

Craig Smith

Victorian Bar – Dever’s List

Bachelor of Engineering (Chemical) (Honours, Owen Potter Award for top graduate)
Monash University

Bachelor of Laws (Honours) Monash University

Master of Laws (H1 average) Melbourne University

Professional experience (General)

From 1998 to February 2009 I worked in the litigation and intellectual property groups at Freehills (now Herbert Smith Freehills), from 2004 as a Senior Associate.

Since coming to the Bar in May 2009 I have appeared in a wide range of commercial disputes including in the Federal Court of Australia, State courts, and the Patents and Trade Marks Offices. I have also assisted with resolving a large number of disputes before trial.

A large component of my practice involves intellectual property disputes (principally patent and trade mark), as well as *Australian Consumer Law* and confidential information disputes. That experience is summarised in a separate CV that is focused on intellectual property.

I also regularly act in contract disputes, and product liability disputes, particularly involving technical subject matter. I also act in proceedings involving tortious issues, including in particular negligence and conversion.

A common feature of many of the intellectual property and commercial disputes that I act in has been the need to familiarise myself with different areas of technology, and to work with expert witnesses in a range of different fields.

Intellectual property

Details of my experience in intellectual property matters are set out in my separate CV which is focussed on intellectual property.

Contract

I have acted in a wide range of contract-based disputes, including in insurance contexts, and has undertaken post-graduate study in contract law. Some examples of relevant cases include:

- For Bega Cheese Limited, in a Federal Court proceeding (including appeal) defending allegations of breach of contract relating to a trade mark licence
- For the Roberts in Supreme Court proceedings against ARB in relation to royalties payable under a sale of business agreement relating to 4WD technology, involving an assignment of various patents

- For ACP Machinery in Federal Court proceedings against Boeing for breach of a restraint in a manufacturing agreement
- For Rockwell Automation in Supreme Court proceedings involving 10 former franchisee distributors, successfully defending allegations of breach of contract, engagement in unconscionable and misleading and deceptive conduct, and breach of confidence and fiduciary duty
- For PD Enterprise in Supreme Court proceedings against Pacific Brands Clothing and Bonds Industries involving allegations of breaches of various manufacturing agreements
- For Patties Foods Ltd in Supreme Court proceedings relating to a breach of warranty relating to the supply of contaminated frozen berries
- For GA & L Harrington Pty Ltd defending Supreme Court proceedings relating to the supply of welded automotive parts, which resulted in a product recall
- For Generic Partners, in a Supreme Court proceeding relating to a breach of an exclusive supply agreement for a pharmaceutical
- For Trailerhomes Pty Ltd in Supreme Court proceedings seeking a declaration that an option to assign a financial benefit was validly exercised

Tort (negligence, conversion)

I have acted in a range of cases involving allegations of negligence, as well as proceedings involving detainee and conversion. Many of the cases involving issues of negligence have involved technical subject matter, with experts addressing areas including welding and fire initiation. Some relevant cases include:

- Defending an accountant who provided an expert determination from claims of negligence in a Supreme Court proceeding;
- Seeking damages in relation to a fire commencing in an adjacent building, arising from negligence
- Acting for the plaintiff in an action for damages relating to the supply of defective plumbing equipment
- Acting for a third party in relation to a damages claim relating to a fire started by a bird-scaring cannon
- Acting for various solicitors in LPLC actions alleging negligence
- Defending a Federal Court proceeding involving allegations of conversion of moulds used to make playground equipment

Selected publications

‘Likely to cause confusion: The section 120(2) Trade Marks Act defence’, Volume 78 *Intellectual Property Forum* (September 2009)

‘Patents covering enantiomers: case note Lundbeck v Alphapharm’, Volume 22 Number 3 *Australian Intellectual Property Law Bulletin*, 2009, pages 49-50

‘Trying to Fence in a Monopoly? S 25 of the Trade Marks Act’, Volume 20 Number 10 *Australian Intellectual Property Law Bulletin*, 2008, pages 150-1

‘Contemplating Reflections’, Issue 204 *Patent World*, 2008, pages 18-20 (a comparison of the UK and Australian Lundbeck decisions)

‘A real state: the Colorado case’, Volume 20 Number 8 *Australian Intellectual Property Law Bulletin*, 2008, pages 129-131

‘Still all at sea? Works of artistic craftsmanship after *Burge v Swarbrick*’, Volume 20 Number 3 *Australian Intellectual Property Law Bulletin*, 2007, pages 37-40

Co-author of Australia chapter of *Copyright, Getting the Deal Through*, 2007 and 2008 (with Kristin Stammer)

‘Trade Mark Protection for Product Shape - Where Does the Public Interest Lie?’, Volume 63 *Intellectual Property Forum*, December 2005. (This article won the IPSANZ Essay Prize for 2005)

‘Recognising a valuable lost opportunity to bargain when a contract is breached’, *Journal of Contract Law*, Volume 21 Number 3, November 2005, page 250. (This article won the Melbourne University Law School’s Student Published Research Prize, postgraduate division for 2005)

‘Concrete meaning? Claim construction in Australia’, (with S. McVicar), *Patent World* Issue 175, September 2005, page 22

‘Warding off internet trade mark infringers’, *Computers & Law*, Vol. 60, June 2005, page 18