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Attorneys for Defendants

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RANDOM HOUSE, INC.,

Plaintiff, . .

01 Civ. 1728 (SHS)

v . .

ROSETTA BOOKS LLC  
and ARTHUR M. KLEBANOFF, in his individual  
capacity and as principal of ROSETTA BOOKS LLC.,

Defendants. .

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**DECLARATION OF ROBERT J. LARocca**

1. I am one of the attorneys for defendants in this case.

2. Attached are true and correct copies of the affidavits filed of record in

Field v. True Comics, 89 F. Supp. 611, 614 (S.D.N.Y. 1950) which I obtained from the federal records center in Manhattan.

I state under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 6th day of April, 2001 in Philadelphia, Pennsylvania.

Robert J. LaRocca

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
RUDOLPH FIELD,

Plaintiff, :

-against-

Civil NO. 50-482

TRUE COMICS, INC., and  
JOSEPH PAUL DIMAGGIO, Jr.,

Defendants.  
----- X

STATE OF NEW YORK )  
                          : ss.:  
COUNTY OF NEW YORK )

THOMAS COWARD, being duly sworn, deposes and says:

1. I am the President of Coward-McCann, Inc., 2 West 45th Street, New York, New York, publishers of books. I have been a publisher of books for <sup>28</sup> years and during this period of time, I have become familiar with the trade usages and practices in the book publishing business and I have had occasion to transact and otherwise examine a large number of book publishing agreements.

2. I am familiar with the terminology generally used in the book publishing business and in agreements for the publication of books.

3. The following provisions of a Memorandum of Agreement made on February 13, 1947, between JOSEPH PAUL DIMAGGIO, JR. as author and RUDOLPH FIELD as publisher, have been called to my attention:

"1. The Author hereby reaffirms the grant and assignment heretofore by him made, to the Publisher, of the sole and exclusive right to publish, print and market in book form, in the United States, the aforesaid work now entitled \*Lucky To Be A Yankee\*.

\* \* \*

"18. That Publisher shall have no additional rights to the said work other than the aforesaid right to publish, print and market the said work in book form in the United States, all of such additional rights being specifically reserved by the Author."

4. The words "publish in book form", when used by authors and publishers, have a definite and universally understood meaning. When used in a contract for the publication of a work containing 210 pages, which I understand is the length of "Lucky To Be A Yankee", they refer to publication of the work as a book in its initial and full length form only.

5. There are a number of media for the supplementary exploitation of a literary work after its publication in book form, such as serialization in periodicals, condensation and many others. The disposition of these supplementary rights is ordinarily the subject of close negotiation between author and publisher and the contract is usually explicit as to which additional rights, if any, a book publisher shall have. Where publisher and author agree, as they did in that portion of paragraph 18 of the contract in question here which is quoted above, that the publisher shall have no additional rights other than to publish, print and market in book form it is understood in the trade that the supplementary publication rights are reserved to the author.

6. I have examined the eight page cartoon article about Joe DiMaggio which appeared in the May No. '71 issue of "True Comics" Magazine. Publication in such form is definitely understood to be different than publication in book form. No one familiar with the customs of the publishing trade would state that the right to publish in this

form was given to a publisher under a grant to publish in  
"book form" only.

T.C. Thomas R. Coward  
Thomas Coward

Sworn to before me this  
14th day of November, 1949.

*Francis L. McDonald*

FRANCIS L. McDONALD  
Notary Public in the State of New York  
Qualified in Bronx County  
Bronx Co. Clk's No. 35, Reg. No. 82-Mc-0  
N. Y. Co. Clk's No. 318, Reg. No. 287-Mc-4  
Commission Expires March 30, 1950

SOUTHERN DISTRICT OF NEW YORK  
----- X  
RUDOLPH FIELD,

Plaintiff,

-against-

TRUE COMICS, INC., and  
JOSEPH PAUL DIMAGGIO, Jr.,

Defendants.  
----- X

Civil No. 50-4821

STATE OF NEW YORK )  
COUNTY OF NEW YORK )

ss.:

FREDERIC MELCHER, being duly sworn, deposes and says:

1. I am president and publisher of "Publishers Weekly", 62 West 45th Street, New York, N. Y., which is a national magazine and the leading trade publication for book publishers.

2. Over a period of <sup>31</sup> years I have had a great deal of experience in the negotiating of contracts between authors and publishers.

3. There has been exhibited to me a Memorandum of Agreement made on February 13, 1947, between JOSEPH PAUL DIMAGGIO, JR. and RUDOLPH FIELD, and the following specific provisions of this agreement have been called to my attention:

"1. The Author hereby reaffirms the grant and assignment heretofore by him made, to the Publisher, of the sole and exclusive right to publish, print and market in book form, in the United States, the aforesaid work now entitled 'Lucky To Be A Yankee'.

\* \* \*

"That Publisher shall have no additional rights to the said work other than the aforesaid right

to publish, print and market the said work in book form in the United States, all of such additional rights being specifically reserved by the Author."

4. In the publishing business the words "book form" have a definite and unequivocal meaning. They signify the right of a publisher to publish a full length work in the form in which the work is written. When it is intended that the publisher shall have the right to publish the work in different forms such as condensed form or magazine serial form or comic form, it is common practice for these additional publication rights to be specifically spelled out in the agreement between author and publisher.

5. It is well understood in the trade that the words "book form" do not include magazine or other periodical form, and that a restriction on a publisher to publish in book form constitutes a reservation of all such other publication rights in the author.

6. In my opinion, in the agreement which has been referred to above, the grant to the publisher of the right to publish the work in question in "book form" does not include the right to republish a condensed version of the book, nor does it include the right to publish a magazine article based on the book, nor does it include the right to publish a so-called comic cartoon version of the book whether condensed or in full length.

7. There has been exhibited to me the May No. 71 issue of "True Comics" Magazine in which there appears eight pages of comic cartoons depicting incidents from the life of JOE DIMAGGIO. It is my opinion, based on the customs and usages of the publishing business, that the words used in the agreement quoted from above do not grant to the publisher

the right to publish such a treatment of the book.

F/M Frederic Melchor

Sworn to before me this

14th day of November, 1949.

Armond Frasca

ARMOND FRASCA  
Notary Public, State of New York  
No. 211123-0  
Qualified in Kings County  
Cert. Exp. with Kus. Co. Clk. & Reg.  
New York County Clk. & Reg.  
Commission Expires March 30, 1951