

# Gabriella Rubagotti

Barrister-at-law, Nigel Bowen Chambers

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## PRACTICE OVERVIEW

Gabriella Rubagotti was admitted to legal practice in 2003 and called to the Bar in 2010. She has 15 years' experience in commercial litigation, and has a particular focus on intellectual property (including all sub-specialties), trade practices, consumer protection, confidential information, commercial, banking and finance and media law. She has expertise across a broad range of industries, including the media, technology, medical device, pharmaceutical, FMCG, financial, agricultural and manufacturing industries.

Gabriella has acted in notable intellectual property and ACCL cases at the bar including *ObjectiVision v University of Sydney & Visionsearch* (**copyright** and **breach of confidence** concerning **computer software in medical devices**), *The a2 Milk Company (Australia) v Lion – Dairy & Drinks* (**ACL proceedings** including misleading representations as to future matters concerning **epigenetics** and human health claims), *DSI Australia (Holdings) v Garford* (**engineering patent**), *Ashton Manufacturing v Express Sign Labs* (**innovation patent**), *Apple v Anying Group* (**trade mark infringement** and customs seizures), *P & M Quality Smallgoods v Seven Network* (**consumer protection contraventions, injurious falsehood, breach of confidence**), *NAB v Smith* (**misleading or deceptive** and **unconscionable conduct** in breach of the **AISC Act** and **breach of fiduciary duty**).

Gabriella has very considerable experience in dealing with **urgent interlocutory applications** in both the Federal and Supreme Courts to restrain breaches of intellectual property rights, to restrain misleading or deceptive conduct (*Specsavers v Coastal Contacts*) to restrain breaches of confidence (*Qantas v Holdforth*), to restrain contempts, including contemptuous internet publications and breaches of court orders (*Tate v Duncan-Strelec*, *Sigalla v TZ Pty Ltd*), to restrain breaches of contract (*Inlon v Celli*) and to restrain injurious falsehoods (*P & M Quality Smallgoods*, *Nahas v Macquarie Radio Network*).

Gabriella has also appeared in leading High Court and Court of Appeal cases concerning questions of **statutory construction** (*Monis v R*, *A-G for the State of SA v City of Adelaide* and *Liu v The Age*) and **media law** (*Cush v Dillon* and *Harbour Radio Pty Ltd v Trad*).

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## FOREIGN LANGUAGES

Italian (fluent)

Gabriella has advised Italian registered entities and has acted against or in cases involving Italian registered entities. In these cases, she has translated commercial documents and correspondence written in Italian.

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## 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'
- 2016: "'A brilliant tactician in the courtroom"... an obvious choice for many instructing counsellors'
- 2015: "'Methodical, innovative and highly intelligent", Gabriella Rubagotti... wins praise from all corners for her achievements in the trademark field'
- 2014: 'Gabriella Rubagotti stands out'

## 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
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## 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)

### **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)

### **Contracts, commercial, banking & finance**

- *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, 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 ASIC Act, breach of fiduciary duty (led by B McClintock SC)

### **Statutory interpretation and 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* (2013) 82 NSWLR 268: constitutional law, statutory interpretation (led by B McClintock SC)
- *Daily Examiner v Mundine* [2012] NSWCA 195: constitutional law and defamation (led by G Reynolds SC)
- *Liu v The Age* (2012) 285 ALR 386; (2012) 257 FLR 360: constitutional law and statutory interpretation (led by B McClintock SC & unled)

### **Injurious falsehood & 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)

### **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* (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)