

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT NEW YORK

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J.D. Salinger, individually and as  
Trustee of the J.D. Salinger Literary Trust,  
  
Plaintiff,  
  
- against -  
  
JOHN DOE, writing under the name JOHN  
DAVID CALIFORNIA; WINDUPBIRD  
PUBLISHING LTD.; NICOTEXT A.B.; and  
ABP, INC. d/b/a SCB Distributors Inc.,  
  
Defendants.  
  
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09 Civ. 5095 ( ) DAB

**AFFIDAVIT**

STATE OF NEW YORK:    )  
                                  )        ss.:  
COUNTY OF NEW YORK: )

MARCIA B. PAUL, being duly sworn, deposes and states:

1. I am a member of the firm of Davis Wright Tremaine LLP, attorneys for plaintiff J.D. Salinger ("Salinger") in the above-captioned action. I am fully familiar with the facts and circumstances stated herein.

2. I submit this affidavit in support of the application of Mr. Salinger by order to show cause for a preliminary injunction, enjoining and restraining defendants from publication, distribution, advertisement, sale or other dissemination in the United States of a sequel to Salinger's much acclaimed novel "*The Catcher in the Rye*" ("*Catcher*"). This "sequel", totally unauthorized by Mr. Salinger, is entitled "*60 Years Later: Coming Through the Rye*" (the "Sequel"). On this application, we also seek leave to file a copy of the Sequel under seal and both books in hard copy form.

3. The facts and circumstances underlying this motion are set forth in the accompanying affidavit of Phyllis Westberg, Mr. Salinger's long time literary agent, sworn to

this same date (“Westberg Aff’t). As explained in the accompanying memorandum of law, defendants’ Sequel is an unauthorized derivative of *Catcher* and is a wholesale usurpation of Salinger’s exclusive copyright interest in the character of Holden Caulfield (the narrator of *Catcher*). That selfsame character is the narrator and principal character in the Sequel, under the name “Mr. C”. Both books are told in the first person – *Catcher* in Salinger’s distinctive style and the Sequel in a rather poor imitation of it. Neither the use of the character, nor the Sequel itself, is in any sense parody as defined under the copyright law, nor are they otherwise a fair use.

4. We are proceeding on this application by order to show cause because of the imminent threat of irreparable harm to Mr. Salinger, as more fully explained in the accompanying memorandum of law and the Westberg Aff’t. The Sequel is already available in this country on a pre-order basis from Amazon.com and, to booksellers, through defendant SCB; both advise the book is scheduled for a September 15, 2009 publication date. The Sequel was published in England earlier this month and has generated a fair amount of buzz both in the English newspapers and online, including in the United States. Copies are already available in this country through eBay.com and by Amazon.co.uk and British booksellers who offer to ship direct into the United States.

5. A copy of the book *The Catcher in the Rye* is Exhibit A hereto.

6. A copy of the Sequel, obtained from England, is Exhibit B hereto. On this application, we seek permission to file Exhibit B under seal and in hard copy. Exhibit B is “unpublished” in the United States and, since the purpose of this application is to stop publication in this country because the work is infringing, the complete work should not be part of the public record in this case. We also seek leave to file *Catcher* (Exhibit A) in hard copy.

7. Based upon the two books, we have prepared some charts comparing the characters, events, narrative, tone and other elements of the two works. Copies of these charts are annexed hereto as Exhibit C.

8. A copy of the complaint in this action is annexed hereto as Exhibit D.

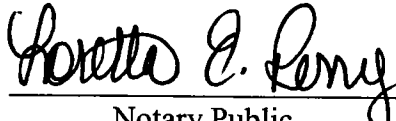
9. We are proceeding by order to show cause because of the imminence of shipment of books into the United States and the current availability of the Sequel in this country by online order. As detailed in the accompanied Westberg Aff't, a British newspaper just this past weekend reported that the author is based in New York, although we do not know his precise whereabouts; the publishers appear to be in the United Kingdom and Sweden. The book has a Swedish literary agent for foreign rights and an English publicist. Under these circumstances, it may take several days to effectively serve the various defendants with copies of the complaint and the supporting papers on this application. Nonetheless, given the urgency of this application, we seek a return date in advance of normal scheduling of a preliminary injunction.

10. Last night, I emailed defendants and all of their agents and representatives to the extent known, advising that we would be filing this action today, before this Court, and seeking preliminary injunctive relief by order to show cause. A copy of my email is annexed hereto as Exhibit E. As of the time of signing this affidavit, the only response I have received is from the Swedish literary agency which purports to sell "translation rights" for the book. That response was cced to windupbirdpublishing.com. We did however received email confirmation that the various emails we sent last evening were opened and read.

11. No prior application for the relief sought herein has been made previously to this or any other Court.

  
MARCIA B. PAUL

Sworn to before me this  
1<sup>st</sup> day of June, 2009

  
Notary Public

**LORETTA E. PERRY**  
**NOTARY PUBLIC, State of New York**  
No. 24-4931617  
Qualified in Kings County  
Commission Expires August 1, 2010