

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, )  
 )  
v. )  
 )  
J. Daniel Vancas, )  
 )  
Respondent. )  
\_\_\_\_\_ )

Registration Nos. 2095296, 2097819  
Cancellation No. 92040459

Marks: "ELVGREN" (Stylized)  
and  
"ELVGREN" (Stylized)



05-16-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #70

ANSWER TO PETITION TO CANCEL REGISTRATION

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

Respondent and registrant J. Daniel Vancas, sued herein as Daniel J. Vancas, hereby responds to the Petition to Cancel Registration and alleges as follows:

Respondent denies the Petitioners' allegations of standing, likelihood of damage or good faith pursuit of cancellation as alleged in the introduction of their Petition. During the 1940 through 1970 time period, Gillette Elvgren sold, assigned, transferred and otherwise relinquished all rights in the art work which is the subject of the Petition. The publishing entity Brown & Bigelow, Inc. acquired the rights Petitioners purport to own. Upon a death in 1980, Gillette

Elvgren had no rights to convey to Petitioner. By the terms of a Settlement Agreement dated March 21, 2001 and sanctioned by the United States District Court for the District of Minnesota (Case No. 98-2281 JRT/FLN), Brown & Bigelow, Inc. acknowledged and agreed on behalf of itself and on behalf of all of its successors, assigns, licensees and others that the Respondent's Elvgren Trademark Registrations are valid and legally enforceable. Brown & Bigelow, for itself and all 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 absolutely and unconditionally released, acquit and forever discharged Respondent from all claims of every kind and nature whatsoever. Said Settlement Agreement bars the Petition herein and the prosecutorial misconduct of Petitioners and provides Respondent with a right to attorneys' fees and costs.

1. In response to the allegations of Paragraph 1, Respondent admits registration and ownership of Registration No. 2095296 on file with the Patent and Trademark Office as of November 5, 1996 and with a registration date of September 16, 1997 as that registration was submitted by Respondent.

2. In response to the allegations of Paragraph 2, Respondent admits registration and ownership of Registration No. 2097819 on file with the Patent and Trademark Office as of November 5, 1996 and with a registration date of September 16, 1997 as that registration was submitted by Respondent.

3. Respondent lacks sufficient information to admit or deny the allegations as set forth in Paragraph 3 of the Petition as the Exhibit A upon which Petitioners rely for their assertions was not attached or incorporated into the Petition provided Respondent.

4. Respondent lacks sufficient information to admit or deny the allegations as set

forth in Paragraph 4 of the Petition as the Exhibit B upon which Petitioners rely for their assertions was not attached or incorporated into the Petition provided Respondent.

5. Respondent is without sufficient information to admit or deny the allegations contained in Paragraph 5 and on that basis denies the allegations contained therein.

6. In response to the allegations contained in Paragraph 6 of the Petition, Respondent admits that certain Elvgren works are in the public domain, certain are protected by copyright and that many are owned by Brown & Bigelow, Inc. By Agreement dated March 21, 2001, Brown & Bigelow, Inc. has acknowledged and conceded that the trademark which is the subject of this Petition is valid and legally enforceable and also acquired a limited right to use the trademark.

7. In response to the allegations contained in Paragraph 7 of the Petition, Respondent admits the existence of a retail market for variations of Elvgren's works and Registrant's creation of such market.

8. In response to the allegations contained in Paragraph 8 of the Petition, Respondent admits that certain Elvgren works have been reproduced with the printed versions of Elvgren's signature and Registrant's creation of such market. Respondent denies the remaining allegations.

9. In response to the allegations contained in Paragraph 9 of the Petition, Respondent admits registering and being the owner of the trademark registration numbers 2095296 and 2097819 as filed with the Patent and Trademark Office. As the Petition provided Respondent does not include Exhibits C and D referenced within Paragraph 9 of the Petition, Respondent is without sufficient information and belief to respond to the documentation allegedly incorporated by reference and without such information denies the balance of the allegations.

10. In response to the allegations contained in Paragraph 10 of the Petition,

Respondent admits being the Registrant and owner of Registration No. 2095296 and Registration No. 2097819. With regard to the balance of the allegations contained herein, Respondent lacks sufficient information and denies these remaining allegations.

11. In response to allegations contained in Paragraph 11 of the Petition, Respondent admits submitting the exhibits for the two trademark applications as filed with the Patent and Trademark Office. As the Petition provided to Respondent does not contain any Exhibit E or any other exhibits alleged to be incorporated by reference, Respondent lacks sufficient information concerning said allegations and Respondent hereby denies the remaining allegations as set forth in Paragraph 11.

12. In response to the allegations contained in Paragraph 12 of the Petition, Respondent admits the requisite assertion of trademark ownership and notice but denies each and every allegation of impropriety contained therein.

13. In response to the allegations contained in Paragraph 13 of the Petition, Respondent admits the requisite assertion of trademark ownership and notice but denies each and every allegation of impropriety or standing contained therein.

14. In response to the allegations contained in Paragraph 14 of the Petition, Respondent admits the requisite assertion of trademark ownership and notice denies each and every allegation of impropriety or standing contained therein.

15. In response to the allegations contained in Paragraph 15 of the Petition, Respondent admits the requisite assertion of trademark ownership and notice and admits contacting the FBI after Meisel, Dillard and Petitioners' agents/representatives/co-conspirators threatened Respondent with grave and serious harm. Except as expressly admitted, Respondent denies each and every allegation contained therein.

16. In response to the allegations contained in Paragraph 16 of the Petition, Respondent denies each and every allegation contained therein.

17. In response to the allegations contained in Paragraph 17 of the Petition, Respondent denies each and every allegation contained therein.

18. In response to the allegations contained in Paragraph 18 of the Petition, Respondent denies each and every allegation contained therein.

19. In response to the allegations contained in Paragraph 19 of the Petition, Respondent denies each and every allegation contained therein.

20. In response to the allegations contained in Paragraph 20 of the Petition, Respondent denies each and every allegation contained therein.

21. In response to the allegations contained in Paragraph 21 of the Petition, Respondent denies each and every allegation contained therein.

#### **AFFIRMATIVE DEFENSES**

1. As a first, separate, and affirmative defense to the Petition to Cancel Registration, Respondent alleges that the Petition does not set forth sufficient facts to state a claim upon which relief can be granted against Respondent.

2. As a second, separate, and affirmative defense to the Petition to Cancel Registration, Respondent alleges that the Petitioners lack standing to bring this Petition or assert the claims contained therein.

3. As a third, separate, and affirmative defense to the Petition to Cancel Registration, Respondent alleges that Petitioners waived their rights, if any.

4. As a fourth, separate, and affirmative defense to the Petition to Cancel Registration, Respondent alleges that Petitioners' claims are barred by the doctrine of estoppel.

5. As a fifth, separate, and affirmative defense to the Petition to Cancel Registration, Respondent alleges the Doctrine of Laches bars Petitioners' claims.

6. As a sixth, separate, and affirmative defense to the Petition to Cancel Registration, Respondent alleges that Petitioners' claims are barred by the Doctrine of Unclean Hands.

7. As a seventh, separate, and affirmative defense to the Petition to Cancel Registration, Respondent alleges that Petitioners' claims are barred by the statute of limitations and administrative deadlines.

8. As an eighth, separate, and affirmative defense to the Petition to Cancel Registration, Respondent alleges that Petitioners' claims are barred by Doctrines of Res Judicata and Collateral Estoppel.

9. As a ninth, separate and affirmative defense to the Petition to Cancel Registration, Respondent alleges that Petitioners are equitably and contractually barred from asserting their claims and that their assertion of such claims is in violation of the aforementioned Settlement Agreement and rules and standards governing these proceedings.

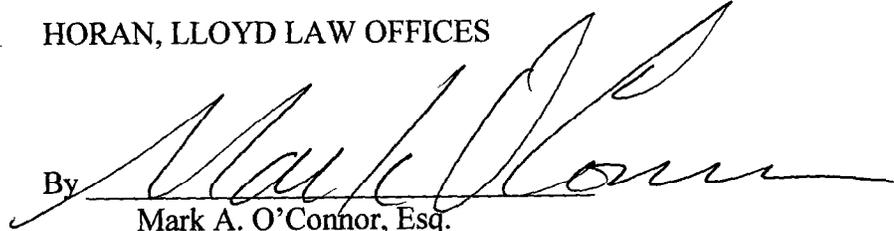
WHEREFORE, Respondent prays that the Petition be overruled, denied, stricken and dismissed in its entirety with all costs and legal fees being awarded to Respondent pursuant to the

terms of the Settlement Agreement, the Federal Rules of Civil Procedure, the Rules of the PTO and the TTAB and all governing statutes and case law.

DATED: May 16, 2002.

HORAN, LLOYD LAW OFFICES

By



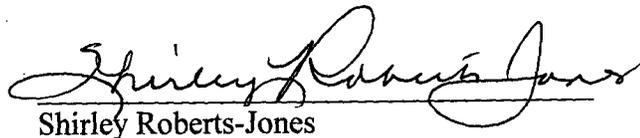
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Attorneys for Respondent  
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CERTIFICATE OF SERVICE

This is to certify that I have this day served the following named persons with the foregoing Answer to Petition to Cancel Registration by placing a true and exact copy of said document in the United States mail, addressed to said counsel at his offices, with sufficient postage thereupon to carry the same to its destination at the following address:

Eric Bakri Boustani, Esq.  
Davis and Schroeder  
215 West Franklin Street, 4<sup>th</sup> Floor  
Monterey, CA 93940

on 16<sup>th</sup> day of May, 2002.



Shirley Roberts-Jones

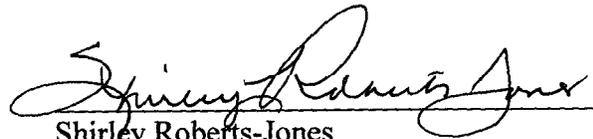
CERTIFICATE OF MAILING BY "EXPRESS MAIL"

"Express Mail" mailing label number: ET 057453238 US

I hereby certify that the foregoing Answer to Petition to Cancel Registration is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service in an envelope addressed to:

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

on this 16<sup>th</sup> day of May, 2002.

  
Shirley Roberts-Jones

TTAB

LAW OFFICES OF  
HORAN, LLOYD, KARACHALE, DYER, SCHWARTZ,  
LAW & COOK  
INCORPORATED

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

May 16, 2002

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**VIA EXPRESS MAIL**

Assistant Commissioner for Trademarks  
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Arlington, Virginia 22202-3513

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**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:

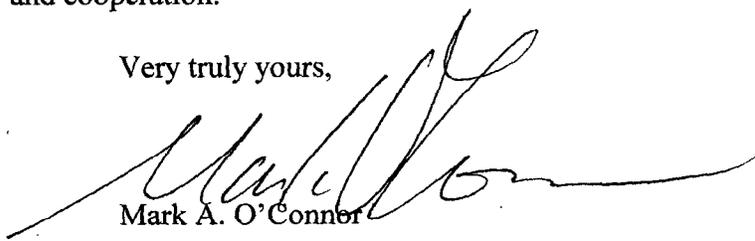
Enclosed are an original and three copies of:

**ANSWER TO PETITION TO CANCEL REGISTRATION**

for filing in the above-entitled matter. Please affix your filing stamp to the copies and return two endorsed copies of the Answer to Petition in the stamped, self-addressed envelope provided.

Thank you for your courtesy and cooperation.

Very truly yours,



Mark A. O'Conner

MAO:srj  
Enclosures