

EXHIBIT 88

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

J.T. COLBY & COMPANY, INC.,
d/b/a BRICK TOWER PRESS,
J. BOYLSTON & COMPANY,
PUBLISHERS, LLC and
IPICTUREBOOKS, LLC,

Plaintiff,

vs.

Case No. 11-CIV4060 (DLC)

APPLE, INC.,

Defendant.

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HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER
Attorneys' Eyes Only Confidential Pages 300 - 302
VIDEOTAPED DEPOSITION OF THOMAS LA PERLE
30(b)(6) Capacity
Redwood Shores, California
Wednesday, September 19, 2012

Reported by:

LORRIE L. MARCHANT, CSR No. 10523
RPR, CRR, CCRR, CLR

JOB NO. 53418

1 any understanding of what they meant by
2 "interactive"?

3 A. Part of the inter -- user modifiability was
4 part of the interactiveness. I do recall that
5 people could make changes to the books. Again, I
6 haven't -- I never created a Family Systems ibook
7 and modified it or followed one to see the changes,
8 so I don't have personal knowledge of that.

9 Q. Do you know anyone who did do that?

10 A. Not that I'm aware of, no.

11 Q. So the person who was the content creator,
12 the person who downloaded the software that's made
13 available by Family Systems before January 2010,
14 could make changes to that content; right?

15 A. I'm sorry. Could you repeat the question?

16 Q. That person who generated the content using
17 the ibook software that was then available on the
18 Web site, that person could then change the content
19 subsequently; right?

20 A. Correct.

21 Q. But other users could also change that
22 content when they visited; right?

23 A. Again, I think -- I think that's true. I
24 did not follow the Family Systems Web site or the
25 books on -- that were being hosted there to confirm

1 A. I think Steve would know, yes.

2 Q. Were users of the Family Systems ibook
3 system able to highlight text?

4 A. Not that the -- I don't know.

5 Q. Were users of the Family Systems ibook
6 system able to make notes on the things they were
7 reading?

8 A. I assume so, but, again, I don't know. I
9 never downloaded the software.

10 Q. Did anyone employed by Apple download the
11 Family Systems ibook software?

12 A. I don't know. Not that I'm aware of.

13 Q. To the best of your knowledge, did anyone
14 working on behalf of Apple download the Family
15 Systems ibook software?

16 A. I don't -- Dechert may have done that. I
17 don't know.

18 Q. If they did it was never reported to you;
19 right?

20 A. It may have been. I just don't recall.

21 MR. CHATTORAJ: Okay. We're going to have
22 to take a break to change tapes. We'll go off the
23 record.

24 THE VIDEOGRAPHER: This is the end of Disk
25 No. 2, Volume I. We are off the record at 3:36 p.m.

1 combination of your own analysis and that
2 of counsel; correct?")

3 THE WITNESS: Well, as I testified before,
4 I was aware of the Family Systems use from very
5 early on when I arrived at Apple. I did review
6 their Web site from time to time. I was aware of
7 their registration.

8 And with additional work that we did during
9 the clearance process, that's correct, that's what
10 we felt, that their -- their software was properly
11 reflected in the registration.

12 BY MR. CHATTORAJ:

13 Q. That their software properly reflected
14 their registration of their mark; correct?

15 A. Yes.

16 MR. CHATTORAJ: I apologize for the delay.
17 I was looking at a document, and I now have
18 misplaced it, and I apologize.

19 MS. CENDALI: Happens to us all.

20 BY MR. CHATTORAJ:

21 Q. Is the iBooks application that's made
22 available to consumers by Apple an interactive Web
23 collaboration system?

24 A. No.

25 Q. Is the iBooks application as made available