

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CENGAGE LEARNING, INC., BEDFORD,
FREEMAN & WORTH PUBLISHING GROUP,
LLC d/b/a MACMILLAN LEARNING,
ELSEVIER INC., MCGRAW HILL LLC, and
PEARSON EDUCATION, INC.,

Plaintiffs,

v.

TRUNG KIEN NGUYEN, DUY ANH NGUYEN,
DUONG THI BAY, XUAN CHINH NGUYEN,
TUAN ANH NGUYEN, VINH NGOC NGUYEN,
LÊ TRANG, VAN QUYNH PHAM, THI LIEN
PHUONG NGUYEN, VAN TUAN DANG, HIEN
VO VAN, QUANG NGUYEN, JESSICA
GOLDBERG, MAXIM GUBCEAC, TRACEY
LUM, RODNEY MOUZONE, ZAINEE JALLAL,
LUU VAN DOAN, BUI HAI LINH, MOHD
HANIFF HASLAM, RAFAN WASEEF, SAMEER
YAMAN, STEFAN DEMETER, SHAHBAZ
HAIDER, ERIKA DEMETEROVA, ROSTISLAV
ZHURAVSKIY, SUSAN RAGON, WALESKA
CAMACHO, ANJUM AKHTER, HASEEB
ANJUM, MUHD IZHAN KHAIRUL, VU XUAN
TRUONG, BINH NGUYEN, ANTHONY
TORRESI, MICHAEL MCEVILLEY, CORNELL
KILLEBREW, MOHD ALI KAMIL, ADAM
HAROLD, ABDUL RAHIM MOHSIN, REFAT
HAMOUDA, MOHAMED SABEK, DO THANH
DUY, CRIS AUSTIN, and WASRI WAMIN,

Defendants.

Case No. 20-cv-769-JGK-SDA

**[PROPOSED] DEFAULT JUDGMENT
AND PERMANENT INJUNCTION**

JOHN G. KOELTL, District Judge:

Plaintiffs Cengage Learning, Inc., Elsevier Inc., McGraw Hill LLC, and Pearson Education, Inc. (collectively, “Plaintiffs”) initiated this action on January 29, 2020 against Doe Defendants. Compl., ECF No. 1. At the same time that they filed the Complaint, Plaintiffs filed

an *ex parte* application for a Temporary Restraining Order, expedited discovery, Order to Show Cause why a Preliminary Injunction should not issue, and alternate service by email, which the Court granted on January 29, 2020. *Ex Parte* Order, ECF No. 11. Plaintiffs served the Doe Defendants by email with the *Ex Parte* Order, their moving papers, the Complaint, and the Summons. *See* Decl. of Service, ECF No. 9. After a show cause hearing, at which Defendants did not appear, the Court issued a Preliminary Injunction against the Doe Defendants on February 24, 2020. Prelim. Inj., ECF No. 14. On March 19, 2020, upon Plaintiffs' motion, the Court issued an Amended Preliminary Injunction. Am. Prelim. Inj., ECF No. 25. After conducting expedited discovery, Plaintiffs filed the Amended Complaint on July 1, 2020, naming Defendant Michael McEvilley, amongst others, ("Defendant" or "McEvilley") on July 1, 2020. ECF No. 36. Plaintiffs served the Amended Complaint and Summons on Defendant on August 31, 2020. ECF No. 100. Defendant did not file Answers or otherwise respond to the Complaint or the Amended Complaint. On Plaintiffs' supporting papers, on August 20, 2021, the Clerk of the Court entered a Certificate of Default against Defendant McEvilley. ECF No. 146.

On August 31, 2021, Plaintiffs submitted an Order to Show Cause and memorandum in support of their request to enter a default judgment and permanent injunction against Defendant pursuant to, *inter alia*, Rules 55(b) and 65(d) of the Federal Rules of Civil Procedure. ECF Nos. 148-153.

On October 11, 2022, the Court issued an Order determining that Plaintiffs are entitled to a default judgment and referred the case to Magistrate Judge Aaron to conduct an inquest. ECF No. 165.

On November 2, 2022, Plaintiffs filed their Proposed Findings of Fact, Memorandum of Law, and Declaration in support of the inquest. ECF Nos. 169-171.

On November 21, 2022, Magistrate Judge Aaron issued his Report & Recommendation (“Report & Recommendation”), recommending that Plaintiffs be awarded \$1,500,000 in statutory damages; a permanent injunction be entered in Plaintiffs’ favor; a post-judgment asset restraint be imposed; the automatic stay of Federal Rule of Civil Procedure 62(a) be dissolved to allow for immediate enforcement of the judgment; and the judgment provide for the transfer of Defendant’s frozen assets to Plaintiffs. ECF No. 174.

On January 11, 2023, the Court issued an Order indicating that it was adopting the Report & Recommendation. ECF No. 176.

NOW, THEREFORE, having adopted the Report & Recommendation and reviewed the entire record herein, the Court HEREBY FINDS that:

A. Plaintiffs are higher education publishers. Plaintiffs’ publications include physical and digital textbooks that are widely available in the United States to consumers and sold through direct sales channels and legitimate distributors and stores, including through online sales.

B. Defendant intentionally reproduces and distributes for sale electronic, infringing copies of Plaintiffs’ copyrighted textbooks. Defendant does so through websites he owns and/or operates. Defendant’s websites named in the original Complaint and additional websites identified by Plaintiffs through third-party discovery in this action are listed as “Infringing Sites - Original Complaint” and “Infringing Sites- Associated Sites,” respectively, on Appendix A hereto (collectively, “Infringing Sites”).

C. Defendant has been properly served in this action with the Complaint, the Amended Complaint, and the Summonses;

D. Because Defendant has not filed an Answer, otherwise responded to the Complaint or the Amended Complaint, or otherwise appeared in this action, the Clerk of Court entered default against Defendant on August 20, 2021;

E. Plaintiffs own the copyrights or exclusively control all rights, title, and interest in their respective works described on Exhibit C to the Amended Complaint (the “Authentic Works”), which is appended hereto as Appendix B;

F. Defendant has willfully infringed Plaintiffs’ copyrights in the Authentic Works in connection with Defendant’s reproduction and distribution of unauthorized copies of Plaintiffs’ textbooks, and Defendant, therefore, is liable for willful copyright infringement under the Copyright Act, 17 U.S.C. §§ 101, *et seq.*;

G. Defendant’s willful infringement of Plaintiffs’ copyrights in the Authentic Works has caused Plaintiffs irreparable harm;

H. As a result of Defendant’s unlawful conduct, Plaintiffs are entitled to the entry of a final judgment and permanent injunction against Defendant.

Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, in accordance with Federal Rule of Civil Procedure 65(d), Defendant, his officers, agents, servants, employees, and attorneys, and all those in active concert or participation with him, are permanently enjoined and restrained from directly or indirectly infringing the copyrights owned or exclusively controlled by any of the Plaintiffs (or any parent, subsidiary, or affiliate of a Plaintiff), whether now in existence or later created.

Without limiting the foregoing, IT IS FURTHER ORDERED that, in accordance with Federal Rule of Civil Procedure 65(d), Defendant, his officers, agents, servants, employees, and attorneys, and all those in active concert or participation with him, are permanently enjoined and

restrained from engaging in any of the following acts:

- 1) Directly or indirectly infringing any copyrighted work that is owned or exclusively controlled by any of the Plaintiffs ("Plaintiffs' Textbooks"), i.e., any copyrighted work published under any of the imprints identified on Appendix C hereto;
- 2) Copying, reproducing, manufacturing, downloading, uploading, transmitting, distributing, selling, offering to sell, advertising, marketing, promoting, or otherwise exploiting any of Plaintiffs' Textbooks without Plaintiffs' express written authorization;
- 3) Enabling, facilitating, permitting, assisting, soliciting, encouraging, or inducing the copying, reproduction, manufacture, download, upload, transmission, distribution, sale, offering for sale, advertisement, marketing, promotion, or other exploitation of any of Plaintiffs' Textbooks without Plaintiffs' express written authorization; and
- 4) Using, hosting, operating, maintaining, creating, or registering any computer server, website, domain name, domain name server, cloud storage, e-commerce platform, online advertising service, social media platform, or payment processing service to enable, facilitate, permit, assist, solicit, encourage, or induce the infringement of Plaintiffs' Textbooks, as set forth in subparagraphs (1) through (3) above.

IT IS FURTHER ORDERED that, pursuant to 17 U.S.C. § 504(c), Plaintiffs' request for statutory damages under the Copyright Act is granted, and Plaintiffs are awarded statutory damages of \$1,500,000 against Defendant for his willful infringement of ten of Plaintiffs' Authentic Works.

IT IS FURTHER ORDERED that, in accordance with Federal Rule of Civil Procedure 69(a) and N.Y. C.P.L.R. § 5222(b), Defendant, his officers, agents, servants, employees, and attorneys, and all those in active concert or participation with him, and any financial institutions, i.e., banks, payment processing companies, savings and loan associations, credit card companies, credit card processing agencies, merchant acquiring banks, or other companies or agencies that engage in the processing or transfer of money and/or other assets ("Financial Institutions"), who receive actual notice of this Order, must immediately cease transferring, withdrawing, or otherwise

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