

Richard Rochford and Joseph Lawlor Comment on Romag v Fossil Ruling

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PRACTICES Intellectual Property, Trademark and Advertising

Haynes Boone Partner [Richard Rochford](#) and Associate [Joseph Lawlor](#) were quoted in several publications, including *Bloomberg Law*, *World Trademark Review*, *World IP Review* and *IP Magazine*, about an April 23 ruling by the U.S. Supreme Court that willfulness is not a precondition for an award of profits against a trademark infringer.

Below is an excerpt from *World IP Review*:

Yesterday's U.S. Supreme Court ruling in *Romag v Fossil* is the latest effort to erase categorical rules on remedies for IP infringement, lawyers have told *WIPR*.

Even if its impact is not felt immediately, the ruling will be seen as a win for plaintiffs in trademark infringement suits.

"I think a useful takeaway is that Romag is pro-brand owner and pro-consumer," said Joseph Lawlor, associate at Haynes Boone, adding: "It will open the door for more brand owners to enforce their trademark rights and may discourage infringement."

But, Lawlor points out, that doesn't necessarily mean it will lead to an increase in litigation: "While plaintiffs may feel emboldened to enforce their trademark rights, there is also reason to believe that pre-litigation settlements will be more likely because defendants will face more risk in proceeding to litigation."

To read the full article, click [here](#).

Rich Rochford, was quoted in *Bloomberg*: The now-stricken "willfulness" requirement in some circuits, including the trademark-case heavy Second Circuit, had [an effect on plaintiff's willingness to pursue claims], Haynes Boone Intellectual Property Chair Richard Rochford said. Now plaintiffs have better chances for monetary awards ... as well as more leverage in negotiation and incentive to persist in litigation, he said.

"Clients want to stop infringement and get damages, and you have to tell them that damages are really tricky and difficult in a lot of cases, because there's often no way to calculate how much you had suffered," Rochford said.

To read the full article, click [here](#).

Below is an excerpt from *IP Magazine*:

Haynes Boone's Joseph Lawlor expressed his belief that the ruling may make pre-litigation settlements more likely to occur as "defendants will face more risk in proceeding to litigation."

Lawlor added, “On the other hand, litigation funding may become more available to potential plaintiffs as the potential for large monetary awards fits their funding model.”

To read the full article, click [here](#).

Here are Lawlor’s comments in *World Trademark Review*:

“The litigation funding industry is likely to be affected.”

“While much of the focus will be on brand owners, the litigation funding industry is likely to be affected by this decision. Large litigation funders often will not fund a case absent the possibility a fairly substantial economic return. The removal of a willfulness barrier to access the defendant’s profits greatly increases the universe of cases that are appropriate for funding. Additionally, because a defendant’s profits are generally more certain and ascertainable than a theory of actual damages (which is often based on expert analysis and/or royalty projections), the risk and range of possible awards will be narrowed. The lessening of that risk will also make trademark infringement suits a more attractive investment.”

To read the full article, click [here](#).