



## U.S. Supreme Court Reinforces Corporate Separateness in Trademark Disputes

In *Dewberry Group, Inc. v. Dewberry Engineers Inc.*, the U.S. Supreme Court issued a unanimous ruling emphasizing the importance of corporate separateness in calculating damages for trademark infringement. The decision, which vacated a \$43 million profit disgorgement award, has significant implications for corporate liability and the limits of profit recovery under the Lanham Act.

### Case Background

Dewberry Engineers, the plaintiff and holder of the “Dewberry” trademark, sued a competing real estate management venture, Dewberry Group for trademark infringement and unfair competition under the Lanham Act, as well as breach of contract under state law.<sup>1</sup> The dispute stemmed from the defendant’s unauthorized use of the trademarked name in marketing its real estate services, despite a prior settlement agreement restricting its use of the mark.<sup>2</sup>

The U.S. District Court for the Eastern District of Virginia found the defendant violated the Lanham Act, concluding that its infringement was “intentional, willful, and in bad faith.”<sup>3</sup> However, the sole named defendant in the case was Dewberry Group, which reported no profits and only survived through cash infusions by the owner of both the defendant and its affiliates.<sup>4</sup> The district court attempted to work around this by treating the defendant and its affiliates, which own the income-generating properties but were not named as defendants, as a single corporate entity and aggregated their profits for purposes of awarding “defendant’s profits” as contemplated by the remedies provision of the Lanham Act found in 15 U.S.C. § 1117(a) (“Section 1117(a)").<sup>5</sup>

The district court calculated nearly \$43 million in damages, including the profits from separately incorporated affiliates.<sup>6</sup> It justified this approach by reasoning that the affiliates benefited from the infringement and were functionally part of a single enterprise.<sup>7</sup> A divided U.S. Court of Appeals for the Fourth Circuit panel affirmed, citing the “economic reality” of the defendant’s operations as justification for treating the defendant and its non-party affiliates as a single corporate entity for purposes of calculating damages.<sup>8</sup>

### **The U.S. Supreme Court’s Holding: Corporate Separateness Matters**

The Court reversed, unanimously holding that an award of “defendant’s profits” under Section 1117(a) is limited to the profits of a named defendant, and thus does not include legally distinct non-party affiliates.<sup>9</sup> Since the term “defendant” is not defined in the Lanham Act, the Court ascribed the term’s usual legal meaning: the party against whom relief or recovery is sought.<sup>10</sup> In this case, it was the Dewberry Group.

The Court relied on the longstanding legal principle that “separately incorporated organizations are separate legal units with distinct legal rights and obligations.”<sup>11</sup> It further noted that under certain circumstances, a court may “pierce the corporate veil” to prevent corporate formalities from shielding fraudulent conduct.<sup>12</sup> However, since the plaintiff chose not to add the defendant’s affiliates as named parties and the plaintiff chose not to make the necessary showing for veil-piercing, the affiliates’ profits could not be included in calculating “defendant’s profits” under Section 1117(a). As the Court concluded in remanding the case for a new damages award proceeding, “The ‘defendant’s profits’ are the defendant’s profits, not its plus its affiliates.”<sup>13</sup>

### **Issues Left Unaddressed: What the Court Did Not Decide**

While the Court ruled on the narrow issue of corporate separateness under the Lanham Act, it made clear that its holding was limited, rejecting the lower court’s treatment of the defendant and its affiliates as a single entity in calculating the “defendant’s profits.”<sup>14</sup> However, it expressed no view on the plaintiff’s argument that even if affiliate profits could not be directly attributed to the defendant, the district

court could have relied on the Lanham Act's "just-sum" provision<sup>15</sup> in Section 1117(a) for a more equitable recovery.<sup>16</sup> Since the district court did not rely upon this equitable provision, the Court did not weigh in on the merits of this argument or whether it could still be argued by the plaintiff on remand. It also expressed no view on when courts could look behind a defendant's tax or accounting records to consider "the economic realities of a transaction" and identify the defendant's "true financial gain."<sup>17</sup> Finally, the Court did not foreclose the possibility of the plaintiff pursuing veil-piercing in further proceedings below.

### **Justice Sotomayor's Concurrence: A Warning on Creative Accounting**

Associate Justice Sonia Sotomayor filed a concurring opinion, highlighting concerns that corporate separateness could be used to shield infringers from liability through clever accounting. She noted that courts should not be "blind ...to economic realities" when calculating profits and suggested that alternative methods, such as analyzing cash infusions from affiliates, could still be used to establish a defendant's financial gain.<sup>18</sup> Justice Sotomayor further suggested that the trial court might consider reopening the record to explore "when and how courts may look beyond a defendant's books in calculating Lanham Act disgorgement awards."<sup>19</sup>

### **Key Takeaways for Trademark Owners and Businesses**

The Court's decision reinforces that corporate formalities matter. Separately incorporated entities cannot be treated as a single unit for profit disgorgement under the Lanham Act. It also underscores the importance of litigating strategically from the outset. The plaintiffs should conduct a damages analysis early to determine whether the infringing entity is unprofitable or underfunded and identify any affiliated entities defendants that should be the subject of alter-ego allegations for piercing the corporate veil and named as additional defendants to ensure a full recovery under Section 1117(a).

Failing to identify and sue the right entities at the start of litigation could leave plaintiffs with a legally sound judgment that is practically unenforceable. At the same time, the Court's decision was narrow, leaving open some important questions. While it rejected the broad aggregation of affiliate profits, it did not foreclose the possibility that a more precise calculation of profits to infringement

should be considered. It also did not resolve enforcement challenges. If affiliates are not defendants to the suit; courts may not be able to compel them to pay.

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*Dewberry Grp., Inc. v. Dewberry Eng'rs Inc.*, No. 23-900, 604 U.S. ---, 2025 WL 608108, at \*2 (U.S. Feb. 26, 2025)

2 *Id.*

3 *Id.*

4 *Id.*

5 *Id.* at \*3.

6 *Id.*

7 *Id.*

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.*

13 *Id.*

14 *Id.* at \*4.

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The Lanham Act's just-sum provision found in 15 U.S.C § 1117(a) states that if a court finds a profit-based recovery "inadequate or excessive," it may "enter judgment for such sum as the court shall find to be just, according to the circumstances," the plaintiff argued that this provision allowed the district court to consider affiliate profits as relevant evidence when determining the defendant's true financial gain. However, because the district court did not base its decision on this provision, the U.S. Supreme Court declined to weigh in on whether such an approach would be permissible.

<sup>16</sup> *Dewberry Grp*, 2025 WL 608108, at \*4.

<sup>17</sup> *Id.* at \*4.

<sup>18</sup> *Id.* at \*5.

<sup>19</sup> *Id.* at \*6.

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