

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

)
 J.T. COLBY & COMPANY, INC. d/b/a/)
 BRICKTOWER PRESS, J. BOYLSTON &)
 COMPANY, PUBLISHERS LLC and)
 IPICTUREBOOKS LLC,)
)
 Plaintiffs,)
)
 -against-)
)
 APPLE INC.,)
)
 Defendant.)

Case No. 11 Civ. 4060 (DLC)

DECLARATION OF CLAUDIA T. BOGDANOS
IN OPPOSITION TO DEFENDANT APPLE INC.’S MOTION TO EXCLUDE ANY
TESTIMONY, ARGUMENT OR EVIDENCE REGARDING THE EXPERT REPORTS
AND OPINIONS OF SUSAN SCHWARTZ MCDONALD

I, Claudia T. Bogdanos, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am over 18 years old and I am competent to make this declaration based upon my personal knowledge. I make this Declaration in opposition to Defendant Apple Inc.’s Motion To Exclude Any Testimony, Argument Or Evidence Regarding The Expert Reports And Opinions Of Susan Schwartz McDonald, cited in the accompanying memorandum of law.

2. I am an attorney at Quinn Emanuel Urquhart & Sullivan, LLP. I am admitted to the New York bar and am currently in good standing.

3. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from the deposition of Susan Schwartz McDonald, Ph.D., dated December 12, 2012.

4. Attached hereto as **Exhibit B** is a true and correct copy of excerpts from the deposition of Stephen M. Nowlis, dated December 14, 2012.

5. Attached hereto as **Exhibit C** is a true and correct copy of the expert report of Susan Schwartz McDonald, Ph.D, titled *A Survey to Measure Potential Source Confusion Associated with iBooks*, dated September 17, 2012, and accompanying exhibits.

6. Attached hereto as **Exhibit D** is a true and correct copy of the Sur-rebuttal and Supplemental Report of Susan Schwatz McDonald, Ph.D., dated December 6, 2012, and accompanying exhibits.

7. Attached hereto as **Exhibit E** is a true and correct copy of excerpts from the deposition of Jacob Jacoby, Ph.D., dated December 6, 2012.

8. Attached hereto as **Exhibit F** is a true and correct copy of the Expert Report of Mike Shatzkin, dated October 24, 2012, and accompanying exhibits.

9. Attached hereto as **Exhibit G** is a true and correct copy of excerpts from the deposition of Richard Freese, dated September 25, 2012.

10. Attached hereto as **Exhibit H** is a true and correct copy of excerpts from the deposition of Mike Shatzkin, dated December 4, 2012.

11. Attached hereto as **Exhibit I** is a true and correct copy of the “Response to Office Action” filed by Apple with the U.S. Patent and Trademark Office on October 9, 2010, in case serial number 85008412.

12. Attached hereto as **Exhibit J** is a true and correct copy of excerpts from the “Response to Office Action” filed by Apple with the U.S. Patent and Trademark Office on December 29, 2010, in case serial number 85008412.

13. Attached hereto as **Exhibit K** is a true and correct copy of excerpts from the deposition of E. Deborah Jay, dated November 30, 2012.

14. Attached hereto as **Exhibit L** is a true and correct copy of excerpts from the Expert Report of Gregory S. Carpenter, dated September 17, 2012.

15. Attached hereto as **Exhibit M** is a true and correct copy of a Pew Research Center Study titled *The Rise of E-Reading*, by Lee Rainie et al. (2012).

16. Attached hereto as **Exhibit N** is a true and correct copy of a *New York Times* article titled “Barnes & Noble Faces Steep Challenge as Holiday Nook Sales Decline,” by Leslie Kauffman, dated January 3, 2012 and available at <http://mediadecoder.blogs.nytimes.com/2013/01/03/barnes-noble-reports-tepid-holiday-sales/>. A version of this article appeared on page B1 of the January 4, 2012 print edition of the *New York Times*, under the headline “Barnes & Noble’s Strategy Is Questioned as Nook Sales Decline.”

17. Attached hereto as **Exhibit O** is a true and correct copy of excerpts from the deposition of John T. Colby, Jr., dated July 18, 2012.

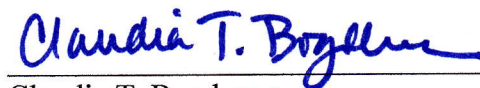
18. Attached hereto as **Exhibit P** is a true and correct copy of *Panel Quality: Our Values*, by Research Now, available at <http://www.researchnow.com/en-GB/~media/578E9AB322D5491CA61005CF64005C54.ashx>.

19. Attached hereto as **Exhibit Q** is a true and correct copy of a printout of the “Research Integrity” page of Research Now’s website, available at <http://www.researchnow.com/en-US/Panels/PanelQuality/ResearchIntegrity.aspx>.

20. Attached hereto as **Exhibit R** is a true and correct copy of excerpts from the Expert Report of Stephen M. Nowlis, dated October 26, 2012.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 25th day of January, 2013 in New York, New York.



Claudia T. Bogdanos
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