

IP Group Of The Year: Goodwin

By **Steven Trader**

Law360, New York (January 29, 2018, 3:50 PM EST) -- In two of the biggest intellectual property cases of 2017, Goodwin first convinced the U.S. Supreme Court that Varsity Brands could copyright its cheerleading uniforms, then helped Otto Trucking escape a bitter trade secrets dispute between Waymo and Uber over self-driving car technology, securing its spot among Law360's Intellectual Property Groups of the Year.

Goodwin stepped in to advocate for Varsity Brands in its infringement suit against Star Athleta just as the case reached the high court in mid-2016 and faced the tall order of convincing the justices that the two-dimensional stripes, chevrons and other visual elements appearing on Varsity's uniforms — traditionally considered a “useful element” not protected under the Copyright Act — were indeed separable and copyrightable.

The question of when such “separability” exists had splintered the circuit courts, but Goodwin's litigators stuck close to the language of the Copyright Act and suggested a test that if you can envision the graphical element as a stand-alone work — regardless of whether it was attractive or “good art” — then it's capable of existing as a freestanding artistic work, which is how the statute reads.

“We thought our position was both sensible and most faithful to what Congress wrote,” partner William Jay, who helped argue the case, told Law360.

Jay said he faced a line of questioning from Justice Sonia Sotomayor about whether Varsity Brand's position would kill competition and also had to fend off arguments by Star Athleta that you can't have a cheerleading uniform without Varsity's copyrighted elements.

“And we said, 'Here are a bunch of pictures of cheerleading uniforms that don't have stripes, chevrons and color blocks, and, anyway, we have copyrights on particular combinations, and if you can't make those, you can make others,’” Jay said.

The duel arguments by Goodwin paid off in a lopsided 6-2 finding by the justices in March that Varsity Brands' designs were eligible for protection.

Partner Brett Schuman applied that same logical and methodical approach in what's possibly one of the



most significant employee mobility cases in a generation: a lawsuit brought by Google's autonomous car division, Waymo, against Uber for allegedly using trade secrets stolen by former Google employee Anthony Levandowski to bolster its own self-driving car unit.

Levandowski left Waymo and started Otto Trucking and Ottomotto, which was eventually purchased by Uber. It was Schuman's job to convince Judge Richard Alsup that even if Levandowski did misrepresent his former employer's trade secrets, Goodwin client Otto Trucking was a separate entity from its founder and was not liable for those actions.

"When we made that argument initially, Judge Alsup sort of in a very demonstrative way said in open court that basically, 'You've got to be kidding me. Otto Trucking is "soaked"' — and he spelled it for emphasis, on the record — 'with Anthony Levandowski,' and he basically told us to go away," Schuman told Law360.

But Schuman and his partner on the case, Neel Chatterjee, didn't back down. Instead, they showed up at multiple court hearings a week and made it a point, at every possible opportunity, to repeat their position that Levandowski and Otto Trucking were separate.

The pair also rolled up their sleeves and dug into the technical aspects of the case and established that Otto Trucking essentially existed to lend trucks to Uber for Uber to develop self-driving capabilities. So even if Levandowski did steal trade secrets, Otto Trucking didn't even possess those, the litigators argued.

Their tenacity paid off in November, when Judge Alsup reversed on his previous position and granted Otto Truckings' summary judgment motion, convinced by the argument that Otto Trucking was simply a holding company that exists to own the trucks and isn't liable for trade secrets theft.

"It was huge, because the trial date in that case has been continued a few times, there's been some further developments, and we're out," Schuman said. "And, you know ... Waymo is seeking a significant sum of money, so there is the possibility of a large verdict against Uber. And we got Otto Trucking out of that case."

In addition to its success in 2017 at the high court and defending an emerging growth company, an area of focus that's really blossomed at the firm, according to practice Chair Douglas Kline, Goodwin's IP litigators also secured a number of high-profile Hatch-Waxman trial wins on behalf of generic pharmaceutical giants like Teva and Dr. Reddys, proving again why "it is the go-to firm for Hatch-Waxman litigation."

"What I think really distinguishes our practice in a variety of ways from our competitors is the breadth of our practice," Kline said. "It's a very broad practice as far as the jurisdictions in which we operate, and we cover a very broad spectrum of technology as experts."

Considering that, according to Kline, the firm prides itself on developing its young attorneys and getting them as much "on their feet" experience at trial from the start, it's no surprise that Goodwin landed victories in the most significant intellectual property cases of the year.

"People turn to us for their most important matters, their matters that they have a high expectation will go to trial; they turn to us because of the track record of success we have at trial," Kline said. "And we think this has been another year where we've been able to demonstrate that."

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