

Threshers, follows Woolworths and Borders under

Recent collapses of High Street names have hurt their suppliers and there will no doubt be more to come this year. If you are a producer or distributor, now is the time to make sure that you have done your best to minimise your loss if a retailer you supply goes under. It is not enough just to have Terms of Business – they need to be carefully drafted to retain ownership until you are paid and you need to make sure your buyer agrees that they are part of every contract you conclude. You want to be in the position if your customer goes under where you have not extended more credit than the value of the goods you can get back and resell, so you can get on to the administrators straightaway and identify and recover your stock.

The important thing is to get the buyer to agree that your terms apply and to make sure that all your paperwork properly and effectively refers to your terms of business.

Attention to detail like this has helped clients of ours recover highly valuable products. It stopped them in effect making a gift to the other unsecured creditors of the insolvent business who are often unlikely even to see a few pennies in the pound. We are able to draft suitable wording and recommend procedures to give you the best opportunity to avoid problems if your buyer goes under.

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Are storm troopers' helmets sculptures?

Designers frequently face the problem of how to protect the work which they do from being copied or otherwise exploited without their consent. The range of possible protections – registered design protection, European design right, copyright and so on create complications for designers to know how best to protect what they have, ahead of a problem arising.

When George Lucas commissioned the production of the Storm Troopers costumes for Star Wars no-one could know how successful the film and its sequels could be. So in 2005 when Lucasfilm tried to stop the individual manufacturer from starting to sell reproduction helmets from the original moulds they sued in America and got judgment for US\$20m but had rather more difficulty in litigation in the UK. Part of their difficulty arose from the historic unwillingness of the UK to allow copyright protection for artistic works including sculptures reproduced by an industrial process, so the court had to consider whether the helmets were sculptures and spend a lot of time addressing a philosophical question similar to "what is art?" The legal costs involved must have greatly exceeded the US\$14,500 which the individual manufacturer apparently made from sales of the articles in the States.

What is worth copying is worth protecting. Designers need to be willing to pay for the cost of protection - do check whether your legal expenses insurance covers intellectual property disputes. We can advise on the best way to protect designs.



Misrepresentation - the sky is the limit

Published recently after a hearing of some eight months and a delay of 18 months after the trial, the 400 plus page judgment in this case emphasises that software producers must be careful what they promise their systems will do - as they can face claims for damages much greater than the initial value of the contract. Statements might be made on websites, in documents prepared in connection with tenders or pitches and even orally. The problem is that if a court finds that statements are made recklessly a limitation of the supplier's liability in the suppliers' terms of business will not work to cap their liability.

EDS supplied a customer relationship management program to BSkyB which apparently caused BSkyB lots of customer dissatisfaction and hence churn, so BSkyB claimed more than £700m damages. The question whether a statement is a misrepresentation is highly technical and you need advice if in doubt.

Fines for Data Breaches

The Alzheimers Society was recently criticised by the Information Commissioners Office for the loss of staff personnel records after the theft of laptops from the society's office.

Starting next month, businesses could be in a worse position if information is lost or stolen.

From 6 April the Information Commissioner's Office will be able to order organisations to pay up to £500,000 as a penalty for serious breaches of the Data Protection Act 1998.

The Information Commissioner can levy the penalty if the data controller has seriously contravened the data protection principles in a way likely to cause substantial damage or distress. This need not be deliberate if something which the data controller ought to have known would occur and of a kind likely to cause damage or substantial distress, but failed to take reasonable steps to prevent.

Most likely problems will emerge from losses of laptops or CD-ROMs containing unencrypted data, thefts of electronic and paper material from offices or homes and careless dumping of paper files or electronic storage and material systems vulnerable to hacking may also cause problems. We are happy to advise what is personal data and how it should be handled.

Entrepreneurs & family companies may repay company share capital

The Companies Act 2006 is now fully in force. One of the changes is to allow private companies to repay share capital without needing to apply to the court to do so. In the right circumstances this may allow private companies which are comfortably provided from a cash flow point of view, to make a repayment of share capital to shareholders. This may be treated as a capital distribution (i.e. subject to capital gains tax) rather than an income payment, with the possibility of saving tax where the shareholders pay higher rate tax which will be up to 50% from April 2010. The simplified procedure now involves the directors of the company swearing a declaration that the company will be able to pay its debts. Obviously you will need to consult your usual tax adviser on whether this possibility is suitable for you but we are able to deal with the corporate arrangements on your behalf.

Staff handbooks not just for large employers

Staff handbooks have grown in importance in recent years. They frequently contain a mixture of contractual terms of employment and non-contractual employers' policies on matters as diverse as health & safety and internet usage. Their significance has increased partly through the development of equal opportunities and anti-discrimination law creating rights for employees. Handbooks enable employers to lay down policies and document how they make sure they and their employees comply with the demands which the law increasingly imposes. We increasingly see even smaller businesses or non-business employers adopting extensive detailed policies and we can help businesses to comply using



