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Intellectual Property Group Of The Year: Williams & Connolly

By **Ivan Moreno**

Law360 (February 16, 2024, 2:02 PM EST) -- Attorneys at Williams & Connolly LLP had a landmark year with two precedent-setting victories in the U.S. Supreme Court that will affect copyright and trademark litigation for years to come, earning the firm a spot among Law360's 2023 Intellectual Property Groups of the Year.

The first victory at the high court came in May, when the justices ruled 7-2 that Andy Warhol's "Orange Prince" silkscreen infringed the copyright of the Prince photograph it was based on, taken by Lynn Goldsmith.

The following month, Williams & Connolly was on the winning side again when the justices ruled unanimously that the First Amendment did not shield a company from trademark infringement liability for creating a poop-themed dog toy that parodied Jack Daniel's iconic whiskey bottles.

"These are two of the most fun cases our practice has ever handled in the Supreme Court and also reflect that we're making a name for ourselves in this area," said Sarah Harris, a Williams & Connolly partner.

Intellectual property attorneys have told Law360 that before Warhol, the question of whether something was "transformative" had taken over the fair-use analysis. The Warhol ruling changed that, with the justices concluding Warhol's silkscreen was not fair use — regardless of how transformative — because it shared the same commercial purpose as Goldsmith's photograph, which was magazine publishing.

The Jack Daniel's decision did something similar to trademark law, raising the standard for when using someone else's trademark as part of an expressive work — whether a movie or a dog toy — can be protected by the First Amendment under the judicially created Rogers test. Justices took no position on the Rogers test but ruled in June it cannot apply when an alleged infringer uses another's trademark to identify its own goods.

The Warhol decision provided clarity on fair use and gave "protection to original creators," Harris said.

"And the same thing for Jack Daniel's, just in terms of removing a misimpression with respect to the Rogers test and how far it could go," she said.



Both cases were argued by Williams & Connolly partner Lisa Blatt, who has presented more than 40 cases to the high court.

"I don't think you could have picked a better advocate for those cases if you had to literally reverse-engineer someone," Harris said.

Besides an epic year at the Supreme Court, the firm notched major wins in federal court and at the Patent Trial and Appeal Board.

Williams & Connolly won a bench trial in New Jersey federal court in June for Teva Branded Pharmaceutical Products and Norton Waterford Ltd. against Cipla Ltd. in a patent dispute concerning Teva's dose counter for an asthma inhaler. The case is on appeal.

"One notable part of this trial from the perspective of our patent group is that nearly all of the witnesses were examined by associates on our team, while the other side basically had only partners stand up in court," said partner David Berl.

Berl said that's an example of the deep talent pool at the firm.

"That's what I tell all clients who come in the door is that a lot of firms have great partners, and you can find really good lawyers at any firm, but our bench and our associates are far superior, I think, to any other firm," he said.

Williams & Connolly also represented Pfizer Inc. against uniQure Biopharma BV in challenging two patents relating to gene therapy for hemophilia B, getting a favorable result at the PTAB in November 2022.

"It was a really hard-fought battle where we were challenging 26 claims across two different patents," said partner Dov Grossman. "Ultimately, the [Trademark Trial and Appeal Board], in three final written decisions, invalidated all of those claims, so it was a really satisfying victory on our end, a complete victory for Pfizer at the PTAB level."

The case is being appealed at the Federal Circuit. Pfizer's gene therapy product is in clinical trials, and it would be the company's first gene therapy product if approved.

Grossman and Berl said the firm approaches patent litigation by focusing on the human interest aspects of the inventions they defend from the start, rather than getting bogged down by technical details.

"We don't turn it into an intellectual exercise," Berl said. "All of these inventions that we defend are meaningful, important inventions, and we convey that to the court."

Grossman said the firm's IP practice has a "unique combination" of people with and without science backgrounds.

"We intentionally staff our cases that way because we want to make sure that if we take some complicated technological concept that we're going to be explaining to a generalist judge, that there are non-technical people on our teams who will understand what people are saying," he said.

It is important, however, to be mindful of the audience, Grossman said, noting judges at the PTAB have technical backgrounds.

"If you try to take a scientific fact and give it a broader meaning beyond what the scientific evidence provides, they will call you out on it," he said. "So knowing your audience is critical, too."

--Editing by Karin Roberts.