

Josephine Thornton

Barrister-at-law, Nigel Bowen Chambers

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Practice Overview

Josephine is in her eighth year at the Bar and practises in intellectual property (patents, trade marks, copyright and plant breeding rights), breaches of confidence, consumer and contract law, commercial, corporate, equity/trusts, real property and administrative law.

Josephine has a keen interest in the life sciences and biology having graduated from the University of New South Wales in 2001 with a Bachelor of Laws (1st Class Honours) and a Bachelor of Science (Genetics). Josephine was also awarded the UNSW Prize for 'Best Performance in Intellectual Property' in 2001 by Spruson & Ferguson. In 2000, Josephine commenced her career at Mallesons in IP/IT, focusing on confidential information, copyright, trade mark and pharmaceutical patent cases as well as insolvency litigation.

Josephine also acted for the Commonwealth prosecuting online child sexual abuse and social security fraud. Josephine has prosecuted regulatory offences for the Department of Fair Trade (Customer Service NSW) under consumer protection legislation. Most recently, Josephine was a senior associate in class actions involving breaches of data privacy and the ACL in relation to motor vehicles and the Tryo eftpos outage.

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Admissions

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| Barrister               | 2003 and 2023 |
| High Court of Australia | 2001          |
| Supreme Court of NSW    | 2001          |

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Qualifications

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| Bachelor of Laws (Hons I)      | University of NSW | 2001 |
| Bachelor of Science (Genetics) | University of NSW | 2001 |

UNSW Prize for 'Best Performance in Intellectual Property'

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Professional Experience

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| Spruson & Ferguson<br>Sydney | Solicitor | 2008         |
| Mallesons<br>Sydney          | Solicitor | 2000 to 2003 |

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## **Recent experience in Intellectual Property Law as Counsel**

### **Patents**

Since returning to the Bar, in October 2024, Josephine was led in a team of four barristers in a five-week patent trial involving three expert concurrent sessions, relating to devices (explosives) and methods in the mining industry. She was also led in a matter involving mechanical devices (pressure wave massager) and most recently in a preliminary discovery action seeking information and samples of gene sequencers (life sciences).

### **Trade Marks/ACL claims and domain name disputes**

Josephine has recently advised a number of small businesses as to prospects regarding potential trade mark/passing off/misleading and deceptive conduct claims as well as domain name disputes. She has drafted letters resolving actions and is currently commencing an action on behalf of the trustees of a religious body.

### **Confidentiality**

Josephine has been involved in numerous matters involving breaches of confidentiality with respect to intellectual property in an employment context and restraint of trade and has recently advised and acted in a dispute where her client's database which was developed at a cost of \$3.5 million was stolen by a person occupying a management/senior executive role where she drafted an amended pleading alleging breach of fiduciary and contractual obligations in relation to the database.

She has drafted agreements for royalties for strawberry breeding including clauses to protect confidential information/intellectual property.

### **Copyright**

Josephine has advised as to breach of copyright with respect to Indigenous artworks and potential damages claims.

## **Representative experience at the Bar:**

### **Federal Court of Australia**

#### Patents:

*Oxford Nanopore Technologies Plc v MGI Australia Pty Ltd* – NSD 367/2025 (Jackman J) (gene sequencers, preliminary discovery)

*Dyno Nobel Asia Pacific Pty Ltd v Orica Explosives Technology Pty Ltd* [2025] FCA 767: wireless detonators and methods of blasting

*EIS GmbH v LELO Oceania & Ors* – NSD 376/2023 (Nicholas J) (mechanical devices, sex toys)

*Sandoz Pty Ltd v H. Lundbeck A/S* – NSD 714/2006 (pharmaceutical, escitalopram, optical isomers)

*Settleitnow ats Cybersettle Inc* – NSD 5/2005 (business systems patent, computer program, resolution after application for particulars of an instance of infringement)

*Bramco Electronics Pty Limited ats ATF Mining Electrics Pty Limited* – NSD 2511/2006 (electronic systems for powering mine equipment – advise as to liability and quantum of infringement and strategy as well as draft pleadings and resolve at mediation)

*Kelvindale Products Pty Limited v TFH Temporary Fence Hire Pty Ltd* (mechanical patent, part of an anchor for temporary fencing)

*Statens Serum Institut ats Octapharma AG* (pharmaceutical)

### Copyright:

Josephine has advised a client on the terms of an interim injunction in relation to copyright works and the Wangka Maaya Pilbara Aboriginal Centre on copyright protection for their language projects.

### Trade Marks:

*Live Earth Resource Management Pty Ltd v Live Earth LLC* [2007] FCA 1034: injunction

*Wilkshire v Bombala Shire Council* [2006] FCA 1158

*Atkins v Master Builders Association of NSW* [2007] FCA 554: Oppose application to dismiss proceedings in a claim for damages based on misleading and deceptive conduct.

*Rainbow Apparel ats Diesel Spa* (interlocutory hearing before Hely J to obtain extra living expenses)

*Backpackers World ats Meniscus* (trade mark and domain name dispute)

### Other:

Advise in relation to vexatious proceedings orders.

*Charles Vinall v Commonwealth Bank of Australia (ACN 123 123 124) Trading as Bank West* in the Federal Court of Australia, NSD81/2026, appeared and resolved in an impromptu mediation.

## **Federal Circuit and Family court of Australia**

Successfully resist creditor's petition.

## **Trade Marks Office**

Josephine has successfully advised and appeared on a number of occasions in relation to trade mark hearings in opposition to the registration of trade marks, including certification marks (rice) and in opposition to a removal application for non use (beverages, beer).

*Ian Wymer v Industrial Fan Equipment Pty Ltd* [2008] ATMO 96: Opposition – ownership of trade mark

*Fresh Trade Australia Pty Limited ats Fauconshawe Holdings Pty Ltd* (opposition to registration)

## **NSW Court of Appeal**

*Gregory Franks v Brad Cameron* 2023/285026: Draft amended notice of appeal in relation to an adjournment being refused in the context of the appointment of trustees for sale pursuant to s 66G of the *Conveyancing Act 1919* (NSW) (*Cameron v Franks* (No 2), *Cameron v Franks* [2023] NSWSC 437 below).

*Scott & Anor v McMahon & Ors* [2004] NSWCA 327: Involving an account of investor's funds to the trustee in bankruptcy (sought by a beneficiary)

*Evans Shire Council v Richardson* [2005] NSWCA 416: Negligence – duty of care

## **Supreme Court**

Advise and appear in relation to claims arising from contract and equitable duties

*Jeffrey Leslie Garrett as Administrator of the Estate of the late Doreen Curry v Allan Kenneth Curry*, 2025/00063501 (common law, possession of land). Obtain an order for the defendant to vacate and a writ of possession.

*Re Baldwin; Application for Judicial Advice* [2023] NSWSC 1311: Succession – trustee seeking judicial advice

Advise executors as to duties in the administration of an estate. Josephine has drafted pleadings seeking orders for an account in respect of a trust established under a will (breach of trust) and has conducted probate and FPA claims.

*Gourmet Dinner Service Australia Pty Ltd (ACN 079 417 306) v Janel Horton & Ghousuddin Mohammed*, 2024/00243358 (Application before Duty Judge to lift a freezing order)

Application to the Duty Judge obtaining orders for money to be transferred from a (frozen) bank account.

Resolved a long standing dispute as to property between a defacto couple which had been instituted as an equitable action.

Prepare application to set aside order to wind up company and advise clients in complex corporate and trust structures to extricate themselves.

Actions to recover \$8,000,000 against Messrs Scott & Slattery on behalf of the beneficiaries of Mr Livingstone's bankrupt estate and trust:

*McMahon v Livingstone and Ors* (Sheahan – cross-claimant); *Sheahan v Scott & Ophix Pty Ltd* [2003] NSWSC 1082: On an account – knowing receipt of trust funds – breach of trust

*Sheahan v Slattery (No 2)* [2006] NSWSC 711: Order to answer interrogatories on origin of documents where cross-examination not available.

*Lock v Gillian Scott* (draft novel causes of action to claim monies and the profits made in the context of s 120 of the Bankruptcy Act, s 37 of the Conveyancing Act and criminal conspiracy with Geoff Lindsay SC).

*Bankrupt estate of John Joseph Scott*: Advice on whether a conflict on Mr Lock's appointment as the Trustee of the estate of Mr Scott.

*Redeemer Baptist School Limited v Glossop and 4 Ors* [2006] NSWSC 582 (20 June 2006): Application to dismiss/stay or require further particulars of a claim for damages founded on tortious conspiracy and *Redeemer Baptist School Ltd v Glossop* [2007] NSWSC 1187: Application for discovery.

*ACNS v HHH & Ors*: Appear at first return date for Plaintiff in \$87,000,000 ISR policy claim for a long wall mine collapse against eight defendants before Bergin J.

Appear for the NRL to obtain an injunction to prevent ticket scalping; contest a strike out application for the Commonwealth Bank.

*Richardson v Tallwoods Pty Ltd, Thomas & Robinson*, 2004/ 20215 (defamation, prepare particulars of malice and aggravated damages)

## **District Court**

*Zepinic v Mitrovic* [2023] NSWDC 423: Appeal from Local Court on ground of procedural unfairness/bias.

*Deborah June Bushell v Luke Giljevich*, 2023/00151376: Defend a claim in Negligence (personal injury) in relation to a dog bite.

*Jessica Kate Sawyer v Bernadete Tales*, 2023/00103798: Defend an action for damages for personal injury as a result of a car accident alleged to have been caused by a cow escaping from a paddock.

Set aside default judgement in a dog breeding case (purchase guarantee).

## **Local Court**

Amend pleadings and prosecute action in negligence for personal injury against a vet for the death of a dog.

Appear in construction/subcontracting dispute and to reduce the amount of instalment payments.

Summary criminal matters (including indictable matters heard summarily) for Legal Aid and private clients.

**Administrative Review Tribunal Australia**

*Haralambous and Chief Executive Officer, National Disability Insurance Agency (NDIS) [2026] ARTA 177 (13 February 2026):* supports.

*Gerada and CEO, National Disability Insurance Agency (NDIS) [2025] ARTA 2632 (28 November 2025):* supports and whether continued eligibility for access.

*Hanieh and Tax Practitioners Board [2024] AATA 3251 (9 September 2024):* Tax, application for a stay and confidentiality orders.

**NCAT**

*Darren Keith Walters v Registrar of Births, Deaths and Marriages, 2023/00242971* (obtain order to amend death certificate).

Appear in contractual and construction matters; advise in a matter regarding a Registered Training Organisation.

Appear in strata disputes.

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**Professional Memberships**

Intellectual Property Society of Australia & New Zealand

Copyright Society of Australia

AIPPI Australia

Australian Bar Association

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**Other Languages Spoken**

Josephine is fluent in Spanish with official qualifications.

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**Publications**

- 2023 on     Draft headnotes for the *Intellectual Property Reports*.
- 2007-2014 Drafted headnotes for the *Intellectual Property Reports* and the *Australian Law Reports*. Updating loose leaf services, including *Lahore’s Copyright and Designs*, and *Intellectual Property Precedents*.
- 2004       Presented at the College of Law seminar, Genetics, Biotechnology and Legal Issues, with co-presenter Justice Michael Kirby.
- 2002       Authored ‘Congratulations to the “inventors” of our genes’