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P.O. BOX 3350, MONTEREY, CALIFORNIA 93942-3350

September 22, 2003

JAMES J. COOK  
DENNIS M. LAW



09-24-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

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OUR FILE NO.2588.06

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ERICA L. SEEMAN

**VIA OVERNIGHT COURIER**

Assistant Commissioner for Trademarks  
BOX TTAB - NO FEE  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

**Re: Drake Elvgren, an individual; John T. Dillard, an individual; and  
Louis K. Meisel, an individual v. J. Daniel Vancas  
Registration Nos: 2095296; 2097819  
Cancellation No. 92040459**

Dear Assistant Commissioner:

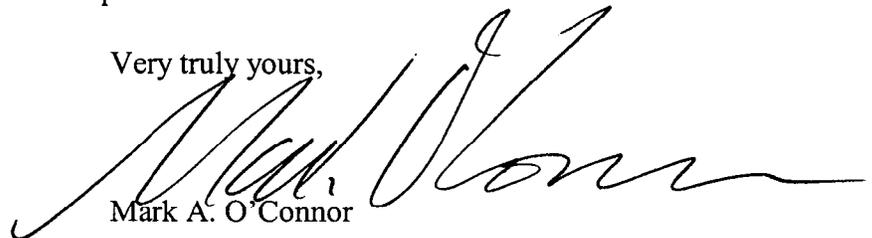
Enclosed are three copies of:

**O'CONNOR LETTER TO JUDGE GRUBE DATED SEPTEMBER 8, 2003**

for filing in this matter. Please indicate your receipt of the letter by date-stamping the enclosed postcard provided and returning it to us.

Thank you for your courtesy and cooperation.

Very truly yours,



Mark A. O'Connor

MAO:ssg  
Enclosures

cc: Mark W. Good, Esq.  
Davis and Schroeder  
215 West Franklin Street, Fourth Floor  
P. O. Box 3080  
Monterey, CA 93942-3080

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**VIA OVERNIGHT DELIVERY**

The Honorable James R. Grube  
Judge, United States Bankruptcy Court  
Northern District of California  
280 South First Street, Room 3020  
San Jose, CA 95113



09-24-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

Re: In re James Daniel Vancas, Debtor  
Chapter 7 Case No. 03-51248-JRG

Meisel, et al. v. Daniel J. Vancas in the Matter of Trademark Registration  
Numbers 2,095,296; 2,097,819 in the United States Patent and Trademark  
Office Before the Trademark Trial and Appeal Board

Dear Judge Grube:

I am counsel of record for James Daniel Vancas in the trademark proceedings on file with the United States Patent and Trademark Office. I have recently learned that Louis K. Meisel through his attorney Mark W. Good applied for relief from the automatic stay and that the hearing on the matter occurred on August 27, 2003 with no appearance by the debtor Vancas. Neither I nor my office received any notice of the motion and the proof of service accompanying it reflects my omission and the omission of all creditors. Apparently Mr. Meisel's attorney mailed a copy to Mr. Vancas and to John Richardson but I have been informed that Mr. Vancas did not receive his copy of the motion until after the hearing had occurred.

Having now obtained a copy of the motion and accompanying declarations of Mark W. Good and Louis K. Meisel in support of such motion, I do not believe the motion was appropriate. Aside from the lack of notice to creditors and other interested persons, the grounds for relief asserted on page 3 of the motion amount to conclusory accusations without evidentiary support. The two declarations relied upon by movants do not contain admissible evidence but instead conclusory remarks and unsubstantiated hearsay made by persons who fail to establish personal knowledge or foundational facts. In the absence of admissible evidence, it does not appear that movants satisfied

98/2281/2003 JTB  
Judge, United States Bankruptcy Court

September 8, 2003

Page 2

their burden of showing cause warranting relief from the automatic stay. They acknowledge at page 3, line 14 of their motion that the requested relief was premised upon allegations rather than evidentiary facts. Moreover and as reflected during the hearing of June 11, 2003, this trademark is an asset of value to which Mr. Vancas has a limited exemption and to which certain creditors assert a security interest. (See also Order entered June 23, 2003.) Notice of the motion should have been given to creditors and other interested parties so that they would have an opportunity to object before movants' attempt to take this asset from the bankruptcy estate.

Movants are not creditors of the Debtor Vancas but representatives and licensees of the Debtor's competitor Brown & Bigelow. Movants gave up all rights to contest the trademark at issue when they had their principal Brown & Bigelow litigate and ultimately settle the issue before the United States District Court for the District of Minnesota (Case No. 98-2281 JRT/FLN). Pursuant to the Settlement Agreement and Mutual Release of Claims signed March 21, 2001 on behalf of Brown & Bigelow and all its representatives (Movants included), it was agreed and determined "that the Trademark Registrations are valid and legally enforceable." (Settlement Agreement at §§ 4 and 10.) A copy of this Settlement Agreement is attached as Exhibit 2 to the Declaration of Debtor in Support of Exemption filed with this Court on June 9, 2003 and relevant portions are also enclosed with this letter.

It is my understanding that Mr. Vancas is objecting to the proposed order granting relief from the automatic stay and that Judge Morgan had previously considered certain of the trademark issues in the course of prior Chapter 13 filings by Mr. Vancas. As attorney of record in the trademark matter before the United States Patent and Trademark Office, I am requesting that this matter be placed on hold until movants provide the requisite notice to interested parties and the court has had an opportunity to consider creditor objections as well as the objections of Mr. Vancas.

Very truly yours,



Mark A. O'Connor

MAO:ssg  
Enclosure

cc: J. Daniel Vancas  
Mark W. Good  
John Richardson, Trustee

SETTLEMENT AGREEMENT  
AND  
MUTUAL RELEASE OF CLAIMS

THIS SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS ("this Agreement") is made by and among Brown & Bigelow, Inc. ("B&B"), J. Daniel Vancas ("Daniel Vancas") and Hillary Vancas ("Hillary Vancas"). Daniel Vancas and Hillary Vancas are sometimes collectively referred to in this agreement as "Vancas."

WHEREAS, Gil Elvgren ("Elvgren") was an artist who became famous for his paintings of pin-up girls;

WHEREAS, Elvgren created art for B&B;

WHEREAS, B&B currently owns valid and enforceable copyrights with respect to some of the art that Elvgren created for B&B;

WHEREAS, the two hundred and ninety-two (292) separate pieces of Elvgren art with respect to which B&B currently owns valid and enforceable copyrights are identified in Exhibit A to this Agreement and the Affidavit that Lisa Joyce filed with the Minnesota Court (defined below) in support of B&B's motion for partial summary judgment and permanent injunction, which art is hereafter referred to in this Agreement as "Elvgren Art";

WHEREAS, on March 1, 1995 and April 1, 1996, B&B and Vancas entered into License Agreements ("the License Agreements"), pursuant to which B&B, subject to certain defined restrictions, granted Vancas a license to reproduce and use certain specified Elvgren Art on canvas and water color paper ("Licensed Illustrations");

WHEREAS, the License Agreements have expired, and Vancas no longer has any rights pursuant to the License Agreements or with respect to the Elvgren Art;

WHEREAS, Vancas applied for and obtained Trademark Registration Nos. 2,095,296 and 2,097,819 ("the Trademark Registrations") from the United States Patent and Trademark Office ("PTO"), the subject of which are block letter and script versions of Elvgren's signature;

WHEREAS, B&B claims that Vancas, individually and doing business as Vanguard Gallery International and Elvgren Fine Art Publishing, have violated the terms of the License Agreements, infringed upon B&B's copyrights to Elvgren Art, and engaged in a variety of other unlawful, unfair and deceptive competitive practices;

WHEREAS, B&B has asserted its claims against Vancas in a lawsuit currently pending before the United States District Court for the District of Minnesota ("the Court") as Case No. 98-2281 JRT/FLN ("the Action");

WHEREAS, Fireman's Fund Insurance Company ("Fireman's Fund") issued an insurance policy to Vancas;

WHEREAS, Vancas has alleged that B&B violated the License Agreements and otherwise engaged in improper conduct;

WHEREAS, B&B and Vancas each deny the claims and allegations that have been asserted against them in the Action or otherwise;

WHEREAS, on December 14, 2000, the Court issued its Memorandum Opinion and Order on Plaintiff's Motion For Partial Summary Judgment and Permanent Injunction ("the Permanent Injunction Order") [a true and correct copy of which is attached to this Agreement as Exhibit B]; and

WHEREAS, B&B and Vancas have, in the interests of settlement and compromise, and in order to avoid the costs and expenses of further litigation, agreed to settle amicably any and all disputes between them.

09/29/2008 11:08:57 AM

NOW THEREFORE, in consideration of the promises and mutual covenants set forth in this Agreement, the receipt and sufficiency of which is hereby expressly acknowledged, B&B and Vancas agree as follows:

1. For purposes of this Agreement, the following definitions shall apply:
  - A. All terms defined in the preceding recitals shall have the same meaning throughout this Agreement.
  - B. "B&B" means the entity known as Brown & Bigelow, Inc.
  - C. "Vancas" means: (1) J. Daniel Vancas; (2) Hillary Vancas; (3) any assumed names under which J. Daniel Vancas and/or Hillary Vancas have or will, in the future, ever conduct business, including without limitation "Vanguard Gallery International" and "Elvgren Fine Art Publishing"; (4) all corporations, joint ventures, partnerships, employers or other entities which, now or in the future, have any relationship or affiliation with J. Daniel Vancas and/or Hillary Vancas; (5) any individual with whom J. Daniel Vancas and/or Hillary Vancas, now or in the future, have any relationship or affiliation, including without limitation any and all of the respective past, present and future directors, officers, employers, employees, independent contractors, agents or other representatives of any of the individuals or entities described in Sections (3) and (4) of this paragraph; and (6) any past, present and future successors, assigns or heirs of any of the individuals or entities described in Sections (1) through (5) of this paragraph.

2. Within seven (7) days after execution of this Agreement, Fireman's Fund shall pay B&B the sum of Two Hundred Thousand Dollars (\$200,000). By signing this Agreement, Daniel Vancas acknowledges and represents that the funds Fireman's Fund will pay to B&B are not his property and he has no entitlement to any portion of those funds.

3. By signing this Agreement, Daniel Vancas and Hillary Vancas, individually and doing business as Vanguard Gallery International and Elvgren Fine Art Publishing, acknowledge and agree that: (a) B&B owns valid and enforceable copyrights to the Elvgren Art; (b) the License Agreements constituted licenses only and did not transfer or assign to Vancas any ownership or other rights with respect to any Elvgren Art; (c) the License Agreements have expired and are no longer in force or effect; (d) Vancas no longer has a license or any other rights pursuant to the License Agreements; and (e) Vancas no longer has any license or other rights with respect to the Elvgren Art.

4. Vancas hereby represents that the Trademark Registrations are valid and enforceable, and that he is the sole owner of the Trademark Registrations. B&B acknowledges that the Trademark Registrations are valid and legally enforceable. Vancas hereby assigns and conveys to B&B a perpetual, royalty free and non-exclusive license to the Trademark Registrations, but solely to the extent needed to allow B&B and its successors, assigns, licensees or others who derive their rights to Elvgren Art from B&B to use, reproduce, copy, license, advertise, sell or otherwise use in any other way the Elvgren Art, and provided that the Elvgren signature on any Elvgren Art is reproduced as it appears, and where it appears, on the Elvgren Art. If Vancas ever has any reason to believe that B&B or any of its successors, assigns, licensees or others who derive their rights to Elvgren Art from B&B have used the Elvgren signatures subject to the Trademark Registrations in any manner other than as permitted by this

or apply in any way to any such claims for relief, actions, suits, damages, demands, debts, liabilities, warranties, judgments, executions, awards or other claims of every kind or nature whatsoever that Vancas may have against B&B for any future violations of this Agreement.

10. By executing this Agreement, B&B does, for itself and any of its parent and subsidiary and affiliated corporations, as well as their respective present and former shareholders, officers, directors, employees, agents, representatives, attorneys, insurers, indemnitors, successors and assigns, hereby absolutely and unconditionally release, acquit and forever discharge Daniel Vancas and Hillary Vancas, as well as any of their respective agents, representatives, attorneys, insurers, indemnitors, successors, heirs and assigns, of and from any and all claims for relief, actions, suits, damages, debts, liabilities, judgments, executions and other claims of every kind and nature whatsoever, whether in law or equity, contract or tort, liquidated or unliquidated, absolute or contingent, known or unknown, suspected or unsuspected, and whether asserted or unasserted in the Action, including without limitation: (a) Any and all claims of every kind and nature whatsoever that were asserted, or could have been asserted, in the Action; (b) any and all claims of every kind and nature whatsoever that relate in any way to the License Agreements; (c) any and all claims of every kind and nature whatsoever that relate in any way to the Elvgren Art; and (d) any and all claims of every kind and nature whatsoever that relate in any way to any alleged use of the Trademark Registrations. The release set forth in this paragraph, however, shall not include or apply in any way to any such claims for relief, actions, suits, damages, demands, debts, liabilities, warranties, judgments, executions, awards or other claims of every kind or nature whatsoever that B&B may have against Vancas (as defined above) for any future violations of this Agreement or the Stipulated Injunction.

will still honor all of the terms and conditions of this Agreement and its exhibits, and he will not undertake to do anything through Hillary Vancas or any of her agents or representatives that he would not otherwise be permitted by this Agreement to do himself. In the event that, within ten (10) days after execution of this Agreement, Hillary Vancas fails or refuses to sign this Agreement or any of its exhibits, she shall not receive the benefit of any of the terms or conditions of this Agreement and any such terms and conditions, and only those terms and conditions as they apply to Hillary Vancas, shall be null and void. The balance of the Agreement, including all terms and conditions relating to Daniel Vancas, shall nonetheless be valid and enforceable as between Daniel Vancas and B&B.

21. This Agreement was reached during a mediation conducted on March 20 and 21, 2001, and the parties hereby acknowledge that this Agreement was reached with all of the disclosures required by Minn. Stat. §572.35, Subd. 1, which disclosures are hereby incorporated in this Agreement as if recited in full.

22. This Agreement may be signed in multiple counterparts, and facsimile signatures shall have the same legal effect as an original signature.

**THE UNDERSIGNED ACKNOWLEDGE THAT THEY HAVE CAREFULLY READ AND FULLY UNDERSTAND ALL TERMS, CONDITIONS AND EXHIBITS OF THIS AGREEMENT; THAT THEY HAVE BEEN REPRESENTED BY THEIR OWN LEGAL COUNSEL IN CONNECTION WITH THIS MATTER; THAT THEY HAVE CONSULTED WITH THEIR OWN LEGAL COUNSEL BEFORE SIGNING THIS AGREEMENT; AND THAT THEY KNOWINGLY AND FREELY AGREED TO ALL TERMS, CONDITIONS AND EXHIBITS OF THIS AGREEMENT.**

Dated: March 21, 2001.

BROWN & BIGELOW, INC.

By: Philip J. Mowbray  
Its: Senior Vice President

Dated: March 21, 2001.

By: J. DANIEL VANCAS, BOTH INDIVIDUALLY AND DOING BUSINESS AS VANGUARD GALLERY INTERNATIONAL AND ELVGREN FINE ART PUBLISHING

Dated: March     , 2001.

By: HILLARY VANCAS, BOTH INDIVIDUALLY AND DOING BUSINESS AS VANGUARD GALLERY INTERNATIONAL AND ELVGREN FINE ART PUBLISHING

**AS TO THE PAYMENT OBLIGATIONS  
DESCRIBED IN PARAGRAPH 2 OF  
THIS AGREEMENT**

Dated: March 21, 2001.

FIREMAN'S FUND INSURANCE  
COMPANY

By: William F. Mufford  
Its: Assistant Vice President