

**EXHIBIT 12**

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

1 Confidential-Colby  
2 asked in these interrogatories for  
3 information regard to the advertising  
4 expenditures relating to such books, correct?

5 A. Yes.

6 Q. And in response in addition to  
7 asserting objections, your -- plaintiffs  
8 responded by saying that it produced Excel  
9 spreadsheets; isn't that true?

10 MR. CHATTORAJ: Objection.

11 A. Yes.

12 Q. Okay. And in the verification to  
13 the interrogatories it states that -- that  
14 you have read the foregoing plaintiffs  
15 responses to the second set of  
16 interrogatories of defendant Apple, that he  
17 knows the contents thereof of the Microsoft  
18 Excel spreadsheets provided there with as  
19 exhibits A, B and C; and that you furnished  
20 the factual information set forth therein.  
21 Do you see that?

22 A. I do, that's what it says.

23 Q. What factual information did you  
24 furnish in order to create the Excel  
25 spreadsheets?

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2 MR. CHATTORAJ: Objection.

3 A. I provided the sales in dollars and  
4 units of each title under iBooks and  
5 ipicturebooks imprints that's requested by  
6 defendant.

7 Q. How did you obtain that  
8 information?

9 MR. CHATTORAJ: Objection.

10 A. What do you mean "How"?

11 Q. Did you refer to a document that  
12 contained the sales information?

13 A. No.

14 Q. Well, where did you get the  
15 information from?

16 A. From computer files.

17 Q. Okay. What computer files did you  
18 look at that contain this information?

19 A. Information on the spreadsheet?

20 Q. Yes.

21 A. There ARE three basic computer  
22 files that contain the information.

23 Q. What are their names?

24 A. Tr.trans, roitrans, ipicturebooks,  
25 T-R-R-O-I, iBooks, and T-R, dot, I-M-F, 3

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2 T-R-I-F.

3 Q. Are these files on the hard drive?

4 A. Yes.

5 Q. If I wanted to find these files on  
6 the hard drive, where would I look?

7 A. You would look in a folder called  
8 Trade 3 within an application called Brick  
9 Tower Press, MP.

10 Q. Are all three of those documents in  
11 that folder?

12 A. Oh, yes.

13 Q. Is there anything else in that  
14 folder?

15 A. Oh, yes.

16 Q. How will I know -- and are these  
17 Excel files?

18 A. Yes, they are.

19 MS. CENDALI: And by the way, Lisa  
20 Widup, trademark counsel for Apple has  
21 also joined the deposition remotely.

22 Q. The information in these files  
23 contains numbers and -- numbers of units and  
24 sales information, right?

25 A. Of what?

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2 Q. Of books sold under the iBooks and  
3 ipicturebooks marks, correct?

4 A. Yes.

5 Q. Where was that information derived?

6 MR. CHATTORAJ: Objection.

7 A. All of our distributors.

8 Q. What are the -- you're talking  
9 about you looked at three spreadsheets, Excel  
10 spreadsheets that were in your hard drive; is  
11 that right?

12 A. No.

13 Q. I just asked you where you obtained  
14 the factual information used to create  
15 exhibits A, B and C?

16 MR. CHATTORAJ: Objection.

17 A. Right.

18 Q. And you referred to three  
19 spreadsheets; isn't that right?

20 A. I did.

21 Q. Okay. So where did the  
22 spreadsheets get the information about the  
23 sales? Where are the underlying documents?

24 MR. CHATTORAJ: Objection.

25 A. There are additional computer

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2 files.

3 Q. Please tell me all computer files  
4 that you used and relied on in order to  
5 provide the information reflected on exhibits  
6 A, B and C to your Interrogatory Responses?

7 MR. CHATTORAJ: Objection.

8 A. Well, we start out with the --  
9 we're going backwards. I'm not sure whether  
10 to go backwards or to go forwards.

11 When we acquired the assets, we  
12 contacted, as you indicated earlier,  
13 different distributors, and we asked them to  
14 transfer the -- our -- substitute our  
15 information for the older entities. They  
16 sent us sales information, each distributor  
17 and there were maybe 15 different  
18 distributors that sent sales information in a  
19 computer filed format, usually either a comma  
20 separated value format, an Excel spreadsheet  
21 format or a tab separated file. And there  
22 are probably hundreds of them.

23 Q. So dealing with the era where Byron  
24 Preiss and -- well, dealing with the sales of  
25 products bearing the mark iBooks, those have

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2 been made prior to your purchase of the asset  
3 of the company iBooks, Inc., correct?

4 MR. CHATTORAJ: Objection.

5 A. No.

6 Q. What company made the sales?

7 A. Initially Simon & Schuster, then  
8 PGW.

9 Q. Those were the distributors though.

10 A. They're the ones who made the  
11 sales.

12 Q. Did your -- did Byron Preiss sell  
13 the books to Simon & Schuster and the  
14 distributors?

15 A. No.

16 Q. What documents exist that show what  
17 the sales were that were made by Simon &  
18 Schuster?

19 A. A spreadsheet called i-wks05.xls.

20 Q. And what period of time does that  
21 cover?

22 A. 1999 through 2005.

23 Q. And was this spreadsheet provided  
24 directly by Simon & Schuster?

25 A. Directly to whom?

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2 MR. CHATTORAJ: Objection.

3 Q. To your companies?

4 A. No.

5 Q. What information did Simon &

6 Schuster provide?

7 MR. CHATTORAJ: Objection.

8 A. Zero.

9 Q. So it didn't provide you with any  
10 documents?

11 A. Not Simon & Schuster.

12 Q. Okay. You have a spreadsheet that  
13 you're using to respond to plaintiffs'  
14 interrogatories. You're the 30(b)(6)  
15 witness. You testified under oath that you  
16 know the contents of the spreadsheets and you  
17 furnished the factual information set forth  
18 therein. Right?

19 A. That's true.

20 Q. Okay. Where did you get the  
21 information with regard to sales of books  
22 during the time before your acquisition of  
23 the assets?

24 MR. CHATTORAJ: Objection.

25 A. From which distributor?

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2 Q. From anyone.

3 A. It varies, the bankruptcy trustee  
4 provided me with the information.

5 Q. Okay. Could you tell me the Bates  
6 numbers of all the information that you  
7 relied on to create the spreadsheets in  
8 exhibits A, B and C?

9 MR. CHATTORAJ: Objection.

10 A. I can't do that, no.

11 Q. Can you tell me the names of the  
12 documents of -- that you relied on to create  
13 the spreadsheets A, B and C?

14 A. Most of them, yes.

15 Q. Please do.

16 A. There was the ones I previously  
17 mentioned. The underlying documents for  
18 those were from a file called raw eBook  
19 trans, and the other file was I think raw PGW  
20 trans, but it's got the name PGW in it.  
21 You've got all the stuff on the hard drive.  
22 And the third document I previously mentioned  
23 through Simon & Schuster, the i-wks05.xls  
24 document and that too was provided on the  
25 hard drive, as well as the flash drive.

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2 Q. Where -- if I wanted to find these  
3 three files on the hard drive, where would I  
4 look?

5 MR. CHATTORAJ: Objection.

6 Q. Where is --

7 MS. CENDALI: Objection.

8 A. The easiest way to do a search is  
9 "wks" and it pops up.

10 Q. Are they in a folder?

11 A. If they're provided on a flash  
12 drive, no. I didn't provide the flash drive  
13 to you. My attorneys provided it. I don't  
14 believe I put it in a folder on the flash  
15 drive. The wks file on the hard drive should  
16 be in a folder, probably Simon & Schuster  
17 sales data.

18 Q. Okay. What I'm trying to find out  
19 is you mentioned these computer files. Are  
20 these computer files documents that were  
21 obtained from the distributors of the books?

22 A. Yes.

23 Q. And does that include files  
24 obtained from Simon & Schuster reflecting  
25 sales made by them?

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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 words, post mid-2006 when you acquired the  
3 assets of iBooks, Inc. and Byron Preiss  
4 Visual Publications, okay, what was the  
5 source for the information contained in  
6 exhibits A, B and C of that information?

7 MR. CHATTORAJ: Objection.

8 A. The sales records from its  
9 distributor.

10 Q. You didn't need to post  
11 acquisition, write to each distributor and  
12 say please give me copies of the sales  
13 records, correct?

14 MR. CHATTORAJ: Objection.

15 A. No.

16 Q. So do you obtain monthly or  
17 quarterly sales records from distributors?

18 A. I'm sorry. Do I retain them?

19 Q. Do obtain them?

20 A. Obtain them, yes.

21 Q. How often do you receive reports  
22 from distributors? Again, relating to sales  
23 of iBooks imprint products?

24 A. After the acquisition?

25 Q. Correct.

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2 A. Each distributor is different. Not  
3 most of them are pretty good, I get them once  
4 a month. Some distributors are not so good,  
5 so I get them once every 3 months. Some  
6 distributors don't send them to me at all, I  
7 have to go after them to get them.

8 Q. What distributors have you used to  
9 distribute iBooks' products since you  
10 acquired the assets in mid-2006, December?

11 A. Which -- I'm sorry, which  
12 distributors?

13 Q. With regard specifically to  
14 describing iBooks' products in the United  
15 States?

16 A. PGW, NBN and Lightning Source.

17 Q. So there are only three  
18 distributors of iBooks' products since you  
19 acquired the assets in mid-2006; is that  
20 correct?

21 A. That's a lot of distributors.

22 Q. And -- but not 15?

23 A. You're talking about the print  
24 books only?

25 Q. What distributors -- so did you --

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2 do underlying records exist showing in a  
3 contemporaneous fashion what the sales  
4 figures actually were in the post  
5 mid-December 2006 period to the present for  
6 iBooks' products?

7 MR. CHATTORAJ: Objection.

8 A. I'm sorry. Let me just understand  
9 the question.

10 Q. As opposed to a spreadsheet that  
11 may have a summary of information, does there  
12 exist monthly or quarterly documents from  
13 distributors that report on sales of books  
14 using the iBooks imprint?

15 A. There are computer files.

16 Q. And are these computer files  
17 generated by your company or are these  
18 computer files sent to you by the  
19 distributors?

20 A. They're all sent to me by the  
21 distributors.

22 Q. Okay. How would I find, if I  
23 wanted to, the documents that were sent to  
24 you by the distributors since you've acquired  
25 the assets?

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2 A. How do you find them where?

3 Q. On the hard drive.

4 A. You would go to the trade 3 folder,  
5 look under a folder called "distributors" and  
6 they're listed as each distributor, and then  
7 within each distributor folder there are any  
8 sales information from that distributor.  
9 Also there is a folder called I think sales  
10 reporting or sales history, that appears  
11 under the "distribution" folder, and that too  
12 would contain the sales information from the  
13 distributor.

14 Q. Did you personally create the  
15 spreadsheets, A, B and C that were provided  
16 with the Interrogatory Responses?

17 A. I gave them to my attorney.

18 Q. Did you give your attorneys the  
19 underlying data or did you give your  
20 attorneys the completed spreadsheets?

21 A. I gave them the completed  
22 spreadsheets.

23 Q. Okay.

24 (Defendant's Exhibit 76, CD  
25 labeled, "Plaintiffs' Responses and