EXHIBIT D

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March 30, 2012

By E-mail

Thomas Morrison
Manatt, Phelps & Phillips, LLP
7 Times Square
New York, NY 10036

Re: *J.T. Colby & Co., Inc., et al. v. Apple Inc.*, No. 11 CIV 4060

Dear Mr. Morrison:

I am writing in response to your letter of March 28, 2012, as well as to address other matters related to the prosecution of this case.

I. REPRESENTATION OF PLAINTIFFS

Please let us know whether your firm still plans to withdraw from representation of the Plaintiffs. As we understand it, Plaintiffs have been searching for new counsel since early January. During the February 27, 2012 status conference, you stated that you thought new counsel might be retained in two to three weeks. When we spoke to your colleagues on March 20, 2012, they claimed that the matter will be transferred to another firm in a matter of a few weeks. Thus, it appears that Plaintiffs are no closer to hiring a new firm than they were three months ago, when, as you described it on February 27, you "pulled back," and tried "to sort of draw a line and let the new firm deal with these [discovery] issues."

Your strategy of doing as little as possible to prosecute your clients' claims and your latest attempt to shift that burden to Apple Inc. ("Apple") is patently unfair. Plaintiffs chose to sue Apple nearly 10 months ago. Since then, Plaintiffs have done almost nothing to pursue their claims, yet we have a firm schedule that your non-action has made difficult to meet, which has prejudiced Apple. In short, we believe this is a case of failure to prosecute.

II. THE COST OF PROCESSING PLAINTIFFS' HARD DRIVE

It is untenable for you to assert that Plaintiffs have fulfilled their discovery obligations by handing over a hard drive containing approximately 950 GB of data, which includes "materials relating to all of Mr. Colby's companies," even those that are not parties to this action; demanding that Apple pay at least $20,000 for that hard drive to be processed; and expecting

Apple's attorneys, rather than your firm, to search for, locate and produce responsive documents that the Plaintiffs will then try to use against Apple. We do not believe that Judge Forrest intended for Apple to essentially pay for the Plaintiffs' lawsuit against it, and we will request clarification on that issue if necessary.

In this vein, we note that your clients' principal, Mr. Colby, apparently maintains both a Park Avenue apartment and a home on Shelter Island. Are Plaintiffs incapable of funding any of this litigation themselves?

On the subject of the hard drive, has your firm conducted an investigation to confirm that the hard drive provided is the sole source of Plaintiffs' electronic documents? What period of time does the hard drive encompass? Does the hard drive include electronic documents obtained from the Byron Preiss entities?

III. PLAINTIFFS' INCOMPLETE DOCUMENT PRODUCTION

The fact of the matter is Plaintiffs have not responded to Apple's discovery requests. For example, we have yet to receive any representative samples of the products sold by Plaintiffs and their predecessors. In addition, Plaintiffs have not produced any hard copy documents since March 7, 2012, when the parties exchanged their initial document productions.

Conspicuously absent from Plaintiffs' March 7 production were any documents related to (1) sales of books bearing the "ibooks" imprint; (2) the brick and mortar channels through which "ibooks" books are sold, if any; (3) advertisements for "ibooks" books, if any; (4) the target market for "ibooks" books; (5) U.S. Patent & Trademark Office ("PTO") records related to Plaintiffs' predecessor's abandoned trademark application for IBOOKS; and (6) John Colby's acquisition of the "ibooks" business. While it is possible that some of these documents may be found on Plaintiffs' hard drive, it is inconceivable that Plaintiffs do not also possess hard copies of documents that are responsive to Apple's discovery requests, including, but limited to, the categories described above. Has your firm conducted a search for documents that are responsive to Apple's requests?

IV. PLAINTIFFS' OBSTRUCTION OF APPLE'S DISCOVERY EFFORTS

Your claim that Plaintiffs have fully complied with discovery is simply not in keeping with the facts. Since January, by your own admissions, your firm has pulled back and done virtually nothing. You do not seem to even be paying attention to notices for depositions and inspections. This has resulted in dilatory progress in discovery and repeated last-minute cancellations of meet-and-confer sessions, depositions and inspections.

- On February 29, 2012, and again on March 20, 2012, you indicated that you would not agree to a schedule for the exchange of expert witness reports, claiming that you cannot commit to anything, as you did not want to bind successor counsel.

- On Friday, March 17, 2012 at 4:16 PM, you cancelled the inspection of Plaintiffs' premises that was noticed for Monday, March 19, 2012, after my associate, Bonnie Jarrett, sent an e-mail to confirm the inspection.

- You later claimed that despite the fact that Plaintiffs' Complaint states that Plaintiffs' offices are located in New York City, the "warehouse" you described during the February 27 status conference is actually on Shelter Island. Since then, you have refused to allow us to inspect Plaintiffs' New York offices.

- During a meet-and-confer call on March 20, 2012, you cancelled the deposition of Mr. Colby that was noticed for March 27, 2012, after we asked for confirmation that the deposition would occur. In fact, it was clear when we raised the issue that your colleagues did not even realize that Mr. Colby's deposition had been noticed two weeks earlier.

- On March 21, 2012, you proposed that Apple inspect Mr. Colby's Shelter Island "warehouse" on April 3, 2012, and we agreed.

- But at 3:08 PM on March 28, 2012, just a few hours after Ms. Jarrett left Nicole German at your office a voicemail message asking for the address of the Shelter Island warehouse, you again cancelled the inspection.

- You have not responded to our letter of March 28, 2012, in which we seek to reach an agreement regarding the dates for Mr. Colby's deposition, as well as the deposition of Plaintiff J. Boylston & Co., pursuant to Rule 30(b)(6).

Clearly, it is Plaintiffs who are abusing the discovery process, not Apple. We see no reason for your refusal to allow the inspection of Plaintiffs' Shelter Island warehouse to go forward on April 3 as previously agreed. Please provide us with the address of that warehouse immediately.

With respect to the inspection of Plaintiffs' New York office, the fact of the matter is, Plaintiffs asserted in their Complaint that they have offices at 1230 Park Avenue, New York, NY. Similarly, even today, your clients' website indicates that several businesses are located at

that address, including all three Plaintiffs in this case. *See* Exhibit A (printed on March 30, 2012). The phone numbers for those businesses have a 212 area code, rather than Shelter Island's 631 area code. *See id.* Thus, your recent statements that while Mr. Colby "maintains an apartment [in New York City], his Brick Tower office is no longer at that address but is at his Shelter Island home," and that the "apartment that no longer contains a business office" are contradicted by both Plaintiffs' pleadings and their website. In any case, we are not required to take Mr. Colby's word on any of this.

As you know, our position in this case is that your clients do not have any trademark rights or an ongoing business related to the disputed mark, and that your clients are simply hoping for a windfall at Apple's expense. Thus, the bona fides of Plaintiffs' business operations are very much at issue in this case, and we wish to inspect Plaintiffs' premises. If Plaintiffs continue to tout a Park Avenue business address to try to give the impression of legitimacy, we have every right to investigate those claims. We also note that it was only after we served the notice of inspection that Plaintiffs disclosed the supposed Shelter Island warehouse. That warehouse certainly was not mentioned in the Complaint or in Plaintiffs' initial disclosures.

V. APPLE'S DOCUMENT PRODUCTION

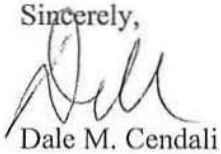
During the February 27 status conference, Judge Forrest ordered the Plaintiffs to produce, by March 7, 2012, the documents "that underlie [their] complaint in this case," *i.e.,* the documents identified in their Rule 26 initial disclosures. The Court required Apple to do the "same thing." Apple's initial disclosures identified one category of documents in its possession, namely, "documents concerning Apple's use and ownership of the IBOOK and IBOOKS mark, and federal trademark registrations related thereto." Apple's March 7 production included, among other things, the PTO file wrappers for Apple's IBOOK and IBOOKS marks, along with various press release and marketing materials related to Apple's iBooks software. Thus, Apple fully complied with the Court's February 27 order.

Unlike your clients, Apple has gone to significant effort and expense to locate, preserve, search for and produce responsive documents in a professional manner. When we met and conferred with Plaintiffs' counsel on March 20, 2012, your colleagues never raised any concerns regarding Apple's discovery responses. Rather, your associates made clear that they did not want to address any substantive issues, and instead, that they would reserve those issues for future counsel. If your colleagues had so inquired, we would have explained that Apple will continue producing documents on a rolling basis, and plans to produce another set of documents on April 9, 2012.

* * *

Cutting through everything, it seems increasingly clear to us that another firm may never enter this case, as they probably realize that Plaintiffs' claims are without merit, such that investing in this case would simply be throwing money away. We urge you to consider dropping this case now. If you do, we will recommend to our client that it not seek an award of its attorneys' fees under the Lanham Act. I look forward to hearing from you soon.

Sincerely,



Dale M. Cendali

EXHIBIT A

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