

Robert Deacon

Call: 1976
 Education: LLB (Manchester)
 Postgraduate Diploma in Intellectual Property Law & Practice (Bristol)
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Robert has broad experience in chancery, commercial and business related civil litigation with specialist knowledge in intellectual property and media and entertainment. His expertise extends to banking and guarantees, partnership, construction, fraud and asset tracing and professional negligence. Primarily known as a litigator he has undertaken many heavily contested often high profile trials and devoted a substantial part of his practice to specialist advice work. He is an experienced interlocutory litigator particularly in relation to freezing and search orders and other interim remedies.

His intellectual property practice ranges from trade marks to copyright, patents and design right work and he has extensive experience of defamation and privacy claims. He has chaired and for some years delivered lectures at the annual intellectual property law and sports law conferences for London Legal Training. His lecture topics have included privacy and image rights, performers' rights, performers' royalties, database rights and freedom of movement of goods.

Robert is recommended in Legal 500 2008 as a leading barrister in the areas of intellectual property and media, sports & entertainment, where he is described by clients as 'our first port of call for a junior barrister on IP matters' and 'a bright star' of 'exceptional quality'.

Recent Cases for Robert include:

Levi v Levi

Constructive Trusts – Proprietary Estoppel – Application of Equitable Principles

Robert Deacon acted for the successful defendant in a constructive trust/proprietary estoppel claim for a one half equitable share of a property purchased in 1995 by the defendant. The claim - to a one half beneficial share in the property - was based on an oral agreement that the share would arise in consideration for an advance by way of loan, used to raise the deposit, made at a commercial rate of interest. A number of issues regarding the application of equitable principles to these facts were raised in the case. It was argued that a loan, at a commercial rate of interest, was not a sufficient detriment to support the equitable claims advanced on behalf of the claimant. It was also the defendant's case that the claimant had relinquished any equitable claim she may have had by agreeing for the loan to be repaid early with interest at the agreed rate. It was held that by agreeing to early repayment the bargain had been varied to exclude the right to a 50% share of the property and the claimant no longer suffered the detriment of leaving the loan outstanding until the property was sold. In those circumstances it was no longer unconscionable for the defendant to deny the 50% interest and the claimant had relinquished it in terms. The claim was accordingly dismissed.

Lancaster v Handle [2007]

Performers' Royalties

Robert acted in this long standing litigation on behalf of two former members of the rock group Status Quo who were Claimants in their claim for an account of back catalogue royalties. These had been paid out to the continuing members but not accounted to the Claimants. Trying to get an account of back catalogue royalties is a familiar problem for erstwhile band members but it is rare for such claims to get off the ground. The claims were defended on the basis that the Claimants had relinquished their rights to back catalogue royalties when they each left the group back in the eighties and that the claims were anyhow time barred. After a heavily contested five day trial the court upheld the claim for Pye back catalogue royalties and, significantly, held that the monies were held by the continuing band members on a class 1 constructive trust. This meant that the account was not to be subject to the normal statutory limitation period of six years but was to go back to the eighties. The court also awarded interest on the amounts due on the account at the rate of 8% per annum. The removal of a time bar to the claim and the award of interest greatly increased the amount of the award.

Red River UK Ltd v Sheikh [2007] All ER (D) 229

Robert acted for the Claimant company in this claim against its former solicitor who had offered to lend it £400,000 on terms, inter alia, that she would be issued with shares in the company. Restrictions were placed on the title to the property purchased by the Claimant with the monies advanced. One of the restrictions provided that no disposition was to be registered without the written consent of the solicitor's mother. There was an objection to the withdrawal of the restriction on the basis that it was a pre-condition of the loan. The court reviewed the inconsistent case law on withdrawal of restrictions and clarified the standard of evidence required to satisfy the court whether or not an agreement had been reached which might prevent the removal of a restriction on a summary application. *Calgary and Edmonton Land Co Ltd v Dobinson* [1974] 1 All ER 484 was applied.

PR Records Ltd v Vinyl 2000 Ltd [2007] EWHC 1721 (Ch) [2008] All ER (D) Morgan J

Robert acted for the Claimant in application for the joinder of a party for purpose of seeking non-party costs order against them. The proceedings concerned two actions which were heard together. The Claimants succeeded in the court below (see [2003] All ER (D) 39 (Dec)) but the costs order in the second action was not paid. The Claimant applied for a non party costs pursuant to CPR 48.2(1)(a) against the third party in respect of that order. The master stopped the application in limine by refusing the joinder of the third party as a party to the action and the claimant appealed. After an exhaustive review of the authorities and extensive argument the Claimant's submissions were upheld and the appeal was allowed. In an important procedural decision it was held 1) that an application to join a non-party under CPR 48.2 should normally be acceded to unless the application was plainly an abuse of process and 2) that the idea of a preliminary assessment on the merits was contrary to the philosophy which underlay the jurisdiction to order costs against a non-party. It was not necessary for the applicant to show that he had an arguable case at the joinder stage.

Stockler Charity v Revenue and Customs [2007] EWHC 2967

Robert acted as lead counsel on behalf of the taxpayer firm of solicitors on an application to enforce a Part 36 agreement to preclude the Revenue from levying penalties on the firm on the basis that the firm had been guilty of negligence in the submission of returns. The correct construction of the word "payable" in sections 95(2) and 95A(2) of the Taxes Management Act 1970 was considered in particular whether by withdrawing the amendments to the returns meant no penalty could be levied by the Revenue. The court found that where the amendment to the partnership return had been withdrawn the effect of the provisions was not sufficiently clear for the court, as a matter of discretion, to decide the point on the application before it. Having declined to decide the point the court indicated that the proper course was for the taxpayer to pursue its appeal under the statutory scheme to the Special Commissioners.

3DC Consulting v Better Regulation

Robert acted for the Defendants in substantial litigation involving various databases of competing companies providing regulatory material on-line for the finance and insurance industries. Complex issues involving the ownership of database rights and copyright in the material in question were raised and argued. A substantial hearing took place in the Chancery Division to determine whether or not a freezing order obtained by the Claimants should be discharged. This hearing required consideration of the intellectual property issues raised in the litigation. After judgment was reserved the parties reached an overall settlement of the litigation before judgment was delivered.

Cool Trading Ltd - Re Easy Caddy

Robert acted on behalf of an importer of golf trolleys from China in the defence of claims by the registered owner of an EC registered design for an electric golf trolley. It was alleged that the client's trolleys infringed the registered design. The case involved consideration of various designs of what appeared to be familiar products in the market place. Doubts were cast on the validity of the registration and after substantial correspondence over this and other issues relating to the design the claim has not been pursued.

Photographs into Paintings

Robert acted on behalf of a successful producer of paintings made from photographic images of well known personalities. This was a copyright claim and after consideration of the evidence was settled at a relatively early stage.

Select Finance

Robert acted on behalf of a finance company in a copyright dispute over the company's website which was alleged to have infringed the website of another competing company. Substantial claims were made by the Claimants which after extensive correspondence were compromised on advantageous terms.

Re Roscolab Ltd

Robert acted for the designers of gobos which are lighting plates used for the projection of images in theatres. This was a claim for infringement of UK and EC design right and for infringement of copyright against a producer and distributor of competing designs. The proceedings developed to correspondence stage.