

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PENGUIN GROUP (USA) INC.,

Plaintiff,

-against-

AMERICAN BUDDHA,

Defendant.

ECF Case

No. 09cv528 (JGK)

DECLARATION OF THOMAS KJELLBERG

THOMAS KJELLBERG, of counsel to Cowan, Liebowitz & Latman, P.C., attorneys for Plaintiff Penguin Group (USA) Inc. (“Penguin”), pursuant to 28 U.S.C. § 1746 declares as follows:

1. A screen shot showing the access page for the “ABOL Deep-Linked Version” of *Oil!*, available without restriction at www.naderlibrary.com/lit.oil.sinclair.htm, is submitted herewith as Exhibit 1.
2. Printouts of pages titled AMERICAN BUDDHA ONLINE LIBRARY COPYRIGHT NOTICE, available at www.american-buddha.com/money.toc.htm, and THE RALPH NADER LIBRARY COPYRIGHT NOTICE, available at www.naderlibrary.com/naderlibrarymemberinfo.htm, are submitted herewith as Exhibit 2.
3. A copy of the December 18, 2008 letter of Richard Dannay to Charles Carreon is submitted herewith as Exhibit 3.

4. A copy of the December 18, 2008 letter of Charles Carreon to Richard Dannay is submitted herewith as Exhibit 4.

5. A copy of the December 23, 2008 letter of Richard Dannay to Charles Carreon is submitted herewith as Exhibit 5.

6. A copy of the December 23, 2008 letter of Charles Carreon to Richard Dannay is submitted herewith as Exhibit 6.

7. A copy of the January 5, 2009 letter of Richard Dannay to Jacob Hammond, headed "Notification of Copyright Infringement," is submitted herewith as Exhibit 7

8. A copy of the January 13, 2009 letter of Charles Carreon to Jacob Hammond, headed "Counternotice to DMCA Notice of Penguin Books," is submitted herewith as Exhibit 8.

9. A copy of Motoko Rich, *Print Books Are Target of Pirates on the Web*, New York Times May 12, 2009, is submitted herewith as Exhibit 9.

10. A copy of the copyright page from the Penguin edition of *Oil!* is submitted herewith as Exhibit 10.

11. A printout of "Comparison of e-book formats From Wikipedia, the encyclopedia" is submitted herewith as Exhibit 11. The e-book formats compared include the Adobe Portable Document Format (PDF) and Hypertext Markup Language (HTML) formats.

12. PDF e-book files are readable in a number of e-book readers. For example, Charles Carreon's book *The Sex.Com Chronicles: A White-Hat Lawyer's Journey to the Dark Side of the Internet*, which can be purchased as a "high-quality softcover" from Amazon.com, is also available for paid download in four e-book formats including "Downloadable eBook (Adobe PDF)," as shown on Exhibit 12 submitted herewith.

13. I purchased a PDF copy of *The Sex.Com Chronicles* using PayPal. As shown by the email receipt submitted herewith as Exhibit 13, that payment was remitted to Online Media Law, PLLC.

14. The PDF copy of *The Sex.Com Chronicles* that I received is readable on the Amazon Kindle e-book reader, as shown on Exhibit 14 submitted herewith, on the Barnes & Noble Nook e-book reader, as shown on Exhibit 15 submitted herewith, and on numerous other e-book readers, as well as on a PC.

15. On February 16, 2009 I downloaded from the Naderlibrary.com website complete copies of the four literary works at issue in this action: (1) the E. J. Kenney translation of *The Golden Ass* by Apuleius; (2) *Oil!* by Upton Sinclair; (3) *It Can't Happen Here* by Sinclair Lewis; and (4) the R. E. Latham translation of *On the Nature of the Universe* by Lucretius, and saved the copies to the hard drive of my office computer in Microsoft Word format. There were no technological or other measures in place controlling access to or preventing copying of the Penguin works, or any of the copyrighted works of third parties, available on the Naderlibrary.com site.

16. In August 2011, I converted those Microsoft Word files to Adobe PDF format. Converting each file involved several mouse clicks, and took a few seconds.

17. Free unauthorized electronic copies of copyrighted books compete directly with lawful electronic copies offered for sale by the copyright owner. Submitted herewith as Exhibit 16 is a photograph of an iPod screen showing the authorized Kindle edition of *Oil!* (of which “Penguin is now proud to be the sole publisher”) available for download for \$12.99.

18. A photograph of an iPod screen on which a page from the Penguin authorized Kindle edition of *Oil!* is displayed is submitted herewith as Exhibit 17.

19. A photograph of a Kindle e-book reader screen, on which a page from American Buddha's unauthorized "ABOL Deep-Linked Version" of *Oil!*, converted to PDF format, is displayed is submitted herewith as Exhibit 18.

20. A photograph of a Nook e-book reader screen, on which a page from American Buddha's unauthorized "ABOL Deep-Linked Version" of *Oil!*, converted to PDF format, is displayed is submitted herewith as Exhibit 19.

21. As the "Comparison of e-book formats From Wikipedia" states, "E-books using HTML can be read using a Web browser." A photograph of an Apple iPad screen, on which American Buddha's unauthorized "ABOL Deep-Linked Version" of *Oil!* is displayed directly via the built-in Web browser, is submitted herewith as Exhibit 20.

22. Photographs of the screen of a Verizon Blackberry Storm "smartphone," on which pages from American Buddha's unauthorized "ABOL Deep-Linked Version" of *Oil!* is displayed directly via the built-in Web browser, are submitted herewith as Exhibit 21.

23. American Buddha is the publisher of numerous e-books for sale via paid download on Amazon.com. A photograph showing an Apple iPod display of the Amazon.com web page on which *Another View On Whether Tibetan Buddhism Is Working In The West* [Kindle Edition] by Tara Carreon, published by American Buddha, is sold for \$2.99, "includ[ing] free wireless delivery via *Amazon Whispernet*," is submitted herewith as Exhibit 22.

24. I purchased an instantly downloadable Kindle copy of *Another View On Whether Tibetan Buddhism Is Working In The West* using my Amazon.com account, as shown on the email receipt ("Amazon.com—Earth's Biggest Selection") submitted herewith as Exhibit 23.

25. The Kindle edition of *Another View On Whether Tibetan Buddhism Is Working In The West* that I purchased is readable on an Amazon Kindle e-book reader and on any e-book

reader with the free Kindle App installed. A photograph of text from *Another View On Whether Tibetan Buddhism Is Working In The West*, displayed on an iPad, is submitted herewith as Exhibit 24.

26. As shown by Exhibit 25 submitted herewith, the Kindle Edition of *Born In Tibet, Again: The Exile of the 12th Trungpa Tulku (A White-Hat Lawyer Investigative Report)*, by Charles Carreon, published by American Buddha, is available for purchase and instant delivery via *Amazon Whispernet* for reading on an Amazon Kindle e-book reader or on any e-book reader with the free Kindle App installed; with promotional sample pages are provided for free as an incentive to purchase.

27. Additional titles published by American Buddha and currently available for paid download on Amazon.com include

(a) *The INSLAW Affair: Investigative Report by The Committee on The Judiciary Together With Dissenting and Separate Views* [Kindle Edition];

(b) *TIDS - Tantra-Induced Delusional Syndrome (A White-Hat Lawyer Investigative Report)* [Kindle Edition] by Charles Carreon;

(c) *The Dalai Lamas - Prisoners of the Potala (A White-Hat Lawyer Investigative Report)* [Kindle Edition] by Charles Carreon;

(d) *Killer Krishnas From Inner Space (A White-Hat Lawyer Investigative Report)* [Kindle Edition] by Charles Carreon;

(e) *The Revolution Will Not Be Capitalized: Che Guevara* [Kindle Edition] by Charles Carreon;

(f) *A Legend In His Own Mind – Michael Ruppert Soldiers On* (American Buddha Biographies) [Kindle Edition] by Charles Carreon;

(g) *Jack Abramoff's House of Cards* (American Buddha Biographies) [Kindle Edition] by Charles Carreon;

(h) *No Good Deed Will Go Unpunished – The Mike Bianca Story* (American Buddha Biographies) [Kindle Edition] by Charles Carreon;

(i) *Lucretius, Sage of The First Millennium* (American Buddha Biographies) [Kindle Edition] by Charles Carreon;

(j) *The Terrorist Who Loved Me – The Betrayal of Pete Seda* (American Buddha Biographies) [Kindle Edition] by Charles Carreon; and

(k) *What Is Buddhism?* (American Buddha Philosophy) [Kindle Edition], by Charles Carreon and Tara Carreon (January 31, 2008).

28. On its Amazon.com page, each of the Kindle e-books published by American Buddha is given an “Amazon Bestsellers Rank,” along with suggestions for additional purchases under the heading “Customers Who Bought This Item Also Bought”

29. On September 2, 2009 I received from American Buddha [ambu@american-buddha.com] at my office email address, at my firm’s place of business in New York City, an unsolicited email with the subject line “ABOL Invites You To Enjoy Your Online Library at Two Locations,” promoting a book titled *Trail of the Octopus* and “inviting” all “Friends of American Buddha” to “Enjoy Your Online Library at Two Locations,” to “come visit,” and to “spread the word.” A copy is submitted herewith as Exhibit 26.

30. *Trail of the Octopus* is currently available on Amazon.com in a \$9.95 Kindle Edition, published by 1 Prime Publishing and available for purchase at www.amazon.com/Trail-of-the-Octopus-ebook/dp/B001PTH6Y8/ref=sr_1_1?s=digital-text&ie=UTF8&qid=1313173313&sr=1-1.

31. As shown by Exhibit 27 submitted herewith, 1 Prime Publishing is the registered trade name of Charles Carreon, and has the same business address as American Buddha, 2165 South Avenida Planeta, Tucson, Arizona 85710.

32. A copy of the April 13, 2007 letter of Charles Carreon to Kent Walker, Esq., General Counsel of Google Inc., is submitted herewith as Exhibit 28.

33. A screen shot of the “sign up page” for the American Buddha Online library, www.american-buddha.com/newsignuppage.htm, as of March 17, 2009 is submitted herewith as Exhibit 29.

34. A printout of a page titled AMERICAN BUDDHA ONLINE LIBRARY / What is The American Buddha Online Library? from the American-buddha.com website, www.american-buddha.com/index.htm?signup, as of March 17, 2009 is submitted herewith as Exhibit 30.

35. A screen shot of the Nader Library home page, www.naderlibrary.com/index.htm, is submitted herewith as Exhibit 31.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT. EXECUTED ON AUGUST 12, 2011 AT NEW YORK, NEW YORK.

s/ Thomas Kjellberg
Thomas Kjellberg