

In the Supreme Court of the United States

AMN DISTRIBUTION, INC.; MOISHE NEWMAN,

Petitioners,

v.

ATHENA COSMETICS, INC.,

Respondents.

**CERTIFICATE OF SERVICE OF APPLICATION FOR AN
EXTENSION OF TIME WITHIN WHICH TO PETITION FOR A WRIT
OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Application to the Honorable Elena Kagan, as Circuit Justice for the Ninth
Circuit, California

Pursuant to Supreme Court Rule 13.5, Applicants AMN Distribution, Inc. and Moishe Newman request a forty-day extension of time, to and including February 10, 2025,¹ within which to file a petition for a writ of certiorari.

1. The decision below is *Athena Cosmetics, Inc. v. AMN Dist.*, Ninth Circuit case no. 22-56178. The Ninth Circuit issued its memorandum opinion on July 16, 2024 (App. A) and denied rehearing en banc September 27, 2024 (App. B). Unless extended, Applicant's time to seek certiorari in this Court expires December 26, 2024. Applicant is filing this application at least ten

¹ The forty-day mark falls on Sunday, February 9; February 10 is the next business day.

days before that date. S. Ct. R. 13.5. This Court's jurisdiction would be invoked under 28 U.S.C. § 1257(a).

2. Applicants were sued by respondent for violation of a settlement agreement stemming from alleged trademark violations in selling counterfeit cosmetics. Although applicants have maintained innocence of both the counterfeit cosmetics sales and the ensuing alleged breach of settlement agreement, respondent succeeded in summary judgment against applicants and on appeal from that summary judgment. Respondent was awarded contractual (and trademark) attorney fees. However, the attorney fee awards contained, inter alia, large blocks of time for (1) a period in which applicant Newman had to fight default due to fraud committed by respondent under oath that Newman had been personally served in California while he was in Australia during the COVID pandemic; and (2) the time that went into preparing for trial and trial before the conduct of appellee's counsel caused a mistrial, as well as the immediate post-trial motions that appellee's counsel worked on despite the pending mistrial, increasing attorney fees and costs for all parties.

3. Good cause exists for a forty-day extension within which to file a petition.

a. Applicant intends to raise with this Court the issue of reasonable award of attorney fees, specifically seeking additional guidance from this Court application of the rule set forth in *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983) that "[t]he district court [] should exclude . . . hours that were not 'reasonably expended.'" Specifically, that attorney time spent due to a prevailing party's fraud and misconduct should be presumed unreasonable as a matter of law and excluded from attorney fees calculations under federal law.

b. An extension is further warranted because applicants were only able to recently make the decision to petition for writ of certiorari and additional time is necessary for undersigned counsel to research, draft, prepare a petition for filing with this Court.

c. The request is further justified by counsel's press of business on other pending matters and the upcoming holiday and winter vacations of his four school-age children. In addition to a full California state appellate practice, Counsel has a complex motion and opening brief due in the Ninth Circuit in the New Year.

Respectfully submitted,

/s/ David Zarmi

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