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Shared Names, Separate Profits: What Dewberry Tells Us About Trademark Liability

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The U.S. Supreme Court's unanimous ruling in *Dewberry Group v. Dewberry Engineers Inc.* (23-900 (604 U.S. ____ (2025))), provides important guidance on corporate separateness, trademark enforcement and the scope of damages under the Lanham Act. Written by Justice Kagan and joined by all members of the Court, the decision vacates a nearly \$47 million damages award and remands for further proceedings, making it clear that profits of corporate affiliates cannot automatically be swept into a trademark infringement award without careful legal consideration.

Legal Takeaways

Corporate Separateness Still Matters – But It Is Not Absolute

Even when companies share a common name or history, courts continue to respect corporate boundaries. In *Dewberry*, the Supreme Court refused to include profits from Dewberry Group Inc.'s affiliates in a disgorgement award, emphasizing that federal trademark law (Lanham Act, 15 U. S. C. §1117(a)) allows recovery only of the defendant's profits – not those of affiliated entities unless those entities are named in the complaint and shown to have directly benefited from or contributed to the infringement.

Litigation Tip: Trademark plaintiffs should carefully consider whether to name affiliates or related companies in the original complaint if they want to account for their conduct or profits during damages calculations.

Damages Must Reflect Actual Harm, Not Theoretical Profits

The Court warned against using lump-sum profits as a stand-in for harm caused. Instead, damages must be tethered to the actual economic impact of the infringement. While the decision does not definitively resolve how and when courts may "look beyond a defendant's books," it opens the door to a more nuanced approach.

Justice Sotomayor, in concurrence, clarified: courts may still look at the practical realities of how a company operates, particularly where assignment schemes or intra-company transfers are used, but such analysis must be "subject to principles of equity."

Implications for Trademark Owners

Monitor Use – Even Within Corporate Families

This case underscores the need for trademark owners to proactively enforce their rights. Past collaboration or shared naming conventions will not insulate a company from infringement claims. Trademark owners must stay vigilant, especially where related entities or former partners continue to use a similar mark in commerce.

Enforcement Tip: If you suspect confusion in the marketplace, swift and strategic enforcement can protect brand equity and preserve your ability to recover meaningful damages.

Plan Ahead in Agreements and Licensing

Although the Court respected corporate separateness in *Dewberry*, it also acknowledged the potential for calculated internal structuring to limit liability. In trademark agreements, licensing deals or settlements, consider requiring intra-company agreements that clarify usage rights and responsibilities, especially in corporate families or affiliate networks.

This foresight can reduce ambiguity in future disputes and help ensure that damages calculations are more direct and equitable.

Why This Case Matters

The *Dewberry* decision reaffirms that trademark owners must balance aggressive enforcement with strategic planning and precision in litigation. It also provides clear signals that courts remain attentive to the real-world relationships between companies, even as they continue to honor corporate formalities.

Need Guidance?

To discuss how this ruling may impact your company's trademark strategy or litigation posture, contact our [team](#).

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