

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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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. :

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REPLY MEMORANDUM OF PLAINTIFF IN SUPPORT OF ITS MOTION FOR AN ORDER DIRECTING DEFENDANT TO BRING HIS PERSONAL PROPERTY INTO NEW YORK STATE AND APPOINTING A RECEIVER TO COLLECT IT

Plaintiff and judgment creditor John Wiley & Sons, Inc. ("Wiley") respectfully submits this reply memorandum to make four points.

First, while defendant at page two of his memo characterizes Wiley as "malicious," it was Kirtsang who transferred \$170,000 to Thailand on February 2, 2009 to defeat Wiley's ability to enforce the judgment through the banking system. (Trial Trans. 103:5-23)

Second, Wiley is entitled to possession of Kirtsang's 2001 Audi A6 because Kirtsang, by his own admission at his deposition, still has full possession of that automobile. (Dunnegan Dec. Ex. A at 101:3-102:1) Under CPLR § 5225(a), that "possession or custody" of the automobile is enough, given its

indefinite nature, to compel Kirtsaeng to deliver it to plaintiffs. Under any analysis, Kirtsaeng's transfer of title to that automobile in December 2009, after the entry of judgment to a person he cannot identify by last name, was fraudulent. Kirtsaeng should not be allowed to use that fraudulent transfer of title to allow him to maintain possession of that vehicle.

Third, Kirtsaeng's computer and "all-in-one" machine do not fall within the exemption of CPLR § 5205(a)(7). That section exempts "working tools and implements" that are "necessary to the carrying on of the judgment debtor's profession or calling." Kirtsaeng is not engaged in a "profession or calling." His activities as a student do not generate any income from that computer or "all-in-one" machine. In any event, Kirtsaeng has not made any showing that these are necessary, as opposed to convenient, for him to get a Ph.D.

Fourth, Kirtsaeng concedes in paragraph 8 of his declaration that he has an obligation to transfer his golf clubs to plaintiffs. CPLR § 5225(a) obligates him to deliver that property "to a sheriff," if the Court does not appoint a receiver. If Kirtsaeng prevails on his appeal, Wiley will return them in the same condition that Kirtsaeng turned them over.

For the reasons set forth above, Wiley respectfully requests that the Court (i) order Kirtsang to bring his out-of-state Personal Property into New York, and (ii) appoint a receiver to collect and liquidate Kirtsang's Personal Property.

Dated: New York, New York
February 16, 2010

DUNNEGAN LLC

By William Dunnegan
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