

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

CHARLES HARRIS, as an individual, and)
UNIQUE PRODUCTS AND SERVICES, a)
Pennsylvania Corporation,)

Plaintiffs,)

v.)

No.: 2:10-cv-05655-JD

Judge: Jan E. DuBois

OPRAH WINFREY, as an individual, and)
THE OPRAH WINFREY SHOW d/b/a)
HARPO PRODUCTIONS INC., an Illinois)
Corporation,)

Defendants.)

DEFENDANTS’ SUPPLEMENT TO THE MOTION TO DISMISS

Defendants Oprah Winfrey, as an individual, and The Oprah Winfrey Show d/b/a Harpo Productions Inc. (hereafter “Harpo”) file this Supplement to the Motion to Dismiss and in support thereof would show the following:¹

Defendants respectfully request that they be permitted to supplement the record before this Court on the Motion to Dismiss with a certified photocopy of the work entitled “How America Elects It’s Presidents” deposited in the Library of Congress Copyright Office with the claim of copyright registered under number TXu 931-707 (hereafter the “Copyrighted Work”). A true and correct copy of the certified copy of the Copyrighted Work is attached hereto as Exhibit

¹ The additional evidence that is the subject of this Supplement was not included in Defendants’ Motion for Rule 11 Sanctions, which was served on November 15, 2010 pursuant to Federal Rule of Civil Procedure 11(c)(2), because, as explained below, the evidence was not available as of that date. In addition to lending support to Defendants’ Motion to Dismiss, the evidence would also, if known at the time, have lent support to Defendants’ Motion for Rule 11 Sanctions.

“A” and incorporated by reference for all purposes. On November 3, 2010, Defendants made an expedited application for a certified copy of the Copyrighted Work to the Copyright Office. See Exh. B. The certified copy attached as Exhibit “A” was not received by Defendants’ counsel until December 10, 2010. As a result, Defendants were unable to include it in the Motion to Dismiss filed on November 29, 2010.

According to Plaintiffs’ Complaint, “Mr. Harris had applied for and received a Certificate of Registration for his booklet ‘How America Elects Her Presidents’, dated and identified as follows: January 6, 2000, No. TXu-931-707.” Compl. ¶ 10. In evaluating a motion to dismiss, the trial court may consider any matters incorporated by reference or integral to the claim. *Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006).

A comparison of the Copyrighted Work to the material Plaintiffs attached to their Complaint, however, reveals that there is little resemblance, if any, except for the subject matter of historical facts about America’s Presidents, between the Copyrighted Work and the material Plaintiffs represent is the copyrighted work. The content, text, style, layout and information is entirely different. For example, there is nothing in the Copyrighted Work about “A person must live in the U.S. how long before they become President” which Plaintiffs represent comes from “page 18: Question 3 of the booklet” or “The Only President who never went to school? ‘Exhibit 10 [Page 25: Question 19 of the booklet.]’”. Compl. Ex. 8, at 2 (Doc. No. 1-3). Insofar as President Taft is concerned, the Copyrighted Work states only: “HEAVIEST -----354 lbs----- William Howard Taft-----1909-13.” Exh. A at 7. Indeed, there are no questions in the Copyrighted Work, and the total number of pages of the Copyrighted Work is 14, whereas the Plaintiffs’ “sample pages” go up to page 25. In short, the Plaintiffs have falsely represented that

the allegedly infringed work is copyright registered under number TXu 931-707, when it patently is not.

WHEREFORE PREMISES CONSIDERED, Defendants respectfully pray that the Motion to Dismiss be granted in all respects, that the Complaint be dismissed with prejudice and for such other and further relief, at law or in equity to which Defendants may justly be entitled.

Respectfully submitted,

**OPRAH WINFREY, as an individual and The
OPRAH WINFREY SHOW d/b/a HARPO
PRODUCTIONS INC.**

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Counsel for Defendants

CERTIFICATE OF SERVICE

I, William T. Hangle, hereby certify that, on December 20, 2010, a true and correct copy of Defendants' Supplement to the Motion to Dismiss was sent to all counsel of record via electronic filing through the Court's Electronic Filing System and by United States Mail, first class postage prepaid, to:

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Counsel for Plaintiffs

/s William T. Hangle

William T. Hangle