

Appellate Group Of The Year: Williams & Connolly

By Chart Riggall

Law360 (February 7, 2024, 2:50 PM EST) -- Securing intellectual property victories for Jack Daniel's Properties Inc. in a suit against a novelty toy manufacturer, and for the photographer behind an Andy Warhol painting of Prince, are among the accomplishments that earned Williams & Connolly LLP's appellate team a spot among Law360's 2022 Appellate Groups of the Year.

Led by powerhouse litigator Lisa Blatt, who was named a Law360 MVP last year and has argued dozens of cases before the U.S. Supreme Court, the Williams & Connolly team argued some of the highest-profile cases of last year's high court terms, more often than not walking away with a victory for the firm's clients.

During the 2022-23 term alone, Williams & Connolly served as lead counsel on eight cases before the high court, arguing seven.

Perhaps the most visible was the firm's work on behalf of Jack Daniel's, going to the mat with VIP Products LLC over the latter company's play on Jack Daniel's iconic whiskey bottle in a poop-themed dog chew toy. An Arizona federal court had agreed with Jack Daniel's in 2017 that its brand was being harmed by the toy, but the Ninth Circuit overturned the ruling in 2020 based on the Rogers test, which governs when free speech concerns trump those of intellectual property.

Williams & Connolly was able to persuade the high court's justices that VIP Products couldn't assert its First Amendment rights if the parody was based on a trademark.

Sarah Harris, a partner in the firm's appellate practice, told Law360 the court has signaled an increased willingness to wade into intellectual property issues in recent years.

"I think the justices, it's fair to say, increasingly just like IP, especially soft IP," she said. "Many [petitions] were granted in the soft IP space in the past couple of terms, and I think it's because it's fun. The statutory questions tend to be solvable, manageable and certainly important."

While observers had looked to the case as perhaps the death knell of the Rogers test, the justices opted for a narrower reading of the long-standing precedent.

"This is a good case that shows leaving your options open, in terms of the path to a win, is important,"



Harris said. "And I think arguments reflected that too — [Blatt] gave them a great menu of options and ways to win."

Asked if the court had erred in declining to take up those broader questions, Blatt quipped, "I would never say the court erred, much less in a case we won 9-0."

In another major intellectual property win, the firm notched a victory for photographer Lynn Goldsmith, who said Andy Warhol's use for a painting of a photograph she took of Prince wasn't fair use. Justices sided 7-2 with Goldsmith, in a case Blatt described in an earlier interview as a "David and Goliath" showdown between Warhol's foundation and an independent photographer.

Blatt told Law360 of the litigation, "We tried to show the court that two artists' work were at issue and that billions of dollars and multiple industries function today on the bedrock principle that the core of copyright includes the right by ... original artists — photographers, authors, musicians and movie studios — to be paid for derivative works."

Harris added, "This case, especially, [was] just so bound up with — what are the consequences in the real world for movie adaptations, or commercials, that sort of stuff? Both sides' briefs were very much dedicated to a lot of the practical concerns that really win copyright cases because they're bound up with, how do you tell if a statute will operate?"

"If you asked what brief was the most fun to work on, this would be at the top of the list," she said. "And I can't think of an argument where the court seems to have had more fun. Maybe Jack Daniels, but this was definitely one for the ages for basically everyone involved."

With 34 attorneys in the practice area, most of Williams & Connolly's appellate attorneys practice out of its Washington, D.C., office. The honor of being named one of the top appellate groups is a familiar one for the firm, notching the same recognition in 2019, 2020 and 2022.

Harris cited Blatt — who boasts a nearly 90% win rate before the Supreme Court — as instrumental to the group's success, but also credited her with involving every member of the team in its work.

"It's a testament to Lisa being very devoted to spreading the wealth. I can't even imagine how probably impossible, but also exhausting, it'd be for one person. ... There's a clear sense of, this is not just everyone revolving around the sun, with no opportunities for doing anything else," she said.

Added Blatt, "We fall in love with our clients and try to frame every case to get the court to feel the same way."

--Editing by Kristen Becker.
