

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF INDIANA
 INDIANAPOLIS DIVISION

ANGEL LEARNING, INC.,)	
)	
Plaintiff,)	
vs.)	No. 1:08-cv-01259-LJM-DML
)	
HOUGHTON MIFFLIN HARCOURT)	
PUBLISHING COMPANY,)	
)	
Defendant.)	

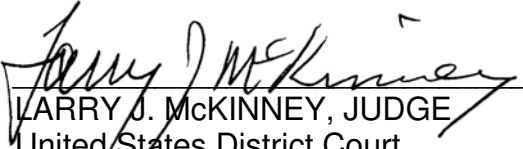
ORDER ON ANGEL LEARNING INC.’S MOTION FOR LEAVE TO FILE SUMMARY JUDGMENT ON HMH’S COUNTERCLAIM AND PARTIAL SUMMARY JUDGMENT ON COUNT I OF ITS COMPLAINT

This matter comes before the Court on plaintiff’s, Angel Learning, Inc. (“ANGEL”), Motion for Leave to File Summary Judgment on HMH’s Counterclaim and Partial Summary Judgment on Count I of its Complaint (“Motion for Leave”) [Dkt. No. 270]. ANGEL seeks to file a Motion for Summary Judgment more than a year after the dispositive motions deadline on the issue of damages owed to defendant, Houghton Mifflin Harcourt Publishing Company (“HMH”), as a result of ANGEL’s breach of warranty. HMH contends that the Motion for Leave is untimely and effectively a second attempt by ANGEL to have the Court reconsider its August 12, 2010 Order [Dkt. No. 248] (“Summary Judgment Order”). ANGEL acknowledges that it raised similar arguments in the briefing leading up to the Summary Judgment Order, but the Court stated that it would not be prudent to discuss the damages issue at that time. See Summary Judgment Order at 20.

A Case Management Plan, including all deadlines contained within it, “may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(c). “In this context, ‘good cause’ means that the deadline could not be met despite the party’s

diligence.” *Sulkoff v. United States*, No. IP-01-1341-C, 2003 WL 1903349, at *3 (S.D. Ind. Jan. 29, 2003) (Tinder, J.). Despite ANGEL’s assurance that allowing the Motion for Summary Judgment will “streamline” the case, ANGEL has provided no reason why it could not have filed this Motion more than a year ago as required by the Case Management Plan or, at the very least, as soon as the Summary Judgment Order concluded that ANGEL had breached certain warranties but failed to address damages. See Dkt. No. 116 (setting dispositive motions deadline of February 1, 2010). Therefore, ANGEL’s Motion for Leave [Dkt. No. 270] is **DENIED**.

IT IS SO ORDERED this 14th day of April 2011.


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

Distribution to:

Sean P. Burke
BARNES & THORNBURG LLP
sean.burke@btlaw.com

Michael T. McNally
ICE MILLER LLP
mcnally@icemiller.com

Scott E. Murray
BARNES & THORNBURG LLP
smurray@btlaw.com

Irwin B. Schwartz
BUSINESS LITIGATION ASSOCIATES,
P.C.
ischwartz@business-litigation-associates.
com

T. Joseph Wendt
BARNES & THORNBURG LLP
jwendt@btlaw.com