

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

)
 J.T. COLBY & COMPANY, INC. d/b/a/)
 BRICKTOWER PRESS, J. BOYLSTON &)
 COMPANY, PUBLISHERS LLC and)
 IPICTUREBOOKS LLC,)
)
 Plaintiffs,)
)
 -against-)
)
 APPLE INC.,)
)
 Defendant.)

Case No. 11 Civ. 4060 (DLC)

DECLARATION OF TODD ANTEN
IN SUPPORT OF PLAINTIFFS’ MOTIONS TO EXCLUDE THE TESTIMONY,
INCLUDING AFFIDAVITS, DECLARATIONS, AND REPORTS, OF (1)
DEFENDANT’S EXPERT WITNESS E. DEBORAH JAY AND (2) DEFENDANT’S
REBUTTAL EXPERT STEPHEN M. NOWLIS

I, Todd Anten, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am over 18 years old and I am competent to make this declaration based upon my personal knowledge. I am an attorney at Quinn Emanuel Urquhart & Sullivan, LLP. I am admitted to the New York bar and am currently in good standing. I make this Declaration in support of Plaintiffs’ Motions To Exclude The Testimony, Including Affidavits, Declarations, And Reports, Of (1) Defendant’s Expert Witness E. Deborah Jay And (2) Defendant’s Rebuttal Expert Stephen M. Nowlis, cited in the accompanying memorandum of law.

2. Attached hereto as **Exhibit A** is a true and correct copy of a *New York Times* article titled “Barnes & Noble Faces Steep Challenge as Holiday Nook Sales Decline,” by Leslie Kauffman, dated January 3, 2013 and available at <http://mediadecoder.blogs.nytimes.com/2013/01/03/barnes-noble-reports-tepid-holiday-sales/>. A

version of this article appeared on page B1 of the January 4, 2012 print edition of the *New York Times*, under the headline “Barnes & Noble’s Strategy Is Questioned as Nook Sales Decline.”

3. Attached hereto as **Exhibit B** is a true and correct copy of excerpts from the deposition of Mike Shatzkin, dated December 4, 2012.

4. Attached hereto as **Exhibit C** is a true and correct copy of a *Los Angeles Times* article titled “A Third of Barnes & Noble Stores May Close In Next Decade, Report Says,” by Tiffany Hsu, dated January 28, 2013 and available at <http://www.latimes.com/business/money/la-fi-mo-up-barnes-noble-stores-close-20130128,0,5751045.story>.

5. Attached hereto as **Exhibit D** is a true and correct copy of excerpts from the expert report of Susan Schwartz McDonald, Ph.D., titled *A Survey to Measure Potential Source Confusion Associated With iBooks*, dated September 17, 2012.

6. Attached hereto as **Exhibit E** is a true and correct copy of excerpts from the deposition of Susan Schwartz McDonald, Ph.D., dated December 12, 2012.

7. Attached hereto as **Exhibit F** is a true and correct copy of excerpts from Jerre B. Swann, *Likelihood of Confusion*, in *TRADEMARK AND DECEPTIVE ADVERTISING SURVEYS: LAW, SCIENCE AND DESIGN* (Diamond & Swann, eds. 2012).

8. Attached hereto as **Exhibit G** is a true and correct copy of excerpts from the deposition of John T. Colby, Jr., dated July 18, 2012.

9. Attached hereto as **Exhibit H** is a true and correct copy of excerpts from the deposition of E. Deborah Jay, dated November 30, 2012.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 5th day of February, 2013 in New York, New York.



Todd Anten