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Unlucky Liz: In Lucky Brand Trademark Dispute, Judge Orders Punitive Damages Against Liz Claiborne Subsidiary

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For a plaintiff in a trademark infringement case, it's hard to think of an outcome worse than the one suffered by Liz Claiborne. Five years ago, the clothing company and its subsidiary Lucky Brand Dungarees sued a much smaller apparel company, Marcel Fashion, and its licensee, Ally Apparel, claiming their "Get Lucky" line of apparel infringed a Liz Claiborne trademark. Liz has not only come up with a big zero on its claims, it has also been ordered to pay Marcel \$300,000--including \$280,000 in punitive damages--according to [a final judgment](#) entered Tuesday by Manhattan federal district court judge Laura Taylor Swain.

The final judgment incorporates an April jury verdict in Marcel's favor and Judge Swain's [2009 summary judgment ruling](#) for Marcel. It clears Marcel of trademark infringement, finding that Marcel has used the trademark "Get Lucky" continuously since 1985. And it grants Marcel Fashion's counterclaims that Lucky Brand infringed Marcel's "Get Lucky" trademark and violated federal unfair competition laws.

Ann Schofield Baker of McKool Smith, who represented Marcel at the six-day jury trial in April, told us she's never heard of a plaintiff in a trademark case getting slapped with punitive damages. But she said the evidence presented at trial--of Lucky Brand's infringement and its violation of a prior settlement agreement--was pretty powerful stuff.

"There was a real pattern of total disregard for my client's trademark that I think really resonated with the jury," said Baker.

John Triggs of Wadley & Patterson, who represented Lucky Brand at trial, did not return a call for comment.

Baker also made us aware of one more quirk of the case: Her trial team, which included associate Katherine Thornburgh, was all female. "It was ladies night out at the Southern District of New York," she said.