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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

J.K. ROWLING and SCHOLASTIC INC.,

Plaintiffs,

-against-

NEW YORK DAILY NEWS COMPANY and
JOHN DOES 1 - 5,

Defendants.

Case No.:

COMPLAINT

Plaintiffs J. K. Rowling (“Rowling”), by her attorneys, O’Melveny & Myers LLP, and Scholastic Inc., by its attorneys Frankfurt Kurnit Klein & Selz, PC (“Scholastic”), referred to collectively herein as “Plaintiffs,” for their complaint against defendants New York Daily News Company (“Daily News”) and John Does 1 through 5 (collectively “Defendants”), allege as follows:

NATURE OF THE ACTION AND RELIEF SOUGHT

1. This action arises out of Defendants' blatant and willful violation of Rowling's valuable intellectual property rights in her highly acclaimed *Harry Potter* series of children's books (the "Series" or the "*Potter* Books"), in violation of the Copyright Act, 17 U.S.C. § 101 *et seq.*, and New York state law.

2. Specifically, with full knowledge that the Series is Rowling's creative work and that the Series' fifth book, *Harry Potter and the Order of the Phoenix* ("*Phoenix*"), is not scheduled to be released for distribution to the public until June 21, 2003, Defendant Daily News has unlawfully and willfully obtained a copy of *Phoenix* from Defendants John Does 1 through 5 and unlawfully and willfully appropriated, reproduced and distributed two full pages of text from *Phoenix* in the June 18, 2003 print and online editions of the *Daily News* newspaper. They have also published numerous elements of original material from the copyrighted Series without Rowling's or Scholastic's consent, in violation of federal copyright laws. The plot elements and character details they have disclosed reveal aspects of the heart of Rowling's as yet-unpublished work. In addition, by revealing this original material, Defendants seek to deprive Rowling of her right and ability to control her own unpublished creative work. Finally, Defendants' actions have irreparably harmed the carefully orchestrated, multi-million-dollar marketing and distribution plans for *Phoenix* created by Rowling and Scholastic. Perhaps worst of all, Defendants' actions spoil the surprise for *Harry Potter* fans everywhere, especially children.

3. Defendants' conduct constitutes copyright infringement under the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*, as well as conversion, breach of contract,

tortious interference with contract, and theft of trade secrets under New York law. Rowling and Scholastic seek damages of tens of millions of dollars in an amount to be proven at trial, attorneys' fees, and such other relief as the Court deems just and proper.

JURISDICTION AND VENUE

4. This action asserts claims arising under Copyright Act of 1976, as amended, 17 U.S.C. § 101 *et seq.* Accordingly, this Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court also has subject matter jurisdiction over Plaintiffs' state law claims pursuant to the principles of pendant jurisdiction.

5. Upon information and belief, this Court has personal jurisdiction over Defendants because they conduct continuous, systematic and routine business within the State of New York. Upon information and belief, this Court also has personal jurisdiction over Defendants because they have committed tortious acts within the State and/or have committed tortious acts outside New York causing injury within the State of New York and derive substantial revenue from interstate commerce.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(a).

PARTIES

7. Rowling is an individual residing in Edinburgh, Scotland. She is and, at all times material herein, was engaged in the business, of among other things, creating literary works, including the Series, and licensing the right to create derivative works based on her literary works, including the copyrighted elements of those works, to others for exploitation.

8. Plaintiff Scholastic Inc. is a New York corporation with its principal place of business at 557 Broadway, New York, New York, 10012. Scholastic is and, at all times material herein, was engaged in the business of, among other things, publishing and distributing books and goods related thereto, including merchandise related to such properties.

9. Defendant New York Daily News Company is a New York corporation with its principal place of business at 141 East 25th Street, New York, New York, 10010. It publishes, among other things, the *Daily News* newspaper, in both print and online editions that are accessible to readers worldwide via the Internet.

10. Plaintiffs are informed and believe and allege thereon that Defendants John Does 1 through 5 are individuals residing in the State of New York. John Does 1 through 5 are individuals acting in concert with Daily News to violate Plaintiffs' intellectual property rights. The addresses of Defendants John Does 1 through 5 are currently unknown to Plaintiffs.

PLAINTIFF'S VALUABLE INTELLECTUAL PROPERTY

The Potter Books

11. The *Potter* Books are a modern day publishing phenomenon and success story. As has been widely publicized, author Rowling, who graduated from Exeter University, was divorced and living on public assistance in Edinburgh when she wrote the *Potter* books in the local coffee shop, drafting the manuscript in longhand while her infant daughter slept. In these unlikely circumstances, Rowling created a highly detailed imaginary world, one that has come to be loved by millions of children and adults around the world.

12. The Series tells the story of a boy named Harry Potter. Harry lives a normal enough life, sleeping in a tiny room under the stairs in the home of his hated Aunt Petunia, Uncle Vernon, and cousin Dudley, all of whom are “Muggles” (humans without any magical abilities), until his eleventh birthday, when he begins to receive letters from the Hogwarts School of Witchcraft and Wizardry, which he is invited to attend. Harry also learns that his parents did not die in a car crash, but in fact were wizards who were killed by Voldemort, the Lord of Darkness, and that he himself is famous in the world of wizardry. Together with his magical snowy owl, Hedwig, Harry leaves his home and begins a new life at Hogwarts School of Witchcraft and Wizardry.

13. Over the course of the four books published to date, Harry learns many new things, makes new friends, travels, and has many adventures. He learns to play new games, including “Quidditch” (a game Rowling invented in which two teams flying on broomsticks try to score points by getting balls through goals that are suspended in mid air), which he plays as part of the Gryffindor House Quidditch team at Hogwarts School of Witchcraft and Wizardry. Harry learns of the Sorcerer’s Stone and the three-headed dog that guarded it, and battles the evil Lord Voldemort. He travels in a magic flying car, meets Cornelius Fudge, the Minister of Magic, and visits the Leaky Cauldron pub. He attends the International Quidditch Cup and competes in the Triwizard Tournament.

14. The first book in the Series, *Harry Potter and the Philosopher’s Stone*, was first published in the United Kingdom in June 1997. A substantially identical version of the book was published in the United States in September 1998 under the title *Harry Potter and the Sorcerer’s Stone* (the title of the United States version is used herein to refer to both the original United Kingdom version and the United States version). The second book in the Series, *Harry*

Potter and the Chamber of Secrets, was published in the United Kingdom in February 1999. A substantially identical version thereof was published in the United States under the same title in July 1999. The third book in the Series, *Harry Potter and the Prisoner of Azkaban*, was published in the United Kingdom in July 1999. A substantially identical version thereof was published under the same title in the United States in October 1999. The fourth book in the Series, *Harry Potter and the Goblet of Fire*, was published in July 2000 simultaneously in the United States and the United Kingdom.

15. Rowling has announced plans to add three books to the Series, for a total of seven books, each covering one year of Harry Potter's life until he graduates from Hogwarts School of Witchcraft and Wizardry.

16. The fifth book in the Series, *Harry Potter and the Order of the Phoenix*, is scheduled for publication on June 21, 2003. The release of the fifth book is a highly anticipated event around the world and has received tremendous press coverage. The secrecy with which the details of *Phoenix* have been shrouded by both Rowling and Scholastic has also received tremendous media coverage.

17. Since the release of the first book in the Series in the United Kingdom in 1997, the Series has been a tremendous popular and critical success. It has been further reported that, collectively, the *Potter* Books, which have been translated into over 55 languages, have sold over 203 million copies worldwide and are poised to take their place among the best loved children's classics, including *Winnie the Pooh*, *The Wizard of Oz*, *Little House on the Prairie*, and *The Hobbit*. The first book in the Series, *Harry Potter and the Sorcerer's Stone*, has sold

over 5 million copies in the United States alone. The Series has also received overwhelming publicity.

18. The books in the Series have won numerous prizes and awards. The first book in the Series, *Harry Potter and the Sorcerer's Stone*, has won at least nine awards, including the 1997 Smarties Book Prize (9-11 years category, Gold Award winner), the 1997 Federation of Children's Book Groups Children's Book Award (Overall winner and Longer Novel category winner), the 1999 American Booksellers Book Award, and the 1998 Young Telegraph Paperback of the Year Award.

19. The Series' second book, *Harry Potter and the Chamber of Secrets*, won the 1998 Smarties Book Prize (9-11 years category, Gold Award winner), the 1998 Federation of Children's Book Groups Children's Book Award (Overall winner and Longer Novel category winner), and the 1998 British Book Awards Children's Book of the Year.

20. The third book in the Series, *Harry Potter and the Prisoner of Azkaban*, won Britain's 1999 Whitbread Children's Book of the Year Award and was the runner-up for the overall 1999 Whitbread Best Book Award (hitherto restricted to adult fiction and ultimately won by Nobel Prize-winner Seamus Heaney for his new translation of *Beowulf*). It also won the 1999 Smarties Book Prize (9-11 years category, Gold Award winner).

21. The fourth book, *Harry Potter and the Goblet of Fire*, which was released on July 8, 2000, was the subject of unprecedented anticipation by both children and adults. The first United States printing was a record 3.8 million copies. Thousands of bookstores around the country stayed open late on July 7th to accommodate the eager customers who rushed to buy the book at the stroke of midnight, many of whom waited for hours in long lines so that they could

be among the very first to get the newest *Harry Potter* book. During the first weekend, Barnes & Noble sold over 500,000 copies, in addition to the advance orders it had already received for another 360,000 copies. The entire United States first-print run sold out in a matter of days.

22. In addition to its unprecedented level of popular success, *Harry Potter and the Goblet of Fire* also received considerable critical praise. For example, Janet Maslin of *The New York Times* remarked:

As the midpoint in a projected seven-book series, “Goblet of Fire” is exactly the big, clever, vibrant, tremendously assured installment that gives shape and direction to the whole undertaking and still somehow preserves the material’s enchanting innocence. This time Ms. Rowling offers her clearest proof yet of what should have been wonderfully obvious: what makes the Potter books so popular is the radically simple fact that they’re so good.

23. In addition to the many prizes and accolades they have won, all four books in the Series have spent many weeks on *The New York Times* bestseller list and other prestigious bestseller lists, demonstrating their enduring popular, as well as critical, acclaim.

24. To meet the expected demand for *Phoenix*, Scholastic has ordered 8.5 million copies for the overlapping first and second printings, an unprecedented number. Since the January announcement of *Phoenix*’s release date, the book has topped bestseller lists.

Plaintiff’s Intellectual Property Rights in the Series

25. The people, places, terms, and images in the *Potter* Books are Rowling’s original creative work. The four *Potter* Books published to date have been registered with the United States Copyright Office. The registration for *Harry Potter and the Sorcerer’s Stone* is Serial No. TX 4-465-397. The registration for *Harry Potter and the Chamber of Secrets* is Serial

No. TX 4-465-398. The registration for *Harry Potter and the Prisoner of Azkaban* is Serial No. TX 4-465-399. The registration for *Harry Potter and the Goblet of Fire* is Serial No. TX 5-122-771. The registration for *Harry Potter and the Order of the Phoenix* will be filed shortly.

Plaintiffs' Efforts at Keeping *Phoenix* Confidential Until June 21, 2003

26. In order to bolster the public's anxious anticipation of *Phoenix*'s release, Scholastic has planned a worldwide marketing campaign worth \$3 to \$4 million. This amount is more than double the marketing budget for the release of *Harry Potter and the Goblet of Fire*. Included in the campaign are billboards; promotional items such as posters, bumper stickers and window displays; event kits; internet advertisements on websites such as Amazon.com and Barnes & Noble; and even *Harry Potter and the Order of the Phoenix* days at baseball parks. A countdown to midnight on June 21 will be held in Times Square, New York City, to celebrate the book's release, and a special billboard on Sunset Strip in Los Angeles will announce its official availability.

27. Scholastic and Rowling have worked hard to ensure that *Phoenix*'s plot details and character development remain secret until the book's official release. Rowling has refused to discuss *Phoenix* in any detail in media interviews. Scholastic has implemented high security measures to prevent early leaking of the book, including severely restricting access to the book solely to individuals with a need to know; storing drafts, proofs, galleys, and finished copies of the book in a safe or locked facility; utilizing confidential tracking codes for shipment of the finished book; and carefully coordinated arrangements with booksellers for the simultaneous release of the book to the public on June 21. Until Defendants' willful violation of the release embargo, Scholastic and Rowling had been successful in their efforts, and the

contents of *Phoenix* remained a surprise for eager fans to discover as quickly as they can turn the book's pages.

28. As an example of Plaintiffs' success in keeping *Phoenix* and its contents from the public until June 21, 2003, Plaintiffs successfully obtained an injunction in the United Kingdom preventing the publication of proofs of *Phoenix* that had been stolen from a printer. Indictments of the individuals responsible for the theft followed, and the British court entered an order enjoining the publication in the media of the proofs or any of *Phoenix*'s content contained therein. This event and the British injunction were well publicized in the press. Upon information and belief, Defendant Daily News was aware of this injunction.

29. Despite Rowling's and Scholastic's best efforts to date, however, *Phoenix* and its contents have been disseminated to the public before the scheduled release date due to the unlawful activities of Defendants.

**DEFENDANTS' INFRINGEMENT OF HARRY POTTER
AND THE ORDER OF THE PHOENIX**

Defendants' Publication of *Phoenix* in the June 18, 2003 edition of *The Daily News*

30. On information and belief, Defendant Daily News, with the assistance of John Does 1 through 5, obtained a copy of *Phoenix* ahead of its release date of June 21, 2003. Defendant Daily news obtained this copy of *Phoenix* with full knowledge of Rowling's and Scholastic's embargo on the book's release.

31. Defendant Daily News then ran two articles in the June 18, 2003 edition of *The Daily News* that directly infringe Plaintiffs' intellectual property rights in *Phoenix*. The first article, "Hocus-pocus! We got Harry," details how Daily News' reporter obtained a copy of

Phoenix with the assistance of Defendants John Does 1 through 5. A photograph of a copy of *Phoenix*, open to two pages and clearly reproducing and displaying the book's text, accompanies the article.

32. The second article, "Here's first look at what happens," details the plot elements, details of characters, and other of Rowling's original creative material from *Phoenix*. All of this material has been deliberately kept confidential by Rowling and Scholastic so as not to spoil the surprise for readers before June 21, 2003 and to maximize interest (and, of course, sales) in the book.

33. Plaintiffs' agents became aware that Defendants had published the image of the two pages from *Phoenix*'s text and the plot and character details upon viewing the June 18, 2003 online edition of *The Daily News*. Plaintiffs' agents subsequently determined that the two articles and photograph of *Phoenix*'s pages were contained in the print edition as well.

34. Plaintiff's agents were shocked as Defendants' action constituted blatant and willful copyright infringement under United States law.

35. In addition, it was apparent that Defendants' publication of the material from *Phoenix* was deliberately timed to take advantage of the tremendous media hype and fanfare accompanying the upcoming release of the fifth book in the Series.

36. Defendants' unauthorized publication of portions and significant creative elements of *Phoenix* is depriving Plaintiff Rowling of the ability to control the use of her intellectual property as embodied in the Series.

COUNT ONE — COPYRIGHT INFRINGEMENT

(17 U.S.C. §§ 101 et seq.)

(Plaintiff Rowling against Defendants New York Daily News and John Does 1 through 5)

37. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs 1 through 36, inclusive, and incorporates them herein by this reference.

38. Plaintiff Rowling owns the copyright in *Phoenix* and its characters.

39. Defendant Daily News, with the assistance of Defendants John Does 1 through 5, has unlawfully and willfully appropriated, reproduced and distributed two full pages of text from *Phoenix* in the June 18, 2003 print and online editions of the *Daily News* in violation of Plaintiff Rowling's exclusive right to control distribution of her work as copyright owner pursuant to 17 U.S.C. § 106.

40. Defendant Daily News has also published plot elements and character details that go to the heart of Rowling's as yet-unpublished work, thereby depriving Rowling of her right and ability to control her own creative work

41. By its actions alleged above, Defendants have infringed and will continue to infringe Plaintiff's copyrights in the *Potter* Books by publishing and displaying Rowling's original copyrighted material and from *Phoenix* without Plaintiffs' permission.

42. Plaintiffs are entitled to recover from Defendants damages in the amount of \$100 million, including attorneys' fees it has sustained and will sustain, and any gains, profits and advantages obtained by Defendants as a result of its acts of infringement as alleged above. At present, the amount of such damages, gains, profits and advantages cannot be fully

ascertained by Plaintiff, but will be established according to proof at trial. Plaintiff is also entitled to recover statutory damages for Defendants' willful infringement of Plaintiff's intellectual property in *Phoenix*.

COUNT TWO – TORTIOUS INTERFERENCE WITH CONTRACT

(Plaintiffs Rowling and Scholastic against Defendants Daily News and John Does 1 through 5)

43. Plaintiffs Rowling and Scholastic repeat and incorporate by reference each and every allegation of Paragraphs 1 through 42 above.

44. Plaintiffs Rowling and Scholastic have entered into an agreement whereby Scholastic and its distributors distribute to retail sellers. Rowling and Scholastic agreed that *Phoenix* would not be made available to the public prior to Saturday, June 21, 2003.

45. Scholastic has entered into various agreements with retail sellers for the sale of *Phoenix*. Pursuant to those agreements, retail sellers agreed not to sell or otherwise distribute *Phoenix* prior to Saturday, June 21, 2003.

46. Daily News had knowledge that *Phoenix* was not to be distributed prior to Saturday, June 21, 2003 pursuant to agreements between Scholastic and retail sellers.

47. Daily News, with the assistance of John Does 1 through 5, intentionally interfered with the contracts between Scholastic and its sellers by obtaining *Phoenix* and publishing portions of the book on June 18, 2003.

48. Plaintiffs are entitled to recover from Defendant damages in the amount of \$100 million, to be established according to proof at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. That the Court find that Defendants have infringed Plaintiff's copyrights in *Harry Potter and the Order of the Phoenix*;
2. That the Court enter judgment for Plaintiff and against Defendants for Plaintiff's actual damages according to proof, and for any profits attributable to infringements of Plaintiff's intellectual property, in accordance with proof;
3. That the Court enter judgment for Plaintiff and against Defendants for statutory damages based upon their acts of infringement pursuant to the Copyright Act of 1976, 17 U.S.C. §§ 101, et seq.;
4. That the Court require Defendants to account for all gains, profits, and advantages derived from their acts of infringement;
5. An award of Plaintiff's costs and disbursements of this action, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505;
6. That the Court deem all gains, profits and advantages derived from acts of infringement and other violations of law by Defendants as well as by its directors, officers, agents, employees, and all other persons and entities in active concert or privity or in participation with them, to be held in constructive trust for the benefit of Plaintiff and be ordered paid over to Plaintiff forthwith; and
7. That the Court grant such other, further, and different relief as the Court deems just and proper.

Dated: New York, New York
June 18, 2003

O'MELVENY & MYERS LLP

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