

# Exhibit 3

REDACTED

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiff,

vs.

No. 11-cv-4060

APPLE, INC.,

Defendant.

-----x

CONFIDENTIAL

VIDEOTAPED DEPOSITION OF  
30(b)(6) JOHN T. COLBY, JR.

New York, New York

Wednesday, July 18, 2012

10:20 a.m.

Reported by:  
Jennifer Ocampo-Guzman, CRR, CLR

Ref: 7845

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2 MR. CHATTORAJ: Objection, calls

3 for speculation. You may answer.

4 A. Generally.

5 Q. What's your understanding?

6 A. The owner died in a car accident  
7 and the widow didn't want to fund the company  
8 to continue operations.

9 Q. Do you have any other information  
10 as to why the company filed for bankruptcy?

11 A. No.

12 Q. Prior to the filing by iBooks, Inc.  
13 of its bankruptcy petition, had you ever  
14 worked for iBooks, Inc.?

15 A. No.

16 Q. Had you ever done business with  
17 iBooks, Inc.?

18 A. Yes.

19 Q. What business had you done?

20 A. The book business.

21 Q. What business had you done with  
22 iBooks, Inc. prior to its filing for  
23 bankruptcy?

24 MR. CHATTORAJ: Objection, asked

25 and answered.

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2 A. I'm not sure what you mean by  
3 "business."

4 Q. Well, I asked you what that  
5 business had you done -- you had said you had  
6 done business with iBooks, Inc. prior to its  
7 filing for bankruptcy, so what was the nature  
8 of that business?

9 A. It was a book transaction.

10 Q. What was it?

11 MR. CHATTORAJ: Objection to form.

12 Q. What type of book transaction?

13 A. Byron purchased the rights to one  
14 of our titles, under our Brick Tower imprint.

15 Q. And was that your only business  
16 dealings with iBooks, Inc. prior to its  
17 filing for bankruptcy?

18 A. Yes.

19 Q. And what title was purchased?

20 A. "The Way of The Pirate" by Robert  
21 Downie, D-O-W--N-I-E.

22 Q. So according to the bankruptcy  
23 petition, am I correct that the net value of  
24 iBooks was negative to the tune of  
25 approximately \$600,000?

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2 A. Yes.

3 Q. And what document reflects the  
4 Simon & Schuster sales?

5 A. I-wks05.xls.

6 Q. So -- and you claim that these  
7 documents were obtained after you acquired  
8 the assets, you wrote to the distributors and  
9 you asked them to give you summaries of the  
10 sales figures; is that right?

11 MR. CHATTORAJ: Objection.

12 A. Not completely, no.

13 Q. What's wrong about it?

14 A. Some of the information came from  
15 the trustee and some of the information came  
16 from the distributors.

17 Q. Okay. Did any of the information  
18 used to create exhibits A, B and C come from  
19 the preexisting business records of iBooks,  
20 Inc.?

21 A. No.

22 Q. What information did you obtain  
23 from the trustee?

24 MR. CHATTORAJ: Objection.

25 A. 350 boxes of information.

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2 Q. Let me be more specific. What  
3 information did you obtain from the trustee  
4 that you used to create exhibits A, B and C?

5 MR. CHATTORAJ: Objection.

6 A. The wks file.

7 Q. Anything else?

8 A. No.

9 Q. Are there in existence  
10 contemporaneous sales records, such as  
11 invoices and the like, showing what the  
12 actual sales in units and dollars were from  
13 1999 through 2006 prior to your acquisition  
14 of the assets in December?

15 MR. CHATTORAJ: Objection.

16 A. What do you mean by  
17 "contemporaneous"?

18 Q. Ordinary course of business  
19 documents that iBooks, Inc. or Byron Preiss  
20 Visual Publications would have had that  
21 reflected sales information?

22 A. None that I've seen.

23 Q. All right. So turning then to the  
24 period post acquisition of the iBooks, of the  
25 assets that included iBooks mark, so in other

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2 A. In 2004, that's correct, right.

3 Q. And why was it that the sales had  
4 dropped from 2003 to 2004, do you know?

5 MR. CHATTORAJ: Objection.

6 A. These are net numbers, but there  
7 are returns. And the returns in '04 reflect  
8 the increased sales in '03.

9 Q. Could you explain what you mean?

10 A. When Simon ships a book in December  
11 of '03, the sales would be recorded as gross  
12 in December of '03 on an accrual basis. The  
13 retailer inventories the book, sells the book  
14 and they keep the book on the shelf until  
15 it's sold, and that period could be 10 months  
16 to 2 years following the update. At any time  
17 during that period the retailer has the  
18 option of returning the book to the  
19 distributor. So hence if there is a large  
20 gross shipments for '03, there follows there  
21 would be large returns in '04 and '05.

22 Q. I see. In other words, on an  
23 accrual -- while there were sales booked in  
24 2003 -- the publisher -- the book store had  
25 the right to return the books and then you

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2 had to subtract out those returns from your  
3 revenue figures; is that right?

4 A. Yes.

5 Q. So do you know specifically what  
6 titles were returned that accounted for the  
7 drop from 2003 to 2004?

8 MR. CHATTORAJ: Objection.

9 A. I have to look at one of those  
10 schedules to see.

11 Q. But you believe it was the returns  
12 that caused the drop?

13 A. Oh, yes.

14 Q. So now in 2004 had, again,  
15 [REDACTED] roughly in sales, but in 2005 the  
16 sales plummeted almost [REDACTED] to  
17 [REDACTED] approximately. Do you know why  
18 the sales dropped over [REDACTED] in, from  
19 2004 to 2005?

20 MR. CHATTORAJ: Objection.

21 A. I know part of the reason.

22 Q. Which is?

23 A. Simon & Schuster and Byron parted  
24 company.

25 Q. And Simon & Schuster had been the



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2 Q. Is it fair to say that in 2005,  
3 Mr. Preiss' company, iBooks, Inc., was in  
4 poor financial shape?

5 MR. CHATTORAJ: Objection.

6 A. I don't know.

7 Q. Is it -- well, let's turn from 2005  
8 to 2006. And in 2006 the sales, once again,  
9 plummeted from approximately [REDACTED] --

10 MS. CENDALI: Excuse me.

11 Q. In 2005, the sales which had  
12 dropped from the [REDACTED] in 2004, the  
13 2005 sales were roughly [REDACTED], but in  
14 2006 through approximately mid-December of  
15 2006 when you acquired the assets that  
16 included the mark iBooks, sales had shrunk to  
17 only [REDACTED], approximately. Why was that?

18 MR. CHATTORAJ: Objection.

19 A. There was many reasons, but in that  
20 instance the returns from '03, '04, '05 came  
21 back to haunt '06.

22 Q. So in essence there was, in  
23 layman's terms, was there a false sense of  
24 prosperity in 2003 because there were sales  
25 but the books sat on the shelves, no one

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2 25 to 50 percent for eBooks, but that's the  
3 percentage of net proceeds.

4 Q. Then there's a line for inventory  
5 write-off, do you see that?

6 A. I do.

7 Q. What is encompassed under that  
8 heading?

9 A. That is the value of inventory that  
10 we sold or destroyed in those specific years.

11 Q. So for example, for 2011 there is  
12 -- in the line inventory write-off there is  
13 approximately [REDACTED]. Do you see that?

14 A. I do.

15 Q. Does that mean you sold [REDACTED] in  
16 inventory or that you destroyed [REDACTED] of  
17 inventory or a combination of the two?

18 MR. CHATTORAJ: Objection.

19 A. That is a debit to inventory  
20 write-off and a credit to inventory.

21 Q. But does that indicate then that --  
22 does that reflect sales or destruction of  
23 inventory?

24 A. It reflects the -- in this case,  
25 the destruction of inventory, right,

1 Confidential-Colby  
2 destruction of inventory, correct.

3 Q. And why was there a destruction of  
4 inventory?

5 A. The returns from orders and other  
6 independence were nonsalable.

7 Q. And so in 2011 you received  
8 approximately [REDACTED] worth of returns that  
9 had to be destroyed; is that right?

10 A. No.

11 Q. Correct me.

12 A. That's an inventory valuation that  
13 once was an asset that needed to be removed  
14 from the balance sheet to show the  
15 destruction and removal of that asset.

16 Q. I understand. But the reason the  
17 asset had to be removed from the balance  
18 sheet is that when you got the returns from  
19 Border's and some of the independence, they  
20 couldn't be sold so you destroyed the books  
21 instead?

22 A. That is part of the reason, yes.

23 Q. Is there any other part of the  
24 reason?

25 A. My distributor NBN was having its

1 Confidential-Colby  
2 problems selling print copies of our books.

3 Q. Why?

4 A. I wish I knew, other than the  
5 Border's collapse.

6 Q. Did you change distributors?

7 A. Not completely.

8 Q. Does NBN still distribute books  
9 bearing the iBooks imprint?

10 A. Yes.

11 Q. Does it still distribute print  
12 versions of those books?

13 A. Yes.

14 Q. Does it distribute any electronic  
15 versions of those books?

16 A. No.

17 Q. Does your new distributor  
18 distribute any books bearing the iBooks  
19 imprint?

20 A. Yes.

21 Q. Who is your new distributor?

22 A. Lightning Source Ingram Book  
23 Company.

24 Q. And why did you bring on Lightning  
25 Source as a new distributor?

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2 A. Three reasons: One, they wanted  
3 our business; Two, NBN couldn't sell our  
4 stuff satisfactorily; and, three, they  
5 offered better marketability and  
6 merchantability of our iBooks list than NBN  
7 could do.

8 Q. Does Lightning Source also  
9 distribute any of your books electronically?

10 A. They do.

11 Q. Does that include books, iBook or  
12 ipicturebooks imprints?

13 A. That's correct.

14 Q. And do you plan on phasing out NBN?

15 MR. CHATTORAJ: Objection.

16 A. I don't know. I don't know.

17 Q. Was NBN happy that you brought on a  
18 new distributor?

19 A. Not really, no.

20 Q. In 2010 it looks like under total  
21 cost of sales or under inventory write-off  
22 there is a write off of about [REDACTED]. Do  
23 you see that?

24 A. I do.

25 Q. Was that the same situation of

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2 returns that needed to be destroyed?

3 A. That's right. And also inventory  
4 needed to be liquidated, yes, that's right.

5 Q. So you ended up with a line called  
6 gross margin, and in 2011 it's listed as  
7 negative [REDACTED]; is that right?

8 A. That's right.

9 Q. What does that mean?

10 A. The [REDACTED]?

11 Q. Yes, when it says negative  
12 [REDACTED] -- there is a negative sign there,  
13 right?

14 A. Right.

15 Q. Does that mean that you didn't make  
16 a profit, you were at a loss in 2011 in terms  
17 of profitability?

18 A. On what basis?

19 Q. I'm just trying to understand. It  
20 said gross margin. What is supposed to be  
21 captured by gross margin?

22 A. That's the operating loss for 2011.

23 Q. So even though you had increased  
24 sales in 2011, you ended up having an  
25 operating loss; is that true?

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2 A. Probably was J. Boylston & Company.

3 Q. And that registration was obtained  
4 after this lawsuit was filed, correct?

5 MR. CHATTORAJ: Objection.

6 A. I believe so.

7 Q. Does J. Boylston have an active  
8 website at ipicturebooks.net?

9 A. No.

10 Q. What happens when someone goes to  
11 ipicturebooks.net?

12 MR. CHATTORAJ: Objection.

13 A. I don't know.

14 (Defendant's Exhibit 44,  
15 ipicturebooks.net website printout,  
16 marked for identification, this date.)

17 MS. CENDALI: I'll show you  
18 Exhibit 44.

19 Q. Does this reflect what happens when  
20 a consumer types URL ipicturebooks.net?

21 A. I don't know.

22 Q. Why haven't you put any content on  
23 ipicturebooks.net?

24 A. I'm unsure how to effectively  
25 market a web strategy.