

Edwina Whitby

## NIGEL BOWEN CHAMBERS

### Admissions and Career Overview

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2014	Barrister, New South Wales
2009-2014	Solicitor, King & Wood Mallesons (Senior Associate 2013 in Dispute Resolution team, Solicitor 2009)
2008	Tipstaff to the Honorable Justice Margaret Beazley AO
2006	Mallesons Stephen Jaques, Summer Clerk and Law Clerk, Dispute Resolution & Mergers Acquisition (2004/6)
2005	Winter Clerkship, Linklaters London

### Tertiary qualifications

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2008	LLB (Hons) (Class 1) University of Sydney
2007	Diploma of Languages (Hispanic Studies), UNSW
2004	Bachelor of Arts (Government and English), University of Sydney

### Experience at the Bar and Notable Cases

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Edwina was called to the bar in 2014 and has quickly developed a diverse practice, focussing on intellectual property and consumer law, as well as general commercial, construction and environmental and planning law. Selected cases include:

#### Intellectual Property and Australian Consumer Law

- *Australian Writers Guild v Audio-Visual Copyright Society (Screenrights) - FCA Proceedings* (ongoing) (led by C. Ronalds SC) – appearing for scriptwriters in a suit against Screenrights for breach of trust; breach of statutory duty; misleading and deceptive conduct against arising out of its distribution of statutory royalties under Part VA, VB, VC of the *Copyright Act*.
- *Caesarstone Ltd v Ceramiche Caesar S.p.A - FCA Proceedings* (reserved) (led by C. Burgess) – appeared for Ceramiche Caesar S.p.A in an appeal from two decisions of the Registrar of Trade Marks to reject applications for registration of CAESARSTONE word/device.
- *Crescent Capital Partners Management v Crescent Funds Management* [2016] FCA 229 and on appeal [2017] FCAFC 2 (led by Cobden SC) – acted for private equity firm Crescent Capital in misleading and deceptive conduct proceedings to restrain use of the name “Crescent Wealth” by a rival financial services provider.

- *Moroccanoil v Aldi* (NSD 613/2015 and NSD 1297/2015) (led by Cobden SC, Cooke) acted for Moroccanoil against Aldi in relation to “Moroccan Argan Oil” hair products, suing for trade mark infringement, passing off and misleading and deceptive conduct. Defended cross-claim seeking removal of Moroccanoil trade marks on the basis of non-distinctiveness and non-use.
- *Biomax v Jabiru Agribusiness* [2016] FCA 505 and [2016] FCA 600 successful application for default judgment for copyright infringement in drawings and photographs advertising farm machinery; “slip rule” application.
- *My Brilliance v Samsung Electronics* [2016] ATMO 84 – trade mark opposition.
- *Scandinavian Tobacco Group v Trojan Trading Company* [2015] FCA 1086 (led by M R Hall SC) – defended a parallel importer of tobacco products against allegations of trade mark infringement, who repackaged goods for compliance with tobacco plain packaging regime in unofficial packaging.
- *Health Boutique v Boom Ideas* [2015] ATMO 104 - trade mark opposition
- *Unilever Australia v Revlon* [2014] FCA 573 (led by Studdy SC) and [2014] FCA 875 (led by M R Hall SC) appeared for Revlon against allegations of misleading and deceptive conduct for advertising and packaging claims for Mitchum Clinical antiperspirant deodorant; resisted interlocutory application for injunctive relief.

### **Property, Building and Construction**

- *Walker Group Constructions v Bluescope Steel* (led by D Ryan SC and FP Hicks) (ongoing); appearing for Walkers in dispute concerning breach of a building and construction contract for defective bolts in roof of a paint facility; whether proceedings barred by *Limitation Act 1969*; whether without prejudice communications can found estoppel.
- *Tzaneros Investments v Walker Group Constructions* [2016] NSWSC 50 (led by M Rudge SC and FP Hicks); [2017] NSWCA 27; led by Jackman SC, Hall SC, FP Hicks) - appeared for Walkers in a dispute concerning breach of a building and construction contract concerning a cracked pavement at a shipping container terminal in Port Botany; successful suit against design engineer for defective design of pavement which did not withstand laden forklift loads.
- *Fuentes v Bondi Beachside* [2016] NSWSC 531 (led by Epstein SC) acted for property developer in dispute concerning the on-sale of an “off the plan” luxury unit prior to settlement.

### **Environment and Planning**

- *St Marys Recycling v NSW* (Federal Court Proceedings) (led by Larkin SC) (settled) – acting for operator of waste transfer and recycling centre in proceedings concerning the applicable contributions payable for waste received at facilities; validity of the ‘proximity principle’ under the *Protection of the Environment Operations (Waste) Act* (NSW).

- *Australia Skydive Pty Ltd v Wyong Shire Council* [2014] NSWLEC 185 (led by Larkin SC) – defended council in judicial review proceedings concerning validity of fees imposed for use of Warnervale Airport by a skydiving business (settled).
- *Teys Australia Southern Pty Limited v Burns* [2015] NSWLEC 1; (2015) 206 LGERA 186 (led by Larkin SC) – defended landholders in judicial review proceedings challenging an approved application for residential subdivision; whether council considered “proposed instrument” in context of s.79C(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979* (NSW).
- *Save Little Manly Beach Foreshore Inc v Minister for Planning (No 3)* [2015] NSWLEC 77 (led by Larkin SC) – acted for community interest group in judicial review proceedings concerning amendments to a Local Environmental Plan affecting waterfront and community land.
- *Wilks v Wagga Wagga City Council* [2015] NSWLEC 1432 (led by Larkin SC) – acted for landholders in Class 1 review of development application for residential subdivision of land in proximity to industrial estate.

### **Selection of cases as a solicitor at King & Wood Mallesons (2009-2014)**

- *Samsung Electronics Australia v LG Electronics Australia* [2015] FCA 227 (instructing Webb SC and Hall) – defended LG’s advertising campaign for LG Cinema 3D TVs against allegations of misleading and deceptive conduct and injurious falsehood – consumer survey evidence.
- *JT International SA v Commonwealth of Australia* [2012] HCA 43; (2012) 291 ALR 669 (instructing Walker SC and Lenehan) – acted for ITA in constitutional challenge to the *Tobacco Plain Packaging Act 2011* (Cth).
- *Peter Bodum A/S v DKSH Australia* [2011] FCAFC 98 (instructing Catterns QC, Goddard SC and M R Hall) – successfully acted for Bodum in case against a seller of copycat plungers, establishing a common law reputation in the get-up and features of the Bodum Chambord coffee plunger, breach of the Trade Practices Act and passing off.
- *Luxottica Retail Australia* – 3 month secondment in role of Legal Counsel to leading eyewear company advising OPSM, Sunglass Hut on branding, as general commercial, regulatory, therapeutic goods and medical devices.

### **Interests**

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Edwina is a certified yoga teacher, completing over 430 hours of training with Power Living Australia (Vinyasa 200 hours, Yin 75 hours; Philosophy 75 hours; Advanced Vinyasa 50 hours; Advanced Assisting 30 hours)

Edwina is also fluent in Spanish, completing studies at the Universidad de La Habana, Cuba, and a Diploma of Languages at the University of New South Wales, where she obtained the Benchmark Prize in Hispanic Studies in consecutive years for 2006 and 2007.