

DUNNEGAN LLC
ATTORNEYS AT LAW
350 FIFTH AVENUE
NEW YORK, NEW YORK 10118

212-332-8300

212-332-8301 TELECOPIER

September 30, 2009

By Hand

Hon. Donald C. Pogue
U.S. Court of International Trade
One Federal Plaza
New York, New York 10278-0001

Re: John Wiley & Sons, Inc. v. Kirtsang
08 Civ. 7834 (DCP)

Dear Judge Pogue:

We are attorneys for plaintiff John Wiley & Sons, Inc. in the above action. We are writing for two purposes.

I.

We are writing to explain why we are delayed in filing the joint pretrial order. We provided a draft in WORD to Mr. Israel on Thursday, September 24, at 1:06 p.m. Mr. Israel provided us another version of the document in WORD on September 28, 2009 at 1:48 p.m. This draft purported to be a redlined version of the draft that we had sent, but upon examination, contained material changes that were not redlined. For example, we enclose the body of the order from (i) the version sent to Mr. Israel on September 24, and (ii) the redlined version received from him on September 28. The September 24 version has been marked in ink to show the changes that Mr. Israel made on the September 28 version. As the Court will see, Mr. Israel deleted portions of the standard order and did not redline those deletions. Other examples exist.

When we sent a redraft to Mr. Israel at 4:07 yesterday afternoon, we sent it in .pdf. Mr. Israel responded at 4:11 p.m. that he would not read a .pdf. We therefore sent it to him in WORD at 4:59 p.m., but asked

him to send his handwritten changes. He instead sent us a .pdf that contained his unmarked changes, and a WORD document with tracked changes that we did not trust. I called Mr. Israel at about 5:45 p.m. to ask him to tell me what changes he had made. He then screamed for about 1 minute, which will not attempt to paraphrase, and hung up the phone. I called him back. He screamed at me again, this time threatening to report me to the Disciplinary Committee.

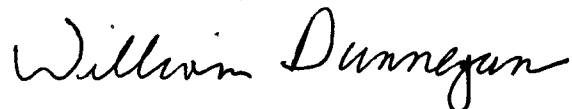
We could not read the entire document last night, as we had other commitments, and will endeavor to file it as promptly as possible.

II.

We request a conference to address the fact that Mr. Israel has refused to disclose the identity of a witness he apparently intends to call at the contempt hearing.

Mr. Israel has served upon us the enclosed declaration of Kai Lui, who he apparently intends to call as a witness at the contempt hearing on October 28. We could not identify that individual. When my associate asked Mr. Israel for the contact information for Mr. Lui, he responded with an e-mail on September 28, 2009 at 11:06 p.m. that provided "You must be joking." I have raised this issue with Mr. Israel by e-mail and he has not responded. An attempt to resolve this by telephone would prove futile.

Respectfully yours,



William Dunnegan

Cc: Sam P. Israel, Esq. (By E-mail)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

JOHN WILEY & SONS, INC., :

Plaintiff, :

-against- : 08 Civ. 7834 (DCP)

SUPAP KIRTSANG D/B/A : ECF Case

BLUECHRISTINE99 AND JOHN :

DOE NOS. 1-5, :

Defendants. :

- - - - -x

William Dunnegan and Laura Scileppi for the Plaintiff

Sam P. Israel for the Defendant

JOINT PRE-TRIAL ORDER

At the pretrial conference held on October 22, 2009 before the Hon. Donald C. Pogue, and attended by counsel, the following matters were discussed and agreed to, and are hereby ORDERED:

1. General. The parties recognize that this joint pretrial order controls the subsequent course of the action unless the order is modified by consent of the parties and the Court, or by order of the Court to prevent manifest injustice. The attached schedules, each on a separate sheet, are part of this order.

2. Parties and Counsel. Schedule A sets forth the names of all parties; the names, addresses and telephone numbers of their respective attorneys, and the names of trial counsel for each party.

3. Jurisdiction. Schedule B-1 sets forth the statutes, legal doctrines, and facts upon which Plaintiff claims jurisdiction. Schedule B-2 indicates which of these, if any, are contested.

4. Uncontested Facts. All material facts that are without substantial controversy are set forth in Schedule C (in the form required by Rule 56). Material facts that are actually and in good faith controverted, and which a party intends to establish at trial, are separately listed in Schedules C-1 and C-2. ~~Facts not included in these schedules may not be established at trial.~~

5. Claims and Defenses. The parties' claims and defenses are separately listed in Schedule D-1 and D-2.

6. Damages and Other Relief. Claims with respect to damages and other relief sought by each party are detailed in Schedules E-1 and E-2.

7. Waiver of Claims. The parties waive all claims with respect to liability, damages, and other relief and all affirmative defenses which are not set forth in Schedules D and E.

8. Triable Issues. Schedules F-1 and F-2 set forth and separately number the issues of the case, without simply restating the disputed facts. ~~All legal issues are to be addressed prior to the commencement of the trial.~~ Schedules F-3 and F-4 set forth the position of the parties on the applicability of 17 U.S.C. § 109.

9. Witnesses. Schedules G-1 and G-2 list for the respective parties the witnesses they will or will probably call to testify at the trial, ~~setting forth for each witness (a) name, (b) address, (c) a summary of expected testimony, and, for expert witnesses, (d) a curriculum vitae, (e) the area of expertise, and (f) the basis upon which the proposing party claims said testimony to be reliable. Once the trial commences, no interruption in the testimony will be permitted. Any objection to a witness, and the grounds therefore, must be separately stated as Objections to Schedule G-1 and G-2.~~

10. Deposition Testimony. Any party proposing to use deposition testimony as evidence shall, at least three weeks prior to the trial date, notify all the adversaries of the testimony proposed to be read. Objections to any proposed deposition testimony shall be made in writing no later than two weeks prior to trial. The parties shall file with the Court copies of the depositions, indicating the portions to be read and the

relative objections. The Court will rule on all such objections prior to commencement of the trial.

11. Exhibits. Schedules H-1 and H-2 list for the respective parties the exhibits to be offered in evidence by that party. Each list shall identify and describe each exhibit. Plaintiff's exhibits shall be identified by numbers, Defendant's by letters. The parties recognize that they will not be allowed to use at trial any exhibits or witnesses not identified in this joint pretrial order except upon prompt notice to all parties and to the Court, and upon a showing of good cause.

"and an objections by the other party as to admissibility.

~~12. Objections to Exhibits. Schedules I-1 and I-2 list for the respective parties each adversary's exhibits whose authenticity or admissibility are contested. The parties shall state the specific ground for objection to each contested exhibit listed therein.~~

13. Discovery. All discovery is complete. Undisclosed discovery which surfaces during trial will be deemed untimely and subject to the sanction of exclusion or imposition of a monetary fine, or both.

14. Jury Trial. The case will be tried to a jury. The jury trial is applicable to all aspects of the case.

Additional Filing Prior to Trial in Jury Cases. In jury cases, unless otherwise ordered by the Court, each party shall file, at a date to be determined at the pretrial conference, requests to charge and proposed voir dire questions. When feasible, proposed jury charges should also be submitted on compact disk in WordPerfect X3 format. This paragraph does not preclude supplemental requests for additional instructions during the course of trial or at the conclusion of the evidence on matters that cannot reasonably be anticipated unless the Court has directed otherwise, and provided that no request to charge shall be accepted unless made and submitted to the Court twenty-four (24) hours in advance of the time that summation commences.

15. Pretrial Legal Memoranda. Not fewer than seven (7) days before the trial, each counsel shall provide the Court with memoranda of law containing a discussion of

any unresolved issue not fully addressed by the Pretrial Summary Memorandum.

16. Trial Time. The trial will take approximately 2 days.

Dated: New York, New York
September 29, 2009

DUNNEGAN LLC

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

SAM P. ISRAEL, P.C.

By _____
Sam P. Israel (SPI0270)
Attorney for Defendant
Supap Kirtsaeng
Twenty Third Floor
New York, New York 10006
Tel: 212-201-5345
Fax: 212-201-5343

SO ORDERED:

Daniel C. Pogue

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
JOHN WILEY & SONS, INC.,

Plaintiff,

-against-

08 Civ. 7834 (DCP)

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

ECF Case

Defendants.
-----x

William Dunnegan and Laura Scileppi for the Plaintiff

Sam P. Israel for the Defendant

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Donald C. Pogue, and attended by counsel, the following matters were discussed and agreed to, and are hereby ORDERED:

1. General. The parties recognize that this joint pretrial order controls the subsequent course of the action unless the order is modified by consent of the parties and the Court, or by order of the Court to prevent manifest injustice. The attached schedules, each on a separate sheet, are part of this order.

2. Parties and Counsel. Schedule A sets forth the names of all parties; the names, addresses and telephone numbers of their respective attorneys, and the names of trial counsel for each party.

3. Jurisdiction. Schedule B-1 sets forth the statutes, legal doctrines, and facts upon which Plaintiff claims jurisdiction. Schedule B-2 indicates which of these, if any, are contested.

4. Uncontested Facts. All material facts that are without substantial controversy are set forth in Schedule C (in the form required by Rule 56). Material facts that are actually and in good faith controverted and which a party intends to establish at trial, are separately listed in Schedules C-1 and C-2.

5. Claims and Defenses. The parties' claims and defenses are separately listed in Schedule D-1 and D-2.

6. Damages and Other Relief. Claims with respect to damages and other relief sought by each party are detailed in Schedules E-1 and E-2.

7. Waiver of Claims. The parties waive all claims with respect to liability, damages, and other relief and all affirmative defenses which are not set forth in Schedules D and E.

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

-----X
JOHN WILEY & SONS, INC.,

08 CV 7834

Plaintiff

-against-

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

_____X

DECLARATION OF KAI LUI


Kai Lui, pursuant to 28 U.S.C. § 1746, declares under penalties of perjury that the following is true and correct:

1. I am a computer consultant and Sam P. Israel is one of my clients. Sometime toward the end of April 2009, Mr. Israel contacted me to see if I could do anything to address a problem he was having in transmitting emails with document attachments from his AOL account. I can confirm that this was the case—*i.e.*, that he was experiencing this problem, as I personally witnessed the problem. To address the situation, I set him up with (and taught him how to use) *Microsoft Outlook* instead of the AOL software he had been using for transmitting documents with attachments.
2. Even then, Mr. Israel took some time getting used to Outlook; in ensuing days he complained to me that emails were not appearing in chronological order for instance.
3. Mr. Israel's computer problems did not stop there, however. Later, after a series of calls and troubleshooting, we had to replace his whole setup—including setting up a brand new computer and monitor and then eliminating a number of trojan horses and adware from external hard drives connected to the computer. The precise reason why his computer was ultimately rendered entirely inoperable is unknown—but it was. At the end, it would not even turn on.

4. Because many of Mr. Israel's programs were Windows XP- based, it later took time to acquire a computer with an older operating system that could accommodate certain of his programs. Still other software had to be purchased anew. In short, it took many hours to repair and replace the entire set-up and it ultimately left Mr. Israel without an operational system for nearly two weeks.
5. I had to make a number of trips to Mr. Israel's office to get his computer problems under control.

New York, New York

September 23, 2009

By:  _____

Kai Lui