

## Appellate Group Of The Year: Orrick

By Piper Hudspeth Blackburn

*Law360 (February 15, 2023, 2:03 PM EST)* -- Orrick Herrington & Sutcliffe LLP's appellate practice group notched high-stakes wins in the past year for major tech, pharmaceutical and financial companies, including a substantial victory at the U.S. Supreme Court for fabric designer Unicolors, earning it a spot among Law360's 2022 Appellate Groups of the Year.

According to Josh Rosenkranz, the head of the firm's Supreme Court and appellate practice, what stands out most about Orrick's success is the team's ability to deliver on a wide variety of challenging cases.

"I think it's a validation of what we've been striving for, which is to do the biggest, hardest appeals, with a view toward diversity of every sort," Rosenkranz said, adding that the firm has worked cases that "run the gamut from copyright to banking, down to products liability to patents."

Rosenkranz is quick to note that the group's numerous wins in the past year also happened in a variety of courts, from state courts to the nation's highest.

In February 2022, Orrick delivered a victory for Unicolors at the Supreme Court, convincing the justices to reinstate a copyright infringement verdict that the company won against fast-fashion chain H&M. The team first got involved in the case after the Ninth Circuit reversed a jury verdict that sided with Unicolors in 2020.

The Supreme Court ruling, one of the biggest copyright decisions of 2022, restored a nearly \$1 million judgment against H&M for selling jackets that infringed its copyrighted designs, holding that a lack of factual or legal knowledge could excuse mistakes in copyright registrations.

According to Orrick, the case could have fundamentally reshaped copyright litigation by prompting a hunt for minor legal mistakes on registration forms that would inevitably penalize artists who lack the legal knowledge to avoid honest errors.

On the state level, the appellate team also successfully convinced two state appellate courts to toss a total of more than \$200 million in judgments against Johnson & Johnson in cases related to talcum powder.



In July, the team scored a reversal from a New York state appeals court, overturning a \$120 million judgment against the pharmaceutical giant. The court determined that the plaintiff failed to establish sufficient evidence that her exposure to talcum in Johnson & Johnson's products led to her cancer. Just over a year earlier, in April 2021, Orrick persuaded a New Jersey appeals court to reverse a \$117 million judgment.

Partner Naomi J. Scotten described the Johnson & Johnson victories as "kind of a home run" for the practice, but she highlighted that the cases were a unique challenge because they came after huge trials with complicated records and decades of evidence.

"It's very satisfying from our perspective, because part of our job is just taking really complicated things and boiling them down," Scotten said.

Because persuading an appeals court to overturn a jury verdict is very difficult, the J&J victories are an example of the team's ability to weave their client's story into a legal argument that will persuade the judges, partner Mel Bostwick added.

"We have to have a good legal argument in order to win," Bostwick said. "But, sometimes that's not enough."

This also applies to a victory from August 2021, Bostwick continued. In that case, the group convinced the Federal Circuit to overturn a \$1.1 billion judgment against Gilead's Kite Pharma Inc., in an intellectual property suit with Juno Therapeutics Inc. over a lifesaving cancer therapy.

Orrick was also successful in defending tech behemoth Apple Inc. in a long-running patent dispute with Canadian licensing firm Wi-LAN in February 2022, convincing the Federal Circuit to reverse an \$85 million judgment.

Rosenkranz, who was recognized as a Law360's 2022 Appellate MVP for the fifth time in 2022, said the group has been able to succeed because it isn't built around one "star" attorney. Instead, it features "multiple partners, leading clients and arguing cases," in a variety of areas, he said.

For instance, on the state level, partner Andrew Silverman won a victory for New York state legislators in a New York state appellate court. The win affirmed the first pay raise for New York legislators in decades, Rosenkranz said.

A variety of associates were able to lead pro bono cases, with Jennifer Keighley winning a case for an asylum-seeker in the Ninth Circuit. That ruling ordered the immigration courts to reexamine his claims under the Convention Against Torture, an international human rights treaty.

Orrick's Supreme Court and appellate practice currently boasts 10 partners, 35 associates and one counsel all exclusively devoted to appellate work, Rosenkranz said. He predicts that the group will grow over the next five years or so, but that's not exactly the goal.

"But the object is not to grow," Rosenkranz added. "The object is to continue to do the most important and hardest cases and to win them."

--Additional reporting by Tiffany Hu, Xiumei Dong and Mike LaSusa. Editing by Steven Edelstone.  
All Content © 2003-2023, Portfolio Media, Inc.