

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	LISA S. BLATT, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF:	
6	NEAL K. KATYAL, ESQ.	
7	On behalf of the Respondents	30
8	REBUTTAL ARGUMENT OF:	
9	LISA S. BLATT, ESQ.	
10	On behalf of the Petitioner	61
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(11:13 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 18-1233, Romag Fasteners versus Fossil, Inc.

Ms. Blatt.

ORAL ARGUMENT OF LISA S. BLATT

ON BEHALF OF THE PETITIONER

MS. BLATT: Thank you, Mr. Chief Justice, and may it please the Court:

The Lanham Act authorizes courts to remedy trademark violations by awarding infringers profits subject to the principles of equity. The question presented here is whether the -- this phrase "principles of equity" requires trademark owners to prove willfulness as an absolute precondition to profit awards.

The answer is no for three reasons:

First, the phrase "principles of equity" signifies a multifactor analysis where no one factor is controlling.

Second, the phrase -- excuse me. The statutory text and structure supersede any settled willfulness requirement.

And, third, there was no such settled

1 background willfulness requirement.

2 First, the phrase "principles of
3 equity" refers to the familiar equitable
4 principles that courts have long applied in
5 determining whether to award profits in
6 trademark cases. A defendant's culpability is a
7 weighty factor, but it should not be
8 controlling. Other traditional equitable
9 factors are also important to further the
10 landmark -- the Lanham Act's purposes to protect
11 consumers and trademark owners' goodwill.

12 Such traditional factors include
13 whether other relief adequately compensates the
14 plaintiff and whether the defendant is enriched
15 by his violation of law.

16 And these factors can all exist along
17 a spectrum. For instance, culpability can range
18 from fraudulent to innocent and everything in
19 between, including callous disregard and
20 negligence. So in a case where a defendant is
21 completely innocent, courts should require a
22 greater showing of other factors before awarding
23 profits.

24 Conversely, greater culpability
25 justifies a profit award that deters future

1 infringement. And courts can be trusted to use
2 their discretion to balance the equities for the
3 cases in between. The statute also requires the
4 amount of any award to be compensatory and not a
5 penalty, and just, according to the
6 circumstances.

7 Second, even assuming a settled
8 willfulness requirement before the Lanham Act,
9 the statutory text and structure reflect a
10 congressional intent to supersede it. From the
11 Act's inception, i.e., from 1946, Congress has
12 expressly distinguished and protected defendants
13 and which defendants from awards of monetary
14 relief based on a heightened mental state.

15 Today the Lanham Act contains eight
16 provisions tying monetary relief to a heightened
17 mental state. That's -- that's a lot of
18 provisions. The provision that dictates
19 monetary relief, Section 117(a), is the
20 provision that controls this case. That case --
21 that provision, excuse me, requires a willful
22 violation for trademark dilution under 1125(c),
23 but no such mental state requirement appears for
24 infringement violations under Section 1125(a) or
25 any other cause of action under the Lanham Act.

1 We think the inference is particularly
2 strong that the omission of a willfulness
3 requirement is intentional. The same Congress
4 in 1999 that amended the statute to add a
5 willfulness requirement for trademark dilution
6 cases under subsection (c) affirmatively
7 distinguished this type of infringement case
8 under subsection (a) because the amendment
9 simultaneously struck out the word "violation"
10 of Sections 1125(a) and then reinserted that
11 same phrase, violation of subsection (a), and
12 then added a willful infringement --

13 JUSTICE SOTOMAYOR: Ms. Blatt, could
14 you concentrate on the word "equity"? Do you
15 think equity would sustain an award for innocent
16 or good-faith infringement without a more
17 culpable state of mind? Because there's a wide
18 swath of behavior between truly innocent, truly
19 good faith, and willful. There could be
20 reckless. There could be callous disregard.
21 Would equity consonance an award for negligence
22 or good faith?

23 MS. BLATT: Yes. And as I said in the
24 earlier --

25 JUSTICE SOTOMAYOR: But how?

1 MS. BLATT: -- the earlier case, you
2 would need a greater showing of the other
3 purposes or the other equitable factors. And
4 those are two. The first and foremost is
5 whether if no other relief could adequately
6 compensate the plaintiff.

7 And even in a case of a completely
8 innocent defendant, damages are notoriously hard
9 to prove. They're almost never recovered in
10 trademark cases. And they're particularly
11 impossible to prove in component cases.

12 There's other equitable factor -- so
13 that's one, is that even a dollar, that they
14 would rule that out in an innocent case, even
15 though there's no other relief, but the second
16 equitable factor is the basic principle of
17 equity, which is just you don't get to hold on
18 to profits that don't correctly belong to you if
19 you violated the law to get them.

20 And, again, here, let's just take the
21 example, the other side says, at a minimum, we
22 concede \$900. That's their argument. All we're
23 entitled to for profits is \$900. Their view is
24 we can't even get \$900 unless you show
25 willfulness, and you, otherwise, you just walk

1 away with nothing.

2 Now, they say that there's the
3 statutory damages, you can always opt for the
4 \$200,000 statutory damages, which is certainly
5 nice, but the problem with that is multifold.
6 One is that it's not even available unless the
7 mark is both registered and counterfeit, so
8 countless trademark plaintiffs aren't even
9 eligible for this.

10 And, second, it's supposed to be a
11 floor and an alternative. So in a hypothetical
12 case, that is our position. Now, in this case
13 we have a little more. The parties on a remand
14 have lots of arguments why the amount should be
15 closer to 900. We have arguments why it should
16 be higher because this is not only just a small
17 business, but the manufacturer set up its
18 operations in China, where counterfeiting is
19 rampant and there's no incentive -- if all you
20 have to pay is nothing, there's just really not
21 that much incentive to prevent counterfeiting.

22 So those would be the arguments on
23 remand. And let me just say, at the common law,
24 we did cite examples, they're not voluminous,
25 but there are examples, both pre-Lanham Act and

1 post-Lanham Act, where courts in cases of
2 innocent infringement did award profits. It's
3 just not routine.

4 JUSTICE KAVANAUGH: Pre- -- pre-Lanham
5 Act, that's not much, right?

6 MS. BLATT: Three? Well, sure. Sure,
7 three's a lot when --

8 JUSTICE KAVANAUGH: Pre- -- pre-Lanham
9 Act, I said.

10 MS. BLATT: Yes.

11 JUSTICE KAVANAUGH: Yeah.

12 MS. BLATT: Yeah. So the one of them
13 was the Mishawaka.

14 JUSTICE KAVANAUGH: Yes.

15 MS. BLATT: And that was a Supreme
16 Court case.

17 JUSTICE KAVANAUGH: Right.

18 MS. BLATT: You didn't award profits,
19 but the -- the district court did. The second
20 was the Oakes case, which is, I don't know,
21 1888. It was from Alabama. Nothing wrong with
22 Alabama. It counts as a case.

23 (Laughter.)

24 MS. BLATT: So -- and then we had a
25 third case that -- the third case is

1 Prest-O-Lite, and that's from New Jersey. So I
2 don't know why these cases don't count just
3 because there are other cases that say we're
4 going to award profits.

5 So if you just look at the -- the
6 common law, and the most significant aspect of
7 the common law, of course, is that the very
8 cases from the common law that articulate a
9 willfulness requirement say in the very same
10 sentence: But there was some conflict in the
11 decision.

12 So a conflict is a conflict is a
13 conflict. It's not a -- the kind of clear rule
14 that you could say would always rule it out.

15 JUSTICE GINSBURG: How is willfulness
16 defined? I mean, here the jury found callous
17 disregard, but not willfulness. Did the judge
18 charge on what those terms meant?

19 MS. BLATT: Yes. Yes. So the -- the
20 charge on willfulness was -- it includes
21 intentional conduct and willful blindness, which
22 is awareness of a high probability of harm and
23 you take affirmative steps to avoid learning
24 about it.

25 Callous disregard is a rubric of

1 willfulness, but it doesn't rise to either of
2 those levels. It's closer on the recklessness
3 spectrum. So generally in your case law,
4 willfulness is defined usually to include
5 reckless, but here the parties, meaning our
6 side, did not object to recklessness being taken
7 out so that the jury was only instructed on
8 willfulness and not recklessness.

9 JUSTICE BREYER: Is it --

10 MS. BLATT: But they're similar
11 because callous disregard under Second Circuit
12 case law was a function of willfulness, it just
13 wasn't willful blindness.

14 JUSTICE BREYER: I can't work out,
15 there's maybe an obvious answer to this that
16 I've missed, but -- but in reading the statute,
17 I thought, well, suppose you do have to have
18 willfulness in order to get profits, and there
19 would be a certain number of cases you don't get
20 profits, right, okay. Think of those cases.

21 Then I see this sentence in 1117, it
22 says, "if the court shall find that the amount
23 of recovery based on profits is either
24 inadequate or excessive, the court may in its
25 discretion enter judgment for such sum as the

1 court shall find to be just, according to the
2 circumstances of the case."

3 So if you did have to have
4 willfulness, but all these things like in China
5 and so forth were -- were -- were right there in
6 the case, the -- the -- the court could give the
7 -- the -- the Plaintiff more money, couldn't
8 they, under that sentence?

9 MS. BLATT: Maybe I don't understand
10 the question. The other side is no, we don't
11 get any money --

12 JUSTICE BREYER: In this case --

13 MS. BLATT: -- absent willfulness.

14 JUSTICE BREYER: -- they think that,
15 but I want to know why. And even if we were
16 arguing about willfulness, so I say suppose
17 they're right that willfulness does apply, you
18 think it doesn't apply, right?

19 MS. BLATT: Right.

20 JUSTICE BREYER: Okay. But suppose
21 they win. Suppose you produce your instance
22 which you just did, that in China they'll go
23 around and, dah-dah-dah, and we won't be able to
24 get any significant amount of money, why
25 wouldn't you say to the judge: Read that

1 sentence, Judge, they weren't willful, we agree
2 but we're giving you reasons why in this case we
3 should get more relief.

4 MS. BLATT: Well, if you're saying you
5 should read willfulness into the --

6 JUSTICE BREYER: No, I'm not -- I'm
7 saying --

8 MS. BLATT: No --

9 JUSTICE BREYER: -- it's what you do,
10 yeah.

11 MS. BLATT: Yeah, so if your view is
12 that you read it into it but then courts can
13 read it out --

14 JUSTICE BREYER: They did not say they
15 can read it out. They can say it's there, they
16 weren't willful but we have a sentence here
17 which gives us total discretion in the interest
18 of justice to give the damages that we think are
19 just and fair.

20 So nobody is going to be hurt by
21 accepting their side. All it's going to do is
22 give this -- more discretion to the district
23 court to award as much money or as little as he
24 thinks is fair.

25 MS. BLATT: So --

1 JUSTICE BREYER: Now why isn't that
2 what that sentence does? I just want to --

3 MS. BLATT: I think this sentence --

4 JUSTICE BREYER: -- know what it does.

5 MS. BLATT: -- helps us. Here's just
6 my concerns. Six circuits read that sentence as
7 saying they cannot award profits if willfulness
8 is not shown.

9 JUSTICE BREYER: No matter how
10 appealing the case?

11 MS. BLATT: Yes, that's why we're here
12 on a petition to --

13 JUSTICE BREYER: Has anybody argued
14 about this sentence?

15 MS. BLATT: Yes.

16 JUSTICE BREYER: In our brief -- in
17 your brief you put that?

18 MS. BLATT: Yes.

19 JUSTICE BREYER: Good. Where -- what
20 -- where -- I better read it.

21 (Laughter.)

22 MS. BLATT: I mean, it's -- it's in
23 the intro and it's in the --

24 JUSTICE BREYER: Fine. Will you just
25 tell me. I obviously, you know, sometimes I

1 read these fast.

2 MS. BLATT: I don't know the page. I
3 mean, it's definitely -- the gestalt of the
4 cases going our way is, look, we'd like to see
5 willfulness, but if we don't see it, it's not
6 controlling, and it's just one of these weighty
7 factors but there's always been a list of
8 traditional factors, before the Lanham Act and
9 after the Lanham Act. The culpability is one and
10 the two that I've ever -- the two that I
11 mentioned are the other ones that are critical,
12 whether there's some form of compensation and
13 whether there's just a sense of unjust
14 enrichment. But yes, you can go down or above.

15 But I think that we use that sentence
16 to say, there's no harm, there's no risk of a
17 windfall because no matter where you come up
18 with your award, the Court can always reduce it
19 or raise it, depending on the circumstances. So
20 I don't -- maybe I just don't understand your
21 question.

22 JUSTICE BREYER: Well, I was trying to
23 understand the significance of the case. And
24 you're saying, unless we read willfulness out of
25 it, there are going to be some terrible cases

1 where, in fact, the -- the infringer did it
2 totally by accident, totally by accident. He
3 had a dream with this -- this symbol appeared to
4 him and he put it on his thing not knowing that
5 somebody else had it, a total accident.

6 MS. BLATT: So --

7 JUSTICE BREYER: Now, you say still
8 this is very bad because don't you know, that
9 the trademark is owned by some widows and
10 orphans and terribly suffering people and --
11 and -- and you should certainly give them some
12 money or goodness knows what'll happen, you know
13 --

14 MS. BLATT: Right, so --

15 JUSTICE BREYER: -- very appealing
16 case that you're worried about, therefore you
17 say --

18 MS. BLATT: Yeah.

19 JUSTICE BREYER: -- read willfulness
20 out of it. I say why do you need to do that?
21 Why not just point to the sentence?

22 MS. BLATT: So we're not reading it
23 out. We're just saying that it's not a
24 precondition in step one. It is -- no question,
25 I mean, our view is that it's a sliding scale,

1 all of these traditional equitable factors are
2 appropriate and then when you get to the amount,
3 you can adjust it.

4 So it just would seem odd to write an
5 opinion that says, even though it's not in the
6 statute, even though it wasn't a clearly stated
7 rule, just because the other side asked for it,
8 we want to read it in because we want to be nice
9 to the respondent. I don't think that's a good
10 way to write an opinion.

11 CHIEF JUSTICE ROBERTS: Ms. --
12 Ms. Blatt, your -- your lead argument, of
13 course, is the phrase willful violation under
14 Section 1125(c) and the willfulness is not --
15 doesn't appear in the other part, but 1125(c)
16 includes willfulness, it's about willfulness.

17 So, and I gather this is the argument
18 on the other side, saying willful violation
19 under -- that's kind of like just the label,
20 this is what it is. And so when you just stick
21 the label in, it's about a willful violation,
22 that shouldn't have the same sort of
23 exprecionias -- whatever it is, argue -- impact
24 as you suggest.

25 MS. BLATT: Right. And that's a --

1 that's a fair argument. The argument is it is
2 just mirroring the cause of action. And so that
3 just begs the question of why did they even need
4 to put willfulness in the trademark dilution as
5 a protection against profits and damages in the
6 first place. That's our whole argument about it
7 appearing eight times.

8 The underlying 1125(c), when it was
9 passed, says you need a willful violation for a
10 cause of action to collect monetary relief. And
11 our point is simply it is not the most natural
12 inference or the most natural inference is if
13 they didn't think that there was already an
14 omnibus willfulness requirement for all profit
15 awards because they took such care in 1125(c),
16 in the statutory damages, and in the treble
17 damages and profits. They basically say you
18 can't get monetary relief, damages, and profits
19 absent these heightened scienter. And the other
20 side says: Well, but those apply to damages
21 too.

22 And our point is, sure, but it seems
23 odd that Congress went out of its way to protect
24 from the beginning in 1125(c) against profits
25 when, under their view you didn't need it

1 because it was already read into the statute as
2 a principle of equity in all cases.

3 So, in other words, take section --
4 the -- the -- the original Trademark Act of --
5 the original 1946 act, that was 1114, which is
6 the violation for registered trademarks. So
7 it's very similar, like 1125(c), it says, here's
8 going to be a class of cases where we don't want
9 monetary relief.

10 So innocent printers and innocent
11 publishers, no damages, no profits. And any
12 defendant who reprints -- or excuse me, who
13 prints an infringe mark without knowing that the
14 infringement was intended to confuse, can't get
15 profits or damages.

16 The other side says, well, it's not
17 superfluous because it at least applies to
18 damages. And our point is, well, it's at least
19 superfluous as to profits. It's that Congress
20 is taking its care in eight provisions to keep
21 saying no profits here, no profits there, no
22 profits left and right, based under these
23 heightened scienter.

24 So whatever you think principles of
25 equity means, the one thing it can't mean is a

1 heightened scienter because the statutory
2 structure is so overwhelming that Congress had
3 this carefully calibrated scheme where they're
4 spelling out when willfulness is required.

5 JUSTICE ALITO: Of the cases where the
6 courts have said that willfulness is a necessary
7 condition, which one would you cite as being --
8 as leading to the most unjust result?

9 The case where -- where a court said
10 we're not going to award profits because there
11 wasn't any willfulness and that's very unjust
12 based on the facts of the case, is there one you
13 would cite as an example?

14 MS. BLATT: No, because they don't
15 say, like their -- the leading case, that Regis
16 case by the highest court in Massachusetts, it
17 just says, we're not going to -- although the
18 law is conflicted, we're not going to allow
19 profits, and they're mostly relating to a
20 fraud-based tort. So the underlying tort at the
21 common law is one of fraud.

22 And so I'm not sure they see it as
23 particularly unjust if you're suing for fraud
24 that you don't get relief if there's no fraud.
25 But in the technical trademark cases where most

1 of our cases come from, they are including the
2 three cases -- well, the Hamilton-Brown case,
3 they're saying you -- this property, your
4 property was infringed so there's a pot of money
5 that's going to rightfully belongs to you.

6 And by the time you get around to your
7 three cases, the Champion Sparkplug case and the
8 Mishawaka case, the Court is balancing the
9 circumstances. It's saying, the willfulness is
10 relevant but it also said, look, we don't think
11 the plaintiff is really hurt, we don't think the
12 defendant really benefitted. You know, you get
13 an injunction and go home.

14 And so I just haven't seen cases where
15 there was a mean court saying: Looks like you
16 deserve it but I'm constrained by this
17 willfulness requirement. I don't know if that
18 answers your question.

19 JUSTICE KAGAN: Do you think it's open
20 to us, Ms. Blatt, to pick a position someplace
21 between you and Mr. Katyal? In other words, Mr.
22 Katyal says, never under any circumstances can
23 you get profits without willfulness and you say,
24 well, willfulness is just one factor among the
25 things that you think about.

1 But I -- I would think that there's
2 some kind of intermediate position, which is
3 based on the history and -- and a general sense
4 of it, which is that willfulness might not be a
5 -- an absolute necessity but it certainly should
6 be entitled to very significant weight.

7 You know, you could say like a
8 presumption of a kind.

9 MS. BLATT: No, I would not say a
10 presumption unless you're going to give us the
11 same presumption, the presumption of
12 compensation when other remedies aren't adequate
13 and a presumption against unjust enrichment.
14 And here's why we sort of used the Kirtsaeng
15 case as an -- as an example in terms of
16 fashioning our rule, is that I do think it's a
17 sliding scale. The more innocent the defendant,
18 you better have a greater justification for
19 compensation; and the more guilty the defendant
20 is -- and then you might have some cases in
21 between.

22 But you could have a negligent or a
23 reckless defendant, and I don't know where the
24 presumption would fit. And the Court should
25 just balance it, should the plaintiff get at

1 least one dollar in that case? And so a
2 presumption just puts the -- the scales too
3 heavy.

4 I think all the courts recognize, and
5 I said, it's a weighty and important factor. So
6 --

7 JUSTICE BREYER: Well, how do you do
8 this?

9 MS. BLATT: Sure.

10 JUSTICE BREYER: I think -- I guess
11 your view is there's no willfulness requirement.
12 But what it says is the plaintiff shall be
13 entitled to recover defendant's profits,
14 damages, and the cost of the action -- okay, it
15 says that -- subject to principles of equity.
16 Okay?

17 Now, we have a problem. One thing to
18 say is equity has always held that willfulness
19 is necessary. Good, we're finished with this
20 case. But that's not your position. Your
21 position --

22 MS. BLATT: It's also not true.

23 JUSTICE BREYER: No, well, I -- I -- I
24 understand. I understand. Okay. Can we say
25 anything about what principles of equity

1 require?

2 MS. BLATT: Sure.

3 JUSTICE BREYER: All right. Now, I
4 notice the Sixth Circuit uses the word
5 "wrongful." Do you want us to use that word?

6 MS. BLATT: No.

7 JUSTICE BREYER: How do you want us to
8 write that sentence? What principles of equity
9 require?

10 MS. BLATT: So -- and I think it helps
11 to say that all of the courts have agreed on
12 what the principles of equity mean. They're the
13 factors that start from the English cases up and
14 through your cases. The ones I said. The
15 defendant's culpability, the need that other
16 relief doesn't adequately compensate the
17 plaintiff, and the theory or are there profits
18 that are -- is there just a -- you're holding on
19 to profits that don't rightfully belong. Those
20 are the three. Now, the Fifth Circuit and the
21 Second Circuit has articulated this maybe in a
22 six-factor test, but they're all getting at
23 those three things.

24 So the factors are clearly defined
25 already in the case law. The courts are all

1 happy. The only thing they're disagreeing about
2 is whether willfulness is a gateway on/off
3 switch.

4 So I would be very happy with an
5 opinion -- and this, if you want to advance the
6 case law further away from where it is on our
7 side, it's perfectly -- I think it's appropriate
8 to say, because the defendant's culpability is a
9 weighty factor, you should have other reasons.
10 But part of the purposes where I would turn to
11 in terms of -- you know, there is no other
12 relief in almost all of these cases. And the
13 whole point of this is not only to -- it's not
14 just giving the -- the mark owner some money; it
15 is protecting consumers.

16 The only other choice would be an
17 injunction, and an injunction in some cases is
18 either hard to get or it just doesn't work.
19 Otherwise, there's no incentive for negligence.
20 You might as well just take your -- you might as
21 well just see what happens if you put some
22 counterfeit stuff on. If it's negligent, you're
23 probably not going to have to pay. It wasn't
24 willful; it was just negligent. Who cares? And
25 so it seems like you should at least have

1 something to deter infringement when -- just
2 look at the statute. The -- Congress obviously
3 --

4 JUSTICE BREYER: I have that part.

5 MS. BLATT: -- cares about trademark
6 infringement.

7 JUSTICE BREYER: But is it all right
8 to say this, that there could be cases where --
9 some profits but not all profits?

10 MS. BLATT: Yes.

11 JUSTICE BREYER: Is the equitable
12 thing to do?

13 MS. BLATT: Yes.

14 JUSTICE BREYER: Yes, so we could say
15 that?

16 MS. BLATT: Yes. Yes. And the
17 parties on remand are actually, you know, going
18 to debate about how much profits, and the
19 ranges, you know, can be as low as \$900 and they
20 go all the way up from there.

21 CHIEF JUSTICE ROBERTS: Well, that's a
22 little strange. I mean, equity either includes
23 profits or it doesn't. I don't know why you
24 would just sort of split the baby and so each
25 side is a little happy. It's a principle of --

1 of equity. And -- and you either get them or
2 you don't.

3 I mean, equity is not -- doesn't mean
4 what seems fair. It -- it's a little more
5 complicated.

6 MS. BLATT: Sorry, I was -- yeah, and
7 this is a different, separate issue that I was
8 referring to, not just profits, but there's a
9 debate in this case whether you get profits that
10 are attributable to the infringement. So
11 because this is a purse and a snap, there's
12 the --

13 CHIEF JUSTICE ROBERTS: Oh, sure.

14 MS. BLATT: That --

15 CHIEF JUSTICE ROBERTS: Well, that's a
16 --

17 MS. BLATT: That --

18 CHIEF JUSTICE ROBERTS: -- different
19 legal basis. It's not the --

20 MS. BLATT: That's all I was talking
21 about, yes.

22 CHIEF JUSTICE ROBERTS: In response to
23 Justice Breyer, you didn't --

24 MS. BLATT: No.

25 CHIEF JUSTICE ROBERTS: -- didn't say,

1 okay, profits are \$100,000, you take 50; I'll
2 take 50.

3 MS. BLATT: No, so the profits that
4 are attributable to the infringement, at least
5 the other side would say, you know, you don't
6 even get your \$900. Now, the only reason courts
7 have lowered them would be laches. You know,
8 there are -- or unclean hands. So there are
9 principles. Or for some reason you thought, I
10 don't know, that -- it can't be a penalty, so
11 for some reason you thought it was a penalty or
12 excessive. I could probably think of some
13 hypotheticals where you might want to lower it,
14 like say you thought the plaintiff was no longer
15 going to be in business or who cared about the
16 -- the goodwill. But, yeah, the -- you're
17 entitled to your profits and then -- but the
18 court does allow an adjustment. But --

19 JUSTICE BREYER: The profits on the
20 purse are -- are -- are \$4 million. The
21 infringer did put in a copy of the trademark in
22 a tiny little inside purse that nobody ever saw.
23 So now he's entitled to profits, \$4 million,
24 when it's unlikely that anybody or maybe only
25 three people were lured into buying his purse

1 because -- so that's what I was thinking of.

2 Maybe what he is entitled to is the purse -- is
3 the profits on --

4 MS. BLATT: So --

5 JUSTICE BREYER: -- on -- on three
6 purses.

7 MS. BLATT: So --

8 JUSTICE BREYER: Or maybe --

9 MS. BLATT: -- there's a separate
10 legal issue which the parties haven't briefed
11 and there's no dispute in the case law, but it's
12 just an amount, whether you're either limited to
13 the attribution or -- and, if not, what kind of
14 mental state would go over that. I can make a
15 very good argument --

16 CHIEF JUSTICE ROBERTS: Yeah, but it's
17 still -- I mean, it's unlikely that there will
18 be \$4 million in profits attributable to this
19 little thing that nobody could see, and that's a
20 question. But -- but I don't think that --
21 well, maybe it's right, maybe equity allows you
22 of there -- you know, it just seems like too
23 much, you say, well, I'm going to just give you
24 less.

25 MS. BLATT: I would say that the

1 equity -- the traditional factors are -- are the
2 equity ones I talked about. The -- the statute
3 does allow, the provision that Justice Breyer
4 was focusing on, an adjustment for -- because
5 you either think it's inadequate or excessive
6 and it can't be a penalty or compensatory.

7 I don't think that relates to equity.
8 I think that's just a legal thing that the --
9 that the statute gives the courts discretion.

10 If I can make -- make one other thing.
11 The statute actually says you can go up to three
12 times damages. So --

13 CHIEF JUSTICE ROBERTS: Thank you.
14 Thank you, counsel.

15 Mr. Katyal.

16 ORAL ARGUMENT OF NEAL K. KATYAL
17 ON BEHALF OF THE RESPONDENTS

18 MR. KATYAL: Thank you, Mr. Chief
19 Justice, and may it please the Court:

20 My friend tries to make this case seem
21 easy, but to do that, she has to sweep both
22 Congress's words and two centuries of history
23 under the rug. We're here today because
24 Congress expressly made that Lanham Act's
25 monetary awards principles subject to the --

1 monetary awards subject to the "principles of
2 equity," and over many decades courts developed
3 a principle that governs cases like this one.
4 They required willfulness for the equitable
5 remedy of profits awards, unlike for
6 injunctions.

7 For all the dust my friend tries to
8 kick up about the cases in her brief, here's the
9 bottom line on all the cited cases: Not one of
10 them, none, actually awarded profits without
11 willfulness in two centuries, either here or in
12 the U.K., and in response to Justice Alito, she
13 hasn't been able to give you a single example of
14 an unjust result as a result of this long
15 tradition.

16 Now, trademark infringement isn't some
17 newfangled violation like cyber-squatting. It's
18 one of the oldest violations in the book. And
19 that book, both before 1946 and after, required
20 willfulness before a defendant could be forced
21 to go through the burdensome process of
22 accounting for its profits and risking a
23 windfall.

24 Five different treatises set out this
25 rule. Many cases speak of this categorical

1 rule. The remainder demonstrate a long-standing
2 practice that -- which is, to use Judge Friendly
3 and the Court's phrase in Halo, has narrowed the
4 channel of discretion for awarding profits.

5 Legislated Congress against the
6 backdrop of that practice, which is why even the
7 1905 Act was interpreted to have a willfulness
8 requirement, and that requirement is now
9 expressed in the Lanham Act's reference to the
10 principles of equity.

11 With respect to my friend's textual
12 arguments, she's asking you to believe that
13 Congress, by implication in the '90s, invited --
14 intended to invite Congress -- the courts to do
15 something they had never done in practice. If
16 Congress wanted to take that step, that would be
17 huge news. They would have said so.

18 Her best argument is the 1999
19 amendment changes things, which is what she
20 walked away from in her brief but is now
21 resurrecting here. And that has four problems:

22 First, Congress in 1999 didn't repeal
23 the textual hook for the willfulness
24 requirement, which was the phrase "principles of
25 equity." That's the way court after court had

1 interpreted it, including the Tenth Circuit just
2 the year before in the Bishop case. Congress
3 left that phrase untouched.

4 Second, Congress never indicated
5 anywhere in this -- in the 1999 Act that they
6 were trying to modify the willfulness
7 requirement in any way, which is what Judge Dyk
8 said below, what the law professor's, Lemley,
9 brief says here.

10 Third, the 1999 amendment did
11 something unique. It was newfangled. It
12 introduced a new cause of action, trademark
13 dilution, one which had no historical analogue.
14 It didn't have a customer confusion element.

15 JUSTICE SOTOMAYOR: Mr. Katyal, my
16 basic problem is that as I'm looking at these
17 cases, the term "willfulness" over the centuries
18 has been differently defined by different
19 people. Some people have included recklessness.
20 Others haven't.

21 McCarthy, if you read his definition
22 of willfulness, it does include recklessness and
23 callous disregard and a whole bunch of
24 blameworthy features. There was a circuit split
25 on this very issue when Congress acted in 1999.

1 You don't think they count for much.
2 You try to distinguish them. But there are
3 cases -- not many, I grant you -- where
4 something less than willfulness was the basis
5 for a recovery.

6 Given the uncertainty of what
7 willfulness means, the fact that there were
8 exceptions to the common law rule, whether you
9 recognize them as significant or not, how do we
10 write an opinion that says you need willfulness
11 a -- a la what you mean --

12 MR. KATYAL: So --

13 JUSTICE SOTOMAYOR: -- willfulness
14 being just conscious avoidance, not
15 recklessness, not callous disregard, not this,
16 not that?

17 MR. KATYAL: Justice Sotomayor, at the
18 time --

19 JUSTICE SOTOMAYOR: How do we --

20 MR. KATYAL: -- of the --

21 JUSTICE SOTOMAYOR: -- do that in
22 light of 117(a), which doesn't have an equity
23 limitation. It says -- 117(a) says you can
24 award profits. If you think it's too much or
25 too little, use your discretion.

1 MR. KATYAL: Absolutely, Justice
2 Sotomayor. That's what Congress said. Once you
3 pass the threshold of getting a profits award,
4 which is of course in 1117(a), quote, "subject
5 to the principles of equity," then we absolutely
6 agree there's discretion at the back end.
7 That's where those equitable principles come in.

8 But Congress at the front end did here
9 exactly when it did in the injunction context
10 and what this Court said in eBay, which is,
11 there's a hard and fast requirement for
12 principles of equity to show their irreparable
13 harm. You said it must be shown, even though
14 equity is generally flexible, you've got to go
15 through the gate.

16 Here that gate is the same thing. In
17 1946, she has --

18 JUSTICE SOTOMAYOR: Go --

19 MR. KATYAL: -- got a case --

20 JUSTICE SOTOMAYOR: -- go to the more
21 important part of my question, which is: What
22 does willfulness mean?

23 MR. KATYAL: All right.

24 JUSTICE SOTOMAYOR: And -- and where
25 is there --

1 MR. KATYAL: In --

2 JUSTICE SOTOMAYOR: -- a universal
3 definition?

4 MR. KATYAL: Yes, we think there is a
5 universal lowest common denominator of
6 willfulness at least meaning what exactly the
7 district court charged here, the petition
8 appendix page 43A which is --

9 JUSTICE SOTOMAYOR: Common denominator
10 --

11 MR. KATYAL: Yeah --

12 JUSTICE SOTOMAYOR: -- which is to say
13 it was the only --

14 MR. KATYAL: -- which is the
15 defendants must be actually aware of the
16 infringing activity. So there are five separate
17 treatises that set that out as a hard and fast
18 requirement, Nims and Ludlow and Jenkins and
19 Haseltine, which, by the way, she misstates
20 because she cites the wrong provision about
21 Haseltine about injunctions, but page 305 with
22 respect to profits says willfulness is required.

23 JUSTICE KAVANAUGH: Why should --

24 MR. KATYAL: Case after case says
25 willfulness meaning knowledge is -- is required.

1 And my basic point is, she's got no
2 case on the other side that disagrees with this
3 with except the possible hypothetical of Oakes
4 in 1883, which, again, didn't actually award
5 profits in the absence of willfulness.

6 And --

7 JUSTICE GINSBURG: Mr. Katyal --

8 JUSTICE KAVANAUGH: Why should --

9 JUSTICE GINSBURG: -- you say that
10 "principle of equity" means willfulness, but in
11 many cases, as Ms. Blatt pointed out, the
12 statute uses the word "willfulness," so you say
13 plain text, "principles of equity." I would say
14 if it said "willfulness," that would be plain
15 text, but "principles of equity"?

16 MR. KATYAL: So, Justice Ginsburg, as
17 our brief explains, every time Congress -- and
18 they certainly didn't use willfulness in the
19 1946 act. Every time they added to it later on,
20 there was a reason for it.

21 So for example, in 1999, the reason
22 they added to it is because you couldn't look to
23 principles of equity to determine what was
24 trademark dilution because that was a
25 brand-newfangled defense which didn't have

1 consumer confusion as a element. So -- but here
2 we're talking about the oldest violation in the
3 book, trademark law.

4 And I'd say, Justice Ginsburg, if you
5 adopted that reading, which is -- she's trying
6 to do, which is, oh, if Congress says the word
7 in some other places by negative implication,
8 then it's -- then it's out in other places, that
9 would be a dangerous cannonball to the statute.

10 JUSTICE KAVANAUGH: Well --

11 MR. KATYAL: So, for example, Section
12 1115(b)(9), which you can look at Joint Appendix
13 page 135, that has that, that says that laches
14 is available to fight incontestability and
15 Section 1069 from the '46 Act says laches is
16 available to contest inter partes
17 determinations.

18 If you adopted her reading, you'd be
19 saying, well laches isn't anywhere else in --

20 JUSTICE KAVANAUGH: Why should --

21 MR. KATYAL: -- the statute.

22 JUSTICE GORSUCH: No, no, no --

23 JUSTICE KAVANAUGH: Why should we
24 assume that Congress wanted to exclude reckless
25 infringement?

1 MR. KATYAL: Because Congress in 1946
2 acted against the backdrop of long-standing,
3 consistent practice. There is not a single
4 example --

5 JUSTICE KAVANAUGH: But there --

6 MR. KATYAL: -- she is able to give
7 you in which there was an award given.

8 JUSTICE KAVANAUGH: But as Justice
9 Sotomayor points out, willfulness is a -- a
10 vague word, ambiguous word, sometimes covered
11 what we would consider recklessness. So why
12 would you, therefore --

13 MR. KATYAL: Because --

14 JUSTICE KAVANAUGH: -- exclude
15 recklessness?

16 MR. KATYAL: -- here, Justice
17 Kavanaugh, there's a more specific tradition.
18 There's no doubt, cases like Ratzlaf say
19 "willfulness" means different things in
20 different contexts, but here it is always meant
21 at least actual knowledge, subjective knowledge
22 --

23 JUSTICE KAVANAUGH: What would be --

24 MR. KATYAL: -- and not recklessness.

25 JUSTICE KAVANAUGH: What would be the

1 policy objective achieved by excluding --

2 MR. KATYAL: Well --

3 JUSTICE KAVANAUGH: -- reckless
4 infringement?

5 MR. KATYAL: -- so we do think they
6 are there, but we think Congress used this
7 phrase and your job is to interpret the phrase
8 --

9 JUSTICE KAVANAUGH: I agree -- I --

10 MR. KATYAL: -- and to essentially get
11 to it. But --

12 JUSTICE KAVANAUGH: I understand that
13 --

14 MR. KATYAL: But --

15 JUSTICE KAVANAUGH: But can you answer
16 --

17 MR. KATYAL: -- the policy --

18 JUSTICE KAVANAUGH: Yeah.

19 MR. KATYAL: -- objectives are -- are,
20 I think, incredibly strong, that is, the
21 tradition of profits comes from equity and the
22 idea that damages weren't -- weren't at that
23 point in time available in courts of equity.
24 And so courts looked to profits.

25 Then there was a separate rationale of

1 unjust enrichment but that was all about moral
2 blameworthiness, about wrongdoing. And someone
3 who was innocent is not wrongdoing, which is why
4 this Court in Saxel, Henner, and in McLean which
5 states --

6 JUSTICE KAVANAUGH: But if you're
7 reckless, you're -- there is some wrongdoing.

8 MR. KATYAL: But I -- it's always been
9 more than that. The courts have always said you
10 actually have to be subjectively knowing what
11 you're doing -- subjectively on knowledge of
12 what you're doing.

13 The Moet case, which this Court has
14 referred to twice as stating the rule both in
15 1877 in McLean and in 1900 in Saxel, Henner is a
16 perfect example of this because in Moet what
17 happened -- Moet, what happened is you had a
18 champagne dealer who imported some bottles not
19 knowing that they were spurious.

20 And what the court said in England and
21 what this Court cited with approval twice before
22 the Lanham Act was, that's someone who's
23 innocent, they're not engaged with wrongdoing.
24 You can even have situations in which they're
25 reckless. For example, the Gorham case in 1912

1 was one in which you had a silverware dealer who
2 was reckless, who blew off the fact that the --
3 that there was a stamp used on the -- on the
4 silverware, which was really the -- a mark of a
5 famous silverware company.

6 But what this Court said is: No --
7 excuse me, what the southern district said is,
8 no, you need more than that. You need actual
9 knowledge, and that --

10 JUSTICE GORSUCH: Mr. Katyal, can we
11 return to Justice Ginsburg's question for just a
12 moment on the statutory text and whether
13 principles of equity might be an unusual way of
14 saying willfulness?

15 As I understood your response to
16 Justice Ginsburg, that we would -- we would
17 perhaps read out laches as a defense, and -- and
18 I -- I just -- my problem with that is that when
19 we say "principles of equity," we -- we mean
20 laches. Those are -- that is part of the trans-
21 substantive history of equity.

22 And if I go look at a treaty in
23 equity, I'm going to find laches. What I'm not
24 going to find is a substantive rule about
25 trademark. For that, I have to go look at a

1 trademark treatise, and -- so that's my problem
2 textually. And I -- I just want to give you a
3 chance to respond to it.

4 And I might ask you, really, isn't
5 your argument nothing about principles of equity
6 but about willfulness in the air?

7 MR. KATYAL: So --

8 JUSTICE GORSUCH: And why didn't you
9 make an argument that we should, as a background
10 principle, assume some sort of consistency with
11 the common law when Congress was legislating?

12 You seem to have disclaimed that and
13 said no, no, there's a textual hook here and
14 it's principles of equity. So that's a long
15 wind-up, but those are my concerns that --

16 MR. KATYAL: We certainly made exactly
17 that argument citing Morissette in our brief for
18 the idea, even if there weren't the price --
19 principles of equity, Congress acts against the
20 backdrop of the common law and is deemed to
21 interpret it. So that's certainly there.

22 I think it's common ground that
23 principles of equity include will -- include
24 knowledge and willfulness because she's even
25 saying it's a factor. That's how she started

1 her argument, and it's at page 8 of her reply
2 brief.

3 So I think everyone agrees that it is
4 a principle of equity, the -- the state of mind,
5 it's just a question of how much weight you give
6 it.

7 Our point to you is, Congress in 1946
8 when they used the phrase "principles of
9 equity," I don't think just meant
10 trans-substantive principles. After all, it was
11 the bedrock of a profits award. Profits is,
12 after all, an equitable remedy in the first
13 place.

14 And so in order to decide whether that
15 equitable remedy should be given, you would look
16 to the tradition of equity. And that tradition
17 has always been -- the long-standing practice
18 for two centuries is that -- is that willfulness
19 has been required. And that's why there's not a
20 single example on the other side.

21 Now she says, well, this is hard,
22 you're going to have to read all these cases,
23 but I think that's the dog that didn't bark.
24 Every single case that's given profits awards in
25 two centuries has required willfulness, so the

1 question is, is it worth the candle to make it a
2 factor and run into the kind of standardless
3 result that I think she's --

4 JUSTICE GINSBURG: But -- but as
5 Justice Sotomayor just pointed out, there wasn't
6 -- there isn't in the cases a uniform agreement
7 on what "willful" means. And Justice Kagan had
8 suggested that maybe it isn't all one way or all
9 the other, so you can say the innocent infringer
10 -- no profits when it's innocent. But then
11 there are shades of blameworthiness.

12 And we not -- we're not going to make
13 willfulness the essential one. Maybe callous
14 disregard. Maybe reckless.

15 MR. KATYAL: Justice Ginsburg, ask her
16 to cite a case in which callous disregard was
17 enough before 1946 to find -- to -- to find a
18 profits award. She won't be able to cite one
19 except for the theoretical possibility of Oakes.

20 And my point to you is when you were
21 interpreting the phrase "principles of equity"
22 just as in Halo, just as in eBay, what this
23 Court did is look to the long-standing practice
24 -- Justice -- the Chief Justice's separate
25 opinion in eBay referred to a page of history

1 being worth a volume of logic. And that's
2 exactly what's happened here.

3 CHIEF JUSTICE ROBERTS: That -- that
4 wasn't original with me.

5 (Laughter.)

6 MR. KATYAL: And that's exactly what's
7 happened here, is that you've had two centuries
8 in which this phrase, at equity, has been
9 interpreted by court after court, and it is a
10 fast rule. Indeed, this Court in the McLean
11 case, Justice Ginsburg, in 1877, said courts
12 constantly refuse profits awards without that.

13 And there isn't any tradition, there
14 isn't any example on the other side, and there's
15 treatise after treatise. And, by the way,
16 Justice Gorsuch, the Restatement is a general
17 treatise -- the Restatement on Torts, it's not
18 like, you know -- so -- but I do think actually
19 the trademark-specific treatises would be what
20 would be the relevant tradition here, if you're
21 trying to understand --

22 JUSTICE BREYER: Reading all those
23 I'll -- I'll try this again and maybe I should
24 ask you. All right. Suppose you win. And so
25 the callous disregard person can't get -- don't

1 -- profits doesn't apply. But this is really a
2 rotten infringer. And he behaved very badly.

3 Can the winning trademark owner point
4 to the sentence I read initially and say, Judge,
5 it's not fair that they're not counting profits
6 here, so don't call it profits, but give me a
7 lot more money?

8 MR. KATYAL: Absolutely. The statute
9 -- this is what we say at page 54 of our brief
10 allows treble damages for that --

11 JUSTICE BREYER: No, I'm not just --
12 treble, but up to a limit?

13 MR. KATYAL: -- profits, but you can't
14 treble profits --

15 JUSTICE BREYER: Up to a limit? But a
16 sentence --

17 MR. KATYAL: You can't just treble
18 profits because that is a harder --

19 JUSTICE BREYER: Correct. So -- so --
20 but the sentence I read has no such limitation.
21 That's what's confusing me about it.

22 MR. KATYAL: Well --

23 JUSTICE BREYER: So I thought is this
24 all much ado about nothing.

25 MR. KATYAL: Well, again, I think that

1 the award is subject in the first instance of
2 the gate to principles of equity.

3 JUSTICE BREYER: Yeah, all right.
4 Fine.

5 MR. KATYAL: But there's a much more
6 important answer here, Justice -- Justice
7 Breyer. She can't come up in response to
8 Justice Alito with a single time in which this
9 happened, an unjust result, in two centuries.

10 And the reason for that is trademark
11 law focuses on protection of consumers in which
12 injunctions and damages has always been enough,
13 which is why there isn't an example on the other
14 side.

15 To the extent she has some theoretical
16 argument, it should be one made to Congress.
17 Congress dealt with it actually here, in this
18 idea that --

19 JUSTICE BREYER: I'm still trying to
20 get the -- it's -- I don't know why I -- I can't
21 get it. I -- I must be missing something.

22 Where it turns out for you having won
23 that there is a case, imaginary, where the
24 person does behave badly but doesn't meet the --
25 the thresh -- the threshold, does this

1 sentence -- do you come across anything that
2 suggests the sentence that I read does any work,
3 where you would say, Judge, I agree, we don't
4 get profits? It wasn't willful what he did, but
5 it was pretty bad.

6 MR. KATYAL: Justice Breyer --

7 JUSTICE BREYER: And so we want more
8 money.

9 MR. KATYAL: Yes, Justice Breyer, it
10 does work with respect to damages, not with
11 respect to profits, because up above in 1117 --

12 JUSTICE BREYER: Yeah.

13 MR. KATYAL: -- profits is subject to
14 the principles of equity. And that is a
15 limitation. But --

16 JUSTICE KAVANAUGH: But damages is
17 notoriously hard to prove, correct?

18 MR. KATYAL: Well, I actually disagree
19 with that. She doesn't cite any study or
20 anything. The only study I'm aware of is the
21 Lex Machina study in 2017, which surveyed 2009
22 to 2017, and every trademark award and found
23 that profits accounted for a total of 13 percent
24 of profits awards and also 13 percent of the
25 dollars.

1 And to the extent you think that's
2 somehow, you know -- you know, worth the candle
3 or something and you should bump that up, that's
4 something that I think Congress should be
5 dealing with, but of course here they did. They
6 have a statutory damages provision to deal with
7 low damages awards --

8 JUSTICE KAVANAUGH: You -- you've
9 mentioned a couple times whether it's worth the
10 candle to not have a willfulness requirement,
11 but is it worth the candle to exclude all
12 reckless cases as Justice Breyer has stated --

13 MR. KATYAL: Yes. The reason --

14 JUSTICE KAVANAUGH: -- when -- when
15 willfulness will usually be a key factor in the
16 calculus regardless of who wins here?

17 MR. KATYAL: Right. We don't doubt
18 that -- if we were to lose this case on remand,
19 you should make very clear that willfulness is a
20 key factor, the big kahuna or something like
21 that, but our point to you is that the reason
22 why a -- a reason why the common law rule makes
23 sense is that willfulness cuts off, I think, the
24 threat of very large profits awards.

25 And this case is a perfect example.

1 She sought \$6 million, every dollar in profits
2 for the sale of these handbags, and that's what
3 she was referring to with this attribution
4 thing. And, indeed, they sought every dollar of
5 Macy's profits, \$7 million. And Macy's is an
6 entity that, you know, nobody is arguing had any
7 knowledge whatsoever, way -- way, shape, or
8 form, or even recklessness with respect to what
9 was going on with these little snaps in the
10 handbags.

11 CHIEF JUSTICE ROBERTS: Well,
12 counsel --

13 MR. KATYAL: That's the danger.

14 CHIEF JUSTICE ROBERTS: I -- how much
15 would you have asked for? I mean -- I mean,
16 it's -- it doesn't strike me as overreaching to
17 ask for every dollar of the profits if you think
18 you're entitled to profits.

19 MR. KATYAL: Well, that's the down --
20 that's the downside here. And, indeed, the
21 statute puts the burden on the defendant to
22 disprove any attribution. And so what -- one of
23 the reasons why you have the willfulness
24 requirement is to knock out and block
25 circumstances in which high awards are

1 threatened, and indeed settlements are forced,
2 which happened in this very case.

3 Now, she says, well, that's not going
4 to deter enough and you need to have something
5 extra, which, again, is something for Congress.
6 Again, this is a perfect illustration, just the
7 injunction alone cost us \$4 million. We had to
8 remove all of these bags, right on the eve of
9 Thanksgiving's big sales and the like.

10 And so in a world in which you have
11 injunctions and damages and all the attendant
12 consequences of pulling inventory, would
13 Congress really have intended to disrupt a
14 200-year-long tradition in order to -- to do
15 this? And --

16 JUSTICE KAGAN: May I ask two
17 questions about that tradition? The first is
18 you've said several times that Ms. Blatt has
19 zero cases, and I believe Ms. Blatt said that
20 she had three cases.

21 MR. KATYAL: Right.

22 JUSTICE KAGAN: So if you would
23 address that.

24 And the second is, although you point
25 to a lot of cases in which the results come out

1 your way, there are comparatively few where the
2 court sets out the rule as a categorical one.
3 You know, in many of these cases, the courts do
4 seem to be thinking of willfulness as a factor,
5 a significant factor, but not a gateway
6 requirement.

7 So those results might come out your
8 way, but they don't articulate the rule that you
9 propose, do they?

10 MR. KATYAL: Five -- yes. Five
11 separate treaties -- treatises and 37 of the 50
12 cited cases do set out the rule or say
13 willfulness is the only factor. But I think
14 that's not the test this Court applies. So, for
15 example, in Halo, what this Court did was look
16 to the long practice, and indeed the first case,
17 main case, it cited was a case called Cincinnati
18 Siemens, and it -- which was a case just about
19 the facts of -- of a -- of damage awards and
20 treble damages awards, but from that
21 long-standing practice what the Court did was to
22 -- was to -- was derive a principle.

23 And that's what we're saying here.
24 You've had a long-standing practice for 200
25 years, and, yes, Justice Kagan, those three

1 cases do not stand up. Even if she had three
2 cases, we don't think an outlier three cases in
3 200 years is going to get her where she needs to
4 go.

5 But taking them in turn, one,
6 Mishawaka Rubber. This is the Sixth Circuit's
7 determination, at 119 Federal Second 323. The
8 rule prevails in Michigan that an account of
9 profits will not be taken where the wrongful use
10 of a trademark has been merely accidental. And
11 then saying this rule is in harmony with the
12 rule prevailing in the federal courts. And,
13 indeed, in Mishawaka Rubber, the Court limited
14 the profits award to the period after May 19th,
15 1933, which was when they were on notice.

16 So that's --

17 JUSTICE SOTOMAYOR: Mr. Katyal, the
18 problem is, as I read those cases, you do have a
19 handful, a little bit more than a handful, that
20 say you need willful. But a lot of those cases,
21 including the quote you gave me, give the
22 negative. Accidental, good faith, is not
23 enough. That's not the same thing.

24 MR. KATYAL: We -- we agree not every
25 case states the rule, but our --

1 JUSTICE SOTOMAYOR: But it also --

2 MR. KATYAL: She doesn't have a case
3 on the other side with the exception of the
4 theoretical possibility of Oakes --

5 JUSTICE SOTOMAYOR: Why don't you --

6 MR. KATYAL: -- which doesn't.

7 JUSTICE SOTOMAYOR: Why don't you deal
8 with the three cases that she points to.

9 MR. KATYAL: Yeah. So the second case
10 is Oakes, which has never once been cited again
11 for that proposition. We're not saying it's
12 because it's from Alabama or something like
13 that. It's literally never been cited again for
14 that proposition. And, again, there was no
15 award in that case.

16 JUSTICE SOTOMAYOR: Well, it's only
17 the last 20, maybe 30 years that we had Lexis to
18 cite cases like that, but --

19 MR. KATYAL: Well, I think, you know
20 -- I think --

21 JUSTICE SOTOMAYOR: Lexis and Westlaw,
22 but --

23 MR. KATYAL: But, Justice Sotomayor, I
24 think, you know, this Court in the McLean case
25 said courts constantly refuse profits awards

1 because of a lack of willfulness, citing the
2 English case of Moet, which is the best case.
3 It's on all fours with this. That's the case
4 that, case after case, Liberty Oil, the Nims
5 treatise -- all of them are based on that
6 fundamental root.

7 And her third case was -- was
8 Prest-O-Lite. And, again, Prest-O-Lite -- and
9 this is our -- in our red brief at page 42. In
10 page 444 of Prest-O-Lite is made clear that the
11 conduct in that case was willful and that's why
12 a profits award was given. "What the defendants
13 did was to fill tanks bearing the Complainant's
14 trademark and either sell or distribute them for
15 sale. I have already found the defendant had
16 knowledge of the practice of the dealers," and
17 the like.

18 So every single one of the cases she
19 points to, I think, actually boomerangs. It
20 doesn't say what she says it does.

21 This is true of other language in
22 Romag's brief which makes this look a lot more
23 complicated than it is. McLean and Haseltine
24 and -- and even Draper, she cites Draper but
25 that's -- she -- it's only one judge. She

1 doesn't point out the other two judges disagreed
2 with this.

3 So, look, at the end of the day, she's
4 got one case from Alabama in 1883, which was
5 never actually resulted in an award of profits.
6 You have five treatises on the other side. You
7 have 37 of the 50 cases which do state a rule,
8 and 13 cases which are fully consistent with the
9 rule. I think that's at least as good as what
10 the Frag --

11 JUSTICE KAVANAUGH: But in --

12 MR. KATYAL: -- Music case was.

13 JUSTICE KAVANAUGH: -- stating the
14 rule in your brief, you consistently say good
15 faith, not willful, innocent, not willful. But
16 there's a huge gray area, maybe not huge, but
17 there is a gray area of behavior that's not good
18 faith or innocent but reckless but nonetheless
19 is not willful.

20 MR. KATYAL: Right, and --

21 JUSTICE KAVANAUGH: And that -- and
22 that -- your description in the brief consistent
23 also seems consistent as Justice Sotomayor says
24 with the rule.

25 MR. KATYAL: And I should have made

1 this clear with respect to Justice Ginsburg's
2 question. Yes, the cases sometimes say
3 ignorance or accidental or something like that.
4 And so -- but there's at least a threshold of
5 actual knowledge.

6 There is no case that she's able to
7 cite in which -- outside of the Oakes language
8 in 1883, that you could read to say that
9 something lower than -- something in which
10 there's objective recklessness is enough to
11 sustain a award of profits. They always rely on
12 subjective actual knowledge.

13 JUSTICE KAVANAUGH: How about
14 subjective recklessness, conscious disregard of
15 a substantial risk?

16 MR. KATYAL: Yeah. So, you know, I
17 don't think that -- I don't think the cases have
18 gotten too into that one way or the other,
19 but --

20 JUSTICE KAVANAUGH: Right. And that's
21 that's key, right?

22 MR. KATYAL: No, I don't think so.
23 Here, I think -- you know, here the question is
24 that, you know, because here -- the district
25 court here found, this is at page 47A, the

1 evidence at trial at most could support a
2 finding that Fossil was negligent, not that it
3 acted in reckless disregard with willful
4 blindness and the like. So --

5 JUSTICE GINSBURG: Mr. Katyal, could
6 you explain the features of trademark that make
7 it different from copyright and patent where
8 as -- if I understand correctly, you can get
9 profits without showing willfulness?

10 MR. KATYAL: Yeah. So trademark law
11 is fundamentally different from those. Those
12 are about ownership. Here this is about
13 consumer confusion and protection of consumers.

14 And as our brief explains, once you go
15 down that path, you have to worry -- and this is
16 one of the reasons for the willfulness
17 requirement, that willfulness litigation will be
18 used to browbeat entities like Fossil and to
19 seek massive amounts of profits, every dollar
20 they made, and also downstream, not just the --
21 you know, not just the designer of the handbags
22 but every entity that sells them, the Macy's of
23 the world to the tune of \$7 million.

24 If Congress really wanted to do that
25 and authorize such a revolutionary change in

1 trademark law, one would think they'd say so and
2 not leave it to negative implication because at
3 the end of the day, what she's asking you to do
4 is to say that Congress in 1999 put into the
5 statute something that literally had never been
6 done once in practice. She has not a single
7 time it's done.

8 That's why this Court in interpreting
9 the phrase "principles of equity" in -- in the
10 Halo case said, look to the long tradition, look
11 to what actually happened.

12 You don't need an ironclad rule, just
13 look to what happened. Here what happened is
14 one thing in the U.K. and in the U.S., for at
15 least 180 years, which is no profits awards in
16 the absence of willful conduct, at least
17 subjective knowledge that what they were doing
18 was wrong.

19 That is the common denominator in
20 Nims, the Restatement, and Ludlow and Jenkins
21 and -- and the 37 cases cited in the brief.

22 No other questions?

23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel.

25 Ms. Blatt, five minutes.

1 REBUTTAL ARGUMENT OF LISA S. BLATT

2 ON BEHALF OF THE PETITIONER

3 MS. BLATT: You may want to cut me
4 off.

5 So I -- I don't know what to say. I
6 didn't go to a fancy law school, but I'm very
7 confident in my representation of the case law.
8 Mishawaka is a case by you guys and you said in
9 there, in the dissent, it was an innocent
10 infringer, the profits were awarded.

11 The district court case says, hey, I
12 don't like the assertion that innocent people
13 shouldn't get profits, but you guys can read the
14 case and decide whether our assertion is
15 credible but that is a district court case and
16 it's a Supreme Court case by the dissent that
17 acknowledges innocence.

18 Oakes, it is what it is. You can read
19 it. And Prest-O-Lite is the same.

20 In terms of give me an example of an
21 unjust case, I would start with this case, the
22 argument is we get zero, even though there was
23 callous disregard, even though their snaps were
24 ripped off, even though it's a small business,
25 even though, you know, that's all they make and

1 it was a counterfeit snap, if we get zero or
2 even a quarter, that would be unjust. So that's
3 my example.

4 Second, on the treatises, I hope you
5 read them. Four of them use the word "damages."
6 They don't distinguish profits. They say a
7 principal of trademark law is you don't get
8 damages. No damages absent willfulness. He
9 doesn't have a response to that.

10 All of their cases but one say
11 "fraudulent intent." So every case that
12 articulates the rule uses the word "fraudulent."
13 Not "wrongful" but "fraudulent." And that's not
14 his argument here.

15 Third, no case that we found under the
16 1905 Act applied a mental state requirement. I
17 don't -- I didn't hear him say a case.

18 Four, he did drop the law professor
19 brief, which I'm so glad because I'm going to
20 quote from the leading cite of the law
21 professor's brief, Thurman.

22 The law was quote, "not clear from
23 1870 through 1905." The issue was "unclear when
24 the Lanham Act was enacted." Specifically
25 notes -- this is my favorite -- "there was a

1 majority and minority rule on the subject and
2 the Supreme Court was in the minority."

3 So you guys had the minority rule
4 because you didn't require willfulness in the
5 Champion Sparkplug case and then apparently you
6 muddied the waters in Mishawaka. So that --
7 that's their treatise. Oh. Wait a minute, "the
8 end result is ambiguity." So that's from their
9 treatise. And -- and four out of their five
10 treatises use the word "fraud."

11 JUSTICE BREYER: You're quite right
12 that I'll read the treatises and I've read the
13 Lemly brief, and I will read the sources, but I
14 don't understand your statement that they would
15 receive no damages.

16 MS. BLATT: So --

17 JUSTICE BREYER: I thought the
18 statute, that I have in front of me, says that
19 they're entitled to recover profits and any
20 damages sustained.

21 MS. BLATT: Right.

22 JUSTICE BREYER: And so you don't need
23 willfulness to recover any damages sustained, do
24 you? Or have I miss understood what --

25 MS. BLATT: No. I'm just saying --

1 JUSTICE BREYER: -- they're saying?

2 MS. BLATT: -- the logic of the
3 Respondent's argument is that the same common
4 law rule that required willfulness for profits
5 in the same breath said fraudulent intent was
6 also required for damages.

7 So it's a --

8 JUSTICE BREYER: All of those cases
9 say that --

10 MS. BLATT: All of the treatises --

11 JUSTICE BREYER: You're right.

12 MS. BLATT: -- four out of the five.

13 JUSTICE BREYER: All of the treatises.
14 Yeah, forgive me.

15 MS. BLATT: One of the cases.

16 JUSTICE BREYER: Nobody is claiming,
17 are they? I wouldn't --

18 MS. BLATT: Nope.

19 JUSTICE BREYER: No.

20 MS. BLATT: Nope. That's our
21 argument.

22 JUSTICE BREYER: Nobody is claiming
23 that you need willfulness for -- that the
24 client, no matter how poor, no matter how -- he
25 gets his damages, right?

1 MS. BLATT: Right. Our argument is --
2 the other side just wants to take you up to
3 where they win this case. The actual common law
4 sources say fraudulent intent and it also
5 extends to damages.

6 This is just another way of saying the
7 law was a mess and it wasn't that clear. When
8 three out of their eight cases say there was a
9 conflict, I just think the whole notion of the
10 Morissette or we cite that Fogerty versus
11 Fantasy cases, if you just have a lack of
12 clarity on the issue, you don't have a basis to
13 presume that Congress wanted you to read in an
14 unstated requirement.

15 And I think in at least in the --
16 the -- -- the Justice Scalia and Garner book, it
17 says, when you're talking about clarity, it's
18 something that all the members of the bar had to
19 agree was settled, and if the very case as it's
20 -- that was conflicted, if the treatises say it
21 wasn't clear, and if the cases are all over the
22 map, again, the fact that we have three cases
23 where they award profits is kind of either here
24 nor there when we had eight cases that are just
25 inconsistent with the willfulness requirement,

1 including, I will end with, I will sit down
2 early, is Champion Sparkplug case. It's a case
3 in 1947, it was construing the 1905 Act, said
4 it's relevant. And then it cited two other
5 factors as part of the equities.

6 That's, to me, you know, just -- it --
7 it would be hard to find a settled rule from 40
8 years of silence under the Lanham Act's
9 predecessor. Thank you.

10 JUSTICE GINSBURG: Ms. Blatt --

11 CHIEF JUSTICE ROBERTS: Thank you.

12 JUSTICE GINSBURG: -- Texas is a fine
13 law school.

14 CHIEF JUSTICE ROBERTS: I was just
15 going to --

16 (Laughter.)

17 MS. BLATT: Thank you.

18 CHIEF JUSTICE ROBERTS: Thank you,
19 counsel. The case is submitted.

20 (Whereupon, at 12:11 p.m. , the case
21 was submitted.)

22

23

24

25

Official - Subject to Final Review

\$	5	air [1] 43:6	award [26] 4:5,25 5:4 6:15,21 9:2, 18 10:4 13:23 14:7 15:18 20:10 34:24 35:3 37:4 39:7 44:11 45:18 48:1 49:22 54:14 55:15 56:12 57: 5 58:11 65:23
\$100,000 [1] 28:1	50 [4] 28:1,2 53:11 57:7	AL [1] 1:6	awarded [2] 31:10 61:10
\$200,000 [1] 8:4	54 [1] 47:9	Alabama [4] 9:21,22 55:12 57:4	awarding [3] 3:12 4:22 32:4
\$4 [4] 28:20,23 29:18 52:7	6	ALITO [3] 20:5 31:12 48:8	awards [16] 3:17 5:13 18:15 30:25 31:1,5 44:24 46:12 49:24 50:7,24 51:25 53:19,20 55:25 60:15
\$6 [1] 51:1	61 [1] 2:10	allow [3] 20:18 28:18 30:3	aware [2] 36:15 49:20
\$7 [2] 51:5 59:23	8	allows [2] 29:21 47:10	awareness [1] 10:22
\$900 [5] 7:22,23,24 26:19 28:6	8 [1] 44:1	almost [2] 7:9 25:12	away [3] 8:1 25:6 32:20
1	9	alone [1] 52:7	B
1069 [1] 38:15	900 [1] 8:15	already [4] 18:13 19:1 24:25 56:15	baby [1] 26:24
11:13 [2] 1:14 3:2	90s [1] 32:13	alternative [1] 8:11	back [1] 35:6
1114 [1] 19:5	A	although [2] 20:17 52:24	backdrop [3] 32:6 39:2 43:20
1115(b)(9) [1] 38:12	a.m [2] 1:14 3:2	ambiguity [1] 63:8	background [2] 4:1 43:9
1117 [2] 11:21 49:11	able [5] 12:23 31:13 39:6 45:18 58: 6	ambiguous [1] 39:10	bad [2] 16:8 49:5
1117(a) [1] 35:4	above [2] 15:14 49:11	amended [1] 6:4	badly [2] 47:2 48:24
1125(a) [2] 5:24 6:10	above-entitled [1] 1:12	amendment [3] 6:8 32:19 33:10	bags [1] 52:8
1125(c) [7] 5:22 17:14,15 18:8,15, 24 19:7	absence [2] 37:5 60:16	among [1] 21:24	balance [2] 5:2 22:25
117(a) [3] 5:19 34:22,23	absent [3] 12:13 18:19 62:8	amount [6] 5:4 8:14 11:22 12:24 17:2 29:12	balancing [1] 21:8
119 [1] 54:7	absolute [2] 3:17 22:5	amounts [1] 59:19	bar [1] 65:18
12:11 [1] 66:20	Absolutely [3] 35:1,5 47:8	analogue [1] 33:13	bark [1] 44:23
13 [3] 49:23,24 57:8	accepting [1] 13:21	analysis [1] 3:20	based [6] 5:14 11:23 19:22 20:12 22:3 56:5
135 [1] 38:13	accident [3] 16:2,2,5	another [1] 65:6	basic [3] 7:16 33:16 37:1
14 [1] 1:10	accidental [3] 54:10,22 58:3	answer [4] 3:18 11:15 40:15 48:6	basically [1] 18:17
18-1233 [1] 3:4	according [2] 5:5 12:1	answers [1] 21:18	basis [3] 27:19 34:4 65:12
180 [1] 60:15	account [1] 54:8	anybody [2] 14:13 28:24	bearing [1] 56:13
1870 [1] 62:23	accounted [1] 49:23	apparently [1] 63:5	bedrock [1] 44:11
1877 [2] 41:15 46:11	accounting [1] 31:22	appealing [2] 14:10 16:15	beginning [1] 18:24
1883 [3] 37:4 57:4 58:8	achieved [1] 40:1	appear [1] 17:15	begs [1] 18:3
1888 [1] 9:21	acknowledges [1] 61:17	APPEARANCES [1] 1:16	behalf [8] 1:19,22 2:4,7,10 3:8 30: 17 61:2
1900 [1] 41:15	across [1] 49:1	appeared [1] 16:3	behave [1] 48:24
1905 [4] 32:7 62:16,23 66:3	Act [20] 3:11 5:8,15,25 8:25 9:1,5,9 15:8,9 19:4,5 32:7 33:5 37:19 38: 15 41:22 62:16,24 66:3	appearing [1] 18:7	behaved [1] 47:2
1912 [1] 41:25	Act's [5] 4:10 5:11 30:24 32:9 66:8	appears [1] 5:23	behavior [2] 6:18 57:17
1933 [1] 54:15	acted [3] 33:25 39:2 59:3	appendix [2] 36:8 38:12	believe [2] 32:12 52:19
1946 [8] 5:11 19:5 31:19 35:17 37: 19 39:1 44:7 45:17	action [5] 5:25 18:2,10 23:14 33: 12	applied [2] 4:4 62:16	belong [2] 7:18 24:19
1947 [1] 66:3	activity [1] 36:16	applies [2] 19:17 53:14	belongs [1] 21:5
1999 [8] 6:4 32:18,22 33:5,10,25 37:21 60:4	acts [1] 43:19	apply [4] 12:17,18 18:20 47:1	below [1] 33:8
19th [1] 54:14	actual [5] 39:21 42:8 58:5,12 65:3	approve [2] 17:2 25:7	benefitted [1] 21:12
2	actually [12] 26:17 30:11 31:10 36: 15 37:4 41:10 46:18 48:17 49:18 56:19 57:5 60:11	approval [1] 41:21	best [2] 32:18 56:2
20 [1] 55:17	add [1] 6:4	area [2] 57:16,17	better [2] 14:20 22:18
200 [2] 53:24 54:3	added [3] 6:12 37:19,22	aren't [2] 8:8 22:12	between [5] 4:19 5:3 6:18 21:21 22:21
200-year-long [1] 52:14	address [1] 52:23	argue [1] 17:23	big [2] 50:20 52:9
2009 [1] 49:21	adequate [1] 22:12	argued [1] 14:13	Bishop [1] 33:2
2017 [2] 49:21,22	adequately [3] 4:13 7:5 24:16	arguing [2] 12:16 51:6	bit [1] 54:19
2020 [1] 1:10	adjust [1] 17:3	argument [26] 1:13 2:2,5,8 3:4,7 7: 22 17:12,17 18:1,1,6 29:15 30:16 32:18 43:5,9,17 44:1 48:16 61:1, 22 62:14 64:3,21 65:1	blameworthiness [2] 41:2 45:11
3	adjustment [2] 28:18 30:4	arguments [4] 8:14,15,22 32:12	blameworthy [1] 33:24
3 [1] 2:4	ado [1] 47:24	around [2] 12:23 21:6	BLATT [77] 1:18 2:3,9 3:6,7,9 6:13, 23 7:1 9:6,10,12,15,18,24 10:19 11:10 12:9,13,19 13:4,8,11,25 14: 3,5,11,15,18,22 15:2 16:6,14,18, 22 17:12,25 20:14 21:20 22:9 23: 9,22 24:2,6,10 26:5,10,13,16 27:6, 14,17,20,24 28:3 29:4,7,9,25 37: 11 52:18,19 60:25 61:1,3 63:16, 21,25 64:2,10,12,15,18,20 65:1 66: 10,17
30 [2] 2:7 55:17	adopted [2] 38:5,18	articulate [2] 10:8 53:8	
305 [1] 36:21	advance [1] 25:5	articulated [1] 24:21	
323 [1] 54:7	affirmative [1] 10:23	articulates [1] 62:12	
37 [3] 53:11 57:7 60:21	affirmatively [1] 6:6	aspect [1] 10:6	
4	agree [6] 13:1 35:6 40:9 49:3 54: 24 65:19	assertion [2] 61:12,14	
40 [1] 66:7	agreed [1] 24:11	assume [2] 38:24 43:10	
42 [1] 56:9	agreement [1] 45:6	assuming [1] 5:7	
43A [1] 36:8	agrees [1] 44:3	attendant [1] 52:11	
444 [1] 56:10		attributable [3] 27:10 28:4 29:18	
46 [1] 38:15		attribution [3] 29:13 51:3,22	
47A [1] 58:25		authorize [1] 59:25	
		authorizes [1] 3:11	
		available [4] 8:6 38:14,16 40:23	
		avoid [1] 10:23	
		avoidance [1] 34:14	

Official - Subject to Final Review

<p>blew ^[1] 42:2 blindness ^[3] 10:21 11:13 59:4 block ^[1] 51:24 book ^[4] 31:18,19 38:3 65:16 boomerangs ^[1] 56:19 both ^[5] 8:7,25 30:21 31:19 41:14 bottles ^[1] 41:18 bottom ^[1] 31:9 brand-newfangled ^[1] 37:25 breath ^[1] 64:5 BREYER ^[56] 11:9,14 12:12,14,20 13:6,9,14 14:1,4,9,13,16,19,24 15:22 16:7,15,19 23:7,10,23 24:3,7 26:4,7,11,14 27:23 28:19 29:5,8 30:3 46:22 47:11,15,19,23 48:3,7,19 49:6,7,9,12 50:12 63:11,17,22 64:1,8,11,13,16,19,22 brief ^[18] 14:16,17 31:8 32:20 33:9 37:17 43:17 44:2 47:9 56:9,22 57:14,22 59:14 60:21 62:19,21 63:13 briefed ^[1] 29:10 browbeat ^[1] 59:18 bump ^[1] 50:3 bunch ^[1] 33:23 burden ^[1] 51:21 burdensome ^[1] 31:21 business ^[3] 8:17 28:15 61:24 buying ^[1] 28:25</p>	<p>17 60:21 62:10 64:8,15 65:8,11,21,22,24 categorical ^[2] 31:25 53:2 cause ^[4] 5:25 18:2,10 33:12 centuries ^[7] 30:22 31:11 33:17 44:18,25 46:7 48:9 certain ^[1] 11:19 certainly ^[6] 8:4 16:11 22:5 37:18 43:16,21 champagne ^[1] 41:18 Champion ^[3] 21:7 63:5 66:2 chance ^[1] 43:3 change ^[1] 59:25 changes ^[1] 32:19 channel ^[1] 32:4 charge ^[2] 10:18,20 charged ^[1] 36:7 CHIEF ^[20] 3:3,9 17:11 26:21 27:13,15,18,22,25 29:16 30:13,18 45:24 46:3 51:11,14 60:23 66:11,14,18 China ^[3] 8:18 12:4,22 choice ^[1] 25:16 Cincinnati ^[1] 53:17 Circuit ^[6] 11:11 24:4,20,21 33:1,24 Circuit's ^[1] 54:6 circuits ^[1] 14:6 circumstances ^[6] 5:6 12:2 15:19 21:9,22 51:25 cite ^[10] 8:24 20:7,13 45:16,18 49:19 55:18 58:7 62:20 65:10 cited ^[8] 31:9 41:21 53:12,17 55:10,13 60:21 66:4 cites ^[2] 36:20 56:24 citing ^[2] 43:17 56:1 claiming ^[2] 64:16,22 clarity ^[2] 65:12,17 class ^[1] 19:8 clear ^[7] 10:13 50:19 56:10 58:1 62:22 65:7,21 clearly ^[2] 17:6 24:24 client ^[1] 64:24 closer ^[2] 8:15 11:2 collect ^[1] 18:10 come ^[7] 15:17 21:1 35:7 48:7 49:1 52:25 53:7 comes ^[1] 40:21 common ^[15] 8:23 10:6,7,8 20:21 34:8 36:5,9 43:11,20,22 50:22 60:19 64:3 65:3 company ^[1] 42:5 comparatively ^[1] 53:1 compensate ^[2] 7:6 24:16 compensates ^[1] 4:13 compensation ^[3] 15:12 22:12,19 compensatory ^[2] 5:4 30:6 Complainant's ^[1] 56:13 completely ^[2] 4:21 7:7 complicated ^[2] 27:5 56:23 component ^[1] 7:11 concede ^[1] 7:22 concentrate ^[1] 6:14 concerns ^[2] 14:6 43:15</p>	<p>condition ^[1] 20:7 conduct ^[3] 10:21 56:11 60:16 confident ^[1] 61:7 conflict ^[5] 10:10,12,12,13 65:9 conflicted ^[2] 20:18 65:20 confuse ^[1] 19:14 confusing ^[1] 47:21 confusion ^[3] 33:14 38:1 59:13 Congress ^[33] 5:11 6:3 18:23 19:19 20:2 26:2 30:24 32:5,13,14,16,22 33:2,4,25 35:2,8 37:17 38:6,24 39:1 40:6 43:11,19 44:7 48:16,17 50:4 52:5,13 59:24 60:4 65:13 Congress's ^[1] 30:22 congressional ^[1] 5:10 conscious ^[2] 34:14 58:14 consequences ^[1] 52:12 consider ^[1] 39:11 consistency ^[1] 43:10 consistent ^[4] 39:3 57:8,22,23 consistently ^[1] 57:14 consonance ^[1] 6:21 constantly ^[2] 46:12 55:25 constrained ^[1] 21:16 construing ^[1] 66:3 consumer ^[2] 38:1 59:13 consumers ^[4] 4:11 25:15 48:11 59:13 contains ^[1] 5:15 contest ^[1] 38:16 context ^[1] 35:9 contexts ^[1] 39:20 controlling ^[3] 3:21 4:8 15:6 controls ^[1] 5:20 Conversely ^[1] 4:24 copy ^[1] 28:21 copyright ^[1] 59:7 Correct ^[2] 47:19 49:17 correctly ^[2] 7:18 59:8 cost ^[2] 23:14 52:7 couldn't ^[2] 12:7 37:22 counsel ^[4] 30:14 51:12 60:24 66:19 count ^[2] 10:2 34:1 counterfeit ^[3] 8:7 25:22 62:1 counterfeiting ^[2] 8:18,21 counting ^[1] 47:5 countless ^[1] 8:8 counts ^[1] 9:22 couple ^[1] 50:9 course ^[4] 10:7 17:13 35:4 50:5 COURT ^[43] 1:1,13 3:10 9:16,19 11:22,24 12:1,6 13:23 15:18 20:9,16 21:8,15 22:24 28:18 30:19 32:25,25 35:10 36:7 41:4,13,20,21 42:6 45:23 46:9,9,10 53:2,14,15,21 54:13 55:24 58:25 60:8 61:11,15,16 63:2 Court's ^[1] 32:3 courts ^[2] 3:11 4:4,21 5:1 9:1 13:12 20:6 23:4 24:11,25 28:6 30:9 31:2 32:14 40:23,24 41:9 46:11 53:3 54:12 55:25 covered ^[1] 39:10</p>	<p>credible ^[1] 61:15 critical ^[1] 15:11 culpability ^[6] 4:6,17,24 15:9 24:15 25:8 culpable ^[1] 6:17 customer ^[1] 33:14 cut ^[1] 61:3 cuts ^[1] 50:23 cyber-squatting ^[1] 31:17</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D.C. ^[3] 1:9,18,21 dah-dah-dah ^[1] 12:23 damage ^[1] 53:19 damages ^[32] 7:8 8:3,4 13:18 18:5,16,17,18,20 19:11,15,18 23:14 30:12 40:22 47:10 48:12 49:10,16 50:6,7 52:11 53:20 62:5,8,8 63:15,20,23 64:6,25 65:5 danger ^[1] 51:13 dangerous ^[1] 38:9 day ^[2] 57:3 60:3 deal ^[2] 50:6 55:7 dealer ^[2] 41:18 42:1 dealers ^[1] 56:16 dealing ^[1] 50:5 dealt ^[1] 48:17 debate ^[2] 26:18 27:9 decades ^[1] 31:2 decide ^[2] 44:14 61:14 decision ^[1] 10:11 deemed ^[1] 43:20 defendant ^[11] 4:14,20 7:8 19:12 21:12 22:17,19,23 31:20 51:21 56:15 defendant's ^[4] 4:6 23:13 24:15 25:8 defendants ^[4] 5:12,13 36:15 56:12 defense ^[2] 37:25 42:17 defined ^[4] 10:16 11:4 24:24 33:18 definitely ^[1] 15:3 definition ^[2] 33:21 36:3 demonstrate ^[1] 32:1 denominator ^[3] 36:5,9 60:19 depending ^[1] 15:19 derive ^[1] 53:22 description ^[1] 57:22 deserve ^[1] 21:16 designer ^[1] 59:21 deter ^[2] 26:1 52:4 determination ^[1] 54:7 determinations ^[1] 38:17 determine ^[1] 37:23 determining ^[1] 4:5 deters ^[1] 4:25 developed ^[1] 31:2 dictates ^[1] 5:18 different ^[8] 27:7,18 31:24 33:18 39:19,20 59:7,11 differently ^[1] 33:18 dilution ^[5] 5:22 6:5 18:4 33:13 37:24</p>
---	--	--	---

Official - Subject to Final Review

<p>disagree ^[1] 49:18 disagreed ^[1] 57:1 disagreeing ^[1] 25:1 disagrees ^[1] 37:2 disclaimed ^[1] 43:12 discretion ^[8] 5:2 11:25 13:17,22 30:9 32:4 34:25 35:6 disprove ^[1] 51:22 dispute ^[1] 29:11 disregard ^[13] 4:19 6:20 10:17,25 11:11 33:23 34:15 45:14,16 46:25 58:14 59:3 61:23 disrupt ^[1] 52:13 dissent ^[2] 61:9,16 distinguish ^[2] 34:2 62:6 distinguished ^[2] 5:12 6:7 distribute ^[1] 56:14 district ^[7] 9:19 13:22 36:7 42:7 58:24 61:11,15 dog ^[1] 44:23 doing ^[3] 41:11,12 60:17 dollar ^[6] 7:13 23:1 51:1,4,17 59:19 dollars ^[1] 49:25 done ^[3] 32:15 60:6,7 doubt ^[2] 39:18 50:17 down ^[4] 15:14 51:19 59:15 66:1 downside ^[1] 51:20 downstream ^[1] 59:20 Draper ^[2] 56:24,24 dream ^[1] 16:3 drop ^[1] 62:18 dust ^[1] 31:7 Dyk ^[1] 33:7</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>each ^[1] 26:24 earlier ^[2] 6:24 7:1 early ^[1] 66:2 easy ^[1] 30:21 eBay ^[3] 35:10 45:22,25 eight ^[5] 5:15 18:7 19:20 65:8,24 either ^[10] 11:1,23 25:18 26:22 27:1 29:12 30:5 31:11 56:14 65:23 element ^[2] 33:14 38:1 eligible ^[1] 8:9 enacted ^[1] 62:24 end ^[6] 35:6,8 57:3 60:3 63:8 66:1 engaged ^[1] 41:23 England ^[1] 41:20 English ^[2] 24:13 56:2 enough ^[5] 45:17 48:12 52:4 54:23 58:10 enriched ^[1] 4:14 enrichment ^[3] 15:14 22:13 41:1 enter ^[1] 11:25 entities ^[1] 59:18 entitled ^[8] 7:23 22:6 23:13 28:17, 23 29:2 51:18 63:19 entity ^[2] 51:6 59:22 equitable ^[11] 4:3,8 7:3,12,16 17:1 26:11 31:4 35:7 44:12,15 equities ^[2] 5:2 66:5 equity ^[5] 3:14,15,20 4:3 6:14,15,</p>	<p>21 7:17 19:2,25 23:15,18,25 24:8, 12 26:22 27:1,3 29:21 30:1,2,7 31:2 32:10,25 34:22 35:5,12,14 37:10,13,15,23 40:21,23 42:13,19,21, 23 43:5,14,19,23 44:4,9,16 45:21 46:8 48:2 49:14 60:9 ESQ ^[4] 1:18 2:3,6,9 essential ^[1] 45:13 essentially ^[1] 40:10 ET ^[1] 1:6 eve ^[1] 52:8 even ^[25] 5:7 7:7,13,14,24 8:6,8 12:15 17:5,6 18:3 28:6 32:6 35:13 41:24 43:18,24 51:8 54:1 56:24 61:22,23,24,25 62:2 everyone ^[1] 44:3 everything ^[1] 4:18 evidence ^[1] 59:1 exactly ^[5] 35:9 36:6 43:16 46:2,6 example ^[16] 7:21 20:13 22:15 31:13 37:21 38:11 39:4 41:16,25 44:20 46:14 48:13 50:25 53:15 61:20 62:3 examples ^[2] 8:24,25 except ^[2] 37:3 45:19 exception ^[1] 55:3 exceptions ^[1] 34:8 excessive ^[3] 11:24 28:12 30:5 exclude ^[3] 38:24 39:14 50:11 excluding ^[1] 40:1 excuse ^[4] 3:22 5:21 19:12 42:7 exist ^[1] 4:16 explain ^[1] 59:6 explains ^[2] 37:17 59:14 expresionias ^[1] 17:23 expressed ^[1] 32:9 expressly ^[2] 5:12 30:24 extends ^[1] 65:5 extent ^[2] 48:15 50:1 extra ^[1] 52:5</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fact ^[4] 16:1 34:7 42:2 65:22 factor ^[14] 3:21 4:7 7:12,16 21:24 23:5 25:9 43:25 45:2 50:15,20 53:4,5,13 factors ^[12] 4:9,12,16,22 7:3 15:7, 8 17:1 24:13,24 30:1 66:5 facts ^[2] 20:12 53:19 fair ^[5] 13:19,24 18:1 27:4 47:5 faith ^[5] 6:19,22 54:22 57:15,18 familiar ^[1] 4:3 famous ^[1] 42:5 fancy ^[1] 61:6 Fantasy ^[1] 65:11 fashioning ^[1] 22:16 fast ^[4] 15:1 35:11 36:17 46:10 FASTENERS ^[2] 1:3 3:4 favorite ^[1] 62:25 features ^[2] 33:24 59:6 Federal ^[2] 54:7,12 few ^[1] 53:1 Fifth ^[1] 24:20 fight ^[1] 38:14</p>	<p>fill ^[1] 56:13 find ^[7] 11:22 12:1 42:23,24 45:17, 17 66:7 finding ^[1] 59:2 Fine ^[3] 14:24 48:4 66:12 finished ^[1] 23:19 First ^[9] 3:19 4:2 7:4 18:6 32:22 44:12 48:1 52:17 53:16 fit ^[1] 22:24 Five ^[8] 31:24 36:16 53:10,10 57:6 60:25 63:9 64:12 flexible ^[1] 35:14 floor ^[1] 8:11 focuses ^[1] 48:11 focusing ^[1] 30:4 Fogerty ^[1] 65:10 forced ^[2] 31:20 52:1 foremost ^[1] 7:4 forgive ^[1] 64:14 form ^[2] 15:12 51:8 forth ^[1] 12:5 FOSSIL ^[4] 1:6 3:5 59:2,18 found ^[5] 10:16 49:22 56:15 58:25 62:15 four ^[5] 32:21 62:5,18 63:9 64:12 fours ^[1] 56:3 Frag ^[1] 57:10 fraud ^[4] 20:21,23,24 63:10 fraud-based ^[1] 20:20 fraudulent ^[6] 4:18 62:11,12,13 64:5 65:4 friend ^[2] 30:20 31:7 friend's ^[1] 32:11 Friendly ^[1] 32:2 front ^[2] 35:8 63:18 fully ^[1] 57:8 function ^[1] 11:12 fundamental ^[1] 56:6 fundamentally ^[1] 59:11 further ^[2] 4:9 25:6 future ^[1] 4:25</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>Garner ^[1] 65:16 gate ^[3] 35:15,16 48:2 gateway ^[2] 25:2 53:5 gather ^[1] 17:17 gave ^[1] 54:21 general ^[2] 22:3 46:16 generally ^[2] 11:3 35:14 gestalt ^[1] 15:3 gets ^[1] 64:25 getting ^[2] 24:22 35:3 GINSBURG ^[12] 10:15 37:7,9,16 38:4 42:16 45:4,15 46:11 59:5 66:10,12 Ginsburg's ^[2] 42:11 58:1 give ^[13] 12:6 13:18,22 16:11 22:10 29:23 31:13 39:6 43:2 44:5 47:6 54:21 61:20 Given ^[5] 34:6 39:7 44:15,24 56:12 gives ^[2] 13:17 30:9 giving ^[2] 13:2 25:14 glad ^[1] 62:19</p>	<p>good-faith ^[1] 6:16 goodness ^[1] 16:12 goodwill ^[2] 4:11 28:16 Gorham ^[1] 41:25 GORSUCH ^[4] 38:22 42:10 43:8 46:16 got ^[4] 35:14,19 37:1 57:4 gotten ^[1] 58:18 governs ^[1] 31:3 grant ^[1] 34:3 gray ^[2] 57:16,17 greater ^[4] 4:22,24 7:2 22:18 ground ^[1] 43:22 guess ^[1] 23:10 guilty ^[1] 22:19 guys ^[3] 61:8,13 63:3</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>Halo ^[4] 32:3 45:22 53:15 60:10 Hamilton-Brown ^[1] 21:2 handbags ^[3] 51:2,10 59:21 handful ^[2] 54:19,19 hands ^[1] 28:8 happen ^[1] 16:12 happened ^[9] 41:17,17 46:2,7 48:9 52:2 60:11,13,13 happens ^[1] 25:21 happy ^[3] 25:1,4 26:25 hard ^[7] 7:8 25:18 35:11 36:17 44:21 49:17 66:7 harder ^[1] 47:18 harm ^[3] 10:22 15:16 35:13 harmony ^[1] 54:11 Haseltine ^[3] 36:19,21 56:23 hear ^[2] 3:3 62:17 heavy ^[1] 23:3 heightened ^[5] 5:14,16 18:19 19:23 20:1 held ^[1] 23:18 helps ^[2] 14:5 24:10 Henner ^[2] 41:4,15 high ^[2] 10:22 51:25 higher ^[1] 8:16 highest ^[1] 20:16 historical ^[1] 33:13 history ^[4] 22:3 30:22 42:21 45:25 hold ^[1] 7:17 holding ^[1] 24:18 home ^[1] 21:13 hook ^[2] 32:23 43:13 hope ^[1] 62:4 huge ^[3] 32:17 57:16,16 hurt ^[2] 13:20 21:11 hypothetical ^[2] 8:11 37:3 hypotheticals ^[1] 28:13</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>i.e ^[1] 5:11 idea ^[3] 40:22 43:18 48:18 ignorance ^[1] 58:3 illustration ^[1] 52:6 imaginary ^[1] 48:23 impact ^[1] 17:23 implication ^[3] 32:13 38:7 60:2</p>
--	---	--	---

Official - Subject to Final Review

<p>important ^[4] 4:9 23:5 35:21 48:6 imported ^[1] 41:18 impossible ^[1] 7:11 inadequate ^[2] 11:24 30:5 INC ^[3] 1:3,6 3:5 incentive ^[3] 8:19,21 25:19 inception ^[1] 5:11 include ^[5] 4:12 11:4 33:22 43:23, 23 included ^[1] 33:19 includes ^[3] 10:20 17:16 26:22 including ^[5] 4:19 21:1 33:1 54:21 66:1 inconsistent ^[1] 65:25 incontestability ^[1] 38:14 incredibly ^[1] 40:20 Indeed ^[6] 46:10 51:4,20 52:1 53: 16 54:13 indicated ^[1] 33:4 inference ^[3] 6:1 18:12,12 infringe ^[1] 19:13 infringed ^[1] 21:4 infringement ^[14] 5:1,24 6:7,12, 16 9:2 19:14 26:1,6 27:10 28:4 31: 16 38:25 40:4 infringer ^[5] 16:1 28:21 45:9 47:2 61:10 infringers ^[1] 3:13 infringing ^[1] 36:16 initially ^[1] 47:4 injunction ^[5] 21:13 25:17,17 35:9 52:7 injunctions ^[4] 31:6 36:21 48:12 52:11 innocence ^[1] 61:17 innocent ^[18] 4:18,21 6:15,18 7:8, 14 9:2 19:10,10 22:17 41:3,23 45: 9,10 57:15,18 61:9,12 inside ^[1] 28:22 instance ^[3] 4:17 12:21 48:1 instructed ^[1] 11:7 intended ^[3] 19:14 32:14 52:13 intent ^[4] 5:10 62:11 64:5 65:4 intentional ^[2] 6:3 10:21 inter ^[1] 38:16 interest ^[1] 13:17 intermediate ^[1] 22:2 interpret ^[2] 40:7 43:21 interpreted ^[3] 32:7 33:1 46:9 interpreting ^[2] 45:21 60:8 intro ^[1] 14:23 introduced ^[1] 33:12 inventory ^[1] 52:12 invite ^[1] 32:14 invited ^[1] 32:13 ironclad ^[1] 60:12 irreparable ^[1] 35:12 isn't ^[9] 14:1 31:16 38:19 43:4 45: 6,8 46:13,14 48:13 issue ^[5] 27:7 29:10 33:25 62:23 65:12 it' ^[1] 25:13</p> <hr/> <p style="text-align: center;">J</p>	<p>January ^[1] 1:10 Jenkins ^[2] 36:18 60:20 Jersey ^[1] 10:1 job ^[1] 40:7 Joint ^[1] 38:12 judge ^[8] 10:17 12:25 13:1 32:2 33: 7 47:4 49:3 56:25 judges ^[1] 57:1 judgment ^[1] 11:25 jury ^[2] 10:16 11:7 JUSTICE ^[159] 3:3,10 6:13,25 9:4, 8,11,14,17 10:15 11:9,14 12:12,14, 20 13:6,9,14,18 14:1,4,9,13,16,19, 24 15:22 16:7,15,19 17:11 20:5 21:19 23:7,10,23 24:3,7 26:4,7,11, 14,21 27:13,15,18,22,23,25 28:19 29:5,8,16 30:3,13,19 31:12 33:15 34:13,17,19,21 35:1,18,20,24 36:2, 9,12,23 37:7,8,9,16 38:4,10,20,22, 23 39:5,8,8,14,16,23,25 40:3,9,12, 15,18 41:6 42:10,11,16 43:8 45:4, 5,7,15,24 46:3,11,16,22 47:11,15, 19,23 48:3,6,6,8,19 49:6,7,9,12,16 50:8,12,14 51:11,14 52:16,22 53: 25 54:17 55:1,5,7,16,21,23 57:11, 13,21,23 58:1,13,20 59:5 60:23 63:11,17,22 64:1,8,11,13,16,19,22 65:16 66:10,11,12,14,18 Justice's ^[1] 45:24 justification ^[1] 22:18 justifies ^[1] 4:25</p> <hr/> <p style="text-align: center;">K</p> <p>KAGAN ^[5] 21:19 45:7 52:16,22 53:25 kahuna ^[1] 50:20 KATYAL ^[69] 2:6 21:21,22 30:15, 16,18 33:15 34:12,17,20 35:1,19, 23 36:1,4,11,14,24 37:7,16 38:11, 21 39:1,6,13,16,24 40:2,5,10,14, 17,19 41:8 42:10 43:7,16 45:15 46:6 47:8,13,17,22,25 48:5 49:6,9, 13,18 50:13,17 51:13,19 52:21 53: 10 54:17,24 55:2,6,9,19,23 57:12, 20,25 58:16,22 59:5,10 KATYAL,ESQ ^[1] 1:21 KAVANAUGH ^[30] 9:4,8,11,14,17 36:23 37:8 38:10,20,23 39:5,8,14, 17,23,25 40:3,9,12,15,18 41:6 49: 16 50:8,14 57:11,13,21 58:13,20 keep ^[1] 19:20 key ^[3] 50:15,20 58:21 kick ^[1] 31:8 kind ^[7] 10:13 17:19 22:2,8 29:13 45:2 65:23 Kirtsaeng ^[1] 22:14 knock ^[1] 51:24 knowing ^[4] 16:4 19:13 41:10,19 knowledge ^[11] 36:25 39:21,21 41:11 42:9 43:24 51:7 56:16 58:5, 12 60:17 knows ^[1] 16:12</p> <hr/> <p style="text-align: center;">L</p>	<p>la ^[1] 34:11 label ^[2] 17:19,21 laches ^[7] 28:7 38:13,15,19 42:17, 20,23 lack ^[2] 56:1 65:11 landmark ^[1] 4:10 language ^[2] 56:21 58:7 Lanham ^[12] 3:11 4:10 5:8,15,25 15:8,9 30:24 32:9 41:22 62:24 66: 8 large ^[1] 50:24 last ^[1] 55:17 later ^[1] 37:19 Laughter ^[4] 9:23 14:21 46:5 66: 16 law ^[32] 4:15 7:19 8:23 10:6,7,8 11: 3,12 20:18,21 24:25 25:6 29:11 33:8 34:8 38:3 43:11,20 48:11 50: 22 59:10 60:1 61:6,7 62:7,18,20, 22 64:4 65:3,7 66:13 lead ^[1] 17:12 leading ^[3] 20:8,15 62:20 learning ^[1] 10:23 least ^[12] 19:17,18 23:1 25:25 28:4 36:6 39:21 57:9 58:4 60:15,16 65: 15 leave ^[1] 60:2 left ^[2] 19:22 33:3 legal ^[3] 27:19 29:10 30:8 Legislated ^[1] 32:5 legislating ^[1] 43:11 Lemley ^[1] 33:8 Lemly ^[1] 63:13 less ^[2] 29:24 34:4 levels ^[1] 11:2 Lex ^[1] 49:21 Lexis ^[2] 55:17,21 Liberty ^[1] 56:4 light ^[1] 34:22 limit ^[2] 47:12,15 limitation ^[3] 34:23 47:20 49:15 limited ^[2] 29:12 54:13 line ^[1] 31:9 LISA ^[5] 1:18 2:3,9 3:7 61:1 list ^[1] 15:7 literally ^[2] 55:13 60:5 litigation ^[1] 59:17 little ^[10] 8:13 13:23 26:22,25 27:4 28:22 29:19 34:25 51:9 54:19 logic ^[2] 46:1 64:2 long ^[5] 4:4 31:14 43:14 53:16 60: 10 long-standing ^[6] 32:1 39:2 44: 17 45:23 53:21,24 longer ^[1] 28:14 look ^[16] 10:5 15:4 21:10 26:2 37: 22 38:12 42:22,25 44:15 45:23 53: 15 56:22 57:3 60:10,10,13 looked ^[1] 40:24 looking ^[1] 33:16 Looks ^[1] 21:15 lose ^[1] 50:18 lot ^[6] 5:17 9:7 47:7 52:25 54:20 56:22</p>	<p>lots ^[1] 8:14 low ^[2] 26:19 50:7 lower ^[2] 28:13 58:9 lowered ^[1] 28:7 lowest ^[1] 36:5 Ludlow ^[2] 36:18 60:20 lured ^[1] 28:25</p> <hr/> <p style="text-align: center;">M</p> <p>Machina ^[1] 49:21 Macy's ^[3] 51:5,5 59:22 made ^[6] 30:24 43:16 48:16 56:10 57:25 59:20 main ^[1] 53:17 majority ^[1] 63:1 manufacturer ^[1] 8:17 many ^[5] 31:2,25 34:3 37:11 53:3 map ^[1] 65:22 mark ^[4] 8:7 19:13 25:14 42:4 Massachusetts ^[1] 20:16 massive ^[1] 59:19 matter ^[5] 1:12 14:9 15:17 64:24, 24 McCarthy ^[1] 33:21 McLean ^[5] 41:4,15 46:10 55:24 56:23 mean ^[16] 10:16 14:22 15:3 16:25 19:25 21:15 24:12 26:22 27:3,3 29:17 34:11 35:22 42:19 51:15,15 meaning ^[3] 11:5 36:6,25 means ^[5] 19:25 34:7 37:10 39:19 45:7 meant ^[3] 10:18 39:20 44:9 meet ^[1] 48:24 members ^[1] 65:18 mental ^[5] 5:14,17,23 29:14 62:16 mentioned ^[2] 15:11 50:9 merely ^[1] 54:10 mess ^[1] 65:7 Michigan ^[1] 54:8 might ^[8] 22:4,20 25:20,20 28:13 42:13 43:4 53:7 million ^[7] 28:20,23 29:18 51:1,5 52:7 59:23 mind ^[2] 6:17 44:4 minimum ^[1] 7:21 minority ^[3] 63:1,2,3 minute ^[1] 63:7 minutes ^[1] 60:25 mirroring ^[1] 18:2 Mishawaka ^[6] 9:13 21:8 54:6,13 61:8 63:6 miss ^[1] 63:24 missed ^[1] 11:16 missing ^[1] 48:21 misstates ^[1] 36:19 modify ^[1] 33:6 Moet ^[4] 41:13,16,17 56:2 moment ^[1] 42:12 monetary ^[8] 5:13,16,19 18:10,18 19:9 30:25 31:1 money ^[9] 12:7,11,24 13:23 16:12 21:4 25:14 47:7 49:8 moral ^[1] 41:1</p>
---	--	---	--

Official - Subject to Final Review

<p>Morissette ^[2] 43:17 65:10 most ^[6] 10:6 18:11,12 20:8,25 59:1 mostly ^[1] 20:19 Ms ^[73] 3:6,9 6:13,23 7:1 9:6,10,12,15,18,24 10:19 11:10 12:9,13,19 13:4,8,11,25 14:3,5,11,15,18,22 15:2 16:6,14,18,22 17:11,12,25 20:14 21:20 22:9 23:9,22 24:2,6,10 26:5,10,13,16 27:6,14,17,20,24 28:3 29:4,7,9,25 37:11 52:18,19 60:25 61:3 63:16,21,25 64:2,10,12,15,18,20 65:1 66:10,17 much ^[11] 8:21 9:5 13:23 26:18 29:23 34:1,24 44:5 47:24 48:5 51:14 muddled ^[1] 63:6 multifactor ^[1] 3:20 multifold ^[1] 8:5 Music ^[1] 57:12 must ^[3] 35:13 36:15 48:21</p> <hr/> <p style="text-align: center;">N</p> <p>narrowed ^[1] 32:3 natural ^[2] 18:11,12 NEAL ^[3] 1:21 2:6 30:16 necessary ^[2] 20:6 23:19 necessity ^[1] 22:5 need ^[14] 7:2 16:20 18:3,9,25 24:15 34:10 42:8,8 52:4 54:20 60:12 63:22 64:23 needs ^[1] 54:3 negative ^[3] 38:7 54:22 60:2 negligence ^[3] 4:20 6:21 25:19 negligent ^[4] 22:22 25:22,24 59:2 never ^[8] 7:9 21:22 32:15 33:4 55:10,13 57:5 60:5 New ^[2] 10:1 33:12 newfangled ^[2] 31:17 33:11 news ^[1] 32:17 next ^[1] 3:4 nice ^[2] 8:5 17:8 Nims ^[3] 36:18 56:4 60:20 nobody ^[6] 13:20 28:22 29:19 51:6 64:16,22 none ^[1] 31:10 nonetheless ^[1] 57:18 Nope ^[2] 64:18,20 nor ^[1] 65:24 notes ^[1] 62:25 nothing ^[5] 8:1,20 9:21 43:5 47:24 notice ^[2] 24:4 54:15 notion ^[1] 65:9 notoriously ^[2] 7:8 49:17 number ^[1] 11:19</p> <hr/> <p style="text-align: center;">O</p> <p>Oakes ^[7] 9:20 37:3 45:19 55:4,10 58:7 61:18 object ^[1] 11:6 objective ^[2] 40:1 58:10 objectives ^[1] 40:19 obvious ^[1] 11:15 obviously ^[2] 14:25 26:2 odd ^[2] 17:4 18:23</p>	<p>Oil ^[1] 56:4 okay ^[6] 11:20 12:20 23:14,16,24 28:1 oldest ^[2] 31:18 38:2 omission ^[1] 6:2 omnibus ^[1] 18:14 on/off ^[1] 25:2 Once ^[4] 35:2 55:10 59:14 60:6 one ^[36] 3:21 7:13 8:6 9:12 15:6,9 16:24 19:25 20:7,12,21 21:24 23:1,17 30:10 31:3,9,18 33:13 42:1 45:8,13,18 48:16 51:22 53:2 54:5 56:18,25 57:4 58:18 59:16 60:1,14 62:10 64:15 ones ^[3] 15:11 24:14 30:2 only ^[12] 8:16 11:7 25:1,13,16 28:6,24 36:13 49:20 53:13 55:16 56:25 open ^[1] 21:19 operations ^[1] 8:18 opinion ^[5] 17:5,10 25:5 34:10 45:25 opt ^[1] 8:3 oral ^[5] 1:13 2:2,5 3:7 30:16 order ^[3] 11:18 44:14 52:14 original ^[3] 19:4,5 46:4 orphans ^[1] 16:10 Other ^[42] 4:8,13,22 5:25 7:2,3,5,12,15,21 10:3 12:10 15:11 17:7,15,18 18:19 19:3,16 21:21 22:12 24:15 25:9,11,16 28:5 30:10 37:2 38:7,8 44:20 45:9 46:14 48:13 55:3 56:21 57:1,6 58:18 60:22 65:2 66:4 Others ^[1] 33:20 otherwise ^[2] 7:25 25:19 out ^[29] 6:9 7:14 10:14 11:7,14 13:13,15 15:24 16:20,23 18:23 20:4 31:24 36:17 37:11 38:8 39:9 42:17 45:5 48:22 51:24 52:25 53:2,7,12 57:1 63:9 64:12 65:8 outlier ^[1] 54:2 outside ^[1] 58:7 over ^[4] 29:14 31:2 33:17 65:21 overreaching ^[1] 51:16 overwhelming ^[1] 20:2 owned ^[1] 16:9 owner ^[2] 25:14 47:3 owners ^[1] 3:16 owners' ^[1] 4:11 ownership ^[1] 59:12</p> <hr/> <p style="text-align: center;">P</p> <p>p.m ^[1] 66:20 PAGE ^[11] 2:2 15:2 36:8,21 38:13 44:1 45:25 47:9 56:9,10 58:25 part ^[6] 17:15 25:10 26:4 35:21 42:20 66:5 partes ^[1] 38:16 particularly ^[3] 6:1 7:10 20:23 parties ^[4] 8:13 11:5 26:17 29:10 pass ^[1] 35:3 passed ^[1] 18:9 patent ^[1] 59:7 path ^[1] 59:15</p>	<p>pay ^[2] 8:20 25:23 penalty ^[4] 5:5 28:10,11 30:6 people ^[5] 16:10 28:25 33:19,19 61:12 percent ^[2] 49:23,24 perfect ^[3] 41:16 50:25 52:6 perfectly ^[1] 25:7 perhaps ^[1] 42:17 period ^[1] 54:14 person ^[2] 46:25 48:24 petition ^[2] 14:12 36:7 Petitioner ^[6] 1:4,19 2:4,10 3:8 61:2 phrase ^[15] 3:15,19,22 4:2 6:11 17:13 32:3,24 33:3 40:7,7 44:8 45:21 46:8 60:9 pick ^[1] 21:20 place ^[2] 18:6 44:13 places ^[2] 38:7,8 plain ^[2] 37:13,14 plaintiff ^[8] 4:14 7:6 12:7 21:11 22:25 23:12 24:17 28:14 plaintiffs ^[1] 8:8 please ^[2] 3:10 30:19 point ^[13] 16:21 18:11,22 19:18 25:13 37:1 40:23 44:7 45:20 47:3 50:21 52:24 57:1 pointed ^[2] 37:11 45:5 points ^[3] 39:9 55:8 56:19 policy ^[2] 40:1,17 poor ^[1] 64:24 position ^[5] 8:12 21:20 22:2 23:20,21 possibility ^[2] 45:19 55:4 possible ^[1] 37:3 post-Lanham ^[1] 9:1 pot ^[1] 21:4 practice ^[11] 32:2,6,15 39:3 44:17 45:23 53:16,21,24 56:16 60:6 Pre ^[2] 9:4,8 pre-Lanham ^[3] 8:25 9:4,8 precondition ^[2] 3:17 16:24 predecessor ^[1] 66:9 presented ^[1] 3:14 Prest-O-Lite ^[5] 10:1 56:8,8,10 61:19 presume ^[1] 65:13 presumption ^[7] 22:8,10,11,11,13,24 23:2 pretty ^[1] 49:5 prevailing ^[1] 54:12 prevails ^[1] 54:8 prevent ^[1] 8:21 price ^[1] 43:18 principal ^[1] 62:7 principle ^[8] 7:16 19:2 26:25 31:3 37:10 43:10 44:4 53:22 principles ^[33] 3:13,15,19 4:2,4 19:24 23:15,25 24:8,12 28:9 30:25 31:1 32:10,24 35:5,7,12 37:13,15,23 42:13,19 43:5,14,19,23 44:8,10 45:21 48:2 49:14 60:9 printers ^[1] 19:10 prints ^[1] 19:13</p>	<p>probability ^[1] 10:22 probably ^[2] 25:23 28:12 problem ^[6] 8:5 23:17 33:16 42:18 43:1 54:18 problems ^[1] 32:21 process ^[1] 31:21 produce ^[1] 12:21 professor ^[1] 62:18 professor's ^[2] 33:8 62:21 profit ^[3] 3:17 4:25 18:14 profits ^[88] 3:13 4:5,23 7:18,23 9:2,18 10:4 11:18,20,23 14:7 18:5,17,18,24 19:11,15,19,21,21,22 20:10,19 21:23 23:13 24:17,19 26:9,9,18,23 27:8,9 28:1,3,17,19,23 29:3,18 31:5,10,22 32:4 34:24 35:3 36:22 37:5 40:21,24 44:11,11,24 45:10,18 46:12 47:1,5,6,13,14,18 49:4,11,13,23,24 50:24 51:1,5,17,18 54:9,14 55:25 56:12 57:5 58:11 59:9,19 60:15 61:10,13 62:6 63:19 64:4 65:23 property ^[2] 21:3,4 propose ^[1] 53:9 proposition ^[2] 55:11,14 protect ^[2] 4:10 18:23 protected ^[1] 5:12 protecting ^[1] 25:15 protection ^[3] 18:5 48:11 59:13 prove ^[4] 3:16 7:9,11 49:17 provision ^[6] 5:18,20,21 30:3 36:20 50:6 provisions ^[3] 5:16,18 19:20 publishers ^[1] 19:11 pulling ^[1] 52:12 purposes ^[3] 4:10 7:3 25:10 purse ^[5] 27:11 28:20,22,25 29:2 purses ^[1] 29:6 put ^[6] 14:17 16:4 18:4 25:21 28:21 60:4 puts ^[2] 23:2 51:21</p> <hr/> <p style="text-align: center;">Q</p> <p>quarter ^[1] 62:2 question ^[13] 3:14 12:10 15:21 16:24 18:3 21:18 29:20 35:21 42:11 44:5 45:1 58:2,23 questions ^[2] 52:17 60:22 quite ^[1] 63:11 quote ^[4] 35:4 54:21 62:20,22</p> <hr/> <p style="text-align: center;">R</p> <p>raise ^[1] 15:19 rampant ^[1] 8:19 range ^[1] 4:17 ranges ^[1] 26:19 rationale ^[1] 40:25 Ratzlaf ^[1] 39:18 Read ^[27] 12:25 13:5,12,13,15 14:6,20 15:1,24 16:19 17:8 19:1 33:21 42:17 44:22 47:4,20 49:2 54:18 58:8 61:13,18 62:5 63:12,12,13 65:13 reading ^[5] 11:16 16:22 38:5,18</p>
---	---	--	---

Official - Subject to Final Review

<p>46:22 really ^[8] 8:20 21:11,12 42:4 43:4 47:1 52:13 59:24 reason ^[9] 28:6,9,11 37:20,21 48:10 50:13,21,22 reasons ^[5] 3:18 13:2 25:9 51:23 59:16 REBUTTAL ^[2] 2:8 61:1 receive ^[1] 63:15 reckless ^[12] 6:20 11:5 22:23 38:24 40:3 41:7,25 42:2 45:14 50:12 57:18 59:3 recklessness ^[12] 11:2,6,8 33:19, 22 34:15 39:11,15,24 51:8 58:10, 14 recognize ^[2] 23:4 34:9 recover ^[3] 23:13 63:19,23 recovered ^[1] 7:9 recovery ^[2] 11:23 34:5 red ^[1] 56:9 reduce ^[1] 15:18 reference ^[1] 32:9 referred ^[2] 41:14 45:25 referring ^[2] 27:8 51:3 refers ^[1] 4:3 reflect ^[1] 5:9 refuse ^[2] 46:12 55:25 regardless ^[1] 50:16 Regis ^[1] 20:15 registered ^[2] 8:7 19:6 reinserted ^[1] 6:10 relates ^[1] 30:7 relating ^[1] 20:19 relevant ^[3] 21:10 46:20 66:4 relief ^[13] 4:13 5:14,16,19 7:5,15 13:3 18:10,18 19:9 20:24 24:16 25:12 rely ^[1] 58:11 remainder ^[1] 32:1 remand ^[4] 8:13,23 26:17 50:18 remedies ^[1] 22:12 remedy ^[4] 3:12 31:5 44:12,15 remove ^[1] 52:8 repeal ^[1] 32:22 reply ^[1] 44:1 representation ^[1] 61:7 reprints ^[1] 19:12 require ^[4] 4:21 24:1,9 63:4 required ^[9] 20:4 31:4,19 36:22,25 44:19,25 64:4,6 requirement ^[23] 3:24 4:1 5:8,23 6:3,5 10:9 18:14 21:17 23:11 32:8, 8,24 33:7 35:11 36:18 50:10 51:24 53:6 59:17 62:16 65:14,25 requires ^[3] 3:16 5:3,21 respect ^[6] 32:11 36:22 49:10,11 51:8 58:1 respond ^[1] 43:3 respondent ^[1] 17:9 Respondent's ^[1] 64:3 Respondents ^[4] 1:7,22 2:7 30:17 response ^[5] 27:22 31:12 42:15 48:7 62:9</p>	<p>Restatement ^[3] 46:16,17 60:20 result ^[6] 20:8 31:14,14 45:3 48:9 63:8 resulted ^[1] 57:5 results ^[2] 52:25 53:7 resurrecting ^[1] 32:21 return ^[1] 42:11 revolutionary ^[1] 59:25 rightfully ^[2] 21:5 24:19 ripped ^[1] 61:24 rise ^[1] 11:1 risk ^[2] 15:16 58:15 risking ^[1] 31:22 ROBERTS ^[17] 3:3 17:11 26:21 27:13,15,18,22,25 29:16 30:13 46:3 51:11,14 60:23 66:11,14,18 ROMAG ^[2] 1:3 3:4 Romag's ^[1] 56:22 root ^[1] 56:6 rotten ^[1] 47:2 routine ^[1] 9:3 Rubber ^[2] 54:6,13 rubric ^[1] 10:25 rug ^[1] 30:23 rule ^[29] 7:14 10:13,14 17:7 22:16 31:25 32:1 34:8 41:14 42:24 46:10 50:22 53:2,8,12 54:8,11,12,25 57:7,9,14,24 60:12 62:12 63:1,3 64:4 66:7 run ^[1] 45:2</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>sale ^[2] 51:2 56:15 sales ^[1] 52:9 same ^[10] 6:3,11 10:9 17:22 22:11 35:16 54:23 61:19 64:3,5 saw ^[1] 28:22 Saxel ^[2] 41:4,15 saying ^[19] 13:4,7 14:7 15:24 16:23 17:18 19:21 21:3,9,15 38:19 42:14 43:25 53:23 54:11 55:11 63:25 64:1 65:6 says ^[28] 7:21 11:22 17:5 18:9,20 19:7,16 20:17 21:22 23:12,15 30:11 33:9 34:10,23,23 36:22,24 38:6,13,15 44:21 52:3 56:20 57:23 61:11 63:18 65:17 scale ^[2] 16:25 22:17 scales ^[1] 23:2 Scalia ^[1] 65:16 scheme ^[1] 20:3 school ^[2] 61:6 66:13 scienter ^[3] 18:19 19:23 20:1 Second ^[12] 3:22 5:7 7:15 8:10 9:19 11:11 24:21 33:4 52:24 54:7 55:9 62:4 Section ^[6] 5:19,24 17:14 19:3 38:11,15 Sections ^[1] 6:10 see ^[6] 11:21 15:4,5 20:22 25:21 29:19 seek ^[1] 59:19 seem ^[4] 17:4 30:20 43:12 53:4 seems ^[5] 18:22 25:25 27:4 29:22</p>	<p>57:23 seen ^[1] 21:14 sell ^[1] 56:14 sells ^[1] 59:22 sense ^[3] 15:13 22:3 50:23 sentence ^[17] 10:10 11:21 12:8 13:1,16 14:2,3,6,14 15:15 16:21 24:8 47:4,16,20 49:1,2 separate ^[6] 27:7 29:9 36:16 40:25 45:24 53:11 set ^[4] 8:17 31:24 36:17 53:12 sets ^[1] 53:2 settled ^[5] 3:24,25 5:7 65:19 66:7 settlements ^[1] 52:1 several ^[1] 52:18 shades ^[1] 45:11 shall ^[3] 11:22 12:1 23:12 shape ^[1] 51:7 she's ^[8] 32:12 37:1 38:5 43:24 45:3 57:3 58:6 60:3 shouldn't ^[2] 17:22 61:13 show ^[2] 7:24 35:12 showing ^[3] 4:22 7:2 59:9 shown ^[2] 14:8 35:13 side ^[18] 7:21 11:6 12:10 13:21 17:7,18 18:20 19:16 25:7 26:25 28:5 37:2 44:20 46:14 48:14 55:3 57:6 65:2 Siemens ^[1] 53:18 significance ^[1] 15:23 significant ^[5] 10:6 12:24 22:6 34:9 53:5 signifies ^[1] 3:20 silence ^[1] 66:8 silverware ^[3] 42:1,4,5 similar ^[2] 11:10 19:7 simply ^[1] 18:11 simultaneously ^[1] 6:9 single ^[7] 31:13 39:3 44:20,24 48:8 56:18 60:6 sit ^[1] 66:1 situations ^[1] 41:24 Six ^[1] 14:6 six-factor ^[1] 24:22 Sixth ^[2] 24:4 54:6 sliding ^[2] 16:25 22:17 small ^[2] 8:16 61:24 snap ^[2] 27:11 62:1 snaps ^[2] 51:9 61:23 somebody ^[1] 16:5 somehow ^[1] 50:2 someone ^[2] 41:2,22 someplace ^[1] 21:20 sometimes ^[3] 14:25 39:10 58:2 Sorry ^[1] 27:6 sort ^[4] 17:22 22:14 26:24 43:10 34:13,17,19,21 35:2,18,20,24 36:2, 9,12 39:9 45:5 54:17 55:1,5,7,16, 21,23 57:23 sought ^[2] 51:1,4 sources ^[2] 63:13 65:4 southern ^[1] 42:7 Sparkplug ^[3] 21:7 63:5 66:2</p>	<p>specific ^[1] 39:17 Specifically ^[1] 62:24 spectrum ^[2] 4:17 11:3 spelling ^[1] 20:4 split ^[2] 26:24 33:24 spurious ^[1] 41:19 stamp ^[1] 42:3 stand ^[1] 54:1 standardless ^[1] 45:2 start ^[2] 24:13 61:21 started ^[1] 43:25 state ^[8] 5:14,17,23 6:17 29:14 44:4 57:7 62:16 stated ^[2] 17:6 50:12 statement ^[1] 63:14 STATES ^[4] 1:1,14 41:5 54:25 stating ^[2] 41:14 57:13 statute ^[16] 5:3 6:4 11:16 17:6 19:1 26:2 30:2,9,11 37:12 38:9,21 47:8 51:21 60:5 63:18 statutory ^[8] 3:23 5:9 8:3,4 18:16 20:1 42:12 50:6 step ^[2] 16:24 32:16 steps ^[1] 10:23 stick ^[1] 17:20 still ^[3] 16:7 29:17 48:19 strange ^[1] 26:22 strike ^[1] 51:16 strong ^[2] 6:2 40:20 struck ^[1] 6:9 structure ^[3] 3:23 5:9 20:2 study ^[3] 49:19,20,21 stuff ^[1] 25:22 subject ^[8] 3:13 23:15 30:25 31:1 35:4 48:1 49:13 63:1 subjective ^[4] 39:21 58:12,14 60:17 subjectively ^[2] 41:10,11 submitted ^[2] 66:19,21 subsection ^[3] 6:6,8,11 substantial ^[1] 58:15 substantive ^[2] 42:21,24 suffering ^[1] 16:10 suggest ^[1] 17:24 suggested ^[1] 45:8 suggests ^[1] 49:2 suing ^[1] 20:23 sum ^[1] 11:25 superfluous ^[2] 19:17,19 supersede ^[2] 3:23 5:10 support ^[1] 59:1 suppose ^[5] 11:17 12:16,20,21 46:24 supposed ^[1] 8:10 SUPREME ^[5] 1:1,13 9:15 61:16 63:2 surveyed ^[1] 49:21 sustain ^[2] 6:15 58:11 sustained ^[2] 63:20,23 swath ^[1] 6:18 sweep ^[1] 30:21 switch ^[1] 25:3 symbol ^[1] 16:3</p>
---	---	---	--

Official - Subject to Final Review

<p style="text-align: center;">T</p> <p>talked [1] 30:2 tanks [1] 56:13 technical [1] 20:25 Tenth [1] 33:1 term [1] 33:17 terms [4] 10:18 22:15 25:11 61:20 terrible [1] 15:25 terribly [1] 16:10 test [2] 24:22 53:14 Texas [1] 66:12 text [5] 3:23 5:9 37:13,15 42:12 textual [3] 32:11,23 43:13 textually [1] 43:2 Thanksgiving's [1] 52:9 theoretical [3] 45:19 48:15 55:4 theory [1] 24:17 there's [32] 6:17 7:12,15 8:2,19,20 11:15 15:7,12,13,16,16 20:24 21:4 22:1 23:11 25:19 27:8,11 29:9,11 35:6,11 39:17,18 43:13 44:19 46:14 48:5 57:16 58:4,10 therefore [2] 16:16 39:12 they'll [1] 12:22 thinking [2] 29:1 53:4 thinks [1] 13:24 third [6] 3:25 9:25,25 33:10 56:7 62:15 though [8] 7:15 17:5,6 35:13 61:22,23,24,25 threat [1] 50:24 threatened [1] 52:1 three [16] 3:18 9:6 21:2,7 24:20,23 28:25 29:5 30:11 52:20 53:25 54:1,2 55:8 65:8,22 three's [1] 9:7 thresh [1] 48:25 threshold [3] 35:3 48:25 58:4 Thurman [1] 62:21 tiny [1] 28:22 Today [2] 5:15 30:23 took [1] 18:15 tort [2] 20:20,20 Torts [1] 46:17 total [3] 13:17 16:5 49:23 totally [2] 16:2,2 trademark [29] 3:12,16 4:6,11 5:22 6:5 7:10 8:8 16:9 18:4 19:4 20:25 26:5 28:21 31:16 33:12 37:24 38:3 42:25 43:1 47:3 48:10 49:22 54:10 56:14 59:6,10 60:1 62:7 trademark-specific [1] 46:19 trademarks [1] 19:6 tradition [10] 31:15 39:17 40:21 44:16,16 46:13,20 52:14,17 60:10 traditional [5] 4:8,12 15:8 17:1 30:1 trans [1] 42:20 trans-substantive [1] 44:10 treaties [1] 53:11 treatise [7] 43:1 46:15,15,17 56:5 63:7,9 treatises [11] 31:24 36:17 46:19</p>	<p>53:11 57:6 62:4 63:10,12 64:10,13 65:20 treaty [1] 42:22 treble [6] 18:16 47:10,12,14,17 53:20 trial [1] 59:1 tries [2] 30:20 31:7 true [2] 23:22 56:21 truly [2] 6:18,18 trusted [1] 5:1 try [2] 34:2 46:23 trying [5] 15:22 33:6 38:5 46:21 48:19 Tuesday [1] 1:10 tune [1] 59:23 turn [2] 25:10 54:5 turns [1] 48:22 twice [2] 41:14,21 two [12] 7:4 15:10,10 30:22 31:11 44:18,25 46:7 48:9 52:16 57:1 66:4 tying [1] 5:16 type [1] 6:7</p> <p style="text-align: center;">U</p> <p>U.K [2] 31:12 60:14 U.S [1] 60:14 uncertainty [1] 34:6 unclean [1] 28:8 unclear [1] 62:23 under [15] 5:22,24,25 6:6,8 11:11 12:8 17:13,19 18:25 19:22 21:22 30:23 62:15 66:8 underlying [2] 18:8 20:20 understand [9] 12:9 15:20,23 23:24,24 40:12 46:21 59:8 63:14 understood [2] 42:15 63:24 uniform [1] 45:6 unique [1] 33:11 UNITED [2] 1:1,14 universal [2] 36:2,5 unjust [10] 15:13 20:8,11,23 22:13 31:14 41:1 48:9 61:21 62:2 unless [4] 7:24 8:6 15:24 22:10 unlike [1] 31:5 unlikely [2] 28:24 29:17 unstated [1] 65:14 untouched [1] 33:3 unusual [1] 42:13 up [13] 8:17 15:17 24:13 26:20 30:11 31:8 47:12,15 48:7 49:11 50:3 54:1 65:2 uses [3] 24:4 37:12 62:12</p> <p style="text-align: center;">V</p> <p>vague [1] 39:10 versus [2] 3:5 65:10 view [5] 7:23 13:11 16:25 18:25 23:11 violated [1] 7:19 violation [11] 4:15 5:22 6:9,11 17:13,18,21 18:9 19:6 31:17 38:2 violations [3] 3:12 5:24 31:18 volume [1] 46:1</p>	<p>voluminous [1] 8:24</p> <p style="text-align: center;">W</p> <p>Wait [1] 63:7 walk [1] 7:25 walked [1] 32:20 wanted [4] 32:16 38:24 59:24 65:13 wants [1] 65:2 Washington [3] 1:9,18,21 waters [1] 63:6 way [16] 15:4 17:10 18:23 26:20 32:25 33:7 36:19 42:13 45:8 46:15 51:7,7 53:1,8 58:18 65:6 weight [2] 22:6 44:5 weighty [4] 4:7 15:6 23:5 25:9 Westlaw [1] 55:21 what'll [1] 16:12 whatever [2] 17:23 19:24 whatsoever [1] 51:7 Whereupon [1] 66:20 whether [15] 3:14 4:5,13,14 7:5 15:12,13 25:2 27:9 29:12 34:8 42:12 44:14 50:9 61:14 who's [1] 41:22 whole [4] 18:6 25:13 33:23 65:9 wide [1] 6:17 widows [1] 16:9 Will [9] 14:24 29:17 43:23 50:15 54:9 59:17 63:13 66:1,1 willful [21] 5:21 6:12,19 10:21 11:13 13:1,16 17:13,18,21 18:9 25:24 45:7 49:4 54:20 56:11 57:15,15,19 59:3 60:16 willfulness [87] 3:16,24 4:1 5:8 6:2,5 7:25 10:9,15,17,20 11:1,4,8,12,18 12:4,13,16,17 13:5 14:7 15:5,24 16:19 17:14,16,16 18:4,14 20:4,6,11 21:9,17,23,24 22:4 23:11,18 25:2 31:4,11,20 32:7,23 33:6,17,22 34:4,7,10,13 35:22 36:6,22,25 37:5,10,12,14,18 39:9,19 42:14 43:6,24 44:18,25 45:13 50:10,15,19,23 51:23 53:4,13 56:1 59:9,16,17 62:8 63:4,23 64:4,23 65:25 win [3] 12:21 46:24 65:3 wind-up [1] 43:15 windfall [2] 15:17 31:23 winning [1] 47:3 wins [1] 50:16 without [6] 6:16 19:13 21:23 31:10 46:12 59:9 won [1] 48:22 word [11] 6:9,14 24:4,5 37:12 38:6 39:10,10 62:5,12 63:10 words [3] 19:3 21:21 30:22 work [4] 11:14 25:18 49:2,10 world [2] 52:10 59:23 worried [1] 16:16 worry [1] 59:15 worth [5] 45:1 46:1 50:2,9,11 write [4] 17:4,10 24:8 34:10 wrongdoing [4] 41:2,3,7,23 wrongful [3] 24:5 54:9 62:13</p>	<p style="text-align: center;">Y</p> <p>year [1] 33:2 years [5] 53:25 54:3 55:17 60:15 66:8</p> <p style="text-align: center;">Z</p> <p>zero [3] 52:19 61:22 62:1</p>
--	---	--	---