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Random House, Inc.  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
RANDOM HOUSE, INC.,

Plaintiff,

v.

ROSETTA BOOKS LLC  
and ARTHUR M. KLEBANOFF, in his individual  
capacity and as principal of ROSETTA BOOKS LLC,

**COMPLAINT**

Defendants. . .

-----X  
Plaintiff Random House, Inc. (“Random House”), by and through its attorneys, Weil, Gotshal & Manges LLP, for its Complaint against Rosetta Books LLC and Arthur M. Klebanoff, in his individual capacity and as principal of Rosetta Books LLC (collectively “RosettaBooks”), alleges, upon knowledge as to itself and otherwise upon information and belief, as follows:

**NATURE OF THE ACTION**

1. In this action, Random House, a preeminent book publisher, seeks preliminary and permanent injunctive relief and damages arising out of RosettaBooks’ ongoing infringements of Random House’s copyright rights, as well as damages on

account of RosettaBooks' tortious interference with Random House's publishing agreements with noted authors. Random House is entitled to the relief sought because the agreements here in issue, which, among other pertinent provisions, grant Random House the exclusive right to publish the works "in book form," convey to Random House the exclusive right to publish its authors' works in "eBook" formats.

2. This lawsuit is occasioned by RosettaBooks' willful infringement of Random House's exclusive publishing rights, through RosettaBooks' publication in eBook form of eight works of three celebrated, widely-read, and enormously popular Random House authors: William Styron, Kurt Vonnegut, and Robert B. Parker.

RosettaBooks has publicly stated that it plans to expand its eBook offerings significantly in the future, a plan which, if implemented, will undoubtedly lead to numerous additional infringements of works to which Random House controls exclusive publishing rights.

3. In derogation of Random House's legal rights, RosettaBooks has copied into multiple digital formats the complete texts of works to which Random House holds exclusive book publishing rights; has copied the digital texts in their multiple formats onto computer servers; has solicited the public to purchase these works in eBook form through its Internet web site, RosettaBooks.com; and, in return for payment of the requested fee, has been fulfilling orders by causing digital copies of these works to be downloaded to the desktop or laptop computers of purchasers.

4. RosettaBooks has undertaken the foregoing activities without request of, or consent from, Random House. Its illegal activities are, moreover, directly competitive with Random House's. If not immediately and permanently enjoined, these activities will cause irreparable injury to Random House by impairing its valuable

copyright rights, by interfering with Random House's relationships with its authors, and by eroding Random House's goodwill with literary agents, booksellers and the public. If enjoined, RosettaBooks, which has made no investment in developing and popularizing the literary properties involved, and seeks only to free-ride on the investment Random House has made and the success Random House has attained in the book publishing business, stands only to lose its ill-gotten gains.

### **THE PARTIES**

5. Plaintiff Random House is a corporation organized and existing under the laws of the State of New York with its principal place of business located at 1540 Broadway, New York, New York. Random House, through its divisions – the Ballantine Publishing Group, the Bantam Dell Publishing Group, the Doubleday Broadway Publishing Group, the Knopf Publishing Group, the Crown Publishing Group, the Random House Trade Publishing Group, Random House Children's Books, the Random House Information Group and the Random House Diversified Publishing Group – is today the world's largest English language general book publisher. Random House publishes works of nearly every genre, including fiction and non-fiction, with offerings for virtually every reading taste or interest. Random House's "backlist" (meaning titles published more than one year earlier) features works by many of the world's foremost and most popular authors. Among Random House's many celebrated authors are William Styron, Kurt Vonnegut, Robert B. Parker, William Faulkner, Truman Capote, Eudora Welty, James A. Michener, John Grisham, Dean Koontz, Carl Sagan, E.L. Doctorow, Maya Angelou, Norman Mailer, Danielle Steel, Louis L'Amour, David

Halberstam, Ken Bums, Geoffrey Ward, Tom Brokaw, John Glenn and Cohn Powell. Books published by Random House have won many major awards, including Pulitzer Prizes, National Book Awards and Newbery and Caldecott Medals.

6. Defendant Rosetta Books LLC is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business located at 845 Third Avenue, 15th Floor, New York, New York.

7. Defendant Arthur M. Klebanoff is an individual residing at 1035 Park Avenue, Apt. 3A, New York, New York. Klebanoff is the Chief Executive Officer of RosettaBooks.

#### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1338 and 1367.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 (b) and (c). Each of the defendants resides or transacts business in the State of New York, and the unlawful activities were carried on in part by one or more defendants within this district.

#### **BACKGROUND**

##### **The Publishing Activities of Random House**

10. Built on a reputation its publishing divisions have developed over decades (some as long as 100 years), Random House has developed a publishing backlist comprising more than twenty-thousand (20,000) titles. As a book publisher, Random House's basic function is to present its authors' works to the reading public in whatever

“book forms” meet marketplace demand. Through the years, these “book forms” have evolved to include hardcover, trade paperback, and mass market paperback editions. As technology has continued to evolve and be applied to the book publishing process, it has begun to be economically viable to deliver books to readers in electronic (“eBook”) versus paper format. Random House has made significant investments to enable it to exploit the eBook format, which provides those who traditionally read books in paper form with new reading options and flexibility, and may even promise an expansion of the base of readers of Random House works.

11. This core publishing premise – that Random House will publish its authors’ works in whatever book forms may meet market demand – is incorporated in Random House’s publishing contracts with its authors, which grant Random House, for the term of copyright, the exclusive right to publish and sell the works contracted for “in book form.”

12. In return for obtaining exclusive rights to publish its authors’ works “in book form,” Random House generally pays an author an advance against the royalty earnings from the sale of copies of his or her book. If the book earns royalties equal to the advance, the author begins to receive additional royalties on each copy sold. However, even if the book never earns sufficient royalties to earn out the advance, which often occurs, authors are not required to refund their advances. The royalty for hard cover editions typically ranges from ten to fifteen percent of the retail cover price; for trade paperbacks, from six to seven-and-a-half percent of the retail cover price; and for mass market paperbacks, from eight to ten percent of the retail cover price. With respect to eBooks, in November, 2000, Random House announced an across-the-board upward

revision of its author royalty rate, from 15 percent of eBook list price to 50 percent of Random House's net receipts. This increase applies both prospectively and retroactively. The new eBook royalty policy, which in many cases significantly increases an author's earnings from eBook sales, reflects Random House's commitment to build this evolving format in partnership with its authors, as well as the anticipated future cost savings of eBooks (lack of returns, elimination of paper and printing costs, etc.).

13. Random House makes substantial expenditures in the works it publishes. Random House employs more than 330 editors, who play an active role in every facet of the publishing process – from evaluating book proposals' publishing merit, through extensive editing of manuscripts, and participation in the marketing process, among other functions. It is not unusual for one or more editors to work actively on a given project over a series of months or even years prior to publication.

14. Once a work is published, Random House makes further substantial expenditures to market and promote it and secure widespread distribution. In the fiscal year ending June 30, 2000, Random House spent in excess of \$100 million in promoting its publications. The promotional activities encompassed, among others, trade and consumer advertising; distribution of review and promotional copies of the book to members of the media and influential readers; in-store displays; author tours and readings; and postings on Internet web sites. Random House also employs several sales forces to call on bookstores and other retail outlets as well as wholesalers to solicit orders.

15. Random House is fundamentally in the content delivery business. Ultimately, it is a work's content, not the format in which such content is delivered, that

drives sales. Consumers do not purchase a work for the book's paper and binding, but rather for its content. Random House's publishing costs confirm this reality. The lion's share of Random House's expenses derive from the advances and royalties paid to authors coupled with the costs of editing, marketing, and promoting works in order to popularize them with consumers. A relatively small percentage of Random House's overall expenses go to paper, printing and binding.

16. Due in part to Random House's editorial work with its authors and the publisher's marketing efforts, authors and books published by Random House, including those that are the subject of this lawsuit, have achieved critical acclaim and significant commercial success. These efforts, and this success, have given Random House and its various imprints an outstanding overall reputation and earned them enormous goodwill with authors, literary agents, booksellers, and the reading public.

### **Random House's Licensing Agreements for the Works In Suit**

#### **The Styron Agreements**

17. Pursuant to a contract dated April 10, 1961, Random House contracted with William Styron to publish *The Confessions of Nat Turner*. By contract dated May 30, 1979, Random House contracted with Styron to publish four additional works, including *Sophie's Choice*. (The two agreements are collectively referred to herein as the "Styron Agreements" and individually as the "1961 Styron Agreement" and the "1979 Styron Agreement.") *The Confessions of Nat Turner* won the Pulitzer Prize for fiction in 1967 and is one of the most lauded American novels of its time. Similarly, *Sophie's Choice* won the National Book Award in fiction in 1980 and is considered a late

20th century American masterpiece. Random House has sold over 260,000 copies of *The Confessions of Nat Turner* and over 3.2 million copies of *Sophie 's Choice* in combined hardcover and paperback formats and continues to sell these books in both hardcover and paperback formats. Random House plans on selling these works as eBooks in the near future.

18. The Styron Agreements grant to Random House an exclusive license, for the term of copyright, to publish *The Confessions of Nat Turner* and *Sophie 's Choice* “in book form,” in the English language, “in such style, and manner.. .as [Random House] deems suitable,” in North America and various other countries. 1961 Styron Agreement at ¶¶ 1 .a.i, 2; 1979 Styron Agreement at ¶¶ 1 .a.i, 6. The Styron Agreements additionally prohibit Styron from authorizing any “[c]onflicting [p]ublication.” Specifically, paragraph 8 of the 1961 Agreement stipulates that, during its term, Styron “will not, without the written permission of the Publisher, publish or permit to be published any material in book or pamphlet form, based on the material in the work, or which is reasonably likely to injure its sales.” See also 1979 Styron Agreement, ¶ 5 (similar).

19. Pursuant to the Styron Agreements, Random House paid Styron advances against royalties to be earned, and has paid, and continues to pay, substantial royalties to Styron beyond these advances based on sales of his works.

20. Over the past forty years, Random House has also made substantial investment in promoting and popularizing the works governed by the Styron Agreements.

21. The United States Copyright Office granted Certificates of Registration in the name of William Styron for *The Confessions of Nat Turner* in 1967,



which was renewed on September 26, 1995, and for *Sophie's Choice* in 1979. Copies of these certificates are annexed to Exhibit A to this Complaint.

22. Random House, as an exclusive licensee of the works governed by the Styron Agreements, is a beneficial owner of valid copyrights in these works. The Styron Agreements are governed by New York law.

### *The Vonnegut Agreements*

23. Pursuant to a contract dated March 7, 1967, Random House, through its predecessor-in-interest Dell Publishing Co., Inc. ("Dell"), contracted with Kurt Vonnegut to publish three novels, including *Slaughterhouse-Five* and *Breakfast of Champions*. By contract dated November 20, 1970, Random House, again through Dell, contracted with Vonnegut to publish five additional works, including *The Sirens of Titan*, *Cat's Cradle*, and *Player Piano*. (These agreements are collectively referred to herein as the "Vonnegut Agreements" and individually as the "1967 Vonnegut Agreement" and the "1970 Vonnegut Agreement.") Vonnegut has become one of America's most celebrated authors and the foregoing works have become staples of American literature.

*Slaughterhouse-Five* is one of the most popular and enduring novels of all time. Random House has sold over 1.3 million copies of *Slaughterhouse-Five*, over 400,000 copies of *Breakfast of Champions*, over 200,000 copies of *The Sirens of Titan*, over 600,000 copies of *Cat's Cradle*, and over 20,000 copies of *Player Piano*, in combined hardcover and paperback formats and continues to sell these books in trade paperback formats. Random House plans on selling these works as eBooks in the near future.

24. The Vonnegut Agreements grant to Random House an exclusive license, for the term of copyright, to publish *Slaughterhouse-Five*, *Breakfast of*

*Champions, The Sirens of Titan, Cat's Cradle, and Player Piano* “in book form,” in the English language, as well as to publish the works “in anthologies, selections, digests, abridgements, magazine condensations, serialization, newspaper syndication, picture book versions, microfilming, Xerox and other forms of copying, either now in use or hereafter developed.” 1967 and 1970 Vonnegut Agreements at ¶¶ 1 .a, 1 .d. (The exclusive territory is North America and the Philippine Republic.) The 1970 agreement, in addition, prohibits Vonnegut from “publish[ing] or permit[ing] to be published any edition, adaptation or abridgment of the Work by any party other than Dell without Dell’s prior written consent.” 1970 Vonnegut Agreement at ¶ 10.

25. Pursuant to the Vonnegut Agreements, Random House paid Vonnegut advances against royalties to be earned and has paid, and continues to pay, substantial royalties to Vonnegut beyond these advances based on the sales of his works.

26. Over the past thirty-four years, Random House has also made substantial investments in promoting the works governed by the Vonnegut Agreements.

27. The United States Copyright Office issued Certificates of Registration in the name of Kurt Vonnegut for the following works on the following dates:

- (i) *Slaughterhouse-Five* – 1969 (renewed on December 29, 1997);
- (ii) *Breakfast of Champion* – 1973;
- (iii) *The Sirens of Titan* – 1959 (renewed on December 9, 1987);
- (iv) *Cat's Cradle* – 1963 (renewed on July 5, 1991); and
- (v) *Player Piano* – 1952 (renewed on Jan. 16, 1980).

Copies of these certificates are annexed to Exhibit A to this Complaint.

28. Random House, as exclusive licensee of the works governed by the Vonnegut Agreements, is a beneficial owner of valid copyrights in these works. The Vonnegut Agreements are governed by New York law.

*The Parker Agreement*

29. Pursuant to a contract dated February 4, 1982 (referred to herein as the “Parker Agreement”), Random House, through its predecessor-in-interest Dell, contracted with Robert B. Parker to publish five novels, including *Promised Land*. *Promised Land* won the Edgar Allan Poe Award from the Mystery Writers of America in 1977, the most prestigious award in the realm of mystery and detective fiction. Random House has sold over 300,000 copies of *Promised Land* in hard cover and paperback formats, continues to sell this book in mass market paperback format and plans on selling this work as an eBook in the near future.

30. The Parker Agreement grants to Random House the exclusive right, for the term of copyright, to publish *Promised Land* “in book form,” in the English language, as well as to publish the work “in anthologies, selections, digests, abridgements, magazine condensations, serialization, newspaper syndication, microfilming, Xerox and other forms of copying of the printed page, either now in use or hereafter developed.” Parker Agreement ¶¶ 1 .a, 1 .d. (The exclusive territory is North America and the Philippine Republic.) The Parker Agreement additionally prohibits Parker, for the term of the agreement, from “without the written permission of Dell, publish[ing] or permit[ing] to be published any material based on the material in the work, or which is reasonably likely to injure its sale.” Id. at 18.

31. Pursuant to the Parker Agreement, Random House paid Parker an advance against royalties to be earned, and has paid, and continues to pay, substantial royalties to Parker beyond that advance based on the sales of his works.

32. Random House has made substantial investment in promoting *Promised Land*.

33. The United States Copyright Office granted a Certificate of Registration in the name of Robert B. Parker for *Promised Land* in 1976. A copy of that certificate is annexed to Exhibit A to this Complaint.

34. Random House, as exclusive licensee of the work governed by the Parker Agreement, is a beneficial owner of a valid copyright in this work. The Parker Agreement is governed by New York law.

**Random House's Contractual Rights Embrace The Delivery of The Texts of The Works to Readers In Any Format**

35. The contractual rights bargained for by Random House in the *Styron*, *Vonnegut* and *Parker* Agreements provide Random House with the exclusive right to publish the contracted-for-books in whatever book formats are appropriate. This right encompasses formats that are the result of technical improvements enabling, for example, books to be read not merely in paper formats, but as well in one or more electronic, or **eBook**, formats. So long as those formats serve the same essential function for which Random House was engaged as the publisher – to enable the reader to read “in book form” the full, linear texts to the author’s work – principles of contract and

intellectual property law make clear Random House's unfettered right to commercially exploit such new formats.

### **The Developing eBook Market**

36. The concept of an electronic book – namely, the ability to read text in a non-paper format – is a natural extension and outgrowth of technological developments that significantly pre-date 1961, the year the earliest agreement covering any of the Works was entered into. The eBook as it presently exists – namely, the ability to store text in electronic form and subsequently retrieve it through the use of a computerized device – can trace its lineage back to the early methods of automated textual storage and retrieval, particularly microfilm and microfiche, developed as long as a century ago, as well as to the development of electronic document creation, storage, retrieval and output mechanisms in the 1950s and 1960s. While the commercial realization of the eBook is of more recent vintage, its conception from these roots has long been foreseeable.

37. As the descriptive name given by the industry implies, an eBook of the type offered by RosettaBooks is simply a book presented in electronic format. Technically, it consists of an electronic file that contains the text of an entire book formatted in a manner that allows the eBook to be read in a linear fashion on a computer, a personal digital assistant such as a Palm Pilot, or a dedicated handheld eBook reader. These eBooks thus contain the same text as their paper counterparts and are displayed for the reader in the same linear fashion, *i.e.*, the reader reads lines of text no differently than if the works were being read in paper format. The only real difference in the reading

experience between eBooks and their paper counterparts is that eBooks display the copyrighted content on a computer screen or eBook reading device, rather than on paper. Rather than physically turning the paper page, the eBook reader pushes a button or computer key to move to the next page of text. Other than these immaterial differences, the core reading experience is the same.

38. Random House has made significant investments toward making eBooks a marketplace reality. Random House has invested more than five million dollars into the development of eBook publishing programs and anticipates investing approximately ten million dollars in the next three to five years based on its belief that eBooks will someday become a book format of choice for a significant segment of the book consuming public.

39. Random House currently offers more than 300 titles in eBook format, consisting of both frontlist and backlist titles from its various divisions. Within the next 12 months, it expects to offer an additional 1000 frontlist titles, and within the next 18 months, an additional 1000 backlist titles. Among the current publishing programs, Modern Library, a recognized publisher of eminent literature in high quality and affordable formats, offers 100 classic titles in electronic format. In addition, in January, 2001, Random House became the first major trade publisher to announce publication of a complete editorial list of original electronic books, commissioned expressly for electronic format.

40. In addition to its in-house publishing efforts, on March 31, 2000, Random House created Random House Ventures, L.L.C., a wholly owned e-investment subsidiary, whose mandate is to invest in and support online and technology-driven

companies that have the potential to reshape traditional publishing concepts, services and relationships, as well as to complement Random House's longstanding publishing programs.

41. **eBooks** are commonly delivered to the public through online distributors (e.g., Amazon.com, BarnesandNoble.com). At these online distributors' web sites, a reader can select and purchase a book in any **eBook** format. The **eBook** is then downloaded directly from the online distributor's web site (or its service provider's file server) onto the reader's computer, virtual library and/or **eBook** reading device, and can be read immediately thereafter.

42. Random House also has invested significant sums toward the creation of industry-leading production and business systems in support of its publishing programs, especially in light of the transformative growth of the Internet. It is establishing a publishing infrastructure designed to allow all Random House publishers to easily and effectively publish their books in any print or electronic format or distribution channel. Random House sets text directly from digitized versions of the work, and maintains the digital file in an archive. With minor enhancements, such files can then be released in various **eBook** formats.

#### **RosettaBooks' Infringing Actions**

43. **RosettaBooks** operates an Internet web site located at <http://www.rosettabooks.com>. The site was officially launched on February 26, 2001. Although it is an Internet start-up company in its earliest stages, **RosettaBooks** touts itself as "the preeminent electronic publisher of great works of fiction and non-fiction. . . ."

44. The sum total of RosettaBooks' "publishing" activities to date has entailed the copying in digital form of copyrighted works such as those covered by the Styron, Vonnegut and Parker Agreements (which can be accomplished easily and fairly inexpensively by scanning paper editions of the Works); the storage of such copies on one or more computer file servers; the offering to the public over its web site of individual digital copies of these works in a variety of eBook formats; and the fulfillment of such orders upon payment by credit card of the requested fee (currently, \$8.99 per work). By these activities, RosettaBooks is able to supply readers with the full texts of the Works which those readers would otherwise likely purchase in paper format, or acquire in eBook format in the near future through Random House itself.

45. While RosettaBooks' eBook offerings thus far are modest (fewer than 100 eBooks are, as yet, available from RosettaBooks), its plans are anything but. RosettaBooks' ambition is to amass "the best backlist titles of the 20th century" – the "top of the pyramid, probably some 20,000 titles or more that will be attractive for republishing." It is evident that RosettaBooks plans to skim this cream of modern literature in utter disregard of the contractual and copyright rights owned in such works by the publishers that introduced, marketed and sold them to the public at great investment.

46. Among the eBooks that RosettaBooks is currently offering for sale are seven Random House titles: Vonnegut's *Slaughterhouse-Five*, *Cat's Cradle*, *Player Piano*, *Breakfast of Champions* and *The Sirens of Titan*; and Styron's *The Confessions of Nat Turner* and *Sophie's Choice*. These works are available in three digital formats: MS Reader, Secured Adobe PDF, and Glassbook. The site has indicated that these titles will



in the future be available in additional eBook formats. Additionally, the site indicates that Parker's *Promised Land* will be "Available Soon."

47. Exhibit B to this Complaint provides a sample of the actual form in which RosettaBooks delivers works (this one, in MS Reader format). Depicted are the cover and first chapter of *Slaughterhouse-Five*, as actually delivered to a purchaser's desktop computer. By way of comparison, Exhibit C to the Complaint reproduces the cover and first chapter of the same work in Random House's paperback format. As is evident, the eBook contains the same text, is displayed for the reader in the same linear fashion, and offers the same basic reading experience as its paper counterpart.

48. In its zeal to stockpile "the best backlist titles of the 20th century," RosettaBooks has trampled on Random House's exclusive rights, *inter alia*, to publish eBooks of the works covered by the Styron, Vonnegut and Parker Agreements and has rebuffed Random House's demands that it cease this unlawful activity. There is every indication that, unless immediately enjoined, RosettaBooks will expand its infringing activities to encompass other significant Random House authors and works.

49. RosettaBooks has, moreover, brazenly traded on the enormous popularity of works such as *Slaughterhouse-Five* and *Sophie 's Choice* by prominently featuring these works both on its web site and in promoting the business of RosettaBooks.com.

50. To accomplish its unlawful objectives, RosettaBooks, with knowledge of Random House's exclusive contract and copyright rights, has been falsely advising Random House authors that their Random House contracts do not encompass eBooks. RosettaBooks has by such actions to date induced at least Messrs. Styron,

Vonnegut and Parker to breach those contracts and, in derogation of those contracts, to sign agreements with RosettaBooks – on economic terms presently unknown to Random House (but asserted by RosettaBooks to be “competitive”) – permitting RosettaBooks to publish at least Styron’s *The Confessions of Nat Turner* and *Sophie’s Choice*; Vonnegut’s *The Sirens of Titan*, *Cat’s Cradle*, *Player Piano*, *Slaughterhouse-Five* and *Breakfast of Champions*; and Parker’s *Promised Land*, in eBook form.

### **Injury to Random House**

51. RosettaBooks’ unauthorized reproductions and public distributions of eBook formats of the Works constitute infringements of Random House’s valuable copyright rights.

52. The eBook is directly competitive with the paper format of the book and, under industry forecasts, will increasingly become a substitute for the paper book for many consumers in the decades to come. These forecasts predict that digital delivery of custom-printed books, textbooks, and eBooks could account for revenues as high as \$7.8 billion (17.5% of the publishing industry) in five years. It is projected that 2.6 million eBook reading devices will be in use by 2005.

53. Threatened harm to Random House is imminent from RosettaBooks’ efforts to exploit the Works and public announcements evidencing an intent to similarly misappropriate numerous other Random House titles. It is highly unlikely that consumers who choose to purchase eBook formats of the Works – or other Random House titles that RosettaBooks will attempt to sell if not enjoined – will also

purchase such titles in their paper format (or, in the alternative, in eBook format in the near future through Random House itself).

54. RosettaBooks' unauthorized reproduction and public distribution of eBook formats of the Works devalues Random House's exclusive rights to exploit the Works in paper and eBook formats. If RosettaBooks were free to cherry-pick Random House's highly prominent works, as they have done by attempting to exploit the Works, they would thereby divert sales from Random House, and Random House would face the prospect of funding the development and marketing of a wide range of its literary offerings, but be deprived of the economic benefits of exclusivity which Random House bargained and paid for in acquiring rights to those works.

55. Additionally, RosettaBooks has indicated its intention to expand significantly the numbers of backlist titles it will publish in eBook form. Many such works will undoubtedly be works to which Random House possesses exclusive eBook publishing rights. Such activities will, if not enjoined, not only, in and of themselves, impair Random House's ability to sell its extraordinarily valuable backlist, which generates some forty percent of Random House's annual sales and incalculable goodwill; it will also invite countless other third parties to commence unauthorized eBook "publishing" enterprises as well. The injury to Random House from such a proliferation of unauthorized third-party "publishers" – none of whom will have invested even a single dollar in the development of the works involved, let alone in bringing about their commercial success – would be incalculable.

56. Moreover, consistent with Random House's business strategy and in partnership with its authors, Random House has made very significant investments in

its own eBook business. RosettaBooks' purloining of Random House's most successful books will, if not enjoined, hobble this important new line of business.

## COUNT I

### Copyright Infringement

57. Random House repeats and realleges each and every allegation contained in paragraphs 1 through 56 hereof with the same force and effect as if fully set forth herein.

58. RosettaBooks' creation of eBook formats of the Works, entailing the reproduction of multiple copies of the Works and their distribution by sale to the public, constitute acts of copyright infringement in violation of exclusive copyright rights in the Works owned by Random House. 17 U.S.C. § 106.

59. In undertaking and persisting over objection in continuing these activities, RosettaBooks' conduct constitutes willful copyright infringement.

60. Such conduct on the part of RosettaBooks has caused and will continue to cause irreparable injury to Random House.

61. Random House is entitled to injunctive relief as well as statutory damages (enhanced for willful infringement) or actual damages and RosettaBooks' profits under the Copyright Act and the recovery of its costs and reasonable attorney's fees. 17 U.S.C. §§ 501-502; 504-505.

## COUNT II

### Tortious Interference With Contracts

62. Random House repeats and realleges each of the allegations contained in paragraphs 1 through 61 hereof with the same force and effect as if fully set forth herein.

63. The foregoing acts of RosettaBooks constitute tortious interference with the contracts for the Works under New York law.

64. Random House's exclusive agreements for the Works are valid, lawful, and enforceable contracts.

65. RosettaBooks is aware of the existence of Random House's agreements for the Works.

66. With knowledge of the above agreements, RosettaBooks has interfered and will continue to intentionally interfere with the agreements for the Works by attempting to contract and by contracting with authors for eBook rights, notwithstanding the fact that Random House has exclusive rights to publish in this format.

67. The actions of RosettaBooks in interfering with such agreements are in bad faith and without justification and are knowing, intentional and willful.

68. RosettaBooks' unlawful actions are directed at Random House and interfere with Random House's agreements for the Works.

69. RosettaBooks' malicious actions are intended to deprive Random House of the ability to publish the Works as eBooks and will significantly impair the market for paper formats of the Works and divert eBook sales from Random House.

70. Random House has been injured by reason of this unlawful interference in an amount presently unknown, but which will be proven at the time of trial.

**PRAYER FOR RELIEF**

WHEREFORE, Random House prays for judgment with respect to its Complaint as follows:

A. Declaring that RosettaBooks and Klebanoff have violated 17 U.S.C. § 106 by infringing Random House's copyright rights in the Works, insofar as the Styron Agreements, the Vonnegut Agreements and the Parker Agreement grant Random House exclusive English language rights to publish and sell the works encompassed by those agreements in eBook form in the territories set forth in the respective agreements;

B. Granting as against RosettaBooks and Klebanoff, their agents, servants, officers, employees, and all those acting under their control and/or on their behalf and/or in concert with them, preliminary and permanent injunctive relief enjoining them from: advertising or promoting the sale, in eBook form, of any of the Works; making copies of any of the Works in any format, electronic or otherwise; delivering copies of any of the Works to any third party, whether for sale or otherwise, and whether via electronic downloads or otherwise; advertising or promoting the sale in eBook form, or making copies or delivering copies to third parties in eBook form, of any other Random House works as to which Random House has been granted an exclusive license to publish "in book form"; directly or indirectly soliciting any Random House author whose work(s) have not been expressly reverted to that author to convey electronic rights to

RosettaBooks; and requiring RosettaBooks to destroy all infringing copies of the Works and all other works for which Random House has been granted an exclusive license to publish in book form;

C. Ordering defendants to produce within thirty (30) days after issuance of an injunction order, a report in writing and under oath setting forth in detail the manner and form in which RosettaBooks has complied with the relief ordered therein;

D. Ordering that RosettaBooks and Klebanoff be required to pay to Random House:

(i) under the copyright law, the actual damages sustained by Random House as a result of RosettaBooks' infringing conduct, together with the profits earned by RosettaBooks, or statutory damages (including for willful infringement), at Random House's election;

(ii) damages for the injuries caused by RosettaBooks' and Klebanoff's tortious interference with Random House's contractual relations; and

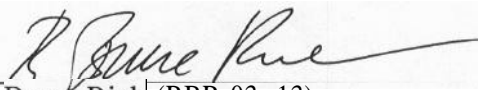
(iii) Random House's costs, disbursements, expenses, and reasonable attorney's fees; and

E. Ordering that Random House shall have of RosettaBooks such other and further relief as is just and proper.

Dated: New York, New York  
February 27, 2001

Respectfully submitted,

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