

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

DYNASTUDY, INC.

*Plaintiff,*

v.

HOUSTON INDEPENDENT  
SCHOOL DISTRICT

*Defendant.*

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Case No. 4:16-cv-01442  
JURY DEMAND

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**COMPLAINT**

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Plaintiff DynaStudy, Inc. (“DynaStudy”) files this Complaint against Defendant Houston Independent School District (“Defendant”) and alleges as follows:

**PARTIES**

1. Plaintiff DynaStudy, Inc. is a small private company incorporated in the state of Texas with its principal place of business located at 1401 Broadway Street, Suite 100, Marble Falls, Texas 78654.

2. Defendant Houston Independent School District is a public independent school district located in Harris County, Texas, and may be served with process by serving its Superintendent of Schools.

**JURISDICTION AND VENUE**

3. This is an action for copyright infringement in violation of the Copyright Act (17 U.S.C. § 501 et seq.), violations of the Digital Millennium Copyright Act (“DMCA”) (17 U.S.C. § 1201 et seq.), trademark infringement and counterfeiting in violation of the Lanham Act § 32 (15 U.S.C. § 1114), false designation of origin and

trademark infringement in violation of the Lanham Act § 43(a) (15 U.S.C. § 1125(a)), and related causes of action arising from Defendant's unlawful use of DynaStudy's copyrights and trademarks arising under federal and state law.

4. This court has subject matter jurisdiction over the claims set forth in this Complaint pursuant to 28 U.S.C. §§ 1331 and 1338, and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a).

5. Venue in this action lies within this Court pursuant to 28 U.S.C. §§ 1391 and 1400(a) because Defendant resides in this judicial district. Additionally, all or part of the events, acts or omissions giving rise to the claims, including acts of infringement, occurred in this judicial district in which Defendant is subject to personal jurisdiction.

### **BACKGROUND**

6. DynaStudy is one of Texas' leading educational publishing companies. For years, DynaStudy has been dedicated to continually providing teachers with the highest-quality products and materials in order to help serve thousands of students in furtherance of their educational goals. Although it is a small MWBE/HUB/SB-certified private company, DynaStudy is the dominant provider of TEKS-aligned student course notes to public schools across Texas.

7. DynaStudy creates student course notes for a variety of subjects and grade levels. The intended use is as a reference during the school year and, before unit tests and standardized assessments, as a study aid. All course notes are designed using the Texas Education Agency's publication of the eligible TEKS for that grade and subject as the starting point. Unlike many other products that are produced for teacher reference, planning, and professional development purposes, DynaNotes student course notes are

designed specifically for student use. As such, these research-based features are heavily utilized in the design:

**(1) text organization** (clear titles and subtitles, logical flow given the standards within each category or, for history, era, standard font variations for different types of information, etc.);

**(2) graphic organization** (most information is not delivered in sentence or paragraph format; instead tables, diagrams, bulleted lists, example boxes, etc. are used);

**(3) vocabulary development/reinforcement** (many students and especially English Language Learners only hear academic vocabulary at school, so verbally and visually exposing students to it as many times as possible is a critical task for educators – ideally when the student is interested in a specific piece of information in order to successfully complete a higher-order thinking activity; vocabulary terms are included and emphasized via font treatment within the concise sections of content in logical order – not in an alphabetical/content-illogical order, such as is common with glossaries; while all required academic vocabulary should be found in the course notes, the remaining language consists of simple syntax and wording to straightforwardly convey meaning or provide explanation);

**(4) relevant content only/concise treatment** (notes are laser focused on required knowledge and relevant examples to demonstrate first-order application; others have worked hard to put together 30- to 60-page review packets after seeing the success that DynaNotes student course notes have

helped students achieve, but the very students who need a homework reference and study aid the most may actually use a 4-page, 6-page, or 10-page colorful DynaNotes summary and shun the 50-page black and white document, however excellent it may also be); and

**(5) colorful presentation** (while the research does not clearly show the reasons, whether it be visual interest or a neurological cause, humans understand, remember, and recall information more effectively when it is presented in color; in a sea of black and white worksheets, and often in a textbook-less environment, the need for colorful, concise, student-friendly course notes stands out).

While the concept of DynaNotes student course notes is straightforward, the creation process itself is intensely design-focused, detail-oriented, and labor-intensive. Fitting one year's worth of subject matter into as useful and clear a reference as possible for the student is an extremely difficult undertaking in which the author and designer must care deeply for the quality and usability of the final product. Many iterations are required to maximize space for the numerous examples needed to demonstrate application of the introduced knowledge and skills. In sum, organizing the detailed lessons and examples into a concise student tool is a massive undertaking that requires content knowledge, application knowledge, communication skills, graphic design skills, time, and patience. Business skills and financial resources are also required. As an example, the use of National Geographic Society NGS Maps requires a negotiated license under their own copyright. Grammar editors, content editors, and often teacher reviewers are also utilized before materials are published. Materials are printed in large quantities on sturdy

cardstock with appropriate trademark and copyright notices included as well as a protective coating applied and are inventoried for shipment upon receipt of orders from school districts across Texas and, more rarely, from outside the state.

8. Examples of DynaStudy's student course notes include DynaNotes Biology End-of-Course Review Guide, DynaNotes Chemistry End-of-Course Review Guide, and DynaNotes Physics End-of-Course Review Guide.

9. DynaStudy markets and sells its student course notes to public schools across Texas as well as other states.

10. DynaStudy is the author and owner of the copyright in its student course notes, including those listed in Exhibit A. DynaStudy's copyrights are registered with the United States Copyright Office. As HISD has correctly noted in previous correspondence, DynaStudy owns hundreds of copyrights related to its products. The federal registration rights and common law rights in these original works are collectively referred to hereafter as the "Copyrighted Works."

11. DynaStudy's copyright registrations are currently valid, subsisting, and in full force and effect.

12. DynaStudy has taken appropriate measures to protect its copyrights and place the public on notice thereof.

13. DynaStudy is the owner of the registration for the following registered marks with the United States Patent and Trademark Office ("USPTO"):

MARK	REG. NO.	SERVICES	FIRST USE
DynaNotes®	3,196,344	Manuals in the field of reading, language arts, writing, math, science, social studies, education, and academic disciplines; paper teaching materials in the field of reading, language arts, writing, math, science, social studies, education, and academic disciplines; printed instructional, educational, and teaching materials in the field of reading, language arts, writing, math, science, social studies, education, and academic disciplines.	As early as Nov. 15, 2005

14. DynaStudy's USPTO registration is currently valid, subsisting in full force and effect, and has achieved incontestability under 15 U.S.C § 1065. A true and correct copy of DynaStudy's registration certificate is attached as Exhibit B. The federal registration rights and common law rights to the DynaNotes® trademark is referred to hereafter as the DynaNotes Mark.

15. DynaStudy has continuously used the DynaNotes Mark in interstate commerce since as early as January 1, 2006, in connection with its student course notes, and has utilized the proper trademark notice with use of, for example, the ™ symbol.

16. The DynaNotes Mark is used on a variety of advertising media, including Internet websites, training and course materials, and other advertising and promotional materials.

17. DynaStudy has invested a significant amount of time, effort, and money into developing, promoting, advertising, and maintaining the DynaNotes Mark throughout Texas and the United States over the course of many years.

18. As a result of the foregoing, the DynaNotes Mark has become widely and favorably known as identifying student course notes originating from, sponsored by, or associated with DynaStudy.

19. All of DynaStudy's Copyrighted Works bear the DynaNotes Mark.

### **GENERAL ALLEGATIONS**

20. Upon information and belief, Defendant's schools and teachers have and continue to unlawfully reproduce, distribute, adapt, and publicly display DynaStudy's Copyrighted Works. DynaStudy has uncovered a number of infringing acts, including, but not limited to, those described in the following paragraphs.

21. Upon information and belief, in 2012 Mr. Dennis Huffman at Lanier Middle School posted a nearly-identical copy of DynaStudy's Grade 8 Science for STAAR guide online for anyone to download.

22. Upon information and belief, Mr. Huffman knew that he could not copy DynaStudy's Copyrighted Works because the works prominently state that "COPYING THIS MATERIAL IS STRICTLY PROHIBITED."

23. On November 1, 2012, DynaStudy contacted Defendant's assistant general counsel David Galbraith regarding this infringing activity. Exhibit C. David Galbraith stated that Mr. Huffman received the copyrighted material "from someone by email." *Id.* However, such a response did not absolve or even address the issue of infringement related to DynaStudy's intellectual property.

24. Upon information and belief, in 2013 Mr. Thomas Dohoney at Westside High School plagiarized a significant portion of DynaStudy's Physics EOC and Chemistry EOC student course notes and then posted these unauthorized derivative works online for anyone to download. Exhibit D. These derivative worked bared the

DynaNotes Mark but DynaStudy's copyright notices were removed. *See id.*

25. Upon information and belief, Mr. Dohoney knew that he could not copy DynaStudy's Copyrighted Works because the works prominently state that "COPYING THIS MATERIAL IS STRICTLY PROHIBITED."

26. Upon information and belief, Mr. Dohoney had access to the Copyrighted Works because Westside High School purchased a 30-pack of the Physics EOC and Chemistry EOC student course notes on or around January 15, 2013. Exhibit E.

27. Upon information and belief, in 2014 Ms. Marla Maharaj at DeBakey High School posted a full version of DynaStudy's Biology EOC student course notes online. Exhibit F.

28. Upon information and belief, Ms. Maharaj knew that she could not copy DynaStudy's Copyrighted Works because the works prominently state that "COPYING THIS MATERIAL IS STRICTLY PROHIBITED."

29. Upon information and belief, Ms. Maharaj had access to the Copyrighted Works because DeBakey High School purchased the Chemistry EOC student course notes on or around February 18, 2013, but not the Biology EOC student course and, despite knowledge that DynaStudy's products could not be copied, chose to infringe DynaStudy's intellectual property related to its Biology EOC course. Exhibit G.

30. Upon information and belief, in 2014 Ms. Nicole DiLuglio at the High School for the Performing and Visual Arts posted the DynaNotes Biology EOC online for anyone to download. Exhibit H.

31. Upon information and belief, Ms. DiLuglio knew that she could not copy DynaStudy's Copyrighted Works because the works prominently state "COPYING THIS



MATERIAL IS STRICTLY PROHIBITED.”

32. According to DynaStudy’s records, the High School for the Performing and Visual Arts has never purchased any copy of the DynaStudy’s Biology EOC student course notes.

33. On May 1, 2014, DynaStudy communicated with Defendant’s assistant general counsel David Galbraith regarding this infringing activity. Exhibit H. David Galbraith brushed aside such flagrant infringement and merely stated that Ms. DiLuglio received the copyrighted material “from a colleague.” *Id.*

34. On July 28, 2015, counsel for DynaStudy contacted counsel for Defendant regarding Defendant’s infringing activity, and sought to resolve this matter in an amicable fashion.

35. On August 27, 2015, counsel for DynaStudy again contacted counsel for Defendant in an effort to resolve this matter.

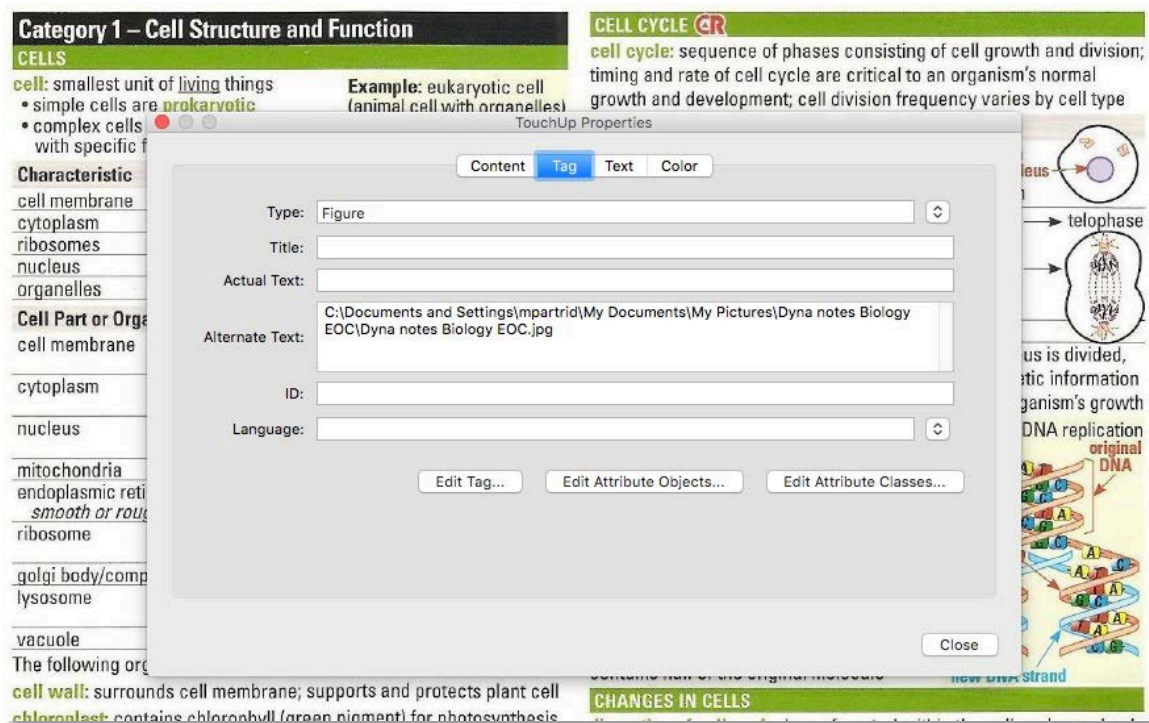
36. On September 25, 2015, counsel for Defendant responded to DynaStudy’s efforts denying any wrong-doing and without making any effort to resolve this matter.

37. In October of 2015, DynaStudy discovered a number of additional infractions. For example, upon information and belief, it discovered that Ms. Amanda Schultz-Weaver, while employed as a biology teacher at Reagan High School, posted a copy of DynaStudy’s Biology EOC student course notes with DynaStudy’s copyrights and trademarks removed.

[illegible]

39. Upon information and belief, the metadata also shows that the PDF was created from a series of scanned images stored in the following directory: “C:\Documents and Settings\mpartrid\My Documents\My Pictures\Dyna notes Biology eoc\.”

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***PDF Metadata Showing Source Image File***

41. Upon information and belief, the “mpartrid” directory and subdirectories are Michael Partridge’s directories, who on information and belief, is a biology teacher at J.H. Reagan High School (one of Defendant’s schools). DynaStudy’s records indicate that Defendant’s employee, Mr. Partridge, never purchased Biology EOC Student Course.

42. Upon information and belief, Michael Partridge removed DynaStudy’s copyrights and trademarks from its Copyrighted Works before distributing this work online as well as to his colleagues and students without regard for DynaStudy’s intellectual property rights.

43. Upon information and belief, the copy of DynaStudy’s student course notes posted by Michael Partridge was copied and reposted by additional school districts and organizations, including, for example, Aldine ISD, Alief ISD, Austin ISD, Clear

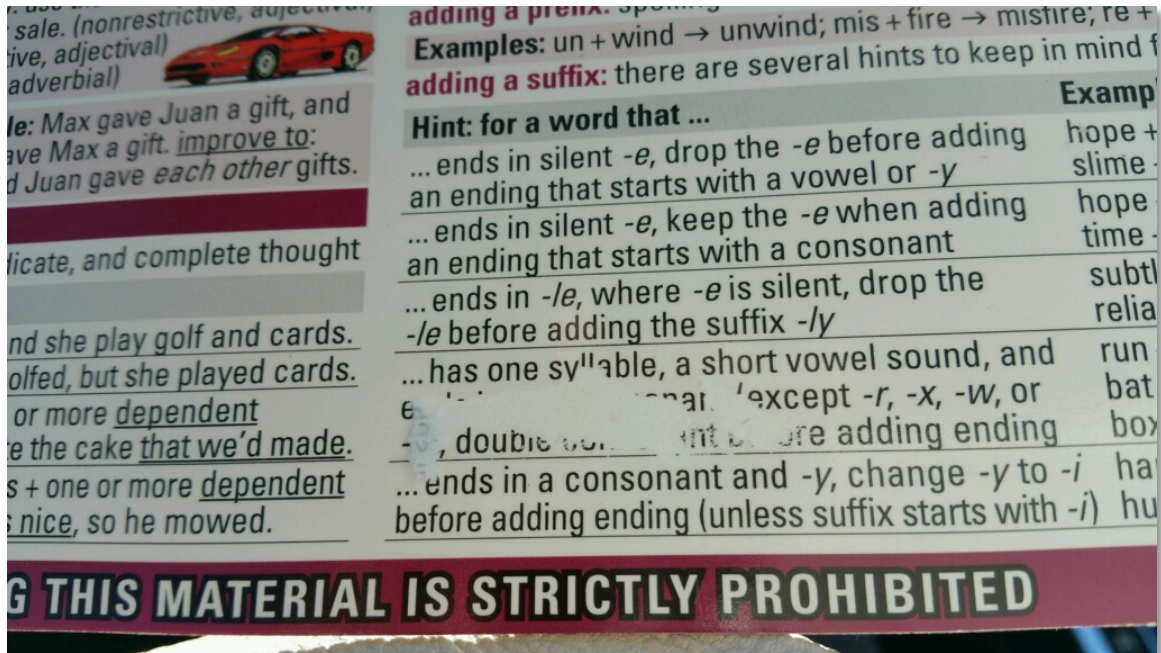
Creek ISD, Coppell ISD, Georgetown ISD, Humble ISD, Judson ISD, Lago Vista ISD, Magnolia ISD, Midland ISD, Mineral Wells ISD, Tulo-so-Midway ISD, Tyler ISD, the Kankakee Valley School Corporation, the Association for Middle Level Education, the Heard Natural Science Museum, and the Texas Association for Supervision and Curriculum Development.

44. Upon information and belief, DynaStudy's sales representative Suzie Williams met with Ms. Jacqueline Thompson and several other administrators at Yates High School around February 2016 to showcase DynaStudy's student course notes. Yates High School is one of Defendant's schools.

45. Upon information and belief, Ms. Thompson asked DynaStudy to leave some example course notes so that other teachers could look at them after the meeting, assuring Ms. Williams that the materials would not be copied.

46. Upon information and belief, when Ms. Williams returned to retrieve DynaStudy's Copyrighted Works, one of the works had paper taped to the bottom covering up the language stating that "COPYING THIS MATERIAL IS STRICTLY PROHIBITED." When DynaStudy questioned HISD's administrator, Ms. Thompson, about the tape covering up the copy warning, Ms. Thompson peeled off the tape in front of DynaStudy and professed to not know who copied the Copyrighted Works. Such a response demonstrated that even high-level administrators were and continue to intentionally infringe DynaStudy's intellectual property.





*DynaNotes with Tape Damage*

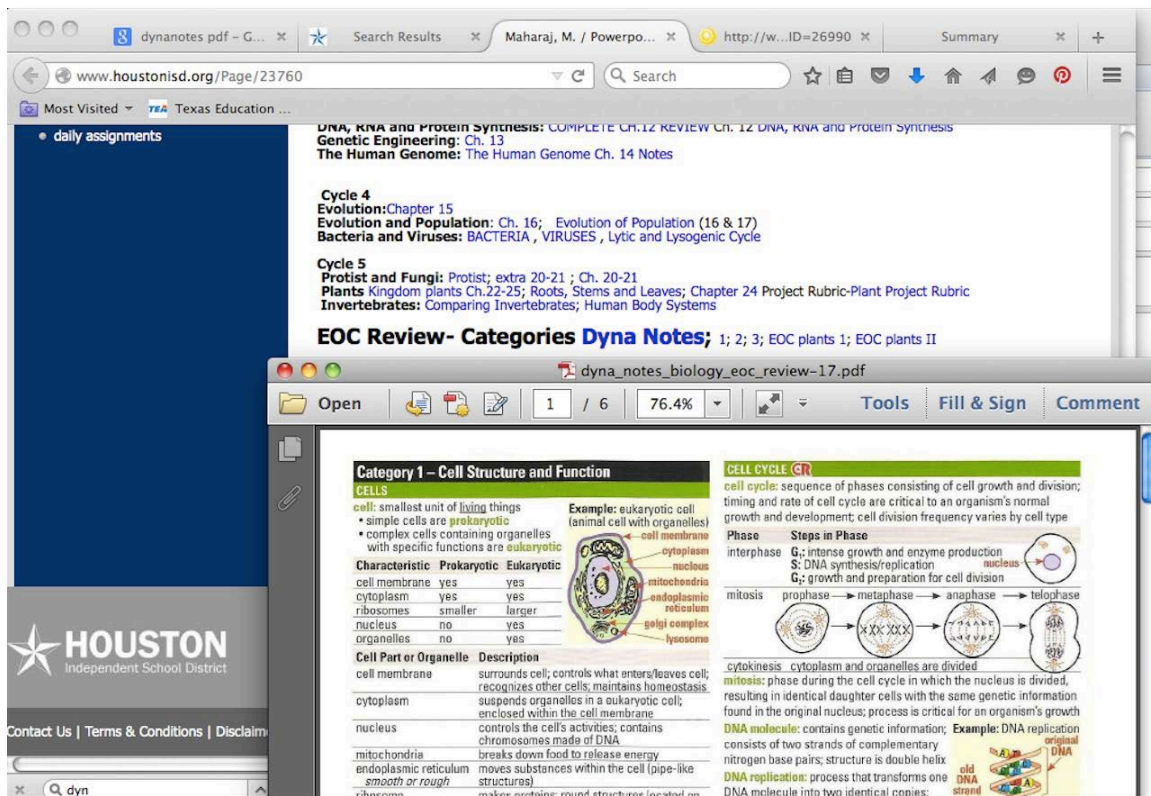
47. Upon information and belief, although Ms. Thompson did not identify who copied DynaStudy's Copyrighted Works, she did not deny that the works had been copied.

48. On April 4, 2016, counsel for DynaStudy again contacted counsel for Defendant regarding Defendant's infringing activity, requested confirmation that a litigation hold was put in place when DynaStudy's counsel first contacted Defendant on July 28, 2015, and sought to resolve this matter.

49. Defendant responded to DynaStudy's correspondence on April 29, 2016, and despite DynaStudy's request to confirm whether a litigation hold has been put in place, Defendant failed to confirm that a litigation hold has been initiated. Defendant also stated it had taken "precautionary measures" to prevent future infringement, but failed to provide any detail as to these "precautionary measures." On information and belief, the administrators at Yates High School, including Ms. Thompson, would have received

notice of the alleged “precautionary measures” installed by Defendant, yet such alleged “precautionary measures” did not stop the infringement of DynaStudy’s materials with regards to Yates High School in February 2016. In sum, DynaStudy in good faith has attempted to reach an amicable solution to stop Defendant’s continuous infringement of its materials since 2012, but Defendant has failed to address any of DynaStudy’s concerns.

50. In its April 29, 2016, correspondence, Defendant contends that no evidence exists that shows DynaStudy’s materials were ever accessed via Defendant’s websites. Such a statement demonstrates Defendant has whole-heartedly failed to properly evaluate the evidence and Defendant’s own actions in this matter. To be clear, the following demonstrates that DynaStudy’s materials could be and were accessed through Defendant’s website:



***Copy of Biology EOC Course Notes Posted on Defendant's Website (7/9/2015)***

51. In its April 29, 2016 correspondence, Defendant's counsel, without any support, claims: "DynaStudy's works do no [sic] possesses [sic] even the minimal degree of creativity necessary to give rise to copyright protection." This statement was made despite Defendant's acknowledgement that DynaStudy owns and possesses over 200 copyright registrations related to its products as well as numerous trademarks. However, the Copyright laws of the United States clearly protect DynaStudy's materials as protection is provided to literary works, pictorial works, and graphic works, all of which are encompassed in DynaStudy's Copyrighted Works. *See* 17 U.S.C. 102. In addition, even compilations of facts are protected by United States Copyright laws: "[t]he subject matter of copyright as specified by section 102 includes compilations and derivative works . . . ." 17 U.S.C. 103(a). To be clear, the Copyright Act defines "compilation" to

mean “a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.” 17 U.S.C. 101. In addition, DynaStudy’s Copyrighted Works include numerous original examples as well as unique designs and organization such that students are best positioned to retain the presented materials. Thus, such an allegation is clearly erroneous given the nature of DynaStudy’s Copyrighted Works in lieu of the laws of the United States. Given the clear disregard of DynaStudy’s intellectual property by Defendant, DynaStudy is now forced to bring this lawsuit to defend its intellectual property rights and preserve its business despite its numerous efforts over several years to reach an amicable solution with Defendant.

52. Additionally, upon information and belief, Defendant’s schools and teachers are reproducing and distributing copies of DynaStudy’s Copyrighted Works with one another. In correspondence dated April 29, 2016, Defendant argues that the first sale doctrine applies to physical copies that were purchased and then placed online for distribution to anyone that has access to the Internet by its teachers. However, the first sale doctrine covers two basic principles: 1) it relates to a single tangible copy (DynaStudy’s Copyrighted Works); and 2) requires that the tangible copy be “lawfully made.” *See* 17 U.S.C. 109(a). In this instant matter and with some limited exceptions, DynaStudy’s Copyrighted Works are print copies and evidence demonstrates that Defendant has at least made unauthorized or unlawful copies of its Copyrighted Works and then chose to electronically publish the unauthorized copy on the Internet without any access control on the website. Thus, Defendant’s argument that its teachers are protected by the first sale doctrine is at direct odds with the Copyright laws of the United



States.

53. As outlined above, David Galbraith, Defendant's assistant general counsel, stated that Mr. Huffman received the copyrighted material "from someone by email." Exhibit C. David Galbraith also stated that Ms. DiLuglio received the copyrighted material "from a colleague." Exhibit H. These admissions are direct evidence confirming DynaStudy's belief that Defendant's schools and teachers are reproducing and distributing copies of DynaStudy's Copyrighted Works to one another.

54. Additionally, the metadata in the copy of the Biology EOC student course notes believed to be posted by Ms. Schultz-Weaver indicates that Michael Partridge, believed to be another one of Defendant's teachers, originally copied the document.

55. Upon information and belief, Defendant's teachers have also reproduced and distributed copies of DynaStudy's Copyrighted Works by making multiple unauthorized paper copies.

56. Upon information and belief, Defendant's schools and teachers have unlawfully reproduced, copied, adapted, and publicly displayed unauthorized copies of DynaStudy's Copyrighted Works despite being on notice of DynaStudy's copyrights.

57. Upon information and belief, Defendant had express knowledge that its schools and teachers were and are unlawfully reproducing, distributing, adapting, and publicly displaying unauthorized copies of DynaStudy's Copyrighted Works since at least 2012.

58. Upon information and belief, Defendant is not an innocent infringer and cannot avail itself of the limitation of damages provision of the Copyright Act or the DMCA.

59. DynaStudy has suffered significant damages as a result of Defendant's infringement. Defendant's infringement of DynaStudy's Copyrighted Works has resulted in numerous lost sales that DynaStudy would have otherwise made.

60. Based upon the lack of control by Defendant of its administrators, teachers, and other agents, the failure to reasonably respond to many of DynaStudy's requests to resolve these issues amicably, and general disregard for DynaStudy's intellectual property rights, DynaStudy has been forced to bring this action to preserve its intellectual property rights as well as protect those administrators and teachers who do legitimately purchase DynaStudy products from those who choose to ignore the rights of the company.

**COUNT ONE**  
**COPYRIGHT INFRINGEMENT UNDER THE COPYRIGHT ACT §§ 101 ET SEQ.**  
**(17 U.S.C. § 501 ET SEQ.)**

61. DynaStudy alleges and hereby incorporates by reference each and every allegation made in the foregoing paragraphs of this Complaint as if each were separately set forth herein.

62. DynaStudy is the sole owner of all right, title and interest to the Copyrighted Works and of all corresponding copyrights and Certificates of Registration.

63. The Copyrighted Works consist of material original to DynaStudy and each is copyrightable subject matter.

64. Defendant had access to and reproduced, distributed, adapted, and/or publicly displayed copies of DynaStudy's Copyrighted Works for financial gain and in violation of DynaStudy's copyrights.

65. Defendant incorporated identical portions of DynaStudy's Copyrighted Works into other works for financial gain and in violation of DynaStudy's copyrights.

66. Defendant created derivative works of DynaStudy's Copyrighted Works for financial gain and in violation of DynaStudy's copyrights.

67. Defendant has copied, distributed, reproduced, adapted, made derivative works of, publicly displayed, and otherwise exploited DynaStudy's Copyrighted Works without the consent or authority of DynaStudy, thereby directly infringing the Copyrighted Works.

68. Defendant's conduct constitutes infringement of the Copyrighted Works and exclusive rights under copyright in violation of 17 U.S.C. § 501 et seq.

69. The infringement of the Copyrighted Works in and to each of the Copyrighted Works constitutes a separate and distinct act of infringement.

70. The acts of infringement by Defendant have been willful, intentional, and purposeful, in reckless disregard of and with indifference to the rights of DynaStudy.

71. As a direct and proximate result of the Defendant's actions, DynaStudy has suffered damages for which DynaStudy now sues.

72. Pursuant to 17 U.S.C. § 504(b), DynaStudy is entitled to recover damages and all profits Defendant has made as a result of its wrongful conduct.

73. Alternatively, pursuant to 17 U.S.C. § 504(c), DynaStudy is entitled to statutory damages between \$750 and \$30,000 per infringed work, and up to \$150,000 per infringed work as a result of Defendant's willful and intentional conduct.

74. Pursuant to 17 U.S.C. § 505, DynaStudy requests an award of its full attorney fees and costs.

**COUNT TWO**  
**CONTRIBUTORY COPYRIGHT INFRINGEMENT**  
**(17 U.S.C. § 501 ET SEQ.)**

75. DynaStudy alleges and hereby incorporates by reference each and every

allegation made in the foregoing paragraphs of this Complaint as if each were separately set forth herein.

76. Numerous individuals and entities directly infringe DynaStudy's Copyrighted Works.

77. Defendant induced, caused, and materially contributed to the infringing acts of others by encouraging, inducing, allowing, and/or assisting other to reproduce and/or distribute DynaStudy's Copyrighted Works.

78. Defendant had knowledge of the infringing acts relating to DynaStudy's Copyrighted Works.

79. The acts and conduct of Defendant, as alleged above in this Complaint, constitute contributory copyright infringement.

80. The acts of infringement by Defendant have been willful, intentional, and purposeful, in reckless disregard of and with indifference to the rights of DynaStudy.

81. As a direct and proximate result of the Defendant's actions, DynaStudy has suffered damages for which DynaStudy now sues.

82. Pursuant to 17 U.S.C. § 504(b), DynaStudy is entitled to recover damages and all profits Defendant has made as a result of its wrongful conduct.

83. Alternatively, pursuant to 17 U.S.C. § 504(c), DynaStudy is entitled to statutory damages between \$750 and \$30,000 per infringed work, and up to \$150,000 per infringed work as a result of Defendant's willful and intentional conduct.

84. Pursuant to 17 U.S.C. § 505, DynaStudy requests an award of its full attorney fees and costs.

**COUNT THREE**  
**VICARIOUS COPYRIGHT INFRINGEMENT**  
**(17 U.S.C. § 501 ET SEQ.)**

85. DynaStudy alleges and hereby incorporates by reference each and every allegation made in the foregoing paragraphs of this Complaint as if each were separately set forth herein.

86. Numerous individuals and entities directly infringed DynaStudy's Copyrighted Works.

87. Defendant had the right and ability to control the infringing acts of the individuals or entities who directly infringed DynaStudy's Copyrighted Works.

88. Defendant obtained a direct financial benefit from the infringing activities of the individuals or entities who directly infringed DynaStudy's Copyrighted Works.

89. The acts and conduct of Defendants, as alleged above in this Complaint, constitute vicarious copyright infringement.

90. The acts of infringement by Defendant have been willful, intentional, and purposeful, in reckless disregard of and with indifference to the rights of DynaStudy.

91. As a direct and proximate result of the Defendant's actions, DynaStudy has suffered damages for which DynaStudy now sues.

92. Pursuant to 17 U.S.C. § 504(b), DynaStudy is entitled to recover damages and all profits Defendant has made as a result of its wrongful conduct.

93. Alternatively, pursuant to 17 U.S.C. § 504(c), DynaStudy is entitled to statutory damages between \$750 and \$30,000 per infringed work, and up to \$150,000 per infringed work as a result of Defendant's willful and intentional conduct.

94. Pursuant to 17 U.S.C. § 505, DynaStudy requests an award of its full attorney fees and costs.

**COUNT FOUR**  
**VIOLATION OF DMCA § 1202(B)**  
**(17 U.S.C. § 1201 ET SEQ.)**

95. DynaStudy alleges and hereby incorporates by reference each and every allegation made in the foregoing paragraphs of this Complaint as if each were separately set forth herein.

96. 17 U.S.C. § 1202(c)(1) defines copyright management information (“CMI”) to include “the information set forth on a notice of copyright.”

97. 17 U.S.C. § 1202(b) prohibits any person without the authority of the copyright holder from intentionally removing CMI, or distributing products knowing that CMI has been removed, having reasonable grounds to believe that the removal will induce infringement.

98. Defendant violated § 1202(b) when its schools and teachers intentionally removed DynaStudy’s copyright notice from at least DynaStudy’s Biology EOC student course notes.

99. Defendant violated § 1202(b) at least when its schools and teachers distributed copies of DynaStudy’s Biology EOC student course notes knowing that DynaStudy’s CMI had been removed without DynaStudy’s authority.

100. When Defendant intentionally removed DynaStudy’s CMI, Defendant had reasonable grounds to believe that the removal would induce and enable infringement.

101. Defendant’s conduct has been willful and intentionally done with full knowledge of DynaStudy’s copyright ownership and in conscious disregard of DynaStudy’s rights.

102. As a direct and proximate result of the Defendant’s actions, DynaStudy has suffered damages for which DynaStudy now sues.

103. Pursuant to the DMCA § 1203(c)(3), DynaStudy is entitled to its actual damages resulting from Defendant's DMCA violation, together with the profits it earned not already taken into account.

104. Alternatively, pursuant to the DMCA § 1203(c)(3), DynaStudy is entitled to statutory damages in the sum of not less than \$25,000 for Defendant's willfully-committed DMCA violation.

105. Pursuant to the DMCA § 1203(b)(5), DynaStudy requests an award of its full attorney fees and costs.

**COUNT FIVE**  
**TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT § 32(1)**  
**(15 U.S.C. § 1114(1))**

106. DynaStudy alleges and hereby incorporates by reference each and every allegation made in the foregoing paragraphs of this Complaint as if each were separately set forth herein.

107. Defendant has infringed DynaStudy's rights in the federally registered DynaNotes Mark in violation of 15 U.S.C. § 1114.

108. Defendant's acts constitute the use in commerce, without the consent of DynaStudy, of a reproduction, counterfeit, copy, or colorable imitation of the federally registered DynaNotes Mark to cause mistake or to deceive the public as to the sponsorship or approval of Defendant's services by DynaStudy, and therefore infringes DynaStudy's rights in the DynaNotes Mark in violation of § 32(1)(a) of the Lanham Act, 15 U.S.C. § 1114(1)(a).

109. Defendant is infringing the DynaNotes Mark with full knowledge of DynaStudy's rights, and such infringement is willful and intentional.

110. As a direct and proximate result of the Defendant's actions, DynaStudy

has suffered damages for which DynaStudy now sues.

111. Pursuant to 15 U.S.C. § 1117(a), DynaStudy is entitled to an award of actual damages, Defendant's profits, and costs based on Defendant's infringement of a federally registered mark.

112. Due to the exceptional nature of this case, and pursuant to 15 U.S.C. § 1117(a), DynaStudy also seeks its reasonable attorney fees.

**COUNT SIX**  
**COUNTERFEITING OF TRADEMARK UNDER THE LANHAM ACT §§ 32 AND 34**  
**(15 U.S.C. §§ 1114 AND 1116)**

113. DynaStudy alleges and hereby incorporates by reference each and every of the allegations made in the foregoing paragraphs of this Complaint as if each were separately set forth herein.

114. Defendant distributed identical products in connection with one or more designations that are identical to, or substantially indistinguishable from, the DynaNotes Mark.

115. Defendant's activities constitute counterfeiting of a federally registered mark under 15 U.S.C. § 1114(1) et seq.

116. Defendant's use of the infringing marks was willful, intentional, and done with the knowledge that the infringing marks are counterfeit marks, as defined in § 34(d) of the Lanham Act, 15 U.S.C. § 1116(d).

117. As a direct and proximate result of the Defendant's actions, DynaStudy has suffered damages for which DynaStudy now sues.

118. Pursuant to 15 U.S.C. § 1117(a), DynaStudy is entitled to an award of actual damages, Defendant's profits, and costs based on Defendant's counterfeiting of a federally registered mark, and requests that this award be trebled pursuant to 15 U.S.C.



§ 1117(b) as a result of Defendant's willful and intentional conduct and use of a counterfeit mark.

119. Alternatively, pursuant to 15 U.S.C. § 1117(c), DynaStudy is entitled to statutory damages between \$1,000 and \$200,000 per counterfeit mark, and up to \$2,000,000 per counterfeit mark as a result of Defendant's willful and intentional conduct.

120. Due to the exceptional nature of this case, and pursuant to 15 U.S.C. § 1117(a), DynaStudy also seeks its reasonable attorney fees.

**COUNT SEVEN**  
**STATUTORY INFRINGEMENT AND FALSE DESIGNATION OF ORIGIN UNDER THE**  
**LANHAM ACT § 43(A)**  
**(15 U.S.C. § 1125)**

121. DynaStudy alleges and hereby incorporates by reference each and every of the allegations made in the foregoing paragraphs of this Complaint as if each were separately set forth herein.

122. The DynaNotes Mark has become uniquely associated with and now identifies DynaStudy's student course notes throughout Texas and the United States.

123. DynaStudy owns federal and common law trademark rights in the DynaNotes Mark.

124. Defendant's acts constitute false designation of origin and/or false description or representation that are likely to cause confusion, or to cause mistake, or to deceive the public as to the sponsorship or approval of Defendant's services or other commercial activities by DynaStudy.

125. Defendant intentionally engaged in conduct that constitutes false designation of origin in violation of 15 U.S.C. § 1125(a).

126. Defendant's use in interstate commerce of the DynaNotes Mark is a willful attempt to trade upon DynaStudy's reputation and business goodwill and constitutes a false designation of origin and/or false or misleading description of fact. All of this is likely to lead the public into believing that this is some affiliation, connection or association between Defendant and DynaStudy when, in fact, no such affiliation or connection exists.

127. Defendant's conduct constitutes an attempt to willfully and intentionally trade on the goodwill that DynaStudy has developed in the DynaNotes Mark.

128. As a direct and proximate result of the Defendant's actions, DynaStudy has suffered damages for which DynaStudy now sues.

129. Pursuant to 15 U.S.C. § 1117(a), DynaStudy is entitled to an award of actual damages, Defendant's profits, and costs based on Defendant's actions.

130. Due to the exceptional nature of this case, and pursuant to 15 U.S.C. § 1117(a), DynaStudy also seeks its reasonable attorney fees.

**COUNT EIGHT**  
**UNFAIR COMPETITION BY MISAPPROPRIATION**

131. DynaStudy alleges and hereby incorporates by reference each and every allegation made in the foregoing paragraphs of this Complaint as if each were separately set forth herein.

132. The actions of Defendant, as described above, in reproducing, distributing, adapting, and/or publicly displaying DynaStudy's Copyrighted Works bearing its DynaNotes Mark, all of which DynaStudy developed through extensive time, skill, labor, and money constitutes unfair competition through misappropriation in violation of state and federal law.

133. Defendant has gained financial benefit for itself through use of DynaStudy's Copyrighted Works because Defendant has not been burdened with the expenses incurred by DynaStudy to develop these works.

134. As a direct and proximate result of Defendant's wrongful acts, DynaStudy believes that it has lost customers and sales.

135. Further, DynaStudy has lost the benefit of its investment of time, money, and resources in building its customer base and sales prospects.

136. Upon information and belief, Defendant continues to engage in such unfair competitive practices and the ensuing damages to DynaStudy, therefore, are continuing and unabated.

137. With regard to DynaStudy's claims for unfair competition by misappropriation, it seeks its actual damages, including all financial gain Defendant derived from its actions.

**COUNT NINE**  
**TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS**

138. DynaStudy alleges and hereby incorporates by reference each and every allegation made in the foregoing paragraphs of this Complaint as if each were separately set forth herein.

139. As more fully described above, Defendant took advantage of its relationship with DynaStudy and its access to DynaStudy's Copyrighted Works to Defendant's financial gain by reproducing, distributing, adapting, and/or publicly displaying DynaStudy's Copyrighted Works such that Defendant would not have to purchase additional copies of the works.

140. Additionally, because Defendant has posted DynaStudy's Copyrighted

Works online, other school districts and organizations can and, upon information and belief, have obtained unlawful copies. As a result, it is reasonably probable that but for Defendant's infringement, DynaStudy would have made additional sales to other school districts.

141. Defendant's interference with DynaStudy's prospective business relationships has caused damage to DynaStudy by depriving DynaStudy of profits it would otherwise have received, for which damages DynaStudy now sues.

142. With regard to DynaStudy's claims for tortious interference with prospective contractual relations, it seeks its actual damages, including all financial gain Defendant derived from its tortious interference.

#### **PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Plaintiff DynaStudy, Inc. prays that Defendant Houston Independent School District be cited to appear and answer and that after a hearing, the Court grant the following relief:

1. Order the impoundment pursuant to 17 U.S.C. §§ 503 and 509(a) of all infringing copies of the Copyrighted Works;
2. Order a permanent injunction be issued, on final trial of this cause, ordering that Defendant Houston Independent School District, any employees, representatives, agents, partners, associates, affiliates and all persons acting in concert or in active participation with Defendant be permanently enjoined from:
  - a. Any unauthorized use of the Copyrighted Works, including reproducing, distributing, adapting, and/or publicly displaying the Copyrighted Works in an unauthorized manner; and
  - b. Otherwise infringing any rights of DynaStudy.
3. Order Defendant to provide an accounting of all financial gain related to

Defendant's infringement of the Copyrighted Works in accordance with 17 U.S.C. § 504(b);

4. Enter judgment against Defendant for lost profits under the Copyright Act (17 U.S.C. § 504(b)), or alternatively, for statutory damages under § 504(c);

5. Enter judgment against Defendant for statutory damages under the DMCA (17 U.S.C. § 1203(c)(3));

6. Enter judgment against Defendant for actual damages and Defendant's profits under the Lanham Act (17 U.S.C. § 1117(a)) trebled pursuant to § 1117(b), or alternatively, for statutory damages under § 1117(c);

7. Enter judgment against Defendant for actual damages, including all financial gain derived by Defendant, for Defendant's tortious interference with prospective contractual relations and unfair competition by misappropriation;

8. In accordance with Texas Law and 15 U.S.C. § 1117(a), find this case to be exceptional;

9. In accordance with Texas Law, 15 U.S.C. § 1117(a), 17 U.S.C. § 505, and 17 U.S.C. § 1203(b)(5), award DynaStudy its reasonable attorney fees, costs, and expenses of this action;

10. Replevy of DynaStudy's property as described above;

11. Pre-judgment and post-judgment interest as provided by law;

12. Exemplary damages; and

13. Such other and further relief at law or in equity as DynaStudy may be justly entitled.

#### **DEMAND FOR TRIAL BY JURY**

DynaStudy demands a trial by jury on its claims alleged against Defendant.

Dated: May 23, 2014

Respectfully submitted,

/s/ Darin Klemchuk

Darin Klemchuk

Texas Bar No. 24002418

darin.klemchuk.com

Gary R. Sorden

Texas Bar No. 24066124

gary.sorden@klemchuk.com

KLEMCHUK LLP

8150 N. Central Expressway

10th Floor

Dallas, Texas 75206

Tel: 214-367-6000

Fax: 214-367-6001

**ATTORNEYS FOR PLAINTIFF**

**DYNASTUDY, INC.**