

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION**

CAMBRIDGE UNIVERSITY PRESS,
OXFORD UNIVERSITY PRESS,
INC., and SAGE PUBLICATIONS,
INC.,

Plaintiffs,

- v. -

MARK P. BECKER, in his official
capacity as Georgia State University
President, et. al.

Defendants.

Civil Action No. 1:08-CV-1425-ODE

**PLAINTIFFS' REPLY IN FURTHER SUPPORT OF THEIR MOTION *IN*
LIMINE TO OVERRULE OBJECTIONS TO EVIDENCE OF
ALLEGED INFRINGEMENTS**

Plaintiffs Cambridge University Press, Oxford University Press, Inc., and SAGE Publications, Inc. (collectively, "Plaintiffs") submit this reply to Defendants' Brief in Opposition to Plaintiffs' Motion *In Limine* to Overrule Objections to Evidence of Alleged Infringements, Docket No. 289 ("Defs.' Opp'n"). The instant motion concerns the parties' March 15, 2011 Joint Filing, Docket No. 266 (the "Joint Filing"). In the Joint Filing, Defendants interposed

several objections with respect to Plaintiffs’ allegedly infringed works: (1) that an exclusive license to publish a work does not confer standing to bring a copyright infringement claim; (2) that copyright registration is a prerequisite to a suit for infringement of works first published outside the United States; and (3) that Plaintiffs should have produced “deposit copies” of each allegedly infringed work. Plaintiffs’ motion explained why each of these objections was unfounded as a matter of law and should, accordingly, be overruled. Docket No. 273.

In their opposition, Defendants essentially concede that Plaintiffs are correct as to the first two of Defendants’ objections. As to the first, Defendants admit that an exclusive licensee has standing to sue for copyright infringement. Defs.’ Opp’n at 2. Accordingly, Plaintiffs’ motion on this point is uncontested and should be granted. Defendants now claim, however, that what they really are disputing is whether Plaintiffs can demonstrate ownership of the works at issue, which they note is the subject of a separate *in limine* motion they have filed. *Id.* at 2-3. Plaintiffs dispute Defendants’ contentions regarding Plaintiffs’ proof of copyright ownership on a number of grounds, but those contentions are – at best – irrelevant to this motion,¹ which is directed solely to the legal proposition that an exclusive

¹ Defendants’ primary example, *The Fragility of Goodness*, is a work that Plaintiffs told Defendants three weeks ago they were removing from their list of alleged

licensee has standing to sue. As Defendants have conceded the point, their legally baseless objections on the Joint Filing “no assignment of copyright to publisher provided (license only)” should be overruled as contrary to law.

As to the second prong of Plaintiffs’ motion, Defendants again admit Plaintiffs’ legal point: that Plaintiffs need not produce a copyright registration certificate for works published in the United Kingdom at least thirty days in advance of publication in the United States. Defs.’ Opp’n at 5. In light of that concession, the Court should grant Plaintiffs’ motion on this point and overrule Defendants’ objection that Plaintiffs have not produced registrations for foreign works. Defendants’ arguments as to whether Plaintiffs works are *actually* foreign works or, if so, whether they are copyrightable, (Defs.’ Opp’n at 6), should be raised – if at all – after Plaintiffs present their case at trial.

Finally, as to the last prong of Plaintiffs’ Motion concerning the purported need to provide deposit copies for certain works, Plaintiffs have explained why Defendants’ position is wrong at length in their motion *in limine* (Docket No. 273) and in their brief opposing Defendants’ Motion in Limine to Exclude Evidence of Alleged Infringement of Improperly Asserted Copyrights (Docket No. 288 at Part

infringements. *See* Exhibit A (email exchange between Plaintiffs’ counsel Randi Singer and Defendants’ counsel Steve Schaezel, dated April 18, 2011).

II), which Plaintiffs incorporate here by reference. For the reasons discussed in those filings, Plaintiffs respectfully move the Court to overrule Defendants' unfounded "deposit copy" objection. There is no reason, as Defendants suggest, to reserve ruling on this issue until trial. As a matter of law, Plaintiffs have no burden at trial to demonstrate, as part of their infringement claims, that they deposited copies with the U.S. Copyright Office. *Id.*

CONCLUSION

For the foregoing reasons, Plaintiffs move the Court to grant their Motion In Limine to Overrule Objections to Evidence of Alleged Infringements in its entirety.

Respectfully submitted this 11th day of May, 2011.

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), I hereby certify that this document complies with the font and point selections set forth in Local Rule 5.1. This document was prepared in Times New Roman 14 point font.

/s/ John H. Rains IV
John H. Rains IV

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the foregoing **PLAINTIFFS’
REPLY IN FURTHER SUPPORT OF THEIR MOTION *IN LIMINE* TO
OVERRULE OBJECTIONS TO EVIDENCE OF ALLEGED
INFRINGEMENTS** with the Clerk of Court using the CM/ECF filing system
which will send e-mail notification of such filing to opposing counsel as follows:

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This 11th day of May, 2011.

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