



wrongfully notified Amazon that Morris & Schaefer's My Quiet Book was counterfeit and infringed Defendants' copyrights. Amazon relied on this notification and removed Morris & Schaefer's My Quiet Book from the Amazon Marketplace. Defendants also engaged in false advertising and unfair competition by falsely representing that they own the copyright to My Quiet Book, thereby suggesting and implying to consumers that Morris & Schaefer's My Quiet Book is counterfeit.

Plaintiff brings this action to enjoin Defendants' unlawful conduct as well as to be justly compensated for its damages.

## II.

### **PARTIES**

#### **A. Plaintiff**

1. Plaintiff Morris & Schaefer Learning Co., LLC d/b/a Learning From A to Z is a Texas limited liability company with its principal place of business in Dallas, Texas.

#### **B. Defendants**

2. On information and belief, Defendant Soft Skills Learning Products, Inc. d/b/a Pockets of Learning d/b/a Toy And Book Store.com is a Massachusetts corporation with its principal place of business in Providence, Rhode Island. It may be served via its registered agent Jack T. Grant at 85 Oakland Avenue, Seekonk, Massachusetts 02771 or wherever he may be found.

3. On information and belief, Jack T. Grant is an individual who, upon information and belief, is a citizen of the State of Massachusetts, and may be served at 85 Oakland Avenue, Seekonk, Massachusetts 02771 or wherever he may be found.

4. On information and belief, Defendant Grant owns, operates, supervises, and/or controls the day-to-day operations of Defendant Soft Skills Learning Products, Inc. d/b/a Pockets

of Learning d/b/a Toy And Book Store.com, including the unlawful activities engaged in by Soft Skills, and has a direct financial interest in such unlawful activities. On information and belief, Grant had knowledge of, directed, controlled, supervised, acted in concert with, and/or took action that contributed to the unlawful activities engaged in by Soft Skills.

5. On information and belief, Defendants Soft Skills and Grant are engaged in the business of selling child learning products and other products over the Internet throughout the United States, including in the Northern District of Texas.

### **III.**

#### **JURISDICTION AND VENUE**

6. This complaint is for an action for misrepresentation under the Digital Millennium Copyright Act (17 U.S.C. § 512), violation of Section 43 of the Lanham Act (15 U.S.C. § 1125(a)), and other state law claims.

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338. This Court has pendent jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because, as set forth more fully below, a substantial part of the events or omissions giving rise to Plaintiff's claims in this matter occurred in the Northern District of Texas.

### **IV.**

#### **FACTUAL BACKGROUND**

##### **A. My Quiet Book**

9. My Quiet Book is a traditional fabric book designed for toddlers that originated long ago in the Philippines.

10. As it is designed for toddlers, My Quiet Book is made of fabric. Its red fabric cover features balloons and it has a red fabric handle on the top of the book so that toddlers can easily carry the book with them. Inside, My Quiet Book has eight white fabric pages featuring a simple children's activity on each page, including buckling a belt, snaps, telling time on a clock, buttons, shapes, tying a shoe, a zipper, and touch.

11. No party owns the copyright to My Quiet Book and it belongs in the public domain.

**B. Amazon.com—The Most Coveted Retail Market In The World**

12. In the world of commerce, there is no single better place to be than Amazon. Since its creation in 1994 by Jeff Bezos, Amazon has grown into one of the most, if not the most, trusted names in Internet commerce. Amazon has provided unique disruption to both the promotion and distribution elements of the marketing equation which provides manufacturers like Morris & Schaefer access to hundreds of millions of people who visit the Amazon website each month. Specifically, Amazon's unique marketing tools, distribution, and customer service allow small manufacturers to lower their costs of goods sold and compete with much larger manufacturers and retailers.

13. While Amazon offers products for sale directly from its own inventory, it also works with third party merchants who advertise and sell their own products on the Amazon website, thereby creating what Amazon calls the "Amazon Marketplace."

14. Gaining access to the hundreds of millions consumers in the Amazon Marketplace can quickly propel a small business into a commercial powerhouse. Likewise, removing a merchant from the Amazon Marketplace can just as quickly destroy that business.

15. Every third party merchant who wishes to sell its products in the Amazon Marketplace must agree to Amazon's terms and conditions.

16. By creating the Amazon Marketplace, Amazon provides a forum where everybody wins. Consumers benefit from the increased competition from more merchants which translates to better products and lower prices. Merchants benefit from access to a new and robust marketplace where literally hundreds of millions of consumers go to shop. Merchants also benefit because Amazon handles the burden of state sales tax payments and reporting. And Amazon benefits from fees it charges to merchants to participate in the Amazon Marketplace.

**C. Morris & Schaefer Makes And Offers My Quiet Book**

17. Two experienced marketers with unique expertise in both distribution and promotion in the modern online marketing world, Derick Schaefer (“Schaefer”) and Jerod Morris (“Morris”), created Morris & Schaefer in December 2010 to make and sell children’s learning products. Morris & Schaefer aimed to apply their marketing expertise to a popular public domain product that up to that point had little exposure on the Internet.

18. Along with several other children’s learning products, Morris & Schaefer made and sold My Quiet Book.

19. Morris & Schaefer joined the Amazon Marketplace to advertise and sell their children’s learning products. They also promoted their Amazon product listings on the Internet using their Internet marketing expertise. In particular, the webpage featuring Morris & Schaefer’s Amazon product listing for My Quiet Book ranked high in Google, Yahoo!, and Bing for several key search terms.

20. Like all merchants who participate in the Amazon Marketplace, Morris & Schaefer entered into a contract with Amazon by agreeing to Amazon’s terms and conditions. Their future was looking bright.

**D. Amazon's Digital Millennium Copyright Act Policy**

21. As the integrity of its marketplace is vital to its entire business, Amazon takes extensive measures to ensure that competition is fair, consumers are protected from counterfeit goods, and the intellectual property rights of third parties are respected.

22. Among these measures, Amazon complies with the provisions of the Digital Millennium Copyright Act (17 U.S.C. § 512) that provide an avenue for people who believe a website is hosting content that infringes their copyrights to obtain removal of that infringing content.

23. Under this law, a website that publishes content from a third party that infringes another party's copyrights is not liable to the copyright holder for copyright infringement, unless the purported copyright holder provides notice to the website requesting removal of the allegedly infringing content and the website does not take action to expeditiously remove the offending the material. Such notices (commonly known as "DMCA Notices") must be made by the copyright holder or their agent with declaration under penalty of perjury that they are true and correct.

24. A false DMCA Notice can be just as damaging as a true one. If a competitor falsely notifies Amazon that you infringe their copyrights, Amazon may immediately remove your product offering from its marketplace.

**E. Soft Skills And Grant Also Sell A Version Of My Quiet Book**

25. On information and belief, Defendant Grant formed and is a principal of Defendant Soft Skills Learning Products, Inc., doing business as Pockets of Learning and Toy And Book Store.com, and has acted in concert with Soft Skills to engage in the wrongdoing alleged herein.

26. As it turns out, another company—Soft Skills—offers a virtually identical product to Morris & Schaefer's My Quiet Book. Like Morris & Schaefer's My Quiet Book, Soft Skills'

product offering (which we will refer to as “Soft Skills Book”) (1) was also called “My Quiet Book,” (2) had a red fabric cover featuring balloons with a handle at the top, and (3) contained eight white fabric pages featuring a simple children’s activity on each page, including buckling a belt, snaps, telling time on a clock, buttons, shapes, tying a shoe, a zipper, and touch. Further, several of the Soft Skills Book’s eight interior pages were identical to those in Morris & Schaefer’s My Quiet Book.

27. Soft Skills also offers a personalized version of the Soft Skills Book (also called “My Quiet Book”) whereby it will embroider a child’s name on the cover of the book.

28. Soft Skills offers the Soft Skills Book, as well as the personalized Soft Skills Book, to consumers in the Amazon Marketplace, on their own website located at [www.toyandbookstore.com](http://www.toyandbookstore.com) (the “Soft Skills Website”), and through other third party vendors.

29. Soft Skills’ product offering in the Amazon Marketplace is a direct product offering from Soft Skills to consumers in the Amazon Marketplace. That is, orders placed by consumers in the Amazon Marketplace for the Soft Skills Book are fulfilled by Soft Skills—not Amazon.

30. Similarly, the Soft Skills Website is an interactive website whereby consumers can place orders, purchase, and pay for the Soft Skills Book and other products online. The Soft Skills Website enables visitors, including Texas consumers, to complete an order using an “online shopping cart” checkout function, and the Soft Skills Website lists Texas as among the locations to which Soft Skills will ship.

31. The Soft Skills Website also enables communications between consumers, including Texas-based consumers, and Soft Skills’ sales staff via email and a Contact Us Form.

32. Consumers can also order the personalized version of the Soft Skills Book through both Amazon and the Soft Skills Website whereby the consumer provides a child's name, and Soft Skills then embroiders that name onto the Soft Skills Book, which Soft Skills then ships to the consumer.

**F. Defendants Engage In False Advertising And Unfair Competition**

33. Morris & Schaefer's entrance into the Amazon Marketplace with their My Quiet Book product offering posed a substantial threat to the sales of the Soft Skills Book. To combat this threat, Defendants advertised their Soft Skills Book product offering on Amazon as "the original My Quiet Book by Pockets of Learning." Defendants also claimed in their Amazon product offering that "Only Pockets of Learning manufactures the original 'My Quiet Book.'"

34. Defendants also included a notice on Soft Skills' Amazon product offering for the Soft Skills Book that My Quiet Book was copyrighted by Pockets of Learning (the fictitious name for Soft Skills) in 1989.

35. Neither Soft Skills nor Grant own a copyright to My Quiet Book.

36. And on the Soft Skills Website, Defendants advertised the Soft Skills Book as "The Original My Quiet Book- with the quality Only Pockets of Learning provides!".

37. Defendants' representations that (1) My Quiet Book was copyrighted by "Pockets of Learning," (2) Pockets of Learning authored My Quiet Book in 1989, and (3) the Soft Skills Book is the "original My Quiet Book," are all false.

38. Further, these assertions falsely suggest and imply to consumers that Morris & Schaefer's My Quiet Book is an infringing copy of the Soft Skills Book and that it is counterfeit.

39. On information and belief, Defendants' false and misleading representations have confused and are likely to confuse consumers into believing that Morris & Schaefer's My Quiet Book offering is counterfeit and infringes Soft Skills' copyrights.



40. On information and belief, Defendants' false and misleading representations have confused and are likely to confuse consumers into believing that Soft Skills (1) owns the copyright to My Quiet Book and the Soft Skills Book, (2) authored My Quiet Book and the Soft Skills Book in 1989, and (3) offer the original version of My Quiet Book.

41. Defendants' false and misleading representations falsely misrepresent the nature, characteristics, and qualities of their goods, services, and commercial activity.

42. Because Defendants were fully aware that they did not create or author My Quiet Book, and that they do not own a copyright to My Quiet Book, Defendants' misrepresentations were wanton, willful, and in bad faith.

43. Defendants marketed and sold the Soft Skills Book over the Internet through both Amazon and the Soft Skills Website to consumers in Texas and the Northern District of Texas.

44. On information and belief, Defendants consistently enjoy a high volume of sales through Amazon and the Soft Skills Website, including substantial sales within Texas and this judicial district.

**G. Defendants' Fraudulent DMCA Notice**

45. Soft Skills and Grant then sent a notice of infringement to Amazon. In this notice, Soft Skills represented that they own the copyright to My Quiet Book, and that Morris & Schaefer's product offering for "My Quiet Book," which was also offered under the name "My Quiet Book for Toddlers," was counterfeit and infringed Soft Skills' copyrights.

46. Soft Skills and Grant knew that Morris & Schaefer had a valid contract with Amazon to market and offer for sale My Quiet Book on the Amazon Marketplace.

47. In reliance on the notice provided by Soft Skills and Grant, Amazon removed Morris & Schaefer's product offering for My Quiet Book from the Amazon Marketplace listings.

48. On or about March 20, 2014, Amazon provided notice to Morris & Schaefer of this action.

49. Since that day, Morris & Schaefer has been locked out of selling My Quiet Book on Amazon, and its business has dried up.

#### **H. The Damage Done**

50. As a result of Defendants' actions, the relevant public will be confused, mistaken, and deceived inot wrongfully believing that Soft Skills authored, created, and owns an exclusive copyright to My Quiet Book.

51. Further, Defendants' actions have caused and will continue to cause the relevant public to wrongfully believe that Morris & Schaefer's My Quiet Book is counterfeit and infringes Soft Skills' copyrights.

52. Grant and Soft Skills' unlawful conduct has also had the intended consequence of improperly interfering in Morris & Schaefer's contract and business relationship with Amazon.

53. Morris & Schaefer's My Quiet Book product offering no longer appears in the Amazon Marketplace, and the removal of the specific My Quiet Book product webpage on Amazon has permanently damaged the Internet marketing strength of My Quiet Book. More specifically, Google has de-indexed the Amazon webpage for Morris & Schaefer's My Quiet Book product offering. Even if Amazon were to return Morris & Schaefer's My Quiet Book product offering to the Amazon Marketplace, it would not rank as high in the search engines because its history of being removed (manufactured by Defendants) suggests unreliability to the search engines. Morris & Schaefer will therefore never be able to return to their proper position in the search engine results.

54. As a result of Defendants' unlawful actions, Morris & Schaefer has incurred and will continue to incur substantial damages in excess of \$75,000.00, and Defendants will be unjustly enriched at Morris & Schaefer's expense.

V.

**CLAIMS**

**A. Count One: Misrepresentation Under The Digital Millennium Copyright Act**

55. Plaintiff realleges and incorporates the allegations set forth in the preceding paragraphs as if set forth in full herein.

56. Defendants made a material representation to Amazon under the Digital Millennium Copyright Act (17 U.S.C. § 512) that Morris & Schaefer's My Quiet Book and the sale thereof infringed Defendants' copyrights.

57. Defendants' representation was false.

58. My Quiet Book is in the public domain.

59. Defendants knew their representation was false when they made it.

60. Amazon relied on Defendants' representation in removing or disabling access to Morris & Schaefer's product offering for My Quiet Book from the Amazon Marketplace.

61. Defendants' conduct directly and proximately caused injury to Morris & Schaefer which resulted in damages in an amount to be determined by the trier of fact.

62. Pursuant to 17 U.S.C. § 512(f), Morris & Schaefer is entitled to its costs and attorney's fees incurred in bringing this action.

**B. Count Two: Violation of Lanham Act (15 U.S.C. § 1125(a))**

63. Plaintiff realleges and incorporates the allegations set forth in the preceding paragraphs as if set forth in full herein.

64. Defendants do not own the copyright to My Quiet Book.

65. Defendants did not author or create My Quiet Book in 1989.

66. The Soft Skills Book is not the original My Quiet Book.

67. Defendants, in connection with the sale of the Soft Skills Book in commerce, used words, terms, names, symbols, or devices, or combination thereof, or false designation of origin, false or misleading description of fact, or false or misleading representation of fact.

68. The origin of My Quiet Book was falsely designated by Defendants in that Defendants (1) falsely represented that My Quiet Book was copyrighted by “Pockets of Learning,” (2) falsely represented that My Quiet Book was authored by Pockets of Learning in 1989, and (3) falsely represented that the Soft Skills Book was the “original My Quiet Book.”

69. Defendants made the false or misleading descriptions of fact that (1) Soft Skills owned the copyright to My Quiet Book, (2) My Quiet Book was authored by Pockets of Learning in 1989, and (3) the Soft Skills Book was the “original My Quiet Book.”

70. Defendants made the false or misleading representations of fact that (1) Soft Skills owned the copyright to My Quiet Book, (2) My Quiet Book was authored by Pockets of Learning in 1989, and (3) the Soft Skills Book was the “original My Quiet Book.”

71. The false designation of origin, false or misleading descriptions of fact, or false or misleading representations of fact was likely to cause consumer confusion, or to cause mistake, or to deceive as to the origin, sponsorship, or approval of its goods, services, or commercial activities by Plaintiff.

72. The false designation of origin, false or misleading description of fact, or false or misleading representation of fact was made in commercial advertising or promotion, misrepresents the nature, characteristics, quality, or geographic origin of Soft Skills’ goods, services, or commercial activities.

73. Defendants' false designation of origin, false or misleading descriptions of fact, or false or misleading representations of fact directly and proximately caused injury to Plaintiff, which resulted in damages in an amount within the jurisdictional limits of this court to be determined by the trier of fact.

74. Pursuant to 15 U.S.C. § 1117, Plaintiff is entitled to recover Defendants' profits from the sale of My Quiet Book and the Soft Skills Book.

75. Defendants' false designation of origin, false or misleading descriptions of fact, or false or misleading representations of fact have caused and will continue to cause Plaintiff irreparable injuries for which there is no adequate legal remedy. Accordingly, Plaintiff is entitled to permanent injunctive relief enjoining Defendants from representing that they created or authored My Quiet Book and from representing that the Soft Skills Book is the "original My Quiet Book."

**C. Count Three: Business Disparagement**

76. Plaintiffs reallege and incorporate the allegations set forth in the preceding paragraphs as if set forth in full herein.

77. Defendants made disparaging statements about Plaintiff's economic interests in that they falsely notified Amazon that Plaintiff's My Quiet Book was counterfeit and infringed Defendants' copyrights.

78. The statements were false because Plaintiff's My Quiet Book does not infringe any intellectual property rights belonging to Defendants.

79. Defendants published the words with malice because they knew the statements were false and made the statements with the intention to harm Plaintiff's business.

80. Defendants published the words without privilege.

81. Defendants' false statements directly and proximately caused injury to Plaintiff, which resulted in damages in an amount to be determined by the trier of fact.

82. Defendants' unlawful conduct was wanton, willful, and malicious warranting the imposition of exemplary damages in an amount to be determined by the trier of fact.

83. Defendants' unlawful conduct has caused and will continue to cause Plaintiff irreparable injuries for which there is no adequate legal remedy. Accordingly, Plaintiff is entitled to permanent injunctive relief requiring Defendants to withdraw their notice to Amazon that Plaintiff's My Quiet Book is counterfeit and infringes Defendants' copyrights.

**D. Count Four: Libel**

84. Plaintiff realleges and incorporates the allegations set forth in the preceding paragraphs as if set forth in full herein.

85. Defendants published statements by written communication to Amazon asserting as fact that Plaintiff's My Quiet Book is counterfeit and infringes Defendants' copyrights.

86. The statements involve a private matter.

87. The statements refer to Plaintiff directly.

88. The statements are defamatory because they:

- a. Injure Plaintiff's reputation and thereby expose Plaintiff to financial injury;
- b. Impeach Plaintiff's honesty, integrity, virtue, and reputation; and
- c. Injure Plaintiff in its occupation or profession.

89. Defendants' written statements constitute libel per se as defined by TEXAS CIVIL PRACTICE AND REMEDIES CODE Section 73.001 because Defendants' statements injure Plaintiff's reputation and thereby expose Plaintiff to public hatred, contempt or ridicule, or financial injury, and impeach Plaintiff's honesty, integrity, virtue, or reputation.

90. Defendants' written statements constitute defamation per se under the common law because Defendants' statements injure Plaintiff in profession or occupation.

91. The defamatory statements require no proof of their injurious character because they were obviously hurtful to Plaintiff.

92. The statements are false.

93. Defendants made the statements either negligently, knowingly, or with reckless disregard for their falsity.

94. Defendants' false statements directly and proximately caused injury to Plaintiff, which resulted in damages within the jurisdictional limits of this court in an amount to be determined by the trier of fact.

95. Defendants' unlawful conduct was wanton, willful, and malicious warranting the imposition of exemplary damages in an amount to be determined by the trier of fact.

96. Defendants' unlawful conduct has caused and will continue to cause Plaintiff irreparable injuries for which there is no adequate legal remedy. Accordingly, Plaintiff is entitled to permanent injunctive relief requiring Defendants to withdraw their notice to Amazon that Plaintiff's My Quiet Book is counterfeit and infringes Defendants' copyrights.

**E. Count Five: Tortious Interference With Contract**

97. Plaintiffs reallege and incorporate the allegations set forth in the preceding paragraphs as if set forth in full herein.

98. Plaintiff had a valid contract with Amazon to sell My Quiet Book in the Amazon Marketplace.

99. Defendants knew about Plaintiff's contract with Amazon.

100. Defendants willfully and intentionally interfered with this contract.

101. Defendants' interference directly and proximately caused injury to Plaintiff, which resulted in damages in an amount within the jurisdictional limits of this court to be determined by the trier of fact.

102. Plaintiff is entitled to recover its lost profits.

103. Defendants' unlawful conduct was wanton, willful, and malicious warranting the imposition of exemplary damages in an amount to be determined by the trier of fact.

104. Defendants' unlawful conduct has caused and will continue to cause Plaintiff irreparable injuries for which there is no adequate legal remedy. Accordingly, Plaintiff is entitled to permanent injunctive relief requiring Defendants to withdraw their notice to Amazon that Plaintiff's My Quiet Book is counterfeit and infringes Defendants' copyrights.

**F. Count Six: Tortious Interference With Prospective Business Relations**

105. Plaintiff realleges and incorporates the allegations set forth in the preceding paragraphs as if set forth in full herein.

106. Plaintiff alleges this claim for Tortious Interference with Prospective Business Relations in the alternative to its claim for Tortious Interference with Contract.

107. Plaintiff had a reasonable probability of continuing its business relationship with Amazon to sell My Quiet Book in the Amazon Marketplace.

108. Defendants knew about Plaintiff's ongoing business relationship with Amazon.

109. Defendants willfully and intentionally interfered with this relationship.

110. Defendants' conduct was independently tortious or unlawful because, among other reasons, (1) Defendants knew they did not own the copyrights to My Quiet Book, (2) Defendants knew that Morris & Schaefer did not infringe Defendants' copyrights, and (3) Defendants engaged in unfair competition by falsely representing to Amazon that Morris & Schaefer's My Quiet Book was counterfeit and infringed Defendants' copyrights.



111. Defendants' interference directly and proximately caused injury to Plaintiff, which resulted in damages in an amount within the jurisdictional limits of this court to be determined by the trier of fact.

112. Plaintiff is entitled to recover its lost profits.

113. Defendants' unlawful conduct was wanton, willful, and malicious warranting the imposition of exemplary damages in an amount to be determined by the trier of fact.

114. Defendants' unlawful conduct has caused and will continue to cause Plaintiff irreparable injuries for which there is no adequate legal remedy. Accordingly, Plaintiff is entitled to permanent injunctive relief requiring Defendants to withdraw their notice to Amazon that Plaintiff's My Quiet Book is counterfeit and infringes Defendants' copyrights.

## **VI.**

### **JURY DEMAND**

Plaintiff hereby demands a trial by jury on all claims so triable.

## **VII.**

### **RELIEF REQUESTED**

WHEREFORE, Plaintiff demands that judgment be entered against Defendants as follows:

(1) That pursuant to federal and Texas state law, the Court issue permanent injunctive relief that Defendants, their agents, representatives, servants, employees, attorneys, successors and assigns, and all others in active concert or participation with Defendants, be required to withdraw their notice to Amazon that Plaintiff's My Quiet Book is counterfeit and infringes Defendants' copyrights;

(2) That Plaintiff recover all damages it has sustained in an amount to be determined at trial;

- (3) That Plaintiff recover compensatory damages in an amount to be determined at trial;
- (4) That Plaintiff recover general damages;
- (5) That Plaintiff recover its lost profits;
- (6) That Plaintiff recover Soft Skills' profits from My Quiet Book and the Soft Skills Book;
- (7) That Plaintiff be awarded exemplary damages in an amount to be determined at trial;
- (8) That Defendants be required to pay Plaintiff's costs, expenses, and reasonable attorney's fees in connection with this action; and
- (9) That Plaintiff be entitled to such other relief as this Court deems just and equitable.

Dated: June 18, 2014

Respectfully submitted,

**HUTCHERSON LAW**

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