

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

PUBLISHAMERICA, LLLP,)	
)	CASE NO. 3:10-cv-00108
Plaintiff/Counter-Defendant,)	
)	JUDGE NIXON
v.)	
)	MAGISTRATE JUDGE BRYANT
LIGHTNING SOURCE INC.,)	
)	JURY DEMAND
Defendant/Counter-Plaintiff.)	

ANSWER AND COUNTERCLAIM

For its Answer to the Complaint filed by Plaintiff PublishAmerica, LLLP ("PA"), Defendant Lightning Source Inc. ("LSI") states as follows:

FIRST DEFENSE

LSI hereby responds to each numbered paragraph of the Complaint as follows:

1. Upon information and belief, LSI admits the first and fifth sentences of Paragraph 1 of the Complaint. LSI is without knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 1 of the Complaint, and they are accordingly denied.
2. Admitted, except that Defendant's correct name is Lightning Source Inc.
3. Paragraph 3 of the Complaint states a legal conclusion and therefore requires no response. However, LSI agrees that jurisdiction and venue are proper in this Court.
4. No response to Paragraph 4 is required.
5. LSI admits the allegations contained in the first three sentences of Paragraph 5 of the Complaint. In response to the fourth sentence of Paragraph 5 of the Complaint, LSI admits that a copy of an Operating Manual is attached to the Complaint as Exhibit 2.

6. LSI admits the allegations contained in the first two sentences of Paragraph 6 of the Complaint. No response to the third sentence of Paragraph 6 is required. In response to the fourth sentence of Paragraph 6 of the Complaint, LSI states that the terms and conditions of the original Print On Demand Agreement and those Print On Demand Agreements executed during any “renewal periods” speak for themselves.

7.-8. LSI states that the terms of PA’s Print On Demand Agreement, including, but not limited to, the terms of the Operating Manual, which were incorporated therein (hereinafter collectively “Agreement”), speak for themselves. Because Paragraphs 7 and 8 contain legal conclusions and characterizations as to limited portions of the Agreement and do not completely or accurately recite the relevant terms and conditions, the allegations in Paragraphs 7 and 8 are denied.

9. In response to Paragraph 9 of the Complaint, LSI admits that it filled Wholesale Orders and Publisher Direct Orders pursuant to the Agreement, that PA designated some titles as returnable, and that LSI disposed of returns and charged PA for those returns in accordance with the parties’ Agreement. LSI otherwise denies the allegations and characterizations contained in Paragraph 9 of the Complaint.

10. In response to Paragraph 10 of the Complaint, LSI admits that in or about May 2009, and consistent with PA’s “Yes-Deliver” return designation, it began shipping to PA a physical copy of each title returned in exchange for a \$2 shipping and handling fee and the wholesale cost of the title in question as instructed by PA. LSI denies the remaining allegations and characterizations contained in Paragraph 10 of the Complaint.

11. In response to Paragraph 11 of the Complaint, LSI admits that it printed a physical copy of each book upon the return of the title and shipped such copies to PA. LSI also

