

Into the Unknown

Taking action against “Persons Unknown”

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Overview

- The development of Persons Unknown actions
- Categories of Persons Unknown
- Persons Unknown and
 - Service
 - Interim injunction
 - Final injunction
 - Damages
- Finding your person unknown
 - *Norwich Pharmacal* orders
 - Spartacus order

Why bring an action against Persons Unknown

- Injunction creates in effect criminal liability in civil claims
- May be a means to find the persons unknown
- Effect on third parties
 - Breach of confidence / privacy
 - Insurers
- Vindication

The development of Persons Unknown actions

- What's in an identity?
- *Friern Barnet UDC v Adams* [1927] 2 Ch. 25 – defendants should be named
- *Bloomsbury Publishing Group Ltd. & Anor v News Group Newspapers Ltd. & Ors* [2003] EWHC 1205
- Media / internet cases
- Protester / demonstrator cases
- Other – insurance cases
- Defined by *conduct*

- But caution

“The facility to sue individuals anonymously as ‘persons unknown is a significant departure from one of the basic norms of civil litigation... The use of this facility needs to be carefully supervised, to ensure that it is not abused.”

As per Warby J in *Birmingham CC v Afsar & Ors* [2020] EWHC 864 at para 21

Other types of effects of actions on unnamed parties

- In rem orders, eg *Venables & Anor v News Group News Papers Ltd & Ors* [2001] EWHC QB 32

- *Contra mundum* effect of interim (?) injunctions in privacy and confidentiality, *AG v Times Newspapers Ltd* (1992) 1 AC 191

- Interim only?
 - *Jockey Club v Buffham* [2002] EWHC 1866
 - *OPQ v BJM and CJM* [2011] EWHC 1059

Categories of Persons Unknown

- **Category 1** - Anonymous defendants who are identifiable but whose names are unknown
- **Category 2** - Defendants who are not only anonymous, but who cannot even be identified

“The distinction is that in the first category the defendant is described in a way that makes it possible in principle to locate or communicate with him and to know without further inquiry whether he is the same as the person described in the claim form, whereas in the second category it is not.

...One does not, however, identify an unknown person simply by referring to something that he has done in the past. "The person unknown driving vehicle registration number Y598 SPS who collided with vehicle registration number KG03 ZJZ on 26 May 2013", does not identify anyone. It does not enable one to know whether any particular person is the one referred to. ”

As per Lord Sumption in *Cameron v Liverpool Vic* (Rev 1) [2019] UKSC 6 at paras 13 and 16

- **Category 3** - People who will or who are highly likely in the future to commit an unlawful civil wrong

Categories 1 and 2 and service

– Identification or service?

“An identifiable but anonymous defendant can be served with the claim form or other originating process, if necessary by alternative service under CPR 6.15. This is because it is possible to locate or communicate with the defendant and to identify him as the person described in the claim form.”

As per Lord Sumption in *Cameron v Liverpool Vic (Rev 1)* [2019] UKSC 6 at para 15

“That distinction is critical to the possibility of service... it is the service of the claim form which subjects a defendant to the court's jurisdiction”

Canada Goose UK Retail Ltd & Anor v Unknown Persons [2020] EWCA Civ 303

– Dispensing with service

“it may be appropriate to dispense with service ... even where no attempt has been made to effect it in whatever manner, if the defendant has deliberately evaded service and cannot be reached by way of alternative service... This would include cases where the defendant is unidentifiable but has concealed his identity in order to evade service.

... a person cannot be said to evade service unless, at a minimum, he actually knows that proceedings have been or are likely to be brought against him. A court would have to be satisfied of that before it could dispense with service on that basis.”

Category 3

- Identification or service?

- “Persons who do not exist at all and will only come into existence in the future”

- (Ineos at [29])

- “People who will or are highly likely in the future to commit an unlawful civil wrong”

- Canada Goose UK Retail Ltd & Anor v Unknown Persons* [2020] EWCA Civ 303 at para 63

Persons Unknown and stages of litigation

	Service	Interim injunction	Final injunction	Damages
Cat 1	Presumably yes	Possible	Possible	Possible
Cat 2	Presumably no, exceptionally dispense with service	Never say never	Not possible	Not possible
Cat 3	Presumably no	Possible	Not possible	Not possible

Canada Goose guidelines

1. Persons unknown defendants must be people who have not been identified but are capable of being identified and served with the proceedings, if necessary by alternative service such as can reasonably be expected to bring the proceedings to their attention, whether existing at the time of issue or “newcomers”
2. Persons unknown must be defined by reference to their conduct which is alleged to be unlawful
3. Interim injunctive relief may be granted only if sufficient real and imminent risk of a tort being committed
4. Defendants subject to the interim injunction must be individually named if known and identified or, if not and described as “persons unknown”, must be capable of being identified and served with the order, if necessary by alternative service, the method of which must be set out in the order

Canada Goose guidelines

5. Prohibited acts must correspond to threatened tort
 - May include lawful conduct if, and only if, and only to the extent that, there is no other proportionate means of protecting the claimant's rights

6. Injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do.
 - Intention to be avoided and only if strictly necessary
 - Non technical but ordinary language

7. Clear geographical and temporal limits.
 - Time limited

Finding your person unknown

- *Norwich Pharmacal* orders
 - Against overseas respondents
 - *Lockton Companies International & Ors v Persons Unknown & Anor* [2009] EWHC 3423 (QB)
 - *AB Bank v Abu Dhabi Commercial Bank* [2016] EWHC 2082
 - *AA v Persons Unknown & Ors, Re Bitcoin* [2019] EWHC 3556
 - Other issues
 - *Mircom International & Ors v Virgin Media & Anor* [2019] EWHC 1827
 - Intention to sue
 - “Recipients” under GDPR
 - *Burford Capital v London Stock Exchange* [2020] EWHC 1183
 - Good arguable case

- Spartacus orders
 - *PML v Person(s) Unknown* [2018] EWHC 838

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