

~~PUBLIC~~

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL

02 15 2017  
585682

~~ORIGINAL~~

II. BACKGROUND

A. The Complaint

Complaint Counsel challenges 64 bilateral trademark dispute settlement agreements entered into by 1-800 Contacts, each with a different contact lens retailer. These settlement agreements relate to online search advertising. The complaint alleges that such advertising is data-intensive: “[I]n determining whether and in what order to play for t8.2(ini)]T3h

restraint on competition. Continental T.V., Inc. v. GTE Sylvania Inc., 433 U.S. 36, 49 (1977). Complaint Counsel likewise stated at the initial conference that they intend to prove their case under a methodology that considers market power over actual effects. Tr., Sept. 7, 2016, at 19:24-20:17. Respondent believes that the evidence will show that the circumstances and character of the agreements make antitrust scrutiny inappropriate and that in the alternative the procompetitive benefits of the agreements outweigh any anticompetitive effects, the agreements are not likely to harm competition or consumers, that 1-800 Contacts does not have market power, and that the complaint's alleged product markets fail. Respondent also challenges the extensive relief being sought.

C. Fact Discovery

One indicator of the scope of appropriate expert discovery in this action is the scope of the fact discovery that the parties have taken. Twenty-nine third parties have been subpoenaed. More than 175,000 documents and electronic files have been produced. We estimate that to the equivalent of more than two million pages. Forty-one depositions have been taken, 14 years-long pre-filing investigation and 28 in the litigation itself.

D. Experts

In light of the multiple different subject matters to be addressed at trial, and the unmanageable scope of the expert reports that Complaint Counsel would be submitting, Respondent has designated seven experts. In its expert designation, Respondent acknowledged the presumptive limit of five expert witnesses and stated that it expects to reduce its list after receiving Complaint Counsel's expert reports and/or file a motion seeking to call additional expert witnesses." Motion, Ex. B, at 2. Respondent received Complaint Counsel's expert reports on February 6, 2017. Two days later, Respondent notified Complaint Counsel that it was

withdrawing one of its seven designated experts.

III. ARGUMENT

A. The Circumstances Of This Case Warrant One Additional Expert

The parties agree that Rule 3.31A(b) authorizes the Court to allow more than five expert witnesses “due to extraordinary circumstances.” Respondent submits that such circumstances exist here.

First, this is not a typical enforcement action. This action involves not one area of the law but at least two. Here, Complaint Counsel’s theory is that the antitrust standard is violated because the reach of the agreements is allegedly beyond the rights protected by trademark law. Respondent contends that the agreements settled reasonably and did so by commonplace and reasonable types of settlement agreements. Respondent’s deference to the evidence related to Complaint Counsel’s trademark theories necessitate testimony from an expert in trademark practice who has litigated and settled such disputes. This subject matter is distinct from the other subject matters on which Respondent is offering expert opinions.

To address these issues, Respondent plans to call Howard Hogan, an accomplished trademark lawyer. Mr. Hogan will testify that the agreements settling 1-800 Con complaints were of a form that is both reasonable and commonplace, that the relief provided was narrowly and appropriately tailored to remedy the violations alleged, and that more narrowly tailored provisions would prove to be impracticable.<sup>2</sup>

Second, Complaint Counsel’s use of the antitrust laws to scrutinize settlement agreements in trademark litigation necessitates testimony regarding the economics of trademarks and trademark

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<sup>2</sup> Complaint Counsel attached Respondent’s Expert Witness List to their motion but omitted the

protection. Respondent intends to call William Landes, a professor of law and economics at the University of Chicago Law School. Dr. Landes co-authored, with Richard Posner, *The Economic Structure of Intellectual Property Law*, which contains two chapters on the economics of trademarks and is viewed as the seminal treatise on that subject. Dr. Landes has published on the economics of litigation, including one of the first papers that use economic analysis to analyze the choice between settling a dispute or going to trial. Dr. Landes will explain and apply economic principles of trademark protections.

provided by the search engines to explain consumer Internet search behavior as relevant to the restrictions in the settlement agreements and also use such data and academic literature to analyze the potential effects of

keywords in Internet paid search advertising. R. Goodstein et al., Using Trademarks  
Keywords: Empirical Evidence of Confusion, 105 TMR 732 (2015). Professor Goodstein w

case arises at the intersection of two areas of the law – trademark (and, more generally, intellectual property and tort) and antitrust, as well as the fact that the subject matter – internet search advertising – requires analysis of massive troves of data related to advertiser and consumer behavior.

Complaint Counsel make some of the same sort of arguments that this Court overruled in *Pom Wonderful*. As they did in *Pom Wonderful*, Complaint Counsel argue here that they have designated fewer than five experts (initially four in *Pom Wonderful*, three here, although Complaint Counsel has not yet designated rebuttal experts). 2011 WL 734462, at \*3. But the Court looked to the fit between the Respondents' experts and the Respondents' defense, not how Complaint Counsel chose to present their case. Id. at \*4-\*5. The same is true here. The fact that Complaint Counsel have chosen to ignore the trademark settlement aspect of the agreements at issue does not mean that Respondents should be hamstrung in presenting their case.

As they did in *Pom Wonderful*, Complaint Counsel argue that other cases “have been prosecuted with fewer than five experts.” Id. at \*3. But as the Court said in *Pom Wonderful*, the result in other cases “is not material to whether Respondents are entitled to defend themselves against the charges brought against them in this case with more than five experts.” Id. at \*4.

Complaint Counsel also argue, as they did in *Pom Wonderful*, that permitting Respondent to present an additional expert in its defense would unfairly burden Complaint Counsel. That argument has no merit. There have been 41 depositions and the equivalent of approximately 10 million pages of documents produced in this matter. In the Part 3 phase alone, 29 third parties have been subpoenaed. At least 10 experts will be deposed regardless of the outcome of this motion. The current motion lists 11 individual Complaint Counsel participating in these





**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF THE ADMINISTRATIVE LAW JUDGES**

**In the Matter of**

**1-800 Contacts, Inc.,  
a corporation**

**Docket No. 9372**

**DECLARATION OF STEVEN M. PERRY IN CONJUNCTION WITH  
RESPONDENT 1-800 CONTACT'S OPPOSITION TO  
COMPLAINT COUNSEL'S MOTION TO LIMIT RESPONDENT  
TO FIVE (5) EXPERT WITNESSES**

I, Steven M. Perry, declare as follows:

1. I am an attorney at the law firm of Munger, Tolles & Olson LLP, counsel for Respondent 1-800 Contacts, Inc. in this matter. I am licensed to practice law before the courts of the State of California and have appeared in the action pursuant to Rule 4.1 of the Commission's Rules of Practice.

2. I submit this Declaration in conjunction with Respondent 1-800 Contact's Opposition to Complaint Counsel's Motion to Limit Respondent to Five (5) Expert Witnesses. I have personal knowledge of the facts stated in this declaration and, if called as a witness, could competently testify to them.

3. Attached to this declaration as Exhibit 1 is a true and correct copy of Respondent's Expert Witness List, served January 13, 2017 in this matter. Exhibit 1 includes the CVs of each of Respondent's six remaining designated experts, but omits the voluminous prior testimony that was included in the expert disclosure.

4. Attached to this declaration as Exhibit 2 is a true and correct copy of the Subpoena Duces Tecum served by Complaint Counsel on Google Inc. on or about October 20, 2016 in this matter.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on February 15, 2017, in Los Angeles, California.

/s/Steven M. Perry

Steven M. Perry

# **EXHIBIT 1**



surrebuttal expert witnesses,” and expects to reduce its list after receiving Complaint Counsel’s expert reports and/or file a motion seeking leave to call additional expert witnesses.

Subject to the foregoing, including its reservations of rights, Respondent provides the following list of experts:

**EXPERT WITNESSES**

1. **Dr. Kevin Murphy.** Professor Murphy’s background, qualifications, and publications within the past ten years are described in his curriculum vitae, a copy of which is provided herewith as Exhibit A. Transcripts of Professor Murphy’s testimony in *US Airways, Inc. v. Sabre Holdings Corp.*, United States District Court, Southern District of New York, Case No. 1:11-cv-02725-MGC are provided as Exhibit B. Transcripts of Professor Murphy’s testimony in *Aspinall v. Philip Morris, USA, Inc.*, Superior Court for the Commonwealth of Massachusetts, Case No. 98-6002-BLSI, are provided as Exhibit C. Neither Professor Murphy nor Respondent have in their possession, custody, or control any transcripts of other trial or deposition testimony given within the past four years that are not under seal.
2. **Dr. Anindya Ghose.** Professor Ghose’s background, qualifications, and publications within the past ten years are described in his curriculum vitae, provided as Exhibit D. In addition, Professor Ghose testified at a deposition in *In re Facebook, Inc., IPO Securities and Derivative Litigation*, United States District Court, Southern District of New York, Case No. 1:12-md-02389. Neither Professor Ghose nor Respondent have in their possession, custody, or control any transcripts of trial or deposition testimony given within the past four years that are not under seal.
3. **Dr. Michael Ostrovsky.** Professor Ostrovsky’s background, qualifications, and publications within the past ten years are described in his curriculum vitae, provided as Exhibit E. Professor Ostrovsky has not given trial or deposition testimony within the past four years.
4. **Dr. William Landes.** Professor Landes’s background, qualifications, and publications within the past ten years are described in his curriculum vitae, provided as Exhibit F. Professor Landes has not given trial or deposition testimony within the past four years.
5. **Mr. Howard S. Hogan.** Mr. Hogan’s background, qualifications, and publications within the past ten years are described in his curriculum vitae, provided as Exhibit G. Mr. Hogan has not given trial or deposition testimony within the past four years.

6. **Dr. Ronald Goodstein.** Professor Goodstein's background, qualifications, and publications within the past ten years are described in his curriculum vitae, provided as Exhibit H. Professor Goodstein has not given trial or deposition testimony within the past four years.
  
7. **Dr. Kent Van Liere.** Dr. Van Liere's background, qualifications, and publications within the past ten years are described in his curriculum vitae, provided as Exhibit I. The transcript of Dr. Van Liere's deposition in *In re: Lumber Liquidators Chinese-Manufactured Flooring Products Marketing, Sales Practice and Products Liability Litigation*, United States District for the Eastern District of Virginia, Case No. 1:15-md-02627, is provided as Exhibit J. The transcript of Dr. Van Liere's deposition in *Rock v. National College Athletic Association*, United States District Court for the Southern District of New York, Case No. 1:12-cv-01019, is provided as Exhibit K. The transcript of Dr. Van Liere's deposition in *Orix USA Corp. v. Preston Hollow Capital, LLC*, United States District Court for the Eastern District of Texas, Case No. 5:15-CV-00170, is provided as Exhibit L. The transcript of Dr. Van Liere's deposition in *Devi*

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Washington, DC 20004

Sean Gates (sgates@charislex.com)  
CHARIS LEX P.C.



**CERTIFICATE OF SERVICE**

I hereby certify that on January 13, 2017, I served **RESPONDENT'S EXPERT WITNESS LIST** on the following Complaint Counsel:

Thomas H. Brock, ***tbrock@ftc.gov***

Barbara Blank, ***bblank@ftc.gov***

Gustav Chiarello, ***gchiarello@ftc.gov***

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Joshua B. Gray, ***jbgray@ftc.gov***

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Daniel Matheson, ***dmatheson@ftc.gov***

Charlotte Slaiman, ***cslaiman@ftc.gov***

Mark Taylor, ***mtaylor@ftc.gov***

DATED: January 13, 2017

By: */s/ Gregory P. Stone*  
Gregory P. Stone

# **EXHIBIT A**





Measuring the Gains from Medical Research: An Economic Approach, edited volume with Robert H. Topel, Chicago: The University of Chicago Press (2003).

## Chapters in Books

“Income and Wealth in America,” with Emmanuel Saez, in Inequality and Economic Policy, ed. Tom Church, Christopher Miller, John B. Taylor, Stanford, CA: Hoover Press (2015)

## Articles

“Government Regulation of Cigarette Health Information,” with Benjamin Klein and Lynne Schneider, 24 *Journal of Law and Economics* 575 (1981).

“Estimation and Inference in Two-Step Econometric Models,” with Robert H. Topel, 3 *Journal of Business and Economic Statistics* 370 (1985).

“Unemployment, Risk, and Earnings: Testing for Equalizing Wage Differences in the Labor Market,” with Robert H. Topel, in Unemployment and the Structure of Labor Markets, pp. 103-139, ed. Kevin Lang and Jonathan S. Leonard. London: Basil Blackwell (1987).

“The Evolution of Unemployment in the United States: 1968-1985,” with Robert H. Topel, in NBER Macroeconomics Annual, pp. 11-58, ed. Stanley Fischer. Cambridge, MA: MIT Press (1987).

“Cohort Size and Earnings in the United States,” with Mark Plant and Finis Welch, in Economics of Changing Age Distributions in Developed Countries, pp. 39-58, ed. Ronald D. Lee, W. Brian Arthur, and Gerry Rodgers. Oxford: Clarendon Press (1988).

“The Family and the State,” with Gary S. Becker, 31 *Journal of Law and Economics* 1 (1988).

“A Theory of Rational Addiction,” with Gary S. Becker, 96 *Journal of Political Economy* 529-562 (1988).

“Building Blocks of Market Clearing Business Cycle Models,” with Andrei Shleifer and Robert W. Vishny, in NBER Macroeconomic Annual, pp. 247-87, ed. Olivier Jean Blanchard and Stanley Fischer. Cambridge, MA: MIT Press (1989).

“Efficiency Wages Reconsidered: Theory and Evidence,” with Robert H. Topel, in Advances in the Theory and Measurement of Unemployment, pp. 204-240. ed. Yoram Weiss and Gideon Fishelson. London: Macmillan (1990).

“Empirical Age-Earnings Profiles,” with Finis Welch, 8 *Journal of Labor Economics* 202 (1990).

“Human Capital, Fertility, and Economic Growth,” with Gary S. Becker and Robert F. Tamura, 98 *Journal of Political Economy*, S12 (1990).

“Accounting for the Slowdown in Black-White Wage Convergence,” with Chinhui Juhn and Brooks Pierce, in Workers and Their Wages: Changing Patterns in the United States, pp. 107-143, ed. Marvin Kosters. Washington, D.C.: American Enterprise Institute (1991).

“The Role of International Trade in Wage Differentials,” with Finis Welch, in Workers and Their Wages: Changing Patterns in the United States, pp. 39- 69, ed. Marvin Kosters. Washington, D.C.: American Enterprise Institute (1991).

“Why Has the Natural Rate of Unemployment Increased over Time?” with Robert H. Topel and Chinhui Juhn, 2 *Brookings Papers on Economic Activity* 75 (1991).

“The Allocation of Talent: Implications for Growth,” with Andrei Shleifer and Robert W. Vishny, 106 *Quarterly Journal of Economics* 503 (1991).

“Rational Addiction and the Effect of Price on Consumption,” with Gary S. Becker and Michael Grossman, 81 *American Economic Review* 237 (1991).

“Wages of College Graduates,” in The Economics of American Higher Education, pp. 121-40, ed. William E. Becker and Darrell R. Lewis. Boston: Kluwer Academic Publishers (1992).

“Changes in Relative Wages, 1963-1987: Supply and Demand Factors,” with Lawrence F. Katz, 107 *Quarterly Journal of Economics* 35 (1992).

“The Structure of Wages,” with Finis Welch, 107 *Quarterly Journal of Economics* 285 (1992).

“The Transition to a Market Economy: Pitfalls of Partial Planning Reform,” with Andrei Shleifer and Robert W. Vishny, 107 *Quarterly Journal of Economics* 889 (1992).

“The Division of Labor, Coordination Costs, ngostsn3(e)-3(r)dEe.001 T9t L(r)3( a)1(g)h14(1e)TJ0.d107

“Industrial Change and the Rising Importance of Skill” with Finis Welch, in Uneven Tides: Rising Inequality in America, pp. 101-132, ed. Peter Gottschalk and Sheldon Danziger. New York: Russell Sage Foundation Publications (1993).

“Vertical Integration as a Self-Enforcing Contractual Arrangement,” with Benjamin Klein, 87 *American Economic Review* 415 (1997).

“Unemployment and Nonemployment,” with Robert H. Topel, 87 *American Economic Review* 295 (1997).

“Wages, Skills, and Technology in the United States,” 111 *American Economic Review* 1051 (2021).



“Entrepreneurial ability and market selection in an infant industry: evidence from the



“The Interaction of Growth in Population and Income,” with Gary S. Becker,  
Unpublished Working Paper (2006).

“Persuasion and Indoctrination,” with Gary Becker (2007).

“The Value of Life Near Its End and Terminal Care,” with Gary S. Becker and Tomas  
Philipson (2007).

“On the Economics of Climate Policy,” with Gary S. Becker and Robert H. Topel,  
Working Paper No. 234 (January 2010, Revised September 2010).

“The Economics of NFL Team Ownership,” with Robert H. Topel, report prepared at the request of the National Football League Players’ Association (January 2009).

### **Articles About Murphy**

“Higher Learning Clearly Means Higher Earning,” by Carol Kleiman. *Chicago Tribune*, March 12, 1989, Jobs Section pp. 1. Long article about “The Structure of Wages” with picture of Murphy.

“Why the Middle Class Is Anxious,” by Louis S. Richman. *Fortune*, May 21, 1990, pp. 106. Extensive reference to Murphy’s work on returns to education.

“Unequal Pay Widespread in U.S.,” by Louis Uchitelle, *New York Times*, August 14, 1990, Business Day section pp. 1. Long piece on income inequality.

“One Study’s Rags to Riches Is Another’s Rut of Poverty,” by Sylvia Nasar, *New York Times*, June 17, 1992, Business Section pp. 1. Long piece on the income inequality research.

“Nobels Pile Up for Chicago, but Is the Glory Gone?” by Sylvia Nasar, *New York Times* November 4, 1993, Business Section pp. 1. Long piece on Chicago School of economics. Featured a photo of five of the



Rebuttal Expert Report of Kevin M. Murphy, June 10, 2013, in the Matter of Microsoft Corporation v. Motorola, Inc., et al., The United States District Court Western District of Washington at Seattle.

Trial Testimony of Kevin M. Murphy, June 19, 2013, in United States of America v.

Expert Report of Kevin M. Murphy, October 21, 2013, in the Matter of Mary A. Carroll and Betty C. Lynn, et al., v. Philip Morris USA, Inc., et al., Superior Court for the State of Delaware in and for New Castle County.

Deposition of Kevin M. Murphy, November 2, 2013, in re: Petition of Pandora Media, Inc., related to United States of America v. American Society of Composers Authors and Publishers, The United States District Court for the Southern District of New York.

Rebuttal Expert Report of Kevin M. Murphy, November 8, 2013, in the Matter of US Airways, Inc. v. Sabre Holdings Corp., Sabre, Inc., and Sabre Travel International Ltd., The United States District Court for the Southern District of New York. Case No. 1:11-cv-02725-MGC.

Deposition of Kevin M. Murphy, November 12, 2013, in The Apple iPod iTunes Antitrust Litigation, The United States District Court for the Northern District of California Oakland Division.

Expert Report of Kevin M. Murphy, November 18, 2013, in the Matter of WNET, Thirteen, Fox Television Stations, Inc., Twentieth Century Fox Film Corporation, WPIX, Inc., Univision Television Group, Inc., The Univision Network Limited Partnership, and Public Broadcasting.1(io)1(io4(dc)-3(aT4 53.839 648 reW nBT12(d P)xW ny(d P)ur4(s)4( Di)-2.1(s)4(t)1(r)2





Supplemental Expert Report of Kevin M. Murphy, October 17, 2014, in the Matter of Nukote of Illinois, Inc. v. Clover Holdings, Inc., and Clover Technologies Group, LLC, The United States District Court for the Northern District of Texas (Dallas). Case No. 3:10-cv-00580-P.

Expert Report of Kevin M. Murphy, October 30, 2014, in the Matter of Processed Egg Products Antitrust Litigation, Indirect Purchaser Action, The United States District Court for the Eastern District of Pennsylvania. Case No. 08-MD-02002.

Verified Statement of Kevin M. Murphy, November 4, 2014, in re: STB Docket No. EP

Second Supplemental Expert Report of Kevin M. Murphy, January 27, 2015, in the Matter of Nukote of Illinois, Inc. v. Clover Holdings, Inc., and Clover Technologies Group, LLC, The United States District Court for the Northern District of Texas (Dallas). Case No. 3:10-cv-00580-P.

Deposition of Kevin M. Murphy, February 9, 2015, in the Matter of Lori Aspinall and Thomas Geanocopoulos, on behalf of themselves and all others similarly situated, v. Philip Morris, USA, Inc., Superior Court for the Commonwealth of Massachusetts. Case No. 98-6002-BLSI.

Expert Report of Kevin M. Murphy, March 13, 2015, in the Matter of Processed Egg Products Antitrust Litigation, Indirect Purchaser Action, The United States District Court for the Eastern District of Pennsylvania. Case No. 08-MD-02002.

Expert Report of Kevin M. Murphy, March 13, 2015, in the Matter of The Dial Corporation, Henkel Consumer Goods, Inc., H.J. Heinz Company, H.J. Heinz Company, L.P., Foster Poultry Farms, Smithfield Foods, Inc., HP Hood LLC, BEF Foods, Inc. and Spectrum Brands, Inc. v. News Corporation, News America Inc., News America Marketing FSI L.L.C., News America Marketing In-Store Services L.L.C., The United States District Court for the Southern District of New York. Case No. 13-cv-06802 (WHP).

Expert Report of Kevin M. Murphy, March 16, 2015, in the Matter of Matthew Edwards,

Declaration of Kevin M. Murphy, April 30, 2015, in the Matter of PB Property Management, Inc., Janet Helm, Jimmy Jewell, Deborah L. Wagner and Stanley H. Wagner, et al. v. Goodman Manufacturing Company, L.P., and Goodman Global, Inc., The United States District Court for the Middle District of Florida Jacksonville Division. Case No. 3:12-cv-1366-HES-JBT.

Deposition of Kevin M. Murphy, May 1, 2015, in the Matter of The Dial Corporation, Henkel Consumer Goods, Inc., H.J. Heinz Company, H.J. Heinz Company, L.P., Foster Poultry Farms, Smithfield Foods, Inc., HP Hood LLC, BEF Foods, Inc. and Spectrum Brands, Inc. v. News Corporation, News America Inc., News America Marketing FSI L.L.C., News America Marketing In-Store Services L.L.C., The United States District Court for the Southern District of New York. Case No. 13-cv-06802 (WHP).

Deposition of Kevin M. Murphy, May 13, 2015, in the Matter of Processed Egg Products Antitrust Litigation, Indirect Purchaser Action, The United States District Court for the Eastern District of Pennsylvania. Case No. 08-MD-02002.

Deposition of Kevin M. Murphy, May 19, 2015, in the Matter of Hoskin Hogan et al. v. BP West Coast Products LLC et al., The United States Superior Court for the State of California, City of Los Angeles. Case No. BC460880.

Rebuttal Expert Report of Kevin M. Murphy, May 29, 2015, in the Matter of Conte1.13 uI Indirect Pt PrHopornBC(ur)3(c)-3(2( a)c -0.0v)-1( 1)-1(c 0.0m)1(e)-3(z 0.0on.or)3(k)-1om(u

Rebuttal Disclosure of Kevin M. Murphy, August 17, 2015, in the Matter of Go Computer, Inc., and S. Jerrold Kaplan v. Microsoft Corporation, The United States Superior Court of the State of California for the City and County of San Francisco. Case No. CGC-05-442684.

Direct Testimony of Kevin M. Murphy, August 18, 2015, in the Matter of US Airways, Inc. v. Sabre Holdings Corp., Sabre, Inc., and Sabre Travel International Ltd., The United States District Court for the Southern District of New York. Case No. 1:11-cv-02725-MGC.

Expert Report of Kevin M. Murphy, August 24, 2015, in the Matter of Fernanda Garber, Mark Lerner, Derek Rasmussen, Robert Silver, Garrett Traub, and Vincent Birbiglia et al. v. Office of the Commissioner of Baseball, et al., The United States District Court for the Southern District of New York. Case No. 12-cv-3704 (SAS).

Deposition of Kevin M. Murphy, August 28, 2015, in the Matter of Go Computer, Inc., and S. Jerrold Kaplan v. Microsoft Corporation, The United States Superior Court of the State of California for the City and County of San Francisco. Case No. CGC-05-442684.

Expert Report of Kevin M. Murphy, September 8, 2015, in the Matter of Parallel Networks Licensing, LLC v. Microsoft Corporation, The United States District Court for the District of Delaware. Case No. 13-2073-SLR.

Deposition of Kevin M. Murphy, September 16, 2015, in the Matter of Kleen Products LLC, et al. v. International Paper, et al., The United States District Court for the Northern District of Illinois Eastern Division. Case No. 1:10-cv-05711.

Deposition of Kevin M. Murphy, September 28, 2015, in the Matter of Parallel Networks Licensing, LLC v. Microsoft Corporation, The United States District Court for the District of Delaware. Case No. 13-2073-SLR.

Expert Report of Kevin M. Murphy, October 27, 2015, in the Matter of ABS Global, Inc. v. Inguran, LLC d/b/a Sexing Technologies and XY, LLC v Genus PLC, The United States District Court for the Western District of Wisconsin. Case No. 14-cv-503.

Trial Testimony of Kevin M. Murphy, November 13, 2015 and November 17, 2015, in the Matter of Lori Aspinall and Thomas Geanocopoulos, on behalf of themselves and all

America Marketing FSI L.L.C., News America Marketing In-Store Services L.L.C., The United States District Court for the Southern District of New York. Case No. 13-cv-06802 (WHP).

Declaration of Kevin M. Murphy, January 26, 2016, in the Matter of ABS Global, Inc. v. Inguran, LLC d/b/a Sexing Technologies and XY, LLC v Genus PLC, The United States District Court for the Western District of Wisconsin. Case No. 14-cv-503.

Expert Report of Kevin M. Murphy, February 5, 2016, in the Matter of Moldex Metric, Inc. v. 3M Company and 3M Innovative Properties Company, The United States District Court for the District of Minnesota. Case No. 2014-cv-01821 (JNE/FLN).

Confidential Submission on Fractional Licensing to the U.S. Department of Justice in Connection with Modification of the ASCAP Consent Decree, February 12, 2016.

Deposition of Kevin M. Murphy, February 16, 2016, in the Matter of Moldex Metric, Inc. v. 3M Company and 3M Innovative Properties Company, The United States District Court for the District of Minnesota. Case No. 2014-cv-01821 (JNE/FLN).

Verified Statement of Kevin M. Murphy, March 7, 2016, Exhibit II-B-2 to CSXT Reply Evidence, in re: STB Docket No. NOR 42142.

Expert Report of Kevin M. Murphy, March 8, 2016, in the Matter of ABS Global, Inc. v. Inguran, LLC d/b/a Sexing Technologies and XY, LLC v Genus PLC, The United States District Court for the Western District of Wisconsin. Case No. 14-cv-503.

Expert Report of Kevin M. Murphy, March 9, 2016, in the Matter of Lisa Watson, Wayne Miner, and James Easley, Individually and on Behalf of All Others Similarly Situated v. Philip Morris Companies, Inc. a corporation, and Philip Morris Incorporated,



# **EXHIBIT D**





- **2015** Nominated for Best Paper in INFORMS-CIST
- **2015** Best Paper Award in MIS Quarterly for 2015
- **2015** Nominated for Best AIS Paper Award.
- **2015** NET Institute Grant
- **2015** Marketing Science Institute Award
- **2015** Adobe Faculty Research Award
- **2014** Best Paper Award in Management Science IS department from the last 3 years (2011-2013)
- **2014** Best Paper Award in Information Systems Research for 2014
- **2014** Best Overall Conference Paper Award at *American Marketing Association Conference*.
- **2014** Best Digital Marketing Track Paper Award at *American Marketing Association Conference*.
- **2014** Kauffman Foundation Grant
- **2014** Selected For “Top 40 under 40 Business School Professors Worldwide” by Business Week.
- **2014** Selected For “Top 200 Thought Leaders for Big Data and Business Analytics” by Analytics Week.
- **2013** Google Faculty Research Award
- **2012** Best Theme Paper Award, International Conference on Information Systems (ICIS)
- **2012** Marketing Science Institute Award
- **2012** SEI-Wharton Future of Advertising Grant
- **2012** Institute on Asian Consumer Insights Award
- **2012** Google Faculty Research Award
- **2012** NET Institute Grant
- **2012** NYU Abu Dhabi Institute Seed Grant
- **2011** Best Paper Award, INFORMS-ITC 1180 Track, AEI In-2011-0-11011-71-8BD356dy[(-)9M]C5H1.2030jT0 T

- **2009** NYU-Poly Research Award
- **2009** N

- Management Science*, 60(6), 1470-1488.
9. Chan, J., and A. Ghose. 2014. Internet's Dirty Secret: Assessing the Impact of Online Intermediaries on HIV Transmission, *MIS Quarterly*, December, 38(4).
    - **Best Paper Award at the 2011 Workshop on Health IT and Economics**
    - **Best Paper Award in MIS Quarterly**
    - **Nominated for Best Paper Award in AIS**
  10. Burtch, G., A. Ghose, and S. Wattal. 2014. Cultural Differences and Geography as Determinants of Online Pro-Social Lending, *MIS Quarterly*, 38(3), 773-794.
  11. Ghose, A., P. Ipeirotis, and B. Li. 2014. Examining the Impact of Ranking and Consumer Behavior on Search Engine Revenue, *Management Science*, 60(7), 1632-1654.
  12. Lambrecht, A., A. Goldfarb, A. Bonatti, A. Ghose, Dan Goldstein, R. Lewis, A. Rao, N. Sahni, S. Yao. 2014. How do Firms Make Money Selling Digital Goods Online, *Marketing Letters*. 25 (3), 331-341.
  13. Burtch, G., A. Ghose, and S. Wattal. 2013. An Empirical Examination Letb Tw [(on 0 Td o(ua)c0.002 Tc 0.002 T

- Marketing to Work: Personalization, Customization and Choice, *Marketing Letters*, **19(3-4)**, 305-321. (Invited paper)
28. Ghose, A., T. Mukhopadhyay, and U. Rajan. 2007. Impact of Internet Referral Services on the Supply Chain, *Information Systems Research*, September, **18(3)**, 300-319.
  29. Ghose, A., and A. Sundararajan. 2006. Evaluating Pricing Strategy using eCommerce Data: Evidence and Estimation Challenges, *Statistical Science*, **21(2)**, 131-142.
  30. Ghose, A., M. Smith, and R. Telang. 2006. Internet Exchanges for Used Books: An Empirical Analysis of Product Cannibalization and Welfare Impact. *Information Systems Research*, **17(1)**, 3-19.
    - **2006 ISR Best Published Paper Runner-up Award & Lead Article**
  31. Ghose, A., R. Telang, and R. Krishnan. 2005. Effect of Electronic Secondary Markets on the Supply Chain. *Journal of Management Information Systems*, **22(2)**, 91-120.
  - 32.

## **BOOK CHAPTERS**

1. Ghose, A. and S. Han. 2012. Mobile Marketing *Advanced Database Marketing*, eds. K. Coussement, K. De Bock and S. Neslin.
2. Ghose, A. 2008. The Economic Impact of User-Generated and Firm-Published Content: Dir

- on the Outbreaks of STDs Workshop on Health IT & Economics (WHITE), University of Maryland at College Park. **Best Paper Award**,
13. B. Li, A. Ghose, and P. Ipeirotis. 2011. Towards a Theory Model for Product Search, *Proceedings of the 20th International World-Wide Web Conference (WWW 2011)*, Hyderabad, March. **Best Paper Award**
  14. B. Li, A. Ghose, and Panagiotis G. Ipeirotis. 2011. A Demo search Engine for Products. *Proceedings of the 20th International World-Wide Web Conference (WWW), 2011*, Hyderabad, March.
  15. Ding, Y., Y. Du, Y. Hu, Z. Liu, K. Ross, L. Wang, and A. Ghose. 2011. Broadcast Yourself: Understanding Youtube Uploaders. *Proceedings of the 2011 ACM SIGCOMM Conference on Internet Measurement*, Berlin, Germany.
  16. Huang, Y., P. Singh, and A. Ghose. 2010. Show Me the Incentives: A Dynamic Structural Model of Employee Blogging Behavior. *Proceedings of the International Conference on Information Systems (ICIS 2010)*, St. Louis, December.
  17. Ghose, A., P. Ipeirotis, and B. Li. 2010. Designing Ranking Systems for Hotels on Travel Search Engines to Enhance User Experience. *Proceedings of the International Conference on Information Systems (ICIS 2010)*, St. Louis, December.

**June.**

29. Ghose, A., and S. Yang. 2008. Analyzing Search Engine Advertising: Sponsored Search and Cross-Selling in Electronic Markets. *Proceedings of the World Wide Web C*

**January. Best Paper Award Nominee**

46. Ghose, A., M. Smith, and R. Telang. 2004. Price Elasticities and Social Welfare in Secondary Electronic Markets. *Proceedings of the International Conference on Information Systems (ICIS 2004)*, Washington D.C., December. **Best Paper Award Nominee**
47. Ghose, A., R. Telang, and R. Krishnan. 2003. Durable Goods Competition in Secondary Electronic Markets. *Proceedings of the International Conference on Information Systems (ICIS 2003)*, Seattle December.
48. Ghose, A., M. Smith, and R. Telang. 2003. Internet Exchanges for Used Books: An Empirical Analysis of Welfare Implications and Policy Issues. *Proceedings of the International Conference on Information Systems (ICIS 2003)*, Seattle, December.
49. Ghose, A., V. Choudhary, T. Mukhopadhyay, and U. Rajan. 2003. Personalized Pricing: A Strategic Advantage for Electronic Retailers. *Proceedings of the INFORMS Conference on Information Systems and Technology (CIST 2003)*, Atlanta, October.
50. Gal-Or, E., and A. Ghose. 2003. The Economic Consequences of Sharing Security Information. *Proceedings of the Workshop on Economics and Information Security (WEIS 2003)*, College Park, University of Maryland, May.
51. Ghose, A., T. Mukhopadhyay, and U. Rajan. 2002. Advantage for Electronic Retailers. *Proceedings of the International Conference on Information Systems (ICIS 2002)*, Barcelona, Spain, December.
52. Ghose, A., T. Mukhopadhyay, and U. Rajan. 2002. Impact of Referral Services on Channel Profits: Competition between Manufacturers & Infomediaries. *Proceedings of INFORMS Conference on Information Systems and Technology (CIST 2002)*, San Jose, California, October.

## PAPERS IN C



Engagement: Evidence from a Randomized Experiment on a Crowdfunding Platform.

*INFORMS Annual Meeting, Minneapolis, MN.*

11. Burtch, G., Ghose, A., and Wattal, S. 2013. Secret Benefactors: Crowdfunder Information Hiding and its Implications for Fundraising Outcomes. *INFORMS Conference on Information*



- Analysis of Product Cannibalization and Welfare Implications. *Conference on Operational Excellence in Retailing, Harvard Business School, June.*
51. Ghose, A., and P. Ipeirotis. 2007. Designing Novel Review Ranking Systems on the Web: Combining Economics with Opinion Mining. *Third Research Symposium on Statistical Challenges in E- Commerce Research (SCECR), University of Connecticut, May.*
  52. Ghose, A., and O. Yao. 2007. Goodbye Price Dispersion? New Evidence from Transaction Prices in Electronic Markets. *Third Research Symposium on Statistical Challenges in E-Commerce Research (SCECR), University of Connecticut, May.*
  53. Forman, C., A. Ghose and A. Goldfarb. 2007. Geography and Ecommerce: Measuring Convenience, Selection and Price. *International Industrial Organization Conference, Savannah, April.*
  54. Archak, N., A. Ghose and P. Ipeirotis. 2007. Towards Automating the Pricing Power of Product Attributes: An Analysis of Online Product Reviews. *Winter Business Intelligence Conference, Utah, February.*
  55. Forman, C., A. Ghose and A. Goldfarb. 2007. Geography and Ecommerce: Measuring Convenience, Selection and Price. *DIS Workshop, University of Florida, January.*
  56. Ghose, A. and P. Ipeirotis. 2007. Designing Trusted Ranking Systems for Consumer Reviews: Combining Economics with Opinion Mining. *DIMACS Workshop on Economics of Information Security, Rutgers University, January.*
  57. Ghose, A. and P. Ipeirotis. 2007. Designing Ranking Systems for Consumer Reviews: The Economic Impact of Customer Sentiment in Electronic Markets. *Proceedings of the 2007 International Conference on Decision Support Systems (ICDSS 2007), IIM Kolkata, January.*
  58. Forman, C., A. Ghose and A. Goldfarb. 2007. Geography and Ecommerce: Measuring Convenience, Selection and Price. *HICSS 20<sup>th</sup> Anniversary Symposium on Competitive Strategy, Economics, and Information Systems, Hawaii, January.*
  59. Ghose, A. and B. Gu. 2006. Estimating Menu Costs in Electronic Markets. *International Symposium on Information Systems (ISIS 2006), India, December.*
  60. Ghose, A., P. Ipeirotis and A. Sundararajan. 2006. The Dimensions of Reputation in Electronic Markets. *International Symposium on Information Systems (ISISc -5 Tw 6.7712 0.1.1005 Tw*



- International Conference on Electronic Commerce (ICEC 2003), Pittsburgh, October.*
91. Ghose, A., R. Telang and R. Krishnan. 2003. Durable Goods Competition in Secondary Electronic Markets. *INFORMS Marketi*

2009 NYU-Poly Research Grant for “The Economics of User-

10. April 2015. Invited Speaker. KAIST University, Seoul. Title: "Randomized Field and Natural Experiments in Mobile Marketing."
11. February 2015. Invited Speaker. University of British Columbia. Title: "Randomized Field and Natural Experiments in Mobile Marketing."
12. February 2015. Invited Speaker. Arizona State University. Title: "Randomized Field and Natural Experiments in Mobile Marketing."
13. February 2015. Plenary Speech. Big Data Summit, Toronto.
14. December 2014. Keynote Speech. NYCE Day. Title: "Randomized Field Experiments in Mobile Marketing".
15. November 2014. Invited Speaker, David Eccles School of Business (Marketing), University of Utah, Title: "Randomized Field Experiments in Mobile Marketing".
16. June 2014. Keynote Speech. Start-Up Grind, Shanghai. Title: "Big Data=Big Value".
17. June 2014. Keynote Speech. BTO Conference, Milan, Italy. Title: "Leveraging Mobile for Digital Innovation".
18. June 2014. Invited Speaker. Milan, Italy. Title: "Innovations in Mobile Marketing".
19. May 2014. Invited Speaker, Foster School of Business (Marketing), University of Washington, Seattle. Title: "Analyzing the Interdependence between Web and Mobile Advertising: A Randomized Field Experiment".
20. April 2014. Invited Speaker. KAIST University, Seoul. Title: "Randomized Field Experiments in Mobile Marketing."
21. March 2014: Keynote Speech. Workshop on Social & Business Analytics, University of Texas, Austin. Title: "Big Data, Randomized Field Experiments and Mobile Marketing Analytics".
22. December 2013. Keynote Speech. BTO Conference, Milan, Italy. Title: "Leveraging Mobile for Digital Innovation".
23. November 2013. Keynote Speech. Future of Business Event, NYU Stern. Title: "Using Big Data to Leverage The Mobile Consumer."
24. November 2013. Pane

- Commerce in the New Mobile Economy.”
36. March 2013. Invited Speaker. Cheung Kong Graduate School of Business, (Marketing). Beijing. Title: “Ranking Products on Search Engines.”
  37. March 2013. Invited Speaker. Fudan University, (Marketing). Shanghai. Title: “Ranking Products on Search Engines.”
  38. March 2013. Invited Speaker. Tsinghua University School of Economics and Management, (Marketing). Beijing. Title: “Ranking Products on Search Engines.”
  39. March 2013. Invited Speaker. Paul Merage School of Business, University of California, Irvine. Title: “Ranking Products on Search Engines.”
  40. February 2013. Invited Speaker. Lerner School of Business, University of Delaware, Newark. Title: “Ranking Products on Search Engines.”
  41. February 2013. Webinar. International Institute of Business Analysis. Title: “Mobile Analytics: Apps, Advertising, and Commerce in the New Mobile Economy.”
  42. January 2013. Plenary Speech. Minnesota Big Data Analytics Conference. University of Minnesota, Minneapolis. Title: “Mobile Analytics: Apps, Advertising, and Commerce in the New Mobile Economy.”
  43. January 2013. Plenary Speech. Advertising and Data Science Congress. NYU Stern. Title: “Mobile Analytics: Apps, Advertising, and Commerce in the New Mobile Economy.”
  44. January 2013. Invited Speaker. Boston University, Boston. Title: “Ranking Products on Search Engines.”
  45. December 2012. Invited Speaker. Harvard Business School (Marketing), Boston. Title: “Apps, Advertising, and Commerce in the New Mobile Economy.”
  46. December 2012. Invited Speaker. Big Data Conference. MIT, Boston. Title: “Mobile Analytics: Apps, Advertising, and Commerce in the New Mobile Economy.”
  47. December 2012. Invited Speaker. David Eccles School of Business. University of Utah. Title: “Apps, Advertising, and Commerce in the New Mobile Economy.”
  48. November 2012. Keynote Speech. Big Data and Business Analytics. BTO Conference, Rome, Italy.
  49. November 2012. Keynote Speech. Digital Marketing Summit, Indian School of Business. Title: “Mobile Analytics: Apps, Advertising, and Commerce in the New Mobile Economy.”
  50. October 2012. Plenary Speech. Orange Institute. Title: “Mobile Analytics.”
  51. October 2012. Invited Speaker. TED lecture series. TEDxNYU. Title: “Mobile Marketing Trends.”
  52. September 2012. Moderator. NYU Stern Center for Measurable Marketing. Panel on “Measurable Marketing in the Path to Purchase.”
  53. August 2012. Keynote Speech. Launch 2012. NYU Stern School. Title: “Technology, Innovation, and the Role of Business in Society.”
  54. May 2012. Plenary Speech. IBC Workshop, Institute of E-Commerce & Digital Markets (LMU) in Munich, Germany. Title: “Social Media and Digital Marketing Trends.”
  55. May 2012. Invited Speaker. London Business School (Marketing). Title: “London Interplay Between Search and Social Media: Designing Ranking Systems for Search Engines.”
  56. April 2012. Invited Speaker. Korea University, Seoul. Title: “Apps, Advertising, and Commerce in the New Mobile Economy.”
  57. April 2012. Invited Speaker. University of Texas at Austin, Austin. Title: “Interplay Between Search and Social Media: Designing Ranking Systems for Search Engines.”
  58. March 2012. Invited Speaker. Wharton School, Philadelphia. Title: “Interplay Between Search and Social Media: Designing Ranking Systems for Search Engines.”
  59. March 2012. Keynote Speech. Allianz Group-CIO Conference, Milan, Italy. Title: “Outlook 2013: Social Media and Digital Marketing Trends.”
  60. March 2012. Plenary Speech. BTO Conference, Milan, Italy. Title: “Social Media and Digital Marketing Trends.”
  61. March 2012. Invited Speaker. University of Connecticut, Storrs. Title: “Interplay Between Search and Social Media: Designing Ranking Systems for Search Engines.”



62. February 2012. Mod

Search, Organic Search, and User-Generated Content in Electronic Markets.”

86. May 2008. Invited Speaker. University of Washington, Seattle. Title “Search Engine Advertising: Sponsored Search, Organic Search, and User-Generated Content in Electronic Markets.”
87. March 2008. Invited Speaker. IBM Research. Mining User-Generated Content Using Econometrics: A Case Study on Reputation Systems.
88. February 2008. Invited Speaker. Yahoo Research. Mining User-Generated Content Using Econometrics: A Case Study on Reputation Systems.
89. February 2008. Invited Speaker. Marketing Science Institute. Title: “An Empirical Analysis of Search Engine Advertising: Sponsored Search in Electronic Markets.”
90. November 2007. Invited Speaker. University of Minnesota, Minneapolis. Title: “The Dimensions of Reputation in Electronic Markets.”
91. June 2007. Invited Speaker. City University of Hong Kong. Title: “The Dimensions of Reputation in Electronic Markets.”
92. June 2007. Invited Speaker. Hong Kong University of Science and Technology.

Controls and Anonymity in Crowd funding.”

3. November 2013. Conference Presentation. Mapping Mobile Conference, NYU Stern School. Title: “Randomized Field Experiments to Measure ROI of Mobile Advertising and Mobile Coupons”.
4. June 2013. Conference Presentation. Marketing Science Conference, Istanbul. Title: “Estimating Cross Platform and Cross Device Synergies Between Web and Mobile Advertising.”
5. June 2011. Conference Presentation. Statistical Challenges in ecommerce Research (SCECR) conference, Rio De Janeiro, Brazil. Title: “How is the Mobile Internet Different?”
6. June 2011. Conference Presentation. ZEW Conference, Mannheim. Title: “Designing Ranking Systems for Hotels on Travel Search Engines By Mining User-Generated and Crowd-Sourced Content.”
7. June 2010. Conference Presentation. Marketi

23. June 2008. Conference Presentation. Marketing Science Conference, Vancouver. Title: "An Empirical Analysis of Search Engine Advertising: Sponsored Search in Electronic Markets."
24. May 2008. Conference Presentation. International Industrial Organization Conference, Washington DC. Title: "An Empirical Analysis of Search Engine Advertising: Sponsored Search in Electronic Markets."
25. April 2008. Conference Presentation. NET Institute Conference, NYU. Title: "An Empirical Analysis of Search Engine Advertising: Sponsored Search in Electronic Markets."

- of Internet Referral Services on the Supply Chain.”
44. November 2006. Conference Presentation. INFORMS Annual Meeting, Pittsburgh. Title: “Estimating Menu Costs in Electronic Markets.”
  45. November 2006. Conference Presentation. INFORMS Annual Meeting, Pittsburgh. Title: “The Impact of Location on Consumer Purchases in Electronic Markets.”
  46. November 2006. Conference Presentation. INFORMS Conference on Information Systems and Technology (CIST), Pittsburgh. Title: “Software Versioning and Quality Degradation? An Exploratory Study of the Evidence.”
  47. October 2006. Conference Presentation. ZEW Conf

66. Dece

88. September 2010. Invited Speaker. Harvard University (Economics), Boston. Title: "Designing Ranking Systems for Hotels on Travel Search Engines By Mining User-Generated and Crowd-Sourced Content."
89. September 2010. Invited Speaker. George Mason University, Washington DC. Title: "Designing Ranking Systems for Hotels on Travel Search Engines By Mining User-Generated and Crowd-Sourced Content."
90. July 2010. Invited Speaker. NBER IT Economics & Productivity Workshop, Boston. Title: "Estimating Demand in the Hotel Industry by Mining User-Generated and Crowd-Sourced Content."
91. July 2010. Invited Speaker. Stanford Institute of Theoretical Economics (SITE), Stanford University. Title: "A Dynamic Structural Model of User Learning in Mobile Media Content."
92. June 2010. Invited Speaker. Workshop on Digital Business Models, Paris. Title: "Estimating Demand in the Hotel Industry by Mining User-Generated and Crowd-Sourced Content."
93. June 2010, Plenary Speech. L2 Mobile Commerce Clinic at NYU Stern.

111. June 2007. Invited Speaker. National University of Singapore. Title: "The Dimensions of Reputation in Electronic Markets."
112. June 2007. Invited Speaker. Conference on Operational Excellence in Retailing. Harvard University (HBS). Title: "Internet Exchanges for Used Books: An Empirical Analysis of Product Cannibalization and Welfare Impli



6.7/7)

- EMBA: Social Media and Digital Marketing Analytics, NYU Spring 2014. (Instructor Rating: 6.85/7)
- C20:0038: Social Media and Digital Marketing Analytics, NYU Fall 2013. (Instructor Rating: 6.7/7)
- MSBA course: Social Media and Digital Marketing Analytics, NYU Fall 2013. (Instructor Rating: 6.8/7)
- TRIUM Global MBA course: Social Media and Digital Marketing Analytics, NYU Fall 2013. (Instructor Rating: 3.9/5)
- MBA course B20:3310: Social Media and Digital Marketing Analytics, NYU Summer 2013. (Instructor Rating: 6.5/7)
- Executive Education: Leveraging Social Media and Digital Marketing, Spring 2013. (Instructor Rating: 6.0/7)
- MBA course B20:3310: Social Media and Digital Marketing Analytics, NYU Fall 2012. (Instructor Rating: 6.0/7)
- C20:0038: Social Media and Digital Marketing Analytics, NYU Fall 2012. (Instructor Rating: 6.2/7)
- C20:0001: IT in Business & Society: UG Core, NYU Fall 2010. (Instructor Ratings: 6.5/7, 6.6/7)
- C20:0038: Electronic Commerce and Social Media: UG Elective, NYU Fall 2009. (Instructor Rating: 6.0/7)
- C20:0001: IT in Business & Society: UG Core, NYU Fall 2008. (Instructor Ratings: 6.6/7, 6.7/7)
- C20:0038: Electronic Commerce: UG Elective, NYU Fall 2008. (Instructor Rating: 6.6/7)
- C20:0001: IT in Business & Society: UG Core, NYU Fall 2007. (Instructor Ratings: 6.6/7, 6.7/7)
- C20:0038: Electronic Commerce: UG Elective, NYU Fall 2007. (Instructor Rating: 6.8/7)
- C20:0001: IT in Business & Society: UG Core, NYU Fall 2006. (Instructor Ratings: 6.8/7, 7/7)
- C20:0038: Electronic Commerce: UG Elective, NYU Fall 2006. (Instructor Rating: 6.7/7)
- C20:0001: IT in Business & Society: UG Core, NYU Fall 2005. (Instructor Ratings: 6.6/7, 6.8/7, 6.6/7)
- C20:0001: IT in Business & Society: UG Core, NYU, Fall 2004. (Instructor Ratings: 6.2/7, 6.3/7)
- 70-451: MIS: UG Course, CMU, Summer 2003. (Instructor Rating: 5/5).

## **PROFESSIONAL SERVICE (JOURNALS)**

- **Senior Editor** – *Information Systems Research* (September 2012 – )
- **Associate Editor** – *Management Science* (Jan 2009 – Present)
- **Associate Editor** – *Management Science* Special Issue on Business Analytics (August 2012 – Present)
- **Associate Editor (Ad Hoc)** – *Management Science* (2008 – 2009)
- **Associate Editor** – *Information Systems Research* (Jan 2009 – December 2012)
- **Associate Editor (Ad Hoc)** – *MIS Quarterly* (2010 – Present)
- **Associate Editor** – *MIS Quarterly*, Special Issue on “Perspectives on Trust in Information Systems,” 2009.
- **Editorial Board** – *Information Systems Research*, Special Issue on “Digital Systems & Competition”, 2008.
- **Reviewer** – *American Economic Review*, *Decision Support Systems*, *Economic Theory*, *Electronic Commerce Research and Applications*, *IEEE Transactions on Knowledge and Data Engineering*, *International Journal of Electronic Commerce*, *Information Systems Research*, *International Journal of Industrial Organization*, *Journal of Economics and Management Strategy*, *Journal of Industrial Economics*, *Journal of Management Information Systems*, *Management Science (Information Systems)*, *Management Science (Marketing)*, *Marketing Science*, *Journal of Marketing Research*, *MIS Quarterly*, *Operations Research Letters*, *Production and Operations Management*.
- **Panel Member** – *Hong Kong Research Grants Council*. (2014 – )

## **PROFESSIONAL SERVICE (CONFERENCES & WORKSHOPS)**

- **Conference Co-Chair** – Workshop on Information Systems and Economics (WISE), 2014, Auckland, December.
- **Track co-Chair** – Economics of Information Systems, International Conference on Information Systems (ICIS) 2012, Orlando.
- **Senior Program Committee** – ACM Electronic Commerce Conference 2012, Spain, June.
- **Senior Program Committee** – ACM Electronic Commerce Conference 2011, San Jose, June.
- **Program Committee** – INFORMS Conference on Information Systems and Technology (CIST) 2012, October.
- **Program Committee** – INFORMS Conference on Information Systems and Technology (CIST) 2010, Austin, November.
- **Program Committee** - The First International Workshop on Opinion Mining for Business Intelligence (OMBI 2010), Toronto, August.
- **Program Committee** - Workshop on Social Media Analytics (SOMA 2010), Washington DC, July
- **Program Committee** – ACM Electronic Commerce Conference 2010, Boston, June
- **Conference Co-Chair** – INFORMS Conference on Information Systems and Technology (CIST), 2009, San Diego, October.
- **Conference Co-Chair** – Workshop on Information Systems and Economics (WISE), 2008, Paris, December.
- **Conference Co-Organizer** – First New York Computer Science and Economics Day (NYCE Day), 2008, September.
- **Steering Committee Member** - Second New York Computer Science and Economics Day (NYCE Day), 2009, November.
- **Conference Co-Chair** – Fourth Symposium on Statistical Challenges in Ecommerce Research (SCECR) 2008, NY, May.
- **Track Chair** – Pacific Asia Conference on Information Systems (PACIS) 2009, India, July (Ecommerce Track).
- **Track Chair** – Pacific Asia Conference on Information Systems (PACIS) 2008, China, July (Economics of Information Systems Track).
- **Associate Editor** – International Conference on Information Systems (ICIS) 2009, Phoenix, December (Economics of Information Systems Track).
- **Associate Editor** – International Conference on Information Systems (ICIS) 2008, Paris, December (Economics of Information Systems Track).
- **Associate Editor**–International Conference on Information Systems (ICIS) 2007, Montreal, December (*Web-Based Information Systems Track*).
- **Associate Editor**–International Conference on Information Systems (ICIS) 2007, Montreal, December (*Economics and Business Value of Information Systems Track*).
- **Program Committee** – ACM Electronic Commerce Conference 2009, Stanford, June.
- **Program Committee** – World Wide Web Conference 2009 (WWW), Spain, May.
- **Program Committee** – World Wide Web Conference 2008 (WWW), Beijing, May (*Social Networks and Web 2.0 Track and Internet Monetization Track*)
- **Program Committee** – International Conference on Web Search and Data Mining (WSDM) 2008, Stanford University, February.
- **Program Committee**–Workshop on Interdisciplinary Studies in Security and Privacy, 2008 (WISSP), NYU-Polytechnic, September.
- **Program Committee**–International Conference on Electronic Commerce 2007 (ICEC), Minnesota, August.
- **Program Committee**–Workshop on Economics of Information Security 2007 (WEIS), Pittsburgh, June.

- **Program Committee** – INFORMS Conference on Information Systems and Technology (CIST) 2007, Seattle, November.
- **Program Committee** – ACM Electronic Commerce Conference 2007, San Diego, June.



- **Faculty Affiliate:** Marketing Science Institute (2008 – Present)
- **Member:** Association of Information Systems (AIS), Information Systems Society (ISS), INFORMS, Marketing Science Society, American Economic Association (AEA).

## **INDUSTRY POSITIONS**

2013 - Present	Chief Data Scientist, 3TI China
2014 - Present	Scientific Advisor, OneVest
1999-2000	Senior Consultant, E-Business Division, IBM.
1998-1999	Business Development Manager, HCL-Hewlett PacCem M.

- “Push Ads Across Devices to Drive Click-throughs, Conversions: NYU professor,” *Mobile Marketer*, November 2013.
- “Topsy Buy Gives Apple Mountains of Twitter Data,” *Ecommerce Times*, November 2013
- “Top Reviewers On Amazon Get Tons Of Free Stuff,” *National Public Radio*. October 2013.
- “Investors Give Yahoo Benefit of Doubt,” *Ecommerce Times*, October 2013
- “SEC’s New Crowdfunding Rule Innovative, But With Risk”, *Xinhua*. October 2013.
- “The Crowdfunding Economy is About to Pop”, *Time*, September 2013
- “The Crowdfunding Caveat: Most Campaigns Fail”, *PC World*, September 2013.
- “B-Schools Are Putting Consumers Under the Social Media Microscope”, *BusinessWeek*, July 2013.
- “Wanelo, Next Verb in Digital Dictionary?,” *Fox Business*, July 2013.
- “Business Grads to Wall Street: Drop Dead”, *Wired*, June 2013.
- “Three Professors Share Crowdfunding Research - Tune In To Learn How To Make Your Campaign A Success.”, *Forbes*, June 2013.
- “Web

- “Personal Blogging at Work Increases Productivity.” *Bloomberg Bu*

# **EXHIBIT F**





*AREAS OF SPECIALIZATION*

Economic Analysis of Law

Intellectual Property

Art Law

Industrial Organization

Antitrust

The Economic Structure of Tort Law, co-

“Legal Precedent: A Theoretical and Empirical Analysis,” *Journal of Law and Economics* (September 1976), co-authored with Richard A. Posner.

“Salvors, Finders, Good Samaritans, and Other Rescuers: An Economic Study of Law and Altruism,” *Journal of Legal Studies* (January 1978), co-authored with Richard A. Posner.

“Should We Tax Virgin Materials to Finance Waste Disposal?” *Waste Age* (March 1978), co-authored with Richard A. Posner.

“An Economic Study of U.S. Aircraft Hijacking, 1961-1976,” *Journal of Law and Economics* (April 1978).

“Altruism in Law and Economics,” *Papers and Proceedings of the American Economic Review* (May 1978), co-authored with Richard A. Posner.

“Adjudication as a Private Good,” *Journal of Legal Studies* (March 1979), co-authored with Richard A. Posner.

“Should Indirect Purchasers Have Standing to Sue Under the Antitrust Laws?” An Economics Analysis of the Rule of Illinois Brick,” *University of Chicago Law Review* (1975)

“An Economic Theory of Intentional Torts,” *International Review of Law and Economics* (December 1981) co-authored with Richard A. Posner.

“Causation in Tort Law: An Economic Approach,” *Journal of Legal Studies* (January 1983) co-authored with Richard A. Posner.

“Optimal Sanctions for Antitrust Violations,” *University of Chicago Law Review* (Spring 1983).

“The Economics of Anticipatory Adjudication,” *Journal of Legal Studies* (June 1994) co-authored with Richard A. Posner.

“Counterclaims: An Economic Analysis,” *International Review of Law & Economics* (Sept. 1994).

“Heavily Cited Articles in Law,” 7 *Kent Law Review* No. 3 (1996) co-authored with Richard A. Posner.

“The Economics of Legal Disputes Over The Ownership of Works of Art and Other Collectibles, “ in *Essays in the Economics of the Arts* (ed. by V. A. Ginsburgh & P.-M. Menger) (Elsevier Science, 1996) co-authored with Richard A. Posner.

“The Art of Law and Economics: An Autobiographical Essay,” 41 *The American Economist*, No. 1 (Spring 1997), reprinted in “Passion and Craft, Economists at Work,” Michael Szenberg, ed. (Ann Arbor: Michigan University Press, 1999)

“Judicial Influence: A Citation Analysis of Federal Courts of Appeals Judges,” *Journal of Legal Studies* (June 1998) co-

University of Chicago Law Review (Spring 2003) co  
authored with Richard A. Posner.

-

“The Empirical Side of Law and Economics,” University of Chicago Law Review (Winter 2003).

“Indirect Liability for Copyright Infringement: Napster and Beyond” in Journal of Econ.  
Perspect (Spring 2003) coauthored with Douglas Lichtman.

“Acts of Terror with Guns: Multiple Shooting Victim Shootings,” in The Bias Against Guns,  
John Lott, ed. (Regnery 2003) authored with John Lott.

“Indirect Liability for Copyright Infringement: An Economic Perspective,” Harvard J  
of Law & Technol (Spring 2003) coauthored with Douglas Lichtman.

“The Test of Time: Does 20

“Why (and When) Judges Dissent: A Theoretical and Empirical Analysis,” *Journal of Legal Analysis* (2011) 3(1): 101-137 co-authored with Lee Epstein and Richard A. Posner

- Reprinted in *The Romanian Judges' Forum Review*. 2011 (3) pp. 118-141.
- Reprinted in *The Economics of Judicial Behaviour*, ed. Lee Epstein. Cheltenham, UK: Edward Elgar Publishing.

“Measuring Coase’s Influence,” *Journal of Law & Economics* (November 2011) co-authored with Sonia Lahr-Pastor;

“Are Even Unanimous Decisions in the U.S. Supreme Court Ideological?” *NW.U. L. REV.* Vol. 106 (No. 2) 699 (2012) co-authored with Lee Epstein and Richard A. Posner

- Described in [The New Republic](#), July 1, 2014

“Was There Ever Such A Thing As Judicial Self-Restraint?” *Cal. L. Rev.* Vol. 100 (2012) 557 co-authored with Lee Epstein

“How Business Fares in the Supreme Court,” *Minn. L. Rev.* Vol. 97 (2013) 1431 co-authored with Lee Epstein and Richard A. Posner

- Reprinted in the *Corporate Practice Commentator*, 55: 505-543 (2013).
- Study described/mentioned in the [Economist](#), March 11, 2015; [New York Times](#), May 4, 2013; [ABA Journal](#), May 7, 2013; [Huffington Post](#), May 6, 2013; [Atlanta Journal-Constitution](#), May 7, 2013; [Slate](#), June 20, 2013; [Harvard Business Review](#), June 21, 2013.

“Revisiting the Ideology Rankings of Supreme Court Justices,” *Journal of Legal Studies* Vol. 44 No. S1 (2015) co-authored with Lee Epstein and Richard A. Posner

- Study described in the [American Prospect](#) Spring 2015.

“The Best for Last: The Timing of U.S. Supreme Court Decisions,” *Duke L. Rev.* Vol. 64 (2015) co-authored with Lee Epstein and Richard A. Posner

- Study described in the [ABA Journal](#), June 2015; *National Law Journal*, April 6, 2015; [New York Times](#), May 4, 2013

“The Decision to Depart (or Not) from Precedent.” *NYU Law Review* Vol. 90 No. 4 (October 2015) co-authored with Lee Epstein and Adam Liptak



# **EXHIBIT G**

**HOWARD S. HOGAN**

Gibson, Dunn & Crutcher LLP  
1050 Connecticut Ave N.W., Suite 200  
Washington, D.C. 20036  
(202) 887-3640  
hhogan@gibsondunn.com

**EDUCATION**

**Georgetown University**  
Bachelor of Science, 1994  
Major in Foreign Service  
Magna Cum Laude Phi Beta Kappa

**New York University**  
Juris Doctorate, 1999  
Cum Laude

**CURRENT POSITION**

Partner, Gibson, Dunn & Crutcher LLP

Howard S. Hogan is a partner in the Washington, D.C. office of Gibson, Dunn & Crutcher and is Co-Chair of the Fashion, Retail and Consumer Products group. Over the course of his career, Mr. Hogan has handled numerous complex cases in a variety of federal and state courts in several different substantive areas, but his practice focuses on intellectual property litigation and counseling, and in particular trademark matters. Mr. Hogan has represented various corporations and individuals in connection with trademark legal issues in a broad range of industries, including financial services, sports, fashion, cosmetics, entertainment, transportation, pharmaceuticals, and online services. A significant portion of Mr. Hogan's practice involves computer, Internet, and new media-related issues. He has represented and counseled a wide variety of companies on these issues, and assisted in negotiating resolutions to a significant number of disputes relating to tradem

Many of Mr. Hogan's matters have tested the application of traditional legal principles to the Internet and new media, such as in connection with issues of Internet jurisdiction, online contracting, and the application of trademark and copyright law to search engines, social media, and online sales. In particular, Mr. Hogan has been counsel of record in a number of matters in which the use of a trademark to trigger Internet advertising has been at issue, including but not limited to *Gucci America, Inc. v. Alibaba* (S.D.N.Y. 2014, 2015); *Rosetta Stone v. Google Inc.* (E.D. Va. 2009); *American Airlines, Inc. v. Yahoo! Inc.* (N.D. Tex. 2008); *American Airlines, Inc. v. Google Inc.* (N.D. Tex. 2007); *Aspen University Inc. v. Western National University LLC* (E.D. Va. 2007); and *WeightWatchers.Com, Inc. v. Diet Patch, Inc.* (S.D.N.Y. 2004).

**PAST EMPLOYMENT**

Associate, Debevoise & Plimpton LLP (2000-04)  
Law Clerk, Naomi Reice Buchwald, U.S. District Judge, Southern District of New York  
(1999-2000)  
Team Leader, AmeriCorps National Civilian Community Corps (1994-96)

**PROFESSIONAL ACTIVITIES**

1. Member, Famous and Well Known Marks Committee, International Trademark Association; Chair, Federal Litigation Task Force. (2015-present)
2. Board Member, Washington Lawyers' Committee for Civil Rights and Urban Affairs. (2016-present)
3. Advisory Council Member, Moving Picture Institute (2011-present)
4. Speaker, Design Law 2016 Symposium. (2016)
5. Speaker, Comic Book Law School, Comic-Con San Diego (2016)
6. Speaker, 14<sup>th</sup> U.S. Patent and Trademark Office – George Washington University Law School China IP Program. (2016)
7. Speaker, U.S. Department of Commerce and China's Ministry of Commerce (MOFCOM) 20th U.S.-China Legal Exchange. (2016)
8. Program co-chair & speaker, Fashion and Retail Law 2016: Trends and Developments, Practising Law Institute. (2016)
9. Speaker, National Press Club Design Patent Panel. (2016)
10. Speaker, Law Luxury Summit 2016. (2016)
11. Member, Anti-Counterfeiting Committee, International Trademark Association; Chair, Policy Task Force. (2011-15)
12. Member, Steering Committee, Northern Virginia Technology Council General Council Committee. (2010-15)
13. Speaker, The Law of Documentaries 101: Copyright and Media Law Issues, Moving Picture Institute Masterclass (2015)
14. Program co-chair & speaker, Fashion and Retail Law 2015: Trends and Developments, Practising Law Institute. (2015)
15. Speaker, Tech Chat: The Domain Name System in Transition, Northern Virginia Technology Council. (2015)
16. Speaker, Collision Course: Design Patents and the Convergence of Existing Intellectual Property Regimes, Penn Intellectual Property Group Symposium. (2015)
17. Speaker, Tech Chat: What is the Future of the FCC's 2012 Spectrum Act?, Northern Virginia Technology Council. (2014)

18. Speaker, Small Business Law & Entrepreneurship Seminar, Georgetown University Law School. (2014)
19. Speaker, Legal Protection for New Product Designs - from Mobile Technologies to Fashion, New York City Bar. (2014)
20. Speaker, Fashion Law, National Business Institute. (2014)
21. Speaker, "Choosing Your Brand: The Importance of Trademark Prosecution" and "Outsourcing – Ethical and Legislative Considerations," Global Outsourcing Association of Lawyers. (2014)
22. Speaker, Fashion Tech: Evolution of the Online Fashion Landscape, Fashion Law Week. (2014)
23. Speaker, Mod Mavericks: Championing a Legal Career within the Fashion Industry, Fashion Law Week. (2013)
24. Speaker, The Omni-Channel Experience, Gibson Dunn Webcast. (2013)
25. Speaker, Fashion Law - The Global Challenge, Practising Law Institute. (2012)
26. Speaker, Competitor's Use of Keyword Advertising and Search Engine Optimization (SEO): Hey! They're Using My Trademarks!, International Trademark Association. (2012)
27. Speaker, Practical Strategies for Maintaining Data Privacy, Association of Corporate Counsel, WMACCA Chapter. (2012)
28. Speaker, Civil Seizure Remedies: Federal and Corporate Solutions, National Intellectual Property Rights Coordination Center's 2012 Symposium. (2012)
29. Speaker, Advanced Trademark Law: Critical Issues You Need to Know, National Constitution Center. (2011)
30. Speaker, Social Media & IP: Critical Issues in the Social Network Environment, National Constitution Center. (2011)
31. Speaker, Data Customization and Privacy – Can They Coexist?, South by SouthWest (SXSW). (2011)
32. Speaker, Critical Developments in Social Media Law, Northern Virginia Tech Council. (2011)
33. Speaker, Recent Trademark Rulings in Europe and the U.S. Relating to Purchasing of Competitors' Trademarks for Search Advertising, Mirsky & Co. Podcast. (2011)
34. Speaker, Trademark Essentials: The Nuts and Bolts of Protection & Enforcement, National Constitution Center. (2010)
35. Speaker, Recent Developments in Survey Evidence, American Bar Association Section on Intellectual Property Annual Conference. (2010)
36. Speaker, Recent Trademark Rulings in Europe and the U.S. Relating to Purchasing of Competitors' Trademarks for Search Advertising, District of Columbia Bar Arts, Entertainment, Media and Sports Law Section Media Law Committee. (2010)
37. Speaker, Recent Trends in Anti-Counterfeiting

38. Speaker, Trademark Essentials: The Nuts and Bolts of Protection & Enforcement, National Constitution Center. (2009)

39. Speaker, Trademark Essentials: The Nuts and Bolts of Protection & Enforcement, National Constitution Center. (2008)

40. Speaker, Domain Names: IP Management, Protection and Litigation Strategies, National Constitution Center. (2008)

41.

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Managing Metadata

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9. Co-author, Lynch Provides a ‘Beast Mode’ Seminar On Use of Trademarks, Sports Business Daily. (2015)
10. Author, More retailers roll out in-store “beacons” to encourage customers to make purchases, Fashion Law and Business Report. (2015)
11. Editor, Fashion and Retail Law 2015: Trends and Developments, Practising Law Institute. (2015)
12. Author, Recent Developments Highlight Continuing Risks for Retailers Related to Data Privacy and Cybersecurity, Fashion Law and Business Report. (2015)
13. Update on Cyberattacks and Data Breaches Provides Useful Information for Retail Industry, Fashion Law and Business Report. (2015)
14. Co-author, Using Trademarks As Keywords: Empirical Evidence of Confusion, 105 Trademark Rep. 732. (2015)
15. Author, New Supreme Court Case Ups the Ante on Trademark Opposition Proceedings, Fashion Law and Business Report. (2015)
16. Author, Fate of Lupita Nyong’o’s Oscar dress puts spotlight on need to secure high-profile fashions, Fashion Law and Business Report. (2015)
17. Co-author, annual update for Intellectual Property Law in Cyberspace, chapters on “Unique Online Trademark Issues” and “Domain Name Registration, Maintenance and Protection,” Bloomberg/BNA. (2015)
18. Co-author, U.S. Commerce Department Announces Plan to Accelerate Transition to Private Management of the Domain Name System, IPWatchdog.com. (2014)
19. Author, A Legal Perspective on “Possessions and the Extended Self” in the Digital Age, The Journal of Marketing Theory and Practice. (2014)
20. Author, The Glamorous Side of Intellectual Property Law, National Law Journal. (2014)
21. Author, Retail Litigation Center’s 2014 Annual Report Details Its Efforts to Influence Courts in Support of Retailers, Fashion Law and Business Report. (2014)
22. Author, Michaels Stores Wins Another Round in Wage & Hour Suits Against Retailers, Fashion Law and Business Report. (2014)
23. Author, California District Court Decision Enforces a Website’s Terms of Service Even as Applied to Minors, Fashion Law and Business Report. (2014)
24. Author, New U.S. Supreme Court Case Creates Uniform Test for False Advertising Standing, Enforces a Proximate Cause Defense to Statutory Claims, But May Be Most Popular With Gray Marketeers, Fashion Law and Business Report. (2014)
25. Companies that allow employees to use social media accounts or personal communication devices for company business should be wary of new cases addressing their discovery obligations, Fashion Law and Business Report. (2014)
26. Co-author, annual update for Intellectual Property Law in Cyberspace, chapters on “Unique Online Trademark Issues” and “Domain Name Registration, Maintenance and Protection,” Bloomberg/BNA. (2014)

## 27. Co-author, Key Legal Issues for Online Retail

# **EXHIBIT H**



RONALD C. GOODSTEIN

Office: McDonough School of Business  
Georgetown University – 310 Old North  
Washington, DC 20057  
(202) 687-8009  
goody@msb.edu

Home: 15505 Summer Grove Ct.  
N. Potomac, MD 20878  
(301) 527-1622

ACADEMIC EMPLOYMENT

Associate Professor of Marketing  
The McDonough School of Business, Georgetown University, July 1998-Present.  
Courses Taught: Marketing Strategy (Undergraduate Capstone Course)  
Core Marketing Strategy (MBA/IEMBA)  
Integrated Marketing Communications (MBA)  
Principles of Marketing (Undergraduate)

Associate Professor of Marketing  
Indiana University School of Business, July 1996-June 1998.  
Courses Taught: Core Marketing Strategy (MBA)  
Advertising and Promotion Management (MBA)

Visiting Associate Professor of Marketing  
The Wharton School, University of Pennsylvania, July 1995-June 1996.  
Courses Taught: Advertising Policy (Undergraduate/MBA)  
Marketing Strategy (MBA)

Assistant Professor of Marketing  
Anderson Graduate School of Management, UCLA, July 1989-June 1995.  
Courses Taught: Advertising Policy (MBA, FEMBA)  
Consumer Behavior (Ph.D.)  
Elements of Marketing (MBA)

Selected Executive Education and Consulting Clients (Topics - Equity, Positioning, IMC, Value Development)  
Verizon; Sprint; HSBC; Microsoft; Assurant; LG; IBM; Credit Suisse Private Banking;  
Siemens; Lexis/Nexis; CIAB and AICPCU; Rochester General Hospital; NASA; Dow;  
Harcros Chemical; Kimberly-Clark; Cedars-Sinai Hospital; Lincoln National; GlaxoSmithKline;  
Headstart; Hughes Aircraft Co.; Johnson & Johnson; ABB; Schneider Electric; Prudential;  
Ingersol Rand

EDUCATION

Ph.D. Marketing, Fuqua School of Business, Duke University, September 1990.  
Thesis: How Do Consumers Screen Advertisements? A Heuristic Model of Ad Processing

B.S. Commerce *with Distinction* McIntire School of Commerce, University of Virginia, May 1982.  
Concentrations: Marketing and Organizational Management



RONALD C. GOODSTEIN

REFEREED ARTICLES (continued)

Gallagher, William E. and Ronald C. Goodstein (2004), "Inference Versus Speculation in Trademark Infringement Litigation: Abandoning the Fiction of the Vulcan Mind Meld," *Trademark Reporter* 94 (Nov.-Dec.), 1229-1270.

Devon DeVecchio and Ronald C. Goodstein (2004), "Moving Beyond Race: The Role of Ethnicity in Evaluating Celebrity Endorsers," in

RONALD C. GOODSTEIN

SELECT CONFERENCE PRESENTATIONS & PROCEEDINGS

Anne Roggeveen, Jens Nordfält, Dhruv Grewal, and Ronald C. Goodstein (2016), "The Impact of Congruency of a Special Display with Its Surroundings," presented at Academy of Marketing Science, Orlando, Florida.

Sandra J. Milberg, Ronald C. Goodstein, and Andres Guzman (2016), "Critical Realities: Putting the "Market" into Marketing Research," Georgetown University Research Seminar Series.

Anne Roggeveen, Jens Nordfält, Dhruv Grewal, and Ronald C. Goodstein (2016) "Product Placement: Does Congruity Matter?" presented at American Collegiate Retailing Association Conference, Secaucus, New Jersey; presented at AMA Conference, Chicago, IL, August 2015.

Anne Roggeveen, Dhruv Grewal, and Ronald Goodstein (2010) , "Combining High-Scope and Low-Scope Retail Cues: an Integrative Perspective ", in NA - Advances in Consumer Research Volume 37, eds. Margaret C. Campbell, Jeff Inman, and Rik Pieters, Duluth, MN : Association for Consumer Research, Pages: 889-890 .

Roggeveen, Anne, Ronald C. Goodstein, and Dhruv Grewal (2008), "How Does the Presence of a

RONALD C. GOODSTEIN

EDITED VOLUMES

Proceedings of the 2002 Society for Consumer Psychology Annual Conference, Julie A. Edell.

"Enhancing Knowledge Development in Marketing," 1998 AMA Educators' Proceedings (Vol. 9), with Scott MacKenzie.

PUBLISHED CASES

Beaudin, C.L., M. Senak, and R.C. Goodstein, "Strategic Planning at AIDS Project L.A.," Nonprofit Boards and Leadership: Cases on Governance, Change and Board-Staff Dynamics, M. Wood (ed.), San Francisco, Josey-Bass (1996).

Beaudin, C.L., M. Senak, and R.C. Goodstein, "AIDS Project Los Angeles Case in Nonprofit Governance (CGN #12), Program on Nonprofit Organizations/Institutions for Social and Policy Studies

RONALD C. GOODSTEIN

PROFESSIONAL SERVICE (continued)

Reviewing for Professional Conference Publications

American Psychological Association Annual Meeting, Division 23, Chair, 2011.  
AMA. Summer Educator's Conference Consumer Behavior Track Chair, 2005.  
Society for Consumer Psychology Annual Meeting, Co-Chair, 2001.  
AMA. Summer Educator's Conference Co-Chair, Summer 1998.  
Association for Consumer Research, Program Committee (1998-2017 various years).

Reviewing for Professional Conference Publications

Association for Consumer Research.  
Western Decision Sciences Institute.  
Society for Consumer Psychology Annual Meeting,  
Southern Marketing Association's Annual Meetings.  
Southwestern Marketing Association's Annual Meeting.  
AMA Winter Educator's Conference.  
AMA Summer Educators' Conference.

## 4 Years of Prior Testimony & Reports

Odyssey Wireless, Inc. v. Motorola Mobility, Ltd. No. 3:15-cv-01741-H-RBB, United States District Court Southern District of California, San Diego Division.

Odyssey Wireless, Inc. v. Samsung Electronics Company, Ltd. No. 3:15-cv-01738-H-RBB, United States District Court Southern District of California, San Diego Division.

California Corporation, UFO INTERNATINOAPRODUCTIONS, LLC, a California Limited Liability Company, and DOES 1, Case No. 2:16-cv-05719-SVW-JC, United States District Court Central District of California.



# **EXHIBIT I**

**KENT D. VAN LIERE , Ph.D.**  
**MANAGING DIRECTOR**

Dr. Van Liere is a Managing Director at NERA with expertise in survey research, sampling, statistics, and market research. He has testified at trial and in deposition

## Education

Washington State University

Ph.D. Sociology, specialization in research methods and statistics (1979).

Washington State University

M.A. Sociology, (1976).

Hamline University

B.A. Sociology, (1974).

## Expert Analysis and Testimony

### Trademark, Trade Dress, and Patent Matters

The Regents of the University of California v. Medivation, Inc. and Medivation Prostate Therapeutics, Inc., San Francisco Superior Court—Opinions regarding surveys used to benchmark patent licensing terms and conditions. (Summary of Opinions: November, 2016;

The Sherwin-Williams Company v. The Wooster Brush Company, United States District Court, Northern District of Ohio—Expert report on likelihood of confusion related to the overall look and design and trade dress of products in the paint brush market. (Expert Report: February 2014; Deposition: May 2014).

Rembrandt Social Media LP v. Facebook, Inc. and Adthis, Inc., United States District Court, Eastern District of Virginia, Alexandria Division—Expert report on a survey to measure the relative importance of various attributes in a patent dispute involving social media. (Expert Report: June 2013; Surrebuttal Report: August, 2013).

Frito-Lay North America, Inc. v. Medallion Foods, Inc. and Ralcorp Holdings, Inc. United States District Court, Eastern District of Texas, Sherman Division—Expert report on likelihood of confusion over the look and design of a tortilla chip in a trade dress and patent matter. (Expert Report: October, 2012; Deposition, November 2012; Trial Testimony, February 2013).

Catalina Marketing Corporation v. Coupons, Inc., Judicial Arbitration and Mediation Services (JAMS)—Declarations and arbitration testimony regarding sampling in a patent infringement matter involving online coupons. (Declarations: May/June/August 2012, Report: September 2012; Arbitration Testimony: Nov/Dec 2012).

Apple Inc. v. Samsung Electronics Co. LTD et al, United States District Court, Northern District of California, San Jose Division—Expert report on surveys related to confusion and dilution in a trade dress infringement matter involving smart phones and tablet computers. (Expert Report: March 2012; Deposition: April 2012; Trial Testimony: August 2012).

Rosetta Stone LTD v. Google, Inc. United States District Court, Eastern District of Virginia, Alexandria Division—Expert report on likelihood of confusion with regard to trademark or branded keyword searches using the Google search engine. (Expert Report: Dec 2009, Deposition: January, 2010, Supplemental Expert Report: August 2012, Deposition: September 2012).

Convolve, Inc v. Dell Inc. et al., United States District Court, Eastern District of Texas, Marshall Division—Expert report on a conjoint survey used to estimate the value of a patented feature in a patent dispute. (Expert Report: April 2011, Deposition: May 2011, Trial Testimony: July 2011).

Celltrace, LLC v. AT&T Mobility, LLC, T-Mobile USA, Inc. et al, United States District Court, Eastern District of Texas, Tyler Division—Expert rebuttal report on use of a survey to estimate the value of a patented feature in a patent dispute. (Expert Report: April, 2011).

Stop Staring! Designs v. Tatyana, LLC d/b/a Bettie Page Clothing, United States District Court, Central District of California—Expert report on likelihood of confusion due to trade dress infringement in the women's clothing market. (Expert Report: February, 2011).

Cytosport, Inc. v. Vital Pharmaceuticals, Inc., United States District Court, Eastern District of California, Sacramento Division—Expert report on a survey in a misleading advertising/likelihood of confusion matter related to product name, trade dress, and labeling. (Expert Report: Dec 2011; Rebuttal Report: Feb 2012; Deposition: June 2012).

National Western Life Insurance Company v. Western National Life Insurance Company, United States District Court, Western District of Texas, Austin Division—Expert report on secondary meaning and rebuttal report on likelihood of confusion in a trademark dispute. (Expert Reports: October 2010, Depositions: October and November, 2010).



In RE NJOY, INC. Consumer Class Action Litigation, United States District Court, Central District of California, Western Division—Expert report regarding consumer perceptions of advertising and packaging in a pre-certification misleading advertising class action regarding e-cigarettes. Expert rebuttal report regarding a proposed conjoint analysis to measure elements of damages. (Expert Declaration: June 2015; Deposition, June 2015; Rebuttal Declaration, November 2015; Deposition, December 2015).

Sarah Samet et al. v. The Proctor & Gamble Company, Kellogg Company and Kellogg Sales Company, United States District Court, Northern District of California, San Jose Division-- Expert report regarding consumer perceptions and expectations in a pre-certification misleading advertising class action regarding various food labeling claims. (Expert Declaration: September, 2015).

Amanda Sateriale, et al. v. R.J. Reynolds Tobacco Co., United States District0( C)-3d2(e)4(d S)-4(t)-2(a)-2( D)2





POM Wonderful, LLC v. Tropicana Products, Inc., United States District Court, Central District of California—Expert rebuttal report in a misleading advertising dispute in the beverage industry. (Expert Report: July 2010, Deposition: August 2010).

POM Wonderful, LLC v. Welch Foods, Inc., United States District Court, Central District of California—Expert rebuttal report in a misleading advertising dispute in the beverage industry. (Expert Report: July 2010, Deposition: July 2010).

John Sutherland et al. v. Dan Gamel, Inc., Superior Court of California, County of Fresno—Expert rebuttal report on issues related to use of a survey to characterize a putative class in a pre-certification class action related to RV sales practices. (Expert Report: May, 2009).

Real Estate Dis2(he)4( be)4(ve)4(r)-7(aP <</MCID 3 6(,)-2 648.4)(i)-2(ve)4( c)iDan Gamel,

Fred Devries et al. v. Morgan Stanley & Company LLC et al., United States District Court, Southern District of Florida—Expert analysis and rebuttal declaration regarding the use of a survey in an overtime wage labor class action (Report: January 2015; Deposition June 2015; Supplemental Declaration: September, 2015).

Laura Karapetian et al. v. American Medical Response, Inc., Superior Court of the State of California for the County of Los Angeles, Central District--Expert analysis and rebuttal declaration regarding a proposed sampling plan to address liability and damages issues related to meal periods, rates, and rounding claims. (Declaration: June 2015; Reply Declaration: July 2015).

Donald McLeod et al., v. Ralphs Grocery Company, Superior Court, State of California, County of Los Angeles—Expert analysis and rebuttal declaration regarding the use of a survey in an exempt/nonexempt labor class action (Report: December, 2014).

James Foster and Stone Logistics, Inc. et al v. CEVA Freight, LLC, United States Distrmt6(s(o)2(u)2(n)2(tm)-.t

John Rock

Virgin Valley Water District v.

Naef, et al. v. Masonite, Superior Court, County of Mobile, Alabama—Consulting expert on statistical surveying and analysis of the prevalence of siding failure in homes made with Masonite siding. Identification of factors contributing to failure, projection of failure rates observed during the survey to the population of homes manufactured with subject siding, calculation of expected future costs of legal settlement under the various terms and conditions.

## Publications

Becker, Elizabeth, Alex Grecu, Sukaina Klein, Denise Martin, Mary Elizabeth Stern, and Kent Van Liere. 2010. “Data in Wage and Hour Litigation: What to Do When You Have It and What to Do When You Don’t.” *NERA Economic Consulting paper*, November 4, 2010.

Butler, Sarah, Van Liere, Kent. 2010. “Use of Surveys in Litigation: Recent Trends.” *NERA Economic Consulting paper*, April 7, 2010.

Van Liere, Kent D., Butler, Sarah. 2007. “Emerging Issues in the Use of Surveys in Trademark Infringement on the Web.” Paper published in the *Advanced Trademark & Advertising Law Conference* proceedings, Seattle, WA, September, 2007.

King, Mike, Kent Van Liere, Gene Meehan, Glenn R. George, Wayne P. Olson, Amparo D. Nieto. 2007. “Making a Business of Energy Efficiency: Sustainable Business Models for Utilities,” Edison Electric Institute, Washington, D.C., August, 2007.

Van Liere, Kent. D. 2007. “Use of Sample Surveys in Product Liability Litigation,” in *The International Comparative Legal Guide to: Product Liability 2007*. London: Global Legal Group LTD, pp. 38-43.

Lawton, Leora, Michael Sullivan, Kent D. Van Liere, Aaron Katz, and Joseph Eto “A Framework and Review of Customer Outage Costs: Integration and Analysis of Electric Utility Outage Cost Surveys,” Energy Storage Program, Office of Electric Transmission and Distribution, U.S. Department of Energy, LBNL-54365, 2004.

Dunlap, Riley E., Kent D. Van Liere, Angela G. Mertig, and Robert E. Jones.



Dunlap, Riley E. and Kent D. Van Liere. 1978. "The New Environmental Paradigm: A Proposed Measuring Instrument and Preliminary Results." *Journal of Environmental Education*, 9: 10-19.

Van Liere, Kent D. and Riley E. Dunlap. 1978. "Moral Norms and Environmental Behavior: An Application of Schwartz's Norm-Activation Model to Yard Burning." *Journal of Applied Social Psychology*, 8: 174-188.

Dunlap, Riley E. and Kent D. Van Liere. 1977. "Further Evidence of Declining Public Concern with Environmental Problems: A Research Note." *Western Sociological Review*, 8: 110-112.

# EXHIBIT 2





**RETURN OF SERVICE**

*I hereby certify that a duplicate original of the within subpoena was duly served:* (check the method used)

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

	)	
In the Matter of	)	
	)	DOCKET NO. 9372
1-800 Contacts, Inc.,	)	
a corporation	)	
	)	

SUBPOENA DUCES TECUM ATTACHMENT

Pursuant to Federal Trade Commission Rules of Practice 3.31 and 3.34(b), 16 C.F.R. §§ 3.31 and 3.34(b), and in accordance with the Instructions and Definitions below, Complaint Counsel hereby requests that Google, Inc. produce all documents, electronically stored information, and other things in its possession, custody, or control responsive to the following requests.

REQUESTS FOR ELECTRONICALLY STORED INFORMATION

Request No. 1 Provide documents sufficient to show each person that has ever had its advertisement appear on a Google search engine results page (SERP) as a result of bidding (on an exact match, phrase match, or broad match basis) on any of the following terms as keywords:

- 1 800 contacts
- 1 800 contact
- 1 800contacts
- 1 800contact
- 1800contacts
- 1800contact
- 1800 contacts
- 1800 contact
- 1-800 contacts
- 1-800 contact
- 1800.contacts
- 1-800-contacts
- 1800contacs
- 1800 contacs
- 1.800 contacts
- 1 8000 contacts
- 800 contacts

800.contacts  
800contacts  
1800contacts.com  
www.1800contacts.com  
www.1800contacts.net  
www.1800contacts.org

Request No. 2: Provide documents sufficient to show each person that has ever had its advertisement appear on a Google SERP as a result of bidding on any of the following terms as keywords:

AC Lens  
Lens.com  
LensCrafters  
Vision Direct  
contact lens  
contact lenses  
buy contacts online

Product Names

Acuvue  
Oasys  
TruEye  
Air Optics  
Optix  
Aqua Comfort  
Dailies Total  
Biotrue  
Soflens  
PureVision  
Biofinity  
Proclear

Request No. 3: Provide documents sufficient to show whether any of the following persons has ever bid on any of the terms listed in Request 1 in any AdWords auction:

1-800 Contacts  
2weekdisposables  
Alcon  
America's Best  
Arlington Contact Lens Service, d/b/a AC Lens  
Bausch & Lomb  
BJ's  
Clearly Contacts

Coastal Contacts  
Contact Lens King  
Contacts Direct  
CooperVision  
Costco  
Daysoft Contact Lenses  
Empire Vision, d/b/a ECCA  
EZ Contacts USA, d/b/a Provision Supply  
Johnson & Johnson, d/b/a Vistakon  
Luxottica, d/b/a LensCrafters, d/b/a Pearle Vision, d/b/a  
Sears Optical, d/b/a Target Optical  
Lens.com  
Lensdirect  
Lens Discounters  
Lenspure  
Price Smart Contacts  
Major Lens  
Memorial Eye, d/b/a ShipMyContacts.com  
Oakwood Eye Clinic, d/b/a Lenses for Less  
Sam's Club  
Save On Lens  
Standard Optical  
Tram Data, d/b/a Replace My Contacts, d/b/a Lensfast  
Vision Direct, d/b/a Lensworld  
Walgreens  
Walmart  
Web Eye Care

Request No. 4 For the persons identified in your response to Requests 1 & 2, and persons identified in Request 3, and for the keywords identified in Appendix A, provide the following data, aggregated on a monthly basis. The response should be organized by person, Ad Group and keyword. (Provide responses separately for each Ad Group even in the event that the same keyword was used in multiple Ad Groups.) For the year 2010, provide the data on a daily basis.

- a. Bidding entity;
- b. Keyword
- c. Campaign;
- d. Campaign type;
- e. Campaign sub-type;
- f. Ad Group;
- g. Keyword matching option;
- h. Impressions;
- i. Clicks;

- j. Total cost (USD)
- k. Ad position;
- l. Conversion rate where available; and
- m. Current quality score.

Request No. 5: Provide data or documents sufficient to show the total impressions, CTR, clicks, CPC, and total spend for each person identified in your response to Requests 1 & 2, and person identified in Request 3, for each month.

Request No. 6: For auctions resulting from queries in Appendix B, provide documents or data sufficient to identify the keywords that led to the inclusion of an advertisement from any person identified in your response to Requests 1 & 2, identified in Request 3, or identified in Appendix C, in the resulting auction despite the person not having bid directly on any term in Request 1. For each such keyword, provide the data items listed below. The reported totals and averages for each keyword should be based only on instances where the advertisement was included as a result of a phrase match or broad match to the queries in Appendix B. The response should be organized by person, Ad Group and keyword. (Provide responses separately for each Ad Group even in the event that the same keyword was used in multiple Ad Groups.) The data may be aggregated by up to one month, but for no greater period. For the year 2010, the data may only be aggregated on a daily basis.

- a. Bidding entity;
- b. Keyword;
- c. Keyword matching option;
- d. Campaign;
- e. Campaign type;
- f. Campaign sub-type;
- g. Ad Group;
- h. Impressions;
- i. Clicks;
- j. Total cost (USD)
- k. Ad position;
- l. Conversion rate where available; and
- m. Current quality score.

Request No. 7: Provide data or documents sufficient to show the total number of queries containing “800contact”, “800 contact”, “800-contact”, or “800.contact” for each month from August 2015 to July 2016.

Request No. 8: For each person identified in your response to Requests 1 & 2, and persons

- a. Bid strategy;
- b. Daily maximum budget;
- c. Negative keywords;
- d. Keywords.

Request No. 9 Provide documents sufficient to show the method Google uses to enforce the advertiser's daily maximum budget over the course of the month.

Request No. 10 For each person identified in your response to Requests 1 & 2, or identified in Request 3, for each of the past five years, provide documents or data sufficient to show how frequently the bidding entity stopped search advertising for contact lenses, because it reached the maximum daily budget for keyword search advertising.

Request No. 11 For June and December of each year of the Request Period, provide all co-occurring words that appear in queries at least 25 times during the month, for any of the following key words: a) 1 800 contacts, b) 800 contacts, c) 1800 contacts, d) 1800.contacts, e) 1800contacts.com, and f) www.1800contacts.com.

Request No. 12 Provide documents or data sufficient to show a representative sample of the contact lens-related web browsing and web searching behavior of individual users who have entered a query containing any of the keywords identified in Specification 1.

Request No. 13 Submit all documents relating to any communication between the Company and 1-800 Contacts discussing how to limit the ability of other companies to present advertisements, procured through AdWords, that would display in response to user search queries containing 1-800 Contacts trademarks.

Request No. 14 Provide any and all search engine advertising algorithm A/B or side-by-side testing relating to the treatment of trademark searches, including the experiment design, results, recommendation, and any actual changes implemented or decisions made as a result.

Request No. 15 Provide a random sample of 1,000 AdWords advertisements that have appeared in response to user searches for the keywords listed in Request No. 1 over the request period. Provide a random sample of 1,000 AdWords advertisements that have appeared in response to user searches for the following keywords: "contacts," "contact lens," "contact lenses," "buy contacts online;" over the request period.

DEFINITIONS

1. The terms “Google,” “Company,” and “You” or “Your” mean Google Inc., its directors, officers, trustees, employees, attorneys, agents, accountants, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships and joint ventures.
2. The term “1-800 Contacts” means Respondent 1-800 Contacts, Inc., its directors, officers, trustees, employees, attorneys, agents, accountants, consultants, and representatives, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and the directors, officers, trustees, employees, attorneys, agents, consultants, and representatives of its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships and joint ventures.
3. The term “Ad Group” has the same meaning that Google ascribes to the term in the ordinary course of business in connection with its AdWords product: a collection of advertisements that “contains one or more ads which target a shared set of keywords.” See <https://support.google.com/adwords/answer/6298>
4. The term “Ad Rank” has the same meaning that Google ascribes to the term in the ordinary course of business in connection with its AdWords product: “A value that’s used to determine [an advertiser’s] ad position (where ads are shown on a page) and whether [an advertiser’s] ads will show at all.” See <https://support.google.com/adwords/answer/1752122?hl=en>
5. The terms “and” and “or” have both conjunctive and disjunctive meanings.
6. The term “Campaign” has the same meaning that Google ascribes to the term in the ordinary course of business in connection with its AdWords product: “[a] set of ad groups (ads, keywords, and bids) that share a budget, location targeting, and other settings.” See <https://support.google.com/adwords/answer/6304?hl=en>
7. The term “Click” has the same meaning that Google ascribes to the term in the ordinary course of business in connection with its AdWords product. See <https://support.google.com/adwords/answer/31799?hl=en>
8. The term “Clickthrough rate” (CTR) has the same meaning that Google ascribes to the term in the ordinary course of business in connection with its AdWords product: “the number of clicks [an] ad receives divided by the number of times [the] ad is shown.” See <https://support.google.com/adwords/answer/2615875?hl=en>



9. The term "Computer Files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Company should produce Documents that exist in machine-readable form, including Documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises. If the Company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with Complaint Counsel's need for Documents and information, you are encouraged to discuss a possible modification to this instruction with the Complaint Counsel identified on the last page of this

data describing or Relating to documents created, revised, or distributed on computer systems; copies of documents that are not identical duplicates of the originals in that Person's files; and copies of documents the originals of which are not in the possession, custody, or control of the Respondent.

Unless otherwise specified, the term "Documents" excludes (a) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature; (b) architectural Plans and engineering blueprints; and (c) documents solely Relating to environmental, tax, human resources, OSHA, or ERISA issues.

15.

describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to.

23. The term "Search Engine" means a computer program, available to the public without charge, to search for and identify websites on the World Wide Web based on a User Query.
24. The term "Technology Assisted Review" means any process that utilizes a computer algorithm to limit the number of potentially responsive documents subject to a manual review. Article 11, Section 11, 0.0005

employees, agents, representatives, or legal counsel, whether or not such documents are on the premises of the Company. If any person is unwilling to have his or her files searched, or is unwilling to produce responsive documents, the Company must provide the Complaint Counsel with the following information as to each such person: his or her name, address, telephone number, and relationship to the Company. In addition to hard copy documents, the search must include all of the Company's electronically stored information.

6. Form of Production. The Company shall submit all documents as instructed below absent written consent signed by Complaint Counsel.
- a. Documents stored in electronic or hard copy formats in the ordinary course of business shall be submitted in the following electronic format provided that such copies are true, correct, and complete copies of the original documents:
- i. Submit Microsoft Excel, Access, and PowerPoint files in native format with extracted text and applicable metadata and information as described in subparts (a)(iii) and (a)(iv).
  - ii. Submit emails in image format with extracted text and the following metadata and information:

Metadata/Document Information	Description
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the custodian of the file.
To	Recipient(s) of the email.
From	The person who authored the email.
CC	Person(s) copied on the email.
BCC	Person(s) blind copied on the email.
Subject	Subject line of the email.
Date Sent	Date the email was sent.
Time Sent	Time the email was sent.
Date Received	Date the email was received.

Time Received	Time the email was received.
Attachments	The Document ID of attachment(s).
Mail Folder Path	Location of email in personal folders, subfolders, deleted items or sent items.
Message ID	Microsoft Outlook Message ID or similar value in other message systems.

- iii. Submit email attachments in image format, or native format if the file is one of the types identified in subpart (a)(i), with extracted text and the following metadata and information:

Metadata/Document Information	Description
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the custodian of the file.
Parent ID	The Document ID of the parent email.
Modified Date	The date the file was last changed and saved.
Modified Time	The time the file was last changed and saved.
Filename with extension	The name of the file including the extension denoting the application in which the file was created.
Production Link	Relative file path to production media of submitted native files. Example: FTC-001\NATIVE\001\FTC-00003090.xls.
Hash	The Secure Hash Algorithm (SHA) value for the original native file.

Metadata/Document Information	Description
Beginning Bates number	The beginning bates number of the document.
Ending Bates number	The last bates number of the document.
Custodian	The name of the custodian of the file.
Modified Date	The date the file was last changed and saved.
Modified Time	The time the file was last changed and saved.
Filename with extension	The name of the file including the extension denoting the application in which the file was created.
Originating Path	File path of the file as it resided in its original environment.
Production Link	Relative file path to production media of submitted native files. Example: FTC-001\NATIVE\001\FTC-00003090.xls.
Hash	The Secure Hash Algorithm (SHA) value for the original native file.

v.

subparts (a)(i) through (a)(v) above. For example, if the redacted file was originally an attachment to an email, provide the metadata and information specified in subpart (a)(iii) above. Additionally, please provide a basis for each privilege claim as detailed in Instruction 6.

b.

- e. Each production shall be submitted with a transmittal letter that includes the FTC matter number; production volume name; encryption method/software used; passwords for any password protected files; list of custodians and document identification number range for each; total number of documents; and a list of load file fields in the order in which they are organized in the load file.
7. All documents responsive to these requests:
  - a. Shall be produced in complete form, unredacted unless privileged, and in the order in which they appear in the Company's files;
  - b. Shall be marked on each page with corporate identification and consecutive document control numbers when produced in image format;
  - c. Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black and white photocopying or conversion to TIFF format of any document (e.g., a chart or graph) makes any substantive information contained in the document unintelligible, the Company must submit the original document, a like-color photocopy, or a JPEG format image);
  - d. Shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct, and complete copies of the original documents; and
  - e. Shall be accompanied by an index that identifies (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents. Complaint Counsel will provide a sample index upon request.
8. If any documents are withheld from production based on a claim of privilege, the Respondent shall provide, pursuant to 16 C.F.R. § 3.38A, a schedule which describes the nature of documents, communications, or tangible things not produced or disclosed, in a manner that will enable Complaint Counsel to assess the claim of privilege.
9. If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the sources it has used to obtain the information. Explain why the information is incomplete.



10. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy but the Company has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify Persons having knowledge of the content of such documents.
11. The Company must provide Complaint Counsel with a statement identifying the procedures used to collect and search for electronically stored documents and documents stored in paper format. The Company must also provide a statement identifying any electronic production tools or software packages utilized by the company in responding to this subpoena for: keyword searching, Technology Assisted Review, email threading, de-duplication, global de-duplication or near-de-duplication, and
  - a. if the Company utilized keyword search terms to identify documents and information responsive to this subpoena, provide a list of the search terms used for each custodian;
  - b. if the Company utilized Technology Assisted Review software;
    - i. describe the collection methodology, including: how the software was utilized to identify responsive documents; the process the company utilized to identify and validate the seed set documents subject to manual review; the total number of documents reviewed manually; the total number of documents determined nonresponsive without manual review; the process the company used to determine and validate the accuracy of the automatic determinations of responsiveness and nonresponsiveness; how the company handled exceptions ("uncategorized documents"); and if the company's documents include foreign language documents, whether reviewed manually or by some technology-assisted method; and
    - ii. provide all statistical analyses utilized or generated by the company or its agents related to the precision, recall, accuracy, validation, or quality of its document production in response to this subpoena; and identify the person(s) able to testify on behalf of the company about information known or reasonably available to the organization, relating to its response to this specification.
  - c. if the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is

stored in the Company's computer systems or electronic storage media in response to this subpoena, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this subpoena

12. Any questions you have relating to the scope or meaning of anything in subpoena or suggestions for possible modifications hereto should be directed to Charlotte Slaiman at (202) 326-2233, [cslaiman@ftc.gov](mailto:cslaiman@ftc.gov). The response to the request shall be addressed to the attention of Charlotte Slaiman, Federal Trade Commission, 400 7th Street SW, Washington, D.C. 20024, and delivered between 8:30 a.m. and 5:00 p.m. on any business day.



**CERTIFICATE OF SERVICE**

I hereby certify that I delivered via electronic mail a copy of the foregoing document to:

Gregory P. Stone  
Steven M. Perry  
Garth T. Vincent  
Stuart N. Senator  
Gregory M. Sergi  
Munger, Tolles & Olson LLP  
355 South Grand Avenue  
35<sup>th</sup> Floor  
Los Angeles, CA 90071  
gregory.stone@mto.com  
steven.perry@mto.com  
garth.vincent@mto.com  
stuart.senator@mto.com  
gregory.sergi@mto.com

Justin P. Raphael  
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560 Mission Street, 27th Floor  
San Francisco, CA 94105  
justin.rafael@m

**Keyword**

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America's Best contacts  
AC Lens  
Bausch & Lomb  
BJ's contact lens  
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Clearly Contacts  
Coastal Contacts  
Contact Lens King  
Contacts Direct  
CooperVision  
Costco contact lens  
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Daysoft  
Empire Vision  
EZ Contacts  
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Price Smart Contacts  
Major Lens  
Memorial Eye  
ShipMyContacts.com  
Oakwood Eye Clinic  
Lenses for Less  
Sam's Club contact lens  
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Save On Lens  
Standard Optical  
Replace My Contacts  
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1 800 contact commercial  
1-800 contacts number  
1-800 contacts overnight shipping  
1-800-contacts expired prescription  
1800 contacts coupon code june 2016  
1800 contacts site:retailmenot.com  
1800contacts commercial special eyes  
1800contacts dailies  
1800contacts.com order code  
biofinity 1800contacts  
coupon codes 1800 contacts  
discount codes 1800contacts  
does 1800contacts contact your eye doctor  
does 1800contacts take paypal  
[email.1800contacts.com](mailto:email.1800contacts.com)  
free expedited shipping code 1800contacts  
how long for 1800contacts to ship  
is 1800 contacts cheaper than costco  
lumen optical 1800contacts  
reviews for 1800 contacts  
site:1800contacts.com 1800contacts  
1 800 contacts torn lens replacement  
1-800 contacts/rebates  
11800contacts  
1800 contacts acuvue oasys 24 pack  
1800 contacts and insurance  
1800 contacts coupon july 2016  
1800 contacts deal  
1800 contacts take insurance  
1800 contactys  
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acuvue 1800contacts  
how 1800contacts works  
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retail me not 1800 contacts  
what insurance does 1800contacts accept  
why is 1800 contacts so expensive  
1 800 contacts fax  
1 800 contacts online coupon  
1 800 contacts text prescription  
1-800 contacts vsp  
1-800-contacts verify prescription  
1800 contact s  
1800 contacts claim form  
1800 contacts colored lenses  
1800 contacts daily disposable  
1800 contacts expedited shipping  
1800 contacts hq  
1800 contacts next day shipping code  
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1800 contacts overnight  
1800 contacts with expired prescription  
1800 contacts without doctor  
1800 contacts wrong prescription  
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1800contacts amish commercial  
1800contacts buyback  
1800contacts new customer  
1800contacts replace torn lenses  
1800contacts vsp reimbursement  
1800contacts walmart locations  
1800contactscoupon



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unitedhealthcare 1800contacts  
vsp with 1800contacts  
who does 1800contacts use for shipping  
www.1800contacts.com coupon  
1 800 contacts email address  
1 800 contacts price list  
1 800 contacts promo code 2016  
1-800 contacts revenue  
1800 contact rebate status  
1800 contactsd  
1800 contacts aquacomfort plus  
1800 contacts freshlook colors  
1800 contacts proclear  
1800 contacts shipping discount  
1800 contacts song  
1800 contacts uk  
1800 contactsa  
1800contactas  
1800contactrs  
1800contacts focus dailies  
1800contacts free torn lens replacement  
1800contacts order tracking  
1800contacts.com  
1800contactscoupons  
800 contacts free expedited shipping  
coupon code 1 800 contacts  
davis vision 1800 contacts  
does 1800contacts actually check prescription  
email address for 1800contacts  
how long does it take for 1 800 contacts to ship  
insurance on 1800contacts  
order status deleted 1 800 contacts  
upload prescription 1800contacts  
using insurance 1 800 contacts  
walmart and 1800contacts  
www.1800contacts.com promo code  
1 800 contacts commercial my brand  
1 800 contacts radio commercial  
1- 800 contacts  
1-800 contacts discount  
[1-800-contacts.com](http://1-800-contacts.com)  
1800 contact promo  
1800 contacts acuvue trueye  
1800 contacts customer service hours  
1800 contacts discount coupon  
1800 contacts online  
1800 contacts online chat  
1800 contacts order code may 2016  
1800 contacts promo.code  
1800contacts ad  
1800contacts bbb  
1800contacts commercial 2016  
1800contacts contacts for astigmatism  
1800contacts coupon 2016

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1800contacts exchange policy  
1800contacts insurance claim  
1800contacts jingle  
1800contacts revenue  
1800contacts stock  
[1800contacts.com/ooninsurance](http://1800contacts.com/ooninsurance)  
19800 contacts  
cancel 1800contacts order  
cancel order 1800 contacts  
free overnight shipping 1800contacts  
how much does 1 800 contacts cost  
mail in rebate for 1800 contacts  
price match 1800contacts  
q800contacts  
walmart 1 800 contacts  
1 800 contacts discount codes  
1 800 contacts draper  
1 800 contacts special eye8(ont)-1.1ap

why does 1-800-contacts require a prescription

1 800 contact discount code

1 800 contacts coupons codes

1 800 contacts return

1-800 contacts address draper

1-800 contacts vs. costco

1800 contact customer service

1800contacts commercial actor  
1800contacts distribution center address  
1800contacts hsa  
1800contacts price  
1800contacts refund policy  
1800contacts salary  
1800contacts samples  
1800contacts superior vision  
1800contacts toilet commercial  
800contacta  
acuvue 1 day moist 1800contacts  
anthem 1800 contacts  
how much does 1800 contacts cost  
sofmed breathables 1800contacts  
vsp and 1800 contacts  
www.1800contacts coupons  
1 800 contact coupon code  
1 800 contacts air optix  
1-800 contacts rebates  
1-800 contacts v. whenu.com  
1-800-contacts draper office  
1800 contact deals  
1800 contacts acuvue oasis  
1800 contacts acuvue oasis coupon  
1800 contacts colors  
1800 contacts cupon code  
1800 contacts military discount  
1800 contacts online prescription  
1800contacts acuvue  
1800contacts acuvue moist  
1800contacts biofinity multifocal  
1800contacts colors  
1800contacts doesn't have my prescription  
1800contacts frequency 55  
1800contacts linkedin  
1800contacts old prescription  
1800contacts order code coupon  
1800contacts price guarantee  
1800contacts price match lens.com  
1800contacts rebate tracker  
[1800contacts.com/shiptoday](http://1800contacts.com/shiptoday)  
1800contacts/  
1800contactsrebates  
7800 contacts  
800 contacts free shipping code  
address for 1800contacts  
air optix multifocal 1800contacts  
can you use insurance with 1-800-contacts  
click email 1800contacts  
coastal contacts vs 1800contacts  
contact 1800 contacts  
coupon code for 800 contacts  
discount code 1 800 contacts  
discount code for 1-800 contacts  
eyemed and 1800contacts







CustomerId	ExternalCustomerId	Name
769343	1011556460	Vision Direct
15537409	1155384233	Vision Direct Backup
107551	1199684660	LensesForLess.com
21001831	1261024631	Sam's Club 2007 BTS
57831649	1658362642	Labs 17-Walmart Brand
38355275	1923030029	Lens.com Search FY 11_10020984
41937383	2162193872	Lenscrafters_28360
11873193	2373799247	29 - Walmart
1391088	2380673559	saveonlens
136980	2544527520	1 800 Contacts
1346636	3298598839	Text (Lens Direct)
9748520	3439116682	Vision Direct US
6377208	3498808349	LensCrafters Contact Lens
103471425	3510044232	America's Best (Ecom)
111677952	3549027628	daysoft.com
11871345	3677704588	Web Eye Care
15097349	3706968290	LensCrafters - US
60672090	3826235125	DVM - Luxottica Contact Lenses
15627496	3878096582	Replace My Contacts
7817513	3979345268	Memorial Eye
888921	4095112250	Vision Direct
20996288	4502114178	Lens Direct
40843011	4636911429	5 - Standard Optical
101251834	4697699163	Lenscrafters
39111445	5022582329	Razorfish: LensCrafters Search Q109_10001993
140734048	5068839453	zzz_Luxoptica usd
17940944	5139401037	VISION DIRECT PTY LIMITED
141743937	5260428653	LensPure
16909269	5984140388	

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 15, 2017, I filed **RESPONDENT 1-800 CONTACTS' OPPOSITION TO COMPLAINT COUNSEL'S MOTION TO LIMIT RESPONDENT TO FIVE (5) EXPERT WITNESSES** using the FTC's E-Filing System, which will send notification of such filing to all counsel of record as well as the following:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

DATED: February 15, 2017

By: /s/ Eunice Ikemoto  
Eunice Ikemoto

**CERTIFICATE FOR ELECTRONIC FILING**

I hereby certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

DATED: February 15, 2017

By: /s/ Steven M. Perry  
Steven M. Perry  
Attorney

Notice of Electronic Service

I hereby certify that on February 15, 2017, I filed an electronic copy of the foregoing Respondent's Opposition to Complaint Counsel's Motion to Limit Respondent to Five (5) Expert Witnesses, with:

D. Michael Chappell  
Chief Administrative Law Judge  
600 Pennsylvania Ave., NW  
Suite 110  
Washington, DC, 20580

Donald Clark  
600 Pennsylvania Ave., NW  
Suite 172  
Washington, DC, 20580

I hereby certify that on February 15, 2017, I served via E-Service an electronic copy of the foregoing Respondent's Opposition to Complaint Counsel's Motion to Limit Respondent to Five (5) Expert Witnesses, upon:

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