

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

GRADUATE MANAGEMENT ADMISSION
COUNCIL,

Plaintiff,

v.

LEI SHI, d/b/a "SCORETOP.COM," *et al.*,

Defendants.

Civil Action No. 1:07-cv-00605

**PLAINTIFF GRADUATE MANAGEMENT ADMISSION COUNCIL'S
OBJECTIONS TO DECEMBER 11, 2007 REPORT AND RECOMMENDATION**

Plaintiff Graduate Management Admission Council ("GMAC") hereby files a short response to Magistrate Judge Barry R. Poretz's December 11, 2007 Report and Recommendation (the "Report") (DE 23). The purpose of this response is to request that the Court modify one aspect of the relief that is recommended in the Report, so as to increase the likelihood that infringing content will in fact be removed from the Scoretop website.

Paragraph 2 of the recommended relief impounds the infringing materials that appear on the defendant's website but it does not identify by name any of the infringing content. This would leave the impoundment aspect of the Final Judgment less specific than it can and should be. GMAC therefore requests that the impoundment relief specifically identify the infringing materials from the Scoretop website that GMAC has been able to locate to date, as reflected in the [Revised] Proposed Order that GMAC filed with the Court on November 20, 2007. Specificity is necessary not only to increase GMAC's prospects of obtaining compliance from defendant Lei Shi, but also to put other infringers or potential infringers on notice that the

materials specifically identified in the Final Judgment cannot be used or copied without infringing upon GMAC's copyrights.

Paragraph 2 of the relief section of the Report recommends the following:

That the Court enter an Order pursuant to 17 U.S.C. § 503(b) calling for the destruction and/or impounding of all testing and related materials made by Shi in violation of GMAC's copyrights including but not limited to such computers and hard drives used by Shi and order Defendant Shi to consent to access to any and all servers on which Scoretop.com materials would be stored.

Report and Recommendation at 10-11. GMAC respectfully requests that, instead of entering this relief under 17 U.S.C. § 503(b), the Court award the following relief:

That, pursuant to 17 U.S.C. § 503(b), the following items are hereby impounded and shall be immediately turned over to GMAC:

- a. all copies of all test questions, test forms, workbooks, simulated exams and other materials that have been posted on the Scoretop website or are otherwise in the Defendant's custody or control that contain actual or reconstructed GMAT test questions or other materials that infringe GMAC's copyrights, including but not limited to the following materials:
 - 1) The Scoretop "sets" of sample GMAT questions, including (i) PS 1-42.zip (a collection of "Problem Solving" sample questions), and (ii) DS 1-22.zip (a collection of "Data Sufficiency" sample questions);
 - 2) "The Ultimate CR Collection" (a collection of "GMAT Critical Reasoning" questions);
 - 3) "1000 SC Real Q's" (a collection of 1000 "GMAT Sentence Correction" questions);
 - 4) "Ultimate RC Collection -- 3,000 Real Q's" (a collection of "GMAT Reading Comprehension" questions); and
 - 5) All Math and Verbal "VIP" practice GMAT questions which are, or purport to be or include, copies or reconstructions of actual GMAT questions;
- b. all plates, molds, matrices, masters, tapes, software and other articles used for reproducing or distributing such infringing copies; and
- c. all other content that is stored on the www.scoretop.com website, including but not limited to content that is accessible only to "VIP members," for inspection and review by GMAC to ensure that all materials that violate GMAC's rights can be identified and destroyed;

It is further ORDERED that, pursuant to 17 U.S.C. § 503(b) and within twenty (20) days of the date on which this Judgment is entered, defendant Lei Shi shall (a) turn over to GMAC all computers, hard drives, zip drives or other equipment or devices that he owns or control which contain any Scoretop-related content; and (b) provide GMAC access to all third-party servers on which he has placed any Scoretop-related materials, so that GMAC can locate and destroy all infringing content. GMAC may dispose of such computers, hard drives, zip drives and other equipment or devices as it deems appropriate.

And it is further ORDERED that, within thirty (30) days of entry of this Judgment, defendant Lei Shi shall file a notice with the Court certifying that all impounded items referenced above have been turned over to GMAC.

This alternative language will make the Final Judgment more specific regarding the infringing materials that have been impounded, thereby avoiding possible disputes regarding the materials that, at a minimum, must be removed from the Scoretop.com website. The balance of the relief awarded to GMAC would be as recommended in the Magistrate's Report.

This, the 21st day of December 2007.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of September, 2007, I electronically filed Plaintiff Graduate Admissions Council's Objections to December 11, 2007 Report and Recommendation using the CM/ECF system.

And I hereby certify that I have mailed the document by U.S. mail to the following non-filing user:

Lei Shi
35 Vine Street, Apt. 205
Winchester, MA 01890

/s/

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