

EXHIBIT 34

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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J.T. COLBY & COMPANY, : Case Number
INC. d/b/a BRICK TOWER : 11-CV-40260
PRESS; J. BOYLSTON & : (DLC)
COMPANY, PUBLISHERS LLC :
and IPICTUREBOOKS :
LLC, :
Plaintiffs, :
vs. :
APPLE, INC., :
Defendant. :

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October 2, 2012

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Videotaped deposition of APPLE,
INC., through HAL E. BORDEN, ESQUIRE, taken
at the offices of Veritext National Court
Reporting Company, 1801 Market Street, Suite
1800, Philadelphia, Pennsylvania 19103,
beginning at 10:15 a.m., before LINDA ROSSI
RIOS, RPR, CCR and Notary Public.

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VERITEXT NATIONAL COURT REPORTING COMPANY
MID-ATLANTIC REGION
1801 Market Street - Suite 1800
Philadelphia, Pennsylvania 19103

1 HAL E. BORDEN, ESQUIRE

2 marks?

3 A. I don't know whether he did or
4 not.

5 Q. And when I say "verbally," you
6 understand I mean --

7 A. Orally.

8 Q. Yes. So if I had asked it as
9 when I -- to the best of your knowledge, did
10 Glenn Gundersen ever communicate orally with
11 anyone at Apple concerning plaintiffs' marks?

12 A. I don't know. In the context
13 of that question, prior to January 27th,
14 speaking about the two applications and
15 ancillary online information that I've been
16 referring to.

17 Q. Can you describe with any
18 greater specificity the, quote/unquote,
19 ancillary online information that you
20 referred to?

21 A. The extent to which I remember
22 is that it was a description of Byron Preiss
23 who was a founder or had other significant
24 involvement in the applicant in question.

25 Q. Do you recall what it said

1 HAL E. BORDEN, ESQUIRE

2 about Byron Preiss?

3 A. I believe that it indicated
4 that Byron Preiss had died and his company in
5 question had gone into bankruptcy.

6 Q. Was this a news article?

7 A. I don't recall the context.

8 Q. Was it a bankruptcy filing?

9 A. I don't believe it was a
10 bankruptcy filing.

11 Q. When you say "online
12 information," was this information found
13 through the Internet or was it found through
14 a professional search database?

15 A. To the best of my recollection,
16 it was found through the Internet.

17 Q. At that time, did you have an
18 understanding that Byron Preiss and the
19 bankruptcy, those facts related in that
20 online source, referred to the same entity as
21 were the applicants for the two abandoned
22 registrations?

23 A. I believe so.

24 Q. That was an understanding you
25 had then, just to clarify?

1 HAL E. BORDEN, ESQUIRE

2 A. Correct.

3 Q. Are you aware of a concept
4 called common-law marks?

5 A. I am.

6 Q. What does that term mean to
7 you?

8 A. The most basic meaning is that
9 it refers to trademark rights based not on a
10 registration, but based on unregistered use.

11 Q. In formulating search
12 strategies in general, do you attempt to
13 capture common-law marks?

14 A. Yes. As a general matter.

15 Q. As a general matter, how do you
16 search for common-law marks?

17 A. Web searches are the most
18 common way to do that.

19 Q. Any other ways?

20 A. It depends on the context of a
21 particular search. There are other sources.

22 Q. Have you ever heard searches
23 referred to as preliminary searches or
24 otherwise known as knockout searches and then
25 so-called full searches? Is that a

1 HAL E. BORDEN, ESQUIRE

2 A. I don't recall.

3 Q. What about you, yourself, did
4 you ever download the filings with the U.S.
5 PTO in connection with those two abandoned
6 applications prior to January 27, 2010?

7 A. That answer as to anyone
8 included me, so yes.

9 Q. I just wanted to clarify that
10 for the record.

11 A. I'm not sure yes is -- yes is
12 not the answer to the question. I think the
13 answer to the question is I don't recall.

14 Q. Very well. Okay. I do need to
15 clarify the record.

16 Did you, yourself, ever
17 download the filings with the U.S. PTO in
18 connection with those two abandoned
19 applications prior to January 27, 2010?

20 A. I don't recall.

21 Q. You mentioned this online
22 information that was discovered concerning
23 Mr. Preiss and the bankruptcy of his
24 companies, which at that time you understood
25 to be the applicants with respect to the

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HAL E. BORDEN, ESQUIRE

abandoned applications. Did anyone seek to download the bankruptcy filings in connection with those companies at the time, meaning prior to January 27, 2010?

A. I don't recall.

Q. Was any documentation in connection with the bankruptcy of those entities reviewed by Apple or anyone acting on Apple's behalf prior to January 27, 2010?

A. Not to my knowledge.

Q. Was any information concerning Mr. Preiss reviewed by anyone at Apple or anyone acting on Apple's behalf other than the online information you identified concerning his death prior to January 27, 2010?

THE WITNESS: Could you read the question back, please?

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(The court reporter read the pertinent part of the record.)

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THE WITNESS: Not to my knowledge.

1 HAL E. BORDEN, ESQUIRE

2 being aware of searches beyond that
3 which were described in the question.

4 BY MR. CHATTORAJ:

5 Q. So having discovered that the
6 applicant had gone bankrupt, no one searched
7 to see what became of the applicant or its
8 mark after the bankruptcy. Right?

9 A. I don't recall searches of that
10 nature.

11 Q. You've used the word
12 "abandoned" several times in connection with
13 the application by Byron Preiss' iBooks
14 entity during your testimony today. What do
15 you mean by that?

16 A. It's literally the status that
17 the trademark office gives to an application
18 that is not prosecuted through to registration.

19 Q. Does an applicant have to stop
20 using a mark if it abandons its application
21 to the trademark office?

22 MS. RAY: Objection.

23 THE WITNESS: No, not to my
24 understanding.

25 BY MR. CHATTORAJ: