





KELLY GILL

Partner

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Year of Call: 1993 - Ontario

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Kelly Gill

A partner at Gowling WLG since 1999, Kelly Gill is best known for his intellectual property litigation practice, particularly in the areas of trademarks and unfair competition. Kelly is past leader of the firm's Trademarks, Brands & Designs and IP Litigation & Strategy groups.

Kelly is ranked as a leading IP lawyer by some of the world's foremost legal directories, such as the Canadian Legal Lexpert Directory, Who's Who Legal and The Best Lawyers in Canada. The 2015 World Trademark Review 1000 ranks Kelly as one of the top trademark litigation counsel in Canada, stating that he "never misses a trick and just doesn't let up. He is a forceful advocate and skilled litigator."

Kelly has appeared before all levels of court in Canada and served as counsel on two of the Supreme Court of Canada's most important trademark and copyright decisions: *Masterpiece Inc. v. Alavida Lifestyles Inc.* (2011 SCC 27) and *CCH Canadian Ltd. v. Law Society of Upper Canada* (2004 SCC 13).

Kelly is the author of numerous publications, most notably *Fox on Canadian Law of Trademarks and Unfair Competition* (4th edition). This two-volume text, first published in 2002 and updated each year since, is considered the leading trademark law authority in Canada. It has been cited by every level of court, including the Supreme Court of Canada in all of its trademark judgments since publication.

Kelly is also an adjunct professor and sits on the Advisory Board of IP Osgoode at Osgoode Hall Law School.

Expertise

Life Sciences

Retail, Leisure & Hotels

Tech

IP Litigation & Strategy

Trademarks, Brands & Designs

Intellectual Property

Career & Recognition

2020

August

Best Lawyers in Canada 2021

May

Lexpert Special Edition: Technology 2020

April

Canadian Legal Lexpert Directory 2020

February

World Trademark Review 1000 2020

2019

December

Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada 2020

September

World Trademark Review (WTR) Global Leaders 2019

August

The Best Lawyers in Canada 2020

July

Managing Intellectual Property IP Stars 2019

April

Canadian Legal Lexpert Directory 2019

January

World Trademark Review 1000 2019

2018

December

Lexpert/ROB Special Edition on Canada's Leading Litigation Lawyers 2018

December

Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada 2019

August

The Best Lawyers in Canada 2019

April

Managing Intellectual Property IP Stars 2018

April

Canadian Legal Lexpert Directory 2018

January

World Trademark Review (WTR) 1000 2018

2017

December

Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada 2018

December

Legal 500 Canada 2018

November

Lexpert U.S./Canada Cross-Border Litigation Guide 2017

November

Lexpert/ROB Special Edition on Canada's Leading Litigation Lawyers 2017

August

The Best Lawyers in Canada 2018

May

Canadian Legal Lexpert Directory 2017

2016

December

Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada 2017

December
Lexpert U.S./Canada Cross-Border Litigation Guide 2016

November
Legal 500 Canada 2017

August
The Best Lawyers in Canada 2017

June
Managing Intellectual Property IP Stars 2016

June
Canadian Legal Lexpert Directory 2016

June
Who's Who Legal: Trademarks 2016

May
Expert Guides: Trademarks 2016

April
Benchmark Canada: The Definitive Guide to Canada's Leading Litigation Firms & Attorneys 2016

2015

December
Who's Who Legal: Canada 2015

September
Who's Who Legal: Trademarks 2015

September
The Best Lawyers in Canada 2016

September
The International Who's Who of Business Lawyers 2015

July
Canadian Legal Lexpert Directory 2015

July
Managing Intellectual Property 2015

July
Who's Who Legal 100, 2015

April
Benchmark Canada: The Definitive Guide to Canada's Leading Litigation Firms &
Attorneys 2015

February
The Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada 2015

February
World Trademark Review 1000: The World's Leading Trademark Professionals , 2015

2014

October
Who's Who Legal: Canada 2014

September
Who's Who Legal - The International Who's Who of Trademark Lawyers 2014

September
Who's Who Legal: The International Who's Who of Business Lawyers 2014

July
Canadian Legal Lexpert Directory 2014

June
Managing IP's Trade Mark & Copyright Handbook 2014

April
Chambers Global 2014

April
Benchmark Canada: The Definitive Guide to Canada's Leading Litigation Firms &
Attorneys 2014

February
Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada 2014

February
World Trademark Review (WTR) 1000 2014

2013

November
Who's Who Legal: Canada 2013

September
The Best Lawyers in Canada 2014

September
Who's Who Legal - The International Who's Who of Trademark Lawyers 2013

July
Who's Who Legal: The International Who's Who of Business Lawyers 2013

July
Canadian Legal Lexpert Directory 2013

April
Chambers Global 2013

March
Benchmark Canada 2013

February
The Best Lawyers in Canada® 2013

February
World Trademark Review (WTR) 1000 (2013)

2012

December
Who's Who Legal: Canada 2012

July
Canadian Legal Lexpert Directory 2012

July
Who's Who Legal: The International Who's Who of Business Lawyers 2012

May
Guide to the World's Leading Trade Mark Law Practitioners 2012

April
World Trademark Review (WTR) 1000 (2012)

April
Benchmark Canada 2012

April
Chambers Global 2012

February
The Best Lawyers in Canada 2012

2011

December
Who's Who Legal 2011

June
World Trademark Review (WTR) 1000 - The definitive guide to trademark legal services
(2011)

February
Canadian Legal Lexpert Directory , 2011

February
The Best Lawyers in Canada® 2011

2010

February
Canadian Legal Lexpert Directory , 2010

February
The Best Lawyers in Canada® 2010

2004

Lexpert, Rising Stars, Leading Lawyer Under 40

1993

Year of Call, Ontario

Benchmark Canada - 2012

Who's Who Legal: Canada - 2011, 2012

Expert Guides, World's Leading Trade Mark Law Practitioners - 2010, 2012

Lexpert, Rising Stars, Leading Lawyer Under 40 - 2004

Best Lawyers in Canada® - 2008-2013

Canadian Legal Lexpert® Directory - 2010-2012

Chambers Global® - 2011, 2012

World Trademark Review 1000 - 2011, 2012

Who's Who Legal: The International Who's Who of Business Lawyers 2012

Memberships

- Canadian Bar Association
- Institute of Trademark Agents
- Intellectual Property Institute of Canada
- International Trademark Association

Representative Work

Kelly has appeared as lead trial counsel and appeal counsel on numerous cases before the Supreme Court of Canada, the Federal Court of Appeal, the Federal Court Trial

Division, the Ontario Court of Appeal, High Court and Divisional Court. He has successfully represented clients in many notable cases, including:

Supreme Court of Canada

- CCH Canadian Ltd. v. Law Society of Upper Canada (2004) - counsel for the Law Society at trial, the Court of Appeal and the Supreme Court of Canada. This leading copyright case was the first time the Supreme Court dealt with such fundamental copyright issues as the standard of originality and fair dealing. The 2004 Judgment of the Supreme Court of Canada is recognised as one of the most important copyright decisions in Canadian history.
- Masterpiece Inc. v. Alavida Lifestyles Inc., 2011 SCC 27, [2011] 2 S.C.R 387 - counsel for Masterpiece Inc., this case has clarified important legal principles with respect to the differences, overlaps and interrelationships in Canada between rights flowing from registration and those existing at common law through use.

Federal Court of Appeal, Federal Court Trial Division, Ontario Court of Appeal, High Court and Divisional Court

- Marlboro Canada Limited v. Philip Morris Products S.A. 2012 FCA 201 - trade-mark/copyright - infringement
- Varco Canada Limited v. Pason Systems Corp. 2011 FC 467 - patents - motion to re-open trial
- Philip Morris Products S.A. v. Marlboro Canada Limited 2010 FC 1099 Date: November 8, 2010 - trade-mark/copyright - infringement
- Pason Systems Corp. v. Varco Canada Ltd., 2006 FCA 100 - patents - judicial review setting aside Decision of Commissioner to amend third party patent pursuant to s. 8 clerical error
- Pason Systems Corp. v. Varco Canada Ltd. 2006 FCA 100 Date: March 9, 2006 - patents - lack of good faith available as ground of invalidity
- Society of Composers, Authors and Music Publishers of Canada, v. Kicks Roadhouse Inc. (c.o.b. How-Dee's) (2005), 39 C.P.R. (4th) 28 (F.C.T.D.) - copyright - trial
- Consorzio Del Prosciutto Di Parma v. Maple Leaf Meats Inc. (2002), 18 C.P.R. (4th) 414 (FCA) - appeal - trade-mark expungement
- Merial LLC v. Novartis Animal Health Canada Inc (2001), 11 C.P.R. (4th) 48, [2001] 2 F.C. 536 (FCTD) - trade-mark infringement action - civil procedure
- Consorzio Del Prosciutto Di Parma v. Maple Leaf Meats Inc. (2001), 11 C.P.R. (4th) 48,

[2001] 2 F.C. 536 (FCTD) - trade-mark expungement

- Canadian Memorial Services v. Personal Alternative Funeral Services Ltd (2000), 4 C.P.R. (4th) 440 (FCTD) - trade-mark infringement; trade-mark expungement; passing off - summary judgement
- Ling Chi Medicine Co. (HK) Ltd v. Mohan Persaud et al (1998), 81 C.P.R. (3d) 369 (FCA) - trade-mark expungement - appeal of trial
- Boehringer Ingelheim (Canada) Ltd v. Bristol-Myers Squibb Canada Inc. (1998), 78 C.P.R. (3d) 67 (Ont.Ct.Gen.Div.) - misleading advertising - interlocutory injunction motion
- 1013579 Ontario Inc. v. Bedessee Imports Ltd. (1997), 77 C.P.R. (3d) 163 (FCA) - trade-mark infringement; passing off - appeal of summary judgement
- M & I Heat Transfer Products Ltd. v. Airseal Controls Inc. (1997), 77 C.P.R. (3d) 126 (FCA) - patent infringement; patent impeachment - appeal of trial
- Canada Games Company Limited v. Llummar Star Kites Inc (1996), 69 C.P.R. (3d) 454, 206 NR 3 (FCA) - trade-mark registrability - appeal of trial decision
- Kellogg Company v. Imperial Oil Limited (1996), 136 DLR (4th) 686, 29 OR (3d) 70, 67 C.P.R. (3d) 426 (Ont.Ct.Gen.Div) - trade-mark infringement; passing off; copyright infringement - appeal of motion for production and motion to strike pleading
- Eveready Canada v. Duracell Canada Inc. (1995), 64 C.P.R. (3d) 348, 44 CPC (3d) 104 (Ont.Ct.Gen.Div) - misleading advertising; trade-mark disparagement - interim injunction motion
- Johnson & Johnson Inc. v. Bristol-Myers Squibb Canada Inc. (1995) - misleading advertising; trade-mark infringement - interlocutory injunction motion
- U & R Tax Services Ltd. v. H & R Block Canada Inc (1995), 62 C.P.R. (3d), 257, 97 FTR 259 (FCTD) - copyright infringement - trial
- Regina v. Ferjo (1994), 58 C.P.R. (3d) 223 (Ont.C.A.) - criminal passing off - appeal of trial
- Somerville House Books Ltd. v. Tormont Publications Inc. (1993), 53 C.P.R. (3d) 77 (FCA) - copyright infringement - appeal of interim injunction motion