

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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RECORDED BOOKS, LLC, : Civil Action No. 8:07-cv-01427-DKC
:
Plaintiff, :
: **PLAINTIFF RECORDED BOOKS,**
v. : **LLC’S MOTION FOR**
: **PRELIMINARY INJUNCTION**
:
OCLC ONLINE COMPUTER LIBRARY :
CENTER, INC. d/b/a NETLIBRARY, :
:
Defendant. :
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Pursuant to Rule 65 of the Federal Rules of Civil Procedure, plaintiff Recorded Books, LLC (“Recorded Books”) hereby respectfully requests that this Court issue a preliminary injunction that enjoins defendant OCLC Online Computer Library Center, Inc. and/or its NetLibrary division (collectively, “NetLibrary”) from: (1) selling, offering for sale, or otherwise promoting to libraries subscriptions to the Recorded Books/NetLibrary “Bundled Collection” of audiobooks (a “Subscription”) pursuant to the eContent Production and Distribution Agreement between Recorded Books and NetLibrary (the “Agreement”); (2) distributing copies of Recorded Books’ copyrighted audiobooks to any library that did not have a Subscription that was in effect on or before May 31, 2007 and/or to any library that renewed such a Subscription on or after June 1, 2007; (3) renewing any Subscription on or after June 1, 2007; (4) engaging in any other conduct that would be prohibited by the Agreement as a result of its termination by Recorded Books; and/or (5) representing to anyone that it is authorized or permitted to do any of the foregoing.

As set forth in detail in the Declaration of Brian T. Downing and Recorded Books’ supporting memorandum, both submitted herewith, Recorded Books lawfully terminated the

Agreement on April 20, 2007, and instructed NetLibrary that it was no longer licensed or authorized to enter into new Subscriptions after May 31, 2007. By continuing, however, to sell Subscriptions and to distribute Recorded Books' copyrighted works to libraries that did not have Subscriptions in effect on or before May 31, 2007, NetLibrary has infringed Recorded Books' copyrights, breached the Agreement, and engaged in false advertising in violation of § 43(a) of the Lanham Act, and will continue to do so unless enjoined. Moreover, NetLibrary's conduct is causing irreparable harm to Recorded Books, an injunction will cause no harm to NetLibrary, and the entry of an injunction is in the public interest.

WHEREFORE, Recorded Books respectfully requests that this Court allow its motion for preliminary injunction. A proposed Order is submitted herewith.

Dated: June 19, 2007

Respectfully submitted,

RECORDED BOOKS, LLC

By its attorneys,

/s/ R. David Hosp

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