

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

)	
Arline Paul, James A. Bellanca, and)	
Mark Paul, individuals,)	
)	
Plaintiffs,)	
)	13-cv-7746
v.)	
)	Hon. Matthew F. Kennelly
Eric L. Miller, an individual, and Wicker)	
Park Press, Ltd.,)	Hon. Arlander Keys, Magistrate Judge
)	
Defendants.)	

**PLAINTIFFS' MOTION FOR A TEMPORARY
RESTRAINING ORDER AND A PRELIMINARY INJUNCTION**

Plaintiffs (sometimes collectively “Editors”), through their undersigned counsel, in accordance with Rule 65, Fed. R. Civ. P., and pursuant to 17 U.S.C. §502, and 15 U.S.C. §1116, respectfully move this Honorable Court to enter a Temporary Restraining Order and a preliminary injunction, against the Defendants, Eric L. Miller and Wicker Park Press, Ltd. (sometimes collectively “Miller”). In support of their Motion, Plaintiffs state as follows:

The Editors have compiled a unique and important book in the field of education. It is titled, *Becoming Self-Directed Learners: Student & Faculty Memoirs of an Experimenting High School 40 Years Later* (the “Center Book”). They have been working on the book for almost five years. Unfortunately, last year they entered into a publishing contract with Defendants, which the Editors terminated after approximately six months. Since that time, apparently unsatisfied with whatever remedies the terminated contract permits them to pursue, Defendants have actively engaged in a campaign of willful copyright infringement and unfair competition. Specifically, they have claimed copyrights in the Center Book, threatened the Editors with charges of

copyright infringement, filed an application to register copyrights in an infringing work that substantially copies the Center Book, and for six months on their website have offered for sale to the public the infringing work, falsely representing that it is associated with the Editors.

Defendants also persist in identifying the Editors as “editors” of the Defendant company separate and apart from any reference to the Center Book or the accused work, trading without permission on the Editors’ good names and name recognition in the educational field of self-directed learning.

To this point, so far as the Editors know, Miller’s accusations against the Editors have been communicated primarily to persons familiar with the Editors and, in many instances, with Miller as well. For this reason, the Editors have not suffered any injury from Miller’s charges that cannot be addressed eventually by a damages award and permanent injunctive relief. The same holds true for Miller’s willful copyright infringement, false advertising, and other unfair competition Miller has committed and continues to commit. On information and belief, neither Miller’s website nor his Face Book page are widely viewed, at least not up to now.

But in early February the Editors are going to launch the Center Book at a major and prestigious international symposium dedicated to the subject of self-directed learning, which is what the Editors’ book is all about. Suddenly, third parties interested in the Center Book at many levels, e.g., educators, reviewers, vendors, and the like, will learn about the book and will want to know where they can get it. Positive initial reception of the book, unsullied by charges of copyright infringement, no matter how baseless, or by market confusion caused because Miller is offering the infringing work under a title, *On Becoming a Self-Directed Learner: Memoirs of an Experimenting High School*, that is confusingly similar to the title of the real Center Book, will be key to the Center Book’s overall success. Miller’s continuing objectionable

conduct will assuredly irreparably harm the Editors at this point forward and should be enjoined. This conduct includes his recent filing of an application to register copyrights in the infringing work even though he holds no such rights either through contract or by way of authorship. This application is holding up the Editors' application to register.

In addition to the very real irreparable harm to the Center Book's success and to the Editors' reputations that Plaintiffs will suffer unless the requested relief is granted, the instant motion should be granted because there is most definitely some likelihood that the Editors will prevail over Defendants on the merits of their case. Also, the balance of harms clearly favors the Editors, because all that Miller will lose from the entry of a temporary restraining order and a preliminary injunction is unlawful "leverage"—wholly illusory and ineffective in any case—in his state court action to recover money. Miller's state court complaint contains numerous diverse counts, but is based on his claim for the contractually undefined "costs and expenses" to which he believes he is entitled as a consequence of the Editors' termination of the parties' former publishing contract.

Finally, the public interest will be served by eliminating the market confusion that will be caused by Miller's false advertising, which confusion may even lead to purchasers being tricked into believing that the Editors' book has been "POSTPONED!" as is currently being represented on Miller's website.

By their Motion, Plaintiffs seek to stop Miller from irreparably harming the Editors by: 1) Infringing the Editors' copyrights in and to their book *Becoming Self-Directed Learners: Student & Faculty Memoirs of an Experimenting High School 40 Years Later* (the "Center Book"); 2) claiming copyright ownership in and to the Center Book; 3) threatening the Editors with claims of copyright infringement; 4) representing on Miller's website and on Face Book that Miller is

the source of the Editors' book and that the Editors are associated with the incomplete and inferior work Miller is actually offering to the public; 5) offering to the public the incomplete and inferior work, presently identified by the confusingly similar title, *On Becoming a Self-Directed Learner: Memoirs of an Experimenting High School*, or representing to public the status of the infringing work's "availability" status.

In addition, by their Motion Plaintiffs seek temporary and preliminary injunctive relief ordering Defendants to post on the home page of their website and on Miller's Face Book page the statement:

Information about *Becoming Self-Directed Learners: Student and Faculty Memoirs of an Experimenting High School 40 Years Later*, can be found at:
[https://www.facebook.com/pages/Becoming-Self-Directed Learners/590845120981781#](https://www.facebook.com/pages/Becoming-Self-Directed-Learners/590845120981781#)

In further support of their motion, Plaintiffs are filing herewith their Memorandum in Support of Plaintiffs' Motion for a Temporary Restraining Order and a Preliminary Injunction.

WHEREFORE, Plaintiffs respectfully request the Court to enter a Temporary Restraining Order and a preliminary injunction enjoining Defendants:

1) To immediately desist from asserting to third parties that Defendants own any copyrights in and to the Center Book titled, *Becoming Self-Directed Learners: Student & Faculty Memoirs of an Experimenting High School 40 Years Later*, and in and to the accused incomplete work titled, *On Becoming a Self-Directed Learner: Memoirs of an Experimenting High School*, and in and to any other work of similar titles or content;

2) to refrain from offering for sale on their website, www.wickerpark-3ibooks.com, and Eric Miller's Face Book page, and from anywhere else, the accused incomplete work titled, *On Becoming a Self-Directed Learner: Memoirs of an Experimenting High School*, and any other book of similar title or content;

3) to immediately remove from their website, www.wickerpark-3ibooks.com, Eric Miller's Face Book page, and from anywhere else under their control, all references to the accused work, *On Becoming a Self-Directed Learner: Memoirs of an Experimenting High School*, and any other book of similar title or content, including, but not limited to, all statements concerning the accused work's or the Center Book's alleged "availability" status including, but not limited to the statement that either one of them has been "postponed";

4) to immediately remove from their website, www.wickerpark-3ibooks.com, Eric Miller's Face Book page, and from anywhere else under their control, all references to the Plaintiff Editors, whether those references are made in association with the accused book or that otherwise associate the Editors with Defendant Wicker Park Press; and,

5) to immediately post on the home page of their website, www.wickerpark-3ibooks.com, the statement: "Information about *Becoming Self-Directed Learners: Student and Faculty Memoirs of an Experimenting High School 40 Years Later*, can be found at:
[https://www.facebook.com/pages/Becoming-Self-Directed Learners/590845120981781#](https://www.facebook.com/pages/Becoming-Self-Directed-Learners/590845120981781#) ”

Respectfully Submitted,

/s/ C. Michael Kendall
Plaintiffs' Attorney

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CERTIFICATE OF SERVICE

I filed the attached Plaintiffs' Motion for a Temporary Restraining Order and a Preliminary Injunction using the CM/ECF system and thereafter, on January 29, 2014, emailed a copy of the filed document to Defendants' attorney at gareth@garethgollrad.com since, to the best of my knowledge, Mr. Gollrad is not yet an electronic filer. I further certify that on January 29, 2014, I caused a copy the identified document to be served via next day mail, to:

Gareth E. Gollrad, Esq.
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/s/ C. Michael Kendall