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Supreme Court Addresses Corporate Separateness and "Defendant's" Profits under the Lanham Act

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On February 26, 2025, the Supreme Court issued its opinion in *Dewberry Group, Inc. v. Dewberry Engineers, Inc.* and reaffirmed the protections of corporate separateness. This case raised the question of whether a court could order disgorgement of profits from unnamed corporate affiliates because the named defendant's profits are inadequate. *Dewberry*, No. 23-900, at 1 (Feb. 26, 2025).

Dewberry involved two similarly named real estate development companies that have been embroiled in trademark litigation for decades. The most recent dispute arose from Dewberry Group's ("Group") alleged violation of a 2007 confidential settlement agreement that acknowledged Dewberry Engineer's ("Engineer") superior claim to the "Dewberry" mark. The District Court granted Engineer summary judgment, finding that Group engaged in willful, bad faith infringement of Engineer's mark. *Id.* at 3.

While Group did not contest the ruling on the merits, it challenged the District Court's $43 million profit disgorgement award. *Id.* This award ordered Group to answer for the profits of its commonly owned but legally distinct affiliates because Group itself generated $0 net profits. *Id.* Since Group, practically speaking, generated all revenue reported by these affiliates, the District Court treated Group and its affiliates as a "single corporate entity." *Id.* at 4. A divided Fourth Circuit affirmed. *Id.*

Before the Supreme Court, Group argued that the Lanham Act only allows the disgorgement of profits from the named defendant, not its affiliates. Engineer argued that the award was proper under the "just-sum" provision of the Lanham Act, which provides that, where the "amount of recovery based on profits is . . . inadequate," a court may "enter judgment for such sum as the court shall find to be *just*." *See* 15 U.S.C. § 1117(a) (emphasis added).

Justice Kagan delivered the Court's opinion, which unanimously vacated the judgment and remanded the case for further proceedings. *Id.* at 8. The Court held that, under Lanham Act § 1117(a), the lower court could "award only profits properly ascribable to the defendant itself." *Id.* at 1. The Court's reasoning was twofold. First, the statute uses the phrase "defendant's profits," and, as defendant is not "specially defined," it "bears its usual legal meaning" as "the party against whom relief or recovery is sought." *Id.* at 4. Second, since Engineer failed to invoke any exception to the "long settled" rule of corporate separateness, "the demand to respect corporate formalities remains." *Id.* at 5. As a result, because Engineer chose not to name the affiliates as defendants or attempt to pierce the corporate veil, the lower courts could not group the affiliates together with the defendant entity. The Court expressly did not rule on the issue of whether this award was proper under the Lanham Act's "just-sum" provision. *Id.* at 8.

Justice Sotomayor joined fully in the Court's opinion but also wrote a concurring opinion. The concurrence cautions corporations that, even though affiliate profits cannot be counted as defendant's profits, courts are not required to ignore economic realities or "accept clever accounting." *Dewberry*, No. 23-900, slip op. at 1 (Sotomayor, J., concurring). For example, if a defendant-entity charges below-market rates for infringing services to affiliates, the affiliates' profits could be ascribed to that defendant-entity. *Id.* at 2.

While the Supreme Court affirmed the tradition of respecting corporate structure, it left a "number of questions unaddressed," including whether the equitable just-sum provision could justify an award based on affiliates' profits and whether courts can "look behind" tax or accounting records to consider "the economic realities of a transaction." *Id.* at 8. While these unanswered questions set the stage for a potentially groundbreaking remand, overall, *Dewberry* provides a useful reminder that Lanham Act plaintiffs must think critically about the financial status of their named defendants.

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