

March 30, 2009

Office of the Maryland Attorney General
Consumer Protection Division
200 St. Paul Place
Baltimore, MD 21202

RE: PublishAmerica

Dear Sirs:

I am enclosing a complaint form (see Enclosure #1) regarding PublishAmerica, LLLP (hereafter, "PA"), a company which is headquartered in your state. This company induced me, through fraud and deception, to sign a seven-year contract to publish my book, and has since repeatedly refused to cancel the contract.

In brief, this company makes virtually all of its money by selling books to its own authors, or to the author's family and friends. Thus, PA's target customer is the author himself. **However, the company is not up front about this business model, but instead deceives prospective authors by presenting itself as a "traditional" publisher that markets books to the general public.** From what I have read, the vast majority of cases are like mine—the author signs a contract giving PA the publishing rights to his or her book for seven long years, only to later learn that PA will not market or promote the book, except to the author and the author's family and friends. To sell more than a few token copies, a PA author must purchase copies of his or her book from PA and then attempt to self-promote the book—a strategy that is often undermined by PA's own policies.

Any discussion of PA's deceptive and misleading business practices must begin with the motto which is prominently displayed at the top of every page of the company's web site, just under the company logo: "We treat our authors the old-fashioned way - we pay them." Unfortunately, the flow of money primarily goes in the other direction: from the author to PA.

A link just under that motto takes you to the F.A.Q. (Frequently Asked Questions) page. Enclosure #2 is a copy of that F.A.Q. page which I printed out in May 2008, and Enclosure #3 is an email I received from PA on July 26, 2007 (prior to signing the contract), which provides a link to that F.A.Q.

page. I have highlighted many of the statements on that F.A.Q. page which I believe are deceptive and/or misleading, such as:

" . . . we earn our income by selling books, and books only."

"We want your book, not your money."

" . . . we submit the book to our wholesalers and distributors, such as Ingram, Baker & Taylor, Brodart, etc., who process it in their computer systems that have direct connections to bookstore computer systems nationwide. That is how a book becomes available through **all American bookstores** from sea to shining sea." (Emphasis in original)

" . . . bookstores order PublishAmerica books more than 400 times per day, each day, for immediate sale, **for stocking**, or for a specific event such as a book signing. Barnes & Noble is our largest customer, followed by Borders and Books-a-Million." (Emphasis added)

"An author's obligations are few, since he/she already contributes the lion's part by having written the book. . . . The author has really only one obligation: to provide us with the completed final-version manuscript. We'll take it from there."

These statements appear to be carefully crafted to convey the impression that PA makes its money by selling books to the general public, and that PA books are routinely stocked in bookstores across the country. Both are false. Most of PA's money is made by selling books to the author, not the public. And from what I have read, most bookstores will not stock PA books, for a variety of reasons, including the price, PA's return policies, the quality of the books, and other factors.

Another link from the PA web site home page takes the author to the "Facts and Figures" page. I recently printed off this page, and have enclosed it as Enclosure #4. As with the F.A.Q. page, I have highlighted certain statements which I believe are deceptive and/or misleading, such as:

" . . . each day an average 15 times a PublishAmerica author appears in **the news media, in newspapers, magazines, radio or TV.**" (Emphasis in original)

"Each day, PublishAmerica authors are invited to do a book signing or another in-store event at a bookstore or a library."

"Of all the brick-and-mortar bookstores, Barnes and Noble is by far our largest customer. Borders/Waldenbooks and Books-a-Million are second and third."

"PublishAmerica contacts dozens of bookstors [sic] each day to set up book signings for our authors." (Emphasis in original)

"PublishAmerica is NOT in any way a POD, vanity press, or subsidy publisher, and has nothing in common with them." (Emphasis in original)

"There's no catch, no hidden surprises. . . . The author is never, ever, under any obligation to pull their wallet to make any purchase whatsoever. **We don't want their money. We want their book.**" (Emphasis in original)

As with the F.A.Q. page, these statements appear to be intended to give the impression that PA aggressively markets its books to the general public through "brick and mortar" bookstores, publicity, book signings, etc. In fact, PA does virtually no marketing or promotion of its books, with one exception—PA does aggressively market each book to the author who wrote that book.

In addition, near the end of the "Facts and Figures" page, under "FACT #12," PA makes the following statement regarding their seven-year contract term: "Our contracts expire after seven years, unlike the life term that most other traditional publishers require." This is obviously an attempt to make PA's seven-year contract term seem reasonable, or even favorable to the author. However, I have been assured by several experienced (and published) writers that this statement is highly misleading, because the contracts of most, if not all, reputable publishers—even those with long initial terms—provide that the publisher will return the book rights to the author when the book is no longer commercially saleable, which usually occurs within much less than seven years. PA does not do this.

Enclosure #5 to this letter is a copy of my contract with PA, dated July 27, 2007. I have highlighted the provisions which imply that PA will aggressively market and promote my book—they talk about PA using copies of the book "for review and/or publicity purposes" (§ 5); distributing copies of the book "for advertising and/or sales promotion purposes" (§ 7); allowing others to publish extracts from the book "to benefit the sale thereof" (§ 8); distributing "promotional information . . . to publications through the United States and/or Canada, or elsewhere" (§ 9). What the contract fails to explain is that PA in fact does none of these things.

Furthermore, the contract requires the author to “actively participate in promoting” sales of the book “**by making himself available** to media interviews, book readings and/or signings, and other public sales promotion appearances.” (Emphasis added) However, the contract fails to explain that any media interviews, book readings, book signings, or other promotional appearances must be arranged solely by the author, without any assistance or participation from PA.

To show how PA truly operates, I am providing Enclosure #6, which is a collection of about 24 solicitations I received from PA between September 2007 and September 2008, with various offers to purchase copies of my own book. (These and other emails enclosed herein are “cleansed” copies which are posted on my web site, and from which I have deleted certain information, such as my email address. If you need copies of the original emails, please let me know and I will provide them.) In the beginning, these solicitations came only about once a month, but by August 2008 they were coming about once a week. PA stopped sending me these solicitations only after I repeatedly requested that they do so. However, Enclosure #7 is a copy of another solicitation I recently received, offering to sell me a framed copy of my royalty check, for \$19.95 plus shipping and handling.

I hope this proves to your satisfaction that PA does target its own authors as customers. I next turn to evidence, in PA’s own words, that they do not market their books to anyone else (except of course the author’s own family and friends).

I have corresponded with PA about their business practices on numerous occasions. I first raised my concerns in an email dated August 13, 2007. Enclosure #8 is a copy of that email. Enclosure #9 is PA’s reply, dated August 14, 2007. Please note that PA refused to terminate our contract and threatened legal action should I attempt to unilaterally withdraw from it, but they fail to address any of my concerns except to state, “you would do well to carefully consider the source of your information. . . .”

On May 27, 2008, I wrote PA a letter asking about the pricing and marketing of my book. Enclosure #10 is a copy of that letter, which I also sent to PA via email. Enclosure #11 is a copy of PA’s email response, dated May 28, 2008. This response makes clear that: (1) PA does not send out copies of the book to media reviewers except upon written request; (2) PA sent out press releases only to a few newspapers in my local area (and for which I had to provide the contact information); (3) “PublishAmerica does not set up interviews, readings and/or signings.” In addition, their response to my question about the book’s price—i.e., that “it would be impossible to quote a

price for this work at this time”—is evasive and inaccurate, since the book had been priced and available for purchase online since January 2008. (The book’s price was initially \$19.95, but was later raised to \$24.95.)

I have also included additional email correspondence between PA and myself regarding these matters: Enclosures #12 through #17. Please note that my request to terminate our contract was once again refused, unless I would pay PA \$300.00 for the privilege.

On May 29, 2008, I filed a complaint with the Better Business Bureau (BBB). Enclosure #18 includes my original complaint, PA’s response, and my rebuttal. Please note that in its response PA does not dispute my contention that they do no significant promotion or marketing of the books they accept for publication, but merely states that the contract does not require the company to do so. By the way, the BBB has given PA a rating of “C-” due to “Number of complaints filed against business.” You can verify this at the following web address:

<http://greatermd.bbb.org/WWWRoot/Report.aspx?site=41&bbb=0011&firm=32010985>

I am also including as Enclosure #19 copies of royalty statements from PA for the periods of August 1, 2007 through January 31, 2008, February 1, 2008 through July 31, 2008, and August 1, 2008 through January 1, 2009. Since I have refused to purchase copies of my book, or provide PA with the names and addresses of my friends and family members, it is hardly surprising that these royalty statements reflect sales of zero books.

However, in the interest of full disclosure, shortly after receiving the January 2009 royalty statement, I received a royalty check from PA in the amount of \$2.78 for the sale of two copies of my book during the period of August 1, 2008 through January 1, 2009. The check stub is Enclosure #20. So in more than a year, PA has managed to sell two copies of my book.

If you need more information, please feel free to contact me, or you can visit “The Truth About PublishAmerica” page of my web site, at the following web address:

<http://www.christianityforthinkers.com/publishamerica.htm>

I want to make clear that I do not object to PA’s business model of selling books to their own authors rather than the general public. My objection is that they hide this business model from prospective customers by pretending to be something that they are not—until after the author is locked into a seven-year contract which PA refuses to cancel. If I had known

that PA's target customer would be me, I never would have signed the contract. Fortunately, I have not lost any money to PA, because I learned the truth about the company (through some internet investigation) not long after signing the contract. However, the internet is full of horror stories about less fortunate souls who have wasted hundreds, and even thousands, of dollars buying and self-promoting their PA book, with little or nothing to show for it. And of course in my case, I have lost the rights to my book until the year 2014.

I will conclude by addressing two concerns that I have in connection with this complaint. First, I have read on the internet that in the past your office has declined to take any action against PA because you view this as a business issue rather than a consumer issue—in effect that PA authors are not consumers but are entering into a business relationship with PA. If that is your position, it is incorrect. As I have shown, PA's target customer is the author, not the public. From this perspective, the author **is** the consumer. PA does not make money and stay in business if its authors do not buy their own books and attempt to self-promote them. In addition, based on PA's true business model, the author is a consumer of publishing services, in the same way as an author who pays a "vanity press" to print copies of his book. PA operates like any other vanity press, except for one thing: rather than getting paid in advance, they seek to get their money from the author after the book is "published." PA's leverage is to hold the author's book hostage for seven years.

My second concern is that you may believe this problem is too limited to be of real public interest. My answer to that is threefold:

(1) Please note again that the BBB has given PA a rating of "C-" because of the numerous complaints against the business. Mine is not an isolated situation.

(2) If you run an internet search for "PublishAmerica scam," you will find many web sites devoted to warning people about this company. The following link (which is also on my own web site) will take you to a web site which can provide you with abundant information about this company and how it truly operates:

http://www.wizardessbooks.com/html/PA_stories.htm).

(3) If it would make a difference to your evaluation of this complaint, I am confident that many other PA victims would write your office if they thought it would do any good. Just let me know and I will put out the

word to those PA victims with whom I have made contact in the time since I became a PA victim myself.

Thank you for your time in reading this complaint. May God bless you and yours, and may you be a blessing to others.

kindest regards,

ORIGINAL SIGNED

DON DAVIDSON

Enclosures:

- #1 - Complaint form (2 pp)
- #2 - F.A.Q.'s from PA web site (4 pp)
- #3 - PA email of 7/26/07
- #4 - "Facts & Figures" from PA web site (2 pp)
- #5 - Contract with PA (8 pp)
- #6 - PA solicitations (24 pp)
- #7 - PA email of 1/21/09
- #8 - My email of 8/13/07 (2 pp)
- #9 - PA email of 8/14/07 (2 pp)
- #10 - My letter of 5/27/08 (2 pp)
- #11 - PA email of 5/28/08
- #12 - My email of 5/28/08 (2 pp)
- #13 - PA email of 5/28/08
- #14 - My email of 5/28/08 (2 pp)
- #15 - PA email of 5/29/08
- #16 - PA email of 5/29/08 (2 pp)
- #17 - My email of 5/29/08
- #18 - BBB complaint (3 pp)
- #19 - PA royalty statements (5 pp)
- #20 - PA royalty check stub (2 pp)