

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.

Civil Case No.: 11-civ-4060 (KBF)

ECF CASE

**DECLARATION OF THOMAS C.  
MORRISON IN SUPPORT OF MOTION  
TO WITHDRAW AS COUNSEL OF  
RECORD FOR PLAINTIFFS**

THOMAS C. MORRISON, under penalty of perjury, hereby declares as follows:

1. I am a member of Manatt, Phelps and Phillips, LLP (the “firm”), attorneys for plaintiffs. This Declaration is submitted in support of the firm’s motion to withdraw as counsel of record.

2. Annexed hereto as Exhibit 1, is a proposed Order granting Manatt, Phelps & Phillips, LLP’s motion to withdraw as counsel for plaintiffs.

3. As I informed the Court at the February 27th Status Conference, our agreement to represent Mr. Colby and his companies in this matter was based on an arrangement we and Mr. Colby made with a litigation funding firm before the Complaint was filed. That arrangement called for (1) an initial investment by the funding firm, followed by (2) a substantial deferral of fees by our firm, following which (3) the funding firm would resume funding the majority of our fees and disbursements. Items 1 and 2 have occurred, but the expected additional funding has

not materialized. Instead, the funding firm asked our firm to take the balance of the case on a contingency basis. That proposal was not acceptable to the firm's management.

4. From mid-January through the end of this month, Mr. Colby and I – as well as a representative of the funding firm - have had discussions with numerous law firms, virtually all of whom expressed an interest in the case. However, due to a combination of factors – including but not limited to the substantial out-of-pocket expenses necessary to see the case through to trial – we have not yet been able to conclude an agreement that is satisfactory to all parties. I am advised, however, that our client and the funding firm are close to an agreement with a pair of firms that would jointly take over the case. Those firms are aware of the October 22, 2012 trial date and have agreed to commit to meeting that date if they agree to go forward as plaintiffs' counsel.

5. As the Court knows, some initial discovery has taken place but the vast majority of the discovery lies ahead. Ironically, most of the meaningful discovery that has occurred has been the result of plaintiffs' efforts. For example, we have taken the only deposition (a third-party deposition) and made the only meaningful document production. On March 7th, plaintiffs produced 2700 pages of documents and exhibits, and on March 23rd plaintiffs turned over Mr. Colby's hard drive to Apple's attorneys; the hard drive contains records for all of Mr. Colby's publishing companies. In contrast – and despite this Court's order at the February 27th Status Conference – Apple produced only 900 pages of documents; these documents consisted *entirely* of (1) publicly available press releases from Apple; (2) publicly available PTO records of the various marks at issue in the litigation; and (3) the correspondence (including a copy of a draft complaint and the numerous exhibits thereto) between myself and Apple's in-house and outside

trademark attorneys before the lawsuit was filed. Not one internal Apple document was produced.

6. The firm has already expended substantial time on this case that has resulted in unpaid bills in the high six figures. Given the firm's overall financial structure and the very small size of our litigation department in New York City, the firm is simply not in a position to continue with this case without a mechanism for payment of its ongoing fees. We have told Mr. Colby that we are willing to forego asserting a lien on the files if he is able to reach an agreement with substitute counsel.

7. For all of the reasons set forth herein, I respectfully request that the Court enter the annexed Order allowing the firm to withdraw as counsel of record for plaintiffs, and staying the case for a maximum of thirty days, at which point new counsel would either appear or the Complaint would be dismissed.

Executed in New York, New York on this 29<sup>th</sup> day of March, 2012.

  
Thomas C. Morrison

# **EXHIBIT 1**

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**ORDER PERMITTING  
PLAINTIFFS' COUNSEL  
TO WITHDRAW**

Upon the Motion to Withdraw as Counsel of Record for Plaintiffs, it is hereby:

ORDERED that said motion is granted and that Manatt, Phelps and Phillips, LLP and each of its attorneys appearing in this case shall be stricken as attorneys of record.

IT IS FURTHER ORDERED that, attorneys Thomas C. Morrisom, Nirav S. Shah, Kimo S. Peluso and Amy T. Sheehan are hereby terminated from the docket.

IT IS FURTHER ORDERED that, Manatt, Phelps and Phillips, LLP must serve a copy upon Plaintiff John T. Colby within \_\_\_\_ days of entry of this order and that service by federal express overnight delivery and electronic mail is deemed to be sufficient service.

IT IS FURTHER ORDERED that this case is stayed for a period of thirty (30) days following which, if new counsel has not appeared for plaintiffs, the Complaint will be dismissed.

Dated: April \_\_, 2012

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Honorable Katherine B. Forrest  
United States District Judge

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