

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

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HIGHLY CONFIDENTIAL  
IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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J.T. COLBY & COMPANY,	:	Case Number
INC. d/b/a BRICK TOWER	:	11-CV-40260
PRESS; J. BOYLSTON &	:	(DLC)
COMPANY, PUBLISHERS LLC	:	
and IPICTUREBOOKS	:	
LLC,	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
APPLE, INC.,	:	
Defendant.	:	

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October 3, 2012  
HIGHLY CONFIDENTIAL

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Videotaped deposition of GLENN GUNDERSEN, ESQUIRE, taken at the offices of Veritext National Court Reporting Company, 1801 Market Street, Suite 1800, Philadelphia, Pennsylvania 19103, beginning at 9:24 a.m., before LINDA ROSSI RIOS, RPR, CCR and Notary Public.

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VERITEXT NATIONAL COURT REPORTING COMPANY  
MID-ATLANTIC REGION  
1801 Market Street - Suite 1800  
Philadelphia, Pennsylvania 19103

1 GLENN GUNDERSEN, ESQUIRE - HIGHLY CONFIDENTIAL  
2 new question.

3 BY MR. CHATTORAJ:

4 Q. Mr. Gundersen, prior to  
5 January 27, 2010, did you visit the Web site  
6 of Family Systems?

7 MS. CENDALI: And with the  
8 understanding that this is not a  
9 privilege waiver, but is really him  
10 recounting his -- what he observed as  
11 a factual matter, I will allow him to  
12 answer the question. Is that fair to  
13 say, Counsel?

14 MR. CHATTORAJ: The purpose of  
15 my question is to elicit the factual  
16 basis of Mr. Gundersen's statements  
17 concerning Family Systems. All I'm  
18 seeking to elicit is that factual  
19 information.

20 MS. CENDALI: So long as we  
21 understand each other that you're not  
22 trying to elicit privilege information  
23 in his answering this question, won't  
24 be treated by you as revealing  
25 privilege information, he can answer

1 GLENN GUNDERSEN, ESQUIRE - HIGHLY CONFIDENTIAL  
2 the question.

3 MR. CHATTORAJ: I can confirm  
4 both of those things.

5 MS. CENDALI: Thank you.

6 THE WITNESS: Prior to  
7 January 27, 2010, I did visit the  
8 Family Systems Web site.

9 BY MR. CHATTORAJ:

10 Q. When?

11 A. At some point in January 2010  
12 prior to the 27th.

13 Q. Did you visit the Family  
14 Systems Web site before January 2010 at any  
15 time?

16 A. I don't believe so, but I can't  
17 be sure about that.

18 Q. Prior to January 27, 2010, did  
19 you utilize products or services offered to  
20 the general public by Family Systems?

21 A. What do you mean by "utilize"?

22 Q. Did you see any product or  
23 services offered to the general public by  
24 Family Systems prior to January 27, 2010?

25 A. I did see products or services

1 GLENN GUNDERSEN, ESQUIRE - HIGHLY CONFIDENTIAL  
2 offered at that site.

3 Q. Did you see any products or  
4 services offered to the general public by  
5 Family Systems other than on the Family  
6 Systems Web site?

7 A. I don't believe so, but I can't  
8 be certain about that.

9 Q. Is it fair to say that at this  
10 time, you do not recall observing any facts  
11 regarding Family Systems other than in  
12 connection with visiting the Web site in  
13 January 2010?

14 THE WITNESS: Could you repeat  
15 that?

16

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17 (The court reporter read the  
18 pertinent part of the record.)

19

- - -

20 THE WITNESS: The question is  
21 whether I observed any facts with  
22 respect to the Family Systems Web  
23 site?

24 BY MR. CHATTORAJ:

25 Q. No.

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2 Q. Are you ready to proceed, Mr.  
3 Gundersen?

4 A. You can ask the next question.

5 Q. My first question is, does this  
6 printout resemble Web pages that you received  
7 when you visited the Family Systems Web site  
8 in January 2010?

9 MS. CENDALI: Objection. You  
10 can answer.

11 THE WITNESS: At this point, I  
12 don't recall what those Web pages  
13 looked like.

14 BY MR. CHATTORAJ:

15 Q. You do recall that when you  
16 visited the Family Systems Web site, you  
17 perceived that Family Systems offered  
18 products or services. Correct?

19 A. Correct.

20 Q. What were those products and  
21 services that you perceived?

22 A. They were offering software  
23 application.

24 Q. They were offering a single  
25 software application?

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2 was going to be in the client's words.

3 Q. Did you have an awareness of  
4 what the market was and whether it's going to  
5 be a consumer product with respect to the  
6 iBooks mark?

7 A. In this case, we understood  
8 that it would be a consumer product. Apple  
9 has other marks which the average person  
10 wouldn't be familiar with, for instance in  
11 the software development field. And those  
12 would be marks that are just used with --  
13 typically just used with a specific audience.  
14 This, we did understand, was going to be a  
15 consumer product.

16 Q. Now, in connection with your  
17 work on the Apple/Family Systems agreement in  
18 January 2010, did you have an understanding  
19 of what Family Systems goods and services  
20 were at that time?

21 A. Well, Family Systems had  
22 software. They had a registration of the  
23 mark for software, and I looked at the  
24 database, spent time looking to see what it  
25 was that they were doing, and I had an

1 GLENN GUNDERSEN, ESQUIRE - HIGHLY CONFIDENTIAL  
2 understanding of what it was.

3 Q. What database did you look  
4 into?

5 A. I'm sorry, I looked at their  
6 Web site.

7 Q. So you looked at the Web site  
8 and used it to gain an understanding of what  
9 their goods and services were?

10 A. Yes. It's possible that we did  
11 other investigation as well, but I don't  
12 recall at this point.

13 Q. Did you have an understanding  
14 of what Family Systems' market was at that  
15 time?

16 A. The Family Systems was not a B  
17 to B product. You was a consumer product.

18 Q. Going back to your testimony  
19 about the approach you take to trademark  
20 clearance searches, is it, therefore, correct  
21 to say that when Dechert LLC carries out a  
22 trademark clearance search, that the concept  
23 of a preliminary or knockout search is simply  
24 inapplicable?

25 MS. CENDALI: Objection. You