

## Trademark Law Alert--Supreme Court Narrowly Upholds Corporate Separateness in Trademark Damages Case

03.07.2025 By [Joel Karni Schmidt](#) and [Paige A. Geier](#)



When can a trademark plaintiff recover profits from an infringer's affiliates? The U.S. Supreme Court tackled this question in [Dewberry Group, Inc. v. Dewberry Engineers Inc.](#), No. 23-900, 604 U.S. \_\_\_\_ (February 26, 2025), a trademark dispute over the use of the DEWBERRY mark in connection with real estate services.

The Court's unanimous ruling reaffirmed the principle of corporate separateness, holding that corporate affiliates cannot be liable for damages under the U.S. Trademark Act, commonly known as the Lanham Act, when they are not parties to the lawsuit. Although the decision left a number of questions unanswered, it could have implications for both trademark litigation and the way in which businesses structure their operations.

### Background and Procedural History

Dewberry Engineers Inc. ("Engineers"), a real estate services firm which owns the registered trademark DEWBERRY, sued Dewberry Group, Inc. ("Group"), a real estate development company owned by John Dewberry, for trademark infringement, unfair competition, and breach of contract under the Lanham Act. The dispute stemmed from Group's 2017 rebranding efforts, where it resumed using the DEWBERRY mark in marketing and leasing materials despite a 2007 settlement agreement restricting such use.

In 2020, Engineers brought suit. The district court found Group liable, ruling that its infringement was "intentional, willful, and in bad faith." The court awarded Engineers \$43 million in profits, basing the calculation on the combined earnings of Group and its separately incorporated affiliates. The rationale for this decision was that Group itself operated at a loss and reported no profits – the company survived from cash infusions from its owner rather than

its own earnings. Meanwhile, its affiliates, to whom Group provided services needed to generate rental income from properties owned by the affiliates, were highly profitable. To reflect that “economic reality,” the district court treated Group and its affiliates “as a single corporate entity” for purposes of calculating a profits award of \$43 million, even though Engineers had not added Group’s affiliates to the lawsuit and never tried to “pierce the corporate veil.”

A divided Fourth Circuit Court of Appeals affirmed the decision, and the Supreme Court granted certiorari to determine whether, under the Lanham Act, a court may award profits from separately incorporated affiliates of a trademark infringer even when the affiliates are not named defendants. The Court held that, in awarding the “defendant’s profits” to the prevailing plaintiff under Lanham Act § 1117(a), a court can award only profits ascribable to the “defendant” itself, meaning the party against whom relief or recovery is sought and it remanded the case for further proceedings regarding the appropriateness of the damages award under the Lanham Act.

### The Supreme Court’s Decision

In an opinion authored by Justice Kagan, the Court first considered the statutory language of 15 U.S.C § 1117(a), the remedies section of the Lanham Act, which states a plaintiff is entitled to “recover [the] defendant’s profits.” Citing Black’s Law Dictionary, the Court relied on the plain meaning of “defendant” – “the party against whom relief or recovery is sought in an action or suit.” Here, simply, that was Group alone; Engineers had chosen not to add Group’s property-owning affiliates as defendants.

The Court next pointed out that longstanding principles of corporate law do not support the district court’s approach. Even if the entities are affiliated, as here, it is long settled that separately incorporated organizations are treated as separate legal units with distinct rights and duties. Where corporations attempt to blur the lines to shield fraudulent conduct, a solution exists – courts can “pierc[e] the corporate veil.” However, Engineers did not make that argument.

Instead, Engineers argued that a later sentence in the Lanham Act’s remedies section, known as the “just-sum provision,” should apply. Found in § 1117(a), it gives courts discretion to modify damages awards in trademark cases:

If the court shall find that the amount of the recovery based on profits is either inadequate or excessive[,] the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances.

Engineers argued that the courts below had followed this approach, first assessing that the defendant’s profits did not reflect its “true financial gain,” and as a second step considering the profits of related entities—for example, to see if the defendant diverted some of its earning to an affiliate’s books.

The Court pointed out that the district court did not rely on the just-sum provision in its calculation. Nor did it do the type of two-step analysis Engineers suggested. Instead, the award was a simple summing of Group’s affiliates’ profits.

The Court ultimately held that, in treating the entities as one and the same, the courts below “approved an award including *non*-defendants’ profits” and thus went beyond the bounds of the Lanham Act. It vacated the judgment of the Court of Appeals and remanded the case.

## Unaddressed Questions

In remanding this case for a new award proceeding, the Court explicitly left a number of questions unanswered:

First, the Court left open the question of whether the just-sum provision *could* have been used to justify an adjusted damages award.

Second, the Court also stated no view on the Government's friend of the court position that courts can look to economic realities to identify the defendant's "true financial gain."

Third, the Court offered no opinion on whether corporate veil-piercing is an available option on remand.

Finally, Justice Sotomayor, in a concurring opinion, emphasized that courts should not ignore economic realities: "principals of corporate separateness do not force courts to close their eyes to practical realities in calculating a 'defendant's profits.'"

## Implications for Future Disputes

The Court's decision in *Dewberry* reinforces the bedrock principle of corporate separateness – that corporations generally aren't liable for the obligations or activities of their affiliates. The decision could lead to an increase in the number of defendants named in future trademark infringement suits to include all affiliated or related entities. It also may cause plaintiffs to try invoking the just-sum provision of the Lanham Act to justify higher damages awards. Further, it could encourage parties to allege "piercing the corporate veil" claims in certain cases. It also may encourage more companies to create complex corporate structures and to strictly adhere to corporate formalities to reduce exposure to high damages awards.

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