

## **EXHIBIT K**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

vs.

No. 11-cv-4060 (DLC)

APPLE, INC.,

Defendant.

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VIDEOTAPED DEPOSITION OF E. DEBORAH JAY,  
Ph.D, taken by Plaintiffs, pursuant to Agreement, at  
the offices of Quinn Emanuel Urquhart & Sullivan  
LLP, 51 Madison Avenue, New York, New York, on  
Friday, November 30, 2012, commencing at 9:45 a.m.,  
before Chandra D. Brown, a Registered Professional  
Reporter and Notary Public within and for the State  
of New York.

Job No: 27813

## DEPOSITION CORRECTION SHEET

In the matter of J.T. Colby & Company, Inc. v. Apple, Inc.  
Witness, E. Deborah Jay, Ph.D., November 30, 2012.

<u>PAGE:LINE</u>	<u>CHANGE TO:</u>	<u>REASON:*</u>
24:16	frequency. This happens to be the Ilit	TE
36:10	case b-o-o-k-s – capital “I” n-c.	TE
37:9	lower case “ibooks,” comma, “Incorporated,”	TE
37:21	“The Stars My Destination,” and then if you	TE
37:23	version of “The Stars My Destination” in	TE
38:6	comma, “Incorporated.”	TE
39:16	comma, I-n-c period. So that’s what’s listed.	TE
40:2	Sure. In the Kargo versus Advance	TE
40:8-9	where Kargo, or Mr. Kargman used a phrase, “powered by Kargo,” in connection with certain,	TE
41:2-3	likelihood of confusion between Kargo, as used in the “powered by Kargo” software, and Cargo,	TE
42:19	confusion study. I believe Professor Simonson	TE
55:14-16	“publish” throughout the verbatims. “I don’t see the publisher.” Here “It said the publisher, right under product details.” The verbatims use	TE
57:14	to “Brick Oven.” So – I don’t really see what	TE
61:7	So it’s – to the extent that it shows	TE
63:24	experience and education and training. So my	TE
65:15	think that the source, sponsor or it was affiliated	TE
66:11	sometimes described as the gold standard, the	TE
68:19	measured in the Union Carbide case. I measured it	TE
71:17	recollection; again, it’s years, many	TE
75:11-12	So the question was “Were the two Everreadies affiliated with each other?” And	TE
78:6	No. I believe it measures affiliation	TE
78:14	credited both as an indicator of affiliation	TE
84:15	mentioned Ibooks, Inc. or ibooks Incorporated,	TE
85:9	I want to look at one thing quickly since I	TE
92:7-9	For example, it misquotes the Reference Manual on Scientific Evidence, in that the Reference Manual, had the entire passage been	TE
92:18	that portion of the Reference Manual was	TE
94:15	dress of Gallo’s Turning Leaf after the	TE
106:20	has spent his life doing survey research,	TE
109:2-3	We don’t know, for example, where Research Now recruits its participants, how many web	TE
109:10	survey on an iPhone or a smartphone. There’s a	TE
110:4	another case. But I do recall that there is a	TE
112:19	MS. CENDALI: Do you want to take a break?	TE
117:8	“It’s right here under product details.” “I	TE
119:17	leave the computer on. It was a part of the	TE

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\* TE = Transcription Error

120:5	it's the CD, until the end of the interview.	TE
131:8	"iBooks" Incorporated, and so – I also	TE
131:12	sort by relevance, popularity, best seller.	TE
134:13	Stars My Destination" is a science fiction	TE
134:19	Apple mentions. The data permit you to do that	TE
135:18	the Barnes & Noble "The Stars My	TE
138:25	confused by "The Stars My Destination"	TE
140:19	books, but I want to make it clear that,	TE
146:12	are less sophisticated than – The data to the	TE
146:16	hardback books.	TE
147:5	the web page for digital books is either the	TE
147:10	about audible books, but about 11 percent of the	TE
149:20	this book, and that's the reality of the	TE
153:16	recall from the Louis Vuitton-Gucci case, that	TE
153:19	Louis Vuitton-Dooney & Bourke, where the survey	TE
153:21	where they had shown respondents a Coach purse,	TE
154:4	survey in a trademark likelihood of confusion,	TE
154:24	attention to the top of the page, the bottom	TE
158:23	not concerned whether they are confused about the	TE
162:24	found that there was not a likelihood of	TE
163:7	this is over five years ago but – and a certain	TE
163:18	Baby mentions in the test and control group.	TE
165:8-9	certainly after that case there was the Louis Vuitton-Dooney & Bourke case.	TE
168:16	main source confusion question, but it was a	TE
168:21	But is was not the main source	TE
170:3	Bourke case, I think it would be – would have	TE
173:24	we trained them on this survey, so I didn't	TE
189:20	the source or is the sponsor affiliated with	TE
202:19	to miss any of those.	TE
207:18	developed primarily by the staff at the	TE
208:11	has no involvement in the design of the	TE
208:16	some of our suggestions and rejects others.	TE
213:10	Field Research's interviewing supervisors	TE
216:16	Reference Manual allows what's commonly	TE
217:14	interviewing or not, so I don't know, but if she	TE
230:24	about whether the makers of the tee-shirt make	TE
238:9	that – actually, I believe, I tried to clarify	TE
240:13	MS. CENDALI: Objection.	TE
245:22	and the imprint is an indicator of who puts out	TE
Global	Nowlis	TE

Note: Throughout the transcript, when I referred to the name "IBOOKS," the court reporter transcribed it in the following manner: "iBooks." Unless I indicated this as part of my answer, I did not intend for "IBOOKS" to be stylized in any particular manner.

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

Executed this 15th day of January 2013 at San Francisco, California.



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E. Deborah Jay, Ph.D.

1 E.D. Jay - 11/30/12

2 BlackBerries.

3 So I believe our IT director has a  
4 corporate smartphone, but it is a BlackBerry;  
5 our interviewing director has a corporate  
6 smartphone which is a BlackBerry; and then a  
7 senior vice president has a BlackBerry; and  
8 then my CFO and I each have, I believe,  
9 iPhones.

10 Q When you bought your iPhones, did you do  
11 that in a store or over the Internet?

12 A My accounting department obtained the  
13 corporate iPhone for me. And I actually did  
14 not personally purchase either iPhone. My  
15 husband purchased the other iPhone for me. I  
16 believe he did that at a Verizon store.

17 Q How would you describe the business of  
18 Apple?

19 MS. CENDALI: Objection. Outside the  
20 scope.

21 But go on.

22 A I've never attempted to describe the  
23 business of Apple. I believe it is certainly  
24 in the computer and software business.

25 Q Would you describe Apple as a book

1 E.D. Jay - 11/30/12

2 publisher?

3 A No.

4 Q Do you think the average consumer would  
5 consider Apple to be a book publisher?

6 MS. CENDALI: Objection.

7 You can answer.

8 A I don't think so, no.

9 Q Dr. Jay, what did you set out to prove or  
10 disprove in designing your study in this case?

11 A I didn't set out to prove anything or  
12 disprove anything. I did a study to determine  
13 whether potential purchasers of softcover -- to  
14 determine one way or the other whether  
15 potential purchasers of softcover and hardcover  
16 books are likely to be confused on whether  
17 there is a likelihood of reverse confusion as  
18 to the source, sponsor or affiliation of books  
19 sold on the Internet with the iBooks imprint as  
20 it appears in the marketplace.

21 THE WITNESS: I think -- have we been  
22 going about an hour?

23 MS. CENDALI: You want to take a break?

24 Q Could you just -- let me just -- because I  
25 have one question that follows directly on the