

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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J.T.COLBY & COMPANY, INC. d/b/a/	)	
BRICKTOWER PRESS, J. BOYLSTON &	)	
COMPANY, PUBLISHERS LLC and	)	Case No. 11 Civ. 4060 (DLC)
IPICTUREBOOKS LLC,	)	
	)	
Plaintiffs,	)	
	)	
-against-	)	
	)	
APPLE INC.,	)	
	)	
Defendant.	)	
_____	)	

**DECLARATION OF JOHN T. COLBY, JR.**  
**IN OPPOSITION TO DEFENDANT’S MOTION TO EXCLUDE**  
**ANY TESTIMONY, ARGUMENT OR EVIDENCE REGARDING**  
**THE EXPERT REPORT AND OPINIONS OF MIKE SHATZKIN**

I, John T. Colby, Jr., 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 opposition to Defendant’s Motion To Exclude Any Testimony, Argument Or Evidence Regarding The Expert Report And Opinions Of Mike Shatzkin, cited in the accompanying memorandum of law (“Plaintiffs’ Memorandum”).

2. I am familiar with the electronic spreadsheets referred to as the “July Spreadsheet” and the “August Spreadsheet” in Plaintiffs’ Memorandum.

3. The July Spreadsheet is a sales report and summary that represents and references large quantities of Plaintiffs’ sales information, including, among other things, Plaintiffs’ sales of books sold under the ibooks imprint from approximately 1999 through early 2012. The July Spreadsheet compiles Plaintiffs’ historical business records (*i.e.*, sales invoices) for such sales throughout this time period from source data records. These business records were maintained

on a hard drive, which I understand was produced to Defendant on or about March 23, 2012. In addition, updated files with the most recent information were hand-delivered to Defendant on a thumb drive during my deposition. Thus, it is my understanding that Defendant has in its possession all of the underlying records that comprise the July Spreadsheet.

4. The August Spreadsheet is a sales report and summary that contains the same information in the July Spreadsheet, but reorganized to separate titles sold under the ibooks imprint from those sold under the ipicturebooks imprint. In reorganizing this data, I noticed two minor errors as relates to the ibooks imprint: (1) in December 2004, sales of the book I, Robot Spec Sale were inadvertently omitted from the July Spreadsheet; and (2) cost of sales was inadvertently undercounted in 2005. I corrected these errors in the August Spreadsheet.

5. On or about October 4, 2012, I provided to Plaintiffs' counsel, for production to Mr. Shatzkin, a data file containing certain subsets of data derived from the same source files (that is, business records) that created the August Spreadsheet. This subset spreadsheet is referred to as the "Shatzkin Spreadsheet" in Plaintiffs' Memorandum. I understand that the Shatzkin Spreadsheet was produced to Defendant. The Shatzkin Spreadsheet provides columns for each entry, among other information: the International Standard Book Number ("ISBN"); title; author; publication date; distributor; imprint; and net units shipped (that is, the number of books shipped minus returns). The Shatzkin Spreadsheet does not include the data for dollar net sales for the listed entries.

6. The only information included in the Shatzkin Spreadsheet but *not* in the August Spreadsheet are some "BISAC" classifications codes. BISAC codes identify a book's genre. I provided the BISAC codes, from my records, for the entries on the Shatzkin Spreadsheet

associated with genre classifications for science fiction, graphic novels, fantasy and horror, among others, that were not already included.

7. I am aware that there are approximately 665 separate entries on the Shatzkin Spreadsheet for science-fiction books sold under the ibooks imprint. Each of these entries lists what I consider to be a separate title for sales and royalty reporting purposes.

8. Having reviewed the Shatzkin Spreadsheet, I have learned that it includes some minor data system errors for which the record was not properly updated. Specifically, I am aware of certain entries that do not list a publication date at all, or list a publication date of “0.” Having reviewed such entries, I have confirmed that each of these entries had first publication dates of 2006 or earlier, with the exception of Green Visions (Tr.), which has not yet been released. In addition, as noted above, I Robot Spec Sale, listed as having a publication date of “12/9999” actually had a publication date of December 2004. In addition, the remaining entries on the Shatzkin Spreadsheet that provide “12/9999” as a publication date actually had a publication date of December 1999. In addition, the five titles listed as having publication dates of 1990 – 1995 (specifically, The Dragon Masters [1990], Black Unicorn [1991], Child of an Ancient City [1992], Dragon’s Plunder [1992] and Born of Elven Blood [1995]) all had first publication dates of June 2008 or earlier, and collectively represent net sales of approximately 142 units. The years associated with these titles in the data file are the copyright dates of the first publication of the print titles.

9. Simon & Schuster was a distributor of Plaintiffs’ books (including science-fiction books) bearing the ibooks imprint until approximately March 2005.

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 Shelter Island, New York.

A handwritten signature in cursive script, appearing to read "J. Colby Jr.", written in dark ink.

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John T. Colby Jr.