

**FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

PEARSON EDUCATION, INC., et al.)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:17-cv-4596 (SEB) (TAB)
)	
CHRISTOPHER DEITER d/b/a)	
WWW.EASYNOTECARDS.COM,)	
)	
Defendant.)	

FINAL JUDGMENT AND PERMANENT INJUNCTION

Plaintiffs, Pearson Education, Inc., McGraw-Hill Global Education Holdings, LLC, Elsevier, Inc., and Cengage Learning, Inc. (collectively, “Plaintiffs”), filed their First Amended Complaint for against Defendant, Christopher Deiter d/b/a www.easynotecards.com (“Defendant”), alleging claims of direct and secondary infringement pursuant to the Copyright Act, 17 U.S.C. § § 501 and 106. The parties have been involved in settlement discussions and wish to resolve this action. In connection therewith, the parties have reached a settlement agreement and jointly stipulate to entry of this Final Judgment and Permanent Injunction.

NOW THEREFORE, Plaintiffs and Defendant having requested the Court to enter this Order, and the Court having considered the agreements reached by the parties as set forth in this Order, **IT IS HEREBY ORDERED, ADJUDGE, AND DECREED** as follows:

FINDINGS

1. Plaintiffs are venerable publishing houses and among the world’s leaders in technology-powered higher education learning services. They each are domestic corporations organized and existing under the laws of the State of Delaware. Pearson, McGraw-Hill, and

Elsevier are each headquartered in New York City. Cengage is headquartered in Boston, Massachusetts.

2. Defendant is an individual who resides in Indianapolis, Indiana. Defendant owns and operates an online business located at www.easynotecards.com (the “EasyNoteCards Site”).

3. Plaintiffs each year publish thousands of educational works, including college textbooks and corresponding instructor solutions manuals and test banks. Plaintiffs have invested substantial sums of money, time, and creative efforts to develop and market their publications, which are among the most well regarded and widely used in their fields. As a standard practice, Plaintiffs require their authors of textbooks and corresponding instructor solutions manuals and test banks, as well as their authors of other publications, to assign the copyrights to them or grant them the exclusive rights of reproduction and distribution. Plaintiffs regularly obtain copyright registrations protecting their various creative works.

4. Instructor solutions manuals are guides that provide answers and solutions to questions contained within the textbook. Test banks are sets of questions, and, in many instances, corresponding answers, tailored to the textbooks for which they were created, to be used by the educator who assigned the textbook for his or her course. Professors and instructors use these supplemental materials to create lesson plans, homework assignments, and exams, and for grading purposes. When students obtain unauthorized access to these materials, the integrity of the educational process is compromised. Unauthorized access to instructor solutions manuals or test banks enables students to cheat, places even greater demands on teaching professionals who wish to use the materials as assessment tools in their classes, and impairs the overall marketability and value of the associated textbooks and programs.

5. The EasyNoteCards Site is a for-profit service. On the EasyNoteCards Site, users can create notecards, which essentially are interactive flashcards. Entirely apart from anything that a user creates for himself or herself, they can also scroll through or search for notecards, including those corresponding to specific textbooks or chapters within those textbooks. Although Defendant does not require users to pay to download such content, he profits from the display of advertising on webpages. The more visitors to the EasyNoteCards Site, the more money that Defendant obtains.

6. Plaintiffs filed claims against Defendant for direct and secondary copyright infringement, seeking injunctive relief, actual or statutory damages, and costs and attorneys' fees, arising out of the distribution on the EasyNoteCards Site of test bank and other testing content created by Plaintiffs and their authors. The infringing content attracted visitors and, thus, advertising revenue. Defendant maintains that users of the EasyNoteCards Site copied Plaintiffs' copyrighted test bank and testing content to the EasyNoteCards Site. It is undisputed, however, that Defendant has failed to remove some or all of such material once he learned of its appearance on the EasyNoteCards Site.

7. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 1338(a). This is an action arising under the Copyright Act, 17 U.S.C. § 101, *et seq.*

ORDER AND FINAL JUDGMENT

NOW, THEREFORE, upon the consent of the undersigned Parties hereto, and pursuant to Titles 17 and 15 of the United States Code and Federal Rule of Civil Procedure 65, **IT IS ORDERED, ADJUDGED and DECREED** as follows:

- I. Final judgment is **ENTERED** for Plaintiffs against Defendant. Defendant is liable for copyright infringement. Neither the fair use doctrine, nor any other defense, applies.

II. A permanent injunction is **ENTERED** in this action.

A. The following definitions shall apply to the Permanent Injunction:

1. "Plaintiffs' Copyrighted Works" means any and all textbooks or other copyrighted works, including instructor solutions manuals, instructor resource manuals, or test banks, or portions thereof, whether now in existence or later created, regardless of media type, the copyrights to which are owned or controlled by any of Plaintiffs or their parents, subsidiaries, affiliates, predecessors, successors, and assigns, whether published in the United States or abroad.
2. "Infringement Notice" means a physical or electronic notice that includes the following elements: (i) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that was allegedly infringed; (ii) identification of the copyrighted work claimed to have been infringed; (iii) identification of the material that was claimed to be infringing and that was to be removed or access to which was to be disabled, and information reasonably sufficient for locating the material; (iv) information reasonably sufficient to contact the sender of the notice; (v) a statement that the sender had a good faith belief that the use of the material complained of in the notice was not authorized by the copyright owner, its agent, or the law; and (vi) a statement that the information in the notice is accurate, and under penalty of perjury, that the person sending the notice was authorized to act on behalf of the owner of an exclusive right that was allegedly infringed.

B. Defendant, along with his agents, servants, representatives, employees, successors, and assigns, and all those acting in concert or in participation with any of

them, are hereby enjoined and restrained from:

1. Directly or secondarily infringing any of Plaintiffs' Copyrighted Works;
2. Uploading or copying, or instructing anyone to upload or copy, any of Plaintiffs' Copyrighted Works or portions thereof to any website, network, or online or electronic storage or distribution system, regardless whether the EasyNoteCards Site or otherwise; and
3. Knowingly encouraging, assisting, or allowing any of Plaintiffs' Copyrighted Works, or portions thereof, to be copied, reproduced, uploaded, downloaded, distributed, disseminated, transmitted, displayed, or linked to on the EasyNoteCards Site or any other website or online or electronic storage or distribution system.

C. Without limitation to the foregoing Section II.B, upon receiving an Infringement Notice from any of the Plaintiffs with respect to the EasyNoteCards Site, or any other website, service, network, or online or electronic storage or distribution system that Defendant now or hereinafter owns or controls, Defendant, along with his agents, servants, representatives, employees, successors, and assigns, and all those acting in concert or in participation with any of them, shall expeditiously remove or disable access to the allegedly infringing material cited in the Infringement Notice.

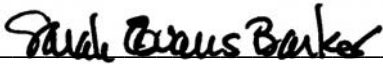
D. With respect to the EasyNoteCards Site, or any other website, service, network, or online or electronic storage or distribution system that Defendant now or hereinafter owns or controls and that allows users to upload content or links to content concerning academics or education, Defendant, along with his agents, servants, representatives, employees, successors, and assigns, and all those acting in concert or in participation with any of them,

shall:

- (i) Include in a Terms of Use agreement an explicit prohibition against uploading or linking to copies of books, instructor solutions manuals, or test banks, in whole or in part, without permission from the copyright owner. The notice shall explain that, without authorization from the copyright owner, uploading or linking to such content generally constitutes copyright infringement and use of the solution manuals or test banks may further violate honor code or academic integrity rules in place at universities, colleges and other institutions of learning;
- (ii) Post in a conspicuous location and manner that is displayed to the user during the upload process a notice advising users that, without permission from the copyright owner, the uploading or linking to copies of any books, instructor solutions manuals, or test banks, in whole or in part, is strictly prohibited; and
- (iii) Provide users who upload, attempt to upload, or are accused of uploading an infringing work with a warning message indicating that copyright infringement is prohibited and that any infringement by that user in the future may lead to, among other things, the user's account being terminated.

III. The Court retains jurisdiction for the purpose of enforcing this Order.

SO ORDERED on March 23, 2018.



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

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