

Poaching Profits: An Examination of the Ability of a Trademark Owner to Recover an Infringer's Profits Under the Lanham Act as Amended in 1999

Blake R. Bertagna*

- I. Introduction 258
- II. Trademarks—"The Essence of Competition": A Brief Overview of Trademark Protection 261
 - A. The Lanham Act of 1946 262
 - B. The Trademark Dilution Act of 1996 265
 - C. The 1999 Amendment..... 267
- III. Willful Conduct 268
- IV. The Second Circuit and Willfulness 272
 - A. *W.E. Bassett Co. v. Revlon, Inc.* 273
 - B. *George Basch Co. v. Blue Coral, Inc.* 273
 - C. Since the 1999 Amendment 274
- V. The Split..... 276
- VI. Text of the 1999 Amendment 281
 - A. Text and Congressional Omission 281
 - B. Ordinary Meaning of "Violation" 287
 - C. The Trademark Act of 1920..... 288
 - D. Amending the Lanham Act..... 289
- VII. Legislative History and Aim of the 1999 Amendment..... 290
 - A. The 1999 Amendment and Cybersquatters..... 291
 - B. The Dilution Controversy 293
 - C. Lanham Act of 1946 296
- VIII. Conclusion 297

* The author is an associate in the intellectual property group of Arent Fox LLP in Washington, D.C. The author would like to thank his friend, Ken Kuykendall, for his helpful comments and insight, and would also like to thank his wife, Kayla Bertagna, for her patience and support.

nothing.
 erson of
 claimed
 is that
 ir arts to
 lace that
 , and the
 ie patent
 bination
 rebuttal
 ements.
 d. The
 it milieu
 eans of,
 bination
 nal core,
 : remains
 mains of
 ach Jazz

re uniquely
 : where the
 other or the
 , KSR, 127
 1740."); *Ex*
 The claim is
 one known
 is presented
 eans would
 ostitute one
 ct matter of
 s of Nakano

l-cWM, and