

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiff,

X

VERIFIED ANSWER

- against-

Case No.: 129 CIV 2682(PGG)

**GURBY ANGLADE AND DARLING BARRERA
BOTH D/B/A/ TBSM SHOP D/B/A
SMTB SHOP
AND JOHN DOES NOS. 1-5**

Defendant.

Assigned Judge: Hon Paul G. Gardephe

X

Defendants, GURBY ANGLADE and DARLING BARRERA, by their attorney Robert L. Greener, hereby alleges the following as and for his VERIFIED ANSWER to the Plaintiff's Amended Complaint dated May 9, 2012:

1. Defendants lack sufficient information to form a belief as to the truth of the allegations in paragraph **1, 2, 3, 4, 5, 6, 7, and 10** of the complaint.
2. Admits to the allegations in paragraph **11** to the extent that the Plaintiff's own copyrights on educational text books.
3. Defendants lack sufficient information to form a belief as to the truth of the allegations of paragraph's **12, 13, 14, 15, and 16** regarding Plaintiff's business practices or methods.
4. Defendant's lack sufficient information to verify the truth of the allegations contained in paragraphs **17, 18, 19, 20, 23, 24, 25, 26, and 27** except to admit that the registrations speak for themselves regarding the validity of the Plaintiff's alleged copyright registrations.

5. Denies each and every allegation in paragraph **28** of the Amended Complaint.
6. Denies each and every allegation of paragraph **29** of the Amended Complaint.
7. Denies each and every allegation in paragraph **30** of the Amended Complaint.
8. Denies each and every allegation in paragraph and **31** of the Amended Complaint.

AS AND FOR THE DEFENDANT'S FIRST AFFRIMATIVE DEFENSE.

9. Even if the acts complained of in the Plaintiff's complaint were true, there was no infringement of Plaintiff's Copyright under 17 U.S.C. 501 as the Instructors Solutions Manuel's as described in the Plaintiff's Amended Complaint and sold by Defendants are not derivative works of Plaintiff's preexisting copyrights under 17 U.S.C.101 and 103 as they contain no or very little original material.

AS AND FOR THE DEFENDANT'S SECOND AFFRIMATIVE DEFENSE.

10. To the extent that the Instructors Solutions Manuel's as described in the Plaintiff's Amended Complaint and sold by Defendants are the subject of filed copyright registrations in the

United States Copyright Office they do not contain original works of art that are protectable under 17 U.S.C. 102.

AS AND FOR THE DEFENDANT'S THIRD AFFRIMATIVE DEFENSE.

11. Plaintiffs are aware of another individual(s) who may be the person responsible for the alleged infringing act complained of herein, and despite that knowledge Plaintiff has failed to name that party as a necessary party in interest in accordance with the Federal Rules of Civil Procedure §§'s 19 and 21.

AS AND FOR THE DEFENDANT'S FOURTH AFFRIMATIVE DEFENSE.

12. Plaintiffs have unclean hands as Plaintiffs failed to properly notify, warn, or instruct the lawful owners and users of the instructor's manuals described in the complaint that third party resale or possession was a violation of its copyrights in the products.

AS AND FOR THE DEFENDANT'S FIFTH AFFRIMATIVE DEFENSE.

13. Plaintiff has unclean hands in that they fail to properly control who receives the copies of their instructor's manuals by limitation though licensing agreements or other controls.

AS AND FOR THE DEFENDANT'S FIFTH AFFRIMATIVE DEFENSE

14. To the extent that the Defendants sold any Instructors Solution Manuals, Plaintiff's suffered no economic damages as the underlying text books have been widely available for many years and students have prepared their own study guides with answer which can be found on the internet, in addition to the fact that instructors themselves offer students the keys and solutions to problems both before and after examinations and practical homework.

WHEREFORE, the Defendants **GURBY ANGLADE AND DARLING BARRERA** respectfully demands that the Amended Complaint be dismissed in its entirety plus that he be awarded costs and fees associated with defending this action.

Dated: New York, NY
OCTOBER 19, 2012

Respectfully Submitted,



ROBERT L. GREENER (RG 8089)
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Attorney for Defendant
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To: Donnegan & Scileppi LLC
Attorney for Plaintiff
Pearson Education Inc.
350 Fifth Ave.,
New York, NY 10118
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VERIFICATION

STATE OF NEW YORK }

}SS:

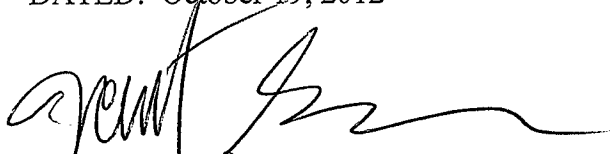
COUNTY OF NEW YORK }

Defendant **DARLING BARRERA** hereby being duly sworn, deposes and says:

that She is the Defendant in the above captioned matter and as such has read the Answer and states that the same is true to her own knowledge except as to matters therein stated to be alleged on information and belief, and as to those matters she believes them to be true


DARLING BARRERA

DATED: October 19, 2012


Notary

Robert L. Greener
Notary Public State of New York
No. 02GR6240831
Qualified in New York
Commission Expires 05 / 09 / 20 15

VERIFICATION

STATE OF NEW YORK }

}SS:

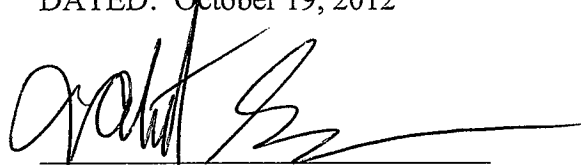
COUNTY OF NEW YORK }

Defendant **GURBY ANGLADE** hereby being duly sworn, deposes and says:

that he is the Defendant in the above captioned matter and as such has read the Answer and states that the same is true to his own knowledge except as to matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true


GURBY ANGLADE

DATED: October 19, 2012


Notary

Robert L. Greener
Notary Public State of New York
No. 02GR6240831
Qualified in New York
Commission Expires 05 / 09 / 20 15