

# Gabriella Rubagotti

Barrister-at-law, Nigel Bowen Chambers

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## PRACTICE OVERVIEW

Gabriella Rubagotti has 15 years' experience in commercial litigation, with a particular focus on intellectual property (including all sub-specialties), trade practices, consumer protection, confidential information, media, commercial and banking and finance law. Gabriella has considerable experience in dealing with urgent interlocutory applications in both the Federal and Supreme Courts.

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## ADMISSIONS

- 2010 Called to the Bar of New South Wales
- 2003 Admitted as a solicitor of the High Court of Australia
- 2003 Admitted as a solicitor of the Supreme Court of New South Wales

## PROFESSIONAL QUALIFICATIONS

- 2003 LLB (Hons), University of New South Wales
- 2001 BA (Hons), University of New South Wales

## FOREIGN LANGUAGES

Italian (near native proficiency)

## RECOGNITION

Doyle's Guide:

- Recommended Leading Intellectual Property Junior Counsel – New South Wales, 2017
- Recommended Leading Intellectual Property Junior Counsel – New South Wales, 2016

World Trademark Review:

- 2017: 'a lateral thinker who has a sharp understanding and sensitivity to trademark oppositions in particular'.
- 2016: "'A brilliant tactician in the courtroom", Selborne Chambers' Gabriella Rubagotti is an obvious choice for many instructing counsellors'.
- 2015: "'Methodical, innovative and highly intelligent", Gabriella Rubagotti of Selborne Chambers wins praise from all corners for her achievements in the trademark field'.
- 2014: 'Gabriella Rubagotti stands out at Fifth Floor Selborne'.

## PUBLICATIONS & SEMINARS

- Author: 'Social Media and Privacy' in *Social Media and the Law*, 2nd edition (LexisNexis: 2016)
- Guest speaker: 2016 Australian Insurance Law Association seminar  
2014 Australian Insurance Law Association seminar  
2013 Communications and Media Law Association seminar

## CURRENT PROFESSIONAL MEMBERSHIPS AND APPOINTMENTS

- Member New South Wales Bar Association
- Member Intellectual Property Association of Australia and New Zealand

## SELECTED APPEARANCES

### Intellectual Property

#### Selected experience at the Bar

- *ObjectiVision Pty Ltd v University of Sydney & Visionsearch Pty Ltd* (FCA 2017): copyright infringement in computer software for medical devices, breach of confidence (ongoing, led by C Dimitriadis SC)
- *Ashton Manufacturing Pty Ltd v Express Sign Labs Pty Ltd* (FCA 2017): innovation patent infringement (settled, led by Ed Heerey QC)
- *Brand Developers Pty Ltd v BDirect Pty Ltd* (FCA 2016): copyright infringement, trade mark infringement and misleading or deceptive conduct (settled, unled)
- *Apple Inc v Anying Group Pty Ltd* (FCCA 2016): trade mark infringement and customs seizure (settled, unled)
- *Apple Inc v Wan* (FCCA 2016): trade mark infringement and customs seizure (settled, unled)
- *Primary Healthcare Ltd v Commonwealth & Ors* [2016] FCA 313: trade marks; appeal de novo (led by Julia Baird SC)
- *Easton Corporation Pty Ltd v Pacific Brands Clothing Pty Ltd & Ors* (FCA 2016): trade mark infringement (settled, led by R Cobden SC)
- *DSI Australia (Holdings) Pty Ltd v Garford Pty Ltd* [2013] FCA 132: patent infringement and unjustified threats (evidence preparation; led by S Goddard SC)
- *Beadcrete Pty Ltd v Fei Yu t/as Jewels for Pools (No. 2)* [2012] FCA 1139: patent infringement (evidence preparation; led by S Goddard SC)
- *Nokia Corporation v Renae Millaras (No. 1), (No.2), (No.3)* [2010] FCA 1396, 1217 & 1174: trade marks; urgent interlocutory injunction and summary judgment (unled)
- *Allen House Mirror & Glass Pty Ltd v Hamilton* [2012] FCA 464: trade marks; appeal from the decision of the Registrar (unled)
- *Societe Des Produits Nestle SA v Aldi Stores* [2010] FCA 218: breach of confidence and copyright infringement; urgent injunction (unled)
- Numerous appearances in the trade marks and patent offices

#### Selected experience as a solicitor

- *Arbitron Inc v Telecontrol Aktiengesellschaft & Anor* [2010] FCA 302; 86 IPR 110: patent infringement and invalidity (electrical engineering patent)
- *Australasian Performing Right Association Limited and Australasian Mechanical Copyright Owners Society Limited* [2009] ACopyT 2: application to increase the rate of royalties payable in connection with digital downloads
- *Lockwood Security Products Pty Ltd v Doric Products Pty Ltd (No 2)* (2007) 235 CLR 173: patent infringement (mechanical patent)
- *Arrow Pharmaceuticals Pty Ltd v Roche Therapeutics Inc & Anor; Roche Therapeutics, Inc v GenRx Pty Ltd* [2007] FCA 83; 71 IPR 546: patent infringement; market valuation (pharmaceutical patent)
- *Pfizer Corp v Commissioner of Patents (No 1) and (No 2)* [2006] FCA 1176; 69 IPR 525; [2006] FCA 164; 67 IPR 646: extension of term (pharmaceutical patent)
- *Arrow Pharmaceuticals Limited v Merck & Co., Inc; Merck & Co Inc v Arrow Pharmaceuticals Limited* [2006] FCAFC 91; 154 FCR 31; [2004] FCA 1282; 213 ALR 182; [2004] FCA 1131; 210 ALR 593: patent revocation, ever-greening and legal professional privilege (pharmaceutical patent)
- *Novartis AG v FH Faulding Co Ltd* [2004] FCA 1002; 62 IPR 530; [2004] FCAFC 254: patent infringement and practice & procedure – separate question; (pharmaceutical patent)

- *Somnomed Ltd v Commissioner of Patents* [2006] FCA 765; 69 IPR 237: judicial review of a decision of the Deputy Commissioner of Patents (pharmaceutical patent)
- *Sony Music Entertainment (Australia) Limited v University of Tasmania* [2003] FCA 532; 129 FCR 472: preliminary discovery application regarding sound recordings

### **Trade practices, consumer protection**

- *The a2 Milk Company (Australia) Pty Ltd v Lion – Dairy & Drinks Pty Ltd* (FCA 2017): misleading representations as to future matters; misleading and deceptive conduct involving human health claims and epigenetics (ongoing, led by D Catterns QC)
- *Teterin Engineering Pty Ltd v IPD Australia Pty Ltd* (NSWSC 2015): breach of contract, negligence and product liability (settled, led by R Newlinds SC)
- *Specsavers Pty Ltd v Coastal Contacts (Aust) Pty Ltd* [2012] FCA 102: misleading or deceptive conduct; urgent interlocutory injunction (led by T Blackburn SC)
- *P & M Quality Smallgoods Pty Ltd v Seven Network (Operations) Pty Ltd & Ors* (NSWSC 2010): consumer protection contraventions, injurious falsehood, breach of confidence, breach of fiduciary duty and valuation of loss (settled at conclusion of hearing, led by B McClintock SC)

### **Banking & finance, contract, general commercial**

- *Inlon Pty Ltd v Farmgard Ltd* (NSWSC 2017): tortious interference with contractual relations (ongoing, led by F M Douglas QC)
- *Inlon Pty Ltd v Celli SpA* [2017] NSWSC 569 [2017] NSWSC 821: exclusive distribution agreement, construction, breach, contractual right of termination, election, declaratory and injunctive relief (led by F M Douglas QC)
- *Australian Kin Fu Ma Zu Association v Hang* (NSWSC 2017): incorporated association; breach of contract; breach of duties; award of lumps sum indemnity costs in favour of client (unled)
- *Bayside Council v V Corp Constructions Pty Ltd* [2017] NSWCA 120: contracts; contractual interpretation (led by T Hale SC)
- *Built NSW Pty Ltd v EvolveBuilt Contracting Pty Limited (in admin.)* (NSWSC 2016): breach of contract, breach of corporations law and valuation of loss (led by F M Douglas QC)
- *Richards v RM Capital Pty Ltd & Ors* (NSWSC 2015): professional negligence, breach of the ASIC Act and valuation of loss (settled unled)
- *Raytrack Sporting Services Pty Ltd & Ors v Gardiner & Anor* (NSWSC 2015): taxation, professional negligence, misleading and deceptive conduct, breach of contract and valuation of loss (settled, led by M Dempsey SC)
- *National Australia Bank Ltd & Anor v Smith & Ors* [2014] NSWSC 1605: possession, misleading and deceptive and unconscionable conduct, negligence, breaches of the AISC Act, breach of fiduciary duty (led by B McClintock SC)

### **Constitutional law**

- *Monis v R, et al* (2013) 249 CLR 92: constitutional law and statutory interpretation (led by G Reynolds SC)
- *A-G for the State of SA v City of Adelaide & Ors* (2013) 249 CLR 1: constitutional law and statutory interpretation (led by G Reynolds SC)
- *Liu v The Age Company Ltd* (2013) 82 NSWLR 268: constitutional law and statutory interpretation (led by B McClintock SC)
- *Daily Examiner Pty Ltd v Mundine* [2012] NSWCA 195: constitutional law and defamation (led by G Reynolds SC)
- *Liu v The Age Company Limited* (2012) 285 ALR 386; (2012) 257 FLR 360: constitutional law and statutory interpretation (led by B McClintock SC & unled)

## Defamation

- *MacKenzie v Maslen (NSWSC 2017)*: defamation for defendant (ongoing, unled)
- *Hang v Nguy & Ors (NSWSC 2017)*: defamation for plaintiff (ongoing, unled)
- *Enders v Erbas & Associates Pty Ltd [2014] NSWCA 70*: defamation for defendant (led by M McHugh SC)
- *Kenny v the ABC [2014] NSWSC 190*: defamation for plaintiff (led by B McClintock SC)
- *Harbour Radio Pty Ltd v Trad (2012) 247 CLR 31*: defamation for appellant (led by G Reynolds SC)
- *Nahas Constructions Pty Ltd v Macquarie Radio Network (unreported, Nicholas J, 12.10.12, NSWSC)*: defamation for plaintiff, injurious falsehood, valuation of loss; urgent injunction (led by B McClintock SC)
- *Boland & Cush v Dillon (2011) 243 CLR 298*: defamation for respondent (led by G Reynolds SC)
- *Habib v Radio 2UE Pty Ltd [2012] NSWDC 12; [2011] NSWDC 52; 41 and 7*: defamation for defendant (led by B McClintock SC & unled)
- *Moss v the ABC (NSWSC 2010)*: defamation for the defendant; jury trial (settled, unled)

## Breach of confidence

- *ObjectiVision Pty Ltd v University of Sydney & Visionsearch Pty Ltd (FCA 2017)*: copyright infringement in computer software for medical devices, breach of confidence (ongoing, led by C Dimitriadis SC)
- *Cracka Holdings Pty Ltd & Anor v Hardman (NSWSC 2016)*: breach of employment contract; breach of confidence (settled, unled)
- *Qantas v Holdforth [2015] NSWSC 821*: breach of confidence (unled)
- *P & M Quality Smallgoods Pty Ltd v Seven Network (Operations) Pty Ltd & Ors (NSWSC 2010)*: consumer protection contraventions, injurious falsehood, breach of confidence, breach of fiduciary duty and valuation of loss (settled at conclusion of hearing, led by B McClintock SC)
- *Societe Des Produits Nestle SA v Aldi Stores [2010] FCA 218* Breach of confidence and copyright infringement; urgent injunction (unled)

## Contempt

- *Tate v Duncan-Strelec [2015] NSWSC 196 & 190; [2014] NSWSC 1125*: contempt (led by B McClintock SC)
- *Sigalla v TZ Pty Ltd [2011] NSWCA 334*: contempt (led by G Reynolds SC)
- *Liu v The Age Company Limited (unreported, Garling J, 11.02.11, NSWSC)*: contempt; urgent interlocutory injunction (led by B McClintock SC)

## Miscellaneous torts

- *Uber BV & Anor v Howarth [2017] NSWSC 54*: tort of intimidation; application for injunction in equity's auxiliary jurisdiction and under Supreme Court Act 1970, s 66 (led by B McClintock SC)
- *Beckett v State of NSW (2013) 248 CLR 432*: tort of malicious prosecution (led by G Reynolds SC)