

AN INTENTION TO RESPECT CONFIDENTIAL IP INFORMATION A FACTOR IN NON-CONTINUATION OF AN INJUNCTION

- ▶ Claimant sought an extension of a without notice injunction prohibiting disclosing confidential IP information to third parties
- ▶ Court finds no real intention to breach confidentiality on the part of the Defendant
- ▶ Reminder that an injunction should not be granted if the purpose is merely to ensure confidential IP information is treated carefully

What's it about?

Rafael Advanced Defence Systems Limited (the **Claimant**) and Mectron Engenharia, Industria e Comercio SA (the **Defendant**) were parties to a contract and a non-disclosure agreement for the Claimant's supply of defence system technology to the Defendant. The Defendant's business was later sold, and the Claimant had concerns that this would lead to the Claimant's IP being disclosed to third parties (even though the Defendant provided assurances that it had no intention of disclosing the Claimant's IP or confidential information in the technology).

Nevertheless, the Commercial Court subsequently granted the Claimant an injunction, restraining the Defendant from assigning the contract or permitting others to use the Claimant's IP rights.

In the present proceedings, the Claimant sought an extension of the injunction, which the Court refused to give, on the basis that the Defendant had made it clear that it did not intend to commit the act for which the Claimant was seeking relief. The Court did not accept that the Claimant's concerns as to the safeguarding of its IP could translate into a concern over the Defendant's good faith as to their confidentiality obligations.

Why does it matter?

The Court took account of the fact that the Defendant clearly stated its intention to respect its non-disclosure obligations, both before and after the injunction was granted.

The judgment reinforced the high threshold to be met for an injunction, highlighting the purpose of an injunction as being to restrain *deliberate* wrongdoing, not merely to ensure parties treat confidential information carefully.

Now what?

It may seem obvious, but clear communication between parties is important. The court gave particular weight to the fact that the Defendant had clearly communicated its intentions and it was on this point that the refusal to continue the injunction hinged. It is also important to consider that, if seeking to obtain an injunction, the breach to be prevented must be deliberate.

[Rafael Advanced Defense Systems Limited v Mectron Engenharia, Industria E Comercio SA \[2017\] EWHC 597 \(Comm\)](#)

For further information on this or any other IP related matter please contact [Annabel Cawood](#) on 020 7788 5002.