

## LIST G BARRISTERS

### Peter Creighton-Selvay SC



Peter Creighton-Selvay SC practises in general commercial litigation and has specialist expertise in intellectual property litigation.

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QUALIFICATIONS	CORRESPONDENCE	CHAMBERS
Bachelor of Laws (Hons)	P 03 9225 8558	Emmerson Chambers
Master of Laws (Hons)	E creighton-selvay@vicbar.com.au	Level 18 Room 10
Bachelor of Arts		200 Queen Street Melbourne VIC 3000

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#### COMMERCIAL LAW

Consumer Law | Contractual Disputes | Corporations & Securities | Equity & Trusts

#### INTELLECTUAL PROPERTY

Appellate | Confidential Information | Copyright & Designs | Information Technology | Media & Entertainment | Patents | Privacy & Data Protection | Telecommunications | Trade Marks

Peter has significant trial and appellate experience and is regularly briefed to appear in the Federal Court, Supreme Court and IP Australia in a wide range of commercial and intellectual property proceedings.

Peter has been consistently ranked in Doyle's Guide to Technology, Media & Telecommunications Barristers (Australia and Victoria), Doyle's Guide to Intellectual Property Barristers (Australia and Victoria), Chambers and Partners (Global and Asia-Pacific), and The Legal 500 (Australia Bar). He has been described in Chambers and Partners as "*an outstanding advocate*" who is "*able to break down complex issues of law and fact into simple, pithy submissions*", "*highly intelligent*", and as having "*an impressive track record at both trial and appellate level*". He has been described in The Legal 500 as "*one of the smartest people at the intellectual property Bar in Australia*", an "*outstanding technician for patent, trade mark and copyright cases*", and as having "*a great strategic mind*".

Prior to joining the Bar, Peter was a solicitor at Mallesons Stephen Jaques in Melbourne and a managing associate at Linklaters in London. He holds a Bachelor of Laws from the University of Melbourne (first class honours) and was a Patrick Moore scholar at the University of Cambridge, where he completed a Master of Laws (also first class honours) and specialised in international commercial litigation, international intellectual property and restitution.

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## Recent Cases

### TRADE MARKS, PASSING OFF & CONSUMER PROTECTION

*Bed Bath N' Table v Global Retail Brands* – alleged trade mark infringement, misleading or deceptive conduct and passing off in respect of the use of the words "BED & BATH" (Federal Court, Full Federal Court and High Court).

*Australian Meat Group v JBS Australia* – appeal from trial judgment finding trade mark infringement in the meat industry involving consideration of the relevance of reputation to the assessment of deceptive similarity (Full Federal Court).

*Pham Global v Insight Clinical Imaging* – alleged trade mark infringement, passing off and misleading or deceptive conduct in relation to radiology services; cross-claim for revocation of registered trade mark (Full Federal Court).

*Stone & Wood Group v Intellectual Property Development Corporation* – alleged passing off, misleading or deceptive conduct and trade mark infringement in relation to beer and cross-claim for groundless threats; trade mark opposition to registration of "Pacific Ale" on the basis of sections 41 and 44 of the *Trade Marks Act* (Federal Court and Full Federal Court).

*Maxim Media v Nuclear Enterprises* – application for interlocutory injunction regarding alleged trade mark infringement, misleading and deceptive conduct and breach of contract regarding publication of magazine (Federal Court).

*Activated Carbon v Registrar of Trade Marks* – appeal from ATMO decision refusing to register three trade marks under section 44 of the *Trade Marks Act* (Federal Court).

*RB (Hygiene Home) v Henkel Australia* – alleged trade mark infringement, misleading and deceptive conduct and passing off in relation to the shape and colour of dishwashing capsules (Federal Court).

*Southcorp Brands v Australia Rush Rich Winery & Ors* – alleged infringement of the "Penfolds" trade mark by use of Chinese character mark and "Ben Fu"; summary and default judgment (Federal Court).

*Telstra v Phone Directories Company* – alleged misleading or deceptive conduct and passing off in relation to the use of the colour yellow (Federal Court).

*Delfi Chocolate Manufacturing v Mars Australia* – appeal from ATMO decision refusing to register “Maltitos” by reason of prior registration of “Maltesers” (Federal Court).

*Nutrifield v Smart Garden Products* – appeal from ATMO decision removing registered mark on the ground of non-use (Federal Court).

*Banjo v FundIT Technology* – opposition to registration of “Banjo” trade marks based on sections 42(b) and 60 of the *Trade Marks Act* and resulting appeal (ATMO and Federal Court).

*Sparkling Juice Company v Tru Blu Beverages* – application to revoke the registered trade mark of, and alleged misleading or deceptive conduct, passing off and trade mark infringement of, a company involved in the sale of non-alcoholic beverages (Federal Court).

*Aquila v Auqua Swimwear* – opposition to application by Auqua Swimwear for partial removal of Aquila trade mark on the basis of non-use; opposition to application by Auqua Swimwear for registration of “Auqua” on the basis of sections 44 and 60 of the *Trade Marks Act* and resulting appeal (ATMO and Federal Court).

*Monster Energy v Rodney Jane Racing* – appeal from ATMO decision upholding opposition to registration of trade marks on the basis of section 60 of the *Trade Marks Act* (Federal Court).

*Confidential arbitration under the ACICA Rules* – breach of contract and alleged trade mark infringement.

*Australia Post v Digital Post Australia* – alleged trade mark infringement and misleading or deceptive conduct in relation to a digital mail service (Federal Court).

*Monash University v Sue Shepherd* – alleged misleading or deceptive conduct and misuse of confidential information in relation to the creation and promotion of the Low FODMAP Diet (Federal Court).

*Salon Concepts v BSB Pacific* – alleged trade mark infringement, misleading or deceptive conduct, passing off, breach of contract and debt claim in relation to spray tan products (Federal Circuit Court).

*Global Tiger Logistics v Cargo Traders SA* – alleged trade mark infringement, misleading or deceptive conduct and passing off in relation to logistics services (Federal Circuit Court).

*Peter Alexander Sleepwear v Harmont & Blaine* – opposition to application for registration of logo featuring dachshund image under sections 42(b) and 60 of the *Trade Marks Act* (ATMO).

*Silver Top Taxi Service v Taxi's Combined Services* – opposition to application for registration of “Silver Service” in relation to taxi services (ATMO).

*Evolve Group v Australian Saltworks* – opposition to application for registration of REVIVE under sections 42(b), 44, 58 and 60 of the *Trade Marks Act* (ATMO).

*Re Betcloud Holdings* – hearing in relation to proposed revocation of registration under section 84A and revocation of acceptance under section 38 of the *Trade Marks Act* of three wagering related trade marks (ATMO).

*Re Ab Initio Software* – application to register greater than symbol as trade mark in respect of computer software and related services and consideration of issues arising under section 41 of the *Trade Marks Act* (ATMO).

*Re Popsockets LLC* – application to register shape of handgrip for mobile phones and electronic devices as a trade mark (ATMO).

*Re The Custom Chef* – application to register “ShopMyHouse” as a trade mark for retailing services (ATMO).

*Motor One Group Pty Ltd v Simon Zaman* – opposition to application for removal of trade mark due to non-use (ATMO).

*MG Icon v Caprice Australia* – interpretation and application of *Raising the Bar* amendments (ATMO).

*Re Fodmapped Foods Pty Ltd* – opposition to revocation of acceptance of trade mark (ATMO).

*Toddler Kindy Gymbaroo v Gym-Mark* – opposition to application for removal of trade mark due to non-use (ATMO).

*Jack Gance & Mario Verrochio v Ian Tauman* – opposition to registration of three trade marks in respect of pharmacy services based on the prior registration and use of various “Chemist Warehouse” trade marks (ATMO).

*World Expeditions Travel Group Pty Ltd v Franklin River Rafting* – opposition to registration of trade mark on the basis of section 41 of the *Trade Marks Act* (ATMO).

*Progressive Green v Flow Systems* – opposition to registration of trade mark on the basis of sections 58, 59 and 60 of the *Trade Marks Act* and related Federal Court proceedings for trade mark infringement and misleading or deceptive conduct (ATMO).

*Re Amazonia IP Holdings* – application to register “RAW” as a trade mark in relation to nutritional supplements (ATMO).

*Monster Energy v TM Storage Place* – opposition to applications for registration of trade marks on the basis of sections 44 and 60 of the *Trade Marks Act* (ATMO).

*Genset Power v Murray Hardinge* – opposition to registration of trade mark under sections 42(b), 58, 59 and 60 of the *Trade Marks Act* (ATMO).

## PATENTS

*Calidad v Seiko Epson* – consideration of the “exhaustion” and “implied licence” doctrines and the extent of modifications which may be made to patented products (High Court).

*Aristocrat v Commissioner of Patents* – consideration of whether patents relating to electronic gaming machines claim a “manner of manufacture” (Federal Court, Full Federal Court and High Court).

*ITW v Airco* – alleged infringement of patent concerning fuel cells; application for extension of time to appeal and judicial review of decision of APO allowing amendments to patent (Federal Court and Full Federal Court).

*SNF (Australia) v Ciba Speciality Chemicals Water Treatments* – long running patent litigation, involving numerous opposition proceedings, Federal Court appeals concerning validity, and infringement proceedings seeking an account of profits, regarding a process of treating mine tailings (APO, Federal Court, and Full Federal Court).

*CPC Patent Technologies v Apple Inc* – alleged infringement of two patents concerning a system for providing secure access to a controlled item using a biometric signal; cross-claim for invalidity (Federal Court).

*Hanwha v REC* – alleged infringement of a patent concerning a solar cell with two dielectric layers; cross-claim for invalidity (Federal Court).

*Boehringer Ingelheim v Elanco New Zealand* – appeal from APO decision permitting amendments under s 104 to a patent for an anti-infective formulation to prevent or ameliorate bovine mastitis (Federal Court).

*The Noco Company v Brown & Watson International* – alleged infringement of three patents relating to a battery jump starter apparatus; cross-claim for invalidity (Federal Court).

*Kutti Bay v Rattlejack Inventions* – alleged infringement of three patents relating to safety systems for protecting against a hazard of drill rod failure and amendment application under s 105 of the *Patents Act* (Federal Court).

*Tasmanian Alkaloids v TPI Enterprises* – alleged infringement of innovation patents relating to high codeine poppies and cross-claim for invalidity; appeal from APO decision concerning the validity of a related standard patent (Federal Court).

*Wilson v Microsoft* – alleged patent infringement and misuse of confidential information in relation to computer software (Federal Court).

*Enterprise Glue v Shopify* – alleged infringement of patent concerning a data access system and cross-claim for invalidity (Federal Court).

*Diogenes v Tabcorp* – alleged infringement of a patent concerning a pool wagering apparatus; cross-claim for invalidity (Federal Court).

*CQMS v ESCO* – numerous opposition proceedings to patent applications for GET monitoring systems and related mining technologies, as well as numerous opposition proceedings to proposed claim amendments (APO).

*CQMS v Sandvik* – opposition to patent application concerning GET monitoring system (APO).

*CQMS v Metalogenia Research* – opposition to patent application concerning a method which utilises accelerometers to determine the orientation of GET (APO).

*Lee Brothers Fencing v Aus Group Alliance* – opposition to patent application concerning moulded cladding panels (APO).

*Crimsafe Security Solutions v Wamlez* – opposition to proposed claim amendments pursuant to section 104 of the *Patents Act* (APO).

*1414 Degrees v Climate Change Technologies* - opposition to proposed claim amendments pursuant to section 104 of the *Patents Act* (APO).

*Gutter Grip v Interit* – opposition to proposed claim amendments pursuant to section 104 of the *Patents Act* (APO).

#### COPYRIGHT, DESIGNS & CONFIDENTIAL INFORMATION

*Lumen Australia v Frontline Australia & Ors* – alleged infringement of copyright, circuit layout rights, trade marks, misuse of confidential information, misleading or deceptive conduct, passing off, and breach of contract, in relation to the manufacture of trailer wiring harnesses; claims for pecuniary relief and additional damages (Federal Court).

*More Group v Ronan Czesler & Ors* – alleged infringement of copyright and misuse of confidential information in relation to dental implant courses (Supreme Court).

*ECS Property Group v Goodridge Nominees* – alleged misuse of confidential information in relation to a business opportunity (Federal Court).

*The National Building Suppliers Group v Mitre 10 Australia* – application for interlocutory injunction and digital inspection of computers by reason of alleged misuse of confidential information, copyright infringement, and conversion, in relation to documents made available on confidential online portal (Federal Court).

*International Warehousing Distribution v Justin Trail* – alleged misuse of confidential information and copyright infringement by a former employee of a craft brewing company, including interlocutory application for digital inspection of computing devices (Federal Circuit Court).

*Dassault v Aurizon* – alleged breach of contract and infringement of copyright in relation to a software licensing agreement relating to a coal rail network in Queensland (Federal Court).

*Pentana Solutions v Titan Dealer Management & Ors* – alleged infringement of copyright in relation to automotive dealer software (Federal Court).

*Stephen McCarthy v Chatsworth Constructions* – alleged infringement of copyright in relation to architectural plans (Federal Court).

*Progress Software v Crown Melbourne* – alleged breaches of contract, restitution and copyright infringement in relation to the licensing of computer software (Supreme Court).

*Wynnes Patent and Trade Marks Attorneys v Wamlez* – hearing relating to certification of design relating to a driver bit for a fastener and issues arising under sections 15 – 17 of the *Designs Act* (ADO).

#### GENERAL COMMERCIAL

*Ying Mui v Frank Hoh* – alleged breaches of fiduciary and statutory duties by former directors of companies acting as trustees of family trusts, knowing receipt and knowing assistance, replacement of trustees (Supreme Court and Court of Appeal).

*Hylepin v Doshay* – alleged breaches of fiduciary duty and oppression regarding the conduct of a business and related entity transactions (Full Federal Court).

*Fonterra Brands v Bega Cheese* – alleged breaches of express and implied terms of licensing agreement, restraint of trade, rectification, misleading or deceptive conduct, estoppel and waiver; related interlocutory disputes concerning privilege, waiver and fraud under sections 122 and 125 of the *Evidence Act* (Supreme Court).

*Ecopave Australia Holdings v Adbri Masonry Group* – application for leave to appeal to the Full Court of the Federal Court (Federal Court).

*Komipharm International v Bio and Gene* – alleged breaches of contract and misleading or deceptive conduct in relation to clinical trials; application for freezing orders on the basis of alleged fraud (Supreme Court).

*Re Frosthollow Pty Ltd* – application for judicial advice by corporate trustee as to whether to defend claims for breaches of trust, indemnity out of trust assets, and replacement of trustee (Supreme Court).

*SNF (Australia) v Ciba Speciality Chemicals Water Treatments* – application to re-open proceedings on the basis of allegations of equitable fraud (Federal Court).

*Uniting Church of Australia v Westpac & Denham* – alleged breaches of contract, negligence, conversion and misleading or deceptive conduct of bank and auditor in the context of a fraud perpetrated by a company employee (Supreme Court).

*Brainwave Technology v Aaron Leibovich* - alleged breaches and repudiation of contract by inventor of a smart chip for mobile phones (Supreme Court).

*Walker Trusco v Aspen Medical* – allegations of breach of fiduciary duty and contract, and misleading or deceptive

conduct, arising from business separation; cross-claim for misuse of confidential information (Supreme Court).

## Memberships

Intellectual Property Society of Australia and New Zealand (IPSANZ)