

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MCGRAW-HILL GLOBAL EDUCATION  
HOLDINGS, LLC, PEARSON EDUCATION,  
INC., and CENGAGE LEARNING, INC.,

Plaintiffs,

v.

DOES 1-10,

Defendants.

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR:**

1. COPYRIGHT INFRINGEMENT  
(17 U.S.C. § 101, *et seq.*)
2. SECONDARY COPYRIGHT  
INFRINGEMENT  
(17 U.S.C. § 101, *et seq.*)
3. TRADEMARK INFRINGEMENT  
(15 U.S.C. § 1114)
4. TRADEMARK COUNTERFEITING  
(15 U.S.C. § 1114)

**DEMAND FOR JURY TRIAL**

Plaintiffs McGraw-Hill Global Education Holdings, LLC, Pearson Education, Inc., and Cengage Learning, Inc. (collectively, “Plaintiffs”) for their Complaint against Defendants Does 1-10 (hereinafter, “Defendants”), 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. This is a case involving extensive violations of the federal laws concerning copyright and trademark infringement. It arises from the intentional reproduction, importation, distribution, and sale of counterfeit textbooks at the expense of authors, students, publishers and others.
2. Plaintiffs are three of the world’s leading educational publishers. They provide a comprehensive range of traditional and digital educational content and tools to professionals and students of all ages.

3. Defendants sell and distribute counterfeit textbooks on AbeBooks.com (“AbeBooks”). Hiding behind the anonymity of Internet pseudonyms, Defendants sell counterfeit copies of Plaintiffs’ copyrighted works, bearing unauthorized reproductions of Plaintiffs’ trademarks, to individual consumers, wholesale distributors, and third-party sellers. The textbooks Defendants sell are not the legitimate and authorized versions published by Plaintiffs, but rather are counterfeit versions that infringe on Plaintiffs’ copyright and trademark rights.

4. Plaintiffs sell their textbooks through various wholesale and retail channels. Plaintiffs’ textbook sales on AbeBooks—whether by wholesalers or individual resellers—represent an important channel for Plaintiffs’ textbook sales. Defendants advertise, offer, and sell their counterfeit copies on the AbeBooks marketplace to the same purchasers seeking out legitimate copies of Plaintiffs’ textbooks. Defendants identify the textbooks using the legitimate textbooks’ names and authors, images of the covers of the textbooks that include Plaintiffs’ marks, and the International Standard Book Numbers (“ISBN”) that identify the textbooks. Defendants often sell their counterfeit versions at a price below the market price for the legitimate books. In so doing, Defendants undercut sales and the perceived value of authorized and legitimate copies of Plaintiffs’ textbooks.

5. Plaintiffs bring this Complaint for damages and injunctive relief to stop and to seek redress for Defendants’ infringement of Plaintiffs’ intellectual property rights.

### **JURISDICTION AND VENUE**

6. 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. §§ 1114 *et seq.*

7. This 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 pursuant to N.Y. C.P.L.R. § 302 over all Defendants because they transacted business and committed tortious acts within and directed to New York, and Plaintiffs' claims arise from those activities. In particular, Defendants (a) transact business within New York or contract to supply goods, including counterfeit goods, in New York, (b) have committed acts of copyright and trademark infringement and counterfeiting within New York and in this District, and (c) have committed acts of copyright and trademark infringement and counterfeiting outside New York, which caused injury to Plaintiffs within New York, and Defendants expected or should reasonably have expected such acts to have consequences in New York, and Defendants derive substantial revenue from interstate or international commerce.

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 28 U.S.C. § 1400(a).

### **PARTIES**

10. Plaintiff Pearson Education, Inc. ("Pearson"), is a Delaware corporation with its principal place of business at 330 Hudson Street, New York, New York 10013.

11. Plaintiff Cengage Learning, Inc., formerly Thomson Learning Inc. ("Cengage"), is a Delaware corporation with offices located New York.

12. Plaintiff McGraw-Hill Global Education Holdings, LLC ("MHE") is a Delaware limited liability company with its principal place of business at 2 Penn Plaza, New York, New York 10020.

13. The true names and identities of Defendants Does 1 through 10 are unknown to Plaintiffs at this time. Each Doe Defendant conducts business through AbeBooks. Defendants

sell and/or distribute counterfeit textbooks using the online storefronts set forth in paragraph 29, but their true names are not identified to the public on AbeBooks. Plaintiffs believe that information obtained in discovery will lead to the identification of the Doe Defendants' true names and permit Plaintiffs to amend this Complaint to state the same.

## **FACTS COMMON TO ALL CLAIMS**

### **A. Plaintiffs' Businesses**

14. Plaintiffs are among the world's largest providers of tailored learning solutions. 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' products and services are sold throughout the world, through direct channels and via a worldwide network of distributors, many of whom sell on AbeBooks. Plaintiffs invest significant resources annually in the worldwide advertisement and promotion of their goods and services under all their marks.

15. Plaintiffs' publish their works under many imprints, or brands, that are well known and highly respected. Cengage's imprints include Brooks/Cole, Delmar, Heinle, and South-Western Educational Publishing, among others. MHE's imprints include McGraw-Hill, among others. Pearson's imprints include Addison Wesley, Allyn & Bacon, and Prentice Hall, among others. These are just some of the Plaintiffs' many valuable and recognizable imprints.

16. Plaintiffs' publications include physical textbooks. These textbooks are widely available in the marketplace for sale or rental, including from physical and online bookstores.

17. Plaintiffs suffer serious financial and reputational injury when their copyrights and trademarks are infringed. Plaintiffs invest heavily in publishing their textbooks. Each year they incur substantial costs for author royalties and other costs of content creation or licensing,

copyediting and proofreading, typesetting, layout, printing, binding, distribution, promotion, and for support of their editorial offices.

18. 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 worldwide advertisement and promotion of their goods and services under their respective marks. Plaintiffs' Marks and the goodwill of the business associated with them in the United States and throughout the world are of tremendous value and have become associated in the public mind with Plaintiffs' reputation for publishing textbooks of the very highest quality.

19. 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 serious financial and creative repercussions for them and their work. A substantial decline in revenue from sales or rentals of Plaintiffs' copyrighted works could cause Plaintiffs to cease publication of one or more deserving textbooks. This would have an adverse impact on the creation of new textbooks, on scholarly endeavor, and on scientific progress, by making it more difficult to publish deserving textbooks.

**B. Plaintiffs' Respective Copyright Registrations**

20. 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 (hereinafter, "Plaintiffs' Books" or "Books"). Plaintiffs or their affiliates have obtained copyright registrations, duly issued by the United States Copyright Office, covering their respective Books.

**C. Plaintiffs' Respective Trademark Registrations**

21. Plaintiffs' Books bear trademarks as set forth on Exhibit B (hereinafter, the

“Marks”), which Plaintiffs or their affiliates have duly registered on the Principal Registrar 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 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.

**D. Plaintiffs’ Efforts to Fight Counterfeiting**

22. Counterfeiters are inundating the marketplace with unauthorized copies of Plaintiffs’ Books. These fake books are often printed overseas and imported into the lucrative U.S. market. The counterfeit books are of varying levels of quality; while some appear to be high quality, many others are not and do not contain the same content as the legitimate textbook. In order to combat the damage caused by counterfeits, Plaintiffs have a worldwide anti-counterfeiting program, through which they go to great lengths to investigate suspicious websites and online marketplace listings. Plaintiffs also regularly receive counterfeit books turned over to them by legitimate distributors who were sold counterfeit textbooks.

23. Counterfeiters often go to great lengths to conceal their identities and often use multiple or fictitious names and addresses to register and operate a massive network of Internet storefronts. Nonetheless, there are often similarities among the storefronts. The counterfeit books may also share similar indicia of being counterfeit, which suggests that the counterfeit books were printed by and come from a common source.

24. In addition to operating under multiple fictitious names, counterfeiters use a variety of other tactics to evade discovery and continue their lucrative, illicit business. For example, once a counterfeiter receives notice of a lawsuit, he or she will often create new online marketplace accounts on AbeBooks or other sites using new aliases. Further, counterfeiters

often use multiple credit card merchant accounts or other payment processing accounts (such as with PayPal) so that they can nimbly switch between accounts to evade detection and launder their illicit proceeds. It is also common for counterfeit sellers to maintain off-shore bank accounts outside the jurisdiction of the Court, into which they regularly move the proceeds of their illegal sales.

**E. The AbeBooks Marketplace**

25. AbeBooks Inc. is a global e-commerce company, and a wholly owned subsidiary of the world's largest e-commerce retailer, Amazon.com, Inc. The AbeBooks online marketplace allows third-party sellers worldwide to advertise, offer for sale, and sell books, both new and used, directly to consumers.

26. The AbeBooks site provides consumers the ability to search for books by ISBN or title and author. Thus, with just a few keystrokes, consumers can see a list of third-party sellers offering a title, ranked (by default) from lowest to highest price. Each listing for the title displays a stock image of the cover of the book and describes whether the book offered for sale is new or used and, if used, the condition of the book. To unsuspecting individual consumers, the listings all appear to be for legitimate copies of textbooks because they are listed with the same cover image, ISBN, edition, author, and publisher. The consumer is left to select the book they want to purchase, which all too often is based solely or largely on the price offered.

27. When a seller receives an order through their online storefront on AbeBooks, the seller ships the book(s) directly to the customer. AbeBooks processes the ensuing payments, and then distributes the sales proceeds to sellers on a regular, automated schedule to the financial institution accounts registered to the respective AbeBooks seller account.

**F. Defendants' Unlawful Activities**

28. Defendants operate storefronts on AbeBooks through which they sell

unauthorized and illegal counterfeit textbooks, including Plaintiffs' Books.

29. Among the known seller accounts or storefronts Defendants have established on AbeBooks are the following (collectively referred to as the "Online Storefronts"):

- (a) CHUTATIP NGAMSUDCHAI (Seller ID 55561475);
- (b) doudoubook (Seller ID 64242208);
- (c) GMTbooks (Seller ID 55286808);
- (d) Nobletext (Seller ID 55471656); and
- (e) William Horton (Seller ID 9082128).

Defendants may likely operate other online storefronts on AbeBooks that Plaintiffs are not aware of yet. They may also operate on other Internet marketplaces or websites.

30. Each of the Online Storefronts offers to ship textbooks to and throughout the United States, including New York.

31. Plaintiffs have made test purchases from Defendants' Online Storefronts, which confirm that Defendants distribute counterfeit copies of Plaintiffs' Books bearing Plaintiffs' Marks (hereinafter, the "Counterfeit Books"). The list of 24 Counterfeit Books does not describe all the textbook titles that Defendants are infringing but rather a subset.

32. Some of Defendants appear to be working collectively because many of the Counterfeit Books exhibit the same counterfeit traits and inferior qualities, and several of the Online Storefronts offer similar inventories.

33. One of the ways in which Defendants and other counterfeiters try to evade enforcement efforts is to describe their counterfeit textbooks in their listings as used, despite the books being brand new, albeit unauthorized, copies. Thus, many of Defendants' "used" books listed on AbeBooks are described as being in "like new," "almost new," or "excellent" condition. For example, the Online Storefront, William Horton, currently lists several "used" copies of



MHE's textbook, *New Venture Creation: Entrepreneurship for the 21st Century*, 10<sup>th</sup> edition, which the Online Storefront describes as being in "As New" and "Just like anew [sic] book." Plaintiffs purchased an "As New" copy of *New Venture Creation from William Horton* on AbeBooks, but rather than receiving the legitimate textbook, Plaintiffs received a counterfeit copy. Listing new counterfeit textbooks in "used" condition ostensibly justifies Defendants' offer of a new current-edition textbook at significant savings. The purportedly "used" condition also can explain why a fake textbook does not include access cards, which the publishers often include with and as a supplement to the legitimate textbook.

34. To the extent Defendants themselves do not manufacture the counterfeits, Defendants intentionally purchase counterfeit copies of Plaintiffs' Books at a materially cheaper price than they would be required to pay had they purchased Plaintiffs' Books directly from the respective publishers or from legitimate third-party sellers, pursuant to the custom and practice of the bookselling industry. In doing so, Defendants deliberately evaded Plaintiffs and other legitimate sources, choosing instead to source illegal and counterfeit copies of Plaintiffs' Books, in violation of Plaintiffs' intellectual property rights. Defendants then distributed the Counterfeit Books directly to individual consumers or other resellers.

35. At the time that Defendants distributed and sold the Counterfeit Books, Defendants knew or should have known that the Counterfeit Books were infringing, including based on their "too good to be true price" and inferior quality.

36. Defendants knowingly directed, supervised, and controlled the importation and/or distribution of the Counterfeit Books, and had a direct financial interest in, and stood to gain a direct financial benefit from, their deliberately infringing activity.

37. By engaging in the illegal conduct alleged above, in addition to directly

organizing and effectuating such infringing activities, Defendants also personally induced, caused, and materially contributed to infringing conduct by others, including resellers to whom Defendants sold the Counterfeit Books. The resellers would have further distributed the Counterfeit Books.

38. Defendants did more than supply the means to facilitate the infringement of Plaintiffs' intellectual property rights. They also substantially participated in, and orchestrated, such infringing activities.

39. The Counterfeit Books are different from and/or inferior to Plaintiffs' Books. Among other differences, the binding, glue, paper, color and printing are often different and inferior. Based on the use of Plaintiffs' trademarks, actual and prospective purchasers are likely to believe that the Counterfeit Books are authorized and legitimate copies of Plaintiffs' Books. The Counterfeit Books' inferior quality weakens, blurs, and tarnishes Plaintiffs' respective trademarks. Plaintiffs' business reputations are further injured by having their trademarks and the goodwill associated with them confused or mistakenly associated with a group or series of textbooks of lesser quality, as alleged above.

40. While Plaintiffs have identified some of the Counterfeit Books that Defendants have imported and/or distributed, Plaintiffs have not identified all of them. Defendants' infringing activities are rampant. Instead, Plaintiffs limited this suit to the Online Storefronts from which Plaintiffs received counterfeit copies of three or more textbook titles. Of course, the number of textbook titles is not the same as the number of counterfeit copies Plaintiffs received from Defendants' Online Storefronts. Plaintiffs purchased and received from many of Defendants' Online Storefronts multiple counterfeit copies of a single textbook title. Nevertheless, the works described on Exhibit A are only examples of Counterfeit Books that

Defendants have introduced into the marketplace.

**FIRST CLAIM FOR RELIEF**

**Copyright Infringement Under 17 U.S.C. §§ 101, *et seq.***

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

42. Plaintiffs' Books 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.

43. 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' Books, which have never been assigned, licensed, or otherwise transferred to Defendants.

44. Beginning on an unknown date and continuing to the present, Defendants, with knowledge of Plaintiffs' copyrights in Plaintiffs' Books, infringed Plaintiffs' copyrights. Specifically, Defendants infringed Plaintiffs' exclusive rights to import and/or distribute to the public by sale or other transfer of ownership. They did so by, among other things, distributing and selling the Counterfeit Books for profit, without Plaintiffs' permission, license, or consent.

45. Defendants' unlawful conduct, as set forth above, was deliberate, intentional, knowing, malicious, and willful.

46. As a result of Defendants' unlawful and deliberate conduct as set forth above, Plaintiffs have been, and will continue to be, damaged.

47. Defendants' 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 Defendants from continuing their infringement of Plaintiffs' copyrights, these injuries

will continue to occur in the future. Plaintiffs are accordingly entitled to injunctive relief restraining Defendants from further infringement.

## **SECOND CLAIM FOR RELIEF**

### **Secondary Copyright Infringement Under 17 U.S.C. §§ 101, et seq.**

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

49. Plaintiffs' Books 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.

50. 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' Books, which have never been assigned, licensed, or otherwise transferred to Defendants.

51. Beginning on an unknown date and continuing to the present, Defendants, with knowledge of Plaintiffs' copyrights in Plaintiffs' Books, indirectly infringed Plaintiffs' copyrights. Specifically, Defendants knowingly engaged in, supervised, and/or controlled the importation, distribution, and/or sale of the Counterfeit Books, and had a direct financial interest in, and stood to gain a direct financial benefit from their deliberately infringing activity. By engaging in the illegal conduct alleged above, in addition to directly organizing and effectuating such infringing activities, Defendants personally induced, caused, and materially contributed to infringing conduct by others, including resellers to whom Defendants sold the Counterfeit Books for further distribution. Accordingly, Defendants are liable for contributory and vicarious copyright infringement.

52. Defendants' unlawful conduct, as set forth above, was deliberate, intentional,

knowing, malicious, and willful.

53. As a result of Defendants' unlawful and deliberate conduct as set forth above, Plaintiffs have been, and will continue to be, damaged.

54. Defendants' 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 Defendants from continuing their infringement of Plaintiffs' copyrights, these injuries will continue to occur in the future. Plaintiffs are accordingly entitled to injunctive relief restraining Defendants from further infringement.

### **THIRD CLAIM FOR RELIEF**

#### **Infringement of Federally-Registered Trademarks Under 15 U.S.C. § 1114**

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

56. This claim, arising under Section 32 of the Lanham Act, 15 U.S.C. § 1114, is for infringement of trademarks registered to Plaintiffs in the United States Patent and Trademark Office.

57. Without Plaintiffs' authorization, Defendants are marketing, offering for sale, and selling in commerce counterfeit textbooks under Plaintiffs' Marks.

58. Defendants' 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 Defendants' goods, in that the public, and others, are likely to believe that Defendants' 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.

59. Defendants, by their above-enumerated acts, willfully and knowingly have

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), and Defendants threaten to further violate and infringe Plaintiffs' said rights.

60. Defendants' 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 Defendants from continuing their infringement of Plaintiffs' Marks, these injuries will continue to occur in the future. Plaintiffs are accordingly entitled to injunctive relief restraining Defendants from further infringement.

61. Defendants' aforesaid conduct was intentional, or deliberately reckless, and without foundation in law.

#### **FOURTH CLAIM FOR RELIEF**

##### **Trademark Counterfeiting Under 15 U.S.C. § 1114(1)(a)**

62. Plaintiffs reallege and incorporate by reference the allegations set forth above in paragraphs 1 - 40.

63. Defendants are infringing the federally registered Plaintiffs' Marks through their use in commerce of a counterfeit, copy, or colorable imitation of Plaintiffs' Marks, in connection with the sale, offering for sale, marketing, distributing, or advertising of textbooks, with such use being likely to cause confusion, to cause mistake, or to deceive the public.

64. Defendants are intentionally using Plaintiffs' Marks on unauthorized products. Defendants are intentionally infringing upon Plaintiffs' trademark rights in order to further their own business enterprises.

65. Defendants' counterfeiting of Plaintiffs' Marks, as described above, has caused and will continue to cause irreparable injury to Plaintiffs' reputation and goodwill, for which

Plaintiffs have no adequate remedy at law. Unless this Court restrains Defendants from continuing their counterfeiting activities, these injuries will continue to occur in the future. Plaintiffs are accordingly entitled to injunctive relief restraining Defendants from further counterfeiting.

### **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 Defendants' infringement of Plaintiffs' Books 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 Defendants' profits, gains, and advantages realized from their unlawful conduct, including a reconciliation of purchases and sales of the Counterfeit Books with documents relating to all such purchases and sales;
4. An order requiring Defendants to pay Plaintiffs such damages as Plaintiffs have sustained as a consequence of Defendants' 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 Defendants and those acting in concert with them from further infringing upon Plaintiffs' respective copyrights pursuant to 17 U.S.C. § 502;
6. An order enjoining Defendants and those acting in concert with them from further infringing upon Plaintiffs' respective trademarks pursuant to 15 U.S.C. § 1116;

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

8. An order requiring Defendants 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.

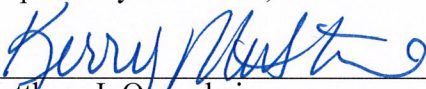
#### **JURY TRIAL DEMAND**

Plaintiffs hereby request a trial by jury.

DATED: August 17, 2017

Respectfully submitted,

By: \_\_\_\_\_

  
Matthew J. Oppenheim  
Kerry M. Mustico  
OPPENHEIM + ZEBRAK, LLP  
5225 Wisconsin Avenue NW, Suite 503  
Washington, DC 20015  
Tel: (202) 480-2999  
Fax: (866) 766-1678  
[matt@oandzlaw.com](mailto:matt@oandzlaw.com)  
[kerry@oandzlaw.com](mailto:kerry@oandzlaw.com)

*Attorneys for Plaintiffs*