

## **EXHIBIT K**



# **A SURVEY TO MEASURE POTENTIAL SOURCE CONFUSION ASSOCIATED WITH iBOOKS**

IN RE: J.T. COLBY & COMPANY, INC. D/B/A BRICK TOWER PRESS,  
J. BOYLSTON & COMPANY, PUBLISHERS LLC AND IPICTUREBOOKS LLC v. APPLE, INC.,  
CASE NO. 11-CIV-4060,  
UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Conducted by  
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**National Analysts Worldwide**

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### C. Experimental Design and Control Stimulus

The standard methodology for any survey to measure source confusion is a controlled, double-blind study design. A “control arm” is needed to parse out artifact associated with guessing or other “noise” that might lead consumers to be misled or draw interpretations for reasons other than the claim in question. In this case, the extraordinary prominence of Apple as a digital brand could potentially invite guesses for which a control is clearly required.

The stimulus chosen as “control” must be as similar as possible to the test stimulus in all ways *except one* – namely, the attribute or element whose impact the researcher wishes to measure. The Control chosen in this instance was “eBooks,” a plausible word that controlled effectively for the crucial letter, “i.”

### D. Questionnaire

Although a decision was made not to show a specific visual stimulus for reasons already described, pains were taken to evoke a scenario describing what people were to envision – namely, the page in a book where identifying information is displayed.

**Q1a. Please envision the following scenario, involving a digital/electronic book.**

***In the scenario we’d like you to envision, you are looking at the particular “page” of a digital/electronic book that contains information about the book – such as the date of publication, the publisher, the Library of Congress number, etc.***

***If, on that page, you see the word [“iBooks” / “eBooks”] what company or companies would you think had made the book available? Please enter your response in the box below. The box will expand as you type.***

***If you think you would have no idea, please feel free to say so.***

The question was framed so as to bring to mind a specific page that readers could imagine and have them envision the word “iBooks” (or “eBooks”) on that page. No particular reading device was specified; respondents were free to imagine

iBooks has come to stand for Apple, thereby creating the perception that a product or service *emanates from Apple*, then by using your own iBooks name, you virtually cede all unique signifying value to Apple, despite any other information you might provide about yourself to communicate singularity. Every time you use the name "iBooks," you are inadvertently speaking about Apple.

If the presence of the name "iBooks" on your very own title page (where books declare their intellectual origins and their publication history), suggests to consumers that Apple had some hand in making that book available, then you might as well just drop your own name and find another one altogether. There is no loss of brand equity more complete than the inability of a brand to "mean" who it is and, instead, to be forced by the encroachment of another to "mean" who it isn't.

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A handwritten signature in black ink, reading "Susan Schwartz McDonald". The signature is written in a cursive style with a large initial "S" and "M".

Susan Schwartz McDonald

September 17, 2012