

1 BRIAN M. DAUCHER, Cal. Bar No. 174212
 ROBERT S. BEALL, Cal. Bar. No. 132016
 2 JOSEPH H. TADROS, Cal. Bar. No. 239379
 ASHLEY E. MERLO, Cal. Bar No. 247997
 3 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
 A Limited Liability Partnership
 4 Including Professional Corporations
 650 Town Center Drive, 4th Floor
 5 Costa Mesa, California 92626-1993
 Telephone: (714) 513-5100
 6 Facsimile: (714) 513-5130
 bdaucher@sheppardmullin.com
 7 jtadros@sheppardmullin.com
 8 Attorneys for Defendants

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA

11 TRAFFICSCHOOL.COM, INC., a
 12 California corporation; DRIVERS ED
 DIRECT, LLC., a California limited
 13 liability company,

14 Plaintiffs,

15 v.

16 ED RIVER, INC., ONLINE GURU,
 INC., FIND MY SPECIALIST, INC.,
 17 and SERIOUSNET, INC., California
 corporations; RAVI K. LAHOTI, an
 18 individual; RAJ LAHOTI, an
 individual; DOES 1 through 10,

19 Defendants.
 20

Case No. CV 06-7561 PA (CWx)

The Hon. Percy Anderson

**DEFENDANTS' NOTICE OF
 DESIGNATION OF CERTAIN
 DEPOSITION TESTIMONY OF
 DR. THOMAS MARONICK
 IN LIEU OF
 CROSS-EXAMINATION AT TRIAL**

Complaint Filed: November 28, 2006
 Bench Trial: November 6, 2007

21
22
23
24
25
26
27
28

1 **TO THE ABOVE-CAPTIONED COURT, PLAINTIFFS AND**
 2 **THEIR ATTORNEYS OF RECORD:**

3 By prior stipulation of the parties and with the prior consent of this
 4 Court, Defendants hereby give notice and submit the following deposition testimony
 5 to be considered in lieu of live cross-examination of plaintiffs' expert Dr. Thomas
 6 Maronick at the trial of this matter. A table with references to the designated
 7 deposition testimony and summaries of the deposition testimony are included
 8 herein.

Deponent	References	Exhibit
Maronick, Thomas	pp. 13:4-14:4; 34:5-35:5; 38:2-39:3 (referring to TE 144, p. 115 (survey 3, questions 5-7)); 39:4-11; 40:6-23 (referring to TE 144, p. 115 (survey 3, questions 5-7)); 41:22-42:19 (referring to TE 144, p. 115 (survey 3, questions 5-7)); 44:2-18 (referring to TE 144 (surveys 2 and 3)); 45:17-46:22; 49:2-19; 50:14-51:15; 54:7-10; 64:25-65:18; 69:4-70:18 (referring to TE 144 (surveys 2 and 3)); 70:19-71:12; 72:12-73:13; 75:13-23 (referring to TE 143, p. 305 (bottom right column)); 78:1-24; 80:3-8; 80:18-81:8; 81:18-82:8; 83:24-84:1; 95:25-96:1; 96:18-96:19; 96:20-97:12 (referring to TE 144 (survey 2)); 97:17-21 (referring to TE 144, p. 115 (survey 3)); 100:2-7 (referring to TE 144 (surveys 2 and 3)); 101:6-102:7; 102:22-103:5; 103:6-12; 104:7-16; 104:20-24; 108:3-25; 109:1-23; 109:24-110:2; 110:18-20; 115:18-116:9; 116:25-117:10; 118:8-21; 125:8-126:17 (referring to TE 144 (survey 4)); 137:23-138:13; 139:21-140:15; 172:4-173:4; 173:5-11; 198:23-199:12; 217:13-218:14.	Ex. A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUMMARY OF DEPOSITION TESTIMONY FOR
CROSS-EXAMINATION OF DR. THOMAS MARONICK
BY SUBJECT MATTER

Survey Universe

1. Maronick surveyed respondents only in relation to California traffic school and gave no opinion as to driver's education. pp. 83:24-84:1; 96:18-19.

Survey Stimulus

2. The Maronick survey 3 showed respondents only the top portion of one page of the DMV.ORG website, which excludes the bottom portion of the webpage containing a disclaimer. pp. 13:4-14:4 (referring to TE 144, p. 114 (survey 3 stimuli)).

3. Maronick agreed that in evaluating advertising claims, the standard is the overall net impression made by the ad. p. 50:14-50:24.

4. Maronick excluded the bottom portion of the DMV.ORG webpage shown to respondents because of the disclaimer at the top of the page and his view that a consumer with a traffic ticket would not review material not addressing traffic school. pp. 198:23-199:12.

Use of a Control

5. Maronick authored an article in 1995, wherein he wrote that the use of a control mechanism is indispensable in a Lanham Act case. pp. 49:2-19; 75:13-23 (referring to TE 143, p. 305 (bottom right column)).

6. Maronick agreed that the use of a control helps ensure that responses to the challenged ad claims are not due to factors other than the challenged ad claims in question. pp. 50:25-51:15; 70:19-71:12; 72:12-20, 80:18-23 (referring to TE 143, p. 306)).

1 separate pages. pp. 39:5-11; 40:5-23 (referring to TE 144, p. 115 (survey 3,
2 questions 5-7)); 44:2-18 (referring to TE 144, pp. 115-116 (survey 3, questions 6-7
3 and 8-9); 96:20-97:12 (referring to TE 144 (survey 2)); 97:17-21 (referring to TE
4 144, p. 115 (survey 3)); 100:2-7 (referring to TE 144 (surveys 2 and 3)).

5 15. Maronick testified that he could have put questions 6 and 7 on
6 different pages, but stated that he wanted respondent to see these questions in
7 tandem. pp. 40:6-23; 44:2-18 (referring to TE 144 (surveys 2 and 3)).

8 16. Respondents could change their answer to question 6 after seeing
9 question 7 and could change their answer to question 8 after seeing question 9.
10 pp. 64:25-65:18; 69:4-70:18 (referring to TE 144 (surveys 2 and 3)).

11 17. Maronick survey 4, question 2 asked respondents to specify
12 whether each of 8 factors (pre-selected and set forth in the survey) were important in
13 their decision as to which traffic school course to use. pp. 116:25-117:10; 118:8-21;
14 125:8-126:17 (referring to TE 144 (survey 4)).

15 Guessing

16 18. Maronick did not instruct respondents not to guess because he
17 testified that guessing "reflects reality" and he did not believe it "appropriate or
18 necessary" to give such an instruction. pp. 45:17-46:22; 95:25-96:1; 172:4-173:4.

19 19. Maronick agreed that a guess can be induced by a question.
20 pp. 173:5-11.

21 Reading Test vs. Memory Test

22 20. Maronick conduct a reading test (stimulus remained in front of
23 the respondent) on survey 2, but conducted a memory test (stimulus shown to
24 respondents and then removed from view) on survey 3. pp. 101:6-102:7; 103:6-12;
25 110:18-20.

26 21. Maronick testified that he believed a memory test should always
27 be used. pp. 102:22-103:5.

28

1 22. Maronick disagreed that a memory test was inappropriate in
2 relation to survey 3. p. 109:1-23.

3 23. Maronick agreed that a respondent would be more likely to
4 notice the disclaimers on the DMV.ORG webpage if he had conducted a reading test
5 on survey 3. pp. 109:24-110:2.

6 **High Involvement vs. Low Involvement Decision-Making**

7 24. Maronick described a high involvement decision as one in which
8 a respondent is likely to take more time in evaluating the decision to be made.
9 p. 104:7-16.

10 25. Maronick testified that he did not know whether the decision to
11 purchase online traffic school was a casual decision and that because of that he
12 instructed respondents to read carefully. p. 108:3-20.

13 26. Maronick testified that whether the Internet is a low or high
14 involvement process depends on various factors. p. 115:18-116:9.

15 27. Maronick testified that his survey was designed to mimic a high
16 involvement decision. pp. 108:11-25; 116:3-9.

17 28. Maronick testified that he believed viewing DMV.ORG to be a
18 low involvement process. p. 104:20-24.

19 **Consumer Purchasing Habits**

20 29. Maronick agreed that the goal of a college student with a traffic
21 ticket is typically to get out of a traffic ticket as cheaply and quickly as possible.
22 pp. 137:23-138:13.

23 30. Maronick agreed that a consumer is likely to hunt around on a
24 variety of websites before making a purchasing decision and that they are going to
25 be more careful when making a decision. pp. 217:13-218:14.

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

31. Maronick testified that by the phrase "recommended by the DMV," he meant that a traffic school course would serve to discharge a traffic ticket. pp. 139:21-140:15.

Dated: November 12, 2007

Respectfully submitted,

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By Ashley E. Merlo
ASHLEY E. MERLO
Attorneys for Defendants