



Profile: Timothy Webb

Timothy Webb, Partner at Clayton Utz, is a leading IP lawyer who advises on both contentious and non-contentious matters. He has a wide range of experience across the spectrum of intellectual property, including copyright, trade marks, patents, designs, advertising, confidential information, domain names and anti-counterfeiting. He has acted for clients in landmark Australian test cases for both copyright and designs, and regularly assists clients in the Copyright Tribunal. Tim is also the joint head of the firm's Trade Mark and Brand Protection Group. Tim is a Fellow of the Chartered Institute of Arbitrators, past member of the Law Society of NSW Litigation Law & Practice and ADR committees, a committee member of the International Trademark Association, and member of the CAMLA Board. Tim's IP expertise is recognised in Chambers, Legal 500, Best Lawyers, Doyle's Guide, Managing IP and World Trademark Review 1000, but he says that is all due to his super talented team. **Ashleigh Fehrenbach**, co-editor, sits down with Tim to discuss his career and insights.

ASHLEIGH: What were two key skills you learnt in your first few years of legal practice?

TIM: I was blessed to work with many fantastically talented lawyers in my first years of practice. The "rotation" system offered by most larger law firms is a wonderful model to expose young lawyers not just to different areas of law and the skills necessary to practise them, but also to different practitioners who have different strengths from which to learn.

The most important skill I picked up is relevant to all areas of the law, and both private practice and in-house. I realised early on the centrality and criticality of communication skills to legal practice. That sounds trite but it is fundamental. So much of what we do – whether drafting transactional documents, preparing advice or advocating a position in court submissions – is about conveying a message that should be clear and achieve an objective. I also learnt early on that much of what makes a communication effective, is its responsiveness. And by "responsiveness" I do not mean "timeliness", but how well it responds to the requirements of the person to whom the communication is being sent. A business might require advice on an issue that could be answered by a 10-page letter replete with case references, or by a two-paragraph email (even if the issues are very complex!). But they are different work products and if one is provided when the other is expected, the only certainty is an unhappy client. So, the skill really is to ask questions to understand the purpose of the communication, and to tailor it accordingly.

Another key skill I learnt, which is a subset of good communication, or

might directly feed into subsequent communications, is attention to detail. That can manifest itself in a variety of contexts, for example, remaining focussed while reviewing thousands of discovery documents looking for the "smoking gun" (rarely found!) or a consistent use of active tense and no typos in a simple letter.

ASHLEIGH: You have worked on a range of high-profile IP matters. I'd love to hear about how you found yourself in that specialisation.

TIM: Unintentionally. And there is a good lesson in that too. I started my legal career as a graduate in the Canberra office of Clayton Utz. My first rotation was in the Corporate department (effectively advice and transactions for the Commonwealth Government), then Property, and then in Litigation and Dispute Resolution. A week into that last rotation, I was on a flight to Sydney to meet with Steven Finch SC and Stephen Burley (then a barrister) in chambers to discuss a dispute concerning copyright in the designs of the Collins class submarines. I immediately knew this was what I wanted to do – not just IP, but dispute resolution generally. In 2005 my supervising partner Robert Cutler moved to Sydney and, with my girlfriend (now wife) getting a job in Sydney, we also came up the highway and I joined his team in the Clayton Utz Sydney office. Robert's practice covered both general commercial litigation and IP, so I began doing both types of matters on a regular basis. Having not studied IP as an undergraduate, I did a Master of Laws at UNSW specialising in IP. That study and the wisdom of my colleagues (including Mary Still and John Collins) provided a wonderful platform for me to grow as an IP lawyer.

ASHLEIGH: What do you find most interesting about the world of IP law?

TIM: Its depth, variety and synergy with the modern world economy.

IP law is not homogenous nor simple – each form of IP has its own legislation (in the case of the Copyright Act, now 689 pages!), body of jurisprudence, international framework and law reform agenda. That complexity provides a deep well for intellectual curiosity.

The clients, industries and issues that arise in the practice of IP law are unlimited. Every day is different. In the last couple of days our team has advised a television broadcaster, automotive manufacturer, telecommunications company, media monitoring organisation, railway technology manufacturer, FMCG producer, government department and sporting code operator. Importantly, IP issues arise for businesses of all sizes – from the largest multinationals to the smallest SMEs and individuals. Each grapples with IP issues, and finding solutions to those issues is never repetitive.

Finally, I also love the personalities within the IP legal fraternity. I think it is a perfect size – large enough that you are regularly meeting new people, but small enough that you have repeated dealings with practitioners to develop deep connections.

ASHLEIGH: In private practice, you are no doubt surrounded by the concerns of both rights holders and consumers of creative works. What do you see as being the biggest legal challenge for rights holders in Australia at the moment?

TIM: Australia has an excellent legal system, its IP laws are sophisticated and, while some would disagree with

this, the common law has proven reasonably adept at dealing with novel issues while legislative reform catches up. In my experience, and as a general comment, rights holders are well placed in Australia to develop, protect, commercialise and enforce their IP rights.

I think the biggest legal challenge for rights holders at the moment is what is happening in Russia (if that part of the world is relevant to their business). In response to economic sanctions imposed as a reaction to the Russian-Ukrainian war, Russia has issued decrees effectively legalising infringement of intellectual property owned by individuals or corporations in “unfriendly” countries and by restricting foreign licensors from accessing IP royalty payments. Those “unfriendly” countries include Australia, USA, UK, Canada, Japan, South Korea, New Zealand, Singapore, Switzerland, Norway, Iceland, Taiwan and all 27 members of the European Union. The USPTO has also reported that over fifty bad faith trade mark applications have already been filed in Russia that clearly copy famous brands that have withdrawn from the Russian market, and it will be fascinating to see how these issues will be addressed in the years ahead.

ASHLEIGH: Can you tell us a bit about the key emerging issues in the telecommunications space? How can lawyers who practise in that area keep up with such a constantly evolving industry?

TIM: The telecommunications sector is dynamic. Some of the current hot topics facing the industry include the proposed Telstra-TPG regional network and spectrum sharing deal (with competitors lobbying to have the ACCC oppose the tie-up in its current form), NBN Co's proposed Special Access Undertaking variation which has drawn strong reactions from the ACCC and retail service providers, the sale and restructuring of mobile tower assets, expansion of the consumer data right to the sector, the so-called “scissor effect” of a widening gap between revenue and network expenditure, and the repositioning of the telco value proposition including as IP content licensors.

I find the best way to keep abreast of developments is to read industry publications (such as Communications Day and, of course, the Communications Law Bulletin), follow the activities of the players in the industry (including Communications Alliance), work on matters, and have inquiring

conversations with those who contribute to the telco sector. And of course attend relevant CAMLA seminars!

ASHLEIGH: What is one development in the IP legal landscape that you are keeping your eye on this year?

TIM: I am keeping my eye on a few things; perhaps I can mention one for each of the most prominent forms of IP.

In copyright law, consultation on the exposure draft of the Copyright Amendment (Access Reforms) Bill 2021 closed earlier this year. I understand that the Department of Infrastructure, Transport, Regional Development and Communications received a lot of feedback, some stridently expressed, so it will be very interesting to see whether those reforms are progressed, and in what form.

The Trade Marks Office is concerned to ensure quality and consistency in the examination of trade marks. It has issued a position paper on how best to assess distinctiveness of marks under application in the light of the High Court decision in *Cantarella*, including principles relating to the examination of descriptive marks or having a geographical reference but which are not ‘geographical indications’. My colleague Brett Doyle is the delegate to the Trade Marks & Designs Consultation Group for the International Trademark Association, and has made an erudite submission on these issues. I will be keenly looking out for any revisions to the Trade Marks Manual of Practice and Procedure.

In the patent space, in April an enlarged five-judge bench of the Full Court of the Federal Court overturned a previous landmark decision in which Beach J found that artificial intelligence (AI) is capable of being legally recognised as an “inventor”, as is reported elsewhere in this edition. The outcome of Dr Thaler's special leave application to the High Court will be interesting. I will also be awaiting the High Court's decision in the *Aristocrat* matter, which was heard in June, which relates to the patentability of computer implemented inventions.

Finally, for designs, reforms from the Designs Amendment (Advisory Council on Intellectual Property Response) Act 2021 came into effect earlier this year, and I will be fascinated to see whether introduction of a grace period and simplification of the designs registration process encourage more designers to file applications.

ASHLEIGH: What is one piece of advice you would share with a young lawyer in the early stages of their career?

TIM: At the risk of making it a theme, I am going to provide more than one, as good advice should be shared and I don't get a platform like this every day!

Enthusiasm to do a task can leave an impression on others as important as how the task is performed. View all work product from the client's perspective, and what will make the job they have to do easier. Invest in developing professional relationships with as many people as time permits. Don't be too anxious about stressful things, or hard on yourself for any mistakes – this is a helpful lens to calibrate: if no one will remember it 2 years from now, it isn't that important. Be open to different paths, appreciating that setbacks can be positives and positives can be setbacks – there is a lot of wisdom in Alan Watts' *Story of the Chinese Farmer* (check it out on YouTube). Most importantly, a legal career is just one part of life, and always keep your primary relationships strong.

ASHLEIGH: Finally, what do you think of CAMLA's new logo?

TIM: As a trade mark lawyer, I think it is distinctive. As a CAMLA board member, I am grateful for the hard work of those involved in developing it. As a punter, I think it looks pretty good. So overall two thumbs up!



Ashleigh Fehrenbach