



U.S. Department of Justice

Antitrust Division

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June 1, 2013

BY E-MAIL

The Honorable Denise L. Cote
United States District Judge, S.D.N.Y.
Daniel P. Moynihan U.S. Courthouse
New York, NY 10007-1312

DxF
6/4/13

ORIGINAL
ELECTRONICALLY

Re: United States v. Apple, Inc., et al., No. 12-cv-2826 (DLC)
States of Texas v. Penguin Group (USA), Inc., No. 12-cv-3394 (DLC)

Dear Judge Cote:

We write in response to Apple's letter from May 31, regarding Mr. Cue's appearance at trial. For almost a month now, Plaintiffs and Apple have been discussing the anticipated date for Mr. Cue's testimony—something Apple was particularly concerned about given Mr. Cue's position at the company. Consistently, Plaintiffs made clear to Apple that we intended to call Mr. Cue during the second week of trial, likely on Tuesday June 11 or Wednesday June 12. At no time during those conversations did Apple ever indicate any conflict with Mr. Cue testifying during that time period.

Approximately 48 hours ago, we were informed by Apple that Mr. Cue is unavailable to testify during the majority of the second week of trial because he will be attending Apple's Worldwide Developers Conference, an annual event hosted by Apple in California. It is simply beyond dispute that Apple was aware both of the conference and Mr. Cue's intention to attend, for several weeks, if not months.

Apple has never explained to Plaintiffs why it failed to disclose this matter prior to this past Thursday, and we do not believe that was appropriate. Nonetheless, if the Court is inclined to permit Mr. Cue to testify on June 13, even if that is after Plaintiffs have rested their case-in-chief, we will be prepared to conduct our adverse direct examination of Mr. Cue at that time.

Respectfully Submitted,

Lawrence E. Buterman