No. 23-900

In the

Supreme Court of the United States

DEWBERRY GROUP, INC.,

Petitioner,

v.

DEWBERRY ENGINEERS INC.,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE SUPPORTING PETITIONER

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September 4, 2024

QUESTION PRESENTED

Whether an award of the "defendant's profits" under 15 U.S.C. § 1117(a) can include an order for the defendant to disgorge the distinct profits of legally separate non-party corporate affiliates.

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INTEREST OF AMICUS CURIAE[*]

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. WLF often appears as an amicus before this Court to urge proper application of equitable principles. *See, e.g.*, *Liu v. SEC*, 591 U.S. 71 (2020); *Lorillard Tobacco Co. v. Engida*, 551 U.S. 1146 (2007) (per curiam).

INTRODUCTION

Respondent's brief in opposition is telling because it refuses to endorse the Fourth Circuit's rationale for granting it victory below. The reason is quite simple. The Fourth Circuit's rationale veers far from acceptable legal principles.

The Fourth Circuit has recently decided that it should act as a superlegislature and ignore statutes' plain language. Its decisions have been so unmoored from statutory text that earlier this year the Solicitor General urged the Court to take the extraordinary step of summarily reversing solely because of the degree of error. In the Fourth Circuit's view, courts in West Virginia, Virginia, North Carolina, and South Carolina must do whatever jurists believe is fair rather than what the law requires.

This is not how American courts should operate. Under this Court's precedent, the Fourth

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[*] No party's counsel authored any part of this brief. No person or entity, other than Washington Legal Foundation and its counsel, paid for the brief's preparation or submission.

Circuit and every other federal court must follow Congress's commands. Sometimes what the law requires may seem unfair to judges. But that seeming unfairness is immaterial in deciding the correct outcome in a case.

The Fourth Circuit, however, believes that the Lanham Act's reference to equity permits courts to dispense fairness rather than justice. This view conflicts with this Court's recent decisions on the limits of equity. And those recent decisions follow a long line of cases holding that having equitable powers does not allow courts to disregard legal principles to advance fairness.

Ensuring that federal courts stay in their lane and do not legislate from the bench is key to the separation of powers. That is why this Court has recently rejected the creation of non-statutory causes of action and limited those causes of actions it has previously recognized. In other words, the Court has emphasized the importance of ensuring that Congress makes the laws, the President enforces the laws, and courts interpret the laws. As the Fourth Circuit's decision reflects neither equitable nor separation of powers principles, this Court should reverse and remind the Fourth Circuit that it too is bound by this Court's decisions.

STATEMENT

John Dewberry founded Dewberry Capital Corporation, which was rebranded as Petitioner Dewberry Group, Inc. in 2017. Petitioner provides services to commercial real estate firms in Florida, Georgia, South Carolina, and Virginia. John also

controls other affiliates, which are distinct corporate entities.

Like Petitioner, Respondent Dewberry Engineers Inc. provides services to commercial leasing companies in Florida, Georgia, South Carolina, and Virginia. In 2006, Petitioner claimed to have common-law rights to the “Dewberry” mark while Respondent claimed a federal trademark for “Dewberry.” A year later, the parties settled that dispute. Respondent could continue using the Dewberry mark, while Petitioner could also use the mark with some limits. Among those limits was that Petitioner could not use the mark for real-estate services provided in Virginia.

After the 2017 rebranding, Petitioner used the “Dewberry Group” and “Studio Dewberry” marks. Other corporate affiliates controlled by John also used the marks. That triggered the 2020 suit alleging that Petitioner infringed Respondent’s trademark because the 2007 settlement did not cover the rebranded entity.

Respondent’s suit named only Petitioner as defendant. No other corporate affiliate controlled by John was sued. The District Court granted Respondent’s summary-judgment motion on liability. In its opinion granting summary judgment, the District Court noted that Petitioner used the “Dewberry” mark on materials used by its corporate affiliates.

The District Court then held a bench trial to determine damages. Respondent sought disgorgement of profits, and the District Court held

that disgorgement was proper. In calculating the disgorgement amount, the District Court held that it could force Petitioner to pay disgorgement of the non-party corporate affiliates' profits. So it awarded Respondent $43 million of Petitioner's affiliates' profits.

A divided Fourth Circuit panel affirmed. In its view, the District Court properly "treated [Petitioner] and its affiliates as a single corporate entity for the purpose of calculating revenues generated by [Petitioner's] use of infringing marks." Pet. App. 39a-40a. According to the majority, the fact that Petitioner and its affiliates had common ownership and engaged in joint activity sufficed to allow for disgorgement of the affiliates' profits. Pet. App. 39a. The majority even claimed that 15 U.S.C. § 1117(a) supported this holding.

Judge Quattlebaum dissented. He explained that "§ 1117(a) speaks to the infringer's profits," not its affiliates. Pet. App. 59a. Besides, Respondent argued "that [only Petitioner], not third parties, was the infringer." *Id.* So in his view, the District Court could not order disgorgement of the non-party corporate affiliates' profits. This Court granted certiorari to resolve the circuit split on this important issue.

SUMMARY OF ARGUMENT

I.A. Congress has invoked equity in many statutes. This Court has often held that when Congress invokes equity it gives courts only those powers that courts of equity had when they merged with courts of law. In other words, equitable relief

does not mean unlimited power. Rather, it limits courts' power to grant relief.

B. From the time that the Articles of Confederation governed our nation until the merger of courts of equity and law, equity courts severely limited disgorgement of profits. Such a remedy was available only against the defendant for its profits—not the profits of third parties—and was limited to the actual profits traced to the defendant's unlawful behavior. The Fourth Circuit's decision violates both limits because it awarded disgorgement of profits that non-party corporations earned, which was greater than the nonexistent profits Petitioner earned from its infringing uses of Respondent's mark.

II.A. Requiring trademark holders to sue all infringers will not encourage infringement. Prevailing plaintiffs may recover attorney fees and costs. This means it could be more expensive for a corporate family to have multiple entities infringing; the attorney fees will be higher for suing multiple corporate affiliates. So decreasing trademark infringement is not a reason to affirm.

B. State and federal law zealously protect distinctions in corporate form. This allows companies to structure themselves in a way that benefits both the owners and the public. But the Fourth Circuit ignored the distinct corporate entities here under the guise of fairness. Affirming that decision will harm our economy.

ARGUMENT

I. SECTION 1117(a) DOES NOT GIVE DISTRICT COURTS CARTE BLANCHE TO DO WHAT IS FAIR.

A. Congress's Invocation Of Equity Limits The Type Of Relief That District Courts May Grant.

The Fourth Circuit held that Section 1117(a)'s use of the phrase "principles of equity" grants District Courts unlimited authority to do what is fair. This statutory construction is backwards. Congress's use of the phrase "principles of equity" limits district courts' authority to order the disgorgement of profits. The Lanham Act does not authorize district courts to award any disgorgement that they think is appropriate or necessary. Rather, the relief sought must be "equitable" in nature.

Equitable relief means relief traditionally granted by courts of equity before courts of law and courts of equity merged in 1938. In other words, Section 1117(a) authorizes district courts to order disgorgement of profits only if courts of equity traditionally granted such disgorgement. They did not.

This Court's decisions confirm that when Congress invokes equity, it intends to limit relief to those traditionally granted by courts of equity. For example, in *Mertens v. Hewitt Assocs.*, 508 U.S. 248 (1993) the Court interpreted the Employee Retirement Income Security Act of 1974's invocation of equity. *See* 29 U.S.C. § 1132(a)(3). The Court held

that allowing parties to seek "equitable relief" "refers to those categories of relief that were typically available in equity." *Mertens*, 508 U.S. at 256.

The dispute in *Mertens* was odd because everyone agreed that the relief the plaintiffs sought was a proper legal remedy. But the Court held that this relief was unavailable under ERISA because the statute limited the relief courts could grant to equitable relief. Interpreting "equitable relief" to mean "whatever relief a common-law court of equity could provide in such a case would limit the relief not at all." *Mertens*, 508 U.S. at 257; *cf. Stout v. Phoenix Assur. Co. of London*, 56 A. 691, 694 (N.J. Ch. 1904) (Under the doctrine of ancillary jurisdiction, a court of equity "can deal with legal questions [] so far as their decision is incidental or essential to the determination of some equitable question." (citations omitted)). So although the Court agreed that in some contexts the term "equitable relief" could mean "whatever relief a court of equity is empowered to provide in the particular case at issue," that did not end the inquiry. *Mertens*, 508 U.S. at 256.

Many situations arose "[a]t common law * * * in which an equity court could 'establish purely legal rights and grant legal remedies which would otherwise be beyond the scope of its authority.'" *Mertens*, 508 U.S. at 256 (quoting 1 John N. Pomeroy, *Equity Jurisprudence* § 181 (5th ed. 1941)). Imposing no limits would be a problem because Congress expressed its intent to limit the type of relief that plaintiffs could pursue under Section 1132(a) by including the equitable qualifier. The Court refused to "read the statute to render the modifier superfluous." *Id.* at 258 (citations omitted). Thus, it

held that the relief the plaintiffs sought there was not available under Section 1132(a)(3).

The Court doubled down on this interpretation of ERISA's invocation of equity 19 years later. As the Court said, "equitable relief must mean something less than all relief." *Great-West Life & Annuity Ins. v. Knudson*, 534 U.S. 204, 209 (2002) (quoting *Mertens*, 508 U.S. at 258 n.8 (cleaned up)). There, the plaintiffs sought specific performance from the defendants and an order requiring them to hand over funds recovered from a third party. The Court held that the fact that such relief was not typically available in equity courts meant that it was unavailable under ERISA. *See id.* at 210.

That, however, was not the end of the Court's analysis. Addressing arguments made by the plaintiffs and the United States as amicus curiae, the Court explained that it did not matter whether the Court's holding was "clearly * * * inconsistent with a primary purpose of ERISA." *Great-West. Life*, 534 U.S. at 220 (quotation omitted). This was because "vague notions of a statute's basic purpose are [] inadequate to overcome the words of its text regarding the specific issue under consideration." *Id.* (cleaned up); *see SEC v. Sloan*, 436 U.S. 103, 116 (1978).

The same is true here. Even if Respondent could not recover for the infringing uses by Petitioner's non-party corporate affiliates, that did not give the District Court carte blanche to do what it thought was fair by awarding disgorgement of the non-parties' profits. Such an award conflicts with the Lanham Act's plain language, which limits the types

of relief that district courts may award for infringement.

ERISA is not the only statute for which this Court has restricted available relief because of the equitable limiter. Title VII provides that district courts may award "any [] equitable relief as the court deems appropriate." 42 U.S.C. § 2000e-5(g). The Court held that the statute's use of the modifier "equitable" before "relief" meant that courts cannot award compensatory or punitive damages by invoking this statutory provision. *United States v. Burke*, 504 U.S. 229, 238 (1992) (citations omitted).

The Court restricted the type of relief available even though racial discrimination "causes grave harm to its victims." *Burke*, 504 U.S. at 238 (citations omitted). Although such discrimination inflicts great harm on victims, that was not a reason to allow courts to award compensatory and punitive damages. *See id.* Because the statute uses the "equitable" modifier, the Court said that courts lacked the power to grant such relief.

While *Burke* was pending, Congress recognized that the statutory language limited plaintiffs' possible recovery. So it passed a law that allowed plaintiffs to pursue both compensatory and punitive damages. *See Burke*, 504 U.S. at 241 n.12 (citing Civil Rights Act of 1991, Pub. L. 102-166, § 102, 105 Stat. 1071, 1073). This is how the Constitution requires our government to operate. The courts interpreted Section 2000e-5(g) to bar compensatory and punitive damages. Congress thought that this was a bad policy and so amended the statute by adding 42 U.S.C. § 1981a. This new statutory provision gave courts the authority to

award compensatory and punitive damages for intentional discrimination. If Congress thinks that Lanham Act plaintiffs should be able to recover the profits of non-party corporate entities, it can pass such a law. But that is unlikely to happen here because, as described below, it is bad policy.

The Court has most recently rejected broad relief under equitable principles in *Liu*. There, the Court held that "equity practice long authorized courts to strip wrongdoers of their ill-gotten gains, with scholars and courts using various labels for the remedy." 591 U.S. at 79. Although different courts have referred to this equitable remedy using different terms, both in *Liu* and here the courts have referred to it as disgorgement.

Despite the *Liu* Court's saying that disgorgement was a remedy typically available in equity courts, that did not end the inquiry. As the Court said, courts were careful "to avoid transforming an equitable remedy into a punitive sanction." *Liu*, 591 U.S. at 79. The Fourth Circuit's decision here, however, did exactly that. By awarding disgorgement of the non-party corporate affiliates' profits, it transformed the traditional equitable remedy of disgorgement into a punitive remedy that was traditionally outside the scope of equity courts' authority.

B. Equity Courts Could Not Award Disgorgement Of Non-Parties' Profits.

"While equity courts did not limit profits remedies to particular types of cases, they did

circumscribe the award in multiple ways to avoid transforming it into a penalty outside their equitable powers." *Liu*, 591 U.S. at 82 (citing *Marshall v. City of Vicksburg*, 82 U.S. 146, 149 (1872)). As the *Marshall* Court said, "[e]quity never, under any circumstances, lends its aid to enforce a forfeiture or penalty, or anything in the nature of either." 82 U.S. at 149 (citing *Livingston v. Tompkins*, 4 Johns. Ch. 415 (N.Y. Ch. 1820); 2 Story's Equity § 1319).

Here, the District Court's award of disgorgement of the non-party corporate affiliates' profits was a penalty. Respondent provided no evidence, nor did the District Court find, that Petitioner made any money from the non-parties' infringing uses. So rather than limiting the equitable remedy of disgorgement to the powers traditionally exercised by equity courts, the District Court punished Petitioner for its infringing uses of Respondent's trademark by requiring Petitioner to pay an amount equal to the non-party corporate affiliates' profits.

1. As part of their efforts not to transform disgorgement awards into penalties, "[e]quity courts" did not "award[] profits-based remedies" "against multiple wrongdoers under a joint-and-several liability theory." *Liu*, 591 U.S. at 82-83 (citation omitted). This rule is not new. Rather, it has a long history in American equity jurisprudence.

In one case, a patent owner sued a city and a corporation for patent infringement. *City of Elizabeth v. Am. Nicholson Pavement Co.*, 97 U.S. 126, 128-29 (1877). Although at the time a patent holder could sue only for ill-gained profits (not damages), the Court

held that "one thing may be affirmed with reasonable confidence, that, if an infringer of a patent has realized no profit from the use of the invention, he cannot be called upon to respond for profits." *Id.* at 138. In *City of Elizabeth*, the city made no profits from the infringement. *Id.* at 140. So even though the parties admitted that the company and the city were operating jointly, the patent owner could not recover from the city. *See id.*

The same is true here. Even if Petitioner operated jointly with its non-party corporate affiliates, it earned no profits from infringing on Respondent's trademark. Under these facts, courts of equity lacked the ability to order the non-infringer to disgorge the profits of its joint actor. Here, that means the District Court could not order Petitioner to disgorge the profits of the non-party corporate affiliates.

Similarly, in *Keystone Mfg. Co. v. Adams*, 151 U.S. 139 (1894) the plaintiff sued a corporation and its officers for infringing his patent for cornshellers. There, the lower court "permitt[ed] the plaintiff to prove, not the defendant's profits, but those realized by other companies. This was, in effect, showing what * * * he might reasonably have made, and not those which he did make." *Id.* at 148 (cleaned up). In rejecting this ruling, the Court explained that "[t]he fallacy" of such a "rule is obvious." *Id.* Thus, the Court reversed the lower court's order and rendered judgment for the defendant. *See id.*

And in *Belknap v. Schild*, 161 U.S. 10 (1896) the plaintiff sued the defendants for infringing his patent for constructing gates. There, the Court held

that defendants in equity "are [] liable to account for such profits only as have accrued to themselves from the use of the invention, and not for those which have accrued to another." *Id.* at 25. Although the United States had profited from the defendants' patent infringement, there was no evidence that the defendants had profited. *See id.* at 26. "The necessary result [wa]s that * * * the plaintiff * * * [wa]s not entitled to * * * profits." *Id.*

Again, the same is true here. Petitioner did not profit from the infringement of Respondent's trademark. A traditional equity court thus would have lacked authority to grant disgorgement of profits. Yet the District Court ignored this precedent and awarded Respondent disgorgement of the non-party corporate affiliates' profits.

As shown by these cases, at the end of the nineteenth century this Court rebuffed equity courts' attempts to exceed their authority by ordering disgorgement of profits from third parties. But the history of American courts' rejecting disgorgement of third parties' profits is much longer.

In a case that started when the Articles of Confederation were still in effect, the owner of a ship sought the return of property seized during the Revolutionary War. Writing for the Court, Chief Justice Marshall held that an equity court could not order disgorgement from "those who were not in possession of the thing to be restored, had no power over it, and were, consequently, unable to redeliver it." *Jennings v. Carson*, 8 U.S. 2, 21 (1807). *Jennings* echoed another case arising from events occurring pre-ratification. There, Justice Iredell explained that

"each party ought only to be required to restore what he was adjudged to receive." *Penhallow v. Doane's Adm'rs*, 3 U.S. 54, 104 (1795) (seriatim).

So from our nation's infancy, courts could not order defendants to pay for ill-gotten gains by others. In *Jennings* and *Penhallow*, that meant the proceeds from the sale of property seized at sea during the Revolutionary War. Here, that means the profits earned by the non-party corporate affiliates.

2. Not awarding disgorgement against one party for profits by another party or by a non-party also aligns with the way equity courts calculated how much disgorgement was owed. As the Court recently said, equity "courts limited awards to the net profits from wrongdoing." *Liu*, 591 U.S. at 83.

In one case, the heirs of a patent holder sued several defendants for infringement. The lower court ordered disgorgement of "the amount of profits which may have been, or with due diligence and prudence might have been, realized, by the defendants for the work done by them or by their servants by means of the" infringing machine. *Livingston v. Woodworth*, 56 U.S. 546, 559 (1853). The Court held that it was "aware of no rule which converts a court of equity into an instrument for the punishment of simple torts." *Id.* Thus, the lower court's ruling was unwarranted by "the well-established rules of equity jurisprudence." *Id.*

The Court explained, "it would be peculiarly harsh and oppressive, were it consistent with equity practice, to visit upon the appellants any consequences in the nature of a penalty." *Livingston*,

56 U.S. at 559-60. So even in the 1850s it was "clear[]" that disgorgement was "restrict[ed]" to the defendants' "actual gains and profits." *Id.* This means that gains and profits from third parties were not included in the disgorgement calculation under traditional equitable principles. So here Petitioner's non-party corporate affiliates' profits were improperly included in the disgorgement calculation.

The Court has strictly enforced the rule limiting disgorgement to the "net profits from wrongdoing." *Liu*, 591 U.S. at 83. For example, in another patent case, the Court held that "it is clear that [the patentee] is not entitled to receive more than the profits actually made in consequence of the use of his process in the manufacture of the" infringing products. *Mowry v. Whitney*, 81 U.S. 620, 649 (1871). The Court held that this meant that it was improper to order disgorgement of the profits the defendant made for selling the infringing goods. It was only the extra profits that he derived from the patented process that an equity court could order handed over to the patentee. *See id.* at 650.

3. True, equity courts recognized an exception to the general rule limiting disgorgement of profits. But that exception was very narrow and does not apply here. "[W]hen the entire profit of a business or undertaking results from" infringing on a patent, "the patentee" can choose "to recover the entire profits." *Root v. Lake Shore & M.S. Ry. Co.*, 105 U.S. 189, 203 (1881). Here, Petitioner had a thriving business before infringing Respondent's trademark and continued to make money unconnected to any infringement. This lone exception to the general rule therefore does not apply.

In short, from the time of the Articles of Confederation until the merger of courts of equity and law, equity courts had limited power to order disgorgement of profits. That power did not extend to ordering disgorgement of profits from non-party corporate affiliates. Yet that is what the Fourth Circuit allowed here. As this Court has repeatedly said, when Congress invokes equity it gives courts only the power that courts of equity had at the time the courts of equity and law merged. Thus, Congress limited district courts' power to award disgorgement of profits by invoking equity in Section 1117(a).

II. ALLOWING RECOVERY FOR PROFITS BY NON-PARTY CORPORATE AFFILIATES WOULD HARM THE ECONOMY.

A. Businesses That Have Their Trademarks Infringed Can Still Recover Ill-Gotten Profits.

According to Respondent and the Fourth Circuit, reversing would cause a cascade of horribles. Chief among these is that companies will use corporate affiliates to infringe the trademarks of competitors or other companies. But that will not happen. In fact, the plaintiffs' bar will have even more incentive to go after trademark infringers.

If Respondent sued the non-party corporate affiliates and proved that they infringed its trademark, it would have been entitled to disgorgement of those affiliates' profits. There was nothing stopping Respondent from joining the non-party corporate affiliates here or suing each infringing affiliate separately. But Respondent chose

a different path and sued only Petitioner. It should not be rewarded for taking this shortcut.

Assuming infringement occurred domestically, at least one district court would have personal jurisdiction over the corporate affiliates and venue would be proper in that district. And if the infringement occurred overseas, Respondent could not recover against either Petitioner or the corporate affiliate. *See Abitron Austria GmbH v. Hetronic Int'l, Inc.*, 600 U.S. 412, 419-21 (2023).

Nor would suing the corporate affiliates have been cost prohibitive. The same statutory section that allows for the recovery of the "defendant's profits" also allows for prevailing plaintiffs to recover attorney fees and costs. In fact, Respondent's attorneys could have recovered more money because rather than just billing for papers prepared for Petitioner, they could have also received payment for preparing papers against the corporate affiliates.

This means that requiring trademark holders to sue all parties who infringe their trademark—rather than just one corporation—will not decrease the incentive for suits. It will also not reward infringers who have corporate affiliates that also infringe. If anything, it will punish infringers that have corporate affiliates who also infringe because they may have to pay more in combined attorney fees. In short, requiring that trademark holders sue all infringers will increase deterrence—not decrease it.

B. Ignoring Corporate Form Would Harm The Economy.

"A corporation is an entity that is created by law and endowed with a separate and distinct existence. * * * Because a principal purpose for organizing a corporation is to permit its owners to limit their liability, there is a presumption of separateness." *Am. Protein Corp. v. AB Volvo*, 844 F.2d 56, 60 (2d Cir. 1988). In fact, "the concept of limited liability [] flows logically from the concept of the corporation as a capital-raising mechanism." Henry G. Manne, *Our Two Corporation Systems: Law and Economics*, 53 Va. L. Rev. 259, 262 (1967). This is because "it allows individuals to use small fractions of their savings for various purposes, without risking a disastrous loss if any corporation in which they have invested becomes insolvent." *Id.*

Of course, this rationale is not limited to individuals. The same is true of one corporation investing in another corporation. The corporation is not going to risk its entire business if it can be held liable for all the debts incurred by a company it invested in. That is why we have seen a surge in complex corporate structures where one large corporation has many corporate affiliates. Berkshire Hathaway is a good example. That one corporation has over 60 corporate affiliates shows the grand success of the corporate form in America.

The corporate form also ensures that the securities market is as efficient as possible. Without providing limited liability, "the value of shares would not be the same to every investor." Frank H. Easterbrook, *Limited Liability and the Corporation*,

52 U. Chi. L. Rev. 89, 92 (1985). This is because an investor who has $1 million to lose would value a security less than someone with only $1,000 to lose. *See* Paul Halpern et al., *An Economic Analysis of Limited Liability in Corporation Law*, 30 U. Toronto L.J. 117, 129-31 (1980).

But these advantages of incorporating disappear if courts do not respect the corporate form. If a person or a corporation can be held liable for the faults of a different corporation then there is no more limited liability. Rather, what exists is as bad as, if not worse than, a general partnership. Both individuals and corporations will have to limit their investments because of the increased risk of liability. When investment is artificially limited because the corporate form is ignored, it harms the entire economy. No longer is capital being used for its most productive purpose; it is being used for less productive purposes.

Moreover, complex corporate structures help streamline services and take advantage of economies of scale. For example, RKT Holdings is a company that helps provide government affairs and legal services to fourteen different corporate affiliates. *See* RKT Holdings, *Our Clients*, https://perma.cc/XWV8-9X6R. Rather than hiring people for redundant roles, this one company can use economies of scale to save the corporations money. This money can then be used to grow the companies and the American economy.

But the Fourth Circuit's rule discourages using these economies of scale. Imagine if RKT Holdings could be held liable if any one of the fourteen corporate affiliates infringed a trademark. It would

change its business practices overnight. The purpose of forming corporations is to limit potential liability, not increase it. The only way to ensure that corporations and investors have the right incentives is to hold that district courts cannot order disgorgement of non-party corporate affiliates' profits.

CONCLUSION

This Court should reverse.

Respectfully submitted,

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September 4, 2024