

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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WARNER BROS. ENTERTAINMENT INC. and	:
J.K. ROWLING,	:
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Plaintiffs,	:
	:
- against -	:
	:
RDR BOOKS and DOES 1-10	:
	:
Defendants	:
	:
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Case Number. 07-CV-9667 (RPP)

DECLARATION OF DAVID S. HAMMER IN OPPOSITION  
TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

David S. Hammer declares and states as follows:

1. I am an attorney licensed to practice in the State of New York and a member of the bar of this court. I am counsel to defendant RDR Books in this action. Except for the facts stated on information and belief, all of the facts set forth in this declaration are known to me personally, and if called as a witness, I could and would provide competent testimony as to them.

2. I present below an index to the papers that defendant RDR Books submits in opposition to plaintiffs' motion for a preliminary injunction against publication of The Lexicon. These papers include a memorandum of law, and six supporting declarations (including my own declaration). These declarations, and their attached exhibits, include the following:

a. Declaration of Roger Rapoport, owner of RDR Books. This declaration explains the steps RDR has taken to ensure that its cover does not create consumer confusion or infringe any of plaintiff's trademarks.

Exhibit 1: The presently proposed cover to the Lexicon.

b. Declaration of Steven Jan Vander Ark, the author of The Lexicon. This declaration explains the genesis of the Lexicon, describes its “A to Z” structure, describes the process by which it was composed, and gives specific examples of the types of information and explanation it provides.

Exhibit 1: Note to Vander Ark from Cheryl Klein

Exhibits 2-14: Sections of the Lexicon.

c. Declaration of Janet Sorensen, Associate Professor of English at the University of California, Berkeley. This declaration describes the history of companion guides to fiction, and points out their usefulness in permitting readers to appreciate the many meanings, references and allusions that serious writers embed in their fiction. Professor Sorensen then provides a close examination of The Lexicon, and shows its value to a reader of the Potter novels.

Exhibit 1: CV of Janet Sorensen

d. Declaration of Shawn Malhotra, a student intern for David Hammer. This declaration analyses the interviews and press articles about plaintiff Rowling’s anticipated companion guide to the Potter novels, all of which Ms. Rowling has identified in responses to defendant’s interrogatories. The declaration shows that Ms. Rowling has stated she may not publish a companion guide for another ten years, and that close to 200 companion guides to the Potter novels already have been published.

Exhibit 1: Summary chart of Rowling Interviews

Exhibits 2-5: Interviews with J.K. Rowling.

e. Declaration of David Harris, a student intern for David Hammer. This declaration identifies six companion books to the Harry Potter series that contain A to Z

encyclopedias which are highly similar to The Lexicon. Portions of the six books are presented as exhibits.

Exhibit 1: Scan of the “Unofficial Harry Potter Encyclopedia” by Kristina Benson.

Exhibit 2: Scan of “Field Guide to Harry Potter”, by Colin Duriez.

Exhibit 3: Scan of “The J.K. Rowling Encyclopedia”, by Connie Ann Kirk.

Exhibit 4: Scan of “A Muggles Guide to Exploring the Wizarding World”, by Fionna Boyle.

Exhibit 5: Scan of “Fact Fiction and Folklore in Harry Potter’s World”, by George Beahm.

Exhibit 6: Scan of “The End of Harry Potter?” by David Langford.

Exhibit 7: Summary Chart of Similarities Between Scanned Companion Books and The Lexicon.

3. Finally, I present as an exhibit to my own declaration plaintiffs’ responses to defendant’s interrogatories. These responses, as the Malhotra declaration shows, make clear that many other companion books already have been published, and that any companion guide by Ms. Rowling may be years away from publication.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: New York, New York  
February 7, 2008

  
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David S. Hammer (DH 9957)