

No. 04-1693

**IN THE
SUPREME COURT OF THE UNITED STATES**

CONTESSA PREMIUM FOODS, INC.,
Petitioner,

vs.

BERDEX SEAFOOD, INC., *ET AL.*,
Respondents.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit**

**MOTION OF INTERNATIONAL TRADEMARK
ASSOCIATION FOR LEAVE TO FILE
BRIEF *AMICUS CURIAE* IN SUPPORT OF
PETITIONER AND BRIEF OF *AMICUS CURIAE*
INTERNATIONAL TRADEMARK ASSOCIATION
IN SUPPORT OF PETITIONER**

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Pursuant to Supreme Court Rule 37.2(b), the International Trademark Association (“INTA”) moves for leave to file the attached Brief *Amicus Curiae* in support of the Petition for Certiorari. Counsel for Petitioner Contessa Premium Foods, Inc. and all respondents but one have consented or stated no objection to the filing of INTA’s brief. Specifically, Respondent Fishery Products International Ltd. has withheld consent, and Mazetta Co. LLC, Hanwa American Corporation, and Admiralty Island Fisheries, Inc. have indicated that they do not object to INTA’s filing.¹ Copies of the

¹ Consistent with footnote five in the petition, which identifies only Fishery Products Int’l, Inc., Berdex Seafood, Inc., and Coast to Coast

consent letters have been filed with the Clerk of the Court concurrently with this motion.

INTA requests leave to file the attached Brief *Amicus Curiae* because the issue presented by the petition concerns an aspect of trademark law of importance to INTA's membership – the standard for the recovery of a trademark infringer's profits. Although the availability of monetary remedies to trademark owners is governed by section 35 of the Lanham Act, 15 U.S.C. § 1117, a three-way split has evolved among the Circuit Courts of Appeal on whether a plaintiff must prove willful infringement as a prerequisite to recovering an infringer's profits from the sale of goods bearing an infringing mark. This split in authority directly affects INTA's membership by depriving trademark owners of the nationwide, uniform rights that the Lanham Act was designed to guarantee.

INTA is a not-for-profit organization whose more than 4,300 members have a special interest in trademarks. These members include trademark owners, law firms, advertising agencies, package design firms, and professional associations from the United States and 170 other countries. All share the goals of emphasizing the importance of trademarks and trademark protection, and of promoting an understanding of the essential role trademarks play in fostering informed decisions by consumers, effective commerce, and fair competition.

INTA members frequently are participants in trademark litigation, and therefore are interested in the development of clear and consistent principles of trademark and unfair competition law. INTA has substantial expertise in trademark law and, as set forth in the attached brief, has selectively participated as an amicus curiae in cases involving significant trademark issues.

In keeping with INTA's interest in promoting national uniformity in the application of federal trademark law, INTA's brief requests that the Court resolve a three-way split

Seafood as the only respondents with an interest in the petition, counsel for Sea Port Products Corp. has informed INTA that Sea Port is not a party to the petition for certiorari.

in authority among the Circuit Courts of Appeal on whether a trademark owner must first prove willful infringement as a prerequisite to recovering a trademark infringer's profits. This split frustrates Congress's purpose of providing uniform, nationwide rights for owners of federally-registered trademarks when it enacted the Lanham Act in 1946. Uniform rights are particularly important to INTA's membership in a marketplace increasingly characterized by brands with national and global reach.

The current split in authority also exposes INTA's membership to forum shopping. Owners of federally-registered trademarks have an incentive to bring infringement suits in circuits that do not require trademark holders to prove willful infringement as a prerequisite to the recovery of an infringer's ill-gotten profits. Similarly, parties that have been accused of trademark infringement – but have not yet been sued – have an incentive to file declaratory relief actions in those circuits that require trademark holders to clear the high evidentiary bar of proving willful infringement before a court may consider whether to force the infringer to disgorge its profits. This Court's announcement of a clear, uniform standard as to the relevance of willfulness to the disgorgement of profits in a trademark case is the most effective way to solve this problem.

For these reasons, INTA respectfully requests leave to file the attached brief, and urges this Court to grant the petition for certiorari and restore national uniformity to federal trademark law on this important issue.

Respectfully submitted,

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RULES

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INTRODUCTION

With this Court's leave, pursuant to Supreme Court Rule 37.2(b),¹ *amicus curiae* International Trademark Association ("INTA"), respectfully submits this brief in support of the petition for certiorari.

INTA requests the Court to resolve a long-standing split among the Circuit Courts of Appeal on whether a trademark owner must prove willful infringement as a prerequisite to recovering the trademark infringer's profits from the sale of goods bearing the infringing mark. INTA does not, in this brief, recommend a particular resolution to the split in authority.² Rather, it advocates that the Court take the opportunity that this case presents to grant certiorari to resolve the split in the Circuits and restore the national uniformity to federal trademark law that Congress intended to create in enacting the Lanham Act in 1946.

INTEREST OF *AMICUS CURIAE*

INTA is a not-for-profit organization whose more than 4,300 members have a special interest in trademarks. They include trademark owners, law firms, advertising agencies, package design firms, and professional associations from the United States and 170 other countries. All share the goals of emphasizing the importance of trademarks and trademark protection, and of promoting an understanding of the essential role trademarks play in fostering informed decisions by consumers, effective commerce, and fair competition. INTA members frequently are participants in trademark litigation, and therefore are interested in the development of clear and

¹ All but one of the parties with an interest in the petition has either affirmatively consented to INTA's filing of this Brief or has indicated that it does not object. The consenting parties' letters of consent have been filed concurrently with this brief. No party to this case authored any part of this brief. No person or entity other than *amicus* or its counsel has made any monetary or other contribution to its preparation or submission.

² Should the Court grant certiorari, INTA will seek the consent of the parties to file an *amicus curiae* brief on the merits.

consistent principles of trademark and unfair competition law. INTA has substantial expertise in trademark law and has selectively participated as an *amicus curiae* in cases involving significant trademark issues.³

INTA was founded in 1878 as the United States Trademark Association, in part to encourage the enactment of federal trademark legislation after the invalidation on constitutional grounds of this country's first trademark act. Since that time, INTA has been instrumental in making recommendations and providing assistance to legislators in connection with federal trademark legislation, including the particular statutory revision that has exacerbated the split in the Circuit Courts of Appeal identified by the petition. *See* Pub. L. No. 106-43, § 3(b), 113 Stat. 219 (1999).

SUMMARY OF ARGUMENT

INTA submits this Brief *Amicus Curiae* to request that the Court resolve a long-standing split in authority among the Circuit Courts of Appeal on whether a trademark owner must first prove willful infringement as a prerequisite to re-

³ Cases in which INTA has filed *amicus* briefs include: *KP Permanent Make-Up, Inc. v. Lasting Impression I Inc.*, 125 S. Ct. 542 (2004); *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23 (2003); *Moseley v. V. Secret Catalogue, Inc.*, 537 U.S. 418 (2003); *TraFFix Devices, Inc. v. Mktg. Displays, Inc.*, 532 U.S. 23 (2001); *Wal-Mart Stores, Inc. v. Samara Bros.*, 529 U.S. 205 (2000); *Fla. Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank*, 527 U.S. 627 (1999); *Dickinson v. Zurko*, 527 U.S. 150 (1999); *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159 (1995); *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763 (1992); *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281 (1988); *WarnerVision Entm't Inc. v. Empire of Carolina, Inc.*, 101 F.3d 259 (2d Cir. 1996); *Preferred Risk Mut. Ins. Co. v. United States*, 86 F.3d 789 (8th Cir. 1996); *Conopco, Inc. v. May Dep't Stores Co.*, 46 F.3d 1556 (Fed. Cir. 1994); *Ralston Purina Co. v. On-Cor Frozen Foods, Inc.*, 746 F.2d 801 (Fed. Cir. 1984); *Anti-Monopoly, Inc. v. Gen. Mills Fun Group*, 684 F.2d 1316 (9th Cir. 1982), *cert. denied*, 459 U.S. 1227 (1983); *In re Borden, Inc.*, 92 F.T.C. 669 (1978), *aff'd sub nom. Borden, Inc. v. Fed. Trade Comm'n*, 674 F.2d 498 (6th Cir. 1982), *vacated and remanded*, 461 U.S. 940 (1983); *Redd v. Shell Oil Co.*, 524 F.2d 1054 (10th Cir. 1975); *Century 21 Real Estate Corp. v. Nev. Real Estate Advisory Comm'n*, 448 F. Supp. 1237 (D. Nev. 1978), *aff'd*, 440 U.S. 941 (1979).

covering a trademark infringer's profits from the sale of goods bearing the infringing mark.

The Lanham Act, codified at 15 U.S.C. § 1051 *et seq.*, was enacted by Congress in 1946 to provide uniform, nationwide rights for owners of trademarks, service marks, collective marks, and certification marks,⁴ thousands of whom are members of INTA. Further to that purpose, Congress codified in the Lanham Act the monetary remedies available to mark owners against infringers in what is now 15 U.S.C. § 1117(a) (2000). Just as the Lanham Act should guarantee mark owners uniform, nationwide rights against junior users, it should also guarantee a uniform standard for the recovery of monetary remedies, including defendant's profits.

This purpose is frustrated by the current, fractured state of the law regarding the standards for the recovery of an infringer's profits. Today, mark owners have an incentive to bring infringement suits in circuits that do not require proof of willful infringement as a prerequisite to the recovery of an infringer's ill-gotten profits. Similarly, parties that have been accused of trademark infringement – but have not yet been sued – have an incentive to file declaratory relief actions in those circuits that require mark owners to clear the high evidentiary bar of proving willful infringement before a court may consider whether to force the infringer to disgorge its profits. This inconsistency in the application of the same statutory language in 15 U.S.C. § 1117(a) undermines the predictability and uniformity that the Lanham Act should provide.

⁴ Consistent with the convention adopted by the Lanham Act, this brief refers to these designations collectively as “trademarks” or “marks.”

ARGUMENT

I. There Is a Clear Split in the Circuits on the Relevance of an Infringer's Willfulness to the Availability of Defendant's Profits as a Remedy for Trademark Infringement

The availability of monetary remedies to mark owners, including disgorgement of an infringer's profits from sales of goods bearing the infringing mark, is governed by section 35 of the Lanham Act. That section provides, in part:

When a violation of any right of the registrant of a mark registered in the Patent and Trademark Office, a violation under section 43(a) [15 USC §1125(a) or (d)], or a willful violation under section 43(c) [15 USC § 1125(c)], shall have been established in any civil action arising under this Act, the plaintiff shall be entitled, subject to the provisions of sections 29 and 32 [15 USC §§ 1111, 1114], and subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action. The court shall assess such profits and damages or cause the same to be assessed under its direction.

15 U.S.C. § 1117(a). Despite the codification of remedies for trademark infringement, the courts' interpretation of section 35(a) is fractured and conflicting. *See generally* Bryan M. Otake, *The Continuing Viability of the Deterrence Rationale In Trademark Infringement Accountings*, 5 UCLA ENT. L. REV. 221, 231 (1998) (noting that "[d]ecisional precedent is mixed and discordant" in discussing the varying standards applied by courts in deciding when a disgorgement of an infringer's profits is appropriate).

As discussed at length in petitioners' brief, there is a three-way split among the Circuit Courts of Appeal on the relevance of whether a defendant willfully infringed the plaintiff's mark to the availability of a disgorgement of the infringer's profits as a remedy. Petitioners' explication of this three-way split is comprehensive, and INTA will not

burden this Court by repeating Petitioners' analysis.⁵ The split can be summarized as follows:

1. The Third, Fifth, Seventh and Eleventh Circuits interpret section 35(a) of the Lanham Act *not* to require a showing of willfulness as a prerequisite to the disgorgement of an infringer's profits from the sale of infringing goods. Although willfulness is a factor that the Court may consider in deciding whether to award defendant's profits, it is not a requirement. *See, e.g., Banjo Buddies, Inc. v. Renosky*, 399 F.3d 168, 174 (3d Cir. 2005) (willfulness is not a prerequisite to an award of infringer's profits); *Quick Techs., Inc., v. Sage Group plc*, 313 F.3d 338, 349 (5th Cir. 2002) (“[W]e decline to adopt a bright-line rule in which a showing of willful infringement is a prerequisite to an accounting of profits.”); *Roulo v. Russ Berrie & Co.*, 886 F.2d 931, 941 (7th Cir. 1989) (“[T]here is no express requirement . . . that the in-

⁵ The law in the First and Sixth Circuits on this issue is not as crystallized as Petitioners' brief implies. The Sixth Circuit case, *Wynn Oil Co. v. Am. Way Serv. Corp.*, 943 F.2d 595, 607 (6th Cir. 1991), cited by petitioners for the proposition that that circuit does not require proof of willfulness for recovery of a defendant's profits, makes that statement only in dicta, which cited with approval the Seventh Circuit's rule that willfulness is not required. (citing *Roulo v. Russ Berrie & Co.*, 886 F.2d 931, 941 (7th Cir. 1989)). Nevertheless, the dispute in *Wynn Oil* was whether the plaintiff was required to prove actual confusion to recover the defendant's profits, and the court cited the Seventh Circuit rule for the proposition that no such showing was required. Because the trial court had found willful infringement, and the Sixth Circuit affirmed that finding, the Sixth Circuit did not address whether willfulness was required for a disgorgement of profits in its holding. In an earlier decision, *Frisch's Rests., Inc. v. Elby's Big Boy*, 849 F.2d 1012, 1016 (6th Cir. 1988), the Sixth Circuit held that a plaintiff *is* required to prove willful infringement before it may recover an infringer's profits. The Sixth Circuit made no effort to distinguish its earlier holding in *Frisch's*.

It also is not clear that the First Circuit requires proof of willfulness for disgorgement of profits if the trademark owner and trademark infringer are not in direct competition. In *Tamko Roofing Prods., Inc. v. Ideal Roofing Co. Ltd.*, 282 F.3d 23, 36 (1st Cir. 2002), cited by Petitioners, the First Circuit expressly declined to decide whether willfulness is required in such circumstances. *See id.* at 29. Because willfulness had been established in the trial court, the Court of Appeals did not need to address the issue. *See id.*

fringer willfully infringe . . . to justify an award of profits.”); *Burger King Corp. v. Mason*, 855 F.2d 779, 783 (11th Cir. 1988) (“Nor is an award of profits based on either unjust enrichment or deterrence dependent upon a higher showing of culpability on the part of the defendant. . . .”). The Third Circuit in particular has held that Congress’ 1999 amendment to 15 U.S.C. § 1117, which added the *express* requirement that the owner of a famous mark prove willfulness to recover monetary relief for dilution under 15 U.S.C. § 1125(c), established that proof of willfulness is *not* required for recovery of a defendant’s profits for trademark infringement under 15 U.S.C. § 1125(a). See *Banjo Buddies*, 399 F.3d at 174.

2. In contrast, the Second, Tenth and D.C. Circuits require a trademark owner to prove that the defendant willfully infringed its mark in all circumstances. In those circuits, proof of willfulness is a prerequisite to the recovery of profits, not just one factor for the court to consider. See, e.g., *Bishop v. Equinox Int’l Corp.*, 154 F.3d 1220, 1223 (10th Cir. 1998) (“[A]n award of profits requires a showing that defendant’s actions were willful or in bad faith.”); *Banff, Ltd. v. Colberts, Inc.*, 996 F.2d 33, 35 (2d Cir. 1993); *ALPO Petfoods, Inc. v. Ralston Purina Co.*, 913 F.2d 958, 968 (D.C. Cir. 1990). In these circuits, only after the trademark owner establishes willful infringement may the court consider other equities in deciding whether to order an accounting of defendant’s profits.

3. Finally, the Ninth Circuit appears to employ a hybrid standard for the disgorgement of an infringer’s profits. That circuit permits a trademark owner to seek a disgorgement of the infringer’s profits, without first proving willful infringement, where the trademark owner and infringer are in direct competition, and the infringer’s profits are used as an approximation of the trademark owner’s actual monetary losses caused by the infringement. See, e.g., *Lindy Pen Co. v. Bic Pen Corp.*, 982 F.2d 1400, 1406 (9th Cir. 1993).⁶ If the par-

⁶ It is not clear from the opinion of the Court of Appeals in this case whether petitioners claimed any actual losses to the three respondents for

ties market non-competing products, or where they do not compete in the same geographical regions, the trademark owner must prove willful infringement as a prerequisite to recovery of the infringer's profits from its sales of the infringing goods. The First Circuit has not yet expressly ruled on whether a successful plaintiff is entitled to a disgorgement of the defendant's profits where the two parties were not in direct competition. *See Tamko Roofing Prods.*, 282 F.3d at 29 (declining to decide whether willfulness is required in such circumstances).

This split requires resolution by this Court. In fact, this case presents an opportunity for this Court to address the remedies available to trademark owners under the Lanham Act for the first time since 1967. *See Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714 (1967) (holding that the Lanham Act, as then written, did not permit the award of attorneys fees). All of the trademark cases that the Court has reviewed in recent decades have addressed substantive rights of trademark owners, rather than the remedies available to them for infringement. *See, e.g., KP Permanent Make-Up, Inc. v. Lasting Impression I Inc.*, 125 S. Ct. 542 (2004) (holding that accused trademark infringer does not have the burden of proving absence of confusion to prevail on a fair use defense); *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159 (1995) (holding that colors may be subject to trademark protection); *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189 (1985) (incontestable mark may not be challenged as merely descriptive).⁷

whom there was some evidence of distribution of products bearing an infringing mark.

⁷ One of the issues raised in the petition for a writ of certiorari in *Dastar Corp. v. Twentieth Century Fox Film Corp.* was whether a court, applying the Lanham Act, could award twice a defendant's profits for deterrent purposes. 539 U.S. 23, 25 (2003). The Court's opinion did not reach that issue, as it found that the plaintiff's claim for false designation of origin failed on the merits. *Id.* at 38.

II. The Court Should Grant Certiorari to Restore Uniformity to Federal Trademark Law

The current split in authority runs counter to Congress' purpose of providing uniform, nationwide rights to trademark owners when it passed the Lanham Act in 1946. Congress designed the Lanham Act to provide a robust and consistent, national scheme of protection for trademarks, to "secur[e] to the [trademark] owner the good will of his business and protect[] the public against spurious and falsely marked goods." S. Rep. No. 79-1333 (1946), *as reprinted in* 1946 U.S.C.C.A.N. 1274, 1274-75. As it became clear in the post-war era that "trade [in the United States] is no longer local, but is national," protection of trademarks could no longer be provided by the inconsistent amalgam of state law protections. *Id.* at 1277. As a result, "a sound public policy require[d] that trademarks should receive nationally the greatest protection that can be given them." *Id.* The Senate Committee on Patents described this purpose as follows:

The purpose of this bill is *to place all matters relating to trademarks in one statute* and to *eliminate judicial obscurity*, to simplify registration and to make it stronger and more liberal, to dispense with mere technical prohibitions and arbitrary provisions, to make procedure simple, and relief against infringement prompt and effective.

Id. at 1274 (emphasis added).

Despite the current split in the circuits on the standard for recovering an infringer's profits, courts have recognized that Congress' purpose in federalizing trademark law in the Lanham Act was to create uniform, nationwide rights for a national economy. Not long after the Lanham Act's passage, Judge Learned Hand recognized that it "put federal trademark law upon a new footing . . . and created rights uniform throughout the Union, in the interpretation of which we are not limited by local law." *S. C. Johnson & Son, Inc. v. Johnson*, 175 F.2d 176, 178 (2d Cir. 1949).

More recently, this Court acknowledged Congress's goals by noting that "[n]ational protection of trademarks is desirable . . . because trademarks foster competition and the maintenance of quality by securing to the producer the benefits of good reputation." *Park 'N Fly*, 469 U.S. at 198; *see also Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 781-82 (1992) (Stevens, J., concurring) ("The purpose of [the Lanham Act] is to protect legitimate business and the consumers of the country,' [and] [o]ne way of accomplishing these dual goals was by creating uniform legal rights and remedies that were appropriate for a national economy." (citation omitted)); *Inwood Lab., Inc. v. Ives Lab., Inc.*, 456 U.S. 844, 861 n.2 (1982) (White, J., concurring) (noting purpose of the Lanham Act to "codify and unify" the common law of trademark protection).

When conflicting interpretations of the Lanham Act among the Circuit Courts of Appeal have matured in the past, this Court has granted certiorari to restore uniformity to the law. Most recently, in its decision in *KP Permanent Make-Up*, 125 S. Ct. 542 (2004), the Court noted that it granted certiorari "to address a disagreement among the Courts of Appeals on the significance of likely confusion for a fair use defense to a trademark infringement claim, and the obligation of a party defending on that ground to show that its use is unlikely to cause consumer confusion." *See id.* at 548; *see also Moseley v. V Secret Catalogue, Inc.*, 537 U.S. 418, 428 (2003) (granting certiorari "because other Circuits have also expressed differing views about the 'actual harm' issue" under the Federal Trademark Dilution Act); *Qualitex Prods.*, 514 U.S. at 161 (noting that the Court granted certiorari because "[t]he courts of appeals have differed as to whether or not the law recognizes the use of color alone as a trademark").

Uniform rights are particularly important in a marketplace increasingly characterized by brands with national and global reach. The current fractured state of the law frustrates Congress' purpose, and the Court should take the opportunity that this case presents to resolve the split in the circuits and restore uniformity to the law.

III. Resolution of the Split Will Discourage Forum Shopping

In addition to frustrating nationwide uniformity to trademark law, the present circuit split also encourages forum shopping. The variation in standards for recovery across the circuits provides both trademark owners and accused infringers a strong motive to file suit in jurisdictions with a standard for the recovery of profits under 15 U.S.C. § 1117(a) that is favorable to their particular position. Specifically, plaintiffs have an incentive to seek relief in circuits that allow recovery absent proof of willfulness, while prospective defendants may seek declaratory judgments in circuits that impose more exacting standards for recovery.

This Court has consistently recognized the prevention of forum shopping as necessary both to effectuate the will of the legislature and to secure equity and efficiency in the judiciary. *See, e.g., Rumsfeld v. Padilla*, 124 S. Ct. 2711, 2725 (2004) (finding that the requirement that habeas petitioners challenging physical custody must file in the district of confinement “serves the important purpose of preventing forum shopping”); *Southland Corp. v. Keating*, 465 U.S. 1, 15 (1984) (interpreting the Federal Arbitration Act so as to avoid encouraging forum shopping); *Walker v. Armco Steel Corp.*, 446 U.S. 740, 745 (1980) (describing forum shopping as an “undesirable result[.]”); *Hanna v. Plumer*, 380 U.S. 460, 468 (1965) (describing “discouragement of forum-shopping” as one of the twin aims of *Erie R.R. v. Tompkins*, 304 U.S. 64 (U.S. 1938)).

In the trademark context, the Court’s resolution of the circuit split in *Qualitex* eliminated opportunities for forum shopping that existed for owners of color trademarks. Before *Qualitex*, the threat of forum shopping loomed heavily over trademark protection in color alone. *See* Craig Summerfield, *Color As A Trademark And The Mere Color Rule: The Circuit Split For Color Alone*, 68 CHI.-KENT. L. REV. 973, 978 (1993) (explaining that the split between the Ninth and Seventh Circuits “[would] undoubtedly lead to forum shop-

ping due to the major difference in substantive rights”). *Qualitex* clarified the potential trademark status of individual colors and reduced potential forum shopping.

The Court’s condemnation of forum shopping is well-founded. Permitting parties possibly to affect the substantive outcome of infringement and unfair competition litigation by selecting the forum with the standard for liability for profits that is most favorable to their position results in uncertain rights and obligations, and compromises the courts’ ability to render like judgments under like facts. Under the current state of the law, a trademark owner may be entitled to a disgorgement of a defendant’s profits in one circuit, but may not be entitled to the same remedy in a different circuit on identical facts.

Inconsistent standards among the Courts of Appeals have created uncertainty that is likely to bring about forum shopping. This Court’s announcement of a clear, uniform standard as to the relevance of willfulness to the disgorgement of profits in a trademark case is the most effective way to solve this problem.

CONCLUSION

Accordingly, INTA requests this Court to grant the petition for certiorari and restore national uniformity to federal trademark law on this important issue.

Respectfully submitted,

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