

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

PEARSON EDUCATION, INC. *et al.*

Plaintiffs,

v.

BOOKHOLDERS LLC,

Defendant.

Civil Action No.: 8:21-cv-00594-PX

**DEFENDANT BOOKHOLDER LLC'S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFFS' COMPLAINT**

Defendant Bookholders LLC ("Defendant"), by its undersigned attorneys, for its answer to the Complaint of Pearson Education, Inc. et al., responds as follows:

The introductory paragraph of the Complaint is in the nature of legal conclusions to which no response is required. To the extent the allegations in the introductory paragraph of the Complaint require a response, Defendant denies the allegations.

NATURE OF THE CASE

1. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 1 of the Complaint and therefore denies the same.

2. Defendant admits that it buys and sells textbooks at its brick-and-mortar location(s) and certain third-party online marketplaces. Defendant admits that it sells textbooks through its website, www.bookholders.com, and holds textbooks sold by or through certain online third-party sellers. Defendant admits that it sells textbooks to individual persons. Defendant is without sufficient knowledge or information to form a belief as to whether any wholesale distributor or re-

seller purchased a textbook from Defendant and therefore denies same. Defendant is without sufficient knowledge or information to form a belief as to whether any book sold by Defendant was an unauthorized copy of Plaintiffs' copyrighted works and therefore denies same. No response is required to the allegations in paragraph 2 of the Complaint that are in the nature of legal conclusions. Defendant denies all other allegations in Paragraph 2 of the Complaint.

3. The allegations in paragraph 3 of the Complaint are in the nature of legal conclusions to which no response is required. To the extent a response is required, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

4. Defendant admits that it identifies textbooks using respective titles, editions, authors, International Standard Book Numbers and cover images. Defendant is without sufficient knowledge or information to form a belief as to whether any book sold by Defendant was an unauthorized copy of Plaintiffs' copyrighted works and therefore denies same. Other allegations in paragraph 4 of the Complaint are in the nature of legal conclusions to which no response is required. To the extent other allegations in paragraph 4 require a response, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

5. The allegations in paragraph 5 of the Complaint are in the nature of legal conclusions to which no response is required. To the extent the allegations in paragraph 5 require a response, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 5 of the Complaint and therefore denies the same.

6. Defendant denies that Plaintiffs repeatedly contacted Defendant. The remaining

allegations in paragraph 6 of the Complaint are in the nature of legal conclusions to which no response is required. To the extent the remaining allegations in paragraph 6 require a response, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations and therefore denies the same.

JURISDICTION AND VENUE

7. Defendant admits that Plaintiffs' Complaint purports to be 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.*

8. Defendant admits that it transacts business in Maryland, including receiving and distributing books. Defendant denies the other allegations in paragraph 8 of the Complaint.

9. Defendant admits that venue is proper in this District for Bookholders LLC. Defendant denies the other allegations in paragraph 9 of the Complaint.

PARTIES

10. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 10 of the Complaint and therefore denies the same.

11. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 11 of the Complaint and therefore denies the same.

12. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 12 of the Complaint and therefore denies the same.

13. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 13 of the Complaint and therefore denies the same.

14. Defendant admits that it is a Delaware limited liability company, maintains a store located at 208 York Road, Towson, MD 21204, maintained a store in College Park, MD that changed locations, and sells/sold textbooks from those stores. Defendant admits that it sets up a

table from time to time on a college campus to receive student textbooks. Defendant denies the other allegations in paragraph 14.

FACTUAL ALLEGATIONS

15. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 15 of the Complaint and therefore denies the same.

16. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 16 of the Complaint and therefore denies the same.

17. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 17 of the Complaint and therefore denies the same.

18. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 18 of the Complaint and therefore denies the same.

19. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 19 of the Complaint and therefore denies the same.

20. The allegations in paragraph 20 of the Complaint are in the nature of legal conclusions to which no response is required. To the extent the allegations in paragraph 20 require a response, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 20 of the Complaint and therefore denies the same.

21. Defendant denies the allegations in paragraph 21.

22. Defendant denies the allegations in paragraph 22.

23. Defendant denies the allegations in paragraph 23.

24. Defendant denies the allegations in paragraph 24 to the extent it alleges Defendant committed any acts which in any way infringed Plaintiffs' copyrights and/or trademarks.

Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 24 of the Complaint and therefore denies the same.

25. Defendant admits that it operates a website at www.bookholders.com, sells textbooks using that website, and sells or holds textbooks sold by or through certain online third-party sellers, including online platforms provided by Amazon, Abebooks, Biblio and Valore. Defendant denies the allegations in paragraph 25 to the extent it alleges Defendant committed any acts which in any way infringed Plaintiffs' copyrights and/or trademarks. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 25 of the Complaint and therefore denies the same.

26. Defendant denies the allegations in paragraph 26 to the extent it alleges Defendant committed any acts which in any way infringed Plaintiffs' copyrights and/or trademarks. Defendant is without sufficient knowledge or information to form a belief as to whether any national distributor purchased a textbook from Defendant and therefore denies same.

27. The allegations in paragraph 27 of the Complaint are in the nature of legal conclusions to which no response is required.

28. Defendant denies the allegations in paragraph 28.

29. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 29 of the Complaint and therefore denies the same.

30. Defendant denies that it and Plaintiffs discussed possible issues with the sale of textbooks. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 30 of the Complaint and therefore denies the same.

31. Defendant denies the allegations in paragraph 31 of the Complaint to the extent it alleges Defendant committed any acts which in any way infringed Plaintiffs' copyrights and/or

trademarks. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 31 of the Complaint and therefore denies the same.

32. Defendant denies the allegations in paragraph 32 of the Complaint to the extent it alleges Defendant committed any acts which in any way infringed Plaintiffs' copyrights and/or trademarks. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 32 of the Complaint and therefore denies the same.

FIRST CLAIM FOR RELIEF

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

33. Defendant repeats and reavers its allegations in response to paragraphs 1 through 32 as if fully set forth herein.

34. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 34 of the Complaint and therefore denies the same.

35. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 35 of the Complaint and therefore denies the same.

36. Defendant denies the allegations in paragraph 36.

37. Defendant denies the allegations in paragraph 37.

38. Defendant denies the allegations in paragraph 38.

39. Defendant denies the allegations in paragraph 39.

SECOND CLAIM FOR RELIEF

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

40. Defendant repeats and reavers its allegations in response to paragraphs 1 through 32 as if fully set forth herein.

41. Defendant denies the allegations in paragraph 41 to the extent it alleges Defendant committed any acts which in any way infringed Plaintiffs' trademarks. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 41 of the Complaint and therefore denies the same.

42. Defendant denies the allegations in paragraph 42.

43. Defendant denies the allegations in paragraph 43.

44. Defendant denies the allegations in paragraph 44.

45. Defendant denies the allegations in paragraph 45.

PRAYER FOR RELIEF

Defendant denies that Plaintiffs are entitled to any relief in connection with the allegations of Plaintiffs' complaint, including without limitation, the allegations of paragraphs 1 through 45.

DEMAND FOR JURY TRIAL

Defendant admits that Plaintiffs demand a trial by jury for all issues so triable.

OTHER DEFENSES

By way of further Answer and as affirmative and non-affirmative defenses, Defendant denies that it is liable to Plaintiffs on any of the claims alleged and denies that Plaintiffs are entitled to damages, punitive damages, equitable relief, attorneys' fees, costs, pre-judgment interest, or to any relief whatsoever, and states as follows:

FIRST DEFENSE

The Complaint and each count thereof fail to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the first sale doctrine.

THIRD DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrines of fair use, nominative fair use, and/or descriptive fair use.

FOURTH DEFENSE

Plaintiffs' claims are barred to the extent the allegedly unlawful or infringing use of the works at issue was licensed or otherwise authorized by persons or entities with the right to license or authorize such use.

FIFTH DEFENSE

Defendant has not infringed any applicable trademarks or copyrights under federal or state law.

SIXTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs' damages, if any, were not caused by Defendant.

SEVENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because the marks and/or copyrights at issue are invalid and/or unenforceable.

EIGHTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Defendant has an express or implied license to use the marks and/or copyrights at issue. Also, Plaintiffs have expressly or impliedly authorized some or all of the actions of Defendant about which they now complain.

NINTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, under the doctrines of laches, waiver, acquiescence, estoppel, or the applicable statute of limitations.

TENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because they are not the proper parties to assert the copyrights and/or trademarks in issue.

ELEVENTH DEFENSE

Defendant has not used Plaintiffs' names or trademarks in commerce within the meaning of the Lanham Act and/or has not otherwise made commercial use of Plaintiffs' names or marks.

TWELFTH DEFENSE

Defendant's alleged use of Plaintiffs' names and/or marks are not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Plaintiffs with Defendant, or as to the origin, sponsorship, or approval of Defendant's goods and services.

THIRTEENTH DEFENSE

Plaintiffs' claims are barred or abated substantially by Plaintiffs' bad faith and the doctrine of unclean hands.

FOURTEENTH DEFENSE

Plaintiffs have not suffered cognizable injury or damage under the allegations set forth in the Complaint. Defendant denies that Plaintiffs have suffered harm or damages as described in the Complaint. However, if Plaintiffs have suffered harm or damages, they were caused in whole or in part by the conduct of Plaintiffs or of third parties, and therefore, any award against Defendant should be reduced by virtue of contributory negligence, comparative negligence, contribution, apportionment, or indemnity.

FIFTEENTH DEFENSE

Without any admission by Defendant that Plaintiffs suffered injury in any way, to the extent that Plaintiffs did suffer such injury, their claims are barred, in whole or in part, because they failed

to use reasonable means to prevent the alleged damage and failed to use reasonable means to mitigate their damages.

SIXTEENTH DEFENSE

Alleged actions taken by Defendant were taken in good faith and were based on legitimate business reasons such that Plaintiffs are not entitled to recovery.

SEVENTEENTH DEFENSE

Plaintiffs' prayer for statutory damages and attorney's fees under the Copyright Act is barred to the extent the copyrights in issue do not meet the registration requirements of the Copyright Act, including 17 U.S.C. §412.

EIGHTEENTH DEFENSE

Plaintiffs' claims are barred because they have failed to name an indispensable party to this lawsuit.

NINETEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have released their claims.

TWENTIETH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Defendant is not the seller or distributor of the textbooks on which Plaintiffs base their claims.

TWENTY FIRST DEFENSE

Defendant states that it pleads any matter which could be asserted as an affirmative defense or avoidance; and, that Defendant intends to rely upon such other and further defenses as may

CERTIFICATE OF SERVICE

I CERTIFY that on this 3rd day of June, 2021, a copy of the foregoing Defendant Bookholder LLC's Answer and Affirmative Defenses to Plaintiffs' Complaint was served by ECF to all counsel of record:

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/s/
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