

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EDWARD L. WHITE, P.C.,

Plaintiff,

- against -

WEST PUBLISHING CORPORATION d/b/a “West”;  
and REED ELSEVIER INC., d/b/a LexisNexis,

Defendants.

**12-CV-1340 (JSR)  
ECF CASE**

**PLAINTIFF’S LOCAL CIVIL RULE 56.1 STATEMENT**

Pursuant to Local Civil Rule 56.1, Plaintiff hereby submits this statement of the material facts as to which the Plaintiff contends there is no genuine issue to be tried.

**Definitions**

1. “Copies” has definition ascribed to that term in 17 U.S.C. § 101. “Copy” is the singular form of the same term, with the same definition.
2. “Copyright Act” means The Copyright Act of 1976, as amended in its current form, 17 U.S.C. § 101 *et seq.*
3. “Copyright Owner” has definition ascribed to that term in 17 U.S.C. § 101.
4. “Derivative Work” has definition ascribed to that term in 17 U.S.C. § 101.
5. “Display” has definition ascribed to that term in 17 U.S.C. § 101.
6. “Lexis” means Defendant Reed Elsevier Inc.

7. “Plaintiff” means Edward L. White, P.C.
8. “West” means Defendant West Publishing Corporation.

**Undisputed Facts**

1. Plaintiff is a professional corporation engaged in the practice of law. [White Deposition]
2. Plaintiff holds copyright registration certificates for the following works (together, the “Works”):
  - a. Plaintiff’s Combined Motion for Summary Judgment for Plaintiffs Beer and Ramsey and Brief in Support, dated May 20, 2009 [Copyright Registration Certificate Number TX 7-259-439, White Deposition Exhibit 5]; and
  - b. Plaintiffs’ Motion in Limine, dated March 15, 2012 [Copyright Registration Certificate Number TX 7-417-300, White Deposition Exhibit 6].
3. The copyright registration certificates for each of the Works identifies Plaintiff as the Author of the Works. [*Id.*]
4. The copyright registration certificates for each of the Works identifies the Plaintiff as the Copyright Claimant of the Works. [*Id.*]
5. Defendant West did not seek or obtain express permission from the Plaintiff to reproduce the Works. [West’s Response to Notice to Admit No. 4]
6. Defendant Lexis did not seek or obtain express permission from the Plaintiff to reproduce the Works. [Lexis’s Response to Notice to Admit No. 4]

7. Defendant West did not seek or obtain express permission from the Plaintiff to create derivative works. [West's Response to Notice to Admit No. 5]
8. Defendant Lexis did not seek or obtain express permission from the Plaintiff to create derivative works. [Lexis's Response to Notice to Admit No. 5]
9. Defendant West did not seek or obtain express permission from the Plaintiff to distribute Copies of the Works. [West's Response to Notice to Admit No. 6]
10. Defendant Lexis did not seek or obtain express permission from the Plaintiff to distribute Copies of the Works. [Lexis's Response to Notice to Admit No. 6]
11. Defendant West did not seek or obtain an express license from the Plaintiff to use the Works in any fashion whatsoever. [West's Response to Notice to Admit No. 7]
12. Defendant Lexis did not seek or obtain express permission from the Plaintiff to use the Works in any fashion whatsoever. [Lexis's Response to Notice to Admit No. 7]
13. Prior to the institution of this lawsuit, West had no communications with the Plaintiff, or anyone acting on the Plaintiff's behalf, concerning the grant of a license, whether express or implied, to authorize West to use the Works. [West's Response to Notice to Admit No. 8]
14. Prior to the institution of this lawsuit, Lexis had no communications with the Plaintiff, or anyone acting on the Plaintiff's behalf, concerning the grant of a license, whether express or implied, to authorize Lexis to use the Works. [Lexis's Response to Notice to Admit No. 8]

15. West obtained the Works from the PACER system. [West's Response to Notice to Admit No. 10]
16. Lexis obtained the Works from the PACER system. [Lexis's Response to Notice to Admit No. 10]
17. Lexis made at least one Copy of each of the Works, in PDF or similar form. [Lexis's Response to Notice to Admit No. 20]
18. West made Copies of the Works by converting the Works into the electronic file format used by West's electronic legal research databases. [West's Response to Notice to Admit No. 11]
19. Prior to the filing of the Complaint, West included electronic, text-searchable versions of the Works in West's electronic legal research databases that were available to subscribers. [West's Response to Notice to Admit No. 12]
20. Prior to the filing of the Complaint, Lexis included electronic, text-searchable versions of the Works in Lexis's electronic legal research databases that were available to subscribers. [Lexis's Response to Notice to Admit No. 12]
21. West made at least one copy of each of the Works for the purpose of including at least one copy of each of the Works in West's databases that are available to subscribers of your electronic legal research services. [West's Response to Notice to Admit No. 18]
22. Lexis made at least one copy of each of the Works for the purpose of including at least one copy of each of the Works in Lexis's databases that are available to subscribers of your electronic legal research services. [Lexis's Response to Notice to Admit No. 18]
23. An image of each of the Works (excluding exhibits), in PDF form, as filed on PACER, was linked to the electronic, text-searchable version of that Work that was included in West's databases that are available

- to certain subscribers of its electronic legal research service. [West's Response to Notice to Admit No. 21]
24. Lexis copied an image of each of the Works, in PDF or similar form, for the purpose of offering those images to subscribers of Lexis's electronic legal research services. [Lexis's Response to Notice to Admit No. 20]
  25. Prior to the filing of the Complaint, certain of the Defendants' subscribers and other fee-paying users accessed copies of the Works from the Defendants' databases. [Bogan Declaration; Document No. LN 8276; West's Response To Plaintiff's Request for Documents Regarding Pricing, dated September 5, 2012]
  26. Plaintiff's registration with the CM/ECF system for the Western District of Oklahoma did not expressly require Plaintiff to relinquish his intellectual property rights in any document filed with the court, nor did the registration expressly inform the Plaintiff that the filing of such documents would entitle others to copy, sell, or distribute those documents for a commercial purpose. [White Deposition Exhibit No. 13]
  27. Both Works were created within three years prior to the filing of the Complaint. [Copyright Registration Certificates, White Deposition Exhibits 5 and 6]

Dated: New York, New York  
October 5, 2012

GREGORY A. BLUE, P.C.

By: /s/ Gregory A. Blue  
Gregory A. Blue  
The Chrysler Building  
405 Lexington Avenue, Suite 2600  
New York, NY 10174  
Telephone: (646) 351-0006  
Facsimile: (212) 208-6874  
blue@bluelegal.us

Raymond A. Bragar  
BRAGAR EAGEL & SQUIRE, P.C.  
885 Third Ave., Suite 3040  
New York, New York 10022  
Telephone: (212) 308-5858  
Facsimile: (212) 208-2519  
bragar@bespc.com

*Attorneys for Plaintiff*