

**EXHIBIT 75**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

J.T. COLBY & COMPANY, INC. d/b/a  
BRICK TOWER PRESS, J. BOYLESTON &  
COMPANY, PUBLISHERS LLC and  
IPICTUREBOOKS LLC,

Plaintiffs,

-against-

APPLE, INC.,

Defendants.

Case No. 11-cv-4060 (DLC)

Expert Report of Robert T. Scherer

research...” and Class 41 included “podcasts in the fields of entertainment, news, current events and activities, hobbies...”. (The actual list of goods/services goes on for almost two full single-spaced pages.)

Are we to believe that this long list of new uses “merely seeks to expand Apple’s registration of the IBOOKS mark to goods and services related to those for which the mark is already registered”? That’s what Apple told the Trademark Examiner in its response to a PTO Office Action. However, it is obvious that this is far more than a mere expansion of the earlier IBOOK/IBOOKS registrations as it encompasses numerous entirely new uses of the mark which require an entirely new comprehensive search and clearance. (It appears that Apple subsequently amended the above-referenced IBOOKS application by deleting Classes 16, 38 and 41, but kept all six Classes in the IBOOKSTORE application. Even with this amendment, the three remaining Classes in the IBOOKS application represent far more than an expansion of the earlier marks and Apple had gone on record as intending to use the IBOOKS mark in connection with all of the goods/services originally listed in the applications.) Also, the fact that Apple found it necessary to conduct even a preliminary screening search of the IBOOKS mark is an indication that this expanded use far exceeds the coverage of the earlier registration. Apple has a duty to properly search and clear new marks or new uses of existing marks; being a very large and successful company does not excuse Apple from responsibility and respect for the trademark rights of others.

I have reviewed copies of several SAEGIS searches which appear to have been conducted by Apple’s outside counsel and found that one of those searches disclosed the marks iBooks (App. No. 75/786,491) covering “books, namely, a series of fiction books; non-fiction books in the field of science” and iBooksinc.com (App. No. 75/786,490) for “computerized on-