

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE,

Plaintiff,

v.

CERTPLEX LTD., a UK corporation,
GLOBAL SIMULATORS LIMITED, a UK
corporation, CERTIFICATION TRENDZ,
LIMITED, a UK corporation,
ITSOLEXPERT LIMITED, a UK
corporation, FREETECH SERVICES
LIMITED, a UK corporation, and JOHN
DOES 1-20,

Defendants.

Civil Action No.:

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, President and Fellows of Harvard College, a/k/a Harvard University (“Harvard”), brings this action against Certplex Ltd., Global Simulators Limited, Certification Trendz Limited, ITSolExpert Limited, Freetech Services Limited, and John Does 1-20 for injunctive relief and damages as follows:

1. This is an action based upon violations of the Copyright Act, 17 U.S.C. §101, *et seq.*, and state law. All claims herein arise out of defendants’ unlawful copying and distribution of Harvard’s Credential of Readiness Examinations. Plaintiff seeks injunctive relief; monetary damages; an award of attorneys’ fees and costs; and such additional relief as this Court deems appropriate.

PARTIES

2. Harvard, with its principal undergraduate campus in Cambridge, Massachusetts, is the nation's oldest institution of higher learning. Harvard is a Massachusetts not-for-profit corporation with various academic units, including the Harvard Business School, whose main campus is in Boston, Massachusetts.

3. Certplex Ltd. ("Certplex") is a United Kingdom limited liability company with its registered office at 27 Old Gloucester Street, London, England.

4. Global Simulators Limited ("Global Simulators") is a United Kingdom limited liability company with its registered office at First Floor, 41 Chalton Street, London, England.

5. Certification Trendz Limited ("Certification Trendz") is a United Kingdom limited liability company with its registered office at Ordman House, 31 Arden Close, Bradley Stoke, Bristol, England.

6. ITSolExpert Limited ("ITSolExpert") is a United Kingdom limited liability company with its registered office at 102 Bressy Grove, South Woodford, London, England.

7. Freetech Services Limited ("Freetech") is a United Kingdom limited liability company with its registered office at 132-134 Great Ancoats Street, Manchester, England.

8. Harvard is unaware of the true names and capacities of John Does 1-20, inclusive, the owners, operators and managers of the named defendants and their operations at "certkiller.com," "testking.com," "certgenie.com," "pass4sure.com" and other related web sites at the Internet domain names listed in **Exhibit 2**. Harvard therefore sues these defendants by such fictitious names. Harvard will amend this complaint to allege their true names and capacities when ascertained. Harvard is informed and believes and therefore alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences alleged, and

that Harvard's injuries as alleged were proximately caused by such defendants. These fictitiously named defendants, along with Certplex, Global Simulators, Certification Trendz ITSolExpert and Freetech, are referred to collectively as "defendants."

9. The actions alleged to have been undertaken by the defendants were undertaken by each defendant individually, were actions that each defendant caused to occur, were actions that each defendant authorized, controlled, directed, or had the ability to authorize, control or direct, and/or were actions each defendant assisted, participated in, or otherwise encouraged, and are actions for which each defendant is liable. Each defendant aided and abetted the actions of one or more of the defendants set forth below, in that each defendant had knowledge of those actions, provided assistance and benefited from those actions, in whole or in part. Each of the defendants was the agent of one or more of the remaining defendants, and in doing the things hereinafter alleged, was acting within the course and scope of such agency and with the permission and consent of other defendants.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over the claims in this action pursuant to the provisions of 17 U.S.C. §501; 28 U.S.C. §1338(a); and 28 U.S.C. §1331. Subject matter jurisdiction is also proper pursuant to 28 U.S.C. §1332 and 28 U.S.C. §1367.

11. This Court has personal jurisdiction over the defendants, who have purposefully availed themselves of the benefits of this District. Defendants have expressly aimed their activities at a resident of this District, knowing that the resulting injury would occur in this District. Defendants have operated commercial websites through which they sold their infringing materials to residents of this District.

12. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b). A substantial part of the events or omissions giving rise to the claim occurred in this District, and a substantial part of property that is the subject of the action is situated in this District. The infringing materials that are the subject of this litigation were created in this District and offered for distribution in this District, and the claims alleged in this action arose in this District.

FACTUAL ALLEGATIONS

13. Harvard Business School is the graduate business school of Harvard. The school offers a full time MBA program and other educational programs, including HBX, an interactive online learning initiative. One of the offered programs is HBX Credential of Readiness (“CORE”), an 8-12 week program that teaches the fundamentals of business and results in a credential issued by HBX. The CORE curriculum, designed by Harvard Business School faculty members and staff, is intended for individuals seeking to understand the fundamentals of business, and how business theories apply in real business settings.

14. In order to obtain the HBX credential, a candidate must meet certain course requirements and then must pass a final examination comprised of a number of modules in particular subject areas, known as the HBX CORE Final Examinations (the “CORE Exams”). The CORE Exams, created at great expense by Harvard Business School, are original works of authorship fixed in a tangible medium of expression by Harvard.

15. The copyright in each CORE Exam was registered, using the “secure” filing procedure, with the United States Copyright Office in compliance with the Copyright Revision Act of 1976 (17. U.S.C. §101, *et seq.*) and Copyright Office Regulations. True and correct copies of the certificates of registration for the CORE Exams are attached to this Complaint as **Exhibit 1** and incorporated by reference.

Defendants' Unlawful Acts

16. Defendants operate web sites at numerous Internet domain names, including “Certkiller.com,” “Testking.com,” “Certgenie.com,” and “Pass4sure.com.” Through these and their other related web sites at the Internet domain names listed in **Exhibit 2** (collectively, the “Test Sales Sites”), defendants offer for sale training materials allegedly designed to prepare students to successfully pass HBX CORE Exams.

17. Harvard is informed and believes, and on that basis alleges, that defendants accessed and copied the CORE Exams, and that the training materials defendants sell through the Test Sales Sites contain exam questions and answers that are either identical or substantially similar to Harvard’s copyrighted exam questions and answers. Harvard has not licensed or authorized defendants to copy or distribute its copyrighted exam content.

18. In sum, defendants have provided and are providing, without permission or license from Harvard, the original copyrighted exam content from the CORE Exams to HBX CORE candidates via the Test Sales Sites.

19. Defendants have utilized a number of techniques to conceal their activities with respect to all of their websites, including Certkiller.com, Testking.com, Certgenie.com and Pass4sure.com. The techniques defendants have used to conceal their activities include, but are not necessarily limited to, private registration of their domain names, the use of false identities to register their domain names, and offshore hosting and payment facilities.

20. Based on the facts alleged herein, defendants have committed, and are committing, thousands of acts of copyright infringement. These acts of infringement are willful, deliberate and committed with knowledge of Harvard’s registered copyrighted material.

FIRST CAUSE OF ACTION

Copyright Infringement 17 U.S.C. §501, *et seq.* (All Defendants)

21. Plaintiff realleges and reincorporates herein by reference the allegations contained in Paragraphs 1 through 20 of this Complaint as set forth above.

22. Harvard is the author, creator and owner of the right, title and interest in each copyrighted CORE Exam registered with the United States Copyright Office. (See **Exhibit 1**, supra).

23. Upon information and belief, defendants had access to the copyrighted works.

24. Defendants willfully infringed Harvard's copyrights by copying, reproducing, displaying and distributing without any authorization from Harvard, infringing copies of the CORE Exams and/or by making derivative works or other infringing use of the CORE Exams in the United States of America.

25. Harvard never authorized the defendants to copy or duplicate or license the CORE Exams, either in whole or in part, or to offer for sale or sell, or offer access to, any copies of its CORE Exams or individual test questions or answers appearing thereon.

26. As a result of the foregoing activities, defendants are liable to Harvard for willful infringement under 17 U.S.C. §501, *et seq.*

27. Harvard has suffered and will continue to suffer, substantial and irreparable damage to its business reputation and goodwill, as well as losses in an amount in excess of \$75,000, but not yet fully ascertained, and which will be further determined according to proof. In addition to Harvard's actual damages, Harvard is entitled, pursuant to 17 U.S.C. §504, to receive the profits made by defendants from their wrongful acts. In the alternative, Harvard is

entitled to statutory damages pursuant to 17 U.S.C. §504(c). These statutory damages should be enhanced in accordance with 17 U.S.C. §504(c)(2) due to the defendants' willful conduct.

28. Harvard has no adequate remedy at law for defendants' wrongful conduct in that: (1) Harvard's copyrights are unique and valuable properties that have no readily determinable market value; (2) the infringement by defendants constitutes interference with Harvard's goodwill and customer relations; and (3) defendants' wrongful conduct and the resulting damage is continuing. Therefore, Harvard is entitled to injunctive relief pursuant to 17 U.S.C. §502 and to an Order under 17 U.S.C. §503 that any infringing materials should be impounded and destroyed.

29. Harvard is also entitled to an order under 17 U.S.C. §503 and 28 U.S.C. §1651(a) requiring that the domain names certkiller.com, testking.com, certgenie.com, pass4sure.com and the other domains listed on **Exhibit 2** be transferred to Harvard.

30. Harvard is also entitled to recover its attorney's fees and costs pursuant to 17 U.S.C. §505.

SECOND CAUSE OF ACTION

State False Advertising And Unfair Competition Law Under MASS. GEN. LAWS ch. 93A, §§ 1-11. (All Defendants)

31. Plaintiff realleges and reincorporates herein by reference the allegations contained in Paragraphs 1 through 30 of this Complaint as set forth above.

32. The defendants' acts within Massachusetts as described in this complaint constitute unfair or deceptive acts or practices in Massachusetts within the meaning of Mass. GEN. LAWS ch. 93A §§ 2 and 11.

33. The defendants' violations of Mass. GEN. LAWS ch. 93A §§ 2 and 11 caused Harvard substantial damages in Massachusetts in an amount to be determined at trial.

34. Harvard has been damaged and will continue to be damaged in Massachusetts by the acts of the defendants unless the defendants are preliminarily and thereafter permanently enjoined by this Court.

35. Harvard is without an adequate remedy at law.

36. Harvard is entitled to multiple damages, attorneys' fees, and costs pursuant to Mass. GEN. LAWS ch. 93A § 11.

PRAYER FOR RELIEF

WHEREFORE, Harvard respectfully requests judgment as follows:

1. That the Court enter judgment against defendants that they have willfully infringed Harvard's rights to the copyrighted CORE Exams identified in **Exhibit 1** under 17 U.S.C. §501;

2. That the Court issue permanent and injunctive relief against the defendants and that defendants, their officers, agents, representatives, servants, employees, attorneys, successors and assigns, and all others in active concert or participation with defendants be enjoined and restrained from:

(a) Imitating, copying or making any other infringing use or infringing distribution of any HBX CORE Exam or variations thereof;

(b) Using reproductions, counterfeits, copies, or colorable imitations of Harvard's copyrighted CORE Exams or variations thereof;

- (c) Distributing, offering for distribution, circulating, selling, offering for sale, advertising, importing, promoting or displaying spurious products or merchandise not authorized or licensed by Harvard;
- (d) Utilizing or maintaining any website to store material that infringes on Harvard's copyrights;
- (e) Providing in any medium whatsoever any copyrighted material owned by Harvard; and
- (f) Assisting, aiding or abetting any other person or business entity in engaging or performing any of the activities referred to in subparagraphs (a) through (e) above.

3. That the Court enter an Order of impoundment pursuant to Section 17 U.S.C. §503 and 28 U.S.C. §1651(a), impounding all infringing copies of Harvard CORE Exams, and any related item, including business records which are in defendants' possession and under their control.

4. That the Court enter an Order pursuant to 17 U.S.C. §503 and 28 U.S.C. §1651(a) requiring that the domain names certkiller.com, testking.com, certgenie.com, pass4sure.com and the other domains listed on **Exhibit 2** be transferred to Harvard.

5. That the Court enter an Order declaring that defendants hold in trust, as constructive trustees for the benefit of Harvard, their illegal profits gained from the distribution of infringing copies of CORE Exams, and requiring defendants to provide Harvard with a full and complete accounting of all amounts due and owing to Harvard as a result of defendants' infringing activities.

6. That the Court enter an Order instructing defendants, jointly and severally, to pay Harvard's general, special, actual and statutory damages as follows:

(a) Harvard's damages and defendants' profits pursuant to 17 U.S.C. §504(b);

or

(b) In the alternative, enhanced statutory damages pursuant to

17 U.S.C. §504(c)(2) for defendants' willful infringement of Harvard's copyright; and

(c) Harvard's actual damages and defendants' profits pursuant to Mass. GEN.

LAWS ch. 93A; and

(d) Pursuant to Mass. GEN. LAWS ch. 93A, increasing damages by three times the actual amount found.

7. That the Court order defendants to pay Harvard both the cost of this action and reasonable attorneys' fees incurred by Harvard in prosecuting this action; and

8. That the Court grant Harvard such additional and further relief as is just and proper.

JURY DEMAND

Plaintiff Harvard hereby demands trial by jury as to all issues in this action triable of right by a jury.

DATED this 29th day of April, 2015

Respectfully submitted,

/s/ John J. Cotter

John J. Cotter (BBO # 554524)
K&L GATES LLP
State Street Financial Center
One Lincoln Street
Boston, Massachusetts 02111-2950
(617) 261-3100
John.Cotter@klgates.com

Counsel for Plaintiff Harvard University

EXHIBIT 1

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
TXu 1-919-044

Effective date of registration:
November 19, 2014

Title

Title of Work: HBX CORE Final Examination: Economics for Managers 1A, 07/2014

Completion/Publication

Year of Completion: 2014

Author

▪ **Author:** President and Fellows of Harvard College

Author Created: text, artwork

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: President and Fellows of Harvard College

Morgan Hall 116, Soldiers Field, Boston, MA, 02163, United States

Rights and Permissions

Organization Name: HBX

Name: Katharine Pilbeam

Email: kpilbeam@hbs.edu

Telephone: 617-496-6753

Address: Harvard Business School

Soldiers Field

Boston, MA 02163 United States

Certification

Name: Grace Lee

Date: November 7, 2014

Certificate of Registration



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Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
TXu 1-919-043

Effective date of registration:
November 19, 2014

Title

Title of Work: HBX CORE Final Examination: Economics for Managers 1B, 07/2014

Completion/Publication

Year of Completion: 2014

Author

■ **Author:** President and Fellows of Harvard College

Author Created: text, artwork

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: President and Fellows of Harvard College

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Email: kpilbeam@hbs.edu

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Address: Harvard Business School

Soldiers Field

Boston, MA 02163 United States

Certification

Name: Grace Lee

Date: November 7, 2014

Certificate of Registration



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Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
TXu 1-919-048

Effective date of registration:
November 19, 2014

Title

Title of Work: HBX CORE Final Examination: Financial Accounting 1A, 07/2014

Completion/Publication

Year of Completion: 2014

Author

▪ **Author:** President and Fellows of Harvard College

Author Created: text, artwork

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: President and Fellows of Harvard College

Morgan Hall 116, Soldiers Field, Boston, MA, 02163, United States

Rights and Permissions

Organization Name: HBX

Name: Katharine Pilbeam

Email: kpilbeam@hbs.edu

Telephone: 617-496-6753

Address: Harvard Business School

Soldiers Field

Boston, MA 02163 United States

Certification

Name: Grace Lee

Date: November 7, 2014

Certificate of Registration



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Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
TXu 1-919-047

Effective date of registration:
November 19, 2014

Title

Title of Work: HBX CORE Final Examination: Financial Accounting 1B, 07/2014

Completion/Publication

Year of Completion: 2014

Author

■ **Author:** President and Fellows of Harvard College

Author Created: text, artwork

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: President and Fellows of Harvard College

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Certification

Name: Grace Lee

Date: November 7, 2014

Certificate of Registration



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Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
TXu 1-919-046

Effective date of registration:
November 19, 2014

Title

Title of Work: HBX CORE Final Examination: Business Analytics 1A, 07/2014

Completion/Publication

Year of Completion: 2014

Author

▪ **Author:** President and Fellows of Harvard College

Author Created: text, artwork

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: President and Fellows of Harvard College

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Soldiers Field

Boston, MA 02163 United States

Certification

Name: Grace Lee

Date: November 7, 2014

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Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
TXu 1-919-045

Effective date of registration:
November 19, 2014

Title

Title of Work: HBX CORE Final Examination: Business Analytics 1B, 07/2014

Completion/Publication

Year of Completion: 2014

Author

▪ **Author:** President and Fellows of Harvard College

Author Created: text, artwork

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

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Email: kpilbeam@hbs.edu

Telephone: 617-496-6753

Address: Harvard Business School

Soldiers Field

Boston, MA 02163 United States

Certification

Name: Grace Lee

Date: November 7, 2014

EXHIBIT 2

CERTPLEX LTD. and GLOBAL SIMULATORS LIMITED domain names

actualanswers.com
actualcerts.com
actualtests.com
braindumps.com
certkiller.com
certpaper.com
cramguides.com
examsheets.com
examsim.com
passguide.com
real-exams.com
realtests.com
selfprep.org

selftestengine.com
test-king.com
test-papers.com
testsinside.com
actual-exam.com
certsheets.com
real-answers.com
real-exam.com
testkingcerts.com
testkingsite.com
testkingworld.net
testnotes.com

CERTIFICATION TRENDZ, LIMITED domain name

testking.com

ITSOLEXPERT LIMITED domain names

becertify.com
certgenie.com
dumps4exam.com
passcram.com
passdumps.com
practicedumps.com
questions4exam.com
questions4test.com
actualtests2014.com
beitcertified.com
cbtdumps.com
dumpsfiles.com

examblogger.com
measureup2014.com
pass4sure2014.com
pdfdump.com
pearsonvue2014.com
prepblogger.com
qablogger.com
realexams2014.com
testforprep.com
testking2014.com
testspdf.com
transcender2014.com

FREETECH SERVICES LIMITED domain names

apass4sure.com
pass4sure.com
pass-4sure.com
pass4sureexam.com

passguides.com
pass4sures.co
pass4sures.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document are being filed with this Court through the electronic case filing (“ECF”) system on April 29, 2015 and will be served with the Complaint in this Action as indicated in the Summons.

/s/ John J. Cotter _____

John J. Cotter