

**EXHIBIT 80**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiff,

vs.

No. 11-cv-4060

APPLE, INC.,

Defendant.  
-----X

CONFIDENTIAL

VIDEOTAPED DEPOSITION OF  
30(b)(6) JOHN T. COLBY, JR.

New York, New York

Wednesday, July 18, 2012

10:20 a.m.

Reported by:  
Jennifer Ocampo-Guzman, CRR, CLR  
Ref: 7845

1 Confidential-Colby  
2 owned any trademarks at the time of the  
3 bankruptcy?

4 MR. CHATTORAJ: Objection.

5 A. I'd hope so, but I was uncertain if  
6 they did, other than what we learned in the  
7 contract files.

8 Q. Okay. Well, turning to page 45 of  
9 Exhibit 3, page 45 is the summary of  
10 schedules; is that correct?

11 A. That's what it says.

12 Q. And does that summary indicate that  
13 at the time of the bankruptcy Byron Preiss  
14 Visual Publications had assets of \$245,368.32  
15 and liabilities of \$958,225.27?

16 A. That's what it says.

17 Q. And were you aware of that at the  
18 time of your asset purchase; is that correct?

19 MR. CHATTORAJ: Objection.

20 A. No, I wasn't.

21 Q. Did you understand that Byron  
22 Preiss Visual Publications was in financial  
23 trouble at the time of the bankruptcy?

24 A. I did not.

25 Q. Did you do any -- did you end up

1 Confidential-Colby

2 buying the assets of iBooks, Inc.?

3 A. Yes.

4 Q. Did you end -- did one of your  
5 companies end up buying the assets of Byron  
6 Preiss Visual Publications?

7 A. Yes.

8 Q. What due diligence, if any, did you  
9 do prior to purchasing the assets?

10 MR. CHATTORAJ: Objection.

11 A. I reviewed the contracts held by  
12 the trustee.

13 Q. What -- what contracts are you  
14 referring to?

15 A. These would be individual book  
16 contracts.

17 Q. And why did you do that?

18 A. To really see if the entities owned  
19 the copyrights they claimed to own.

20 Q. Did you do anything else as part of  
21 your due diligence prior to buying the assets  
22 of either of these companies?

23 A. Like what?

24 Q. Do any other sort of investigation?

25 A. I reviewed the sales information

1 Confidential-Colby  
2 from Publishers Group West, its distributors,  
3 to the iBooks distributor. I reviewed the  
4 Amazon.com listings of each title under the  
5 iBooks mark, and that sucked up a lot of  
6 time.

7 Q. Did you speak to any employees of  
8 either iBooks, Inc. or Byron Preiss Visual  
9 Publications?

10 A. After or before the bankruptcy?

11 Q. As part of your due diligence.

12 A. No.

13 Q. What investigation, if any, did you  
14 do with regard to what trademark rights if  
15 any were held in the iBooks imprint?

16 A. My attorney did that.

17 Q. Who was your attorney at the time?

18 A. Aydin Caginalp, A-Y-D-I-N,

19 C-A-G-I-N-A-L-P.

20 Q. Do you know what the attorney did?

21 MR. CHATTORAJ: Objection to the  
22 extent the question calls for privileged  
23 communications.

24 A. Not specifically, no.

25 Q. Did you acquire the business

1 Confidential-Colby  
2 records of iBooks, Inc. and Byron Preiss  
3 Visual Publications?

4 A. What do you mean by "acquire"?

5 Q. What assets of Byron Preiss Visual  
6 Publications did you purchase?

7 A. The inventory, the contracts, the  
8 marks, the copyrights, there might be more  
9 but those are the major -- the major ones.

10 Q. And what marks of Byron Preiss  
11 Visual Publications did you purchase?

12 A. The ones I knew about at the time  
13 were the name Byron Preiss, the name Byron  
14 Preiss Visual Publications, the name BP Books  
15 and the name "Masters of The Universe Science  
16 Fiction Award." I may have misstated that,  
17 but it's close.

18 Q. Did you also acquire any of the  
19 books and records of Byron Preiss Visual  
20 Publications?

21 A. Whatever -- whatever the trustee  
22 had, yes.

23 Q. And what condition were those  
24 records in when you acquired them?

25 MR. CHATTORAJ: Objection.

1 Confidential-Colby

2 A. What do you mean "condition."

3 Q. Well, were they neatly organized  
4 and easy to use, what condition were they?

5 MR. CHATTORAJ: Objection.

6 A. Well, neatly organized in terms of  
7 being in little archive boxes on pallets in a  
8 warehouse in New Jersey, they were neatly  
9 organized and stacked.

10 Q. So you acquired boxes of documents;  
11 is that right?

12 A. That's right.

13 Q. Approximately how many boxes of  
14 documents were acquired?

15 A. 11 skids.

16 Q. What is a skid, excuse me?

17 A. Skid, a skid is a pallet.

18 Q. So approximately how many boxes  
19 would be in a pallet?

20 A. Oh, I would think -- depending on  
21 how you stacked them, maybe -- maybe 40, but  
22 depends on the size of the box. If they're  
23 in the bigger boxes you can get maybe ten on  
24 a pallet. If they are the little boxes you  
25 can get about 20, 25. But those are also

1 Confidential-Colby  
2 included books, physical books, library  
3 copies and also business records it was a  
4 mix.

5 Q. Did you acquire any electronic  
6 records of Byron Preiss Visual Productions --  
7 Publications?

8 A. Only from the trustee. I don't  
9 know where they came from before the trustee  
10 had them.

11 Q. And what were in these electronic  
12 documents?

13 A. There were -- what do you mean by  
14 "electronic documents"?

15 Q. Well, I asked you if you had  
16 acquired any computer electronic documents.

17 A. Okay. Right. Right.

18 Q. And you said only from the trustee.

19 A. Okay. Sorry. Right, right.

20 Well, the documents are sales  
21 records from Simon & Schuster, sales records  
22 from PGW. There were the book records  
23 themselves, the covers, the interior, the  
24 different formats of each of the titles.  
25 When they laid them out, they assembled them



1 Confidential-Colby

2 on a computer, computer base. That's most of  
3 it.

4 Q. And where are those records now?

5 A. They're in a couple of different --  
6 the computer records?

7 Q. Yes.

8 A. They're on a hard drive, external  
9 hard drive in my office.

10 Q. Was that hard drive produced to us  
11 in this litigation?

12 A. It was.

13 Q. And is there any other place where  
14 these electronic documents reside?

15 A. My attorney's office.

16 Q. And with regard to the hard copy  
17 documents that you mentioned, where are those  
18 documents now?

19 A. Did I mention hard copy documents?

20 Q. You mentioned that there were boxes  
21 in a pallet?

22 A. Those are mostly library books,  
23 inventory books. There was some -- some  
24 sales records but they were printouts of the  
25 electronic files and they're sitting in my

1 Confidential-Colby

2 basement.

3 Q. Did you search these -- you said  
4 there were 11 skids?

5 A. Skids, yeah.

6 Q. Did you search those boxes to see  
7 if they have responsive documents in this  
8 litigation?

9 A. Yes.

10 Q. And did you produce copies of any  
11 of the hard copy documents that were in those  
12 boxes?

13 A. As to the -- they're on the hard  
14 drive, I made sure the electronic version was  
15 on the hard drive.

16 Q. I'm asking whether in terms of the  
17 documents that were in the boxes, the hard  
18 copy documents, did you search those boxes?

19 A. I did.

20 MR. CHATTORAJ: Objection.

21 A. Not all of them, but I did search  
22 most of them.

23 Q. And when you searched them, did you  
24 provide your attorneys with any copies of  
25 these hard copy documents?

1 Confidential-Colby

2 A. They already had them on the hard  
3 drive.

4 Q. And the hard drive, did you obtain  
5 the information on the hard drive from the  
6 bankruptcy trustee?

7 MR. CHATTORAJ: Objection.

8 A. Yes, you can characterize it that  
9 way.

10 Q. Well, how did you obtain the  
11 information in the hard drive?

12 A. I went to the warehouse in New  
13 Jersey and arranged for the -- with the  
14 bankruptcy trustee and arranged for the  
15 transportation of the company's computers  
16 into my warehouse.

17 Q. Okay. So did you obtain the  
18 physical computer that Byron Preiss Visual  
19 Publications had used?

20 A. That's right.

21 Q. And did you -- was that the same  
22 computer used by iBooks, Inc.?

23 A. I don't know.

24 Q. You produced in this case as part  
25 of your discovery obligations a single

1 Confidential-Colby

2 computer's hard drive, correct?

3 A. That's right.

4 Q. Okay. Did that computer contain  
5 the electronic records of both iBooks, Inc.  
6 and Byron Preiss Visual Publications?

7 A. To the best of my knowledge, yes.

8 Q. Did you scan any hard copy  
9 documents into those -- into that computer  
10 that you obtained or did you simply --

11 MR. CHATTORAJ: Objection.

12 A. No, it wouldn't work. It wouldn't  
13 work like that.

14 Q. So you just -- did you -- does the  
15 hard drive that you produced, was that the  
16 actual computer that you had received in 2006  
17 or 2007 pursuant to the bankruptcy?

18 A. No.

19 Q. What happened to the computer that  
20 you had obtained as part of the asset sale?

21 A. I threw them out.

22 Q. When did you throw them out?

23 A. In, I guess, '07 and '08 from a  
24 warehouse.

25 Q. Prior to throwing out these

1 Confidential-Colby

2 computers, did you do anything to preserve  
3 their records?

4 A. Yes.

5 Q. What did you do?

6 A. I copied the data from them to my  
7 external hard drive.

8 Q. And when you say your external hard  
9 drive, what are you referring to?

10 A. My external hard drive that I keep  
11 on my desk where all the data records go.

12 Q. In the course of your business, do  
13 you use a single computer?

14 A. No.

15 Q. What computers do you use?

16 A. I only -- I use an iPad and an  
17 iMac.

18 Q. And what computer did you transfer  
19 the information that you obtained in the  
20 bankruptcy to?

21 MR. CHATTORAJ: Objection.

22 A. What computer?

23 Q. Yes.

24 A. At the time it was my G5 iMac, and  
25 it went from the storage devices we acquired

1 Confidential-Colby

2 on to one brand new hard drive.

3 Q. What was the purchase price you  
4 paid to acquire the assets of Byron Preiss  
5 Visual Publications?

6 A. I'm not sure what you mean because  
7 there are two entities involved.

8 Q. Okay. There is iBooks, Inc. and  
9 there's Byron Preiss Visual Publications; is  
10 that right?

11 A. Right.

12 Q. So did you pay a single price for  
13 the assets for both companies?

14 A. That's right.

15 Q. And am I correct that you made  
16 \$125,000 for the assets of both iBooks, Inc.  
17 and Byron Preiss Visual Publications?

18 A. Excluding legal fees, that's true.

19 Q. And in terms -- I previously asked  
20 you what assets you had acquired of Byron  
21 Preiss Visual Publications, what assets did  
22 you acquire of iBooks, Inc.?

23 A. The same.

24 Q. The same categories of assets; is  
25 that right?

1 Confidential-Colby

2 A. That's right.

3 Q. And in terms of due diligence, did  
4 you do anything differently with regard to  
5 the due diligence with regard to iBooks, Inc.  
6 as opposed to Byron Preiss Visual  
7 Publications?

8 MR. CHATTORAJ: Objection.

9 A. No.

10 Q. Prior to the acquisition, did you  
11 speak to any of iBooks, Inc.'s or Byron  
12 Preiss Visual Publications' creditors?

13 A. Yes. I'm sorry, did you say prior  
14 to the bankruptcy?

15 Q. Prior to your acquisition of the  
16 assets?

17 A. Yes, yes, yes, uh-huh.

18 Q. Who did you speak to?

19 A. Richard Freese.

20 Q. Who is he?

21 A. He is or was president of  
22 Publishers Group West.

23 Q. And what was that conversation  
24 about?

25 A. How were sales going, how are you