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2025 Trademark Takeaways: Highlights of Key Rulings Shaping Trademark Law

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February 04, 2026

Trademark case law continues to develop each year, and 2025 was no exception, with courts issuing a wide array of trademark opinions. For a more in-depth discussion of 2025's most impactful decisions, we invite you to watch our recent webinar, *Trending Topics in Trademark Law: Perspectives from Practitioners*. In recent years, the Supreme Court has become increasingly engaged in shaping trademark doctrine, while the Federal Circuit continues to serve as the most instructive appellate court. This article highlights one Supreme Court decision and two Federal Circuit opinions that are poised to shape the trademark landscape.

The Federal Circuit Adopts a New Test for Color Mark Registration

The trademarking of colors is an exotic and niche corner of trademark law that rarely sees the spotlight. While trademark applicants seldom come close to achieving protection for color, there are notable exceptions to this rule. For example, the canary yellow adorning 3M's Post-it Notes, the vibrant green of a John Deere tractor, and the bright red on the bottom of a Louboutin shoe are all colors that enjoy trademark protections.

In *In re PT Medisafe Technologies*, the Federal Circuit adopted a new test for analyzing whether a particular color is worthy of a trademark. PT Medisafe Technologies (Medisafe) attempted to register a dark green color mark for use in connection with its line of chloroprene examination gloves. 134 F.4th 1368 (Fed. Cir. 2025). Applying the two-step test set forth by the Federal Circuit in *H. Marvin Ginn Corp.*, the examining attorney determined that the color mark was generic and lacked acquired distinctiveness.^[1] Medisafe appealed this decision to the Trademark Trial and Appeal Board.^[2] In rendering its affirmation of the examining attorney's denial, the Board applied the Milwaukee test, a slightly modified version of the Marvin test that is tailored specifically to color marks.

Specifically, the Milwaukee test is a two-step inquiry. It asks: First, what is the genus of the goods or services at issue? Second, is the color sought to be registered understood by the relevant public primarily to refer to that specific genus of goods or services? The Federal Circuit held that the Milwaukee test is the appropriate test to use when determining whether a color mark is sufficiently distinct for registration. Applying the Milwaukee test, the court determined that the dark green color mark was too generic to be viewed by the relevant public as a source indicator for Medisafe's examination gloves. In sum, *In re PT Medisafe* establishes the Milwaukee test as the appropriate test to apply in determining whether a color mark is distinctive enough to be acceptable for trademark registration.

The Federal Circuit Clarifies "Guiding Principles" for Applying the Doctrine of Foreign Equivalents

In *In Vêtements Group AG*, the appellant sought to register the mark "VETEMENTS" in standard characters and in stylized form in connection with various items of clothing. 137 F.4th 1317, 1320 (Fed. Cir. 2025). The examining attorney refused to register the mark on the basis that the word "vêtements" is French for "clothing" and is thus generic and merely descriptive. The Trademark Trial and Appeal Board affirmed this ruling.

The Federal Circuit upheld the holding of the Board, explaining that the doctrine of foreign equivalents applied to this particular case and rendered the mark merely descriptive. In reaching this conclusion, the court explained the doctrine of foreign equivalents and outlined certain guiding principles that govern its application. To begin, the court defined the doctrine of foreign equivalents, stating that it "is used to ascertain if a non-English word mark is impermissibly generic or descriptive by translating the mark into English and then considering its genericness or descriptiveness."^[3] Importantly, the court makes clear that this doctrine is not applied to all non-English word marks. Rather, "when it is unlikely that an American buyer will translate the foreign mark and will take it as is, then the doctrine of foreign equivalents will *not* be applied" (emphasis added).

To determine when it is indeed "unlikely that an American buyer will translate the foreign mark," the court set forth three nonexclusive guiding principles. First, the burden is on the party opposing translation to show it is unlikely that the ordinary American purchaser would stop and translate the word into its English equivalent. Second, it is not required that an absolute majority of Americans be capable of translating the word into English. Rather, it is sufficient that an "appreciable number of Americans, from the U.S. population as a whole, are capable of translating the word." And third, it must be considered whether, in context, the mark would be translated by a purchaser with ordinary sensibilities. This third step is distinct from the second step. Rather than analyzing the purchaser's ability to translate the word, it assumes that the purchaser would be able to translate the word and analyzes whether even a native speaker would find that the context renders translation of the word irrelevant. Overall, *In re Vetements Group AG* provides valuable guidance that clarifies the analysis required for the trademark registration of non-English words.

The Supreme Court Addresses the Appropriate Scope of Lanham Act Disgorgement Awards

In *Dewberry Group, Inc. v. Dewberry Engineers, Inc.* 604 US 321 (2025), the Supreme Court clarified the scope of profit attribution under § 1117(a), unanimously holding that Lanham Act disgorgement awards are limited to the profits of named defendants and do not extend to the profits of separately incorporated affiliates.

This dispute arose after Dewberry Engineers had "decisively" prevailed in a trademark infringement suit against an unrelated, competitor real estate company, Dewberry Group.^[4] While "operat[ing] at a loss for decades," the Dewberry Group solely provided services to its profitable, but *separately incorporated*, affiliates. Therefore, to reflect the "economic reality of Dewberry Group's relationship with its affiliates," the lower courts treated the companies as a "single corporate entity for the purposes of calculating a profits award."

The Supreme Court disagreed. While acknowledging that concerns about "corporate formalities . . . insulat[ing] infringing conduct from penalty" are "not amiss," the Court emphasized the bedrock principle of corporate separateness. Therefore, absent veil-piercing or other exceptional circumstances, liability does not automatically extend to affiliates. In practical terms, this case underscores the strategic importance of early discovery on corporate structure and the significance of precisely identifying and naming infringing parties.

If you have any questions regarding trademark trends, please contact [Benjamin West Janke](#) or [Caroline Dean](#).

^[1] *In re PT Medisafe Technologies*, 134 F.4th 1368, 1370 (Fed. Cir. 2025); *H. Marvin Ginn Corp. v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 990 (Fed. Cir. 1986).

^[2] *In re PT Medisafe Technologies*, 134 F.4th at 1372.

^[3] *In re Vetements Group AG*, 137 F.4th 1317, 1322 (Fed. Cir. 2025).

^[4] *Dewberry Group v. Dewberry Engineers*, 604 U.S. 321, 324 (2025).