

Insights

CLARK AUTHORS ARTICLE ON 'ROMAG' FOR 'LAW360'

Jan 17, 2020

Ben Clark, senior trial counsel in St. Louis, [authored an article published Jan. 16 by Law360](#) concerning the possible implications of *Romag Fasteners Inc. v. Fossil Inc.*, a case argued before the U.S. Supreme Court on Jan. 14. The case considers the availability of profit disgorgement as a remedy to a successful trademark infringement plaintiff. “[T]he tenor of the court’s inquiries in Romag suggest that it may conclude that a showing of willful conduct is not a threshold gateway through which a trademark plaintiff must pass to continue on the road to disgorgement of an opponent’s profits,” he wrote. “However, it is highly likely that, even in the event of such a holding, intentional or reckless conduct will be deemed relevant — perhaps centrally relevant — to determination of the disgorgement issue. Such a result likely would lead to an increase in trademark infringement case filings and disgorgement awards, while at the same time militating against routinely allowing disgorgement where the accused conduct is not intentionally unlawful or committed with reckless disregard for the law.”

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