

Cassels on IP: October 2025

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In this edition: Cassels lawyers recognized in the 2026 edition of Chambers and Best Lawyers in Canada, a review of the inherent distinctiveness objection in trademark examinations, the recognition of a potential new defence to copyright infringement, and more...

Hot Off the Press

[A “Distinct” Challenge for Trademark Owners: A Review of the Inherent Distinctiveness Objection in Trademark Examinations >](#)

It has been six years since the 2019 overhaul to Canada's *Trademarks Act*, and the “not inherently distinctive” (NID) objection to trademark registration introduced as part of those amendments has led to confusion and unpredictability for trademark applicants. In this article, members of the Cassels Trademarks & Brand Management team discuss some of the challenges that this ground of objection has caused and offer recommendations both for how brand owners seeking to secure trademark registrations can minimize their risk of facing an NID objection as well as how brand owners can increase their chances of overcoming an NID objection if one is received.

[The Tort of Misuse of Copyright: A Viable Defence >](#)

The Federal Court of Appeal recently opened the door to potentially significant changes in how copyright infringement claims are litigated in Canada. In *Bell Canada v. Millennium Funding, Inc.*, the Court confirmed for the first time that the emerging doctrine of “copyright misuse” – when a copyright holder attempts to use their copyright in a manner that violates antitrust law or public policy – can be a viable defence to a copyright infringement claim in Canada. This article provides an overview of the Court's decision and what it may mean for copyright litigants going forward.

Cassels Wins

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[Cassels Recognized Among the Country's Best in Chambers Canada 2026 >](#)

Cassels is proud to announce that over 70 of our lawyers across more than 25 areas of practice have been recognized as leaders in their field in the 2026 edition of Chambers Canada.

The Cassels Intellectual Property team was noted as a leader in both "Intellectual Property" and "Intellectual Property: Litigation," with [Casey Chisick](#), [Mark Davis](#), and [Andrew Skodyn](#) all receiving individual recognition. In addition, [Jennifer McKenzie](#) was recognized in the area of "Advertising & Marketing" and [Jessica Zagar](#) was recognized for the first time in the area of "Media & Entertainment."

[Best Lawyers in Canada 2026 >](#)

Cassels is proud to announce that 110 of our lawyers across 35+ practice areas have been named to the 2026 edition of Best Lawyers in Canada, the strongest showing ever for the firm.

[Casey Chisick](#), [Mark Davis](#), [Steven Kennedy](#), [Karen MacDonald](#), [Eric Mayzel](#), [Jennifer McKenzie](#), [Andrew Skodyn](#), and [Jessica Zagar](#) were all recognized in the area of [Intellectual Property Law](#).

[Best Lawyers: Ones to Watch 2026 >](#)

Cassels is excited to announce that 43 of our lawyers have been named to the 2026 edition of Best Lawyers: Ones to Watch, our best showing yet. Ones to Watch recognizes practitioners for outstanding professional excellence early in their careers.

[Lindsay E. Dykstra](#), [Kassandra Shortt](#), [Sam Sokoloff](#), [Claire Stempien](#), and [Eleanor Wilson](#) were all recognized in the area of [Intellectual Property Law](#).

[Cassels Lawyers Recognized in Lexpert's Special Edition on Health Sciences >](#)

[Casey Chisick](#), [Mark Davis](#), [Karen MacDonald](#), and [Andrew Skodyn](#) have been recognized in this year's edition of the Lexpert Special Edition on Health Sciences. Inclusion in this guide is based on an extensive peer survey to identify leading lawyers in the health sciences industry from across the country. This Lexpert special edition also features in-depth editorial articles discussing industry developments, trends, and legal issues.

[Cassels Partners Recognized as 2025 IP Stars by ManagingIP >](#)

We are excited to see multiple Cassels partners recognized as "IP Stars" in the 2025 edition of Managing Intellectual Property, one of the leading rankings of intellectual property lawyers around the world. This year's listees include: [Casey Chisick](#) (Copyright), [Mark Davis](#) (Patent | Trademark), [Karen MacDonald](#)

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(Trademark), [Chandimal Nicholas](#) (Transactions), [Stephen Selznick](#) (Copyright), [Andrew Skodyn](#) (Patent | Trademark), and [Jessica Zagar](#) (Copyright). In addition, [Steven Kennedy](#) and [Eric Mayzel](#) have been named notable practitioners for their work in intellectual property law.

[Mark Davis and Andrew Skodyn Named to IAM's Patent1000 2025 >](#)

[Mark Davis](#) and [Andrew Skodyn](#) have been ranked by IAM on its Patent1000 list for 2025. In addition, the firm's [Intellectual Property Group](#) has been recognized for patent litigation. The Patent1000 focuses exclusively on patent practice and has firmly established itself as the definitive 'go-to' resource for those seeking world-class patent expertise.

[Mark Davis Recognized Among WIPR Leaders >](#)

[Mark Davis](#) has been recognized among the WIPR 2025 Leaders by the World IP Review. WIPR Leaders is a definitive guide to the world's top intellectual property lawyers, curated across 80+ countries and six continents. The lawyers included this year represent the very best in IP law.

Recent Work

Cassels Secures IP Litigation Victories

The Cassels IP team recent secured an important IP litigation victory:

- In, *Astra Capital Incorporated v. Astra Energy Services Corp.* 2025 [TMOB 114](#), [Stephen Selznick](#) and [Eleanor Wilson](#) obtained a significant win before the Trademarks Opposition Board, representing Astra Capital Incorporated. In this unique case, Astra Capital successfully opposed Astra Energy's application for the mark Astra Group Corp. & Design based on confusion with its registered trademarks ASTRA PROPERTY GROUP (TMA1167255) and ASTRA PROPERTY GROUP & Design (TMA1167256). Interestingly, Astra Capital's marks were filed *after* Astra Energy's proposed mark, but had proceeded to registration first. In responding to the opposition, Astra Energy argued that Astra Capital should be estopped from opposing Astra Energy's mark because Astra Capital had deleted certain services from its own application after receiving an objection to registration from the Trademarks Office based on alleged confusion with Astra Energy's mark. However, the Board agreed with Cassels' arguments that unlike in patent cases, where there is statutory support for the Registrar of Patents to exercise jurisdiction to apply equitable doctrines such as estoppel, no such authority exists for the Registrar of Trademarks. The Board further accepted Cassels' position that even if it did possess equitable jurisdiction to find estoppel, Astra

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Capital's removal of the services in issue was not an admission of the likelihood of confusion with Astra Energy's mark. The Board went on to hold that Astra Capital succeeded on multiple grounds of opposition and refused Astra Energy's trademark application.

Recent Publications

Cassels Contributions to Prominent IP Publications

- [Mark Davis](#) and [Kassandra Shortt](#) have updated their chapter on Costs in *Intellectual Property Disputes: Resolutions and Remedies*, a one-stop reference for litigators and counsel advising on the remedies available to intellectual property owners and stakeholders at all stages of IP disputes, including initial risk management, mediation and alternative dispute resolution, and all levels of litigation.
 - [Jennifer McKenzie](#), [Steven Kennedy](#), and [Rounaq \(Ron\) Khoja](#) have co-authored the Canada Chapter of WTR – Americas Trademark Prosecution Review 2025, published by the World Trademark Review. This publication offers a wide-ranging view of the best strategies to follow across the Americas to secure trademarks, with a focus on the prosecution landscape in specific key markets, including Canada.
 - [Mark Davis](#) has updated the Trademark Litigation materials on LexisNexis Practice Advisor, providing practice notes and tips for legal professions regarding summary judgment and anti-counterfeiting. These updated materials include checklists for drafting notices, actions and applications, and precedents for various letters, statements of claim, and statements of defence.
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In Case You Missed It

[“Live Forever”: Ownership and Usage of Concert Photos >](#)

Oasis' North American reunion tour has been a source of controversy among photographers and journalists due to strict photo usage limits imposed by the band's management. Several prominent news media organizations, including Getty Images, Reuters, and AFP, have suspended coverage of the tour, citing concerns over press freedom and the preservation of cultural records. This article provides a copyright and entertainment law perspective on the ongoing tensions, discussing the often-contentious nature of photograph rights in the live music industry.

[Patented Drug Pricing: The PMPRB Releases New Price-Review Guidelines >](#)

On June 30, 2025, the Patented Medicine Prices Review Board published its new [Guidelines for PMPRB Staff](#), outlining the new two-step process by which PMPRB staff will monitor, review, and make recommendations on patented drug prices. These new guidelines will come into effect on January 1, 2026.

[Canadian Consultation on Proposed Changes to the Madrid System Principle of Dependency >](#)

The Canadian Intellectual Property Office (CIPO) is currently conducting a public consultation on the principle of dependency under the Madrid System. The Madrid System allows trademark owners to apply for trademark protection in over 100 countries by filing a single application with the World Intellectual Property Office (WIPO) through the trademarks office in their home country. The goal of the consultation is to receive feedback on the proposed changes to the principle of dependency, including whether to change the five-year dependency rule, which states that for the first five years after international registration, certain changes that are made to the basic application or registration must be communicated to WIPO. At the end of the five-year dependency period, the international registration becomes completely independent of the basic application or registration.

[Potential Amendments to Canadian Practice on Patentable Subject-Matter for Computer-Implemented Inventions >](#)

The Canadian Intellectual Property Office (CIPO) has proposed amendments to the Manual of Patent Office Practice (MOPOP) relating to patentable subject-matter. The MOPOP is intended to be a comprehensive guide to CIPO's patent practices. The proposed amendments are intended to reflect the evolution in Canadian patent law and examination practices for computer-implemented inventions following two recent landmark judicial decisions: *Canada (Attorney General) v. Benjamin Moore & Co.* 2023 FCA 168 and *Choueifaty v. Canada (Attorney General)* 2020 FC 837.

[CRTC Public Hearing on the Modernization of the Definition of CanCon Within the Audiovisual Industry >](#)

The CRTC held a public hearing from May 14–27, 2025 to modernize the definition of Canadian content (CanCon) in the audiovisual industry. Stakeholders were invited to comment on proposed changes, including expanding key creative roles, defining “showrunner,” revising creative control criteria, and introducing flexibility in IP ownership requirements. The hearing also addressed broader issues such as AI use in broadcasting and access to data and information for the broadcasting industry.

A Few More Things

On the Horizon

- [Jessica Zagar](#) is presenting 'Copyright in the Age of AI: Legal Implications and Emerging Issues' during the Ontario Bar Association's Entertainment, Media and Communications Law and Information Technology and Intellectual Property Law Program, being held virtually on October 8, 2025.
- [Karen MacDonald](#) is presenting "IP Remedies" at the Federal Court Annual Education Seminar for Federal Court judges on October 15, 2025, in Vancouver.
- [Eric Mayzel](#) is moderating a panel on "Cross-Border Copyright Foundations" on October 20, 2025, at the Copyright Society International Meeting in Dublin, Ireland.
- [Kassandra Shortt](#) is moderating the IPIC webinar "Limitation Periods in IP Cases: Key Principles and Challenges" on October 27, 2025.
- [Mark Davis](#) will present "Whose Invention is it Anyway? Naming AI as an Inventor in Patent Applications" at a webinar hosted by LexisNexis Canada on October 30.
- [Chandimal Nicholas](#) will be speaking at the 3rd Annual Advanced Summit on Food Law & Regulation Canada, taking place from November 12-13, 2025.
- [Mark Davis](#) is presenting "Summary Judgment – When and How to Use it Effectively for Patent Matters" at the University of Toronto's Patent Colloquium on November 14, 2025, in Toronto.
- [Mark Davis](#) is chairing the four-part IP Strategy webinar series "Being an Effective IP Strategist", hosted by IPIC. [Andrew Skodyn](#) is moderating the session, "Monitoring & Measuring the Success of an IP Strategy" as part of the series on November 25, 2025.
- [Claire Stempien](#) is hosting a webinar for law students in British Columbia titled "A Day in the Life of an IP Professional" as part of IPIC's Emerging Leader's Outreach Committee.

Where We've Been

- Members of the Cassels IP team have been appointed to multiple committees for the 2026-27 term of the International Trademark Association (INTA). These appointments include [Mark Davis](#) (Parallel Imports), [Steven Kennedy](#) (Commercialization of IP), [Karen MacDonald](#) (Anti-Counterfeiting), [Jennifer McKenzie](#) (Brand Restrictions), [Claire Stempien](#) (Brands and Sustainability), and [Stephen Selznick](#) (Right of Publicity & Canadian correspondent for INTA Weekly Bulletin).
- [Mark Davis](#) has been appointed as a Director of the Intellectual Property Institute of Canada (IPIC).
- [Jessica Zagar](#), [Stephen Henderson](#), and [Dakota Bundy](#) presented on Contracts & Negotiations at The NXT Gen Data & Tech Summit on September 30, 2025.
- [Casey Chisick](#) and [Eric Mayzel](#) presented an "Overview of Artificial Intelligence Litigation" on September 29, 2025, at Music Publishers Canada's Music Tech Summit.
- [Mark Davis](#) attended the ABA IP Law Spring Meeting in Washington D.C. to connect with our US

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colleagues.

- [Karen MacDonald](#) discussed “Extraordinary Remedies in IP Litigation: Mastering Anton Piller, Mareva & Norwich Orders” as part of an IPIC webinar that took place on September 19, 2025.
- [Steven Kennedy](#) spoke on a panel for the ABA Business Law Fall Meeting on September 18, 2025, on the topic of “Who Owns IT? IP Ownership Conundrums in Business Transactions.”
- [Lindsay Dykstra](#) was a guest speaker at Canada's Music Incubator (CMI) for its Artist Entrepreneur program on Wednesday, September 10, 2025, where she provided an overview on entertainment law matters relevant to up-and-coming music artists.
- [Casey Chisick](#), [Mark Davis](#), [Sean Jackson](#), [Andrew Skodyn](#), and [Eleanor Wilson](#) attended the Intellectual Property Owners Association (IPO) Annual Meeting, which was held from September 7-9, 2025 in San Diego.
- [Eric Mayzel](#) presented at the Osgoode Hall Law School Intellectual Property Law & Technology Intensive Program on “Copyright Collective Administration & Reform” on September 3, 2025.
- [Jessica Zagar](#) presented on IP Rights in Fashion as part of the IP Intensive (IP Innovation Clinic) at Osgoode Hall Law School on Friday, August 29, 2025.
- [Mark Davis](#) moderated a webinar on “Trademarks and Trade: Customs and Border Enforcement Issues in Canada, China, Europe and the US” on July 15, 2025, that was offered by the Intellectual Property Institute of Canada.
- [Jessica Zagar](#) co-presented the webinar “Copyright & AI: Navigating the Creative Frontier” hosted by IPIC on June 23, 2025.
- [Chandimal Nicholas](#) and [Kassandra Shortt](#) attended the 2025 BIO International Convention in Boston, June 16, 2025.
- [Andrew Skodyn](#) presented on the topic, “Working with Expert Witnesses”, at a virtual session hosted by The Advocates Society on May 21, 2025.
- The Cassels IP team once again attended the International Trademark Association Annual Meeting. [Mark Davis](#), [Steven Kennedy](#), [Karen MacDonald](#), [Jennifer McKenzie](#), [Chandimal Nicholas](#), and [Stephen Selznick](#) were in San Diego, California from May 17 to May 21, 2025, where they connected with clients and other members of the trademarks bar.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.