

Defamation & Intellectual Property Risks

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9 July 2014



Overview

- Intellectual Property
 - Intellectual Property Act 2014
 - Greys/Counterfeits – the brands bite back
 - Intellectual Property & Enterprise Court (IPEC)
- Defamation
 - Defamation Act 2013
 - Why change?
 - Key provisions
- Impact on insurers



INTELLECTUAL PROPERTY

Intellectual Property Act 2014

- Long process of consultation
- Key features:
 - Simplifying & improving:
 - design protection
 - Patent protection
 - Clarifying the IP legal framework
 - Making the international and EU IP system work better
 - Series of tidying up measures

Designs....

- New criminal offence (s13) to protect designs from blatant copying
- New voluntary Design Opinions Service from the IPO (s11) – prevent litigation
- Exemptions under s4 for experiments/teaching etc.
- Support for good faith investments (s7)
- New provisions under s10 – route to appeal from unfavourable IPO decision.

Patents

- Easier public notice of patent rights (s15) – use of a web address
- Patent Opinions Service extended (s16)

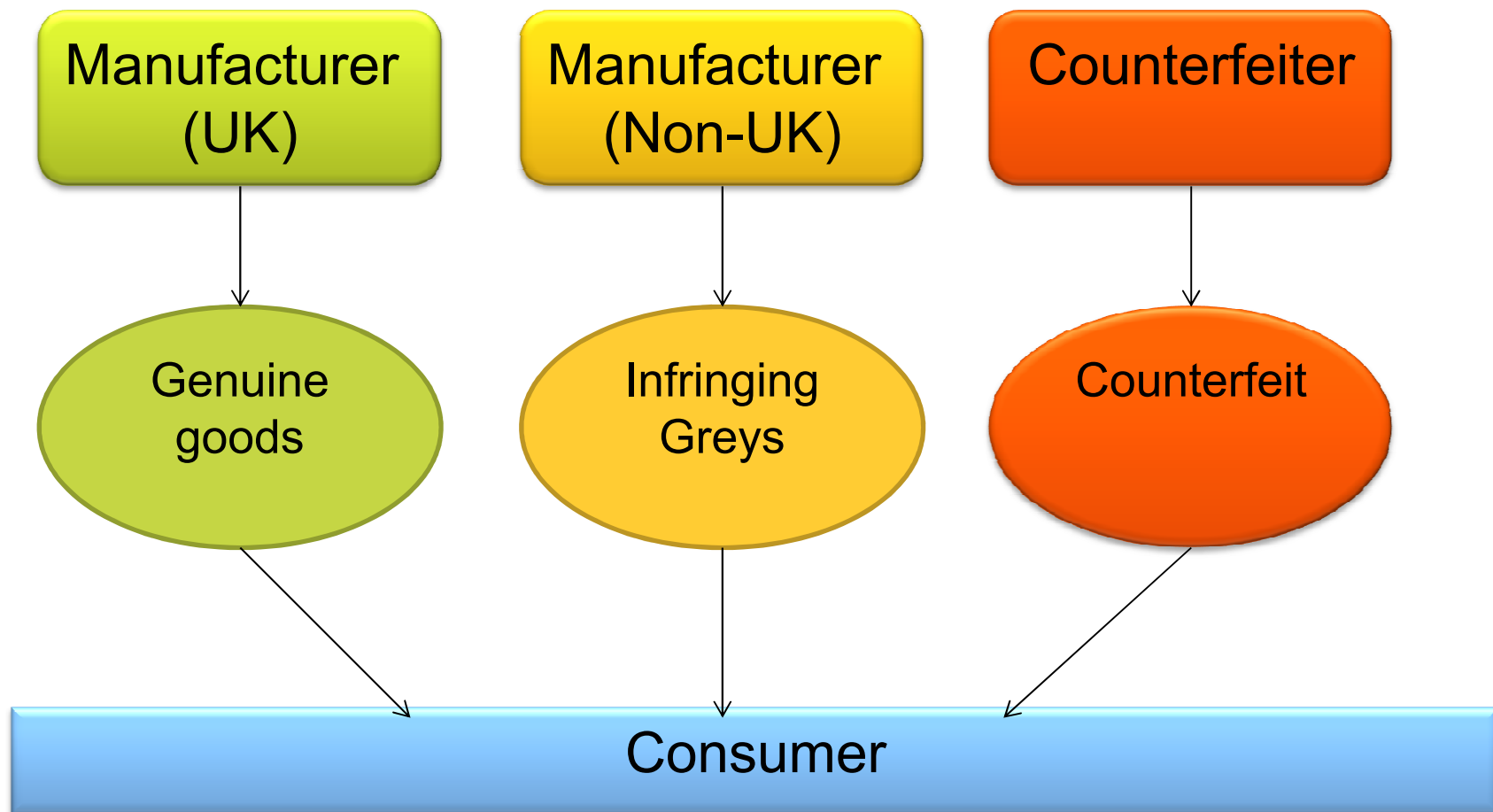
Other provisions

- Simplification of UK unregistered design rights
- Alignment with EU structure
- Improves process for protecting copyright works produced outside the UK
- Unified Patent Court s17
- Annual report to Parliament on IPO activities

Why is this important?

- Check the cover you are writing:
 - Do the new designs provisions affect risk?
 - Are civil claims more likely because of new offences?
- Claims handling:
 - Use the opinions service as new form of ADR
 - Should be quicker/more cost effective.....

The brands bite back



Why is this important?

- You may be covering trademark infringement?
- Brands getting more aggressive – unrecognised liabilities?
- Check proposal forms – proper supply chain?
- Risk applies to:
 - Retailers
 - Distributors
 - Wholesalers
 - Importers

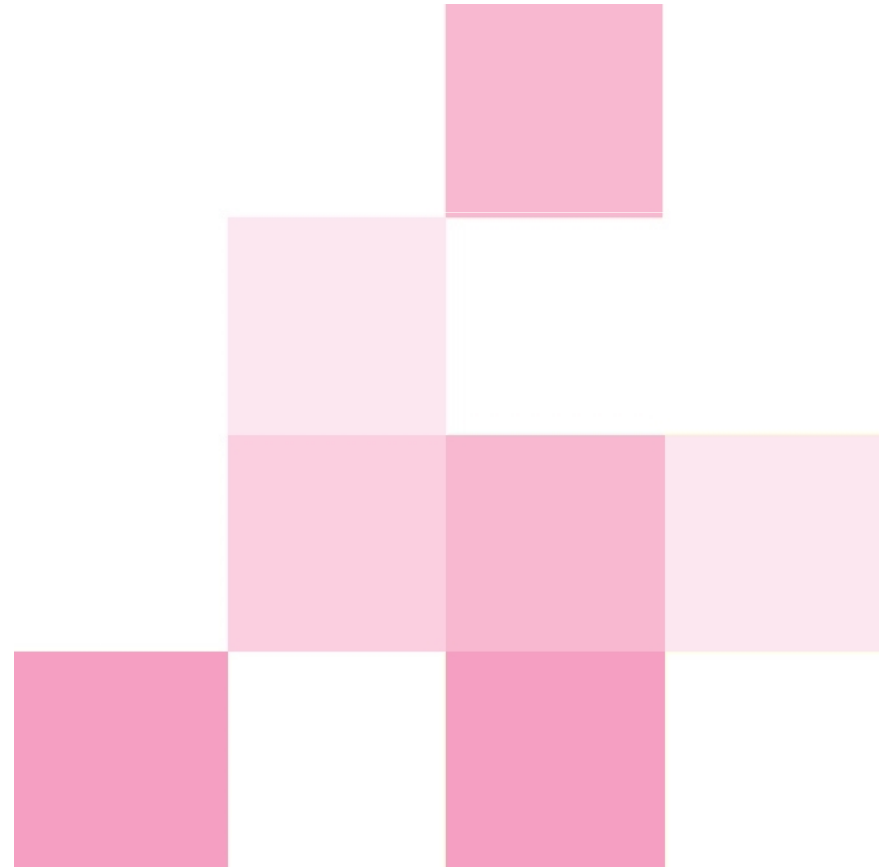
IPEC

- Designed to streamline all but the biggest IP cases
- Limit of £500k damages
- Separate procedure within the CPR
- Costs capping (quite involved)(Max £50k liab/ £25k quantum)
- Specialist judge (HHJ Hacon)
- Active case management
- Usually max 2 day trial

Why is this important?

- IPEC proving popular with parties
- More likely to see litigated cases
- Costs exposure is limited
- Quicker

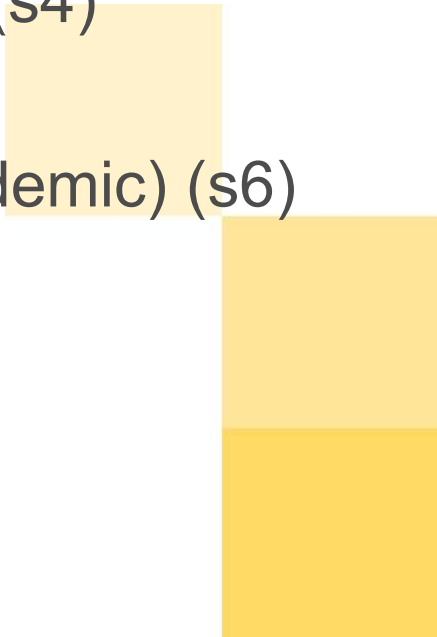
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DEFAMATION



What was wrong with the old law?

- Chilling effect – Simon Singh
- Libel tourism
- Out of date – internet/social media
- Claims were too easy
- Abused by the rich and powerful?

The important changes

- Seriousness threshold (s1)
 - Defence of Truth (s2)
 - Defence of Honest Opinion (s3)
 - Publication on a matter of public interest (s4)
 - Defence for operator of websites (s5)
 - Peer reviewed statements (scientific/academic) (s6)
 - Privileged reports (s7)
 - Single publication rule (s8)
 - Non-domiciled persons (s9)
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Seriousness threshold

- Sounds like good news....
- Previous reluctance to strike out
- But.....
 - How will the test be applied? Front loading?
 - Corporates/LLPs etc?

Publication in the public interest

- Abolishes *Reynolds*
- Act is thin on how defence will be assessed
- Return to checklist? More holistic approach?
- Who can benefit?
- Objective? Subjective?

Libel Tourism

- Before....Reputation for being an easy place to claim.
Good damages.
- Now....s10:
 - England must be clearly the most appropriate place in the world to bring an action in respect of this statement.

Website Operators

- Defence if it can establish it was not the operator who “posted” the statement
- Not defeated if operator “moderated” posts
- But:
 - Lots of key terms undefined
 - Operator needs to take a notice of complaint seriously
 - If author can be identified by C, then defence unless malice

Single Publication Rule

- One year limitation period
- Before:
 - News item on 1 January
 - Google search 31 December – new one year period....

Good News....

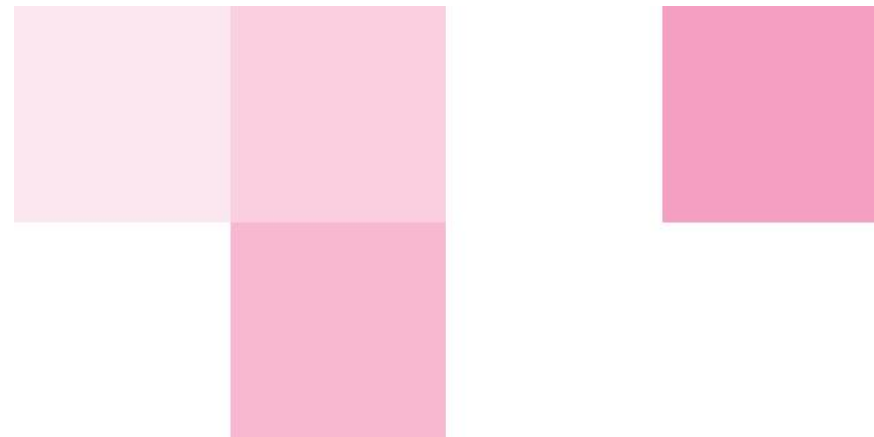
- There should be far fewer claims from:
 - Corporations
 - Overseas claimants
 - Vexatious litigants
 - Scientists/academics
- Limitation will mean something
- Better protection for ISP type customers
- Generally supports freedom of speech

However.....

- Will s1 just mean more front loading of cases?
- Will s4 be found to be as wide as hoped?
- Will there be a reversion to “checklist” defences?
- Will ISPs be as protected as Parliament wanted?
- Will libel tourists really be deterred?
- How will people try to get round the single publication rule?

Questions?

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