

CONFIDENTIAL

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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,

Plaintiff,

vs.

No. 11-cv-4060

APPLE, INC.,

Defendant.

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CONFIDENTIAL

VIDEOTAPED DEPOSITION OF
30(b)(6) JOHN T. COLBY, JR.
New York, New York
Wednesday, July 18, 2012
10:20 a.m.

Reported by:
Jennifer Ocampo-Guzman, CRR, CLR

Ref: 7845

1 Confidential-Colby

2 MR. CHATTORAJ: Objection.

3 A. I'm still confused about valuation.

4 Q. Any analysis where a -- someone was
5 asked to quantify the financial worth of the
6 iBooks mark or the ipicturebooks mark?

7 A. In that sense, yes, as it relates
8 to the entity.

9 Q. Can you explain what you mean?

10 A. Byron tried to sell the company
11 before the bankruptcy.

12 Q. So prior to Byron Preiss' death he
13 tried to sell his company before it went into
14 bankruptcy?

15 A. He wasn't aware it was going to go
16 into bankruptcy, but he wasn't aware that he
17 was going to get hit by the bus.

18 Q. Fair enough.

19 But the point is you were aware
20 that Mr. Preiss had been trying to sell
21 iBooks, Inc. and Byron Preiss Visual
22 Publications; is that right?

23 A. After the bankruptcy I learned
24 about it, but not before.

25 Q. And what valuation documents were

1 Confidential-Colby

2 Q. And which of your entities sold the
3 books, was it J. Boylston or was it plaintiff
4 Brick Tower?

5 A. J. Boylston.

6 Q. So who -- were there contracts
7 between J. Boylston and somebody reflecting
8 sales of iBooks?

9 MR. CHATTORAJ: Objection.

10 A. No.

11 Q. Okay. How did J. Boylston sell
12 books using the iBooks mark?

13 MR. CHATTORAJ: Objection.

14 A. Our distributor PGW sold iBooks
15 products.

16 Q. And who -- and your distributor PGW
17 paid a fee or gave royalties to your company
18 as a result of that, right?

19 A. In theory, yes.

20 Q. Okay.

21 A. Practically, no.

22 Q. What do you mean by that?

23 A. Just what it says.

24 Q. Did you not receive compensation
25 from your distributor PGW?

1 Confidential-Colby
2 words, post mid-2006 when you acquired the
3 assets of iBooks, Inc. and Byron Preiss
4 Visual Publications, okay, what was the
5 source for the information contained in
6 exhibits A, B and C of that information?

7 MR. CHATTORAJ: Objection.

8 A. The sales records from its
9 distributor.

10 Q. You didn't need to post
11 acquisition, write to each distributor and
12 say please give me copies of the sales
13 records, correct?

14 MR. CHATTORAJ: Objection.

15 A. No.

16 Q. So do you obtain monthly or
17 quarterly sales records from distributors?

18 A. I'm sorry. Do I retain them?

19 Q. Do obtain them?

20 A. Obtain them, yes.

21 Q. How often do you receive reports
22 from distributors? Again, relating to sales
23 of iBooks imprint products?

24 A. After the acquisition?

25 Q. Correct.

1 Confidential-Colby

2 A. Each distributor is different. Not
3 most of them are pretty good, I get them once
4 a month. Some distributors are not so good,
5 so I get them once every 3 months. Some
6 distributors don't send them to me at all, I
7 have to go after them to get them.

8 Q. What distributors have you used to
9 distribute iBooks' products since you
10 acquired the assets in mid-2006, December?

11 A. Which -- I'm sorry, which
12 distributors?

13 Q. With regard specifically to
14 describing iBooks' products in the United
15 States?

16 A. PGW, NBN and Lightning Source.

17 Q. So there are only three
18 distributors of iBooks' products since you
19 acquired the assets in mid-2006; is that
20 correct?

21 A. That's a lot of distributors.

22 Q. And -- but not 15?

23 A. You're talking about the print
24 books only?

25 Q. What distributors -- so did you --

1 Confidential-Colby
2 bought them, so they were returned and sales
3 plummeted?

4 MR. CHATTORAJ: Objection.

5 A. I can't say that. I don't know.

6 Q. But you understand that the problem
7 was that there were a -- that a lot of
8 returns in 2006 and 2005?

9 MR. CHATTORAJ: Objection.

10 A. That's my understanding, yes.

11 Q. Okay. And turning, if you would,
12 to the second page of the exhibit. We just
13 broke out 2005. That was the year Mr. Preiss
14 died. He died on July 9 of 2005 via car
15 accident; is that right?

16 A. That's about right, yeah.

17 Q. And this indicates on a monthly
18 basis that sales in January of 2005 were much
19 better than the rest of the year. Do you see
20 that, they were roughly [REDACTED]?

21 A. Yes. In January of '05?

22 Q. Yes.

23 A. Yes, 646, yes, I see it.

24 Q. And then they dropped in February
25 to roughly [REDACTED], in March to only [REDACTED]

1 Confidential-Colby

2 ■■■, in April to roughly ■■■. And then
3 isn't it true then in May, June and July of
4 '05 there were no sales at all?

5 A. According to this schedule, yeah.

6 Q. So in July of 2005, the month that
7 Mr. Preiss died, the 2 months preceding that
8 there were no sales at all of iBooks?

9 MR. CHATTORAJ: Objection.

10 A. There are no shipments to -- from
11 the distributor to the retailer, but it
12 doesn't mean there weren't any retail sales
13 of iBooks in that period.

14 Q. Well, there was no income earned by
15 iBooks, Inc. during that period, right?

16 MR. CHATTORAJ: Objection.

17 A. Income from what?

18 Q. From sales of iBooks?

19 MR. CHATTORAJ: Objection.

20 A. I can't say. I can't say for
21 certain that's true.

22 Q. Well, you were attempting in
23 finding out the information in preparing the
24 spreadsheet Exhibit A to report all of the
25 sales accurately; correct?

1 Confidential-Colby

2 A. That's right.

3 Q. And you didn't find any sales for
4 those months in 2005, correct?

5 MR. CHATTORAJ: Objection.

6 A. That's correct. I didn't find
7 them, no.

8 Q. Correct.

9 Okay. So turning back to the first
10 page of the document, again, in 2006 the
11 sales were negative; isn't that true?

12 A. Yes, that's right.

13 Q. And is that because there were more
14 returns than were sales?

15 A. That's correct.

16 Q. And then in 2007, that was the
17 first full year that -- where you owned the
18 iBooks mark; isn't that right?

19 MR. CHATTORAJ: Objection.

20 A. The first full year, that's
21 correct.

22 Q. And in 2007 you had sales of
23 approximately [REDACTED] in iBooks books; is
24 that right?

25 A. That's right.

1 Confidential-Colby
2 for 21st century publishing.

3 Q. What specific documents are you
4 referring to? How will we find these ads?

5 A. They are in the original titles
6 launched in '99 on the back page of each book
7 announcing the iBooks launch. And the whole
8 idea behind it was that the books live and
9 are new things and new entities.

10 Q. There is nothing in Mr. Preiss'
11 letter announcing iBooks to USA Today that
12 says that iBooks is to refer to new ideas,
13 correct? Isn't it true that what he writes
14 about is that this is the first publishing
15 imprint to take full advantage of the
16 promotional and distribution potential of the
17 internet?

18 MR. CHATTORAJ: Objection.

19 A. He does.

20 Q. Isn't it true that you don't know
21 what the "i" in iBooks is supposed to relate
22 to?

23 A. I do know.

24 Q. How do you know this?

25 MR. CHATTORAJ: Objection.

1 Confidential-Colby

2 A. Through Byron's history of
3 publishing and the kinds of books he
4 published.

5 Q. And that's a very amorphous
6 statement.

7 What specifically are you aware of
8 that tells you what the "i" in iBooks is
9 supposed to refer to?

10 A. Books sentient beings.

11 MR. CHATTORAJ: Counsel, you've
12 asked the same question three times. He
13 answered the question differently
14 before.

15 MS. CENDALI: The judge said
16 "object."

17 Q. Go ahead.

18 MR. CHATTORAJ: I'm going to direct
19 him not to answer because you are
20 badgering the witness.

21 MS. CENDALI: I'm not badgering the
22 witness.

23 MR. CHATTORAJ: You certainly are.
24 You've asked the question four times,
25 four times.

1 Confidential-Colby

2 MS. CENDALI: I don't care.

3 MR. CHATTORAJ: You don't care?

4 MS. CENDALI: This is

5 cross-examination, he gives an amorphous

6 answer, I'm allowed to --

7 MR. CHATTORAJ: He previously

8 answered.

9 MS. CENDALI: And your answer is

10 objection and I will put this all before

11 Judge Cote again.

12 MR. CHATTORAJ: And I will --

13 MS. CENDALI: Don't interrupt him.

14 Read it back before counsel started

15 interrupting his answer, when's he's

16 talking about --

17 Q. What were you saying about a

18 sentient beings, sir?

19 A. To Byron's world books are three

20 dimensional sentient beings.

21 Q. So what does that have to do with

22 the what the "i" in iBooks stands for?

23 A. The history of Byron's work with

24 Isaac Asimov, specifically the "I, Robot"

25 books and works, the "I, Robot" screenplay,

1 Confidential-Colby
2 specifically Byron is coauthor of a book
3 called "Dragon World" with Michael Reaves,
4 who is the author of "I, Alien."

5 Byron had many software products he
6 manufactured in 1990s with the help of his
7 science fiction writers that we have
8 advantage of today, Arthur Clarke and Isaac
9 Asimov. Byron used his name next to anything
10 he could possibly produce with Isaac Asimov's
11 name or Michael Reaves of the "I, Alien"
12 genre. And based on that and Byron's
13 discussion of books of standalone sentient
14 beings, that's where the "I" comes from.

15 Q. You believe the "I" in iBooks
16 refers to books as standalone sentient
17 beings?

18 A. That's right.

19 Q. Are you aware of any documents
20 where Preiss said this?

21 A. No.

22 Q. Did Preiss tell you that the "i" in
23 iBooks was intended to refer to books as
24 sentient beings?

25 A. He used the word -- he used the

1 Confidential-Colby
2 word sentient as a standalone
3 three-dimensional object.

4 Q. There's nothing in Exhibit 18 that
5 refers to Isaac Asimov or books as sentient
6 beings, is there?

7 A. No.

8 Q. Instead he simply says, "iBooks is
9 the first publishing imprint designed to take
10 full disadvantage of promotional and
11 distribution potentials of the internet,"
12 right?

13 A. Right, because he was trying to
14 sell the book.

15 Q. Was he being truthful?

16 A. Sure, as a marketing person. He's
17 trying to sell the book.

18 Q. Isn't it true that iBooks, Inc.
19 applied for a trademark registration in the
20 mark iBooks but its application was rejected
21 by the PTO?

22 A. I was not aware of that until
23 counsel researched it.

24 Q. So you weren't aware of that at the
25 time you bought the assets in bankruptcy; is