

**IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY**

CIV-2013-488-

IN THE MATTER of breach of contract, inducement of breach of contract,
breach of confidence, and copyright infringement

BETWEEN **JZK, INC** a Washington corporation, having its place of
business at 14507 Yelm Hwy SE, Washington, 98597,
United States of America

First Plaintiff

AND **JZ KNIGHT** of Yelm, Washington, United States of
America, spiritual teacher

Second Plaintiff

AND **DAVID E MCCARTHY** of 616 Oneriri Road, Kaiwaka,
Northland, New Zealand, former student

Defendant

**STATEMENT OF CLAIM
DATED 18 FEBRUARY 2013**

 **Simpson Grierson**
Barristers & Solicitors

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To: The Registrar of the High Court at Whangarei

and

To: The defendant

THE PLAINTIFFS SAY:

1. The first plaintiff, JZK, Inc, is a Washington corporation having its place of business at 14507 Yelm Hwy SE, Washington, 98597, United States of America. JZK, Inc operates Ramtha's School of Enlightenment.
2. The second plaintiff, Ms Knight, is the president and sole shareholder of JZK, Inc and the founder of and spiritual teacher for Ramtha's School of Enlightenment, a division of JZK, Inc.
3. The defendant, Mr McCarthy, is a former student of Ramtha's School of Enlightenment.

Background

4. Ramtha's School of Enlightenment teaches students a philosophy of spirituality, which comprises information and techniques developed through teaching and study over many years (**RSE Confidential Information**).
5. A condition of participating in Ramtha's School of Enlightenment's training and events, is that each student agrees not to disseminate the information and techniques taught at the school.
6. The defendant was a student of Ramtha's School of Enlightenment until around 1996.
7. On or around 11 November 1993, Mr McCarthy signed a Conditions of Participation (**1993 COP**) which stated in relevant part:

RAMTHA SCHOOL OF ENLIGHTENMENT is pleased to admit all persons who will enter into a solemn covenant to abide by these conditions of participation. The information and techniques taught

here are for your knowledge only. You are not authorized to teach what you learn here to others. It shall be a condition on your admission to the School that you shall not, directly or indirectly, teach others the information and/or techniques that you learn here; nor shall you assist or facilitate other persons in their teaching of these matters to others. ...

8. The Conditions of Participation were updated in 1999, 2006 and again in 2007.
9. Employees of JZK, Inc record information and techniques taught at Ramtha's School of Enlightenment for and on behalf of JZK, Inc (**RSE Videos**).
10. Some RSE Videos are streamed, either live or on demand, through JZK, Inc's website, '*Ramtha TV*' (located at URL <http://www.ramtha.tv>). Individuals may only access RSE Videos streamed on *Ramtha TV* if they have:
 - (a) paid the applicable fee for viewing that particular RSE Video; and
 - (b) agreed to and signed the 2007 version of the Conditions of Participation (**2007 COP**).
11. The 2007 COP provides in relevant part:

Ramtha's School of Enlightenment, a division of JZK, Inc. (the "School"), is pleased to have you participate in the teachings of Ramtha so long as you make a solemn covenant to abide by these conditions of participation. These conditions apply to students, teachers, and other participants in the School, and apply to all future events or activities in which you participate at the School. Therefore, as a condition to your participation you must agree to the following:

1. The information and techniques taught here are for your knowledge only. You are licensed to use this information and techniques for your personal use only. By signing these Conditions of Participation, you agree not to teach or otherwise disseminate through speeches, books, articles, media interviews, or other forms of mass or group distribution (collectively, to "Teach or Disseminate") any information or techniques that you learn or are taught at the School, and for teachers, that you teach at the School, nor will you assist or facilitate other persons in doing so without the prior written consent of the School. You further agree not to Teach or Disseminate anything you BELIEVE you received from Ramtha in a dream, a vision or discipline, or any other source.

Initials: _____

2. The materials provided to you at the School are subject to the copyright laws. You are not authorized to copy, reproduce, prepare adaptations, publicly distribute, publicly perform, or publicly display any of those materials without the prior written consent of the School.

...

6. These Conditions of Participation will remain in effect and enforceable for the life of JZ Knight, plus 21 years. Inasmuch as a violation of these conditions would cause damage to the School in an amount that is difficult or impossible to estimate, you agree that these conditions may be enforced by equitable proceedings, including court injunction. Further, you agree that all income you receive from activities in violation of these Conditions of Participation will be paid to JZK, Inc. as compensation for the damages that JZK, Inc. incurs because of such breach (whether JZK, Inc. can establish the amount of such damages), unless JZK, Inc. can establish that its damages are greater than this amount. You agree to pay on demand the reasonable attorneys' fees and costs incurred by JZK, Inc. in connection with the enforcement of these Conditions of Participation, including those incurred on appeal. Initials: _____

12. Selected RSE Videos have been edited and made into VHS video tapes and DVDs for sale.

Mr McCarthy's activities on YouTube.com

13. Beginning from at least as early as 10 September 2012, several videos using footage taken from RSE Videos available on the *Ramtha TV* Website or sold on VHS video tape have been posted on YouTube.com by or on behalf of the defendant under the username *enlightenmefree* (**YouTube Videos**).

Particulars of YouTube Videos

- (a) The video labelled "*Fire, Health and Safety Violations at Ramtha's School of Enlightenment (RSE) Video 1 of 3*" posted on YouTube.com on or around 10 September 2012 at the URL <http://www.youtube.com/watch?v=NUouND-5NIs>.
- (b) The video labelled "*Fire, Health and Safety Violations at Ramtha's School of Enlightenment (RSE) Video 2 of 3*" posted on YouTube.com on or around 30 September 2012 at the URL <http://www.youtube.com/watch?v=Jk0c43mBgeM>.

- (c) The video labelled "*Sandra Romero speaks at a local Cult*" posted on YouTube.com on or around 4 October 2012 at the URL <http://www.youtube.com/watch?v=vJkI96Nn4vk>.
- (d) The video labelled "*Sandra Romero Seeks Voters from a Cult*" posted on YouTube.com on or around 9 October 2012 at the URL <http://www.youtube.com/watch?v=bkbGEUSg4OQ>.
- (e) The video labelled "*J Z Knight talks about Mexicans*" posted on YouTube.com on or around 18 November 2012 at the URL <http://www.youtube.com/watch?v=IOXPPn9Jrlg>.

Particulars of responsibility for postings under the username *enlightenmefree*

- (f) In the comments made about the YouTube Video labelled "*Sandra Romero speaks at a local Cult*" there is a comment posted by the user *enlightenmefree* for which Mr McCarthy takes credit.
- (g) Mr McCarthy has taken credit for the statement appearing underneath the video "*J Z Knight talks about Mexicans*".
- (h) Two counter notifications provided to YouTube.com by the user *enlightenmefree*, and forwarded by email on or around 15 and 28 November 2012 respectively by YouTube.com to JZK, Inc, both contain the following information:

... Display name of uploader: *enlightenmefree* ... I consent to the jurisdiction of the Federal District Court for the district in which my address is located, or if my address is outside of the United States, the judicial district in which YouTube is located, and will accept service of process from the claimant. David E McCarthy 616 Oneriri Rd Kaiwaka, Northland 0573 enlightenmefree@gmail.com 011 64 9 902 2082

- (i) Mr McCarthy takes credit for a comment posted by the user *enlightenmefree* in the comments section for a video posted on YouTube.com at URL <http://www.youtube.com/watch?v=2SvabjxtI4s&lc=J2aOANbdZsujnW1c-QoEHs7LrWsoA05rmGyNkdo1Lao&feature=plcp>.

14. The RSE Video footage used in the YouTube Videos has been taken from:
- (a) An RSE Video filmed, and streamed on *Ramtha TV*, on or around 31 March 2011;
 - (b) An RSE Video filmed, and streamed on *Ramtha TV*, on or around 17 February 2012;
 - (c) An RSE Video which was made available on VHS video tape entitled "*A Classic Teaching of Christmas*" which was recorded in 2001; and
 - (d) An RSE Video which was made available on VHS video tape entitled "*The Art of Giving*" which was recorded in 2003.
15. The YouTube Videos also use footage copied from a VHS video tape entitled "*Boktau 1998*" which was recorded in 1998 (the **Boktau Video**). This footage was recorded by Christain Schlaepfer as a gift for and with the permission of Ms Knight. Mr Schlaepfer was a student of Ramtha's School of Enlightenment.
16. Much of the content of the YouTube Videos is taken from the RSE Videos and Boktau Video and combined with statements of unfounded allegations of:
- (a) fire, health and safety violations occurring at Ramtha's School of Enlightenment; and
 - (b) abuse being inflicted on attendees through the methods used at Ramtha's School of Enlightenment;

with a stated view to having Ramtha's School of Enlightenment shut down and Ms Knight and the directors of JZK, Inc investigated for fraud and corruption.

17. The user *enlightenmefree* has acknowledged that content used in the YouTube Videos has been taken from Ramtha's School of Enlightenment.

Particulars

- (a) The following information is provided within the last 60 seconds of each of the YouTube Videos and/or in the statement provided by the user *enlightenmefree* underneath the YouTube Videos:

RSE video clips
Used Under Fair Use Doctrine 17 USC § 107
Nonprofit educational purposes

- (b) Ramtha's School of Enlightenment has been defined as 'RSE' in the statements provided by the user *enlightenmefree* underneath four of the five YouTube Videos.

18. The plaintiffs have not authorised Mr McCarthy, any former or current student of Ramtha's School of Enlightenment, or any other person to take content from RSE Videos or the Boktau video and use it in either the YouTube Videos, or in the 22 minute segment (defined below).

19. Unless restrained by the Court, Mr McCarthy threatens and intends to continue to keep the YouTube Videos available on YouTube.com, to disseminate further content from the RSE Videos, and create or cause the creation of, and disseminate transcripts, and translations of transcripts, of content taken from the RSE Videos, which will cause the plaintiffs to suffer further loss and damage.

Particulars

- (a) In or around October 2012 Mr McCarthy posted a video labelled "*Behind the Mask UNEDITED 1 of 4*" under the username *enlightenmefree* which contained an approximately 22 minute segment pulled from an RSE Video on to YouTube.com at URL <http://www.youtube.com/watch?v=uhfQvC4tTKY> (the **22 minute segment**).

- (b) In a counter notification forwarded to JZK, Inc by YouTube.com on or around 16 November 2012, Mr McCarthy opposed removal of the 22 minute segment from YouTube.com and indicated that he holds at least 11 hours of RSE Videos.
- (c) The label given to the 22 minute segment when it was posted on Youtube.com indicated that it was part 1 of 4 videos.
- (d) On or around 3 February 2013 Mr McCarthy posted the following message on a message board for *Enlighten Me Free* of which he is one of the moderators:

A request for help..
If you can help with transcribing segments of the video's '*JZ Knight behind the Mask 1 and 2*' into written form: English, Germans, Spanish, French, Japanese, and Italian.... please contact EMF.

...

We will make these transcripts freely available on EMF.

...

Thank you.
David

- (e) The labels given to two of the YouTube Videos indicate that these are parts one and two of a set of three videos.
- (f) The following comment was posted by the user *enlightenmefree* in or around November 2012 in the comments section for the YouTube Video labelled "*Sandra Romero speaks at a local Cult*":

Let there be no mistake about who produced these videos.
We are former students of RSE.
What we presented is the tip of a very dangerous iceberg.
There are more videos to follow, each one more damning than the next.
All documentation and first hand witnesses are at hand. ...

- (g) Mr McCarthy has claimed an affiliation with an organisation of former students of Ramtha's School of Enlightenment called '*Enlighten Me Free*'. Ms Virginia Coverdale, another former student affiliated with *Enlighten Me Free*, who is also known by the usernames '*coverdale*' and '*coverdalev*', has indicated

that *Enlighten Me Free* intends to publish an additional 11 hours of RSE Videos online:

- (i) The following statement was posted at the URL: www.theolympian.com/2012/10/24/2295691/video-tries-to-link-romero-jz.html#disqus_thread under the username *coverdale* on or around 24 October 2012:

BTW, the whole video is available. Can't wait to get it out. ITs difficult to send 11 hours out on a youtube but we will as soon as the new video is finished. Makes this one look sane.

- (ii) The following statement was posted at the URL: <http://www.youtube.com/watch?v=7zMn8wOfrSM&feature=plcp> under the username *coverdalev* on or around 24 October 2012:

JZ Knight claims we took this out of context so we tried to oblige her by posting the video in its full context ... but she complained to YOUTUBE. We will eventually prevail and re-post ... We will have it back up in a few days.

FIRST CAUSE OF ACTION: BREACH OF CONTRACT (1993 COP)

20. In breach of the 1993 COP, Mr McCarthy has disseminated RSE Confidential Information to the public by posting the YouTube Videos and the 22 minute segment on YouTube.com.
21. As a result of Mr McCarthy's breach of contract, JZK, Inc has suffered and continues to suffer loss and damage to its business particulars of which will be provided prior to trial but which includes:

Particulars of loss and damage

- (a) Loss of exclusivity of the content of the RSE Videos and the Boktau Video shown in the YouTube Videos resulting in loss of fees from existing, past and future students who would otherwise have paid a fee for access to this and other RSE content.

- (b) The integrity of Ramtha's School of Enlightenment and the teachings and techniques taught there are being undermined and distorted by Mr McCarthy's dissemination of segments of RSE Videos and the Boktau Video in isolation from the wider contexts of the school and its teachings with consequent impact on membership fees.

22. Unless restrained by this Court, Mr McCarthy threatens to further breach the 1993 COP, which is likely to lead to loss and damage.

Particulars

- (a) The first plaintiff refers to the particulars provided at paragraph 19(a) – (g) above.

THE FIRST PLAINTIFF CLAIMS:

- (a) A declaration that by disseminating content from the RSE Videos and the Boktau Video through YouTube.com, the defendant has breached his contract with the first plaintiff.
- (b) An injunction restraining the defendant by himself or his servants or agents or otherwise howsoever from disseminating through YouTube.com or otherwise content from RSE Videos and the Boktau Video, transcripts or translations of transcripts of content from RSE Videos and the Boktau Video, or any other information and/or techniques taught at Ramtha's School of Enlightenment to the public, or causing or authorising the dissemination through YouTube.com or otherwise of content from RSE Videos and the Boktau Video, transcripts or translations of transcripts of content from RSE Videos and the Boktau Video, or any other information and/or techniques taught at Ramtha's School of Enlightenment to the public;
- (c) An injunction requiring the defendant to remove the YouTube Videos from YouTube.com;

- (d) An inquiry as to the damages the first plaintiff has suffered by reason of the defendant's breach of contract;
- (e) Judgment for the amounts as determined by the Court;
- (f) Interest on the judgment sum for such periods and at such rate as the Court thinks fit; and
- (g) Costs.

SECOND CAUSE OF ACTION: INDUCING BREACH OF CONTRACT

The first plaintiff repeats paragraphs 1 – 22 above.

- 23. The YouTube Videos contain segments of RSE Videos made on or around 31 March 2011 and 17 February 2012 that were accessible only by paying the fee referred to in paragraph 10(a) above and subject to the conditions in the 2007 COP set out at paragraph 11 above.
- 24. By obtaining material from unknown participants in Ramtha's School of Enlightenment in breach of the 2007 COP for the purposes of dissemination to the public, Mr McCarthy engaged in conduct which is intended to and has induced such individuals to breach the 2007 COP.

Particulars

- (a) Mr McCarthy received copies of content from RSE Videos which had been streamed on *Ramtha TV*.
 - (b) The first plaintiff is unable to fully particularise the extent and nature of Mr McCarthy's conduct until either after discovery has taken place and/or interrogatories have been answered.
25. As a former student of Ramtha's School of Enlightenment and active member of *Enlighten Me Free* Mr McCarthy knew, or a reasonable person in his position would have known, that:

- (a) content from the RSE Videos filmed and streamed on or around 31 March 2011 and 17 February 2012 and from the 22 minute segment was only available through *Ramtha TV*; and
- (b) any individual who accessed and made copies of the RSE Video content streamed on *Ramtha TV* and then gave these copies to Mr McCarthy, or allowed Mr McCarthy to directly access and copy RSE Video content streamed on *Ramtha TV*, without the authorisation of JZK, Inc, would be in breach of an agreement not to disseminate information and techniques learned at Ramtha's School of Enlightenment.

Particulars

- (a) The following information is provided either within the last 60 seconds of the YouTube Videos and/or in the statement provided by the user underneath the YouTube Videos:

RSE video clips

Used Under Fair Use Doctrine 17 USC § 107

Nonprofit educational purposes

- (b) Ramtha's School of Enlightenment has been defined as 'RSE' in the statements provided by the user underneath four of the five YouTube Videos.
 - (c) In a counter notification forwarded to JZK, Inc by YouTube.com on or around 16 November 2012, Mr McCarthy indicated that he holds at least 11 hours of RSE Videos.
 - (d) The first plaintiff is unable to fully particularise the extent and nature of Mr McCarthy's knowledge and intentions until after discovery, and/or interrogatories have been answered.
- 26.** As a result of Mr McCarthy's conduct, JZK, Inc has suffered and continues to suffer loss and damage to its business particulars of which will be provided prior to trial but which includes.

Particulars of loss and damage

- (a) Loss of exclusivity of the content of the RSE Videos shown in the YouTube Videos resulting in loss of fees from existing, past and future students who would otherwise have paid a fee for access to this and other RSE content.
- (b) The integrity of Ramtha's School of Enlightenment and the teachings and techniques taught there are being undermined and distorted by Mr McCarthy's dissemination of segments of RSE Videos in isolation from the wider contexts of the school and its teachings with consequent impact on membership fees.

27. Unless restrained by this Court, Mr McCarthy threatens to engage in conduct which is intended to induce individuals to breach the 2007 COP which is likely to lead to loss and damage.

Particulars

- (a) The first plaintiff refers to the particulars provided at paragraph 19(a) – (g) above.

THE FIRST PLAINTIFF CLAIMS:

- (a) An injunction restraining the defendant by himself or his servants or agents or otherwise howsoever from disseminating through YouTube.com or otherwise content from RSE Videos, transcripts or translations of transcripts of content from RSE Videos, or any other information and/or techniques taught at Ramtha's School of Enlightenment to the public, or causing or authorising the dissemination through YouTube.com or otherwise of content from RSE Videos, transcripts or translations of transcripts of content from RSE Videos, or any other information and/or techniques taught at Ramtha's School of Enlightenment to the public;

- (b) An injunction requiring the defendant to remove the YouTube Videos from YouTube.com;
- (c) An inquiry as to the damages the first plaintiff has suffered by reason of the defendant's breach of contract;
- (d) Judgment for the amounts as determined by the Court;
- (e) Interest on the judgment sum for such periods and at such rate as the Court thinks fit; and
- (f) Costs.

THIRD CAUSE OF ACTION: BREACH OF CONFIDENCE

The plaintiffs repeat paragraphs 1 – 27 above.

28. By reason of the facts and matters pleaded above, RSE Confidential Information was imparted to Mr McCarthy, through both his direct participation at Ramtha's School of Enlightenment, and indirectly through an unknown individual (or individuals) who has participated in Ramtha's School of Enlightenment, in circumstances importing an obligation of confidence.

Particulars

- (a) RSE Confidential Information was provided to Mr McCarthy after he signed the 1993 COP under which he agreed:
 - (i) the information and techniques taught at Ramtha's School of Enlightenment are for his knowledge only;
 - (ii) that he was not authorised to teach what he learned at Ramtha's School of Enlightenment to others; and
 - (iii) that he would not, directly or indirectly, teach others the information and/or techniques that he learned at Ramtha's School of Enlightenment.

(b) RSE Confidential Information used in the YouTube Videos was provided to Mr McCarthy by an unknown individual who had accessed the information on *Ramtha TV* and had agreed under the 2007 COP that:

(i) the information and techniques taught at Ramtha's School of Enlightenment are for that individual's knowledge and personal use only; and

(ii) that individual would not teach or disseminate any information or techniques that individual learned or was taught at the school nor facilitate other persons in doing so without the prior written consent of the school.

29. At all times Mr McCarthy knew that the information provided to the individual was subject to an obligation of confidence.

Particulars of knowledge

(a) As a former student of Ramtha's School of Enlightenment and active member of *Enlighten Me Free*, Mr McCarthy knew that all participants at Ramtha's School of Enlightenment are required to keep the information and techniques learned there confidential.

30. Without the prior consent of the plaintiffs, Mr McCarthy was not entitled to use RSE Confidential Information, supplied to him by the plaintiffs, or any part of it, for any purpose other than that for which it was supplied to Mr McCarthy.

31. Mr McCarthy was not entitled to be in possession of or make use of RSE Confidential Information, or any part of it, supplied to him in breach of the 2007 COP.

32. Mr McCarthy has made and continues to make, in breach of confidence, unauthorised use of RSE Confidential Information to the detriment of the plaintiffs.

Particulars

- (a) The plaintiffs repeat paragraphs 13-18 above;
- (b) The plaintiffs reserve the right to further particularise breaches after discovery and/or interrogatories have been answered.

33. Mr McCarthy's unauthorised use of RSE Confidential Information was and is made in flagrant disregard of the plaintiffs' rights and to deliberately cause damage to the plaintiffs.

Particulars

- (a) Mr McCarthy knows, by virtue inter alia of the 1993 COP, that he was not authorised to disseminate RSE Confidential Information to the public;
- (b) Mr McCarthy's stated purposes of posting the YouTube Videos include having Ramtha's School of Enlightenment shut down and having Ms Knight and the directors of JZK, Inc investigated for fraud and corruption.

34. Unless restrained by this Court, Mr McCarthy threatens to make, in breach of confidence, further unauthorised use of RSE Confidential Information to the detriment of the plaintiffs.

Particulars

- (a) The plaintiffs refer to the particulars provided at paragraph 19(a) – (g) above.

THE PLAINTIFFS CLAIM:

- (a) A declaration that the dissemination of content from RSE Videos and the Boktau Video is in breach of an obligation of confidence and thereby unlawful;
- (b) An injunction restraining the defendant by himself or his servants or agents or otherwise howsoever from disseminating through YouTube.com or otherwise content from RSE Videos and the Boktau Video, transcripts or translations of transcripts of content from RSE Videos and the Boktau Video, or any other information and/or techniques taught at Ramtha's School of Enlightenment to the public, or causing or authorising the dissemination through YouTube.com or otherwise of content from RSE Videos and the Boktau Video, transcripts or translations of transcripts of content from RSE Videos and the Boktau Video, or any other information and/or techniques taught at Ramtha's School of Enlightenment to the public;
- (c) At the plaintiffs' election, an inquiry as to the damages the plaintiffs have suffered by reason of the defendant's breaches of confidence or an account of the defendant's profits from the breaches of confidence;
- (d) Exemplary damages;
- (e) Judgment of the amounts as determined by the Court;
- (f) Interest on the judgment sum for such periods and at such rates as the Court thinks fit; and
- (g) Costs.

FOURTH CAUSE OF ACTION: PRIMARY INFRINGEMENT OF COPYRIGHT

The plaintiffs repeat paragraphs 1 – 34 above.

35. Copyright subsists in the following:

- (a) The RSE Videos which are original films (**film copyright works**).
- (b) The sound tracks of the RSE Videos (excluding the music sound tracks) which are original sound recordings (**sound recording copyright works**).
- (c) The statements made by Ms Knight in the RSE Videos and the Boktau Video which are original literary works (**literary copyright works**).

(together the **Copyright Works**)

- 36. The Copyright Works qualify for copyright by virtue of either domicile or residence of the authors under section 18(2) of the Copyright Act 1994 and/or first publication in a prescribed foreign country under section 19 of the Act.
- 37. The film and sound recording copyright works were created by employees of JZK, Inc in the course of their employment. By virtue of their employment by JZK, Inc, copyright in the film and sound recording copyright works was first owned by JZK, Inc.
- 38. Ms Knight is the author and owner of copyright in the literary copyright works.
- 39. By virtue of agreements entered between JZK, Inc and Ms Knight, Ms Knight is and has been the owner of all copyright in the film and sound recording copyright works at all material times.

Particulars

- (a) A confirmatory deed of assignment of copyright and licence between Ms Knight and JZK, Inc, dated 15 February 2013, confirms that copyright in the Copyright Works was vested in Ms Knight from the date of creation of each Copyright Work.

40. By virtue of agreements between JZK, Inc and Ms Knight, JZK, Inc has an exclusive worldwide licence to use the Copyright Works.

Particulars

- (a) A confirmatory deed of assignment of copyright and licence between Ms Knight and JZK, Inc, dated 15 February 2013, confirms that JZK, Inc has an exclusive worldwide licence to use the Copyright Works.
41. Mr McCarthy by reason of the facts and matters pleaded above has infringed and threatens to infringe copyright in the Copyright Works by:
- (a) Copying, or authorising others to copy, all or a substantial part of the Copyright Works;
- (b) Making, or authorising others to make, an adaptation of all or a substantial part of the Copyright Works;
- (c) Uploading or authorising or directing the uploading of, unauthorised copies or adaptations of all or a substantial part of the Copyright Works onto YouTube.com;
- (d) Causing or authorising copies or adaptations of all or a substantial part of the Copyright Work to be communicated to, issued to, and played or shown to members of the public.

(Sections 16, 29, 30, 31, 32 and 33 of the Copyright Act 1994).

42. Without discovery the plaintiffs are unable to further particularise the instances of infringement.
43. Mr McCarthy has committed the acts of infringement stated above in flagrant disregard of the plaintiffs' copyright to deliberately cause damage to the plaintiffs.

Particulars

- (a) Mr McCarthy has acknowledged, by purporting to rely on the Fair Use Doctrine 17 USC § 107, that copyright subsists in the Copyright Works and that he was not authorised by the copyright owner to use the Copyright Works;
- (b) Mr McCarthy's stated purposes of posting the YouTube Videos include having Ramtha's School of Enlightenment shut down and having Ms Knight and the directors of JZK, Inc investigated.

44. As a result of Mr McCarthy's posting the YouTube Videos on YouTube.com, JZK, Inc has suffered and continues to suffer loss and damage to its business particulars of which will be provided prior to trial but which includes.

Particulars of loss and damage

- (a) Loss of exclusivity of the content of the RSE Videos and the Boktau Video shown in the YouTube Videos resulting in loss of fees from existing, past and future students who would otherwise have paid a fee for access to this and other RSE content.
- (b) The integrity of Ramtha's School of Enlightenment and the teachings and techniques taught there are being undermined and distorted by Mr McCarthy's dissemination of segments of RSE Videos and the Boktau Video in isolation from the wider contexts of the school and its teachings with consequent impact on membership fees.

45. Unless restrained by this Court, Mr McCarthy threatens and intends to further infringe copyright which is likely to lead to loss and damage.

Particulars

- (a) The plaintiffs refer to the particulars provided at paragraph 19(a) – (g) above.

THE PLAINTIFFS CLAIM:

- (a) A declaration that the defendant has infringed the plaintiffs' copyright in the Copyright Works;
- (b) An injunction restraining the defendant by himself or his servants or agents or otherwise howsoever from copying, making an adaptation of, or communicating, issuing, playing or showing through YouTube.com or otherwise all or any substantial part of the Copyright Works to the public, or causing or authorising the copying, making an adaptation of, or communicating, issuing, playing or showing through YouTube.com or otherwise all or a substantial part of the Copyright Works to the public;
- (c) An injunction restraining the defendant by himself or his servants or agents or otherwise howsoever from disseminating through YouTube.com or otherwise content from RSE Videos and the Boktau Video to the public, or causing or authorising the dissemination through YouTube.com or otherwise of content from RSE Videos and the Boktau Video to the public;
- (d) An order for delivery up and destruction of all infringing copies of the Copyright Works or other material in the possession or power or control of the defendant;
- (e) At the plaintiffs' election, an inquiry as to the damages the plaintiffs have suffered by reason of any infringements or an account of the defendant's profits from the infringements;
- (f) Additional damages under section 121(2) of the Copyright Act 1994;

- (g) Judgment for the amounts as determined by the Court;
- (h) Interest on the judgment sum for such periods and at such rate as the Court thinks fit; and
- (i) Costs.

THIS DOCUMENT is filed by TRACEY JEAN WALKER, solicitor for the plaintiff, of the firm Simpson Grierson.

The address for service of the plaintiff is at the offices of Simpson Grierson, Level 27, Lumley Centre, 88 Shortland Street, Auckland.

Documents for service on the plaintiff may be left at that address for service or may be posted to the solicitor at Private Bag 92518, or left for the solicitor at a document exchange for direction to DX CX10092 or transmitted to the solicitor by facsimile to 09-307 0331.