

EXHIBIT F

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.

Case No. 11-cv-4060 (DLC)

EXPERT REPORT OF MIKE SHATZKIN

I have been asked by the attorneys for Plaintiffs in this matter to review the Expert Report of Gregory S. Carpenter and evaluate the relevance of his opinions for the publishing world.

Mr. Carpenter demonstrates a complete lack of familiarity with publishing and how it works, with the result that his evidence is largely irrelevant and his conclusions largely flawed as they are applied to this particular case. The role and behavior of "brands" in book publishing is somewhat unlike the way they play out in other consumer goods. The publishing ecosystem does not primarily recognize a corporate branding source, but operates within a trifurcated branding structure: the author, the imprint or series grouping within the publishing house by which the title is published, and then the publisher. Creators, retailers, and end consumers all play various roles within the tri-level world of "book marketing." As a result, a more classical understanding and definition of brand and brand-building behavior does not adequately explain brands in publishing and, indeed, can well be misleading, as it is in Mr. Carpenter's report.

Specifically, this report will explain the following:

1. How the multi-level branding -- author, imprint or series, and publishing company -- emerged and how it works in the publishing business.
2. How the relatively recent shift in the industry, due to a trend toward book purchasing online and the rapid growth of digital or electronic/e-books, has moved the focus from business-to-business branding to building business-to-consumer brands.
3. How the iBooks brand could have capitalized on its legacy to build a valuable consumer franchise had Apple not adopted the same name.

publishers were the most advantaged, because they had large numbers of consumers who read multiple titles from their lists. Romance readers already knew the company name and imprint "Harlequin." Science fiction fans knew Tor and Baen. The consistency of the content experience they offered had, without any elaborate effort on their part, built brand awareness that translated into online power.***

The niche publishers, and the niche imprints of general publishers, quickly established themselves as viable consumer brands as measured by online success: getting website visitors, signing up consumers for email notifications of new publications, and, in some cases, being able to spawn new enterprises on the back of the customer base their content consistency had created for them.

One great example of that is from a niche publisher called Hay House in San Diego: a publisher of "mind body spirit" books. Hay House built email lists earlier than most publishers and has used them for years to promote its new titles in a much more cost-efficient way than most publishers have available to them. It also started doing events where its reader base paid fees to spend time with Hay House authors.

Indeed, events have become an important ancillary business for some niche publishers, building on the base of enthusiasts their publishing has delivered them. F+W Media, a private-equity financed rollup of "enthusiast" (*i.e.* vertical or niche) publishers, has a whole events business serving multiple opportunities created by its disparate communities to assemble for paid gatherings.

The major publishers have recently started to join this trend. Because they are determinedly "general" (and because they are built on publishing the biggest commercial books, the likelihood of commercial success, not topic or genre, must be the dominant criterion by which they make acquisition decisions), they tend not to have large lists within topic areas the way a specialty publisher like Hay House or F+W does. But they often do have lists in genres, particularly in science fiction and romance, which have been the two biggest genres in the inexorable and fast-paced ebook evolution.

The iBooks Brand

The iBooks imprint published a large number of titles primarily in the science-fiction genre (665), followed by graphic novels, horror, and fantasy, which have turned out to be of substantial interest on the Internet and have sold well as ebooks. Although the sales of iBooks overall were modest (5,689,950 units, with sales of science-fiction titles alone totaling 1,944,314 units), particularly compared to a big general publisher, its specialization in a genre that is characterized by customers who make many repeat purchases in the genre suggests the potential for a core audience that would recognize it as a publishing specialist. It is thus reasonable to surmise that were there no distractions suggesting that the iBooks brand meant something else (namely, Apple and/or Apple's iBooks/iBookstore), it is likely that the publishers of iBooks would have had the opportunity to build on that awareness to create a powerful niche brand in the digital space.

Mr. Carpenter's Fundamental Lack Of Industry Understanding And Flawed Conclusions

Against this industry-specific background, the many errors in Mr. Carpenter's report are made plain. Intended as a tool to understand the branding issues in this case, his report is simply not applicable to the world of publishing. Mr. Carpenter's fundamental misapplication of general branding principles results in erroneous and misplaced opinions and conclusions.

Mr. Carpenter writes that "creating consumer awareness and recognition requires significant investment by the brand owner." (Paragraph 9.) That is not true in publishing where almost no money is spent -- or has been spent -- creating consumer awareness and recognition of brands. Publishing brands are built on the awareness of what is being published under the author, imprint, series, or publishing-house name. This imputed value of the brand from the content it delivers has been the method of building brand awareness for book publishers throughout the history of publishing, from when it was basically strictly marketing to gatekeepers up to the current era where consumers have become direct targets.

Mr. Carpenter posits that "by selecting target customers, developing a unique value proposition to those target buyers, and delivering that value consistently, an organization can endow a brand with meaning and hence value." (Paragraph 11.) This actually turns publishing practice on its head. What happens is that publishers deliver a "value" -- a kind of book -- consistently under an author, imprint, series, or company brand. The audience *self-selects* around the content, and the value of the brand is created over time by the *experiences* readers and consumers have with the published books.

Mr. Carpenter states: "in working to build a brand that is recognized by consumers, companies need to engage in a variety of activities to educate consumers and create awareness of that brand." (Paragraph 12.) In fact, I am not aware of any publishing brands -- not Dummies, Harlequin, or others -- that have built their brands that way. Their brands were built on the strength and consistency and ubiquity of their content; other activities might have a brand-enhancing effect, but in publishing they are actually new-fangled exploitations of the brand, not efforts to build it.

Mr. Carpenter goes on to say: "Possible means of establishing brand recognition include advertising, marketing and other promotional activities; creating personal experiences in which consumers interact with the brand; and combinations of those methods." (Paragraph 12.) This has not been the history or experience of publishing. Advertising for brand building is virtually non-existent, as is brand-focused marketing. The creation of personal experiences for interaction is a recent development around new opportunities (such as live events); it has not been an established method for building awareness to sell books.

Mr. Carpenter writes that "Creating a brand requires educating buyers about the meaning of a brand, and continually educating new buyers as they enter the market." (Paragraph 14.) Again, this does not describe the reality in publishing. Publishers sell books. If a reader consumes enough books that deliver a consistent experience under the heading of an author, imprint, series,

I declare under penalty of perjury that, based upon the information available to me, to the best of my knowledge, the foregoing is true and correct. I reserve the right to supplement this report.

Oct 24, 2012
Date

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