

FILED

JUN - 8 2012

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia



**Oppenheim
+ Zebrak, LLP**

Scott A. Zebrak, Esq.

4400 Jenifer Street, NW, Suite 250
Washington, DC 20015
202.450.3758 | 866.766.1678 (fax)
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June 7, 2012

By Hand-Delivery

Clerk's Office
U.S. District Court
for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001

Case: 1:12-mc-00315
Assigned To : Unassigned
Assign. Date : 6/8/2012
Description: Miscellaneous

Re: Application for DMCA Subpoena

Dear Sir or Madam:

On behalf of my client, Elsevier Inc. (hereinafter, "Elsevier"), I respectfully request that the Clerk issue a subpoena pursuant to 17 U.S.C. § 512(h).

By way of background, Section 512(h) of the Digital Millennium Copyright Act provides that a "copyright owner or a person authorized to act on the owner's behalf may request the clerk of any United States District Court to issue a subpoena to a service provider for identification of an alleged infringer in accordance with this subsection." 17 U.S.C. § 512(h)(1). For a subpoena to be issued, Section 512 (h) requires that a copyright owner file the following with the Clerk:

- (1) A copy of the notification required by Section 512(c)(3)(A);
- (2) A proposed subpoena; and
- (3) A sworn declaration to the effect that the purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this title.

Accordingly, attached for filing with the Clerk are Elsevier's notification pursuant to Section 512(c)(3)(A), a proposed subpoena, and a sworn declaration. As Elsevier has complied with the requirements of the statute, they ask that the Clerk pursuant to Section

Rec'd
8/46

Letter to Clerk's Office
June 7, 2012
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512(h)(4) expeditiously issue and sign the proposed subpoena and return it to Elsevier (c/o undersigned counsel) for service on the subpoena recipient.

Thank you for your cooperation and prompt response in this matter. If you have any questions, I am reachable as noted above.

Sincerely,



Scott A. Zebrak

Enclosures

UNITED STATES DISTRICT COURT

for the

District of Columbia

In re DMCA Subpoena to eBay.com

Plaintiff

v.

Defendant

Misc

Civil Action No.

12-315 (UNA)

(If the action is pending in another district, state where:

District of)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Registered Agent, eBay
173 West Election Road, Draper, UT 84020

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Identifying information for the operator of the seller Titletext2008 and the URLs on Exhibit A hereto, from any and all sources, including but not limited to billing or administrative records that prove the name(s), address(es), telephone number(s), email address(es), account number(s) and any other electronic or physical names, addresses, or contact information.

Place: Oppenheim + Zembrak, LLP 4400 Jenifer St. NW, Suite 250 Washington, DC 20015	Date and Time: 6/14/2012 9:00 am
-------------------------------------------------------------------------------------------	-----------------------------------------

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

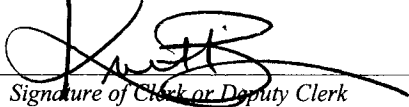
Place:	Date and Time:
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The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

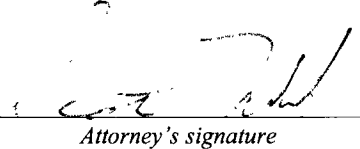
Date: 6/8/12

ANGELA D. CAESAR

CLERK OF COURT


Signature of Clerk or Deputy Clerk

OR


Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party)

Elsevier Inc., who issues or requests this subpoena, are:

Scott A. Zembrak, Esq., Oppenheim + Zembrak, LLP
4400 Jenifer Street NW, Suite 250, Washington, DC 20015 Tel: 202-450-3758, Email: scott@oandzlaw.com

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of

\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

EXHIBIT A

Elementary Linear Algebra

By David Hecker and Stephen Francis Andrilli

ISBN: 0123747511

http://www.ebay.com/itm/Elementary-Linear-Algebra-David-Hecker-and-Stephen-Francis-Andrilli-2009-/170827352034?pt=US_Texbook_Education&hash=item27c61a87e2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

JUN - 8 2012

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

**IN RE: DMCA SUBPOENA)
TO EBAY.COM)**

Misc 12-315 (UNA)

DECLARATION OF SCOTT A. ZEBRAK

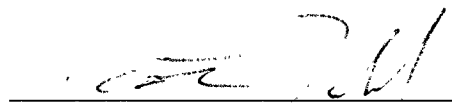
I, Scott A. Zebrak, declare and testify as follows:

1. I am a member of Oppenheim + Zebrak, LLP and am admitted to practice law in the District of Columbia, among other jurisdictions. I represent Elsevier Inc.

2. On behalf of the client(s) described above, I am seeking a subpoena pursuant to 17 U.S.C. §512(h) to identify the persons infringing my client's copyrighted works as identified on the attachment to this declaration.

3. The purpose for which the subpoena is sought is to obtain the identity of alleged infringers and the information obtained therefrom will only be used for the purpose of protecting rights under 17 U.S.C. 101, et seq.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 7, 2012.



Scott A. Zebrak, DC Bar # 452649

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By David Hecker and Stephen Francis Andrilli

ISBN: 0123747511

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O+Z Oppenheim
+ Zebrak, LLP

Scott A. Zebrak, Esq.

4400 Jenifer Street, NW, Suite 250
Washington, DC 20015
202.450.3758 | 866.766.1678 (fax)
scott@oandzlaw.com

June 7, 2012

By Federal Express

Registered Agent
eBay
173 West Election Road
Draper, UT 84020

Misc 12-315
(UNA)

Re: Infringements

Dear Registered Agent:

We represent Elsevier Inc. (hereinafter, "Elsevier"). We provide this notice pursuant to the Section 512 of Title 17 of the U.S. Code (as enacted by the "Online Copyright Infringement Liability Limitation Act") to request that you immediately take action with respect to infringements that are occurring by seller Titletext2008 on eBay.com at the addresses described on the attachment. This notice is being provided to you as the party responsible for the URLs described in the attachment.

Based on the information at our disposal, we have a good faith belief that the material located on and/or being distributed from the URLs described in the attachment is infringing Elsevier's copyrights. The copyrighted works that have been infringed include, among others, those listed on the attachment hereto.

The unauthorized copies are identified by their titles or variations thereof. Such copies, titles, listings, references, descriptions, depictions, and material that are the subject of infringing activities are hereinafter referred to as "Infringing Material."

Given the infringing activity, we urge you to cooperate with our efforts to protect Elsevier's intellectual property rights and immediately do the following:

1. Immediately take steps to remove or disable access to all of the Infringing Materials;

Letter to eBay
June 7, 2012
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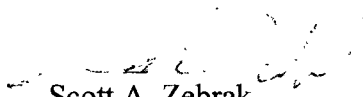
2. Notify any seller who may have participated in reproducing or distributing the Infringing Material that their conduct was illegal and could be subject to enforcement; and
3. Take appropriate action against any responsible seller under your Abuse Policy/Terms of Service Agreement, including termination of repeat offenders under Section 512(i) of Title 17 of the U.S. Code.

I believe that the information in this notification is accurate. Under penalty of perjury, I hereby affirm that I am authorized to act on Elsevier's behalf whose exclusive copyright rights I believe to have been infringed as described herein. By providing this notice, Elsevier is not waiving its right to engage in other enforcement activities, and reserve all rights to do so at any time.

You or the account holder may contact me at the above-listed contact details.

Thank you for your cooperation and prompt response in this matter.

Sincerely,



Scott A. Zebrak

Attachment

EXHIBIT A

Elementary Linear Algebra

By David Hecker and Stephen Francis Andrilli

ISBN: 0123747511

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