

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>THE OHIO STATE UNIVERSITY,</b>	:	
	:	
<b>Plaintiff,</b>	:	
	:	<b>Case No. 2:10-CV-00890</b>
<b>v.</b>	:	
	:	<b>Judge Watson</b>
	:	
<b>MAPLE STREET PRESS, LLC,</b>	:	<b>Magistrate Judge Preston Deavers</b>
	:	
<b>Defendant.</b>	:	

**FINAL CONSENT JUDGMENT AND PERMANENT INJUNCTION**

Plaintiff The Ohio State University (hereinafter collectively referred to as either "OSU" or "Ohio State" or "Plaintiff") and Defendant Maple Street Press, LLC (hereinafter referred to as "Maple Street" or "Defendant"), having reached a settlement of all claims and having agreed to a Permanent Injunction as set forth in this Final Consent Judgment Granting Permanent Injunction and final Dismissal of All Other Claims for Relief ("Consent Judgment"), it is hereby:

**ORDERED, ADJUDGED and DECREED that:**

1. The term "Ohio State Trademark Registrations" shall mean U.S. trademark Registration Nos. 1,152,683, 1,267,035, 2,437,954, 1,294,114, 1,152,682, 1,121,595, 1,294,115, 2,689, 612 and any Ohio State Trademark Registrations now existing or hereafter registered, as applied to the services and goods in such registrations.

2. The "Ohio State Trademarks" shall mean both the Ohio State Trademark Registrations (set out in paragraph 1, above) and the common law trademarks BUCKEYE, BUCKEYES, BUCKEYE BATTLE CRY, BLOCK "O", BLOCK "O" with Buckeye Leaves,

OHIO STATE, OSU, OHIO STATE UNIVERSITY, the trade dress of Ohio State football uniforms and helmets, the school colors and font styles, school song and other symbols and indicia which point to and indicate origin in Ohio State.

3. Prior to the acts of Defendant complained of herein, Plaintiff, as the owner of the Ohio State Trademarks, has extensively used, advertised, marketed and sold products and services throughout the United States under its distinctive Ohio State Trademarks.

4. Ohio State has objected to Maple Street's publication, without permission or license, of a magazine devoted to Ohio State football, currently called "Buckeye Battle Cry," which uses many of the Ohio State Trademarks.

Plaintiff and Defendant have reached a settlement of all claims asserted by Plaintiff in the Lawsuit (the "Settlement Agreement") and have agreed to a Permanent Injunction as set forth in this Final Consent Judgment and Permanent Injunction, without any admission of liability.

#### **PERMANENT INJUNCTION**

1. Defendant, each of its related and affiliated entities, corporations, partnerships, agents, servants, employees, officers, directors, shareholders, assigns, representatives, successors, and all persons in active concert or participation with Defendants, are hereby ORDERED:

- a. To not use the Ohio State Trademarks, as defined in this Agreement, in any commercial way;
- b. to permanently refrain from doing any other act or thing, or encouraging or permitting any third party from doing any other act or thing that might suggest or induce the belief that Maple Street's businesses, services or products are in any way connected with, sponsored, affiliated, licensed or endorsed by Ohio State;

- c. to not use the Ohio State Trademarks or any other words or signs or symbols or device that suggest an affiliation, approval, license, connection, sponsorship or endorsement with Ohio State on the front or back cover of any publication, whether print or electronic; and
- d. to not use the Ohio State Trademarks or any other words or signs or symbols or device that suggest an affiliation, approval, license, connection, sponsorship or endorsement with Ohio State as the title of any publication, whether print or electronic; and
- e. to permanently refrain from producing, advertising, selling or giving away the publication "Buckeye Battle Cry" whether print or electronic, and
- f. to take all legal and equitable measures to regain possession of all copies of publications containing any of the Ohio State Trademarks, including but not limited to the publication "Buckeye Battle Cry," and to surrender all copies of print publications that include any of the Ohio State Trademarks, including but not limited to the publication "Buckeye Battle Cry" for destruction.

**IT IS FURTHER ORDERED:**

1. That this Court has personal jurisdiction over the parties to and subject matter of this action;

2. That jurisdiction over this cause is retained by this Court for the sole purpose of enforcement of compliance with both this Final Consent Judgment and Permanent Injunction and the Settlement Agreement (attached hereby as Exhibit A) between Plaintiff and Defendant, for further orders and directions as may be necessary or appropriate for the

construction and effectuation of the terms of the Final Consent Judgment and Permanent Injunction and Settlement Agreement;

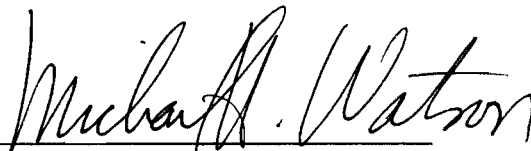
3. That, except for the relief herein granted, the above-identified civil action, including all claims, counterclaims, and affirmative defenses which Plaintiff or Defendant have, could have or should have asserted therein, is hereby dismissed with prejudice;

4. That Plaintiff and Defendant have waived notice of the entry of this Final Consent Judgment and Permanent Injunction and the right to appeal therefrom or to test its validity;

5. That the parties shall pay their own attorney's fees and costs

Dated:

Nov. 16, 2010

  
MICHAEL H. WATSON  
United States District Court Judge

APPROVED AS TO FORM:

Richard Cordray  
Attorney General of the State of Ohio

By: Joseph R. Dreitler & Mary R. True  
Joseph R. Dreitler, Trial Attorney (0012441)  
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WHilton@gc-law.com

Attorney for Defendant Maple Street Press LLC

Attachments-1

## SETTLEMENT AGREEMENT

**THIS SETTLEMENT AGREEMENT ("Agreement")** dated as of November 3, 2010, (the "Effective Date"), by and between The Ohio State University, public institution of higher learning located in Columbus, Ohio ("Ohio State"), and Maple Street Press, LLC, a limited liability company incorporated under the laws of the State of Massachusetts and having its principal place of business located at 155 Webster Street, Suite B, Hanover MA 02339 ("Maple Street").

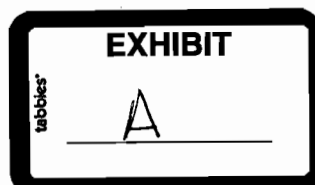
### RECITALS

**WHEREAS**, for more than 140 years Ohio State has been actively engaged in providing college level educational courses and college sport exhibition events and recreation programs, dramatic and musical entertainment events; and

**WHEREAS**, Ohio State is the owner of both common law rights and trademark registrations set out in paragraph 3, below, for the trademarks BUCKEYE, BUCKEYES, BUCKEYE BATTLE CRY, BLOCK "O", BLOCK "O" with Buckeye Leaves, OHIO STATE, OSU, OHIO STATE UNIVERSITY, the trade dress of Ohio State football uniforms and helmets, the school colors and font styles, school song and other symbols and indicia which point to and indicate origin in Ohio State (collectively, "Ohio State Trademarks"); and

**WHEREAS**, Ohio State's fight song *Buckeye Battle Cry* was composed in 1919, and has been continuously associated with Ohio State athletics for nearly 100 years; and

**WHEREAS**, Ohio State has, for at least 100 years, and continuing today, published, sold and distributed print copies of athletics magazines and programs for Ohio State athletics teams and events, which are a substantial source of revenue for Ohio State; and



**WHEREAS**, Ohio State has objected to Maple Street's publication, without permission or license, of a magazine devoted to Ohio State football, currently called "Buckeye Battle Cry", which uses many of the Ohio State Trademarks; and

**WHEREAS**, on October 1, 2010, Ohio State filed a lawsuit against Maple Street in the United States District Court for the Southern District of Ohio, Case No. 2:10-cv-00890 for trademark infringement, unfair competition, and passing off, under the Lanham Act, 15 U.S.C. § 1051 *et seq.* (the "Lawsuit"); and

**WHEREAS**, the parties wish to settle the Lawsuit and resolve all claims and controversies among them related to Maple Street's publication, sale and distribution of publications devoted to Ohio State football, and regarding Maple Street's use of Ohio State's registered and common law trademarks now and going forward, upon the terms set forth below.

**NOW, THEREFORE**, in consideration of the representations, promises and mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Ohio State and Maple Street hereby agree as follows:

1. Long prior to the acts of Maple Street set forth herein, Ohio State has been the owner and licensor of the exclusive right to use the Ohio State Trademarks in connection with all goods and services that relate to Ohio State.

2. Long prior to the acts of Maple Street set forth herein, and as a result of Ohio State's fame and its extensive use, advertising, and sale of goods and performance of services bearing the Ohio State Trademarks, the Ohio State Trademarks have acquired strong secondary meaning, have achieved favorable national recognition, and have become assets of significant value as symbols pointing only to Ohio State, its services, products and goodwill.

3. Ohio State owns valid and subsisting registrations in the United States Patent and Trademark Office ("PTO") for, *inter alia*, the following Ohio State Trademarks:

- a. "BUCKEYES" — registration number 1,152,683, registered April 28, 1981, to provide college sport exhibition events and recreation programs;
- b. "BUCKEYES" — registration number 1,267,035, registered on February 14, 1984 for use on: toy stuffed animals, Christmas decorations, bean bags, plastic toys, foam toys and equipment sold as a unit for playing a stick ball game; clothing-namely, T-shirts, ties, scarves, bibs, sweatshirts, athletic shorts, hats, aprons, jogging suits and sweaters; blankets, textile placemats, handkerchiefs, quilts and pennants; tumblers, cups, mugs, glasses and insulated beverage container holders; hassocks, bean bag leisure furniture, letter holding boxes, mirrors, and folding seats for use by individuals in athletic stadiums and plaques; tote bags; pens, posters, decals, and paintings; jewelry-namely, rings, pins, belt buckles and key chains, all being made of precious metal; electric lamps; providing college level educational programs, sport exhibition events and recreation programs;
- c. BUCKEYE DESIGN — registration number 2,437,954, registered January 2, 2001 for use on decals and stickers;
- d. "OHIO STATE" — registration number 1,294,114, registered September 11, 1984 for providing college level educational programs, sport exhibition events, recreation programs, toy stuffed animals, Christmas decorations, bean bags, plastic figurine toys, foam figurine toys, bats, balls and other equipment sold as a unit for playing a stick ball game, shoe laces, t-shirts, ties, scarves, bibs, sweatshirts, shorts, hats, aprons, jogging suits, sweaters, blankets, pennants, textile placemats, handkerchiefs, quilts, tumblers, cups, mugs, glasses, beverage container insulators, hassocks, bean bag leisure furniture, mirrors, and folding seats for use by individuals in athletic stadiums, tote bags, pens, posters, decals, paintings, letter holding boxes, rings, pins, belt buckles, key chains and electric lamps;
- e. "OHIO STATE" — registration number 1,152,682, registered April 28, 1981 for college sport exhibition events and recreation programs, dramatical and musical entertainment events and college level educational courses;
- f. "OSU" — registration number 1,121,595, registered July 3, 1979 for college sport exhibition events and recreation programs, dramatical and musical entertainment events and college level educational courses;
- g. "OHIO STATE UNIVERSITY" — registration number 1,294,115, registered September 11, 1984 for jewelry-namely, rings, pins, belt buckles and key chains; pens, posters, decals, paintings, letter holding boxes; hassocks, bean bag leisure

furniture, plaques, mirrors and folding seats for use by individuals in athletic stadiums; tumblers, cups, mugs, glasses and beverage container insulators; : blankets, pennants, textile placemats, handkerchiefs and quilts; clothing-namely, t-shirts, ties, scarves, bibs, sweatshirts, shorts, hats, aprons, jogging suits and sweaters; toy stuffed animals, Christmas decorations, bean bags, plastic figurine toys, foam figurine toys, and equipment-namely, bats and balls sold as a unit for playing a stick ball game; and : providing college level educational programs, sport exhibition events and recreation programs.

- h. "O" – registration number 2,689,612, registered February 25, 2003 for clothing, namely, jackets, sweaters, hats and T-shirts.

4. The above-referenced registrations are incontestable, which is conclusive evidence of the validity of the registrations, Ohio State's ownership of the registered trademarks, and Ohio State's exclusive right to use the registered trademarks in commerce in connection with the goods and services specified in the certificates of registration enumerated above under 15 U.S.C. § 1115(b).

5. In connection with the promotion of its various academic, athletic, entertainment and philanthropic activities, and in association with its registered and common law trademarks, Ohio State has historically used the term "Ohio State" to refer to and describe the school, various individuals, teams, school songs and organizations affiliated with Ohio State.

6. In connection with the promotion of its various academic, athletic, entertainment and philanthropic activities, and in association with its registered and common law trademarks, many of which include the term "Buckeye" and "Buckeyes," Ohio State has historically used the term "Buckeyes" to refer to and describe various individuals, teams, school songs and organizations affiliated with Ohio State, including use of the school fight song *Buckeye Battle Cry* since 1919 and adoption of "Brutus Buckeye" as the official Ohio State mascot in 1965.

7. By virtue of its 90+ years as the Ohio State fight song, and its prominent use during Ohio State events, and particularly football and basketball games, the public now associates the name "Buckeye Battle Cry" solely as indicating origin in Ohio State.

8. In connection with the promotion of its various academic, athletic, entertainment, musical and philanthropic activities, Ohio State has also historically used, as a trademark, the Block O with Buckeye Leaves:



9. Ohio State's use of the Block O with Buckeye Leaves trademark has been continuous since 1973 and the public now associates the Block O with Buckeye Leaves trademarks solely as indicating origin in Ohio State.

10. Ohio State has used its school colors for more than 100 years and stylized font style for decades:



11. Ohio State has used the Ohio State Trademarks continuously and exclusively for identification with Ohio State and its academic, athletic and entertainment

activities. The Ohio State Trademarks and their respective reputation and goodwill have continuously grown and they are now well known throughout the City of Columbus, the State of Ohio and the United States.

12. As a result of Ohio State's fame and its extensive use, advertising, sale of goods and performance of services bearing the Ohio State Trademarks, the Ohio State Trademarks have acquired strong secondary meaning, have achieved favorable national recognition, and have become assets of significant value as symbols pointing only to Ohio State, its services, products and goodwill.

13. Ohio State approves and maintains quality control over all of the products and services it licenses and produces, and the goods and services bearing the Ohio State Trademarks in order to protect the tradition, prestige and goodwill associated with these marks, and Ohio State makes systematic efforts to safeguard the quality and integrity of the Ohio State Trademarks, and the public assumes that Ohio State has approved, sponsored or endorsed all products and services bearing the Ohio State Trademarks.

14. Long after Ohio State's adoption and use of the Ohio State Trademarks, Maple Street began to publish a magazine devoted to Ohio State football called "Buckeye Battle Cry", which uses many of the Ohio State Trademarks.

15. Maple Street is not affiliated with, nor is it a licensee of Ohio State, nor is it otherwise authorized to use the Ohio State Trademarks on a publication devoted to Ohio State athletics.

16. Maple Street's publication of a magazine devoted to Ohio State football did not begin until long after the Ohio State Trademarks had become exclusively associated in the minds of consumers with Ohio State.

17. Maple Street acknowledges the use of the Ohio State Trademarks on a magazine devoted to Ohio State athletics is likely to cause confusion as to sponsorship or authorization by Ohio State, and that such actions could constitute trademark infringement in violation of section 32(a) of the Lanham Act, 15 U.S.C. § 1114, and passing off and unfair competition under 15 U.S.C. § 1125(a).

18. In consideration for Ohio State terminating the Lawsuit, per the terms of this Agreement, Maple Street, its related and affiliated entities, corporations, agents, servants, employees, assigns, representatives, and successors, and all others in active concert and privity with it, agree:

- (a) to not use the Ohio State Trademarks, as defined in this Agreement, in any commercial way; and
- (b) to not use the Ohio State Trademarks or any other words or signs or symbols or device that suggest an affiliation, approval, license, connection, sponsorship or endorsement with Ohio State on the front or back cover of any publication, whether print or electronic; and to not use the Ohio State Trademarks or any other words or signs or symbols or device that suggest an affiliation, approval, license, connection, sponsorship or endorsement with Ohio State as the title of any publication, whether print or electronic; and
- (c) to not produce, advertise, sell or giveaway any publication, whether print or electronic, that has more than 10% of the total pages of such publication devoted to Ohio State; and
- (d) to not produce, advertise, sell or giveaway any publication, whether print or electronic, that deals only with Ohio State and one (1) other school or university, in other words, to not produce, advertise, sell or giveaway any publication, whether print or electronic, that deals with Ohio State and could be considered as competitive with a "game day" program or "media guide", including but not limited to any bowl game program or media guide; and
- (e) to permanently refrain from doing any other act or thing, or encouraging or permitting any third party from doing any other act or thing that might suggest or induce the belief that Maple Street's businesses, services or products are in any way connected with, sponsored, affiliated, licensed, or endorsed by Ohio State; and

- (f) to permanently refrain from producing, advertising, selling or giving away any publication, whether print or electronic, devoted to Ohio State athletics, under any title, including but not limited to "Buckeye Battle Cry;" and
- (g) to take all legal and equitable measures to regain possession of all copies of publications containing any of the Ohio State Trademarks, including but not limited to the publication "Buckeye Battle Cry" and to surrender all copies of print publications that include any of the Ohio State Trademarks, including but not limited to the publication "Buckeye Battle Cry," for destruction.

18. Notwithstanding the foregoing, this Agreement does not prohibit Maple Street from publishing and distributing a magazine or other publication that discusses Ohio State athletics, athletes and coaches so long as 1) the title does not utilize the Ohio State Trademarks; and 2) the Ohio State portion of the publication is not the dominant or featured portion of the publication--for example, the number of pages devoted to Ohio State is no more than devoted to the other eleven (11) schools of the Big Ten Conference. By further way of example only, and not of limitation, the following publications are attached as examples of acceptable usage: Phil Steele's Big Ten/Big 12, Sporting News College Football, Sports Illustrated College Football Preview, Sports Illustrated Big Ten Preview, Athlon Sports Big Ten Preview, and Lindy's Big Ten Preview.

19. Ohio State hereby releases and discharges all claims of any kind and character, known or unknown, and whether at law or in equity against Maple Street, and its directors, officers, shareholders, employees, agents, attorneys and assigns, arising out of or in any way relating to Ohio State's claims in Case No. 2:10-cv-00890 (other than those claims arising out of the obligations created and set forth herein).

20. Maple Street hereby releases and forever discharges all claims of any kind and character, known or unknown, and whether at law or in equity against Ohio State, its trustees, officers, employees, agents, insurers, attorneys, and assigns, arising out of or in any way relating

to claims raised or attempted to be raised in Case No. 2:10-cv-00890 (or any claims which could have been brought).

21. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Ohio State and Maple Street (the "Parties"). The Parties hereby declare that the terms of this Agreement are completely read and fully understood and voluntarily accepted after consultation with their respective counsel, if any, each of whom shall be considered as having drafted this Agreement. The Parties acknowledge that this Agreement is a full, fair and final settlement of all claims released hereunder, and further represent that, in executing this Agreement, they do not rely on any inducements, promises, or representations other than those expressly set forth in this Agreement. The Parties agree to bear their own attorneys' fees and costs incurred in connection with this litigation.

22. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed sufficiently given (a) the following business day after having been timely sent by reputable overnight courier service for priority, next day delivery, (b) upon confirmation of receipt by the recipient after having been sent by fax, in each case to the applicable party's street address or fax number as set forth below (as the same may be amended by such party upon written notice to the other), or (c) by such other means as the parties may hereafter agree in writing, and shall only be effective if delivered to all addressees indicated as follows:

If to Plaintiffs:

Christopher M. Culley, Esq.  
Senior Vice President and General Counsel  
The Ohio State University – Office of Legal Affairs  
1590 North High Street, Suite 500  
Columbus OH 43201

With a copy to:

Joseph R. Dreitler, Esq.  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215  
Fax: (614) 227-2390  
E-mail: jdreitler@bricker.com

If to Maple Street Press LLC:

James Walsh  
Maple Street Press, LLC  
155 Webster Street, Suite B  
Hanover, MA 02339

With a copy to:

William E. Hilton  
Gauthier & Connors LLP  
225 Franklin Street, Suite 2300  
Boston, MA 02110  
Fax (617) 426-2275  
E-mail: mconnors@gc-law.com

23. All parties agree that this Agreement and the attached Final Consent Judgment and Permanent Injunction shall be filed with the United States District Court, Southern District of Ohio, Eastern Division. This Agreement shall be construed under and governed by the laws of the State of Ohio, without regard to conflicts of laws principles. The Parties agree that the exclusive venue for all actions to challenge, interpret or enforce this Agreement shall be in the United States District Court of Ohio, Southern District, Eastern Division. The Parties also agree that the exclusive venue for all actions relating to any current or future use of the Ohio State

Trademarks by Maple Street shall be in the United States District Court of Ohio, Southern District, Eastern Division. To the extent that any action described above to challenge, interpret or enforce this Agreement is brought in the future, the Parties agree that such action must be brought only in the United States District Court of Ohio, Southern District, Eastern Division and that such court shall have exclusive personal jurisdiction over both such action and all parties; and all parties consent and waive any objections to said exercise of personal jurisdiction and venue. Further, the parties consent to service of process by registered mail, return receipt requested, overnight carrier, or by any other manner provided by law. In the event any party hereto attempts to challenge, set aside or to enforce this Agreement, or any party brings any action for its breach, such action must be brought only in the U.S. District Court for the Southern District of Ohio, and the prevailing party shall be entitled to all reasonable costs, including, but not limited to, reasonable attorneys' fees.

23. The Parties each hereby further warrant, represent and acknowledge to the other that they have the right and authority to execute this Agreement, and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims covered by this Agreement.

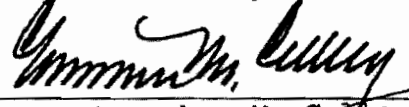
24. This Agreement represents and contains the entire agreement and understanding between the Parties hereto with respect to the subject matter of this Agreement, and supersedes any and all prior oral and written agreements and understandings, and no representation, warranty, condition, understanding or agreement of any kind with respect to the subject matter hereof shall be relied upon by the Parties unless incorporated herein. This Agreement may not be amended or modified except by an agreement in writing signed by the Party against whom the enforcement of any modification or amendment is sought.

25. In the event that one or more of the provisions, or portions thereof, of this Agreement is determined to be illegal or unenforceable, the remainder of this Agreement shall not be affected thereby and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.

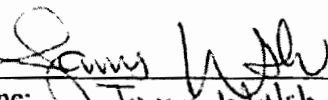
26. The Parties hereto agree that copies may be signed in counterparts, each of which shall be binding and effective as if it were an original.

IN WITNESS WHEREOF, the Parties have executed this Agreement with an Effective Date as set forth above.

The Ohio State University

By:   
Name: Christopher M. Cutley  
Title: Senior Vice President & General Counsel  
Date: 11.10.10

Maple Street Press LLC

By:   
Name: James Walsh  
Title: President  
Date: 11/3/10