EXHIBIT J

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,

VS.

No. 11-cv-4060 (DLC)

APPLE, INC.,

Defendant.

DEPOSITION OF STEPHEN M. NOWLIS Friday, December 14, 2012

New York, New York

9:30 a.m.

Reported by:

Maureen Ratto, RPR, CCR, CLR

Job No: 27929

95% confidence level and if you have a error of .01, meaning 10%, then you have a 90% confidence level. So 90% you're pretty sure and 95% most people would say they're sure. This is a generalization, there can be exceptions to this.

- Q. Dr. Nowlis, why did you include this permission question in your study in this case?
- A. Because I was testing for Likelihood of Confusion and this was one of the ways that I did it.
- Q. What is your understanding of the issue to which the permission question in your study was directed?
- A. Well, my permission or approval question was getting at this idea of sponsorship, whether they thought another company had sponsored the use of this term.
- Q. Have you used this question before in other trademark studies?
 - A. I believe that I have. I don't

Confusion surveys for other matters but as far as I know none of those have ever been produced, in certain cases because I did a study and the results weren't what somebody wanted to see so they -- you know, they didn't produce them. But as far as I know, I don't think that any of my Likelihood of Confusion surveys have ever been produced.

- Q. And how many Likelihood of Confusion studies have you done?
- A. Three or four prior to this I would say, roughly.
- Q. Any for Apple?
- A. No.
- Q. How about secondary meaning studies, have you done any secondary meaning studies?
 - A. Yes.
 - Q. How many, roughly?
 - A. Two or three, maybe.
- Q. Have any of those been produced?

38 1 NOWLIS 2 Α. Whether someone would be 3 confused due to impressions of affiliation. 5 What do you mean by "impressions 0. of affiliation"? 6 7 Α. Whether they think the companies 8 were affiliated. 9 Do you own any Apple products? 0. 10 Α. Yes. 11 What do you own? 0. 12 A. I have an iPhone and I have an 13 iPad and I have Apple earphones. 14 So is it fair to say that you're 15 pretty familiar with Apple products? 16 I think I'm fairly familiar with A. 17 them. 18 If you had to ascribe a noun to Q. 19 the iPhone, what would that noun be? 20 An iPhone is a what? 21 MS. CENDALI: Objection. You 22 can answer. 23 An iPhone is a device. A. 24 Can you be more specific? Q. 25 Well, you said to give you a A.

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buy something I think it says,

"sending," it takes five seconds, and
then it will say "Your sample has now
been received on your Nook. You may
now open it and look at it. I think
they use the word "sending" but I'm not
sure.

Q. How would you describe the business of Apple?

- A. I would say Apple is a -- in a very general sense, a computer company -- well, a computer company that sells -- that sell phones, they sell computers, they sell iPads, so I guess I would call it a computer company.
- Q. Do you consider Apple to be a book publisher?
- A. No.
- Q. From the data generated from your study, is it your opinion that consumers consider Apple to be a book publisher?
- A. No.

46 1 NOWLIS 2 So is it your opinion that 0. 3 consumers don't consider Apple to be a 4 book publisher, am I saying it right? 5 You are correct. They do not Α. 6 see it as a book publisher. 7 How about a company that prints 0. 8 books? Do consumers consider Apple to be a company that prints books? 9 10 Α. No. 11 A company that releases books? 0. 12 Α. No. 13 0. A company that puts out books? Α. 14 No. 15 A company that sells books? Q. 16 A company that sells books? A. 17 did not ask that question. I asked the 18 questions you were talking about 19 before, prints, releases or puts out. 20 0. So you're not able to answer the 21 question? Is that --22 A. Sell books? I mean, is it --23 you can say they -- yeah, they sell

books and they distribute books through

the -- their bookstore, but they don't

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print, release or put out. That's what
people -- how people responded in my
survey.

Q. My question was not necessarily what Apple does but what consumers think of Apple as doing.

So do you think consumers perceive Apple as a company that sells books?

MS. CENDALI: Objection.

- A. I -- I never asked consumers that, so I'm not quite sure how -- how they would respond to that question.
- Q. Well, you also didn't ask them if Apple published books but you were able to answer my question about publishing?

- A. In my opinion, when my questions about prints, releases or puts out were questions about publishing. So I believe I did ask that question.
- Q. What does "puts out" mean to you?

48 1 NOWLIS 2 Puts out, I'm not quite sure A. 3 what you want me to tell you. Q. Can you try? A. I can't give you more than that. 6 It means "puts out" and respondents 7 were free to interpret that however 8 they wanted. 9 You chose the words? 0. 10 Α. Right. 11 Was your thought process that 0. 12 "puts out," means physically puts a 13 product on a shelf someplace? 14 No. I'm sorry. I see what 15 you're saying. Puts out would be some 16 sort of an indicator of the source of 17 the book. They have something to do 18 with the source of the book. 19 Could that term encompass sales? 0. 20 MS. CENDALI: Objection. 21 Or selling? 0. 22 A. Could that term encompass

So puts out, then, in your mind,

That -- that

selling of the book? No.

would have been a separate question.

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Q.

53 1 NOWLIS 2 0. How many times? 3 Α. Boy, I'm really not sure. I'm going to take a guess, 30 times. I 5 really don't know. 6 How many in trademark cases? 0. I'm not sure. A. 8 Can you give a rough number? 0. 9 I wish I could help you. I just A. 10 honestly don't know. 11 0. And you consider your study in 12 this case to be a rebuttal study? Is 13 that correct? 14 I wrote a rebuttal report and as A. 15 part of my report I conducted a study, 16 so those are one in the same. 17 So back to my earlier question 0. 18 of if you've ever done a rebuttal study 19 before, what is your answer? Okay. I think what you mean is 20 A. 21 when I wrote a rebuttal report did I 22 include in that a survey? Is that what 23 you are getting at?

Fair enough. I don't recall.

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Α.

Yes.

54 1 NOWLIS 2 Is it possible that you never Q. 3 have? 4 That is possible. I simply Α. 5 don't remember right now. 6 What did you set out to prove or Q. 7 disapprove in designing your study? 8 MS. CENDALI: Objection. 9 My study was designed to examine Α. 10 issues of Likelihood of Confusion. 11 For what mark? 0. 12 For iBooks. Again, it was done Α. 13 as a rebuttal to the prior survey, to 14 point out what I thought were flaws 15 with the original survey and had to do 16 what I thought was a more proper way of 17 examining the issues. 18 By "original survey," do you Q. 19 mean the survey of Dr. Susan McDonald? 20 Α. Yes. 21 Okay. Did anyone assist you in 0. 22 creating the questions for your study? 23 A. No. 24 When was your first

communication with counsel about this

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59 1 NOWLIS 2 examination to see whether those seven 3 people are included among the 66 in Table 1? 5 Α. Yes. You can do that analysis. 6 But without doing that analysis, Q. one is not able to simply add 66 and 8 seven and say "73 respondents commented 9 or named iBooks"? 10 Α. You are correct. 11 How did you come up with the 0. 12 words "puts out"? 13 I thought it was the right thing A. 14 to do. 15 0. Have you used it before? I -- I'm not sure. I think I 16 A. 17 probably have. I also looked at what 18 other people have done and I thought it 19 made sense to do that in this case as 20 well. 21 Can you name for me a study you 0. 22 looked at that used the words "puts 23 out," the words "puts out"?

Not now, I can't, no. I've seen

it used before, though, a number of

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A.

- A. I was asked to provide a rebuttal report to Dr. McDonald.
 - Q. Were you asked to conduct a study?

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- A. No.
- Q. You've testified that you've submitted a number of, you know, roughly, 30 rebuttal reports prior to this one. Is that right?
- A. That was a guess.
- Q. A guess, of course.
- A. I'm guessing.
 - Q. And, am I correct, forgive me, that you didn't recall the number of those that involved a study as well or was there a number?
 - A. You are correct, you really don't recall if I've done a survey as part of a rebuttal report prior to this.
 - Q. What about Dr. McDonald's report made you -- caused you to do a study?
 - A. Because I thought that her methodology was very flawed, which I

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- 2 If you could look, please, on Q. 3 page 35 of your report, and the 4 reproduction there, do you see how 5 iBooks, Inc., first appears on this 6 page? It first appears as "An original A. 8 publication of ibooks" -- all lower 9 case -- "Inc." -- lower case, period. 10
 - Q. But yet, you avoided the word "published" in your questions to respondents, despite iBooks appearing here as an original publication of iBooks, Inc. Is that right?
 - A. I did because I didn't want to do a reading test.

- Q. What do you mean by "a reading test"?
- A. A reading test is where you ask somebody, for example, "What's the brand of this product," and they look at the package and they say, "Oh, the brand is Poland Springs." So I didn't want to do a reading test.

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2	carefully analyzing that.	
3	Q. But you carefully analyzed	
4	Dr. McDonald's original report. Is	
5	that right?	
6	A. Absolutely.	
7	Q. Is your study a probability	
8	study?	
9	A. It is a likelihood of confusion	
10	study.	
11	Q. Is it a probability study,	
12	though?	
13	MS. CENDALI: Objection.	
14	A. I'm not sure what you mean by	
15	"probability study"?	
16	Q. Have you heard that term before,	
17	"probability study"?	
18	A. I've heard of it but I think it	
19	can mean different things. That's why	
20	I'm not quite sure what you mean by	
21	that.	
22	Q. Well, what is your understanding	
23	of the term or the various meanings	
24	that the term can have?	
25	MS. CENDALI: Objection.	

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- A. Where -- a probability study could be examining probabilities. I mean, you could -- where you would measure some degree of error perhaps.

 I mean, that term, itself, can mean different things so, again, it's hard for me to give you a clear answer, again, without some context. It's sort of like saying "What is a survey?" I mean, I can give you a sort of very general response but I'm not quite sure where you're getting at.
 - Q. How about in the area of statistics, what does "probability study" mean to you?
 - A. Where you would try to identify the opinions of people around some confidence error.
 - Q. Did you do that in your study in this case?
 - A. In my study, what I did was I compared the results of my test group, minus my control group as a way to determine any potential confusion.

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2	Q. So that's not a probability
3	study, the way you defined it in terms
4	of statistics? Is that right?
5	A. Well, again, in my opinion we're
6	in an ambiguous situation here. If I
7	was reviewing a paper, The Journal of
8	Marketing Research and somebody said,
9	"I did a probability study." We would
10	respond to that author, "Well, what do
11	you mean by that? I mean, that's a
12	very broad term. What exactly did you
13	do?"
14	Then if they came back and said,
15	"Well, I had this, and I conducted this
16	and so on and so on."
17	Well, we'd say, "Oh, okay, we
18	see where you're getting at."
19	It's just such an ambiguous term
20	without context it's hard for me to say
21	"yes" or "no" without knowing what
22	other additional information is needed.
23	Q. If an expert in statistics were
24	reviewing your study the way you review

the papers of your -- your students,

would that statistical expert consider your study to be a probability study?

MS. CENDALI: Objection.

- A. They would consider it to be a study with a test group and a control group.
- Q. So is that a yes to a probability study or a no to a probability study? Which is it?
- A. I'm not quite sure what they would say. If I said, "I did a probability study."

They would say "What do you mean by that?"

"Well, I had a test group and a control group."

"Oh, okay. I see what you mean."

If I said I did a probability study but I didn't have a control group or my interpretation was to do this, that or the other thing they may say, "Oh, I know what you mean by that term. I think that term in and of itself has

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meaning to -- that everybody would

immediately know what that means.

Q. You did a mall intercept study,

right, a mall intercept study, correct?

A. Yes.

Q. Have you ever done a mall intercept study that you would consider to be a probability study as that term is used in the statistics field?

- I've done prior to this, from what I can recall, they were all the same type of design, where we had a test group and a control group and we could get at the difference between those to give us confidence in the results. That was sort of a way of getting at the error by removing the error from the test group by using the control group.
- Q. In general, are you able to answer the question of whether mall intercept studies are considered to be probability studies in general, not

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yours in particular, but just in general?

- A. Again, I think it depends what we mean by a, quote/unquote, probability study. I -- I don't think that that term by itself -- I know -- I think -- I'm trying to get at this and that you think there is a technical meaning that everybody ascribes to it, I don't think that's true. As I mentioned before, I review a lot of papers and I don't think I've seen people just say, "Oh, probability study," and everybody say "I know what you mean." They would give more detail. They would say what they did and, "Oh, okay, I know what they're talking about now."
- Q. Well, in terms of what you did in your study, what is the probability that any one of the respondents in your study was selected for inclusion in your universe?

NOWLIS

MS. CENDALI: Objection.

- A. What is the probability that they were included in the universe?

 Well, I screen for people and I only screen for people that would be in the universe. There were other people that didn't match the screening that were that were not that did not become part of the survey. I don't know how many people were screened and they say, "Well, you can't be apart of this study," and moved on. Is that the question you're asking me?
- Q. So am I understanding you, then, that you don't know what the probability is or is it that there's no way of knowing what the probability is of an individual selected for inclusion in your universe?

MS. CENDALI: Objection.

A. Well, the universe that I considered, we went through my screening questions and exactly what they were. What percentage of that, of

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the entire population, I don't know what those numbers are. I don't know if anybody would be able to identify that. Is it 10%? 20%? I'm not sure. I didn't want to get everybody. I wanted to get the relevant consumers to answer the question.

- Q. How would you define "the universe" for your study?
- A. Well, I mean, I -- I screen
 based on a certain criteria and those
 screening criteria would give us the
 universe. So we can go through my
 screener and you'll see what I screened
 on and that would be my universe.
- Q. In your own words as the person who designed the study, how would you define "the universe"? Feel free to refer back to your report, but in your definition, what is your definition of "universe" in your study?

MS. CENDALI: Objection.

A. And, again, I try to be as careful as I can in these things and

give you exactly what I did, so I don't misstate something so we can go through my survey and that would be fine. And I screened based on different criteria, I screened for people who would be likely to buy a paperback or hardback, who would buy a biography, history, science fiction or comic or graphic novel, people who would buy a book at a shopping mall, airport, bookstore or flea market. I didn't include people who worked at the mall. I didn't include other people.

So the universe would be the people that fit this criteria. I guess you could call these in a general sense, people who buy physical -- certain kinds of physical books through brick-and-mortar stores.

- Q. And these were anybody in the country?
- A. Yes. This was done -- this was done at malls throughout the country.
- Q. But not everywhere around the

country, it was only in certain malls, correct?

- A. True. Those malls were meant to represent the U.S. population.
- Q. So what is the probability that a book buyer living in Omaha, Nebraska, was included in your study?

MS. CENDALI: Objection.

A. The probability that a book buyer in Omaha, Nebraska? I don't recall -- I don't think -- I don't think I used malls in Omaha, Nebraska, but let me double check so I can make sure that I can give you the most accurate response I can.

I did not include Omaha,

Nebraska. Again, this is what is survey
does, this is why it's a typical
survey. We don't -- it's -- this
happens all the time with the election,
say, 50 million people vote. We don't
survey all 50 million people. We
survey a sample of those 50 million
people and that allows us to

extrapolate for the population. It's the same thing I did here.

So by looking at the malls that I did, which were across the country, this would then allow me to extrapolate for other people who didn't participate in the survey, but we know based on survey principles they would likely have the same opinion.

Q. So is the answer to my question zero?

- A. Could you remind me of your question again?
- Q. What the probability was that a book buyer in Omaha, Nebraska, was selected for inclusion in your study's universe, in your study?
- A. Yeah. They -- they would -they did not participate in it but
 their opinions would likely be the same
 as the result that I got, if I had
 surveyed them. That's a basic
 statistical principle. We all do that.

NOWLIS

I don't know of any survey that -- that

surveys every single person in the

before.

Q. On page 17, of your report,
paragraph 14 -- sorry, paragraph 40 -so this is Exhibit No. 1, page 17,
paragraph 40.

population. I've never seen that

MS. CENDALI: Page 17?

THE WITNESS: 4,0.

THE REPORTER: 40 or 14?

MS. BOGDANOS: Sorry. I said the wrong number first. Sorry. I misspoke myself. So Exhibit 1, page 17, paragraph 40.

- Q. You have a criticism of
 Dr. McDonald here that she chose to
 show the word iBooks in the same text
 the rest of the online questionnaire.
- A. Yes.
- Q. Could you explain that criticism to me, please?
- A. Okay. The criticism would be that it is, again, extremely important,

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So I said would they buy
paperback or hardcover and what type of
book would you buy? And then, where
would you purchase a book? So, I'm
sorry, your question was, would they
buy electronic books?

MS. BOGDANOS: Could we have the question read back, please?

(Whereupon, a portion of the proceedings is read back by the reporter.)

A. Right. I don't exclude for that. In other words, if it says do you read digital books you're not allowed to be in it. You are, in part of the — this survey, if you read physical books, and we know from research that the Pew Study that people have been talking about, that I believe there is an 88% overlap between people who buy hardback or paperback books and who read electronic books. So because we know there's a big overlap, there's a very, very, you know, large percentage

of people that would read electronic books that would also be included in my study.

- Q. There's no question in your study, though, that asks, specifically, about reading electronic books, is there?
- A. There is not.
- Q. Nor is there a question in your study that asks about purchasing electronic books, is there?
- A. There is not. But -- right. I didn't exclude -- in other words, I didn't exclude those people. They were allowed to be part of my survey.
- Q. Did you consider readers of electronic books to be relevant to your universe?

MS. CENDALI: Objection.

A. Well, the universe was defined, as I did here, because these would be the people that would be most, you know, relevant for the book that I showed them.

NOWLIS

However, we can extrapolate from these results two people who would also buy electronic books because we know from research that there is a big overlap between them.

(Nowlis Exhibit 6, a project of the Pew Research Center, a study entitled "The Rise Of E-Reading" was received and marked on this date for identification.)

- Q. Dr. Nowlis have you ever seen what's been marked as Exhibit 6 before today?
- A. Yes.
- O. What is it?
- A. This is a study, a project of the Pew Research Center and this study is entitled, "The Rise Of E-Reading" and it says, "21% of Americans have read an e-book," and it goes on. I'll stop there.
- Q. You testified before that -- I don't have your exact number committed to memory, I apologize, a number in the

- 1 NOWLIS 2 80% -- that 88% of people who read 3 print books also read electronic books? My memory from the study, if my 4 A. 5 memory serves me right is that there 6 was an 88% overlap between those two 7 groups. 8 Well, let's take a look at page 0. 9 3 of Exhibit 6, the middle paragraph, 10 the paragraph that begins "Those who 11 have taken the plunge," and you see the 12 second sentence and after the colon in 13 the second sentence it says, "88% of 14 those who read e-books in the past 12 months also read printed books"? 15 16 I do. Α. 17 So that does not mean that 88% 0. 18 of those who read hardback, you know,
 - Q. So that does not mean that 88% of those who read hardback, you know, paper books, printed books, also read e-books, so the converse is not necessarily true, correct?

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A. I suppose. It -- it's possible but that's how I interpret that, that there is an overlap between the two groups of 88%. That's my interpretation

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of that. In other words, say, a huge overlap. In other words, there are very few people that only read one type or the other.

- Q. If you could take a look,
 please, at page 4 of the Pew report,
 the bottom of the page there is a
 heading "The prevalence of e-book
 reading is markedly growing but printed
 books still dominate the world of book
 readers." Do you see that?
- A. I do.
- Q. And it goes on to say "72% of American adults had read a printed book and 11% listened to an audio book in the previous year compared to 17% of the adults who have read an e-book."

 Do you see that?
- A. Yes.
- Q. Does that change your opinion?

 Does that change your testimony about

 the overlap that you perceive or

 understand between e-books and printed

 books?

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- A. No. And it also supports my earlier point that you asked me about before, about why did I pick a printed book for my study and this shows 72% of the adults have read a printed book, which is by far the most common kind of book.
- Q. Is it possible that someone who's a reader of an e-book might respond differently to the stimulus in your study than someone who is a reader exclusively of printed books?

MS. CENDALI: Objection.

A. Again, anything is possible. I try to live in the world of probable and because in this case there is such a great overlap amongst the -- both people, they -- that read both types, so if somebody is going to read a printed book, they're also going to ready an electronic book, and I see no reason why they would respond differently if they read both kinds of books.

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source question then?

- A. Just a -- I mean that the way that I asked the questions, these are different angles, I'm trying to get at the same underlying construct of confusion. There is three different ways of doing that to give a consumer the full ability to point out confusion if it exists.
- Q. Let's talk about the first two for now. And I'm trying to understand your understanding of the difference between "source confusion" and "affiliation confusion."

So if someone -- if someone answered "yes" to Question 2-A of your study, did they think that the company or companies that printed, released or put out this book have made or put out other things besides books. And let's say that that person in answering Question 2-B identified an iPad or iPhone or an Apple product. Then, what that person is expressing is an

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understanding that the same company put out both the book that they were shown and the Apple product the they named.

Is that right?

- A. It would be that the same company that has the, in this case, the iBooks mark, imprint, whatever we're going to call it, is affiliated with Apple because Apple sells the same products.
- Q. But I'm not understanding where you get the concept of "affiliation" from a set of answers that says that the company that made -- that printed, released or put out this book, also makes or puts out other things besides books.
- A. Right.
- Q. I don't understand where the second company enters that picture. To me it sounds like the same company and two different kinds of products. Could you enlighten me?

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- A. Well, I mean we can go through the question word for word if maybe that would help.
- Q. Okay.
- So the question is now "With Α. respect to the company or companies that printed, released or put out this book, do you think they have made or put out other things besides books," so I'm having trouble understanding your question because it seems pretty clear to me if they said okay, hypothetically, they could say, okay, what company put this out, it's iBooks, also they put out an iPad. Okay. that's an interpretation of they're -they've affiliated the product that Apple put out, its iPad would be affiliated with iBooks in this case.
- Q. So it's a product affiliation question?
- MS. CENDALI: Objection.
 - A. I mean it's affiliated in the

232 1 NOWLIS 2 sense that this is a company that puts 3 out these products so you're 4 affiliating with a company through its 5 products. 6 0. Have you ever encountered any 7 other form of affiliation question in 8 any cases in which you've worked as a 9 survey expert? 10 Α. I'm really not sure. I may 11 have, I may not have. I don't -- I 12 can't tell you right now. 13 Do you read articles or other 14 writings on survey evidence in 15 trademark litigation? Are you up on the literature in the field? 16 17 MS. CENDALI: Objection. Literature, meaning do I follow 18 A. 19 legal opinion? 20 No. Scholarly articles, 21 scientific pieces, just written work 22 concerning trademark surveys for 23 litigation?

MS. CENDALI:

form. You can answer.

Objection to the

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- A. Yes. And I cited that
 throughout my report. I have many
 citations to -- you know, there is a
 book Trademark and Deceptive
 Advertising Surveys, which I cite many
 times.
 - Q. Is that Jerry Swan's book?
 - A. These are different chapters from different authors. I don't remember if Jerry Swan is the editor -- edited it or not, but different chapters are by different people so he did not write the whole book. I think he wrote a chapter.
 - Q. So in the different chapters that you cite, or in any writings with which you're familiar that you haven't cited, where do you find support for the type of affiliation question that you asked, as being an affiliation question as opposed to a question that tells you more about the source of the product?

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2 Overbroad.

- A. My understanding is that this question was asked in the original Eveready case?
- Q. And my question is: In what writings or other literature concerning trademark surveys for litigation have you seen this type of affiliation question presented as a proper way of measuring Lanham Act affiliation?

 MS. CENDALI: Objection.
- A. I don't think I could point something out to you right now.
- Q. Have you ever seen a different variety of affiliation question in any of the writings that you've read?
- A. I believe that I have.
- Q. Now, if a respondent in your study thought that there was another company involved in some way, but that it wasn't the company that actually, you know, printed, released or put out the book, is there a question in your study to get at that perception?

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its own separate company, and it's plain they don't think of Apple as a book publisher as the -- the data from your study shows that, correct?

- A. Yes.
- Q. So where in your study -- let me withdraw that.

How does your study capture, if at all, the perception a respondent may have that iBooks is the publishing arm of Apple in my hypothetical?

MS. CENDALI: Objection.

A. Well, again, there's different

-- there's three different questions.

If there's some subtlety in those

components and in who owns what and how

one is related to the other, they have

three different ways of getting at

confusion, right? Maybe they -- maybe

they thought they received permission

or approval from the parent to -- to,

you know, house the distributor. Maybe

they thought it was put out by the -
the big company.

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- 2 -- where instead of the name 3 being "iBooks," the name was "Apple," 4 and if someone simply said, "Apple," which means they read it on the page --A. Right. -- but then in asking the what 0. else besides books, they thought Apple 8 9 -- they thought the company that had 10 printed, released or put out the book, 11 had made or put out --12 Α. Right. 13 -- if that person, then, named 14 technology items or said, "iPhone, 15 iPad, iTunes devices," that would give 16 you more information as to what they 17 meant by Apple? 18 MS. CENDALI: Objection. 19 Yes. Just like they would in my A. test, the same idea, they would then be 20 able to say "iPad, iPhone," or 21 22 whatever, and that would give us more 23 information.
 - Q. And it gives more information about the company that put out the

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2 book?

MS. CENDALI: Objection.

- A. It gives more information about the products that that company puts out so you would be affiliated through those products.
- If in your study, a respondent thought that iBooks, Inc., or that iBooks was the publishing arm of Apple, and they don't think of Apple as a book publisher, if they are asked with respect to the company or companies that printed, released or put out this book -- and so this is really going back to the answer they gave to Question 1, and so if they had named iBooks -- and so it's really asking with respect to iBooks, and with respect to this book-making company that you -- you've named or book releasing or book printing or all the words there, do you think they made or put out other things besides books?

Now, if Apple, if iBooks, excuse

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2 testimony, but do you consider that the 3 words "printed, released, or put out" 4 embody the notion of publishing? 5 A. Yes. I think that's a fair statement. Okay. And your data show, do 0. 8 they not that, consumers don't think of Apple as a book publisher, and we've 10 been down this path, correct? 11 Α. Yes. 12 Okay. So moving on from Q. 13 question No. 1, which is the source 14 question in your study, right? 15 Α. Yes. 16 Q. Okay. 17 Once, again, people had the A. 18 opportunity to say anything they want. 19 Q. Okay. 20 They could have said, "Apple," A. 21 they could have said whatever --22 anything they wanted. 23 0. Okay. Now, do you think it's a 24 reasonable statement that if people

consider company A to be a subsidiary

251 1 NOWLIS 2 respondents who might think that iBooks 3 is a subsidiary of Apple but that the two companies are separate, though 5 related? 6 MS. CENDALI: Objection. A. That is not what -- that is No. 8 not what it was designed to test. 9 Is it your understanding as a --10 as a survey expert in trademark cases, 11 that such a perception on the part of a 12 respondent, that that indicates 13 confusion? 14 MS. CENDALI: Objection. 15 A. Such a response, would --16 meaning in what response? 17 I'm going back to my earlier 0. 18 question about the perception in the 19 minds of respondents. 20 MS. BOGDANOS: Maybe -- maybe we 21 can have that question read back. 22 THE REPORTER: Which question? 23 The last question?

MS. BOGDANOS: No. The -- a

little bit more back. The question

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