

# Anti-Counterfeit Best Practices

Textbook Distributor (hereinafter, "TD") hereby agrees to adopt, implement and adhere to each of the measures set forth below.

1. TD shall maintain a corporate culture that recognizes "counterfeit textbooks"—i.e., an unauthorized physical copy of a textbook—as unlawful and the cause of significant harm. TD shall not regard counterfeit textbooks as just a "part of doing business." Rather, TD will take affirmative steps in a good faith effort to (1) avoid buying, renting and selling counterfeit textbooks, (2) identify counterfeit textbooks in its inventory, and (3) provide publishers with information regarding counterfeit textbooks and suppliers of counterfeit textbooks.
2. TD shall provide to the Educational Publishers Enforcement Group or "EPEG" an affirmation of their adoption and implementation of these Best Practices. TD shall provide this affirmation annually on or around June 1st of each year. Each such TD shall be deemed a "Best Practice Distributor." EPEG shall maintain a list of all "Best Practice Distributors," and shall make it publicly available.
3. These Best Practices shall be made publicly available on a website maintained by EPEG for a period of time EPEG determines is appropriate. In order to promote a fair and legal marketplace, EPEG will encourage other textbook distributors to adopt and implement the Best Practices in full, as set forth on the website.
4. Because the risk of obtaining counterfeits increases when acquiring inventory from anonymous sellers, or sellers who provide false names, TD shall:
  - a. require its suppliers to affirm in writing or with valid electronic acknowledgment that the textbooks they sell to TD are authentic, and lawfully acquired;
  - b. require its suppliers to provide accurate identifying information ("Identifying Information"), including their true name (individual), company (if applicable), physical address, rather than simply an alias or a mailbox, telephone number and email address; and
  - c. employ a verification process to confirm that the Identifying Information of the affirming supplier is accurate and updated regularly.
5. When TD acquires textbooks described as "new," TD shall require at the time of acquisition that the supplier identify the source of such books, including the name and physical address, from which it obtained the textbooks. When TD acquires textbooks described as "used" but which, upon inspection, are actually new, TD shall promptly require that the supplier identify the source of such books, including the name and physical address, from which it obtained the textbooks. This provision does not apply to any supplier that is a Best Practice Distributor, except it does apply to any such supplier who sells to TD ten or more new textbooks at a price that is less than 90% of the net price offered by the publisher of the textbook.
6. TD shall maintain a database of all of the titles that it has previously identified as counterfeit, as well as suppliers who have previously provided counterfeit textbooks to TD. TD shall exercise greater caution with respect to known counterfeit titles and suppliers who have previously provided counterfeit textbooks.

7. TD shall have qualified and trained personnel inspect incoming inventory (including buybacks, returns and rental returns) to determine, as best as they can, if the inventory is counterfeit. At a minimum, TD shall inspect the following prior to placing them into inventory:
  - a. all textbooks with a title that is known by TD to have been counterfeited previously;
  - b. new textbooks (including textbooks described as “used” but which are actually new) that are sold in quantities of five or more at a price that is less than 90% of the publisher’s net price;
  - c. all textbooks with a title that is included on a list of recent releases to be provided to TD by EPEG (while the list may be revised periodically, it shall not exceed 100 total titles per Publisher participating in these Best Practices at any one time);
  - d. all textbook titles sold in quantities of five or more by a supplier that has previously provided TD with a counterfeit textbook, unless such supplier either (i) has sold more than 50,000 textbooks to TD in the prior 12 months and less than 1% of the textbooks supplied have been identified as counterfeit, or (ii) is a Best Practice Distributor;
  - e. all textbooks sold in quantities of ten or more per title contained in a shipment that includes a counterfeit textbook;
  - f. any inventory that, to TD’s knowledge, shipped directly or indirectly from outside the United States; and/or
  - g. textbooks of poor quality or that have traits known by TD to be consistent with counterfeit textbooks.

In addition to the foregoing, other than for textbooks that TD sources directly from a publisher or a Best Practice Distributor, TD shall perform a systematic random inspection on incoming textbooks.

8. The inspections described in Paragraph 7 above shall be conducted by trained personnel who compare the incoming inventory to a legitimate exemplar from the publisher unless a textbook is rejected as counterfeit without the need for a comparison. In the event that the TD does not have a legitimate exemplar available to it, it may purchase one from the relevant publisher, or if no legitimate exemplar is available, submit the incoming textbook to the publisher or their designated review agent to determine if the textbook is counterfeit.
9. Upon inspection, if a textbook appears to be counterfeit, TD will promptly notify the applicable publisher by email (in the form set forth on Exhibit A) and ship the textbook to the publisher. If TD sends a textbook from a larger shipment to the publisher, TD will quarantine the remaining portions of the shipment of any textbooks that are new or appear to be new, and it will not distribute such portions until the publisher has made a determination of legitimacy. TD understands and agrees that any book determined to be counterfeit shall be permanently surrendered to the applicable publisher, whereas publishers will return non-counterfeits to TD. Publisher shall make commercially reasonable efforts to respond to TD regarding the legitimacy of the textbook within 5 business days from receipt of the textbook for known counterfeit titles and within 14 days for all other titles, which periods could be longer depending on the number of copies to be reviewed or conflicting publisher personnel commitments.

10. In the event TD determines or is informed that it has sold, rented or otherwise distributed a counterfeit book, it shall promptly notify the respective publisher and immediately take steps in an effort to mitigate the harm. Among other things, this means that TD shall immediately notify any entity to whom it sold five or more copies of the counterfeit textbook and request that such buyer return the counterfeit textbooks, which, at the publisher's discretion and direction, TD will ship to the applicable publisher. If the buyer refuses to cooperate, TD will promptly advise the publisher of such.
11. TD will employ an inventory management system that allows TD to track the source of each particular textbook that it purchases, sells or maintains in its inventory. The inventory management system will include, at a minimum, marking or coding each textbook with a unique identifier that allows TD to determine (1) who provided the textbook to TD, (2) the date it was received, and (3) the purchase price. TD will maintain the records for at least five (5) years from the date of purchase.
12. When shipping a potentially counterfeit textbook to a publisher or their reviewing agent, TD shall create a new spreadsheet for each set of surrenders to a publisher that includes all of the information set forth on Exhibit A Step 1, which includes the unique identifier or SKU used by TD to identify each textbook, ISBN13, title, edition, and author, as well as information concerning the shipment (number of textbooks, tracking information, etc.). The spreadsheet shall be named using the following convention: distributor name, date of initial contact, surrender to publisher (i.e. Acme Books 2019.03.29 surrender to Cengage). TD shall also complete the header information on the spreadsheet including TD's full identifying contact information and the instructions for return shipping of books not confirmed as counterfeit.

Before shipping the textbook(s) to the publisher, TD shall email the spreadsheet to the appropriate publisher representative and copy [EPEG\\_surrenders@oandzlaw.com](mailto:EPEG_surrenders@oandzlaw.com). In the subject line of the email, TD shall use the same naming convention used for the name of the surrender spreadsheet. TD shall also include the shipment tracking numbers in the body of the email.

TD shall ship the suspected counterfeit textbooks to the publisher at the designated address and include a hard copy of the spreadsheet (columns A to L) in the shipment.

13. Under no circumstance will TD return a known counterfeit or suspected counterfeit textbook to one of its suppliers or to a customer. TD understands that the respective publishers may require those items as evidence in a lawsuit and thus they need to be preserved.
14. TD will not intentionally remove or alter from any textbooks any known devices, markings, or other tools used by the publishers to track or identify legitimate copies of their textbooks. Nor shall TD encourage, induce, support, or aid others to do so.
15. TD will reasonably cooperate with the publishers as they take targeted action to enforce against counterfeits. This includes providing information, documents and sample inventory with respect to recently identified counterfeit titles and sellers that are the subject of publisher enforcement efforts.

16. Upon request from EPEG and no more than once per year, unless there is a good faith belief that it is needed more frequently, TD shall allow EPEG, at a mutually agreed date and time, to audit its compliance with these Best Practices. Also, if a publisher has a good faith belief that TD has distributed counterfeit books subsequent to any prior audit, it may conduct an audit of TD's inventory (including the records of that inventory), either by title or supplier, or randomly, in an attempt to identify counterfeits and/or suppliers of counterfeits.
17. TD will designate one person within its organization to be responsible for overseeing compliance with these Best Practices. Within 14 days of naming such person or their successor, TD shall identify the person to EPEG for purposes of communications.
18. TD recognizes that the steps set forth herein are reasonable and appropriate to try to avoid the purchase, sale, rental, and other distribution of counterfeit textbooks.
19. Nothing herein constitutes any license, limitation or waiver of any rights.