UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PEARSON EDUCATION, INC.; BEDFORD, FREEMAN & WORTH PUBLISHING GROUP, LLC d/b/a MACMILLAN LEARNING; CENGAGE LEARNING, INC.; and MCGRAW HILL LLC, Plaintiffs, v. BOOKHOLDERS LLC, Defendant.	**Civil Action No.** **COMPLAINT FOR:** **1. COPYRIGHT INFRINGEMENT (17 U.S.C. §§ 101, *et seq.*)** **2. TRADEMARK INFRINGEMENT AND COUNTERFEITING (15 U.S.C. §§ 1114, *et seq.*)** **DEMAND FOR JURY TRIAL**

This action arises from the unlawful distribution of counterfeit textbooks falsely purporting to be those published and produced by Plaintiffs Pearson Education, Inc. ("Pearson"), Bedford, Freeman & Worth Publishing Group, LLC d/b/a Macmillan Learning ("Macmillan Learning"), Cengage Learning, Inc. ("Cengage"), and McGraw Hill LLC ("McGraw Hill," and, collectively, "Plaintiffs"). Defendant BookHolders LLC ("Defendant") has persistently engaged in this counterfeiting activity in clear and unambiguous violation of Plaintiffs' rights under federal copyright and trademark law.

Plaintiffs allege, on personal knowledge as to matters relating to themselves, and on information and belief as to all other matters, as follows:

NATURE OF THE CASE

1. Plaintiffs are leading educational publishers who develop, market, distribute, license, and sell a comprehensive range of traditional and digital educational content and tools to

professionals and students of all ages on virtually all subjects. Plaintiffs' publications are among the most popular and widely used titles in their fields.

2. Defendant runs a large and sophisticated business that engages in buying and selling textbooks, including through its website, www.bookholders.com, as well as through third-party online marketplaces and brick and mortar locations. Defendant's sales include counterfeit textbooks, which are unauthorized copies of Plaintiffs' copyrighted works and bear unauthorized identical or substantially indistinguishable reproductions of Plaintiffs' federally registered trademarks. Defendant sells the infringing counterfeit textbooks to individual consumers, wholesale distributors, and other re-sellers.

3. Plaintiffs have purchased numerous counterfeits directly from Defendant. Plaintiffs have also obtained counterfeits from Defendant's customers, who purchased them from Defendant. At present, Plaintiffs have evidence of Defendant's distribution of at least 43 of their textbook titles. But this is a mere snapshot. The true scope of Defendant's distribution of counterfeits is greater and not precisely known to Plaintiffs, who fear that what they know to date is only the proverbial "tip of the iceberg."

4. Defendant sells its counterfeit textbooks to purchasers seeking out legitimate copies of Plaintiffs' textbooks. On its website and on third-party marketplaces, Defendant identifies the textbooks using the legitimate textbooks' respective titles, editions, authors, cover images bearing Plaintiffs' trademarks, and ISBN (the International Standard Book Number).

5. In August 2017, September 2018, October 2018, and March 2019, Plaintiffs provided Defendant with specific notice of its problem with counterfeits by serving it with notices of infringement. Defendant stopped responding after the first notice and continued to sell counterfeits even after being told to stop. Notwithstanding its persistent, obvious, and ongoing

infringement problem, Defendant has remained committed to its counterfeit book practices.

6. Sales of counterfeits displace legitimate sales, depriving Plaintiffs and their authors of the much-needed returns from their creative efforts and investments. Left unchecked, counterfeits threaten the publication of deserving works, depriving students and others of important learning tools. Moreover, counterfeits deprive Plaintiffs of control over the quality and characteristics of the textbooks made and sold under their trademarks, thus harming Plaintiffs' brands and confusing the consuming public. Accordingly, after repeated pleas to Defendant to cease selling counterfeit textbooks to consumers, Plaintiffs seek injunctive relief and damages to put a stop to and obtain redress for Defendant's egregious infringement.

JURISDICTION AND VENUE

7. This is a civil action arising under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*, and the Lanham Act, 15 U.S.C. §§ 1051 *et seq*. As such, the Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a) and 15 U.S.C. § 1121.

8. The Court has personal jurisdiction over Defendant because Defendant transacts business in Maryland, committed tortious acts within Maryland, and Plaintiffs' claims arise from those activities. In particular, Defendant (a) operates two physical stores in Maryland through which it conducts its counterfeit textbook business, (b) transacts business within Maryland or contracts to supply goods, including counterfeit goods, in or from Maryland, (c) ships and receives textbooks, including counterfeits, from and in Maryland, and/or (d) operates one or more of its online storefronts, through which counterfeits have been sold, from Maryland. In addition, Defendant's website is highly interactive, and its online storefronts operate on other on highly interactive websites, all of which are accessible and sell goods, including counterfeit goods, to consumers in Maryland.

9. Venue is proper, *inter alia*, pursuant to 28 U.S.C. §§ 1391(b) and 28 U.S.C. § 1400(a), because Defendant conducts, transacts, and/or solicits business in this District, and a substantial part of the acts of infringement alleged herein occurred in this District.

PARTIES

10. Plaintiff Pearson is a Delaware corporation with a principal place of business at 221 River Street, Hoboken, New Jersey 07030.

11. Plaintiff Macmillan Learning is a New York limited liability company with its principal place of business at One New York Plaza, New York, New York 10004, and is wholly owned by Macmillan Holdings, LLC, also a New York limited liability company.

12. Plaintiff McGraw Hill is a Delaware limited liability company with its principal place of business at 1325 Avenue of the Americas, 12th Floor, New York, New York 10019.

13. Plaintiff Cengage, formerly Thomson Learning Inc., is a Delaware corporation with its principal place of business at 200 Pier Four Boulevard, Boston, Massachusetts 02210.

14. Defendant BookHolders LLC is a Delaware limited liability company with its primary place of business located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. Defendant also maintains physical stores at 7326 Baltimore Avenue, College Park, Maryland 20740 and 208 York Rd Towson, Maryland 21204 at which it sells textbooks both in person and over the internet. Defendant has further operated "pop-up" stores in Baltimore, Maryland.

FACTUAL ALLEGATIONS

A. Plaintiffs' Businesses

15. Plaintiffs are some of the largest and most successful publishers of textbooks and other educational materials in the United States and internationally. With a rich literary and

educational heritage, Plaintiffs' products and services are used in the United States and beyond at educational institutions and in other learning environments. In the academic marketplace, Plaintiffs serve secondary, post-secondary, and graduate-level students, teachers, and learning institutions providing quality content, assessment tools, and educational services in all available media. Plaintiffs' publications include physical textbooks. These textbooks are widely available in the marketplace for sale, including from physical and online bookstores. Plaintiffs' products and services are sold through direct channels and via an international network of distributors.

16. Plaintiffs invest heavily in publishing their textbooks. Each year they incur substantial costs for author royalties and other costs of content creation or licensing, development and editing, copyediting and proofreading, typesetting, layout, printing, binding, distribution, promotion, and for support of their editorial offices.

17. Plaintiffs and/or their predecessors have also invested decades of effort in building a reputation of quality in the publishing industry, which consumers associate with Plaintiffs and their trademarks. Plaintiffs invest significant resources annually in the advertisement and promotion of their goods and services under their respective trademarks. Plaintiffs' trademarks and the goodwill of the business associated with them are of tremendous value and have become associated in the public mind with Plaintiffs' reputation for publishing textbooks of the very highest quality.

18. Plaintiffs are the copyright owners of, and/or the owners of the exclusive rights under copyright in, *inter alia*, those works or derivative works described on **Exhibit A** (the "Authentic Works"). Plaintiffs or their affiliates have obtained copyright registrations, duly issued by the United States Copyright Office, covering their respective Authentic Works.

19. Plaintiffs' Authentic Works bear trademarks as set forth on **Exhibit B** (the

"Marks"), which Plaintiffs or their affiliates have duly registered on the Principal Register of the United States Patent and Trademark Office. Plaintiffs own or are the exclusive licensee of their respective Marks. Plaintiffs' Marks are distinctive and arbitrary and, in some cases, are now incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065. Plaintiffs and/or their predecessors invested decades of effort in building a reputation of quality in the publishing industry, which consumers associate with Plaintiffs' Marks. All of the registrations listed on Exhibit B are valid, subsisting, unrevoked, and not cancelled. Plaintiffs also own common law rights in these and other trademarks.

20. Plaintiffs have yet to identify the full range of copyrights and trademarks that Defendant has infringed. Accordingly, Exhibits A and B are representative, not comprehensive, and will be expanded as discovery uncovers additional counterfeits (thereby expanding the scope of "Plaintiffs' Authentic Works," "Plaintiffs' Marks," and "Counterfeit Textbooks" as defined herein).

B. Defendant's Unlawful Activities

21. Beginning no later than 2017, Defendant has sold and distributed counterfeits of Plaintiffs' Authentic Works bearing Plaintiffs' Marks (the "Counterfeit Textbooks").

22. Defendant has distributed the Counterfeit Textbooks without any authorization or license from Plaintiffs. Plaintiffs did not print, or authorize the printing of, the Counterfeit Textbooks. Plaintiffs did not ever sell, or authorize others to sell, the Counterfeit Textbooks.

23. Defendant, without any authorization or license from Plaintiffs, has knowingly and willfully used identical or substantially indistinguishable copies of Plaintiffs' Marks in connection with the sale and offering for sale of the Counterfeit Textbooks.

24. Defendant's infringing activities are substantial. Plaintiffs currently are aware of at least 43 separate titles of Plaintiffs' Authentic Works and eight of Plaintiffs' Marks that

Defendant has infringed. Exhibit A describes the Counterfeit Textbooks sold by Defendant that Plaintiffs have discovered to date, through Defendant's customers and Plaintiffs' own purchases from Defendant, and Exhibit B describes the Marks that Defendant has infringed in connection with these sales. Exhibits A and B will be updated over the course of discovery in this action.

25. Defendant sells Counterfeit Textbooks to individual consumers and commercial wholesalers and retailers via a variety of channels. Defendant operates a website at www.bookholders.com, through which it sells textbooks. Defendant also sells books through marketplace storefronts it operates on Amazon, Abebooks, Biblio, eCampus, Valore, and perhaps other marketplaces. Plaintiffs purchased Counterfeit Textbooks from at least three of Defendant's online marketplace storefronts on Abebooks, eCampus, and Valore. Finally, Defendant sells textbooks through multiple physical storefronts, including those in Maryland.

26. Defendant has also sold Counterfeit Textbooks to large, national distributors. For example, Defendant sold Counterfeit Textbooks to at least MBS Textbook Exchange, LLC, Valore, Inc., and A Book Company, LLC d/b/a eCampus.com, who identified the books as likely counterfeit, and surrendered them to Plaintiffs, who confirmed they are counterfeit.

27. Plaintiffs require discovery to learn the full scope of the Counterfeit Textbooks that Defendant has distributed through these and other channels.

28. At the time that Defendant sold the Counterfeit Textbooks, Defendant knew or should have known that the Counterfeit Textbooks were infringing. Defendant knew or should have known that some of its suppliers are not authorized to reproduce Plaintiffs' Authentic Works or use Plaintiffs' Marks on textbooks. Defendant obtained these books without due diligence as to where the suppliers acquired the books or the authenticity of the books. Defendant compounded the problem when, upon receipt of the books, it failed to conduct an adequate review for

authenticity.

29. Defendant has also been put on notice of its infringing conduct by Plaintiffs, but failed to stop it. Indeed, Plaintiffs sent multiple infringement notices directly to Defendant, all of which Defendant ignored. On August 18, 2017, Plaintiffs sent Defendant, via its registered agent, an infringement notice informing it that it had sold at least seven counterfeit titles.[1] Then, Plaintiffs sent Defendant, via its registered agent on September 5, 2018 and its College Park, Maryland store on October 24, 2018, an infringement notice informing Defendant that it had sold at least 34 counterfeit titles. Next, on March 13, 2019, Plaintiffs sent Defendant, via hand delivery to its CEO and its College Park store, an infringement notice informing Defendant that it had sold at least 58 counterfeit titles. At no time did Defendant respond to Plaintiffs' direct infringement notices.

30. In addition, Plaintiffs sent notices to Amazon and Abebooks informing them that Plaintiffs had purchased counterfeit textbooks from Defendant's storefronts. These notices were, in turn, sent to Defendant. Defendant reached out to Plaintiffs in August 2017 in response to the first notice to Amazon. Plaintiffs were not able to come to a resolution with Defendant at that time. Defendant then ceased communicating with Plaintiffs and continued to distribute counterfeit textbooks.

31. By infringing Plaintiffs' copyrights and trademarks, Defendant causes Plaintiffs to suffer financial and reputational injury. The revenue from Plaintiffs' sales of textbooks represents a substantial portion of Plaintiffs' respective annual revenues. Both publishers and authors alike are deprived of income when their textbooks are unlawfully copied and sold, or when their copyrights are otherwise infringed, which can have financial and creative repercussions for them

[1] Plaintiffs are not asserting claims on titles that they learned Defendant infringed more than three years ago. Notwithstanding, Defendant's infringing conduct and disregard of infringement notices that pre-dates this three-year period shows the willful nature of its infringing conduct.

and their work. A substantial decline in revenue from sales of Plaintiffs' textbooks could cause Plaintiffs to cease publication of one or more deserving textbooks. This would have an adverse impact on the creation of new textbooks and on scholarly endeavors.

32. The Counterfeit Textbooks that Defendant sold are different than and can be inferior to Plaintiffs' Authentic Works. Among other differences, the binding, glue, paper, color, and printing are often different and inferior. Content from Plaintiffs' Authentic Works can also be missing from the counterfeit. Based on the use of Plaintiffs' Marks, actual and prospective purchasers are likely to believe that the Counterfeit Textbooks are Plaintiffs' Authentic Works. This weakens, blurs, and tarnishes Plaintiffs' Marks. It further injures Plaintiffs' business reputations by causing Plaintiffs' Marks and the goodwill associated with them to be confused or mistakenly associated with a group or series of textbooks of lesser quality.

FIRST CLAIM FOR RELIEF

Copyright Infringement (17 U.S.C. §§ 101 *et seq*.)

33. Plaintiffs re-allege and incorporate by reference the allegations set forth above in paragraphs 1- 32.

34. Plaintiffs' Authentic Works constitute original works and copyrightable subject matter pursuant to the Copyright Act, and they are protected by registrations duly issued to Plaintiffs (or their predecessors or affiliates) by the United States Copyright Office.

35. At all relevant times, Plaintiffs have been and still are the owners, or exclusive licensees, of all rights, title, and interest in and to their respective copyrights in Plaintiffs' Authentic Works, which have never been assigned, licensed, or otherwise transferred to Defendant.

36. Beginning on an unknown date, but at least since early 2017, Defendant, with

knowledge of Plaintiffs' copyrights in Plaintiffs' Authentic Works, infringed Plaintiffs' copyrights. Specifically, Defendant infringed Plaintiffs' exclusive rights to distribute their copyrighted works. It did so by, among other things, selling the Counterfeit Textbooks for profit, without Plaintiffs' permission, license, or consent.

37. Defendant's unlawful conduct, as set forth above, was deliberate, intentional, knowing, and willful.

38. As a result of Defendant's conduct, as set forth above, Plaintiffs have been, and will continue to be, damaged.

39. Defendant's actions described above have caused and will continue to cause irreparable damage to Plaintiffs, for which Plaintiffs have no remedy at law. Unless this Court restrains Defendant from continuing its infringement of Plaintiffs' copyrights, these injuries will continue to occur in the future. Plaintiffs are accordingly entitled to injunctive relief restraining Defendant from further copyright infringement, as well as other appropriate equitable relief.

SECOND CLAIM FOR RELIEF

Trademark Infringement and Counterfeiting (15 U.S.C. §§ 1114 *et seq.*)

40. Plaintiffs re-allege and incorporate by reference the allegations set forth above in paragraphs 1- 32.

41. At all relevant times, Plaintiffs have been and still are the owners, or exclusive licensees, of all rights, title, and interest in and to their respective Marks listed on Exhibit B, which are valid and protectable trademarks that are registered with the United States Patent and Trademark Office. Without Plaintiffs' authorization, Defendant has sold and offered for sale Counterfeit Textbooks under Plaintiffs' Marks.

42. Beginning on an unknown date, but at least since early 2017, Defendant has

infringed Plaintiffs' federally registered Marks through its use in commerce, without Plaintiffs' consent, of reproductions, counterfeits, copies, or colorable imitations of Plaintiffs' Marks in connection with the sale, offering for sale, distribution, and/or advertising of Plaintiffs' works. Moreover, the spurious trademarks on the Counterfeit Textbooks that Defendant has distributed and sold are identical to and/or substantially indistinguishable from Plaintiffs' Marks.

43. Defendant's aforesaid uses of Plaintiffs' Marks have caused and are likely to continue to cause confusion, mistake, and/or deception as to the source or origin of Defendant's goods, in that the public, and others, are likely to believe that Defendant's goods are provided by, sponsored by, approved by, licensed by, affiliated with, or in some other way legitimately connected with Plaintiffs, all to Plaintiffs' irreparable harm.

44. Defendant, by its above-enumerated acts, willfully and knowingly has violated and infringed Plaintiffs' rights in and to the federally registered Marks, in violation of Section 32 of the Lanham Act (15 U.S.C. § 1114). Defendant's conduct was intentional, or deliberately reckless, and without foundation in law.

45. Defendant's actions described above have caused and will continue to cause irreparable damage to Plaintiffs, for which Plaintiffs have no remedy at law. Unless this Court restrains Defendant from continuing its infringement of Plaintiffs' Marks, these injuries will continue to occur in the future. Plaintiffs are accordingly entitled to injunctive relief restraining Defendant from further trademark infringement, as well as other appropriate equitable relief.

PRAYER FOR RELIEF

By reason of the acts and circumstances alleged above, Plaintiffs seek relief from this Court as follows:

1. Judgment on each of the claims set forth above, including that Defendant's

infringement of Plaintiffs' Authentic Works and Marks was intentional and willful;

2. Damages and/or restitution according to proof at trial, including exemplary damages where authorized by statute;

3. An accounting and disgorgement of Defendant's profits, gains, and advantages realized from its unlawful conduct, including a reconciliation of purchases and sales of the Counterfeit Textbooks with documents relating to all such purchases and sales;

4. An order requiring Defendant to pay Plaintiffs such damages as Plaintiffs have sustained as a consequence of Defendant's unlawful acts as alleged above, including actual damages or statutory damages, at Plaintiffs' election, pursuant to 17 U.S.C. § 504;

5. An order enjoining Defendant and all persons who are in active concert or participation with Defendant from further infringing upon Plaintiffs' respective copyrights pursuant to 17 U.S.C. § 502;

6. An order enjoining Defendant from further infringing upon Plaintiffs' respective trademarks pursuant to 15 U.S.C. § 1116;

7. An order requiring Defendant to pay Plaintiffs such damages as Plaintiffs have sustained as a consequence of Defendant's unlawful use of counterfeit trademarks, as alleged above, including statutory damages or treble damages, pursuant to 15 U.S.C. § 1117;

8. An order requiring Defendant to deliver up for destruction all products, packaging, labels, literature, advertising, and other material bearing imitations, including confusingly similar variations, of Plaintiffs' respective copyrights and marks pursuant to 17 U.S.C. § 503 and 15 U.S.C. § 1118;

9. Prejudgment and post-judgment interest at the applicable rate;

10. Plaintiffs' attorney's fees, expenses, and costs of suit; and

11. Such other and further relief the Court deems proper.

JURY TRIAL DEMAND

Plaintiffs hereby request a trial by jury.

DATED: March 8, 2021

Respectfully submitted,

By: */s/ Matthew J. Oppenheim*

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