

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

FOLLETT HIGHER ED GROUP, LTD., )  
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)  
Plaintiff, )  
)  
)  
v. )  
)  
BOOKRENTER.COM, INC., )  
)  
)  
Defendant. )

**FILED UNDER SEAL**

No. 11-CH-

**11 CH 28519**

**EMERGENCY MOTION AND INCORPORATED MEMORANDUM OF LAW IN  
SUPPORT OF A TEMPORARY RESTRAINING ORDER AND PRELIMINARY  
AND PERMANENT INJUNCTIVE RELIEF**

Plaintiff Follett Higher Ed Group, Ltd., (“Follett”) submits this Memorandum of Law in support of its Emergency Motion for Temporary Restraining Order and Preliminary and Permanent Injunction against Defendant BookRenter.com, Inc. (“BookRenter”). As support for its motion, Follett incorporates the verified allegations made in its Verified Complaint for Declaratory Injunctive Relief filed on August 11, 2011.

**I. INTRODUCTION**

Temporary, preliminary, and permanent injunctive relief is necessary to address the substantial and irreparable harm Follett has and will continue to suffer if, pending resolution of this action, BookRenter is permitted to ignore the plain terms of the parties’ agreement by, among other things, REDACTED

REDACTED In failing to abide by the agreement, BookRenter is interfering with Follett’s existing contracts, interfering with Follett’s prospective business relations and engaging in unlawful and deceptive trade practices. Follett is entitled to the relief requested for the reasons stated below. BookRenter must be immediately stopped from these unlawful practices for the reasons stated below.

## **II. FACTUAL BACKGROUND<sup>1</sup>**

### **A. The Parties**

Follett is a family-owned bookstore service provider headquartered in River Grove, Illinois. In operation since 1873, Follett manages more than 850 bookstores nationwide and provides management systems, support services and used textbooks to over 1,800 independently managed bookstores and their customers, i.e., college students across the country. According to its website, [www.bookrenter.com](http://www.bookrenter.com), BookRenter launched in 2008 as a website that enables college students to rent college textbooks.

### **B. The Affiliate Rental Program**

In early 2010, Follett sought to market online text rental services to college bookstores. It developed the Follett College Store Online Rental Affiliate Program (the "Affiliate Program"). Colleges bookstores that join the Program become "Follett Affiliates" and execute a Text Rental Affiliate Program Agreement. A true and correct standard copy of the agreement is attached at Exhibit B.

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<sup>1</sup> The facts set forth herein are likewise contained in Follett's Verified Complaint for Declaratory and Injunctive Relief, which is incorporated by reference herein and attached at Exhibit A.

**C. The Re-Marketing Agreement**

At the time Follett began the Affiliate Program, it had yet to develop software to operate its own online rental website. BookRenter was an online textbook rental provider, but had limited marketing resources to reach college bookstores.

On March 10, 2010, Follett and BookRenter entered into an agreement captioned as the “College Stores Online Rental Services Re-Marketing Agreement” (the “Re-Marketing Agreement”) A true and correct copy of the Re-Marketing Agreement is attached as Exhibit C.

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**1. Post-Termination Provisions**

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**2. BookRenter Continues to Accept Orders from Follett Affiliate Customers.**

On or about February 2011, Fred Weber, BookRenter's Senior Vice President, met with Mehdi Maghsoodnia, BookRenter's Chief Executive Officer, and informed Maghsoodnia that Follett had developed its own online text rental websites. BookRenter terminated the Re-Marketing Agreement on May 15, 2011. Ex. C.

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BookRenter objected to Follett's proposed transition plans and has refused to stop taking orders from Follett Affiliate customers. BookRenter has refused to provide Follett with the Critical Data for the Follett Affiliates.

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Regarding Follett's demand that BookRenter stop taking orders from Follett Affiliate customers, on August 1, 2011, Weber sent an email to Maghsoodnia proposing two options. A true and correct copy of this email is attached at Exhibit C.

Weber proposed that BookRenter immediately disable its rent functions from the Follett Affiliate Target Sites. Ex. D. Regarding returns of outstanding rentals from the BookRenter site, Follett further proposed that BookRenter could maintain Follett Affiliate Target Sites for processing rental returns only. *Id.* This would protect students.

In the alternative, Weber proposed that BookRenter disable BookRenter's Follett Affiliate Target Sites and that BookRenter provide Follett with a list of all outstanding books rented from Follett Affiliates, including customer name, contact information, rental dates, and the price and terms of the rental, i.e. provide Follett with the Critical Data. *Id.* Weber stated that Follett would "email customers with instructions and documents required for customers to return rentals to Follett. Follett will ship all returned books to BookRenter and reimburse BookRenter for books not returned [REDACTED] *Id.* This would likewise protect students.

Maghsoodnia responded and refused both options. *Id.* He stated, “[h]onestly, we do not have time to spent any cycle [sic] on this. I think we should go through this peak and then sit down and decide on how to unwind this relationship.” *Id.*

On August 2, 2011, Weber again wrote to Maghsoodnia again requesting “on behalf of these 272 stores that have signed agreements with Follett, that BookRenter disable these sites .... Further delay of this process only will lead to unnecessary complications and additional damage to affiliate relationship.” *Id.* Weber asked Maghsoodnia to respond by August 3, 2011.

Maghsoodnia responded on August 4, 2011, again refusing to cooperate. *Id.* He stated, “[n]ow at the worst time in the year, you guys are asking us to take a drastic approach of shutting down the sites for over 200+ stores most of whom I assume do not really understand the impact of this action on them and their students.” *Id.* He further stated, “[y]ou can do the right thing for the store and cooperate with us *after peak* when we can focus on the mess created by Follett.” Ex. D (emphasis added).

Just hours later, Chad Stith of BookRenter sent identical emails to Follett Affiliates, including the University of Kansas bookstore, the Frostburg State University bookstore, and University of Wisconsin-Milwaukee bookstore. True and correct copies of these emails are attached at Exhibit D. In his email, Stith wrote, “[y]ou are receiving this email because we have received instructions from Follett to immediately shut down your BookRenter-powered store.” Ex. D. He stated, “as a result of such an abrupt and unstructured shut-down, these students will be unable to return their rentals, resulting in additional charges to the student that could easily be avoided simply by using your current website to return the book.” *Id.* He further stated, “[t]his could also create significant customer confusion as your students attempt to return their rentals either into your physical store or via a website that has no record of any prior transactions.” *Id.*

To date, BookRenter continues to accept orders from customers of 272 Follett Affiliate nationwide via Target Sites that have the look and feel of the Follett Affiliate. For example, the official Target Site for the University of Kansas bookstore, a Follett Affiliate, contains a “rent your textbooks” link that takes a customer to Follett’s rental website. BookRenter also continues to host a rental website bearing the University of Kansas bookstore’s logo and likeness, even though BookRenter has no contract with the bookstore. This is just one example. The same scenario is happening with regards to 272 other Follett Affiliates at colleges nationwide including, but not limited to, the following:

- Bingham Young University
- New York University
- Northern Illinois University
- Texas State University – San Marcos
- University of California-San Diego
- University of Colorado-Boulder
- University of Illinois-Chicago

**D. BookRenter Is Marketing to Follett Affiliates.**

Follett is the exclusive provider of Follett Affiliates’ customers access to online textbook rental websites. Ex. B, Section 2. BookRenter is aware that Follett is the exclusive provider of access to online rental websites to the Follett Affiliates and that Follett has contracts with the

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Despite having knowledge of Follett’s agreement with its Affiliates, BookRenter is marketing online text rental services to Follett Affiliates. As set forth above, on August 2, 2011,

BookRenter sent a marketing email every Follett Affiliate provided “news” about “Marketing Materials” created by BookRenter. Ex. E. In addition, to date, Follett has been informed that at least one Follett Affiliate contacted by BookRenter subsequently entered into an agreement with BookRenter.

**E. BookRenter Is Making False and Misleading Statements to Follett Affiliates.**

BookRenter is making false and misleading statements about Follett to Follett Affiliates in violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/1 *et seq.* As set forth above, in the past week, BookRenter sent an email to several Follett Affiliates describing Follett’s so-called “abrupt and unstructured shut-down” of BookRenter-hosted pages. Ex. D. In the email, BookRenter further alleged that “students will be unable to return their rentals, resulting in additional charges to the student that could easily be avoided simply by using your current website to return the book.” *Id.*

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websites. In addition, Follett has never stated any intention nor sought to charge additional fees to customers with existing rentals made on the BookRenter website. Instead, as set forth above, Follett addressed BookRenter returns by either allowing BookRenter to operate its Target Sites for processing returns only, or having BookRenter provide information for the outstanding rentals so that Follett can contact customers directly and enable the rentals are processed accurately. *See* Ex. C. BookRenter has refused to cooperate with either option.

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breaching the Re-Marketing Agreement and interfering with Follett's existing and prospective business relations. As if this were not enough, Follett has and continues to engage in unlawful trade practices by making false and misleading allegations about Follett to its Affiliates.

### **III. FOLLETT IS ENTITLED TO AN INTERIM INJUNCTION**

#### **A. Standard For a TRO or Preliminary Injunction**

A temporary restraining order and a preliminary injunction are both designed to prevent the danger of future loss. *See Armour & Co. v. United Am. Food Processors, Inc.*, 37 Ill. App. 3d 132, 137 (1st Dist. 1976). A temporary restraining order or preliminary injunction should issue when, as here, a plaintiff shows: (1) it has no adequate remedy at law; (2) it has clear, ascertainable rights that need protection; (3) it will suffer irreparable harm absent temporary injunctive relief; and (4) it will likely to succeed on the merits of its claims. *Falcon, Ltd. v. Corr's Natural Beverages, Inc.*, 165 Ill. App. 3d 815, 820 (1st Dist. 1987). Follett need only "raise a fair question as to the existence of the right claimed and lead the court to believe [it] probably will be entitled to the relief prayed for if the proof should sustain [its] allegations." *Office Elecs., Inc. v. Grafic Forms, Inc.*, 56 Ill. App. 3d 395, 399-400 (2nd Dist. 1978). As set forth below, these four prerequisites are easily satisfied in this matter.

#### **B. Follett Has No Adequate Legal Remedies.**

Between now and the time the underlying dispute could be resolved, Follett has no remedy (absent temporary, preliminary and permanent injunctive relief) to stop BookRenter from continuing to accept orders from Follett Affiliate customers and failing to redirect them to Follett's websites.

While damages in the loss of rental orders may be calculable, the injuries to Follett's reputation, goodwill and competitive position in the online text rental industry are incalculable. *Falcon Ltd. v. Corr's Nat'l Bev.*, 165 Ill. App. 3d 815, 820-821 (1st Dist. 1987) (distributor

lacked adequate legal remedy where despite its exclusive right to sell and distribute through wholesale distribution network, manufacturer was directly soliciting sub-distributors); *U-Haul Co. of Cent. Ill. v. Hindahl*, 90 Ill. App. 3d 572, 575-76 (3d Dist. 1980) (finding “obvious” U-Haul’s business interest in preventing both past and new customers seeking to do business with U-Haul from being diverted to competitor).

Similarly, Follett has no adequate legal remedy to prevent BookRenter from interfering with Follett’s existing and prospective business relations. By continuing to accept orders, BookRenter is interfering with Follett’s right to be the exclusive online rental access provider for its Affiliates. In addition, by failing to redirect Follett Affiliate customers, BookRenter is interfering with Follett’s prospective economic relations with those customers. BookRenter’s conduct will cause Follett to not only lose future customers, but also to suffer a diminished competitive advantage and to potentially lose future market share in the online travel industry. These types of losses, because they are incalculable, make a party’s legal remedy inadequate. *See, e.g., A-Tech Computer Servs., Inc. v. Soo Hoo*, 254 Ill. App. 3d 392, 401 (1st Dist. 1993) (“While pecuniary damages can be calculated, loss of competitive position is intangible, incapable of being measured.”); *Falcon*, 165 Ill. App. 3d at 821 (finding no adequate remedy at law where defendants “interfered with plaintiffs’ contractual and prospective relationship with their subdistributors to the extent that damages cannot be ascertained with certainty.”); *see also Eagle Books, Inc. v. Jones*, 130 Ill. App. 3d 407, 411 (4th Dist. 1985) (holding legal remedy inadequate because “while immediate damages in loss of sales may be calculable, the potential loss of future business is incapable of adequate computation”); *U-Haul*, 90 Ill. App. 3d at 577 (“injury to . . . reputation and good will, and the resulting potential loss of future business, is

incapable of adequate computation”). Accordingly, the Court should find that Follett lacks an adequate remedy at law.

**C. Follett Has Protectable Rights.**

**1. Follett Has Protectable Rights Under the Re-Marketing Agreement.**

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**3. Follett Has a Right to Engage in Economic Relations Without Interference.**

Follett has a right to engage in economic relations without unlawful interference. BookRenter has and continues to violate that right. Every new rental order from a Follett Affiliate customer that BookRenter secures on its websites is a rental that, but for BookRenter's breach of the Re-Marketing Agreement, would have been placed on a Follett website. BookRenter is thus interfering with Follett's economic relations, and Follett needs immediate protection.

**D. Follett Will Suffer Irreparable Harm.**

BookRenter's refusal to stop taking orders from Follett Affiliate customers REDACTED

REDACTED and further interferes with Follett's current and prospective business relationships with its Affiliates and their customers (who would otherwise place textbook rental orders on Follett's websites).

"An injury is irreparable when it is of such a nature that the injured party cannot be adequately compensated in damages or when damages cannot be measured by any pecuniary standard." *Falcon*, 165 Ill. App. 3d at 821; *see also Sports Unlimited, Inc. v. Scotch & Sirloin of Woodfield, Inc.*, 58 Ill. App. 3d 579, 583-84 (1st Dist. 1978) (Irreparable harm "denotes transgressions of a continuing nature, of such constant and frequent recurrence that no redress can be had at law"; finding issuance of preliminary injunction in breach of contract action "entirely proper"). "Once a protectible interest has been established, injury to plaintiff will presumably follow if that interest is not protected." *U-Haul*, 90 Ill. 3d at 575-76 (quoting *Donald McElroy, Inc. v. Delaney*, 72 Ill. App. 3d 285, 294 (1st Dist. 1979)). Actual loss is not required to show irreparable harm. *Id.* ("the threat of immediate and irreparable harm will suffice.").

"The loss of sales and customers as well as the threat of continuation of such losses to a legitimate business interest ... have been held to sufficient to constitute irreparable injury."

*Falcon*, 165 Ill. App. 3d at 821; *Eagle Books, Inc. v. Jones*, 130 Ill. App. 3d 407, 411 (Ill. App. 1985); *U-Haul*, 90 Ill. App. 3d at 572 (finding irreparable harm where competitor tried to divert plaintiff's customers resulting in lost potential business; "*U-Haul* could lose sales to customers calling for rentals who use Jartran as an alternative, and *U-Haul* could lose those customers to Jartran on future transactions."). Loss of competitive position in a given industry is also a harm "of an intangible though very real nature which [is] not readily subject to measurement by any certain pecuniary standard." *Cross Wood Prods, Inc. v. Suter*, 97 Ill. App. 3d 282, 286 (1st Dist. 1981) (preliminary injunction appropriate where employee's act of starting a business in direct competition with employer placed employer at a competitive disadvantage).

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Follett has suffered actual injury - lost sales from customers who, but for BookRenter's conduct, would have placed rental orders on Follett's websites. See *U-Haul Co.*, 90 Ill. App. 3d at 572 (finding irreparable harm where competitor tried to divert plaintiff's customers resulting in lost potential business).

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a bargain-for

contractual provision that provides substantial and intangible benefits to Follett. Customers who access BookRenter's Target Sites are not being redirected to Follett's websites, resulting in loss

in competitive position and potential future sales. These are injuries that cannot be quantified or remedied. *See U-Haul*, 90 Ill. App. 3d at 577; *Cross World Prods Inc.*, 97 Ill App. 3d at 286. Thus, the resulting harm to Follett is both real and irreparable.

**E. Follett Will Likely Succeed on the Merits.**

**1. BookRenter Is Breaching the Re-Marketing Agreement.**

More than a “fair question” exists that Follett will prevail in proving that BookRenter is breaching the Re-Marketing Agreement. BookRenter has clear obligations upon termination.

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Despite having knowledge of Follett’s agreement with its Affiliates, BookRenter is marketing online text rental services to Follett Affiliates. On August 2, 2011, BookRenter sent a marketing email to every Follett Affiliate providing “news” about “Marketing Materials” created by BookRenter. Ex. F. He further offered to be the bookstore’s marketing contact for future support. Ex. F. In addition, to date, Follett has been informed that at least one Follett Affiliate

contacted by BookRenter subsequently entered into an agreement with BookRenter. Thus, because BookRenter seeks to induce the Follett Affiliates to breach their contractual relationship with Follett, Follett will likely prevail in showing that BookRenter is interfering with Follett's existing business relations.

**3. BookRenter Is Interfering with Follett's Prospective Economic Relations..**

Follett has a reasonable expectation of engaging in economic relations with Follett Affiliates' customers seeking to rent textbooks via Follett's websites. By continuing to accept orders from Follett Affiliate customers and refusing to redirect them to Follett's websites, BookRenter is intentionally and unjustifiably interfering to prevent Follett from engaging in economic relations with Follett Affiliate customers. Thus, Follett will likely prevail in showing that BookRenter is interfering with Follett's prospective economic relations.

**4. BookRenter's False and Misleading Statements Are Deceptive Trade Practices..**

The Illinois Uniform Deceptive Trade Practice Act (the "Act") prohibits unfair competition and "is primarily directed towards acts that unreasonably interfere with another's conduct of his or her business." *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 865 (1st Dist. 2008). The Act makes it unlawful to "disparage the goods, services, or business of another by false or misleading representation of fact." 815 ILCS 510/2(a)(8). A plaintiff need not prove actual confusion or misunderstanding in order to prevail under the Act. *Chicago's Pizza*, 384 Ill. App. 3d at 866. A person "likely to be damaged by a deceptive trade practice of another may be granted injunctive relief upon terms that the court considers reasonable." 815 ILCS 510/3.

BookRenter has and continues to make misleading statements about Follett to its Affiliates. For example, it told Follett Affiliates that Follett was demanding an "abrupt and

unstructured shut-down” of BookRenter-hosted pages. Ex. D. It also told Follett Affiliates that “students will be unable to return their rentals, resulting in additional charges to the student that could easily be avoided simply by using your current website to return the book.” *Id.*

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Follett’s websites. In addition, Follett has never stated any intention nor sought to charge additional fees to customers with existing rentals made on the BookRenter website. Instead, as set forth above, Follett addressed BookRenter returns by either allowing BookRenter to operate its Target Sites for processing returns only, or having BookRenter provide information for the outstanding rentals so that Follett can contact customers directly and enable the rentals are processed accurately. *See* Ex. C. BookRenter has refused to cooperate with either option. Thus, Follett will likely prevail in showing that BookRenter has and continues to violate the Act.

**F. The Balancing of Harms Weighs Heavily in Favor of Ordering Injunctive Relief.**

Preliminary injunctive relief is further warranted where in “balancing the inconveniences to the parties and the public, the allowance of the injunction at this time to protect the status quo causes less disturbance to the defendants’ position than the disallowance would to the plaintiff’s position.” *Sports Unlimited, Inc. v. Scotch & Sirloin of Woodfield, Inc.*, 58 Ill. App. 3d 579, 583-84 (1st Dist. 1978); *see Lucas v. Peters*, 318 Ill. App. 3d 1, 16-17 (1st Dist. 2000) (noting that court should balance equities in considering injunctive relief).

The balance of the equities favors granting Follett temporary, preliminary and permanent injunctive relief. BookRenter will not be harmed if the Court enters an order requiring



BookRenter to honor the terms of the Re-Marketing Agreement and barring BookRenter from interfering with Follett's contractual rights and prospective economic relations. Preserving the status quo would mean that Follett and BookRenter continue to benefit from their bargained-for contractual relationship. *See Arcadia Health Servs., Inc. v. A+ Health Care, Inc.*, No 96 C 8363, 1997 U.S. Dist. LEXIS 705, at \*13 (N.D. Ill. Jan. 16, 1997) ("the public has an interest in valid contacts being enforced"). In contrast, if injunctive relief is not granted, Follett will suffer immediate, substantial irreparable harm while pending resolution of the dispute. Therefore, Follett needs and is entitled to the temporary, preliminary and permanent injunctive relief it requests.

#### **IV. CONCLUSION**

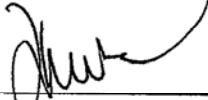
For these reasons, Follett respectfully requests that pending the resolution of this action, the Court:

- A. Temporarily, preliminarily and permanently enjoin BookRenter from accepting orders from Follett Affiliate customers;
- B. Temporarily, preliminarily and permanently order BookRenter to redirect Follett Affiliate customers to Follett's websites;
- C. Temporarily, preliminarily and permanently enjoin BookRenter from soliciting Follett Affiliates;
- D. Temporarily, preliminarily and permanently enjoin BookRenter from making false and misleading statements about Follett to Follett Affiliates;
- E. Temporarily, preliminarily and permanently order BookRenter to provide Follett with all Critical Data for Follett Affiliates, which includes all information BookRenter has on customers and orders; and
- F. Award Follett any other such relief that the Court deems appropriate.

Respectfully submitted this 11th day of August, 2011,

Respectfully submitted,

FOLLETT HIGHER ED GROUP, LTD.,

By:   
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One of Its Attorneys

Derek J. Meyer  
Kristen C. Klanow  
MCDERMOTT WILL & EMERY LLP  
227 West Monroe Street  
Chicago, Illinois 60606  
Tel: (312) 372-2000  
Fax: (312) 984-7700  
Firm No.: 90539

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COUNTY DEPARTMENT, CHANCERY DIVISION

FOLLETT HIGHER ED GROUP, LTD., )  
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Plaintiff, )  
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BOOKRENTER.COM, INC., AND )  
MEHDI MAGHSOODNIA, )  
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Defendants. )

No. 11-CH-

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TREASURER/CLERK

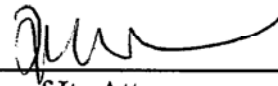
NOTICE OF MOTION

TO: Greg Wharton  
Vice President, Legal Affairs  
BookRenter.com  
155 Bovet Road, Suite 207  
San Mateo, CA 943402

PLEASE TAKE NOTICE that on August 15, 2011 at 9:15 AM or as soon thereafter as counsel may be heard, we shall appear before the Honorable Sophia Hall in courtroom 230, or any judge sitting in his or her stead, and then present **FOLLETT'S EMERGENCY MOTION AND INCORPORATED MEMORANDUM OF LAW IN SUPPORT OF A TEMPORARY RESTRAINING ORDER AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**, a copy of which is attached hereto and is hereby served upon you.

Dated: August 11, 2011

FOLLETT HIGHER ED GROUP, LTD

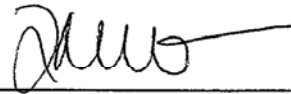
By:   
One of Its Attorneys

Derek J. Meyer  
Kristen C. Klanow  
McDERMOTT WILL & EMERY LLP  
227 West Monroe Street  
Chicago, Illinois 60606  
Tel: (312) 372-2000  
Fax: (312) 984-7700  
Firm No.: 90539

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she caused to be served on the parties listed below the foregoing NOTICE OF MOTION by sending via electronic mail and depositing the same in the U.S. Mail at 227 West Monroe Street, Chicago, IL 60606 before 5:00 p.m. on August 11, 2011:

Greg Wharton  
Vice President, Legal Affairs  
BookRenter.com  
155 Bovet Road, Suite 207  
San Mateo, CA 943402  
gregory.wharton@bookrenter.com



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Kristen C. Klanow