

FEDERAL COURT

BETWEEN:

HIS HIGHNESS PRINCE KARIM AGA KHAN

Plaintiff

- and -

**NAGIB TAJDIN, ALNAZ JIWA, JOHN DOE and DOE CO. and all other persons
or entities unknown to the Plaintiff who are reproducing, publishing, promoting
and/or authorizing the reproduction and promotion of the Infringing Materials**

Defendants

WRITTEN REPRESENTATIONS IN REPLY
(Plaintiff's Rule 369 Motion for Judgment)

1. These are the Written Representations of the Plaintiff in reply to the Respondents' Written Representations.
2. On February 17, 2011, the Respondent (Defendant Alnaz Jiwa) served Respondents' Written Representations in this matter. Respondent (Defendant) Nagib Tajdin has indicated by letter also dated February 17, 2011 that he would rely on the written submissions of Mr. Jiwa.
3. It appears that the issues in dispute relate to paragraphs 5, 6 and 7 of the Draft Judgment attached to the Plaintiff's motion record.

Paragraph 5

4. The Defendants object to paragraph 5. Paragraph 5 seeks to implement the court's order that a permanent injunction should issue to prevent the Defendants from infringing the Plaintiff's copyright. The Defendant's proposed order does not refer to infringement but only publishing and distribution. Infringement includes production and reproduction, and also includes making a sound recording, communicating the work to the public by telecommunication, translating, selling or distributing works, by way of trade exposing or offering for sale or rental, possessing for the purpose of doing any of those acts and includes all the other specific acts reserved to the copyright owner by section 4 and section 27 of the Copyright Act. The proposed draft judgment simply seeks to incorporate specific language to spell out many of the specific things that are included in copyright infringement. Given the behaviour of the Defendants so far, the Plaintiff submits that this specificity is more than justified. The Defendant's proposed draft paragraph 5 does not grant an injunction which includes all of the prohibitions encompassed by infringement and does not even mention infringement.

Paragraph 6

5. The reasons for judgment refer to delivery up of all copies of the infringing material. The Plaintiff's proposed order for delivery up specifically refers only to the Golden Edition and materials that formed part of the Golden Edition or were used to create the Golden Edition. In the Plaintiff's proposed draft judgment Farmans and Talikas are defined in paragraph one as the Farmans and Talikas "contained" in the Golden Edition. In the change proposed by the Defendants, it appears that the Defendants will not deliver up the individual Farmans and Talikas which they assembled for inclusion in the Golden Edition thus in effect keeping separate copies of all of the infringing material. In the Plaintiff's respectful submission, this would not give effect to the intent of the reasons for judgment.

Paragraph 7

6. Paragraph 7 seeks to refer the whole matter of damages to a reference. The summary judgment motion only dealt with liability. The Defendants agree to a reference for damages but not to a procedure to determine the amount of damages or whether an accounting of profits is an appropriate measure of damages. The Plaintiff has a right to pursue damages or profits after an appropriate determination of the quantum of sales and the profits made by the defendants. During the cross-examinations in the summary judgment motion, the Defendants have consistently refused to provide financial information concerning the number of books sold and the profits made from the sales of those books. Therefore discovery is appropriate.

Paragraph 8

7. It appears that the parties are in substantial agreement with this paragraph. The Plaintiff is not seeking costs of more than \$30,000. The only proposed difference between the Defendants' version and the Plaintiff's version is that the costs would be paid directly to the Plaintiff rather than the AKDN Foundation. This change arises because of the Court's concern that costs could not be paid to a third party.

Paragraph 9

8. There does not appear to be any disagreement over this paragraph, only its location in the draft judgment.

Costs of this motion

9. On January 27, 2011, the Plaintiff sent a draft judgment to the Defendants. On January 31, 2011, Mr. Tajdin replied rejecting much of the draft judgment. By the morning of February 7, we had not heard from Mr. Jiwa and it was clear that there would be no agreement on the form and content of the draft judgment, at least with Mr. Tajdin. Therefore the Plaintiff brought the current motion. As can be seen by Mr. Jiwa's response, the Plaintiff was justified in its belief that

agreement would not be reached voluntarily. Therefore the Plaintiff asks for the costs of this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

this 22nd day of February, 2011.

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Solicitors for His Highness
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TO: THE ADMINISTRATOR
FEDERAL COURT

AND TO: NAGIB TAJDIN
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AND TO: ALNAZ JIWA
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