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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. E. DEBORAH JAY, PH.D. IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

I, E. Deborah Jay, Ph.D. declare as follows:

1. I submit this declaration in support of the motion by Apple, Inc. for summary judgment. I am over the age of 18 and competent to testify. I have personal knowledge of the matters stated in this declaration and would testify truthfully to them if called upon to do so.

2. I am President and CEO of Field Research Corporation, a marketing and public opinion research firm, headquartered in San Francisco, California. I have over 30 years of experience conducting large-scale surveys of all types, including surveys for public agencies, nonprofit organizations, private companies, and law firms. I have conducted many surveys on behalf of plaintiffs and defendants in trademark cases. I have testified in state and federal courts, and I routinely have been qualified by courts as an expert in survey methodology.

3. As detailed in my expert report attached hereto as Exhibit 1, I conducted a likelihood of reverse confusion survey (the “Field Survey”) at the request of counsel for Apple to determine whether potential buyers of print books on Amazon.com and Barnesandnoble.com are likely to mistakenly believe that Apple is the source of, a brand affiliated with, or a sponsor of books sold by Plaintiffs on the Internet.

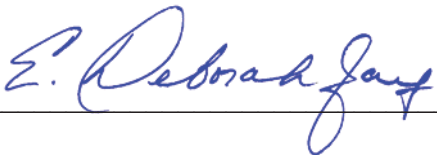
4. The Field Survey was an “*Eveready*”-style survey, designed in accordance with the methods and format for likelihood-of-confusion surveys endorsed in the seminal case of *Union Carbide Corp. v. Ever-Ready, Inc.*, 531 F.2d 366 (7th Cir. 1976), and repeatedly reaffirmed by courts. The Field Survey was conducted according to accepted survey standards and in conformity with the standards discussed in the Federal Manual for Complex Litigation, 4th Ed. § 11.493 (2004) and the Reference Guide on Survey Research, Federal Reference Manual on Scientific Evidence, 3rd Ed. (2011).

5. The Field Survey included two “test” groups. The stimulus for the first test group was the actual web page for a book published by Plaintiffs that was available for sale on the Amazon.com website. The stimulus for the other test group was the actual web page for a book published by Plaintiffs that was available for sale on the Barnesandnoble.com website.

6. Less than 1% of the 428 survey respondents in the two test groups (the groups shown the actual web pages from the Amazon.com and Barnesandnoble.com websites) named Apple in response to the questions in the Field Survey about the source, the affiliation and sponsor of Plaintiffs’ books, and none of the survey respondents in the two test groups named an Apple product in connection with Plaintiffs’ books. In my opinion, this strongly supports the conclusion that there is not a likelihood of reverse confusion.

7. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 21st day of December, 2012 in San Francisco, California.

A handwritten signature in blue ink that reads "E. Deborah Jay". The signature is written in a cursive style and is positioned above a horizontal line.

E. Deborah Jay, Ph.D.