

LYN14,5.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 5/14/09
--

JOHN WILEY & SONS, INC.,

Plaintiff, :

-against-

: 08 Civ. 7834 (GEL)

SUPAP KIRTSANG D/B/A BILLYTEXT  
D/B/A BLUECHRISTINE99 D/B/A  
PINKYTEXT D/B/A SUDCHLIEW D/B/A  
TUBOOKS123 D/B/A PIGVICKY AND  
JOHN DOE NOS. 1-5,

: ECF Case

:

:

Defendants. :

- - - - -x

STIPULATED CONFIDENTIALITY AGREEMENT  
AND PROTECTIVE ORDER

IT IS HEREBY STIPULATED and agreed by and between  
counsel for Plaintiff John Wiley & Sons, Inc. and counsel  
for Defendant Supap Kirtsang, that the terms and  
conditions of this Stipulated Protective Order shall be  
entered as follows:

1. This Stipulated Protective Order shall be  
applicable to and govern all depositions, documents  
produced in response to requests for production of  
documents, answers to interrogatories, responses to  
requests for admissions and all other discovery taken  
pursuant to the Federal Rules of Civil Procedure, as well  
as all documents produced by either party in response to

informal discovery requests, and testimony adduced at trial, matters in evidence and computerized records (collectively, "RECORDS") which the disclosing party designates as "CONFIDENTIAL MATERIAL" or "CONFIDENTIAL ATTORNEYS EYES ONLY MATERIAL" hereafter furnished, directly or indirectly, by or on behalf of any party in connection with this action.

2. In designating RECORDS as "CONFIDENTIAL MATERIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL," a party shall make such a designation of CONFIDENTIAL MATERIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL only for RECORDS which that party in good faith believes (i) contain trade secret or other confidential, competitive or proprietary business information used by it in, or pertaining to, its business which the party takes appropriate efforts to keep confidential, (ii) contain confidential personal or financial information which the party takes appropriate steps to keep confidential, or (iii) contain other information which the party is otherwise required to keep confidential by agreement or law. For a designation of RECORDS as "CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL," the party must additionally believe in good faith that the RECORDS must be protected from disclosure to the parties themselves in this

litigation and must be subject to the restricted disclosure provided for below. CONFIDENTIAL MATERIAL and CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL shall be used solely for the purpose of conducting this litigation and not for any other purpose.

3. RECORDS designated as CONFIDENTIAL MATERIAL may be disclosed only to the following persons:

- a. the attorneys working on this action on behalf of any party, including in-house attorneys;
- b. any paralegal assistants, stenographic and clerical employees working under the direct supervision of such counsel;
- c. any parties to this action who are individuals, and the employees, directors or officers of parties to this action who are corporations or partnerships, to the extent necessary to further the interest of the parties in this litigation;
- d. any person not employed by a party who is expressly retained or sought to be retained by any attorney described in paragraph 3(a) to assist in preparation of this action for trial, with disclosure only to the extent necessary to perform such work;
- e. any witnesses who appear for deposition or trial in this matter, during the course of their testimony,

upon the witness being advised of the need and agreeing to keep the RECORDS confidential;

- f. certified court reporters; and
- g. the Court.

4. RECORDS designated as "CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL" may be disclosed only to the following persons:

- a. the attorneys working on this action on behalf of any party, including in-house attorneys;
- b. any paralegal assistants, stenographic and clerical employees working under the direct supervision of such counsel, with disclosure only to the extent necessary to perform their work in connection with this matter;
- c. any person not employed by a party who is expressly retained or sought to be retained by any attorney described in paragraph 4(a) to assist in preparation of this action for trial, with disclosure only to the extent necessary to perform such work;
- d. any witnesses who appear for deposition or trial in this matter, during the course of their testimony, upon the witness being advised of the need and agreeing to keep the RECORDS confidential;
- e. certified court reporters; and
- f. the Court.

5. The persons described in paragraphs 3(d) and 4(c) shall have access to the CONFIDENTIAL MATERIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL only once they have been made aware of the provisions of this Order and have manifested their assent to be bound thereby by signing a copy of the annexed "ACKNOWLEDGMENT." The other persons described in paragraphs 3 and 4 shall have access to the CONFIDENTIAL MATERIAL and CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL pursuant to the terms of this Order without signing a copy of the annexed "ACKNOWLEDGEMENT." At the time of the termination of this lawsuit by settlement, judgment or otherwise, the parties hereto shall provide other counsel with a copy of the pertinent aforementioned lists upon request. The persons receiving CONFIDENTIAL MATERIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL are enjoined from disclosing it to any other person, except in conformance with this Order. This Stipulation will not require the disclosure of experts other than by Local Rule, Federal Rule of Civil Procedure, and/or Court Order.

6. Each individual who receives any CONFIDENTIAL MATERIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL hereby agrees to subject himself/herself to the jurisdiction of this Court for the purpose of any

proceedings relating to the performance under, compliance with or violation of this Order.

7. The recipient of any CONFIDENTIAL MATERIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL that is provided under this Order shall maintain such RECORDS in a secure and safe area and shall exercise the same standard of due and proper care with respect to the storage, custody, use and/or dissemination of such RECORDS as is exercised by the recipient with respect to its own proprietary information.

8. Parties shall designate CONFIDENTIAL MATERIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL as follows:

a. In the case of RECORDS produced pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, interrogatory answers, responses to requests for admissions, and the information contained therein, designation shall be made by placing the following legend on any such RECORD prior to production: "CONFIDENTIAL MATERIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL." In the event that a party inadvertently fails to stamp or otherwise designate a RECORD as CONFIDENTIAL MATERIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL at the time of its production, that party shall have ten (10) business

days after discovery of such error to so stamp or otherwise designate the RECORD.

b. In the case of RECORDS produced pursuant to Rule 45 of the Federal Rules of Civil Procedure, designation shall be made by placing, within ten (10) business days after receipt of such RECORDS by the designating party, the following legend on any such RECORD: "CONFIDENTIAL MATERIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL." During the time between the production of RECORDS by a third party and ten (10) business days after receipt of such RECORDS by the designating party, such RECORDS may only be disclosed to those persons set forth in paragraph 4.

c. In the case of depositions, designation of the portion of the transcript (including exhibits) which contains CONFIDENTIAL MATERIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL shall be made by a statement to such effect on the record in the course of the deposition or, upon review of such transcript by counsel for the party to whose CONFIDENTIAL MATERIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL the deponent has had access, said counsel shall designate within fourteen (14) days after counsel's receipt of the transcript.

d. Transcripts of depositions that contain CONFIDENTIAL MATERIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL will not be filed with the Court unless it is necessary to do so for purposes of trial, motions for summary judgment, or other matters. If a deposition transcript is filed that contains CONFIDENTIAL MATERIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL, the transcript shall bear an appropriate legend on the caption page and shall be filed under seal.

9. A party shall not be obligated to challenge the propriety of a CONFIDENTIAL MATERIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL designation at the time made, and failure to do so shall not preclude a subsequent challenge thereto. In the event that any party to this litigation disagrees at any stage of these proceedings with such a designation, such party shall provide to the producing party written notice of its disagreement with the designation. The parties shall first try to dispose of such dispute in good faith on an informal basis, which shall occur within seven (7) business days of notice of disagreement with a designation. If the parties are unable to resolve the dispute via the meet-and-confer, within ten (10) business days of the meet-and-confer the designating party shall either (a) withdraw the designation or (b) file



a motion for protective order seeking to retain the designation as applied to the challenged material. If the designating party does not withdraw the designation or file a motion for protective order within ten (10) business days of the meet-and-confer, the designation shall be deemed withdrawn. If the designating party timely files a motion for protective order, until and unless the Court enters an order changing the designation, the designated material shall continue to be subject to this Order. The burden of proving that RECORDS have been properly designated as CONFIDENTIAL MATERIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL shall be on the party making such designation.

10. In the event that any CONFIDENTIAL MATERIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL is used in any court proceedings in connection with this litigation, it shall not lose its CONFIDENTIAL MATERIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL status through such use, and the parties shall take all steps reasonably required to protect its confidentiality during such use.

11. Nothing in this order shall preclude any party to the lawsuit, their attorneys or any other person from disclosing or using, in any manner or for any purpose, any RECORDS not obtained in this lawsuit, if such RECORDS are lawfully obtained from a third party, even though the

same RECORDS may have been produced in discovery in this lawsuit and designated as CONFIDENTIAL MATERIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL.

12. Nothing in this order shall preclude any party to the lawsuit or their attorneys (a) from showing RECORDS designated as CONFIDENTIAL MATERIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL to an individual who either prepared or reviewed the RECORDS prior to the filing of this action; or (b) from disclosing or using, in any manner or for any purpose, RECORDS from the party's own files which the party itself has designated as CONFIDENTIAL MATERIAL or CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL.

13. Within sixty (60) days of the termination of litigation between the parties, all CONFIDENTIAL MATERIAL and CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIAL, and all copies thereof, except such copies which have been filed with the Court, utilized in accordance with this Order, or which are and will continue to be maintained in a secure place pursuant to the continuing obligations of this Order, shall be returned to the party which produced it or shall be destroyed.

14. Except as specifically provided herein, the terms, conditions and limitations of this Order shall

survive the termination of this action at the option of the designating party.

15. This Order is without prejudice to the right of any party to seek relief from the Court, upon good cause shown, from any of the provisions contained in paragraphs 1 through 16, inclusive hereof.

Dated: New York, New York  
May 13, 2009

DUNNEGAN LLC

By William Dunnegan  
William Dunnegan (WD9316)  
wd@dunnegan.com  
Laura Scileppi (LS0114)  
ls@dunnegan.com  
Attorneys for Plaintiff  
350 Fifth Avenue  
New York, NY 10118  
(212) 332-8300

SAM P. ISRAEL, P. C.

By Sam P. Israel  
Sam P. Israel (SPI 0270)  
SMIsrael@aol.com  
Attorneys for Defendant  
1 Liberty Plaza - 23<sup>rd</sup> Floor  
New York, New York 10006  
(212) 201-5345

SO ORDERED:

Gerard E. Lynch  
Gerard E. Lynch  
United States District Judge

5/14/09