No. 24-501

IN THE

Supreme Court of the United States

V.V.V. & SONS EDIBLE OILS LIMITED,

Petitioner,

—v.—

MEENAKASHI OVERSEAS, LLC,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Is a petition for certiorari timely when it is filed more than 90 days after the order for which review is sought?

2. Is an appeal frivolous when it seeks to relitigate the same issue decided on an earlier appeal and foreclosed by the mandate by ignoring the clear language of the appellate court's prior ruling and mandate?

3. May attorneys' fees be awarded jointly and severally against a litigant and its counsel upon a finding of a frivolous appeal under Rule 38 of the Federal Rules of Appellate Procedure?

CORPORATE DISCLOSURE STATEMENT

Respondent Meenakshi Overseas, LLC has no parent company and there are no publicly held companies that own 10% or more of its stock.

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JURISDICTION

The Ninth Circuit order granting Respondent's motion for attorneys' fees was entered on April 16, 2024. *See* Appendix B to Petition for Certiorari. The petition for certiorari, which challenges such order, was filed on October 28, 2024, more than the 90 days provided in Supreme Court Rule 13 for filing a petition.

STATUTORY PROVISIONS INVOLVED

Fed. R. App. P. 38

If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

STATEMENT OF THE CASE

Petitioner V.V.V. & Sons Edible Oils Limited ("VVV") filed this action on December 23, 2014 alleging claims under the federal trademark statute (the Lanham Act) and California state law against Respondent Meenakshi Overseas, LLC ("Meenakshi") based on three of Meenakshi's trademarks covered by U.S. Trademark Registration Nos. 4,006,654 ("the '654 Mark"), 4,225,172 ("the '172 Mark") and 4,334,000 ("the '000 Mark"). Meenakshi moved to dismiss the claims against all three marks based on res judicata and statute of limitation grounds. Dist. Ct. ECF No. 7. The District Court denied the motion as to the '172 Mark and '000 Mark on March 31, 2016 (Dist. Ct. ECF No. 21), but eventually granted the motion as to the claims against the '654 Mark based

on res judicata on February 14, 2017. Dist. Ct. ECF No. 26.

Following the District Court's ruling, Meenakshi filed a second motion to dismiss the claims against the '172 Mark and '000 Mark based upon lack of standing on September 18, 2017. Dist. Ct. ECF No. 40. On October 5, 2017, VVV filed a Notice of Non-Opposition in response to Meenakshi's motion, stating:

> Plaintiff hereby notifies the Court that it does not oppose Defendants (sic) motion to dismiss the case due to the complexity of the area of law and the desire to have the Ninth Circuit Court of Appeals to review the case as soon as possible. Plaintiff, however, opposes Defendant's request for attorneys' fees.

Dist. Ct. ECF No. 47.

VVV appealed to the Ninth Circuit ("VVVI"), which reversed the District Court's dismissal of the claims against the '654 Mark, but affirmed its dismissal of the claims against the '172 Mark and '000 Mark. *V.V.V. & Sons Edible Oils Ltd. v. Meenakshi Overseas, LLC*, 946 F.3d 542 (9th Cir. 2019). In its opinion, the Ninth Circuit expressly rejected VVV's argument that the District Court's dismissal of the claims against the '172 Mark and '000 Mark had been based upon the District Court's erroneous resolution of the claim preclusion issue with respect to the '654 Mark:

> Finally, we address the dismissal of VVV's claims as to the '000 and '172 marks. VVV argues that dismissal of these claims was error because the dismissal was 'premised

> upon' the district court's erroneous claim preclusion ruling. That is not correct. The district court initially denied Meenakshi's motion to dismiss these claims, holding that they were *not* barred by claim preclusion. The district court then granted a separate motion to dismiss these claims because VVV explicitly did not oppose it.
>
> VVV's non-opposition to the later motion to dismiss waived any challenge to the dismissal of its claims based on the '000 and '172 marks. . . . We therefore affirm the district court's order dismissing VVV's claims as to the '000 and '172 marks.

Id. at 547.

Following remand form the Ninth Circuit, the District Court permitted VVV to "file an amended complaint to add a fraud-based claim as to the '654 mark only." Dist. Ct. ECF No. 70. On July 23, 2020, VVV nevertheless filed a first amended complaint that included claims against the '172 Mark and '000 Mark that had previously been dismissed and unsuccessfully appealed to the Ninth Circuit. Dist. Ct. ECF No. 71. Not surprisingly, the District Court granted Meenakshi's motion to dismiss those claims in a January 24, 2022 order. Dist. Ct. ECF No. 80. The District Court rejected VVV's argument that the Ninth Circuit left those claims open as "misinterpret[ing] . . . the Ninth Circuit mandate." *Id*. As the District Court explained, "[t]he Ninth Circuit mandate explicitly affirmed the dismissal of all claims against the '000 and '172 marks because Plaintiff's non-opposition to Defendant's motion to dismiss waived any challenge to dismissal." *Id*. Accordingly, it ruled that "all claims against the '172

and '000 marks stand as dismissed with prejudice pursuant to the Ninth Circuit decision and mandate." *Id*.

On May 9, 2022, Meenakshi filed a Rule 54(b) motion for entry of final judgment as to the claims against the '172 Mark and '000 Mark. Dist. Ct. ECF No. 98. Among the arguments asserted by Meenakshi in support of its motion was the absence of any risk of multiple appeals or the Ninth Circuit having to decide the same issue twice since it had already weighed in on the dismissal of the claims against the '172 Mark and '000 Mark. *Id*. Indeed, Meenakshi specifically highlighted the absence of any basis for another appeal to the Ninth Circuit were its motion granted: "Given these circumstances, there is no possible good faith basis under Rule 11 for Plaintiff to appeal any final judgment certified by the Court pursuant to Rule 54(b). Plaintiff is obviously bound by the Ninth Circuit's earlier decision and cannot challenge it again with the same appeal." *Id*.

On March 3, 2023, the District Court granted Meenakshi's Rule 54(b) motion. Dist. Ct. ECF No. 109. In so ruling, the District Court agreed with Meenakshi's position that "there is no risk of piecemeal appeals given the unique procedural posture of this case. . . ." *Id*. VVV did not heed Meenakshi's and the District Court's warning, but instead filed a second appeal to the Ninth Circuit ("VVV2") in which it never addressed the only conceivable issue left to challenge – the propriety of the District Court's Rule 54 analysis – and instead focused on the precise issue it had already lost on the first appeal concerning the dismissal of claims against the '172 Mark and '000 Mark.

On February 1, 2024, the Ninth Circuit affirmed, holding that the mandate on the first appeal "was clear" in "expressly reserve[ing] only those claims relating to the '654 Mark to be considered by the district court on remand." *V.V.V. & Sons Edible Oils Ltd. v. Meenakshi Overseas, LLC*, 2024 U.S. App. LEXIS 2220, 2024 WL 379527 (9th Cir. Feb. 1, 2024). Accordingly, "the claims relating to the '172 and '000 Marks were foreclosed," and the Ninth Circuit held that "[t]he district court complied with the mandate in dismissing those claims with prejudice." *Id*.

On February 29, 2024, VVV filed a petition for rehearing and/or rehearing *en banc*. App. Ct. ECF No. 38. On March 26, 2024 the Ninth Circuit denied VVV's petition. *V.V.V. & Sons Edible Oils Ltd. v. Meenakshi Overseas, LLC*, 2024 U.S. App. LEXIS 7130 (9th Cir. Mar. 26, 2024).

On March 28, 2024, Meenakshi filed a motion in the Ninth Circuit seeking attorneys' fees in connection with VVV's appeal in VVV2 under Fed. R. App. P. 38, arguing that the appeal was frivolous. App. Ct. ECF No. 40. On April 16, 2024, the Ninth Circuit granted Meenakshi's motion and referred it to the Court's special master, Appellate Commissioner Lisa Fitzgerald, to determine the amount of fees to be awarded. *V.V.V. & Sons Edible Oils Ltd. v. Meenakshi Overseas*, LLC, 2024 U.S. App. LEXIS 9180 (9th Cir. April 16, 2024). VVV did not file a petition for certiorari seeking review of the Ninth Circuit's order granting Meenakshi's motion for attorneys' fees.

On July 29, 2024, Appellate Commissioner Fitzgerald issued an order awarding Meenakshi attorneys' fees in the amount of $19,926.00 against VVV and its counsel, Kenneth Brooks, jointly and

severally. *V.V.V. & Sons Edible Oils Ltd. v. Meenakshi Overseas, LLC*, 2024 U.S. App. LEXIS 28038 (9th Cir. July 29, 2024). VVV then filed this petition for certiorari on October 28, 2024.

REASONS FOR DENYING THE PETITION

VVV's petition is untimely. It failed to file a petition within ninety days of the order that it seeks to challenge, the Ninth Circuit's April 16, 2024 order granting Meenakshi's motion for attorneys' fees based on VVV's frivolous appeal in VVV2.

VVV has also failed to identify any issue even remotely worthy of Supreme Court review. In fact, it is difficult even to understand what issue VVV contends the Supreme Court should decide. It references a supposed split in the Circuits on the role of a mandate, but that issue concerning the ability of a district court to deviate from a mandate has nothing to do with the outcome of VVV's frivolous appeal in VVV2. There is no dispute among any courts that when a mandate clearly forecloses an issue from decision, the district court may not revisit the issue. Such was the case here, as the Ninth Circuit's opinion in VVI unequivocally foreclosed VVV's ability to pursue claims against the '172 Mark and '000 Mark. VVV's appeal in VVV2 was thus frivolous within the meaning of Fed. R. App. P. 38, and the Ninth Circuit appropriately granted Meenakshi motion for attorneys' fees expended in defending against VVV's groundless appeal.

Nor is there any issue worthy of review arising out of the granting of the fees award against VVV and its attorneys jointly and severally. It has long been settled among numerous circuit courts that such relief under Rule 38 is appropriate.

I. THE PETITION IS UNTIMELY

As a threshold matter, VVV's petition for certiorari is untimely. It filed the petition within 90 days of the Appellate Commissioner's July 29, 2024 order fixing the amount of attorneys' fees to be awarded. *See* Appendix A to Petition for Certiorari. However, the issues VVV seeks to raise do not involve the amount of fees that were awarded (an issue that would itself hardly merit Supreme Court review). Instead, VVV seeks to challenge the Ninth Circuit's underlying order granting Meenakshi's motion for attorneys' fees based on its conclusion that the appeal in VVV2 was frivolous.

The Ninth Circuit issued its ruling granting Meenakshi's attorneys' fees motion on April 16, 2024. *See* Appendix B to Petition for Certiorari. Under Supreme Court Rule 13(3), "[t]he time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice)." Accordingly, to the extent VVV wished to seek Supreme Court review of the Ninth Circuit's order granting Meenakshi's attorneys' fees motion under Fed. R. App. P. 38 for filing a frivolous appeal, it should have filed a petition by July 15, 2024. Its petition more than three months later is untimely and should be denied on that basis alone.

II. THE LAW IS CLEARLY SETTLED THAT DISTRICT COURTS MAY NOT DEVIATE FROM WHAT THE MANDATE HAS CLEARLY DECIDED

Even if the petition were timely, VVV has failed to raise any grounds worthy of Supreme Court review. Its petition seeks to justify its frivolous appeal in VVV2 by relying on a split in the circuits as to whether mandates are jurisdictional in nature. *See* Petition at 6-7 (citing *United States v. Thrasher*, 483 F.3d 977, 982 (9th Cir. 2007)). As explained n *Thrasher*, several circuit courts, including the Ninth Circuit, have considered the mandate as jurisdictional and thus limiting the district court's authority on remand. *Thrasher*, 483 F.3d at 982; *see*, *e.g.*, *Seese v. Volkswagenwerk, A.G.*, 679 F.2d 336, 337 (3d Cir. 1982); *Tapco Products Co. v. Van Mark Products Corp.*, 466 F.2d 109, 110 (6th Cir. 1972). Other circuit courts have considered the mandate rule to be a specific application of the general doctrine of law of the case, which permits a district court to exceed the mandate on remand in certain limited circumstances. *See*, *e.g.*, *United States v. Matthews*, 312 F.3d 652, 657 (5th Cir. 2002); *Tronzo v. Biomet, Inc.*, 236 F.3d 1342, 1349 (Fed. Cir. 2001); *United States v. Gama-Bastidas*, 222 F.3d 779, 784 (10th Cir. 2000); *United States v. Bell*, 988 F.2d 247, 251 (1st Cir. 1993).

However, this split was of no consequence to disposition of the appeal in VVV2 and in no way excuses the frivolous nature of VVV's appeal that resulted in the challenged award of fees. Even in those circuits where the mandate is not considered jurisdictional, district courts are of course not generally free to revisit issues that the mandate

clearly lays to rest. *See*, *e.g.*, *Matthews*, 312 F.3d at 657 ("lower court on remand … may not disregard the explicit directives of [the appellate] court"); *Bell*, 988 F.2d at 251 (reopening an already decided matter "would require a showing of exceptional circumstances"). Rather, a party would need to show that the case falls within one of three narrow exceptions to the law of the case doctrine: a dramatic change in controlling authority; substantial new evidence; or a blatant error resulting in serious injustice. *Id.*; *see also Planned Parenthood of Cent. & Northern Arizona v. Arizona*, 718 F.2d 938, 949 (9th Cir. 1983).

In the present case, the mandate in VVVI could not have been clearer in indicating that VVV's claims directed at the '000 Mark and '172 Mark were dismissed with prejudice and thus foreclosed from further litigation in the district court:

> VVV's non-opposition to the later motion to dismiss waived any challenge to the dismissal of its claims based on the '000 and '172 marks. In order to preserve an issue for appeal, a party must make known to the court any objection to the court's action. VVV made no such objection. We therefore affirm the district court's order dismissing VVV's claims as to the '000 and '172 marks.

VVVI, 946 F.3d at 547. And yet VVV's appeal simply ignored the above unequivocal language by pretending that the Ninth Circuit's decision in VVV1 somehow left open the very infringement claims against the '000 Mark and '172 Mark dismissed by the District Court and affirmed by the Ninth Circuit. Not surprisingly, the Ninth Circuit had little

difficulty disposing of that frivolous argument, stating: "Our mandate in VVV I was clear."

Faced with an appeal that simply ignored the clear language of the Ninth Circuit's earlier decision, and made no attempt even to fit within any of the exceptions that could arguably permit a district court to revisit the dismissal of the claims against the '000 Mark and '172 Mark, the Ninth Circuit correctly deemed it to be a frivolous appeal under Fed. R. App. P. 38. Whatever nuances may be implicated in future cases as to how far a district court may deviate from a mandate, the present case does not raise any of them. This case involves nothing more than a run-of-the-mill situation in which a stubborn litigant simply ignored the plain language of a mandate and sought to re-litigate the precise issue already decided without any legitimate basis. There is no reason the Supreme Court needs to weigh in on the issue under such circumstances.

III. THERE IS NO DISPUTE THAT LITIGANTS AND THEIR ATTORNEYS MAY BE HELD JOINTLY AND SEVERALLY LIABLE FOR ATTORNEYS' FEES AWARDED UNDER FED. R. APP. P. 38 FOR A FRIVOLOUS APPEAL

VVV's suggestion that the Court should grant certiorari to address the imposition of joint and several liability on litigants and their counsel under Fed. R. App. P. 38 is also baseless. The circuit courts have long been in uniform agreement that when a frivolous appeal is taken, the Court has inherent power to impose sanctions upon the appellant and his counsel jointly and severally. *See*, *e.g.*, *Gallop v. Cheney*, 642 F.3d 364, 370 n. 3 (2d Cir. 2011); *Top*

Entm't Inc. v. Ortega, 285 F.3d 115, 120 (1st Cir. 2002); *Taiyo Corp. v. Sheraton Savanah Corp.*, 49 F.3d 1514, 1515 (11th Cir. 1995); *Romala Corp. v. United States*, 927 F.2d 1219, 1225 (Fed. Cir. 1991); *Hilmon Co. v. Hyatt Int'l*, 899 F.2d 250, 254 (3d Cir. 1990); *Int'l Union of Bricklayers Local 20 v. Martin Jaska, Inc.*, 752 F.2d 1401, 1407 & n. 8 (9th Cir. 1985).

Such a rule is also in keeping with long-established Supreme Court precedent recognizing that a client is bound by the acts or omissions of its lawyer. *See Link v. Wabash R.R. Co.*, 370 U.S. 626, 633-34 (1962). As there is no dispute among the circuits and no need for clarification of the governing law, the Supreme Court should decline certiorari in this case.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

December 2, 2024

Respectfully submitted,

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