

**EXHIBIT 4**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JT COLBY AND COMPANY, INC., D/B/A  
BRICK TOWER PRESS, J. BOYLESTON AND  
COMPANY PUBLISHERS, LLC, AND  
IPICTUREBOOKS, LLC,

Plaintiffs,

-against-

Index No.  
11-CV-4060 (DLC)

APPLE, INC.,

Defendant.

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VIDEOTAPED DEPOSITION OF

MIKE SHATZKIN

New York, New York

December 4, 2012, 9:35 a.m.

Reported By:

Nicole Sesta

Ref: 8575

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2 consumer brand. The question is whether it's a  
3 consumer brand on which some commercial value  
4 can be built. If there are six people that know  
5 about it, it would be pretty hard. If there are  
6 thousands of people that would know about it it  
7 would be somewhat easier. If there millions of  
8 people that know about it then you're Harlequin  
9 and you build a world scale enterprise on it.

10 It is my opinion that iBooks was  
11 recognized as a legitimate science fiction  
12 publisher by a substantial number of science  
13 fiction book consumers, and that that created a  
14 foundation on which can be built upon.

15 Q That again is based on the sales  
16 numbers?

17 A Yes.

18 Q In paragraph three where you say  
19 how the iBooks brand could have capitalized on  
20 its legacy, do you see that, to build a valuable  
21 consumer franchise? Is it your opinion that it  
22 ever did capitalize on that legacy?

23 MR. RASKOPF: Objection to  
24 the form of the question.

25 A I'm not aware of any specific

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2 form.

3 A Generally speaking, no. They  
4 undertake marketing activities on behalf of  
5 books, not authors. Sometimes the two are  
6 linked but not always, not often even.

7 Q Is it your testimony that all  
8 marketing in the publishing industry occurs with  
9 respect to individual books?

10 MR. RASKOPF: Objection to  
11 the characterization of the  
12 witness' prior testimony.

13 A Essentially, yes. Essentially  
14 publishers don't have any budget for anything  
15 else. Each book has a budget for marketing.  
16 That's where all the money is spent. So you're  
17 figuring out how to spend the money to sell a  
18 book, and certainly a house would be aware that  
19 if it has six ads for six books in the New York  
20 Times book review, and they all say Harper  
21 Collins underneath that an agent or somebody  
22 else might say Harper Collins is doing a lot of  
23 hot books, but they're not trying to sell Harper  
24 Collins. They're trying to sell each book.

25 Q At the bottom of page six of your

1 M. Shatzkin  
2 report you talk about, you say, "If a reader  
3 consumes enough books that deliver a consistent  
4 experience under the heading of an author  
5 imprint, series", and continuing to the next  
6 page seven, "or company that heading becomes a  
7 brand with meaning." Do you see that?

8 A Yes.

9 Q When you say consistent  
10 experience, what does that mean?

11 A Obviously it could mean different  
12 things to different people. But what it means  
13 is that it's science fiction, not romance, that  
14 it's history, not anthropology. In other words,  
15 that it's baseball, not tennis, that two, three,  
16 four, five, six books that you're reading under  
17 this brand have some common denominator which is  
18 evident to you as a consumer. That's what it  
19 means.

20 Q So the consistency of the  
21 experience is reflected in the consistency of  
22 the genre of the books?

23 MR. RASKOPF: Objection to  
24 the form.

25 A I think the genre, the genre is

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2 certainly a simple way and it's the way the  
3 biggest publishers are most able to cope with  
4 going to B to C thinking. It could be topical,  
5 in which case it wouldn't be genre at all. So  
6 if it were let's say knitting, you might have a  
7 book which is a stitch dictionary and another  
8 book which is about sweaters and another book  
9 which is about etchings and another book which  
10 is about how to make things bigger or smaller,  
11 or another book which is for left-handed  
12 knitters, I mean any number of subjects, which  
13 aren't necessarily the same genre. That is they  
14 might -- or in fact a book which is a novel  
15 where the heroin knits could even fit into this  
16 world of knitting interest.

17 It wouldn't be about genre. It  
18 would be about a consistent delivery of content  
19 that was of interest to someone who was  
20 interested in knitting. So consistency does  
21 not -- consistency can be delivered in any  
22 number of ways. Generally speaking topical  
23 consistency is what interests me the most and  
24 which I've written about a lot. Genre is the  
25 easiest thing for the big houses because they do

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2 publish critical mass of books and science  
3 fiction or romance intentionally, but they don't  
4 usually seek out many books on the same subject  
5 in the same way. So I think it is often about  
6 genre consistency but it doesn't have to be.

7 Q Is it your opinion that books sold  
8 under the iBooks imprint have exhibited  
9 consistency?

10 A It is my opinion that someone who  
11 read a number of science fiction books under  
12 iBooks would believe that.

13 Q Do you have any opinion as to  
14 whether the iPicturebooks books have exhibited  
15 consistency?

16 A No, I don't have an opinion.

17 Q On page seven of your report,  
18 second full paragraph you refer to the push  
19 strategy and the pull strategy, do you see that?

20 A Uh-huh.

21 Q What is your understanding of push  
22 strategy?

23 A Essentially the difference is are  
24 you putting your hopes of reaching the consumer  
25 on the retailer's ability to merchandize you,