

Even After a Supreme Court Win, Romag Fasteners Can't Get a Big Jury Verdict to Stick

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by Shannon Bjorklund



Trademark law aficionados have followed the progress of *Romag Fasteners v. Fossil* from District Court to the Federal Circuit to the Supreme Court and back again. We [previously blogged](#) about the Supreme Court decision here. In the latest installment, the Connecticut District Court refused to enter a \$6.7 million advisory jury award, instead awarding a mere \$90,000 to Romag Fasteners for this multi-year litigation.

The District Court's [opinion](#) is a primer in damages law, with a cautionary tale of what-not-to-do if you want to avoid a court's ire. The District Court started by laying out the damages theories: an advisory jury verdict of \$90,000 of unjust enrichment, based on allocating just 1% of Fossil's profits to the Romag magnetic fastener, and an advisory jury verdict of \$6.7 million based on a deterrence theory. Romag Fasteners had declined to pursue statutory damages, instead seeking the more speculative and much more judicial-resource-intensive theory of lost profits. And following the Supreme Court's decision – holding that lost profits may be available even without willful trademark infringement, though *mens rea* remains critically important – the District Court had latitude to award damages of \$90,000, *over seven hundred times \$90,000* (\$6.7 million), or something in between.

The District Court's disillusionment with Romag's litigation conduct and aggressiveness disproportionate to its harm was apparent. In evaluating the equitable factors in setting an award, the Court determined that almost all of them favored Fossil. The Court emphasized Romag's behavior at the beginning of the litigation: from filing a lawsuit immediately prior to the lucrative holiday shopping season, submitting a false affidavit to obtain a TRO, and damaging Fossil due to the strategic timing of its lawsuit. "Plaintiff

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carefully timed this suit to take advantage of the imminent holiday shopping season to be able to exercise the most leverage over Defendants in an attempt to extract a quick and profitable settlement, as it had done twice before in the past three years.” By contrast, the Court determined that Fossil had acted negligently, at worst, and the relative balance of the behaviors favored a judgment of approximately \$90,000 for trademark infringement, which when added to prior patent damages, would total approximately \$133,000.

In a strange coda to such a long-running and hard-fought case, both parties submitted requests to amend the judgment by remarkably small amounts. Romag Fasteners asked the Court to amend the judgment to reflect the correct value of the patent judgment, for a total judgment of \$142,000 plus interest. And Fossil, not to be outdone, submitted a response agreeing with the total of \$142,000, but disagreeing as to the date on which interest would apply. So, is this the end of this long-running dispute? Only time will tell.