

CONFIDENTIAL

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

APPLE, INC.,

Defendant.

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VIDEOTAPED DEPOSITION OF

JOHN T. COLBY, JR.

New York, New York

Friday, July 20, 2012

9:41 a.m.

Reported by:  
Jennifer Ocampo-Guzman, CRR, CLR

Ref: 7827

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2 MR. CHATTORAJ: Objection.

3 A. I'm not sure what you mean by  
4 financial difficulties.

5 Q. That its business was doing badly?

6 MR. CHATTORAJ: Objection.

7 A. And by business what do you mean?

8 Q. You're unable to answer that  
9 question, Mr. Colby?

10 A. Well, there are two sides to a  
11 business.

12 Q. Mr. Colby, isn't it true that prior  
13 to Byron Preiss' death iBooks, Inc., was  
14 experiencing difficulties keeping the  
15 business afloat?

16 MR. CHATTORAJ: Objection.

17 A. It would seem to, it would seem to  
18 suggest that, yes.

19 Q. And isn't it true that Mr. Preiss  
20 died the day after Exhibit 102, talking about  
21 the tax penalties, was written?

22 A. I believe that's true, yes.

23 Q. He died on July 9, 2005, isn't that  
24 correct?

25 A. I think that's true, yeah.

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2 Q. But isn't it true that the  
3 financial difficulties with the company had  
4 occurred prior to his death?

5 MR. CHATTORAJ: Objection.

6 A. Well, that's the period of time  
7 we're talking about, yes, he left two kids by  
8 the way.

9 Q. Let's look at Exhibit 106.

10 (Defendant's Exhibit 106, E-mail  
11 dated 9/13/05, Bates No.  
12 COLBYHD00547340, marked for  
13 identification, this date.)

14 Q. Exhibit produced from the hard  
15 drive, COLBY HARD DRIVE 54734, from Robin  
16 Bader at BPVP.com to among others B.C.  
17 Ashmall-Liversidge@ipicturebooks.com and  
18 others. And at the bottom of the e-mail it  
19 says, Roger, do ibooks.net and BPVP.com still  
20 exist?

21 And Roger Cooper responds, "In  
22 looking for them on the internet, (as you  
23 probably have), it looks like the site have  
24 vanished. Who would know officially?"

25 Do you see that?

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2 ipicturebooks folder or they could be under  
3 that folder too, but nonetheless that's where  
4 they are.

5 Q. How did you set the price of  
6 \$125,000 that you bid to purchase the assets  
7 of Byron Preiss Visual Publications and  
8 ibooks, Inc.?

9 A. That was my estimate of the fair  
10 market value of the sales potential of the  
11 existing inventory in the next two years out.

12 Q. How did you go about figuring that  
13 out?

14 A. I created a spreadsheet by title,  
15 may have described this on Wednesday, by  
16 opening inventory, purchases, sales, returns,  
17 pending inventory, doing that for units and  
18 dollars and then once I figure out the  
19 return, return curve, I can also figure out  
20 the sales curve. These are all basically  
21 signed curves, I won't go into the math, but  
22 they'll go out 60 cycles, which is in my  
23 world five years, and I just forecasted it  
24 out knowing what the existing inventory, how  
25 long the existing inventory was going to last

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2 and then would calculate the required  
3 purchases to replenish that inventory.

4 When the inventory ran out -- I did  
5 that by title -- and that spreadsheet gave me  
6 the total number that, well, it's a forecast  
7 and based on that information I thought that  
8 125 was a fair price. Like a net present  
9 value situation.

10 Q. Did you allocate any portion of the  
11 purchase price to the value of the ibooks  
12 mark itself?

13 A. It was important to know that we  
14 had the rights in the mark and that  
15 bankruptcy trustee represented to me also the  
16 right to Byron Preiss Visual Publications the  
17 name to that one too, and to Milk & Cookies  
18 Press, that was very important to the marks,  
19 that have been mentioned earlier. And the  
20 bankruptcy trustee represented to me that  
21 those are the marks. And so, okay, I built  
22 that into the equation. Otherwise, I, it  
23 would have been difficult to value it without  
24 those marks. I needed all those marks in  
25 place.