IN THE SUPREME COURT OF THE UNITED STATES

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No. 23-900

DEWBERRY GROUP, INC., FKA DEWBERRY CAPITAL CORPORATION,
PETITIONER

v.

DEWBERRY ENGINEERS INC.

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ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE
IN ORAL ARGUMENT AS AMICUS CURIAE, FOR DIVIDED ARGUMENT,
AND FOR ENLARGEMENT OF TIME FOR ORAL ARGUMENT

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Pursuant to Rule 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case, that the time for oral argument be enlarged to 65 minutes, and that the time be allotted as follows: 30 minutes for petitioner, 10 minutes for the United States, and 25 minutes for respondent. The United States has filed a brief as amicus curiae in support of neither party. Respondent has consented to this motion and agreed to cede 5 minutes of argument time to the United States. Petitioner is unwilling to cede any of

its time, but does not oppose the United States' participation in the argument or the enlargement of the argument time to 65 minutes to afford the United States 10 minutes of argument time. Cf. City of Grants Pass v. Johnson, 144 S. Ct. 1289 (2024) (No. 23-175) (enlarging argument by 5 minutes in a similar situation); Tyler v. Hennepin County, 143 S. Ct. 1443 (2023) (No. 22-166) (similar); Shoop v. Twyford, 142 S. Ct. 1612 (2022) (No. 21-511) (similar).

The question presented in this case concerns the proper interpretation and application of Section 35 of the Lanham Act, which allows the owner of a registered trademark to obtain an award of the "defendant's profits" in an appropriate case. 15 U.S.C. 1117(a).

The United States has filed a brief as amicus curiae supporting neither party. The United States argues that while the courts below erred by treating petitioner and its nonparty corporate affiliates as a "single entity" for purposes of calculating petitioner's profits, Pet. App. 85a, this Court should vacate the court of appeals' judgment and remand for further consideration of the profits award (to the extent the relevant issues have been properly preserved). Although the United States agrees with petitioner that the judgment below should not be affirmed, the government disagrees with petitioner's suggestion that contributory-infringement or veil-piercing principles are the only potential rationales for treating funds that an infringer

diverted elsewhere as part of the infringer's profits. The United States likewise disagrees with certain positions that respondent took in opposition to the petition for a writ of certiorari. For example, respondent asserted that the judgment below rests on the statutory text permitting a court to award "such sum as the court shall find to be just, according to the circumstances of the case," 15 U.S.C. 1117(a), but in the government's view, the courts below did not rely on that ground.

The United States has a substantial interest in the resolution of the question presented because it concerns the scope of relief available for infringement of a trademark that is registered with the United States Patent and Trademark Office (USPTO). The USPTO administers the federal statutory scheme for trademark registration, see 35 U.S.C. 2(a)(1); Iancu v. Brunetti, 588 U.S. 388, 390 (2019), and has a broader interest in the proper functioning of the U.S. trademark system, including uniform, predictable, and adequate remedies for trademark infringement.

The United States has previously presented oral argument as amicus curiae in cases involving the Lanham Act and trademark law. See, e.g., Abitron Austria GmbH v. Hetronic Int'l, Inc., 600 U.S. 412 (2023) (No. 21-1043); Jack Daniel's Props., Inc. v. VIP Prods. LLC, 599 U.S. 140 (2023) (No. 22-148); B&B Hardware, Inc. v. Hargis Indus., Inc., 575 U.S. 138 (2015) (No. 13-352); Hana Financial, Inc. v. Hana Bank, 574 U.S. 418 (2015) (No. 13-1211); POM Wonderful

LLC v. Coca-Cola Co., 573 U.S. 102 (2014) (No. 12-761); Already, LLC v. Nike, Inc., 568 U.S. 85 (2013) (No. 11-982). Oral presentation of the views of the United States would materially assist the Court in its consideration of this case.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

OCTOBER 2024