

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD L. WHITE, P.C.,

Plaintiff,

v.

WEST PUBLISHING CORPORATION
d/b/a "West," and REED ELSEVIER INC.
d/b/a LexisNexis,

Defendants.

ECF CASE

Civil Action No. 12-CV-1340 (JSR)

**DECLARATION OF LEIGH BEAUCHAMP IN SUPPORT OF DEFENDANT REED
ELSEVIER INC.'S MOTION FOR SUMMARY JUDGMENT**

I, Leigh Beauchamp, pursuant to 28 U.S.C. § 1746, hereby declare:

1. I submit this declaration in support of Defendant Reed Elsevier Inc.'s Motion for Summary Judgment. The facts set forth herein are based upon my personal knowledge, information supplied to me by those working at my direction in the ordinary course of business, or my review of regularly kept, contemporaneously made business books and records of Reed Elsevier Inc. If called as a witness, I could and would competently testify about the matters stated herein.

2. I have been an employee of LexisNexis, a division of Reed Elsevier Inc. ("Lexis"), since 2000, and have been Director of Content Development for Lexis since 2008.

3. Lexis is an online legal research service that provides numerous products and services for legal practitioners, law students, and other business customers. Lexis's services include electronic databases that contain case law, news and business information, public records and other content.

4. In approximately 2005, Lexis began making available its Briefs, Pleadings, and Motions (BPM) product offering.

5. The BPM product is comprised of electronic databases that contain selected attorney-authored briefs, pleadings, and motions that were filed, without seal, in federal and state courts.

6. The BPM product is intended to provide attorneys and other Lexis users with research materials in targeted practice areas.

7. Based on my understanding of customer usage and customer feedback, Lexis customers do not purchase the BPM product to gain access to any particular brief or document. Lexis customers purchase the BPM product for its comprehensive nature, specifically, for the volume of briefs and the editorial enhancements.

8. Lexis markets its BPM product directly to practicing attorneys.

9. The BPM database currently consists of over 1.4 million legal documents.

10. Lexis offers education packages to law schools that grant student users free access to Lexis's BPM product.

11. A 2007 study conducted by Lexis concluded that the vast majority of legal documents on lexis.com were accessed by law students.

12. Lexis acquires legal documents for the BPM product through various sources. Lexis retrieves documents filed in federal district courts primarily through the Public Access to Court Electronic Records ("PACER") system.

13. Lexis pays the same rate as other private users to download legal documents from PACER.

14. Lexis has relationships with certain courts to obtain documents filed in those courts, and those courts send copies of legal documents directly to Lexis.

15. Lexis also receives requests directly from attorneys and legal organizations to make their legal documents available as part of the BPM product. For example, one state government agency signed an exclusive subscription agreement, with a condition being that Lexis make available in the BPM database the legal documents authored by that office.

16. Lexis is selective in choosing what legal documents to include in the BPM database. Lexis makes strategic decisions about whether legal documents will add value to the BPM product, depending on whether a document pertains to a priority topic or practice area or is from a priority jurisdiction.

17. After a Lexis editor decides that a particular legal document should be added to the BPM product, the document is downloaded from PACER (or is obtained in another manner).

18. It is necessary for Lexis to copy the entire legal document, in part because the whole copy is needed to make the BPM database comprehensively text searchable, which is an integral feature of the BPM product. In addition, including only portions of legal documents in the BPM database would limit the ability of Lexis users to use the BPM product to compare forms and arguments in one legal document with another, as well as to evaluate the effectiveness of those forms and arguments.

19. A Lexis editor determines if the legal document should be split into multiple documents (for instance, if a brief includes an attachment) or if previously split documents should be combined.

20. A Lexis editor or Lexis's outside conversion vendor reviews all legal documents for sensitive information, such as social security numbers, financial information or information regarding minors, and makes any necessary redactions.

21. A Lexis editor captures and records certain "metadata" about the legal document, such as the case name, the court, the type of document, any expert witnesses involved, and the court opinion with which the legal document is associated. This allows for searching by jurisdiction, document type and any other captured data field.

22. Lexis then sends legal documents and corresponding metadata to an outside conversion vendor that converts the pdf document into Lexis's proprietary data file format that is text and segment searchable.

23. Following this conversion, Lexis runs a cite recognition program to identify statutes, codes, regulations and court opinions cited in the legal document and to embed links to those statutes, codes, regulations and court opinions in the converted document.

24. Lexis also runs an algorithm program on the legal documents to identify relevant practice areas, which allows Lexis users to search for legal documents by practice area.

25. Hyperlinks are also added to and from other legal documents related to that particular case, such as expert reports and jury instructions, as well as links to the converted legal documents from the case law opinion(s) to which the documents are related.

26. In most instances, Lexis includes with the converted document a link to the version of the legal document as it is available in the court records, such as on PACER, for convenience, verification and archival purposes. A Lexis user can only access the link to that version of the legal document by first accessing the enhanced version of document through the BPM database.

27. Lexis adds a unique Lexis citation to each enhanced legal document to enable users to identify and cite to each document.

28. Once the document has undergone the enhancement process, it is then incorporated into the BPM product and organized into relevant menus and files within the BPM product.

29. I understand the legal documents at issue in this case to be: Plaintiffs' Combined Motion for Summary Judgment For Plaintiffs, Beer and Ramsey, And Brief In Support, filed on May 20, 2009 and Plaintiffs' Motion In Limine, filed on March 15, 2010 (collectively "the Briefs"). Both of these documents were filed in *Beer et al. v. XTO Energy, Inc.*, Case No. CIV-07-798-L in the Western District of Oklahoma.

30. Lexis obtained copies of the Briefs via PACER.

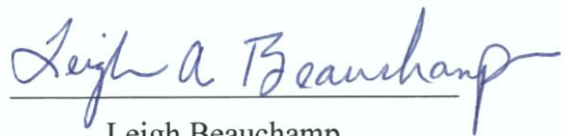
31. Lexis made enhancements to the Briefs as discussed above in paragraphs 19-28.

32. On August 4, 2010, Lexis made these enhanced versions of the Briefs, along with a link to the PACER versions, available to Lexis users as part of the BPM database.

33. Lexis removed the Briefs from the BPM databases after receiving the Complaint in this action.

34. Lexis has never negotiated for individual licenses to use legal documents and almost certainly would not because any additional significant transaction costs associated with acquiring BPM content would cause the BPM product to be economically unfeasible.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 5th day of October, 2012, in Chelsea, Michigan.


Leigh Beauchamp