

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 by the iBooks, Inc. entity fell into the
3 first category in the terms of this text I
4 just read?

5 A. I don't know what category
6 you're talking about.

7 Q. The category that can be safely
8 ignored?

9 A. I'm sorry, what are we talking
10 about? We're talking about this application
11 over here?

12 Q. Yes.

13 A. Identify which serial number
14 are we talking about? Tell me which
15 application and serial number.

16 Q. I'm referring to Gundersen
17 Exhibit 5, and Gundersen Exhibit 6.

18 A. Well, Gundersen Exhibit 6 is
19 merely a portion of what apparently is the
20 file.

21 Q. That's correct. So really the
22 application is Gundersen Exhibit 5.

23 A. And your question is?

24 Q. Did the abandoned application
25 reflected in Gundersen Exhibit 5 fall into

1 GLENN GUNDERSEN, ESQUIRE - HIGHLY CONFIDENTIAL
2 the first category that can be safely ignored
3 set forth on page 113 of your book?

4 A. This is an application that was
5 examined, was investigated, we determined who
6 the applicant was. We determined what
7 subsequently happened to the applicant and
8 its business. We found that the applicant
9 had died -- the principal of the applicant
10 had died, the company had been liquidated.
11 We found no further evidence after that of
12 continuing use of the mark. We found no Web
13 site for successor business. We found no
14 other business, no other evidence of use by a
15 successor business, and this is a situation
16 where we very thoroughly examined this
17 application and examined what it led us to.

18 Q. So the answer to my question
19 is, you determined based on your examination,
20 that the application had been abandoned and
21 that the applicant had abandoned its mark and
22 could be safely ignored. Right?

23 A. No. I did not -- the scenario
24 there is -- that this makes out is an
25 applicant applies for a mark, drops the