

DECEMBER 18, 2018 | NEWS

## North Carolina Federal Jury Finds Walmart Liable For Willful Trademark Infringement

**CHARLOTTE, NC** — A federal jury in the United States District Court for the Eastern District of North Carolina has found Walmart's use of BACKYARD GRILL in connection with grills and grilling accessories to infringe North Carolina-based Variety Stores, Inc.'s trademark rights. The jury further found Walmart's infringement to be willful.

### SERVICE LINE

Intellectual Property

### RELATED ATTORNEYS

Christina Davidson Trimmer

S. Alex Long, Jr.

### MEDIA CONTACT

Wendy M. Byrne

[wbyrne@shumaker.com](mailto:wbyrne@shumaker.com)

After a three-day trial, the jury returned a unanimous verdict for Variety after deliberating for less than two hours. The long-awaited trial was necessary after the Fourth Circuit Court of Appeals earlier this year reversed the District Court's Order granting summary judgment in favor of Variety. The Fourth Circuit vacated the District Court's \$32.5 million judgment in favor of Variety and remanded the case back to the District Court for a jury trial. The three-day trial was limited to the question of whether Walmart infringed Variety's trademark rights, and whether the infringement was willful. Now that a North Carolina federal jury has found that Walmart is liable for willful trademark infringement, the amount of damages Walmart must pay will be determined at later proceedings.

Variety Stores, Inc. is a wholly owned subsidiary of Variety Wholesalers, Inc. and operates Roses, Roses Express, Maxway and other discount stores across the South and Midwest. Variety has owned and used its BACKYARD trademark since 1993. It filed suit against Walmart in 2014 after Walmart launched its BACKYARD GRILL brand.

Throughout this trademark infringement litigation Variety has been represented by W. Thad Adams, III, Samuel A. Long, and Christina Davidson Trimmer of Shumaker Loop & Kendrick LLP, and Scott P. Shaw of Call & Jensen PC. The case is Variety Stores, Inc. v. Wal-Mart Stores, Inc., case number 5:14-cv-217-BO, in the U.S. District Court for the Eastern District of North Carolina Western Division.

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