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April 7, 2023

VIA ELECTRONIC FILING AND FIRST-CLASS MAIL

Mr. Scott S. Harris
Clerk of the Court
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

**Re: Avery Dennison Corporation v. ADASA Inc.
No. 22-822, Second (Opposed) Motion to Extend**

Dear Mr. Harris,

We represent Respondent, ADASA Inc., in the above referenced case.

This is a second (opposed) request for an extension of time to file Respondent's Brief in Opposition to a Petition for Certiorari. The first (consented) request of 19 days was granted, and the present due date for the Brief in Opposition is May 2, 2023. This is a second request for an extension to and until May 26, 2023—24 additional days (for a total combined extension of 43 days).

This is a patent case in which the Petitioner has asserted that its Petition should be held in light of co-pending petitions in *Interactive Wearables, LLC v. Polar Electro Oy*, No. 21-1281, and *Tropp v. Travel Sentry, Inc.*, No. 22-22. See Petition at 3-4. On April 5, 2023 (earlier than expected), the Government submitted its Invitation Brief recommending a grant of certiorari in both of the other cases.

The basis for the second extension is to allow (to the extent possible) both Respondent in its Brief in Opposition, and Petitioner in its Reply, to take into account either a grant or denial in *Interactive Wearables* and *Tropp*. An opportunity has arisen for both sides to address to the Court not just any impact of the Government's Invitation Brief position on the present Petition, but the Court's now-soon underlying decision in the other cases. The Court would likely grant certiorari in the other cases at the earliest at the May 18 conference, if its decision is to grant.

Note that Movant/Respondent will accept some risk that the other petitions will be decided after the May 22 Order and only Petitioner's Reply will be able to

Mr. Scott S. Harris
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incorporate such analysis. But Respondent will assume this risk out of courtesy to Petitioner's position that it would like completion of briefing and distribution for conference this Term.

Extending the date until May 26, 2023 to file the Brief in Opposition (total extension of 43 days) would still give Petitioner ample time to file a Reply and get full consideration of its Petition this Term, by the end of June.

Petitioner opposes this request for a variety of reasons, and therefore Respondent attaches Petitioner's email with its position statement. Respectfully, Respondent does not grasp how Petitioner or this Court will experience "stark prejudice" (Petitioner's words) to decide the other two long-pending petitions before deciding the present one, instead of simultaneously. In those other cases, the parties, multiple amici (not including Petitioner) and the Government itself have advised this Court on petition-merits already.

For these reasons, I respectfully request a twenty-four (24) day second extension of time, until May 26, 2023 to file a brief in opposition to the Petition for Writ of Certiorari. On today's date, this letter has been served to all other parties as required by Rule 29.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert P. Greenspoon", with a stylized, flowing script.

Robert P. Greenspoon

Attachment: Petitioner's statement of opposition
Cc: Derek L. Shaffer

Robert Greenspoon

From: Derek Shaffer <derekshaffer@quinnemanuel.com>
Sent: Thursday, April 6, 2023 4:20 PM
To: Robert Greenspoon
Cc: Joseph Milowic III; Owen Roberts; Joseph Milowic III; Christopher Michel; Charanjit Brahma; Jon Suder; Glenn Orman; wojcio@fsclaw.com
Subject: [EXT] RE: No. 22-822, Avery Dennison v. ADASA
Attachments: Re: [EXT] RE: No. 22-822, Avery Dennison v. ADASA

Hi Rob:

We've extended all the courtesies we can in this regard and we consider them generous, for the reasons that I'd previously explained. The prior email thread that resulted Avery Dennison's consent and yielded the extension ADASA has already obtained (atop the two-week extension associated with its waiver of response) is attached for ease of reference. As you'll recall, I specifically explained there why ADASA has already had ample time to respond to the petition and why any extension beyond the prior would be prejudicial. So I frankly see this request for further extension as incompatible with the compromise we reached and the stated premises for same.

The only intervening circumstance that you now point to is the SG's response to the CVSG in two other pending cases. But that, with all due respect, is at best a red herring, and if anything makes it all the more imperative that we stick to the current schedule and thereby ensure that the Court is duly informed when it decides whether or not to grant cert in the parallel 101 cases. Of course, it was eminently foreseeable that the SG would respond around now (or perhaps earlier) to the CVSG. Although you say the response came "surprisingly early," I don't know of any measure by which that's true (the Court called for response in both cases back in October, some 5-6 months ago). Moreover, the existing schedule gives you an additional month to account for the SG's views, which should be ample. Finally, we draw the opposite conclusion you do from the shared premise that the Court "would grant certiorari in the other cases at the earliest at the May 18 conference." So that the Court can take due account of our petition when it decides whether to grant cert in the others, we intend to waive reply in our case so that it can be distributed in time to be considered at the same May 18 conference. Because your latest requested extension would effectively prevent that from happening, it poses stark prejudice to Avery Dennison and also to the Court. Please understand, therefore, that we cannot and will not consent to any such further extension.

By comparison, I honestly do not understand what importance you could ascribe to learning exactly how the Court disposes of other cert petitions, let alone why you think our outstanding briefs should await that. Countless cert petitions (and responses to same) may reference potentially-related petitions in which cert has yet to be granted or denied, without briefing

pausing in the meantime. Indeed, I believe that's what happened in *Interactive Wearables* relative to *American Axle*. As matters stand, our clients will have the benefit of completed cert briefing in two other 101 cases, including the SG's amicus brief, well before ADASA files its response as currently scheduled. My respectful suggestion is that you be prepared to proceed in that posture, just as we are. If you seek any further extension, please be advised that we will oppose (and not because we are discourteous, but because we are committed to sticking with the prior agreement, protecting against obvious prejudice, and enabling the Supreme Court to be properly informed as it decides whether or not to grant cert in this case alongside parallel cases posing questions under Section 101).

Thanks for consulting, and best,

Derek

Derek Shaffer

Partner,

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From: Robert Greenspoon <rgreenspoon@dbllawyers.com>

Sent: Thursday, April 6, 2023 3:45 PM

To: Derek Shaffer <derekshaffer@quinnemanuel.com>

Cc: Joseph Milowic III <josephmilowic@quinnemanuel.com>; Owen Roberts <owenroberts@quinnemanuel.com>; Joseph Milowic III <josephmilowic@quinnemanuel.com>; Christopher Michel <christophermichel@quinnemanuel.com>; Charanjit Brahma <CBrahma@beneschlaw.com>; Jon Suder <jts@fsclaw.com>; Glenn Orman <orman@fsclaw.com>; wojcio@fsclaw.com

Subject: No. 22-822, Avery Dennison v. ADASA

[EXTERNAL EMAIL from rgreenspoon@dbllawyers.com]

Dear Derek,

We write asking for Avery Dennison's consent to a second extension to file ADASA's Brief in Opposition, to May 26 (23 additional days, total of both extensions = 42 days). The basis for the second extension is to allow (to the extent possible) both ADASA's BIO and Avery Dennison's Reply to take into account either a grant or denial in *Interactive Wearables* and *Tropp*. The SG's Invitation Brief came surprisingly early, and now an opportunity has arisen for both

ADASA and Avery Dennison to address to the Court not just any impact of the Government's Invitation Brief position on the present petition, but the Court's now-soon underlying decision in the other cases. Avery Dennison's petition invited comparison to the other cases. By our calculations, the Court would grant certiorari in the other cases at the earliest at the May 18 conference.

Note we will accept some risk that the other petitions will be decided after the May 22 order and only Avery Dennison's Reply will be able to incorporate such analysis. But we will assume this risk out of courtesy to Avery Dennison's position that it would like an early completion of briefing.

Our May 26 BIO would still give Avery Dennison ample time to file a Reply and get full consideration of its petition by the end of June.

Thank you in advance for your anticipated courtesies.

Regards,

Robert Greenspoon

Partner

DUNLAP BENNETT & LUDWIG

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T:312-551-9500 D:312-551-9504



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