

Dale Cendali
Claudia Ray
Bonnie L. Jarrett
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022

Perry J. Viscounty
LATHAM & WATKINS LLP
140 Scott Drive
Menlo Park, CA 94025

Jennifer L. Barry
LATHAM & WATKINS LLP
600 West Broadway, Suite 1800
San Diego, CA 92101-3375

Attorneys for Defendant
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. STEPHEN M. NOWLIS IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

I, Stephen M. Nowlis, declare as follows:

1. I am the August A. Busch Jr. Distinguished Professor of Marketing in the Olin School of Business at Washington University in St. Louis. I hold a PH.D. in Marketing and a Master's degree in Business Administration from the University of California at Berkeley, Haas School of Business. My field of expertise is marketing, consumer behavior, survey methods, and decision-making.

2. At the request of Kirkland & Ellis LLP, I provided my opinion of the first survey conducted by Susan Schwartz McDonald on behalf of Quinn Emanuel Urquhart and Sullivan and detailed in Dr. McDonald's expert report, *A Survey to Measure Potential Source Confusion Associated with iBooks*, Sept. 17 2012. As explained in my expert report, in my opinion, Dr. McDonald's survey methodology is so flawed that the results from her survey are unreliable and meaningless from a consumer research perspective.

3. I also designed, directed, and supervised the administration of a rebuttal likelihood of a reverse confusion survey. Unlike Dr. McDonald, who used a "conceptual stimulus," in my survey I used one of Plaintiffs' actual books as a stimulus. I also asked widely accepted questions for testing confusion, which were derived from the *Ever-Ready* survey, and used a proper control.

4. The resulting confusion rate from my survey was 1.49%. In my opinion, this strongly supports the conclusion that consumers are not likely to be confused between Plaintiffs' iBooks imprint and Apple's iBooks mark.

5. I declare under penalty of perjury under the laws of the United States that the contents of my expert report, which is attached as **Exhibit 1**, 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 St. Louis, Mo

A handwritten signature in black ink, appearing to read "S. Nowlis", written over a horizontal line.

Stephen M. Nowlis