

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

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.

-----X

VIDEOTAPED DEPOSITION OF
MIKE SHATZKIN
New York, New York
December 4, 2012, 9:35 a.m.

Reported By:

Nicole Sesta

Ref: 8575

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J U R A T

STATE OF NEW YORK)

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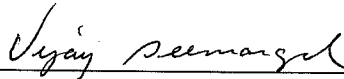
COUNTY OF *New York*)

I, MIKE SHATZKIN, hereby certify that I have read the transcript of my testimony taken under oath in my deposition of December 4, 2012; that the transcript is a true and complete record of my testimony, and that the answers on the record as given by me are true and correct.

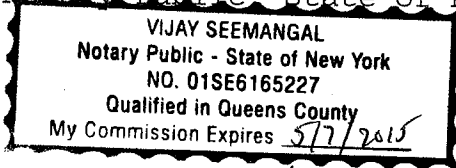


MIKE SHATZKIN

Signed and subscribed to before me this 17th day of December, 2012.



Notary Public, State of New York



12/17/12

ERRATA SHEET

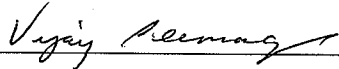
J.T. Colby & Co., Inc., et al. v. Apple, Inc.
Deposition of Mike Shatzkin, December 4, 2012

PAGE	LINE(S)	CHANGE	REASON FOR CHANGE
46	20	"royals" should read "roils"	Mistranscription by court reporter.
53	5	"text" should read "tech"	Mistranscription by court reporter.
54	20	"jobs" should read "chops"	Mistranscription by court reporter.
55	7	"described" should read "describe"	Mistranscription by court reporter.
132	20	"search optimization" should read "search engine optimization"	Mistranscription by court reporter.
144	3	"Toucan is" should read "Two Continents"	Mistranscription by court reporter.
205	9	"etchings" should read "edgings"	Mistranscription by court reporter.



Mike Shatzkin

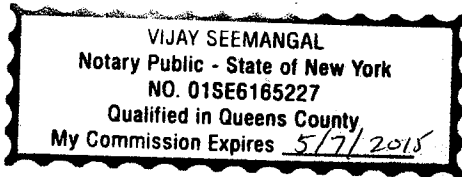
Subscribed before me, this 17th day of December, 2012.



Notary Public

May 7, 2015

Date Commission Expires



12/17/12

1 M. Shatzkin

2 court reporter.

3 A Okay.

4 Q Also note that we have a court
5 order in place today. So that the objections
6 will simply consist of the word objection. If
7 your counsel is going to instruct you not to
8 answer I'm sure he'll do that.

9 A Okay.

10 Q Can you think of any reason why
11 you're not able to testify today, is there any
12 medication that you're on that might affect you?

13 A No, no.

14 Q Is it correct that you're here
15 today to testify as an expert witness on behalf
16 of the plaintiffs in the lawsuit between JT
17 Colby and Apple?

18 A Yes.

19 Q What did you do to prepare for
20 this deposition?

21 A I read a bunch of material, the
22 complaint, depositions by Rich Freese and John
23 Colby, I think. And I read the expert
24 testimony, the expert report and then the
25 deposition from the branding, I'm sorry, the

1 M. Shatzkin

2 name jumped out of my mind, the branding expert
3 from Apple.

4 Q Would that be Professor Carpenter?

5 A Yes, Professor Carpenter. And I
6 had my staff help me massage some numbers to
7 analyze some of the data out of the sales
8 records of iBooks. I would say that's pretty
9 much what I did to prepare for this, prepare to
10 write the report that you have and prepare for
11 this testimony.

12 Q You mentioned the expert report of
13 Professor Carpenter, was that just one report or
14 was there more than one?

15 A I'm recalling one.

16 Q You also mentioned deposition
17 transcripts of Mr. Freese and Professor
18 Carpenter, are those the only deposition
19 transcripts that you reviewed, and excuse me Mr.
20 Colby?

21 A Think I read something from Mr.
22 Colby. But those would be the only ones.

23 Q You mentioned having your staff
24 help you with numbers. Who on your staff helped
25 you with that?

1 M. Shatzkin

2 A Yes, sure.

3 MR. RASKOPF: Objection.

4 A Yes. Wait a minute. Plaintiffs,
5 no, actually if iBooks is a plaintiff I had
6 heard of iBooks. I had not heard of Mr. Colby.

7 Q Had you heard of JT Colby and
8 Company?

9 A No.

10 Q Before this case?

11 A No.

12 Q Had you heard of Brick Tower Press
13 before this case?

14 A No.

15 Q Had you heard of J. Boyleston and
16 Company before this case?

17 A No.

18 Q Had you heard of iPicturebooks?

19 A Yes.

20 Q And in what context did you hear
21 of iPicturebooks?

22 A Very aware of it. I'm in the
23 business and I'm aware of what goes on in the
24 business, and I knew Byron Preiss and I knew
25 what Byron Preiss did. So I was aware of iBooks

1 M. Shatzkin

2 and I was aware of iPicturebooks when they were
3 new.

4 Q Do you recall roughly when that
5 was?

6 A Late 1990s.

7 Q Had you ever met Mr. Raskopf
8 before this case?

9 A No.

10 Q Had you ever worked with his law
11 firm before this case?

12 A No.

13 Q Have you heard of Allegaert Berger
14 & Vogel?

15 A No, I haven't heard them.

16 Q You said you had heard of iBooks
17 and iPicturebooks before. Have you ever done
18 any work for either of those entities?

19 A No.

20 Q Had you ever done any work for Mr.
21 Preiss?

22 A No.

23 Q Have you ever heard of a company
24 called Byron Preiss Visual Publications?

25 A Yes.

1 M. Shatzkin

2 Q So a publishing company would
3 create a book and come to Two Continents for
4 distribution to retailers?

5 A That's right.

6 Q You mentioned your consulting work
7 that you've been doing. That's been since early
8 1979, correct?

9 A That's right.

10 Q Is there a particular area in
11 which you consult?

12 MR. RASKOPF: Objection to
13 the form.

14 You may answer.

15 A Well, essentially, I'm an expert
16 in book publishing. So I consult to book
17 publishers and their trading partners. And
18 their trading partners are both upstream and
19 downstream, right, so their trading partners are
20 agents and printers and bookstores and other
21 publishers and marketing firms. The precise
22 nature of my practice is it changed over time as
23 circumstances in the industry have changed over
24 time. So in the beginning, it was largely about
25 distribution deals because that's what I knew.

1 M. Shatzkin

2 So there were -- when I stopped working at Two
3 Continents, it was already true that lots of
4 small publishers were distributed by large
5 publishers. And I had a number of clients over
6 the years where I would help them get more out
7 of their distributor because I had seen that
8 from both sides.

9 Then, in the last 20 years, it's
10 really been about digital change. A lot of my
11 work has been around digital change. Not
12 exclusively. I'd say that the two biggest
13 pieces are digital change and the supply chain.

14 Q When you say "digital change,"
15 what do you mean by that?

16 A What I mean is that we are in the
17 midst of a transition from everything being read
18 on paper, just about, to everything being read
19 on screens, just about. And that transition,
20 which we are no where near done with, royals the
21 publishing industry because it changes the
22 economics and it changes the value propositions.
23 And therefore, it presents a combination of
24 threats and opportunities to anybody who's in
25 the business. And understanding those dynamics

1 M. Shatzkin

2 and how they impact particular players or
3 particular propositions is what I think I've got
4 a reputation for doing well.

5 Q Have you ever worked directly for
6 any publishers as a full-time employee?

7 A No, except for Two Continents, no.

8 Q You have worked for publishers as
9 a consultant, correct?

10 A Oh, yes.

11 Q What publishers have you worked
12 for?

13 A All of them, literally. Random
14 House, Simon & Schuster, Harper Collins,
15 Hachette, Penguin. I mean, I'm just naming the
16 big ones now, right. Many small ones, foreign
17 ones. I mean, in one way or another, I've been
18 retained by them or I've sold them projects or
19 that is to say sold them books to publish.

20 I've interacted on a professional
21 basis with most of the significant publishers in
22 the English-speaking world.

23 Q Have you ever done any work for
24 Harlequin?

25 A I spoke at Harlequin's global

1 M. Shatzkin

2 Q It says, "I have reviewed and
3 considered the amended and supplemental
4 complaint and jury demand, answer and
5 affirmative defenses, the plaintiffs iBooks
6 sales figures and examples of the plaintiffs'
7 print and electronic books." Do you see that?

8 A Yes.

9 Q What sales figures did you look
10 at?

11 A We looked at a spreadsheet that, I
12 believe, was the sales reporting or compilation
13 of the sales reporting by Simon & Schuster for
14 the several-year period during which they
15 distributed iBooks.

16 Q Do you know what period that was?

17 A Off the top of my head, like
18 around 2000 to 2004, something like that.

19 Q Did you look at any other sales
20 figures other than the ones you just mentioned?

21 A Not that I remember, no.

22 Q You also mentioned in your report
23 examples of the plaintiffs print and electronic
24 books. Do you recall what books you looked at?

25 A Exactly which titles, no.

1 M. Shatzkin

2 people, is that also the gatekeepers?

3 A No, the bookstore buyers, the
4 reviewers and the librarians and the people who
5 are making professional judgments about the
6 books.

7 Q So is it fair to say that you're
8 expressing that brands matter to the gatekeepers
9 but not to the end consumers?

10 A That's exactly right.

11 MR. RASKOPF: Note my
12 objection to the form.

13 A That's exactly right.

14 Q And then in the next paragraph you
15 say, "As all brand experts know the key for
16 brands to deliver a consistent experience to
17 their users."

18 A Uh-huh.

19 Q What's your basis for saying that?

20 A Well, despite the fact that I've
21 had no formal education in branding or taken any
22 courses in branding, I have been exposed to a
23 lot of dialogue about branding and marketing
24 conversations for many, many, many, many years.
25 And there are ways to describe -- there are

1 M. Shatzkin
2 certain things about brands that are sort of
3 like branding 101 and one of them, which I
4 believe Mr. Carpenter emphasized and stressed,
5 was that brands have to deliver a consistent
6 experience or they undercut themselves.

7 The way I've always described it,
8 and I have not seen it written this way, is a
9 brand is a shortcut. A brand is a way of
10 knowing something about a branded product from
11 just a description of a brand. So if someone
12 says, Hilton Hotels versus Holiday Inns, that
13 tells the consumer something based on a general
14 understanding of what a Hilton is and what a
15 Holiday Inn is based on the fact that they are
16 reasonably consistent in what they deliver.

17 So that's what I meant. And that
18 was based on conversations with people that know
19 a lot. I've interacted with there was a
20 branding company called Siegel and Gale that an
21 ex-employee of mine worked for for a while.
22 They were brand experts. I can't remember
23 whether I actually -- I didn't work for them. I
24 did some work with them. I mean, I've been
25 exposed to a sophisticated thinking about

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2 branding over a long period of time.

3 Q And two lines below that it says,
4 "To a consumer it would undercut a brand's value
5 to see a cookbook, a memoir, and a novel stamped
6 the same way." What did you mean by that?

7 A What I mean by that is that a
8 consumer would -- if a consumer looked for
9 meaning in a publishing brand, it would be
10 looked -- the consumer would most likely be
11 looking for consistency of topic or subject or
12 presentation of some kind.

13 So Dummies is a brand where the
14 topics are not the same, but the way of
15 presenting the topics, if you bought a book, a
16 Dummies book, on needlework and you need to know
17 how to fry an egg and there's a Dummies book on
18 how to fry an egg, you would have expectations
19 and knowledge about what that book would deliver
20 to you. But generally speaking, brand
21 consistency is more about topic or genre. So if
22 you're buying a Harlequin book, you know you're
23 not getting a spy novel. You're getting a
24 romance book. And so that is the way that most
25 consumers -- it's the only way that most

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2 Q What are those dozen places?

3 A I don't know them all. I'm not a
4 science fiction reader.

5 Q Do you have any particular ones in
6 mind?

7 A Well, Orbit is the Hachette
8 division that does science fiction. I don't
9 remember what Random House calls their science
10 fiction imprint. There was Del Rey Books, well
11 that's part of Random House. Del Rey Books was
12 with Ballantine, but the big houses mostly do
13 science fiction. And there's Daw, which may or
14 may not still exist, but which was a big science
15 fiction imprint would now be owned by Penguin, I
16 think. In these niche areas there are
17 specialists and they don't exist. I mean they
18 may exist in the hundreds because they're going
19 to be small publishers that do three titles and
20 then go away, but I'm not thinking about those.
21 I'm thinking about the ones that are providing a
22 lot of content into the marketplace. There
23 aren't hundreds of those.

24 Q You mentioned Tor and Baen as
25 making active efforts to communicate with their

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2 Crowell-Collier bought the Free Press of
3 Glencoe, Illinois, which is where the Free Press
4 started, the man who started the Free Press was
5 a man named Jeremiah Kaplan, who became a bit of
6 a legend in the business, moved from Glencoe,
7 Illinois to New York because his company was
8 bought.

9 My dad was the vice president of
10 Crowell-Collier at the time and Jerry Kaplan
11 stayed at our house for the first two weeks he
12 was in New York. So I've been aware of the Free
13 Press since I was 15. They've always done --
14 they started out as a much more academic
15 publisher back in those days. They did sort of
16 high quality political and social science. They
17 have for years and years and years and years.

18 So I followed them. I'm aware of
19 them. Book publishing companies I would say
20 with 99.9 percent certainty and accuracy do not
21 advertise their brands, period. They advertise
22 their books, only their books, and they mention
23 their brand within the advertising of their
24 books but brand recognition is based on the
25 cumulative book recognition.

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2 published books or whether it was some originals
3 or not. I don't know.

4 Q Do you know how many new titles
5 iBooks publishes each year?

6 A No.

7 Q Do you know how many iBooks has
8 published overall?

9 A I know in these documents that I
10 know what their output was for a period of time
11 that I examined, which was approximately 2000 to
12 2004 that we talked about earlier. For that
13 period we did tally titles, and so I know in a
14 general sense. I cannot recall. But I have
15 known and expressed opinions about but I don't
16 remember the numbers at the moment.

17 Q I believe you said that you had
18 reviewed a report by Professor Carpenter,
19 correct?

20 A Yes.

21 Q Was it just one report by him?

22 MR. RASKOPF: Objection.

23 Asked and answered.

24 A I recall one. Oh no, no, there
25 was a second one. That's right. I did see a

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2 second one where he responded in some ways to
3 what I had said. So yes, I have seen two.

4 Q Did you review the exhibits to
5 Professor Carpenter's reports?

6 A The exhibits were part of the
7 report. I certainly would have looked at them
8 not being conscious about distinguishing between
9 report and exhibits.

10 Q I'll give you what we'll mark as
11 Exhibit 8, which I'll represent was Exhibit 18
12 to Professor Carpenter's first report.

13 (Exhibit 8, Exhibit 18 to
14 Professor Carpenter's report,
15 marked for identification, as of
16 this date.)

17 Q Take a look at this and let me
18 know when you're ready.

19 A Okay.

20 Q If you turn to the page that in
21 the lower left is number A-76.

22 A Yes.

23 Q On the right-hand side there
24 appears to be a listing for Book Confessions of
25 a Romantic Pornographer. Do you see that?

1 M. Shatzkin

2 A Yes.

3 Q It's possible though that there
4 could be overlap between genres?

5 MR. RASKOPF: Objection to
6 the form.

7 A Of course, yes.

8 Q Further down in the same paragraph
9 you say, "It is thus reasonable to surmise that
10 were there no distractions suggesting that the
11 iBooks brand meant something else, namely Apple
12 and/or Apple's iBooks/iBooks store it is likely
13 the publishers of iBooks would have had the
14 opportunity to build on that awareness." Do you
15 see that?

16 A Yes.

17 Q What is the basis for that
18 statement?

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

21 A The basis for the statement, the
22 basis for the statement is expertise and logic.
23 The basis of the statement is not in a book or a
24 rule book. Because I know that science fiction,
25 romance, and other genre readers tend to read

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2 many books in the same genre and repeat what
3 they do, and because I know that iBooks had a
4 lot of very, very highly branded authors, I
5 intuit, I believe as an expert that the
6 likelihood is that fans of science fiction
7 having discovered an iBook, however it is they
8 found it shopping in a store that carried it,
9 would easily find others and be attracted to
10 others. So it's an expert opinion. It's not
11 something that I can point to a survey to
12 demonstrate.

13 Q Do you know whether any of the
14 things you've talked about is likely to happen
15 had happened prior to 2010?

16 MR. RASKOPF: Objection to
17 the form of the question.

18 Q Customers discovering their books
19 and --

20 A I'm sorry?

21 Q Do you know whether prior to 2010
22 customers had discovered books published under
23 the iBooks imprint?

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

1 M. Shatzkin

2 Q And come to recognize it?

3 MR. RASKOPF: Objection to
4 the form of the question. You may
5 answer.

6 A That was actually the point to
7 this paragraph, which was one, approximately 2
8 million units of iBooks science fiction were
9 sold to an unknown number of people. And I am
10 positing that a significant number of those
11 people had several, and those people would know
12 iBooks and would have from the sales that took
13 place in the time period that I was analyzing
14 it. That's the basis of the opinion.

15 Q And that time period was 2000 to
16 2004, correct?

17 A Approximately, yes.

18 Q But you don't know for a fact
19 whether there were repeat customers who had two
20 or three or more iBooks science fiction books?

21 MR. RASKOPF: Objection to
22 the form. Asked and answered.

23 A No.

24 Q We're going to go off the record
25 for a minute while we set up a spreadsheet for

1 M. Shatzkin

2 that as you recall was from 2000 to 2004?

3 A Yes, I believe it is.

4 Q Did anyone explain this
5 spreadsheet to you in terms of what data it
6 contained or how it worked?

7 A I don't think so, no. We didn't
8 have any need to understand every column. We
9 were looking for very, very specific information
10 and we were able to -- actually Katherine was
11 able to find what I asked her to find without
12 much help from me or anybody else.

13 Q Looking at the spreadsheet it
14 looks like there's an initial column that was
15 numbers; is that correct?

16 A Okay, yes, the numbers on the far
17 left, yes.

18 Q It looks like there's a next
19 heading that says ISBN?

20 A ISBN, yes.

21 Q What does ISBN stand for?

22 A International standard book
23 number.

24 Q Is that the unique number assigned
25 to a book?

1 M. Shatzkin

2 A It's a unique number assigned to
3 each publication, yes.

4 Q It looks like then if you continue
5 moving to the right looking at the spreadsheet
6 there's a column that says title?

7 A Yes.

8 Q And that's followed by author,
9 correct?

10 A That's right.

11 Q Now it looks like there's retail
12 price is a column?

13 A That's right.

14 Q Then it looks like if you go over
15 four columns there's a column headed TTD pound
16 symbol out. Do you see that?

17 A Yes, and I don't really remember
18 what each of those columns means. Katherine
19 sorted that at the time but I don't really
20 remember. Oh, yes, it's probably units shipped
21 out. That's what I would imagine, number of
22 copies shipped, in other words.

23 MR. RASKOPF: We can't see
24 the Excel sheet, counsel.

25 Q If you can feel free to scroll

1 M. Shatzkin
2 the information I needed so she could extract
3 what I wanted to extract. I didn't really pour
4 over the spreadsheets themselves myself.

5 MS. RAY: Counsel, our
6 understanding is that there was
7 only one spreadsheet produced to
8 us as material the witness
9 considered.

10 MS. BOGDANOS: That's
11 correct.

12 MS. RAY: If there was
13 another spreadsheet -- so our
14 understanding is correct, there
15 was no other spreadsheet?

16 MS. BOGDANOS: Correct.

17 Q In directing your colleague to
18 tally numbers of science fiction units sold, did
19 you do any independent investigation to confirm
20 the numbers that you derived from the
21 spreadsheet?

22 A No. Under both meanings of that
23 question, that I can conjure, the answer would
24 be no to both of them.

25 Q You testified that your

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2 understanding is that the sales data covered the
3 period 2000 to 2004, correct?

4 A Approximately.

5 Q Approximately. To the best of
6 your knowledge have you reviewed any sales data
7 for any time period after 2004?

8 A I can't recall. I seem to know
9 anecdotally that the numbers have not been
10 nearly -- were not nearly as robust after the
11 Simon & Schuster period. Whether I know that by
12 seeing numbers or whether I know that by asking
13 questions and being told that I can't really
14 recall, but I didn't try to analyze it.

15 Q Looking at this spreadsheet of
16 sales data do you know whether these sales were
17 made to distributors or to end customers?

18 A Well, there were two components
19 and don't ask me to find them because I won't be
20 able to, which were shipments out and returns.
21 So the shipments out and returns were all
22 transactions conducted with intermediaries. The
23 number that I just gave you, the 1,900,000, or
24 whatever, was a net number. That is it was the
25 shipments out with returns subtracted.

1 M. Shatzkin

2 So the presumption is that the
3 difference between gross and the net constitute
4 sales that were made to consumers by the
5 intermediaries.

6 Q So I understand, you would have a
7 gross sales number, correct, and a net sales
8 number, is that right, and the difference
9 between those represent?

10 A Returns.

11 Q Returns?

12 A There was a gross sales number.
13 What we got as raw data was a gross sales number
14 and a returns number. We from that calculated a
15 net sales number and that's the number I was
16 reporting. That was part of what the exercise
17 was designed to accomplish.

18 Q So the 1.9 was the net number, the
19 number shipped out net of returns?

20 A That's right.

21 Q Other than looking at the net
22 sales number do you have any way of knowing how
23 many of any of the 1.9 million books or the
24 total 5.6 million books were actually sold into
25 the hands of consumers?

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2 is I assume this is a recently recent search. I
3 don't know about how much of the original iBooks
4 output was cleared for distribution at the
5 moment or even whether that process is an
6 ongoing process. So in other words, if you ran
7 the same search three months from now would it
8 yield the same numbers or would more books come
9 back into play. So no, it doesn't really change
10 my opinion about anything.

11 Q And as you said the spreadsheet
12 you looked at, your understanding was it covered
13 2000 to 2004, correct?

14 A Yes, approximately.

15 Q So you wouldn't know what the
16 numbers would reflect, for example, for 2008,
17 correct?

18 A That's right, I would not know.

19 Q You wouldn't know what the numbers
20 would reflect for 2009?

21 A That's right.

22 Q Or for 2010?

23 A Yes.

24 Q Or for 2012?

25 A Right.

1 M. Shatzkin

2 Q Do you have any reason to believe
3 that either of these tables was inaccurate?

4 A No, I have no reason to believe
5 that.

6 Q Do you know what the origin of the
7 name iBooks for an imprint is?

8 A No.

9 Q Have you made any inquiry as to
10 what the origin of the name is?

11 A No.

12 Q Were you aware that iBooks Inc.
13 filed for bankruptcy in February 2006?

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

16 A I was not aware that they filed
17 for bankruptcy in February 2006, but I think I
18 was aware that they filed for bankruptcy.

19 Q Does the bankruptcy filing affect
20 your opinion at all?

21 A No.

22 Q Why not?

23 A Because it does nothing to reduce
24 the awareness that was built during the period
25 that I examined and looked at. The things that

1 M. Shatzkin

2 happened, nothing reduces the number of readers
3 of science fiction under the iBooks brand. The
4 subsequent hard times of iBooks did not reduce
5 those numbers. It doesn't affect my opinion.

6 Q When you say awareness, that's
7 brand awareness that you surmise was generated
8 based on the number of units of science fiction
9 books?

10 MR. RASKOPF: Objection to
11 the form of the question.

12 A That's accurate.

13 Q Turning back to your report, which
14 is Exhibit 3.

15 A Got it.

16 Q On the first page of your report,
17 second full paragraph starts Mr. Carpenter
18 demonstrates. In the middle of the paragraph
19 you say, "The publishing ecosystem does not
20 primarily recognize a corporate branding
21 source." Do you see that?

22 A Yes.

23 Q What did you mean by that?

24 A What I meant was that the name of
25 the corporate owner is not a primary, of primary

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2 consumer brand. The question is whether it's a
3 consumer brand on which some commercial value
4 can be built. If there are six people that know
5 about it, it would be pretty hard. If there are
6 thousands of people that would know about it it
7 would be somewhat easier. If there millions of
8 people that know about it then you're Harlequin
9 and you build a world scale enterprise on it.

10 It is my opinion that iBooks was
11 recognized as a legitimate science fiction
12 publisher by a substantial number of science
13 fiction book consumers, and that that created a
14 foundation on which can be built upon.

15 Q That again is based on the sales
16 numbers?

17 A Yes.

18 Q In paragraph three where you say
19 how the iBooks brand could have capitalized on
20 its legacy, do you see that, to build a valuable
21 consumer franchise? Is it your opinion that it
22 ever did capitalize on that legacy?

23 MR. RASKOPF: Objection to
24 the form of the question.

25 A I'm not aware of any specific

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2 a lot of opinions and so whether there's an
3 opinion that -- whether I can conjure up several
4 more opinions if I look at that again, probably
5 I could.

6 Q Looking at page six of your report
7 in the second paragraph you say in the second
8 line, "That is not true in publishing where
9 almost no money is spent or has been spent
10 creating consumer awareness in recognition of
11 brands." Do you see that?

12 A Uh-huh.

13 Q What is your basis of that
14 statement?

15 MR. RASKOPF: Objection.

16 A 50 years in business.

17 Q Is your testimony that publishers
18 do not spend any money creating consumer
19 awareness?

20 MR. RASKOPF: Objection to
21 the form of the question.

22 A No, it is my contention that
23 publishers spend no money creating consumer
24 awareness of brands. Publishers spend money
25 creating consumer awareness of titles they're

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2 publishing, of content, not of the names of
3 brands.

4 Q Is it your understanding that
5 publishers do not promote individual imprints or
6 brands?

7 MR. RASKOPF: Objection to
8 the form of the question. You may
9 answer.

10 A Unless the imprint or brand has an
11 audience centric component like Dummies the
12 answer is yes, it is my understanding that they
13 never do.

14 Q But there might be some publishers
15 for whom there is an audience centric component,
16 correct?

17 MR. RASKOPF: Objection to
18 the form.

19 A Even -- yes, and even when that is
20 true, such as Harlequin, we don't often find
21 Harlequin pushing the name Harlequin. They
22 don't need to do it. They do it by publishing
23 books with Harlequin's name on them.

24 Q I think you said that you have not
25 visited Harlequin's web site, correct?

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2 A What?

3 Q You said you read about ebooks.
4 What materials have you read?

5 A I read mostly it's online
6 material. There's a whole bunch of entities
7 that report to the publishing world, and then
8 there are some blogs like Digital Reader is a
9 really good one that track the ebook world
10 specifically. And then of course, I'm running
11 eight or ten days of conference programming a
12 year that are around this subject.

13 As a result I'm talking to people
14 all the time sometimes about propriety data
15 where there are companies that do surveys of
16 ebook consumers and they often present at my
17 conferences so I'm talking to them on a regular
18 basis. It's a pretty regular flow of
19 information.

20 Q You said that you had looked at
21 Professor Carpenter's second report, correct?

22 A Yes.

23 Q Sitting here today do you have any
24 opinions related to that report?

25 A I think my opinion is pretty much

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2 the same as it was in the first report, which is
3 that he is obviously an intelligent man with a
4 strong command of conventional wisdom and
5 knowledge about branding. I've seen people from
6 outside publishing coming into publishing and
7 failing to understand it for 50 years.

8 In the 1960s it was IT & T
9 acquiring a publishing house and making fools of
10 themselves and RCA acquiring Random House and
11 not knowing what to do with it. It's a common
12 theme that has played out for years and years
13 and years that people who are experts -- Borders
14 killed themselves because they started in 1999
15 hiring management that knew how to run pet
16 stores and knew how to run all kinds of things
17 but didn't know anything about books.

18 It's not only a common thing that
19 experts in other fields fail to understand
20 publishing, the failures are generally of a
21 category which is they don't get the granularity
22 of it. That's exactly what Carpenter failed to
23 get. He looked at Random House, Simon &
24 Schuster, there's six major companies and they
25 can't even establish a brand. So how is a

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2 little guy going to establish a brand. Well,
3 we're not trying to establish a brand with the
4 universe. Science fiction publishers just want
5 to establish a brand with science fiction
6 readers. I don't know if it's four percent of
7 the people in the country or nine percent of the
8 people in the country, but it's not 50 percent
9 of the people in the country. You're not going
10 to get the kind of brand recognition that you
11 get from Pepsi Cola or the New York Yankees out
12 of a publishing shopper. It's a much more
13 targeted thing.

14 Publishing companies, the big
15 ones, are built on a very, very wide assembly of
16 audiences which each and each book is a separate
17 project to build a market for it. Anybody
18 coming into publishing from the outside just
19 their jaw drops. They don't really know how to
20 cope with it. It looks crazy to them for the
21 most part. I'd be surprised if Professor
22 Carpenter didn't from his view of the publishing
23 business say these guys are nuts.

24 But that's, as I say, this is not
25 a failure of understanding that is unique to him

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2 or that in any way, in my opinion, denigrates
3 his abilities. It is normal that people outside
4 the publishing business are stymied by the
5 massive number of very, very small commercial
6 projects that we in the publishing business
7 handle as a routine of our day-to-day lives.

8 Q You talked earlier about niche
9 imprints. Is it fair to say that iBooks, that
10 the iBooks imprint to the extent it has a brand
11 is a niche imprint?

12 MR. RASKOPF: Objection to
13 the form of the question.

14 A I would say it is fair to say that
15 iBooks has the foundation to capitalize on brand
16 equity within the science fiction fantasy niche.
17 When you cross the line of having something that
18 qualifies as a niche imprint or a strong brand
19 is a separate question, but since my premise is
20 that publishing brands are built on the
21 knowledge of consumers who have purchased and
22 read something that gives the brand identity, I
23 think that iBooks did enough to qualify on that
24 basis and if the right strategies were employed
25 they would have -- employed and able to use the

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2 brand -- they would have a real opportunity to
3 turn that into something that would be a long
4 way from being Harlequin, but would be on its
5 way to being something like Harlequin or Baen or
6 Tor or Orbit.

7 Q You talked about crossing the line
8 to having a brand. Is it your opinion that
9 iBooks at any point crossed that line?

10 MR. RASKOPF: Objection to
11 the form.

12 A You're asking me to generate a
13 characterization. I'm just simply not
14 comfortable saying when the lines got drawn. I
15 go back to what I said, which is that they have
16 a foundation of knowledgeable people in what
17 strikes me as sufficient number to make a real
18 play for a science fiction brand.

19 It's not a dozen people. It's
20 probably thousands and it may be tens of
21 thousands of people who consumed enough books so
22 if -- remember if it was 50,000 people, we're
23 living in a country of 300 million people. So
24 whether it be 50,000 of them and you and I may
25 never meet one with those odds, but if we could

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2 meet those 50,000 people and say do you know
3 iBooks they'd say I read an Arthur Clarke book,
4 and then I read something by someone I didn't
5 know because these people who read 5, 10, 20, 40
6 science fiction books a year, as I said earlier,
7 are not reading them from 500 publishers.
8 They're coming from a dozen publishers. They
9 would remember iBooks.

10 Q Is it your opinion that iBooks has
11 made a play to capitalize on those people who
12 have bought books in the past?

13 MR. RASKOPF: Objection to
14 the form of the question.

15 A I have not seen the evidence of
16 it.

17 Q I'd like to show you what we've
18 marked to save time as Exhibit 14, a book called
19 Plantepedia by Maggie Stuckey. We've marked as
20 Exhibit 15 Glide Path by Arthur C. Clarke.
21 We've marked as Exhibit 16 Arthur C. Clark's
22 Venus Prime 5. We've marked as Exhibit 17 a
23 book called Voodoo Moon Trilogy by Cheri Scotch.
24 We've marked as Exhibit 18 the Dawn of Amber by
25 Robert Zelazny. We've mark as Exhibit 19 Dorian