

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PAUL GREGORY ALLEN, TRUSTEE
OF THE ESTATE OF ADRIAN JACOBS,

Plaintiff,

-against-

SCHOLASTIC INC.,

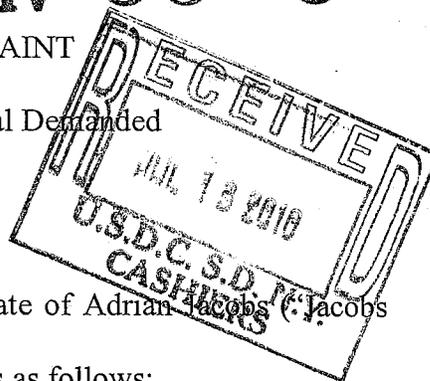
Defendant.
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JUDGE SCHEINDLIN

No. **10 CIV 5335**

COMPLAINT

Jury Trial Demanded



Paul Gregory Allen, in his capacity as Trustee of the Estate of Adrian Jacobs (": Jacobs Estate"), by its undersigned attorneys, Andrews Kurth LLP, alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement based on Defendant Scholastic Inc's 2000 publication of a book entitled *Harry Potter and the Goblet of Fire* ("*Goblet*"), by J.K. Rowling. *Goblet* infringes the copyright of a book by Adrian Jacobs entitled *The Adventures of Willy the Wizard - No 1 Livid Land* ("*Willy the Wizard*"), published in the United Kingdom in 1987, before the publication of any of the books in the *Harry Potter* Series. Mr. Jacobs and J.K. Rowling were represented by the same literary agent, Christopher Little. Thirteen (13) years prior to the writing and publication of *Goblet*, Mr. Little had possession of approximately 1,000 copies of *Willy the Wizard*. *Goblet* is substantially similar to the protectable expression in *Willy the Wizard*. Accordingly, Paul Gregory Allen, the Trustee of the Estate of Adrian Jacobs, brings this action.

PARTIES

2. Plaintiff Paul Gregory Allen is a citizen of the United Kingdom. He sues in his capacity as Trustee of the Estate of the late Adrian Jacobs ("*Jacobs*"), who died on February 18, 1997.

Jacobs is the author of *Willy the Wizard*. At all times relevant to this lawsuit, Jacobs resided in England and Wales and was a citizen of the United Kingdom.

3. Upon information and belief, Defendant Scholastic Inc. (“Scholastic”) is a corporation incorporated in the State of New York, with its principal place of business at 557 Broadway, New York, NY, 10012. Upon information and belief, Scholastic is the United States publisher of the book *Goblet*.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

5. Upon information and belief, this Court has personal jurisdiction over Defendant pursuant to NY C.P.L.R. § 301 because Defendant is domiciled in New York.

6. Upon information and belief, venue is proper in this district under 28 U.S.C. § 1391(b) because Defendant resides and/or does business in this district, a substantial part of the events giving rise to Plaintiff’s claim occurred in this district, Defendant’s acts of infringement have occurred in this district, and Plaintiff is suffering harm in this district.

FACTS

United States Copyright in *Willy the Wizard*

7. The book *Willy the Wizard* was written in 1987 by Jacobs. As a citizen of the United Kingdom and the author of an original literary work, Jacobs owned a copyright in *Willy the Wizard* by operation of law in the United Kingdom.

8. *Willy the Wizard* was first published in the United Kingdom in 1987 by Bachman & Turner under ISBN 085974 144 3, under license from Jacobs. The book consists of text by Jacobs and illustrations by Nick Tidnam. *Willy the Wizard* has not been published in the United States.

9. In 1989, Jacobs was declared bankrupt, and, pursuant to the law of the United Kingdom, control of the copyright to *Willy the Wizard* passed to the Official Receiver of the Insolvency Service. In 2003, Jonathan Jacobs, the sole beneficiary of the Jacobs Estate, was appointed to administer the estate, after which time the Official Receiver assigned the copyright to *Willy the Wizard* to him. In 2008, Jonathan Jacobs appointed the Plaintiff, Paul Gregory Allen, as trustee of the Jacobs Estate with full powers over all assets, including the copyright to *Willy the Wizard*.

Prior Access to *Willy the Wizard*

10. In 1987, after completing the manuscript of *Willy the Wizard*, Jacobs approached Christopher Little (“Little”), a partner at the London-based Christopher Little Literary Agency, for help promoting the book and securing a publisher within the United Kingdom.

11. After their initial meeting, Little became Jacob’s agent and Jacobs provided Little with copies of the manuscript.

12. On information and belief, Little sent copies of the manuscript to a number of third parties.

13. Little did not secure a United Kingdom publisher for *Willy the Wizard*.

14. Without Little’s help, Jacobs published *Willy the Wizard* through a United Kingdom publisher, Bachman & Turner, in 1987.

15. In 1987, after *Willy the Wizard* went to press, Jacobs provided Little with approximately 1,000 copies of the book *Willy the Wizard* published by Bachman & Turner.

16. Jacobs provided these copies so that Little could seek a foreign publisher for the book.

17. Little did not secure a foreign publisher for *Willy the Wizard*.

18. Upon information and belief, in 1994, Little became literary agent to J.K. Rowling (“Rowling”), after Rowling submitted her initial draft of what would become Rowling’s first

book *Harry Potter and the Philosopher's Stone* ("Stone") (entitled *Harry Potter and the Sorcerer's Stone* in the United States).

19. Upon information and belief, Little remained Rowling's literary agent during the publication of *Stone* in 1997 and at all times during the writing and publication of subsequent books in the Harry Potter series including *Harry Potter and the Chamber of Secrets* first published in 1998, *Harry Potter and the Prisoner of Azkaban* first published in 1999, *Goblet* first published in 2000 and *Harry Potter and the Order of the Phoenix* first published in 2001.

20. Upon information and belief, *Stone* was edited and finalized, and all the subsequent books in the Harry Potter series including *Goblet* were written after Little and Rowling began to work together.

21. Upon information and belief, either Rowling, Little or editors at Little's agency had access to *Willy the Wizard* when writing and/or editing *Stone* and all the subsequent books in the Harry Potter series including *Goblet*.

22. Upon information and belief, Rowling granted Defendant Scholastic an exclusive license to publish *Goblet* in the United States.

23. Upon information and belief, Scholastic first published *Goblet* in the United States in July 2000 and has continuously distributed the book since that time.

Substantial Similarity of the Works

24. *Willy the Wizard* and *Goblet* are similar in theme, plot, characters, setting, and total concept and feel. The central theme of each work—a year-long wizard contest—unfolds as similar characters enact parallel plot points. These parallel plots take place in parallel contexts—a fantasy world located in the real world where magical communities and regular people co-exist

and where magical solutions abound to solve real-world problems, from travel to commerce to illness.

25. Similar and identical themes and plots include those set forth in paragraphs 26 through 30 herein, and further explained in paragraphs 32-58.

26. Both *Willy the Wizard* and *Goblet* tell the story of a wizard competition, and the protagonist of each book is a wizard who takes part in—and ultimately wins—the competition.

27. Both Willy and Harry, the featured wizards in the respective works, are required to deduce the exact nature of a central task in the competition.

28. Both Willy and Harry uncover the nature of this central task covertly in a bathroom.

29. Both Willy and Harry complete the task using information gleaned from helpers.

30. The task for both Willy and Harry involves rescuing hostages imprisoned by a community of half-human, half-animal creatures.

31. Throughout *Willy the Wizard* and *Goblet*, the similar themes and plot elements are expressed in similar ways.

32. The two books express the primary theme of a wizard competition in similar ways, including as set forth in paragraphs 33 through 39 herein.

33. Both books contemplate completion of the contest in one year. *Willy the Wizard*, Ch. 1, p. 3, col. 1, ¶ 4, line 5; *Goblet*, Ch. 12, p. 184.

34. In both books, the competition is announced in a castle, and in both cases it is in the “Great Hall” of that castle. *Willy the Wizard*, Ch. 1, p. 2, col. 2, ¶ 1; *Goblet*, Ch. 12, pp. 184, 186.

35. Both competitions are subject to a form of regulatory control in which the regulators can detect any misuse of magic and impose punishment. *Willy the Wizard*, Ch. 1, p. 2, col. 2, ¶¶ 2-4; *Goblet*, Ch. 1, p. 8.

36. The punishment contemplated in each work is to send the offending wizard to wizard prison. *Willy the Wizard*, Ch. 1, p. 2, col. 2, ¶ 7; *Goblet*, Ch. 2, p. 23.

37. Both competitions involve competitors from real-world countries. *Willy the Wizard*, Ch. 1, p. 3, col. 2, ¶ 2; *Goblet*, Ch. 15.

38. In both works, a French wizard arrives in a fantastical, animal-drawn carriage and plays a senior role in administering the competition. *Willy the Wizard*, Ch. 1, p. 3, col. 1, ¶ 1; *Goblet*, Ch. 15, pp. 242-244.

39. The competitions in both works use substantially identical systems of scoring and reward. In *Willy the Wizard*, competitors receive 40 points for releasing each hostage. In *Goblet*, the competitors receive approximately the same number of points per hostage—one competitor receives 40 points, one receives 45, and one receives 47. *Willy the Wizard*, Ch. 4, p. 8, col. 1, ¶ 4; *Goblet*, Ch. 12, pp. 506-07. Likewise, in both works, the wizard who wins the competition will receive a prize of 1,000 units—1,000 stars in *Willy the Wizard* and 1,000 Galleons in *Goblet*. *Willy the Wizard*, Ch. 4, p. 8, col. 1, ¶ 4; *Goblet*, Ch. 12, p. 188.

40. In both books, the main character learns the nature of the central task in a similar way as set forth in paragraphs 41 through 42 herein.

41. Both Willy and Harry receive instructions for the task in a form they are not able to understand initially. *Willy the Wizard*, Ch. 4, p. 8, col. 1, ¶ 3; *Goblet*, Ch. 21, p. 365.

42. Both Willy and Harry decode the instructions in order to learn what they must do. *Willy the Wizard*, Ch. 4, p. 8, col. 1, ¶ 4; *Goblet*, Ch. 25, p. 463.

43. Deducing the nature of the task set for the respective main characters, Willy and Harry, occurs in a similar way as set forth in paragraphs 44 through 48 herein.
44. Both Willy and Harry are in special bathrooms when they learn the nature of the task. *Willy the Wizard*, Ch. 4, p. 8, col. 1, ¶ 1; *Goblet*, Ch. 25, p. 459.
45. Each wizard uses a tool available in the special bathroom to uncover the nature of the central task. *Willy the Wizard*, Ch. 4, p. 8, col. 1, ¶ 3; *Goblet*, Ch. 25, p. 462.
46. In each work, access to the special bathroom, or magical supplies it contains, is available only to higher status wizards. *Willy the Wizard*, Ch. 4, p. 8, col. 1, ¶ 2; *Goblet*, Ch. 25, p. 459.
47. Both Willy and Harry are able to use colored water additives with magical properties that allow them to focus more clearly on decoding the instructions. *Willy the Wizard*, Ch. 4, p. 8, col. 1, ¶ 2, line 5; *Goblet*, Ch. 25, p. 460.
48. When Willy and Harry, respectively, employ the proper method of decoding, the previously unintelligible instructions are presented to the wizard in comprehensible language. *Willy the Wizard*, Ch. 4, p. 8, col. 1, ¶ 3; *Goblet*, Ch. 25, p. 463.
49. In both books, in order to complete the task, Willy and Harry rely on assistance from helpers as set forth in paragraphs 50 through 53 herein.
50. Both Willy and Harry have friends who conduct library research in order to assist with the task. *Willy the Wizard*, Ch. 4, p. 9, col. 1, ¶ 5; *Goblet*, Ch. 26, p. 485.
51. Both rely on elves and others who obtain key pieces of information by eavesdropping. *Willy the Wizard*, Ch. 4, p. 12, col. 1, ¶ 1; Ch. 5, p. 15, col. 2, ¶ 2; *Goblet*, Ch. 26, pp. 491, 496.
52. Both receive last-minute intelligence that proves crucial in completing the task. *Willy the Wizard*, Ch. 5, p. 16, col. 1, ¶ 1; *Goblet*, Ch. 26, pp. 490-94.

53. The protest of some of the helpers regarding their past working conditions and their insistence on improved conditions is a theme in both works. *Willy the Wizard*, Ch. 1, p. 1, col. 1, ¶ 1, lines 3-5; *Goblet*, Ch. 21, p. 378.

54. The authors also express the tasks that Willy and Harry must complete in a similar way as set forth in paragraphs 55 through 57.

55. Both Willy and Harry must rescue hostages from a community of magical creatures that are half human and half animal. *Willy the Wizard*, Ch. 4, p. 8, col. 2, ¶ 4, line 1; *Goblet*, Ch 26, p. 498.

56. In *Willy the Wizard*, the “Kanganatives” have torsos like humans and legs like kangaroos. In *Goblet*, the “Merpeople” have torsos like humans and are otherwise like fish. *Willy the Wizard*, Ch. 4, p. 8, col. 2, ¶ 4, line 4; *Goblet*, Ch. 26, p. 497.

57. In both cases, the magical community resides in an isolated location that is protected by a physical barrier that the main character must overcome. *Willy the Wizard*, Ch. 4, p. 9, col. 2, ¶ 2, line 3; *Goblet*, Ch. 25, p. 464.

58. Throughout both books, the shared elements of theme and plot occur in substantially the same sequence, as set forth above in paragraphs 26 through 57.

59. In addition to incorporating the themes and plot of *Willy the Wizard* related to the wizard competition itself, *Goblet* includes numerous other character and setting elements that are taken from *Willy the Wizard*, such as those set forth in paragraphs 60 through 67. Because *Goblet* copies the overall plot of *Willy the Wizard* along with key features of the magical world created by Jacobs in *Willy the Wizard*, the two books have the same total concept and feel.

60. Both protagonists are wizards, raised by non-wizards, who join the magical community in pre-/early-adolescence. *Willy the Wizard*, Ch. 2, p. 5, col. 2, ¶ 9, line 3; *Goblet*, Ch. 2, pp. 19-20.

61. Each protagonist attended or attends at least one of several wizard schools in Europe. *Willy the Wizard*, Ch. 1, p. 3, col. 1, ¶ 6, Ch. 4, p. 10, col. 2, ¶ 3; *Goblet*, Ch. 7, p. 85.
62. Each protagonist has studied or studies wizard history. *Willy the Wizard*, Ch. 1, p. 3, col. 1, ¶ 6; *Goblet*, Ch. 13, p. 234.
63. Near its beginning, each work describes an international gathering of wizards who have come together from real countries all over the world and the personal impact that the main character feels knowing he is part of this brotherhood. Upon seeing “wizards of all races” in their native dress, including “wizards from Ivory Coast and Delhi,” Willy is struck by “the immensity of the Wizard brotherhood.” *Willy the Wizard*, Ch. 1, p. 3, col. 2, ¶ 2. Likewise, upon arriving at an international wizard event attended by, among others, “African wizards” in “long white robes,” Harry contemplates “how many witches and wizards there must be in the world.” *Goblet*, Ch. 7, p. 81-82.
64. Both works feature similar means of magical transportation that allow wizards to travel undetected through the real world. These means include: a form of travel in which the traveler touches an object that is apparently unrelated to transportation and is instantly transported to a different location, *Willy the Wizard*, Ch. 1, p. 1, col. 1, ¶ 5 (Aladdin’s dagger); *Goblet*, Ch. 6, p. 73 (portkeys); a magical train that is used only by wizards; *Willy the Wizard*, Ch. 4, p. 10, col. 1, ¶ 2; *Goblet*, Ch. 11, p. 163; a formal transportation system by which any wizard is able to summon invisible transport, *Willy the Wizard*, Ch. 1, p. 3, col. 2, ¶ 4 (swan taxi); *Goblet*, Ch. 9, p. 126 (Knight Bus); and travel through use of snuff or other powder carried on the wizard’s person in a small container. *Willy the Wizard*, Ch. 1, p. 3, col. 2, ¶ 6, *Goblet*, Ch. 4, p. 47.

65. Both works discuss special wizard hospitals for the diagnosis and treatment of wizard illnesses, including mental illnesses. *Willy the Wizard*, Ch. 4, p. 10, col. 2, ¶ 2, *Goblet*, Ch. 30, p. 603.

66. In both works, memory erasing spells play an important role in the relations of wizards with non-wizards. *Willy the Wizard*, Ch. 2, p. 5, col. 1, ¶ 4; *Goblet*, Ch. 10, p. 145.

67. Although both works are set in the real world, both works feature commercial villages, hidden away from the real world, that produce goods and services especially for wizards. In *Willy the Wizard*, Memories Hideaway is a thriving community in which the inhabitants engage in cottage industries, including producing candy with magical properties and alcohol especially for wizards. *Willy the Wizard*, Ch. 5, p. 13, col. 1, ¶ 1. Likewise, Hogsmeade in *Goblet* is a village full of magical cottage industries, primarily known for its brewery and candy shop. *Goblet*, Ch. 19, p. 318-19.

68. In view of these and other likenesses between *Goblet* and protectable aspects of *Willy the Wizard*'s theme, plot, characters, setting, and total concept and feel, the two works are substantially similar.

Action in the United Kingdom

69. On June 15, 2009, the Jacobs Estate sued Bloomsbury Publishing PLC ("Bloomsbury"), the British publisher of *Goblet*, in the Chancery Division of the High Court of Justice in England, for infringement of the copyright in *Willy the Wizard*. On February 10, 2010, Rowling was joined as a party defendant in that lawsuit.

70. Applications for Summary Judgment were filed by Bloomsbury on December 17, 2009 and Rowling on March 1, 2010, and are now pending before the High Court.

COUNT 1 – COPYRIGHT INFRINGEMENT

71. Plaintiff repeats and incorporates by reference the allegations set forth in paragraphs 1 through 70, above.

72. Jacobs authored an original book entitled *Willy the Wizard* in 1987. Jacobs was a national of and was domiciled in the United Kingdom when he wrote *Willy the Wizard*, and *Willy the Wizard* was first published in the United Kingdom. *Willy the Wizard* is protected subject matter under the laws of the United Kingdom

73. The United Kingdom is a treaty party under the Berne Convention, within the meaning of 17 U.S.C. §101. Accordingly, the copyright in *Willy the Wizard* is protected from infringement in the United States under 17 U.S.C. §§ 104(b)(1) and (2).

74. Plaintiff now owns the copyright to *Willy the Wizard* in his capacity as Trustee of the Jacobs Estate.

75. Defendant, without Plaintiff's authorization or consent, has reproduced, distributed, offered for sale, sold and continues to sell, copies of the book *Goblet*, which is substantially similar to the protectable expression in Plaintiff's copyrighted work *Willy the Wizard*, thereby infringing Plaintiff's exclusive rights under copyright in *Willy the Wizard* in violation of the United States Copyright Act, 17 U.S.C. § 501.

76. Defendant's infringement of Plaintiff's exclusive rights in Plaintiff's work *Willy the Wizard* has caused Plaintiff damage, and has enabled Defendant to profit illegally therefrom.

77. Defendant's conduct has caused and will continue to cause irreparable injury to Plaintiff unless enjoined by the Court. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Scholastic as follows:

A. Scholastic, and each of its officers, directors, servants, employees, agents, licensees, attorneys, successors, affiliates, parents, subsidiaries, and assigns, and any and all persons in active concert or participation with any of them who receive notice of such judgment directly or otherwise, be permanently enjoined, from infringing the copyright of Plaintiff, including, without limitation, by publishing, printing, reproducing, distributing, displaying, advertising, promoting, offering for sale, and/or selling the infringing book *Goblet*, or any other materials copied or derived from *Willy the Wizard*;

B. Scholastic, at its own expense, be ordered to deliver up to Plaintiff for destruction all copies of the *Goblet* in its possession or control including, without limitation, all inventory of *Goblet* and any derivative works;

C. Scholastic, at its own expense, be directed to recall *Goblet* and any other works that copy, or are otherwise derived from, *Willy the Wizard*, as well as all advertising and promotional materials concerning such works, from any distributors, retailers, vendors, or others to whom such works have been sold or distributed, and that Scholastic destroy or deliver up to Plaintiff for destruction all works returned to them;

D. That Scholastic be ordered to account to Plaintiff for, and disgorge and pay to Plaintiff, all the gains, profits, savings, and advantages realized by Scholastic from its acts of copyright infringement described above pursuant to 17 U.S.C. § 504(b);

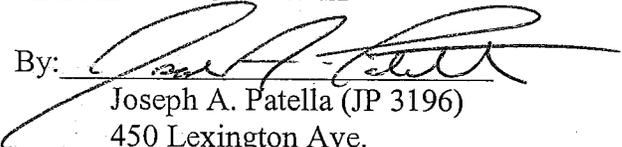
E. That Plaintiff be awarded its costs pursuant to 17 U.S.C. § 505; and

F. That Plaintiff be granted such other relief as the Court may consider equitable, just and proper.

Date: New York, New York
July 13, 2010

Respectfully submitted,

ANDREWS KURTH LLP

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