

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
IPICTURES LLC,

Plaintiffs,

vs.

Civil Action
No. 11-cv-4060 (DLC)

APPLE, INC.,

Defendant.

-----)

VIDEOTAPED DEPOSITION OF

JACOB JACOBY, Ph.D.

New York, New York

Thursday, December 6, 2012

Reported by:

SHAUNA STOLTZ-LAURIE

Ref: 8576

Jacoby

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think?

MS. BOGDANOS: Objection.

A. Yes, but in a post sale -- we're looking at prospective purchasers who are in the post sale situation.

Q. Right.

A. Not -- so here we have prospective purchasers put into a presale or point of same by question D, frame of mind.

Q. Okay.

A. But they're not put into a post sale frame of mind.

Q. But isn't it true, whether it's at the time of sale or whether it's post sale, you are still looking to see the thoughts of prospective purchasers?

A. You know, this study can't capture it, and I'll tell you why. A book is something that you will consume over time. It takes you a while to read a book, with regards to whether it's an hour or four hours. You will be looking at it. You -- you probably will not read it, if it's a four-hour book, all at once, maybe even if

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Jacoby

it's not an hour book. You'll have many opportunities to look at the book.

This nowhere simulates that situation, where you can pick it up, thumb, look: I like the story. Then go back and see what it says at the beginning, or you can form an idea regarding who the publisher is. There's none of that here. There's handing somebody for a brief study --

Hold on for a moment. (Perusing document) Yeah. For the second part of -- this is question F12. "For the second part of the study I would like to show you a book and ask you a few questions," period. Well, "To do this I need to take you to our interviewing room. I'm going to give you a book. I'm going to ask a few questions about it." You're going to have time to look at that book and examine that book as you would after a sale (sic).

THE COURT REPORTER: "You will" or "you wouldn't"?

THE WITNESS: Would not.

(Discussion off the record.)