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# drawing the line in between separate corporations: supreme court vacates a \$43m trademark disgorgement ruling

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On February 26, 2025, the U.S. Supreme Court issued a unanimous decision in *Dewberry Group Inc. v. Dewberry Engineers Inc.* that reaffirms a key limitation in trademark remedies: courts cannot order disgorgement of profits from a defendant's corporate affiliates unless those entities are expressly named as defendants. In a unanimous ruling, the Court held that the Lanham Act's provision for awarding a defendant's profits applies strictly to the defendant itself, not its related entities. *See* 15 U.S.C. § 1117(a). This decision underscores the importance of corporate separateness, signaling to businesses that structuring operations through distinct legal entities can be a viable way to mitigate responsibility for judgment damages. For trademark plaintiffs, it serves as a cautionary tale—failure to properly name all liable parties in litigation can significantly limit the scope of monetary recovery.

## Background of the Case

The case arose from a long-running trademark dispute between two real estate development companies, both using the "Dewberry" name. Dewberry Engineers, which had operated under its name for decades, initially settled a dispute with Dewberry Group in 2007, allowing the latter a limited use of the name. However, in 2020, Dewberry Engineers sued again, alleging that Dewberry Group's rebranding—including the creation of sub-brands such as Dewberry Living, Dewberry Office, and Studio Dewberry—constituted a new case of trademark infringement.

Dewberry Engineers sought monetary relief under Section 35(a) of the Lanham Act, which provides that a prevailing plaintiff in a trademark infringement case may recover, "subject to the principles of equity," the defendant's profits, actual damages, and costs. Disgorgement of profits is a remedy aimed at depriving infringers of financial gains obtained through unlawful use of a trademark, rather

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than compensating the plaintiff for its own losses.

### Lower Court Decisions

A Virginia federal district court awarded Dewberry Engineers nearly \$43 million in profits allegedly derived from the infringement. Notably, Dewberry Group itself had little to no reported profits. Instead, in order to show the “economic reality” between the Dewberry Group and its affiliates—the latter of which was the receipt of all of the former’s profits—the lower court treated all the companies as one single corporate entity, attributing the profits of Dewberry Group’s affiliates to the defendant and including them in the damages calculation.

On appeal, a divided Court of Appeals panel in the Fourth Circuit affirmed, citing the aforementioned “‘economic reality’ of Dewberry Group’s relationship with its affiliates,” as the basis to treat all the entities as a single corporate entity. Specifically, the court reasoned that it did not matter that the affiliates were the entities that “received the revenues” earned, because there was a common link amongst all the companies, and to rule otherwise may incentivize businesses to use their affiliates in order to evade financial consequences for infringement.

### The Supreme Court’s Decision

Dewberry Group appealed, arguing that the Lanham Act limits disgorgement to the profits of the named defendant(s) and does not allow courts to automatically treat affiliated companies as a single economic entity. The company contended that established corporate law principles require courts to respect corporate separateness unless veil-piercing is warranted.

Dewberry Engineers countered that the Lanham Act’s “just-sum provision” allows courts to adjust an award based on equitable considerations. The provision specifically states that if the amount of recovery based on profits is “inadequate or excessive,” then courts may exercise their discretion and adjust the award to a “just” amount. *See* 15 U.S.C. § 1117(a). The plaintiff’s argument relied on the provision to justify the lower court’s decision to overlook corporate separateness and account for the affiliate’s profits in calculating the defendant’s financial benefit from infringement.

Writing for the Court, Justice Kagan emphasized that the Lanham Act permits recovery of only the *defendant’s* profits. Kagan explained that “the term ‘defendant’ bears its usual legal meaning: the party against whom relief or recovery is sought—here, Dewberry Group.” *See* Black’s Law Dictionary 541 (3d ed. 1933).

The Court’s decision reaffirmed that, under traditional corporate law principles, separate legal entities cannot be treated as a single unit unless there is a valid basis for piercing the corporate veil. The Court noted: “It is long settled as a matter of American corporate law that separately incorporated organizations are separate legal units with distinct legal rights and obligations.” *See Agency for Int’l Development v. All. for Open Soc’y Int’l Inc.*, 591 U.S. 430, 435 (2020). Dewberry Engineers admitted that they had not attempted to pierce the corporate veil to establish liability against the affiliates, leaving no basis for including their profits in the award.



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The Court also rejected the argument that the "just sum provision" could support the \$43 million award. The Court noted that neither the district court nor the Fourth Circuit had relied on this provision in awarding the \$43 million. In other words, the \$43 million did not come from increasing the damages of the named defendant. Instead, the lower courts had improperly disregarded corporate separateness as the basis for getting to the total.

However, the Court left several key issues open for further proceedings. It did not determine whether the just-sum provision could be used to support a profits award based on affiliate earnings, or whether courts can look beyond a defendant's financial records to assess its true gains. It also left open the possibility of veil piercing under appropriate circumstances, stating, "whether veil-piercing remains an available option" is a question for the lower courts to address.

In a concurring opinion, Justice Sotomayor called attention to the notion that corporate separateness does not prevent courts from considering economic realities. She cautioned that courts should not be blind to accounting practices that obscure a defendant's financial gains. "Nor do [corporate formalities] force courts to accept clever accounting, including efforts to obscure a defendant's true financial gain through arrangements with affiliates," she wrote.

The case has been remanded to the Fourth Circuit, where Dewberry Engineers may attempt to argue for disgorgement under the just-sum provision, though the Supreme Court expressed no opinion on whether that argument remains available.

### Takeaways

The Supreme Court's decision in *Dewberry Group* clarifies the limits of trademark remedies under the Lanham Act and reaffirms fundamental corporate law principles. Businesses should take note of the ruling's implications for liability and structuring, while plaintiffs should ensure they account for corporate separateness when seeking monetary relief. The ruling could lead to more amendments to add defendants to a case, as cautious plaintiffs try to ensure that they "follow the money"—at least to the extent that potential affiliates can be jointly liable with the primary defendant. As the case is remanded for reconsideration, it remains to be seen whether Dewberry Engineers can salvage its disgorgement claim through the two-step or "just sum" processes Dewberry Engineers advocated for at the appellate stages.