

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. ____

CIRRUS DESIGN CORPORATION,

Applicant,

v.

GREAT WESTERN AIR, LLC, doing business as CIRRUS AVIATION SERVICES,

Respondent.

**APPLICATION TO THE HONORABLE ELENA KAGAN
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

Pursuant to Supreme Court Rule 13(5), Cirrus Design Corporation (“Applicant”) hereby moves for an extension of time of 30 days, to and including May 30, 2025, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari is April 30, 2025.

In support of this request, Applicant states as follows:

1. The U.S. Court of Appeals for the Ninth Circuit rendered its decision on December 17, 2024 (Exhibit 1). Applicant timely petitioned for rehearing. The Ninth Circuit denied that petition on January 30, 2025. This Court has jurisdiction under 28 U.S.C. §1254(1).

2. This case concerns the Seventh Amendment right to a jury trial in Lanham Act suits to recover a trademark infringer’s profits. The Seventh Amendment preserves “the right of trial by jury” in “suits at common law.” U.S.

Const. amend. VII. As this Court has explained, “[t]he right to trial by jury is ‘of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right’ has always been and ‘should be scrutinized with the utmost care.’” *SEC v. Jarkesy*, 603 U.S. 109, 121 (2024) (quoting *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935)).

3. Applicant is an aircraft design, manufacturing, maintenance, management, and flight training company and the holder of the federally registered “CIRRUS” trademark. Respondent is a charter airline service operating under an identical CIRRUS mark.

4. Respondent sought a declaration in federal court that its use of the CIRRUS mark did not infringe Applicant’s trademark. Respondent’s complaint for declaratory judgment included a jury demand. Applicant counterclaimed for trademark infringement, requesting an injunction as well as the monetary remedy of respondent’s profits, which is authorized by the Lanham Act. Applicant likewise demanded a jury on its claims. The parties both demanded a jury in a subsequent round of amended pleadings.

5. Shortly before the jury trial was scheduled to begin, respondent withdrew its jury demand and moved to strike Applicant’s. Citing the Ninth Circuit’s decision in *Fifty-Six Hope Road Music v. A.V.E.L.A., Inc.*, 778 F.3d 1059, 1075 (9th Cir. 2015), respondent argued the monetary remedy of profits is equitable and thus carries no jury-trial right. The district court agreed and struck Applicant’s jury

demand. The claims then proceeded to a four-day bench trial, after which the district court entered judgment in favor of respondent.

6. The Ninth Circuit affirmed. On the Seventh Amendment issue, the Ninth Circuit held that the monetary remedy of profits under the Lanham Act is an equitable remedy, not a legal remedy for which the jury-trial right applies.

7. The Ninth Circuit's decision is deeply flawed, not least of which because it is irreconcilable with this Court's seminal decision in *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 477 (1962). The Lanham Act, like other federal intellectual property statutes, provides three types of monetary remedies for infringement: actual damages, statutory damages, and profits. *See* 15 U.S.C. §1117(a), (c). This Court held in *Dairy Queen* that those very remedies in that very statute confer a jury-trial right. 369 U.S. at 477. But the decision below holds that one of them—profits—does not.

8. In light of that conflict with *Dairy Queen*, it is perhaps unsurprising that the decision below conflicts with decisions from multiple other circuits. *See, e.g., Swofford v. B & W, Inc.*, 336 F.2d 406, 411 (5th Cir. 1964) (profits for patent infringement); *Kennedy v. Lakso Co.*, 414 F.2d 1249, 1253-54 & nn.13-15 (3d Cir. 1969) (same). Indeed, the Ninth Circuit itself has held that a request for profits for *copyright* infringement triggers the jury-trial right. *See Sid & Marty Krofft Television Prods., Inc. v. McDonald's Corp.*, 562 F.2d 1157, 1175 (9th Cir. 1977).

9. Unfortunately, the stakes here are higher still, as this case is part of a broader trend sowing confusion among lower courts about the Seventh Amendment's

application to claims for profits under federal intellectual property statutes. *See Black & Decker Corp. v. Positec USA, Inc.*, 118 F. Supp. 1056, 1065 n.14 (N.D. Ill. 2015) (Dow, J.).

10. Undersigned counsel did not participate in the proceedings below and was only recently retained. Undersigned counsel also has substantial briefing and argument obligations between now and the current due date of the petition, including: a supplemental brief in *Boland v. Bonta*, No. 23-55276 (9th Cir.) (April 17); a reply in support of a motion for a preliminary injunction in *CCIA v. Uthmeier*, No. 24-cv-00438 (N.D. Fla.) (April 17); a response to a motion to dismiss in *Wilmer Cutler Pickering Hale & Dorr LLP v. Executive Office of the President*, No. 25-cv-917 (D.D.C.) (April 17); a reply in support of a motion for summary judgment in *Outsourcing Facilities Association v. FDA*, No. 24-cv-00953 (N.D. Tex.) (April 22); oral argument in *Wilmer Cutler Pickering Hale & Dorr LLP v. Executive Office of the President*, No. 25-cv-917 (D.D.C.) (April 23); and a response brief in *Harman International Industries, Inc. v. Illinois National Insurance Co.*, No. 47,2025 (Del.) (April 28).

11. Applicant's petition is currently due on April 30, 2025. Applicant respectfully requests a modest 30-day extension of time, to and including May 30, 2025, to prepare and file a petition that fully addresses the important and far-reaching issues raised by the decision below.

WHEREFORE, for the foregoing reasons, Applicant respectfully requests that an extension of time to and including May 30, 2025, be granted within which Applicant may file a petition for a writ of certiorari.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'P. D. Clement', is positioned above a horizontal line.

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