

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN WILEY & SONS, INC., :

Plaintiff, :

-against- :

08 Civ. 7834 (GEL)

SUPAP KIRTSANG D/B/A :

ECF Case

BLUECHRISTINE99 AND JOHN :

DOE NOS. 1-5, :

Defendants. :

- - - - -x

DECLARATION OF LAURA SCILEPPI IN SUPPORT
OF PLAINTIFF'S MOTION FOR A PRELIMINARY
INJUNCTION AND AN ORDER OF ATTACHMENT

LAURA SCILEPPI hereby declares pursuant to 28
U.S.C. § 1746 that the following is true and correct.

1. I am a member of the bar of this Court and
an associate at Dunnegan LLC, attorneys for plaintiff John
Wiley & Sons, Inc. ("Wiley") in this action.

2. I am making this declaration in support of
Wiley's application for (a) a preliminary injunction
restraining defendant Supap Kirtsaeng ("Kirtsaeng") from
selling in the United States foreign editions of Wiley's
books printed outside of the United States and imported
into the United States without Wiley's permission ("Foreign
Editions"), and (b) attaching Kirtsaeng's funds held by
PayPal, Inc. ("PayPal"), Bank of America and M&T Bank to

maintain the status quo and to ensure that those funds may be used to satisfy any judgment that Wiley obtains in this action.

Background

3. Wiley commenced this action on September 8, 2008, alleging that Kirtsaeng had infringed certain of Wiley's copyrighted textbooks by selling Foreign Editions in the United States.

4. Kirtsaeng resides in California and is subject to the personal jurisdiction of this Court under the New York long-arm statute, CPLR § 302(a).

5. When Wiley commenced this action, we had no knowledge of the extent of Kirtsaeng's sales that infringed Wiley's copyrights.

6. Kirtsaeng answered on December 2, 2008, and did not raise the affirmative defense lack of personal jurisdiction. He did not assert any counterclaim.

7. Pursuant to a notice sent to counsel on January 5, 2009, the Court held a pretrial conference on January 21, 2009. At that conference, the Court set a discovery cutoff date of May 22, 2009.

Wiley's Efforts to Obtain Discovery

8. On January 26, 2009, Wiley served a document request calling for Kirtsaeng to produce:

"Document Request 2

Any and all documents that constitute, refer, or relate to the sale, distribution, or transfer of any books, including Foreign Editions."

9. On January 26, 2009, Wiley served an interrogatory on Kirtsaeng asking:

"Interrogatory 2

State the amount of revenue that defendant has received from the sale of Foreign Editions of the textbooks of Wiley."

10. On February 16, 2009, Kirtsaeng responded:

"Estimated revenue from the sale of Wiley's international edition textbooks is \$1,600. This consists of 8 titles, 20 books per title @ \$10 per book."

I annex as Exhibit B a copy of Kirtsaeng's response.

11. On March 19, 2009, Kirtsaeng produced, in paper and compressed format, an Excel spreadsheet purporting to disclose his sales of Foreign Editions. However, because of the paper and compressed format, this document was unusable.

12. Wiley then served a subpoena on PayPal on or about March 23, 2009, requesting information concerning Kirtsaeng's sales of Foreign Editions.

13. Despite my requests to his counsel on March 19, 2009, March 26, 2009, April 8, 2009, and April 16, 2009, Kirtsaeng did not produce an electronic copy of this

Excel spreadsheet until April 21, 2009. He did so about four hours after I e-mailed his counsel a draft of a joint letter addressed to the Court concerning this matter. This electronic document revealed that Kirtsaeng had sold Foreign Editions beginning in 2008.

PayPal's Disclosure Of Kirtsaeng's Sales
And His Transfer Of Over \$188,000 From PayPal

14. On April 22, 2009, PayPal responded to Wiley's subpoena by providing its business records on CD-Rom, which are too voluminous to print. I have provided a copy of the CD-Rom to counsel for Kirtsaeng, and will provide a copy to the Court upon request.

15. The documents that PayPal produced on April 22, 2009 demonstrate the following:

- Since March 3, 2005, Kirtsaeng has received \$1,199,483.13 from sales on PayPal. A copy of the PayPal record for Kirtsaeng's account showing the "Total Amount Received" is annexed as Exhibit C.
- The vast majority of these sales appear to be Foreign Editions of textbooks of various publishers, including Wiley. A sampling of Kirtsaeng's PayPal Transaction Log showing the

date, subject line, and amount of transactions is annexed as Exhibit D.

- Kirtsaeng has continued selling Foreign Editions. His last sale occurred on April 13, 2009. A print out of the most recent activity in Kirtseang's PayPal Transaction Log is annexed as Exhibit E.
- From the January 5, 2009, when Kirtsaeng's counsel was served with notice of the pretrial conference, until April 6, 2009, Kirtsaeng has withdrawn from one of his PayPal accounts \$188,100. Prior to January 5, 2009, Kirtsaeng's last withdrawal was in September of 2008. A summary of all of the withdrawals made from January 5, 2009 to April 6, 2009 is annexed as Exhibit F.
- As of April 17, 2009, Kirtsaeng had \$93.42 in one of his PayPal accounts. The PayPal record for this account is annexed as Exhibit C.
- Two of Kirtsaeng's PayPal accounts are linked to bank accounts. One is linked to an account at Bank of America and another is linked to an account at M&T Bank. The PayPal record for account linked to Bank of America is annexed as

Exhibit C. The PayPal record for the account linked to M&T Bank is annexed as Exhibit G.

- Despite his answer to interrogatory 2 stating that he had sold about 160 of the Foreign Editions of Wiley, the PayPal records demonstrate that Kirtsaeng sold more than 500 of the 8 Foreign Editions that are the subject of the complaint.

16. After receiving these PayPal documents, I checked eBay for sales under the username Billytext. I learned that Kirtsaeng is currently offering to sell, or has recently sold, Foreign Editions of at least four Wiley works.

- Since January of 2009, Kirtsaeng has sold 21 Foreign Editions of the work entitled Organic Chemistry, which has received Copyright Registration number TX-2-544-723 on April 19, 1989. Print outs of Kirtsaeng's listings and sales histories are annexed as Exhibit H.
- Kirtsaeng is currently offering a Foreign Edition of the work entitled Information Technology for Management, which has received Copyright Registration number TX-6-

013-876 on August 20, 2004. A print out of the current eBay listing is annexed as Exhibit I. Since January of 2009, Kirtsaeng sold at least 24 Foreign Editions of this work. Print outs of Kirtsaeng's listings and sales histories are annexed as Exhibit J.

- Since January of 2009, Kirtsaeng has sold at least 6 Foreign Editions of Cell and Molecular Biology, which has received Copyright Registration number TX-4-872-740 on October 28, 1998. Print outs of Kirtsaeng's listings and sales histories for these items are annexed as Exhibit K.
- Since January of 2009, Kirtsaeng sold at least 1 Foreign Edition of Fundamentals of Heat and Mass Transfer, which has received Copyright Registration number TX-6-410-153 on July 28, 2006. Print outs of Kirtsaeng's listing is no longer available, but feedback showing a sale of this title and is annexed as Exhibit L.

The Present Application

17. Wiley is proceeding by order to show cause, rather than by notice of motion, because of the urgency of the relief it seeks.

18. Wiley has not made this or a similar application to this, or any other, Court.

19. I annex as Exhibit M a proposed form of preliminary injunction and order of attachment.

20. At about 9:30 a.m. this morning, I provided counsel for Kirtsaeng with an e-mail copy of the papers that we are submitting to the Court in support of the present application. I invited him to appear when we intend to present the proposed order to the Court at about _:00 p.m. today.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of April 2009.



Laura Scileppi