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Appellate Group Of The Year: Williams & Connolly

By **Christopher Cole**

Law360 (December 4, 2020, 4:10 PM EST) -- Williams & Connolly LLP scored wins in two major intellectual property cases before the U.S. Supreme Court, including a decision in favor of Booking.com that adding a domain to a generic name can create a protectable trademark, which put it among Law360's Appellate Groups of the Year.

The firm's widely known appellate practice, frequently called upon to tackle marquee cases before the justices and circuit courts, also won a major IP victory when the high court overturned a Federal Circuit ruling that a trademark owner must prove "willful" infringement to recover profits from an alleged infringer.

The cases are two out of a variety of wins Williams & Connolly took home on behalf of clients over the past year, even as COVID-19 shattered the norms of doing business in the legal industry. The group also counts among its victories an important case involving toxic waste cleanups conflicting with the U.S. Environmental Protection Agency's projects.

Sarah M. Harris, a partner in the practice, told Law360 the firm has earned a reputation for taking on high-profile appeals and, in perhaps a rarity for Washington, D.C., taking a bipartisan approach to an ever-expanding caseload.

"We are one of the few truly bipartisan practices out there, and we make a really conscious effort to appeal to both the right and the left when we are trying to brief arguments for the court," she said. "We all bring different perspectives and appeal to different people across the aisle, which has been pretty effective for us in terms of getting clients to trust us with their cases."

Harris called it a "pretty good batting average" that the firm has won all three cases it argued before the Supreme Court during the year.

Possibly the firm's biggest case in sheer publicity terms was U.S. Patent and Trademark Office v. Booking.com, in which the latter retained Williams & Connolly as lead counsel before the high court. The big question for the justices was essentially whether a common word could be turned into a protectable trademark using the generic top-level domain ".com."

Booking.com's argument carried the day, led by practice group partner Lisa S. Blatt and Harris as lead brief-writer and second chair. In what ended up being groundbreaking for the legal profession, when Blatt presented oral arguments in early May, it was the first case in Supreme Court history to be argued remotely — not to mention the first where live audio was publicly available.

The court ruled 8-1 in the online company's favor, saying on June 30 that the ".com" addition could protect the name.

In another key triumph, the Williams & Connolly team repped a small, family-owned business called Romag Fasteners Inc. in appealing an adverse Federal Circuit decision concerning whether a trademark owner had to prove "willful" infringement in order to recover profits.

At the crux of the case was a bid by Romag, which makes magnetic handbag snaps, to collect profits from Fossil Inc. for making what the firm described as "counterfeit Romag snaps," an effort that the lower courts, citing precedent, decided would need to hinge on a showing of "willful" infringement. A jury had found that Fossil acted with "callous disregard" for Romag's rights but that its infringement was not "willful," the firm said.

After granting review and hearing arguments, the high court ruled unanimously on April 23 in favor of Romag's stance that a trademark plaintiff need not prove "willfulness" to be awarded profits.

Harris said it was noteworthy that two of the biggest Supreme Court cases for over the course of a year had been IP disputes, a legal area that's not always been a staple for Williams & Connolly, though it does take on all kinds of work.

In one of the most complicated cases, the firm noted that Blatt served as lead counsel for Atlantic Richfield Co. in seeking to overturn an opinion of the Montana Supreme Court that landowners can pursue common-law claims for "restoration" requiring environmental cleanups at Superfund sites that directly conflict with EPA-ordered cleanups at those sites.

Atlantic Richfield argued among other things that the Comprehensive Environmental Response, Compensation, and Liability Act requires the landowners who filed a lawsuit to seek EPA approval for a plan to restore a Superfund site.

The Supreme Court ruled unanimously on April 20 in favor of Atlantic Richfield on that ground, in what the firm said was the court's first case in more than a decade involving CERCLA, which Harris described as an "unbelievably complicated and messy statute" for courts and lawyers to dissect.

Harris said she was "incredibly grateful" for the teamwork at Williams & Connolly, among them appellate group partner Amy Mason Saharia, for the collaboration that has helped the practice succeed at each level of federal appeals court. She believes the firm's willingness to delve into any kind of litigation makes it stand out.

"The combination of COVID and being busier this year than we ever have before has been a real challenge," Harris said, but the firm has continued to thrive, projecting further growth into next year. "I think it's a great testament to our practice."