

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**SUMMARY ORDER**

**RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 19<sup>th</sup> day of September, two thousand eleven.

PRESENT: JOSEPH M. MCLAUGHLIN,  
GUIDO CALABRESI,  
REENA RAGGI,  
*Circuit Judges.*

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PEARSON EDUCATION, INC., JOHN  
WILEY & SONS, INC., CENGAGE LEARNING  
INC., THE MCGRAW-HILL COMPANIES, INC.  
*Plaintiffs-Appellees,*

v.

No. 10-2610-cv

VIRENDER YADAV, SUKWINDER SINGH, DBA  
Modern Books, DBA Express Books, JOHN DOES 1-5,  
*Defendants,*

VINOD KUMAR, DART AIR, INC., DBA Unique  
Books, DBA Jhon Book Store, DBA Modern Books,  
DCA Expressbooks06, DBA Express Books, DBA  
Qualityinstruments400,  
*Defendants-Appellants.*

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APPEARING FOR APPELLANTS: Vivek Suri, New York, New York.

APPEARING FOR APPELLEES: William Dunnegan (Laura Scileppi, *on the brief*),  
Dunnegan LLC, New York, New York.

Appeal from the United States District Court for the Southern District of New York  
(Charles S. Haight, Jr., *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND  
DECREED that the judgment entered on May 26, 2010, is AFFIRMED.

Defendants Vinod Kumar and Dart Air, Inc. appeal from the district court's entry of final judgment pursuant to Fed. R. Civ. P. 54(b) for plaintiffs Pearson Education, Inc., John Wiley & Sons, Inc., Cengage Learning Inc., and the McGraw Hill Companies, Inc. on their claims that defendants' resale in the United States of textbooks manufactured by plaintiffs in India infringed plaintiffs' United States copyrights in the domestic versions of those textbooks. See 17 U.S.C. §§ 106(3), 501, 602(a). On this appeal, defendants argue that the district court erred in failing to recognize that the first sale doctrine, see 17 U.S.C. § 109(a), shields the purchaser of a copyrighted work produced outside the United States from an infringement claim based on the importation and resale of the work in the United States. We assume the parties' familiarity with the facts and record of proceedings, which we need not discuss in order to affirm.

Defendants' argument on appeal presents a question of law that we review de novo. See United States v. Gravel, 645 F.3d 549, 551 (2d Cir. 2011). At the time of the district court's decision, that question of law had not been resolved by this court. Recently,

however, this court decided John Wiley & Sons, Inc. v. Kirtsaeng, --- F.3d ----, 2011 WL 3560003 (2d Cir. Aug. 15, 2011), which holds, as a matter of law, that the first sale doctrine does not apply under the circumstances of this case. See id. at \*8. Defendants argue that John Wiley & Sons is wrongly decided. This panel, however, is bound by the holding of that case unless it is reversed by the Supreme Court or by this court en banc. See Hutchison v. Deutsche Bank Securities Inc., 647 F.3d 479, 488 (2d Cir. 2011). In sum, because defendants' argument is now defeated by the law of this circuit, their appeal fails on the merits.

Defendants raise no other arguments on appeal. Accordingly, the May 26, 2010 judgment of the district court is AFFIRMED.

FOR THE COURT:  
CATHERINE O'HAGAN WOLFE, Clerk of Court