

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LAW SCHOOL ADMISSION COUNCIL, INC.,	)	
	)	
<b>Plaintiff,</b>	)	
	)	
v.	)	CASE NO. _____
	)	
ROBIN SINGH EDUCATIONAL SERVICES, INC., D.B.A. TESTMASTERS,	)	
	)	
and	)	<b>JURY TRIAL DEMANDED</b>
	)	
ROBIN SINGH,	)	
<b>Defendants.</b>	)	
	)	

**DECLARATION OF JAMES VASELECK IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PRELIMINARY INJUNCTION**

1. My name is James Vaseleck and I am the Executive Assistant to the President and Associate General Counsel at the Law School Admission Council. I have been in this position for nineteen years.

2. I make this Declaration in support of Plaintiff's Memorandum of Law in Support of its Motion for a Preliminary Injunction Pursuant to Fed. R. Civ. P. 65(a).

3. I have personal knowledge of the facts set forth in this declaration and could testify thereto if called upon to testify as a witness.

**A. The Development and Licensing of the Law School Admission Test**

4. LSAC is a non-profit organization that provides services to law schools and their students, including, but not limited to, the preparation and administration of the Law School Admission Test or LSAT.

5. LSAC currently owns, and at all relevant times has owned, all rights to each and every LSAT test it creates and administers, as well as the instructions, answers, answer keys, and material related to each test (collectively, "LSAT Materials"). LSAC registers its LSAT Materials pursuant to a regulation promulgated by the Register of Copyrights allowing for "secure test" registration. A "secure test" is defined as "a nonmarketed test administered under supervision at specified centers on specific dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage following each administration." The regulation suspends the requirement to deposit copies of the work, and requires instead that registrants of secure tests need only deposit a sufficient portion or a description of the test sufficient to identify it. True and correct copies of the majority of registration certificates, and filing receipts for pending applications for registration of the LSAT Materials obtained through secure filings at the Copyright Office, are attached as Exhibit A to the Complaint filed September 4, 2009.

6. LSAC currently licenses LSAT Materials to numerous commercial test-preparation companies, all of which are permitted limited use of the materials in exchange for royalty payments calculated based on the number of students and/or questions used, consistent with the terms of their respective licenses ("Commercial Licenses").

7. LSAC grants these licenses so that students using the preparation courses will have access to actual test questions and because it allows it to recover some of its investment in developing and administering the test.

8. LSAC also licenses LSAT Materials to university-based pre-law advisors, pre-law societies, and other non-profit organizations devoted to providing expanded opportunities for minority law applicants. Each of these licensees are granted royalty-free licenses to make limited use of the LSAT Materials for non-commercial purposes, consistent with the terms of

their respective licenses (“Non-profit Licenses”). Commercial Licenses and Non-profit Licenses are collectively referred to as “LSAT Licenses.”

9. One of my responsibilities at LSAC is to negotiate and oversee compliance with the LSAT Licenses. In that capacity, I have been the lead contact at LSAC for each of the licensees, and am intimately familiar with each LSAT License and the conduct and prior history of each licensee.

**B. The TestMasters LSAT Course and Its License for the LSAT Materials**

10. TestMasters is a company that offers LSAT test-preparation courses and materials (the “TestMasters LSAT Course”).

11. On September 3, 2009, I visited the website of TestMasters: [www.testmasters.net](http://www.testmasters.net). According to the “Welcome to TestMasters” page of the website, “every student enrolled in [the] full length course receives a personal set of every available real LSAT question in existence (more than 6000 questions) . . . and these questions are grouped according to type so that students can grasp the underlying consistencies of the exam.” Attached as Exhibit 1 to my Declaration is a true and correct copy of the “Welcome to TestMasters” page of the TestMasters website that I reviewed.

12. I also noted on the TestMasters website that the TestMasters LSAT Course is offered throughout the United States, including in the Commonwealth of Pennsylvania where courses are ongoing at numerous locations, such as the University of Pennsylvania. From the website, it appears that classes are scheduled to coincide with the four dates the LSAT is given each year, i.e., February, June, September and December. Attached as Exhibit 2 to my Declaration is a true and correct copy of the “Pennsylvania LSAT Course Schedules” page of the TestMasters website showing TestMasters courses held in Pennsylvania for the four upcoming LSAT administrations.

13. There are TestMasters LSAT courses going on now for the September 2009 exam and courses that will start in mid-September for the December 2009 exam. By way of example, the Philadelphia Late Summer LSAT Course started on August 1, 2009 and will be completed on September 24, 2009; and there is a Philadelphia Early Autumn LSAT Course Schedule that starts on September 15, 2009 and will be completed on December 2, 2009. From the website it appears that there are comparable courses in at least one city in forty-six states. Attached as Exhibit 3 to my Declaration are true and correct copies of the "Philadelphia Early Summer LSAT Course Schedule," "Philadelphia Early Autumn LSAT Course Schedule," and the "TestMasters LSAT Course Schedules" pages of the TestMasters website.

14. In February 1992, I met with Robin Singh, the founder and president of TestMasters, after he approached LSAC requesting permission and a commercial license to reproduce and incorporate into TestMasters' LSAT Preparation Course all available LSAT questions. After a number of discussions with Singh, I agreed, on LSAC's behalf, to a license and subsequently granted TestMasters a series of limited, royalty-bearing licenses that permitted TestMasters to reproduce certain LSAT Materials. Copies of my early correspondence with Mr. Singh and the original licenses are attached as Exhibit 4 to this Declaration.

15. Each and every license between LSAC and TestMasters includes provisions regarding regular accounting, periodic payments, required copyright notice provisions, and guidelines under which end-users would be required to operate.

16. Since 1992, TestMasters has chronically failed to timely comply with the accounting and payment terms of the licenses, finding itself in arrears multiple times in 17 years.

17. In a letter dated October 31, 1996, Singh requested a five-year term for a license rather than the one- or two-year licenses that LSAC had previously granted, explaining that "the

actual questions [TestMasters] . . . licenses are a vital part of [its] LSAT course.” Attached as Exhibit 5 to this Declaration is a true and correct copy of the October 31, 1996 letter and my response indicating LSAC’s preference for a maximum of three-year terms.

18. In November 2005, Singh approached me about the possibility of revising the license agreement to permit electronic delivery and use of the licensed content. Later that year, LSAC notified all of its licensees that it was willing to consider granting an expanded license that would permit electronic use, but that each license would first be required to submit security protocols to demonstrate how it would protect LSAC’s valuable copyrighted material. TestMasters sent in such a proposal and we ultimately approved those protocols and granted a license accepting the same. True and correct copies of correspondence regarding the expansion of the license to include electronic use are attached as Exhibit 6.

19. Leading up to the expiration of the license that immediately predated the most current one, TestMasters requested expansion onto additional digital media (i.e., DVDs) and proposed security protocols and a fee structure for the same. On August 1, 2007, LSAC entered into a new license agreement with TestMasters (“2007 License”). Notwithstanding its past history and as an accommodation to TestMasters, in this agreement, LSAC permitted the expanded use and adopted the fee structure that TestMasters proposed. Attached as Exhibit 7 to this Declaration is the correspondence leading up to and an executed copy of the 2007 License.

20. TestMasters failed to meet the obligation to provide an accounting in February 2008 (the first accounting of the term).

21. In March 2008, having not received the required February 2008 accounting and payment, LSAC contacted TestMasters to inquire about the missed accounting periods and payment obligations and to remind it that another accounting would be due July 31, 2008. On

April 1, 2008, Singh responded to these reminders, stating that before TestMasters provided any accounting or payment to LSAC, he would need to discuss some questions about the license agreement with me. Attached as Exhibit 8 to this Declaration is a true and correct copy from my file of this March-April chain of email correspondence between an LSAC employee that reports to me and TestMasters.

22. On May 13, 2008, after Singh failed to follow up about his specific questions, LSAC sent a formal letter insisting that TestMasters “strictly abide by the terms of the agreement” and pay the past-due royalties. In this letter, LSAC set a deadline for TestMasters to provide an accounting and payment and said that, failing receipt of that, it would exercise its right to void the license. Attached as Exhibit 9 to this Declaration is a true and correct copy of this correspondence.

23. On June 2, 2008, Singh responded, acknowledging receipt of the letter, and asked that TestMasters be permitted to pay the royalties on July 31, 2008 because it did not have the money at that time due to the significant amount it was spending on legal fees for litigations involving two competitors. TestMasters did not dispute its obligation to pay the royalties at that time. On that same day, I responded, stating that TestMasters would need to comply with the accounting and payment obligations by June 17, 2008. Attached as Exhibit 10 to this Declaration is a true and correct copy of this email exchange.

24. On June 16, 2008, Singh provided the accounting and sent a check for the outstanding license fees along with an email in which he said that he viewed LSAC’s insistence that TestMasters honor its obligation under the license agreement it had negotiated “as a form of extortion.” He further suggested that he did not believe LSAC was entitled to the license fees

and that he would “use all legal means available to recoup the money [he had] paid.” Attached as Exhibit 11 to this Declaration is a true and correct copy of Singh’s correspondence.

25. In March 2009, having not heard anything further from TestMasters since the June 16, 2008 email and check, LSAC contacted TestMasters to inquire about the two missed accounting periods and payment obligations (July 31, 2008 and February 1, 2009) and to remind it that the current license expired on July 31, 2009. Between March 12, 2009 and July 16, 2009, LSAC followed up with Defendants multiple times by email and phone to inquire about TestMasters’ failure to comply with the February accounting and payment obligations, reiterating the payment and accounting terms of the license agreement, and reminding Defendants that the current license agreement was set to expire July 31, 2009. TestMasters sent a series of emails to LSAC throughout the March 2009-July 2009 period promising to provide the accounting and/or payment by certain dates but repeatedly failing to do so. At no time during that period did TestMasters make any attempt to explain its failure to comply with its material obligations under the 2007 License, nor did it make any efforts to discuss a renewal of the license set to expire on July 31. Attached as Exhibit 12 to this Declaration are true and correct copies from my file of this series of correspondence between me or an LSAC employee that reports to me and TestMasters personnel.

26. Finally, on June 22, 2009, TestMasters sent an email to LSAC providing an accounting of the students enrolled in the TestMasters LSAT Course for the June 2008, October 2008, December 2008, and February 2009 administrations of the LSAT examination. TestMasters did not, at that time, indicate when the past-due payment would be forthcoming, nor did it raise the issue of the soon-to-expire license. Attached as Exhibit 13 to this Declaration is a true and correct copy of the email from my file that provided the accounting.

27. The accountings provided on June 22, 2009 (that were actually due on or around July 31, 2008 and February 1, 2009) showed 7,713 full-time students (at \$115 per student) and 852 weekend students (at \$23 per student) resulting in \$906,591 of license fees owed by TestMasters to LSAC.

28. TestMasters then failed to comply with its obligation to provide an accounting or payment on July 31, 2009 and, to date, has yet to provide such accounting.

29. The 2007 License expired on July 31, 2009.

30. As of the expiration of the 2007 License, TestMasters owed LSAC \$906,591 in license fees plus the total amount that would be calculated and owed as a result of the accounting that was due by July 31, 2009.

**D. TestMasters' Infringement of the LSAC Copyrights**

31. LSAC has continued its efforts to facilitate TestMasters' compliance with the accounting and payment obligations in the 2007 License. TestMasters not only has failed to comply, but also continues to use the LSAT Materials without license.

32. After not receiving the more than one million dollars in royalties TestMasters owed LSAC or any substantive response from TestMasters about the license that would soon expire, I sent TestMasters another letter on August 4, 2009 (a) reminding it that the license to use the LSAT Materials expired on July 31, 2009; (b) demanding that it immediately cease and desist from any use of LSAC's proprietary LSAT Materials; and (c) advising it that any continued, unlicensed use of the LSAT Materials would constitute willful copyright infringement. In this letter, I advised TestMasters that LSAC would be willing to "consider a request for a new license" but only after TestMasters' compliance with outstanding accounting/payment obligations. Attached as Exhibit 14 to this Declaration is a true and correct copy of the August 4, 2009 Letter.



33. On August 9, 2009, Singh sent me an email stating that he could not “discontinue using the LSAT questions” but that he would reply substantively to LSAC’s August 4 letter by August 24, 2009. Attached as Exhibit 15 to this Declaration is a true and correct copy of the August 9, 2009 email.

34. On August 12, 2009, I authorized LSAC’s outside counsel, Brett Miller, to send a letter that reiterated the demands in my August 4, 2009 letter and provided deadlines by which Singh either would need to confirm that Defendants had ceased all use of the LSAT Materials or would pay all past license fees due under the 2007 License and enter a new license. Attached as Exhibit 16 to this Declaration is a true and correct copy of the August 12, 2009 letter that I authorized Miller to send and that I received a copy of.

35. On August 19, 2009, Singh contacted me in response to Miller’s letter, stating that Defendants were “not in a position to” comply with the demand that they either stop using the proprietary LSAT Materials or pay the license fees due under the 2007 License. In this letter, Singh stated: “I have read over our licensing agreement and I acknowledge that we are obligated to pay you in full under the terms of that agreement . . . .” Singh further stated: “If I could, I would pay you those fees in full today, but I cannot.” He also said: “[W]e cannot discontinue using LSAT questions copyrighted by the LSAC, since this would require TestMasters to shut down its business completely.” Singh again cited the funding of two other intellectual property litigations to which TestMasters was a party as the reason TestMasters could not pay LSAC past-due royalties. He then proposed a payment schedule pursuant to which he would pay \$50,000 or \$100,000 immediately and the remainder by March 2010. Attached as Exhibit 17 to this Declaration is a true and correct copy of the August 19, 2009 correspondence.

36. On August 21, 2009, I asked Miller to respond on LSAC's behalf, once again reiterating LSAC's position regarding the continued unlicensed use of the LSAT Materials, setting out a payment schedule consistent with Singh's proposal and other non-negotiable settlement terms to which it was willing to agree, providing an August 25, 2009 deadline for Singh to return the signed settlement agreement, and providing an August 31, 2009 deadline to enter an appropriate license agreement. Attached as Exhibit 18 to this Declaration is a true and correct copy of the letter I authorized Miller to send on August 21, 2009 and that I received a copy of.

37. That same day, Singh responded to Miller by email: "I already fedexed a check for \$100,000 [] this morning. I hope that will satisfy provision 1a." Miller responded, reiterating the terms of the settlement and deadlines for compliance. TestMasters did not meet the August 25, 2009 deadline. Subsequently, Singh responded, attempting to negotiate the terms and again reiterating that he could not commit to paying any royalties until the end of March 2010. He also has since suggested that he is interested in entering into another license agreement but attempted to put conditions on his willingness to do so. Attached as Exhibit 19 to this Declaration is a true and correct copy of the August 21-27, 2009 email exchange between Singh and Miller.

38. Given TestMasters' recent conduct and LSAC's prior history with the company, and with Singh personally, LSAC does not believe that any further attempts to negotiate with TestMasters would be fruitful, nor does it have any confidence that TestMasters would honor the terms of any agreements negotiated.

39. As of the date of this Declaration, TestMasters continues to reproduce, distribute, publicly display and create derivative works from the LSAT Materials covered by the LSAT Registrations without a proper license or other authorization to do so.

**E. The Harm to LSAC from TestMasters' Infringement**

40. LSAC has suffered harm from TestMasters' past conduct and will continue to suffer harm if TestMaster is permitted to continue its infringing conduct.

41. The loss of significant license fees due to TestMasters has affected not only LSAC's revenue stream, but its ability to budget and manage finances for the years to come.

42. LSAC invests a considerable amount of time and money in developing the LSAT test questions, including costs related to the staff hours, marketing and efforts dedicated to creating these questions, carefully calibrating them until they are suitable for testing, administering the test questions on a quarterly basis, and preserving the integrity of the test. LSAC's large investment in the quality and effectiveness of this test creates a market for it to license the questions to test-preparation companies such as TestMasters for fees that help offset the aforementioned costs.

43. The license agreements LSAC enters into with its licensees provide strict terms that serve to protect the LSAT Materials, including terms under which end-users may use the materials.


44. Allowing TestMasters to make unauthorized use of the LSAT Materials directly affects LSAC's reputation and the standards by which other licensees of the LSAT Materials may agree to operate, and may also have an effect on the royalties LSAC will be able to set for its valuable materials in the years to come.

45. TestMasters' widespread unauthorized use also has the potential to place LSAC's valuable copyrighted materials into the hands of unlimited numbers of end-users, whose unauthorized and unrestricted uses could undermine the value of the copyright. The scope of such harm is difficult for LSAC to foresee.

46. If TestMasters is permitted to continue its infringing conduct, LSAC will suffer ongoing injury that cannot be quantified and/or address with monetary damages.

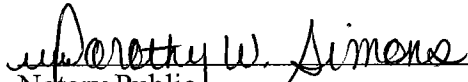
I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

4 SEPT 09  
Date

  
James Vaseleck  
Executive Assistant to  
the President and Associate  
General Counsel  
Law School Admission Council

STATE OF PENNSYLVANIA  
COUNTY OF BUCKS

Sworn to and Subscribed before me this 4<sup>th</sup> day of September, 2009.

  
Notary Public

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Dorothy W. Simons, Notary Public  
Newtown Twp., Bucks County  
My Commission Expires May 10, 2012  
Member, Pennsylvania Association of Notaries