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

Proceeding	92071980
Party	Plaintiff Elevated Faith LLC
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Submission	Motion for Summary Judgment Yes , the Filer previously made its initial disclosures pursuant to Trademark Rule 2.120(a); OR the motion for summary judgment is based on claim or issue preclusion, or lack of jurisdiction. The deadline for pretrial disclosures for the first testimony period as originally set or reset: 08/02/2020
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Date	03/05/2020
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ELEVATED FAITH LLC,)	
)	
Petitioner,)	Proceeding/
)	Cancellation No. 92,071,980
vs.)	
)	Registration No. 5,187,052
GODISGHL, LLC,)	
)	
)	
Registrant.)	
)	

PETITIONER’S MOTION FOR SUMMARY JUDGMENT

Petitioner Elevated Faith LLC (“Petitioner”) hereby moves for summary judgment pursuant to Rule 56, Fed. R. Civ. P., and Trademark Rule 2.127(e), sustaining this cancellation against Reg. No. 5,187,052 for the mark G V V (the “Registered Mark”) issued to Registrant GODISGHL, LLC, (“Registrant”).

As set forth in the attached memorandum, this Motion is made on the grounds that: (i) the Registered Mark fails to function as a mark, (ii) the Registered Mark is or has become generic, (iii) the Registered Mark is deceptively misdescriptive, (iv) Registrant is not the rightful owner of the Registered Mark for the identified goods, (v) deceptiveness, and (vi) fraud on the United States Patent and Trademark Office (“USPTO”). Accordingly, Petitioner respectfully submits that this cancellation against Reg. No. 5,187,052 must be sustained pursuant to this Motion as a trial on the matter would entail unnecessary fees and waste the Board’s scarce resources.

DATED: March 5, 2020.

Respectfully submitted,
Rockridge Venture Law

/Kevin Christopher/

Kevin Christopher
116 Locust St. STE E
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(615) 997-0723

Attorney for Petitioner Elevated Faith LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the forgoing PETITIONER'S
MOTION FOR SUMMARY JUDGMENT was delivered through electronic filing in ESTTA to:

John R. Sommer
sommer@stussy.com

DATED: March 5, 2020.

Respectfully submitted,
Rockridge Venture Law

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Attorney for Petitioner Elevated Faith LLC

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

ELEVATED FAITH LLC,)	
)	
Petitioner,)	Proceeding/
)	Cancellation No. 92071980
vs.)	
)	Registration No. 5,187,052
GODISGHL, LLC,)	
)	
)	
Registrant.)	
)	

**MEMORANDUM IN SUPPORT OF
PETITIONER’S MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Petitioner Elevated Faith LLC (“Petitioner”), respectfully submits this memorandum in support of its Motion for Summary Judgment (the “Motion”). Pursuant to Fed. R. Civ. P. 56(a), Petitioner herein presents grounds for summary adjudication on Counts One, Two, and Five of its First Amended Petition to Cancel (the “Amended Petition”) [Doc. 14]. For the following reasons, Petitioner prays that Reg. No. 5,187,052 (the “Registration”) for the mark G V V (the “Registered Mark”) by Registrant GODISGHL, LLC, (“Registrant”) be judged ineffective and improperly registered, and henceforth immediately cancelled.

II. BACKGROUND

Petitioner set forth in its Amended Petition [Doc. 14] in legally sufficient detail its basis for standing and grounds for relief. Petitioner, for sake of brevity, will not repeat the entirety of its averments and claims for relief, but hereby incorporates the allegations of the Amended Petition by reference in this Memorandum.

On March 16, 2015, the Registrant submitted in its § 1(b) application (the “Application”) the drawing:



for “baseball caps and hats; bucket caps; hooded sweatshirts; shirts; socks; sweaters; sweatshirts; T-shirts; tank-tops.” Pet’r’s Am. Pet. ¶ 4. The Registrant claimed the literal elements in its Application consisted of the letters G and V. In describing the Registered Mark the Applicant stated, “The mark consists of the letter G, the symbol greater than, an inverted V, and the letter V.” Nearly two years later on February 1, 2017, the Registrant submitted within its Statement of Use T-shirt specimens emblazoned with the Registered Mark on the left breast portion of said T-shirts, without any additional showings of labels, tags, or retail displays.

On August 8, 2019, Petitioner filed its Petition to Cancel the Registration, amended on January 31, 2020, on the grounds that: (i) the Registered Mark fails to function as a mark; (ii) the Registered Mark is an improper registration by a non-owner; (iii) the Registered Mark is an improper registration as a deceptive mark; (iv) Registrant fraudulently obtained registration; and, (v) the Registered Mark fails to function as a mark.

III. MATERIAL, UNDISPUTED FACTS

A. The Registered Mark was Created and Used by Others Prior to Registrant’s Registration.

In its Amended Petition, Petitioner submitted evidence that on August 8, 2013, musician Nick Jonas posted a photo to Instagram of his new tattoo (the “Jonas Tattoo”), which is nearly, if not exactly, identical to the Registered Mark. *See* Pet’r’s Am. Pet. Ex. 5. Petitioner also submitted numerous depictions of the Registered Mark in use by other parties prior to Registrant’s March

16, 2015, § 1(b) filing date. Petitioner has shown that the Registered Mark began appearing on t-shirts sold by other Christian retailers and published on Instagram posts dating back to mid- 2014, long before Registrant's submission of its Application. *See* Pet'r's Am. Pet. Exs. 6-7. Further, as shown through even a cursory Internet search the Registered Mark was widely circulated on artwork and in tattoos prior to the Registrant's filing date. *See* Pet'r's Am. Pet. Ex. 8.

B. The Registered Mark is a Popularly Recognizable Christian Symbol, Recognizable as Such Prior to Registration.

In its Answer [Doc. 4], Registrant admitted that its Registered Mark is an image consisting of symbols representing as shorthand the phrase "God is Greater than the Highs and Lows." Reg.'s Answer ¶ 4. Registrant has further recognized, and even promoted, the religious symbolism of the Registered Mark through its #godisghl Instagram account. As presented in the Amended Petition, Registrant has posted photos of the Registered Mark as a tattoo next to other popular religious symbols like the dove and cross, associated the Registered Mark with biblical scripture like Romans 8:39, and has affiliated the Registered Mark with the hashtags #verse, #godisgreaterthanthehighsandlows, #religion, and #romans839. *See* Pet'r's Am. Pet. Ex. 8.

To be clear, the Registrant for several years has consistently posted on Instagram pictures of the mark in connection with references to Romans 8:39 and the Christian faith. *See* Exhibit 1. It is also important to highlight that Registrant's Instagram account is #godisghl, likely because other hashtags linked to the Registered Mark but not Registrant were already in use at the time of Registrant's Instagram activation, including:

#godisgreaterthanthehighsandlows;
#godisgreaterthanhighsandlows;
#godisgreaterthanmyhighsandlows;
#godisgreaterthanthehighandlows; and,
#godisgreaterthanthehighsandthelows.

See Exhibit 2.

Further publicly available evidence supports that the Registered Mark was a recognizable Christian symbol prior to the Application filing. The Jonas Tattoo, when originally posted to Instagram in 2013, was captioned, “God is Greater than the Highs and Lows,” and has received over 180,000 “like” responses. Pet’r’s Am. Pet. Ex. 5. Petitioner has submitted numerous accounts of the public associating the Registered Mark with the phrase “God is Greater than the Highs and Lows,” other popular religious symbols, biblical scripture, and hashtag variations of “God is Greater than the Highs and Lows”. See Pet’r’s Am. Pet. Ex. 8–10.

C. ARGUMENT

A. The Applicable Standard for Summary Judgment.

Summary judgment is an appropriate method for disposing of claims in which there are no genuine issues of material fact in dispute, thus leaving the case to be resolved as a matter of law. See Fed. R. Civ. P. 56(a). The purpose of summary judgment is to avoid an unnecessary trial where additional evidence would not reasonably be expected to change the outcome. See *Pure Gold, Inc., v. Syntex (U.S.A.), Inc.*, 739 F.2d 624, 626, 222 USPQ 741 (Fed. Cir. 1984). Petitioner has the burden of demonstrating by a preponderance of evidence the absence of any genuine issue of material fact and that it is entitled to summary judgment as a matter of law. See *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Sweats Fashions, Inc. v. Pannill Knitting Co. Inc.*, 833 F.2d 1560, 1562, 4 USPQ2d 1793 (Fed. Cir. 1987).

B. Petitioner has Standing to Cancel GODISGHL’s Registration.

“Standing is a threshold inquiry directed solely to establishing a plaintiff’s interest in the proceeding. The purpose in requiring standing is to prevent litigation where there is no real controversy between the parties, i.e. where a plaintiff is no more than a mere intermeddler.” *Harjo*

v. Pro Football Inc., 30 USPQ2d 1828, 1830 (TTAB 1994). In order to establish standing in a petition to cancel action, Petitioner need only show that it will be damaged by the maintenance of the subject registration. See TBMP §303. Petitioner is a seller of apparel featuring the Registered Mark, and therefore has an interest in continuing to freely make use of the Registered Mark. Pet'r's Am. Pet. ¶ 3. Furthermore, on March 13, 2019, Petitioner received a cease and desist letter from Respondent's counsel accusing Petitioner of infringement. See Exhibit 3. This demand alone is sufficient to demonstrate Petitioner's standing. See *Miller v. Miller*, 105 USPQ2d 1615, 1619 (TTAB 2013) (cease and desist letters provide evidence that plaintiff has business interests that have been affected, i.e., a real interest in the proceeding.). See also *Ipco Corp. v. Blessings Corp.*, 5 USPQ2d 1974, 1977 (TTAB 1988); *Apollo Med. Extrusion Techs., Inc. v. Med. Extrusion Techs., Inc.*, 123 USPQ2d 1844, 1848 (TTAB 2017). "Once standing is established, the [plaintiff] is entitled to rely on any of the grounds set forth in ... the Lanham Act which negate [defendant's] right to its subject registration." *Jewelers Vigilance Comm., Inc. v. Ullenberg Corp.*, 823 F.2d 490, 2 U.S.P.Q.2d 2021, 2023–24 (Fed. Cir. 1987).

A. The Registered Mark Fails to Function as a Mark Because of its Commonplace and Ornamental Use.

A generic mark is one which the public does not understand to be a trademark, in that it identifies goods coming from a single source. See *Martahus v. Video Duplication Servs., Inc.*, 3 F.3d 417, 422 (Fed. Cir. 1993). A commonplace term, message, or expression widely used by a variety of sources that merely conveys an ordinary, familiar, well-recognized concept or sentiment fails to function as a trademark sufficient for registration. See generally *In re Eagle Crest Inc.*, 96 USPQ2d 1227, 1229 (TTAB 2010). Such a commonplace mark requires some extra layer of distinctiveness that constitutes a source identifier. *Id.*

The critical inquiry in determining whether a designation functions as a mark is how the designation would be perceived by the relevant public. *See* 15 U.S.C. § 1064; *Bayer Co. v. United Drug Co.*, 272 F. 505, 509 (S.D.N.Y. 1921); *Baroness Small Estes, Inc. v. Am. Wine Trade, Inc.*, 104 U.S.P.Q.2d 1244 (T.T.A.B. 2012). Public perception can be determined by looking to the specimens and other evidence of record showing how the designation is actually used in the marketplace. *See In re Eagle Crest Inc.*, 96 USPQ2d at 1229. To be a valid mark, this phrase must be used in a manner calculated to project to purchasers or potential purchasers a single source or origin for the goods. *In re Volvo Cars of North America Inc.*, 46 USPQ2d 1455, 1459 (TTAB 1998). Common expressions used in an ornamental manner frequently do not serve a trademark function. *See, e.g., In re Peace Love World Live, LLC*, 127 USPQ2d 1400, 1403 (TTAB 2018) (“The phrase I LOVE YOU conveys a term of endearment comprising the bracelet and, thus, it is ornamental. It does not identify and distinguish the source of the bracelet, especially where there is so much jewelry decorated with the term I LOVE YOU in the marketplace.”).

The specimens of use submitted with the Application underlying the Registration display the Registered Mark on the Registrant’s claimed goods in an ornamental manner. The specimens consist of a photograph of a t-shirt, displaying the Registered Mark on the front breast pocket area of the shirt. Pet’r’s Am. Pet. Ex. 3. Numerous third-party retailers have produced and sold goods, including t-shirts, hats and jewelry, bearing the decorative or ornamental shorthand of “God is Greater than the Highs and Lows” and formatives thereof. Pet’r’s Am. Pet. Ex. 7, 9. The USPTO has refused other similar registrations due to the registered mark failing to function as a mark. *See* Pet’r’s Am. Pet. Ex. 4 (Examiner refused to register word mark “God is Greater than the Highs and Lows” – the exact meaning of the Registered Mark admitted by Registrant – on the justification that it is considered a widely used commonplace message).

This is a case in which widespread ornamental use of the Registered Mark by third parties “is part of the environment in which the [mark] is perceived by the public and ... may influence how the [mark] is perceived.” *In re Hulting*, 107 USPQ2d 1175, 1178 (TTAB 2013) (quoting *In re Tilcon Warren Inc.*, 221 USPQ 86, 88 (TTAB 1984)). The existence of hundreds of easily and publicly identifiable third-party retailers and tens of thousands of public uses of the Registered Mark in connection with the goods recited in the Registrations supports a finding that the Registered Mark fails to indicate a single origin or source, least of all the Registrant. *See In re Eagle Crest Inc.*, 96 USPQ2d at 1230 (“Because consumers would be accustomed to seeing this phrase [ONCE A MARINE, ALWAYS A MARINE] displayed on clothing items from many different sources, they could not view the slogan as a trademark indicating source of the clothing only in applicant. It is clear that clothing imprinted with this slogan will be purchased by consumers for the message it conveys.”); *Damn I’m Good, Inc. v. Sakowitz, Inc.*, 514 F. Supp. 1357, 212 USPQ 684 (S.D.N.Y. 1981) (where plaintiff used DAMN I’M GOOD as a message engraved on a bracelet and commenced use of the term on a hangtag only after competitors began to produce similar products, court held that “plaintiff does not hold a valid trademark.”).

The Registered Mark fails to function as a trademark in connection with Registrant’s registered goods. It is merely a commonplace collection of symbols universally recognized for the information conveyed. In its rejection of U.S. Serial No. 88322995 (the “‘995 application”), the USPTO clearly stated that the spelled-out version of the Registered Mark “is a slogan or term that does not function as a trademark or service mark to indicate the source of applicant’s goods and to identify and distinguish them from others...[it] is a commonplace term, message, or expression widely used by a variety of sources that merely conveys an ordinary, familiar, well-recognized concept or sentiment.” Pet’r’s Am. Pet. Ex. 4. There could be no clearer statement of

the USPTO's application of the law than this rejection. In its Application for the Registered Mark, the Registrant failed to disclose the commonly understood meaning of the mark. Consequently, the Application examiner spent only a few moments searching combinations of "g," "v," and "v," to evaluate the distinctiveness and functionality of the mark. *See* Exhibit 4. However, the Registrant has consistently since at least the time of registration supplemented display of the Registered Mark with reference to Romans 8:39 and the spelled out "God is Greater than the Highs and Lows." Exhibit 1.

The Registered Mark is incapable of identifying a single source for its claimed goods because Registrant is not the exclusive, or the substantially exclusive, source of retail clothing goods offered in connection with the Registered Mark. As stated by the '995 application examiner, "GOD IS GREATER THAN THE HIGHS AND LOWS is [a] commonly used religious inspirational message." Pet'r's Am. Pet. Ex. 4. Petitioner has shown that this message was commonly used prior to Registrant's Application, and that countless individuals and retailers understand its common usage without the slightest thought of or connection to the Registrant. The Registered Mark fails to function as a trademark in connection with the registered goods and its Registration should be cancelled under the Trademark Act 14(1), 1, 2, and 45.

B. The Registered Mark is or has Become Generic as a Religious Symbol Used by Many.

The primary significance of a registered mark to the relevant public is the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used. 15 U.S.C. §1064(c); *See H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 531-32 (Fed. Cir. 1986). The more commonly a phrased is used, the less likely that the public will use it to identify

only one source and the less likely that it will be recognized by purchasers as a trademark. *See Reed v. Amoco Oil Co.*, 611 F. Supp. 9, 225 USPQ 876, 877 (M.D. Tenn. 1984). Religious symbols may present particular issues of informational or descriptive significance. *See* TMEP § 1202.17(e)(iv). Not that this has stopped the surge of applications seeking to register the latest popular Christian phrase to reach the cultural lexicon. For instance, following the virality of the phrase “What Would Jesus Do” in the late 1990s, there were several attempts to register the mark “WWJD,” none of which were admitted to the Principal Register. *See* U.S. Serial Nos. 75460394, 75377664, 75323159, 75323158, and 75332220.

As Registrant admits, the evidence submitted by the Petitioner very clearly shows that the Registered Mark is shorthand for the phrase “God is Greater than the Highs and Lows,” which is a declaration associated with and used by those of the Christian faith. There is no dispute that the Registered Mark is a familiar Christian expression, and as such it is the type of expression that should remain free for all to use. Petitioner’s evidence shows that the Registered Mark is commonly used in an informational and ornamental manner on t-shirts and various other retail items produced and/or sold by others without reference to the Registrant. For instance, Petitioner’s search for the slogan on the Etsy retailer website retrieved nearly two thousand results of sellers offering shirts, hats, jewelry and other goods for sale imprinted with the Registered Mark. Pet’r’s Am. Pet. Ex. 9. Moreover, as presented in this Memorandum and in the Amended Petition, the Registrant in nearly every promotional publication of the Registered Mark cross references God, Jesus, Romans 8:39, the Holy Bible, and/or religion. *See* Exhibit 1; *see also* TMEP § 1202.17(c)(iii) (“If a universal symbol fails to function as a source indicator because it is informational or conveys an informational message, and it appears along with other non-source-indicating matter, the examining attorney must issue a failure-to-function refusal.”).

Because consumers would be accustomed to seeing the Registered Mark displayed on clothing items from many different sources, and particularly in connection with a religious expression, they could not view the Registered Mark as a trademark indicating source of the clothing only in Registrant. Clothing imprinted with the Registered Mark is widely purchased by consumers for the message the mark conveys, not as a source identifier to Registrant. Registrant is not entitled to appropriate the collection of symbols captured by the Registered Mark, preventing competitors from using it to promote the sale of their own clothing as Registrant has attempted to do with the Petitioner. Even “as a matter of competitive policy, it should be close to impossible for one competitor to achieve exclusive rights” in common phrases or slogans. 1 McCarthy on Trademarks and Unfair Competition § 7:23 (4th ed. 2010).

The manner of use on Registrant’s specimens shows that the Registered Mark is merely conveying an informational statement. The specimens consist of a photograph of a t-shirt, inadequately displaying the Registered Mark on the front breast pocket area of the shirt. Pet’r’s Am. Pet. Ex. 3; TMEP § 904.03(a). This manner of use and conveyance of information is no different from the thousands of other retail products surveyed in this Memorandum and the Amended Petition. As used on Registrant’s goods, the Registered Mark would merely be viewed as an informational message rather than as a trademark identifying the source of Registrant’s clothing. *See* TMEP § 1202.17(c)(i)(A). As the USPTO summarized in its rejection of the ‘995 application, “Because consumers are accustomed to seeing this term or expression commonly used in everyday speech by many different sources, they would not perceive it as a mark identifying the source of applicant’s goods and/or services but rather as only conveying an informational message.” Pet’r’s Am. Pet. Ex. 4. The Registrant’s failure to alert the examiner of the Registered Mark to the meaning of the collective symbols should not be overlooked, such that by gaming the

system the Registrant can be permitted to monopolize what is clearly an unregistrable, commonplace mark of a religious nature. Upholding the Registered Mark has the practical effect of allowing individuals and companies to monopolize religious symbols that would directly limit the free exercise of religion. Neither a cross, Star of David, nor the Registered Mark may be exclusively limited to particular retailers such that consumers may only source claimed goods from those retailers. In that environment, trademark owners could prejudicially exclude certain groups from displaying or using such religious marks, or exploitatively inflate the cost of such marks to limit certain classes of people from using or displaying the marks. Effectively, this case is not merely about an improperly registered mark, but about the potential of a rights holder to limit fellow retailers like Petitioner from providing goods that consumers use to express their core religious beliefs and values.¹

C. The Registered Mark is an Improper Registration by a Non-Owner.

Before an application based on an intent to use in commerce under 15 U.S.C. §1051(b) can reach registration, the applicant must file an amendment to allege use or a statement of use which states that the applicant is the owner of the mark. *See* 15 U.S.C. §§1051(b)(3)(A)–(B). An “application that is not filed by the owner is void.” *See* TMEP § 1201.02(b); *In re Wella A.G.*, 787 F.2d 1549, 229 USPQ 274, 277 (Fed. Cir. 1986) (“Under section 1 of the Lanham Act, only the

¹ Petitioner believes that this trademark registration is clearly prohibited not only under TMEP § 1202.17(e)(iv) but also under the Religious Freedom Restoration Act of 1993 (“RFRA”), precluding federal laws from hindering religious freedoms. *See Gonzales v. O Centro Espirita Beneficente União do Vegetal*, 546 U.S. 418 (2006); *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014); *Kennedy v. Bremerton School District*, (Alito, J., concurring). Under RFRA, the USPTO cannot, absent a compelling government interest, employ a practice of trademark registration of a religiously symbolic or themed trademark that results in the burdening of an individual’s exercise of religion. Here, the Petitioner has been accused of trademark infringement through the sale of apparel emblazoned with Christian symbolism commonly known to reference a particular bible verse. *See* Exhibit 1; Exhibit 5, § 5. Maintenance of the asserted mark would definitely result in continued legal costs to Petitioner associated with Registrant’s assertions, and potentially, even unjustly, result in damage liabilities borne by Petitioner. Effectively, Petitioner would be fined for its evangelistic practices. Moreover, Petitioner would be precluded from evangelistic practices though the commercial sale and distribution of the disputed design. *See* Exhibit 5 § 8.

owner of a mark is entitled to apply for registration.”). Where the registrant is not, and was not, at the time of the filing of its application for registration the rightful owner of the registered mark, a petitioner may seek cancellation of the registered mark. *See* TBMP § 309.03(c)(1); *Cf., e.g., Levi Strauss & Co. v. R. Josephs Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993) (where opposer was asserting that applicant’s mark is a descriptive term which cannot be owned exclusively by anyone, rather than alleging that someone other than applicant is the owner of the term as a mark) *recon. den.*, 36 USPQ2d 1328 (TTAB 1994).

As previously argued in this Memorandum and the Amended Petition, the Registered Mark should not have achieved its registration because of its inability to serve the purpose of trademark registration—serving as a source-identifier to the public—due to the extensive use of many other Christian retailers using it as a commonplace expression of a religious nature. *See In re Eagle Crest, Inc.*, 96 USPQ2d at 1230; *In re Volvo Cars of North America Inc.*, 46 USPQ2d at 1460–61 (holding DRIVE SAFELY not registrable for automobiles and automobile parts because the mark would be perceived merely as an “everyday, commonplace safety admonition”); *In re Remington Prods., Inc.*, 3 USPQ2d 1714, 1715–16 (TTAB 1987) (holding PROUDLY MADE IN USA not registrable for electric shavers because the mark would be perceived merely as a common message encouraging the purchase of domestic-made products); TMEP § 1202.04(b). “The more commonly a [term or expression] is used, the less likely that the public will use it to identify only one source and the less likely that it will be recognized by purchasers as a trademark.” *In re Hulting*, 107 USPQ2d at 1177 (quoting *In re Eagle Crest, Inc.*, 96 USPQ2d at 1229); TMEP § 1202.04(b).

Consumers are accustomed to seeing the Registered Mark; indeed, it is sold on apparel by thousands of vendors without any reference to the Registrant. Accordingly, despite its registration

the public does not view the Registered Mark as a mark identifying the source of Registrant's goods but rather as one merely conveying information, in particular a biblical reference. Petitioner's evidence demonstrates that the Christian community, as well as celebrities, popularized this symbol and brought it into the mainstream well before the Registrant's commercial activities. Pet'r's Am. Pet. Exs. 5 - 7. This evidence, coupled with the fact that countless other third parties use this symbol in connection with their goods, precludes any possible association of the Registered Mark with one particular source.

The Registrant in 2017 entered into an active trade market of consumer items featuring the Registered Mark. The Registrant in submitting its Application made no mention of other retailers nor the commonly understood informational message conveyed by the collection of symbols comprising the Registered Mark. The Registrant is not the owner of the mark, but merely an exploiter of a popular interest design, and therefore its registration of the Registered Mark is improper and void.

D. CONCLUSION

For the foregoing reasons, Petitioner requests that its Motion be granted and that summary judgment be entered, sustaining this petition to cancel against GODISGHL's Registration Serial No. 5,187,052 for the mark G V V.

DATED:

Respectfully submitted,
Rockridge Venture Law

/Kevin Christopher/

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Attorney for Petitioner Elevated Faith LLC

EXHIBIT 1



godisghl Follow

91 posts 958 followers 131 following

G>AV™ Apparel

God is Greater than the Highs & Lows

Supporting charities worldwide

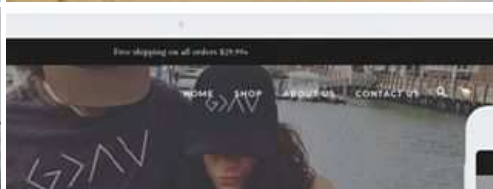
Tag us at #godisghl

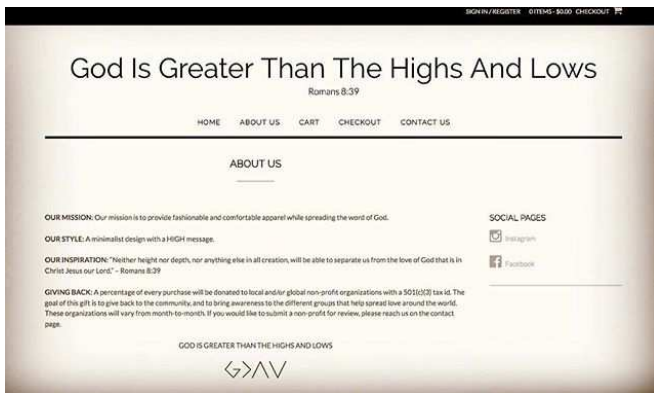
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godisghl Finalizing some items with the website. Should be up and running in about a week. If you'd like to purchase an item before then, contact us for details. God bless. #godisghl

157w



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FEBRUARY 22, 2017

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#godisghl #god #clothing
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 #godisgreaterthanthehighsandlo
 ws #picoftheday #instagod
 #religion

152w Reply



105 likes

MARCH 30, 2017

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godisghl "This tattoo means a lot to me, my whole life I've struggled with depression and other things, and through good times and bad, I know God has been there every step of the way. Whenever I look at this tattoo, it reminds be that He is there. That He is greater. He is greater than the highs and the lows. Which gets me through the really bad days and even the good. We are so lucky to have



123 likes

MAY 17, 2017

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JUNE 1, 2017

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EXHIBIT 2



#godisgreater

2

Related Hashtags #savedbygrace #godsloveneverfails #prayerchangesthings :

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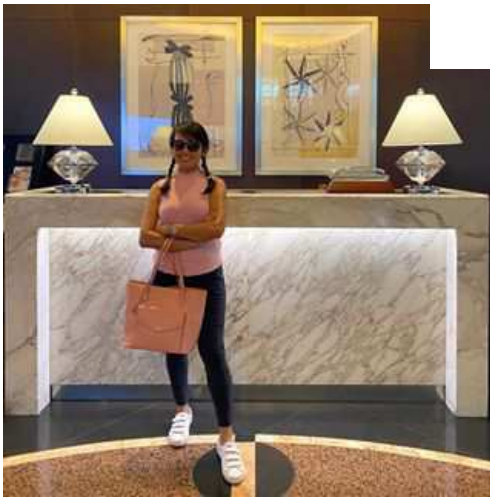
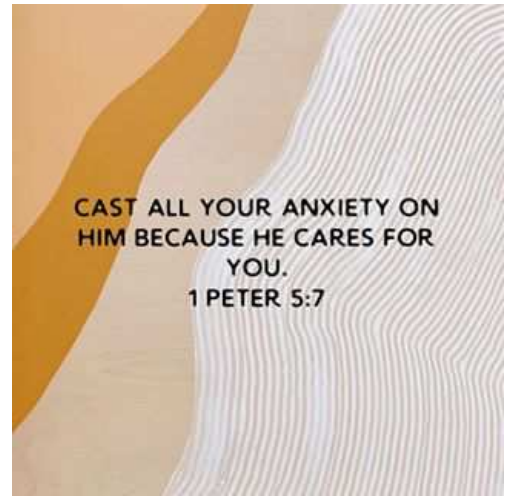


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 New start.
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 New opportunities.
 New intentions.
 New results.

How you start your day is how you live your day. Your life is a result of your choices. Set the bar high & get to it!





#godisgreaterthanhighsandlows

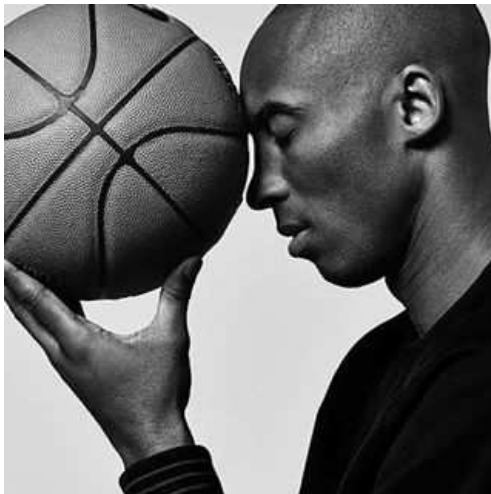
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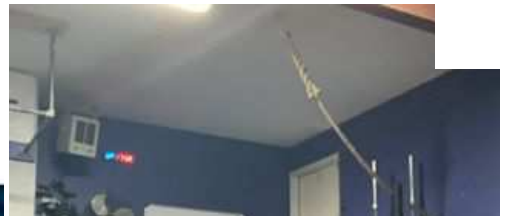
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ying to argue about
od with your grandma.





#godisgreaterthanmyhighsandlows

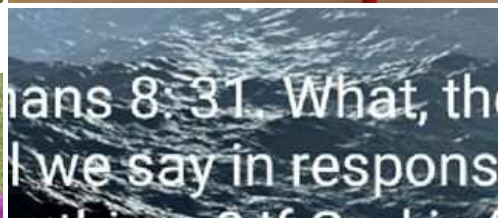
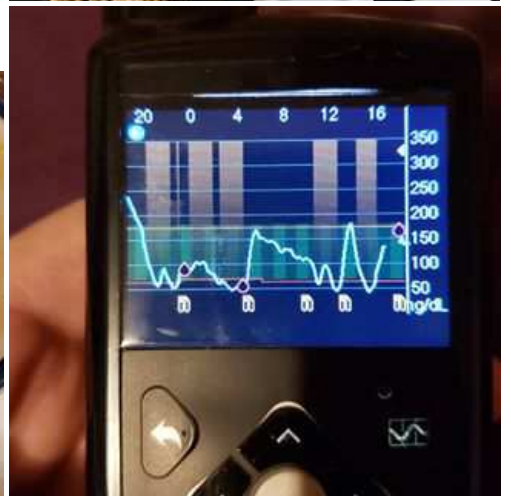
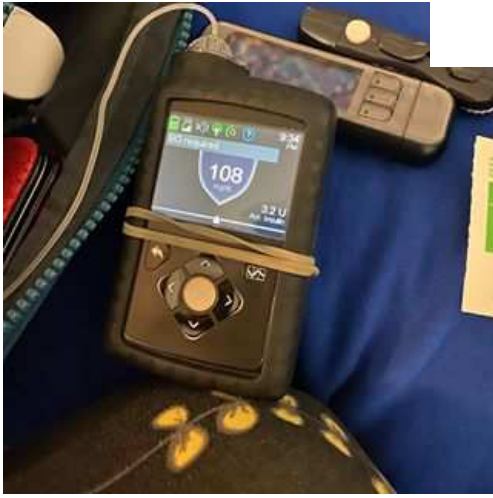
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godisgreaterthanthehighan...

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1,170 followers

4,402 following

He Is Greater

God knows what He's doing.

to help heal the broken-hearted, to give strength to those who feel no hope. to show them Jesus' love.

POSTS

TAGGED



Justin Walker @JustinCWalker1

Pray for the people who have hurt you the most- and watch what God will do.

8:55 PM · 2/16/20 · Twitter for iPhone

429 Retweets 2,076 Likes

I say we let God be God.

God created heaven and earth in six days. Who's to say he can't change your life in one ? Stay faithful.

Isn't it funny? When it came to choosing his disciples Jesus picked the people you & i would have missed.

I hope you know today that He didn't die for the beautiful & dressed up you that sits in church or reads their bible everyday. He died for the you that cries at night & wakes up too late for church & makes unforgivable mistakes & goes weeks without thanking him. Don't forget that

4/1/18, 4:46 PM

4,593 Retweets 20.1K Likes



mackenzie * @mackenziecoss

if we are halfway entertaining God, we shouldn't wonder why He's not showing up the way we want Him to.

God is not a halfway God. He's an all or nothing God. He isn't going to halfway do something. if you want Him to show up, YOU have to show up.

be hot or cold.

1:37 PM · 2/27/20 · Twitter for iPhone

Tweet



Lyndsey Joy @okaylyndsey

One day Paul was killing Christians, the next day he was a Christian. One day Peter was a fisherman, the next day he

is the reason someone believes in

CHRIST DID NOT DIE FOR YOU TO PICK AND CHOOSE

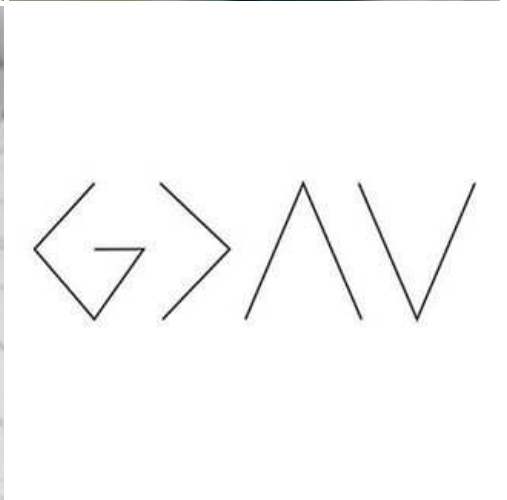


#godisgreaterthanthehighsandthelows

428 posts

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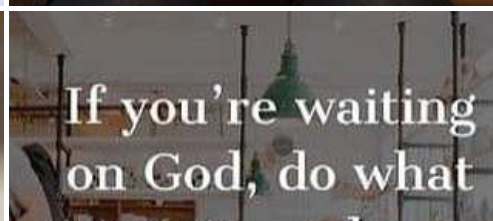
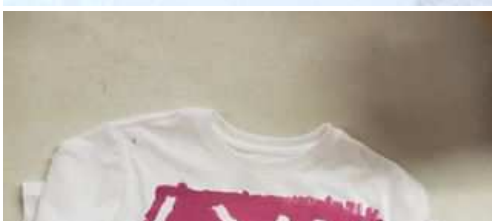
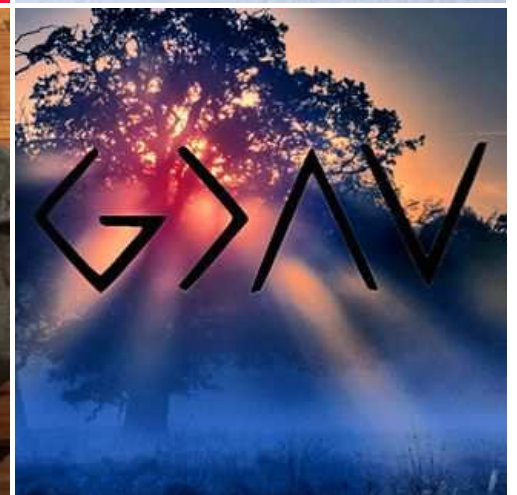
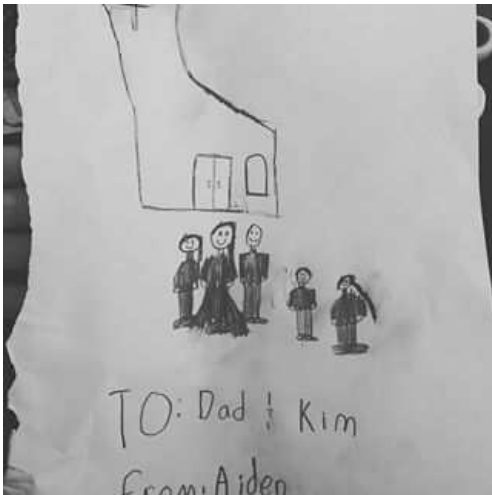


EXHIBIT 3

Law Offices
MANN & ZARPAS, LLP

15233 VENTURA BOULEVARD, SUITE 714
SHERMAN OAKS, CALIFORNIA 91403

TELEPHONE: (818) 789-0510

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WWW.MANNZARPAS.COM

WRITER'S E-MAIL
czarpas@mannzarpas.com

March 13, 2019

Via Email & U.S. Mail

josh@routinesocial.com
hello@elevatedfaith.com

ELEVATED FAITH
118 E Main Street
Winneconne, WI 54986

Re: Our Clients: Joseph & Jeremy Guindi
Infringement of Trademark Registration No. 5187052

Gentleman:

This law firm is legal counsel to Joseph & Jeremy Guindi (collectively our “client”), owners of the trademark, “G > A V” (design only) in Class 025 for clothing, namely baseball caps and hats, bucket caps, hooded sweatshirts, shirts, socks, sweaters, sweatshirts, t-shirts, and tank-tops (the “Mark”). The purpose of this letter is to put you on formal and final notice of our client’s United States Patent and Trademark Registration No. 5187052, for the Mark, a copy of which is enclosed. Furthermore, this is to advise you that your actions constitute an infringement of our client’s Mark, in violation of our clients’ intellectual property rights as described below.

Specifically, Elevated Faith is selling apparel bearing a design mark that is identical or nearly identical to our clients’ Mark (the “Infringing Mark”). We have confirmed that sales of goods bearing the Infringing Mark are being made via the website www.elevatedfaith.com. It is clear that your use of the Infringing Mark is in violation of our client's federally registered ownership rights and is likely to cause confusion in the marketplace as to the source of the goods bearing the Infringing Mark. As a result, such use constitutes trademark infringement and unfair competition under U.S. law. The Lanham Act and related laws provide numerous remedies for trademark infringement and dilution, including, but not limited to, preliminary and permanent injunctive relief, money damages and where intentional infringement is shown, attorneys' fees and possible treble money damages.

Our client has provided our office with a series of emails that put you on notice of the infringement as early as January 30, 2018. We also understand that you are under the mistaken impression that our clients needs a Copyright Registration in order to enforce their rights against you. We suggest that

you immediately consult with legal counsel as copyright ownership plays no role in determining whether there is trademark infringement. The facts here are simple: Elevated Faith is selling goods in Class 025 clothing bearing the Infringing Mark for which it is liable for trademark infringement of our client's intellectual property rights.

For these reasons, on behalf of our client, demand is hereby made that Elevated Faith (and any and all affiliates, persons or entities acting in concert with or on its behalf) immediately cease and desist use of the Infringing Mark on apparel.

We further demand as follows:

1. that your company, and all those in active concert and participation with it, immediately cease and desist from ordering, purchasing, displaying, advertising, offering for sale, selling, distributing, disposing of and otherwise dealing in and with all articles of apparel bearing the Infringing Mark, and otherwise from infringing or violating our client's exclusive rights;

2. that your company immediately withdraw from the web site www.elevatedfaith.com each and every article of apparel bearing the Infringing Mark, and place all unsold articles bearing the Infringing Mark in a safe and secure place of storage until this matter is finally resolved;

3. that within 10 days after the date of this letter, you provide this firm with a written accounting of each and every item of apparel bearing the Infringing Mark, stating:

- a. quantities manufactured by your company
- b. quantities sold by your company to its buyers
- c. quantities returned by your buyers to your company
- d. quantities in your inventories;

4. that within 10 days after the date of this letter, you provide this firm with the names, addresses, telephone numbers, facsimile numbers, e-mail addresses and contact person(s) of the buyers, suppliers, freight forwarders, carriers (land, ocean, air) and Customs agents or brokers of the above referenced articles of apparel bearing the Infringing Mark;

5. that within 10 days after the date of this letter, you provide this firm with copies of all purchase orders, commercial invoices, Customs entry forms, bills of lading, waybills, delivery receipts, warehouse and storage records, shipping and distribution records, sales records, returns records and inventories of and relating to all items of apparel bearing the Infringing Mark?

6. that within 10 days after the date of this letter, you provide this firm with a written accounting of all gains, profits and advantages made by your company from the sales and dealings

Law Offices

MANN & ZARPAS, LLP

Elevated Faith

March 13, 2019

Page 3

of articles of apparel bearing the Infringing Mark.

We further require that you provide us with a written confirmation of your acquiescence to these demands within ten (10) business days of receipt of this letter. While we do not expect the above requests to be accomplished within ten (10) business days, you must nonetheless provide written confirmation of your acquiescence along with an indication of the reasonable efforts that will be shortly undertaken in order to comply with said requests.

Given we have now placed you on (further) notice of our client's federally registered Mark, your continued use of the Mark in connection with use of the Infringing Mark on apparel would be deemed an intentional and willful violation of our client's pre-established and well-known rights.

Although our client would prefer to resolve this matter amicably, if we do not hear from you within the above-prescribed time, our client will be forced to pursue all available legal and other remedies to put an immediate end to, and obtain compensation for, your infringing conduct. However, we fully expect that as you have been fully advised of our client's rights and the seriousness of our allegations, you will realize it is in your best interest to comply with our demands amicably rather than engaging in a protracted and costly dispute to no favorable end on your part.

Govern yourself accordingly.

LAW OFFICES OF MANN & ZARPAS, LLP



CRYSTAL A. ZARPAS

CAZ:aew

cc: Joseph Guindi
Jeremy Guindi

United States of America

United States Patent and Trademark Office



Reg. No. 5,187,052

Registered Apr. 18, 2017

Int. Cl.: 25

Trademark

Principal Register

Guindi, Jeremy (UNITED STATES INDIVIDUAL)
2315 East Larkwood treet
West Covina, CA 91791

Guindi, Joseph (UNITED STATES INDIVIDUAL)
2315 East Larkwood Street
West Covina, CA 91791

CLASS 25: Baseball caps and hats; Bucket caps; Hooded sweatshirts; Shirts; Socks; Sweaters; Sweatshirts; T-shirts; Tank-tops

FIRST USE 1-27-2017; IN COMMERCE 1-27-2017

The mark consists of the letter "G", the symbol greater than, an inverted "V", and the letter "V".

SER. NO. 86-565,390, FILED 03-16-2015
MICHELE LYNN SWAIN, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

EXHIBIT 4

*** User:mswain1 ***

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	1	0	1	1	0:01	86565390[SN]
02	2	0	2	2	0:03	"gvv"[bi,ti] or "g vv"[bi,ti] or "gv v"[bi,ti] or "g v v"[bi,ti]

Session started 6/19/2015 2:46:11 PM

Session finished 6/19/2015 2:55:24 PM

Total search duration 0 minutes 4 seconds

Session duration 9 minutes 13 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 86565390

EXHIBIT 6

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

ELEVATED FAITH LLC,)	
)	
Petitioner,)	Proceeding/
)	Cancellation No. 92,071,980
vs.)	
)	Registration No. 5,187,052
GODISGHL, LLC,)	
)	
)	
Registrant.)	
)	

AFFIDAVIT OF JOSH GANDER

I, Josh Gander, pursuant to 28 U.S.C. § 1746, hereby swear:

1. I am member and president of Elevated Faith LLC (“Elevated Faith”), an e-commerce company that sells apparel, jewelry, and stickers at www.elevatedfaith.com.
2. Under my direction, Elevated Faith’s stated mission as displayed on its website is to sell products with inspirational and Christian messages allowing Elevated Faith consumers “to tell friends and strangers about their faith.”
3. My ownership and operation of Elevated Faith is an extension of my Christian faith. I feel that I am engaging in evangelism and advancing the Christian faith by providing means for consumers of Elevated Faith to purchase apparel with Christian messages and to publicly display and wear that apparel as a profession of faith.
4. Under my direction, Elevated Faith tithes its profits through donations to faith-based organizations.

5. GODISGHL LLC, the owner of U.S. Trademark Registration No. 5187052 (the “‘052 Mark”), and brothers Joseph and Jeremy Guindi prior to establishment of their limited liability company and assignment of the ‘052 Mark thereto, have accused my company of trademark infringement of the ‘052 Mark related to Elevated Faith’s sales of apparel emblazoned with the symbols G > ^ V (the “Christian Symbols”).
6. I recognize, and customers of Elevated Faith recognize, the Christian Symbols as conveying the information “God is Greater than the Highs and Lows” and referring specifically to the biblical passage of Romans 8:39, which states, “Neither height nor depth, nor anything else in all creation, will be able to separate us from the love of God that is in Christ Jesus our Lord.” This passage is highlighted in the item descriptions of products featuring the Christian Symbols on Elevated Faith’s website.
7. I am aware that GODISGHL LLC has also referenced this biblical passage on its Instagram page next to their own products featuring the Christian Symbols.
8. I believe that GODISGHL LLC’s attempts to enforce the ‘052 Mark against Elevated Faith constitute attempts to monopolize the display, use, and sale of products that feature the Christian Symbols commonly understood as a shorthand for an inspirational Bible verse. I further believe that if GODISGHL LLC is allowed to maintain the ‘052 Mark and assert infringement against Elevated Faith and other similarly situated sellers, then the rights of companies and individuals to freely engage in evangelistic practices of their Christian faith will be hindered. Finally, I believe that such unmitigated infringement assertions can lead to manipulation of the meaning of and distribution of this biblical verse and inspirational message when it is exclusively held in the hands of a single retailer.

I declare under penalty of perjury that the foregoing is true and correct.

s/Josh Gander
Member, Elevated Faith LLC

Certificate of Service

I hereby certify that on March 5, 2020, I electronically filed the foregoing document with STTA. I also certify that the foregoing document is being served this day on all counsel identified below via transmission of Notices of Electronic Filing generated by ESTTA or in some other authorized manner.

s/Kevin Christopher _____
Kevin Christopher BPR #034845
116 Locust St. STE E
Cookeville, TN 38501
Attorney for Plaintiffs