

In The
Supreme Court of the United States

GOLD VALUE INTERNATIONAL TEXTILE, INC., DBA FIESTA FABRIC, A
CALIFORNIA CORPORATION,

Applicant,

v.

SANCTUARY CLOTHING, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY;
AMAZON.COM, INC., A WASHINGTON CORPORATION; MACY'S, INC., AN OHIO
CORPORATION; NORDSTROM, INC., A WASHINGTON CORPORATION;
BLOOMINGDALES, INC., A NEW YORK CORPORATION; DILLARDS, INC., AN
ARKANSAS CORPORATION; ZAPPOS IP, INC., A NEVADA CORPORATION; DOES, 1-10,
Respondents.

**APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI**

To the Honorable Elena Kagan
Associate Justice of the United States Supreme Court
and Circuit Justice of the Ninth Circuit

DONIGER / BURROUGHS

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INTERNATIONAL TEXTILE,
INC. DBA Fiesta Fabric*

PARTIES TO THE PROCEEDINGS

Applicant Gold Value International Textile, Inc., dba Fiesta Fabric was the Plaintiff and the Appellant in the proceedings below.

Respondents Sanctuary Clothing, LLC, Amazon.com, Inc., Bloomingdales, Inc., Dillards, Inc., Macy's, Inc., Nordstrom, Inc. and Zapos IP, Inc. were Defendants and Appellees in the proceedings below.

RULE 29.6 STATEMENT

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, Applicant Gold Value International Textile, Inc., dba Fiesta Fabric is a nongovernmental corporation. There is no parent or publicly held company owning 10% or more of the corporation's stock.

**To the Honorable Elena Kagan, Associate Justice of the United States
Supreme Court and Circuit Justice for the Third Circuit:**

Applicant-Plaintiff, Gold Value International Textile, Inc., dba Fiesta Fabric, a California Corporation (“Applicant”) respectfully requests an extension of time to file a petition for writ of certiorari. Sup. Ct. R. 13.5. The earliest deadline for Applicant to file their petition is Monday, October 28, 2019, which is ninety days¹ from Tuesday, July 30, 2019, the date when the United States Court of Appeals for the Ninth Circuit issued an order denying Applicant’s petition for panel rehearing and rehearing *en banc*. This Application is filed within the deadline. For good cause set forth herein, Applicant asks that this deadline be extended by thirty days so that the new deadline would be Wednesday, November 27, 2019.

BACKGROUND

Applicant owns the copyright in a two-dimensional design used for printing on textiles. That design is the subject of a copyright registration certificate issued by the United States Copyright Office bearing number VAu 1-151-509, with an effective date of October 23, 2013. Applicant registered the design, along with other designs, under a single copyright registration for a collection of unpublished works. Prior to the effective date of registration, Applicant sold samples of fabric (approximately 190 yards) bearing the design at issue to “a limited group of existing and potential customers for the limited purpose of securing full production contracts for hundreds or thousands of yards of fabric.” Applicant’s president testified that he knew that sample fabric bearing the design had been made prior to the date of registration but did not know that or if such limited sampling

constituted “publication” for the purposes of copyright registration.

The case comes before the Court from an opinion from the United States Court of Appeals for the Ninth Circuit, which was issued on June 4, 2019. In that opinion, the Ninth Circuit affirmed the district court’s grant of summary judgment and award of attorneys’ fees in favor of defendants. The Ninth Circuit held that Applicant’s knowledge that the design at issue had been the subject of sampling prior to the registration date was a knowing inclusion of inaccurate information sufficient to invalidate the registration as to the design at issue. The opinion signified a departure from the analysis that courts in that circuit have used to determine under 17 U.S.C. § 411(b) whether a copyright registration is sufficient to support an infringement claim. Specifically, the Ninth Circuit modified the scienter requirement under that section from a longstanding “intent to defraud” standard to one based solely on whether a copyright registrant “knowingly included inaccurate information.” In doing so, the Ninth Circuit—in the form of a three-judge panel—issued an opinion directly at odds with its prior precedent, without *en banc* review. Further, it explicitly acknowledged its disagreement with, and thus generated a circuit split with the Eleventh Circuit.

OPINIONS BELOW

The Opinion issued from the Ninth Circuit on June 4, 2019, affirming the District Court’s holding is attached hereto as Appendix 1.

The July 30, 2019 Order denying Appellant’s Petition for Rehearing and Rehearing *En Banc* is attached hereto as Appendix 2.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1).

REASONS EXTENSION IS JUSTIFIED

In support of this request, Applicant states as follows:

1. The U.S. Court of Appeals for the Ninth Circuit rendered its decision on June 4, 2019 (Appendix 1), and denied panel rehearing and rehearing *en banc* on July 30, 2019 (Appendix 2).
2. This Court has jurisdiction under 28 U.S.C. §1254(1).
3. Applicant's counsel is a boutique firm that employs fewer than ten attorneys total. Notwithstanding its size, the firm handles a large and active caseload.
4. Further, Applicant's counsel recently experienced a departure of one of its senior attorneys. Given the firm's small size, this departure has caused a very large impact on the workflow of the firm. Applicant's counsel has only recently hired a replacement for the departing attorney.
5. Applicant's counsel is currently preparing for trials that are highly likely to go to trial in the coming months. Including:
 - a) *Fabric Selection, Inc. v. Topson Downs of California, Inc.; et al.*, Case No. 2:17-cv-05721 in the United States District Court, Central District of California, for which trial is currently set January 7, 2020;
 - b) *Marcia Webb v. Jesse Flemming ; et al.*, Case No. BC624996 in the Superior Court of California, County of Los Angeles, for which trial is currently set November 12, 2019;

c) *Undiscovered Corp. v. Heist Studios; et al.*, Case No. 2:18-cv-05719 in the United States District Court, Central District of California, for which trial is currently set December 17, 2019.

6. The foregoing events have necessarily required a great deal of counsel's time and focus. Pre-trial filing deadlines, motions *in limine*, completion of expert discovery, and other trial preparation have occupied, and continue to occupy, a majority of counsel's workload. Counsel and Applicant would benefit from additional time to craft a precise and well-argued petition free from the burden of dividing limited work hours between this petition and counsel's aforementioned pre-trial obligations.

CONCLUSION

WHEREFORE, for the reasons denoted above, Applicant respectfully requests an extension of time up to and including November 27, 2019 to file its petition for a writ of certiorari.

Dated: October 17, 2019

Respectfully submitted,

DONIGER / BURROUGHS

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