



## US Supreme Court: 'Defendant's Profits' Are Limited to Named Defendants Under the Lanham Act

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Under the Lanham Act, a plaintiff who prevails on a trademark infringement claim may be entitled to recover the “defendant’s profits” as damages. The Supreme Court in *Dewberry Group, Inc. v. Dewberry Engineers Inc.* unanimously construed “defendant’s profits” in 35 USC § 1117(a) to mean that only the named defendant’s profits can be awarded, not the profits of other related corporate entities. The Court, however, left open the possibility that other language in § 1117(a) may allow for damages linked to the profits of related entities, if properly raised and supported.

Dewberry Engineers is the owner of a registered trademark for DEWBERRY used in connection with real estate services. Dewberry Engineers successfully sued Dewberry Group, a commercial real estate company, for infringing its trademark. Dewberry Group—the named defendant—provides its real estate services to a group of about 30 companies, all of which are affiliates of Dewberry Group. Those affiliates—none of which were named parties to the lawsuit—each own a piece of commercial property for lease and Dewberry Group carries out all business functions (e.g., financial, legal, operational, and marketing) for the affiliates. All income is recorded in the affiliates’ books, resulting in tens of millions of dollars in profits. Dewberry Group itself, however, only receives fees from its affiliates, and had allegedly operated at a loss for decades.

In assessing the “defendant’s profits” under the Lanham Act, the district court considered the “economic reality” of the overall organization of Dewberry Group and its affiliates and treated the defendant and affiliates “as a single corporate entity.” The Fourth Circuit majority

affirmed and reasoned that considering the “economic reality” of the defendant’s operation is appropriate to prevent businesses from “insulat[ing] their infringement from financial consequences.”

The Supreme Court unanimously rejected the lower courts’ treatment, explaining that § 1117(a) only allows the plaintiff to “recover [the] defendant’s profits.” Because “defendant” is not explicitly defined, its usual legal meaning applies—“the party against whom relief or recovery is sought in an action or suit.” And since the affiliates were not named, their profits were not “statutorily disgorgable . . . as ordinarily understood.” The Court also pointed to the long-standing “principle of corporate separateness” which recognizes that “separately incorporated organizations are separate legal units with distinct legal rights and obligations . . . even if the entities are affiliated.” While a court may “pierc[e] the corporate veil to prevent . . . fraudulent conduct,” the plaintiff here never tried to make a showing, so “corporate formalities remain.”

As an alternative argument, the plaintiff argued that courts can account for the affiliates’ profits under a different provision of § 1117(a). Under that provision, if a court finds that a “recovery based on profits is either inadequate or excessive,” the court can instead enter judgment “for such sum as the court shall find to be just, according to the circumstances.” This, according to the plaintiff, would enable a court to consider the affiliates’ profits in assessing the “defendant’s true financial gain.” Without expressing a view on this interpretation of the statute, the Court concluded that the lower courts never ruled on the adequacy of the defendant’s profits and had therefore never relied on this provision for its damages award. Instead, the lower courts simply treated the defendant and the affiliates as a single entity, “lump[ed]” their profits together, and disregarded “corporate formalities.”

The Supreme Court vacated the damages award and remanded the case for a new award proceeding. In doing so, the Court was careful to explain that it was not addressing the plaintiff’s arguments based on the “just sum” provision, and that it would be left to the lower court to decide whether the plaintiff had forfeited that argument. The Court further explained that the availability of corporate veil piercing—an issue raised during oral arguments—would also be a question for the lower courts.

**Practice Tip:** Recoverable “defendant’s profits” under the Lanham Act include only the profits of the named defendant(s) in a trademark dispute. Thus, trademark infringement plaintiffs should consider naming as defendants any affiliated entities receiving revenue in connection

with the allegedly infringing goods or services, provided that there is a good faith basis for liability. In any event, where a defendant's revenue is split between affiliated entities, plaintiffs should ensure that any damages arguments based on the "just sum" provision of § 1117(a) or corporate veil-piercing are expressly plead to the extent they can be supported by the evidence.

*Dewberry Group, Inc. v. Dewberry Engineers Inc.*, No. 23-900 (2025)

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