

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN WILEY & SONS, INC. AND
CENGAGE LEARNING, INC.,

Plaintiffs,

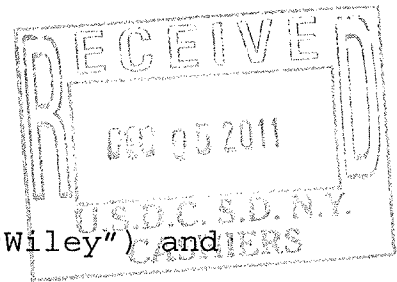
-against-

JOHN DOE D/B/A/ MR. TEXTBOOKS
AND JOHN DOE NOS. 1-5,

Defendants.

JUDGE FORREST

11 Civ 8831



COMPLAINT

Plaintiffs John Wiley & Sons, Inc. ("Wiley") and

Cengage Learning, Inc. ("Cengage"), by their undersigned attorneys, for their complaint against defendants John Doe d/b/a Mr. Textbooks and John Doe Nos. 1 through 5, aver:

Nature of the Action

1. Plaintiffs are bringing this action to enforce their copyrights and trademarks against defendants' unlawful sale in the United States of non-United States versions of plaintiffs' educational books.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over the first two claims in this action pursuant to 28 U.S.C. §§ 1331 and 1338 because they arise under the Copyright Act, 17 U.S.C. § 101 et seq., or the Lanham Act, 15 U.S.C. § 1051 et

seq. This Court has subject matter jurisdiction over the third claim in this action pursuant to 28 U.S.C. § 1367 because it is so related to the claims within the original jurisdiction of this Court that they form part of the same case or controversy within the meaning of Article III of the United States Constitution.

3. Upon information and belief, venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400.

Parties

4. Wiley is a corporation organized and existing under the laws of the State of New York with its principal place of business at 111 River Street, Hoboken, New Jersey 07030.

5. Cengage is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 200 First Stamford Place, 4th Floor, Stamford, Connecticut 06902.

6. Upon information and belief, defendant John Doe d/b/a Mr. Textbooks is a natural person currently residing in the United States whose identity is presently unknown to plaintiffs.

7. Upon information and belief, defendants John Doe Nos. 1-5 are natural persons currently residing in the United States whose identities are presently unknown to plaintiffs.

The Businesses of Plaintiffs

8. Each plaintiff publishes a variety of works, including educational books.

9. As a standard practice, each plaintiff requires its authors to assign the copyright to it or grant it the exclusive rights of reproduction and distribution in the United States. This practice enables each plaintiff to maximize dissemination of each work.

10. Plaintiffs invest significant monies to publish their copyrighted works. Plaintiffs, for example, make substantial investments in royalties, content creation, licensing, copyediting, proofreading, typesetting, layout, printing, binding, distribution, and promotion.

11. Plaintiffs earn a substantial portion of their revenue from the publication of their copyrighted works and would suffer serious financial injury if their copyrights were not enforced. A substantial decline in their income could cause plaintiffs to cease publishing one or more deserving books or journals. This would adversely impact the creation of new works, scholarly endeavor, and scientific progress.

12. Plaintiffs' educational books authorized for sale in the United States are of the highest quality (the "United States Editions"). These books are generally printed with strong, hard-cover bindings with glossy protective coatings and,

in some cases, contain extra features such as sewn ribbon bookmarks. Plaintiffs frequently offer academic supplements, such as CD-ROMs, computer passwords that provide purchasers with access to academic websites corresponding to the textbooks, and study guides with the United States Editions.

13. Plaintiffs generally create different versions of their educational books that are intended for sale in specific geographic markets outside of the United States (the "Foreign Editions"). The Foreign Editions materially differ from the United States Editions. The Foreign Editions have thinner paper and different bindings, different cover and jacket designs, fewer internal ink colors, if any, lower quality photographs and graphics, and generally lower prices than the United States Editions. Also, the Foreign Editions often lack academic supplements, such as CD-ROMs, website passwords, or study guides. The Foreign Editions are generally marked to indicate their lower cost by a legend indicating, in substance, that the title is a "Low Price Edition" and/or authorized for sale only in a particular country or geographic region. The Foreign Editions are uniformly manufactured outside of the United States.

Plaintiffs' Copyrights and Trademarks

14. Plaintiffs routinely register their copyrights. Wiley has generally registered its copyrights in its works,

including those identified on Schedule A (the "Wiley Copyrights"). Cengage has generally registered its copyrights in its works, including the works on Schedule B (the "Cengage Copyrights").

15. Wiley also owns, itself or through its parent or affiliate companies, trademarks that it uses to differentiate its products from those of its competitors.

16. Among Wiley's well-known trademarks are "John Wiley & Sons, "Wiley," and the "John Wiley Colophon" (the "Wiley Trademarks"). The United States Registrations for the Wiley Trademarks are identified on Schedule C.

The Infringing Acts of Defendants

17. Defendants have without permission purchased Foreign Editions of plaintiffs' books manufactured outside of the United States and resold them to purchasers in the United States, including purchasers in the State of New York, through the Internet using the e-mail addresses including, but not limited to, mrtetxt@yahoo.com and the usernames including, but not limited to, "Mr. Textbooks" at websites including, but not limited to, Biblio.com.

FIRST CLAIM FOR RELIEF
(Copyright Infringement - 17 U.S.C. § 501)

18. Plaintiffs repeat the averments contained in paragraphs 1 through 17 as if set forth in full.

19. Wiley has received United States Certificates of Copyright Registration for the Wiley Copyrights.

20. Cengage has received United States Certificates of Copyright Registration for the Cengage Copyrights.

21. The Wiley and Cengage Copyrights are valid and enforceable.

22. Defendants have infringed the Wiley and Cengage Copyrights in violation of 17 U.S.C. § 501.

23. Defendants' acts have irreparably damaged and, unless enjoined, will continue to irreparably damage plaintiffs. Plaintiffs have no adequate remedy at law for these wrongs and injuries. Plaintiffs are, therefore, entitled to a preliminary and permanent injunction restraining and enjoining defendants and their agents, servants, employees, and attorneys and all persons acting in concert with them, from infringing the Wiley and Cengage Copyrights.

24. Defendants have willfully infringed the Wiley and Cengage Copyrights.

25. Plaintiffs are entitled to recover all damages sustained as a result of defendants' unlawful conduct including (1) defendants' profits, or (2) plaintiffs' damages, or alternatively (3) statutory damages.

SECOND CLAIM FOR RELIEF

(Trademark Infringement - 15 U.S.C. § 1114(a))

26. Plaintiffs repeat the averments contained in paragraphs 1 through 25 above as if set forth in full.

27. Wiley owns the Wiley Trademarks, for which it has obtained United States Trademark Registrations.

28. The Wiley Trademarks are valid and enforceable.

29. Defendants have infringed the Wiley Trademarks in violation of 15 U.S.C. § 1114(a) by using them on and/or in connection with the works that they have sold.

30. Defendants' acts complained of herein have irreparably damaged Wiley and may continue to do so. The damage to Wiley includes harm to its good will and reputation in the marketplace for which money cannot compensate. Wiley has no adequate remedy at law for these wrongs. Wiley is, therefore, entitled to a preliminary and permanent injunction restraining and enjoining defendants, their agents, servants, employees, and attorneys and all persons acting in concert with them from using the Wiley Trademarks or any colorable imitation of them.

31. Defendants have willfully infringed the Wiley Trademarks.

32. Wiley is entitled to recover (1) defendants' profits from the infringing books, (2) plaintiffs' damages, (3) the costs of the suit, and (4) reasonable attorneys' fees.

THIRD CLAIM FOR RELIEF
(Common Law Unfair Competition Under State Law)

33. Plaintiffs repeat the averments contained in paragraphs 1 through 32 above as if set forth in full.

34. Defendants' acts complained of herein have damaged and may continue to damage Wiley irreparably. The damage to Wiley includes harm to its good will and reputation in the marketplace for which money cannot compensate. Wiley has no adequate remedy at law for these wrongs and injuries. Wiley is, therefore, entitled to a preliminary and permanent injunction restraining and enjoining defendants, their agents, servants, employees, and attorneys and all persons acting in concert with them from using the Wiley Trademarks or any colorable imitation of them, to restitution of defendants' ill-gotten gains, and to punitive damages in an amount to be determined by the trier of fact in this action.

WHEREFORE, plaintiffs demand judgment:

A. Preliminarily and permanently enjoining defendants, their agents, servants, employees, and attorneys and all those acting in concert with them from infringing the Wiley and Cengage Copyrights in violation of 17 U.S.C. § 501;

B. Awarding plaintiffs their damages or defendants' profits, or alternatively, at plaintiffs' election, statutory

damages, as a result of defendants' willful infringement of the Wiley and Cengage Copyrights;

C. Preliminarily and permanently enjoining defendants, their agents, servants, employees, and attorneys and all those acting in concert with them from infringing the Wiley Trademarks in violation of 15 U.S.C. § 1114(a);

D. Awarding plaintiffs their damages and/or defendants' profits from their willful infringement of the Wiley Trademarks pursuant to 15 U.S.C. § 1117(a);

E. Directing that defendants engage in such additional activities, including, but not limited to, recalls of products and corrective advertising, as may be necessary and appropriate to mitigate the damage defendants have caused;

F. Awarding plaintiffs their costs in this action, including their reasonable attorneys' fees pursuant 17 U.S.C. § 505 and 15 U.S.C. § 1117;

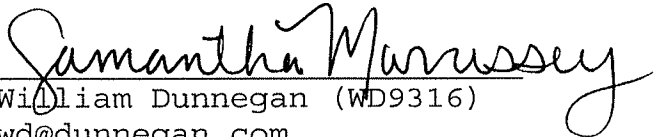
G. Awarding plaintiffs punitive damages in an amount to be determined by the trier of fact in this action; and

H. Granting such other and further relief as to this

Court seems just and proper.

Dated: New York, New York
December 5, 2011

DUNNEGAN LLC

By 

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Schedule A
"Wiley Copyrights"

<u>Title</u>	<u>(Author)</u>	<u>(Edition)</u>	<u>(Date of Registration)</u>	<u>(Registration #)</u>
1.	Accounting Principles,	(Jerry J. Weygandt)	(10E)	(August 29, 2011) (TX0007420810)
2.	Advanced Accounting,	(Debra C. Jeter)	(4E)	(March 25, 2011) (TX0007348265)
3.	Advanced Engineering Mathematics,	(Erwin Kreyszig)	(10E)	(July 26, 2011) (TX0007417577)
4.	Analytical Trigonometry with Applications,	(Raymond Barnett)	(10E)	(December 13, 2010) (TX0007307369)
5.	Applied Calculus,	(Debra Hughes-Hallett)	(4E)	(June 16, 2010) (TX0007190610)
6.	Applied Statistics and Probability for Engineers,	(Douglas C. Montgomery)	(5E)	(October 26, 2010) (TX0007279317)
7.	Basic Concepts of Chemistry,	(Leo J. Malone)	(8E)	(April 19, 2010) (TX0007170805)
8.	Basic Engineering Circuit Analysis,	(J. David Irwin)	(10E)	(August 12, 2011) (TX0007406519)
9.	Big Java,	(Cay Horstmann)	(4E)	(July 16, 2010) (TX0007196180)
10.	Business Statistics,	(Ken Black)	(6E)	(January 7, 2011) (TX0007309917)
11.	Cell and Molecular Biology,	(Gerald Karp)	(6E)	(December 27, 2007) (TX0006929210)
12.	Chemistry: Matter and Its Changes,	(James E. Brady)	(5E)	(March 15, 2010) (TX0007159028)
13.	Control Systems Engineering,	(Norman S. Nise)	(6E)	(August 9, 2011) (TX0007422777)

Schedule B
"Cengage Copyrights"

Title (Author) (Edition) (Date of Registration) (Registration #)

1. Biological Psychology (Kalat) (9E) (November 24, 2006)
(TX0006486718)
2. Comparative Politics in Transition (McCormick) (6E)
(October 21, 2009) (TX0007050200)
3. Contemporary Marketing (Boone/Kurtz) (13E) (May 9, 2007)
(TX0006560316)
4. Chemistry and Chemical Reactivity (Kotz/Treichel/Townsend)
(7E) (March 28, 2008) (TX0006853329)
5. Chemistry (Whitten/Davis/Peck) (8E) (May 2, 2006)
(TX0006352309)
6. Organic Chemistry (McMurry) (6E) (June 1, 2003)
(TX0005747307)
7. Advanced Nutrition and Human Metabolism (Gropper/Smith)
(5E) (July 2, 2008) (TX0006871541)
8. Applied Mathematics for the Managerial, Life, and Social
Sciences (Tan) (4E) (February 9, 2006) (TX0006288626)
9. Audio in Media (Alten) (9E) (October 21, 2010)
(TX0007285657)
10. Auditing: A Business Risk Approach
(Rittenberg/Schwieger/Johnstone) (6E) (May 29, 2007)
(TX0006583787)
11. The Basics of Social Research (Babbie) (5E) (June 28, 2011)
(TX0007389988)

Schedule C
"Wiley Trademarks"

	<u>U.S. Trademark</u>	<u>Registration Number</u>	<u>Class</u>
1.	"JW" Colophon	1,639,555	009, 016
2.	"Wiley"	1,003,988	009, 016, 036, 038
3.	"Wiley"	2,159,987	009, 042