

<b>Pleiades Publ., Inc. v Springer Science + Bus. Media LLC</b>
2014 NY Slip Op 03917
Decided on May 29, 2014
Appellate Division, First Department
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This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on May 29, 2014

Mazzarelli, J.P., Acosta, Andrias, Clark, JJ.

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**[\*1] Pleiades Publishing, Inc., Plaintiff-Respondent,**

**v**

**Springer Science + Business Media LLC, Defendant-Appellant.**

Phillips Nizer LLP, New York (Alan Behr of counsel), for appellant.

Skadden Arps Slate Meagher & Flom, LLP, New York (Jonathan L. Frank of counsel), for respondent.

Order, Supreme Court, New York County (Marcy S. Friedman, J.), entered June 10, 2013, which, to the extent appealed from as limited by the briefs, denied defendant's motion to dismiss the cause of action for breach of the implied covenant of good faith and fair dealing, unanimously affirmed, with costs.

Plaintiff is a publisher of English-language versions of Russian-language scientific, technical, and medical journals. Defendant is plaintiff's exclusive distributor pursuant to an agreement that

required it to use "commercially reasonable efforts" to promote the Russian-language journals and to market and promote them as "offerings in its online database called the Russian Library of Science [RLS];." Plaintiff alleges that defendant incorporated its journals into a bundle of available "non-subscribed" journals, which disguised from customers the "separate identity, value proposition, and pricing approach for the RLS," thereby reducing the current and long-term economic value of plaintiff's journals and depriving plaintiff of the benefits it should have obtained under the distribution agreement. These allegations state a cause of action for breach of the implied covenant of good faith and fair dealing (*see Richbell Info. Servs. v Jupiter Partners* , 309 AD2d 288, 302 [1st Dept 2003]). While the agreement granted defendant the discretion to decide how to market and promote the RLS, defendant did not have [\*2]the right to exercise that discretion in such a way as to frustrate plaintiff's rights under the agreement, deprive plaintiff of the value of its journals, or benefit itself at plaintiff's expense (*see id.* ).

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 29, 2014

CLERK