

Apple clashes with Amazon in e-book case

7 June 2013, by John Biers



Jeff Bezos CEO of Amazon introduces the Kindle Paperwhite eReader during a press conference on September 6, 2012 in Santa Monica, California. Apple attorneys in the US antitrust case on e-books went on the offensive Thursday, grilling a trio of witnesses from Apple rival Amazon and undertook a bruising cross-examination of a Google executive

Apple attorneys in the US antitrust case on e-books went on the offensive, attacking the credibility of government witnesses and seeking to debunk key elements of the government's case.

[Apple](#) attorneys grilled a trio of witnesses from Apple rival Amazon and undertook a bruising cross-examination of a [Google](#) executive.

Apple attorney Howard Heiss peppered Amazon executives during a series of contentious exchanges with skeptical questions on Amazon statements about its business profile and pointed out inconsistencies between Amazon testimony and documentary evidence.

Amazon is very "[metrics](#)-focused," Heiss said to Amazon's vice president for Kindle Russell Grandinetti during a cross examination.

Grandinetti had previously testified that he did not

know Amazon's [market share](#) of the [e-books](#) market.

"We were a very large seller of e-books," Grandinetti said, while denying he could estimate Amazon's market share.

Heiss then presented a news article quoting another Amazon executive estimating the company's market share at 70-80 percent.

Amazon is a key witness in the government's case, which maintains that Apple conspired with [publishers](#) to orchestrate a transformation of the e-book market in early 2010 that cost consumers hundreds of millions of dollars.

In entering the market, Apple signed a series of "agency" model contracts with publishers, in which publishers set the price and guaranteed Apple a 30 percent commission.

Prior to Apple's entry, the e-book industry was dominated by Amazon and run on a "wholesale" model where retailers set the prices. Amazon charged \$9.99 for bestsellers prior to Apple's entry into the market.

Part of the government's case is that Apple and publishers forced Amazon to switch to the agency model, resulting in higher prices.

Apple attorneys sought to show that Amazon faced an increasingly difficult market in late 2009 and early 2010 in which publishers were already planning hardball tactics—even before Apple's entry.

Amazon's pricing model was unpopular not only with publishers, but also with agents and authors who worried about the erosion of intellectual property.

Grandinetti confirmed that by the end of 2009 four of the "Big Six" publishers announced plans to "window" bestselling books, meaning they would delay release of the Amazon e-book for a period of

months until after the release of the physical book.

As five of the major publishers signed agency models with Apple, they contacted Amazon to renegotiate terms.

The first negotiation was with MacMillan Chief Executive John Sargent, who presented Amazon with the choice of shifting to an agency model or accepting a wholesale model with windowing for seven months.

"We expressed quite strongly how unpalatable the choice was," Grandinetti said of his encounter with Sargent. "The meeting was very tense."

Amazon initially tried to punish MacMillan by removing the "buy" button from MacMillan titles.

But Amazon ultimately capitulated after three days and quickly negotiated the agency model with MacMillan.

Soon after that, Amazon negotiated similar contracts with the other four publishers.

Apple attorneys sought to show that Amazon's shift to the agency model was its own decision and not orchestrated by Apple.

But Amazon officials testified that the publishers were forcing the change at Apple's behest.

Laura Porco, who was director of Amazon's Kindle Books at the time, told the court in a written declaration that the publishers informed Amazon that they were switching to agency "because that's what Apple made them do."

Porco told the court Thursday she was "alarmed" when the publishers demanded agency from [Amazon](#).

"I felt like we were being pushed into something that was really terrible for consumers," Porco said.

Following Porco's testimony, Apple attorney Orin Snyder aggressively questioned Thomas Turvey, an executive in Google's book selling division.

Turvey said in a written deposition that publishers told him that they could not accept wholesale terms with Google because of their terms with Apple.

During the testimony, Turvey was unable however to name a single publishing executive who said this.

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