

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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WARNER BROS. ENTERTAINMENT, INC., and	:	07 Civ 9667 (RPP)
J.K. ROWLING,	:	
	:	
Plaintiffs,	:	
- against -	:	
	:	
RDR BOOKS and DOES 1-10,	:	
	:	
Defendants.	:	
	:	
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DECLARATION OF SHAWN MALHOTRA SUBMITTED  
IN OPPOSITION TO PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION

I, Shawn Malhotra, declare and state as follows:

1. I am a first year law student at New York University School of Law.

Except for the facts stated on information and belief, all of the facts set forth herein are known to me personally, and if called as a witness, I could and would testify accurately and competently to them.

2. I began working for David S. Hammer as a part-time legal intern in January 2008. Mr. Hammer assigned me to help him in the defense of the present case, Warner Bros. Entertainment, Inc. and J. K. Rowling v. RDR Books.

3. Mr. Hammer asked me to research and summarize the contents of the list of news articles that Ms. Rowling cited in her response to Interrogatory Three of Defendant’s First Set of Interrogatories. In this response, Ms. Rowling acknowledged that she had made public statements “on numerous occasions that she planned on writing a Harry Potter companion guide”, and that these statements had been reported, among

other places, in a series of news articles, “a representative sample of which” she then listed. I provide the complete list given by Ms. Rowling as Exhibit 1 to this affidavit.

4. After multiple searches on the LexisNexis and Westlaw databases, I have read as many articles as possible from the complete list provided as Exhibit 1. I have also researched and read many of Ms. Rowling’s public statements about writing a Harry Potter companion guide that were not cited in Exhibit 1. I have also read through defendant’s unpublished Harry Potter companion book (“the Lexicon”).

#### Ms. Rowling’s Reported Statements

5. Ms. Rowling has publicly admitted that she has not begun to write the planned Harry Potter companion guide and does not expect to complete it soon. In one of the articles cited by Ms. Rowling in Exhibit 1, Ms. Rowling states: “I haven’t started writing [the companion guide]. I never said it was the next thing I’d do.” Ms. Rowling also claims that “[it’s] the first time in 10 years that I have no deadline.” I provide the complete news article as Exhibit 2 to this affidavit.

6. Ms. Rowling has publicly admitted that she plans to take an extended break from publishing any new material. In one of the articles cited by Ms. Rowling in Exhibit 1, Ms. Rowling admits: “I think I probably will [do a Harry Potter encyclopedia.] ... The raw material is all in my notes. ... But I’m not going to do it tomorrow, because I’d really like a break. I want to take a break from publishing for a little while. You know, I’ve still got a young family [her 4-year-old son David Gordon and 2-year-old daughter Mackenzie Jean]. So you may be waiting.” I provide the complete news article as Exhibit 3 to this affidavit.

7. Ms. Rowling has publicly acknowledged that many unofficial Harry Potter companion books have been published and sold. As evidenced in one of the articles cited by Ms. Rowling in Exhibit 1, there are an estimated 190 unofficial Harry Potter companion books actively sold on the market. One such companion book, "What Will Happen in Book 7?", has sold 300,000 copies in the United States. I provide the complete news article (which Ms. Rowling cited in her interrogatory responses) as Exhibit 4 to this affidavit.

Ms. Rowling's 12/17/2007 Interview with Melissa Anelli, John Noe and Sue Upton:

8. Perhaps the most complete discussion that Ms. Rowling has provided of plans for a companion volume appears in an interview she gave on December 17, 2007 to the staff of a popular Harry Potter fan website named "PotterCast – The Harry Potter Podcast" (the "Pottercast Website"). This interview was recorded in a "podcast", which the Pottercast Website has made available. Steven Vander Ark has verified that the voice of the person described as Ms. Rowling on the podcast is in fact the voice of J. K. Rowling.

9. The Pottercast Website has provided a transcript of the December 17, 2007 interview, which I provide as Exhibit 5 to this declaration. I have compared the text of the relevant portions of the transcript to the podcast (that is, the portions described below), and can verify that the remarks of Ms. Rowling that I refer to in this declaration were accurately transcribed.

10. In the December 17<sup>th</sup> interview, Ms. Rowling publicly admitted that she does not expect to finish writing her Harry Potter companion guide for another ten years. Thus, after the interviewer states that she cannot wait for Ms. Rowling's planned

companion guide, Ms. Rowling responds: “Would it be okay if that’s ten years? ... No, listen, I absolutely intend to do it, but I can’t pretend that I’m in a hurry right now. It’s gonna be a hell of a lot of work. But I have- I’ve kept everything and I know where things are and yeah, at some point I will get myself together and do it.”

11. During the same interview, Ms. Rowling described her vision for the companion book. This description makes clear that the book Ms. Rowling plans will be very different from the Lexicon. Thus, while the Lexicon provides an A to Z listing of the characters, creatures, places and spells mentioned in the Potter novels, Ms. Rowling’s focus seems to be on material that is not actually in the novels themselves. Thus, she states that:

“The ideal would be to have- say on the left hand side you’ve got a page showing all your back story, extra details on characters, or an entry on wands, showing what every character’s wand was and all of this stuff. ... And I think also it might be interesting to have information about the actual writing and what I discarded. So on one side it’s acting like the whole world is true and it’s giving you extra information on that real world ... and on the other side we’re admitting that it’s actually fiction and I’m showing yeah, discarded plots, characters that didn’t make it, problems in the plot. I think both lots of information are interesting so it would be nice to unite both of them.”

12. This material, which supplements the material in the novels, does not overlap with the Lexicon, which confines itself to describing what actually is in the novels.

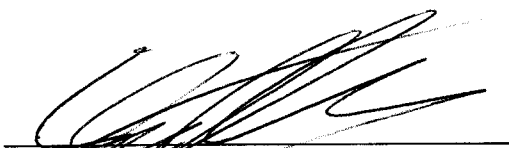
13. I provide the following chart, which summarizes the most important interviews that Ms. Rowling has given about her companion books:

<p><b>The Sunday Telegraph (London)</b> 10/28/07</p>	<p>“Later, asked what she was going to write next, Ms Rowling said that it would not be the long-awaited Harry Potter encyclopedia . 'It's the first time in 10 years that I have no deadline,' she added. 'But I will always write.'”</p>
<p>10/16/07</p>	<p>Article is about a book tour for American school children. The article states:</p>

Los Angeles Times	“When someone asked how a reported Harry Potter encyclopedia was coming along she simply laughed. “It’s not coming along”, she said,” and I haven’t started writing it. I never said it’s the next thing I’d do.”
7/26/07 Scotland) UPI (Edinburgh,	States that Rowling is planning to write an encyclopedia, but isn’t ready to start writing it. I’m not going to do it tomorrow because I’d really like a break,” Rowling said during the interview at Edinburg Castle, “so you may be waiting.”
7/25/07 Newstex Web Blogs, Gryffindor Gazette	The article quotes Rowling: ““I need to be off ... writing,” Rowling admitted in the interview, which took place Tuesday in Edinburgh, Scotland. “I think I probably will [do a Harry Potter encyclopedia.] ... The raw material is all in my notes. ... But I’m not going to do it tomorrow, because I’d really like a break. I want to take a break from publishing for a little while. You know, I’ve still got a young family [her 4-year-old son David Gordon and 2-year-old daughter Mackenzie Jean]. So you may be waiting.”” The article also elaborates several new plot details that she plans to include in the encyclopedia.
5/13/07 The Sunday Telegraph (London)	Mentions that Rowling plans to write an encyclopedia, and quotes her agent saying that she retained all the rights to the series, including any companion books. The article also says there’s been 190 unofficial companion books published, and quotes an author of one who said he did not profit greatly from it.

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

Dated: February 5, 2008  
New York, New York

  
Shawn Malhotra