

No. 23-____

IN THE

Supreme Court of the United States

HASBRO, INC. and DIANE J. PETERS, in her capacity as successor trustee of the Reuben B. Klammer Living Trust,¹

Applicants/Petitioners,

v.

MARKHAM CONCEPTS, INC.; LORRAINE MARKHAM, individually and in her capacity as trustee of the Bill and Lorraine Markham Exemption Trust and the Lorraine Markham Family Trust; SUSAN GARRETSON,

Respondents.

Application for an Extension of Time Within Which to File a Petition for a Writ of Certiorari to the U.S. Court of Appeals for the First Circuit

**APPLICATION TO THE HONORABLE JUSTICE
KETANJI BROWN JACKSON AS CIRCUIT JUSTICE**

PETER K. STRIS
Counsel of Record
STRIS & MAHER LLP
777 S. Figueroa Street
Suite 3850
Los Angeles, CA 90017
(213) 995-6800
pstris@stris.com

Attorney for Applicants

¹ Before the First Circuit, the caption named Beatrice Pardo and Paul Glass as co-successor trustees of the Reuben B. Klammer Living Trust. Diane J. Peters has since become the sole successor trustee of the trust and is accordingly named as the applicant here.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, applicant Hasbro, Inc. states that it is a publicly held corporation, has no parent company, and has no non-wholly owned subsidiaries or affiliates.

APPLICATION

To the Honorable Ketanji Brown Jackson, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the First Circuit:

Under 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, applicants Hasbro, Inc. and Diane J. Peters respectfully request a 60-day extension, to and including November 20, 2023, within which to file a petition for a writ of certiorari in this case.

The decision of the First Circuit was filed on June 22, 2023. That opinion, which is reported at 71 F.4th 80, is attached. Absent an extension, a petition for a writ of certiorari would be due on September 20, 2023. The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1). In accordance with Rule 13.5, this application is being filed more than 10 days before the filing date for the petition for a writ of certiorari.

1. An extension will permit counsel for Applicants, who were retained on September 7, 2023, time to adequately coordinate among the Applicants and to prepare a thorough and well-researched petition that is most helpful to the Court in evaluating the important issues of federal law on which the circuits are divided here.

2. The extension of time is also necessary in light of scheduling of other client matters that have key events in the coming weeks. These include:

- Counsel have a trial currently set to begin on November 13, 2023 in *Scott v. AT&T Inc.*, No. 20-cv-7094-JD (N.D. Cal.), a major class action involving hundreds of thousands of class members and high nine-figure damages. In addition to the trial itself, counsel face numerous pre-trial deadlines in the preceding weeks.
- Counsel are required to make their final written submission on October 31, 2023 in a significant international arbitration.²
- Counsel are required to submit an expert report on September 14, 2023 in *Urlaub v. Citgo Petroleum Corp.*, No. 2021-cv-4133 (N.D. Ill.), a large complex class action under the Employee Retirement Income Security Act of 1974.

In light of these and other ongoing client obligations, there is good cause for the requested extension.

3. There is also good cause for an extension because this case presents an important issue of federal law on which the circuits are divided. The First Circuit applied no preference for a fee award under 17 U.S.C. § 505, which provides for fee shifting in copyright cases. Slip Op. 10-11. According to the court, that decision is in line with some circuits that have “disagreed that the inquiry should tilt in favor of a fee award.” Slip Op. 11 n.10. But as acknowledged by the First Circuit here, “some circuits take the view that fee awards under § 505 should be ‘the rule rather than the exception and should be awarded routinely.’” *Ibid.* This is an important issue regarding congressional policy in

² The arbitration is confidential, so counsel do not provide any further details.

intellectual property cases, where it expressly departed from the American rule that parties pay their own attorney's fees to protect parties from vexatious litigation on the one hand and brazen copyright infringement on the other.

4. The additional time will not prejudice either party, as the underlying proceedings are completed, and the sole issue remaining is responsibility for legal fees. Moreover, the requested extension of time would still permit consideration of the petition and—if granted—resolution of this case during the Court's current Term.

CONCLUSION

For the foregoing reasons, the application for a 60-day extension of time, to and including November 20, 2023, within which to file a petition for a writ of certiorari should be granted.

Respectfully submitted,

s/ Peter K. Stris

PETER K. STRIS

Counsel of Record

STRIS & MAHER LLP

777 S. Figueroa Street

Suite 3850

Los Angeles, CA 90017

(213) 995-6800

pstris@stris.com

Attorneys for Applicants

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