

Bell and Mason in Law.com: Supreme Court to Hear Lanham Act Case With Broad Implications on Corporate Structure, Liability

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Haynes Boone Partner [David Bell](#) and Associate [Preston Mason](#) authored an article for *Law.com* as the United States Supreme Court hears oral arguments in a trademark infringement case this week.

Read an excerpt below.

On Dec. 11, the U.S. Supreme Court is set to hear oral arguments in the trademark infringement case of *Dewberry Group v. Dewberry Engineers*. The outcome of this case may affect the scope of corporate liability and judicial discretion. It could also impact how companies choose to configure affiliates and holding companies and how they assign trademark ownership within that structure.

Section 1117(a) of the Lanham Act provides that a plaintiff that establishes trademark infringement is entitled to recover the defendant's profits, subject to the principles of equity:

The "court shall assess such profits and damages or cause the same to be assessed under its direction. ... If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case."

Courts often refer to the defendant's tax returns in assessing an infringer's profits.

The Lanham Act clearly allows judicial discretion in assessing the defendant's profits. But what are the limits of this discretion?

How the Case Arrived Before the Court

This dispute started when two companies named "Dewberry" collided. Dewberry Engineers and Dewberry Group are each real estate development companies. After on-and-off spats over the Dewberry brand, Dewberry Engineers sued Dewberry Group, alleging trademark infringement, among other things. Dewberry Group provides its development services through commonly owned affiliates that it effectively controls. Notably, Dewberry Engineers did not join the affiliates as defendants.

After finding in favor of Dewberry Engineers, the district court awarded it a \$43 million profit disgorgement award. Dewberry Group objected to this award because its tax returns reflected no profits as a result of the infringement. The \$43 million award actually came from profits generated and enjoyed by the legally separate affiliates of Dewberry Group. The court treated Dewberry Group and its affiliates as a single corporate entity for the purpose of calculating the profit disgorgement award.

To read the full article on *Law.com*, click [here](#).