

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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NADINE ALDRED a/k/a MILLENIA BLACK,

Plaintiff,

-against-

PENGUIN GROUP (USA) INC. and
SIGNET, a Division of
PENGUIN GROUP (USA) INC.,

Defendants.

COMPLAINT
AND
JURY DEMAND

06 CV 7887
Judge Crotty

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INTRODUCTION

This case involves racial discrimination by Signet, a Division of Penguin Group (USA) Inc., and by Penguin Group (USA) Inc., against Nadine Aldred, an author who writes under the pen name Millenia Black, in the making and enjoyment of all the benefits, privileges, terms and conditions of a publishing contract. Defendants have engaged in discriminatory conduct in violation of federal and state law, as well as misleading advertising in violation of the Lanham Act and violations of New York State common law.

JURISDICTION

1. This action is to remedy intentional racial discrimination as prohibited by 42 U.S.C. §1981 and the New

York State Civil Rights Law §40-c, and violations of the Lanham Act, 15 U.S.C. §1125(a).

2. Plaintiff seeks declaratory and injunctive relief, compensatory, monetary and punitive damages, and attorneys' fees.

3. Jurisdiction is conferred upon this Court by 28 U.S.C. §§1331, 1332, 1343, 2201 and 2202, and 15 U.S.C. §1121(a). Jurisdiction over the state claims is further invoked pursuant to 28 U.S.C. §1367 and the Court's pendent jurisdiction. The matter in controversy exceeds \$75,000.

4. Venue is founded in the Southern District of New York pursuant to 28 U.S.C. §1391(b).

PARTIES

5. Plaintiff Nadine Aldred ("Aldred" or "plaintiff") is a female citizen of color of the United States. Using the pen name Millenia Black, Aldred is the author of two novels, *The Great Pretender* and *The Great Betrayal*, both of which are the subject of her claims herein. At all relevant times herein, Aldred has lived in the State of Florida.

6. On information and belief, and at all times relevant herein, defendant Penguin Group (USA) Inc. is and has been a world-renowned publisher of works of fiction and

non-fiction, in hard cover, trade and paperback formats. On information and belief, Penguin Group (USA) Inc. is and has at all relevant times been a corporation of the State of Delaware that is registered to do business in the State of New York, and whose principal place of business has, at all relevant times, been 375 Hudson Street, New York, New York.

7. On information and belief, and at all times relevant herein, Signet has been a Division of Penguin Group (USA) Inc. and has functioned as an agent of Penguin Group (USA) Inc. Penguin Group (USA) Inc. and Signet are hereafter collectively referred to as ("Penguin" or "defendants").

FACTUAL ALLEGATIONS

8. In or about September of 2002, plaintiff Aldred self-published her first novel, entitled *The Great Pretender*, under the pen name Millenia Black. The work of fiction centers around the topic of marital infidelity, and contains an additional subtle component, in that all of its subject matter and characters are devoid of racial characteristics.

9. The cover art for the self-published version of *The Great Pretender* shows two wedding bands in flames and does not portray any people.

10. Aldred is not described by race anywhere in the self-published version of *The Great Pretender* and neither does her photograph appear.

11. After it was self-published as mainstream fiction/literature, *The Great Pretender* was well-reviewed, began to sell nationally in bookstores, garnered several inquiries for the sale of foreign rights and film rights, and garnered the sales of translation rights to publishers in Turkey and Poland.

12. In the latter half of December 2004, and as a direct result of the successful marketing of the self-published edition of *The Great Pretender*, Penguin became interested in Aldred's current and future work.

13. On or about December 21, 2004, Penguin and Aldred entered into a contract which provides, *inter alia*, that Penguin obtained the exclusive right to print, publish and sell *The Great Pretender*, as well as Aldred's upcoming novel, in exchange for certain monetary advances, royalties and other benefits ("The Contract").

14. On information and belief, The Contract follows a standard form contract used by Penguin for all mainstream

nonfiction works, albeit with certain modifications inserted at the request of one or the other party.

15. From the time of execution of *The Contract* through today, plaintiff has complied with all of her responsibilities thereunder.

16. On information and belief, defendants' employee and agent, Kara Cesare, who was assigned by Penguin to be Aldred's editor, asked plaintiff's agent, Sara Camilli, whether she had ever met Aldred in person and whether Aldred was black or white. Camilli responded that Aldred is black.

17. For its version of *The Great Pretender*, Penguin revised the original cover art by superimposing two non-white women over the image of the burning wedding bands. Penguin published and marketed *The Great Pretender* using the revised cover art.

18. Plaintiff objected to the use of false racial identifiers on the cover art of *The Great Pretender*, but Penguin published the work as such over Aldred's objections.

19. Although *The Great Pretender* contains no racial classifications of its characters, for the purposes of distribution and marketing, Penguin classified and styled the

novel as African American fiction/literature and marketed the work as such to bookstores and the general public.

20. On information and belief, the classification African American fiction/literature is generally understood by the public to refer to the content and subject matter of the work.

21. On information and belief, novels classified and styled as African American fiction/literature are generally understood by the public to target a smaller audience than novels classified as general fiction.

22. On information and belief, novels classified and styled as African American fiction/literature are typically purchased by a predominantly black, minority audience.

23. On information and belief, novels classified and styled as African American fiction/literature are not typically purchased by a white, majority audience.

24. On information and belief, novels classified and styled as African American fiction/literature are marketed to a predominantly black, minority audience.

25. On information and belief, the subject matter of infidelity is understood by the general public to be a universal topic.

26. Penguin classified, styled and marketed *The Great Pretender* as African American fiction/literature based

solely on Aldred's race, and without regard to the subject matter of the novel.

27. Aldred objected to such misclassification, but defendants refused to re-classify the book.

28. On information and belief, Penguin would not have classified, styled and marketed the work of a white author as African American fiction/literature if such work's content and subject matter had been racially neutral.

29. On information and belief, if *The Great Pretender* had been written by a white author, Penguin would not have classified the work as African American fiction/literature.

30. On information and belief, if *The Great Pretender* had been written by a white author, Penguin would not have altered the cover art to add women of color.

31. On information and belief, Penguin knowingly and intentionally treated plaintiff Aldred differently from white authors due to Aldred's race.

32. On information and belief, as a result of defendants' conduct, *The Great Pretender* was deprived of many commercial, mainstream marketing opportunities.

33. On information and belief, such injury included, without limitation: the segregation of Aldred's mainstream novel onto African American literature/interest bookshelves in many bookstores throughout the United States, where, on

information and belief, few white customers seek to purchase books; the declining by many bookstores situated in white communities to order the book, or to host Aldred for book signings where she could market her work; the declining of many commercial radio, print, and television media venues that cater to mainstream audiences to feature her or her work; the loss of foreign language translation sales opportunities to foreign publishers not typically known for acquiring debut African American fiction/literature; the loss of mainstream film or television options or sales; and loss of the opportunity to have the book selected and offered by commercial book clubs that appeal to racially diverse readers, thereby depriving Aldred of additional sales opportunities and general recognition.

34. As a result of defendants' conduct, plaintiff Aldred was deprived of the opportunity to launch her debut novel in a racially neutral fashion.

35. On information and belief, as a result of defendants' actions, plaintiff has been pigeonholed as an African American author despite her best efforts to become known as an author without regard to race.

36. As a highly experienced publishing house, Penguin knew that its classification of *The Great Pretender* as African American fiction/literature, and its marketing of the

work as such would have the afore-described effects on Aldred's work and reputation.

37. The designation of *The Great Pretender* as African American fiction/literature is false.

38. Penguin's designation of the book as African American fiction/literature and imposition of cover art portraying women of color, individually and collectively falsely imply that the book is about African American characters and/or African American topics.

39. Penguin's designation of the book as African American fiction/literature and imposition of cover art portraying women of color, individually and collectively are likely to mislead or confuse consumers.

40. On information and belief, defendants' conduct has caused significant and ongoing economic loss to plaintiff Aldred.

41. On information and belief, Aldred's reputation has been permanently altered such that she and her work are now known to the public by her race instead of solely by the genre of her writing.

42. In accordance with The Contract, Aldred wrote and submitted to Penguin the manuscript for her second novel, *The Great Betrayal*.

43. *The Great Betrayal* focuses on marital infidelity and family secrets. As initially written by Aldred, *The Great Betrayal's* characters are described as white.

44. After reviewing the manuscript, Penguin demanded that Aldred re-write the characters so as to render them African American or race-neutral.

45. Thereafter, Penguin showed Aldred its intended cover art, which portrayed an unmade bed with the face of an African American woman and the back of an African American man superimposed above it.

46. On information and belief, Penguin intended to classify and style *The Great Betrayal* as African American fiction/literature, based solely on plaintiff's race and without regard to the subject matter of the book.

47. On information and belief, Penguin intended to market *The Great Betrayal* with the African American fiction/literature designation, which it knew would have the same limiting effects as the designation has on *The Great Pretender*.

48. On information and belief, if *The Great Betrayal* had been written by a white author, Penguin would not have demanded that the author edit the white characters to render them black or race neutral.

49. On information and belief, if *The Great Betrayal* had been written by a white author, Penguin would not have placed an African American couple on the cover.

50. On information and belief, if *The Great Betrayal* had been written by a white author, Penguin would not have planned to classify the book as African American fiction/literature.

51. On information and belief, defendant Penguin knowingly and intentionally treated plaintiff Aldred differently from white authors due to Aldred's race.

52. After plaintiff threatened to sue Penguin for racial discrimination, Penguin withdrew its demand that Aldred rewrite the work to change the race of the characters, and advised that it would remove the African American couple from the cover art.

53. Despite these representations, Penguin sent the cover art with the African American couple to African American Web sites including, but not limited to, Urban-Reviews.com, and retailers including, but not limited to, Amazon and Barnes & Noble, both of whose Web sites advertised *The Great Betrayal* for pre-order with the misleading cover art for several weeks.

54. On information and belief, advance sales of *The Great Betrayal* have been negatively impacted, and Aldred

will continue to experience economic harm as a result of such false and misleading advertising.

55. On information and belief, a white author would not have been subjected to such racially discriminatory treatment by Penguin.

56. As a result of the racially discriminatory treatment afforded her by defendants, Aldred has experienced humiliation and emotional distress.

57. Defendants' actions were taken knowing that they violated plaintiff's federally protected civil rights and with the intent to violate such rights.

FIRST CAUSE OF ACTION

58. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1-57 as if fully set forth herein.

59. Defendants intentionally discriminated against plaintiff on the basis of her race as more fully set forth above.

60. Defendants violated plaintiff's rights to make and enforce contracts without regard to race, as guaranteed by 42 U.S.C. §1981.

SECOND CAUSE OF ACTION

61. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1-60 as if fully set forth herein.

62. Defendants engaged and continue to engage in false and/or misleading descriptions of fact and false and/or misleading representations of fact with regard to *The Great Betrayal* as more fully set forth above.

63. Defendants engaged and continue to engage in false and/or misleading descriptions of fact and false and/or misleading representations of fact with regard to *The Great Pretender* as more fully set forth above.

64. Defendants' conduct, as more fully set forth above, violates the Lanham Act, 15 U.S.C. §1125(a).

THIRD CAUSE OF ACTION

65. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1-64 as if fully set forth herein.

66. Plaintiff was subjected to discrimination in her civil rights because of her race and color, as more fully set forth above.

67. Defendants' conduct violated and continue to violate New York Civil Rights Law §40-c.

68. At the time of the commencement of this action, a copy of this Complaint will be served upon the Attorney

General, in accordance with New York Civil Rights Law §40-d.

FOURTH CAUSE OF ACTION

69. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1-68 as if fully set forth herein.

70. Defendants violated the implied term of good faith and fair dealing in The Contract by, as more fully set forth above, treating plaintiff differently, based on her race, than they would have treated a white author with the same contract who had written the same books.

WHEREFORE, plaintiff respectfully requests that this Court:

- A. Declare that defendants' actions constitute illegal race discrimination under 42 U.S.C. §1981 and New York Civil Rights Law §41-c;
- B. Declare that defendants' actions constitute violations of the Lanham Act, 15 U.S.C. §1125(a);
- C. Declare that defendants breached their contractual obligations to plaintiff;
- D. Permanently enjoin defendants from further violating plaintiff's rights, including, without limitation, not applying any racial designations

to *The Great Betrayal* or any future work, and not engaging in any retaliation against Aldred;

- E. Order defendants to re-publish *The Great Pretender*, forthwith under the following conditions:
- (i) a book cover with race-neutral art; (ii) classification of the work as mainstream/general fiction; (iii) a foreword containing an apology and explaining that the re-publication is due to the original misclassification and misrepresentation of the book as African American fiction/literature, and (iv) sufficient marketing resources for the re-publication of *The Great Pretender* to make plaintiff whole;
- F. Award judgment for all the past and future economic losses suffered or to be suffered by plaintiff in the amount of \$250,000,000.00.
- G. Award judgment for compensatory damages to compensate plaintiff for the humiliation and emotional distress she suffered as a result of Penguin's unlawful conduct in the amount of \$1,000,000.00.
- H. Award a penalty of not less than \$100 and not more than \$500 for each violation of plaintiff's

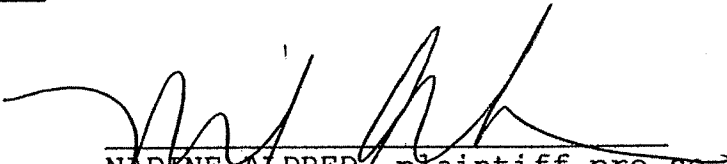
rights under New York Civil Rights Law §40-c, in accordance with New York Civil Rights Law §40-d.

- I. Award punitive damages in an amount sufficient to punish defendants for their intentional violation of plaintiff's federally protected civil rights and to deter defendants from engaging in such unlawful conduct in the future;
- J. Award all costs and reasonable attorneys' fees; and
- K. Grant such additional and further relief as this Court may deem just and appropriate.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands, pursuant to Rule 38 of the Federal Rules of Civil Procedure, a trial by jury of this action.

Dated: Orlando, FL
September 27, 2006


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