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APPLE INC.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

J.T. COLBY & COMPANY, INC. d/b/a BRICK
TOWER PRESS, J. BOYLSTON & COMPANY,
PUBLISHERS LLC and IPICTUREBOOKS LLC,

Plaintiffs,

- against -

APPLE INC.,

Defendant.

Case No. 11-CIV-4060 (DLC)

ECF Case

**DECLARATION OF DR. GREGORY S. CARPENTER IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

I, Gregory S. Carpenter, declare as follows:

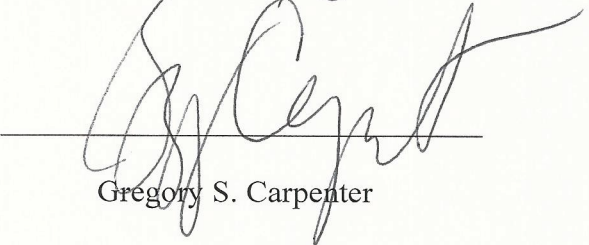
1. I am the James Farley/Booz Allen Hamilton Professor of Marketing Strategy and Director of the Center for Market Leadership at the Kellogg School of Management at Northwestern University. My research on competitive marketing strategy has appeared in leading journals, such as the *Journal of Marketing*, *Journal of Consumer Research*, *Journal of Marketing Research*, *Marketing Science*, and *Management Science*. I have received four awards from the American Marketing Association for the contributions my research has made. My research has been cited in arguments presented to the United States Supreme Court, in addition to being featured by *Harvard Business Review*, *Financial Times* (London), and National Public Radio. I have served on the editorial boards of the *Journal of Marketing Research*, *Marketing Science*, and *Marketing Letters*, and as Associate Editor of *Location Science*

2. I was retained by Kirkland & Ellis LLP to offer an opinion regarding the strength of Plaintiffs' ibooks and ipicturebooks imprints and, from a marketing perspective, the likelihood of confusion of those alleged marks with Apple's iBooks mark. In my opinion, Byron Preiss and Plaintiffs have not taken the actions necessary to create a brand that consumers recognize and associate with a particular source and, given the lack of brand recognition, let alone significant recognition, of the alleged ibooks and ipicturebooks marks, confusion between Plaintiffs' imprints and Apple's iBooks mark is unlikely. My complete opinion is detailed in my Expert Report, which is attached as **Exhibit 1**.

3. At the request of Apple, I also prepared a rebuttal report rebutting, from a marketing perspective, certain issues raised in the expert report of Robert T. Scherer, which was submitted by Plaintiffs on September 17, 2012. My Rebuttal Report is attached as **Exhibit 2**.

4. I declare under penalty of perjury under the laws of the United States that the contents of my expert reports as well as this declaration are either true to my knowledge or based upon information and belief.

Executed this 20th day of December, 2012 in Evansville, Ill.



Gregory S. Carpenter