

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

-against-

07 Civ. 9399 (CSH)  
ECF Case

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.

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PLAINTIFFS' REPLY MEMORANDUM OF LAW IN  
SUPPORT OF THEIR MOTION FOR SUMMARY  
JUDGMENT ON THEIR COPYRIGHT CLAIMS  
AGAINST DEFENDANTS VINOD KUMAR AND  
DART AIR, INC.

Plaintiffs should succeed on their motion for  
summary judgment because (i) Vinod Kumar's ("Kumar")  
opposition does not create a genuine issue of material  
fact; (ii) on the undisputed facts, plaintiffs are entitled  
to judgment as a matter of law; and (iii) the pro se  
defendants are not entitled to special treatment because

plaintiffs properly notified them of the consequences of failing to make a proper response.

To create a record of defendants' "opposition," Kumar's letter to the Court is annexed as Exhibit A. Dart Air, Inc. ("Dart") has not served any documents.

Argument

I.

VINOD KUMAR'S OPPOSITION DOES  
NOT CREATE ANY GENUINE ISSUE  
OF MATERIAL FACT

Kumar's opposition contains no sworn statements, but only bald allegations. This is not enough to overcome a motion for summary judgment. Castro v. N.Y. City Dep't of Sanitation, 13 Fed. Appx. 63, 64, 2001 U.S. App. LEXIS 15755 (2d Cir. 2001) ("The district court properly dismissed the claims where plaintiff's submissions included only conclusory and vague allegations. . . "); FTC v. Medical Billers Network, Inc., 543 F. Supp. 2d 283, 303 (S.D.N.Y. 2008) ("However, Careres's conclusory statements that facts listed in the FTC's Rule 56.1 Statement are 'incorrect,' 'vague,' 'incomplete,' or 'disputed' are not sufficient to put any fact in dispute when Careres does not adequately put into dispute the FTC's underlying evidence."); Odom v. Keane, 1997 U.S. Dist. LEXIS 14077 at \*7-9 (S.D.N.Y. September 15, 1997) ("However, a pro se party's 'bald

assertion,' completely unsupported by evidence, is not sufficient to overcome a motion for summary judgment."), citing, Carey v. Crescenzi, 923 F.2d 18, 21 (2d Cir. 1991)

Even taking the allegations in Kumar's opposition as properly supported, Kumar has not created any genuine issue of material fact as to his or Dart's liability. Kumar admits that he sold plaintiffs' textbooks which were printed abroad. (Ex. A, p. 1) He also admits that he used Dart to ship the books and that Dart collected the money from infringing sales through its bank account. (Ex. A, p. 2) Willfulness is not at issue, since plaintiffs seek minimum statutory damages. Thus, Kumar's opposition, even when taken as if supported by evidence, creates no question of fact that requires a trial.

## II.

### KUMAR HAS NOT CHALLENGED PLAINTIFFS' LEGAL POSITION

Plaintiffs' legal position is that defendants' sale in the United States of foreign editions of their copyrighted works constitutes copyright infringement. Pearson Education Inc., et al. v. Jun Liao, et al., 2008 U.S. Dist. LEXIS 39222 at \*11-12 (S.D.N.Y. May 13, 2008) ("The record also reveals that Liao and Gu have violated plaintiffs' exclusive right to 'distribute copies

. . . of the copyrighted work[s] to the public' in violation of 17 U.S.C. §§ 106(3) and 602(a) by purchasing copies of plaintiffs' textbooks that were manufactured abroad and subsequently selling them within the United States without the permission of the copyright holders.") Kumar has offered no authority that plaintiffs' legal position is incorrect. Accordingly, there is no genuine issue of material fact and plaintiffs should be entitled to judgment as a matter of law.

Defendants' only hope of avoiding summary judgment rests on their excuse that they are pro se defendants. However, as set forth below, that excuse is insufficient.

### III.

DEFENDANTS WERE PROPERLY SERVED WITH A NOTICE TO PRO SE LITIGANTS WHO OPPOSE SUMMARY JUDGMENT, AS REQUIRED BY LOCAL RULE 56.2

Local Rule 56.2 requires a party moving for summary judgment against a pro se litigant to provide notice that "you may not oppose summary judgment simply by relying upon the allegations in your complaint and that if you do not respond to the motion for summary judgment on time with affidavits or documentary evidence contradicting the facts asserted by the [movant], the court may accept


the [movant's] factual assertions as true." FTC v. Medical Billers Network, Inc., 543 F. Supp. 2d 283 at 301-302, citing, Local Rule 56.2; See McPherson v. Phillip Coombe, Jr., 174 F.3d 276, 280-81, (2d Cir. 1999) Plaintiffs provided this notice in their document "Notice to Pro Se Litigants Opposing Summary Judgment." (Docket No. 21) This document provides ample notice to pro se defendants Kumar and Dart of the obligations and potential consequences of insufficient opposition.

Conclusion

For the reasons set forth above, plaintiffs respectfully request that the Court grant their motion for summary judgment on their copyright claims against Vinod Kumar and Dart Air, Inc.

Dated: New York, New York  
August 20, 2008

DUNNEGAN LLC

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