

*Sky Channel Pty Ltd v. Darcy's Tavern Pty Ltd* [2003] FCA 19 (N31 of 2003); *Sky Channel Pty Ltd v. First Mitmac Pty Ltd* (N32 of 2003) (Gyles J, 14 January 2003);

*Sky Channel Pty Ltd v. Intertwine Pty Ltd* [2003] FCA 67 (N93 of 2003) (Lindgren J, 11 February 2003)

*Sky Channel Pty Ltd v Yahmoc Pty Ltd* [2003] FCA 401 (Allsop J, 9 April 2003);

*"Anton Piller" type orders – use of decoding device to gain unauthorised access to encoded broadcast – s135 ANA of the Copyright Act 1968 (Cth) - Use of a 'smart card'*

### **Anton Piller**

The applicants (jointly Sky Channel) sought orders in the nature of *Anton Piller* type orders: *Anton Piller KG v Manufacturing Processes Ltd* [1976] 1 Ch 55 at 61 and 62, based on alleged breaches of a new division of the *Copyright Act (Cth) 1968* (the Act). These orders allow the applicant, under strict conditions as to supervision and accountability to the court, to enter upon premises and seize evidence, that it is feared is likely to be destroyed if the party with control of the evidence were made aware of the intended claim and action.

### **The alleged breaches**

Sky Channel transmitted signals or broadcasts for commercial pay TV. Equipment which could enable a person to receive wireless broadcasts from Sky Channel, could be purchased quite lawfully. The signals however are encoded, making the lawfully acquired equipment useless, unless there was also used a device which could decode the coded or encrypted signal.

These cases involved allegations against parties it was alleged used without authority, a decoding device or a 'smart card' to receive Sky Channel broadcasts in commercial situations, namely in hotels the respondents operated.

### **Comment**

Their Honours in the three separate cases were satisfied that, on the evidence that was before the court, there was a strong case made out for a breach of s. 135ANA in each case for use and authorisation of use of a broadcasting decoding device in contravention of the section.

Notably, Allsop J considered the use of these *Anton Piller* type orders were an 'extreme use of the Courts inherent power.' It is interesting that the power was exercised, in the absence of evidence that the respondents would act improperly

towards the evidence. Relevant also in this regard, was the small size of the smart card, lending itself to easy removal and concealment.

The terms of the orders are not reproduced here but are found in the judgments. These provide a helpful guide to some practical issues such as abridging time and requesting an order under section 50 of the *Federal Court of Australia Act*, that the transcript of the proceedings and the judgment not be distributed prior to a designated time, without leave of the Court.