

Cherchez les Catalogues Raisonné

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The success of the art market depends largely on confidence in the authenticity of artists' works. Traditionally, a work in an artist's "*catalogue raisonné*" has been key to confirming the authenticity, and thus value. To that point, a recent lawsuit filed in the U.S. District Court for the Southern District of New York ("S.D.N.Y.") regarding a purported Jackson Pollock work underscores the importance of the *catalogue raisonné* in pre-purchase due diligence, and shows that omission from the *catalogue* could be potentially disastrous to the value of a work. See *Lagrange v. Knoedler Gallery, LLC*, 11-cv-8757 (S.D.N.Y.) (filed Dec. 1, 2011).

A *catalogue raisonné* is designed to be a comprehensive compilation of artist works, describing the works in a way that may be reliably identified by third parties. As scholarly compilations of an artist's body of work, *catalogues raisonnés* are critical tools for researching the attribution and provenance of artwork. In a *catalogue raisonné*, the works are arranged in chronological order, and each entry describes the individual work's dimensions, materials, exhibition history, citation history and ownership information. Typically, a *catalogue raisonné* is written by the leading experts on an artist over the course of many years' research. In evaluating a work, such experts examine the work's overall visual appearance, technical execution, historical context, and even resort to forensics in the quest to confirm or deny whether a work is by the artist's hand. While historically *catalogues raisonnés* have been published as books, there has been a recent movement toward digital versions of such catalogs, such as the online *catalogue raisonné* of artist Isamu Noguchi, recently launched by the Noguchi Museum.

In the recently filed New York lawsuit, Pierre Lagrange, a London hedge-fund executive, and the trust of which he is principal beneficiary, sued the Knoedler Gallery and its former director and president, Ann Freedman, over the sale of a painting advertised as

Untitled, 1950 by Jackson Pollock. The complaint for breach of warranties, fraud, and unjust enrichment alleges that the plaintiffs relied on the defendants' representations in purchasing the purported Pollock painting for \$17 million. The plaintiffs add that an unnamed consulting company hired by Lagrange concluded in a report last month that the painting was a fake. The plaintiffs contend that the defendants' misrepresentations included verbal assurances (supported by allegedly false printed materials) on the authenticity of the work, although the painting was not included in the Jackson Pollock *catalogue raisonné*. The plaintiffs claim that auction houses Christie's and Sotheby's refused to sell the work principally because it is omitted from the Pollock *catalogue raisonné*, and therefore questions surrounding authenticity, because of that omission, would have doomed any future resale of the work. Additionally, the plaintiffs allege that because the defendants were aware that this omission from the *catalogue raisonné* would effectively render the work unsalable, the defendants falsely represented that the Pollock *catalogue raisonné* was in the process of being updated and that the revised version would include the work.

Authors of *catalogue raisonné* operate under threat of lawsuits because excluding a work from a work from an artist's *catalogue raisonné* can so greatly affect its market value. Owners of questionable works may be under great pressure to have those works included in the catalog, and have turned to the courts on various theories, including antitrust, disparagement and the like. Similarly, as we noted in our last posting, the Andy Warhol Art Authentication Board will dissolve in early 2012, citing substantial legal fees incurred in defense of its authentication activities. And it should be noted that Knoedler reacted to the suit by shuttering its doors after 165 years in business.

Whatever the eventual findings of fact and outcome of the case may be, this lawsuit highlights the critical importance of the *catalogue raisonné* on the value of a work. Omission from an artist's *catalogue raisonné* indeed can prove fatal to any potential resale of a work, notwithstanding any proof the owner may offer to support authenticity. Thus, potential art buyers should exercise due diligence in investigating the authenticity of a work, and should likely seek the advice of impartial third parties in evaluating the genuineness and potential value of a work not included in an artist's *catalogue raisonné*.