

## The Top Trademark Decisions Of 2025

By **Theresa Schliep**

*Law360 (December 17, 2025, 2:04 PM EST)* -- The U.S. Supreme Court vacated a trademark infringement award that reached nearly \$47 million and found nonparties couldn't be on the hook for the amount, while the Federal Circuit reproached a trademark tribunal for its handling of a man's attempt to register the F-word. Here are Law360's picks for the biggest trademark decisions of 2025.

### **Dewberry Group Inc. v. Dewberry Engineers Inc.**

One of 2025's top trademark rulings came from the U.S. Supreme Court, which in February reversed the Fourth Circuit's decision upholding that affiliates of a real estate development company could be liable for a \$43 million award in a trademark suit even though they were not parties in the case. The award reached nearly \$47 million after the district court added \$3.7 million in legal fees.

The companies have been locked in a yearslong battle over the shared name they use to market real estate development services. A Virginia federal court had held affiliates of real estate developer Dewberry Group liable for the judgment, since the actual defendant had no recorded profits, and it had concluded that treating them as one corporate entity would allow the plaintiff to capture the profits from the infringing activity.

But the law doesn't back such an approach to the case, Justice Elena Kagan wrote, finding that the only profits that could be awarded to Dewberry Group Inc. were from the defendant itself.

Alexandra Pakzad of Caldwell Law said the opinion was written narrowly and left open the possibility that the just-sum provision of the Lanham Act, which can apply when courts find that recovery of a defendant's profits is either inadequate or excessive, could support a broad profits award, even if the facts of this case didn't support its application.

The opinion is also instructive on litigation strategy, Pakzad said.

"For me, the takeaway would be to think about profits-related issues early on in the case, including naming affiliated corporate entities from the beginning and identifying additional relevant parties during discovery and promptly adding them," Pakzad said.

Megan K. Bannigan of Debevoise & Plimpton LLP also highlighted a concurrence from Justice Sonia Sotomayor, who wrote "that principles of corporate separateness do not blind courts to economic realities."

"Justice Sotomayor's concurrence suggests alternative ways courts may still consider affiliate profits and disgorgement calculations, including piercing the corporate veil or invoking the just-sum provision," Bannigan said.

The case is Dewberry Group Inc. v. Dewberry Engineers Inc., case number 23-900, in the U.S. Supreme Court.

### **In re: Brunetti**

In the latest case to address trademark protections for vulgar or profane words, the Federal Circuit in August faulted the Trademark Trial and Appeal Board for affirming the rejection of a man's application to register the F-word.

The panel's split 2-1 opinion found that the TTAB didn't sufficiently support its holding, which backed a trademark examining attorney's rejection of artist and fashion designer Erik Brunetti's trademark application on failure-to-function grounds. The board has previously allowed registrations including the F-word, the appeals court noted, finding that "the board's reasoning sounds in fact very much as though it has taken an 'I know it when I see it' approach to failure-to-function refusals."

The Federal Circuit rejected Brunetti's other arguments, including that the U.S. Patent and Trademark Office is retaliating against him for his role in the Supreme Court's 2019 overturning of a ban on immoral or scandalous marks. In that case, he tried getting the word "fuct" registered.

Attorneys said the opinion highlights confusion surrounding the failure-to-function standard, which the Federal Circuit noted is growing as a ground for registration refusal.

"The [USPTO], the TTAB and the courts have been relying increasingly on this notion that the trademark fails to function as a trademark, and people have been saying for ages: 'What does this actually mean?'" Bannigan said.

For now, Pakzad said attorneys need to make the extra effort to show that trademarks they're trying to register can operate as source identifiers.

"When applicants are pursuing marks that are more highly common or [are] particularly expressive terms, it's important to build a record demonstrating that the consumer perceives it as a source identifier," said Pakzad, who is Brunetti's sister-in-law.

The case is In re: Brunetti, case number 23-1539, in the U.S. Court of Appeals for the Federal Circuit.

### **Yuga Labs Inc. v. Ryder Ripps et al.**

One of the more prominent nonfungible tokens is the Bored Ape Yacht Club NFT collection, which was created by Miami-based Yuga Labs Inc. and whose purchasers included pop star Justin Bieber and rapper Snoop Dogg. That collection was at the center of a Ninth Circuit decision that concluded for the first time in July that NFTs qualify as trademarks.

Yuga Labs filed a trademark infringement suit against Ryder Ripps and Jeremy Cahen, who made an NFT collection imitating the Bored Apes to highlight what they called the racism underpinning the original

project. The Ninth Circuit said in its opinion that "Yuga's NFTs are not merely monkey business and can be trademarked," although it reversed a lower court's grant of summary judgment and said the likelihood of confusion issue must go to trial.

In some ways, the opinion is yet another that demonstrates how the 2023 Supreme Court decision in *Jack Daniel's Properties Inc. v. VIP Products LLC* narrowed the so-called Rogers test, which stipulates that alleged infringers can be shielded from liability if a trademark has expressive value and does not mislead consumers. The high court ruled that the test doesn't apply when a party uses another's trademark as its own.

In doing so, the appeals court said the justices "made clear that this First Amendment exception to trademark enforcement" cannot apply when an alleged infringer uses another's trademark to identify their own goods.

"After the VIP products case, it's clear the Rogers test is not a get-out-of-jail-free card anymore," Monica Riva Talley, a director with Sterne Kessler Goldstein & Fox PLLC, said.

Greg Phillips of Knobbe Martens said the case also highlights how commercializing art or social commentary that's using another brand's images increases the infringement risk.

"If you're making social commentary by itself, then that's fine," Phillips said. "If you're saying, 'I'm going to make this social commentary, but I'm also going to sell this product and make money from it,' that rubs brand owners the wrong way, and the law thinks, 'Well, wait a minute. You shouldn't be able to do that.'"

Even if NFTs aren't all the rage that they were a few years ago, this opinion can still be instructive for other emerging technologies and trends, Phillips added.

The case is *Yuga Labs Inc. v. Ryder Ripps et al.*, case number 24-879, in the U.S. Court of Appeals for the Ninth Circuit.

### **Jaime Rogozinski v. Reddit Inc.**

In another notable decision out of the Ninth Circuit, the appeals court declined to side with the maker of a popular page on Reddit who had accused the site of hijacking the forum and depriving him of the right to register for a trademark on the brand.

The Ninth Circuit's nonprecedential decision in June rejected the appeal from Jaime Rogozinski, who founded the popular WallStreetBets forum on Reddit. The forum is a stock and financial advice community, and Rogozinski was the moderator of the site until he says Reddit booted him and sought its own trademark on the term.

That prompted his suit in California federal court in February 2023, accusing Reddit of infringing his trademark, among other claims. But the judge overseeing the case found Rogozinski didn't have priority over the mark, and the Ninth Circuit affirmed, saying in its brief opinion that "it was Reddit that created and provided the services that enabled Reddit's many users to contribute to the discussion on the r/WallStreetBets subreddit."

"Even if Rogozinski played a prominent role among those users, he has not stated a valid ownership

claim over the WALLSTREETBETS mark," the opinion said.

Preetha Chakrabarti of Crowell & Moring LLP said there are some connections between the WallStreetBets decision and other notable decisions from 2024, such as the NFT holding and the Brunetti case. For one, she said they all implicate "the very bread and butter of trademark law: Is this mark being used in commerce in connection with goods or services?"

Rogozinski is "claiming that he's the first person to use this phrase on a subreddit," Chakrabarti said. But that doesn't matter if he wasn't using it in commerce.

"You can put a word out there, you can put a logo out there, but if you're not actually using it in commerce in a way that's intended by the Lanham Act, that doesn't mean anything," she said.

On Dec. 8, the Supreme Court rejected a petition from Rogozinski challenging the Ninth Circuit's opinion.

The case is Jaime Rogozinski v. Reddit Inc., case number 24-735, in the U.S. Court of Appeals for the Ninth Circuit.

## **Schedule A**

One district court highlight from this year is a Chicago judge's opinion signaling a major shift in his handling of a legal mechanism used by brands to quickly — and relatively easily — tackle widespread counterfeiting on the internet.

The August opinion from U.S. District Judge John F. Kness took issue with what he called "the deluge of Schedule A cases," which are proceedings where brands don't publicly identify defendants but instead list them in sealed Schedule A attachments.

These cases allow brands to go after alleged counterfeiters without tipping them off to the fact that they're being sued so that they don't disappear with their ill-gotten gains. But it's been under scrutiny as Schedule A has become an increasingly popular anti-counterfeit tool.

Judge Kness put a pause on Schedule A litigation to reassess its use, and he said in his opinion that the review of the practice "has not been flattering" due to issues like the opacity of the proceedings, the lack of due process and the "pell-mell prejudgment freezing of defendants' assets."

"As currently entrenched, the Schedule A mechanism demands that the Federal Rules of Civil Procedure and principles of due process be unreasonably contorted for plaintiffs to receive the relief they seek," he said. "It is no answer to say that the ends justify the means — that the scourge of rampant counterfeiting justifies the present scheme."

Judge Kness' opinion is significant given that Chicago has been the hot spot for these types of filings. And Michelle Mancino Marsh of ArentFox Schiff LLP said the decision can complicate anti-counterfeiting efforts, even if some of the concerns around Schedule A are well founded.

"There typically isn't a defendant who is willing to show up" to court, Marsh said, adding that "you're putting up additional barriers for brand owners, and that can have serious implications" for them.

The case is Eicher Motors Limited v. The Individuals, Corporations, Limited Liability Companies,

Partnerships, and Unincorporated Associations Identified on Schedule A Hereto, case number 1:25-cv-02937, in the U.S. District Court for the Northern District of Illinois.

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