

From: Sargent, John
To: 'von Holtzbrinck Dr. Stefan'; Salat Dr. Rüdiger
Sent: 5/6/2011 12:12:17 PM
Subject: RE: Amazon as a publisher

Plaintiffs' Exhibit
US v Apple
12-cv-02826
PX-0097

Hi guys. I'll play devil's advocate here:

I believe the biggest book retailer in America by market cap is Walmart. There is a long history of the vertical paly in bookselling. Scribner. Then Doubleday owning the largest publisher, the largest book chain and the largest book club. As you mention, B&N. Borders.

Own brand selling at retail is very broadly practiced and accepted. Think power tools at Sears and Walmart.

I would have to get a legal opinion, but I do not think there is a market dominance abuse law in the USA. I think there are plenty of protections if Amazon wanted to buy their way into a monopoly position, but if they win it in the market, that is fair. Most of the breakups I can recall (and they have been very few) were done in sectors that effected national security interests. If they didn't break up Microsoft, can't see the argument on Amazon. Where we do have protections is pricing. And you can argue that their pricing has been predatory. But in the end, the consumer wins, so it is a hard battle to fight. Can you imagine taking them on now for instance by claiming they are selling textbooks too cheaply?

Our protection is that we have no obligation to sell to Amazon. Literally we could just stop selling to them tomorrow, or any day thereafter. Stefan, you will remember we considered that some years ago.

At present B&N is the largest bookseller in America. They are also probably the 8th largest publisher.

All that said, I agree that Amazon is to be feared (and respected). It would take some big stones to stop selling to them. Our authors would go bat shit. The better play would be to wait until the Bookish site is up and we have other direct channels fully built. Then start windowing e books so they are available first only on our sites. Amazon will probably react by dropping us, which is a whole lot better than us dropping them. That would be some very high risk poker...

Also remember, much of their current aggressiveness is a reaction to our behavior. We took away their ability to compete on price. They need to differentiate their site, and if they can't use price and promotion, all that is left is product.

This is going to be a long battle I think. Happy to discuss our next move. A good dinner topic for meetings this summer....

From: von Holtzbrinck Dr. Stefan [mailto:stefan.vonholtzbrinck@holtzbrinck.com]
Sent: Friday, May 06, 2011 4:47 AM
To: Sargent, John; Salat Dr. Rüdiger
Subject: Amazon as a publisher

Hi John and Rüdiger.

Despite the fact that the new Amazon publishing arm might not go very far I think we might want to check from a **market dominance abuse perspective** in

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the US (they have over 50% SoM in ebooks and they will be the biggest physical retailer)

- how far can they go (what will come up is, that they treat their authors preferentially, left pocket right pocket on promo budgets – since I think that they are already skewing their lists a bit on the ebook side for Kindle sales purposes), when/if is the line of market dominance abuse crossed and

This move is not comparable in its dimension with B&N's half hearted publishing efforts.

This one will include serious additional activities of author marketing and sales promotion on all levels (FB, Amazon), it will have a deeper integration in the value chain (print, online, pre-market manuscript tests), it will come with an unparalleled global reach/campaigns into the remotest spot in one swoop fell, it will come from the by far biggest book retailer the world has seen (to date a >100 times bigger market cap than B&N, let alone all the others on the planet) with an outstanding market share and – given the whole situation in the next market developments, the shrinking of the bookseller market space - Amazon's physical and e-retailing position will only strengthen.

This whole thing will not be a big blow in day one - they are too clever to confront publishers with serious challenges right away. This might creep in: they will start to do only a few big names – to not upset the community. But they will go after midlist authors and given the power they have – they will bring them beyond where they were – without inventory big risks (pod, e-book). They might end up to be the "makers or breakers" and then they will at least become another Tesco with 60% plus margin. So there two outcomes, which reinforce themselves: higher margins and a serious competitor, leaving us less room for maneuver.

May be I am overly anxious, but so far Amazon has not disappointed my expectations J.

Stefan

Montlake Romance Marks Tip of Amazon's Expansion Into Publishing
By Rachel Deahl
May 04, 2011

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With the news that Amazon is expanding its publishing arm, launching in the fall Montlake Romance (with plans to deepen its category publishing to mystery, science fiction, and thrillers), many in the publishing business have been talking about the company's hiring strategies. And agents have been eyeing the unfolding process closely, trying to gauge whether the retailer will become as viable a place for their books as traditional houses.

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For weeks job openings at Amazon, in both editorial and publicity, have been posted online, offering positions in Seattle and New York. Rumors have surfaced that the company is recruiting a New York publishing staff and is on the hunt for a high-level executive to be the publisher of its expanded publishing wing. Amazon confirmed that it will be handling its own distribution, and that Victoria Griffith is publisher of the new Montlake imprint. A rep for the company, who noted that Amazon "has had a New York office for some time," said that "some" of the publishing jobs with the company will be based in New York. While the rep would not comment on when Amazon will launch the other planned genre imprints, rumors have been floating that the company has already closed a deal with an author, for a sizable sum, for either its thriller or mystery imprint.

A number of sources inside New York publishing houses said there was a sour feeling about the way Amazon has, to this point, gone about its employee search. The company sent a form letter to a number of senior executives, some within the same publisher, inquiring if they would be interested in working for Amazon. While some sources scoffed that a suite of Amazon imprints could establish respect in the industry—one insider said Amazon's publishing efforts would likely be seen as a "proprietary bookseller-publisher pretty far down the food chain of quality publishers"—agents were less damning.

One agent noted that Amazon is uniquely positioned to promote authors and books in a way traditional houses are not—through content on its Web site as well as by tapping into information about its customers' book-buying habits. For this reason, this agent said, there is a certain appeal to selling a book to them. He noted, though, that "when any new publishing company or imprint is created, I generally like to wait and see how they're going to do before placing my authors' intellectual property there."

Regarding distribution, questions linger about whether print books from Amazon could find their way into Barnes & Noble or the independents, since both see the company as their most significant competition. One source said it would be presumptuous to assume that B&N would not stock a book simply because Amazon published it, while others added that, for the right title, having no distribution in B&N or the independents would not seriously damage sales anyway.

B&N did not respond to e-mails about whether it will carry Montlake titles. Some independent booksellers are already saying they will never carry a book published by Amazon. "Nobody that sells books needs to do business with Amazon. We don't carry titles by our competitors. We don't carry Barnes & Noble titles. Why would we carry Amazon?" said Geoffrey Jennings of the Fairway. Kans., Rainy Day Books. He added: "It doesn't matter how big you make the press, a vanity press is still a vanity press." Steve Bercu, of Austin's BookPeople, said it is unlikely he would carry an Amazon title. "They haven't exactly endeared themselves to retailers. Maybe they're looking forward to a happy future collecting sales tax when 100% of retailers aren't mad at them."

Another insider said he thinks Amazon will likely start to "acquire big names in the editorial ranks as well as make runs at big authors." He added: "And I think agents would sell to them, especially since they'll probably spend big money." Amazon has proven recently that, for the right author, it is willing to pay a lot. After St. Martin's Press closed a reported \$4 million four-book deal with self-publishing sensation Amanda Hocking, word leaked that Amazon had put in a competitive bid in an attempt to land the author.

"They probably know enough about the book business by now to do as well as, or better, than the old-school houses," said another agent, acknowledging that he would probably sell a book to Amazon. Of course, as the previous insider guessed, it may come down to money on the table. Yet another agent said: "The big question is whether Amazon will pay advances, and at what level. And, of course, what will their tolerance of risk be as a publisher."