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## *Supreme Ct Holds Disgorgement of Profits Available Absent Willfulness, for 1125(a) Infringement*

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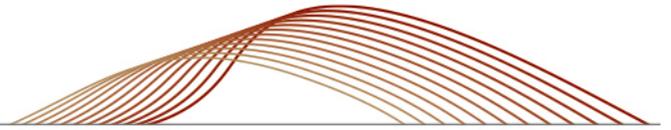
Supreme Court Enforces Language of Lanham Act; Makes Disgorgement of Profits Uniformly Available as a Remedy for Infringement under Section 1125(a).

The April 23 Supreme Court ruling in *Romag Fasteners, Inc. v. Fossil Group, Inc.* (No. 18-1233) is a significant and appropriate win for trademark owners, ending the split seen previously in the Circuit Courts on the issue, and finding that willfulness is not a prerequisite to an award of infringers' profits under Section 1117(a) for a violation of Section 1125(a) of the Lanham Act. This decision enforces the Act as written and restores the teeth to Section 1125(a)-based suits in those jurisdictions previously improperly imposing a willfulness prerequisite for disgorgement of profits—which is often the only monetary award available to plaintiffs for Section 1125(a) violations, because of the difficulties often faced in quantifying and proving damages. As the decision rightly notes, the mindset of the infringer will be taken into account in deciding what relief should be awarded to the plaintiff, so an award of an infringer's ill-gotten profits from its infringement is not a given—but it is at least, uniformly, a possibility. The mere potential for disgorgement of profits should also be the stick to encourage companies and individuals to undertake the appropriate diligence before they just adopt and use marks in which others have priority rights, and it will hopefully diminish the amount of infringement seen by and the resultant harm to trademark owners as a result of so-called "innocent" or negligent trademark infringers. Trademark owners will expectedly file more infringement suits under Section 1125(a) now, instead of trying to pursue infringers under other, potentially more tenuous, causes of action or for statutory violations that might have provided a better opportunity for a meaningful award of monetary damages prior to the Supreme Court's ruling.

Courts previously requiring willfulness for disgorgement of profits for trademark infringement under Section 1125(a) are the First, Second, Eighth, Ninth, Tenth, and D.C. Districts.

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