

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PEARSON EDUCATION, INC.,  
JOHN WILEY & SONS, INC.,  
CENGAGE LEARNING, INC., AND  
THE MCGRAW-HILL COMPANIES,  
INC.,

96 Civ 6354 (JSR)

Plaintiffs,

vs.

VINOD KUMAR, VIRENDER  
YADAV, SUKHWINDER SINGH AND  
DART AIR, INC. ALL D/B/A  
MODERN BOOKS D/B/A EXPRESS  
BOOKS D/B/A UNIQUE BOOKS  
D/B/A JHON BOOK STORE D/B/A  
EXPRESSBOOKS06 D/B/A  
QUALITYINSTRUMENTS400 AND  
JOHN DOES NOS. 1-5,

Defendants.

EXAMINATION BEFORE TRIAL of the testimony of  
VIRENDER YADAV as taken by and before BETH J.  
SPINNER, a Certified Shorthand Reporter and Notary  
Public of the State of New York at the law offices  
of WILLIAM DUNNEGAN, ESQ., The Empire State  
Building, 350 Fifth Avenue, Suite 4908, New York,  
New York, 10118, on Wednesday, May 7, 2008,  
~~commencing at 10:00 a.m.~~

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Yadav - direct

1 A. Local packages where they can reach  
2 physically, they can go.

3 Q. Got it.

4 A. States they go through DHL, Fed-Ex, whatever.

5 Q. Now, is that the way that Dart Air  
6 operated?

7 A. Operates, that's right.

8 Q. After the two or three months, you  
9 told Niurka to operate the business, is that fair?

10 A. Yes, there were two reasons. My business, I  
11 cannot give my time to the Dart Air operation  
12 because they need some direction, they send across  
13 the state.

14 Secondly, I wanted Niurka that sees  
15 interest to having business, and sees doing  
16 something her own. So I give this business to  
17 Niurka.

18 Q. After you gave it to Niurka, did Mr.  
19 Malik continue with the business?

20 A. Yes.

21 Q. Did you actually change ownership of  
22 the shares of the company?

23 A. Yes, I transferred everything.

24 Q. Do you have the documents that showed  
25 that at some point?

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Yadav - direct

1 A. There should be.

2 Q. You should have those documents?

3 A. Should be with Dart Air. Because Dart Air  
4 should have those documents or C.P.A.s should have  
5 those documents.

6 Q. You actually signed formal papers  
7 transferring ownership of Dart Air?

8 A. Of course. Of course. Of course.

9 Q. That is to transfer, you signed formal  
10 papers to transfer to Niurka?

11 A. Right.

12 Q. Now, how long did Niurka own Dart Air?

13 A. Until the time she transferred these.

14 Q. When was that?

15 A. I think maybe when your books and things  
16 started, during that time.

17 Q. When you say things started, you mean  
18 this lawsuit?

19 A. When we came to about your books, that these  
20 are illegally traded.

21 Q. That is after this lawsuit had  
22 started, right?

23 A. Yes, yes.

24 Q. So after this lawsuit had started --

25 A. Yes.

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Yadav - direct

1 Q. -- Niurka transferred Dart Air to?

2 A. We asked Vinod, because Vinod handle the Dart  
3 Air company in India. His name is also Dart Air  
4 Service in India. He also owns a courier business.

5 Q. About when did you transfer Dart Air  
6 Inc. to Vinod Kumar?

7 A. I think it has been four months, five months.  
8 I don't remember dates but during this time. I  
9 mean, Niurka transferred.

10 Q. Got you.

11 A. We asked him what is this business we had  
12 been notified, what is this business. He sent some  
13 papers, this is legal, this is this, this is  
14 reference of this and this and this. He tried to  
15 told us that this is not a problem. But we did not  
16 listen and we told him that we want to shut down  
17 this or we don't want to be part of any  
18 responsibility of this.

19 We don't want to listen anything you  
20 want to do, anything to deal with you. We don't  
21 want to be part of this business at all. We don't  
22 understand this isn't right business. We  
23 understand what you are saying is right. What you  
24 are saying, we are not satisfied with you. So you  
25 want to shut down or you want to have this business

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Yadav - direct

1 your own.

2 Q. So the business was, the business of  
3 Dart Air was transferred to Vinod Kumar --

4 A. Yes.

5 Q. -- after this lawsuit was started?

6 A. That's right.

7 Q. At that point did you receive any  
8 money for it?

9 A. It was, I told you, it was only an operation.

10 Q. But did you --

11 A. No.

12 Q. For transferring the business, did you  
13 receive anything from Mr. Kumar?

14 A. No.

15 Q. Zero?

16 A. No. We did not have anything. We did not  
17 have that kind of account, anything at all.

18 Whatever this pack is, like from India it comes,  
19 okay. You send here to the customers, shipping,  
20 whatever, there are some CODs money against it, it  
21 meets the expenses, it is nothing. We did not  
22 receive on that account any single penny.

23 Q. When did you first realize that Dart  
24 Air was distributing books that were shipped from  
25 India?

Yadav - direct

1 A. No, books and packages, but they were coming.

2 Q. Right. When did you first realize  
3 that Dart Air was picking up books as opposed to  
4 other types of merchandise from Kennedy Airport?

5 A. Books and all these merchandise?

6 Q. Yes.

7 A. This has always been books and we don't know  
8 it is books or package, they have been coming from  
9 day one. But we realized that this is a wrong  
10 business, you want to say that.

11 Q. Let me try to explain my question a  
12 little bit better and then I will ask one very  
13 precisely.

14 A. Please.

15 Q. From day one of Dart Air books may  
16 have been in the packages that were picked up at  
17 Kennedy Airport, right?

18 A. I don't think this kind of many books. They  
19 were packages but these kind of packages, like  
20 books packages, it was not that during that time.  
21 There were packages like letters and other things  
22 and small envelope.

23 Q. During what period of time did you  
24 personally first realize that there were books in  
25 the packages that were being picked up from Kennedy

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Yadav - direct

1 Airport?

2 A. We did not want it to pay attention that  
3 books or merchandise or anything, we had no idea.  
4 When you notified -- no, not you notified, some  
5 other attorney, he had sent a kind of pamphlet or  
6 something that there will be a case against you and  
7 it is a books case that we inquire about it.  
8 Somebody else had sent some, that he will help us  
9 in this case and cases coming against us.

10 Q. So --

11 A. We realized what are these books. Then we  
12 realized that these are these books.

13 Q. Well, do you remember being served  
14 with a summons and complaint?

15 A. Yes.

16 Q. In this case?

17 A. Yes.

18 Q. How long before you received that  
19 summons and complaint did you receive the notice?

20 A. About 15 days before, maybe 10, 15, 20 days  
21 before.

22 Q. Who sent you that notice?

23 A. There was an attorney. I don't remember the  
24 name. But there was an attorney. I spoke to him.

25 Q. Did you receive anything from that

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Yadav - direct

1 merchandise that was shipped from India to Kennedy  
2 Airport to anyone in the United States?

3 A. No.

4 Q. Do you know anybody other than the two  
5 drivers for Dart Air who would do that?

6 A. Sometime Malik. Malik or manager, they go  
7 sometime with that.

8 (Priority Mail Envelope received and  
9 marked Plaintiff's Exhibit B for Identification.

10 Book entitled "Computer Ethics"  
11 received and marked Plaintiff's Exhibit C for  
12 Identification.)

13 Q. Now, I'd like to show you both Exhibit  
14 B and Exhibit C. I am going to ask you have you  
15 seen any of those or either of those before today?

16 A. These packages?

17 Q. Yes, have you seen Exhibit B before  
18 today?

19 A. You mean the contents or you mean the  
20 package?

21 Q. I mean the package.

22 A. Yes, I have seen.

23 Q. You understand that Exhibit B was  
24 addressed to Kim Banks, 353 West 56th Street?

25 A. No, I don't know about the address and these

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Yadav - direct

1 thing. I know about the package. This kind of  
2 packages, I used to see my -- sometime they used to  
3 come by the mail to my home and my office, but  
4 address, etcetera, we never saw these addresses.

5 Q. So you have no recollection of seeing  
6 Exhibit B before today?

7 A. We never tried to read the addresses because  
8 we had no linking business that we need these  
9 addresses.

10 Q. When you say we, who do you mean?

11 A. My office, my staff also when I am all the  
12 time not in my office, my office, also when postman  
13 delivers.

14 Q. When you say your office, do you mean  
15 Tradex?

16 A. Yes, Tradex.

17 Q. Do you know whether or not this  
18 envelope came from Tradex?

19 A. From Tradex?

20 Q. Yes.

21 A. From Tradex, no. To Tradex address. To the  
22 Tradex address, postman sometime deliver those  
23 packages.

24 Q. Did you ever hear of a company called  
25 Express Books?

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Yadav - direct

1 A. Only after you notified.

2 Q. And after we notified, how did you  
3 learn of Express Books?

4 A. How did I?

5 Q. How did you learn of Express Books?

6 A. These are kind of some thing, that we know  
7 that it is going on. I have no knowledge who is  
8 Express, who is owner, who is sending. I have  
9 nothing beyond that.

10 Q. Did you ever have a discussion with  
11 Vinod Kumar about who was Express Books?

12 A. He just agreed that he owns business.

13 Q. He agreed that he was doing Express  
14 Books?

15 A. This business about the books business.

16 Q. Did Vinod Kumar ever mention Express  
17 Books to you?

18 A. Never.

19 Q. Now, did Dart Air ever use, to your  
20 knowledge, the United States Postal Service to  
21 deliver packages within Manhattan?

22 A. I just know because the post, the supervisor  
23 came many times because the registered address of  
24 the Dart Air was 146 West and he told me that these  
25 guys, they put in the post box, these heavy

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Yadav - direct

1 package, they are not supposed to be delivered  
2 there because they are for the small packets and  
3 Dart Air people, they put in, this would go  
4 directly to the post office. I conveyed to them  
5 that the supervisor from the post office, he  
6 complain about it. He came to my address. So do  
7 not do that. They told me after that, they deliver  
8 to the post office.

9 Q. When did the supervisor from the post  
10 office come to you?

11 A. Maybe during six month, one year, I don't  
12 remember.

13 Q. When you say six months, one year, can  
14 you be any more specific?

15 A. I have no knowledge.

16 Q. Do you know the name of the person who  
17 came to visit you from the post office?

18 A. Sitting over there on the Seventh Avenue, I  
19 know the person. I know the main person, he is  
20 with the van, he brings the van on the Seventh  
21 Avenue.

22 Q. Seventh Avenue and what?

23 A. Seventh Avenue and 29th Street. They have  
24 the post office van. And my regular postman, when  
25 he comes, then he say today you have got a lot of

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Yadav - direct.

1 books. He will bring today. And the same guy, he  
2 come with his other postman, and he used to  
3 complain. I have seen him personally.

4 Q. Okay.

5 Now, your usual postman said you have  
6 a lot of books?

7 A. Yes.

8 Q. He would complain about the fact --

9 A. I mean books, packages, books mean these kind  
10 of packages, heavy packages. Now we know they are  
11 books.

12 Q. You didn't know that there were books  
13 in them at the time?

14 A. No, we did not know. He said heavy packages  
15 like that. After that, now we call them books.

16 Before that we did not know they are  
17 books until lawsuit notified to us. Now we are  
18 calling them books. Before we were calling them  
19 packages.

20 (Priority Mail Envelope received and  
21 marked Plaintiff's Exhibit D for Identification.)

22 Q. Let me show you what I have just  
23 marked as Exhibit D. Have you seen that before  
24 today?

25 A. These packages I told you.

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Yadav - direct

1 Q. Inside they were big?

2 A. When you open the door, there were so many  
3 collected like this and nobody knew that, whose  
4 mail they are. They asked me, I said no, I don't  
5 get my mail. So they garbaged.

6 But these, when I come out, sometime I  
7 go ten, 12, from my home, and I found that these  
8 are same thing, the garbage, I also garbaged when I  
9 found.

10 Q. Did you also receive at the offices of  
11 Tradex at 146 West 29th Street packages which  
12 looked similar to Exhibit D, except for the  
13 address, of course?

14 A. Nobody bothered about that at all. But these  
15 similar packages we used to receive, I told you, my  
16 mailman used to tell me that they are coming and  
17 not the regular mailman who has a van, he used to  
18 bring and used to -- so we were thinking that they  
19 put less tickets, somebody's package, or they made  
20 something wrong delivery, or because the postman is  
21 pissed off because they put in the box instead of  
22 the -- to the main office. So it should go back,  
23 they will take care. We did not know about that.

24 Q. Sometimes people from Dart Air were  
25 picking up these packages that looked like Exhibit

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Yadav - direct

1 D, right?

2 A. Yeah, they were all D or, they were kind of  
3 similar. Sometime in these, sometime in these.  
4 Sometime they had a bulletin kind of bag.

5 Q. But people from Dart Air would from  
6 time to time come to the offices of Tradex at 146  
7 West 29th Street --

8 A. No, we used to call them.

9 Q. You used to call them, they would come  
10 and pick up packages that looked like this?

11 A. Yes. Not only this, because that is the  
12 regular process. Sometimes the package is a big  
13 box, sometimes somebody deliver, sometime DHL  
14 because they have a register office there, they  
15 deliver so...

16 Q. Did you ever ask anyone why these  
17 packages were being delivered to the office at  
18 Tradex at 146 West 29th Street?

19 A. Because the address is there. Return address  
20 is there. We presume that Dart Air got registered  
21 office, so that is why they check that they came  
22 from there so they deliver to the registered  
23 office. We presumed like that.

24 Q. Did you make any effort to change the  
25 registered office?

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Yadav - direct

1 A. Because once we, in the good faith, we did  
2 not know that this is -- every day mailing is  
3 there. It is only because of the registered  
4 sometime came. Now everything is changed once we  
5 know about that.

6 Q. Everything is what?

7 A. Changed. The registered office or this,  
8 everything, we have changed.

9 Q. After the lawsuit arose you changed  
10 everything?

11 A. Yes. To my personal knowledge I do not know  
12 they are a corporation, they are a provider, they  
13 are a company, they are individual or whatever.  
14 Because Vinod admitted straight away, he is doing  
15 this business.

16 Q. Say that again.

17 A. Vinod straight away admitted it is his  
18 business, and he is doing this business.

19 Q. Can you look at Exhibit B, any of the  
20 information on it, and tell me if you see anything  
21 which suggests to you the identity of the person  
22 that delivered it to the United States Postal  
23 Service?

24 A. I do not know about addresses at all. I have  
25 no knowledge.

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Yadav - direct

1 Q. Does it strike you as out of the  
2 ordinary course of business of Dart Air to deliver  
3 packages to addresses in Manhattan by using the  
4 United States Postal Service?

5 A. Whatever I have knowledge, I tell you. The  
6 one guy, he used to cry and Malik used to tell him  
7 that he can press the button, he has got the power  
8 to cry. And he said, "sir, night I went ten  
9 o'clock. Sir, I am tired. So many package. I am  
10 doing this. I am doing this. All everything."

11 So I told him about these people are  
12 crying, it is extra job and too much hard working  
13 job, they put these.

14 So I think later on these things,  
15 before they were putting the labels as per their  
16 instructions because they have in this office, then  
17 they were sending from the India as it is. These  
18 things. Why they were using these, I never tried  
19 to inquire. Never, nobody, we don't know.

20 Yes, yes, I think this was cheaper  
21 because of the DHL, I think. They that rate to  
22 take from DHL, Fed-Ex, and everything, and because  
23 of the -- this is somehow cheaper, I guess.

24 Q. So are you telling me that it is your  
25 understanding that the envelope which is marked as

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Yadav - direct

1 Plaintiff's Exhibit B was shipped from India with  
2 United States postage already on it?

3 A. No, no, not about this. I am talking about  
4 this, about this thing. This address. Because  
5 they used to cry they have to put these labels on  
6 this here. It is too much work. They have to work  
7 hard. This is so many things, small, small, and  
8 everything.

9 So I think later on they made a system  
10 that they were sending these from India, as it is,  
11 only postage they were putting here, I think like  
12 that.

13 I guess.

14 Q. Who would put the postage on it?

15 A. Staff of the Dart.

16 Q. The drivers?

17 A. No, not drivers, they don't do that. Office  
18 staff. Drivers don't do that. Drivers are  
19 running, that are not their job, they hardly stay.  
20 This was the office boys who work. And from India  
21 when they come, these are big big bags. They don't  
22 come like, there are so many inside.

23 I mean, to our knowledge and  
24 everything we try to find the everything he was  
25 operating from India, everything, selling, doing,

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Yadav - direct

1 States delivery confirmation --

2 A. Before.

3 Q. -- bar code on it?

4 A. Before they were doing here in the computer.  
5 They said this is extra work for us, they were  
6 tired.

7 Q. Have you ever seen anyone from Dart  
8 Air deliver any packages to the postal service  
9 outside of Manhattan?

10 A. No, not outside Manhattan. Manhattan I have  
11 seen. Outside, I don't know, maybe the drivers,  
12 they know. But outside Manhattan, I don't think  
13 they give the delivery of the books. I never seen  
14 them. This was for the time period something extra  
15 burden on them. On the Dart. This is not the  
16 regular business. The entire staff is tied up with  
17 the regular business.

18 Q. What makes you think books are not the  
19 regular business of Dart Air?

20 A. Because they started last year only. This is  
21 too much headache and work.

22 Q. When you say last year only, when, to  
23 your knowledge, did Dart Air start selling the  
24 books?

25 A. Because the other courier company, they had

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Yadav - direct  
1 also started that.

2 Q. Other courier company, what do you  
3 mean?

4 A. I mean NYC Courier, I know it. They were  
5 talking in general, they are carrying load of  
6 stuff, lot of clothes, then they said they switch  
7 over to their customer, like you are Dart Air  
8 customer, they come and tell you, can you switch  
9 over to our business, we give you good rates.  
10 Sometimes handicrafts come, some time glass come,  
11 sometimes books come. It is a boom sometime of the  
12 business, you know. So people, they switch over to  
13 the customers and they ask us, that is what I  
14 overheard. And this is a cheap business, you don't  
15 make good money on this. You get very very less  
16 money. But this is bulk business, you get lot of  
17 packages, but it is like you bring one to some  
18 student send in an application form, they send \$15.  
19 Maybe this they got \$100 or 50 cents to carry from  
20 India. They say we will give you this much of  
21 books.

22 So the other company was also carrying  
23 the books one time. So I overheard all these  
24 times.

25 Q. At some point --

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Yadav - direct

1 A. To my knowledge I think you understand little  
2 better because I can tell you about their operation  
3 so you can link, okay.

4 Fortunately or unfortunately Vinod  
5 being in the courier business is using this, okay.  
6 But there are other players of the books, okay.  
7 Let us say it is not Vinod, somebody is using Dart.  
8 Please carry my these 2,000 packages in one week.  
9 Every packet this much, this much weight. Usually  
10 they carry by weight. So any carrier can pick up.

11 Q. When you say any courier can pick up,  
12 I am not following you. In India, any courier can  
13 pick up or in the United States?

14 A. In India. In India I am talking. This is a  
15 business. They need a business to carry them.  
16 Vinod maybe he stayed in this.

17 Q. He what?

18 A. Vinod is a courier guy, he is not a book guy,  
19 so maybe he got this some, I mean, temptation or  
20 some weak point that he can, others are selling the  
21 book, so better he can sell the books. He can get  
22 better mileage because he will be having the  
23 courier profit and he will be having the book  
24 profit. So he is not a book person, he is a  
25 courier person.

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Yadav - direct

1 Q. But he owns the books he is shipping,  
2 right?

3 A. No, no, no. That is what I'm telling you.  
4 You are not trying to understand that.

5 Q. He owns some of the books that he is  
6 shipping?

7 A. I never heard about that. He buys the books  
8 from somebody. He is a middle man.

9 Q. Right, but at some point he owns the  
10 books that he is shipping to the United States,  
11 right?

12 A. I never heard about it. If you come to the  
13 Dart office now, they are scared of you, they are  
14 scared of me, and they clean it. And I kick them.  
15 Otherwise you had tons of them. You sit them. You  
16 throw them. If he owns, he should have been  
17 paying. He should have been paying for these  
18 books. He is not paying. They were garbage like.  
19 When packages come, they are polybags, this size.  
20 And the, all the packages, they are put in the  
21 bags.

22 Q. When you say bags, what do you mean  
23 bags?

24 A. That is what I am explaining, they are  
25 politan bags, very thick politan bag. Politan

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Yadav - direct

1 means, not the plastic but --

2 Q. Bubble wrap?

3 A. Not the bubble wrap. It is not plastic bag,  
4 they are bags of the, very strong plastics. It is  
5 in Dart. Maybe 20 bags comes every day. They are  
6 full of merchandise. When they come from India.

7 And if one book or ten book I have  
8 seen in the Dart office, you are using for as a  
9 waste, you are eating on them food, you are doing  
10 that. If it is his books, he should have pain.

11 Q. I can't understand you. He should  
12 have what?

13 A. He should have some pain. Some pain off his  
14 merchandise. If they could cost him, let us say, I  
15 sent my son will be appearing, he is doing M.B.A.  
16 from India, he will be appearing for FCA, FIC, or  
17 some financial course maybe in July. I forgotten  
18 name. There is one financial post graduate course.  
19 I paid though \$1,200 for him here in U.S. That is  
20 a United States course. I send the same books for  
21 \$800, seven books. Then I asked my son, he said  
22 no, papa, they are part of the fees and part of the  
23 books, they are together. Books themselves cost  
24 about \$500, six books, okay.

25 Let us say they are not \$600, let's

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