UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE BOOK HOUSE OF STUYVESANT PLAZA, INC., a New York corporation; FICTION ADDICTION LLC, a South Carolina limited liability company; and POSMAN BOOKS AT GRAND CENTRAL INC., a New York corporation, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware corporation; RANDOM HOUSE, INC., a New York corporation; PENGUIN GROUP (USA) INC., a Delaware corporation; HACHETTE BOOK GROUP USA, INC., a Delaware corporation; SIMON & SCHUSTER, INC., a New York corporation; HARPERCOLLINS PUBLISHERS LLC, a Delaware limited liability company; and MACMILLAN PUBLISHERS INC., a Delaware corporation,

Defendants.

JURY TRIAL DEMANDED

INDEX NO. 13-CV-1111 (JSR) (JLC)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF (15 U.S.C. §§ 1 and 2)

Class Action Complaint

Plaintiffs THE BOOK HOUSE OF STUYVESANT PLAZA, INC., FICTION ADDICTION LLC, and POSMAN BOOKS AT GRAND CENTRAL INC., filing this Complaint on behalf of themselves and all other similarly situated independent brick-and-mortar bookstores against Defendants AMAZON.COM, INC., RANDOM HOUSE, INC., PENGUIN GROUP (USA) INC., HACHETTE BOOK GROUP USA, INC., SIMON & SCHUSTER, INC., HARPERCOLLINS PUBLISHERS LLC, and MACMILLAN PUBLISHERS INC., for their complaint, allege as follows:

I.

VENUE AND JURISDICTION

1. Each of the named Defendants transacts business within the Southern District of New York. Defendant AMAZON.COM, INC. also maintains an office for one of its subsidiaries in the Southern District of New York. Defendants RANDOM HOUSE, INC., PENGUIN GROUP (USA) INC., HACHETTE BOOK GROUP USA, INC., SIMON & SCHUSTER, INC., HARPERCOLLINS PUBLISHERS LLC, and MACMILLAN PUBLISHERS INC. maintain their business headquarters in the Southern District of New York.

2. Plaintiff POSMAN BOOKS AT GRAND CENTRAL INC. is also located in the Southern District of New York.

3. The Court has jurisdiction as each named Plaintiff is seeking declaratory and injunctive relief, on behalf of themselves and others similarly situated, based solely on violations of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2).

II.

THE PARTIES

4. Plaintiff THE BOOK HOUSE OF STUYVESANT PLAZA, INC. ("BOOK HOUSE") is a corporation organized and existing under the laws of the State of New York with its principal place of business located in Albany, New York. BOOK HOUSE is an independent brick-and-mortar bookstore that sells both traditional, (hardcover and paperback) books as well as electronic books ("e-books").

5. Plaintiff FICTION ADDICTION LLC ("FICTION ADDICTION") is a limited liability company organized and existing under the laws of the State of South Carolina with its

principal place of business located in Greenville, South Carolina. FICTION ADDICTION is an independent brick-and-mortar bookstore that sells both traditional books as well as e-books.

6. Plaintiff POSMAN BOOKS AT GRAND CENTRAL INC. ("POSMAN BOOKS") is a corporation organized and existing under the laws of the State of New York with its principal place of business located in New York, New York. POSMAN BOOKS is an independent brick-and-mortar bookstore that sells both traditional books as well as e-books.

7. Defendant AMAZON.COM, INC. ("AMAZON") is a corporation organized and existing under the laws of the state of Delaware with its principal place of business in Seattle, Washington. AMAZON is the largest online retailer of both traditional books and e-books in the United States.

8. Defendant RANDOM HOUSE, INC. ("RANDOM HOUSE") is a corporation organized and existing under the laws of the state of New York with its principal place of business in New York, New York. RANDOM HOUSE is one of the largest publishers of both traditional books and e-books in the United States.

9. Defendant PENGUIN GROUP (USA) INC. ("PENGUIN") is a corporation organized and existing under the laws of the state of Delaware with its principal place of business in New York, New York. PENGUIN is one of the largest publishers of both traditional books and e-books in the United States.

10. Defendant HACHETTE BOOK GROUP USA, INC. ("HACHETTE") is a corporation organized and existing under the laws of the state of Delaware with its principal place of business in New York, New York. HACHETTE is one of the largest publishers of both traditional books and e-books in the United States.

11. Defendant SIMON & SCHUSTER, INC. ("S & S") is a corporation organized and existing under the laws of the state of New York with its principal place of business in New York, New York. S & S is one of the largest publishers of both traditional books and e-books in the United States.

12. Defendant HARPERCOLLINS PUBLISHERS LLC ("HARPERCOLLINS") is a limited liability company organized and existing under the laws of the state of Delaware with its principal place of business in New York, New York. HARPERCOLLINS is one of the largest publishers of both traditional books and e-books in the United States.

13. Defendant MACMILLAN PUBLISHERS INC. ("MACMILLAN") is a corporation organized and existing under the laws of the state of Delaware with its principal place of business in New York, New York. MACMILLAN is one of the largest publishers of both traditional books and e-books in the United States.

III.

STATEMENT OF FACTS

14. Defendants RANDOM HOUSE, PENGUIN, HACHETTE, S & S, HARPERCOLLINS, and MACMILLAN, are commonly referred to, and also herein, as the "BIG SIX" because of their domination of the United States book publishing industry. Collectively, the BIG SIX are responsible for approximately 60% of all revenue generated from print books sold in the United States. Moreover the BIG SIX dominate the publishing of nationally ranked bestseller books. For example, 85% of all revenue generated from the sale of New York Times Bestsellers is from books published by the BIG SIX. In addition, the BIG SIX are the publishers for many well-known established authors including, but not limited to, Barbara Kingsolver (HARPERCOLLINS), Philippa Gregory (S & S), Ken Follett (PENGUIN), Stephenie Meyer

(HACHETTE), Lee Child (RANDOM HOUSE), and Hilary Mantel (MACMILLAN).

15. On November 19, 2007, AMAZON released the first edition of the Kindle, a dedicated electronic reading device ("e-reader") that utilized electrophoretic ink ("e-Ink") and enabled e-books to be read on a portable device. The Kindle was so popular that it sold out in just a few hours and remained out of stock until the spring of 2008. Although AMAZON's Kindle has experienced some competition from other dedicated e-readers, such as Barnes & Noble's Nook, which was initially released on November 30, 2009, Plaintiffs are informed and believe that the Kindle has consistently maintained and now has a dominant position of well over 60% in the dedicated e-reader market.[1]

16. Plaintiffs are informed and believe that around the time of the initial release of the Kindle, AMAZON entered into various contracts with each of the BIG SIX publishers. These contracts, which have not been made public, established that AMAZON would use digital rights management access control technology ("DRM") specifically designed to limit the use of digital content after sale for all of the e-books published by the BIG SIX. As such, this DRM would prevent the unauthorized use, sharing, or copying of the content of these e-books.

17. DRMs were first popularly used in the electronic music industry by Apple's iTunes store. After numerous law suits challenging how iTunes music could only be played on Apple devices, Apple moved away from using DRMs and as of April 2009, all of the music available on iTunes is DRM free. Along with device or platform specific DRMs, DRMs can also be open-source, meaning that open-source DRM protected e-books can be read on any open-source

---

[1] Recent statements have confirmed that Barnes & Noble is experiencing financial difficulties and will be downsizing by closing a significant portion of their brick-and-mortar bookstores. The Nook is the only device other than the Kindle that has more than a single digit share of the dedicated e-reader market.

device regardless of whom the device and/or the e-book is purchased from.

18. AMAZON'S DRM is known as AZW. All e-books sold by AMAZON contain the AZW DRM. E-books with the AZW DRM can only be read on a Kindle device or on another device enabled with a Kindle application ("app"). Similarly, the only DRM-protected books that can be read on a Kindle are those with the AZW DRM. In addition, one can only buy AZW DRM e-books from AMAZON. This means that if a consumer would like to read an e-book published by any of the BIG SIX and they choose to buy it from AMAZON they must read it on a Kindle device or via a Kindle app. And if a consumer already owns a Kindle device and wants to read an e-book on their Kindle that was published by any of the BIG SIX, they must buy the book from AMAZON.

19. Starting in 2009, AMAZON began releasing free Kindle apps that allow a consumer to read Kindle e-books on devices other than the Kindle. As of today, free Kindle apps are available for the iPhone, iPad, Android devices, the BlackBerry, Mac computers, and PC computers. But, the Kindle app works solely with e-books sold by AMAZON.

20. On September 28, 2011, AMAZON released the Kindle Fire. Unlike the traditional Kindle, the Kindle Fire has a color display, does not utilize e-Ink, and was designed to compete with tablet devices, such as the iPad, which are the primary alternatives to dedicated e-readers for the mobile e-reader device market. Plaintiffs are informed and believe that the Kindle Fire holds a dominant position of well over 60% in the small media tablet market.

21. AMAZON's well known domination of the traditional book market and its domination of both the dedicated e-reader and small media tablet markets has allowed it dominate the e-book market. Plaintiffs are informed and believe that AMAZON's share of the e-book

market is at least 60% with its only substantial competition being Barnes & Noble, whose self-proclaimed share of the e-book market is 27%, but, at the same time, who is also currently downsizing its physical footprint. Plaintiffs are also informed and believe that Apple's iBookstore commands less than 10% of the e-book market and that it is the third-largest seller of e-books in the United States.

22. AMAZON also boasts that it carries over 180,000 Kindle exclusive titles by authors such as Kurt Vonnegut, Stephen Covey, Andy Borowitz, and Karen McQuestion that are not available from any other retailer and can only be read via a Kindle or the Kindle app.

23. Currently, none of the BIG SIX have entered into any agreements with any independent brick-and-mortar bookstores or independent collectives to sell their e-books. Consequently, the vast majority of readers who wish to read an e-book published by the BIG SIX will purchase the e-book from AMAZON.

IV.

CLASS ACTION ALLEGATIONS

24. Plaintiffs bring this action as a Class Action pursuant to Federal Rule of Civil Procedure 23 on behalf of themselves and the following Class: all independent brick-and-mortar bookstores who sell e-books.

25. Certification of the Class is appropriate pursuant to Federal Rule of Civil Procedure 23(a). The members of the class are so numerous that joinder of all members is impracticable. There are several hundred independent brick-and-mortar bookstores throughout the United States that sell e-books.

26. There are common questions of both law and fact, including but not limited to:

a. whether Defendants entered into a series of contracts and/or combinations among and between themselves which unreasonably restrain trade and commerce in the market for e-books in the United States;

b. whether AMAZON has unlawfully monopolized or attempted to monopolize the market for e-books in the United States;

c. whether, as a result of the antitrust violations set forth in this Complaint, Plaintiffs and the Class are entitled to equitable relief or other relief, and the nature of such relief;

d. whether Defendants acted on grounds generally applicable to the Class, making injunctive relief appropriate; and

e. whether a Class can be certified pursuant to Fed. R. Civ. P. 23(b)(2).

27. Plaintiffs' claims are typical of the claims of the Class, because Plaintiffs and all Members of the Class were injured by the same wrongful practices of Defendants that are described in this Complaint. Plaintiffs' claims arise from the same practices and course of conduct that gave rise to the claims of the Class Members, and are based on the same legal theories.

28. Plaintiffs will fairly and adequately represent the interests of the Members of the Class. Plaintiffs' interests are the same as, and not in conflict with, the other Members of the Class. Plaintiffs' counsel is experienced in class action, complex, and antitrust litigation.

29. Defendants have acted or refuse to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with regard to Members of the Class as a whole and certification of the Class under Rule 23(b)(2) proper.

V.

RELEVANT MARKETS

30. The relevant geographic market in this case is the United States. The relevant product market in this case is the market for e-books.

VI.

COUNT ONE

(Against all Defendants for Violations of 15 U.S.C. §1)

31. Paragraphs 1-30 are incorporated herein by reference with the same force and effect as though set forth at this point in full.

32. The contracts entered into between AMAZON and the BIG SIX constitute a series of contracts and/or combinations among and between the Defendants which unreasonably restrain trade and commerce in the market for e-books sold within the United States in violation of Section 1 of the Sherman Act.

33. Plaintiffs and the Class have been restrained from selling e-books in the United States as a result of the contracts and combination described in Paragraph 32. In addition, consumers have been injured because they have been deprived of choice and also denied the benefits of innovation and competition resulting from the foreclosure of independent brick-and-mortar bookstores, which have been excluded by Defendants' exercise of market power as explained herein. Therefore, both the Plaintiffs and the Class have suffered antitrust injury.

34. Competition, including price competition and choice at the consumer level for e-books has been, and will continue to be, restrained, suppressed, or eliminated as a result of the contracts and combinations described herein.

35. Competitors, actual and potential, have been, and will continue to be, restrained from vigorously competing with one another for selling e-books as a result of the contracts and combination described herein.

VII.

COUNT TWO

(Against AMAZON for Monopolization - 15 U.S.C. §2)

36. Paragraphs 1-30 are incorporated herein by reference with the same force and effect as though set forth at this point in full.

37. The contracts entered into between AMAZON and the BIG SIX constitute a series of contracts and/or combinations among and between the Defendants which have resulted in a monopoly in the market for e-books sold within the United States in violation of Section 2 of the Sherman Act.

38. The aforesaid conduct and acts of AMAZON and the BIG SIX were engaged in by AMAZON with the purpose and intent: (1) to injure, suppress, destroy and irreparably harm Plaintiffs and the other Class Members in the relevant market; (2) to monopolize the market for the sale of e-books in the United States; (3) to reduce or eliminate sales of e-books by Plaintiffs and the other Class Members; (4) to control prices; (5) to reduce the variety of offerings that would otherwise be available to consumers; and (6) to unlawfully monopolize trade and commerce in said relevant market.

39. Plaintiffs and the Class have been restrained from selling e-books in the United States as a result of the contracts and combination described herein. In addition, consumers have been injured because they have been deprived of choice and also denied the benefits of innovation

and competition resulting from the foreclosure of independent brick-and-mortar bookstores, which have been excluded by AMAZON's monopoly of the relevant market as explained herein. Therefore, both the Plaintiffs and the Class have suffered an antitrust injury.

40. Competition, including price competition at the consumer level for e-books has been, and will continue to be restrained, suppressed, or eliminated as a result of the monopoly described herein.

41. Competitors, actual and potential, have been, and will continue to be, restrained from vigorously competing with one another for selling e-books as a result of the monopoly described herein.

42. The aforesaid violations of Section 2 of the Sherman Act have had, will have, and will continue to have the following effects, among others:

a. AMAZON has achieved and maintained a monopoly in the sale of e-books in the United States;

b. AMAZON has restrained, suppressed, and eliminated actual and potential competition in the sale of e-books in the United States;

c. Consumers have been denied the benefits of unrestricted competition in a free and open market for the sale of e-books in the United States; and

d. Plaintiffs and Class Members have been denied the benefits of unrestricted competition in a free and open market for the sale of e-books in the United States.

43. AMAZON did not engage in the conduct described herein for any legitimate business reason or purpose and such conduct constitutes a violation of Section 2 of the Sherman

Act (15 U.S.C. § 2).

VIII.

COUNT THREE

(Against AMAZON for Attempted Monopolization - 15 U.S.C. §2)

44. Paragraphs 1-30 are incorporated herein by reference with the same force and effect as though set forth at this point in full.

45. Alternatively, the aforesaid conduct and acts of AMAZON and the BIG SIX were engaged in by AMAZON with the purpose and intent: (1) to injure, suppress, destroy, and irreparably harm Plaintiffs and the other Class Members in the relevant market; (2) to monopolize the market for the sale of e-books in the United States; (3) to reduce or eliminate sales of e-books by Plaintiffs and the other Class Members; (4) to control prices; (5) to reduce the variety of offerings that would otherwise be available to consumers; and (6) to unlawfully monopolize trade and commerce in said relevant market. The aforesaid conduct and acts of AMAZON have created and creates a dangerous probability that AMAZON will succeed in injuring, suppressing, destroying, and irreparably harming Plaintiffs and Class Members as vital competitors in the relevant market and will allow AMAZON to control prices and monopolize trade and commerce in said relevant market.

46. By reason of AMAZON's aforesaid unlawful conduct and as a direct and proximate result of such conduct, Plaintiffs and other Class Members have lost sales, profits, and the value of their businesses. Plaintiffs and other Class Members have, and will continue to suffer irreparable harm through loss of their trade and business, and consumers will be damaged by: (1) the weakening or elimination of Plaintiffs and other Class Members in the market for the sale

of e-books in the United States; and (2) the weakening or elimination of independent sources for the sale of e-books in the United States.

47. The aforesaid violations of Section 2 of the Sherman Act have had, will have, and will continue to have the following effects, among others:

a. There will be a dangerous probability that AMAZON will achieve a monopoly in the market for the sale of e-books in the United States;

b. AMAZON has and will restrain, suppress, and eliminate actual and potential competition in the market for the sale of e-books in the United States;

c. Consumers have been and will be denied the benefits of unrestricted competition in a free and open market for the sale of e-books in the United States; and

d. Plaintiffs and other Class Members have been and will be denied the benefits of unrestricted competition in a free and open market for the sale of e-books in the United States.

48. AMAZON's conduct constitutes a violation of Section 2 of the Sherman Act (15 U.S.C. § 2).

IX.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court adjudge and decree:

1. For a declaration that Defendants have violated Section 1 of the Sherman Act;

2. For a declaration that AMAZON has violated Section 2 of the Sherman Act;

3. For an injunction prohibiting AMAZON and the BIG SIX from publishing and selling e-books with device and app specific DRMs and further requiring the BIG SIX to allow independent brick-and-mortar bookstores to directly sell open-source DRM e-books published by the BIG SIX;

4. For an injunction prohibiting AMAZON from selling DRM specific, or non-open-source, dedicated e-readers, alternative e-reader devices, and apps;

5. For reasonable costs of suit as incurred herein;

6. For reasonable attorneys' fees; and

7. For such other and further relief as the Court deems just and proper.

Dated: New York, New York
February 15, 2013

Respectfully submitted,

CREIZMAN PLLC

By: _____

Eric M. Creizman (EC 7684)
565 Fifth Avenue, Fl. 7
New York, New York 10017
Tel.: (212) 972-0200
Fax: (646) 200-5022
Email: ecreiz@creizmanllc.com

Local Counsel for Plaintiffs

and

BLECHER & COLLINS, P.C.

Maxwell M. Blecher
Alyson C. Decker
515 S. Figueroa St., Suite 1750
Los Angeles, California 90071
Tel.: (213) 622-4222
Fax: (213) 622-1656
Email: mblecher@blechercollins.com
adecker@blechercollins.com

Lead Counsel for Plaintiffs