

A \$5M jury award in a trademark infringement case is uncommon enough. But what if the finder of fact found no damages or lost profits from the trademark and trade dress infringement, yet *still* awarded \$5M in punitive damages to the plaintiff? In a recent case instituted by Monster Energy Company (“Monster Energy” or “Monster”) against Integrated Supply Network (“ISN”), the jury found that there were no actual damages and no lost profits resulting from ISN’s infringement of Monster’s intellectual property with its Monster Mobile and ISN Monster lines of automotive goods. Nonetheless, the jury awarded \$5M in punitive damages after concluding that ISN acted with malice, oppression, or fraud.

This jury verdict illustrates the confusion surrounding awarding damages in a trademark infringement action. It also illustrates the potential outcome of a trademark infringement case where the plaintiff wins on his cause of action but loses for failing to prove actual damages. Further, this case demonstrates the importance of jury instructions.

Monster brought the trademark infringement lawsuit against ISN in 2017. Monster alleged that it expended a significant amount of its marketing efforts on motorsports, including by sponsoring racing events, athletes, activities, etc. Monster further alleged that ISN, by using a mark confusingly similar to Monster’s numerous trademarks in connection with ISN’s business of producing, distributing, marketing, and/or selling automotive tools, infringed on Monster’s trademark rights.



(Left: Monster Energy’s gloves; Right: ISN’s gloves; Source: Complaint, at Dkt. No. 1, ¶141)

After 8 days of trial, the jury returned a verdict in favor of Monster but awarded no actual damages and found no lost profits. Instead, the jury awarded a punitive damages award of \$5M. The jury instructions given before the jury deliberation are illustrative as to the cause of this strange damages award (Dkt. No. 440). The instructions pertaining to punitive damages stated, “[i]f you find for Monster Energy, you may, but are not required to, award punitive damages.” The instructions were silent as to whether awarding actual damages or finding lost profits would be a prerequisite to awarding punitive damages.<sup>1</sup>

Additionally, according to the jury instructions, since the jury found that the infringement by ISN was not willful, Monster was not entitled to lost profits as actual damages. The only other way the jury could have found actual damages was through calculating a reasonable royalty, the exact type of damages award that Monster sought. Since the jury awarded \$0 in actual damages, Monster likely did not prove by a preponderance of the evidence any reasonable royalty.

The jury was instructed to consider the following in its determination of an actual damages award: (1) the injury to Monster Energy's reputation; (2) the injury to Monster Energy's goodwill; and (3) the royalties that Monster Energy would have earned in a license agreement with ISN. However, the instructions further stated that the calculation of a reasonable royalty only involves the royalty that would have resulted from a hypothetical license negotiation and does not consider numbers (1) and (2) listed above. Therefore, it is still possible for Monster Energy to be awarded a permanent injunction against ISN from the harm caused by the infringement since the jury determined that there were no monetary damages, but did not decide the issue of irreparable harm in the form of loss of goodwill and reputational harm.

After the jury verdict was reached, Monster filed a motion for a permanent injunction, which ISN has not yet opposed. Dkt. No. 457, 458. The latest substantive docket entry is dated November 29, 2018 and is an order denying ISN's application to exceed the page limits for its memorandum in opposition to the permanent injunction. Dkt. No. 463.