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## How a Blog Post Led Archer & Greiner to the U.S. Supreme Court

Tony Maruo

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In 2011, Ronald Coleman banged out a frustrated entry on his popular trademark blog about an Asian-American rock band, The Slants, that was fighting to have its name accepted as a registered trademark.

"Good luck with that, fellows," Coleman wrote on the blog, titled Likelihood of Confusion.

Coleman at the time was practicing in New York but would later move to Archer & Greiner's Hackensack office. He had written before about the inconsistent policy of the U.S. Patent and Trademark Office when it came to trademark protection for offensive or disparaging names, and he did not hold out much hope that The Slants could win.

Little did Coleman know that the post would trigger a chain of events that culminates Jan. 18 when his Archer & Greiner law partner John Connell, who practices at the firm's Haddonfield headquarters, argues pro bono before the U.S. Supreme Court on behalf of The Slants. It is the most high-profile case of the nine arguments set for the court's first session of 2017 and one of few appearances by a first-time Supreme Court advocate in a case that has garnered national attention.

A few months after the blog post appeared, Coleman received a call from a Portland, Oregon, lawyer who represented The Slants. "You seem interested in the case," Coleman recalls the lawyer saying. And then he asked if Coleman might want to take it over altogether. "He said they've taken it as far as they could. Plus, they ran out of money."

Coleman said yes, though he said his firm at the time, Goetz Fitzpatrick, was not that interested in handling the case pro bono. Rounds of appeals and years later, in 2015, Coleman moved to Archer & Greiner, which was much more receptive to helping The Slants.

"The level of the pro bono effort was mushrooming and the importance of the case was mushrooming," Coleman said. "My new firm has been extremely receptive."

The Slants won before the U.S. Court of Appeals for the Federal Circuit. The en banc panel found that Section 2(a) of the Lanham Act, which bars the registration of trademarks that "may disparage," was unconstitutional. A case that began deep in the technicalities of trademark law was now a significant First Amendment tussle, and it was in the hands of a firm with limited Supreme Court experience.

The Obama administration appealed, and as soon as the high court granted cert in late September, the phones rang at Archer & Greiner from veteran Supreme Court firms. They offered to help—which in some instances meant, "We can take it from here."

Coleman said the calls "came in every flavor—from, 'What can we do to help?' to, 'You're a schmuck if you handle this yourself.'" He took the offers seriously, and understood that "there was a lot of appeal to the case. It looks like a winner."

But the tone of many of the callers was, "Only the initiated can communicate with the court," Coleman said, and he wasn't buying it. The only offer of help he accepted came from the University of California, Los Angeles School of Law Supreme Court Clinic, resulting in a "fantastic partnership" with professors Stuart Banner and Eugene Volokh, a renowned First Amendment expert.

But Coleman himself is not arguing the case, even though it was his blog post that snagged the client. His firm partner Connell, a veteran media and First Amendment litigator, was more suited for the task, Coleman said. "He's more of a constitutional law specialist, and I knew he should take it on. Even very good surgeons know they shouldn't do brain surgery."

In spite of Coleman's rebuffs, help flowed in, taking the form of more than 20 amicus curiae briefs supporting The Slants. In addition to the Cato Institute's self-described "funny brief," the court is hearing from a wide range of groups including Pro-Football Inc., whose Washington Redskins trademark was canceled under Section 2(a) in 2014. The team's appeal is before the Fourth Circuit awaiting the Supreme Court's decision in the Slants case.

The clause "blatantly" violates the First Amendment because it is content-based, viewpoint-based and erratically enforced, Arnold & Porter's Lisa Blatt wrote in the Redskins brief. "The clause targets only racial slurs, crude references to women's anatomy, and demeaning depictions of religious figures, while leaving unburdened speech that expresses a positive or neutral viewpoint on those same subjects."

By way of illustration, Blatt's brief offered an eye-popping 14-page appendix listing hundreds of offensive names that have been given trademark protection. In an apologetic tone, Blatt wrote, "Amicus regrets that it is necessary to use offensive language in a brief to this court."