

MEDIA WATCH

“When free trade trumps animal protection” – to be published in the *New Law Journal*.

David Thomas argues that animal protection must be given much greater importance in international trade law.

UK CASE LAW

*Covance Laboratories Limited and Covance Laboratories Incorporated v PETA Europe Limited and others*¹⁸

On 16 June 2005 an important judgment was handed down by Judge Peter Langan in the High Court of Justice (Leeds District Registry).

The background to the case is that in 2004 a member of PETA USA obtained employment with Covance Laboratories Ltd (“CL USA”) in its Primate Toxicology Department. She filmed the treatment of monkeys, including monkeys being hit, choked, taunted and terrified (apparently deliberately) by employees. She made her film into a video, and also made detailed written records of the systems and procedures used by CL USA. Her material was analyzed by lawyers and vets within PETA USA, who concluded that CL USA was committing serious breaches of federal and state legislation. On 17 May 2005 PETA USA submitted complaints against CL USA to various US bodies, and held a press conference to publicize these matters. Later the same day PETA Europe publicized them in Europe.

The following day, Judge Langan heard an application by the holding company of CL USA for an injunction to prevent publication of the video, which he granted. On 27 May and 10 June 2005 he heard submissions for the continuation of the injunction until trial. It was asserted that PETA Europe received film material “knowing that it was secret,

confidential and private to” CL USA, and that PETA Europe knew that the material was taken and compiled in breach of the investigator’s obligations as an employee. The injunction was discharged, on the following grounds.

The judge noted that an injunction which would prevent further publication would interfere with the right to freedom of expression, a right guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Section 12 of the Human Rights Act 1998 provides:

“(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression...

(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed...”

In addition, under Section 12(4), where the proceedings relate, *inter alia*, to journalistic material (as in this case), the Act specifies that the court must also have regard to the extent to which it would be in the public interest for the material to be published.

Regarding the effect of Section 12(3), Judge Langan applied the House of Lords decision in *Cream Holdings Ltd v Banerjee*:¹⁹ “the general approach should be that courts will be exceedingly slow to make interim restraint orders where the applicant has not satisfied the court he will probably (‘more likely than not’) succeed at the trial”. He also applied the Court of Appeal’s judgment in *A v B plc*,²⁰ in which Woolf CJ stated: “the existence of a public interest in publication strengthens the case for not granting an injunction ... the fact that the

¹⁸ Not yet published.

¹⁹ [2005] 1 AC 253, 22.

²⁰ [2003] QB 195, 11.