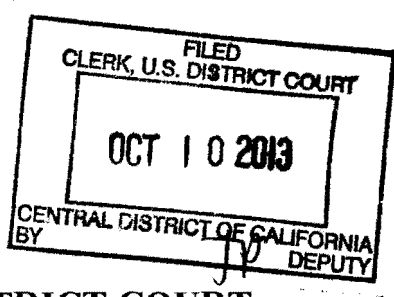


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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

11 ELVH, INC., a California corporation, Case No. CV 13-7524 MPW
12 Plaintiff,
13 vs.
14 KELLY VAN HALEN, an individual,
15 Defendant.

- 16 COMPLAINT FOR:
- 17 1. INFRINGEMENT OF REGISTERED TRADEMARK (SECTION 32(1) OF THE LANHAM ACT);
 - 18 2. TRADEMARK DILUTION (SECTION 43(C) OF THE LANHAM ACT);
 - 19 3. FALSE DESIGNATION (SECTION 43(A) OF THE LANHAM ACT);
 - 20 4. COMMON LAW TRADEMARK INFRINGEMENT;
 - 21 5. UNFAIR COMPETITION (CAL. BUS. & PROF. CODE § 17200);
 - 22 6. COMMON LAW UNFAIR COMPETITION;
 - 23 7. CALIFORNIA STATE TRADEMARK DILUTION (CAL. BUS. & PROF. CODE § 14247);
 - 24 8. DECLARATORY ACTION

25 DEMAND FOR TRIAL BY JURY

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COMPLAINT

ELVH, Inc. (hereinafter “Plaintiff”), by and through its undersigned counsel, for its Complaint against Kelly Van Halen (hereinafter “Defendant”) states the following allegations made on belief that the same are likely to be proven after further investigation and discovery.

NATURE OF THE ACTION

This is an action for trademark infringement, trademark dilution, false designation of origin and unfair competition arising out of Defendant’s unauthorized and confusingly similar use of Plaintiff’s federally registered VAN HALEN trademarks and service marks as part of Defendant’s “Kelly Van Halen” mark. Plaintiff also seeks a declaratory judgment that Defendant’s eventual use of Kelly Van Halen for construction services and interior design services would be an infringing use and therefore subject to injunctive relief Plaintiff seeks in this case.

JURISDICTION AND VENUE

1. Jurisdiction of the Court is invoked under 28 USC §1121 and §1338(a) as an action arising under Acts of Congress relating to trademarks, namely, the Lanham Act, 15 USC §1051 *et seq.* This Court has pendent jurisdiction over claims arising under state law pursuant to 28 USC §1338(b) and 28 §USC 1367(a).

2. Venue is proper in this district pursuant to 28 USC § 1391(b) and (c), because this is the judicial district in which the Defendant resides and a substantial part of the events giving rise to Plaintiff’s claims have occurred and are continuing to occur in the District.

THE PARTIES

3. Plaintiff is a corporation organized and doing business under the laws

1 of the State of California.

2 4. Defendant, Kelly Van Halen, is an individual who resides in the County
3 of Los Angeles, State of California.

4
5 **FACTS**

6 5. Plaintiff is the intellectual property holding company of the world
7 famous rock band Van Halen and enforces the band's intellectual property rights
8 worldwide.

9 6. Since 1978, Van Halen has continuously used the trademark and
10 service mark VAN HALEN in interstate commerce for a wide variety of
11 entertainment related services and a wide variety of goods.

12 7. Warner Bros. Records released Van Halen's eponymous debut record
13 in 1978. Since that time, the record *Van Halen* has sold over ten million copies in
14 the United States and been awarded the Diamond certification by the Recording
15 Industry Association of America (RIAA). The RIAA awards certification based on
16 the number of albums and singles sold through retail and other ancillary markets—
17 diamond is the RIAA's highest award.

18 8. Van Halen's album *1984* has also achieved sales of over ten million
19 copies and has been awarded the Diamond certification by the RIAA.

20 9. According to the RIAA, Van Halen is the nineteenth best-selling artist
21 of all-time with sales of over 56 million albums in the United States alone.

22 10. Van Halen was inducted into the Rock & Roll Hall of Fame in 2007.

23 11. Plaintiff is the owner of the following four (4) federal trademark and
24 service mark registrations ("Marks"):

25 a. VAN HALEN for "printed matter for publicity and promotional
26 material, namely, posters; fold-out poster books; postcards; mounted and unmounted
27 photographs and photographic prints; newsletters; stickers; calendars; decals and
28 temporary tattoos; printed concert tickets; printed backstage passes; trading cards;

1 books, trivia books, tour books, encyclopedias, comic books, picture books,
2 magazines, all in the field of music and entertainment; tablature books; sheet music
3 books; book covers” in Int’l Class 16. Fed. Reg. No. 2853393 registered on the
4 Principal Register on June 15, 2004, with dates of use since February 3rd 1978, and

5 b. VAN HALEN for “clothing namely, shorts; caps; hats; jerseys;
6 blouses; shirts; tank-tops; T-shirts, namely long sleeve and short sleeve T-shirts;
7 polo shirts; woven and knit shirts; thermal shirts; sweaters; jogging and warm-up
8 suits; sweat shirts; sweat pants; sweat bands; headbands; bandanas; jeans; pants;
9 ties; jackets; gloves; scarves; neckwear” in Int’l Class 25. Fed. Reg. No. 2866540
10 registered on the Principal Register on July 27, 2004 with dates of use since March
11 3rd 1978, and

12 c. VAN HALEN & Design for “musical sound recordings, musical
13 video recordings” in Int’l Class 9 with dates of use since March 1, 1978; “musical
14 instruments, musical instruments accessories, namely, guitar picks” in Int’l Class 15
15 with dates of use since June 1, 2007; “stickers; tablature books; sheet music books”
16 in Int’l Class 16 with dates of use since May 30, 2005; “clothing, namely caps, hats,
17 t-shirts” in Int’l Class 25 with dates of use since July 7, 2007; “entertainment
18 services, namely, live performances and appearances by a vocal and instrumental
19 group, and live performances and appearances featuring prerecorded music by a
20 vocal and instrumental group; fan club services; providing a website featuring
21 entertainment information, namely, reviews, articles, interviews, music videos,
22 music charts, personal biographies, diaries, information on music instruments, tour
23 dates, games, trivia, access to memorabilia, photographs, video clips, and audio
24 clips, all available via a global computer network” in Int’l Class 41 Fed. Reg. No
25 3701926 with dates of use since June 30, 2007, and

26 d. VAN HALEN for “entertainment services, namely live
27 performances and appearances, and live performances and appearances featuring
28 prerecorded music by a vocal and instrumental group; fan club services; providing a

1 website featuring entertainment information, namely reviews, articles, interviews,
2 music videos, music charts, personal biographies, diaries, information on music
3 instruments, tour dates, games, trivia, access to memorabilia, photographs, video
4 clips, and audio clips, all available via a global computer network” in Int’l Class 41
5 Fed. Reg. No. 2868311 with dates of use since March 3, 1978.

6 e. Copies of all four registrations are attached as exhibits to this
7 complaint.

8 12. As a result of the widespread use in interstate commerce by Plaintiff
9 and its licensees of the Marks in connection with a wide variety of goods and
10 services, the Marks have acquired extensive goodwill, have developed a high degree
11 of distinctiveness, are recognized throughout the United States as well known and
12 famous and recognized as identifying high quality goods and services which have
13 their origin with or have been authorized by Plaintiff.

14 13. On January 25, 2010, Defendant filed in the United States Patent &
15 Trademark Office (“PTO”) two separate multi-class intent-to-use trademark
16 applications for the mark KELLY VAN HALEN for:

17 a. Armoires; Chairs; Dining tables; End tables; Entertainment
18 centers; Pillows; Sofas; Tables; Upholstered furniture in Int’l Class 20.

19 b. Bed blankets; Blanket throws; Children’s blankets; Lap blankets
20 in Int’l Class 24.

21 c. Bathing suits; Blouses; Coats; Coverups; Dresses; Hats; Jackets;
22 Jeans; Leggings; Lounge pants; Pajamas; Pants; Ponchos; Robes; Scarves; Shirts;
23 Sweaters; Vests in Int’l class 25.

24 d. Building construction; Construction management; Construction
25 of environmentally responsible residential real property; Custom construction and
26 building renovation; Housing services, namely, repair, improvement, and
27 construction of residential real property; Installation and maintenance of solar
28 thermal installations; Residential and building construction consulting in Int’l Class

1 37 (herein “construction services”).

2 e. Design of specialty interior and exterior environment settings;
3 Interior design services; Interior design services including space planning, furniture
4 selection, material and surface selection in Int’l Class 42 (herein “interior design
5 services”).

6 14. Plaintiff filed with the PTO’s Trademark Trial and Appeal Board an
7 opposition (Opposition No. 91195961) against both KELLY VAN HALEN
8 applications but not against Defendant’s KVH mark for Int’l Class 24 and Class 25
9 items, which has since registered.

10 15. The basis of the opposition is the same arguments found in this
11 Complaint and the Opposition proceeding is currently pending before the Trademark
12 Trial and Appeal Board.

13 16. Defendant’s mark KELLY VAN HALEN is confusingly similar to
14 Plaintiff’s VAN HALEN Marks in sound, appearance and commercial impression.

15 17. Defendant’s goods are apparel, blankets and other fashion accessories.
16 They are either identical or closely related to the goods sold by Plaintiff or represent
17 a natural zone of expansion for Plaintiff and such goods would travel and be
18 promoted through the same channels of trade for sale to, and use by, the same class
19 of purchasers.

20 18. Defendant’s use of the mark KELLY VAN HALEN in connection with
21 her goods is likely to cause confusion, mistake or deception as to the source of
22 origin of Defendant’s goods in that the public, the trade and others are likely to
23 believe that Plaintiff’s goods are: (a) the same as Plaintiff’s; or (b) provided by,
24 sponsored by, approved by, licensed by, affiliated with or in some other way
25 legitimately connected to Plaintiff.

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1 **FIRST CAUSE OF ACTION**

2 **(Infringement of a Registered Trademark)**

3 **Section 32(1) of the Lanham Act, 15 U.S.C. §1114(1)**

4 19. Plaintiff repeats and realleges each and every allegation in the
5 foregoing paragraphs as fully set forth herein.

6 20. Without authorization from Plaintiff, Defendant is using in interstate
7 commerce infringing imitations of Plaintiff's Marks in connection with the
8 promotion and sale of apparel, blankets and fashion accessories.

9 21. Defendant's conduct is likely to have caused and will continue to cause
10 confusion and mistake among consumers and others as to the source, origin, or
11 sponsorship of Defendant's products.

12 22. Defendant's conduct is willful and an intentional violation of Plaintiff's
13 rights.

14 23. Defendant's conduct constitutes trademark infringement under Section
15 32(1) of the Lanham Act, 15 U.S.C. §1114.

16 **SECOND CAUSE OF ACTION**

17 **(Trademark Dilution)**

18 **43(c) of the Lanham Act, 15 U.S.C. §1125(c)**

19 24. Plaintiff repeats and realleges each and every allegation in the
20 foregoing paragraphs as fully set forth herein.

21 25. Plaintiff's VAN HALEN word marks are famous, as the term is used in
22 15 U.S.C. §1125(c), and were famous before Defendant's first use of KELLY VAN
23 HALEN as a trademark or service mark based on the extensive nationwide use,
24 advertising and promotion.

25 26. Defendant's actions, as described above, are likely to continue to dilute
26 the distinctive quality of Plaintiff's VAN HALEN word marks by blurring in
27 violation of Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c).

28

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1 **THIRD CAUSE OF ACTION**

2 **(False Designation)**

3 **43(a) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A)**

4 27. Plaintiff repeats and realleges each and every allegation in the
5 foregoing paragraphs as fully set forth herein.

6 28. Defendant's actions, as described above, are likely and will continue to
7 cause confusion or mistake or to deceive as to the origin, sponsorship, or approval of
8 Defendant, her products, services and commercial activities by or with Plaintiff, and
9 thus constitute trademark infringement, false designation of origin, passing off, and
10 unfair competition in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C.
11 §1125(a)(1)(A).

12 **FOURTH CAUSE OF ACTION**

13 **(Common Law Trademark Infringement)**

14 29. Plaintiff repeats and realleges each and every allegation in the
15 foregoing paragraphs as fully set forth herein.

16 30. By reason of Plaintiff's continuous use and promotion of Plaintiff's
17 VAN HALEN Marks, as well as the distinctiveness of those marks, consumers
18 associate and recognize the marks as representing a single source or sponsor of
19 goods, and therefore Plaintiff's trademarks are protectable at common law.

20 31. Plaintiff owns and enjoys common law trademark rights in the VAN
21 HALEN Marks, which rights are superior to any rights that Defendant may claim in
22 and to those trademarks with respect to Defendant's products. Plaintiff's trademarks
23 are inherently distinctive and have acquired secondary meaning with the trade and
24 consuming public, and/or have become distinctive in the minds of customers, in that
25 Plaintiff's trademarks are associated with Plaintiff.

26 32. Defendant's use of Plaintiff's trademarks in connection with the
27 advertising, distribution, marketing, promotion, offer for sale, and/or sale of
28 Defendant's products is likely to cause confusion and, upon information and belief,

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1 has caused confusion as to the source of Defendant's products, in that customers will
2 be likely to associate or have associated such products as originating with Plaintiff,
3 all to the detriment of Plaintiff.

4 33. By reason of Defendant's actions alleged herein, Plaintiff has suffered,
5 and will continue to suffer, irreparable injury to its rights, and has suffered, and will
6 continue to suffer, substantial loss of goodwill and loss in the value of Plaintiff's
7 trademarks, unless and until Defendant is enjoined from continuing her wrongful
8 acts.

9 34. By reason of Defendant's actions alleged herein, Plaintiff has been
10 damaged in an amount not presently ascertained, and such damage will continue and
11 increase unless and until Defendant is enjoined from continuing her wrongful acts.

12 FIFTH CAUSE OF ACTION

13 **THE**
Hollywood
14 (Unfair Competition)
Cal. Bus. & Prof. Code § 17200, *et seq.*
15 **REPORTER**

16 35. Plaintiff repeats and realleges each and every allegation in the
17 foregoing paragraphs as fully set forth herein.

18 36. Defendant's actions complained of herein are unlawful and/or
19 fraudulent business acts or practices, constituting unfair competition in violation of
20 California Business and Professions Code § 17200, *et seq.*

21 37. As a direct, proximate, and foreseeable result of Defendant's wrongful
22 conduct as alleged above, Plaintiff has suffered injury and is entitled to relief,
23 including disgorgement of all revenues, earnings, profits, compensation, and
24 benefits obtained by Defendant as a result of her unlawful and/or fraudulent
25 business acts or practices.

26 38. Defendant's unlawful and/or fraudulent business acts or practices
27 described above are a serious and continuing threat to Plaintiff, and if Defendant is
28 allowed to continue her wrongful conduct, Plaintiff will suffer further immediate
and irreparable injury, loss, and damage. In the absence of preliminary and

1 permanent injunctions, Defendant will continue to engage in the wrongful conduct
2 described above.

3 **SIXTH CAUSE OF ACTION**

4 **(Common Law Unfair Competition)**

5 39. Plaintiff repeats and realleges each and every allegation in the
6 foregoing paragraphs as fully set forth herein.

7 40. Defendant's actions in connection with Defendant's products are likely
8 to cause confusion, to cause misrepresentation, to cause mistake, and/or to deceive
9 the public as to the affiliation, approval, sponsorship, or connection between
10 Defendant and Plaintiff, and constitute unfair competition at common law.

11 41. By reason of Defendant's actions in connection with Defendant's
12 products, Plaintiff has suffered, and will continue to suffer, irreparable injury to its
13 rights, and has suffered, and will continue to suffer, substantial loss of goodwill and
14 loss in the value of its trademark, unless and until Defendant is enjoined from
15 continuing her wrongful acts.

16 42. By reason of Defendant's actions in connection with Defendant's
17 products, Plaintiff has been damaged in an amount not presently ascertained, and
18 such damage will continue and increase unless and until Defendant is enjoined from
19 continuing her wrongful acts.

20 **SEVENTH CAUSE OF ACTION**

21 **(California Trademark Dilution)**

22 **Cal. Bus. & Prof. Code § 14247**

23 43. Plaintiff repeats and realleges each and every allegation in the
24 foregoing paragraphs as fully set forth herein.

25 44. Plaintiff's VAN HALEN Marks are distinctive and famous.

26 45. Defendant began using Plaintiff's VAN HALEN Marks in connection
27 with Defendant's products after these trademarks became famous.

28 46. Defendant's advertising, distribution, marketing, promotion, offer for

1 sale, and/or sale of Defendant's products using Plaintiff's trademarks has injured the
2 business reputation of Plaintiff and dilutes and/or is likely to dilute the distinctive
3 value of Plaintiff's VAN HALEN Marks in violation of Section 14247 of the
4 California Business and Professions Code.

5 47. Plaintiff has no adequate remedy at law. Injury to Plaintiff and dilution
6 of Plaintiff's trademarks will continue, all to Plaintiff's irreparable harm, unless
7 Defendant is enjoined by this Court.

8 **EIGHTH CAUSE OF ACTION**

9 **(Declaratory Action)**

10 **28 U.S.C. §2201**

11 48. Plaintiff repeats and realleges each and every allegation in the
12 foregoing paragraphs as fully set forth herein.

13 49. There currently exists between Plaintiff and Defendant an actual,
14 present, and justiciable controversy based on Defendant's filing of a service mark
15 application for the mark *KELLY VAN HALEN* for construction services and
16 interior design services.

17 50. Defendant is not currently using KELLY VAN HALEN as a service
18 mark for the foregoing but has a bona fide intent to do so. Plaintiff requests that the
19 court declare that such intended usage or eventual usage to be a violation of
20 Plaintiff's trademark and service mark rights because it infringes and/or dilutes
21 based on blurring pursuant to Sections 32 and 43(a) of the Lanham Act.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff requests that the Court grant it the following relief:

- 24 1. That Defendant be permanently enjoined from continued use of the
25 infringing mark KELLY VAN HALEN or a confusingly similar variant of
26 Plaintiff's Marks;
- 27 2. That the Court order the impoundment and destruction of all infringing
28 goods;

- 1 3. That Defendant be required to abandon with prejudice her currently
- 2 pending federal trademark applications for the mark KELLY VAN HALEN.
- 3 4. For a final judgment against Defendant for all profits derived from
- 4 Defendant's unlawful conduct, all actual damages suffered by Plaintiff (such
- 5 amount to be trebled), and Plaintiff's reasonable attorneys' fees and the costs of this
- 6 action.
- 7 5. For a judgment declaring that Defendant's use of the mark KELLY
- 8 VAN HALEN for construction services and interior design services infringes upon
- 9 or dilutes by blurring Plaintiff's famous VAN HALEN word marks.
- 10 6. That Plaintiff is granted such further relief as the Court deems just.

11
12 DATED: October 10, 2013

KINSELLA WEITZMAN ISER
KUMP & ALDISERT LLP

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16 By: Jennifer J. McGrath
Jennifer J. McGrath
Attorneys for Plaintiff ELVH, INC.

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DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand trial by jury on all issues and causes of action triable
by jury.

DATED: October 10, 2013

KINSELLA WEITZMAN ISER
KUMP & ALDISERT LLP

By: Jennifer J. McGrath
Jennifer J. McGrath
Attorneys for Plaintiff ELVH, INC.



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Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,853,393

United States Patent and Trademark Office

Registered June 15, 2004

**TRADEMARK
PRINCIPAL REGISTER**

VAN HALEN

E.L.V.H., INC. (CALIFORNIA CORPORATION)
3500 W. OLIVE AVENUE, SUITE 300
BURBANK, CA 91505

FOR: PRINTED MATTER FOR PUBLICITY AND PROMOTIONAL MATERIAL, NAMELY, POSTERS; FOLD-OUT POSTER BOOKS; POSTCARDS; MOUNTED AND UNMOUNTED PHOTOGRAPHS AND PHOTOGRAPHIC PRINTS; NEWSLETTERS; STICKERS; CALENDARS; DECALS AND TEMPORARY TATTOOS; PRINTED CONCERT TICKETS; PRINTED BACKSTAGE PASSES; TRADING CARDS; BOOKS, TRIVIA BOOKS, TOUR BOOKS, ENCYCLO-

PEDIAS, COMIC BOOKS, PICTURE BOOKS, MAGAZINES, ALL IN THE FIELD OF MUSIC AND ENTERTAINMENT; TABLATURE BOOKS; SHEET MUSIC BOOKS; BOOK COVERS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 2-3-1978; IN COMMERCE 2-3-1978.

SER. NO. 78-145,392, FILED 7-18-2002.

JANICE L. MCMORROW, EXAMINING ATTORNEY

EXHIBIT A

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,866,540

Registered July 27, 2004

**TRADEMARK
PRINCIPAL REGISTER**

VAN HALEN

E.L.V.H., INC. (CALIFORNIA CORPORATION)
3500 W. OLIVE AVENUE, SUITE 300
BURBANK, CA 91505

SWEAT PANTS; SWEAT BANDS; HEADBANDS;
BANDANAS; JEANS; PANTS; TIES; JACKETS;
GLOVES; SCARVES; NECKWEAR, IN CLASS 25
(U.S. CLS. 22 AND 39).

FOR: CLOTHING NAMELY, SHORTS; CAPS;
HATS; JERSEYS; BLOUSES; SHIRTS; TANK-TOPS;
T-SHIRTS, NAMELY LONG SLEEVE AND SHORT
SLEEVE T-SHIRTS; POLO SHIRTS; WOVEN AND
KNIT SHIRTS; THERMAL SHIRTS; SWEATERS;
JOGGING AND WARM-UP SUITS; SWEAT SHIRTS;

FIRST USE 3-3-1978; IN COMMERCE 3-3-1978.

SER. NO. 78-145,326, FILED 7-18-2002.

GLENN CLARK, EXAMINING ATTORNEY

Hollywood
REPORTER

EXHIBIT B

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

Reg. No. 2,868,311

United States Patent and Trademark Office

Registered Aug. 3, 2004

**SERVICE MARK
PRINCIPAL REGISTER**

VAN HALEN

E.L.V.H., INC. (CALIFORNIA CORPORATION)
3500 W. OLIVE AVENUE
SUITE 300
BURBANK, CA 91505

FOR: ENTERTAINMENT SERVICES, NAMELY
LIVE PERFORMANCES AND APPEARANCES, AND
LIVE PERFORMANCES AND APPEARANCES FEATURING
PRERECORDED MUSIC BY A VOCAL AND INSTRUMENTAL
GROUP; FAN CLUB SERVICES; PROVIDING A WEBSITE
FEATURING ENTERTAINMENT INFORMATION, NAMELY
REVIEWS, ARTICLES, INTERVIEWS, MUSIC VIDEOS,
MUSIC CHARTS, PERSONAL BIOGRA-

PHIES, DIARIES, INFORMATION ON MUSIC
INSTRUMENTS, TOUR DATES, GAMES, TRIVIA,
ACCESS TO MEMORABILIA, PHOTOGRAPHS, VIDEO
CLIPS, AND AUDIO CLIPS, ALL AVAILABLE VIA A
GLOBAL COMPUTER NETWORK, IN CLASS 41 (U.S. CLS.
100, 101 AND 107).

FIRST USE 9-9-1974; IN COMMERCE 3-3-1978.

SER. NO. 76-344,683, FILED 12-4-2001.

JANICE L. MCMORROW, EXAMINING ATTORNEY

EXHIBIT C

United States of America
United States Patent and Trademark Office



Reg. No. 3,701,926 E.L.V.I., INC. (CALIFORNIA CORPORATION)
Registered Oct. 27, 2009 10100 SANTA MONICA BLVD.
C/O NIGRO KARLIN, SUITE 1300
LOS ANGELES, CA 90067

Int. Cls.: 9, 15, 16, 25, and 41 FOR: MUSICAL SOUND RECORDINGS, MUSICAL VIDEO RECORDINGS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

FIRST USE 3-1-1975; IN COMMERCE 3-1-1078.

FOR: MUSICAL INSTRUMENTS, MUSICAL INSTRUMENTS ACCESSORIES, NAMELY, GUITAR PICKS, IN CLASS 15 (U.S. CLS. 2, 21 AND 36).

FIRST USE 6-1-2007; IN COMMERCE 6-1-2007.

FOR: STICKERS, TABLATURE BOOKS, SHEET MUSIC BOOKS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 36).

FIRST USE 5-30-2005; IN COMMERCE 5-30-2005.

FOR: CLOTHING, NAMELY, CAPS, HATS, T-SHIRTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 7-7-2007; IN COMMERCE 7-7-2007.

FOR: ENTERTAINMENT SERVICES, NAMELY, LIVE PERFORMANCES AND APPEARANCES BY A VOCAL AND INSTRUMENTAL GROUP, AND LIVE PERFORMANCES AND APPEARANCES FEATURING PRERECORDED MUSIC BY A VOCAL AND INSTRUMENTAL GROUP; FAN CLUB SERVICES; PROVIDING A WEBSITE FEATURING ENTERTAINMENT INFORMATION, NAMELY, REVIEWS, ARTICLES, INTERVIEWS, MUSIC VIDEOS, MUSIC CHARTS, PERSONAL BIOGRAPHIES, DIARIES, INFORMATION ON MUSIC INSTRUMENTS, TOUR DATES, GAMES, TRIVIA, ACCESS TO MEMORABILIA, PHOTOGRAPHS, VIDEO CLIPS, AND AUDIO CLIPS, ALL AVAILABLE VIA A GLOBAL COMPUTER NETWORK, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 6-30-2007; IN COMMERCE 6-30-2007.

OWNER OF U.S. REG. NOS. 2,853,393, 2,868,311, AND OTHERS.

SN 77-020,189, FILED 10-12-2006.



David J. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT D

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) ELVH, Inc.	DEFENDANTS Kelly Van Halen
--	--------------------------------------

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Jennifer J. McGrath (SBN 211388) KINSELLA WEITZMAN ISER KUMP & ALDISE 808 Wilshire Blvd., 3rd Floor Santa Monica, CA 90401 (310) 566-9808	Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input type="checkbox"/> 1</td> <td align="center"><input checked="" type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input checked="" type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify): _____
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

This is an action for trademark infringement, trademark dilution, false designation and unfair competition pursuant to the Lanham Act and related California Statutes.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) (405(g)) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609
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FOR OFFICE USE ONLY: Case Number: CV 13-7524

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). **IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? No Yes

If yes, list case number(s): _____

VIII(b). **RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? No Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER): Jennifer J. McGrath Date October 10, 2013

Jennifer J. McGrath

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

General Information

Docket Number	2:13-cv-07524
Court	United States District Court for the Central District of California
Nature of Suit	Property Rights: Trademark
Date Filed	2013-10-10 00:00:00