

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

BEDFORD, FREEMAN & WORTH PUBLISHING
GROUP, LLC d/b/a MACMILLAN LEARNING;
MACMILLAN HOLDINGS, LLC; CENGAGE
LEARNING, INC.; ELSEVIER INC.; ELSEVIER
B.V.; MCGRAW HILL LLC; and PEARSON
EDUCATION, INC.,

Plaintiffs,

v.

SHOPIFY INC.,

Defendant.

Case No.

COMPLAINT AND JURY DEMAND

Plaintiffs Bedford, Freeman & Worth Publishing Group, LLC d/b/a Macmillan Learning (“Macmillan Learning”), Cengage Learning, Inc. (“Cengage”), Elsevier Inc. (“Elsevier”), McGraw Hill LLC (“McGraw Hill”), and Pearson Education, Inc. (“Pearson”) (collectively, the “Publishers”), and Macmillan Holdings, LLC and Elsevier B.V. (collectively, with the Publishers, “Plaintiffs”), by and through their undersigned counsel, hereby file their Complaint against Shopify Inc. (“Shopify”), asserting claims of contributory and vicarious copyright infringement and contributory trademark infringement. Plaintiffs allege as follows on personal knowledge as to matters relating to themselves and on information and belief as to all other matters.

INTRODUCTION

1. The Publishers are leading educational publishers committed to creating, publishing, marketing, and selling high-quality copyrighted works that advance learning. Shopify is among the world’s largest providers of “one-stop” e-commerce solutions. Shopify provides its

subscribers—including known infringers—with a complete online business toolbox that includes, among other things, storefront building, webhosting, product fulfillment, marketing, customer support, business expertise, business analytics, capital investment, and payment processing.

2. Shopify plays host, enabler, and protector to a world of digital textbook pirates. Shopify has received detailed notices virtually every week for years identifying specific Shopify subscribers using Shopify’s services for piracy. Yet, Shopify routinely ignores illegal activity by the identified subscribers, putting its corporate finances over its legal obligations. Shopify knows that it is assisting subscribers to infringe, but it does not care.

3. Shopify’s President describes Shopify’s one-strike policy towards infringement as follows: “If we see a store that is infringing on any type of intellectual property, either on a trademark or a copyright or anything of that nature, it’s gone. We don’t allow it.” Nilay Patel, *How Shopify’s Network of Sellers Can Take On Amazon*, The Verge (May 4, 2021, 9:30 AM), <https://www.theverge.com/22417825/shopify-harley-finkelstein-interview-online-shopping-amazon-apple>. Unfortunately, Shopify’s actions do not match its words. Shopify does not enforce its own policies, merely giving lip service to the protection of others’ intellectual property rights while profiting from the infringement of those rights.

4. When Shopify learns of specific instances of copyright and trademark infringement, Shopify shirks its legal obligations by continuing to assist repeat infringers in their infringement. Shopify not only provides its repeat-infringer subscribers with the tools they need to run their illegal businesses, but also provides them with anonymity, a false veneer of legitimacy, and a safe haven from which to break the law. When Shopify becomes aware that one of its subscribers is using its services to infringe, Shopify must do something about it. Blindly ignoring piracy in order to make more money, as Shopify does here, is not a lawful option.

5. Shopify has a Trust and Security team that is charged with the responsibility of monitoring Shopify stores (i.e., websites) for compliance with its Acceptable Use Policy, which expressly prohibits copyright and trademark infringement. *See* Shopify Acceptable Use Policy ¶ 6 (Apr. 15, 2020), <https://www.shopify.com/legal/aup> (“Acceptable Use Policy”). Shopify also claims to use artificial intelligence (“AI”) to monitor Shopify stores. Notwithstanding Shopify’s policies and claimed practices, Shopify routinely allows subscribers to sell infringing goods, even after Shopify knows that they are engaged in illegal behavior.

6. Beginning in 2017, and continuing over the successive years, Plaintiffs and/or their authorized agents have regularly and repeatedly sent infringement notices to Shopify identifying specific subscribers engaged in piracy (“Pirate Subscribers”) by store name and store URL (“Notices”). These Notices identify representative examples of specific infringing works sold on the Pirate Subscribers’ websites (“Pirate Websites”) by providing the URL of the product pages advertising and selling such infringing works. The Notices also make clear that the Pirate Subscribers are not authorized to sell digital copies of the Publishers’ works on Shopify. The Notices identify hundreds of Pirate Websites and many thousands of specific instances of copyright and trademark infringement on Shopify. Yet, despite receiving Notice after Notice, Shopify has continued to assist known Pirate Subscribers to infringe.

7. Without court intervention, Shopify will continue to facilitate and assist in the infringement of Plaintiffs’ copyright and trademark rights as complained of herein, causing significant financial damage and reputational harm. Accordingly, to address and remedy Shopify’s persistent and pervasive willful infringement, Plaintiffs bring this action.

JURISDICTION AND VENUE

8. The claims herein arise under the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*, as amended, and the Lanham Act, 15 U.S.C. § 1051 *et seq.*, as amended. The Court thus has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338(a), and 15 U.S.C. § 1121(a).

9. The Court has specific personal jurisdiction over Shopify pursuant to Va. Code Ann. § 8.01-328.1. Shopify has engaged in substantial activities purposefully directed at the Commonwealth of Virginia, and the claims asserted herein arise from and relate to those extensive activities and Shopify's contacts therefrom. Shopify engages in a persistent course of conduct and derives substantial revenue from services rendered and products used in Virginia. Shopify regularly transacts and solicits business, knowingly and intentionally markets, and contracts to supply and supplies its services and products in Virginia, including services and products that relate to the infringement complained of herein. Shopify has caused tortious injury to Plaintiffs by acts of copyright and trademark infringement occurring within Virginia.

10. In particular, and without limitation, Shopify operates and/or controls computer servers in Ashburn, Virginia to, among other things, store and deliver infringing digital copies of the Publishers' textbooks, test banks, and/or ISMs, which often bear infringing copies of trademarks, to the consuming public. Accordingly, the infringing activities complained of herein occur in part through Shopify-controlled servers located in Virginia. Further, the Pirate Websites, which exist and operate solely on Shopify's platform, and which Shopify monitors and controls, are highly interactive, continuously accessible to Virginia customers, and sell infringing digital content to Virginia consumers, among others. When that infringing content is sold on the Pirate Websites, it is often delivered from computers in Virginia. Plaintiffs' injuries complained of herein arise out of these interactions.

11. Alternatively, the Court has personal jurisdiction over Shopify pursuant to Federal Rule of Civil Procedure 4(k)(2)—the so-called “federal long-arm statute.” The copyright and trademark infringement claims herein arise under federal law. Shopify has extensive contacts with the United States as a whole. Shopify overwhelmingly directs its business into the United States, including with respect to the matters giving rise to this lawsuit. For instance, and without limitation:

- a. Shopify is a publicly traded company on the New York Stock Exchange, trading under the symbol “SHOP” since 2015.
- b. Shopify’s founder and CEO has acknowledged in the press that “Shopify was a company initially [built] for American customers.” Sriram Krishnan, *Tobi Lütke*, *The Observer Effect* (Dec. 16, 2020), <https://www.theobservereffect.org/tobi.html>.
- c. Shopify maintains a substantial U.S. workforce and regularly hires employees in the United States, including those with responsibility for Shopify’s handling of, and response to, infringement notices, as well as members of Shopify’s Trust and Security team. While Shopify has announced that its workforce will work remotely on a permanent basis with certain exceptions, it has employees in multiple states across the United States, including Arizona, California, Michigan, New York, Pennsylvania, and Virginia.
- d. Shopify’s in-house legal counsel includes numerous U.S. lawyers who are active members of various bars in the United States. Shopify’s newly appointed General Counsel is also located in Washington, D.C.
- e. Shopify lobbies the U.S. Congress, including with respect to the sale of counterfeit goods online, and has retained lobbyists in the United States for that purpose.

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