

LAW OFFICE OF RHETT O. MILLSAPS II
Rhett O. Millsaps II (RM1336)
745 Fifth Avenue, Suite 500
New York, NY 10151
Phone: (646) 535-1137
Fax: (646) 355-2816
Email: rhett@rhettmillsaps.com

Attorneys for Plaintiff Great Minds

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

GREAT MINDS,

Plaintiff,

v.

FEDEX OFFICE AND PRINT SERVICES, INC.,

Defendant.

Case No. 16-CV-1462

ECF CASE

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff Great Minds, by its undersigned counsel, for its complaint against defendant FedEx Office and Print Services, Inc. (“FedEx”), hereby alleges, on knowledge as to its own conduct and otherwise on information and belief, as follows:

NATURE OF THE ACTION

1. This action arises from defendant FedEx’s willful and blatant infringement of Great Minds’ intellectual property rights in certain non-profit educational materials created and owned by Great Minds, namely materials constituting Great Minds’ *Eureka Math* curriculum (the “Materials”), in violation of the U.S. Copyright Act. FedEx, being fully aware of Great Minds’ rights in and to the Materials, is misappropriating those rights by reproducing the Materials for profit despite Great Minds’ repeated notices that FedEx has no authorization or license to do so.

2. Thus, Great Minds has no choice but to file this lawsuit seeking injunctive relief and damages it has suffered as a result of FedEx's activities constituting copyright infringement under the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*

PARTIES

3. Plaintiff Great Minds is a 501(c)(3) non-profit educational organization duly organized and existing under the laws of Washington, D.C. with its principal place of business at 55 M Street SE, Washington, DC.

4. Defendant FedEx is a Texas corporation with its principal place of business at 13155 Noel Road, Suite 1600, Dallas, Texas. Upon information and belief, FedEx owns and operates approximately 1800 stores throughout the United States – including but not limited to stores in Michigan and New York – that provide, among other things, printing, duplication, and binding services to the public.

JURISDICTION

5. This action asserts claims arising under the Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 *et seq.* This Court has federal question jurisdiction over these claims pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331, 1338(a), and 1338(b).

6. This Court has personal jurisdiction over FedEx because it conducts substantial business in the State of New York, has infringed Great Minds' copyrights in the State of New York, and has purposefully targeted its activities to and has systematically transacted, done, and solicited business in this District.

7. Venue is proper in this Court under 28 U.S.C. § 1391(b) because FedEx operates stores in this District, has infringed Great Minds' copyrights in this District, and a substantial part of the events or omissions giving rise to Great Minds' claims occurred in this District.

Venue additionally is proper in this District under 28 U.S.C. § 1400(a) because FedEx resides or may be found in this District.

FACTUAL ALLEGATIONS

8. Great Minds is a Washington, D.C. based non-profit 501(c)(3) organization established in 2007 that seeks to ensure that all students, regardless of their circumstance, receive a content-rich education in the full range of the liberal arts and sciences, including English, mathematics, history, the arts, science, and foreign languages. Great Minds (formerly Common Core, Inc.) works with teachers and scholars to create instructional materials, conduct research, and promote policies that support a comprehensive and high-quality education in America's public schools.

9. As a central component of this mission, Great Minds so far has created: curriculum maps for English Language Arts for grades K-12, which Great Minds is developing into a comprehensive curriculum that will be previewed this summer; curriculum maps for U.S. and World history for grades K-5; and the Materials – a comprehensive math curriculum, *Eureka Math*, for grades PreK-12. More than 60,000 educators around the country have begun using Great Minds' curricula, and in the last three years the states of New York and Tennessee have adopted the Materials for use as their math curriculum.

10. Great Minds owns copyright registrations in the Materials, which are listed in the chart attached hereto as Exhibit A.

11. Great Minds itself publishes and sells book version of the Materials and uses the proceeds from those sales to advance Great Minds' non-profit, educational mission.

12. Great Minds also makes the Materials available for any member of the public to “reproduce and Share . . . in whole or in part, for NonCommercial purposes only” under a

Creative Commons Attribution – Non Commercial – Share Alike 4.0 International Public License (the “License,” a copy of which is attached hereto as Exhibit B). Great Minds’ public licensing of its *Eureka Math* curriculum under this Creative Commons license advances Great Minds’ mission and benefits the public by allowing teachers, students, and school districts to freely share, reproduce, and use the Materials for their non-commercial, educational benefit.

13. The License makes clear, however, that Great Minds retains its copyright rights to commercial use and reproduction of the Materials. The License states:

To the extent possible, the Licensor waives any right to collect royalties from You for the exercise of the Licensed [*i.e.*, noncommercial] Rights, whether directly or through a collecting society under any voluntary or waivable statutory or compulsory licensing scheme. **In all other cases the Licensor expressly reserves any right to collect such royalties, including when the Licensed Material is used other than for NonCommercial purposes** (emphasis added).

14. This explicit limitation of the License to noncommercial use requires that commercial print shops, like FedEx, negotiate a license and pay a royalty to Great Minds if they wish to reproduce the Materials for commercial purposes – *i.e.*, their own profit – at the request of their customers. Thus, this limitation benefits Great Minds and the public, too, by providing Great Minds with additional financial resources to develop new curricula, which in turn can be made available nationwide for free, noncommercial use, and otherwise to further its educational mission.

15. Great Minds would not make the Materials or its other curricula materials available to the public for free, noncommercial use if in doing so it gave up its right to charge a royalty for commercial reproduction of its materials. Indeed, Great Minds has entered royalty-bearing licenses with other third parties for commercial reproduction of the Materials, and the revenues that Great Minds collects from licensees authorized to reproduce the Materials for profit supports Great Minds’ continual improvement of its existing curriculum and development

of new curriculum.

16. In or around October 2015, Great Minds discovered that at least one FedEx store in Michigan had reproduced the Materials for profit – a commercial use – without authorization or license from Great Minds.

17. Great Minds, through its counsel, wrote to FedEx on October 27, 2015 to advise FedEx that its activities had exceeded the bounds of the License and violated Great Minds' copyright rights in and to commercial uses of the Materials. Great Minds demanded that FedEx either enter a royalty-bearing license with Great Minds or cease such commercial reproduction of the Materials going forward.

18. FedEx, through its counsel, responded by letter dated December 3, 2015. Despite the plain language of the License granting members of the public the right to use the Materials for free for noncommercial purposes only, FedEx asserted that its duplication of the Materials for its own profit was lawful because FedEx was assisting school districts in their noncommercial use of the Materials. FedEx accordingly refused to negotiate a license with Great Minds for commercial reproduction rights in the Materials or to cease such commercial use.

19. In or around February 2016, Great Minds discovered that at least one FedEx store in or around Suffolk County, New York also had reproduced the Materials for profit without authorization or license from Great Minds.

20. Great Minds, through its counsel, again wrote to FedEx on March 9, 2016 to correct FedEx's mistaken view of its rights under the License and to renew Great Minds' demand that FedEx negotiate a commercial license or cease all commercial reproduction of the Materials.

21. In a telephone call on March 23, 2016, FedEx's counsel informed Great Minds,

through its counsel, that FedEx would neither pay a royalty to Great Minds for its commercial reproduction of the Materials nor cease its commercial reproduction because, in FedEx's view, FedEx is merely acting as an agent for school districts in assisting them with their lawful activities under the License.

COUNT ONE – COPYRIGHT INFRINGEMENT
(17 U.S.C. §§ 101 et seq)

22. Great Minds incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth in this paragraph.

23. By its actions alleged above, FedEx has infringed and will continue to infringe Great Minds' copyrights in the Materials by reproducing the Materials for profit without authorization or license from Great Minds.

24. Great Minds is entitled to an injunction restraining FedEx, its agents, employees, and all persons acting in concert with them, from engaging in any further such acts in violation of the Copyright Act.

25. Great Minds is further entitled to recover from FedEx, at Great Minds' election, either (a) the damages it has sustained and will sustain, and any gains, profits, and advantages obtained by FedEx as a result of its acts of infringement as alleged above, or (b) statutory damages for FedEx's willful infringement of its copyrights in the Materials.

26. In light of FedEx's willful and flagrant violation of Great Minds' copyrights, Great Minds also is entitled to recover from FedEx Great Minds' reasonable attorneys' fees and other costs of the action.

JURY TRIAL DEMAND

Plaintiffs hereby request a trial by jury on all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Great Minds respectfully demands:

A. That the Court find that defendant has infringed plaintiff's copyrights in the Materials;

B. That the Court find that defendant will continue to infringe plaintiff's copyrights unless permanently enjoined from doing so;

C. That the Court enter a permanent injunction restraining defendant, and its agents, servants, employees, attorneys, successors and assigns, and all persons, firms, and corporations acting in concert with them, from directly or indirectly infringing plaintiff's copyrights, including but not limited to continuing to manufacture, reproduce, distribute, market, advertise, promote, solicit, or accept orders for, sell, or offer for sale the Materials and from participating or assisting in any such activity;

D. That the Court order that an accounting be made for all profits, income, receipts, or other benefit derived by defendant from the reproduction, copying, display, promotion, distribution, or sale of materials that improperly or unlawfully infringe upon plaintiff's intellectual property rights;

E. That the Court enter judgment for plaintiff and against defendant, at Great Minds election, either (i) for plaintiff's actual damages according to proof, and for any profits attributable to infringements of plaintiff's copyrights according to proof, or (ii) for statutory damages based upon defendant's acts of infringement pursuant to the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*;

F. That the Court grant an award of plaintiff's costs and disbursements of this action, including reasonable attorneys' fees, pursuant to 15 U.S.C. § 505; and

G. That the Court grant such other, further, and different relief as the Court deems just and proper.

Dated: March 24, 2016
New York, New York

Respectfully submitted:

LAW OFFICE OF RHETT O. MILLSAPS II



Rhett O. Millsaps II (RM1336)
745 Fifth Avenue, Suite 500
New York, NY 10151
Phone: (646) 535-1137
Fax: (646) 355-2816
Email: rhett@rhettmillsaps.com

Attorneys for Plaintiff Great Minds