

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WISCONSIN

FREEDOM FROM RELIGION FOUNDATION,

Plaintiff,

v.

Case No. 11-CV-634

BOOKPACK, INC.,
(d/b/a ULYSSES PRESS), and
JONATHAN C. CRISWELL,

Jury Trial Demanded

Defendants.

COMPLAINT

The plaintiff, Freedom From Religion Foundation (“FFRF”), by and through its attorneys, Godfrey and Kahn, S.C., alleges the following Complaint against the defendants, Bookpack, Inc. (d/b/a as, and referred to here as, “Ulysses Press”) and Jonathan C. Criswell:

INTRODUCTION

1. This is an action for copyright infringement, arising from Criswell’s extensive unauthorized copying of material from the popular *Freethought of the Day* feature on FFRF’s website. Criswell and Ulysses Press published the copied material in a book titled *The Wit and Blasphemy of Atheists: 500 Greatest Quips and Quotes from Freethinkers, Non-Believers and the Happily Damned*. Of the five hundred quotations in the book, approximately three hundred were copied from FFRF’s website.

2. FFRF has long planned to publish its *Freethought of the Day* compilation in book form, as a day planner, and potentially in other forms. *The Wit and Blasphemy of Atheists* is now available for sale throughout the United States and beyond. Criswell and Ulysses Press have

unjustly reaped profits from FFRF's copyrighted work, and the continued sales of the infringing book will undermine the market for FFRF's future *Freethought of the Day* publications.

THE PARTIES

3. The plaintiff, Freedom From Religion Foundation, is a national nonprofit educational organization whose offices are located in Madison, Wisconsin. FFRF's mission is to educate the public on matters relating to atheism and freethought and to promote the separation of church and state.

4. The defendant, Bookpack, Inc. is a California corporation with its principal offices in Berkeley, California. Upon information and belief, Bookpack, Inc. does business exclusively under the name Ulysses Press, operating as a book publisher focusing on niche genres.

5. The defendant, Jonathan C. Criswell, is the author of *The Wit and Blasphemy of Atheists*.

6. Criswell's address is unknown to FFRF. Upon information and belief he is a resident of Greenville, South Carolina.

JURISDICTION AND VENUE

7. This is a civil action for copyright infringement arising under the laws of the United States, 17 U.S.C. § 101, et seq. This Court thus has federal question jurisdiction under 28 U.S.C. § 1331.

8. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and 1400(a), because, among other reasons, the defendants are subject to personal jurisdiction here. The defendant Ulysses Press is deemed to reside in this district pursuant to 28 U.S.C. § 1391(c), and a substantial part of the events giving rise to the claims occurred in this judicial district.

9. Defendant Ulysses Press is subject to personal jurisdiction in this district pursuant to Wis. Stat. § 801.05(1)(d) because it is engaged in substantial and not isolated activities within this state.

10. Defendants Ulysses Press and Criswell are subject to personal jurisdiction in this district pursuant to Wis. Stat § 801.05(4) because this is an action claiming injury within Wisconsin arising out of the Defendants' acts outside of Wisconsin, and, at the time of the injury, copies of the infringing book were used or consumed within Wisconsin and this district in the ordinary course of trade.

11. The exercise of personal jurisdiction over the Defendants is consistent with the Due Process Clause of the U.S. Constitution.

FACTUAL BACKGROUND

12. FFRF is a national non-profit educational group whose two primary purposes are to promote the Constitutional principle of separation of state and church and to educate the public on matters relating to nontheism. FFRF was incorporated in Wisconsin in 1978, and it now has more than 17,000 members, who generally describe themselves as "freethinkers," a label intended to include atheists, agnostics and rational skeptics of any pedigree.

13. FFRF publishes a wide variety of materials including its monthly newspaper, *Freethought Today*, as well as books, pamphlets, calendars and other printed materials.

14. FFRF's website contains a feature called the "*Freethought of the Day*" which provides a daily quotation or a description of an historical event concerning atheism, agnosticism, or freethought. The quotations in *Freethought of the Day* are typically accompanied by a short biography of the featured individual or a description of the featured event. One *Freethought of the Day* is featured each day on the FFRF website, and FFRF members can subscribe to receive the *Freethought of the Day* via email.

15. The *Freethought of the Day*, of which there are now nearly 800 entries, has been compiled with great effort, care and judgment by FFRF employees beginning in 2004. Each *Freethought of the Day* quotation has been selected, edited and arranged after careful research and verification by FFRF employees.

16. FFRF has long planned to publish the *Freethought of the Day* compilation in book form, as a day planner, and potentially in other forms.

17. Upon information and belief, Criswell monitored the *Freethought of the Day* for the purpose of copying the quotations found there and incorporating them in his own book.

18. In 2011, Ulysses Press published *The Wit and Blasphemy of Atheists: 500 Greatest Quips and Quotes from Freethinkers, Non-Believers and the Happily Damned*. The cover of *The Wit and Blasphemy of Atheists* identifies Criswell as the author with the phrase “Compiled by Jonathan C. Criswell.”

19. *The Wit and Blasphemy of Atheists* is available for purchase nationwide through Ulysses Press’ website, through Amazon.com, and through Barnes & Noble.

20. Of the five hundred quotations in *The Wit and Blasphemy of Atheists*, approximately three hundred are copied from FFRF’s *Freethought of the Day*.

21. In many cases, Criswell copied exactly FFRF’s editing of the selected quotations, including deletions indicated by ellipses and explanatory material inserted in brackets.

22. Criswell copied quotations that were not generally available to the public except through FFRF’s *Freethought of the Day*. For example:

A. Criswell copied verbatim a quotation from Gloria Steinem that had appeared in a 1980 interview with Annie Laurie Gaylor, FFRF co-president. The

interview had been first published in *The Feminist Connection*, a Madison-based periodical published from 1980 to 1984.

B. Criswell copied a quotation from Robert Patterson, an FFRF member, whose friend had submitted Patterson's quotation directly to FFRF for inclusion in *Freethought of the Day* as a gift for Patterson's birthday.

C. Criswell copied a quotation from scientist Ben Bova, who had been interviewed on FFRF's radio show, *Freethought Radio*. An FFRF employee transcribed the interview and a quotation from it became a *Freethought of the Day*.

D. Criswell copied a quotation from Julia Sweeney which she wrote and submitted directly to FFRF for use as a *Freethought of the Day* on her birthday.

E. Criswell copied multiple quotations from writer Sherry Matulis, who had been a columnist for *The Feminist Connection*. Two of the quotations copied by Criswell were from a speech Matulis delivered to the 1981 annual convention of FFRF.

23. Criswell's copying described above shows that Criswell had access to, and copied from, the FFRF's copyrighted work.

24. Criswell's copying constitutes the misappropriation of the FFRF's authorship and protected expression in the selection, editing and arrangement of the quotations in *Freethought of the Day*.

FIRST CAUSE OF ACTION COPYRIGHT INFRINGEMENT

25. The allegations in paragraphs 1-24 are incorporated here by reference.

26. FFRF's *Freethought of the Day* compilation is the subject of U.S. copyright registration No. TXu 1-755-783, effective May 17, 2011 (a copy of the registration certificate is attached as Exhibit A).

27. FFRF is the author and owner of a valid copyright in the *Freethought of the Day*.
28. Criswell and Ulysses Press have infringed FFRF's copyright in *Freethought of the Day*.
29. Upon information and belief, such infringement was willful.
30. Upon information and belief, such infringement is ongoing.
31. FFRF has been damaged by Ulysses Press and Criswell's infringement in an amount to be determined at trial.
32. Ulysses Press and Criswell's infringement is causing FFRF irreparable harm, and will continue to do so unless enjoined.

WHEREFORE, FFRF respectfully requests an order and judgment that:

1. Ulysses Press and Criswell have infringed FFRF's copyright in the *Freethought of the Day*.
2. Ulysses Press and Criswell are permanently enjoined from (1) reproducing, (2) copying any material from FFRF's website or any other FFRF material, and (3) selling or distributing *The Wit and Blasphemy of Atheists*.
3. FFRF is entitled to an accounting from Ulysses Press and Criswell of all sales and distribution of *The Wit and Blasphemy of Atheists*.
4. Pursuant to 17 U.S.C. § 504, FFRF is entitled to money damages for its losses and it is entitled to recover any and all profit derived from the sales and distribution of *The Wit and Blasphemy of Atheists*.
5. For any act of infringement on or after May 17, 2011, pursuant to 17 U.S.C. § 504, FFRF is entitled to recover, at its election, statutory damages or actual damages and other profits attributable to Ulysses Press and Criswell's infringement.

6. For any act of infringement on or after May 17, 2011, pursuant to 17 U.S.C. § 505, FFRF is entitled to recover its costs and reasonable, actual attorneys' fees in this matter.

7. Such other relief as the Court deems just and equitable.

JURY DEMAND

FFRF demands trial by jury on all issues triable to a jury.

Dated this 14th day of September, 2011.

/s/ James D. Peterson

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