

## Tim Penny

Call: 1988  
 Education: LLB (Bristol)  
 Accredited Mediator  
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Tim specialises in the fields of commercial and chancery litigation, particularly the areas of intellectual property, sport, media and entertainment and IT. His commercial work includes fraud, partnership, distribution agreements, gaming, financial services and shareholders disputes. He has a particular expertise in worldwide freezing and search orders and cross-border disputes. His IT practice covers computer, telecoms, data-protection and e-commerce work. On the IP side he deals with copyright, passing off, trademarks, design rights and breach of confidence. Media clients include recording companies and artists, agents, sports clubs and players. He is on the editorial board of the E-commerce Law Reports.

Tim is a recommended leading barrister for commercial litigation, civil fraud and media, sports & entertainment in Legal 500 2008 and for commercial chancery in Chambers & Partners 2009.

Tim Penny enters this year's tables after being highly recommended by peers and clients as "hard-working, effective and user-friendly." His chancery practice overlaps with his media and privacy practice. (Chambers & Partners 2009)

Tim Penny has 'first-rate advocacy skills' and 'commercial acumen'. (Legal 500 2008)

Tim Penny, who acted for the claimants in the 'Busted' case, impresses solicitors with his 'ability to grasp complex matters quickly and provide sound tactical advice'. (Legal 500 2008)

### Arbitration:

Tim is experienced in arbitrations in relation to commercial disputes and media related work.

### Commercial Litigation:

Tim's commercial practice covers a wide range of chancery/commercial disputes. Recent work has covered partnerships, shareholder disputes, distribution agreements, commercial arbitration, agency, gaming disputes, conflicts and asset tracing. He is recommended in Legal 500 2008 as a leading commercial litigation barrister.

### Fraud:

Tim is very experienced in dealing with urgent injunctive relief and related applications in commercial fraud and similar types of dispute. He has spent much of the past 18 months opposing (successfully both at first instance and in the Court of Appeal) a substantial application to discharge a Search Order, involving allegations of material non disclosure and misrepresentation, abuse of the process and failure to comply with the Rules of Court: to date, all such allegations have failed: see *Indicii Salus v Chandrasekaren* (various reported decisions). He has acted for a London casino in fraud proceedings against a major gambler, and in numerous other cases he has brought or defended actions alleging commercial fraud. His experience with 'soft' intellectual property work is often a valuable asset in such cases. Tim is recommended as a leading barrister for fraud: civil in Legal 500 2008.

### Intellectual Property:

His practice covers all aspects of intellectual property including litigation and advisory work. He has substantial experience of media & entertainment related disputes in relation to film and distribution work, recording and publishing contracts

and confidential information. His IP practice involves Trade Marks, copyright and design right. Clients include substantial record companies, film distributors, publishing houses and high profile individuals.

### Sports Law:

His sports work includes commercial disputes acting on behalf of rugby football league clubs, football clubs, football players and agents and disciplinary disputes involving doping offences. Instructions have included acting on behalf of a banned athlete on a doping issue, acting for a boxing promoter in a dispute between promoter and boxer, an international broadcasting dispute involving cricket authorities and Commercial Court litigation between the governing bodies of British motorcycle racing. Football-related cases involve acting on behalf of a Premiership club in relation to a variety of commercial disputes and acting for a number of footballers on agency matters. He is recommended as a leading junior in media, sports & entertainment law and is a member of the Bar Sports Law Group.

### Technology:

He has a wide experience of domain name and other internet related litigation, notably database right and copyright disputes. He has wide experience of commercial work covering computer software and hardware and telecoms disputes.

### Recent and Continuing Cases for Tim include:

**Animatrix Limited & Dr Snuggles Animatrix Partnership LLP v Jeffrey O’Kelly [2008] EWHC 438 (Ch)**  
**Philip Sales QC sitting as a Chancery Division Judge**

#### Intellectual Property - Injunctive Relief

Tim acted for the Claimants who were seeking to enforce the terms of a compromise agreement relating to the ownership and vesting of certain intellectual property rights in and to a cartoon character called Doctor Snuggles. This was an unusual application because the Claimants were seeking summary declaratory relief as well as summary injunctive relief without the full determination by the Court after a trial of the rights of the respective parties. The Defendant contended that on a true construction of the compromise agreement, the Claimants were not entitled to the relief claimed, but that even if they failed on that ground, the Court should not make an exception to the general rule that declaratory relief will not be granted without an investigation of the merits at trial, and the Defendant relied upon *Wallersteiner v Moir* [1974] 1 WLR 991 (CA) in this regard.

The Claimants succeeded in obtaining all the relief they sought. The Court held that this was an appropriate case for an exception to be made to the general rule, and that applying the approach in *Patten v Burke Publishing* [1991] 1 WLR 541, the summary declarations were required to ensure that justice was done for the Claimants.

**Thunder Air Limited v Hilmar Hilmarsson [2008] EWHC 355 (Ch) Patten J**

#### Breach of Fiduciary Duty - Lugano Convention

In this case, Tim (and Stephen Nathan QC) represented the Defendant in proceedings brought by the Claimant alleging conversion, breaches of fiduciary duty and claims for an account against the individual Defendant who was a former director of the Claimant and a controlling shareholder of a Liechtenstein company which had signed a management agreement with the Claimant to manage the business of a luxury private jet aircraft owned by the Claimant. At the initial ex parte on notice hearing, the Court had refused to allow the Defendant time to consider the application and had made ex parte on notice delivery up orders and an injunction. The Defendant applied under the provisions of the Lugano Convention to the English Court stay the proceedings on the basis that he was domiciled in Switzerland and that there was no reasonably arguable case that the Defendant had committed the wrongs alleged against him within this jurisdiction. Following a 2 day hearing before Patten J, the Defendant’s application was successful and the Claimant’s claim was stayed. The Court held that, under the Torts Interference with Goods Act 1977, an individual defendant did not necessarily commit the tort of conversion even if his company had committed such a tort as the fact that he directed the affairs of the company did not give him “control” over the relevant goods under the 1977 Act. It followed that there was no serious issue to be tried against the Defendant and the injunction was discharged, and there was no good arguable case to found jurisdiction on Article 5(3) of the Lugano Convention. Therefore, all further proceedings were stayed.

**Indicii Salus v Chandrasekaran; [2007] EWHC 406 (Ch), [2007] All ER (D) 28 (Mar); [2007] EWHC 406 (Ch); [2006] EWHC 680 (Ch); 2006 EWHC 521 (Ch)**

### **Injunctions - commercial - fraud - IP**

Tim is instructed by the claimant in this fiercely contested case, which involves opposing an application by the defendants to obtain the discharge of a Search Order obtained by his client. The claim relates to threatened copyright infringement in the source code in a computer programme which cost £20m to develop, and involves widespread allegations of fraud and dishonesty. As evidenced by a series of judgments at first instance and in the Court of Appeal, Tim has succeeded in defeating all the defendants' challenges to the Search Order. Following Tim's cross-examination of the main protagonists at the final hearing, the allegations of dishonesty were dismissed in their entirety against his clients and were established against the defendants, and the discharge application was dismissed. The defendants' appeal against the dismissal of their discharge application was heard and dismissed recently by the Court of Appeal (Master of the Rolls presiding). Tim has appeared against (successive) Leading and Junior Counsel throughout this case, and he has been successful at every stage. A substantial order for indemnity costs was made against the defendants.

### **Sisco Oil v Rubicon Inv Holdings v Petroil [2007]**

In this case, Tim is instructed by the Claimants and obtained at very short notice a worldwide freezing order against a number of defendants. The claim relates to the development and operation of oil refineries in Argentina and the claimant has made serious allegations of deceit. The defendants' application to discharge the injunction was unsuccessful and a substantial judgment (in excess of £4m) was obtained by the Claimants. The interim injunction proceedings have involved consideration of the Dadourian criteria, a successful contested disclosure application, applications for injunctions against third parties alleged to hold the defendants' funds and issues relating to service outside the jurisdiction. The case is ongoing for the purposes of enforcing the Claimants' judgment.

### **Re Eurolife Group Limited**

During the past year, Tim has been instructed by the estate of the deceased managing director of an insurance group of companies which went into liquidation. The claim made by the liquidator involved complex issues arising under the Administration of Insolvent Estates Order 1986 and the Insolvency Act 1986. The claims settled favourably shortly before the contested hearing.

### **McKennitt v Ash [2005] EWHC 3003 (QB) [2006] EWCA Civ 1714**

#### **Confidentiality - privacy- property- enforcement of judgments**

This has become one of the leading cases on the law of privacy. Tim was instructed by the successful claimant, Loreena McKennitt until the interim injunction stage. Following the Judgment in the Court of Appeal, Tim was instructed on a separate legal issue, namely, whether it could be said that the defendant had a beneficial interest in a property which was not registered in her name. This involved a detailed consideration of the *Oxley v Hiscock* line of authorities. The case settled favourably outside Court. Following his involvement in this case, Tim was invited by Inner Temple to draft a Mock Trial on the law of privacy.

### **McPhail v Bourne [2008]**

Tim was instructed by the Claimants in a high profile multi-party dispute concerning a successful band. The claims involve claims of copyright infringement, partnership dissolution, undue influence and breach of fiduciary duty.

### **Trade marks**

Tim has been instructed in relation to a number of trade mark disputes. In particular, he represented a defendant who successfully advanced an application for a declaration of invalidity as a consequence of which the claimant substantially relinquished its claims. He has also been instructed for the trade mark owner of the Hang Ten trade mark in a long-running series of disputes. Again, the ultimate outcome of these disputes was successful.

### **Partnership - Injunctions - Arbitration**

Tim was instructed during 2007 by a well-known firm of London solicitors in proceedings brought against two former partners who it was alleged were in breach of their duties as partners. The claim involved an application for an urgent injunction and the case was brought to a successful resolution within a very short period of time.

### **Rolex v Robert James Limited**

Tim was instructed by the defendants in an application for wide-ranging proprietary injunctive relief brought by a well-known Swiss watch manufacturer. The case required considerable attention to be paid by the client's legal team to the

strategic approach which should be adopted. Having manoevered the clients into a beneficial tactical position, the case was settled on favourable grounds.

### **Donegan v Ghadami, Briggs J, 13 June 2007 High Court**

Tim was instructed by the successful claimant in obtaining the release of a unilateral notice entered against the title of his client's valuable (£7m) property. The case involved a detailed consideration of the law of proprietary estoppel. Tim applied for the summary disposal of the claim, and the application was successful before Mr Justice Briggs. The defendant's application to appeal was unsuccessful ([2007] EWCA Civ 944).

### **Flaherty v NGRC Court of Appeal, [2005] EWCA Civ 1117; [2004] EWHC 2838 (Ch), [2005] LLR 70**

Tim took over the claimant's case shortly before trial in a claim involving allegations of greyhound doping at Wimbledon Stadium. The issues at stake were wide-ranging, and included apparent bias, breach of natural justice, and a detailed consideration of technical evidence relating to what happened at the testing laboratory.

### **Wetherspoon v Van der Berg Limited**

Tim acted for two defendants against which the claimant made allegations including knowing receipt and dishonest assistance. The claimant obtained without notice injunctions against Tim's clients. Tim obtained the discharge of the without notice injunctions together with swingeing costs orders, and the proceedings were eventually discontinued against Tim's clients on extremely beneficial terms. The litigation continues against other defendants.

### **Pegasus Ventures v Midas Investment Limited**

Tim represented the owners of a substantial quantity of shares which were "frozen" by a firm of stockbrokers and their clearing house. Tim obtained a satisfactory resolution of the case following issuing of proceedings.

### **Alaverdy v Martin Holder**

Tim was instructed by the claimant in this matter which settled at the beginning of the trial. The claim involved the alleged misappropriation of monies by the defendant and was complicated by issues relating to the application of the doctrine of illegality.

### **Konkola Copper Mines Plc & Another v Coromin Ltd & Others (N<sup>o</sup>2) [2006] EWHC 1093 (Comm), [2006] 2 All ER (Comm) 400, [2006] 2 Lloyd's Rep 446**

Tim was instructed by one of a number of Zambian insurance companies against which proceedings were issued in this jurisdiction. The Zambian insurers contested jurisdiction on the basis of an exclusive jurisdiction clause in the insurance contract, despite the fact that there were proceedings properly on foot against another defendant in this jurisdiction. The application by the Zambian insurers was successful.

### **Insolvency - commercial**

Tim was instructed recently by a high profile and important client in relation to a claim against the client under S423 of the Insolvency Act 1986 (transaction at an undervalue with the purpose of defrauding creditors). Quite apart from the legal issues the case had to be handled with considerable sensitivity. Having dealt with the S423 application, Tim advised upon various issues relating to possible transactions at an undervalue, following which the case settled favourably following a mediation.

During the past year, Tim has been instructed by the estate of the deceased managing director of an insurance group of companies which went into liquidation. The claim made by the liquidator involved complex issues arising under the Administration of Insolvent Estates Order 1986 and the Insolvency Act 1986. The claims settled favourably shortly before the contested hearing.