

# TRADEMARK INFRINGEMENT

## WORKING WITH THE EXPERTS

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### **Trademark Infringement**

A **trademark** is a symbol, usually defined as a unique and highly recognizable phrase, design, or emblem. It is strongly associated with the identity of a brand, and is the property of the brand's owner. Trademarks may be heavily used in advertising, but they are also typically displayed on corporate signage, packaging, and letterhead. It is increasingly common in the modern business world to find them identifying corporate buildings, and other properties as well. **Trademark infringement** refers to the criminal act of using a trademark without proper authorization, in association with products or services, in a way that is likely to cause confusion about where those goods or services come from. Because of its strong brand association, the false use of a trademark can have wide-ranging and potent effects upon brand profitability – and on a company's reputation.

Meanwhile, consumers are tricked into purchasing goods or services which do not meet the standards of quality which they have every right to expect. For these reasons, the use of trademarks is strictly regulated under US law. Acts of trademark infringement are taken very seriously.

## **Trademark Infringement Damages**

When a trademark is used by someone who does not have the right to use it, an offense has been made against that trademark's owner. There are a number of other crimes which are conceptually similar, such as the unauthorized use of any physical company property – like a vehicle, or a building. To an individual, the illicit use of a trademark might be most comparable to identity theft – one of the most commonly feared crimes in American society today. Companies invest significant amounts of time, effort, and money in promoting their corporate and brand identities, and trademark infringement can lead to considerable financial setbacks in very short periods of time. The process involved in determining trademark infringement damages works as follows, in a general sense.

- ❖ **Profit disgorgement** is the determination of the profits of the defendant. The costs of doing business in general must also be specifically determined and excluded, as must any profits which have nothing to do with the trademark being infringed upon.
- ❖ **Lost profits** need to be evaluated with regard to the plaintiff. Had there been no infringement, what would the plaintiff's profits have been? Would they have had the capacity to earn those profits themselves, or did the defendant exceed the plaintiff's capabilities?
- ❖ **Profit apportionment** is a legal term which refers to the determination of damages, based upon the aforementioned determinations. It is based upon the resulting evaluation of what portion of the defendant's profits are owed to the plaintiff, versus what would have gone to the defendant regardless of any trademark infringement.

## Working with Trademark Damages Experts

As a form of intellectual property, trademarks represent a field of law – and, by consequence, of legal dispute – which is centuries old. According to a recent news article from Smithsonian magazine, former plaintiffs include Kelloggs Corporation, Mattel, Inc., and Sir Isaac Newton. For as long as **trademark infringement** suits have been brought to court – wherever and whenever that court may have been held – expert witnesses have been brought in by either side.

In the present day, when an instance of trademark infringement occurs, a **trademark damages expert** must be called upon to help evaluate the case. Expert legal advice is needed in order to help the plaintiff ascertain exactly what damages are owed to them, in a manner which is legally fair and which will stand up in court. As has already been outlined above, this is not a simple procedure. The process involves a detailed accounting, often of two or more corporate interests, with determinations based upon everything from “could the plaintiff have generated this profit” to “was the defendant aware of their trademark infringement?”

In short, defining exactly how the plaintiff was injured – how their current and future financial interests were affected – is a vital step in securing rightfully owed damages. US law protects the plaintiff’s exclusive rights to their **intellectual property**, and supports this pursuit of legal damages. Damages may be pursued for any number of reasons, including loss of profit, damage to reputation, and brand defamation, among other common effects of trademark infringement. Each of these factors will need to be demonstrated individually, as well as explained into the figure which is owed to the plaintiff.

Nowadays, this is even more complicated a procedure than it used to be. In today’s America, high-speed digital communications and widespread internet access have led to a wealth of information being available at everybody’s fingertips. Unrelated trademarks owned by the same corporate interest are now widely recognized as such, and damage to a brand’s reputation can extend to property – including other trademarks – which

might once have been considered completely unrelated. Damage being incurred by otherwise unrelated trademarks and their associated brands is difficult to evaluate, but it becomes one more thing that the plaintiff needs to be able to maintain in court – if they wish to be fairly compensated for the damage that has been done to them.

## **Rogers DVS for The Best Trademark Damages Expertise**

Graham Rogers first opened Rogers DVS in 2011. Prior to that point, he had spent his professional career accumulating more than twenty-four years of personal experience in trademark consultation and related fields. These include, among others, business valuation and financial damages analysis. His personal focus was in **intellectual property valuation**, the vital process of appraising the value of an item of intellectual property – including for damage assessment purposes. He has worked with a wide range of corporate interests, reflecting clients and claims of many different sizes (and resulting levels of complexity).

Rogers DVS is staffed by an experienced and wide-ranging team of compassionate and concerned professionals – people who understand the value of what is at stake in a trademark infringement case. Their experience includes a wide range of factors, which make it invaluable to the field of damages assessment as it exists today, and a must-have for any case involving disputes over the unauthorized use of intellectual property. Graham Rogers and his staff are fully licensed, certified, and widely credentialed, having qualified as expert witnesses in state, federal, and tax court. They have worked within such industries as the pharmaceutical industry, medicine, high technology, digital services, finances, retail, healthcare services, and the insurance industry.

**Rogers DVS**, led by **Graham Rogers** is an expert witness and consultancy business specializing in IP and Business Valuation, Fraud & Forensics, IP Damages and more. Your business and intellectual property is worth having the best. At Rogers DVS you get personalized attention, service and real experience on your side.

If you have need of a free trademark infringement damages consultation, **Contact Rogers DVS today**, and Graham Rogers will personally respond to your inquiry ASAP.