

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

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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

EDRIVER, INC., ONLINE GURU,
 INC., FIND MY SPECIALIST, INC.,
 and SERIOUSNET, INC., California
 corporations; RAVI K. LAHOTI, an
 individual; RAJ LAHOTI, an
 individual; DOES 1 through 10,

Defendants.

Case No. CV 06-7561 PA (CWx)

The Hon. Percy Anderson

**DEFENDANTS' COUNTER
 DESIGNATIONS TO PLAINTIFFS'
 DEPOSITION DESIGNATIONS OF
 EXPERTS HOLLANDER AND
 SIMONSON**

Complaint Filed: November 28, 2006
 Trial: October 30, 2007

1 with the relevant state material to the state in which
2 they resided.

3
4 **AND (85: 4-14)**

5 Page 85

6 4 Q Would it have been reasonable if you had been
7 5 told that only one percent of the traffic comes in
8 6 through that United States top page? Would that still be
9 7 a reasonable assumption on your part?

10 8 A Had I been told that, I have no idea what I
11 9 would have done. I didn't ask people to make a decision
12 10 on the first page. I asked them to make a series of
13 11 decisions, series of judgments, to express a series of
14 12 opinions after they had navigated, had been exposed to
15 13 four separate pages, three of which had DMV.ORG on them,
16 14 three of which had CAR.ORG on them.

17
18 **AND (86: 7-15)**

19 Page 86

20 7 Q Then you must have looked at some website,
21 8 traffic information to determine the reliability of your
22 9 assumption, correct?

23 10 A No, sir, I did not. To repeat myself, I went
24 11 where I started. It was the United States map, then I
25 12 clicked my way through as a resident of California and
26 13 these were the screens that came up and they came up in
27 14 that order and it made sense to me to use these four

28

1 15 screens.

2 **Counter-Designations by Defendants**

3 (84:7 -- 85:3)

4 Page 84

5 7 Q Did Mr. Daucher or anybody give you information
6 8 that indicated the actual traffic to that website and how
7 9 it enters, the reality of that?

8 10 A I believe that I was told that there are many
9 11 ways that people can get into that website and maneuver
10 12 through it and that there was no one set way.

11 13 Q Who told you that?

12 14 A I believe Mr. Daucher. I don't know who else
13 15 would tell me there are many ways through it. I selected
14 16 a -- I selected a series of screens that I thought would
15 17 be reasonably representative of the issues at hand that
16 18 would display the litigated issue as a reasonably prudent
17 19 respondent or consumer may see it when reasonably
18 20 browsing those websites. So those are my decisions. Is
19 21 that the only way people could have gotten there? No, it
20 22 was not the only way that people could have gotten there.

21 23 Q In your professional opinion, it's your judgment
22 24 as to what is reasonable and correct in designing a
23 25 survey?

24 Page 85

25 1 A My judgment is that this was a reasonable way to
26 2 introduce the issue in an unbiased fashion presenting all
27 3 of the issues that were relevant.

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1 **AND (85:15-22)**

2 Page 85

3 15 Q Why did you select four pages, not six, not one,
4 16 not 17?

5 17 A It was in my judgment a reasonable compromise
6 18 between the potential number that could clearly exceed
7 19 four and I didn't want to fatigue the respondents. It
8 20 was certainly more than one. It was in my judgment, my
9 21 sole professional judgment, this was a reasonable way to
10 22 present the issue.

11

12 **Grounds for counter-designations:**

13 Completeness, Fed. Rule Evid. 106.

14

15 **1.2. Testimony offered by Plaintiffs**

16 **(94:6 -- 95:13)**

17 Page 94

18 6 Q As I sit here today, there's no way for you to
19 7 tell me what the perceptions of any one of those four
20 8 states was, Alabama, Maryland, Arizona, New Mexico. You
21 9 can't separate those states out; is that correct?

22 10 A That's correct.

23 11 Q Did Mr. Daucher tell you which of those four
24 12 states has a DMV and which does not as its motor vehicle
25 13 group?

26 14 A The reason that those states were selected was
27 15 that California has a DMV, and to the best of my

28

1 16 knowledge, the other four states do not have a DMV
2 17 nomenclature.

3 18 Q You didn't disclose that anywhere in your
4 19 report. Is there a particular reason why you didn't make
5 20 an issue of that in preparing your report?

6 21 A You have to help me.

7 22 Q Is there a particular reason you chose --

8 23 A I heard you.

9 24 Q Let me withdraw the question.

10 25 Is there a particular reason you didn't disclose

11 Page 95

12 1 that particular issue in your analysis?

13 2 A That the residents of Alabama, Arizona, Maryland
14 3 and New Mexico do not have a DMV?

15 4 Q Yes, sir.

16 5 A There was no reason at all.

17 6 Q What's the point of having them in there at all?

18 7 A To repeat what I told you earlier, sir, to get
19 8 the responses of people who do not have a DMV in their
20 9 state, to see whether or not they responded differently
21 10 to a DMV.ORG list.

22 11 Q Did you come to any conclusion on that point?

23 12 A I came to a conclusion that there's no
24 13 difference.

25 **AND (96:24 -- 97:3)**

26 Page 96

27 24 Q Okay. Do you think that 87 respondents is
28

1 25 statistically reliable respondents to ascertain the

2 Page 97

3 1 perception of people in the state of Alabama?

4 2 A I didn't attempt to report the results of the

5 3 state of Alabama. I did look at respondents in four

6

7 **Counter-Designation by Defendants**

8 **(96:3-11)**

9 Page 96

10 3 Q Okay. Is it your view that your survey, if

11 4 properly designed, comes to the conclusion or supports

12 5 the opinion that people who live in states where there is

13 6 no DMV have the same level of recognition of the term DMV

14 7 as those that live in the state that does have a DMV?

15 8 A If I understood what you just said, the answer

16 9 to your question is, yes, I believe I saw no difference

17 10 between the California respondents and the aggregated

18 11 non-California respondents.

19

20 **AND (228:10 – 229:16)**

21 Page 228

22 10 Q Okay. Now, if you look at the question 1-A,

23 11 DMV, slash, state, slash, government. Look at the

24 12 results that go across in the six columns. Would you

25 13 agree that the results for the non-DMV states indicate a

26 14 lower affiliation opinion than California?

27 15 A I would.

28

1 16 Q Yet you combined those non-DMV states with
2 17 California to formulate your opinion, didn't you?
3 18 A I did.
4 19 Q Would you agree that the numbers in the non-DMV
5 20 states lower the total number of people in the entire
6 21 test group and control group that found an affiliation?
7 22 A They were lower in both the test and control
8 23 group, true.
9 24 Q When you combine them with California, would you
10 25 agree that the net result was to lower the overall

11 Page 229

12 1 result?
13 2 A Yes. I would agree with that.
14 3 Q Now, does it concern you to have so many
15 4 controls that are in excess in this chart of the test
16 5 groups? For example, question 1-B, your control of 14.7
17 6 exceeds 12.6 on the DMV, slash, state, slash, government
18 7 line, meaning that the control, it's a negative. I mean,
19 8 we have a control group that's supposedly measuring
20 9 noise, you're assuming the entire test group and some.
21 10 What does that mean?

22 11 A It means what I've been trying to tell you it
23 12 means, sir, that anything that appears on those pages
24 13 dealing with the subject of traffic schools may, in fact,
25 14 be thought to have some relationship, affiliations,
26 15 sponsorship or endorsement with an official governmental
27 16 agency. I have been saying that consistently.

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Grounds for counter-designation:

Completeness, Fed. Rule Evid. 106.

1.3. Testimony offered by Plaintiffs

(97:21 -- 98-5)

Page 97

21 Q Of the 834, 490 were in the test group and only
22 344 were in the control group. Do you have an
23 explanation for the considerable disparity between those
24 two numbers?

25 A I had originally intended to talk to 300 in the

Page 98

1 test group in California and 200 in the control group in
2 California. When I decided to add individual states, I
3 decided to add 50/50 in each state, which led me to the
4 disparity -- some of that disparity is simply response
5 disparity over which I had no control.

Counter-Designation by Defendants

(98:6-20)

Page 98

6 Q Okay. Is there a particular reason that you
7 felt it unnecessary to try to equalize those two groups,
8 the test group and the control group? You said a second
9 ago you wanted originally 300 in the test and 200 in the
10 control. That's a 35-percent difference. Why did you

1 11 design the survey with fewer in control by design than --
2 12 fewer than the number in the test group?
3 13 A Because the control is -- I have to be very
4 14 careful with my response. It's more important that I be
5 15 able to, if I need to, drill down deeper in the test
6 16 group than the control group. As it turns out, it was
7 17 not necessary to drill down into either of those two
8 18 groups. I specifically and usually, if I have a choice,
9 19 elect to interview more people in a test group than I do
10 20 in a control group.

11
12 **Grounds for counter-designation:**

13 Completeness, Fed. Rule Evid. 106.
14

15 **1.4. Testimony offered by Plaintiffs**

16 **(99:21 – 100:7)**

17 Page 99

18 21 Q Of the 483 that were Californians, how many of
19 22 those were in the test group and how many were in the
20 23 control group?

21 24 A I did not report that.

22 25 Q Okay. And how many of the 351 that are
23 page 100

24
25 1 non-California are in the test group and how many are in
26 2 the control group?

27 3 A Once again, I have not reported.
28

1 4 Q How many residents of the state of Alabama were
2 5 in the control group and how many were in the test group?

3 6 A I can give you a blanket response. I did not
4 7 report that in any of the five states.

5
6 **Counter-Designation by Defendants**

7 But see Trial Exhibit 193 (breaking out number of California participants in
8 test and control groups) (authenticated at Amended Hollander Declaration, ¶ 25).

9
10 **Grounds for counter-designation:**

11 Completeness, Fed. Rule Evid. 106.

12
13 **1.5. Testimony offered by Plaintiffs**

14 **(109:4-14)**

15 Page 109

16 4 Q Okay. Are you isolating DMV.ORG from the
17 5 content it's contained in, the pages on which it's
18 6 presented as part of your consideration?

19 7 MR. DAUCHER: Vague.

20 8 THE WITNESS: I want to answer your question,
21 9 but I'm not certain what you mean by isolating that. I
22 10 presented respondents with four pages and I asked
23 11 their -- take away their gestalt opinion after viewing
24 12 these four pages. One of the elements was DMV.ORG. Many
25 13 of the elements were not.

26
27 **AND (111:5-24)**

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1 Page 111

2 5 Did you attempt to test the belief of the public
3 6 about whose website the DMV.ORG website is?

4 7 A Whose website? Well, it seems to me that
5 8 tangentially I certainly did by asking if this website or
6 9 any elements upon it were affiliated, sponsored or
7 10 endorsed by anyone else. I guess the answer to your
8 11 question is yes. Did I ask them a direct question whose
9 12 website this is? I did not.

10 13 Q Why not?

11 14 A Because that was not the issue.

12 15 Q Really?

13 16 A That was not my understanding of the issue,
14 17 Counselor.

15 18 Q Is it possible your understanding is confused on
16 19 that issue?

17 20 A It is always possible that I'm confused.

18 21 Q You did not ask anywhere in any of your
19 22 questions whose website is if it, did you?

20 23 MR. DAUCHER: Asked and answered.

21 24 THE WITNESS: I did not.

22

23

24

25 **AND (112:19 -- 113:12)**

26 Page 112

27 19 Q Tell me where it says -- tell me where it says,

28

1 20 Mr. Hollander, you're testing the belief of the public as
2 21 to whose website they are looking at.

3 22 A I never said I did. I repeatedly told you in
4 23 this deposition, I have not.

5 24 Q Why not? Why didn't you test that?

6 25 A Because as I understood the issue, it was what a

7 Page 113

8 1 reasonably prudent potential buyer --

9 2 MR. MAKOUS: I apologize for pointing, Brian.

10 3 THE WITNESS: -- believe that DMV.ORG is
11 4 affiliated with or endorsed or sponsored by the
12 5 Department of Motor Vehicles or some other state entity.
13 6 That is the question I set out to answer.

14 7 BY MR. MAKOUS:

15 8 Q But you didn't ask the direct question, who
16 9 endorses this website, if anyone, or who sponsors this
17 10 website, if anyone, or who owns this website, if anyone,
18 11 did you?

19 12 A Asked and answered. No, I didn't.

20

21 **Counter-Designation by Defendants**

22 (109:14 -- 110:15)

23 Page 109

24 14 BY MR. MAKOUS:

25 15 Q Uh-huh. So did you come to an opinion about
26 16 what DMV.ORG actually communicates to the purchasing
27 17 public?

28

1 18 A What DMV or DMV.ORG?

2 19 Q DMV.ORG, the website name and domain name

3 20 actually communicate to the purchasing public.

4 21 A I concluded it does not communicate affiliation

5 22 in connection with sponsorship or endorsement.

6 23 Q By anybody?

7 24 A By darn close to that, but certainly by the

8 25 Department of Motor Vehicles, the state or other

9 Page 110

10 1 governmental agencies.

11 2 Q Okay. And in your view, did you test the

12 3 perception of the purchasing public as to its

13 4 understanding of the domain name DMV.ORG?

14 5 A I believe that I fairly tested whether or not it

15 6 was perceived to be affiliated, sponsored or endorsed by

16 7 any entities specifically by the state --

17 8 Q Okay.

18 9 A -- or by the Department of Motor Vehicles.

19 10 Q Did you attempt to test the perception of the

20 11 consuming public as to the DMV.ORG website?

21 12 A I'm not -- I believe that's -- that in the main,

22 13 that's what I attempted to do, and in the main, I believe

23 14 that's what I succeeded in doing by giving them a fair

24 15 representation of that website.

25 **AND (112:1-11)**

26 Page 112

27 1 Q In fact, your first question after the screening

28

1 2 question was, as I read it in your report, quote, if you
2 3 have an opinion, do you think that any of the entities
3 4 shown on these four pages is affiliated, comma, with
4 5 anyone else, comma, or that none of them are affiliated
5 6 with anyone else, question mark. Correct?

6 7 A Correct.

7 8 Q Okay. That's not testing ownership of the
8 9 website at all, is it?

9 10 A That is not asking a question about ownership.
10 11 It is asking a question about affiliation.

12 **Grounds for counter-designation:**

13 Completeness, Fed. Rule Evid. 106.

14
15 **1.6. Testimony offered by Plaintiffs**

16 **(125:10 -- 126:12)**

17 Page 125

18 10 Q Now, the next paragraph after the list of things
19 11 says, we're going to show you four web pages and ask you
20 12 some questions about them, close quote.

21 13 Is that your work? Did you write that?

22 14 A Yes, I did.

23 15 Q So you're sensitizing the respondents as to what
24 16 they expect to see; is that correct?

25 17 A I'm going to object to the use of the word
26 18 "sensitized." Sir, I'm telling the respondents that they
27 19 were going to be seeing more than one page.

28