

Gibson Dunn Secures Unanimous Supreme Court Victory for Dewberry Group, Securing Vacatur of \$43 Million Award

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The Supreme Court issued a unanimous win for Gibson Dunn client Dewberry Group in a landmark opinion addressing available profits-related remedies under the Lanham Act. The Act provides that a prevailing trademark plaintiff may, “subject to the principles of equity,” recover the “defendant’s profits.” 15 U.S.C. § 1117(a). In this trademark dispute between Dewberry Group and Dewberry Engineering, the district court ordered Dewberry Group to disgorge nearly \$43 million in profits realized only by its legally distinct corporate affiliates, which weren’t parties to the case. After a divided Fourth Circuit panel affirmed the award, the Supreme Court granted review. And after argument (Tom Hungar argued for Dewberry Group), the Court vacated the entire award in a 9–0 opinion authored by Justice Kagan.

The Supreme Court emphatically rejected the basis on which the lower courts had defended the award, which had ordered Dewberry Group to disgorge the profits earned by its distinct affiliates. The Court’s opinion confirms that because the Lanham Act permits disgorgement only of the “defendant’s” profits, courts may not lump in the profits earned by non-parties—because doing so would require the court to disregard corporate formalities and treat distinct entities as if they were one and the same.

The Court’s opinion confirms the vital importance of respecting corporate separateness, allowing companies to structure their work and anticipate their liability in a sensible and predictable manner. Its holding will also reverberate beyond the Lanham Act to many other statutory schemes that permit parties to seek disgorgement and other remedies from defendants found liable.

The Gibson Dunn team included partners Tom Hungar, Helgi Walker, and Jonathan Bond, and associates Patrick Fuster, Matt Aidan Getz, and Christian Talley.

The case is *Dewberry Group Inc. v. Dewberry Engineers Inc.*, No. 23-900 (S. Ct.)

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