

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MCGRAW HILL LLC; BEDFORD, FREEMAN &
WORTH PUBLISHING GROUP, LLC d/b/a
MACMILLAN LEARNING; MACMILLAN
HOLDINGS; CENGAGE LEARNING, INC.;
ELSEVIER INC.; ELSEVIER B.V.; and
PEARSON EDUCATION, INC.;

Plaintiffs,

v.

RADIUS INTERNATIONAL, INC.,

Defendant.

Civil Action No. 21-cv-4325

JUDGE: Jorge L. Alonso

MAGISTRATE JUDGE: Jeffrey Cummings

**ANSWER, ADDITIONAL DEFENSES AND COUNTERCLAIMS OF
DEFENDANT RADIUS INTERNATIONAL, INC.**

Defendant Radius International, Inc., (“Radius”) through its attorneys, hereby answers the Complaint of Plaintiffs McGraw Hill LLC, Bedford, Freeman & Worth Publishing Group, LLC d/b/a Macmillan Learning, Macmillan Holdings, Cengage Learning, Inc., Elsevier Inc., Elsevier B.V., and Pearson Education, Inc. (“Plaintiffs”). Any allegations not expressly admitted are hereby denied. This Answer follows the numbering provided in the Complaint.

NATURE OF THE CASE

1. Radius admits that Plaintiffs purport to have asserted violations of federal copyright and trademark laws. Radius denies the remaining allegations in Paragraph 1.
2. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 and therefore denies them.

3. Radius admits that it is a global logistics provider specializing in freight forwarding, customs brokerage and supply chain management. Radius admits that it has three offices in the US, including an office in Elk Grove Village, Illinois. Radius denies the remaining allegations in Paragraph 3.

4. Radius denies the allegations in Paragraph 4.

5. Radius denies the allegations in the first sentence of Paragraph 5. Radius is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 5.

6. Radius admits that the Complaint includes claims for direct, contributory and vicarious copyright and trademark infringement/counterfeiting and that Plaintiffs are seeking redress. Radius denies the remaining allegations in Paragraph 6.

PARTIES

7. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 and therefore denies them.

8. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 and therefore denies them.

9. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 and therefore denies them.

10. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 and therefore denies them.

11. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 and therefore denies them.

12. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and therefore denies them.

13. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and therefore denies them.

14. Admitted.

JURISDICTION AND VENUE

15. Radius admits the allegations in Paragraph 15.

16. Radius admits that it is registered to do business and has an office in Illinois. Radius denies the remaining allegations in Paragraph 16.

17. Radius denies the allegations in Paragraph 17.

FACTUAL ALLEGATIONS

Plaintiffs' Businesses and the Infringed Copyrights and Trademarks

18. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 and therefore denies them.

19. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 and therefore denies them.

20. Any copyright registrations speak for themselves. Radius denies any attempt to re-characterize the scope or application of the copyright registrations. Radius denies the remaining allegations in Paragraph 20.

21. Any Marks speak for themselves. Radius denies any attempt to re-characterize the scope or application of the Marks. Radius denies the remaining allegations in Paragraph 21.

22. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 and therefore denies them.

23. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 and therefore denies them.

24. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 and therefore denies them.

Defendant's Infringement

25. Radius denies the allegations in Paragraph 25.

26. Radius denies the allegations in Paragraph 26.

27. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 and therefore denies them.

28. Radius denies the allegations in Paragraph 28.

29. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 and therefore denies them.

30. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 and therefore denies them.

31. Radius denies the allegations in Paragraph 31.

32. Radius is without knowledge or information sufficient to form a belief as to the truth of allegations in the first sentence of Paragraph 30 and therefore denies them. Radius denies the remaining allegations in Paragraph 32.

33. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33 and therefore denies them.

34. Radius admits that in March 2019, Radius allowed Plaintiffs to conduct an inspection and that Radius allowed Plaintiffs to take numerous textbooks. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34 and therefore denies them.

35. Radius denies the allegations in Paragraph 35.

36. Radius denies the allegations in Paragraph 36.

37. Radius admits that Nancy Abuali was an owner of Middle-East Air Cargo, Inc., that Radius purchased the assets of Middle-East Air Cargo, Inc. (d/b/a MEA Cargo, Inc.), and that Nancy Abuali was subsequently an employee of Radius. Radius is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 37.

38. Radius denies the allegations in Paragraph 38.

CLAIMS FOR RELIEF

Count 1 – Direct Copyright Infringement

39. Radius repeats each and all of its prior responses to the allegations in the Complaint as if fully set forth herein.

40. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 40 and therefore denies them.

41. Radius denies the allegations in Paragraph 41.

42. Paragraph 42 contains a statement of law to which no response is required. To the extent that a response is required, Radius denies the allegations contained in Paragraph 42.

43. Radius denies the allegations in Paragraph 43.

44. Radius denies the allegations in Paragraph 44.

45. Radius denies the allegations in Paragraph 45.

Count II – Contributory Copyright Infringement

46. Radius repeats each and all of its prior responses to the allegations in the Complaint as if fully set forth herein.

47. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 and therefore denies them.

48. Radius denies the allegations in Paragraph 48.

49. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 49 and therefore denies them. Radius denies the remaining allegations in Paragraph 49.

50. Radius denies the allegations in Paragraph 50.

51. Radius denies the allegations in Paragraph 51.

52. Radius denies the allegations in Paragraph 52.

Count III – Vicarious Copyright Infringement

53. Radius repeats each and all of its prior responses to the allegations in the Complaint as if fully set forth herein.

54. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54 and therefore denies them.

55. Radius denies the allegations in Paragraph 55.

56. Radius denies the allegations in Paragraph 56.

57. Radius denies the allegations in Paragraph 57.

58. Radius denies the allegations in Paragraph 58.

Count IV – Direct Trademark Infringement/Counterfeiting

59. Radius repeats each and all of its prior responses to the allegations in the Complaint as if fully set forth herein.

60. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60 and therefore denies them.

61. Radius denies the allegations in Paragraph 61.

62. Radius denies the allegations in Paragraph 62.

63. Radius denies the allegations in Paragraph 63.

64. Radius denies the allegations in Paragraph 64.

Count V – Contributory Trademark Infringement/Counterfeiting

65. Radius repeats each and all of its prior responses to the allegations in the Complaint as if fully set forth herein.

66. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 66 and therefore denies them.

67. Radius denies the allegations in Paragraph 67.

68. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 68 and therefore denies them. Radius denies the remaining allegations in Paragraph 68.

69. Radius denies the allegations in Paragraph 69.

70. Radius denies the allegations in Paragraph 70.

71. Radius denies the allegations in Paragraph 71.

Count VI – Vicarious Trademark Infringement/Counterfeiting

72. Radius repeats each and all of its prior responses to the allegations in the Complaint as if fully set forth herein.

73. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 73 and therefore denies them.

74. Radius denies the allegations in Paragraph 74.

75. Radius is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 75 and therefore denies them. Radius denies the remaining allegations in Paragraph 75.

76. Radius denies the allegations in Paragraph 76.

77. Radius denies the allegations in Paragraph 77.

78. Radius denies the allegations in Paragraph 78.

79. Radius denies the allegations in Paragraph 79.

RESPONSE TO PLAINTIFFS' PRAYER FOR RELIEF

Radius denies that Plaintiffs are entitled to relief against Radius in this action.

AFFIRMATIVE DEFENSES

Further answering the Complaint, and as additional defenses thereto, Radius asserts the following additional defenses, without assuming the burden of proof when the burden of proof on any issue would otherwise rest with Plaintiffs.

1. The Complaint fails to state a claim upon which relief can be granted.
2. Plaintiffs have failed to name “Morena”, a necessary or indispensable party under Fed. R. Civ. P. 19 as a defendant.
3. Plaintiffs have failed to name “ABC Books L.L.C.”, a necessary or indispensable party under Fed. R. Civ. P. 19 as a defendant.
4. To the extent Plaintiffs have suffered any damages, such damages were not caused by Radius.
5. To the extent Plaintiffs have suffered any damages, such damages are barred or limited by Plaintiffs’ failure to timely mitigate.
6. To the extent Plaintiffs have suffered any damages, such damages are offset and set off.
7. Plaintiffs’ claims are barred by the equitable doctrines of laches, waiver, estoppel, acquiescence, ratification, and unclean hands.
8. Plaintiffs are not entitled to injunctive relief because Plaintiffs have not suffered any immediate or irreparable injury.

9. To the extent that Plaintiffs' allegations of copyright infringement have merit, Radius' actions were those of an innocent infringer and Plaintiffs' statutory damages are limited under 17 U.S.C. § 504(c)(2).

10. To the extent that Plaintiffs' allegations of trademark infringement have merit, Radius' actions were those of an innocent infringer and Plaintiffs' statutory damages are limited under 15 U.S.C. § 1117(c)(1).

11. Plaintiffs' claims are barred to the extent Plaintiffs seek statutory damages that are unconstitutionally excessive and disproportionate to any actual damages that may have been sustained, in violation of Radius' Fifth Amendment right to Due Process.

12. Plaintiffs are collaterally estopped from seeking to recover for claims arising out of shipments not proven to have contained counterfeit goods.

13. Plaintiffs' claim for damages was caused by superseding or intervening acts or omissions attributable to other persons or entities over which Radius had no control and over whom Radius had no legal responsibility.

14. Plaintiffs' claim for injunctive relief is barred because Plaintiffs cannot establish that they have no adequate remedy of law and will suffer irreparable harm unless the Court grants the relief requested.

15. Plaintiffs' claims for costs and attorney's fees are barred because Plaintiffs do not meet the statutory prerequisites of the Copyright Act for such an award and cannot prove the requisite state of mind or culpability on the part of Radius.

16. Plaintiffs' claims for costs and attorney's fees are barred because Plaintiffs do not meet the statutory prerequisites of the Lanham Act for such an award and cannot prove the requisite state of mind or culpability on the part of Radius.

17. Plaintiffs' claims are barred because Radius is not liable for any wrongdoing of Middle-East Air Cargo, Inc.

RESERVATION OF RIGHTS

Radius has not yet had an opportunity to conduct discovery and otherwise fully investigate this matter and, accordingly, reserves the right to assert additional defenses or counterclaims that may be disclosed in the court of discovery or further investigation. Radius expressly reserves the right to amend its Answer and Defenses as additional information becomes available and/or is otherwise discovered.

COUNTERCLAIMS

This is an action for declaratory judgment pursuant to the Lanham Act and the copyright laws of the United States. Counterclaim-Plaintiff Radius International, Inc. ("Radius"), as and for its counterclaims against Counterclaim-Defendants McGraw Hill LLC, Bedford, Freeman & Worth Publishing Group, LLC d/b/a MacMillan Learning; Cengage Learning, Inc., Elsevier Inc., and Pearson Education, Inc. ("Counterclaim-Defendants") alleges as follows:

PARTIES

1. Radius is a corporation incorporated under the laws of the Commonwealth of Massachusetts with its principal place of business in Chelsea, Massachusetts.
2. On information and belief, Counterclaim-Defendant McGraw Hill LLC is a Delaware limited liability company with its principal place of business in New York, New York.
3. On information and belief, Counterclaim-Defendant Bedford, Freeman & Worth Publishing Group, LLC d/b/a Macmillan Learning is a New York limited liability company with its principal place of business in New York, New York.

4. On information and belief, Counterclaim-Defendant Macmillan Holdings, LLC is a New York limited liability company with its principal place of business in New York, New York.

5. On information and belief, Counterclaim-Defendant Cengage Learning Inc., formerly Thompson Learning Inc., is a Delaware corporation with its principal place of business in Boston, Massachusetts.

6. On information and belief, Counterclaim-Defendant Elsevier Inc. is a Delaware corporation with its principal place of business in New York, New York.

7. On information and belief, Counterclaim-Defendant Elsevier B.V. is a corporation organized under the laws of the Netherlands with its principal place of business in Amsterdam, Netherlands.

8. On information and belief, Counterclaim-Defendant Pearson Education, Inc. is a Delaware corporation with its principal place of business in Hoboken, New Jersey.

JURISDICTION AND VENUE

9. These counterclaims are brought under the Declaratory Judgment Act, pursuant to 28 U.S.C. §§ 2201 and 2202, seeking adjudication that:

- a. Radius' role and actions arranging transportation for goods belonging to third-parties Morena and ABC Books L.L.C. do not constitute copyright infringement under 17 U.S.C. § 106(3) or 17 U.S.C. § 602(a)(1) or trademark infringement under the Lanham Act, 15 U.S.C. 1114(1)(a).

10. The intellectual property rights asserted by Plaintiffs/Counterclaim-Defendants in this action, as set forth in the Complaint, are collectively referred to as the "IP Rights."

11. The textbooks referred to in the Complaint are collectively referred to as the “Accused Products”.

12. The Court has personal jurisdiction over Counterclaim-Defendants by virtue of their having filed this action in this judicial district. The Court has jurisdiction over these counterclaims pursuant to 28 U.S.C. §§ 1331 and 1338 in that this action arises under the copyright and trademark laws of the United States and an actual controversy exists between the parties.

13. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b) and because Counterclaim-Defendants brought the underlying action in this judicial district.

ACTUAL CASE AND CONTROVERSY

14. Counterclaim-Defendants allege that Radius has infringed the IP Rights. Radius denies those allegations.

15. Counterclaim-Defendants allege that Radius “distributed to the consuming public” unauthorized copies of Counterclaim-Defendants’ copyrighted textbooks. Counterclaim-Defendants further contend that Radius acted intentionally, with reckless disregard for the IP rights, and/or with willful blindness to the infringing nature of its conduct. Radius denies those allegations.

16. Counterclaim-Defendants allege that Radius used in commerce a counterfeit copy of Plaintiffs’ trademarks “in connection with the sale, offering for sale, and/or distribution of counterfeit textbooks.” Counterclaim-Defendants allege that Radius’ actions are likely to cause confusion, mistake, and/or deception as to the origin and nature of the counterfeit textbooks. Counterclaim-Defendants further contend that Radius acted intentionally, with reckless disregard

for the IP rights, and/or with willful blindness to the infringing nature of its conduct. Radius denies those allegations.

17. Radius' business is to arrange for the transportation and/or warehousing of goods.
18. Radius did not import the Accused Products.
19. Radius did not distribute the Accused Products to the public by sale or other transfer of ownership.
20. Radius did not take title to the Accused Products.
21. Radius did not control the marketing or advertising of the Accused Products.
22. Radius did not control the price for which the Accused Products were sold.
23. Radius had no authority to control or jointly own the Accused Products.
24. Radius was not responsible for generating or consummating the sale of the Accused Products.
25. Radius was not responsible for transferring title of the Accused Products from seller to purchaser.
26. Radius did not sell or offer for sale the Accused Products.
27. Radius did not use the IP Rights in connection with its own goods and services.
28. Radius did not import the Accused Products into the United States.
29. To the extent that the Accused Products were, in fact, counterfeits, Radius did not know that and had no reason to know that.
30. Radius did not present the Accused Products as its own.
31. Radius did not infringe the IP Rights of the Plaintiffs.
32. There is a substantial, justiciable, and continuing controversy between the parties.
33. Radius will be damaged by the claims against it, and will be irreparably harmed if the existing controversy between the parties is not promptly adjudicated.

COUNT I
DECLARATORY JUDGMENT OF COPYRIGHT NON-INFRINGEMENT

34. Radius repeats and realleges each and all of its allegations in the above paragraphs as if fully set forth herein.

35. At all relevant times, Radius did not hold title to; did not control marketing, advertising or price of; had no responsibility for generating or consummating a sale of; had no authority to control or jointly own; did not sell or offer to sell; did not use; did not import; did not present as its own; and did not distribute to the public by sale or other transfer of ownership the Accused Products.

36. Radius has not engaged in any activity that infringes – directly, indirectly or vicariously – on the Plaintiffs’ IP rights.

37. As a result, Radius requests a declaratory judgment that it has not infringed any of the Copyrights-in-Suit.

COUNT II
DECLARATORY JUDGMENT UNDER THE LANHAM ACT

38. Radius repeats and realleges each and all of its allegations in the above paragraphs as if fully set forth herein.

39. At all relevant times, Radius did not hold title to; did not control marketing, advertising or price of; had no responsibility for generating or consummating a sale of; had no authority to control or jointly own; did not sell or offer to sell; did not use; did not import; and did not present as its own the Accused Products.

40. Radius has not engaged in any activity that infringes – directly, indirectly or vicariously – on the Plaintiffs’ IP rights.

41. As a result, Radius requests a declaratory judgment that it did not violate the Lanham Act, 15 U.S.C. §1114(1)(a).

PRAYER FOR RELIEF

WHEREFORE, Defendant/Counterclaimant Radius prays for judgment as follows:

- A. Dismissal of Plaintiffs' Complaint with prejudice such that Plaintiffs take nothing.
- B. Entry of declaratory judgment that Radius did not infringe the Copyrights-in-Suit;
- C. Entry of declaratory judgment that Radius did not violate the Lanham Act;
- D. Entry of injunctive relief against Plaintiffs enjoining any statements that Radius is an importer or seller or distributor of any counterfeits of Plaintiffs' products, or that Radius is an infringer of Plaintiffs' intellectual property rights, and any other or additional injunctive relief;
- E. Entry of an order declaring this case to be an exceptional case;
- F. Ordering Plaintiffs to pay Radius the costs of defending this action, including but not limited to attorneys' fees and costs as allowed by governing statutes, rules and other legal authority; and
- G. Awarding Radius such other and further relief as the Court deems just and proper.

Dated: December 16, 2021

Respectfully submitted,

RADIUS INTERNATIONAL, INC,

By its attorneys,

/s/ Kevin R. Mosier

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on December 16, 2021.

/s/ David M. Caves

DAVID M. CAVES

BRADLEY RILEY JACOBS PC