

I, PURITA T. EUGENIO, hereby certify that this document is being deposited with the United States Postal Service as Express Mail, postage prepaid, in an envelope addressed to COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VA 22202-3514

Signature: Purita T. Eugenio

Printed Name of Person Mailing Document: PURITA T. EUGENIO

Express Mail Label Number: EK471096073US

Date of Deposit: SEPTEMBER 10, 2003

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

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

Petitioners,

vs.

J. Daniel Vancas,

Registrant.

**Cancellation No.: 92040459  
Registration Nos.: 2095296, and  
2097819**

**Mark(s): "ELVGREN" (Stylized)  
and  
"ELVGREN" (Stylized)**

**NOTICE OF RELIEF FROM THE AUTOMATIC BANKRUPTCY STAY**

**COMMISSIONER FOR TRADEMARKS  
2900 CRYSTAL DRIVE  
ARLINGTON, VA 22202-3514**

**TO THE PATENT AND TRADEMARK OFFICE AND ALL PARTIES AND THEIR  
COUNSEL:**

PLEASE TAKE NOTICE that Petitioners moved the Bankruptcy Court for relief from the automatic stay at a hearing held on August 27, 2003. Petitioner's motion was granted by the Hon. James R. Grube, allowing Petitioners to continue their cancellation proceedings against the Registrant's Marks. A true and accurate copy of the motion for relief from stay is attached

herewith as **Exhibit A**. Although Petitioners have not yet received a copy of the signed order releasing the stay, pursuant to correspondence from the PTO on March 15, 2003<sup>1</sup>, Petitioners are notifying the Board that the Stay has been lifted, within the twenty-day period provided for in the March 15, 2003 notice. When Petitioners have obtained a copy of the order, it will be forwarded to the Board forthwith.

As noted in the Notice of Additional Bankruptcy Stay, previously filed with the PTO, Registrant J. Daniel VANCAS has filed for bankruptcy twice in the Northern District of California, during the pendency of these cancellation proceedings. (Case Nos. 02-55062, 03-51248) Petitioners first received a notice of bankruptcy stay from Registrant's counsel indicating that this action was stayed effective with Registrant's filing of a voluntary petition on February 27, 2003.

Upon conducting research into this filing, Petitioners discovered that the Registrant had previously filed an additional Voluntary Petition for bankruptcy under Chapter 13 on **September 9, 2002, during the pendency of this action**. Under the automatic stay provisions of Section 362 of the United States Bankruptcy Code, 11 U.S.C. 362, a petition for bankruptcy (filed under Section 301, 302, or 303 of the Code, 11 U.S.C. 301, 302, or 303) operates as a stay, inter alia, of the commencement or continuation of a judicial, administrative, or other process against the debtor that was or could have been commenced before the commencement of the bankruptcy case.

This first bankruptcy stay was in effect from September 9, 2002, through January 31,

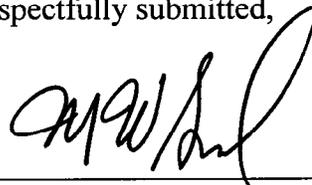
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<sup>1</sup> TTAB Notice dated March 15, 2003, attached herewith and incorporated by reference as **Exhibit B**.

2003, for a total of One Hundred Forty Four (144) days. Therefore, the dates must be moved back at least 144 days as a result of this first stay, and any and all actions taken by the parties or by TTAB during the period of this stay are void. The second bankruptcy stay went into effect on February 27, 2003 based on the Registrant's second filing for bankruptcy, and upon notice, TTAB suspended the proceedings accordingly.

Petitioners request that TTAB reset the dates of this cancellation proceeding accordingly, and notify the parties of the new dates, taking into account both stays issued by the Bankruptcy Court.

Respectfully submitted,



Date: September 10, 2003

---

Eric Bakri Boustani, Esq.  
Mark W. Good, Esq.  
DAVIS & SCHROEDER,  
A Professional Corporation  
215 West Franklin, 4th Floor  
P. O. Box 3080  
Monterey, CA 93942-3080  
Telephone: (831) 649-1122  
Facsimile: (831) 649-0566  
E-mail: mark@NetLawyers.com

Attorneys for Petitioners,  
DRAKE ELVGREN,  
JOHN T. DILLARD, and  
LOUIS K. MEISEL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF RELIEF FROM THE AUTOMATIC BANKRUPTCY STAY** was mailed **FIRST CLASS** mail, postage prepaid, this 10th day of September, 2003 on Opposer's counsel:

Mark A. O'Connor, Esq.  
HORAN, LLOYD LAW OFFICES  
499 Van Buren Street  
Post Office Box 3350  
Monterey, CA 93942-3350



---

Mark W. Good

UNITED STATES BANKRUPTCY COURT  
Northern District of California

In re: VANCAS, JAMES DANIEL, aka )  
Dan Vancas, fdba Vanguard Gallery )  
Debtor )

Bankruptcy No.: 03-51248  
R.S. No.:  
Hearing Date: August 27, 2003  
Time: 2:00 p.m.

RS031042

FILED  
AUG 28 2003  
11:17:01

Relief From Stay Cover Sheet

Instructions: Complete caption and Section A for all motions. Complete Section B for mobile homes, motor vehicles, and personal property. Complete Section C for real property. Utilize Section C as necessary. If moving party is not a secured creditor, briefly summarize the nature of the motion in Section D.

(A) Date Petition Filed: 2/27/2003 Chapter: 7  
Prior hearings on this obligation: N/A Last Day to File §523/§727 Complaints: 6/9/2003

(B) Description of personal property collateral (e.g. 1983 Ford Taurus):

Secured Creditor [ ] or lessor [ ]  
Fair market value: \$ \_\_\_\_\_ Source of value: \_\_\_\_\_  
Contract Balance: \$ \_\_\_\_\_ Pre-Petition Default: \$ \_\_\_\_\_  
Monthly Payment: \$ \_\_\_\_\_ No. of months: \_\_\_\_\_  
Insurance Advance: \$ \_\_\_\_\_ Post-Petition Default: \$ \_\_\_\_\_  
No. of months: \_\_\_\_\_

(C) Description of real property collateral (e.g. Single family residence, Oakland, CA):

Fair market value: \$ \_\_\_\_\_ Source of value: \_\_\_\_\_ If appraisal, date: \_\_\_\_\_

Moving Party's position (first trust deed, second, abstract, etc.):

Approx. Bal. \$ \_\_\_\_\_ Pre-Petition Default: \$ \_\_\_\_\_  
As of (date): \_\_\_\_\_ No. of months: \_\_\_\_\_  
Mo. payment: \$ \_\_\_\_\_ Post-Petition Default: \$ \_\_\_\_\_  
Notice of Default (date): \_\_\_\_\_ No. of months: \_\_\_\_\_  
Notice of Trustee's Sale: \_\_\_\_\_ Advances Senior Liens: \$ \_\_\_\_\_

Specify name and status of other liens and encumbrances, if known (e.g. trust deeds, tax liens, etc.):

Position	Amount	Mo. Payment	Defaults
1 <sup>st</sup> Trust Deed: _____	\$ _____	\$ _____	\$ _____
2 <sup>nd</sup> Trust Deed: _____	\$ _____	\$ _____	\$ _____
_____			
_____			
(Total)	\$ _____	\$ _____	\$ _____

(D) Other pertinent information: Prior to this bankruptcy, Movants filed a petition with the Trademark Trial and Appeal Board to cancel two trademarks owned by the debtor based on allegations of fraud. The debtor has continued his oppressive conduct with the two trademarks during these bankruptcy proceedings. Movants request relief from the automatic stay so that these cancellation proceedings may move forward.

Dated: \_\_\_\_\_  
Signature  
Mark W. Good  
Print or Type Name

0107/2003TAE

1 Eric Bakri Boustani, CA SBN 184883  
Mark W. Good, CA SBN 218809  
2 DAVIS & SCHROEDER, a Professional Corporation  
215 West Franklin Street, Fourth Floor  
3 P.O. Box 3080  
Monterey, CA 93942  
4 Telephone (831) 649-1122  
Facsimile (831) 649-0566  
5 Email: eric@cybercounsel.com

**FILED**  
JUL 18 2003

CLERK  
United States Bankruptcy Court  
San Jose, California

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UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF  
CALIFORNIA  
SAN JOSE DIVISION

In Re: VANCAS, JAMES DANIEL, aka  
Dan Vancas, fdba Vanguard Gallery  
  
Debtor

) CASE NO.: 03-51248  
) CHAPTER 7

) NOTICE OF MOTION AND MOTION FOR  
) RELIEF FROM THE AUTOMATIC STAY  
) UNDER U.S.C. § 362 (With Supporting  
) Declarations)

) **Date: August 27, 2003**  
) **Time: 2:00 p.m.**

) JUDGE: HON. JAMES R. GRUBE  
) United States Federal Courthouse  
) 280 South First Street, Room 3020  
) San Jose, CA 95113

1. NOTICE IS HEREBY GIVEN to the Debtor ("Responding Party"), and other interested parties that on August 27, 2003 in courtroom No. 3020, Drake Elvgren, John T. Dillard, and Louis K. Meisel ("Movants") in the above-captioned matter will move this Court for an Order

1 granting relief from the automatic stay as to Debtor and Debtor's bankruptcy estate on the  
2 grounds set forth in the attached Motion.

3 2. NOTICE IS ALSO GIVEN to the Trustee as an additional Responding Party, because the  
4 Motion relates to intellectual property of the Debtor.

5 3. This Motion is being heard on REGULAR NOTICE pursuant to Local Bankruptcy Rule  
6 4001-1. **Your rights may be affected.** You should read these papers carefully and discuss  
7 them with your attorney, if you have one in this bankruptcy case. (If you do not have an  
8 attorney, you may wish to consult one.)

9 If you do not want the court to grant relief from the automatic stay, or if you want the  
10 court to consider your views on this motion, then on or before August 6, 2003, you or your  
11 attorney must file a written response containing Points and Authorities in opposition to this  
12 motion with the court at the United States Courthouse, Room 3035, 280 South First Street  
13 San Jose, CA 95113-3099.

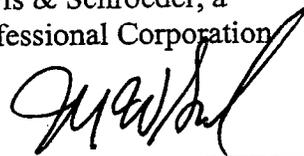
14 If you mail your response to the court for filing, you must mail it early enough so the  
15 court will receive it on or before the date stated above. You must also mail a copy within the  
16 same time limits to: Mark W. Good, Davis & Schroeder, a Professional Corporation, 215 West  
17 Franklin Street, Fourth Floor, P.O. Box 3080, Monterey, CA 93942.

18 If you or your attorney do not take these steps, the court may decide that you do not  
19 oppose the relief sought in this motion, and may enter an order granting relief from the automatic  
20 stay.

21 4. Hearing Location: United States Courthouse, Room 3020, 280 South First Street  
22 San Jose, CA 95113-3099

23 Dated: 7/17/2003

Davis & Schroeder, a  
Professional Corporation



24  
25 Mark W. Good, Attorney for Movants

1 MOTION FOR RELIEF FROM THE AUTOMATIC STAY (Trademark Cancellation)

2 MOVANTS: Drake Elvgren, John T. Dillard, and Louis K. Meisel

3  
4 1. The Property at Issue: Movants move for relief from the automatic stay to continue  
5 Cancellation proceedings against two trademarks owned by the Debtor in the Trademark Trial  
6 and Appeals Board Cancellation No. 92040459.

7 2. Case History: A Voluntary Petition under Chapter 7 was filed on February 27, 2003.  
8 Movants received notice on July 7, 2003<sup>1</sup>, that the debtor was granted a discharge on July 1,  
9 2003. Based on this discharge, and pursuant to 11 U.S.C. § 362(c)(2)(C), it is arguable that the  
10 automatic stay is no longer in effect. However, Movants have filed this motion out of an  
11 abundance of caution, to confirm with the court that they may now proceed forward with their  
12 Trademark Cancellation proceeding.

13 3. Grounds for Relief from Stay: Pursuant to 11 U.S.C. § 362(d)(1), cause exists because,  
14 (1) Movants allege that debtor obtained the Trademarks fraudulently, and have so alleged in  
15 their Petition to Cancel with the Trademark Trial and Appeal Board.<sup>2</sup> (2) During these  
16 Bankruptcy proceedings, Debtor has continued his illegal conduct asserting to people trading in  
17 public domain "Elvgren" artwork that they must have his permission to do so by virtue of  
18 owning the 2 Elvgren trademarks that are the subject of Movants' Cancellation proceedings.<sup>3</sup>  
19 This conduct on the part of the Debtor is a continuing pattern, (as outlined in the Petition to  
20 Cancel) and was the primary reason that Cancellation proceedings were initiated by the Movants.  
21 (3) Under 11 U.S.C. § 523(a)(2)(A) and § 523(a)(2)(B)(i), because the two "Elvgren" trademarks

22  
23 <sup>1</sup> See Good Declaration attached herewith and incorporated by reference as Exhibit A, No. 6

24 <sup>2</sup> See Good Declaration, No. 3

25 <sup>3</sup> See Meisel Declaration attached herewith and incorporated by reference as Exhibit B. Nos. 6-8

1 were obtained fraudulently by the debtor with a signed writing, they are not subject to discharge.

2 (4) If relief from the Automatic Stay is not granted, the Debtor will be allowed to continue his  
3 oppressive conduct against Movants and others, leaving Movants and others who deal in public  
4 domain "Elvgren" art, with no available options to protect themselves against being further  
5 damaged, harmed and harrassed by the Debtor.

6 4. Evidence in Support of Motion: Movants submit the attached Declarations and  
7 supporting documents to provide evidence in support of the Relief from Stay Motion pursuant to  
8 Local Bankruptcy Rules.

9  
10 WHEREFORE, Movant prays that this Court issue an Order granting the following:

11  
12 1. That Relief from the Automatic Stay be granted, with specific regards to proceeding  
13 against the Debtor in the Trademark Trial and Appeal Board, and any other subsequent or related  
14 actions that relate to the two Elvgren trademarks<sup>4</sup> currently owner by the Debtor.

15 2. Additional provisions requested:

16 a. That the Order be binding and effective in this and any future bankruptcy case  
17 commenced by or against the above-named Debtor for a period of 2 years from  
18 the entry of the Order on this Motion.

19 b. That the 10-day stay prescribed by Bankruptcy Rule 4001(a)(3) be waived.

20 3. This order will be binding in any and all chapters following any later conversion of this  
21 case to a case under a different chapter of Title 11 of the United States Code, unless a specific  
22 exception has been provided herein.

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<sup>4</sup> Trademark Registration Number(s) 2,095,296 and 2,097,819 for the mark(s) "ELVGREN" (Stylized); and "ELVGREN" (Stylized) (together "Elvgren marks") owned by the Debtor.

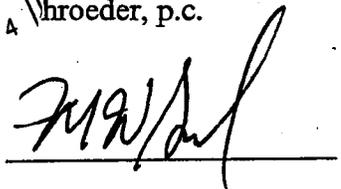
1 Dated:

7/2003

2 submitted,

3 Rén, John T. Dillard, and Louis K. Meisel, Movants

4 hroeder, p.c.



Mark W. Good, Attorney for Movants

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PROOF OF SERVICE

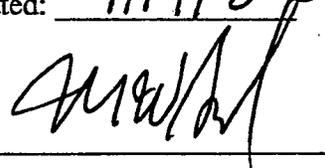
STATE OF CALIFORNIA  
COUNTY OF MONTEREY

1. I am over the age of 18 and not a party to the within action. My business address is as follows: 215 West Franklin Street, Fourth Floor, Monterey, CA 93940.

2. Regular Mail Service: On 7/17/2003 pursuant to Local Bankruptcy Rule 4001-1 and Local Rule 5-6, I served the documents described as: NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (including supporting declarations), and PROPOSED ORDER on the interested parties at their last known address in this action by placing a true and correct copy thereof in a sealed envelope with postage thereon fully prepaid in the United States Mail at Monterey, California, addressed as set forth on the attached list.

3. See attached list for names and addresses of all parties and counsel that have been served.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 7/17/2003  


Mark W. Good

FILED 03/09/02 TAD

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List of persons served:

James Daniel Vancas  
26544 Carmel Rancho Blvd. #1  
Carmel, CA 93923

Debtor in pro se

John W. Richardson  
2901 Park Ave. #C2  
Soquel, CA 95073-2831

Trustee

1 Eric Bakri Boustani, CA SBN 184883  
Mark W. Good, CA SBN 218809  
2 DAVIS & SCHROEDER, a Professional Corporation  
215 West Franklin Street, Fourth Floor  
3 P.O. Box 3080  
Monterey, CA 93942  
4 Telephone (831) 649-1122  
Facsimile (831) 649-0566  
5 Email: mark@cybercounsel.com

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8 UNITED STATES BANKRUPTCY COURT FOR  
9 THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION  
11

12 In Re: VANCAS, JAMES DANIEL, aka )  
13 Dan Vancas, fdba Vanguard Gallery )  
14 )  
15 Debtor )

CASE NO.: 03-51248  
CHAPTER 7

JUDGE: JAMES R. GRUBE

16 ) **DECLARATION OF MARK W. GOOD IN**  
17 ) **SUPPORT OF MOVANT'S MOTION FOR**  
18 ) **RELIEF FROM THE AUTOMATIC STAY**  
19 )

20  
21 I, the undersigned, Mark W. Good, hereby declare under penalty of perjury that the  
22 following information is true and correct to the best of my knowledge:

23 1. I am an attorney licensed to practice in the State of California, as well as The  
24 California Supreme Court, the Ninth Circuit Court of Appeals and Federal District Courts in  
25 California. I have been practicing law since February, 2002 and Intellectual Property law for  
that same period specializing in Internet and Trademark matters.

1  
2           2.     I have represented John Dillard, Drake Elvgren and Louis Meisel ("Movants") in  
3 their petition to cancel the two Elvgren trademarks owned by the Debtor. The trademarks are  
4 actual copies of the signatures of the deceased artist, Gillette Elvgren. Drake Elvgren is the son  
5 of Gillette Elvgren.

6           3.     This petition to cancel was based on allegations that the trademarks had been  
7 obtained fraudulently by the Debtor, James Daniel Vancas. A true and accurate copy of the  
8 original Petition to Cancel, (less exhibits) is attached herewith and incorporated by reference as  
9 Exhibit 1. *See* paragraph Nos. 19 and 20 of Exhibit 1.

10           4.     In their Petition to Cancel, the Movants alleged fraudulent actions and acts of  
11 unfair competition by the Debtor using the "Elvgren" trademarks owned by the Debtor.  
12 Specifically, the Movants alleged that the Debtor claimed ownership of all rights to images  
13 created by the famous pinup artist Gil Elvgren which contained the signature "Elvgren", and that  
14 the Movants could not use the printed words "Gil Elvgren" without paying the Debtor and giving  
15 the Debtor credit. (*See* Exhibit 1, paragraph 15)

16           5.     Movants were subsequently notified by counsel for debtor that the Petition to  
17 Cancel the Debtor's Marks was stayed pursuant to automatic stay imposed by this bankruptcy  
18 filing on March 3, 2003.

19           6.     Movants received notice on July 7, 2003, that the debtor was granted a discharge  
20 on July 1, 2003.

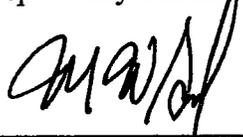
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I declare under penalty of perjury that the foregoing is true and correct. Executed on the 17<sup>th</sup> day of July, 2003 at Monterey, California.

Respectfully Submitted,



Mark W. Good

Davis & Schroeder, a Professional Corporation  
Eric Bakri Boustani, CA SBN 184883  
Mark W. Good, CA SBN 218809  
DAVIS & SCHROEDER  
215 West Franklin Street, Fourth Floor  
P.O. Box 3080  
Monterey, CA 93942

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

Cancellation No. \_\_\_\_\_

**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).

10/07/2000TTAB

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

10/02/2008 11:49  
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



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



10/08/2008 10:00 AM

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2. For the past 5 years Mr. Vancas (the "Debtor") has been harassing me over his claimed ownership of all rights to using and images created by the famous pinup artist Gil Elvgren which contains the signature "Elvgren".

3. Vancas claimed that I could not even use the printed words "Gil Elvgren" without paying him and giving him credit.

4. Vancas has written to and harassed and threatened no fewer than 18 (eighteen) of my publishers and their distributors including but not limited to Random House, Taschen and Bud Plant to name a few.

6. As the leading authority on Elvgren I have been approached by and am aware of at least 30 to 40 others who sell Elvgren prints, calendars, books and other Elvgren items online, who have also been threatened and frightened by Vancas.

7. On or about June 16, 2003, I was called by the manager of a retail store in Santa Cruz, California. She told me that the Debtor (VANCAS, JAMES DANIEL, aka Dan Vancas) had entered her store that day and threatened her and the other employees there. The Debtor angrily told the store employees that they could not display any "Elvgren" artwork without his permission. He then physically removed two "Elvgren" pieces of artwork from the walls inside the store.

8. Subsequent to this call, I was contacted by the President of Collectors Press, Inc., which is headquartered out of Portland, Oregon. He related the same story to me as did the store manager. He said that he was contacted by the store management also, as the work removed from the store's wall by the Debtor was produced by Collectors Press, Inc.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on the  
of July, 2003 at New York, New York.

Respectfully Submitted,

  
Louis K. Meisel

Davis & Schroeder, a Professional Corporation  
Eric Bakri Boustani, CA SBN 184883  
Mark W. Good, CA SBN 218809  
DAVIS & SCHROEDER  
215 West Franklin Street, Fourth Floor  
P.O. Box 3080  
Monterey, CA 93942



10/03/2003TAS

UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Mailed: March 15, 2003

Opposition No. 92040459

DRAKE ELVGREN, JOHN T.  
DILLARD AND LOUIS K.  
MEISEL

v.

VANCAS, J. DANIEL

David Mermelstein, Attorney:

It has come to the attention of the Board that the defendant is involved in a bankruptcy proceeding.

Accordingly, proceedings herein are suspended under the automatic stay provisions the United States Bankruptcy Code, 11 U.S.C. § 362, pending final determination of the bankruptcy case. See *In re Checkers of North America Inc.*, 23 USPQ2d 1451 (Comm'r 1992).

Within twenty days after the final determination of the bankruptcy case, the interested party should notify the Board so that this case may be called up for appropriate action. During the suspension period the Board should be notified of any address changes for the parties or their attorneys.

.oOo.

TTAB

I, PURITA T. EUGENIO, hereby certify that this document is being deposited with the United States Postal Service as Express Mail postage prepaid, in an envelope addressed to COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VA 22202-3514

Signature: Purita T. Eugenio

Printed Name of Person Mailing Document: PURITA T. EUGENIO

Express Mail Label Number: EK471096073US

Date of Deposit: SEPTEMBER 10, 2003

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

Drake Elvgren, an individual;  
John T. Dillard, an individual; and  
Louis K. Meisel, an individual;  
  
Petitioners,  
  
vs.  
  
J. Daniel Vancas,  
  
Registrant.

**Cancellation No.: 92040459  
Registration Nos.: 2095296, and  
2097819**

**Mark(s): "ELVGREN" (Stylized)  
and  
"ELVGREN" (Stylized)**

**COMMISSIONER FOR TRADEMARKS  
2900 CRYSTAL DRIVE  
ARLINGTON, VA 22202-3514**

**TRANSMITTAL LETTER**

In connection with the above-referenced trademark registration cancellation proceedings, transmitted herewith are the following:

(1) Notice of Relief from the Automatic Bankruptcy Stay (4 pages), along with two Exhibits; and

(2) Postcard.

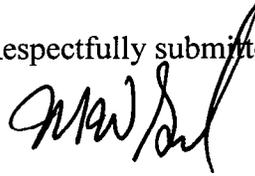


09-12-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #76

Please date-stamp the enclosed postcard and return same to the undersigned in acknowledgment of receipt of all transmitted materials.

Respectfully submitted,



Mark W. Good

MWG:pte  
September 10, 2003  
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