

Judge Casey

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

04 CV 7604

THE ASSOCIATION OF AMERICAN
UNIVERSITY PRESSES, INC.;
THE PROFESSIONAL/SCHOLARLY
PUBLISHING DIVISION OF THE
ASSOCIATION OF AMERICAN
PUBLISHERS, INC.;
PEN AMERICAN CENTER, INC.; and
ARCADE PUBLISHING, INC.,

Plaintiffs,

- against -

THE OFFICE OF FOREIGN ASSETS
CONTROL OF THE DEPARTMENT OF THE
TREASURY; JOHN W. SNOW, SECRETARY
OF THE TREASURY, in his official capacity;
and R. RICHARD NEWCOMB, DIRECTOR,
OFFICE OF FOREIGN ASSETS CONTROL,
in his official capacity,

Defendants.

Civ. No. 04-7604

ORDER TO SHOW CAUSE

Upon the Declarations of John G. Ackerman, dated September 22, 2004, William Breichner, dated September 21, 2004, Marc H. Brodsky, dated September 21, 2004, Edward J. Davis, dated September 24, 2004, Janet Francendese, dated September 13, 2004, Peter Givler, dated September 21, 2004, Scott Mahler, dated September 21, 2004, Daniel J.J. Ross, dated September 9, 2004, Salman Rushdie, dated September 22, 2004, Richard Seaver, dated September 22, 2004, and W. Edwin Sharp, dated September 3, 2004; the Complaint herein; and the Plaintiffs' Memorandum of Law in Support of their Motion for Preliminary and Permanent Injunctions; and for good cause having been shown, it is hereby

ORDERED that Defendants show cause, before this Court, ~~in the Courthouse located at~~
~~500 Pearl Street, New York, New York, 10007, on _____, 2004, at ___ o'clock ___,~~
why an Order should not be entered:

1. Pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, granting to Plaintiffs the following declaratory and injunctive relief:

- a. a declaration that sections 500.206(c), 515.206(a)(2), 538.211(c)(2), and 560.210(c)(2), and the second sentences of §§ 500.550(b) and 515.545(b) of the information regulations of the Defendant Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") in Title 31 of the Code of Federal Regulations violate the Trading With the Enemy Act ("TWEA"), 50 U.S.C. App. §§ 1-40, and the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1701-06, as amended by the Berman Amendment and the Free Trade in Ideas Amendment;
- b. a declaration that sections 500.206(c), 515.206(a)(2), 538.211(c)(2), and 560.210(c)(2), and the second sentences of §§ 500.550(b) and 515.545(b) of Title 31 of the Code of Federal Regulations abridge the freedoms secured by the First Amendment to the Constitution;
- c. a declaration that sections 500.206(c), 515.206(a)(2), 538.211(c)(2), and 560.210(c)(2), and the second sentences of §§ 500.550(b) and 515.545(b) of Title 31 of the Code of Federal Regulations violate the First and Fifth Amendments of the Constitution because they are unconstitutionally vague;
- d. a declaration that 31 C.F.R. § 501.801, to the extent that it applies to information and informational materials exempted from regulation by the Berman

Amendment and the Free Trade in Ideas Amendment, imposes an unconstitutional prior restraint on speech and press; and

- e. a preliminary and permanent injunction enjoining OFAC from enforcing sections 500.206(c), 515.206(a)(2), 538.211(c)(2), and 560.210(c)(2), and the second sentences of §§ 500.550(b) and 515.545(b) of Title 31 of the Code of Federal Regulation and any other sections of the same title that regulate information or informational materials exempted from regulation by the Berman Amendment and the Free Trade in Ideas Amendment;
2. Consolidating the determination of this motion with the resolution on the merits of this action, pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure;
 3. In the event a determination of this motion for a preliminary injunction is not consolidated with the resolution on the merits, and a preliminary injunction is entered, enjoining OFAC from enforcing sections 500.206(c), 515.206(a)(2), 538.211(c)(2), and 560.210(c)(2), and the second sentences of §§ 500.550(b) and 515.545(b) of Title 31 of the Code of Federal Regulation and any other sections of the same title that regulate information or informational materials exempted from regulation by the Berman Amendment and the Free Trade in Ideas Amendment, with respect to any activities undertaken pending resolution on the merits of this action;
 4. Granting Plaintiffs their attorneys' fees and related costs in this action and such additional relief as the Court deems just and proper; and it is further

ORDERED that answering papers, if any, shall be received by Plaintiffs' counsel Davis

Wright Tremaine LLP, 1633 Broadway, New York, New York 10019, by no later than 5 p.m. on

October 18, 2004, and reply papers shall be served by Plaintiffs by 5 p.m. on November 1.

2004; and it is further ordered that service of this Order and supporting papers upon David N. Kelly, Esq., United States Attorney, Southern District of New York (Attn: Civil Process Clerk), 86 Chambers Street, New York, New York 10007, with copies by overnight delivery to the United States Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, DC 10220, and the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530-0001, be deemed good and sufficient service.

It is further ordered that Defendants shall inform plaintiffs and the Court by October 4, 2004 whether they agree to consolidate determination of the preliminary injunction with resolution on the merits. After being so informed, the Court will set a hearing date or conference as necessary.

Richard Casey
 U.S.D.J.

Dated: New York, New York
 September 27, 2004