

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

Ronald D. Coleman (RC 3875)

GOETZ FITZPATRICK LLP

One Penn Plaza—Suite 4401

New York, NY 10119

(212) 695-8100

[rcoleman@goetzfitz.com](mailto:rcoleman@goetzfitz.com)

*Attorneys for Defendants Textbook Discounters and  
Michael Viaene*

PEARSON EDUCATION, INC., JOHN WILEY &  
SONS, INC. CENGAGE LEARNING, INC., and THE  
MCGRAW-HILL COMPANIES, INC.,

*Plaintiffs,*

v.

TEXTBOOK DISCOUNTERS, MICHAEL VIAENE,  
VLATKO KLJAJIC and CHUNYONG QIN ALL  
D/B/A TEXTBOOK DISCOUNTERS D/B/A  
GRACEQIN2009 and JOHN DOE NOS. 1-5,

*Defendants.*

Civil Action No.  
1:10-CV-00324-WHP

**ANSWER**

Defendants Textbook Discounters and Michael Viaene (herein referred to collectively as “defendants”), by and through their undersigned counsel, for their answer to the Complaint by plaintiffs, defend and say as follows:

**NATURE OF THE ACTION**

1. Denied.

**JURISDICTION AND VENUE**

2. Admitted.
3. Denied.

**PARTIES**

4. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

5. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

6. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

7. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

8. Denied.

9. Admitted.

10. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

11. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

12. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

**THE BUSINESSES OF PLAINTIFFS**

13. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

14. Defendants deny knowledge and information sufficient to admit or deny the

allegations of this paragraph of the Complaint.

15. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

16. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

17. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

18. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

**THE BUSINESSES OF PLAINTIFFS**

19. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

20. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

21. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

22. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

23. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

24. Denied, accept admit that defendants have purchased books manufactured, upon information and belief, by plaintiffs, and resold them to willing, fully-informed purchasers in

various locations in the United States utilizing the business name “Textbook Discounters” in various sales venues.

**FIRST CLAIM FOR RELIEF**

25. Defendants repeat and incorporate their responses to the corresponding allegations of the Complaint as if set forth in full.

26. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

27. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

28. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

29. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

30. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

**SECOND CLAIM FOR RELIEF**

35. Defendants repeat and incorporate their responses to the corresponding allegations of the Complaint as if set forth in full.

36. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

37. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

38. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

39. Defendants deny knowledge and information sufficient to admit or deny the allegations of this paragraph of the Complaint.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

### **THIRD CLAIM FOR RELIEF**

44. Defendants repeat and incorporate their responses to the corresponding allegations of the Complaint as if set forth in full.

45. Denied.

### **AFFIRMATIVE DEFENSES**

#### **Lack of Personal Jurisdiction**

The Court lacks personal jurisdiction over defendants, who are neither domiciled nor present in this District and do not conduct business in this District.

### **Improper Venue**

Venue is not proper in this District because no defendant resides in this District; neither a substantial part of the events or omissions giving rise to plaintiffs' claim nor of any property that is the subject matter of the action is located in this District; and notwithstanding whether or not any defendant can "be found" in this District, there are other Districts in which the action may otherwise be brought.

### **Failure to State a Claim—All Claims**

Although alleging, in conclusory fashion, that plaintiffs are suffering or will suffer harm or damage as the result of defendants' actions, the Complaint fails to allege facts that coherently enunciate how reselling and creating markets for merchandise for which plaintiffs receive revenue actually cause defendants any damage cognizable at law or otherwise, including with respect to the standards for the awarding of statutory damages under the Copyright Act.

### **Failure to State a Claim—Trademark**

Plaintiffs have failed in the Second Claim for Relief to state a claim for which relief can be granted because while the Complaint alleges that defendants infringed plaintiffs' trademarks "by using them on and/or in connection with the works that they have sold," it also alleges that plaintiffs themselves, not defendants, authorized such use on and in connection with their genuine works sold by defendants without alteration or other action with respect to such trademarks; and because the claim for trademark infringement does not allege a likelihood of confusion.

### **Failure to State a Claim—Common Law Unfair Competition**

Plaintiffs have failed in the Second Claim for Relief to state a claim for which relief can be granted because to the extent it sounds in trademark, plaintiffs have failed to allege a likelihood of confusion; to the extent it sounds in copyright, it is preempted by the Copyright

Act; and to the extent it is intended to enunciate any other theory of recovery, it has failed to state any cognizable claim for unfair competition under New York law.

**First Sale Doctrine—Copyright and Trademark**

Plaintiffs' copyright and trademark claims are barred by the First Sale Doctrine.

**Waiver—Trademark**

Plaintiffs have failed in the Second Claim for Relief to state a claim for which relief can be granted because the Complaint admits that plaintiffs themselves "create" the Foreign Editions, which bear the trademarks alleged to be infringed and yet which are merely genuine works sold by defendants without alteration or other action with respect to such trademarks, which are used on the works by virtue of plaintiffs' actions. By virtue of these facts, plaintiffs have knowingly relinquished any right they may have had to complain of the use of their trademarks arising from defendants' sale of the Foreign Editions bearing them.

**License—Trademark**

Plaintiffs have failed in the Second Claim for Relief to state a claim for which relief can be granted because the Complaint admits that plaintiffs themselves "create" the Foreign Editions, which bear the trademarks alleged to be infringed and yet which are merely genuine works sold by defendants without alteration or other action with respect to such trademarks, which are used on the works by virtue of plaintiffs' actions. By virtue of these facts, as well as the fact that the trademarks are, by what is upon information and belief plaintiffs' design, inseparable from the Foreign Editions, plaintiffs have implicitly granted a license to use such trademarks on and in connection with the Foreign Editions to all persons, including defendants, who utilize the Foreign Editions for any purpose.

**Fair Use—Trademark**

Defendants' use of any trademarks owned by plaintiff was and is fair use.

**Illegality**

The claims in the Complaint are barred because they are an attempt unlawfully to restrain trade.

WHEREFORE, defendants demand that plaintiff's Complaint be dismissed, with prejudice, in its entirety, and that defendants be granted their attorneys fees and costs of suit.

Respectfully submitted,



Ronald D. Coleman (RC 3875)

GOETZ FITZPATRICK LLP

One Penn Plaza—Suite 4401

New York, NY 10119

(212) 695-8100

[rcoleman@goetzfitz.com](mailto:rcoleman@goetzfitz.com)

*Attorneys for Defendants Textbook  
Discounters and Michael Viaene*