

EXHIBIT 39

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

CONFIDENTIAL

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 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.

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2 Q. So someone from Apple returned your
3 call promptly; isn't that true?

4 MR. CHATTORAJ: Objection.

5 A. If February 1 was indeed the date,
6 it could be.

7 Q. Now, isn't it true that in your
8 call with Mr. Gunderson you continued to ask
9 him whether Apple would be interested in
10 carrying your books on the iPad?

11 A. That's true, but the exclusive use
12 of our books on the iPad.

13 Q. Didn't you tell Mr. Gunderson that
14 your primary concern was getting your books
15 on the iPad?

16 A. Well, yes, under the ibooks mark.

17 Q. And isn't it true that Mr.
18 Gunderson had a conversation with you about
19 Apple's trademark rights?

20 A. He mentioned that Apple has the
21 right to do so.

22 Q. Did he mention to you that Apple
23 had used iBooks as a trademark for many
24 years?

25 A. I don't recall.

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2 Q. Did he mention to you that Apple
3 owned registered trademarks?

4 A. Excuse me. I don't recall getting
5 into a legal discussion with him.

6 Q. Do you have any other conver -- any
7 other recollection of your conversation with
8 Mr. Gunderson?

9 A. He said that he would put me in
10 contact with someone at Apple I could talk to
11 and I expected a call back from somebody to
12 talk with about our ibooks and how we can use
13 our ibooks, excuse me, on the iPad platform.

14 Q. What was your next communication
15 with anyone at Apple?

16 A. Anyone, probably a help center
17 person from iTunes.

18 Q. Fair enough.

19 Leaving aside those helpful people,
20 my family has speed dial, do you -- all
21 kidding aside.

22 What is your next communication
23 with anyone at Apple with regard to this
24 trademark dispute?

25 A. I don't recall having any.