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Supreme Court Limits Reach of Trademark Infringement Damages: Affiliation Insufficient

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The Supreme Court recently issued its opinion in *Dewberry Group, Inc., FKA Dewberry Capital Corp. v. Dewberry Engineers Inc.* (23-900, Feb. 26, 2025), and addressed the issue of awarding profits in a trademark infringement case under the Lanham Act, specifically, whether the profits of the defendant's affiliated companies can be included in the award.

Court Rules Only Defendant's Profits Can Be Included in Lanham Act Damages

Dewberry Engineers Inc. sued Dewberry Group, a competitor in the real estate development industry, for trademark infringement under the Lanham Act. Dewberry Engineers claimed that Dewberry Group's use of the "Dewberry" mark caused confusion and damaged its brand. The District Court found in favor of Dewberry Engineers and awarded nearly \$43 million in profits, which included the profits of Dewberry Group's affiliated companies. The Court of Appeals for the Fourth Circuit affirmed this decision, leading Dewberry Group to seek review by the Supreme Court.

The central legal issue in this case is whether the profits of affiliated companies can be included in the calculation of "defendant's profits" under the Lanham Act. The Lanham Act allows a prevailing plaintiff to recover the defendant's profits resulting from the infringement of a mark. The question before the Supreme Court was whether the term "defendant's profits" includes the profits of affiliated companies that were not named as defendants in the lawsuit.

The Supreme Court held that in awarding the "defendant's profits" to the prevailing plaintiff in a trademark infringement suit under the Lanham Act, a court can award only profits ascribable to the "defendant" itself. The term "defendant" bears its usual legal meaning: the party against whom relief or recovery is sought – here, Dewberry Group. The Engineers chose not to add the Group's affiliates as defendants. Accordingly, the affiliates' profits are not the (statutorily disorgable) "defendant's profits" as ordinarily understood.

Implications for Future Trademark Infringement and Corporate Liability

The Court's reasoning was based on the principles of corporate law and the statutory language of the Lanham Act. The Court emphasized that the term "defendant" refers to the party against whom relief is sought, and this definition does not extend to affiliated companies that were not named as defendants in the lawsuit. The Court noted that corporate law treats separately incorporated organizations as distinct legal entities with their own rights and obligations, even if they are affiliated through common ownership.

The Court also addressed the argument of whether principles of corporate law should allow for the inclusion of affiliated companies' profits in the calculation of the defendant's profits. The Court rejected this argument, stating that the usual rule in corporate law is that separately incorporated entities are separate legal units. The Court cited previous cases, such as *United States v. Bestfoods* and *Agency for Int'l Development v. Alliance for Open Society Int'l Inc.*, to support its reasoning.

The Supreme Court's decision has significant implications for trademark infringement cases under the Lanham Act. By clarifying that only the profits of the named defendant can be included in the calculation of "defendant's

profits," the Court has set a clear standard for future cases. This decision reinforces the principle that separately incorporated entities are distinct legal units and cannot be treated as a single entity for the purpose of awarding profits in trademark infringement cases. Not only does this decision provide clear guidance for future trademark infringement cases with regard to damages, but it also shows the importance of properly joining all parties who may have generated revenue (and therefore potentially profit) from the infringing activities.

If you have any questions or need guidance, please reach out to [Adam S. Baldrige](#), [Edward D. Lanquist](#), or a member of Baker Donelson's [Intellectual Property Team](#).