Punitive Damages in Trademark Litigation: A Shift in the Legal Landscape?

Published by *The Katten Kattwalk* | Issue 29

Summer 2025

By Floyd A. Mandell

The US Court of Appeals for the Seventh Circuit's (Seventh Circuit) decision in *Curry v. Revolution Laboratories, LLC*, 124 F.4th 441 (7th Cir. 2024), has drawn attention to the interplay between federal and state law in trademark litigation, particularly regarding the availability of punitive damages. While the Lanham Act itself does not authorize punitive awards, *Curry* illustrates that state law may supply the basis for such relief when infringement is found to be willful or egregious, and that damages under federal law are inadequate to compensate a plaintiff and/or further deterrence is justified.[1]

Factual Summary and Outcome

In *Curry*, the plaintiff, Charles Curry, owned the federally registered "Diesel Test" trademark for a nutritional supplement. In 2016, Revolution Labs began marketing a product under the same trademark. Defendants' internal correspondence confirmed that the defendant elected to continue using the disputed mark despite receiving cease and desist letters confirming confusion among consumers. A jury found the defendant liable for willful infringement, awarding compensatory damages as well as $900,000 in punitive damages. The Seventh Circuit ultimately affirmed the award, explaining that state law can authorize punitive damages where a defendant's conduct meets relevant legal standards.

Punitive Damages Analysis

In *Curry,* the Seventh Circuit relied on the three-part test established by the US Supreme Court in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), to evaluate the constitutionality of the punitive damages award. Under *Gore*, courts typically consider: (1) the degree of reprehensibility of the defendant's conduct, (2) the ratio between punitive and compensatory damages, and (3) the presence of comparable civil penalties under state law.

First, *Curry* focused on ***reprehensibility***, which *Gore* identifies as "the most important" factor. The Seventh Circuit noted that Revolution Labs received repeated legal warnings but continued using the "Diesel Test" mark. Internal emails showed executives were aware of Curry's rights yet still chose to persist. This evidence led the court to conclude that the company's actions were willful — an indication of "heightened culpability" that can justify punitive sanctions under certain state-law principles.

Second, the court examined the ***ratio*** of punitive damages to compensatory damages. *Gore* does not mandate a strict mathematical formula but looks for any "gross disproportion" relative to the harm suffered. In *Curry*, the court included disgorged profits in the denominator when assessing compensatory damages because the profits award served to approximate the magnitude of the injury. Once disgorgement was added to the actual damages, the resulting punitive-to-compensatory ratio remained within acceptable bounds. This holistic approach — treating disgorgement as part of the "harm" measure — was key to upholding the constitutional validity of the punitive damages award.

Third, the court measured the punitive figure against ***analogous civil penalties*** under relevant state law. *Gore* instructs courts to see whether an award is consistent with, or at least not grossly disproportionate to, potential statutory fines or penalties for similar conduct. In *Curry*, the Seventh Circuit determined that the $900,000 total punitive award (spread among multiple defendants) did not exceed what state statutes might reasonably impose in analogous cases and was thus not unconstitutionally excessive.

By affirming the jury's verdict under these three guideposts, the Seventh Circuit reinforced that state-law punitive damages can remain within due process constraints when the defendant's conduct is particularly willful, the punitive-to-compensatory ratio is not extreme and the award aligns with analogous civil penalties.

Comparisons with Prior Appellate Rulings

Punitive damages have historically been viewed as unavailable under the Lanham Act, as illustrated by the following decisions. The Second Circuit in *Getty Petroleum Corp. v. Bartco Petroleum Corp.*, 858 F.2d 103 (2d Cir. 1988), and *Getty Petroleum Corp. v. Island Transport Corp*., 862 F.2d 10 (2d Cir. 1988), held that punitive damages were not available under the Lanham Act for trademark infringement. Similarly, in *Estate of Bishop v. Equinox International Corp.*, 256 F.3d 1050 (10th Cir. 2001), the Tenth Circuit declined to grant punitive damages. However, the Seventh Circuit in *JCW Investments, Inc. v. Novelty, Inc.*, 482 F.3d 910 (7th Cir. 2007), found that while the Lanham Act does not authorize punitive damages, such damages may still be available for accompanying state law claims, a reasoning echoed in *Curry.*

Another case that demonstrates an evolving stance on punitive damages is *Lontex Corp. v. Nike, Inc.*, 107 F.4th 139 (3d Cir. 2024), where the court upheld a jury's punitive damages award after finding that Nike acted with reckless indifference to the plaintiff's rights. In that case, Nike continued using the "Cool Compression" mark despite receiving a cease and desist letter, and the court found that such conduct justified punitive damages under Pennsylvania law.

Implications for Trademark Disputes

The *Curry* decision highlights the significance of both federal and state law in shaping the remedies available in trademark litigation. While the Lanham Act provides compensatory damages, disgorgement of profits, and, in certain cases, enhanced statutory damages, it does not authorize punitive damages. However, this limitation does not preclude the availability of punitive damages through state-law claims where applicable legal standards are met.

The Seventh Circuit's ruling confirms that plaintiffs may seek punitive damages under state law when they can establish willful or egregious conduct by the defendant. At the same time, it underscores the need for courts to carefully scrutinize such claims to ensure that any punitive award aligns with constitutional due process standards. The court's reasoning follows prior precedent, particularly *JCW Investments, Inc. v. Novelty, Inc*., which affirmed that while the Lanham Act itself does not provide for punitive damages, state-law claims may allow for such relief in appropriate circumstances.

A central factor in *Curry* was the defendant's bad faith conduct and indifference to confusion after receiving notice of potential infringement. The court examined internal records indicating awareness of the plaintiff's claims. This aspect of the decision suggests that courts may assess post-notice conduct when determining whether a defendant acted in a manner that justifies punitive liability under state law. However, the case does not establish a blanket rule that continuing use after receiving a cease and desist letter automatically constitutes willful infringement or merits punitive damages. Each case remains fact-specific, and courts will continue to evaluate the totality of the circumstances, including whether a defendant had a legitimate basis for contesting the claim or whether a plaintiff provided sufficient evidence of intentional disregard.

The broader implications of Curry extend to how businesses and legal practitioners approach trademark disputes. For ***plaintiffs***, the ruling illustrates that punitive damages may be an option when a state-law claim is available, particularly where clear evidence supports allegations of willful or reckless infringement. This requires careful documentation of the defendant's knowledge and intent, as well as a strong legal basis for pursuing punitive relief. For ***defendants***, the decision highlights the importance of assessing trademark claims thoroughly and responding to infringement allegations with diligence. While a cease and desist letter does not mandate immediate cessation of use, businesses should carefully evaluate the merits of the claim, seek legal guidance and document their decision-making process to mitigate potential exposure to punitive damages.

Ultimately, *Curry* reflects the evolving landscape of trademark remedies and the interplay between federal and state law. The case reinforces that while punitive damages remain unavailable under the Lanham Act, they may still be awarded in appropriate cases through state-law claims, subject to constitutional limitations. Courts will continue to refine the standards for determining when punitive damages are warranted, and both plaintiffs and defendants must remain attentive to how courts interpret willfulness, bad faith and the implications of post-notice conduct in future cases.

**Marta Sarvas, Floyd's former law student who received her LLM degree from the Illinois Institute of Technology, Chicago-Kent College of Law, in May 2025, contributed to this article. She is also certified by Harvard University and is a licensed attorney in Ukraine.*

[1] The prevailing plaintiff in this case was originally a pro bono client referred to Katten by the Chicago Lawyer's Committee for Civil Rights Under Law of the Chicago Bar Association.

CONTACTS

For more information, contact your Katten attorney or any of the following attorneys.

Floyd A. Mandell
+1.312.902.5235
floyd.mandell@katten.com