

**EXHIBIT 85**

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 IPICTURE  
BOOKS, LLC,

Plaintiffs,

-against-

Index No.  
11-CV-4060 (DLC)

APPLE, INC.,

Defendant.

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VIDEOTAPED DEPOSITION OF ROBERT SCHERER

New York, New York

November 16, 2012, 9:06 a.m.

Reported By:

Nicole Sesta

Ref: 8577

1 R. Scherer

2 the mark to the assignee.

3 Q Do you believe that when Apple  
4 acquired the '634 registration from Family  
5 Systems it did not obtain the goodwill  
6 associated?

7 A That's correct. That's my belief.

8 Q What is the basis of your opinion?

9 A As I said, the transfer of  
10 goodwill is a requirement for a valid trademark  
11 assignment. Goodwill is an intangible asset.  
12 It's the medal association and consumer  
13 recognition of that mark as a branding or  
14 identifying source. Because it's an intangible  
15 concept one has to look at other tangible assets  
16 that were transferred with the mark because the  
17 mark and the goodwill cannot be separated.

18 The whole idea is to make sure  
19 that the assignee acquires what is required in  
20 order to continue to conduct that business, a  
21 business which is substantially similar to the  
22 business that was done by the assignor. In this  
23 case Apple did not acquire the tangible assets  
24 necessary to meet the standard of goodwill  
25 transfer.