

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

EPISCOPAL DIOCESE
OF FORT WORTH

§
§
§

Plaintiff,

vs.

§
§
§

THE RT. REV. JACK LEO IKER

§
§

Defendant.

§
§

THE EPISCOPAL DIOCESE OF FORT
WORTH

§
§

Intervener/Plaintiff,

§
§

vs.

§
§

JONATHAN D. F. NELSON, WILLIAM
D. SIMS, JR., THOMAS S.
LEATHERBURY, ALLEN W. YEE, and
THE RT. REV. C. WALLIS OHL

§
§
§
§
§

Civil Action No. 4:10-CV-00700-Y

Defendants.

§
§

THE CORPORATION OF THE
EPISCOPAL DIOCESE OF FORT
WORTH

§
§
§

Intervener/Plaintiff,

§
§

vs.

§
§

THE EPISCOPAL CHURCH, THE RT.
REV. EDWIN F. GULICK, JR., THE RT.
REV. C. WALLIS OHL, NAMAN,
HOWELL, SMITH & LEE, PLLC,
JONATHAN D.F. NELSON,
WILLIAM D. SIMS, JR., THOMAS S.
LEATHERBURY, AND ALLEN W. YEE

§
§
§
§
§
§
§
§
§

Defendants.

§

**COMPLAINT IN INTERVENTION OF THE CORPORATION
OF THE EPISCOPAL DIOCESE OF FORT WORTH**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Intervener, The Corporation of The Episcopal Diocese of Fort Worth, files this complaint in intervention as party-plaintiff as authorized by Rule 24(a)(2), Federal Rules of Civil Procedure.

A. PARTIES

1. Intervener, The Corporation of The Episcopal Diocese of Fort Worth, hereafter "Intervener Diocesan Corporation," which is a Texas non-profit corporation since 1982, intervenes as plaintiff in this suit.

2. Defendant, The Episcopal Church which is a non-profit unincorporated association with its principal office in New York, New York, may be served at 815 Second Avenue, New York, New York 10017

3. Defendants, The Rt. Rev. Edwin F. Gulick, Jr., and The Rt. Rev. C. Wallis Ohl may be served at 3550 Southwest Loop 820, Fort Worth, Texas 76133.

4. Defendant, Naman, Howell, Smith & Lee, PLLC, hereafter "Naman Howell," may be served at 400 Austin Avenue, Suite 800, Waco, Texas 76701.

5. Defendant, Jonathan D. F. Nelson, hereafter "Nelson", may be served at 1400 West Abrams Street, Arlington, Texas 76013.

6. Defendants, William D. Sims, Jr., Thomas S. Leatherbury, and Allen W. Yee, hereafter "Vinson & Elkins", may be served at 2001 Ross Avenue, Suite 3700, Dallas, Texas 75201.

B. ORIGINAL LAWSUIT

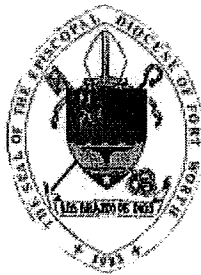
7. Plaintiff Episcopal Diocese of Fort Worth sued Defendant The Rt. Rev. Jack Leo Iker, hereafter “the Bishop,” alleging counts of service mark infringement under the Lanham Act, service mark dilution under the Lanham Act and for injunctive relief to enjoin defendant from using the marks. The Bishop filed an answer asserting that the Marks are owned by Intervener Diocesan Corporation and are only used by him in his capacity as Bishop of another Intervener, The Episcopal Diocese of Fort Worth, hereafter “Fort Worth Diocese.”

C. INTERVENER’S CAUSES OF ACTION

8. The Intervener Diocesan Corporation was formed in 1983. The Intervener Diocesan Corporation based on Article 14 of the Constitution of The Episcopal Diocese of Fort Worth and Canon 18 of the Canons of The Episcopal Diocese of Fort Worth holds, manages and administers all property and funds acquired by gift, will or otherwise for the use by and benefit of the Fort Worth Diocese.

9. Since 1983, the Fort Worth Diocese has used two service marks (and trademarks) for religious services and publications (the “Marks”). The Marks are:

The Episcopal Diocese of Fort Worth



The latter Mark is known as the Seal of the Fort Worth Diocese. The Fort Worth Diocese and Intervener Diocesan Corporation have common law rights to the Marks. Intervener Diocesan Corporation owns the Marks and allows the Fort Worth Diocese to exclusively use the Marks.

10. There is only one Fort Worth Diocese and only one Diocesan Corporation. Bishop Iker is the Bishop of the Fort Worth Diocese and an employee of the Fort Worth Diocese. Bishop Iker does not use the Marks personally, but only on behalf of the Fort Worth Diocese.

11. At two Annual Conventions of the Fort Worth Diocese held in 2007 and 2008, the majority of the delegates voted to amend the Fort Worth Diocese's Constitution and to withdraw the Fort Worth Diocese from association with The Episcopal Church, hereafter "TEC," and to associate with another Anglican Province within the Anglican Communion, the Anglican Province of the Southern Cone.

12. The delegates' votes, while overwhelmingly in favor of the actions taken, left a minority group that was dissatisfied with the annual convention votes.

13. This minority group, with the assistance of the Presiding Bishop of TEC, sought to call a special meeting of the Fort Worth Diocese. At this meeting in February of 2009, which was not called as required by Article 4 of the Constitution of the Fort Worth Diocese, or in accordance with the bylaws of Intervener Diocesan Corporation, the delegates unlawfully elected persons who claim to be officers of the Fort Worth Diocese and Trustees of Intervener Diocesan Corporation.

14. This minority group of persons, with the assistance and encouragement of TEC, published a web site claiming that it represents the Fort Worth Diocese. The web site used the two Marks and also used the domain name “episcopaldiocesefortworth.org”.

15. In January 2009, these persons received a letter from the law firm of Decker, Jones, McMackin, McClane, Hall & Bates (“Decker Jones”), intellectual property counsel representing the Fort Worth Diocese and Intervener Diocesan Corporation. The letter stated that the Fort Worth Diocese had common law rights to the two Marks and that the use of the Marks and the domain name by these persons led to a likelihood of confusion and constituted trademark infringement. The letter also pointed out that the web site statement of these persons claiming to represent the Fort Worth Diocese was a misrepresentation.

16. The unlawfully elected persons at the February 2009 meetings represented by Jonathan D. F. Nelson and Kathleen Wells, and TEC represented by the Naman Howell firm, filed a lawsuit on April 14, 2009, in Tarrant County, as Cause No. 141-237105-09. One of the issues in the state lawsuit is who owns the Marks.

17. Nelson and Wells, instead of filing suit on behalf of the minority group, took the unusual tactic of purporting to represent the Fort Worth Diocese and Intervener Diocesan Corporation by bringing the lawsuit in the name of the Fort Worth Diocese and Intervener Diocesan Corporation against the individual Trustees of Intervener Diocesan Corporation and Bishop Iker (collectively, the “State Court Defendants”).

18. On May 8, 2009, the State Court Defendants responded in the state lawsuit, asserting that the state lawsuit was unauthorized by the Fort Worth Diocese and

Intervener Diocesan Corporation. A copy of the response was served on Nelson, Wells, Naman Howell, as well as East Coast lawyers representing TEC.

19. On May 29, 2009, an attorney from TEC’s law firm of Naman Howell, John A. Powell (“Powell”), signed and filed trademark applications in the United States Patent and Trademark Office (USPTO) to obtain registrations on behalf of the Fort Worth Diocese. These applications were:

<u>Mark</u>	<u>Serial No.</u>
The Episcopal Diocese of Fort Worth	77/748,064
Seal Mark	77/748,164

20. Each trademark application stated the Fort Worth Diocese appointed Powell of Naman Howell to represent the Fort Worth Diocese. Powell signed the following declaration in each of the trademark applications.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, **declares that he/she is properly authorized to execute this application on behalf of the applicant;... to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce,** either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive... (emphasis supplied)

21. The trademark applications each listed a number of churches as making up the Fort Worth Diocese. Included in this listing of churches were the churches who remain with the Fort Worth Diocese as well as those churches who had quit the Fort Worth Diocese and aligned with the minority group and TEC. The trademark applications contained materials showing use of the Marks by the minority group.

Furthermore, the trademark applications did not identify Intervener Diocesan Corporation as the rightful owner of the Marks.

22. Neither the Fort Worth Diocese, Intervener Diocesan Corporation nor the churches remaining in the Fort Worth Diocese were made aware of the trademark applications. Neither the Fort Worth Diocese nor Intervener Diocesan Corporation granted any authority to Naman Howell to represent them before the USPTO.

23. In September 2009, the State Court Defendants moved the state trial court to require Nelson and Wells to show their authority to prosecute the state lawsuit on behalf of the Fort Worth Diocese and Intervener Diocesan Corporation.

24. On September 16, 2009, the state trial court granted the State Court Defendants' motion, finding that Nelson and Wells did not show that they had been hired by the Fort Worth Diocese and Intervener Diocesan Corporation and barred Nelson and Wells from appearing as attorneys for the Fort Worth Diocese and Intervener Diocesan Corporation.

25. Six months later, in March 2010, despite the ruling in the state court, TEC's law firm of Naman Howell continued with its representation of the Fort Worth Diocese in the two trademark applications before the USPTO, which were refused twice before finally being registered. In its responses to the USPTO, Naman Howell failed to advise the USPTO of the findings by the state court regarding representation. TEC, the minority group and Naman Howell chose to keep the USPTO in the dark about the state court lawsuit, as at no time was the USPTO advised of the state lawsuit or the issues therein, which issues had relevance in the trademark applications.

26. At no time during the pendency of the trademark applications did Naman Howell or Nelson communicate to the Fort Worth Diocese, Intervener Diocesan Corporation or their counsel anything about the trademark work being done by Naman Howell.

27. On June 25, 2010, the Court of Appeals, Second District of Texas, Fort Worth agreed with the state trial court that Nelson and Wells failed to establish that they had authority to represent Fort Worth Diocese and Intervener Diocesan Corporation. *In re Franklin Salazar, et al*, 315 S.W.3d 279, 282 (Tex.App. – Fort Worth 2010, orig. proceeding).

28. The USPTO, completely unaware of the state court action and the underlying dispute, issued Reg. Nos. 3,820,400 and 3,826,996 (the “Registrations”), respectively on July 20, 2010 and August 3, 2010.

29. On August 13, 2010, the Nelson and Wells amended their lawsuit in state court, naming their clients from the minority group instead of as the Fort Worth Diocese and Intervener Diocesan Corporation.

30. In an unbelievable act of déjà vu, Nelson, joined this time by Dallas lawyers from Vinson & Elkins, filed this present lawsuit on September 21, 2010, purporting to once again represent the Fort Worth Diocese. Nelson’s present lawsuit involves using the Registrations against Bishop Iker and by implication against the Fort Worth Diocese.

31. Nelson and Vinson & Elkins failed to communicate any of their actions regarding the preparation and filing of the present lawsuit to the Fort Worth Diocese or Intervener Diocesan Corporation. Had Nelson and Vinson & Elkins communicated with

the Fort Worth Diocese, the Fort Worth Diocese would have instructed Nelson and Vinson & Elkins not to bring the lawsuit.

32. The minority group continues to use the Marks and the domain name “episcopaldiocesefortworth.org”.

33. TEC has participated in and contributed to the minority group’s use of the Marks, in obtaining the Registrations and in bringing the present lawsuit. The minority group has participated in obtaining the Registrations and in bringing the present lawsuit.

34. The minority group and TEC lack ownership of the Marks.

CAUSES OF ACTION

First Cause of Action Fraudulently Procured Trademark Registrations By TEC and the Minority

35. Jurisdiction for this claim arises under 15 USC §§ 1119 – 1121 and 28 USC §§ 1331 and 1338(a).

36. Intervener Diocese Corporation adopts and incorporates paragraphs 1-34 above.

37. TEC, the minority group, which includes Defendant Gulick, and TEC’s law firm of Naman Howell falsely stated to the USPTO that the Applicant was the Episcopal Diocese of Fort Worth instead of Intervener Diocesan Corporation. TEC, the minority group and TEC’s law firm of Naman Howell falsely stated to the USPTO that the Applicant was the Episcopal Diocese of Fort Worth, a Texas unincorporated association made up of churches both within the Fort Worth Diocese and within the minority group who had quit the Fort Worth Diocese. TEC, the minority group, and TEC’s law firm of Naman Howell, knowing that the Fort Worth Diocese was represented by other intellectual property counsel of the Fort Worth Diocese’s own choosing, and

knowing the true identity of the Fort Worth Diocese's and Intervener Diocesan Corporation's counsel due to the actions in the state court, falsely stated and represented to the USPTO that Naman Howell represented the Fort Worth Diocese. TEC, the minority group, TEC's law firm of Naman Howell falsely stated to the USPTO that no other association had the right to use the Marks in commerce even though TEC, the minority group, and TEC's law firm of Naman Howell were intending to deprive the association of churches that remained in the Fort Worth Diocese of the ability to use the Marks. The Registrations were fraudulently obtained.

38. The Registrations were obtained by attorneys clearly adverse to the Intervener Diocesan Corporation and without the consent of the Intervener Diocesan Corporation. The Registrations are being used against Intervener Diocesan Corporation and the Fort Worth Diocese by TEC, the minority group, which includes Defendant Ohl, as well as the law firms of Naman Howell, Nelson and Vinson & Elkins, by the filing and prosecution of this present lawsuit against Bishop Iker.

39. The Registrations are therefore subject to cancellation and Intervener Diocesan Corporation is entitled to relief in the form of an order of this Court, directing the Director of the United States Patent and Trademark Office to forthwith cancel the Registrations.

40. Intervener Diocesan Corporation has been damaged by the fraudulently obtained Registrations.

**Second Cause of Action
Trademark Infringement by TEC and the Minority**

41. Jurisdiction for this claim arises under 15 USC §§ 1125(a) and 28 USC §§ 1331 and 1338(a).

42. Intervener Diocesan Corporation adopts and incorporates paragraphs 1-40 above.

43. The use of the Marks by the minority group, including Defendants Gulick and Ohl, causes a likelihood of confusion to the detriment of Intervener Diocesan Corporation. TEC is contributing to and encouraging the minority group's use of the Marks. The minority group and TEC are infringing Intervener Diocesan Corporation's Marks and will likely continue to infringe, unless enjoined by this Court.

44. The infringement of the Marks by the minority group, including Defendants Gulick and Ohl, and TEC has been willful.

45. Intervener Diocesan Corporation has been damaged by the infringement by the minority group and TEC. Due to the willfulness of their infringement and due to assertion of claims based upon the Registrations obtained by lawyers for the minority group and TEC, this is an exceptional case under 15 USC § 1117(a) and Intervener Diocesan Corporation is entitled to an amount of their attorneys' fees incurred in this litigation.

**Third Cause of Action
False Advertising and Unfair Competition by TEC and It's Lawyers**

46. Jurisdiction for this claim arises under 15 USC §§ 1125(a) and 28 USC §§ 1331 and 1338(a).

47. Intervener Diocesan Corporation adopts and incorporates paragraphs 1-45 above.

48. By filing the state court lawsuit in April 2009, Nelson represented to the court and to the public that Nelson provided legal services to the Fort Worth Diocese and Intervener Diocesan Corporation. By filing the trademark applications for the Marks and obtaining the registrations, Naman Howell represented to the USPTO and the public that Naman Howell provided legal services to the Fort Worth Diocese. By filing this present lawsuit, Nelson and Vinson & Elkins represent to this Court and the public that Nelson and Vinson & Elkins provide legal services to the Fort Worth Diocese and by implication Intervener Diocesan Corporation that the Fort Worth Diocese and Intervener Diocesan Corporation have authorized this lawsuit against its Bishop Iker.

49. The representations that the law firms and lawyers provided legal services to the Fort Worth Diocese and Intervener Diocesan Corporation are false and misleading. TEC and the minority group, including Defendants Gulick & Ohl, encouraged, contributed and advertised the false and misleading representations. The misrepresentations were willful. As a result of the misrepresentations by the law firms, TEC and the minority group, a likelihood of confusion exists as to the identity of Intervener Diocesan Corporation and the Fort Worth Diocese and who owns what property. Intervener Diocesan Corporation and the Fort Worth Diocese have been damaged and Intervener Diocesan Corporation seeks an injunction prohibiting the law firms and lawyers as holding themselves out as providing legal services to the Fort Worth Diocese and Intervener Diocesan Corporation.

**Fourth Cause of Action
FRCP 11 Violation**

50. Jurisdiction for this claim arises under the Federal Rules of Civil Procedure (“FRCP”).

51. Intervener Diocesan Corporation adopts and incorporates paragraphs 1-49 above.

52. FRCP 11 requires attorneys signing pleadings to make certain representations to the court. 28 U.S. C. § 1927 provides a remedy against counsel who unreasonably and vexatiously multiply the proceedings in a case. Nelson and Vinson & Elkins have violated FRCP 11 and 28 U.S. C. § 1927 by bringing the present lawsuit. The present lawsuit was brought for improper purpose and seeks to harass Intervener Diocesan Corporation and Bishop Iker, as well as unreasonably and vexatiously multiply the proceedings in the dispute between the parties and case needlessly increase the cost of litigation. The claims presented by Nelson and Vinson & Elkins are not warranted by existing law and the factual contentions presented by Nelson and Vinson & Elkins lack evidentiary support, even after a reasonable opportunity for discovery.

53. In the state court lawsuit, Nelson was found not to have authority to represent the Fort Worth Diocese. Nelson is barred from representing the Fort Worth Diocese in state court. Nelson and Vinson & Elkins are trying an end run around the bar in state court by purporting to represent the Fort Worth Diocese in bringing this action in federal court.

54. Nelson and Vinson & Elkins are aware that Bishop Iker is an employee of the Fort Worth Diocese and does not personally use the Marks and that any use by

Bishop Iker is in his representative capacity on behalf of the Fort Worth Diocese. Yet Nelson and Vinson & Elkins have brought a lawsuit against Bishop Iker individually.

55. Intervener Diocesan Corporation seeks to have Nelson and Vinson & Elkins sanctioned.

PRAYER

WHEREFORE, Intervener Diocesan Corporation prays for judgment against Defendants as follows:

- a. That Judgment be granted for Intervener Diocesan Corporation against Defendants on Intervener Diocesan Corporation's claims;
- b. That Defendants be preliminarily and permanently enjoined from using in connection with religious services and publications, the Mark "The Episcopal Diocese of Fort Worth" and the Seal Mark;
- c. That Defendants be required to pay Intervener Diocesan Corporation's damages suffered by Intervener Diocesan Corporation as a result of the claim of Defendants' infringement of Intervener Diocesan Corporation's Marks;
- d. That Defendants be ordered to surrender for destruction all materials constituting infringement of Intervener Diocesan Corporation's Marks;
- e. That this Court issue a declaratory judgment, judicially declaring that Intervener Diocesan Corporation owns the Marks and Defendants lack ownership of any rights to the Marks;
- f. That the United States Patent and Trademark Office be ordered to cancel Registration Nos. 3,820,400 and 3,826,996;

g. That U.S. Registration Nos. 3,820,400 and 3,826,996 be declared fraudulently obtained;

h. That Intervener Diocesan Corporation be awarded its damages against Defendants sustained in consequence of Defendants having fraudulently obtained Registration Nos. 3,820,400 and 3,826,996 under 15 USC 1117(a) and 1120;

i. That the Court find this to be an exceptional case under 15 USC § 1117 due to Defendants' fraudulent and wrongful procurement of the Registrations and assertion of the Registrations against Bishop Iker, as well as Defendants willful infringement of the Marks, and award Intervener Diocesan Corporation its reasonable attorneys' fees incurred as a result of this litigation;

j. That Nelson, Naman Howell and Vinson & Elkins be enjoined from representing that they provide legal services to the Fort Worth Diocese and Intervener Diocesan Corporation ;

k. That Nelson, Naman Howell and Vinson & Elkins be required to pay Intervener Diocesan Corporation's damages suffered by Intervener Diocesan Corporation as a result of the false and misleading representations by Nelson, Naman Howell and Vinson & Elkins;

- l. That Nelson, Naman Howell and Vinson & Elkins be sanctioned;
- m. Awarding Intervener Diocesan Corporation its costs incurred in this action; and
- o. For such other and further relief as this Court deems just and proper.

Respectfully submitted,



J. SHELBY SHARPE
State Bar No. 18123000
6100 Western Place, Suite 1000
Fort Worth, Texas 76107
Telephone: (817) 338-4900
Facsimile: (817) 332-6818

GEOFFREY A. MANTOOTH
State Bar No. 12957530
Decker, Jones, McMackin,
McClane, Hall & Bates, P.C.
801 Cherry Street, Unit #46
Fort Worth, Texas 76102
Telephone: (817) 336-2400
Facsimile: (817) 332-3043

**Attorneys for Intervener The
Corporation of The Episcopal
Diocese of Fort Worth**

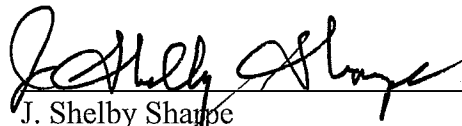
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing COMPLAINT IN INTERVENTION OF THE CORPORATION OF THE EPISCOPAL DIOCESE OF FORT WORTH been served by certified mail, return receipt requested, and/or regular mail, this 18th day of October, 2010, on the following:

Jonathan D. F. Nelson
1400 West Abrams Street
Arlington, Texas 76013
Tel: 817-261-2222 / Fax: 817-861-4685

William D. Sims, Jr.
Thomas S. Leatherbury
Allen W. Yee
2001 Ross Avenue, Suite 3700
Dallas, Texas 75201
Tel: 214-220-7700 / Fax: 214-220-7716

ATTORNEYS FOR PLAINTIFF



J. Shelby Sharpe