

Exhibit F

1 UNITED STATES DISTRICT COURT NORTHERN
DISTRICT OF CALIFORNIA SAN JOSE DIVISION

2 -----X
APPLE INC., a California corporation

3
4 PLAINTIFF,

5 -against-

6 SAMSUNG ELECTRONIC CP., LTD., a Korean
business entity; SAMSUNG ELECTRONICS
7 AMERICAN, INC., A New York Corporation;
SAMSUNG TELECOMMUNICATIONS AMERICA, LLC,
8 a Delaware limited liability company,

9
DEFENDANTS.

10 -----X

11
12 ***CONFIDENTIAL***

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15 VIDEOTAPED DEPOSITION OF RUSSELL WINER
16 New York, New York
17 Friday, April 27, 2012

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23 Reported by:
24 Rebecca Schaumloffel, RPR, CLR
25 JOB NO. 48805

1 THE VIDEOGRAPHER: This is the 09:13AM
2 start of tape label one in the 09:14AM
3 videotaped deposition of Russell S. 09:14AM
4 Winer in the matter Apple, Inc., 09:14AM
5 versus Samsung Electronics Company, 09:14AM
6 Limited. Today is April 27, 2012. 09:14AM
7 The time is approximately 9:16 a.m. 09:14AM
8 Appearances have already been noted by 09:14AM
9 the Court Reporter. 09:14AM
10 Will the Court Reporter please 09:14AM
11 swear in the witness. 09:14AM

12

13 R U S S E L L S. W I N E R, called as a
14 witness, having been first duly sworn by a
15 Notary Public of the State of New York, was
16 examined and testified as follows:

17 EXAMINATION BY

18 MR. ZELLER:

19 Q. Please tell us your full name for 09:14AM
20 the record. 09:14AM

21 A. Russell S. Winer. 09:14AM

22 Q. What does the S. stand for? 09:14AM

23 A. Stuart. 09:14AM

24 Q. Have you ever gone by any other 09:14AM
25 name? 09:14AM

1 things I would look at but not referred to as 02:48PM
2 Sleekcraft factors. 02:48PM

3 Q. Are you offering a legal opinion 02:49PM
4 about likely to confusion? 02:49PM

5 MS. HAGBERG: Objection; outside 02:49PM
6 the scope. 02:49PM

7 A. I am not offering a legal 02:49PM
8 opinion. I am offering some evidence of 02:49PM
9 actual confusion, how it contributes to the 02:49PM
10 infringement of Apple's trade dress. 02:49PM

11 Q. Is infringement of Apple's trade 02:49PM
12 dress something that is a recognized field 02:49PM
13 within your expertise? 02:49PM

14 MS. HAGBERG: Objection; vague. 02:49PM
15 Were you finished? 02:49PM

16 MR. ZELLER: Yes. 02:49PM

17 MS. HAGBERG: Objection; vague. 02:49PM

18 A. If I was asked to determine 02:49PM
19 whether or not consumers would be confused 02:49PM
20 between two products, the elements of the 02:50PM
21 Sleekcraft factors many of them would be ones 02:50PM
22 I would use just by my marketing expertise. 02:50PM
23 I would not refer to them as Sleekcraft 02:50PM
24 factors. I have never done that. 02:50PM

25 Q. Why do you call them Sleekcraft 02:50PM

1 in this report? 02:50PM

2 A. The attorneys suggested the 02:50PM

3 Sleekcraft factors as a framework that could 02:50PM

4 be used to understand the likelihood of 02:50PM

5 confusion that can exist in the marketplace 02:50PM

6 as a framework to tie together a number of 02:50PM

7 different elements. 02:50PM

8 Q. Regardless of what they are 02:50PM

9 called, is there anything that you can point 02:50PM

10 to in the peer-reviewed literature in your 02:50PM

11 field where the methodology of these factors 02:50PM

12 are applied? 02:51PM

13 A. Not in the peer-reviewed 02:51PM

14 literature. 02:51PM

15 Q. Have you, yourself, ever written 02:51PM

16 any kind of scholarly article or published 02:51PM

17 materials where you applied the methodology 02:51PM

18 of these factors? 02:51PM

19 MS. HAGBERG: Objection; vague. 02:51PM

20 A. No. 02:51PM

21 Q. Had you ever engaged in such an 02:51PM

22 analysis prior to the time that you were 02:51PM

23 engaged as an expert in this report? 02:51PM

24 MS. HAGBERG: Objection; form 02:51PM

25 and vague. 02:51PM

1 A. No. 02:51PM

2 Q. Is there anything you can point 02:51PM

3 to in your field to show that these factors, 02:51PM

4 called Sleekcraft or something else, are in 02:51PM

5 fact accepted and recognized methodology 02:51PM

6 applied by people in your field? 02:52PM

7 MS. HAGBERG: Objection; vague. 02:52PM

8 Object to the form. 02:52PM

9 A. I have in the classroom asked 02:52PM

10 students to evaluate the similarity and 02:52PM

11 possible confusion between different brands. 02:52PM

12 And brands is a classroom exercise and given 02:52PM

13 them a set of characteristics that they 02:52PM

14 should use to judge that similarity or 02:52PM

15 potential confusion. I never called them 02:52PM

16 Sleekcraft factors and most of the items on 02:52PM

17 this list were in that set of items that I 02:52PM

18 asked the students to consider. 02:52PM

19 Q. Anything else you can point to in 02:52PM

20 your field? 02:52PM

21 A. No. 02:52PM

22 Q. If I understood in the context of 02:52PM

23 these classroom exercises you're talking 02:52PM

24 about, all of the factors that are referenced 02:52PM

25 here in the Sleekcraft factors were not 02:52PM

1 something that you instructed your students 02:52PM
2 on; is that correct? 02:52PM
3 MS. HAGBERG: Objection; 02:52PM
4 misstates testimony, vague. 02:52PM
5 A. I think what I said is that many 02:53PM
6 of these were the criteria that I asked them 02:53PM
7 to use. Not all of them. 02:53PM
8 Q. Which ones did you not ask your 02:53PM
9 students in the context of these exercises to 02:53PM
10 consider? 02:53PM
11 MS. HAGBERG: Objection; vague. 02:53PM
12 A. Particularly, when it listed in 02:53PM
13 paragraph 100 as particularly G and H. 02:53PM
14 Q. You are referring to "Defendants 02:53PM
15 intended selecting the mark" and "Likely to 02:53PM
16 have expansion of the product lines"? 02:53PM
17 A. Yes. 02:53PM
18 Q. Focusing on the Sleekcraft 02:53PM
19 factors that you apply here in your analysis, 02:53PM
20 and specifically focusing on A, strength of 02:53PM
21 the mark. Do you see that? 02:54PM
22 A. Yes, I do. 02:54PM
23 Q. Are there objective definable 02:54PM
24 criteria in your field that define the 02:54PM
25 strength of a mark? 02:54PM

1 A. I think if you take a look at 02:54PM
2 some of the measures I talk about in the 02:54PM
3 case -- in the statement, such as brand 02:54PM
4 equity surveys that are conducted by various 02:54PM
5 independent branding consultings, consulting 02:54PM
6 firms, they provide indications of the 02:54PM
7 strength of the mark. There are other kinds 02:54PM
8 of survey work that I have seen conducted by 02:54PM
9 companies that talk about, again, how 02:54PM
10 distinctive certain marks are relative to 02:54PM
11 others. And, of course, we look at money 02:54PM
12 that is spent on advertising and other 02:54PM
13 marketing support that would help to 02:55PM
14 contribute to the strength of the mark. 02:55PM
15 Q. Anything else? 02:55PM
16 A. I think, also, just the sales of 02:55PM
17 the products, also, have some indication of 02:55PM
18 how strong the mark is. 02:55PM
19 Q. Anything else? 02:55PM
20 A. Well, I think there is some 02:55PM
21 non-quantitative measures as well in terms of 02:55PM
22 just my expertise in terms of being able to 02:55PM
23 compare the distinctiveness, brand 02:55PM
24 identities, the strength of what we call the 02:55PM
25 brand associations that people have with 02:55PM

1 brands. So there are many different measures 02:56PM
2 that can be used to determine the strength of 02:56PM
3 the mark. 02:56PM

4 Q. Anything else? 02:56PM

5 A. No, that's all I can think of 02:56PM
6 right now. 02:56PM

7 Q. In your field, is one factor in 02:56PM
8 evaluating the strength of the mark the 02:56PM
9 exclusivity by which the plaintiff has used 02:56PM
10 it and the length of time? 02:56PM

11 A. I don't think length of time is 02:56PM
12 necessarily correlated with strength of the 02:56PM
13 mark. 02:56PM

14 Q. I didn't ask if it was 02:56PM
15 necessarily correlated. I am asking about in 02:56PM
16 your field, please tell us, in your field, is 02:56PM
17 one factor in evaluating the strength of the 02:56PM
18 mark the exclusivity or lack of exclusivity 02:56PM
19 by which the plaintiff has used it? 02:56PM

20 A. I don't know the definition of 02:56PM
21 exclusivity. I wasn't asked to opine on 02:56PM
22 that. 02:56PM

23 Q. Is the extent of exclusivity of 02:56PM
24 the use of a mark a criteria, criterion that 02:57PM
25 your field recognizes? 02:57PM

1 THE VIDEOGRAPHER: The time is 05:15PM

2 5:17. That's the end of today's 05:15PM

3 deposition. 05:15PM

4 We are going off the record. 05:15PM

5 (Whereupon, at 5:17 p.m., the

6 Examination of this Witness was

7 concluded.)

8

9

10

RUSSELL WINER

11

Subscribed and sworn to before me

12 this ____ day of _____, 2012.

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NOTARY PUBLIC

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