

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.

SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3215

(202) 326-7900

FACSIMILE:
(202) 326-7999

April 29, 2015

The Honorable Denise L. Cote
United States District Court for the Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

Re: *DNAML Pty, Limited v. Apple, Inc. et al.*, 13 Civ. 6516 (DLC)
Diesel eBooks, LLC v. Apple, Inc. et al., 14 Civ. 1768 (DLC)
Abbey House Media, Inc. v. Apple, Inc. et al., 14 Civ. 2000 (DLC)

Dear Judge Cote:

Plaintiff DNAML is in receipt of the letter and related materials submitted to the Court on April 27, 2015. We believe that the allegations of misconduct are baseless and intend to respond to them fully. Given the serious nature of Defendants' allegations and their detailed submission to the Court, DNAML respectfully requests that it be given until Wednesday, May 6, 2015 to respond.

Several aspects of Defendants' description of the communications that preceded Defendants' letter are misleading, and DNAML wishes to correct the record now. Defendants' letter gives the impression that Defendants confronted DNAML with allegations of spoliation weeks ago. That is inaccurate. On April 3, counsel for Defendants sent an email to counsel for DNAML stating that the spreadsheet attached to DNAML_0004402 was last modified on November 18, 2013, and that Dr. Rosen's report stated that the projection was prepared as of April/May 2010, and asked DNAML's counsel to "help us understand this discrepancy."

In two meet-and-confer calls with Defendants' counsel on April 10, 2015, and April 20, 2015, counsel for DNAML repeatedly asked Defendants' counsel to provide more detail about their concerns so that DNAML could investigate them. Defendants' counsel repeated that they believed a "discrepancy" existed between Dr. Rosen's report and the

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.

The Honorable Denise L. Cote
April 29, 2015
Page 2

last modified date in the spreadsheet, but at no point during those calls did Defendants' counsel raise any concern that DNAML had altered documents to inflate DNAML's claimed damages. In fact, Defendants' counsel specifically denied that they were suggesting that DNAML engaged in fraud.

DNAML's counsel investigated the claimed "discrepancy." On the April 20, 2015 call, DNAML's counsel reported that it could provide a declaration from Adam Schmidt, DNAML's founder and Managing Director, stating that the 4402 spreadsheet was created in the ordinary course of business, last substantively updated in 2010, and was pulled from DNAML's files in 2013 in order to send to attorneys for purposes of this litigation. Defendants' counsel indicated that such a declaration would be a "very productive first step that may resolve everything."

On April 23, 2015, Defendants' counsel called DNAML's counsel and for the first time accused DNAML of committing "spoliation" by substantively altering projection documents in November 2013. Defendants' counsel stated that they would file a motion the next day, April 24, 2015. Ultimately, Defendants filed their submission to the Court on April 27, 2015, and sent us a copy by email the following day. DNAML and its counsel are diligently investigating these new allegations of litigation misconduct and, with the Court's permission, intend to respond fully by Wednesday, May 6, 2015.

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.

The Honorable Denise L. Cote
April 29, 2015
Page 3

Respectfully Submitted,

KELLOGG, HUBER, HANSEN, TODD, EVANS
& FIGEL, PLLC

By: 

Michael J. Guzman (*pro hac vice*)
Derek T. Ho (DH0104)
Sumner Square
1615 M St. NW, Suite 400
Washington, DC 20036
Tel: (202)326-7910
mguzman@khhte.com
dho@khhte.com

On behalf of Plaintiff DNAML PTY, Limited

cc: Counsel of Record (via ECF Notification)