

# Gabriella Rubagotti

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## Summary

Upon obtaining a BA(Hons)/LLB (UNSW), Gabriella was admitted to legal practice in 2003 and called to the Bar in 2010.

Gabriella practices in intellectual property, media, competition and consumer, contract and privacy law (the latter including data breaches), breach of confidence, and intentional torts.

Gabriella has 20 years' experience in patent litigation. As counsel, Gabriella has acted in matters including *Encompass Corporation v InfoTrack* (FCAFC; **validity; manner of manufacture**), *Brien Holden Vision Institute Ltd v Nthalmic Holdings Pty Ltd & Ors* (FCA; **optical physics patent infringement**), *DSI Australia (Holdings) Pty Ltd v Garford Pty Ltd* [2013] FCA 132 (FCA; **apparatus & method patent; unjustified threats**), *Beadcrete Pty Ltd v Fei Yu trading as Jewels 4 Pools (No 3)* [2013] FCA 187 (**validity**) and *Ashton Manufacturing v Express Sign Labs* (FCA; **innovation patent**). This builds on her considerable patent experience obtained whilst a solicitor in cases such as *Arbitron Inc v Telecontrol & Anor* (FCA; **electrical engineering patent infringement**); *Lockwood Security Products Pty Ltd v Doric Products Pty Ltd (No 2)* (HCA; **mechanical patent infringement**); *Arrow Pharmaceuticals Pty Ltd v Roche Therapeutics Inc & Anor*; *Roche Therapeutics, Inc v GenRx Pty Ltd* (FCA; **pharmaceutical patent infringement; market valuation**); *Pfizer Corp v Commissioner of Patents (No 1) and (No 2)* (FCA; **extension of patent term; pharmaceutical patent**) *Arrow Pharmaceuticals Limited v Merck & Co., Inc*; *Merck & Co Inc v Arrow Pharmaceuticals Limited* (FCAFC; FCA; **pharmaceutical patent revocation**; ever-greening and legal professional privilege), *Novartis AG v FH Faulding Co Ltd* (FCAFC; FCA; **pharmaceutical patent infringement**; civil procedure – separate question); *Somnomed Ltd v Commissioner of Patents* (FCA; **pharmaceutical patent**; judicial review).

Gabriella has also advised on and appeared in a number of the most noteworthy cases in her other areas of expertise, including *Lavazza v Cantarella* (FCA; **trade marks**), *Self-Care v Allergan* (HCA; **trade marks & trade practices**), *Realestate.com.au Pty Ltd v Hardingham* (HCA; **contract & copyright**), *ObjectiVision v University of Sydney & Visionsearch* (**copyright & breach of confidence; computer software in medical devices**), *The a2 Milk Company (Australia) v Lion – Dairy & Drinks* (**consumer law**, incl. re. future matters concerning human health claims and epigenetics), *Beckett v New South Wales* (HCA; **tort of malicious prosecution**), *Monis v The Queen* and *Attorney-General (SA) v Corporation of the City of Adelaide* (HCA; **constitutional law & statutory interpretation**), and *Harbour Radio Pty Ltd v Trad and Cush v Dillon* (HCA; **defamation**).

Gabriella is briefed in registration and opposition proceedings in the Trade Marks and Patents Office, and she accepts briefs at trial and appellate level in all Australian jurisdictions.

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## Inquiries

Royal Commission into Defence and Veteran Suicide, Counsel Assisting (2021-present)

Notably, in her role as Counsel Assisting Gabriella has had extensive experience taking expert evidence on human health matters, including those concerning pharmacology and human physiology.

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## Representative experience

### Intellectual property & consumer law

*Cantarella Bros Pty Ltd v Lavazza Australia Pty Ltd* (FCA; 2023; **trade marks**; reserved; led by R Cobden SC & E Heerey KC)

*Self Care IP Holdings Pty Ltd v Allergan Australia Pty Ltd* [2023] HCA 8; 97 ALJR 388; 408 ALR; 171 IPR 120 (**trade marks; consumer law**; led by J Beaumont SC)

*Realestate.com.au Pty Ltd v Hardingham* [2022] HCA 39; 296 ALJR 40; 406 ALR 678; 170 IPR 1 (**contract; copyright**; led by R Cobden SC)

*Home Grown Brands Australia Pty Ltd v Sperling Enterprises Pty Ltd* [2021] FCCA 1597 (**trade marks**; unled)

*Combe International Ltd v Dr August Wolff GmbH & Co. Kg Arzneimittel* [2021] FCAFC 8; 157 IPR 230 (**trade marks**; led by J Beaumont SC)

*Dr August Wolff GmbH v Combe (No 2)* [2020] FCA 730 (**trade marks**; led by J Beaumont)

*Brien Holden Vision Institute Ltd v Nthalmic Holdings Pty Ltd & Ors* (FCA; 2020; **optical physics patent infringement**; settled; led by S Goddard SC)

*4Cyte Pathology Pty Ltd v Myriad Women's Health, Inc (formerly Counsyl, Inc)* (FCA; 2020; **trade marks**; settled; unled)

*Ozcare v Auscare Home & Community Care Ltd* (FCA; 2020; **trade marks**; settled; unled)

*University of Sydney v ObjectiVision Pty Limited* [2019] FCA 1625; 148 IPR 1 (**contract**; **copyright**; led by C Dimitriadis SC)

*Community First Credit Union Limited v Bendigo and Adelaide Bank Limited* [2019] FCA 1553; 146 IPR 186 (**trade marks**; led by S Goddard SC)

*Encompass Corporation Pty Ltd v InfoTrack Pty Ltd* [2019] FCAFC 161; 372 ALR 646; 145 IPR 1 (**patent validity**; **manner of manufacture**; led by C Dimitriadis SC)

*The a2 Milk Company (Australia) Pty Ltd v LD&D Pty Ltd* (FCA; 2019; **trade marks**; settled; unled)

*Australian Karting Association Ltd v Karting (New South Wales) Inc* (FCCA; 2019; **trade marks**; **copyright infringement**; settled; leading G Tsang)

*Knead (Holding) S.A.L. & Anor v Fiordelli* [2018] FCCA 1472 (**copyright**; unled)

*Ashton Manufacturing Pty Ltd v Express Sign Labs Pty Ltd* (FCA; 2017; **patent infringement**; settled; led by Ed Heerey KC)

*The a2 Milk Company (Australia) Pty Ltd v Lion – Dairy & Drinks Pty Ltd* (FCA; 2017; **consumer law**; incl. re. future matters concerning human health claims and epigenetics; settled; led by D Catterns QC)

*Primary Healthcare Ltd v Commonwealth & Ors* [2016] FCA 313 (**trade marks**; led by J Baird SC)

*Easton Corporation Pty Ltd v Pacific Brands Clothing Pty Ltd & Ors* (FCA; 2016; **trade mark infringement**; settled; led by R Cobden SC)

*Brand Developers Pty Ltd v BDirect Pty Ltd* (FCA; 2016; **copyright infringement**; **trade mark infringement**; **misleading or deceptive conduct**; settled; unled)

*Apple Inc v Anying Group Pty Ltd* (FCCA; 2016; **trade marks**; **customs seizure**; settled; unled)

*Apple Inc v Wan* (FCCA 2016; **trade marks**; **customs seizure**; settled; unled)

*National Australia Bank Limited v Smith* [2014] NSWSC 1605 (13 November 2014) (**misleading or deceptive conduct**; led by B McClintock SC)

*DSI Australia (Holdings) Pty Ltd v Garford Pty Ltd* [2013] FCA 132 (**apparatus & method patent**; **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 validity**; evidence preparation; led by S Goddard SC)

*Specsavers Pty Ltd v Coastal Contacts (Aust) Pty Ltd* [2012] FCA 102 (**misleading or deceptive conduct**; led by T Blackburn SC)

*Allen House Mirror & Glass Pty Ltd v Hamilton* [2012] FCA 464 (**trade marks**; unled)

*Societe Des Produits Nestle SA v Aldi Stores* [2010] FCA 218 (**breach of confidence**; **copyright**; **urgent interlocutory injunction**; unled)

*Nokia Corp. v Renae Millaras (No. 1), (No.2), (No.3)* [2010] FCA 1396, 1217 & 1174 (**trade marks**; **urgent interlocutory injunction**; unled)

*P & M Quality Smallgoods Pty Ltd v Seven Network (Operations) Pty Ltd & Ors* (NSWSC; 2010; **misleading or deceptive conduct; injurious falsehood; breach of confidence; breach of fiduciary duty; valuation of loss**; settled; led by B McClintock SC)

*Australasian Performing Right Association Limited and Australasian Mechanical Copyright Owners Society Limited* [2009] ACopyT 2 (**royalty rate increase application** re digital downloads; instructed as solicitor immediately prior to call to the Bar)

Almost 40 Office appearances concerning registration and opposition matters.

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## Defamation

*Al Muderis v Nine Network Australia Pty Ltd* (FCA; 2023; ongoing; led by S Chrysanthou SC)

*Palmer v McGowan (No 5)* [2022] FCA 893; 404 ALR 621 (led by P Gray SC)

*Tate v Australian Broadcasting Corporation* [2019] FCA 610 (led by P Gray SC)

*McGinn v Peter Clisdell Pty Ltd (No 2)* [2018] NSWSC 1856 (unled)

*Age Company Pty Ltd & Ors v Liu* [2016] HCATrans 306 (**special leave**; led by B McClintock SC)

*Liu v The Age Co. Ltd* [2016] NSWCA 115; 92 NSWLR 679 (led by B McClintock SC)

*Enders v Erbas & Associates Pty Ltd* [2014] NSWCA 70; Aust Torts Reports ¶182–161 (led by M McHugh SC)

*Kenny v Australian Broadcasting Corporation* [2014] NSWSC 190 (led by B McClintock SC)

*Tate v Duncan-Strelec* [2013] NSWSC 1446 (led by B McClintock SC)

*The Age Company Ltd and Ors v Liu and Anor* [2013] HCATrans 205 (**special leave**; led by B McClintock SC)

*Kelly v Crosby & Ors* [2013] HCATrans 17 (**special leave**; led by B McClintock SC)

*Crosby v Kelly* [2013] FCA 1343 (led by B McClintock SC)

*Harbour Radio Pty Ltd v Trad* [2012] HCA 44; 247 CLR 31 (led by R McHugh SC)

*Harbour Radio Pty Limited v Trad* [2012] HCATrans 51 (**special leave**; led by R McHugh SC)

*David & Anor v Abdishou* [2012] HCATrans 253 (**special leave**; led by G Reynolds SC & M F Richardson)

*Daily Examiner Pty Ltd v Mundine* [2012] HCATrans 362 (**special leave**; led by G Reynolds SC)

*Daily Examiner Pty Ltd v Mundine* [2012] NSWCA 195 (led by G Reynolds SC & ATS Dawson)

*Qureshi v John Fairfax Publications Pty Ltd* [2012] NSWSC 1605 (led by B McClintock SC)

*Habib v Radio 2UE Sydney Pty Ltd (No. 1), (No. 2), (No. 3) and (No 4)* [2012] NSWDC 7, 12, 41, 52 (led by B McClintock SC & unled)

*Nahas Constructions Pty Ltd v Macquarie Radio Network* (unreported, Nicholas J, 12.10.12, NSWSC; defamation; injurious falsehood; urgent injunction; led by B McClintock SC)

*Cush v Dillon* [2011] HCA 30; 243 CLR 298 (led by G Reynolds SC)

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## Contract

*Housman v Camuglia* [2021] NSWCA 106; 104 NSWLR 615 (**contract; civil procedure**; led by G Sirtes SC)

*Senses Northbridge Pty Ltd v Sahab Holdings Pty Ltd (No 3)* [2020] NSWSC 345 (**breach of contract**; led by S Epstein SC)

*International Animal Health Products Pty Ltd v Inghams Enterprises Pty Ltd* (FCA; 2019; **breach of contract; consumer law**; settled; unled & led by S Goddard SC)

*Inlon Pty Ltd v Celli SpA* [2017] NSWSC 569 (**breach of contract**; privilege & equitable remedies; led by F M Douglas QC)

*Cracka Holdings Pty Ltd & Anor v Hardman* (NSWSC; 2016; **breach of contract; breach of confidence**; settled; unled)

*Teterin Engineering Pty Ltd v IPD Australia Pty Ltd* (NSWSC 2015); **breach of contract & product liability** (settled; led by R Newlinds SC)

*Qantas v Holdforth* [2015] NSWSC 821(**breach of contractual confidence**; unled)

*Raytrack Sporting Services Pty Ltd & Ors v Gardiner & Anor* (NSWSC; 2015; **breach of contract; professional negligence; misleading or deceptive conduct**; settled; led by M Dempsey SC)

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## Constitutional law

*Monis v The Queen* [2013] HCA 4; 249 CLR 92 (**constitutional law; statutory interpretation**; led by G Reynolds SC)

*Monis v The Queen and Anor; Droudis v The Queen and Anor* [2012] HCATrans 161 (**special leave**; led by G Reynolds SC)

*Monis v Regina; Droudis v Regina* [2011] HCATrans 97 (**removal under s. 40(1)** of the *Judiciary Act 1903* (Cth); led by G Reynolds SC)

*Monis v Regina; Droudis v Regina* [2011] HCATrans 76 (**removal under s. 40(1)** of the *Judiciary Act 1903* (Cth); led by G Reynolds SC)

*Attorney-General (SA) v Corporation of the City of Adelaide* [2013] HCA 3; 249 CLR 1 (**constitutional law; statutory interpretation**; led by G Reynolds SC)

*The Age Co. Ltd v Liu* [2013] NSWCA 26; 82 NSWLR 268 (**constitutional law; civil procedure**; led by B McClintock SC)

*Daily Examiner v Mundine* [2012] NSWCA 195 (**constitutional law; defamation**; led by G Reynolds SC)

*Liu v The Age Co. Ltd* (2012) 285 ALR 386; (2012) 257 FLR 360 (**constitutional law; civil procedure**; unled & led by B McClintock SC)

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## Intentional torts; contempt; civil procedure

*Appleroth v Ferrari Australasia Pty Ltd (No 5)* [2023] FCA 744 (and preceding decisions; **suppression**; unled)

*Ghosh v Medical Council of New South Wales* [2020] NSWCA 122; 102 NSWLR 303 (**administrative law & Health Practitioner Regulations**; led by F M Douglas QC)

*Tate v Duncan-Strelec* [2020] NSWSC 52 (and preceding decision; **criminal contempt**; unled)

*GR v Secretary; Department of Families; Disabilities and Community Services* [2019] NSWCA 277 (family law & **civil procedure**; led by FM Douglas QC)

*Inlon Pty Ltd v Farmgard Pty Ltd* [2019] NSWSC 718 (**civil procedure**; led by FM Douglas QC)

*Strata Plan 47027 v McGinn* [2018] NSWSC 1228 (**civil procedure**; unled)

*Uber BV & Anor v Howarth* [2017] NSWSC 54 (**tort of intimidation**; application for injunction in equity's auxiliary jurisdiction & under s. 66, *Supreme Court Act 1970*; led by B McClintock SC)

*Qantas Airways Ltd v Lucinda Holdforth* [2015] NSWSC 821 (**civil procedure**; unled)

*Built NSW v Evolvebuilt Contracting* [2014] NSWSC 255 (**civil procedure**; led by FM Douglas QC)

*Beckett v New South Wales* [2013] HCA 17; 248 CLR 432 (**tort of malicious prosecution**; led by G Reynolds SC & S Nixon)

*Sigalla v TZ Pty Ltd* [2011] NSWCA 334 (**contempt**; led by G Reynolds SC)

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## **Foreign Languages**

Italian (fluent)

Gabriella has advised and has acted in cases involving Italian entities including Lavazza SpA and Celli SpA. She has drafted affidavits, translated commercial documents and correspondence and has communicated (orally and in writing) in Italian, including with witnesses.

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## **Recognition**

### **Doyle's Guide:**

Leading Intellectual Property Junior Counsel – Australia, 2023

Leading Intellectual Property Junior Counsel – NSW, 2023

Recommended Intellectual Property Junior Counsel – NSW, 2016-2022

Recommended Technology, Media & Telecommunications Junior Counsel – NSW, 2016-2022

### **Australia's Best lawyers:**

Recognised for Intellectual Property and Defamation & Media, 2020-2024

### **The Legal 500 Asia & Pacific:**

TMT & IP – 2022 ('Gabriella has first-rate technical knowledge and attention to detail, but also shows excellent creativity when coming up with smart and effective legal strategies.')

### **World Trademark Review (recognition of barristers ceased after 2018):**

2018 ('recommended junior counsel')

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')