

**EXHIBIT 5**

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

1 M. Shatzkin

2 Q Why not?

3 A Well, you're showing me a document  
4 that was from 2000 and I would think that it's  
5 superceded by data from 2000 to 2004. That's  
6 what I relied on. So the fact that a document  
7 that precedes that data characterizes it  
8 differently would not change my opinion.

9 Q So the description of iBooks as a  
10 general trade imprint doesn't affect your view  
11 one way or the other by the company itself?

12 A No, it doesn't affect my opinion  
13 at all.

14 Q Do you know whether iBooks has  
15 ever used e-mail lists of the type you described  
16 earlier?

17 A I don't know.

18 Q Do you know whether iBooks sells  
19 books directly to consumers through its web  
20 site?

21 A I have no idea. I actually think  
22 I know that they don't.

23 Q Do you know whether iBooks hosts  
24 events of the type you described earlier,  
25 whether conferences or --

1 M. Shatzkin

2 A I'm not aware of any.

3 Q Do you know whether iBooks uses  
4 Facebook or Twitter?

5 A I don't know.

6 Q Do you know whether it makes any  
7 use of social media whatsoever?

8 A I don't know.

9 Q Do you know whether with respect  
10 to the -- withdrawn. Do you know whether the  
11 plaintiffs have done anything with the iBooks  
12 imprint to put it in direct contact with  
13 consumers?

14 MR. RASKOPF: Objection to  
15 the form.

16 A I don't know.

17 Q Have you made any inquiry as to  
18 whether the iBooks imprint has made any effort  
19 to be in touch with its consumers?

20 MR. RASKOPF: Note my  
21 objection to the form.

22 A I'm trying to remember how I know  
23 that. The current owner of iBooks is a  
24 bookstore guy and has not probed in that  
25 direction, but I can't remember why I know that.

1 M. Shatzkin

2 I'm not aware of them making any efforts to go  
3 direct to consumer.

4 Q When you say a bookstore guy what  
5 do you mean by that?

6 A I mean that his background is in  
7 bookstores and his belief is in bookstores. So  
8 in the continuum or in the evolution of industry  
9 thought moving from bookstore dependent to  
10 bookstore independent, he tends to be more  
11 behind the curve than ahead of the curve based  
12 on his background.

13 Q I believe you said that you had  
14 not looked at any web sites in connection with  
15 your report, correct?

16 MR. RASKOPF: Objection to  
17 the characterization of the  
18 witness' prior testimony. You may  
19 answer.

20 A I don't recall looking at any web  
21 sites to prepare for this, no.

22 Q Do you know whether there is any  
23 active web site for iBooks?

24 MR. RASKOPF: Objection to  
25 the form of the question. You may

1 M. Shatzkin

2 answer.

3 A I don't know. Kind of hard for  
4 them to have one I guess if they didn't have one  
5 before or the iBooks store opened. I'm not sure  
6 what they do if they have one now.

7 Q You talked earlier about community  
8 building, do you recall that?

9 A Community?

10 Q Community building.

11 A Yes.

12 Q Do you know whether any of  
13 plaintiffs have engaged in community building  
14 with respect to iBooks?

15 MR. RASKOPF: Objection to  
16 the form. You may answer.

17 A I'm not aware of any such efforts,  
18 no.

19 Q Do you know whether any of  
20 plaintiffs have engaged in search engine  
21 optimizations with respect to iBooks?

22 A No, I don't know.

23 Q Do you know whether they've  
24 collaborated with other publishers or imprints  
25 with respect to iBooks?

1 M. Shatzkin

2 A No, I don't know.

3 Q Do you know if they have  
4 collaborated with other web sites?

5 A I don't know.

6 Q For example, Library Thing which  
7 you mentioned?

8 A I have no idea whether they have  
9 collaborated or not.

10 Q Do you know if they have  
11 collaborated with Good Reads at all?

12 A I don't know.

13 Q Do you have any information about  
14 what volume of traffic the plaintiffs' web site  
15 gets?

16 A No, I don't even know if they have  
17 a web site.

18 Q Have you ever seen any marketing  
19 materials for plaintiffs' iBooks books?

20 MR. RASKOPF: Objection to  
21 the form. You may answer.

22 A I don't think so.

23 Q I understand that earlier you used  
24 both the terms marketing and advertising. Are  
25 those two different things in your mind?

1 M. Shatzkin

2 A Depending on how one defines  
3 marketing, advertising could be a subset of  
4 marketing. Publicity is marketing. Advertising  
5 is marketing and other things are marketing.  
6 Some people break out publicity and advertising  
7 as if they were separate from marketing. It's a  
8 nuanced view of how to define these things. I  
9 don't think there's a textbook definition that  
10 says it's one or the other.

11 Q Would you understand marketing as  
12 including publicity and advertising?

13 A I would, yes.

14 Q Do you know whether plaintiffs do  
15 any advertising for their iBooks imprint?

16 A I don't know.

17 Q Do you know if they do any  
18 advertising for iPicturebooks?

19 A I don't know.

20 Q Do you know whether there are any  
21 fan sites for any of the iBooks or  
22 iPicturebooks?

23 A I don't know.

24 MS. RAY: Let's take a  
25 break.