

Peter Creighton-Selvay



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

QUALIFICATIONS

Bachelor of Laws (Hons)
Master of Laws (Hons)
Bachelor of Arts

CORRESPONDENCE

P 03 9225 8558
E creighton-selvay@vicbar.com.au

CHAMBERS

Emmerson Chambers
Level 18 Room 10
200 Queen Street
Melbourne VIC 3000

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 for many years been ranked as “*preeminent*” or “*leading*” junior counsel in Doyle’s Guide to Technology, Media & Telecommunications Barristers (Australia and Victoria) and Doyle’s Guide to Intellectual Property Barristers (Australia and Victoria).

He has been repeatedly recommended in Chambers and Partners. In 2021, he was described as “*one of Australia’s leading junior IP counsel*”, having “*cross-examination skills better than those of many silks*”, and “*a strong black-letter lawyer and eloquent advocate*” who is “*especially sought after for trade mark cases*”. In 2022, he was described as “*terrific - a well-prepared, very articulate presenter who’s very good on his feet*” and whose “*knowledge of IP law is excellent*”. In 2023, he was recommended as having “*an impressive track record at both trial and appellate level*”.

He has been similarly recommended in The Legal 500. In 2021, he was described as “*One of Australia’s leading junior IP counsel*” and an “*outstanding technician for patent, trade mark and copyright cases*”. In 2022, he was described as having “*extraordinary skills*” and being “*very impressive and great to work with*”. In 2023, he was described as “*an exceptional advocate*” 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.

Liability limited by a scheme approved under Professional Standards Legislation

Recent Cases

INTELLECTUAL PROPERTY

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, with D Shavin QC).

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, with E Heerey QC).

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, with T Cordiner QC).

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, with D Shavin QC).

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, with B Caine QC and E Heerey QC).

CPC Patent Technologies v Apple Inc – alleged infringement of patents concerning a system for providing secure access to a controlled item using a biometric signal; cross-claim for invalidity (with B Caine QC and A Lang SC).

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

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, with G Dalton QC).

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

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, with C Golvan QC; ATMO, unled).

ESCO v CQMS – alleged groundless threats and claim for revocation of patent relating to improvements in excavator teeth; cross-claim alleging patent infringement; numerous opposition proceedings concerning patent applications relating to mining technology (APO, unled; Federal Court, with E Heerey QC).

Wilson v Microsoft – alleged patent infringement and misuse of confidential information in relation to computer software (Federal Court, with A Ryan SC).

Delfi Chocolate Manufacturing v Mars Australia – appeal from ATMO decision refusing to register “Maltitos” by reason of prior registration of “Maltesers” (Federal Court, with A Ryan SC and E Heerey).

Telstra v Phone Directories Company – alleged misleading or deceptive conduct and passing off in relation to the use of the colour yellow (Federal Court, with M Wyles QC and S Rebikoff).

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

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, with E Heerey QC).

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

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, unled).

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

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, unled).

Hanwha v REC – alleged infringement of a patent concerning a solar cell with two dielectric layers; cross-claim for

invalidity (Federal Court, with C Dimitriadis).

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, unled).

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, unled).

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, with C Golvan QC).

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, with E Heerey QC).

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, unled).

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

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

ECS Property Group v Goodridge Nominees – alleged misuse of confidential information and misleading or deceptive conduct in relation to a business opportunity (Federal Court, with C Golvan QC).

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

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, with E Heerey QC).

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, with A Ryan SC).

Australia Post v Digital Post Australia – alleged trade mark infringement and misleading or deceptive conduct in relation to a digital mail service (Federal Court, with W Houghton QC and S Rebikoff).

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

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, unled).

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, with E Heerey).

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, unled).

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, unled).

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, with E Heerey QC).

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 and Federal Court, unled).

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

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

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, with E Heerey QC).

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, with B Caine QC).

COMMERCIAL LAW

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, with M Osborne QC).

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, with G Dalton QC).

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, with P Solomon QC).

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

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

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, with M Osborne QC).

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

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, unled).

Business Health v DKN Financial Group – alleged breaches of contract, restitution, misleading or deceptive

conduct and copyright infringement in relation to software development (County Court, with P Solomon QC).

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

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, with J Peters QC).

Hylepin v Doshay – allegations of breach of fiduciary duty and oppression regarding the conduct of a business and related entity transactions (Full Federal Court, with G Dalton QC).

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, with C Golvan).

Guo, Sun, Wu & Zang v OHAPIF Pty Ltd – third party claim against former director arising from alleged breaches of fiduciary duties, *ASIC Act*, *Corporations Act* and *Australian Consumer Law* relating to property investment trust and associated loan transactions (Supreme Court, unled).

Memberships

Intellectual Property Society of Australia and New Zealand (IPSANZ)