

EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JT COLBY AND COMPANY, INC., D/B/A
BRICK TOWER PRESS, J. BOYLESTON AND
COMPANY PUBLISHERS, LLC, AND
IPICTUREBOOKS, LLC,

Plaintiffs,

-against-

Index No.
11-CV-4060 (DLC)

APPLE, INC.,

Defendant.

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VIDEOTAPED DEPOSITION OF
MIKE SHATZKIN
New York, New York
December 4, 2012, 9:35 a.m.

Reported By:

Nicole Sesta

Ref: 8575

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2 branding over a long period of time.

3 Q And two lines below that it says,
4 "To a consumer it would undercut a brand's value
5 to see a cookbook, a memoir, and a novel stamped
6 the same way." What did you mean by that?

7 A What I mean by that is that a
8 consumer would -- if a consumer looked for
9 meaning in a publishing brand, it would be
10 looked -- the consumer would most likely be
11 looking for consistency of topic or subject or
12 presentation of some kind.

13 So Dummies is a brand where the
14 topics are not the same, but the way of
15 presenting the topics, if you bought a book, a
16 Dummies book, on needlework and you need to know
17 how to fry an egg and there's a Dummies book on
18 how to fry an egg, you would have expectations
19 and knowledge about what that book would deliver
20 to you. But generally speaking, brand
21 consistency is more about topic or genre. So if
22 you're buying a Harlequin book, you know you're
23 not getting a spy novel. You're getting a
24 romance book. And so that is the way that most
25 consumers -- it's the only way that most

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2 a biography, followed by, you know, there's no
3 particular consistency to what they read. Those
4 people are very unlikely to have much of an
5 informed opinion about publishers or imprints.

6 But then there are other readers
7 who are genre readers. And their
8 characteristics are different and they tend to
9 read many, many, many books in the same genre.
10 And in that case, there's a much higher
11 likelihood that they will be conscious of
12 publisher brands within the genre.

13 Q Have you ever done any research to
14 examine consumer awareness of brands either on
15 the part of general readers or genre readers?

16 MR. RASKOPF: Objection.

17 Asked and answered.

18 A No.

19 Q Are you aware of any research that
20 looks at awareness of brands among general
21 readers or genre readers?

22 A No.

23 Q You mentioned Harlequin as an
24 example of a niche publisher, correct?

25 A Yes.

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2 Crowell-Collier bought the Free Press of
3 Glencoe, Illinois, which is where the Free Press
4 started, the man who started the Free Press was
5 a man named Jeremiah Kaplan, who became a bit of
6 a legend in the business, moved from Glencoe,
7 Illinois to New York because his company was
8 bought.

9 My dad was the vice president of
10 Crowell-Collier at the time and Jerry Kaplan
11 stayed at our house for the first two weeks he
12 was in New York. So I've been aware of the Free
13 Press since I was 15. They've always done --
14 they started out as a much more academic
15 publisher back in those days. They did sort of
16 high quality political and social science. They
17 have for years and years and years and years.

18 So I followed them. I'm aware of
19 them. Book publishing companies I would say
20 with 99.9 percent certainty and accuracy do not
21 advertise their brands, period. They advertise
22 their books, only their books, and they mention
23 their brand within the advertising of their
24 books but brand recognition is based on the
25 cumulative book recognition.

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2 That's why I said they did not
3 spend any money on brand promotion, per se. I
4 think I could actually make that statement about
5 just about every publisher there is, which is my
6 objection to the report I read.

7 Q The Free Press doesn't exist any
8 longer as an independent entity, correct?

9 A Free Press is an imprint of Simon
10 & Schuster.

11 Q It was merged into Simon &
12 Schuster in 2012, correct?

13 A Oh, well, you mean the most recent
14 reorganization that they've done. Yes, well,
15 Simon & Schuster in the last month just
16 announced a reorganization where sort of my
17 sense, following my playbook, which is that the
18 general, that -- well, it's not actually
19 following my playbook. They don't have the
20 basis of a B to C business at the Free Press.
21 There's not enough -- their books are not like
22 romance books or science fiction books where
23 people read 20 a year and will return to the
24 brand to read them.

25 The value of the Free Press

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2 If anyone built a brand by saying
3 I'm going to make this brand understood by a
4 bunch of people and advertise and promote to
5 them to do that, I didn't see it. Somehow or
6 another I missed it. Even if it happened once I
7 would be amazed but it certainly did not happen
8 repeatedly.

9 Q So is it your testimony that all
10 brands in publishing including the Dummies brand
11 for that series of books exist solely because of
12 the sales of books that happened to happen?

13 MR. RASKOPF: Objection to
14 the form of the question.

15 A It is my testimony that all
16 brands, that is author brands, title brand,
17 author brands -- sorry, imprint brands, series
18 brands and publishing house brands are the sum
19 total of awareness created by the books sold and
20 read under those brands. There is very, very
21 minimal impact of anything else.

22 Q Do publishing houses undertake
23 marketing activities with respect to authors,
24 for example?

25 MR. RASKOPF: Objection to

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2 form.

3 A Generally speaking, no. They
4 undertake marketing activities on behalf of
5 books, not authors. Sometimes the two are
6 linked but not always, not often even.

7 Q Is it your testimony that all
8 marketing in the publishing industry occurs with
9 respect to individual books?

10 MR. RASKOPF: Objection to
11 the characterization of the
12 witness' prior testimony.

13 A Essentially, yes. Essentially
14 publishers don't have any budget for anything
15 else. Each book has a budget for marketing.
16 That's where all the money is spent. So you're
17 figuring out how to spend the money to sell a
18 book, and certainly a house would be aware that
19 if it has six ads for six books in the New York
20 Times book review, and they all say Harper
21 Collins underneath that an agent or somebody
22 else might say Harper Collins is doing a lot of
23 hot books, but they're not trying to sell Harper
24 Collins. They're trying to sell each book.

25 Q At the bottom of page six of your