

EXHIBIT H

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 (DLC)

APPLE, INC.,

Defendant.

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VIDEOTAPED DEPOSITION OF E. DEBORAH JAY,
Ph.D, taken by Plaintiffs, pursuant to Agreement, at
the offices of Quinn Emanuel Urquhart & Sullivan
LLP, 51 Madison Avenue, New York, New York, on
Friday, November 30, 2012, commencing at 9:45 a.m.,
before Chandra D. Brown, a Registered Professional
Reporter and Notary Public within and for the State
of New York.

Job No: 27813

1 E.D. Jay - 11/30/12

2 iBooks or they said something else, they would
3 have been asked: What makes you think this;
4 can you be more specific; are there any other
5 reasons why you think this.

6 So we had multiple questions that
7 permitted respondents to explain their answers,
8 and that did not signal one way or the other
9 that one answer was of more interest than
10 another answer.

11 Q Your conclusions and opinions that you've
12 set forth in this book survey report on this
13 Exhibit 1, they are based on the study you
14 conducted in this case, correct?

15 A Well, the conclusions in the report are
16 based on the study I conducted. Since then, I
17 have certainly seen other materials. Certainly
18 I've seen Dr. Nowliss' survey report, which I
19 believe actually supports the same conclusions
20 as -- although he tested, I believe, post-sale
21 confusion, and I tested reverse confusion, but
22 both support, strongly support the conclusion
23 that there is no likelihood of confusion.

24 I have seen Dr. McDonald's survey, which I
25 believe has even more flaws than Professor

1 E.D. Jay - 11/30/12

2 used -- was used in the Complaint, not a
3 representation that is used with any frequency
4 on the Amazon and Barnes & Noble website, not a
5 representation that Dr. McDonald used, but a
6 representation that includes a variety of
7 information that would have been available to a
8 purchaser, both in a point-of-purchase
9 situation.

10 And I should say I believe Professor, or
11 Dr. Nowliss tested for point-of-sale confusion,
12 as well as post-sale, because it would
13 essentially be the same thing. You would be
14 looking at the book, and you would ask the same
15 questions. So whether you were showing
16 somebody, the respondent, the book, it does say
17 I, with a big B, but it has a variety of other
18 information on it. And as I say, it's not the
19 way it appears with any frequency on either
20 Amazon or Barnes & Noble, the specific websites
21 described in the Complaint, and it's not the
22 way it was -- appeared in the Complaint.

23 Q Before today, before right now, had you
24 ever seen a physical iBooks book before?

25 A Yes.