

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

<p>MONAVIE, a Utah limited liability company,</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">v.</p> <p>MXI CORP., a Nevada corporation,</p> <p style="text-align:center">Defendant.</p>	<p style="text-align:center"><b>ORDER</b></p> <p style="text-align:center">Case No. 2:09-cv-01041-TC</p> <p style="text-align:center">Judge Tena Campbell</p>
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Mona Vie brings several causes of action against MXI relating to MXI's use of Mona Vie's trademark. After MXI filed this partial motion for summary judgment, the parties stipulated to dismissal of two of the causes of action discussed in the motion. Consequently, the court needs only to consider whether Mona Vie may be entitled to punitive damages under its Lanham Act claim for trade dress infringement.

The Lanham Act allows for recovery of profits, damages and costs, and attorney fees. 15 U.S.C. § 1117. Under the Lanham Act, the Court possesses the authority and discretion to award up to three times actual damages suffered by the plaintiff or a disgorgement of the infringer's profits. MXI argues that because the plain language of the damages section of the Lanham Act does not specifically provide for punitive damages that none are available. Mona Vie counters that even though there is no express provision for punitive damages in the Lanham Act, this does not mean such damages are unavailable.

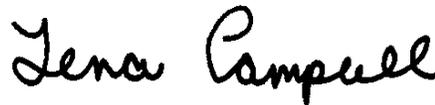
While the Lanham Act permits the court to treble damages in order to remedy a violation, it does not permit punitive damages. See, e.g., La Quinta Corp. v. Heartland Props., LLC, 603 F.3d 327, 342 (6th Cir. 2010) (holding that the only damages allowed under the Lanham Act are

remedial, not punitive); Duncan v. Stuetzle, 76 F.3d 1480, 1490 (9th Cir. 1996) (“[P]unitive damages are not available under the Lanham Act); Zazu Designs v. L’Oreal S.A., 979 F.3d 499, 507 (7th Cir. 1992); Getty Petroleum Corp. v. Bartco Petroleum Corp., 858 F.2d 103, 113 (2d Cir. 1988) (holding, after extensive review of statutory language and legislative history, that the Lanham Act does not authorize an award of punitive damages). Although punitive damages are not available to Mona Vie for Lanham Act violations, punitive damages may be awarded for its Utah statutory and common-law claims. See Getty Petroleum Corp. v. Island Transp. Corp., 862 F.2d 10, 13-14 (2d Cir. 1988) (holding that punitive damages were not available under the Lanham Act but were allowed for non-Lanham Act claims); Big O Tire Dealers, Inc. v. Goodyear Tire & Rubber Co., 561 F.2d 1365, 1376 (10th Cir. 1977) (permitting punitive damages for common law trademark infringement).

Accordingly, the court GRANTS summary judgment for MXI, and holds that Mona Vie may not recover punitive damages for a violation of the Lanham Act.

DATED this 21st day of July, 2010.

BY THE COURT:



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TENA CAMPBELL  
Chief Judge