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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
PEARSON EDUCATION, INC., et al.,

Plaintiffs,

10 Civ. 324 (WHP)

-against-

MEMORANDUM & ORDER

TEXTBOOK DISCOUNTERS, et al.,

Defendants.  
-----X

WILLIAM H. PAULEY III, District Judge:

Plaintiffs Pearson Education, Inc., John Wiley & Sons, Inc., Cengage Learning, Inc., and The McGraw-Hill Companies, Inc. bring this action for copyright infringement, trademark infringement, and common law unfair competition. Defendant Michael Viaene d/b/a Textbook Discounters ("Viaene") moves to dismiss this action for lack of personal jurisdiction and improper venue under Federal Rules of Civil Procedure 12(b)(2) and (3). For the following reasons, Viaene's motion is denied.

BACKGROUND

Plaintiffs allege that Defendants purchased Foreign Editions of textbooks manufactured abroad and resold them, without authorization, to domestic purchasers through the internet. (Complaint dated Jan. 14, 2010 ("Compl.") ¶ 24.) Plaintiffs further claim that Viaene, who resides in and operates his business out of Minnesota, sold books over the internet to New York residents. (Compl. ¶¶ 8-9, 24.) Specifically, Plaintiffs offer the Declaration of Jennifer Siewert, a paralegal for Plaintiffs' counsel, who purchased two Foreign Edition textbooks

published by Plaintiffs from Textbook Discounters over the internet. (Declaration of Jennifer Siewert dated Jul. 15, 2010 (“Siewert Decl.”) at ¶¶ 2-4.) Textbook Discounters shipped those books to her home in New York. (Siewert Decl. ¶ 4.) Additionally, Plaintiffs offer “PayPal” records which reveal that Textbook Discounters sold a textbook published by Plaintiff McGraw-Hill to a purchaser in New York. (Declaration of Laura Scileppi dated Jul. 15, 2010 ¶ 8.) Defendants do not challenge the veracity of these assertions.

## DISCUSSION

### I. Personal Jurisdiction

“On a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of showing that the court has jurisdiction over the defendant.” Metro. Life Ins. Co. v. Robertson-Ceco Corp., 84 F.3d 560, 566 (2d Cir. 1996). Where, as here, there has been little or no discovery, “a plaintiff challenged by a jurisdiction testing motion may defeat the motion by pleading in good faith . . . legally sufficient allegations of jurisdiction, *i.e.*, by making a *prima facie* showing of jurisdiction.” Jazini v. Nissan Motor Co., 148 F.3d 181, 184 (2d Cir. 1998). The Court must conduct a two-part inquiry: “First, it must determine whether the plaintiff has shown that the defendant is amenable to service of process under the forum state’s laws; and second, it must assess whether the court’s assertion of jurisdiction under these laws comports with the requirements of due process.” Metro. Life Ins. Co., 84 F.3d at 567 (2d Cir. 1996).

#### A. New York Long-Arm Statute

Because there is no specific federal statute governing personal jurisdiction on a copyright or trademark claim, the Court must look to New York law—in this case, the New York

long-arm statute. See N.Y. C.P.L.R. § 302(a) (2006); Fort Knox Music Inc. v. Baptiste, 203 F.3d 193, 196 (2d Cir. 2000). New York's long-arm statute allows for jurisdiction over a non-domiciliary that, inter alia, contracts anywhere to supply goods or services in the state or commits a tortious act without the state causing injury to person or property within the state and either (a) regularly does or solicits business or derives substantial revenue in the state; or (b) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce. N.Y. C.P.L.R. § 302(a) (2006). "A nondomiciliary transacts business under §302(a)(1) when he purposefully avails [himself] of the privilege of conducting activities within [New York], thus invoking the benefits and protections of its laws." Capitol Records, Inc. v. MP3tunes, LLC, No. 07 Civ. 9931 (WHP), 2008 WL 4450259, at \*3 (S.D.N.Y. Sept. 29, 2008) (quoting CutCo Indus., Inc. v. Naughton, 806 F.2d 361, 365 (2d Cir. 1986).)

While the Court must look to the "totality of the circumstances" to determine whether this standard is met, the sale of even a single item over the internet that is shipped into New York can give rise to personal jurisdiction. See Chloe v. Queen Bee of Beverly Hills, LLC --- F.3d ---, 2010 WL 3035495 (2d Cir. 2010); Pearson Education, Inc. v. Yi Shi, 525 F. Supp. 2d 551, 555 (S.D.N.Y. 2007); Parker Waichman Alonso LLP v. The Orlando Firm, P.C., No. 09 Civ. 7401 (CM), 2010 WL 1956871, at \*7 (S.D.N.Y. May 14, 2010); John Wiley & Sons, Inc. v. Swancoat, No. 08 Civ. 5672 (JGK), 2009 WL 2486048, at \*1 (S.D.N.Y. Aug. 14, 2009).

Here, Plaintiffs allege that Textbook Discounters sold several books over the internet to New York purchasers and sent those books to New York. Because at least two of those books are alleged to infringe Plaintiffs' copyrights and trademarks, there is no question that

Plaintiffs' claims for copyright and trademark infringement are directly related to those sales. See Swancoat, 2009 WL 2486048 at \* 2. Accordingly, Plaintiffs have pled facts sufficient to make a prima facie showing of personal jurisdiction under the New York long-arm statute.

B. Due Process

In addition to pleading jurisdiction under the long-arm statute, Plaintiffs must satisfy the due process clause of the Constitution. Metro. Life Ins. Co., 84 F.3d at 567. The due process test for personal jurisdiction involves two inquiries: the "minimum contacts" inquiry and the "reasonableness" inquiry. Metro. Life Ins. Co., 84 F.3d at 567. The minimum contacts inquiry requires that courts determine whether a defendant has sufficient contacts with the forum state to justify the court's exercise of personal jurisdiction over the defendant. "In actually sending items to New York, there can be no doubt that [Defendant's] conduct was 'purposefully directed toward the forum State.'" Chloe, 2010 WL 3035495, at \*10.

When determining "reasonableness," courts consider: (1) the burden on the defendant; (2) the interests of the forum state; (3) the plaintiff's interest in obtaining relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several States in furthering fundamental substantive social policies. Asahi Metal Indus. Co., Ltd. v. Super. Ct. of CA, Solano Cty., 480 U.S. 102, 113 (1987); Chloe, 2010 WL 3035495, at \*11.

With respect to the first factor, Viaene suffers a burden in having to defend himself in a foreign forum. However, that burden "cuts both ways," as Plaintiffs' witnesses would have to travel to Minnesota if this case were brought there. Chloe, 2010 WL 3035495, at \*11. Moreover, the second and third factors weigh in favor of Plaintiffs, as New York has an

interest in preventing the intellectual property of its citizens from being infringed, and several of the Plaintiffs are residents of New York. The fourth and fifth factors are neutral. Taken together, these factors show that Viaene could reasonably have expected to be subject to suit in New York. See Chloe, 2010 WL 3035495, at \*11; Yi Shi, 525 F. Supp. 2d at 555; Swancoat, 2009 WL 2486048, at \* 3. Accordingly, exercise of jurisdiction over Viaene does not violate the constitutional guarantee of due process.

## II. Venue

Viaene also seeks dismissal of this action for improper venue under Fed. R. Civ. P. 12(b)(3). “In an action for copyright infringement, venue is controlled by 28 U.S.C. § 1400(a), which states that an action may be brought where the defendant or his agent resides or may be found.” Capitol Records, Inc. v. Kuang Dyi Co. of RM, No. 03 Civ. 520 (LAP), 2004 WL 405961, at \*1 (S.D.N.Y. Mar. 4, 2004) (internal citations and quotation marks omitted). “It is well-established that a defendant ‘may be found’ in any district in which he is amenable to personal jurisdiction; thus, venue and jurisdiction are coextensive.” Capitol Records, 2004 WL 405961 at \*1. Accordingly, having found that Defendant Viaene d/b/a Textbook Discounters is subject to personal jurisdiction in this District, venue is also proper.

CONCLUSION

For the foregoing reasons, Defendant Michael Viaene d/b/a Textbook

Discounters's motion to dismiss is denied.

Dated: August 20, 2010  
New York, New York

SO ORDERED:

  
WILLIAM H. PAULEY III  
U.S.D.J.

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