Time To "Dew" It Again.

Dewberry Group, Inc., FKA Dewberry Capital Corp v. Dewberry Engineers Inc., No. 23-900, 604 U.S. (2025)

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On February 26, 2025, the United States Supreme Court unanimously overturned a $43 million damages award arising out of a trademark infringement lawsuit. The Court held that when awarding the "defendant's profits" to the plaintiff under 15 U.S.C. § 1117(a) of the Lanham Act, the plaintiffs are entitled only to the profits of the named defendant and cannot include the profits of non-party affiliates, even if those affiliates are under common ownership.

The case began in 2007 when Dewberry Engineers (the "Engineers"), a real estate development firm, filed suit against Dewberry Group (the "Group"), a commercial real estate company, for trademark infringement of its mark "Dewberry." The case ultimately settled, leading to the Group being prohibited from using the "Dewberry" mark. However, around a decade later in 2017, the Group resumed using "Dewberry" in its business dealings with affiliates. The Engineers again sued the Group for trademark infringement, unfair competition and breach of contract. Importantly, the Group's affiliates were not named as parties to the litigation. The District Court found the Group liable on all counts, issued a scathing opinion stating the Group's actions were "intentional, willful, and in bad faith," and awarded the Engineers $43 million in damages. A divided Court of Appeals for the Fourth Circuit affirmed the award reiterating the "economic reality" of the Group's relationship with its affiliates, stating that it agreed with the District Court's treatment of all the companies "as a single corporate entity." The Group then petitioned for certiorari, which was granted.

On appeal, the Engineers admitted that it did not make a case for piercing the corporate veil, thus the principles of corporate separateness remained. However, in an attempt to justify the lower courts damages award, the Engineers argued that the so called just-sum provision of § 1117(a) permits a court, after assessing the "defendant's profits," to determine a different figure that reflects the "defendants true financial gain." On the other hand, the Group argued that there was no basis for the lower courts to disregard the corporate form and separateness between it and its affiliates when calculating profit disgorgement. The Supreme Court agreed.

In vacating and remanding the Fourth Circuit's decision, the Supreme Court highlighted the significance of maintaining corporate separateness. In authoring the unanimous opinion of the Court, Justice Elena Kagan explained that the Lanham Act's provision for recovering "defendant's profits" applies solely to the profits of the defendant named in the lawsuit. Justice Kagan noted that the Lanham Act does not offer a special definition of the term "defendant," so the term retains its usual legal meaning. Thus, including profits from non-party affiliates would ignore the well-established distinctions between separate corporate entities, which the law does not allow. On remand, a new damages award proceeding will be held in according with the Supreme Court's opinion, focusing on the Group as the sole defendant.

The Supreme Court's decision serves as a critical reminder of the importance of corporate formalities and the limits of legal remedies in trademark disputes. Plaintiffs seeking disgorgement of profits under the Lanham Act must include all relevant parties in their lawsuits.

Tags: Supreme Court, Trademark Litigation, Damages, Real Estate