

TTAB
Exhibits

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration Number(s) 2,095,296; 2,097,819
For the mark(s) "ELVGREN" (Stylized); and "ELVGREN" (Stylized)
Date(s) Registered September 9, 1997; September 16, 1997

Drake Elvgren, an individual;
John T. Dillard, an individual; and
Louis K. Meisel, an individual.

PETITIONERS

VS.

Daniel J. Vancas

RESPONDENT

02-22-2002
U.S. Patent & TMOfo/TM Mail Rcpt Dt. #61

02/27/2002 SWILSON1 00000002 2095296
01 FC:376 300.00 OP

Cancellation No. _____

Void date: 02/27/2002 SWILSON1
02/27/2002 SWILSON1 00000002 2095296
01 FC:376 -300.00 OP

02/27/2002 SWILSON1 00000057 2095296
01 FC:376 1800.00 OP

PETITION TO CANCEL REGISTRATION

PETITIONERS

Petitioner Drake Elvgren is the son of Gillette Elvgren (a renowned artist) and heir to the Gillette Elvgren estate. Drake Elvgren has also been involved in the publication of two books about his father. The other named Petitioners are a representative group of the significant number of individuals and organizations that reproduce, use, write

about, distribute, and sell Gillette "Elvgren" signature artwork. They have come together in order to defend the generic "Elvgren" name for unrestricted use by the Elvgren art community. The petitioning parties are:

1. Drake Elvgren, the Son of Gillette Elvgren and heir to the Gillette Elvgren estate. His address is:
12402 Spring Grove
Houston, Texas 77099

2. John T. Dillard
25705 Baldwin Place
Carmel, California 93923

3. Louis K. Meisel
Louis K. Meisel Galleries
141 Prince Street
New York, New York 10012

To the best of the Petitioners' knowledge, the name and address of the current owner of the registration is

Daniel J. Vancas
1199 Forest Avenue, No. 225
Pacific Grove, California 93950

The above-identified Petitioners believe that they are or will be damaged by the above-identified registration and they hereby petition to cancel same for the detailed reasons set forth herein.

**AS GROUNDS FOR THIS PETITION, IT IS ALLEGED THAT:
STATEMENT OF FACTS**

1. DESCRIPTION OF REGISTRANT'S REGISTRATION No. 2,095,296: Filed on November 5, 1996, for the mark ELVGREN (Stylized); registered on September 9, 1997 on the Principal Register, in class 16, for "artwork and paintings, namely, originals and reproductions of paintings, printed and painted reproductions, illustrations, prints, lithographs, gift cards, posters, and post cards,

trading cards with art work thereon, portfolios, posterbooks, calendars"; claiming first use in interstate commerce on 00/00/1994.

2. DESCRIPTION OF REGISTRANT'S REGISTRATION No. 2,097,819: Filed on November 5, 1996, for the mark ELVGREN (Stylized); registered on September 16, 1997 on the Principal Register, in class 16, for "artwork and paintings, namely, originals and reproductions of paintings, printed and painted reproductions, illustrations, prints, lithographs, gift cards, posters, and post cards, trading cards with art work thereon, portfolios, poster books, calendars"; claiming first use in interstate commerce on 00/00/1996.

3. In 1937, Gillette Elvgren began painting calendar pin-ups for Louis F. Dow, one of America's leading publishing companies. These pin ups are easily recognizable because they are signed with a printed version of Elvgren's name, as opposed to his later cursive signature. [See pages 18,19 and 65 of the book "Gil Elvgren, All His Glamorous American Pin-Ups" incorporated herein by reference and attached hereto as Exhibit A]

4. Around 1944, Gillette was approached by Brown and Bigelow, a firm that still dominates the field in producing calendars and advertising specialties. Elvgren signed on with Brown and Bigelow. Elvgren's Brown and Bigelow images all contain his cursive signature. [See pages 22,23, 27 and 80 of the book "Gil Elvgren, All His Glamorous American Pin-Ups" incorporated herein by reference as Exhibit B]

5. Gillette Elvgren died in 1980, leaving his Son, Drake Elvgren as heir to the Gillette Elvgren estate.

6. Many of Gillette Elvgren's works are now in the public domain, the remainder are still protected by copyright. Many of the Gillette Elvgren works that are still copyrighted are owned by Brown and Bigelow.

7. A large retail market has come into existence that trades, reproduces, and sells many variations of Gillette Elvgren's works that have come into the public domain, and that are reproduced with permission of the copyright owner(s).

8. Many of these works are reproduced with Gillette Elvgren's signature, exactly as it appeared on the original works of art. Works containing both the earlier printed version of Elvgren's signature and the later cursive "Elvgren" signature are reproduced, sold, traded and displayed.

9. Mr. Daniel J. Vancas' registrations were for "artwork and paintings, namely, originals and reproductions of paintings, printed and painted reproductions, illustrations, prints, lithographs, gift cards, posters, and post cards, trading cards with art work thereon, portfolios, poster books, calendars." [See Patent and Trademark Office Registration Numbers 2,095,296 and 2,097,819, incorporated herein by reference as Exhibit C and Exhibit D respectively] This is exactly the manner and types of works in which Gillette Elvgren affixed his signature to artwork and paintings of his own creation.

10. When the Registrant claimed first use in interstate commerce of the Elvgren signatures, [00/00/1994 for Registration No. 2,095,296 and 00/00/1996 for Registration No. 2,097,819] more than ten million (10,000,000) reproductions of Elvgren work (bearing his signatures) had already been introduced into interstate commerce. Gillette Elvgren had been signing his works with the *exact two signatures claimed as trademarks* by the Registrant, on the *exact same* subject matter claimed by the Registrant, for more than fifty years previous to the Registrant's claim of first use.

11. All images shown as exhibits for the two trademark applications submitted by the Registrant were not products of the Registrant's origin, but were merely copies of artwork painted by Gillette Elvgren, as early as 1939. Because these works of art were painted by Gillette Elvgren, they also bore his signature. The claim that *the Registrant* first used Gillette Elvgren's signature in commerce *in the 1990's* is untenable. [See list of Registrant's exhibits, together with the year created and copyright status attached herein and incorporated by reference as Exhibit E.]

12. Starting in September, 1997, the Registrant began sending threatening emails and faxes, to various companies and individuals engaged in the sale and promotion of Gillette Elvgren reproductions and artwork bearing the artist's signature. These communications by

the Registrant claimed that because the Registrant had trademarks on Gillette Elvgren's signature, that anyone selling these works could only do so with the permission of the Registrant. The Registrant also claimed that because of his trademark, only he could use the printed word "Elvgren." In addition, these communications included threats that the Federal Bureau of Investigation would take action against these individuals and companies at behest of the Registrant.

PETITIONERS' STANDING TO FILE

Standing of the various Petitioners is as follows:

13. Drake Elvgren:

Drake Elvgren, is the son of Gillette Elvgren, and heir to the Gillette Elvgren estate. As such, Drake has been involved in the publication of two books about his father, and his father's work. The Registrant has harassed Drake's publisher and tried to interfere with the printing of these books. As the son of Gillette Elvgren, Drake is somewhat of an authority on his father's work. The Registrant's act of obtaining a trademark on Drake's father's signatures has inhibited Drake's ability to trade in his father's work. Drake has heard from several other collectors of his father's work saying that they have also been intimidated by the Registrant against selling Elvgren works.

Drake believes that because he is Gillette Elvgren's heir, he should be able to trade in his father's work without being harassed by the Registrant. Drake, prefers that the Elvgren work remain in the public domain, for all to appreciate and enjoy. He does not want the dissemination of his father's works to be impeded by an individual attempting to usurp the Elvgren name.

14. John T. Dillard:

Dillard is a seller of reproduction art prints, including prints painted by Gillette Elvgren. Since 1997, the Registrant has harassed Dillard several times via e-mail with claims that the Registrant owned all of Gillette Elvgren's artwork and that Dillard's publication of non-copyrighted images violated the Registrant's "Elvgren" trademarks. Dillard has known several other small business people who the Registrant had similarly accused and bothered by the Registrant - whether they were selling Elvgren image reproductions or originals on

eBay. Most recently, the Registrant Filed a Notice of Infringement with eBay against Dillard on Jun 8, 2001, and disrupted his sales for 2 weeks - causing Dillard to lose approximately \$350 in sales. During that time period, Dillard was de-listed and prohibited from selling any articles at eBay as a direct result of the Registrant's actions asserting Trademark rights in Gillette Elvgren's signatures. Dillard is currently unable to continue publication of public domain images without enduring additional aggravation caused by the Registrant.

15. Louis K. Meisel:

Meisel wrote a historical book on pinup art entitled, "The Great American Pinup," and in addition, authored the authoritative book on Gillette Elvgren and his artwork "Gil Elvgren, All His Glamorous American Pin-Ups."

Since registering the "Elvgren" signatures in 1997, the Registrant has been continually harassing Meisel over the Registrant's claimed ownership of all rights to images created by the famous pinup artist Gil Elvgren which contained the signature "Elvgren". The Registrant claimed that Meisel could not even use the printed words "Gil Elvgren" without paying the Registrant and giving the Registrant credit. The Registrant has written to and harassed and threatened no fewer than 18 of Meisel's publishers and their distributors including but not limited to Random House, Taschen and Bud Plant. The Registrant further threatened that he had enlisted the FBI (Federal Bureau of Investigation) to pursue and prosecute Meisel and his associates, and gave Meisel the name of the agent he allegedly enlisted to do this.

As the leading authority on Gillette Elvgren, Meisel has been approached by and has knowledge of at least 30 to 40 others who sell Elvgren prints, calendars, books and similar products over the Internet who have also been threatened and actually scared by the Registrant.

Meisel has spent thousands of dollars in legal fees, not to mention hundreds of valuable hours, defending himself against the Registrant's false claims and assisting others to do the same. Meisel is not aware of every bookstore and distributor contacted by the Registrant, and therefore assumes the Registrant has intimidated

some of the weaker ones and caused some to remove Meisel's books from sale.

SPECIFIC GROUNDS ALLEGED FOR CANCELLATION

16. Elvgren has been a generic term of art that has been used in that segment of the art industry of which the Petitioners are members, to describe the artwork of Gillette Elvgren since the early 1940's. "Elvgren" is used to describe this artwork since, fundamentally, it is the surname of the artist that created the work. A "Picasso" is a term of art which is commonly used to describe a work of art created by the famous artist Pablo Picasso. Similarly, "Elvgren" is a term of art or common descriptor that is used to describe works of art created by the famous pin-up artist Gillette Elvgren.

17. A random search of the word "Elvgren" on the google.com search engine showed 5,390 hits for web pages. [See Exhibit F attached herewith and incorporated by reference.] Virtually all of these hits (based on a random check of several pages) are related to the artist Gillette Elvgren, and his works of art. The term "Elvgren" was and is still used to generically to describe the man Gillette Elvgren, the works of art created by Gillette Elvgren, and the scores of individuals bearing the surname Elvgren. Thus, the name Elvgren is most commonly used to describe works of art created by Gillette Elvgren as opposed to works of art created by others. Elvgren is not a proprietary product of the Registrant and has never been, in spite of the Registrant's correspondence to some users, demanding licensing and/or acknowledgement of his rights in the name Elvgren, and his false claim filed with the PTO.

18. Registrant's alleged registered mark is the common descriptive name of all Gillette Elvgren art works and related products. It is the generic name of all such goods produced and sold by every company or person engaged in such business. Therefore, Petitioners allege that Registrant's registered mark does not function to identify Registrant's goods nor distinguish them from goods offered by others. Petitioners are likely to be damaged by the existing registration of said generic term, in that the existence of said registration tends to impair Petitioners' legal right to use of the said term, and because Petitioners have been involved for some time in the manufacture,

sale, and distribution of Elvgren art works, as to which the Petitioners have a valid and legal right to refer to by its common descriptive name, Elvgren, which is the proper surname of the artist Gillette Elvgren.

19. On information and belief, Petitioners allege that Registrant's registration was obtained fraudulently in that in the formal application papers filed by Registrant, under oath pursuant to 18 USC 1001, states that Registrant's first use in commerce for Registration No. 2,095,296 took place on 00/00/1994 and first use in commerce for Registration No. 2,097,819 took place on 00/00/1996. In fact, all images submitted by the Registrant as exhibits for his two trademark applications were not products of the Registrant's origin, but were merely copies of artwork painted by Gillette Elvgren as early as 1939. On information and belief, Registrant's statements as to ownership, use, and knowledge of others using the same mark are intentionally false, and constitute perjury under 18 USC 1001.

20. On information and belief, Petitioners further allege that Registrant's registration was obtained fraudulently in that in the formal application papers filed by Registrant, under oath pursuant to 18 USC 1001, states that to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use the Elvgren mark in commerce. Said statement was false because as Registrant was a dealer in fine art, and owner of an art gallery, he either knew or should have known that Elvgren works were widely distributed and there existed a huge retail market for Elvgren works which bore the identical artist signatures which were claimed by the Registrant, and used for the same subject matter claimed in his application for registration. On information and belief, said statement was made by the Registrant with knowledge and belief that said statement was false. On information and belief, said false statement was made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registrations. Reasonably relying upon the truth of said false statements, the U.S. Patent and Trademark Office did, in fact, grant said registration to Registrant. On information and belief, Petitioners were damaged by said false statements and the registration issued in reliance thereon in that Petitioners, since as early as 1997, some or all of them, have continuously used the mark Elvgren on Elvgren works in which they

deal. Petitioners' continued and legal use of said mark is being and will be impaired by the continued registration of said mark of Registrant.

21. Registrant now claims a monopoly right of control for sales, past and present, from Petitioners and others in the industry, which is an attempt to use his fraudulently obtained trademark registration to demand licensing fees and control from something he cannot own, (namely, all artwork created by the artist Gillette Elvgren, which bears his signature, some of which is in the public domain) all to the damage of Petitioners and to the general public.

WHEREFORE, Petitioners pray that Registration Nos. 2,095,296 and 2,097,819 be canceled immediately, and that this Petition for Cancellation be sustained in favor of Petitioners, with costs and legal fees awarded, if appropriate, pursuant to the Federal Rules of Civil Procedure and the Rules of the PTO and the TTAB.

DAVIS AND SCHROEDER,
A California Professional Law Corp.

BY 
ERIC BAKRI BOUSTANI, Esq.
ATTORNEY FOR
Drake Elvgren, John T. Dillard,
and Louis K. Meisel

Date: 2-11-02

LAW OFFICES
DAVIS & SCHROEDER
A PROFESSIONAL CORPORATION

G. GERVAISE DAVIS III
JOHN D. LAUGHTON
ROBERT T. DAUNT
ERIC BAKRI BOUSTANI

GEORGE L. SCHROEDER
(RETIRED)

215 W. FRANKLIN STREET, 4TH FLOOR
MONTEREY, CALIFORNIA 93940
POST OFFICE BOX 3080
MONTEREY, CALIFORNIA 93942

VOICE (831) 649-1122
FACSIMILE (831) 649-0566
www.netlawyers.com

February 22, 2002

Box TTAB
Fee
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513



02-22-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #61

Re: Trademark Registration Numbers 2,095,296; 2,097,819
for the marks

To whom it may concern:

Enclosed, please find an original and one copy of a Petition to Cancel together with exhibits, a check in the amount of \$1,800.00 (eighteen hundred dollars) payable to the Patent and Trademark Office, and a self-addressed stamped envelope to confirm the receipt of same.

If you have any questions, or need any further information, please do not hesitate to call me at the number above.

Sincerely,

Mark W. Good

Enclosures (4)