

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

J.T. COLBY & COMPANY, INC.,
d/b/a BRICK TOWER PRESS,
J. BOYLSTON & COMPANY,
PUBLISHERS, LLC, and
IPICTUREBOOKS, LLC,
Plaintiffs,

CASE NO.
11-CIV-4060 (DLC)

v.
APPLE, INC.,
Defendant.

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VIDEOTAPED DEPOSITION OF

RICHARD FREESE

September 25, 2012

Prince Frederick, Maryland

2:04 p.m.

REPORTED BY:

Lori J. Goodin

REF: 8254

1 A. Yes.

2 Q. What is your title?

3 A. President and CEO.

4 Q. How long have you been the President  
5 and CEO of Recorded Books?

6 A. About 16 months. What would May of  
7 last year be? I think it is about --

8 MR. RASKOPF: About right.

9 BY MS. JARRETT:

10 Q. Were you ever employed by National  
11 Book Network?

12 A. Yes.

13 Q. When were you employed by National  
14 Book Network?

15 A. Twice. I was employed in the '90's,  
16 early '90's, or mid '90's. I left in 2001. And  
17 then I joined them again in 2010, I believe.

18 Q. When you joined National Book  
19 Network in the 1990's, what was your role?

20 A. I was a VP of sales and marketing.

21 Q. Did you continue in that role until  
22 2001?

1           A.     Because I was offered the position  
2 of President of Motor Books International in  
3 St. Paul.

4           Q.     What is Motor Books International?

5           A.     It is a specialty publisher of books  
6 for automobile, motorcycle, plane, anything with  
7 an engine, enthusiasts.

8           Q.     Is it a, is it an independent  
9 publisher then?

10          A.     It was an independent publisher when  
11 I was there. It was owned by private equity and  
12 private investors.

13          Q.     Okay. And then why did your  
14 employment with National Book Network end in  
15 2000 -- well, the second time?

16          A.     Because the ownership made a  
17 decision to downsize the company instead of  
18 continue to grow the company. And I like to  
19 build things. So, we agreed to disagree, and I  
20 took this job.

21          Q.     So, would that, did you leave  
22 National Book Network the second time then in

1 about May 2011?

2 A. I think -- May of last year, yes.

3 Q. Okay. And with respect to

4 Publishers Group West, why did your employment

5 with that company end?

6 A. Because the parent company, Advanced

7 Marketing Services, declared bankruptcy at the

8 end of, I believe it was '06. And as part of the

9 liquidation we sold Publishers Group West to the

10 Perseus Book Company.

11 Q. Okay. Do you know John Colby?

12 A. I do, indeed.

13 Q. Who is Mr. Colby?

14 A. John is the publisher of ibooks, and

15 Milk and Cookies and a number of other imprints.

16 Q. Okay. How do you know Mr. Colby?

17 A. I, you know, that is, I have known

18 John through both a family connection and through

19 our, both working at Doubleday for many years.

20 Q. What is the family connection?

21 A. My father was Chief Financial

22 Officer of Doubleday, Inc. in the '70's and

1 '80's. I believe his aunt, May, was the  
2 Executive Assistant to John Sargent or one of the  
3 other executives on the Doubleday executive team.

4 And so, we got to know John through  
5 that connection, my father and his aunt.

6 Q. I see. Okay. You mentioned that  
7 you -- well, so how long have you known  
8 Mr. Colby?

9 A. I would say 30 years.

10 Q. Is it fair to say you are friends?

11 A. Yes.

12 Q. Okay. Are you aware of the lawsuit  
13 filed by J.T. Colby & Company, J. Boylston &  
14 Company and ibooks against Apple, Inc.?

15 A. I'm am aware that there is a  
16 lawsuit. I'm not privy to what the details of  
17 that is.

18 Q. Have you ever seen the complaint?

19 A. I have not.

20 Q. How did you first learn of the  
21 lawsuit?

22 A. I honestly don't recall, but I think

1 Mr. Colby contact you about in connection with  
2 the purchase of ibooks, Inc.?

3 A. What I remember, because it was  
4 years ago, is that John and I worked on pulling  
5 together sales lists and title lists so that he  
6 could assess the value of the company and decide  
7 whether he was going to purchase it, and he  
8 worked through me to get those lists.

9 Q. When did this occur?

10 A. The bankruptcy was 2006, so I have  
11 to believe it was in that time frame. I honestly  
12 don't recall.

13 Q. What time period did the sales lists  
14 encompass?

15 A. The period of time that ibooks was a  
16 client of PGW.

17 Q. And what period of time was ibooks a  
18 client of PGW?

19 A. Again, I don't recall. I did sign  
20 ibooks as a client. I can't remember when. So,  
21 it was somewhere between that 2003 and 2000 -- it  
22 was anywhere from, you know, 2003 to 2006.

1 Q. Did you know Byron Preiss?

2 A. I came to know Byron Preiss, through  
3 the process of signing him as a client. I had  
4 never known him beforehand.

5 Q. Okay. Did you ever work for any  
6 companies that Mr. Preiss owned?

7 A. I did not.

8 Q. Did National Book Network ever  
9 distribute ibooks' or ipicturebooks' books before  
10 2006?

11 A. I don't believe so.

12 Q. Okay.

13 MS. JARRETT: I am going to mark  
14 Freese exhibit --

15 THE WITNESS: Yes, I just don't  
16 recall.

17 MS. JARRETT: Sorry. I'm going to  
18 mark Freese Exhibit 3.

19 (Freese Exhibit Number 3  
20 marked for identification.)

21 BY MS. JARRETT:

22 Q. And that is a May 17, 2005, memo by

1 Ron Preiss and yourself, as well as some others  
2 from, I am going to say the name wrong, Rick  
3 Pincofski.

4 A. Okay.

5 Q. If you could take a moment and let  
6 me know when you've had a chance to review that  
7 document.

8 A. Okay.

9 Q. Does this refresh your recollection  
10 that it was in 2005 that you were communicating  
11 with Byron Preiss about PGW distributing ibooks'  
12 books?

13 A. This isn't about us distributing  
14 these books. This is about us helping print his  
15 books.

16 Q. Okay. Who distributed the books for  
17 i -- the ibooks' books before PGW, do you know?

18 A. I don't recall.

19 Q. Okay. If I told you that the  
20 plaintiffs in this case alleged that -- well,  
21 give me one second.

22 In 2006 Publishers Group West, as



1 the ibooks distributor, would that refresh your  
2 recollection as to when PGW began distributing  
3 books for ibooks?

4 A. That, it certainly sounds like it  
5 could be in the time frame.

6 Q. Okay. And you don't have any  
7 documents that would show exactly when PGW became  
8 the distributor, correct?

9 A. I don't.

10 Q. Okay. And you said this document,  
11 Freese Exhibit 3, is about PGW helping print  
12 books for ibooks; is that correct?

13 A. That's correct.

14 Q. Can you explain that for me?

15 A. Yes. When publishers change  
16 distribution, what happens is the old distributor  
17 will hold a reserve for return. Because what  
18 happens is since books are completely returnable  
19 from the retail and wholesalers, the returns  
20 continue to go to the older, old distributor.  
21 While the sales are, you know, coming from a new  
22 distributor.

1 BY MS. JARRETT:

2 Q. During the time that Publishers  
3 Group West distributed them?

4 MR. RASKOPF: Note my objection to  
5 the form of the question.

6 THE WITNESS: Define significant for  
7 me.

8 BY MS. JARRETT:

9 Q. Do you have any recall of the level  
10 of returns of ibooks' books when PGW was their  
11 distributor?

12 A. I don't recall them being out of the  
13 norm in general business. I do recall --  
14 actually -- yes, that when they stopped  
15 publishing, we were taking returns as opposed  
16 to -- and we weren't selling as many books.

17 So, we started to, you know,  
18 accumulate returns.

19 Q. When did they stop publishing?

20 A. Shortly after Byron was killed. I  
21 don't recall how soon.

22 Q. Do you know for how long they

1 stopped publishing?

2 A. You know, to say that they stopped  
3 publishing is probably an overstatement, because  
4 I don't recall. What I recall is that the  
5 frontlist, that they were intending to come out  
6 wasn't coming out at the rate that it was  
7 supposed to come out.

8 And really all I remember is that  
9 they started to, that returns started to outstrip  
10 sales.

11 Q. For how long can a retailer return  
12 books to a distributor like -- could -- I will  
13 start over, sorry.

14 For how long could a retailer return  
15 books to Publishers Group West.

16 A. Essentially as long as the book was  
17 in print and in sellable condition.

18 Q. Mr. Preiss died in the summer of  
19 2005, correct?

20 A. I don't recall.

21 Q. Okay. Would books that were  
22 returned in 2005 -- withdrawn.

1 Books that were returned in 2005  
2 would have been published before Mr. Preiss's  
3 death, correct?

4 A. Yes, assuming that -- yes.

5 Q. Fair enough. Similarly, books that  
6 were returned in 2006, would be books that were  
7 published before --

8 A. 2006.

9 Q. 2006?

10 A. Well, in or before 2006.

11 Q. Okay. And, in fact, could include  
12 books that were published as far back as 2003,  
13 correct?

14 A. Or well beyond.

15 Q. Okay. Did the returns of ibooks'  
16 books have anything to do -- let me say it this  
17 way.

18 Were the returns of ibooks' books in  
19 2006 related to Mr. Preiss's death?

20 A. No.

21 Q. Okay. One thing I forgot to mention  
22 in my ground rules is if you need a break, let me

1 know?

2 A. Thank you. Likewise.

3 Q. Thank you. Too kind, too kind.

4 Okay. You rejoined National Book Network in, is  
5 that in 2010, or did I miss --

6 A. No, I think it was 2010.

7 Q. Okay. Was National Book Network  
8 distributing ibooks' books at that time?

9 A. As I recall, yes.

10 Q. And by that time Mr. Colby had  
11 acquired the business, correct?

12 A. Correct.

13 Q. And what knowledge do you have of  
14 the distribution of plaintiffs' books by NBN  
15 during your second stint?

16 A. Pretty much the same scope as  
17 Publishers Group West.

18 Q. Were the sales the same as they were  
19 during the time that Mr. Preiss owned the  
20 company?

21 A. They were not.

22 Q. How were they different?

1 A. Yes.

2 Q. And then a letter -- let me finish.

3 A. Sorry.

4 Q. That is okay. Are you familiar with  
5 the ibooks logo that has a light bulb, lower case  
6 letter, I, and then ibooks in all lower case?

7 A. Yes.

8 Q. Are you aware of any advertising  
9 featuring that logo?

10 A. I don't specifically remember any  
11 advertising. But, co-op advertising normally  
12 would include the publisher's logo, so I would  
13 assume that is the case.

14 Q. And where is co-op, or, excuse me.  
15 To what audience is co-op advertising directed?

16 A. The consumer market.

17 Q. Okay.

18 A. It is basically with the way co-op  
19 is, it is either a customer creating a catalog or  
20 a newspaper ad. Or in many instances you are  
21 also just buying placement. You are getting a  
22 front table at Barnes & Noble for two weeks.