Final Briefs Filed with SCOTUS in *Romag Fasteners* Case on Trademark Infringement Damages

Published Article
December 9, 2019
IPWatchdog

In an article published by IPWatchdog on December 9, Ben Hodges discusses the case *Romag Fasteners, Inc., v. Fossil, Inc., et al* and the final briefings that were filed, setting the stage for oral arguments on January 14, 2020. The case will hopefully end with a resolution for the current Circuit split on the availability of disgorgement of profits as damages for trademark infringement.

The case began when Romag sued Fossil and obtained a jury verdict that Fossil infringed on their trademark. Although Romag was granted $6.7 million in profits from Fossil, Fossil was not found to have willfully infringed on Romag's trademarks. After the jury verdict, the Court reduced the award to eliminate disgorgement as a remedy because Romag was unable to prove willful infringement.

"Many briefs appear to agree that the main issue is how to avoid a windfall to the trademark owner and that disgorgement of profits at least has the potential to be a severe penalty. Those arguing against the willfulness prerequisite believe that balancing principles of equity in each case will avoid that result. They also believe that damage to a trademark owner, be it lost profits or other brand damages, is often difficult or impossible to prove, while disgorgement provides a more easily calculated amount which will more easily allow brand owners to enforce their marks," Hodges explained.

This case has the potential to grant broad discretion to District Courts, which have more detailed information about each case and the conduct of all parties involved, eliminating a bright-line rule in intellectual property. Alternatively, a single bright-line rule could be created for all Courts.

Contact

Benjamin J. Hodges

Related Services

Copyright & Trademark

Final Briefs Filed with SCOTUS in *Romag Fasteners* Case on Trademark Infringement Damages

Foster Garvey

For the full article, visit the IPWatchdog website.