

**EXHIBIT 35**

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,

Plaintiffs,

vs.

No. 11-cv-4060 (DLC)

APPLE, INC.,

Defendant.

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VIDEOTAPED DEPOSITION OF Philip G.  
Hampton, II, taken by Plaintiffs, pursuant to  
Agreement, at the offices of Quinn Emanuel Urquhart  
& Sullivan LLP, 51 Madison Avenue, New York, New  
York, on Thursday, November 29, 2012, commencing at  
9:17 a.m., before Chandra D. Brown, a Registered  
Professional Reporter and Notary Public within and  
for the State of New York.

Job No: 27911

1 P. Hampton - 11/29/12

2 A Yes.

3 Q And Apple learned that the Byron Priess  
4 entity went bankrupt, right?

5 MR. VISCOUNTY: Objection.

6 A Yes.

7 Q And Apple did not follow up to see what  
8 happened to the assets of the Byron Priess  
9 entity, did it?

10 MR. VISCOUNTY: Objection.

11 A There is nothing in the records that I've  
12 read that showed that Apple followed up.

13 Q And no one has shown you any record that  
14 suggests that Apple followed up, I take it.

15 MR. VISCOUNTY: Objection.

16 A Correct.

17 Q Now, you're an experienced trademark  
18 lawyer, right?

19 A Yes, sir.

20 Q And if you have reason to believe --  
21 you're doing a search for it -- to find out who  
22 is using iBooks for Books, among other things,  
23 right --

24 MR. VISCOUNTY: Objection.

25 Q -- it's included.

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2 Q So a prudent trademark search which  
3 locates a mark for use on a product or service  
4 that is related, at a minimum, to the proposed  
5 use would dictate that if such use was located  
6 but the mark, the mark's owner was in  
7 bankruptcy, that the search should then  
8 determine whether the mark passed to a  
9 subsequent purchaser of that business out of  
10 bankruptcy; wouldn't it?

11 MR. VISCOUNTY: Objection.

12 A Not necessarily.

13 Q Okay.

14 Why not?

15 MR. VISCOUNTY: Objection.

16 A There are a lot of factors that one would  
17 evaluate as to whether or not additional  
18 searching would be done.

19 Q Okay.

20 So now based on what you understand to be  
21 what Apple did here, what would validate  
22 Apple's determination not to look into whether  
23 the trademark iBooks asset of Preiss was  
24 purchased out of bankruptcy by a subsequent  
25 purchaser?

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2 MR. VISCOUNTY: Objection.

3 A Well, there are some facts specific to  
4 this case which would lessen the need to do any  
5 follow-up on the bankruptcy of the Preiss  
6 entity.

7 Q Okay. Lessen or eliminate.

8 Let's make sure we understand each other.  
9 I'm not talking about lessening any need. I'm  
10 talking about eliminating any need.

11 Is there anything that you saw in anything  
12 that Apple did that eliminated, as far as  
13 you're concerned, the need to follow up on the  
14 Byron Priess bankruptcy?

15 MR. VISCOUNTY: Objection.

16 A Again, I am not going to answer that  
17 question with the word "eliminate" because  
18 "eliminate" means that there would be a zero  
19 percent chance of doing anything. I believe  
20 that it significantly lessened -- the facts in  
21 this case are such that there was significantly  
22 lessened and approached a zero percent need to  
23 do any additional searching.

24 Q Even though the fact that Byron Priess was  
25 in bankruptcy and one of his assets was iBooks

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2 for Books was made known to Apple --

3 MR. VISCOUNTY: Objection.

4 Q -- right?

5 MR. VISCOUNTY: Objection.

6 A Yes.

7 Q Now tell me what those facts are.

8 A The facts in this case were that Apple did  
9 a lot of searching on the Internet, et cetera.  
10 It found no mention of anybody's use of iBooks  
11 for Books after the Preiss bankruptcy dates.  
12 And in this case, since the Preiss bankruptcy  
13 took place in about 2005, and this search was  
14 done in 2010, the chances that there were --  
15 there was anything other than a very de minimis  
16 use of an iBooks trademark by a company for  
17 goods that would be relevant to Apple's  
18 proposed use of an iBooks mark, I believe that  
19 the chances of that approached zero.

20 Q So you understand that --

21 MR. VISCOUNTY: Hold on a second.

22 It's easier for the Court Reporter and  
23 videographer if you face this way. They can  
24 take down your testimony.

25 MR. RASKOPF: I'm not offended by that.

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2 I'm a little offended by the fact that he had  
3 to move, but --

4 Q So you understand that to find out what  
5 happened to that asset, all Apple had to do was  
6 consult the bankruptcy records in the Federal  
7 District Court of New York, right?

8 MR. VISCOUNTY: Objection.

9 A I don't know that that's all they had to  
10 do.

11 Q Let's just say you elected -- it was your  
12 search and you elected, notwithstanding these  
13 mounds of evidence that suggested that nobody  
14 is using the iBooks mark anymore, decided to  
15 find out what happened to that asset of Byron  
16 Priess in bankruptcy, what would you, as a  
17 trademark practitioner, do in order to see  
18 whether someone had purchased that asset?

19 MR. VISCOUNTY: Objection.

20 A You're assuming that I would do, given  
21 these facts, I would do anything.

22 Q Yes, I am.

23 A And I would not do anything. I would have  
24 done exactly --

25 Q I understand that. I understand your