

SUPREME COURT OF THE UNITED STATES

MSCHF PRODUCT STUDIO, INC.,

Petitioner,

v.

VANS, INC. AND VF OUTDOOR, LLC,

Respondents.

No. 23M _____

**PETITIONER'S MOTION FOR LEAVE TO FILE
PETITION FOR WRIT OF CERTIORARI OUT OF TIME**

Pursuant to this Court's Rules 21 and 33.2, Petitioner MSCHF Product Studio, Inc. ("MSCHF") respectfully requests leave to file its enclosed petition for a writ of certiorari to the U.S. Court of Appeals for the Second Circuit (the "Petition") out of time.

1. MSCHF filed and served its enclosed Petition on March 5, 2024, believing in good faith that this date was 90 days from the entry of judgment in the Second Circuit on December 5, 2023. In fact, March 5, 2024, was 91 days from December 5, 2023. Both MSCHF's counsel and Counsel Press, the printer engaged to prepare and file the Petition, inadvertently overlooked the additional leap year day in February and miscalculated the due date under this Court's Rule 13 by one day. Our office discovered the error on March 12, 2024, when we

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inquired with Counsel Press about why the Petition had not yet appeared on the docket, and Counsel Press contacted the office of the Clerk of this Court.

2. This error was wholly unintentional, and MSCHF believed—in reliance on counsel and on Counsel Press, whose compliance check apparently did not account for the additional leap year day—that it was in compliance with all of this Court’s rules and had timely filed its Petition on March 5. MSCHF therefore respectfully requests that the Court grant leave to file its enclosed Petition on the basis of excusable neglect. *See, e.g., Schacht v. U.S.*, 396 U.S. 984 (1969) (summarily granting motion for leave to file petition for writ of certiorari out of time).

3. Respondents Vans, Inc. and Vans Outdoors, LLC (“Vans”) would not be prejudiced by the Court’s granting of this motion, as MSCHF notified Vans well in advance that it intended, and was proceeding, to file timely its Petition, and MSCHF served its Petition on Vans on March 5, 2024.

4. Additionally, the Petition addresses matters of public interest because it identifies circuit splits over important questions of law regarding the scope of the Lanham Act as applied to communicative works in light of the First Amendment’s protection of artistic freedom.

5. MSCHF notified Vans of this motion, and Vans does not consent to it.

Dated: March 13, 2024

Respectfully submitted,

Mark A. Lemley

Counsel of Record

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