

# Exhibit 1

REDACTED

UNITED STATES DISTRICT COURT  
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,

-against-

APPLE, INC.,

Defendant.

Case No. 11-cv-4060 (DLC)

**EXPERT REPORT OF MIKE SHATZKIN**

I have been asked by the attorneys for Plaintiffs in this matter to review the Expert Report of Gregory S. Carpenter and evaluate the relevance of his opinions for the publishing world.

Mr. Carpenter demonstrates a complete lack of familiarity with publishing and how it works, with the result that his evidence is largely irrelevant and his conclusions largely flawed as they are applied to this particular case. The role and behavior of "brands" in book publishing is somewhat unlike the way they play out in other consumer goods. The publishing ecosystem does not primarily recognize a corporate branding source, but operates within a trifurcated branding structure: the author, the imprint or series grouping within the publishing house by which the title is published, and then the publisher. Creators, retailers, and end consumers all play various roles within the tri-level world of "book marketing." As a result, a more classical understanding and definition of brand and brand-building behavior does not adequately explain brands in publishing and, indeed, can well be misleading, as it is in Mr. Carpenter's report.

Specifically, this report will explain the following:

1. How the multi-level branding -- author, imprint or series, and publishing company -- emerged and how it works in the publishing business.
2. How the relatively recent shift in the industry, due to a trend toward book purchasing online and the rapid growth of digital or electronic/e-books, has moved the focus from business-to-business branding to building business-to-consumer brands.
3. How the iBooks brand could have capitalized on its legacy to build a valuable consumer franchise had Apple not adopted the same name.

4. How Mr. Carpenter's unfamiliarity with publishing and marketing within that industry result in misstatements and erroneous conclusions.

I have reviewed and considered the Amended and Supplemental Complaint and Jury Demand, Answer and Affirmative Defenses, the plaintiffs' iBooks sales figures, and examples of the plaintiffs' print and electronic books.

The facts I call upon in formulating my opinions have been gathered both anecdotally and systematically through approximately 50 years of participation in the book-publishing industry, the last 40 of them continuously. I have been an author and have worked with most of the major players in the industry as an author, agent, packager, or consultant.

### **Expertise, Background, and Compensation**

I have been employed full time in the publishing business since 1973 and have worked in a part-time capacity in the industry since 1962, while completing my formal education. For the first six years of my continuous work in the industry, I worked for a book-distribution company owned by my family, which distributed books on behalf of about 100 small publishers from all over the world. I managed all sales and marketing. Since 1979, I have primarily been a consultant, but have also written, agented, and packaged books. Starting in the mid-1990s, I have organized industry education events -- conferences -- mostly around the subject of "digital change in book publishing." I have also been an expert speaker on this subject at industry events around the world, including in London, Milan, Montreal, Toronto, Sydney, Frankfurt, Copenhagen, and Amsterdam.

Since February, 2009, my blog -- The Shatzkin Files -- has been published at my web site, [www.idealog.com](http://www.idealog.com) on a regular basis, and the complete archive is located there. I have thousands of regular readers worldwide. A more complete statement of my qualifications and speeches can be found at the [www.idealog.com](http://www.idealog.com) site. Exhibit A of this report contains my summary biographical page from the Idea Logical Company web site.

I have not provided any expert testimony in the past four years.

For my work on this case, I am being paid \$500 an hour (\$600 per hour for deposition and trial-preparation time and for deposition testimony; and \$700 per hour for trial testimony).

### **Multi-Level Branding**

For about 100 years, consumer book publishers in most of the world have reached consumers through what is called the "book trade" (hence: "trade publishers"), which is a network of bookstores and libraries and the wholesalers that help serve them. In addition, the most important marketing tools have been reviewers and radio and TV shows that wanted to feature "book authors" as part of their programming. Until relatively recently, every important city in the US had a newspaper that did its own book reviews and local TV and radio programs that were happy to air appearances with authors published by known publishing houses.

publishers were the most advantaged, because they had large numbers of consumers who read multiple titles from their lists. Romance readers already knew the company name and imprint "Harlequin." Science fiction fans knew Tor and Baen. The consistency of the content experience they offered had, without any elaborate effort on their part, built brand awareness that translated into online power.\*\*\*

The niche publishers, and the niche imprints of general publishers, quickly established themselves as viable consumer brands as measured by online success: getting website visitors, signing up consumers for email notifications of new publications, and, in some cases, being able to spawn new enterprises on the back of the customer base their content consistency had created for them.

One great example of that is from a niche publisher called Hay House in San Diego: a publisher of "mind body spirit" books. Hay House built email lists earlier than most publishers and has used them for years to promote its new titles in a much more cost-efficient way than most publishers have available to them. It also started doing events where its reader base paid fees to spend time with Hay House authors.

Indeed, events have become an important ancillary business for some niche publishers, building on the base of enthusiasts their publishing has delivered them. F+W Media, a private-equity financed rollup of "enthusiast" (*i.e.* vertical or niche) publishers, has a whole events business serving multiple opportunities created by its disparate communities to assemble for paid gatherings.

The major publishers have recently started to join this trend. Because they are determinedly "general" (and because they are built on publishing the biggest commercial books, the likelihood of commercial success, not topic or genre, must be the dominant criterion by which they make acquisition decisions), they tend not to have large lists within topic areas the way a specialty publisher like Hay House or F+W does. But they often do have lists in genres, particularly in science fiction and romance, which have been the two biggest genres in the inexorable and fast-paced ebook evolution.

### **The iBooks Brand**

The iBooks imprint published a large number of titles primarily in the science-fiction genre (665), followed by graphic novels, horror, and fantasy, which have turned out to be of substantial interest on the Internet and have sold well as ebooks. Although the sales of iBooks overall were modest (██████ units, with sales of science-fiction titles alone totaling ██████ units), particularly compared to a big general publisher, its specialization in a genre that is characterized by customers who make many repeat purchases in the genre suggests the potential for a core audience that would recognize it as a publishing specialist. It is thus reasonable to surmise that were there no distractions suggesting that the iBooks brand meant something else (namely, Apple and/or Apple's iBooks/iBookstore), it is likely that the publishers of iBooks would have had the opportunity to build on that awareness to create a powerful niche brand in the digital space.

direct-to-consumer efforts would include *none* of the Big Six houses he cited. Rather, they would include Harlequin for romance and Tor for science fiction, as discussed above. They would include Abrams and Rizzoli for art books. There are other players in romance (Ellora's Cave) and science fiction (Baen) that are relatively tiny players but, because of their consistent offering in a niche that has many repeat buyers, have more recognizable brand identities than the big corporate names with many consumers.

\*Exhibit B: "Technology, curation, and why the era of big bookstores is coming to an end" (from *The Shatzkin Files*)

\*\*Exhibit C: "Selling direct will become an essential capability for publishers to have" (from *The Shatzkin Files*)

\*\*\* Exhibit D: "Publishers, brands, and the change to btoc" (from *The Shatzkin Files*)

### **Opinions and Conclusions**

The iBooks imprint has reached thousands of its niche readers. The records show that during the period when Byron Preiss owned and operated iBooks, it sold about 5 million units, of which nearly 2 million were in the science-fiction genre. Given the propensity of science-fiction readers to stick to their genre, it is reasonable to assume that many thousands, perhaps tens of thousands, of science-fiction readers purchased and read several iBooks titles and thus recognized the iBooks imprint.

In addition, iBooks published works by some very significant science-fiction authors, including Ray Bradbury and Arthur Clarke. This further supports the assumption that the imprint would have been known to science-fiction devotees, who pay attention to substantial, recognized authorship.

Because of its specialization, such a niche reader group is aware of authors and individual imprints within the genre -- more acutely so than is a general readership. The specialized nature of a genre, such as science fiction, results in a focused reader circle, attuned to the authors and publishers within the particular field.

As a result, at the time the entire industry turned its attention to consumer branding (which can't be assigned a precise date, but which started to happen in the later part of the first decade of the 21st century, and with accelerating speed after Kindle was launched in November 2007), the owners of iBooks would have found themselves with a strong foundation on which to promote iBooks directly to consumers as a science-fiction brand. They had big authors and a big backlist, and they had undoubtedly sold multiple titles to enough people -- many thousands, if not tens of thousands -- to enable that. As previously observed, publishing brands are defined by the content they publish. However, for iBooks, promotional efforts targeting end consumers did not make economic sense, because in the interim Apple had created such a strong (and overshadowing) alternative identity for the word iBooks.