

2791 TRADE NAME INFRINGEMENT: DAMAGES

Question _____ asks: What sum, if any, do you award against (defendant) as damages for the trade name infringement?

In considering the amount to be inserted by you in answer to the damage question, the burden of proof rests upon the person claiming damages to satisfy you by the greater weight of the credible evidence, to a reasonable certainty, that (plaintiff) sustained damages [with respect to the element or elements mentioned in the question and the amount of the damages.] The greater weight of the credible evidence means that the evidence in favor of an answer has more convincing power than the evidence opposed to it. Credible evidence means evidence you believe in light of reason and common sense. "Reasonable certainty" means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. The amount inserted by you should reasonably compensate the person for the damages from the trade name infringement.

[In determining damages, you may consider whether (plaintiff) suffered any measurable loss to its goodwill. The goodwill of a company is an intangible business value that reflects the basic human tendency to do business with merchants who offer products and services of the type and quality the customer desires and expects. Service to the customer, and a willingness to stand behind a warranty and other representations about the quality of the products or services sold by a merchant, are factors that help establish the goodwill of a business. If you find that (plaintiff)'s goodwill has been damaged either by injury to its general business reputation or by damage to a particular product or service, you may assess damages as you find to be shown by the evidence.]

The fact that (defendant) did not actually intend, anticipate, or contemplate that these losses would occur is not a relevant factor to be considered by you.

Determining damages for trade name infringement cannot always be made exactly or with mathematical precision; you should award as damages amounts which will fairly compensate (plaintiff) for its injuries.

COMMENT

This instruction and comment were approved in 2009.

See the comment to Wis JI-Civil 2790.

This instruction is based on a verdict in which the jury is asked for damages as a lump sum. As an alternative, the verdict on damages could ask subdivided questions on the specific elements of damages, e.g. loss of business, additional expenses, and loss of goodwill. See D.L. Anderson's Lakeside Leisure Co., Inc. v. Anderson, 2008 WI 126, 314 Wis.2d 560, 757 N.W.2d 803.