

EXHIBIT 38

CONFIDENTIAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
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

APPLE, INC.,

Defendant.

-----X

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VIDEOTAPED DEPOSITION OF

JOHN T. COLBY, JR.

New York, New York

Friday, July 20, 2012

9:41 a.m.

Reported by:
Jennifer Ocampo-Guzman, CRR, CLR

Ref: 7827

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2 Q. Well, you now know that Diamond
3 Comics did not distribute ibooks, right?

4 A. I'm still uncertain of that.

5 Q. Then your next paragraph goes on to
6 talk about how that you license book product
7 to various entities; do you see that?

8 A. Yes.

9 Q. And then in the last sentence you
10 write, "I was hoping you could you pass this
11 along to the right person at Apple in order
12 to discuss our ibooks brand and eBook titles
13 for use on the new iPad."

14 Do you see that?

15 A. I do.

16 Q. So isn't it true that you were
17 contacting Apple about selling your books via
18 Apple's new app?

19 MR. CHATTORAJ: Objection.

20 A. That was the basis for my inquiry,
21 yes.

22 Q. So nowhere in this e-mail did you
23 state that Apple had infringed your rights,
24 correct?

25 MR. CHATTORAJ: Objection.

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2 A. Well, I did but in a business way,
3 I quoted the word "ibooks" in the second line
4 of the second paragraph knowing probably that
5 Mr. Dowling would recognize the term, and
6 that's my polite way of saying, you know,
7 hey, we've got a conflict and let me talk to
8 somebody about it.

9 Q. Well, all you are asking him here
10 is that you wanted to sell your books via
11 Apple; isn't that right?

12 MR. CHATTORAJ: Objection.

13 A. I'm asking him to lead me to the
14 right person to talk to at Apple.

15 Q. About selling your books via the
16 iPad, right?

17 MR. CHATTORAJ: Objection.

18 A. I'm looking for the right person to
19 talk to.

20 Q. About selling your books on the
21 iPad, right?

22 MR. CHATTORAJ: Objection.

23 A. Also about Apple's use of the word
24 ibooks.

25 Q. Although you don't mention that

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2 here?

3 A. Well, I do in my polite way.

4 Q. And isn't it true that if you
5 wanted to, you could sell your books via the
6 iPad?

7 MR. CHATTORAJ: Objection.

8 A. I don't know.

9 Q. Have you ever attempted to?

10 A. No.

11 Q. When was the next time you had a
12 communication with anyone at Apple?

13 A. No one at Apple, but I thought that
14 Mr. Gunderson was an Apple employee, he would
15 have been my next, my next contact point.

16 Q. Did you get a call the next day
17 from Glen Gunderson, an attorney on behalf of
18 Apple?

19 A. Glen, I can't remember if he called
20 and left a message and I called back or he
21 got me right away, but I didn't know he was
22 an attorney.

23 Q. But you spoke to Mr. Gunderson on
24 or around February 1st; is that right?

25 A. Sounds about right.