

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- :

JOHN DOE D/B/A/ NEAL FRANCES :
D/B/A RYAN D/B/A TEST CENTER :
AND JOHN DOE NOS. 1-5, :

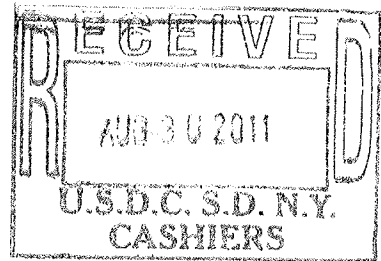
Defendants. :

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COMPLAINT

11 JUDGE SWAIN
CIV 6081

11 Civ.



Plaintiffs Pearson Education, Inc. ("Pearson"), John Wiley & Sons, Inc. ("Wiley"), Cengage Learning, Inc. ("Cengage") and The McGraw-Hill Companies, Inc. ("McGraw-Hill"), by their undersigned attorneys, for their complaint against defendants John Doe d/b/a Neal Frances d/b/a Ryan d/b/a Test Center and John Doe Nos. 1-5, aver:

Nature of the Action

1. Plaintiffs publish college textbooks and corresponding instructors' solutions manuals. Plaintiffs are bringing this action to obtain legal and equitable relief to remedy defendants' infringement of plaintiffs' copyrights through

their sales of unauthorized copies of plaintiffs' instructors' solutions manuals.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over the claim in this action pursuant to 28 U.S.C. §§ 1331 and 1338 because it arises under the Copyright Act, 17 U.S.C. § 101 et seq.

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

Parties

4. Pearson is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at One Lake Street, Upper Saddle River, New Jersey 07458.

5. 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.

6. 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.

7. McGraw-Hill is a corporation organized and existing under the laws of the State of New York with its

principal place of business at 1221 Avenue of the Americas, New York, New York 10020.

8. Upon information and belief, defendant John Doe d/b/a Neal Frances d/b/a Ryan d/b/a Test Center is a natural person currently residing in the United States whose identity and location is currently unknown to plaintiffs.

9. 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

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

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

12. 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.

13. 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.

14. An important part of plaintiffs' business is derived from publishing college textbooks. College professors select textbooks from competing publishers based on the pedagogical value and the quality of supplementary materials.

15. Instructors' solutions manuals are important supplementary materials. Professors use instructors' solutions manuals to aid in grading homework. Students, however, use instructors' solutions manuals to cheat. Professors are less likely to select a textbook if the instructors' solutions manuals are freely and/or widely available. Accordingly, plaintiffs do not sell their instructors' solutions manuals, and tightly control their distribution to known faculty.

Plaintiffs' Copyrights

16. Plaintiffs routinely register their copyrights. Pearson has generally registered its copyrights in its works, including the works on Schedule A (the "Pearson Copyrights").

17. Wiley has generally registered its copyrights in its works, including the works on Schedule B (the "Wiley Copyrights").

18. Cengage has generally registered its copyrights in its works, including the works on Schedule C (the "Cengage Copyrights").

19. McGraw-Hill has generally registered its copyrights in its works, including the works on Schedule D (the "McGraw-Hill Copyrights").

The Infringing Acts of Defendants

20. Defendants have, without permission, reproduced and sold copies of plaintiffs' works. Specifically, the defendants have reproduced and sold copies of plaintiffs' instructors' solutions manuals, including sales into the Southern District of New York, through online sales at websites and forums, including but not limited to, topix.com and thetestcenter.blogspot.com, using the usernames including, but not limited to, "Neal Frances," "Ryan" and "Test Center," and e-mail addresses including, but not limited to, thetestcenter@yahoo.com, thetestcenter@hotmail.com and gradewise@gmail.com.

CLAIM FOR RELIEF

(Copyright Infringement - 17 U.S.C. § 501)

21. Plaintiffs repeat the averments contained in paragraphs 1 through 20 as if set forth in full.

22. Pearson has received United States Certificates of Copyright Registration for the Pearson Copyrights.

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

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

25. McGraw-Hill has received United States Certificates of Copyright Registration for the McGraw-Hill Copyrights.

26. The Pearson, Wiley, Cengage and McGraw-Hill Copyrights are valid and enforceable.

27. Defendants have infringed the Pearson, Wiley, Cengage and McGraw-Hill Copyrights in violation of 17 U.S.C. § 501.

28. 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 Pearson, Wiley, Cengage and McGraw-Hill Copyrights.

29. Defendants have willfully infringed the Pearson, Wiley, Cengage and McGraw-Hill Copyrights.

30. 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 at plaintiffs' election, (3) statutory damages.

WHEREFORE, plaintiffs demand judgment:

A. Preliminarily and permanently enjoining the defendants, their agents, servants, employees, and attorneys and all those acting in concert with them from infringing the Pearson, Wiley, Cengage and McGraw-Hill 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 Pearson, Wiley, Cengage and McGraw-Hill Copyrights;

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

D. Granting such other and further relief as to this Court seems just and proper.

Dated: New York, New York
August 30, 2011

DUNNEGAN LLC

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Schedule A
"Pearson Copyrights"

Title, Author (Edition) (Registration Date) (Registration Number)

1. Absolute C++, Savitch (4th Edition) (June 30, 2009)
(TX0006983278)
2. Absolute Java, Savitch (4th Edition) (March 25, 2009)
(TX0007031718)
3. Accounting Information Systems, Romney (11th Edition) (March
24, 2008) (TX0006996489)
4. Advanced Accounting, Beams (10th Edition) (October 22, 2008)
(TX0006899994)
5. Algebra and Trigonometry, Sullivan (8th Edition) (September
21, 2007) (TX0006827976)
6. Analysis: With an Introduction to Proof, Lay (4th Edition)
(February 1, 2005) (TX0006095958)
7. Corporate Finance, Berk (2nd Edition) (March 16, 2010)
(TX0007147969)
8. Cost Accounting: A Managerial Emphasis, Horngren (13th
Edition) (May 1, 2008) (TX0007005297)
9. Engineering Economy, Sullivan (14th Edition) (August 5,
2008) (TX0006868899)
10. Engineering Mechanics: Statics and Dynamics, Bedford (5th
Edition) (September 6, 2007) (TX0006821471)
11. Financial and Managerial Accounting, Horngren (1st Edition)
(May 7, 2007) (TX0006579342)
12. Foundations of Finance, Keown (6th Edition) (August 9, 2007)
(TX0006904586)
13. Fundamentals of Corporate Finance, Berk (1st Edition) (April
29, 2009) (TX0006962665)
14. Governmental and Nonprofit Accounting Theory and Practice,
Freeman (9th Edition) (September 28, 2010) (TX0007267656)
15. Intermediate Algebra for College Students, Blitzer (5th
Edition) (February 29, 2008) (TX0006852845)
16. International Accounting, Choi (6th Edition) (January 30,
2008) (TX0006850645)
17. Introduction to Government and Non-for-Profit Accounting,
Razek (6th Edition) (April 11, 2008) (TX0006975056)
18. Introduction to Management Accounting, Horngren (15th
Edition) (May 24, 2010) (TX0007188121)
19. Physics for Scientists and Engineers: A Strategic Approach,
Knight (2nd Edition) (June 6, 2009) (TX0006984405)
20. Quantitative Analysis for Management Render (10th Edition)
(April 10, 2008) (TX0006936506)

Schedule B
"Wiley Copyrights"

Title, Author (Edition) (Registration Date) (Registration Number)

1. Accounting Principles, Jerry Weygandt (Eighth Edition)
(December 20, 2007) (TX0006954905)
2. Advanced Accounting, Debra Jeter (Fourth Edition) (March 25,
2011) (TX0007348265)
3. Financial Accounting: Tools for Business Decision Making,
Paul Kimmel (Fourth Edition) (April 20, 2006) (TX0006355329)
4. Intermediate Accounting, Donald Keiso (13th Edition) (March
25, 2011) (TX0007350089)
5. Intermediate Accounting, Donald Keiso (11th Edition) (May
29, 2003) (TX0005745393)
6. Managerial Accounting, James Jiambalvo (Fourth Edition) (May
4, 2010) (TX0007712095)
7. Managerial Accounting Tools For Business Decision Making,
Jerry Weygandt (Fourth Edition) (June 3, 2009)
(TX0006997911)
8. Managerial Accounting Tools For Business Decision Making,
Jerry Weygandt (Fifth Edition) (November 19, 2010)
(TX0007311538)
9. Multinational Financial Management, Alan Shapiro (Ninth
Edition) (May 3, 2010) (TX0007182397)
10. Physics, John Cutnell (Sixth Edition) (August 15, 2003)
(TX0004802903)

Schedule C
"Cengage Copyrights"

Title, Author (Edition) (Registration Date) (Registration Number)

1. Accounting, Warren/Reeve/Duchac (23rd Edition) (November 13, 2006) (TX0006480143)
2. Accounting Information Systems, Hall (6th Edition) (March 28, 2008) (TX0006843764)
3. Auditing: A Business Risk Approach, Rittenberg/Schwieger/Johnstone (6th Edition) (May 29, 2006) (TX0006583787)
4. Bank Management, Koch/Macdonald (6th Edition) (January 21, 2006) (TX0006303413).
5. Business and Professional Ethics for Directors, Executives, and Accountants, Brooks (4th Edition) (September 26, 2009) (TX0006425925)
6. South-Western Federal Taxation: Comprehensive 2009, Willis/Hoffman/Raabe (32nd Edition) (February 13, 2009) (TX0006972055)
7. Principles of Economics, Mankiw (4th Edition) (September 29, 2006) (TX0006434553)
8. Payroll Accounting 2009, Bieg/Toland (19th Edition) (February 13, 2009) (TX0006931803)
9. Fundamentals of Financial Management, Brigham/Houston (12th Edition) (September 18, 2009) (TX0007035007)
10. Financial Management: Theory and Practice, Brigham/Ehrhardt (12th Edition) (May 9, 2007) (TX0006560448)
11. Management, Daft (8th Edition) (May 9, 2007) (TX0006577475)
12. Intermediate Financial Management, Brigham/Daves (9th Edition) (September 29, 2006) (TX0006438595)
13. Cost Accounting: Foundations and Evolutions, Kinney/Raiborn (7th Edition) (0324560559) (March 28, 2008) (TX0006843770)

Schedule D
"McGraw-Hill Copyrights"

Title, Author (Edition) (Registration Date) (Registration Number)

1. Principles of Auditing and Other Assurance Services,
Whittington (17th Edition) (September 28, 2009)
(TX0007226971)
2. Advanced Financial Accounting, Baker (8th Edition) (June 18,
2009) (TX0006994271)
3. Corporate Finance, Ross/Westerfield/Jaffe (9th Edition)
(September 28, 2010) (TX0007265582)
4. Advanced Accounting Solutions Manual, Hoyle/Schaefer/Doupnik
(9th Edition) (May 27, 2009) (TX0006976421)
5. Managerial Accountig, Garrison/Noreen/Brewer (12th Edition)
(July 9, 2010) (TX0007221129)