

# Justine M. Beaumont SC

## Barrister-at-law, Nigel Bowen Chambers

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### PRACTICE OVERVIEW

Justine Beaumont has 30 years of commercial litigation experience, with a particular focus on intellectual property (including copyright, trade marks, patents, passing off and confidential information) and media, technology and telecommunications law. Justine's expertise extends to consumer law, equity and general commercial law. She also has considerable experience in dealing with urgent injunction applications, especially in the Federal Court.

Justine has appeared for participants in a wide range of industries such as the media (including free-to-air and pay television, radio, print and online media), film, music, technology, telecommunications, pharmaceutical, manufacturing, consumer goods, sports and fitness industries, as well as for Government. She also has recent experience in substantial commercial arbitrations.

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### ADMISSIONS

- 2022 Appointed Senior Counsel
- 2008 Called to the Bar of New South Wales
- 1991 Admitted as a Solicitor of the Supreme Court of New South Wales

### QUALIFICATIONS

- 1991 BA LLB (Hons), University of Sydney

### PROFESSIONAL EXPERIENCE

- 2008 - present Barrister, NSW
- 1992- 2008 Allens
- 1991-2002 Reporter, Federal Court Reports (while working full time as a solicitor)
- 1991 Associate, Federal Court of Australia
- 1988/1989 Winter Clerkship, Linklaters & Paine, London

### CURRENT PROFESSIONAL MEMBERSHIPS AND APPOINTMENTS

- Member New South Wales Bar Association
- Member Intellectual Property Association of Australia and New Zealand
- Member Copyright Society
- Member NSW Bar Association Professional Conduct Committee #1

## RECENT RECOMMENDATIONS AND RANKINGS

- Chambers Asia Pacific and Global 2018-2024
- Legal 500 Asia Pacific 2021-2024
- Doyles Guide 2018-2024
- Best Lawyers 2020-2025

## SELECTED CASES

### Copyright

- *Roadshow Films Pty Limited v Telstra Corporation Limited (Extension of Orders)* [2023] FCA 1167 – statutory construction issues re extension of site blocking orders under the Copyright Act.
- *Reference by APRA AMCOS* [2022] ACopyT 1 and [2022] ACopyT 4 – ongoing Copyright Tribunal reference regarding the value and structure of licence fees for the use of the copyright in musical works in films and TV shows which are streamed online by major subscription video on demand services. Appearing for The Walt Disney Company (Aust) Pty Ltd
- *Boomerang Investments v Padgett* (2020) 383 ALR 202; [2020] FCA 535 - copyright infringement (appearing for the copyright owner and composers of the song ‘Love is in the Air’) and associated applications: [2020] FCA 882, [2020] FCA 1413, [2021] FCA 385, [2021] FCA 1071 and **[2021] FCA 1561** (led by Hall SC); and [2018] FCA 4
- *Application by Isentia Pty Limited* [2021] ACopyT 1 – appeared for News Pty Ltd (unled)
- *Foxtel Management v TPG Internet* [2019] FCA 1450 - site blocking application under section 115A of the *Copyright Act 1968* (Cth) (unled)
- *Foxtel Management v TPG Internet* [2018] FCA 933 - site blocking application under section 115A of the *Copyright Act* (unled)
- *Foxtel Management v TPG Internet* (2017) 349 ALR 154; [2017] FCA 1041 –site blocking application under section 115A of the *Copyright Act* (unled)
- *Commissioner of Taxation v Seven Network* [2017] HCA Trans 024 – meaning of ‘royalty’ in double tax treaty; cinematograph film copyright in relation to the live feed of Olympic Games television coverage (led by Slater QC)
- *Universal Music Australia Pty Ltd v TPG Internet Pty Ltd* (2017) 348 ALR 493; [2017] FCA 435 – appeared for an internet provider in a site blocking application (led by Lancaster SC)
- *Roadshow Films v Telstra* (2016) 248 FCR 178; [2016] FCA 1503 – appeared for an applicant copyright owner in the first application under s 115A (led by Lancaster SC)
- *Re Phonographic Performance Company of Australia* [2016] ACopyT 2; [2015] ACopyT 3 – significant copyright reference in relation to reasonable royalties payable for sound recordings in radio simulcasts streamed on the internet (appeared for commercial radio, led by Hennessy SC)
- *Audio-Visual Copyright Society v Foxtel* [2012] ACOPYT 1 - valuation of copyright in underlying works used in retransmission of free-to-air broadcasts (led by Cobden SC)

- *Re Phonographic Performance Company of Australia Ltd* (2010) 87 IPR 148 - Fitness Australia copyright reference involving substantial economic and econometric evidence (led by Nicholas SC)
- *Roadshow Films v iiNet (No. 2)* [2009] FCA 1391 – claims of authorisation of copyright infringement by ISPs (appearing for the Internet Industry Association led by Burley SC)

## Trade marks

- *The Agency Group v H.A.S. Real Estate* on appeal [2023] FCAFC 203 and first instance [2023] FCA 482 – trade mark infringement and misleading or deceptive conduct/ passing off claims (leading JPS Ambikapathy)
- *Self Care IP Holdings v Allergan Australia* [2023] HCA 8– appeared in the High Court (leading GR Rubagotti) as contradictor and *amicus curiae* in a trade mark infringement case involving the BOTOX marks
- *Giorgio Armani S.p.A v Arman's Fine Jewellery Pty Ltd* 2022 ATMO 198 – trade mark opposition (leading M McGrath)
- *Cosmetic Warriors v Australian Therapeutic Supplies* 2021 ATMO 89 – part cancellation of a trade mark on the ground of non-use (unled)
- *Combe International v Dr August Wolff GmbH* (2021) 157 IPR 230; [2021] FCAFC 8 – appeal to the Full Court regarding sections 44 and 60 of the *Trade Marks Act 1995* (leading G Rubagotti).
- *Dr August Wolff GmbH v Combe* (2020) 149 IPR 1; [2020] FCA 39 - trade mark dispute, and on costs *Dr August Wolff GmbH v Combe (No 2)* [2020] FCA 730 (leading G Rubagotti)
- *Notaras v Barcelona* (2019) 138 IPR 304; [2019] FCA 4 and *Notaras v Barcelona (No 2)* [2019] FCA 617 - trade mark appeal (unled)
- *Rolex SA v Spooks GmbH* [2018] ATMO 200 - trade mark opposition (unled)
- *Ingeus v Qantas Airways* (2018) 137 IPR 267- trade mark opposition (unled)
- *Singtel Optus v Optum, Inc* [2016] ATMO 11- trade mark opposition (unled)
- *Ion Asset Management v Ion Trading UK* [2015] ATMO 124 – trade mark non-use application (unled)
- *Liftshop v Easy Home Living Elevators* (2014) 106 IPR 419 (Full Court) and (2013) IPR 511 (first instance) – trade mark infringement/ contravention of s 18 ACL in the context of internet searches (led by Studdy SC)
- *Société Des Produits Nestlé SA v Christian (no 12)* (2014) 110 IPR 209; *(no 15)* [2015] FCCA 368; *(No 5)* [2014] FCCA 2234 - various applications in a trade mark infringement case (unled)
- *Qantas Airways v Edwards* [2014] ATMO 40 - trade mark opposition (unled)
- *Snack Foods v Premier* (2013) 99 IPR 629 – trade mark infringement/ passing off (led by Cobden SC)
- *OrangeTee.com v OrangeTee Aust* (2011) 91 IPR 600 – trade marks opposition, and in related proceedings in the FCA (unled)
- *E & J Gallo Winery v Lion Nathan Australia* (2009) 175 FCR 386; [2009] FCAFC 27- trade mark infringement/ non-use case (led by Bannon SC)

## Patents

- *Zuru v Brand Developers* (2017) (Fed Court) – patent infringement/ invalidity dispute settled at trial
- *Sanofi-Aventis v Apotex* [2015] HCA Trans 300 – patent invalidity (led by Catterns QC)
- *Apotex v Sanofi-Aventis* (2009) 82 IPR 416 and later on the Special Leave application - [2010] HCA Trans 59– patent infringement and invalidity (led by Catterns QC)
- *PAC Mining v Esco Corp* (2009) 80 IPR 1 – patent infringement and invalidity (led by Nicholas SC)

## General commercial/ equity

- *In the matter of Sunnya Pty Ltd* [2023] NSWSC 1286 – claims for breaches of directors’ duties including under the Corporations Law; claims under the principles in *Barnes v Addy*; amendment and joinder application (leading A Aleksov and R Chen)
- *Maersk A/S v. Patti* – Anton Piller (search) orders obtained in a shipping freight dispute in the Federal Court involving breach of contract, contraventions of the ACL and allegations of fraud (leading J McKenzie)
- *Jubilant Generics v Generic Partners* – interlocutory injunction and *Norwich Pharmacal* orders obtained to protect confidential information and copyright (leading JE McKenzie, Fed Court 2020)
- *Commonwealth v Sanofi (no 5)* [2020] FCA 543 – appeared for Apotex in the Commonwealth’s suit on an undertaking as to damages in relation to the drug clopidogrel (unled)
- *Merck KGaA v Merck Sharp & Dohme* (2019) 145 IPR 72; [2019] FCA 1084 – application for the determination of a preliminary question regarding the proper law of a contract - based on estoppel and abuse of process (part of an international contract and trade mark dispute) (led by Lancaster SC)
- *Gram Engineering Pty Ltd v Bluescope Steel Ltd* [2018] FCA 539– damages suit following infringement of registered design (led by Jackman SC)
- *Sheather v Staples Waste Removals* –breach of fiduciary duty/ equitable fraud re a domain name; on appeal [2014] FCA 84, [2014] FCA 330 and [2012] FCA 998 and, at first instance: *Staples Waste Removals v Arev Computer Centre (no 2)* [2012] FMCA 214 (unled both at trial and on appeal)
- *Apotex v Sanofi* [2013] FCA 1425 – represented a generic pharmaceutical company in a suit on the usual undertaking as to damages, a substantial compensation case (led by Habib SC)
- *Westfield v AMP Capital Investors Limited as responsible entity for the KSC Trust* – Supreme Court of NSW Equity Division– breach of trust/ Corp Act case, settled mid-trial (led by Payne SC)

## Trade practices/ Australian Consumer Law

- *Invisalign Australia v SmileDirectClub* [2023] FCA 395– misleading or deceptive conduct claims relating to orthodontic treatment (international dispute between the parties) (led by K Morgan SC and with JE McKenzie; appeared on appeal in Nov 2023- reserved)
- *Brick Lane Brewing v Torquay Beverage Co* [2023] FCA 66- misleading or deceptive conduct claims regarding ‘get-up’ of beer (leading JE McKenzie, M McGrath)

- *Lawton v FHMC* [2021] FCA 1165 - interlocutory injunction and ancillary relief obtained to restrain breaches of contract and misleading or deceptive conduct (leading J Ambikapathy)
- *Australian Olympic Committee, Inc v Telstra* (2017) 258 FCR 104 and at first instance [2016] FCA 857 –first application under s 36 of the *Olympic Insignia Protection Act 1987* (Cth) /Australian Consumer Law (allegations of misleading advertising) – appeared at trial and on appeal (led by Bannan SC)
- *LG Electronics Australia v LG Energy Solutions* (2017) – interlocutory injunctions obtained for contraventions of ss18, 29 of the *ACL* (unled)
- *ACCC v MSY Technology (no 2)* (2011) 279 ALR 609; [2011] FCA 382 – trade practices/ breach of statutory warranties/ penalties (unled)
- *ACCC v Prouds Jewellers* [2008] FCAFC 199 - Part V, *Trade Practices Act* (led by Bannan SC)

### **Public Law/ Regulatory**

- *Tertiary Education Quality & Standards Agency v Telstra & Ors* [2021] FCA 1202 – appearing for TEQSA in the first proceeding for site blocking injunctions under the new provisions of the *TEQSA Act 2011* which prohibit the provision of academic cheating services to students of Australian universities (leading JE McKenzie).