

Staff Report



To	General Committee
Subject	Intellectual Property Rights – Kempenfelt Kelly Trademark
Ward(s)	All Wards
Date	September 24, 2025
Department Head Approval	S. Schlichter, Director of Economic & Creative Development
Executive Management Approval	B. Araniyasundaran, P. ENG., PMP, General Manager of Infrastructure and Growth Management
CAO Approval	M. Prowse, Chief Administrative Officer
Noted	I. Peters, Director of Legal Services Department
Staff Report #	ECD008-25

Recommendation(s):

1. That Staff Report ECD008-25 regarding the City of Barrie intellectual property rights related to the name and use of Kempenfelt Kelly™ be received.
2. That a licensing agreement for the use of the Kempenfelt Kelly registered Official Marks and Trademark be provided to Tourism Barrie for their immediate and continued use of the Kempenfelt Kelly™ name and image to promote tourism activity in the City of Barrie.
3. That the City Clerk be authorized to sign a Consent to Use of the Trademark Letter in relation to the Kempenfelt Kelly™ trademark for Tourism Barrie in a form acceptable to the Director of Legal Services.
4. That staff in Economic and Creative Development develop a policy framework for community and commercial use of the Kempenfelt Kelly™ mark that reflects the principles of civic pride, children’s enjoyment, and tourism promotion and report back to General Committee.

Executive Summary:

The purpose of this Staff Report is to **provide members of Council with an update concerning the trademark of Kempenfelt Kelly™, the City of Barrie's continued ownership and the use of the trademark by Tourism Barrie.**

Key Findings:

Barrie businessman Arch Brown commissioned a cartoon logo in 1967 to be able to bring to life a mysterious creature that may have lived in the depths of Kempenfelt Bay, thus naming it Kempenfelt Kelly. **Mr. Brown graciously donated the Kempenfelt Kelly™ trademark to the City of Barrie in 1987 for the purposes of tourism promotion, enjoyment and benefit of children.** Kempenfelt Kelly™ became the official mascot of the City of Barrie in 1990.

On July 19th, 2024, the City of Barrie were notified by the Canadian Intellectual Property Office that an individual had made an application to challenge the City's ownership of the Kempenfelt Kelly™ trademark under section 45 of the Trademarks Act, in an effort to claim and register it for their own commercial use. Legal Services engaged an Intellectual Property specialist to support the City's response.

Following this, **the City has been successful in the following:**

- 1. Retaining the Kempenfelt Kelly™ trademark, however with a limited scope of use,** as the goods (t-shirts and caps) and some of the services were removed
- 2. Securing two Official Marks for both the word and design elements of Kempenfelt Kelly™** (refer to the Appendix)

The City of Barrie continues to own, maintain and actively defend Kempenfelt Kelly™'s use to ensure it remains under city control for the intended purpose that Arch Brown initially laid out.

In terms of past use of the trademark, **Tourism Barrie has been a longstanding supporter of the Kempenfelt Kelly™ trademark, utilizing it effectively to highlight the city's waterfront and enhance the promotion of community and tourism events.** Their efforts have contributed to building awareness and strengthening the city's profile as a destination. **With the City's recent acquisition of Official Marks, staff are recommending the formalization of Tourism Barrie's ongoing use of the trademark through a Consent to Use of the Trademark Letter.** This step will ensure that Tourism Barrie can continue leveraging the trademark while providing the City with assurance that its use remains aligned with approved boundaries and brand protection objectives.

Financial Implications:

Allowing Tourism Barrie to continue using the Kempenfelt Kelly™ trademark will have no financial implications for the City of Barrie. The arrangement simply formalizes existing practice and provides clarity around permitted use, with no associated costs or budget impacts to the municipality.

Alternatives:

The following alternatives are available for consideration by General Committee:

Alternative #1 – General Committee could choose not to allow Tourism Barrie continued use of the trademark. This alternative is not recommended as the trademark was established to support tourism promotion, community enjoyment, and overall public benefit - values that align directly with Tourism Barrie’s mandate and ongoing efforts. The trademark has become a recognized community icon, and its continued use by Tourism Barrie ensures it is shared in a way that reinforces local identity and pride, while remaining within the boundaries of the City’s trademark use policy.

Strategic Plan Alignment:

Affordable Place to Live		
Community Safety		
Thriving Community	X	<ul style="list-style-type: none"> • Create and foster programs and opportunities to support community wellness
Infrastructure Investments		
Responsible Governance	X	<ul style="list-style-type: none"> • Ensure accountability and transparency

Additional Background Information and Analysis:

As part of the City’s due diligence in preparing a response to the trademark challenge, staff undertook a coordinated effort to gather supporting evidence demonstrating the ongoing use and community value of the trademark. This includes Tourism Barrie, who have incorporated the trademark into the promotion of local events and tourism marketing assets as well as City departments who, over time, have utilized the Kempenfelt Kelly™ trademark in marketing and summer camp initiatives.

On June 9th, 2025, the City received notice of the Section 45 proceeding decision by the Trademark Registrar. As a consequence, the City's trademark registration was amended but not completely expunged. The goods (t-shirts and caps) were removed, as well as some of the services. While the Kempenfelt Kelly™ trademark was amended, the City of Barrie still has a registered trademark, just with a more limited scope for use.

Given the community-oriented nature of the image and usage of Kempenfelt Kelly™, the City further pursued registration of the mark as an “Official Mark”. Unlike a trademark, which is typically granted to individuals or businesses to protect their commercial brand within specific classes of goods or services, an official mark is a designation available exclusively to public authorities that provides broader and more permanent protection.

As of July 2, 2025, the City received formal notice that the official marks had been successfully published for both the word and design elements of Kempenfelt Kelly™.

Currently, staff have been informed that the original challenger to the City’s trademark has misrepresented their ownership of the mark within the community which presents a significant concern. A legal response is underway.

This misinformation has created confusion and is particularly problematic given that several community organizations and businesses have expressed interest in incorporating the Kempenfelt Kelly™ story and lore into their promotional activities to highlight and celebrate the City of Barrie. At this time, out of an abundance of caution, staff are unable to pursue support to authorize the use of the official marks by third parties given the challenger’s actions and his pending application. This limits opportunities to leverage this important cultural asset for community and economic promotion.

The City’s legal proceedings to protect the integrity of the mark and the outstanding process related to the challenger’s trademark application are also continuing.

The Economic and Creative Development Department, in collaboration with Legal Services and Access Barrie, are currently drafting an Official Mark Community Use Policy to guide the appropriate use of the City’s official mark(s) and trademark(s). This policy will establish a clear process for individuals, businesses, non-profit organizations, and community groups to request and obtain permission to use the marks, while also setting out the parameters and restrictions for their application. The intent is to ensure consistent, respectful, and appropriate representation of the City’s identity across all community, cultural, and promotional initiatives.

Kempenfelt Kelly™ is more than just a mascot. It is a beloved community icon that embodies the spirit, creativity, and shared folklore of our city. For generations, residents and visitors alike have cherished the tales of Kelly while enjoying days on the Bay, with stories of the fabled lake “monster” becoming part of Barrie’s cultural fabric. Community groups recognize and respect Kelly as a symbol that belongs to everyone, and they value its role in uniting people through shared imagination and pride. In fiercely defending this treasured icon, the City is not only protecting its identity but also ensuring that Kempenfelt Kelly™ continues to as intended - bringing joy, wonder, and a sense of belonging to the Barrie community for years to come.

Consultation and Engagement:

There was no public consultation required in relation to this Report.

Environmental and Climate Change Impact Matters:

There are no environmental and/or climate change impact matters related to the recommendation.

Appendix:

Appendix A - Registered Marks – Kempenfeld Kelly™ Design

Report Author:

Sarah Young, Senior Business Innovation & Strategic Partnerships Officer, Economic & Creative Development

Appendix A - Registered Marks

KEMPENFELT KELLY DESIGN — 0928993



Application number

0928993

Type(s)

Design

Section 9 information

Subparagraph 9(1)(n)(iii)

Category

Prohibited Mark; Official Mark

CIPO Status

ADVERTISED

TM5 status

Filed

2025-04-07

Registered

2025-07-02

Responsible Authority

The Corporation City of Barrie
City Hall, PO Box
Collier Street
Barrie
ONTARIO L4M4T5

Agent

MIMI R. PALMER
WeirFoulds
66 Wellington Street West,
Suite 4100
P.O. Box 35
Toronto
ONTARIO M5K1B7

Documents

[View documents](#)

Vienna information (Code & Description)

- 3.15.0 Other animals; large prehistoric animals, dinosaurs --
Note: Not including fabulous animals of divisions 4.3 and 4.7.
- 4.5.15 Other forms representing an unidentifiable animal, other fantastic beings having the appearance of animals --
Note: Not including fabulous animals classified in division 4.3.

Classification data

Disclaimer

The classification data is provided for information and searching purposes only. CIPO does not warrant the accuracy of the classes assigned to the trademark. This data has no legal value of any kind.

- 1 - Chemicals and adhesives
- 2 - Paints, varnishes and lacquers
- 3 - Bleaching, cleaning preparations and non-medicated cosmetics
- 4 - Industrial oils, greases and fuels
- 5 - Pharmaceuticals and herbicides
- 6 - Common metals
- 7 - Machinery
- 8 - Hand tools
- 9 - Electrical, scientific and teaching apparatus and software
- 10 - Medical and veterinary devices
- 11 - Environmental control items
- 12 - Vehicles
- 13 - Guns and ammunitions
- 14 - Precious and semi-precious metals, and jewellery
- 15 - Musical instruments
- 16 - Paper and printed goods
- 17 - Rubber and rubber goods
- 18 - Leather and artificial leather goods
- 19 - Non-metallic building materials
- 20 - Furniture, mirrors, articles not included in other classes
- 21 - Household goods and glass
- 22 - Ropes and fibres
- 23 - Yarns and threads
- 24 - Textiles and textile goods
- 25 - Clothing, footwear, headgear
- 26 - Sewing and decorative items including slide fasteners
- 27 - Floor coverings
- 28 - Games, toys and playthings, sporting articles

- 29 - Meats and processed foods
- 30 - Staple foods
- 31 - Agricultural, horticultural and forestry
- 32 - Beer and non-alcoholic beverages
- 33 - Wines and spirits
- 34 - Smoker's articles
- 35 - Advertising, marketing, promotional and business
- 36 - Insurance and financial
- 37 - Building construction and repair
- 38 - Telecommunications
- 39 - Transportation and storage
- 40 - Treatment of materials
- 41 - Education and entertainment
- 42 - Computer and scientific
- 43 - Accommodation, food and drink
- 44 - Medical and veterinary, beauty, agricultural and forestry
- 45 - Personal and legal

Action History

Action	Action date	Due date	Comments
Filed	2025-04-07		
Created	2025-04-14		
Formalized	2025-04-14		
Accepted for Publication	2025-06-20		
Advertised	2025-07-02		Vol.72 Issue 3688

KEMPENFELT KELLY — 0928994

Application number

0928994

Type(s)

Word

Section 9 information

Subparagraph 9(1)(n)(iii)

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ADVERTISED

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Agent

MIMI R. PALMER
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Suite 4100
P.O. Box 35
Toronto
ONTARIO M5K1B7

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Index headings

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