age bracket, and on what can be said about quantitative results of participants' responses.



David Yates  
Senior Associate

## COPYRIGHT

# Authorisation of copyright infringement on the Internet

*By Jim Dwyer, Partner, and Alison Barnett, Lawyer*

**The Full Court of the Federal Court, in *Cooper v Universal Music Australia Pty Ltd* [2006] FCAFC 187 (18 December 2006), has confirmed on appeal that website operators and Internet service providers may be liable for authorising copyright infringement by the operators and users of remote websites.**

## Background

Stephen Cooper owned the domain name, mp3s4free.net, and operated the MP3s4FREE website, which provided hyperlinks to remote websites that stored infringing MP3 copies of sound recordings. E-Talk was the Internet service provider that hosted the website, together with another company that was not a party to the appeal. Liam Bal was the director and controlling mind of E-Talk. Chris Takoushis was an E-Talk employee.

## The appeals

The appeals challenged the decision at first instance to the extent that it was based on findings that each of Cooper, Bal, Takoushis and E-Talk had infringed copyright by authorising the doing of infringing acts, whether the making of copies of the sound recordings by Internet users, or the communication of the sound recordings to the public by the operators of the remote websites.

The principal issue on appeal was the meaning of the word 'authorise' in s101(1) of the

*Copyright Act 1968* (Cth). In determining whether or not a person has authorised infringing acts in Australia, s101(1A) provides that the matters that must be taken into account include:

- the extent of the person's power to prevent the doing of the act concerned;
- the nature of any relationship with the person who did the act concerned; and
- whether the person took reasonable steps to prevent or avoid the doing of the act.

## The Full Court's decision

The Full Court dismissed the appeals by Cooper, E-Talk and Bal, but allowed the appeal by Takoushis. As a mere employee, he could not be said to have 'authorised' the infringing acts. Significantly, he did not have the power to cause E-Talk to take down the website and discontinue its hosting arrangements with Cooper. The court pointed to the following main factors in upholding the findings of authorisation by Cooper, E-Talk and Bal:

- Cooper had the power to prevent the copying of copyright sound recordings via his website but had deliberately designed the website to facilitate infringing copies of sound recordings and did not take any reasonable steps to prevent or avoid infringements;
- E-Talk and Bal did not take any steps to prevent the infringing acts, such as taking the website down or declining to host the site, even though each knew of the contents of the website and the copyright problems that arose from its operation; and
- each of Cooper, E-Talk and Bal had a commercial interest in attracting users to the website for the purpose of copying the sound recordings because they benefited financially from sponsorship or advertising on the website.

The Full Court also found that none of Cooper, E-Talk or Bal had a defence under s112E of the Copyright Act because they had all done more than merely provide the facilities that another person had used to infringe copyright.

## Implications of the case

This is the first Australian appellate decision to consider the authorisation of copyright infringement online. While each case will be determined on its own facts, the failure to take steps to prevent or reduce infringement where the website operator or Internet service provider has an element of control, the deliberate encouragement of infringement and a commercial interest in infringement are all factors that are likely to contribute to a finding of authorisation of copyright infringement.

An application was filed with the High Court of Australia on 23 January 2007 seeking special leave to appeal the Full Federal Court's decision.



Jim Dwyer  
Partner



Alison Barnett  
Lawyer

## COPYRIGHT

# High Court considers copyright licences and architectural drawings

By Marina Lloyd Jones, Lawyer

**In *Concrete Pty Limited v Parramatta Design Developments Pty Ltd* [2006] HCA 55 (6 December 2006), the most recent intellectual property case to come before the High Court, an implied licence granted to joint venturers who had commissioned architectural plans, was held to be assigned to the purchaser of the land (and the development consent) to which the plans related. The High Court also looked at restrictions that may be placed on the enforcement of IP rights by a party to a joint venture as a result of its obligations to co-venturers.**

A joint venture bought land in Nelson Bay, in coastal NSW, on which to develop units. A principal in one of the joint venturers, Landmark Building Developments Pty Ltd (**Landmark**), was an architect and, through his firm Parramatta Design (**Parramatta**), was paid market rates to prepare plans for an eight-unit development. Once the planning consent was granted, Landmark's principals decided they wanted to apply for approval of a larger development. To convince the other joint venturer to commit to the expanded development, the architect agreed to prepare plans at no further cost. None of the relevant arrangements were documented in writing.

The joint venture broke down following the approval of the expanded development, and the land was bought by Concrete Pty Limited (**Concrete**). Concrete sought to construct the development according to the second set of plans, its offer of a

licence fee being refused by the architect.

Concrete commenced proceedings in the Federal Court, alleging that Parramatta had made unjustified threats to bring proceedings for copyright infringement. Parramatta cross-claimed for infringement of its copyright in the expanded plans. Concrete succeeded at first instance, however, the Full Federal Court found for Parramatta on appeal. Concrete appealed to the High Court.

## High Court sides with new land owners

The High Court unanimously allowed the appeal, with Justices Kirby and Crennan delivering the leading judgment (with which Justice Gummow 'agreed generally'). In finding that the joint venture had an implied licence from the architect to use the expanded plans, which licence had transferred to Concrete with the sale of the land, their Honours followed the decision in *Beck v*

*Montana Constructions P/L* [1964-5] NSW 229. There, Justice Jacobs held:

The engagement for reward of a person to produce material of a nature which is capable of being the subject of copyright implies a permission, or consent, or licence in the person giving the engagement to use the material in the manner and for the purpose in which and for which it was contemplated between the parties that it would be used at the time of the engagement [at 235].

When a land owner has a right to use architectural plans, and sells land while holding out that plans are available and approved, the land sale will be accompanied by an implied agreement under which the vendor grants the purchaser whatever rights they have in the plans. This assumes that the original licence or consent is assignable, a matter that is ultimately determined upon reviewing the terms of that original grant. The implied licence that transfers to the successors in title will not arise out of any contract between the purchaser and the architect, but will be implied from the nature of the original arrangement between the owners and the architect.

Parramatta placed much weight on the fact that no fees were paid for the second phase of architectural work, attempting to characterise the licence to use the plans as a bare licence (in which no consideration passed from the joint venture to the architect) and therefore revocable at will. Justices Kirby and Crennan did not consider this fact determinative,

holding that it should not be assessed in isolation but by reference to the purpose of the joint venture (ultimately, to build and sell units and share profits). The reward to the architect here was his share of that portion of the profits that would flow to the joint venture and which was attributable to the savings on architectural fees.

In the circumstances before them, Justices Kirby and Crennan considered the relevant implied licence not only assignable but also irrevocable once the development consent had been granted. The architect 'having given a thing with one hand, is not to take away the means of enjoying it with the other' [at 99].

While Justice Callinan also found for Concrete, his Honour focused not on the implied licence, but on the joint venturers' obligations to one another (based on both contractual and fiduciary duties). Again, Justice Gummow 'agreed generally' with the judgment: the purpose of the joint venture was to maximise the financial return of all parties. The development consent was of little or no use without the plans and the right to use them, and for the architect to prejudice the fulfilment of those commercial objectives by denying to his co-venturers the capacity to enjoy the best financial realisation of the joint venture property would be contrary to the implicit mutual intention of the joint venturers.

The facts of this case were relatively narrow, and it may be that the High Court's opinion will only be applied in the future to similar cases involving architectural plans, development consents and/or joint ventures.

However, the idea that a person engaged to create material protected by copyright may license successors in title to the original sponsor (already accepted in *Beck*), and that that licence may be irrevocable, could have applicability beyond the confines of the particular facts presented to the High Court.



Marina Lloyd Jones  
Lawyer

## COPYRIGHT

# Additional damages for copyright infringement

By Miriam Stiel, Senior Associate

**Two recent cases consider the factors that will be taken into account when ordering a copyright infringer to pay additional damages under section 115(4) of the *Copyright Act 1968* (Cth).**

Section 115(4) provides that, where, in an action for copyright infringement under that section:

- (a) an infringement of copyright is established; and
- (b) the court is satisfied that it is proper to do so, having regard to:
  - (i) the flagrancy of the infringement; and
    - (ia) the need to deter similar infringements of copyright; and
    - (ib) the conduct of the defendant after the act constituting the infringement or, if relevant, after the defendant was informed that the defendant had allegedly infringed the plaintiff's copyright; and
  - (ii) whether the infringement involved the conversion of a work or other subject-matter from hardcopy or analog form into a digital or other electronic machine-readable form; and
  - (iii) any benefit shown to have accrued to the defendant by reason of the infringement; and

(iv) all other relevant matters; the court may, in assessing damages for the infringement, award such additional damages as it considers appropriate in the circumstances. Because of the wide discretion which s115(4) affords, whether a court will award additional damages and if so, the amount of the award, will depend on the facts of a particular case, but some guidance can be taken from these cases.

## Unlicensed ringtone downloads

*APRA v Monster Communications Pty Limited* [2006] FCA 1806 involved the provision of ring tones and images for downloading on mobile telephones. Monster Communications (**Monster**) and its director, Mr Chong, were found to have infringed the copyright in various musical works and associated lyrics, the rights to which were owned or controlled by one of two collecting societies, Australasian Performing Right Association Ltd (**APRA**) or Australasian Mechanical Copyright Owners Society (**AMCOS**). Monster had obtained licences from APRA and AMCOS, but these were terminated when Monster failed to pay the royalties due under the licences.

In ordering Monster and Chong to pay additional damages of \$100,000, Justice Rares took into account:

- Monster's deliberate failure to enter into new licences with APRA and AMCOS and its knowledge that it was not entitled to use the copyright material in the absence of a licence;
- the significant financial benefit Monster obtained from sales of the copyright works: a considerable part of its \$19 million in revenue derived over three years was found to have been generated by the infringements; and
- the fact that Monster had previously been sued for copyright infringement and its 'reckless attitude' in failing to respect other people's copyright.

## Supply of infringing films

In *Venus Adult Shops Pty Ltd v Fraserside Holdings Ltd* [2006] FCAFC 188, the Full Federal Court upheld a decision of the Federal Magistrates Court, which had awarded additional damages of \$85,000 in connection with the making and supply of infringing copies of pornographic films. In awarding additional damages, the magistrate relied on:

- the flagrancy of the conduct: the infringers had full knowledge that their copying was illegal and that it was 'rampant in their industry';
- their conduct in connection with the proceedings, including their failure to comply with court orders requiring them to deliver up infringing items; and
- the financial benefits they had derived from selling the infringing films without paying for them.

The Full Federal Court (Justices French and Kiefel), upheld the award of \$85,000 in additional damages. They stated that there was no necessary linkage between additional damages and conversion damages. Justice Finkelstein (dissenting) said that an award of additional damages should only be made if the defendant's conduct deserves punishment or there is a need for deterrence.



Miriam Stiel  
Senior Associate

## COPYRIGHT

# Penalties substantially reduced in copyright case appeal

By Vanessa Kingston, Lawyer

**Penalties imposed by a Queensland magistrate in a copyright prosecution case have been overturned on appeal: *Peter Balasoglov Bell v The State of Queensland* [2006] FCA 1788.**

Peter Balasoglov Bell and Annette Madeline Griffiths pleaded guilty to 21 offences under s132 of the *Copyright Act 1968* (Cth), relating to infringing copies of DVDs.

The order imposed by the Magistrates Court of Queensland, relating to the infringing 3544 DVDs and 671 titles, was a 'global' penalty under the *Crimes Act 1914* (Cth) of \$20,000 against each of the named defendants for breaches of s132 of the Copyright Act.

Payment of the penalty was suspended and the applicants were ordered to undertake 1340 hours of community service, in lieu. The defendants then appealed the penalty imposed by the Magistrates Court under s131B of the Copyright Act 1968 (Cth).

The decision of Justice Keifel in the Federal Court considers the penalty imposed by the Magistrates Court, which the applicants submitted and the respondent conceded was '*manifestly excessive*'. Her Honour agreed with the parties and noted that a penalty of \$20,000 was '*about twice as much as would usually be imposed*' and that the magistrate had '*miscalculated*' the number of

hours of community service that could be ordered.

In light of this, Justice Keifel set aside the penalties of the lower court and ordered a suspended penalty of \$10,000 against each of the applicants, and, in lieu thereof, they were each to perform 455 hours of community service. This effectively saw the penalty imposed by the magistrate halved.

The decision illustrates that penalties can be 'miscalculated' under the relevant legislation. In this case, the provisions allowing for the calculation of penalties under the *Penalties and Sentences Act 1992* (Qld) were misinterpreted by the magistrate, resulting in the penalties imposed being substantially reduced on appeal.

## New criminal provisions for copyright infringement

Significantly, the *Copyright Amendment Act 2006* (Cth), which received Royal Assent on 11 December last year, saw new criminal provisions for copyright infringement introduced. The amendments came into effect on 1 January this year and strengthen

the protection regime for copyright owners. Of particular interest are the strict liability offences, which allow scope for on-the-spot fines to be issued.



Vanessa Kingston  
Lawyer

## LEGISLATIVE UPDATE

# Procedural changes to Customs seizures

By Tim Golder, Partner, and Daniel Spirdonoff, Lawyer

**Amendments to the *Trade Marks Act 1995* (Cth) and the *Copyright Act 1968* (Cth) have, or will soon, come into effect, dealing with the way in which Notices of Objection to Importation are administered by the Australian Customs Service. The changes are designed to ease the administrative burden and costs, and make the Notice scheme more attractive and accessible to trade mark and copyright owners.**

## What is a Notice?

Section 132 of the Trade Marks Act and section 135 of the Copyright Act each allow for a trade mark or a copyright owner (as the case may be) to lodge a Notice of Objection to Importation (**Notice**) with the Australian Customs Service (**Customs**) objecting to the importation into Australia of goods that infringe that trade mark or copyright.

A Notice is a highly effective tool for those whose rights are often infringed and market share diluted through the influx of counterfeit goods. Counterfeit goods often originate from outside of Australia and it can be a time-consuming, expensive and fruitless process for trade mark and copyright owners to identify the person importing and distributing the goods throughout Australia.

Once a Notice has been lodged, however, Customs can seize such goods at the point of entry into Australia. When the goods are seized, the identity of the importer is provided by Customs and this allows the trade mark or copyright owner to engage directly with him or her and take any necessary

action before the goods are released onto the market.

## Effect of the amendments

Previously, a Notice had to be renewed every two years from the date it was first lodged. However, it was thought that renewing so frequently imposed considerable administrative burden and cost to the trade mark or copyright owner. To minimise these, the relevant sections of both Acts have been amended so that any Notice filed or renewed after 23 October 2006 (in the case of a trade mark owner) or 1 January 2007 (in the case of a copyright owner) need now only be renewed every four years.

A Notice had to be accompanied by a security (either a cash deposit or bank guarantee) for an amount sufficient to repay to Customs any expenses that may have been incurred in connection with a seizure (deemed to be A\$10,000 for a trade mark owner, and A\$5000 for a copyright owner).

It was thought that such a large security discouraged trade mark and copyright owners from lodging a Notice. To address this, the relevant sections of the Acts have

been amended so that any Notice filed after 27 March 2007 (in the case of a trade mark owner) or 1 January 2007 (in the case of a copyright owner) can be accompanied by a simple written undertaking to repay any expenses incurred by Customs in connection with a seizure. Furthermore, from these dates, a security already filed with Customs in connection with an existing Notice can be withdrawn and replaced by an undertaking. Customs does, however, retain the right to require security to be provided in cases where a trade mark or copyright owner has previously defaulted on an undertaking, or where Customs otherwise considers it reasonable.

## Implications

These amendments are favourably geared towards trade mark and copyright owners and should increase the appeal of lodging a Notice. This, in turn, should mean that the fight against 'counterfeiters' is taken up a gear, as more and more trade mark and copyright owners begin to appreciate the value to their businesses of a Notice, and take the necessary steps to lodge one with Customs.



*Tim Golder*  
*Partner*



*Daniel Spirdonoff*  
*Lawyer*

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