

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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JOHN WILEY & SONS, INC.,

Plaintiff

08 CV 7834

Lynch, G, USDJ

-against-

**SUPAP KIRTSANG D/B/A BLUECHRISTINE99
and JOHN DOE NOS. 1-5,**

Defendants

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**DECLARATION OF SUPAP KIRTSANG
IN OPPOSITION TO MOTION FOR
ATTACHMENT AND PRELIMINARY INJUNCTION**

Supap Kirtsaeng, pursuant to 28 U.S.C. § 1746 declares under the penalties of perjury as follows:

1. I submit this declaration, together with the accompanying memorandum of law and declaration of my counsel in opposition to the motion (the “**Motion**”) of Plaintiff John Wiley & Sons, Inc., (“**Plaintiff**” or “**Wiley**”) seeking an order of attachment as well as a preliminary injunction.
2. I am a doctoral candidate in the area of differential geometry at the University of Southern California. I moved to the United States from Thailand in 1997 to pursue a Bachelor of Science degree in mathematics at Cornell University; four years later I was awarded my B.S. I was only able to achieve this degree by reason of a full academic scholarship granted to me by my country in 1997.
3. This is the first time I have been involved in any legal proceedings whether here or in Thailand.

4. In financing my undergraduate education, Thailand expects that I will return to contribute to my country through public work in my area of expertise. I plan to do so once I am awarded my doctorate.

5. I have received only intermittent funding in connection with my graduate training (through sporadic teacher assistant work). I also note-- as is no great secret—that the pursuit of a doctorate in this country is an extremely expensive undertaking.

6. In or about 2006, just as I was about to start the matriculation process at USC, I inquired of some of my friends from Thailand how they were able to pay for their advanced educations. Several of them informed me that they had taken to selling books online and that it was through such efforts that they were able to complete their educations before returning home. This seemed an appropriate way for me to cover my expenses and to repay some of the funds people back home had lent me in the short term.

7. None of my friends had experienced any legal issues from selling text books in this manner. As I would come to do myself, they sold the books openly and without fear of legal consequence. Like me, they sold legitimate copyright- bearing text books originally acquired from overseas publishers. Unlike some of my friends who were selling books to pay for their education, however, I did not personally bring books from overseas into this country; they were shipped to California via UPS express and ocean freight as directed by friends and family (who I would later reimburse from sales I would make on eBay). Hence I obtained the books here and resold them here.

8. I understand that the books had notices saying that they should not be sold in the United States. At the same time, they all had notices saying that they are copyrighted in the United States. See Exhibit 1 hereto. I cannot understand how a book can be "lawfully made" under U.S. Copyright law and yet barred from resale in this country; I thought that this was a matter only concerning wholesalers. Wiley, I thought, had arrangements with its wholesale distributors—meaning the people my family obtained the books from—which restricted their distributions to overseas.

9. It is my understanding that if one buys a US copyrighted book and resells it the sale is not subject to claims of infringement under the so-called *first sale* doctrine. I was given this advice by friends who had done their research before setting up their businesses. For my part, I note that even Wiley concedes that the books that I sold were *authorized* Wiley books, albeit published in another country.

10. I understand that the attachment statute authorizes such relief as either a means to obtain jurisdiction over a defendant or where a defendant has hid, assigned or disposed of property in order to deprive an ostensible creditor of its ability to enforce a prospective judgment. The Court has already exercised jurisdiction over me—so the remedy would not serve the jurisdictional purpose. With respect to the second purpose: I have not sought to secrete assets and from what I can see Wiley has submitted no proof to the contrary.

11. Admittedly, I have withdrawn funds to repay family and friends in anticipation of my graduation from USC. I also have no intention of continuing to sell books since I no longer need funds to pay for my education or to repay people for their loans. In short, I had no further need to maintain funds in my PayPal account.

12. While I am not a lawyer, I am a mathematician and I can confirm that I only received \$6,400 on the 8 titles covered by the complaint. (In a semester, I would sell an average of 10 books per title and my average profit was around \$10 per book. I have sold books over the course of 4 semesters. Since there are 8 titles, the estimate for the total comes to $20 \times 10 \times 4 \times 8 = \6400 .)

13. True enough I also sold books by other publishers, but those sales are not the subject of this suit. And even then, the numbers cited by Wiley are vastly misleading in that they make no allowance for costs and expenses. My total profits on this process paid for my graduate education and living expenses and, once loans and family obligations were repaid, left little else.

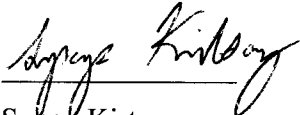
14. I also have every reason to believe that Wiley made profits on my sales including sales made by its affiliate John Wiley & Sons (Asia) Pte Ltd. See Exh. 1 hereto.

15. When one takes into account the money Wiley itself made on the sales, the Plaintiff may have ultimately turned more of a profit on my activities than me. (Wiley also made profits on books that I brought overseas and did not sell in time. Wiley, as well as other publishers update their editions frequently; this requires additional purchases by reason of the forced obsolescence of certain volumes. They do so without notice, meaning that I was often left with books that were updated and un-saleable. Ultimately-- in many instances I sustained net losses while Wiley made profits.)

16. I cannot understand how—on the basis of scant trades and marginal profits—and in view of the fact that I have done nothing to deliberately injure the Plaintiff or hide assets from it, the Plaintiff would require the drastic relief it seeks here.

17. Accordingly I respectfully ask the Court to deny the Motion.

Dated: May 5, 2009


Supap Kirtsaeng