
WIPO LIST OF NEUTRALS

BIOGRAPHICAL DATA

Nicholas WESTON
Nicholas Weston Lawyers
& Trade Marks Attorneys
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Australia



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Date of Birth: June 15, 1965

Nationality: Australian

EDUCATIONAL AND PROFESSIONAL QUALIFICATIONS

Registered Trade Marks Attorney (Australia), 2000;
Barrister and Solicitor of the Supreme Court of Victoria (1997) and High Court of Australia (1997);
Bachelor of Laws, 1996;
Bachelor of Economics, 1991.

Awards/Accolades:

Ranked by Managing IP Magazine World Survey 2008 for both 'Trade Mark Prosecution' and 'Trade Mark Contentious'.

LANGUAGES

English

PRESENT POSITION

Principal, Nicholas Weston Lawyers & Trade Marks Attorneys, Melbourne, Victoria 3000, Australia;
Chairman of Board of Directors of Agenix Limited [ASX:AGX, NASDAQ: AGXLY], a publicly listed biotechnology company with operations in Australia, Singapore, China and the United States of

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America;
Chairman of Board of Directors of the Karma Currency Foundation Limited, a charity that provides on-line charitable gift vouchers.

PROFESSIONAL EXPERIENCE BEFORE PRESENT POSITION

Progressively Law Clerk, Solicitor, then Partner, Weston & Weston, Melbourne (1989 – 2005).

AREAS OF SPECIALIZATION

Intellectual Property; trade marks, domain names, copyright, passing off;
Commercial disputes; litigation, arbitration and mediations typically involving intellectual property assets or joint ventures;
Representing clients before the courts and Registrar of Trade Marks.

MEMBERSHIP IN PROFESSIONAL BODIES

Committee Member, External Partnering Sub-Committee – ADR Committee, International Trade Marks Association (INTA);
Member, Australia China Business Council;
Member, The Law Institute of Victoria (LIV) Litigation Section;
Member, Licensing Executives Society of Australia and New Zealand (LESANZ).

EXPERIENCE IN INTELLECTUAL PROPERTY

Conducted numerous court proceedings involving trade marks, copyright, passing off, confidential information and other intellectual commercial assets.
Preparation of agreements, licences and settlement deeds involving intellectual property or technology.

EXPERIENCE WITH RESPECT TO DOMAIN NAMES

Acting as counsel in the resolution of domain name disputes, for example: acts for heavy.com, the world's second largest provider (after youtube.com) of user generated online content.
Familiar with the law, practice, procedure and claims relating to UDRP and auDRP domain name disputes.

MAJOR PUBLICATIONS

Australian Intellectual Property Journal, (August 2000): *Groundless Threats of Trade Mark Infringement Proceedings – How to Avoid Getting Court* 11 AIPJ 151 (first writer);
Australian Intellectual Property Journal (May 1997): *Copyright & Virtual Reality – a Band-Aid on the Bleeding Edge* 8 AIPJ 71;
Publisher of the Australian Trade Marks Law Blog, <http://www.australiantrademarkslawblog.com>

Seminars:

Is an occasional speaker on intellectual property at conferences and seminars, including "Intellectual Property Protection Under the Australia – United States Free Trade Agreement" – paper delivered at Commercialising Intellectual Property Conference, 23rd to 25th August 2004, Eden on the Park, Melbourne; "Contracts & IP – Seven Steps to IP Perfection" - paper delivered at IIR Advanced Contract Law Conference, 8th to 10th December 2004, The Duxton Hotel, Melbourne.

EXPERIENCE IN COURT LITIGATION

Experienced litigator State and Federal Courts of Australia over a 19 year period, first as a law clerk, then as a solicitor and advocate. Has acted in numerous commercial disputes involving intellectual property, such as *Showtime Management Australia Pty Ltd v. Showtime Presents Pty Ltd* [2008] NSWSC 618 (17 June 2008) and *Showtime Management Australia Pty Ltd v Showtime Presents Pty Ltd* [2008] NSWSC 594 (13 June 2008) (see below). Has acted for banks, insurers, not-for-profit organisations (including a university student union), developers, and many other commercial organisations.

PROFESSIONAL TRAINING IN ARBITRATION

WIPO Arbitration Workshop 2008, Geneva;
WIPO Advanced Workshop on Domain Name Dispute Resolution: Update on Practices and Procedures 2008, Geneva.

EXPERIENCE IN ARBITRATION

Has represented clients at numerous mediations and arbitrations over 19 years (first as a law clerk, then as a lawyer) in the Supreme Court of Victoria, Supreme Court of New South Wales, the County Court of Victoria, Magistrates Court of Victoria, Victorian Civil and Administrative Tribunal and the Federal Court of Australia.

Successfully acted as instructing solicitor for the 2 Applicants against 24 Respondents in an Application to the Supreme Court of Victoria against an award made under the *Commercial Arbitration Act* 1984 (Vic) on grounds of misconduct including bias or apprehended bias on the part of the arbitrators, the failure of the award to determine issues referred for decision in the arbitration agreement and its determination of issues which were not referred. Successful on 5 of the 6 grounds run at trial. The case was unusual and reported because it concerned an application to a secular court - and the obtaining of a decision - to set aside the result of Melbourne, Australia's first ever Din Torah: an Arbitration conducted by 3 senior Rabbis acting as 'Dayanim' or Arbitrators under Jewish law (Halakhah). See *Mond v Berger* (2004) 10 VR 534; [2004] VSC 45 (Inty://www.austlii.edu.au/au/cases/vicNSC/2004/45.html). See also 23(2) 'The Arbitrator and Mediator', page 127 (<http://www.iama.org.au/pdf/j1v23n02.pdf>).

Representative Mediation proceedings in 2008 include *Showtime Management Australia Pty Ltd v Showtime Presents Pty Ltd* (Supreme Court of New South Wales case concerning the break up of a joint venture where the main asset of a trust was a business that operated two Queen tribute bands - settled in a Mediation before The Honourable Gerald Edward (Tony) Fitzgerald AC, QC); *Gigpower Pty. Ltd. v. Show Support Pty. Ltd.* (Federal Magistrates Court case concerning the underlying copyright in a registered device trade mark - settled in Mediation). Appeared for applicants in two proceedings before Victorian Civil and Administrative Tribunal that settled in Mediation.

ARBITRATION EXPERIENCE
SUMMARY TABLE

| Type | Administering Institution | | Role | | | |
|----------------------------|---------------------------|------------------------|----------------------|-----------------|---------------|----------|
| | Name | Number of Arbitrations | Presiding Arbitrator | Sole Arbitrator | Co-arbitrator | Counsel |
| International Arbitrations | AAA | | | | | |
| | ICC | | | | | |
| | LCIA | | | | | |
| | Ad Hoc | 1 | | | | 1 |
| Number of cases: sub-total | | 1 | | | | 1 |
| Domestic Arbitrations | AAA | | | | | |
| | Ad Hoc | 6 | | | | 6 |
| | | | | | | |
| Number of cases: sub-total | | 6 | | | | 6 |
| TOTAL | | 7 | | | | 7 |

MEDIATION EXPERIENCE**SUMMARY TABLE**

| Type | Administering Institution | | Role | |
|---------------------------------|---------------------------|----------------------|------------|-------------|
| | Name | Number of Mediations | Mediator | Counsel |
| International Mediations | | | | |
| | | | | |
| | Ad hoc | 1 | | 1 |
| Number of cases: sub-total | | 1 | | 1 |
| Domestic Mediations (Estimates) | AAA | | | |
| | | | | |
| | | | | |
| | Court-annexed | 200+ | | 200+ |
| | Private references | 20+ | 20+ | 1 |
| Number of cases: sub-total | | 220+ | 20+ | 200+ |
| TOTAL | | 221+ | 20+ | 201+ |