

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs, :

-against-

08 Civ. 7413 (GBD)

EDGAR BOBADILLA D/B/A BERGH D/B/A :
LUIS BERGH D/B/A BERGH123 D/B/A :
NEWBERGH123 D/B/A MATT OSBERT :
AND JOHN DOES NOS. 1-5, :

Defendants. :

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DECLARATION OF WILLIAM DUNNEGAN IN SUPPORT
OF PLAINTIFFS' APPLICATION FOR AN ORDER
ALLOWING SERVICE BY E-MAIL ON DEFENDANT
EDGAR BOBADILLA AND ALLOWING SERVICE OF
SUBPOENAS ON PAYPAL, INC. AND GOOGLE INC.

WILLIAM DUNNEGAN hereby declares pursuant to 28
U.S.C. § 1746 that the following is true and correct.

1. I am a member of the bar of this Court and
the firm of Dunnegan LLC, attorneys for plaintiffs in this
action, which was filed on August 21, 2008.

2. I am making this declaration in support of
plaintiffs' application for an order authorizing plaintiffs
(i) pursuant to Rule 4(e)(1) of the Federal Rules of Civil
Procedure and New York CPLR § 308(5), to serve defendant
Edgar Bobadilla d/b/a Bergh d/b/a Luis Bergh d/b/a Bergh123

d/b/a Newbergh123 d/b/a Matt Osbert ("Bobadilla") with the summons, complaint, Individual Practices, ECF Instructions, and the Order for the Initial Pretrial Conference in this action by e-mail, and (ii) pursuant to Rule 26(d) of the Federal Rules of Civil Procedure, to serve subpoenas on PayPal, Inc. ("PayPal") and Google Inc. ("Google") to identify Bobadilla and John Doe Nos. 1-5.

3. Under Rule 4(e)(1), the Court has authority to permit service on an individual defendant located in the United States by any means available under the laws of the State in which the Court sits. Under CPLR § 308(5), a plaintiff may accomplish service in any manner that the Court directs, if service is not practical under CPLR § 308 (1), (2) or (4). See D.R.I. Inc. v. Dennis, 2004 U.S. Dist. LEXIS 22541 (S.D.N.Y. 2004) (Leisure, J.); See generally Rio Properties, Inc. v. Rio International Interlink, 284 F.3d 1007 (9th Cir. 2002) (Affirming lower court's decision permitting service on foreign defendant via e-mail).

4. In this case, neither service nor substitute service under CPLR § 308 (1), (2), or (4) is feasible.

5. The complaint alleges that defendants have sold electronic copies of plaintiffs' copyrighted instructors solutions manuals through online sales at

"Google Groups," "mathforum.org," "sparknotes.com," "sci.tech-archive.net," "Gunle.com," "www.mathkb.com," "studentdump.com," "talkabouteducation.com" and "rapidshare.com" using the usernames Bergh, Luis Bergh, Bergh123, Newbergh123 and Matt Osbert.

6. We have been, by searching the Internet, unable to locate a physical address for Bobadilla.

7. Due to the electronic nature of the Bobadilla's business, we seek an order authorizing us to serve Bobadilla using the e-mail addresses used in processing his sales, newbergh123@yahoo.com, mattosbw1@gmail.com and berghpayment@yahoo.com.

8. While we would usually also want to mail service of process to the last known address of the defendant, we have not been able to obtain any address for Bobadilla.

8. Under these circumstances, service to these e-mail addresses is reasonably calculated to give notice to Bobadilla, and much more likely to give actual notice of the action than service by publication.

9. Other judges of this Court have granted similar applications to serve a defendant by e-mail. A copy of the order of Judge Cote in the action entitled Pearson Education, Inc., et al. v. Sharp Books, et al., 08 Civ. 6803, is attached as Exhibit A. A copy of the order

of Judge Lynch in the action entitled Pearson Education, Inc., et al. v. Manohar Marimuthu, et al., 07 Civ. 6914, is attached as Exhibit B. A copy of the order of Judge McMahon in the action entitled Pearson Education, Inc., et al. v. John Doe d/b/a "LPE Bookstore," 07 Civ. 8028, is attached as Exhibit C.

12. As the payment system used by Bobadilla, PayPal probably knows the true identity and location of Bobadilla.

13. As the business forum and e-mail provider used by Bobadilla, Google probably knows the true identity and location of Bobadilla.

13. Under Rule 26(d), however, "a party may not seek discovery from any source before the parties have conferred as required by Rule 26(f)." Without the identities and locations of the defendant, this conference would not be productive.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of August 2008 in New York, New York.


William Dunnegan

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8/13/08

PEARSON EDUCATION, INC. AND
JOHN WILEY & SONS, INC.,

Plaintiffs,

-against-

JOHN DOE D/B/A SHARP BOOKS
AND JOHN DOES NOS. 1-5,

Defendants.

08 Civ. 6803 (DLC)
ECF Case

ORDER ALLOWING SERVICE BY E-MAIL AND
SERVICE OF SUBPOENAS TO ASCERTAIN THE
IDENTITY AND LOCATION OF DEFENDANTS

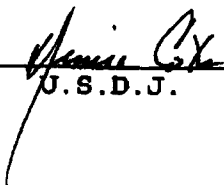
Upon the application of plaintiffs Pearson Education, Inc. and John Wiley & Sons, Inc., as set forth in the annexed declaration of William Dunnegan, dated August 11, 2008, for an order (i) pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure allowing service by e-mail of the summons and complaint on defendant John Doe d/b/a Sharp Books ("Sharp Books") in this action, and (ii) pursuant to Rule 26(d) of the Federal Rules of Civil Procedure allowing service of subpoenas on Abebooks Inc. ("Abebooks"), PayPal, Inc. ("PayPal") and Google Inc. ("Google") to ascertain the true identities and locations of defendants Sharp Books and John Doe Nos. 1-5, and good cause for that relief appearing, it is hereby

ORDERED, pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure, that plaintiffs may serve the summons and complaint in this action upon defendant Sharp Books by e-mailing a copy of each, along with a copy of this order, in .pdf format to the e-mail address Sharpbooks@gmail.com; and it is further

ORDERED that service shall be deemed complete upon the filing of a declaration with the Clerk of the Court affirming that the e-mail has been sent in conformity with this order; and it is further

ORDERED, pursuant to Rule 26(d) of the Federal Rules of Civil Procedure, that plaintiffs may serve subpoenas on AbeBooks, PayPal and Google to identify and locate defendants Sharp Books and John Does Nos. 1-5 in this action.

Dated: New York, New York
August 13, 2008



U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs, :

-against-

07 Civ. 6914 (GEL)
ECF CASE

MANOHAR MARIMUTHU, SHRIHARI :
SIVASUBRAMANIAM AND RAMKUMAR :
CHANDRASEKARAN D/B/A RK SELLERS :
AND JOHN DOE NOS. 1-5, :

Defendants. :

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ORDER ALLOWING SERVICE BY E-MAIL AND MAIL
AND SERVICE OF SUBPOENAS TO ASCERTAIN THE
IDENTITY AND LOCATION OF DEFENDANTS

Upon the application of plaintiffs Pearson Education, Inc., John Wiley & Sons, Inc., Cengage Learning Inc. and The McGraw-Hill Companies, Inc., as set forth in the annexed declaration of William Dunnegan, dated October 18, 2007, for an order (i) pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure allowing service by e-mail and mail of the summons and complaint on defendant Ramkumar Chandrasekaran d/b/a RK Sellers in this action, and (ii) pursuant to Rule 26(d) of the Federal Rules of Civil Procedure allowing service of subpoenas on AbeBooks Inc. ("AbeBooks"), Google Inc. ("Google"), PayPal, Inc.

("AbeBooks"), Google Inc. ("Google"), PayPal, Inc. ("PayPal") and eBay, Inc. ("eBay") to ascertain the true identities and locations of defendants Ramkumar Chandrasekaran d/b/a RK Sellers and John Doe Nos. 1-5, and good cause for that relief appearing, it is hereby

ORDERED, pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure, that plaintiff may serve the summons and complaint in this action upon defendant Ramkumar Chandrasekaran d/b/a RK Sellers by e-mailing a copy of each, along with a copy of this order, in .pdf format to the e-mail address seller.rk@gmail.com as well as mailing a copy of each, along with a copy of this order, to the defendant's last known address of 910 East Lemon Street, Apartment 21, Tempe, Arizona 85281 in a envelope bearing the legend "personal and confidential" and not indicating on the outside that the communication is from an attorney or concerns an action against the person to be served; and it is further

ORDERED that service shall be deemed complete upon the filing of a declaration with the Clerk of the Court affirming that the e-mail and mailing has been sent in conformity with this order; and it is further

ORDERED, pursuant to Rule 26(d) of the Federal Rules of Civil Procedure, that plaintiffs may serve subpoenas on AbeBooks, Google, PayPal and eBay to identify

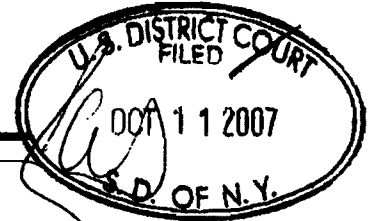
and locate defendants Ramkumar Chandrasekaran d/b/a RK
Sellers and John Does Nos. 1-5 in this action.

Dated: New York, New York
October 22 2007


U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOC # 9



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

Plaintiffs,

-against-

07 Civ. 8028 (CM)

JOHN DOE D/B/A LPE BOOKSTORE
D/B/A KBS AND JOHN DOES
NOS. 1-5,

Defendants.

ORDER ALLOWING SERVICE BY E-MAIL AND MAIL
AND SERVICE OF SUBPOENAS TO ASCERTAIN THE
IDENTITY AND LOCATION OF DEFENDANTS

Upon the application of plaintiffs Pearson Education, Inc., John Wiley & Sons, Inc., Cengage Learning Inc. and The McGraw-Hill Companies, Inc., as set forth in the annexed declaration of William Dunnegan, dated October 2, 2007, for an order (i) pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure allowing service by e-mail and U.S. mail of the summons and complaint on defendant John Doe d/b/a LPE Bookstore d/b/a KBS in this action, and (ii) pursuant to Rule 26(d) of the Federal Rules of Civil Procedure allowing service of subpoenas on AbeBooks Inc. ("AbeBooks"), Google Inc. ("Google"), PayPal, Inc.

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("PayPal") and eBay, Inc. ("eBay") to ascertain the true identities and locations of defendants John Doe d/b/a LPE Bookstore d/b/a KBS and John Doe Nos. 1-5, and good cause for that relief appearing, it is hereby

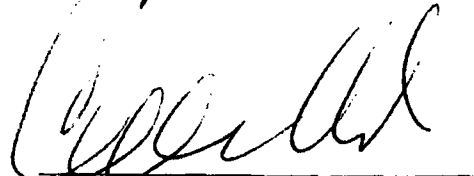
ORDERED, (pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure, that plaintiffs may serve the summons and complaint in this action upon defendant John Doe d/b/a LPE Bookstore d/b/a KBS by e-mailing a copy of each, along with a copy of this order, in .pdf format to the e-mail address ^{Special e-mail case} lowprice.edition@gmail.com as well as mailing a copy of each, along with a copy of this order, to the defendant's last known address of 1011 East Orange Street, #63, Tempe, Arizona 85281 in a envelope bearing the legend "personal and confidential" and not indicating on the outside that the communication is from an attorney or concerns an action against the person to be served; and it is further

ORDERED that (service shall be deemed complete upon the filing of a declaration with the Clerk of the Court affirming that the e-mail and mailing has been sent in conformity with this order); and it is further

ORDERED, pursuant to Rule 26(d) of the Federal Rules of Civil Procedure, that (plaintiffs may serve subpoenas on AbeBooks, Google, PayPal and eBay to identify

and locate defendants John Doe d/b/a LPE Bookstore d/b/a
KBS and John Does Nos. 1-5 in this action).

Dated: New York, New York
October 18, 2007



U.S.D.J.