

# Shauna Ross

Barrister-at-law, Nigel Bowen Chambers

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## Background and Qualifications

Prior to joining the Bar, Shauna Ross' previous experience as a solicitor at a multinational law firm in Sydney and at the centralised international Intellectual Property department at British American Tobacco in London, provides her with a deep understanding as to the needs, expectations and preferences of solicitors and clients.

Shauna graduated from Kings College London with a Bachelor of Laws (LLB) in 2006. She also achieved the International Baccalaureate from St Andrew's College, Dublin in 2002. Shauna holds a Graduate Diploma in Legal Practice from the College of Law, Sydney, 2009.

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## Experience at the Bar and Notable Cases

Shauna was admitted to the Bar in April 2012 and has since enhanced her specialist knowledge and expertise in intellectual property matters, including trade marks, copyright, designs, patents and domain name disputes. Her considerable experience in these areas complements her broader commercial practice.

Shauna is regularly briefed to provide complex advice and appear in matters at first instance, on appeal and those in which interlocutory relief is sought. Often appearing unled or led by highly regarded Senior Counsel in large-scale litigation, Shauna has appeared in the High Court of Australia, Federal Court of Australia (including the Full Court), New South Wales Court of Appeal, Federal Circuit Court and the Australian Trade Marks Office.

Matters in which Shauna is briefed include those with trade mark, copyright, designs and patent claims (including questions of ownership, validity, revocation/removal and infringement for all forms of intellectual property), contravention of the Australian Consumer Law, breach of contract, passing off, as well as other matters of a commercial nature. Shauna also appears before tribunals such as NCAT and Commissions of Inquiry, including ICAC.

Shauna has been recognised in the *Doyles Leading Intellectual Property Barristers (NSW)* in 2016, 2017, 2020 and 2021.

Shauna contributes to a number of trade mark publications, including *Lahore Patents, Trade Marks & Related Rights*.

Selected cases of Interest include:

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## Intellectual Property

- *JR Consulting v Drafting Pty Ltd & Ors v Cummings & Ors* – High Court [2016] HCATrans 202 (led by Sophie Goddard SC) (Acted for the Respondent (software developer) in successfully resisting an application for Special Leave in a case concerning copyright infringement, breach of contract and breach of confidence)
- *Bendigo and Adelaide Bank Limited v Community First Credit Union Limited* [2021] FCAFC 31 (led by Sophie Goddard SC) (Acted for Community First Credit Union Limited, the Respondent, in two Full Court appeals with respect to rectification of the Register, non-use and trade mark applications)
- *Trident Seafoods Corporation v Trident Foods Pty Ltd* [2019] FCAFC 100; 369 ALR 367; 143 IPR 1 (led by Sue Chrysanthou) (Acted for the Respondent (food manufacturer) in two appeals with respect to non-use and registrability of trade marks)
- *JR Consulting & Drafting Pty Ltd v Cummings* [2016] FCAFC 20; 329 ALR 625; 116 IPR 440 (led by Sophie Goddard SC) (Acted for the Respondent (software developer) in case involving issues of copyright, contract, breach of confidence and trade marks. See also in the Supreme Court [2015] NSWSC 552; [2015] NSWSC 10; [2014] NSWSC 1700; [2014] NSWSC 1252)

- *Scandinavian Tobacco Group Eersel BV v Trojan Trading Company Pty Ltd* [2016] FCAFC 91; 243 FCR 152; 338 ALR 72; 119 IPR 247 (led by Michael Hall SC) (Acted for the Respondent (tobacco importer) in the Full Court appeal concerning section 123 of the *Trade Marks Act* and parallel importations of tobacco products in the context of tobacco plain packaging, trade mark infringement and related *Australian Consumer Law* claims)
- *Maggie Sottero Designs LLC v Loner* [2018] FCA 1151 (Unled) (Acted for the Applicant in an application for interlocutory and final relief for copyright and trade mark infringement)
- *Trident Seafoods Corporation v Trident Foods Pty Ltd* [2018] FCA 1490 (led by Sue Chrysanthou) (Acted for the Respondent (food manufacturer) in two appeals from the Trade Marks Office with respect to non-use and registrability of trade marks)
- *Thomas International Limited v Humantech Pty Ltd* [2015] FCA 541 (led by Sophie Goddard SC) (Acted for the Applicant (psychometric test developer and analyst company) in an application for interlocutory relief concerning breach of contract, trade mark infringement, passing off and contraventions of the *Australian Consumer Law*)
- *Anchorage Capital Partners Pty Limited v ACPA Pty Ltd & Anor* [2015] FCA 882 (led by Alec Leopold SC) (Acted for the Applicant/Cross Respondent (company specialising in turnaround business which involves acquiring a controlling interest in a struggling business, fixing it up and then on-selling it at a profit) in proceedings involving allegations of trade mark infringement, contraventions of the *Australian Consumer Law* and a claim for revocation of trade marks)
- *Delnorth Pty Ltd v Commissioner of Patents* [2013] FCA 165; 100 IPR 175 (led by Christian Dimitriadis SC) (Acted for the Applicant patentee in an appeal against a decision of a delegate of the Respondent (the Commissioner) to revoke a number of claims of Australian patent number 2004249786)
- *Multisteps Pty Ltd v Source and Sell Pty Ltd* [2013] FCA 743; 214 FCR 323; 309 ALR 83; 105 IPR 342 (led by Sue Chrysanthou) (Acted for the Applicant (fruit and vegetable punnet designer and manufacturer) in a claim for design and patent infringement and resisting claims of invalidity)
- *Millennium & Copthorne International Limited v Kingsgate Hotel Group Limited* – Federal Court of Australia – unreported (led by Sophie Goddard SC) (Acted for the Applicant (international hotel conglomerate) in a costs application post successful proceedings concerning an appeal from a decision of a delegate of the Registrar of Trade Marks in a trade mark opposition)

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## General Commercial

- *Siegwerk Australia Pty Ltd (In Liquidation) v Nuplex Industries (Aust) Pty Ltd* [2014] HCATrans 180 (led by Stuart Donaldson SC) (Acted for the Respondent (chemical manufacturer) in successfully resisting an application for Special Leave in a case concerning causation of property damage)
  - *In the matter of Hayes Steel Framing Systems Pty Ltd (Administrators Appointed)* [2017] NSWSC 385 (led by Farid Assaf SC) (Acted for the applicant for winding up for three companies)
  - *Antonio & Marianna Di Rico v Dion Cominos; Dion Cominos v Antonio & Marianna Di Rico* [2015] NSWCATCD 75 (Unled) (Acted for the Applicants/Cross Respondents in proceedings concerning *quantum meruit*, estoppel and allegations of breach of statutory warranties pursuant to the *Home Building Act 1989*)
  - *Visy Packaging Limited v Siegwerk Australia Pty Ltd v Nuplex Industries (Aust) Pty Ltd v QBE Insurance (Australia) Limited* [2013] FCA 231 (led by Stuart Donaldson SC) (Acted for the Respondent/Cross Applicant chemical manufacturer in defending a claim of causation of property damage and reasonable settlement and in a claim for indemnity pursuant to an insurance contract)
  - *Siegwerk Australia Pty Ltd (In Liquidation) v Nuplex Industries (Aust) Pty Ltd* [2013] FCAFC 130
  - *Siegwerk Australia Pty Ltd (in liquidation) v Nuplex Industries (Aust) Pty Ltd* [2016] FCA 158
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## Land and Environment

- *Environment Protection Authority v Minto Recycling Pty Limited* [2019] NSWLEC 193 (led by Patrick Larkin SC) (Acted for the Respondent in Class 5 for breach of a condition of an Environmental Protection Licence)
  - *Toner Design Pty Ltd v Newcastle City Council* [2013] NSWCA 410; 198 LGERA 203 (led by Patrick Larkin SC) (Acted for the Respondent Council in an appeal from the separate question of whether or not development was “designated development”, in particular the construction of clause 37A of Schedule 3 of the *Environmental Planning and Assessment Regulations 2000*)
  - *Friends of King Edward Park Inc v Newcastle City Council & Ors (No 2)* [2015] NSWLEC 76 (led by Chris Birch SC) (Acted for the Second Respondent (the Reserve Trust) and the Third Respondent (Minister for Primary Industries) in proceedings concerning the validity of a development consent and validity of a Plan of Management)
  - *Howarth & Reid v Gosford City Council (No 2)* [2014] NSWLEC 40; 204 LGERA 425 (led by John Maston and then Patrick Larkin SC) (Acted for the Respondent Council in proceedings concerning validity, satisfaction and/or lapse of a deferred development consent and estoppel)
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## Trade Marks Office

- *Kevin Robinson v Little Wings Limited* [2021] ATMO 11 (unled) (Acted for the non-use applicant in a successful section 92(4)(a) challenge)
  - *US Dairy Export Council v Consorzio Per La Tutela Del Formaggio Gorgonzola* [2020] ATMO 44 (Unled) (Acted for the applicant for the trade mark)
  - *Red Rooster Foods Pty Ltd* [2019] ATMO 160 (Unled) (Acted for the applicant for the trade mark)
  - *Trident Seafoods Corporation v Trident Foods Pty Limited* [2019] ATMO 22 (Unled) (Acted for the opponent)
  - *Braintree Communications Pty Ltd v PayPal Inc* [2018] ATMO 90 (Unled) (Acted for the applicant for non-use)
  - *Allied Pinnacle NSW Pty Ltd v Dingo Flour Mill Pty Ltd* [2018] ATMO 175 (Unled) (Acted for the applicant for the trade mark)
  - *Council of the City of Shellharbour v Bright Events Pty Ltd* [2018] ATMO 48 (Unled) (Acted for the opponent)
  - *AIA Agricola Italiana Alimentare SpA v Borgo Developments Pty Ltd* [2017] ATMO 152 (Unled) (Acted for the trade mark owner resisting the non-use action)
  - *Bendigo and Adelaide Bank Limited v Community First Credit Union Limited* [2017] ATMO 73 (Unled) (Acted for the applicant for the trade mark)
  - *Metropolitan Investment Group Pty Ltd v Autumnpaper Ltd* [2016] ATMO 115 (Unled) (Acted for the applicant for the trade mark)
  - *Intellectual Property Development Corporation Pty Ltd v Malina Schinder and Adrian Schindler* [2016] ATMO 103 (Unled) (Acted for the applicant in a non-use action)
  - *The Institute of Chartered Accountants in Australia v Association of International Certified Professional Accountants* [2016] ATMO 94 (Unled) (Cross oppositions. Acted for the applicant in one opposition and the opponent in the other opposition)
  - *Red Bull GmbH v Total Eden Pty Ltd* [2015] ATMO 67 (Unled) (Acted for the applicant for the trade mark)
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- Independent Commission Against Corruption – Operation Acacia (led by Patrick Larkin SC)
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### Arbitration

- Confidential arbitration before the Hon. Kevin Lindgren QC AC (led by Patrick Larkin SC)
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### Publications

- *Patents Trade Marks and Related Rights*, LexisNexis Looseleaf
  - *Deceptive similarity: overview of the law and an update regarding marks contained within other marks: Part 2*, LexisNexis IP Bulletin, Vol 28, No 4, June 2015
  - *Deceptive similarity: marks contained within other marks: Part 1*, LexisNexis IP Bulletin, Vol 28, No 3, May 2015
  - *The bad faith of superheroes: a review of the Australian bad faith decisions*, LexisNexis IP Bulletin, Vol 28, Vol 2, March/April 2015
  - *On colour marks and word marks denoting colour*, LexisNexis IP Bulletin, Vol 28, Vol 8, October 2015
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### Memberships, Appointments and Recommendations

- New South Wales Bar Association
  - Lecturer at Bar Practice Course (current)
  - NSW Committee Member, IPSANZ (current)
  - Mediator: mediator course completed in October 2015
  - Casual Academic Tutor, University of Technology Sydney, Civil Practice (2014-2016)
  - Committee Member, Mother's Day Classic, National Breast Cancer Foundation (2014-2016)
  - Publication verifier for INTA Bulletin
  - *Doyles Guide Leading Intellectual Property Barristers (NSW)* in 2016, 2017, 2020, 2021 and 2022.
  - *The Legal 500 Asia Pacific 2022: Shauna is extremely knowledgeable, responsive and articulate. She weighs the pros and cons of next steps in litigation very carefully before recommending the best course of action.*
  - Best Lawyers in Australia 2023 Edition: Recognised for Intellectual Property and Litigation Law
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