EXHIBIT 22

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

601 Lexington Avenue
New York, New York 10022

Bonnie L. Jarrett
To Call Writer Directly:
(212) 446-4964
bonnie.jarrett@kirkland.com

(212) 446-4800

www.kirkland.com

Facsimile:
(212) 446-4900

August 9, 2012

Via Electronic Mail

David Shaiman
Allegaert Berger & Vogel LLP
111 Broadway, 20th Floor
New York, NY 10006

Re: *J.T. Colby & Co., Inc., et al. v. Apple Inc.*, No. 11 cv 4060

Dear David:

I am writing in response to your letter of August 3, 2012.

Interrogatory Responses

We look forward to receiving Plaintiffs' supplemental response to Interrogatory No. 9 by Monday, August 13, 2012. While we appreciate your confirmation that Plaintiffs' responses to Interrogatories Nos. 10 and 11 set forth all information known to them regarding the information sought by those requests, in order to respond to Interrogatory No. 11, Plaintiffs must also identify the advertisements produced by Plaintiffs by Bates number or other information (*e.g.*, file path and name).[1] In your August 3 letter, you identified "all of Plaintiffs' business records" and asserted that "Plaintiffs have no further obligation to supply you with information to identify specific documents. . . ." *See* Letter from D. Shaiman to B. Jarrett, dated Aug. 3, 2012 ("Pls.' Aug. 3 Ltr."), at 1-2. That assertion is incorrect. In fact, Rule 33(d) requires Plaintiffs to "specify[] the records that must be reviewed, in sufficient detail to enable [Apple] to locate and identify them as readily as the responding party could." Given this obligation, it clearly is improper for Plaintiffs to refer Apple to all of their business records for the answer to Interrogatory No. 11. Indeed, as one court has explained:

> Rule 33(d) does not permit a party to respond to an interrogatory by simply pointing to a mass of documents and advising the interrogating

[1] In an effort to address Plaintiffs' objections to Interrogatory No. 11, Apple will narrow the scope of Interrogatory No. 11. Specifically, Plaintiffs need not state the dates on which advertisements depicting the "ibooks" and "ipicturebooks" imprints appeared, in what outlet such advertisements appeared, the circulation of each advertisement, or the cost of placing each such advertisement.

> party that the answer to its question is 'in there somewhere.' A Rule 33(d) interrogatory response must, to some extent, specify the appropriate documents from which the information sought can be derived. It is "an abuse of the [Rule 33(d)] option" to merely direct the interrogating party to a mass of business records.

In re Vivendi Universal, S.A. Secs. Litig., No. 02 Civ. 5571 (RJH) (HBP), 2009 WL 8588405, at * 6 (S.D.N.Y. July 10, 2009) (alterations in original; quoting Advisory Committee Note to the 1980 Amendment to Rule 33(c)).

Furthermore, in your letter of July 26, 2012, you asked us to "provide [you] with the Bates numbers of any produced documents that Apple believes are responsive to this request." *See* Letter from D. Shaiman to B. Jarrett, dated July 26, 2012. We provided you with that information on August 8, 2012. *See* Letter from B. Jarrett to D. Shaiman, dated Aug. 8, 2012.

In short, the law is clear that Plaintiffs must identify the documents contained in the hard drive that they contend contain the answer to Interrogatory No. 11. Please do so by Thursday, August 16, 2012.

Initial Disclosures

We look forward to receiving Plaintiffs' amended initial disclosures, removing Jerry Butler from the list of individuals Plaintiffs intend to rely upon, by Friday, August 10, 2012.

Privilege Logs and Excluded Documents

My June 22, 2012 letter provided you with a proposed format and date range for the parties' respective privilege logs.[2] In your August 1st letter, you note that Plaintiffs "have concerns as to the format, date range, and other details" of privilege logs, but you do not provide any suggestions as to how to address those concerns. In order to move this discussion forward, please provide us with a counter-proposal by August 10, 2012, and we will review it with our client.

With respect to the documents that Plaintiffs requested be excluded before we reviewed Plaintiffs' hard drive, you state that you are unable to review those documents, and produce any documents that are not in fact privileged, because Plaintiffs "do not have" them. *See* Pls.' Aug. 3, 2012 Ltr., at 2. It was our understanding that Plaintiffs had retained a copy of the hard drive that Plaintiffs produced on March 23, 2012. *See, e.g.,* Letter from B. Jarrett to P. Chattoraj, dated June 11, 2012, at 2 ("It is our understanding that the hard drive that was produced is

[2] Contrary to the assertion in your letter that "Defendant has not yet committed to a date by which it will provide a privilege log" (*see* Pls.' Aug. 3, 2012 Ltr., at 2), my June 22 letter also proposed that each party provide its privilege log three business days before its first witness is deposed. *See* Letter from B. Jarrett to P. Chattoraj, dated June 22, 2012, at 1.

actually a copy of the hard drive John Colby uses in connection with all of his publishing businesses.").

In any event, however, it simply is not the case that Plaintiffs need the hard drive to review the excluded documents. Specifically, although the processed data that VDiscovery (our e-discovery vendor) provided to both parties does not include the excluded documents, VDiscovery kept a copy of the excluded documents that it can make available to Plaintiffs so that the documents can be reviewed and any responsive, non-privileged documents from that group can be produced. (To be clear, pursuant to the parties' March 2012 agreement, we do not have a set of the excluded documents to provide you.) Accordingly, please produce those documents by Thursday, August 23, 2012.

Plaintiffs' Document Production

We appreciate the additional information you provided regarding Plaintiffs' document production, and will let you know if your suggestions do not resolve our difficulties in opening any of the files. In addition, we are still reviewing the transcripts of the Rule 30(b)(6) deposition and Mr. Colby's deposition in his individual capacity, and will provide you with a complete list of any documents we are unable to locate.

Plaintiffs' Sales through Brick-and-Mortar and Online Stores

You state in your August 1st letter that the "NBNTransFile" documents produced by Plaintiffs contain information regarding copies of Plaintiffs' books bearing the "ibooks" and "ipicturebooks" imprints to brick-and-mortar stores. *See* Pls.' Aug. 3, 2012 Ltr., at 4. However, we are unable to determine from that document whether books are sold through brick-and-mortar stores or online retailers. Specifically, there are many entries for businesses that have both physical and online stores, including national chains such as Barnes & Noble and Borders, and individual businesses such as Quail Ridge Books & Music in Raleigh, NC and The Red Balloon Bookshop in St. Paul, MN. The "NBNTransFile" documents also include information about sales to Ingram, a distributor. It is our understanding that Ingram distributes books to both brick-and-mortar stores and to online retailers, including Amazon.com. In short, it is impossible to tell from the "NBNTransFile" documents how many, if any, of Plaintiffs' books bearing the "ibooks" and "ipicturebooks" imprints are sold to brick-and-mortar stores, and how many such books are sold online. If our understanding is incorrect, please explain how one can make that determination. If our understanding is correct, please produce documents that set forth the information that Mr. Colby could not provide during the Rule 30(b)(6) deposition by Thursday, August 16, 2012.

* * *

If you have any questions about the issues discussed above, please do not hesitate to contact me. The foregoing is not intended to be a full and complete recitation of Apple's position with respect to any discovery issues, and Apple hereby expressly reserves, and does not waive, all of its rights and remedies in connection with these issues.

Sincerely,

Bonnie L. Jarrett

Bonnie L. Jarrett

cc: Robert Raskopf, Esq.
Partha Chattoraj, Esq.

Dale M. Cendali, Esq.
Claudia Ray, Esq.