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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE PERCY ANDERSON, JUDGE PRESIDING

TRAFFICSCHOOL.COM, INC., et al.,)

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Plaintiffs,)

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Vs.)

No. CV 06-7561 PA

)

)

EDRIVER, INC., et al.,)

)

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Defendants.)

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REPORTER'S DAILY TRANSCRIPT OF TRIAL PROCEEDINGS

LOS ANGELES, CALIFORNIA

TUESDAY, NOVEMBER 6, 2007

LEANDRA AMBER, CSR 12070, RPR
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A P P E A R A N C E S

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I N D E X

PLAINTIFFS WITNESS

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1 LOS ANGELES, CALIFORNIA; TUESDAY, NOVEMBER 6, 2007; 9:02 A.M.

2 -o0o-

3
4 THE CLERK: Calling Civil Case CV 06-7561,
5 trafficschool.com, Incorporated, et al., versus edriver,
6 Incorporated, et al.

7 Counsel, please state your appearances for the
8 record.

9 MR. MAKOUS: David Makous, Daniel De Carlo, and
10 Mina Hamilton for the plaintiffs.

11 MR. DAUCHER: Brian Daucher, Ashley Merlo, and
12 Joseph Tadros for the defendants, your Honor.

13 THE COURT: Good morning.

14 All right. Does either side wish to be heard on
15 their motions in limine?

16 MR. MAKOUS: Yes, your Honor. Plaintiffs would
17 like to be heard briefly.

18 THE COURT: All right.

19 MR. MAKOUS: Good morning, your Honor.

20 We think it useful to comment at the beginning of
21 this trial on the two surveys. And just to refresh the Court
22 on this --

23 THE COURT: I don't need to be refreshed. I have
24 read the motions.

25 MR. MAKOUS: Okay. I would like to address, then,

1 the motion to exclude Mr. Hollander and its relevance to
2 Dr. Simonson first.

3 As a fundamental position here, the defendants
4 asked for additional time, having not conducted and filed and
5 served a survey which was on the principal issues in this
6 case -- that is, the deceptive nature of the search engines
7 and the Web pages -- they essentially characterize a survey
8 which has nothing to do with what Mr. Maronick did as a
9 rebuttal survey when, in fact, it was a survey that might
10 have been presented initially.

11 Mr. Hollander is critiquing Dr. Maronick, as is
12 Mr. Simon -- Dr. Simonson. In the interest of fairness, and
13 we believe the rules contemplate this, we are entitled to one
14 expert to do so, not two, and that the rebuttal survey be
15 excluded so as not, in fact, a rebuttal survey at all.

16 THE COURT: If their testimony is cumulative, you
17 can object.

18 MR. MAKOUS: Okay.

19 THE COURT: And I'm not going to allow cumulative
20 testimony.

21 MR. MAKOUS: So in essence, your Honor, your
22 position is that they can pick their expert?

23 THE COURT: My position is if their testimony is
24 cumulative, then I'll exclude it. I'm not going to entertain
25 testimony that's merely repetitive. So two experts aren't

1 going to testify about the same -- are going to say the same
2 thing twice.

3 MR. MAKOUS: Thank you for your clarification.
4 That disposes with that as far as I'm concerned, your Honor.

5 As far as the -- our motion to exclude
6 Mr. Hollander, it's fundamentally based upon this. He did
7 not test any issue pertinent to this litigation. What
8 Mr. Hollander attempted to do is ask an incomprehensible
9 question with inappropriate stimuli and seek out some wide
10 range of mental associations in the minds of the consuming
11 public, which is not pertinent to the 43A case we have before
12 us.

13 The question he asked we believe is not
14 understandable, and we believe that it is irrelevant.
15 Several reasons why: He didn't test the same universe that
16 Dr. Maronick did. He combined universes from multiple states
17 where there is no DMV and failed to allocate any data, and
18 changes in data accordingly. He used multiple stimuli that
19 are -- were not tested by our expert and also not what would
20 be seen by the survey respondents.

21 That is to say that a survey respondent would see
22 a page, have it presented, and then make a decision to go
23 somewhere else. He aggregated all of those.

24 In several states he -- none of the respondents
25 would have seen the fourth stimuli.

1 So in conclusion, none of the information sought by
2 Mr. Hollander is relevant to this litigation.

3 Let me briefly put up the question that
4 Mr. Hollander posed to the respondents.

5 THE COURT: Did you put that question in your
6 brief?

7 MR. MAKOUS: Yes, your Honor.

8 THE COURT: I -- I've read your briefs. I've seen
9 it.

10 MR. MAKOUS: Okay. So would the Court permit that
11 I put it up and go over it?

12 THE COURT: Counsel, how much longer do you need --

13 MR. MAKOUS: Well --

14 THE COURT: -- for your argument?

15 MR. MAKOUS: -- my argument is essentially that,
16 your Honor, as the Court would -- we can put up a
17 demonstrative.

18 THE COURT: How much time would you like to
19 conclude your argument?

20 MR. MAKOUS: I have concluded my argument, your
21 Honor. It's not reliable nor relevant nor within the scope
22 of the acceptable testimony under Daubert.

23 THE COURT: Do you want to put this up?

24 MR. MAKOUS: Okay. Pardon me, your Honor. I'm
25 just searching for that question.

1 THE COURT: Uh-huh.

2 MR. MAKOUS: Just give me a second.

3 Let me show the Court very briefly what
4 Mr. Hollander showed to the survey respondents.

5 This is the first screen shot that was shown to the
6 respondents. And if you'll note there are several things
7 of -- that's different than what Mr. Maronick did. First of
8 all, it has "The Unofficial Guide to the DMV" here, which did
9 not appear when Dr. Maronick surveyed. It has a different
10 plate number in the upper left-hand corner, *DMV.org*.

11 It also is comprised of an entire page, which is
12 the top page essentially of the Website.

13 Dr. Maronick tested the Traffic School California
14 page. It then is followed by a second page, which one would
15 have to click through to get to on that site, called "The
16 unofficial online guide to the California DMV."

17 This is not what someone would see visiting the
18 site, unless they were progressing through it in the order
19 identified.

20 Then there is this third page here with noticeable
21 white space below it, which has the offensive references that
22 plaintiff is essentially complaining of. It has the "I Drive
23 Safely" traffic school partnership with the plaintiff -- the
24 defendants in the middle of the page and then a lot of white
25 space below it.

1 At the very bottom of this, if someone were to
2 scroll down, they would see this disclaimer that appears at
3 the bottom.

4 In conducting this -- finally, there is -- again,
5 if one would click through, you would go to the "I Drive
6 Safely" page, which is this page. These are four separate
7 pages, three of which would not be presented at the same time
8 to the viewer, but in sequence, if the viewer chose to go
9 through this site in this fashion.

10 This last page, of course, is not the *DMV.org* page.
11 It's a click to the "I Drive Safely" part of *DMV.org*.

12 They also accompany this with an instruction to the
13 survey respondents to scroll down if they chose to do so.
14 That was in the survey. No such instruction exists in the
15 real-world Website of the defendants. There's no instruction
16 to scroll down.

17 Then Mr. Hollander asks this question, which I've
18 made my notes on. It says right here, "Mr. Hollander's
19 question: If you have an opinion" -- this is to the survey
20 respondents after they have looked at the four pages.

21 "If you have an opinion, do you think that any of
22 the entities shown on these four pages is affiliated with
23 anyone else or that none of them are affiliated with anyone
24 else?"

25 It seems to be incomprehensible.

1 What does a "yes" answer mean to that? What does a
2 "no" answer mean to that?

3 There's three questions in there. If you have an
4 opinion, it is an assumption, but it's also a question: Do
5 you have an opinion?

6 The second part of that is "Do you think any of the
7 entities shown on this page is affiliated with anyone else or
8 that none of them are affiliated with anyone else?" I can't
9 answer that question.

10 I asked Mr. Simonson -- Dr. Simonson at his
11 deposition, "Is that a clear question?"

12 His answer was, and it's in our brief, "I'm not
13 sure."

14 This is their expert.

15 Now, you know, taking in and taking that particular
16 question for what it's worth, what is it testing? It's not
17 testing the Website sponsorship affiliation or ownership,
18 which is the element of this case at issue. Does the
19 consumer believe -- in this particular paradigm, does the
20 consumer believe that they are somehow somewhere, that is,
21 either at a DMV site or a site that is authorized by the DMV,
22 in essence?

23 Dr. Maronick asked the right question, the best
24 question: Whose Website is this? Period. Who makes this
25 product? Time immemorial approved question styling.

1 Mr. Hollander asked something that no one can
2 answer. So not only is it an unreliable question; it's
3 irrelevant. Now, let me tell you why it's irrelevant
4 further.

5 If you look at this exhibit, it has multiple
6 entities on it. And it's -- again, I apologize. I'm just
7 going to flash it.

8 There are four pages here. They have all sorts of
9 information on it. There are states all over the place.
10 There's Geico. There's Progressive. There's Unofficial
11 Guide. There's *DMV.org*. If my recollection serves me,
12 50 percent of the people that answered this question said,
13 "I don't know. I'm not sure if any company is affiliated
14 with any or if not" -- whatever that question means. More
15 testimony -- 50 percent is testimony that this is an
16 incomprehensible question.

17 What does "yes" mean when you answer? What does
18 "no" mean? It means basically anything.

19 This Court is not being asked in this case to
20 ascertain whether anybody on the top page of the *DMV.org*
21 Website, "The Unofficial Guide to the DMV," has a
22 relationship with anyone else. It's not the issue. The
23 public needs and its responses are unreliable, irrelevant.

24 The consequence of that, Mr. Hollander's study
25 should not be admitted into evidence.

1 Thank you, your Honor.

2 And I will respond on Dr. Maronick any criticisms
3 they have of his.

4 THE COURT: Are you done?

5 MR. MAKOUS: Thank you.

6 THE COURT: Do you wish to be heard?

7 MR. DAUCHER: Your Honor, we don't need to be heard
8 on our motion to exclude Maronick. I believe that's
9 adequately addressed in our papers. And I also frankly
10 believe we've adequately addressed the issues he's raised
11 today because those are exactly the arguments they presented
12 in their motions in limine.

13 One point I would make, though, with respect to the
14 question that he asserts that Maronick asked as being a
15 proper question. The questions that Dr. Maronick asked are
16 exactly the type of leading questions that you would not
17 allow one of us to ask a witness in the courtroom. And the
18 question that Dr. -- that Hollander asked is the type of
19 nonleading question that opens the door to further
20 investigation. That's the fundamental dispute between those
21 two surveys.

22 You've got Hollander, who is seeking to measure
23 commercial impression, not trying to establish a commercial
24 impression by jamming a question down the throat; and you've
25 got Maronick, who is demanding a commercial impression.

1 And those are -- that ships in the night. We did
2 a rebuttal survey to show how different the results are when
3 you use a nonleading question as opposed to a leading
4 question. So I think it's been -- it's fully briefed in
5 terms of the legal arguments that have been presented, the
6 propriety of those surveys, and with that I would submit.

7 THE COURT: You have two experts that are going to
8 testify or criticize their survey -- their expert's survey?

9 MR. DAUCHER: Hollander only created a rebuttal
10 survey. Simonson critiques the technique of Maronick. So
11 they are different. They are not cumulative. In fact, we
12 have done it by declaration already, your Honor.

13 THE COURT: Oh.

14 MR. DAUCHER: There wasn't even an objection
15 asserted on cumulative grounds to those declarations. So I'm
16 not sure it's really at issue anymore. But they are
17 different topics. Simonson comes in and points out what
18 Maronick did wrong. Hollander comes in and shows the Court
19 what the results look like if you correct for some of those
20 errors that we attribute to Maronick's survey.

21 So they are different in that way.

22 THE COURT: All right. Anything else?

23 MR. DAUCHER: Nothing further, your Honor.

24 THE COURT: Okay. All right. The plaintiffs'
25 motion to preclude the testimony of the defendants' expert --

1 well, many of the criticisms that counsel points out really
2 go to the weight that the Court should afford the experts'
3 testimony.

4 And so counsel will have an ample opportunity to
5 cross-examine the defendants' experts. So I'm going to deny
6 the motion in limine.

7 And the defendants' motion in limine to preclude
8 the plaintiffs' expert is also denied for similar reasons.

9 All right. Are you ready to begin?

10 MR. MAKOUS: Yes, your Honor.

11 MR. DE CARLO: Yes, your Honor. With one
12 exception, and we need to let our technical people, if the
13 Court permits, to set up the system so that we have access to
14 any exhibits.

15 THE COURT: The exhibits are on the computer?

16 MR. DE CARLO: They are, your Honor.

17 THE COURT: Okay. Are you going to -- are you
18 going to give an opening statement?

19 MR. DE CARLO: No, your Honor.

20 THE COURT: Okay. Do you wish to give an opening
21 statement?

22 MR. DAUCHER: We would also waive opening
23 statement.

24 THE COURT: All right. And who is your first
25 witness?

1 MR. DE CARLO: We're going to start with Mr. Raj
2 Lahoti, your Honor.

3 THE COURT: Okay. And the computer -- your
4 exhibits are on the computer?

5 MR. DE CARLO: Your Honor, we have -- for purposes
6 of the examination they're on the computer, and we'll be
7 asking Mr. Bruyere to call them up. And we also have
8 binders, which our staff people left our office before we did
9 and they're not here with the hard-copy binders, which were
10 for the Court and the witness.

11 And if we could take -- at some appropriate time if
12 we could take a short break to call and find out where they
13 are.

14 THE COURT: Well, let me see if I have this right.
15 So you have duplicates of the exhibits on the
16 computer --

17 MR. DE CARLO: Yes, your Honor.

18 THE COURT: -- correct?

19 Okay. So when you display them, that's going to be
20 the same as the hard copy; correct?

21 MR. DE CARLO: It is, your Honor. The only value
22 to having the hard copy is that some documents are multipage
23 and so we may ask the witness to look through a multipage
24 document to familiarize themselves with it. If we -- if --
25 it's more difficult to do that electronically because we

1 would have to go page by page by page because only one page
2 can appear on the screen at a time.

3 THE COURT: And the -- okay. There should be a
4 plug coming out of that machine. I think all you need to do
5 is put the -- plug the computer into that plug, and it should
6 work.

7 MR. DAUCHER: Your Honor, may I confer with my
8 client?

9 THE COURT: Yes.

10 MR. DE CARLO: Your Honor, can Ms. Hamilton be
11 excused so she can make phone calls to try --

12 THE COURT: Yes. That's fine.

13 Okay. Enough of this. Sir, you don't need to get
14 in the back of the machine. Flip on -- there should be a
15 button on the front of this -- on the front of the console
16 that says computer. Can you turn it around? All the way
17 around in front where the lady is.

18 Did you punch that?

19 Once you get to that set on the computer, okay.
20 Now go over to your computer -- that's a Dell?

21 THE WITNESS: (No audible response.)

22 THE COURT: Okay. Do you have something on the
23 screen on the computer now?

24 THE WITNESS: Yes, your Honor.

25 THE COURT: Okay. Then you're going to need to

1 hit -- I think you're going to need to hold down the function
2 key. And your F8 key, does it say "CRT" and "LCD"?

3 All right. Cycle through -- there you go.

4 THE WITNESS: Thank you, your Honor.

5 THE COURT: Yeah. You're welcome. My bill will be
6 delivered in the morning.

7 Now, do you need a chair?

8 THE WITNESS: Yeah. I'll just bring it back here,
9 your Honor.

10 THE COURT: Okay. So you're going to sit on the
11 bench?

12 All right. Now, what else do we need?

13 MR. DE CARLO: Well, ideally, your Honor, I would
14 have liked the hard copies to be able to both show the
15 witness and for my own purposes. But if the Court would like
16 to get started with just the electronic, I think I can get
17 through without hard copies. Our messengers left before we
18 did. I hope they didn't get in an accident or something.

19 THE COURT: I'm sure they didn't. They -- did
20 you -- can the person who went out to make a call -- have you
21 heard from them yet?

22 MR. DE CARLO: He's not come back in the courtroom
23 yet, your Honor.

24 THE COURT: Okay. Well, why don't we do this.
25 We'll give you ten minutes, and maybe you'll have some

1 information as to where they are. Maybe they'll be here by
2 then. So we'll take a recess for ten minutes, and then I'll
3 come back out and hopefully we'll be able to get started.

4 MR. DE CARLO: We apologize, your Honor.

5 MR. MAKOUS: Thank you, your Honor.

6 THE COURT: Okay.

7 THE CLERK: All rise. This United States Court is
8 in recess.

9 (Whereupon, from 9:34 a.m. to 9:54 a.m., a break
10 was taken.)

11 THE CLERK: All rise.

12 Please be seated.

13 THE COURT: All right. Counsel, are we ready to
14 begin?

15 MR. DE CARLO: Yes, we are, your Honor.

16 THE COURT: All right. Would you call your first
17 witness.

18 MR. DE CARLO: Yes, your Honor.

19 The plaintiff would like to call Mr. Raj Lahoti to
20 the stand.

21 THE COURT: All right.

22 THE CLERK: Please stand next to the Court reporter
23 and raise your right hand to be sworn.

24 Do you solemnly swear that the testimony you are
25 about to give in the matter now pending before this Court

1 shall be the truth, the whole truth, and nothing but the
2 truth so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Thank you.

5 Please take the witness stand.

6 **RAJ LAHOTI,**

7 called as a witness by counsel for the plaintiff(s) being
8 first duly sworn, testified as follows:

9 THE CLERK: Please state your full name and spell
10 your last name for the record.

11 THE WITNESS: Raj Kaumar Lahoti, L-a-h-o-t-i.

12 THE COURT: All right. Before we begin. Are there
13 any other potential witnesses in the courtroom who are not
14 parties?

15 MR. DE CARLO: No, your Honor.

16 THE COURT: Okay. Go ahead.

17 MR. DE CARLO: Thank you, your Honor.

18 **DIRECT EXAMINATION**

19 BY MR. DE CARLO:

20 Q. Good morning, Mr. Lahoti.

21 A. Good morning.

22 Q. I have put on the screen Exhibit 333, which I believe
23 you recognize; is that correct?

24 A. That's correct.

25 Q. Okay. And that is an organizational chart of your

1 organization; is that correct?

2 A. That's correct.

3 Q. Okay. And let's start out with what your position is
4 with each one of these entities. Well, actually, first of
5 all, let's start out with what this chart means. BizGroups,
6 Inc., is a -- the parent company that owns all of the
7 affiliates that are -- or all of the subsidiaries that are
8 listed below it; is that correct?

9 A. That's correct.

10 Q. Okay. And when we say "parent," we mean that BizGroups
11 owns all the stock of each one of those entities; is that
12 correct?

13 A. Yes.

14 Q. Okay. And your role with BizGroups, Incorporated, is
15 you are the CEO?

16 A. Yes.

17 Q. Okay. And are you also the CEO of Online Guru?

18 A. Yes. Each of the companies.

19 Q. Okay. On Online Gurus primary function is to do what,
20 sir?

21 A. It is a management and marketing company.

22 Q. And it manages and markets Website -- a Website
23 primarily, that being *DMV.org*?

24 A. That's one of the Websites; correct.

25 Q. There are other Websites it manages as well?

1 A. That's correct.

2 Q. Okay. And BizGroups, Inc., is a corporation that is
3 owned by two persons; is that correct? Yourself and your
4 brother, Mr. Ravi Lahoti?

5 A. Yes, that's correct.

6 Q. Okay. Edriver, Incorporated, what is its primary
7 business?

8 A. It owns the domain name *DMV.org*.

9 Q. And Find My Specialist, Incorporated, what is its
10 primary function?

11 A. It owns different types of domains, domains that were --
12 that we register for various purposes.

13 Q. Is it accurate to say that Find My Specialist owns
14 thousand of domain names?

15 A. I believe so.

16 Q. Okay. And is it also accurate to say that of the domain
17 names that Find My Specialist owns, there are at least
18 hundreds of domain names that are redirected to the domain
19 name *DMV.org*?

20 A. Yes, that's correct.

21 Q. Are there thousands?

22 A. I don't know if there's thousands.

23 Q. At least hundreds?

24 A. Yes.

25 Q. Okay. And ecatalyst, what does that do?

1 A. That owns different types of Websites.

2 Q. Okay. Are there any particular kind of Websites that it
3 owns?

4 A. It's the structure -- you know, how we're separating
5 them is it's -- hasn't been completely defined, but I think,
6 you know, we have a separation. Edriver owns the *DMV.org*
7 Website. Find My Specialist owns more so, you know, domain
8 names for various for kinds of uncategorized. And ecatalyst
9 are some Websites that we plan on building out, you know,
10 pretty soon. So actually sites that we're going to build on
11 to full Websites.

12 Q. Okay. Let's focus on *DMV.org*, which I believe you just
13 said the domain name is actually owned by edriver,
14 Incorporated; is that correct?

15 A. That's correct.

16 Q. Okay. But it is Online Guru that makes the *DMV.org*
17 Website; is that correct?

18 A. Yes.

19 Q. Okay. And is it also accurate to say that Online Guru
20 manages the *DMV.org* Website with permission from edriver via
21 a license agreement? Is that correct?

22 A. Yeah. The management agreement.

23 Q. Okay. The *DMV.org* domain name was registered in 1999?

24 A. Yes.

25 Q. Okay. You did not join the company -- or strike that.

1 You did not join the organization that operates
2 *DMV.org* until 2003; is that correct?

3 A. We -- yes. We formed an organization in 2003.

4 Q. Okay. I didn't mean to confuse you, but let's be clear.

5 BizGroups, Incorporated, is a parent corporation
6 that was formed only recently; correct? 2006.

7 A. 2007.

8 Q. 2007.

9 Okay. And when you joined the business, you
10 actually joined with entity?

11 A. Online Guru and edriver.

12 Q. And that was in 2003; correct?

13 A. Around June, July.

14 Q. And prior to that time you were a full-time college
15 student, and you recognized a -- an opportunity and so you
16 left college to run this business full time; is that
17 accurate?

18 A. No, that's not.

19 Q. Were you not a full-time college student before you
20 joined this business?

21 A. No. I was part time. I was taking probably two
22 classes.

23 Q. Okay.

24 A. And I was in a business even prior to that. So probably
25 three years before that I had my own -- or I had another

1 business with another partner.

2 Q. Okay. Now, let's talk about the business of
3 Online Guru.

4 MR. DE CARLO: If you could pull up Exhibit 301,
5 Mr. Bruyere, and also be prepared with 300.

6 BY MR. DE CARLO:

7 Q. Mr. Lahoti, *DMV.org* is principally a Website that -- I'm
8 sorry. Strike that.

9 *DMV.org*, as part of its business model, offers for
10 sale traffic school services or traffic school courses; is
11 that correct?

12 A. We -- that's not correct.

13 THE CLERK: Sorry. What's the exhibit number on
14 this?

15 THE WITNESS: 301.

16 MR. DE CARLO: I've placed on the screen
17 Exhibit 301.

18 BY MR. DE CARLO:

19 Q. Now Mr. Lahoti, would you take a look at Exhibit 301,
20 please.

21 A. That's correct. I mean yes, I'm seeing that.

22 Q. And you recognize this page, of course; right?

23 A. Yes.

24 Q. Okay. Now, this is actually a page -- I think you've
25 testified in your -- I've seen elsewhere that there's

1 approximately 4,000 total pages on the *DMV.org* Website.

2 A. Yeah, around there.

3 Q. I take it it fluctuates from week to week or day to day?

4 A. Yeah. I don't know the exact number, but yeah.

5 Q. Okay. And this particular page that we've placed on the
6 screen, which is Exhibit 301, this is a page which is
7 dedicated to traffic school in the state of --

8 MR. DE CARLO: Can you blow that up a little,
9 Mr. Bruyere.

10 BY MR. DE CARLO:

11 Q. In -- and this is a page that is dedicated to traffic
12 school in the state of Nevada; is that correct?

13 A. Yes.

14 Q. Okay. And through this page, if a user -- an Internet
15 user logs onto this page, they have an opportunity at this
16 page to purchase a traffic school -- traffic school course
17 through a company by the name of I Drive Safely; is that
18 correct?

19 A. Upon clicking on the link and visiting their site, they
20 can purchase a product from the advertiser.

21 Q. Okay. So the user clicks on this I Drive Safely link
22 and travels to the I Drive Safely Website where I Drive
23 Safely offers traffic school courses; is that correct?

24 A. Yes.

25 Q. Okay. And this is, of course, for the state of Nevada,

1 but you offer the -- you offer traffic school services in
2 this manner in other states as well; is that correct?

3 A. Yes. Advertise, yes. That's correct.

4 Q. Okay. And specifically with regards to I Drive
5 Safely -- by the way, I Drive Safely you would -- is an
6 affiliate of yours; is that correct?

7 A. No, that is not.

8 Q. They're not an affiliate?

9 A. No. They're not an affiliate.

10 Q. What would you call them?

11 A. They're an advertiser.

12 Q. They're just an advertiser?

13 A. Yes.

14 Q. Okay. Are you just a passive advertiser? Do you know
15 what that term means?

16 A. Passive advertiser in the sense that -- can you clarify
17 what that means?

18 Q. Sure.

19 Well, you promote these services on your Website,
20 don't you?

21 A. We have had the same discussion in the past. We
22 recommend them; so if that's what -- promote and recommend is
23 the same thing, then yes.

24 Q. Okay. And with regards to I Drive Safely, you have a
25 relationship with I Drive Safely for purposes of providing

1 traffic school services in addition to Nevada, also New
2 Mexico?

3 A. I think so, yes.

4 Q. Colorado?

5 A. Yes.

6 Q. Idaho?

7 A. Yes.

8 Q. And Virginia?

9 A. Yes. There's -- yes. That's correct.

10 Q. Okay. And are you aware that my client,
11 *trafficschool* -- are you familiar with my client
12 *trafficschool.com*?

13 A. Yes I am.

14 Q. Okay. And you're familiar with the type of business
15 that *trafficschool.com* runs; is that correct?

16 A. Of course.

17 Q. And they offer traffic school courses as well; correct?

18 A. Yes.

19 Q. Okay. And in some states *trafficschool.com* also uses
20 I Drive Safely as their traffic school fulfiller; is that
21 correct?

22 MR. DAUCHER: Objection. Foundation. Speculation.

23 THE COURT: Sustained.

24 BY MR. DE CARLO:

25 Q. Okay. Do you know, Mr. Lahoti, if my client,

1 *trafficschool.com*, has any type of relationship with I Drive
2 Safely?

3 A. Yes.

4 Q. Okay. And that relationship is one in which my client
5 utilized -- my client, *trafficschool.com*, utilizes I Drive
6 Safely to fulfill traffic school services for users of the
7 *trafficschool.com* Website; is that correct?

8 A. I don't know what specific states or how they -- how
9 they do it. I think -- I think *trafficschool.com*, your
10 client, collects, you know, the payment, and then, you know,
11 I Drive Safely potentially is the course that the person
12 signs up through. I'm not sure, though, exactly how that
13 works.

14 MR. DE CARLO: Okay. Can we go to Exhibit 303
15 Mr. Bruyere.

16 BY MR. DE CARLO:

17 Q. Okay. I put -- placed in front of you, Mr. Lahoti,
18 Exhibit 300, which is a page from the *trafficschool.com*
19 Website.

20 Do you recognize that?

21 A. Yes.

22 Q. Okay.

23 MR. DE CARLO: And if we go to the next page,
24 please, Mr. Bruyere. And the next page.

25 ///

1 BY MR. DE CARLO:

2 Q. As you can see from my client's Website, they also do
3 business with I Drive Safely in Nevada; is that correct?

4 A. I can't see that from here.

5 Q. You can't see that?

6 A. I'm sorry.

7 You said do they do business in the same state?

8 Q. Yes.

9 A. I thought you said they do business with -- they do
10 business in the same state as in Nevada, yes.

11 Q. Okay. By using I Drive Safely.

12 A. No. I can see that on this.

13 Q. Okay.

14 MR. DE CARLO: If we go to the next page

15 Mr. Bruyere.

16 BY MR. DE CARLO:

17 Q. And also New Mexico; correct?

18 MR. DAUCHER: Objection. Calls for speculation of
19 the witness as to the business of the plaintiffs, your Honor.

20 THE COURT: Sustained.

21 BY MR. DE CARLO:

22 Q. Do you know, Mr. Lahoti, if *trafficschool.com* provides
23 traffic school courses in the state of New Mexico through
24 I Drive Safely?

25 A. Just one second ago they flipped to the next page and I

1 saw I Drive Safely's logo; so if that is correct, then yes.
2 But I did not know that prior to this.

3 Q. Okay. So independent of these documents, you don't know
4 that?

5 A. No, I don't.

6 Q. Okay. Well, then, we went go over those documents
7 anymore.

8 Now, in addition to the states that I just
9 mentioned to you before -- your states, Nevada, New Mexico,
10 Colorado, Idaho, and Virginia -- *DMV.org* also offers traffic
11 school courses in other -- in other -- strike that.

12 *DMV.org* also enables its users to purchase traffic
13 school courses in other states; correct?

14 A. We advertise other traffic school courses similar to how
15 Google would advertise every product and service in the
16 entire world.

17 Q. Okay. And that includes California, the state of
18 California?

19 A. Yes. We advertise traffic school courses in California.

20 Q. And who do you do that through? Which entity -- which
21 advertiser?

22 A. At the moment I believe it is I Drive Safely.

23 Q. Okay. How about Florida? Do you do business in
24 Florida?

25 A. Yes. We advertise traffic school in Florida.

1 Q. Okay. And New Jersey?

2 A. Yes.

3 Q. And New York as well; correct?

4 A. Correct.

5 Q. Okay. Now, I think I asked you before if you promote
6 traffic school courses in those states. And your testimony
7 is that you recommend, but you're not comfortable referring
8 to that as promotion.

9 A. There was a time that we had recommendation language on
10 the advertisers listed on our site. At the moment I believe
11 they -- you know, we constantly change those things, and
12 right now it's been -- I mean, not constantly, but we've
13 evolved in changing to, you know, strictly a sponsor listing
14 on our site.

15 Q. All right. In 2006, Mr. Lahoti, did *DMV.org* market and
16 promote the advertisers that listed traffic school services
17 on the *DMV.org* Website?

18 A. As I set before, if promote and recommend to you mean
19 the same thing, yes. We did recommend these traffic school
20 services.

21 Q. Okay. What it means to me is not important.

22 What -- what does market mean to -- to you?

23 A. Market?

24 Q. Yes.

25 What does that mean to you?

1 A. We're advertising a service.

2 Q. Okay. So it just means "advertising"?

3 A. I think marketing means advertising. I'm not -- I'm not
4 sure if it means anything else.

5 Q. Okay. Let me ask the same question about promotion.

6 In 2006, just promote -- did you promote the
7 services of the traffic school providers that advertise
8 traffic school services on the *DMV.org* Website?

9 MR. DAUCHER: Objection. Asked and answered.

10 THE COURT: Sustained.

11 MR. DE CARLO: Okay. Could we pull up Exhibit 115
12 please, Mr. Bruyere.

13 Oh, 15. I'm sorry.

14 THE CLERK: 115?

15 MR. DE CARLO: 15. 15.

16 BY MR. DE CARLO:

17 Q. Mr. Lahoti, I believe you have -- this is a multipage
18 exhibit; so if you could pull out Exhibit 15.

19 THE COURT: Would you like to have Exhibit 15
20 placed before the witness?

21 MR. DE CARLO: Oh, I'm sorry, your Honor.

22 Yes. May the witness place Exhibit 15 -- may -- if
23 the Court permits, may Exhibit 15 be placed before the
24 witness?

25 THE CLERK: Which binder is this for? Condensed?

1 MS. HAMILTON: Excuse me?

2 THE COURT: All right. Let me see counsel at
3 sidebar.

4 (Sidebar.)

5 THE COURT: Okay. You don't have lawyers just
6 walking up. Okay? So you need to tell your side if they
7 want to approach, they need to ask permission. And try to
8 avoid after every question or every answer saying "okay."

9 Now, what are you guys doing with respect to these
10 exhibits? Have you come to any agreement as to their
11 admissibility?

12 MR. DAUCHER: We filed a joint exhibit list. Most
13 are non objected; so I believe they would be admitted under
14 your order.

15 THE COURT: Well, that's not true.

16 MR. DAUCHER: Okay.

17 THE COURT: So if you're going to offer -- well,
18 I don't know what you're doing right now. So none of these
19 exhibits are in evidence. So if you want it in, you're going
20 to have to offer it.

21 MR. DAUCHER: Okay.

22 MR. DE CARLO: At the time.

23 THE COURT: If you want to come to some agreement
24 that they're already and that they're admissible, that's
25 fine. If not, then you're going to have to offer them.

1 MR. DAUCHER: We'll reach a stipulation.

2 MR. DE CARLO: I believe if -- your Honor, if
3 it's -- may I just ask Mr. Daucher a question?

4 THE COURT: Uh-huh.

5 MR. DE CARLO: Mr. Daucher, every document that we
6 stipulated there's no objection to it -- may we have an
7 agreement or a stipulation that that be -- that exhibit be
8 automatically admitted into evidence without requiring to
9 have it admitted after each time it is raised?

10 MR. DAUCHER: Yes. So long as all the exhibits
11 there's no objection to are admitted I --

12 THE COURT: That's fine.

13 At the end of the day why don't you work out a
14 stipulation. And I'll just consider now that all the
15 documents that -- you're going to work out a stipulation as
16 to all the documents that you are displaying.

17 MR. DAUCHER: Okay.

18 THE COURT: Okay. And then make sure the clerk
19 knows -- whatever the stipulation is, make sure the clerk
20 knows. Okay?

21 MR. DAUCHER: Okay.

22 THE COURT: All right.

23 (Open court.)

24 MR. DE CARLO: May I continue, your Honor?

25 THE COURT: Yes.

1 MR. DE CARLO: Thank you.

2 BY MR. DE CARLO:

3 Q. Mr. Lahoti, do you have Exhibit 15 in front of you?

4 A. Yes.

5 Q. Okay. These are a series of exhibits that relate to the
6 agreements between Online Guru and some of your advertisers;
7 is that correct?

8 A. Yes.

9 Q. Okay. And in any of your agreements, does it indicate
10 that Online Guru is going to promote the services of the
11 advertisers?

12 MR. DAUCHER: Objection. Best evidence.

13 THE COURT: Overruled.

14 You can answer if you know.

15 THE WITNESS: Can you show me?

16 MR. DE CARLO: May I withdraw the question, your
17 Honor?

18 THE COURT: Yes.

19 MR. DE CARLO: Question withdrawn.

20 BY MR. DE CARLO:

21 Q. Mr. Lahoti, would you please turn to the page that reads
22 DEF 00244 on the bottom.

23 A. I don't know where that is. It goes from 242 to 249.

24 MR. DE CARLO: It is -- to help you out, it is the
25 agreement that reads Online Guru Business Development

1 Agreement.

2 May I approach the witness, your Honor, and show
3 him --

4 THE COURT: No.

5 Which exhibit number you are you referring to?

6 MR. DE CARLO: Exhibit 15.

7 THE COURT: Okay. And the numbers that you've
8 referred him to -- is that a Bates number on the document?

9 THE WITNESS: I see it now.

10 THE COURT: All right.

11 THE WITNESS: Sorry.

12 MR. DE CARLO: Okay.

13 BY MR. DE CARLO:

14 Q. Mr. Lahoti, do you recognize this document?

15 A. Yes.

16 Q. And this is a business development agreement between
17 Online Guru and who -- or whom?

18 A. Golden State Private School.

19 Q. Okay. And Golden State Private School is an entity that
20 does what?

21 A. They are a private school, and they also operate driving
22 schools.

23 Q. Driving education courses?

24 A. That's one of their businesses.

25 Q. Okay. And if you would look at Item B in the recitals.

1 A. Item B?

2 Q. Yes.

3 A. Oh, sorry.

4 Q. It says, "School desires to retain the company to market
5 and promote its business utilizing the URL
6 *teendriverseducation.com*, managed by the company."

7 Do you see that?

8 A. Yes.

9 Q. This is an agreement that was written by Online Guru; is
10 that correct?

11 A. Yes.

12 Q. *Teendriverseducation.com* is a domain name that is not
13 owned by Golden State Private School; is that correct?

14 A. The domain name itself is not.

15 Q. And Online Guru was going to, according to this
16 document, market and -- strike that.

17 Mr. Lahoti, what is your understanding of what
18 Online Guru was going to do -- in relation to the language in
19 this agreement that it was going to promote this business?

20 A. What was my understanding, you said?

21 Q. Correct.

22 A. That we would basically display this school throughout
23 our site. We would advertise it. We would recommend it. We
24 would do all those things.

25 Q. Online Guru offers driver's education courses in --

1 through its advertisers in California; is that correct?

2 A. We don't specifically offer driver's education. We --
3 we advertise -- we advertise them. There's two questions in
4 there, I think. So we advertise these courses in California,
5 driver's education.

6 Q. And so we're clear, the -- the student who purchases the
7 course through your advertiser, one of the states that they
8 could purchase the course in and take the driver's education
9 is California; correct?

10 A. Yes, that is correct.

11 Q. And another state is Florida; correct?

12 A. For driver's education, yes.

13 Q. And another state is New Jersey; correct?

14 A. Don't -- I don't know about New Jersey.

15 Q. You don't know?

16 And other -- do you know if another state is
17 New York?

18 A. I don't think so.

19 Q. You're not sure?

20 A. I'm not sure.

21 Q. Do you know if you offer driver's -- if you advertise
22 driver's education services in the state of Texas?

23 A. Yes.

24 Q. Okay. And do you know if you offer driver's education
25 courses through a company in Texas by the name of Virtual

1 Drive?

2 A. Yes.

3 Q. And Driver's Ed In A Box is another company?

4 MR. DAUCHER: Objection. No question.

5 THE COURT: Sustained.

6 BY MR. DE CARLO:

7 Q. Do you know if Online Guru advertises the services of
8 driver's education courses in the state of Texas by the name
9 of Driver's Ed In A Box?

10 A. I know that we do not anymore.

11 Q. When did that relationship terminate?

12 A. I think -- I think October 9th of this -- wait. This is
13 November. I think last month, 8th or 9th. You can ask
14 Mr. Moretti for exact date.

15 Q. You're familiar with my client, Driver's Ed Direct?

16 A. Yes, I am.

17 Q. And are you familiar with the states that Driver's Ed
18 Direct offers driver's education courses in?

19 A. Not off the top of my head.

20 Q. Okay. So you don't know if my client, Driver's Ed
21 Direct, does business with driver's education in Texas?

22 A. I do know that they do.

23 Q. How about Colorado?

24 A. At one time I did -- I did know. I don't know how it is
25 today, but yes.

1 Q. Do you know that -- do you know if Driver's Ed Direct
2 offers driver's education courses in the state of California?

3 A. Yes.

4 Q. And is driver's education -- strike that.

5 Is the state of California for Online Guru an
6 important market for driver's education courses?

7 A. I think -- I think every state is important.

8 Q. Is it one of the more profitable states for -- for
9 Online Guru?

10 A. I would say that we generate a fair amount of revenue
11 from the state of California.

12 Q. Okay.

13 MR. DE CARLO: Could we pull you have Exhibit 61,
14 please, Mr. Bruyere.

15 BY MR. DE CARLO:

16 Q. In --

17 MR. DAUCHER: What exhibit number is this?

18 MR. DE CARLO: 681.

19 THE CLERK: 681?

20 MR. DE CARLO: Yes.

21 THE COURT: Sir, yes.

22 All right. Does he have 681 in that bundle?

23 MR. DE CARLO: We have it. Your Honor, I was going
24 to have him look at the screen.

25 THE COURT: All right. Fine.

1 BY MR. DE CARLO:

2 Q. Mr. Lahoti, do you recognize this document?

3 A. I did not create this document, but let me just take a
4 look at it real quick.

5 Yes, I do. Or I mean I know the data.

6 Q. Okay. And this is a --

7 A. I can see the data.

8 Q. And this is a summary of revenues on a month-by-month
9 basis broken down by different types of courses of Online
10 Guru; is that correct?

11 A. Different types of courses of Online Guru?

12 Q. Yes.

13 A. These are the -- this is the courses that are sold of
14 our advertisers. Or the product -- it's not even courses.
15 It's products and services that the advertisers have sold
16 because I guess -- I mean, there's one, for example,
17 Jumby Bay Studios. They don't sell a course. They sell a
18 DVD. But yes. Generally most of these are the number of
19 courses or products that each of these companies are selling
20 through the relationship with Online Guru, where they're
21 advertising with us.

22 Q. The yellow band that's highlighted that -- specifically
23 I would like you to note online teen driving -- online and
24 online teen driving home study. Those are the revenues that
25 are generated through the relationship with the driver's

1 education provider in California; is that correct?

2 A. The -- those two lines, yes. That's correct.

3 Q. Okay.

4 MR. DE CARLO: And if you could go to the next page
5 please Mr. Bruyere.

6 BY MR. DE CARLO:

7 Q. Okay. In 2006 there's a Y -- a year-to-date column
8 there.

9 A. Okay.

10 Q. And can you identify the fifth line down, I believe.

11 There you go.

12 MR. DE CARLO: Thank you, Mr. Bruyere.

13 Right there.

14 BY MR. DE CARLO:

15 Q. That relates to the revenues for driver's education for
16 2006; is that correct?

17 A. The fifth line.

18 MR. DAUCHER: Objection. Vague.

19 THE COURT: Sustained.

20 You can rephrase.

21 MR. DE CARLO: Mr. Bruyere, are you able to put
22 these two documents next to each other, because unfortunately
23 the --

24 THE WITNESS: That's okay. I can see that.

25 ///

1 BY MR. DE CARLO:

2 Q. Okay. It looks like the fourth and the fifth item
3 relate to the California courses. So if we go to the second
4 page.

5 MR. DE CARLO: And if we could blow that up now
6 Mr. Bruyere; so we can see it better.

7 THE WITNESS: It's very small, but I can see it
8 says -- I think it says -- or I think it says 1.2 million and
9 then 141,000.

10 BY MR. DE CARLO:

11 Q. Thank you. That's what I was trying to get at.

12 A. Okay. I can see that.

13 Q. So for 2006 that represented a large percentage or a
14 substantial percentage of California driver's education
15 revenue for Online Guru; correct?

16 A. Can you say that one more time.

17 Q. The revenues generated from the California-based
18 driver's education courses represents a substantial segment
19 of the revenue for driver's education courses as a whole for
20 Online Guru; isn't that correct?

21 A. That's correct.

22 Q. And if we follow it over to the year to date in 2007,
23 that trend is continuing; is that correct?

24 A. That's year to date 2007? Yes, it is.

25 Q. So would you agree that California is a growing market

1 for Online Guru with regard to driver's education with
2 California?

3 A. Yeah. It has grown significantly. And I hope -- I hope
4 these things continue to grow.

5 Q. Okay. In addition to traffic school and driver's
6 education, Online Guru also advertises for sale a product by
7 the name of "Rules of the Road"; is that correct? It's a
8 DVD.

9 A. Yes. It's another product we advertise on our driver's
10 education pages.

11 Q. Are you aware that my client also offers for sale the
12 driver's -- the DVD entitled "Rules of the Road"?

13 A. I wasn't until I saw it on one of the exhibits.

14 Q. So you know now?

15 A. Yes.

16 Q. Online Guru provides vehicle history reports for
17 those -- strike that.

18 Online Guru makes available to Web visitors vehicle
19 history reports; is that correct?

20 A. Yes. That's a -- that's a product we also display or
21 advertise.

22 Q. My client also offers vehicle history reports.

23 Do you know -- strike that.

24 Do you know if my client also offers vehicle
25 history reports?

1 A. Somewhere on their site I saw that through these
2 exhibits. I would have never been aware if I -- if I didn't
3 see it in the exhibits because it's not very clear on the
4 site.

5 Q. Online Guru also advertises used car links; is that
6 correct?

7 A. Used car what?

8 Q. Links.

9 A. Yes.

10 Q. And are you aware if my client also offers used car
11 links on their Website?

12 A. Not aware of that.

13 Q. Online Guru offers links for insurance quotes; is that
14 correct? Car insurance quotes.

15 A. Yes. We link to insurance companies.

16 Q. That's a substantial part of Online Guru's revenues; is
17 that correct?

18 A. Advertising those services is.

19 Q. Do you know if my client advertises for insurance --
20 auto insurance links and quotes?

21 A. I don't -- I don't think it is a substantial part of
22 their business, and I don't think it's very clear where to
23 find those on their sites. Through litigation, I'm aware of
24 these things in exhibits. But even when I'm surfing on the
25 site to find these, I've -- I've had trouble to find them.

1 MR. DE CARLO: Your Honor, I would ask that the
2 answer be stricken as nonresponsive.

3 THE COURT: You asked the question. It will stand.
4 Overruled.

5 Next question.

6 BY MR. DE CARLO:

7 Q. Do -- does Online Guru offer links to enable users to
8 obtain driving records?

9 A. Are you talking about a specific state?

10 Q. No. For any state.

11 A. Yes. Through both advertisers and through linking
12 directly to the state government.

13 Q. Do you know if my client offers those same types of
14 links?

15 A. I don't know if they link to the state government, but
16 I do know, again through litigation, that they say that there
17 is some driving record they can order in California.

18 THE COURT: How much longer do you have with this
19 witness?

20 MR. DE CARLO: Probably another two hours, your
21 Honor.

22 THE COURT: Where does it say on here that you were
23 going to have two hours with this witness?

24 MR. DE CARLO: I believe in the original witness
25 list, your Honor, we estimated an hour to an hour and a half

1 on direct --

2 THE COURT: Well, I'm looking at a joint trial --
3 joint witness list with a summary of the witness testimony
4 and time estimates.

5 MR. DE CARLO: Yes, your Honor. If my memory
6 serves, I believe we indicated an hour to an hour and a half
7 with Mr. Lahoti. That -- that -- in preparing further for
8 Mr. Lahoti, I realized we need more time with him.

9 THE COURT: Well, Counsel, that's why we do this.
10 So you're going to need to conform to your estimates. And
11 one of the problems here, Counsel, why don't you ask him what
12 he knows about his own business. I assume you'll have your
13 own witness up here who will testify as to what your clients'
14 business is.

15 Obviously -- because he isn't objecting, but
16 obviously there's no foundation for some of this. And it's
17 just -- I don't know what the point is. He can certainly
18 testify as to what his business is, and you can put your
19 client on to establish what their business is. So go ahead.
20 But -- it's your witness, but the clock is running.

21 And which Mr. Lahoti is this?

22 MR. DE CARLO: This is Mr. Raj Lahoti.

23 THE COURT: Okay. Go ahead.

24 MR. DE CARLO: Thank you, your Honor.

25 BY MR. DE CARLO:

1 Q. Mr. Lahoti, part of Online Guru's business is to provide
2 content and information regarding driving-related links; is
3 that correct?

4 A. Yeah. Through the *DMV.org* Website, yeah.

5 Q. Okay. And *DMV.org* also provides links to DMV -- to
6 official state DMVs; is that correct?

7 A. Yeah. That's a big part of our Website.

8 Q. Mr. Lahoti, can -- a large part of your business is to
9 drive traffic to the *DMV.org* Website from Website users; is
10 that correct?

11 A. Yes.

12 Q. And the name of your company is Online Guru, and that is
13 a testament, I believe, to the fact that you have referred to
14 yourself as a -- as an expert in the -- in Website
15 management; is that correct?

16 A. Yes. I refer to myself as somebody who knows a lot
17 about this business.

18 Q. You're familiar with the term "search engine
19 optimization"; correct?

20 A. Of course.

21 Q. And search engine optimization is the process by which
22 you attempt to have users attracted to your site through
23 getting your listings to rise to the top of natural search
24 listings on search engines; is that correct?

25 A. That's -- that's the end -- yeah. That's the goal of

1 search engine optimization is to optimize your Website for
2 the search engines.

3 Q. And can you describe briefly what are the techniques
4 that you use to enhance search engine optimization.

5 A. I mean, that's -- that's like a -- I mean, there's a lot
6 of techniques in which -- tell me what -- what -- there's --
7 there's thousands of techniques to -- to -- and I -- and we
8 implement -- you know, it's good content, good information,
9 site structure, site architecture. Give me a little
10 direction here.

11 Q. I will.

12 The use of meta data assists with search engine
13 optimization; is that correct?

14 A. I don't know how much it assists anymore, to be honest
15 with you. Meta data has been -- is something that -- you
16 know, because you can just put whatever key words you want in
17 there, a lot of search engines kind of ignore a lot of that
18 nowadays. But we still do it because maybe there's some
19 directories that use it. But I'm not familiar if Google or
20 Yahoo! or MSN really use that anymore.

21 Q. Another element of assisting in search engine
22 optimization is the number of Websites that link to your
23 site; is that correct?

24 A. It's a little bit more complex than that, but it's the
25 type of Websites that link to you, their quality; you know,

1 all of that is factored into it.

2 Q. And that is -- search engine optimization is a different
3 concept than search engine marketing; is that correct?

4 A. Yeah. Search engine marketing is primarily when you pay
5 to sponsor your listing on the search engine.

6 Q. Search engine marketing is the type of practice where
7 you purchase key words or you bid on key words in search
8 engines like Google and Yahoo!; is that correct?

9 A. Yes.

10 Q. And the purpose of purchasing or bidding on certain key
11 words is to attract users who are interested in those
12 particular key words; correct?

13 A. Yeah. The people that are searching -- that are typing
14 those key words in and searching on those key words, you want
15 to advertise your product and service on the search engine so
16 that that user might be interested in your product.

17 Q. It's a very targeted way of -- of doing advertising?

18 A. Definitely. It's probably the most targeted way to do
19 it online.

20 Q. And it's very effective in your experience?

21 A. It depends on what your product is and -- or our product
22 and service. Yes, it's very effective.

23 Q. Are you familiar with the term "click per action"?

24 A. No, I'm not.

25 You mean cost per action?

1 Q. Cost per action. I apologize.

2 A. Yes. I'm familiar with that.

3 Q. Cost per action is the business model that Online Guru
4 primarily utilizes; correct?

5 A. It's -- yes. It's one of the ways that we get paid
6 through our advertiser, through the CPA model, yes.
7 Cost-per-action model.

8 Q. And that means you get paid through your advertiser when
9 a certain action is taken by the user. For example, a user
10 clicks on the I Drive Safely icon, travels to the I Drive
11 Safely Website, and purchases an I Drive Safely traffic
12 school course.

13 That's an action which will generate a revenue to
14 Online Guru; correct?

15 A. Correct. It's a -- it's a common form of
16 performance-based advertising.

17 Q. And that represents 85 to 90 percent of Online Guru's
18 revenues?

19 A. I believe so.

20 Sorry for interrupting.

21 Yes, I believe so.

22 Q. Are you familiar with a --

23 MR. DE CARLO: Can you pull up Exhibit 114, please.

24 BY MR. DE CARLO:

25 Q. Are you familiar with the Website called

1 *UnitedStates.org*?

2 A. Yes.

3 Q. And this Website, if you know, is owned by who or whom?

4 A. It's owned by us, I believe. Find My Specialist.

5 Q. Find My Specialist is one of those companies that is a
6 subsidiary of BizGroups; correct?

7 A. Correct.

8 Q. And what -- if I put the *UnitedStates.org* on your
9 screen.

10 MR. DE CARLO: And, Mr. Bruyere, if you with blow
11 up that portion.

12 BY MR. DE CARLO:

13 Q. It says, "*UnitedStates.org* guides you to the Websites
14 and services provided by the federal government. We offer
15 a valuable source of information critical to citizens of the
16 United States and those who plan to become citizens."

17 The purpose of *UnitedStates.org* is to direct
18 visitors to various federal government Websites; is that
19 correct?

20 MR. DAUCHER: I'm going to object on relevance to
21 the line of questioning.

22 THE COURT: Why is this relevant?

23 MR. DE CARLO: It goes to the misrepresentations of
24 the defendants.

25 And I have one more question, your Honor.

1 THE COURT: Sustained.

2 Move on.

3 BY MR. DE CARLO:

4 Q. There is a reference to *DMV.org*.

5 THE COURT: Counsel, ask a question, and then
6 I'll -- if there's an objection, I'll rule on it. So that
7 objection to that question is sustained.

8 Next question.

9 MR. DE CARLO: Would you highlight that,
10 Mr. Bruyere.

11 BY MR. DE CARLO:

12 Q. I've just highlighted a reference to a link to *DMV.org*,
13 where it says, "A comprehensive easy-to-read guide for your
14 Department of Motor Vehicles."

15 Is that a federal Website, Mr. Lahoti?

16 A. No, it is not.

17 Q. Okay.

18 MR. DE CARLO: Would you please pull up
19 Exhibit 322, Mr. Bruyere.

20 Okay. Could you blow up this section right here.

21 BY MR. DE CARLO:

22 Q. This is, Mr. Lahoti, a search result from a search for
23 the term "DMV."

24 Do you see that?

25 A. Yes, I do.

1 Q. Online Guru bids on the term "DMV" in its search engine
2 marketing strategies with Google and Yahoo!; is that correct?

3 A. Yes, that's correct.

4 Q. And the reason that *DMV.org* bids on DMV as a key word is
5 because *DMV.org* is hoping to attract those who type in the
6 word DMV in searches in Google and Yahoo!; is that correct?

7 A. Yes, that's correct.

8 Q. Now, in terms of how this page is laid out, the top
9 listing represents a sponsored listing; is that correct?

10 A. The top and the right side.

11 Q. Okay. So the top and the right -- the right is a
12 sponsored listing too?

13 MR. DE CARLO: Go back to the full screen, please.

14 BY MR. DE CARLO:

15 Q. So on this search result *DMV.org* is the first search?

16 A. On this one, yes, it is.

17 MR. DE CARLO: Can you, again, blow up the
18 reference to *DMV.org*, Mr. Hair?

19 BY MR. DE CARLO:

20 Q. Now, with regards to search engine marketing and these
21 advertisements -- these advertisements that appear, these are
22 advertisements in which the text is written by the
23 advertiser; is that correct?

24 A. Yes, that's correct. Upon approval by the editorial
25 policy of Google.

1 Q. You -- you --

2 MR. DE CARLO: Move to strike, your Honor, as
3 nonresponsive, the latter part of the answer.

4 THE COURT: Overruled.

5 BY MR. DE CARLO:

6 Q. You control, Mr. Lahoti, the text that is going to go on
7 this listing; correct? "You" meaning Online Guru.

8 A. Same answer as before. Yes. Upon approval by their
9 editorial policy.

10 Q. Google doesn't write the ad for you?

11 A. Actually, sometimes they do. Because we have a
12 relationship with Google, and they optimize our ads. They
13 write them, and they display what -- we have account
14 managers, and there are times when they're telling us, "Hey,
15 these are the ads that we wrote for you, and, you know, what
16 do you think," type of thing.

17 Q. Do you know if Google -- this is a Google page.

18 Do you know if Google contributed to the authorship
19 to the text of this sponsored ad?

20 A. This is a year ago; so I don't remember. But I know
21 that I, of course, approved it.

22 Q. Okay. Let's talk about this for a second.

23 You have identified yourself above the -- in the
24 advertisement as the -- as "California DMV." And then
25 underneath it is your domain name, *California.DMV.org*.

1 Why, Mr. Lahoti, is there an identification on this
2 sponsored link of California DMV?

3 A. Well, the headline allows you for 25 characters. And
4 the purpose of the headline is basically to talk about what
5 the subject matter is of that product or service or Website
6 that you're advertising.

7 So at this time we were just basically talking
8 about what is the subject matter. Just like if somebody
9 typed in "driver's license," we would say "California
10 driver's license." And we -- you further clarify what that
11 is in the description lines, which are one and two. But in
12 this case they're all across, which shows us -- it's a guide
13 to Department of Motor Vehicle information. It's a guide to
14 DMV license and registration.

15 Q. There's no reference on this to an unofficial guide;
16 correct?

17 A. Well, it doesn't specifically say that it's an
18 unofficial guide. However it says that it's a ".org" site,
19 and it's also a sponsored link, which is typically uncommon
20 for government entities to sponsor an advertisement on
21 Google --

22 Q. Mr. Lahoti --

23 A. -- unless -- I'm sorry.

24 Q. Ahead --

25 A. The military does advertise, though. So it's not --

1 they're not banned from advertising, but it's uncommon.

2 Q. Mr. Lahoti, at this time when this search engine -- when
3 this ad ran, you had been aware -- you had been made aware
4 that there were consumers that were confused about the
5 affiliation of *DMV.org*; is that correct?

6 A. During this time I was aware that there are some
7 consumers that may -- that may be confused as to the nature
8 of our product and service --

9 Q. Did you --

10 A. -- or as to the affiliation.

11 Q. And is there a reason why you did not put an indication
12 on this sponsored listing that you are not affiliated with
13 the California DMV?

14 A. There's very limited text that you're able to put on
15 this ad. So unless the entire ad says this site is not
16 affiliated with the government agency, that's pretty much all
17 you can fit in that ad. So at that time we felt once a
18 person clicks through, they're going to see our site.

19 Q. You're completely responsible under Google's policy for
20 the representations that are made in a sponsored
21 advertisement; is that correct?

22 MR. DAUCHER: Objection. Calls for a legal
23 conclusion.

24 THE COURT: Sustained.

25 BY MR. DE CARLO:

1 Q. According to Google's policy, Mr. Lahoti, are the -- is
2 the advertiser, Online Guru in this instance, responsible for
3 the representations that are made in a sponsored
4 advertisement according to Google's policy?

5 A. I do not know.

6 MR. DE CARLO: Can you please pull up --

7 THE WITNESS: I assume we're responsible, but I
8 don't know.

9 MR. DE CARLO: 95, please.

10 THE COURT: Counsel, you have about 45 minutes left
11 with this witness.

12 BY MR. DE CARLO:

13 Q. Would you read Number 2, Mr. Lahoti.

14 Had you reviewed -- strike that.

15 Have you reviewed Google's policies and procedures?

16 A. I have reviewed them in the past, yes.

17 Q. This indicates that the consumer is solely
18 responsible --

19 A. The customer, you mean.

20 Q. Sorry.

21 The customer is solely responsible; is that
22 correct?

23 A. What was that again?

24 That's correct. They -- they put the
25 responsibility on our end.

1 Q. Okay. Thank you.

2 MR. DE CARLO: Can you go to 323, please,
3 Mr. Bruyere.

4 BY MR. DE CARLO:

5 Q. This is a listing, Mr. Lahoti, that was done on May 22,
6 2007, and it's for the same search term, DMV.

7 Do you see that?

8 A. Yes.

9 Q. And your sponsored listing comes up again as the first
10 sponsored listing; correct?

11 A. Yes.

12 Q. And there's a difference between this one and the one
13 that we pulled up from 2006. And that's because the word
14 "info" is added to the sponsored link. Now it says
15 "California DMV info."

16 Do you see that?

17 A. Yes.

18 Q. So somebody at Online Guru went and added the word
19 "info."

20 Was there a reason for that?

21 A. First of all, we're -- these ads are changing all the
22 time. So two months before that it probably said "guide" or
23 "info." These ads are constantly testing and tweaking. In
24 this case, just continual reenforcement of what information
25 they're going to find on our Website.

1 Q. This ad for May of 2007 comes after this lawsuit was
2 filed.

3 Was that information added in response to this
4 lawsuit?

5 A. No, it was not.

6 MR. DE CARLO: Would you go to Exhibit 324, please,
7 Mr. Bruyere.

8 BY MR. DE CARLO:

9 Q. This is another search, and it's dated November 20th,
10 2006.

11 You understand that November 20th, 2006, predates
12 the lawsuit; correct?

13 A. Yes.

14 Q. This is a search for the term "Driver's Ed." Driver's
15 ed is a term that *DMV.org* bids on with Google and Yahoo!;
16 correct?

17 A. Yes.

18 Q. And that is because Online Guru is trying to attract
19 consumers that are interested in purchasing driver's ed
20 courses to come to the *DMV.org* Website; correct?

21 A. In this specific ad, yes.

22 Q. The advertisement indicates in the top "California DMV
23 Driver's Ed."

24 That's text that *DMV.org* wrote; correct?

25 A. That Online Guru did, yeah.

1 Q. Online Guru. Thank you.

2 And it indicates that California recommended
3 driver's ed course for obtaining a learner's permit.

4 Mr. Lahoti, in the context of this advertisement
5 with California DMV Driver's Ed, underneath that *DMV.org*, and
6 then an indication that there's a recommendation, do you
7 think that a reasonable consumer might be deceived into
8 believing that the driver's education course is being
9 endorsed by the California Department of Motor Vehicles?

10 MR. DAUCHER: Objection. Speculation and
11 irrelevant since it's not the full stimuli that the user sees
12 before purchasing a product.

13 THE COURT: Overruled.

14 You can answer.

15 THE WITNESS: When I look at this ad right now with
16 the information that I know, I could see how a user could
17 be -- could perceive it as -- as a -- you know, a DMV ad
18 because of the use of the language in here.

19 BY MR. DE CARLO:

20 Q. The Department of Motor Vehicles has an important
21 relationship with the providing of driver's education
22 services; is that correct?

23 MR. DAUCHER: Objection. Foundation.

24 THE COURT: Sustained.

25 BY MR. DE CARLO:

1 Q. Do you know if in order for someone to obtain a driver's
2 license they need to first pass or take a driver's education
3 course that is approved by the California Department of Motor
4 Vehicles?

5 MR. DAUCHER: Same objection.

6 THE COURT: Sustained.

7 MR. DE CARLO: I asked him if he knew.

8 THE COURT: I heard you the first time. The
9 objection was sustained.

10 MR. DE CARLO: I apologize.

11 THE COURT: If you have another question you can
12 ask it.

13 MR. DE CARLO: I do, your Honor.

14 BY MR. DE CARLO:

15 Q. What is the purpose at this stage of the advertisement
16 to be recommending a driver's education course? Why does
17 *DMV.org* or Online Guru at this stage recommend or indicate to
18 the consumer that they're recommending a driver's ed course?

19 A. It's an advertisement to basically get somebody to come
20 to the site and check out the information and -- and in this
21 specific case, a driver's ed course -- to -- you know, to
22 purchase a driver's ed course through our advertiser.

23 MR. DE CARLO: Would you go to the next page,
24 please, Mr. Bruyere.

25 BY MR. DE CARLO:

1 Q. Now, in this -- this is another advertisement,
2 Mr. Lahoti. And in this case the search term is "California
3 Driver's Ed." And right below the California DMV Driver's
4 Ed, in the heading of the ad, underneath it it says
5 *California.DMV.org*.

6 Why does the word "California" come up before DMV
7 in your sponsored advertisement here?

8 A. Because that's -- the use of sub domains is a common
9 practice. Or the use of -- just, you know, adjusting or
10 displaying the URL based on what the subject matter is of
11 what the person is looking for. They're looking for
12 California information; so that's going to catch their eye.

13 Q. And in your opinion, is it -- would it be reasonable for
14 a consumer to be deceived by this advertisement into thinking
15 that it is the California Department of Motor Vehicles link?

16 A. Not this specific domain name just because it's -- it's
17 not a government domain. But as I said before, when we --
18 when we reevaluated the display of this -- the headline and
19 the -- the, you know, the headline specifically, we decided
20 to make some changes to it because when I look back at it,
21 I think we really -- you know, I think somebody could
22 potentially be confused by it. So -- but I don't think in
23 the display URL it is.

24 MR. DE CARLO: Exhibit 325, please, Mr. Bruyere.

25 BY MR. DE CARLO:

1 Q. This is a traffic school search. The word there is
2 "traffic school." This is a key word that Online Guru bids
3 on to attract those interested in purchasing traffic school
4 to arrive at Online Guru's Website; correct?

5 A. At *DMV.org*?

6 Q. Yes.

7 A. Yes.

8 MR. DE CARLO: Could you go to the right side,
9 please.

10 Thank you.

11 BY MR. DE CARLO:

12 Q. This reference is to an approved traffic school, and it
13 says what it says.

14 Mr. Lahoti, can you see how a reasonable person
15 would be deceived into thinking that this link is being
16 approved or that it's affiliated with the California
17 Department of Motor Vehicles?

18 MR. DAUCHER: Objection. Dysjunctive question.

19 THE COURT: Is that a -- is that objection
20 recognized in the Evidence Code?

21 MR. DAUCHER: It's -- it's just that it's two
22 questions.

23 THE COURT: You mean it's compound?

24 Would you rephrase the question.

25 MR. DE CARLO: Yes, your Honor.

1 BY MR. DE CARLO:

2 Q. Mr. Lahoti, can you see how a reasonable consumer would
3 be deceived into believing that the California Department of
4 Motor Vehicles -- strike that.

5 Do you see how a reasonable consumer would believe
6 that upon accessing this link they would be going to the
7 department -- the California Department of Motor Vehicles
8 Website?

9 A. No, I do not.

10 MR. DE CARLO: Would you show the date on this one,
11 please, Mr. Bruyere.

12 BY MR. DE CARLO:

13 Q. This is a November 27, 2006, listing.

14 A. Okay.

15 MR. DE CARLO: Would you, please --

16 THE COURT: Sir, is that a question or are you
17 testifying?

18 BY MR. DE CARLO:

19 Q. Is that a -- is the date on this November 27th, 2006,
20 Mr. Lahoti?

21 MR. DAUCHER: Objection. Foundation.

22 THE COURT: Sustained.

23 BY MR. DE CARLO:

24 Q. Now, with regards to -- we've shown some examples here
25 of California. These similar strategies -- strike that.

1 These strategies you used -- you employ for other
2 states as well other than California; correct?

3 A. I don't understand.

4 Q. The key -- the bidding on key words -- you employ that
5 strategy for states other than California; correct?

6 A. We bid on key words for every single topping on our Web
7 side.

8 Q. And to try to attract visitors from states other than
9 California who have interest in, for example, traffic schools
10 in their own particular states; correct?

11 A. That's one of the reasons why we attract people.

12 Q. And the same with driver's education; correct?

13 A. Yes.

14 MR. DE CARLO: Okay. If we could please go to
15 Exhibit 367.

16 BY MR. DE CARLO:

17 Q. Mr. Lahoti, this is another Internet search.

18 Do you see that? It's a Google search.

19 A. Yes, I do.

20 Q. Okay. And the search term is -- terms are "California
21 DMV approved driver's education."

22 Can you see how a consumer interested in purchasing
23 driver's education in California might type in those search
24 terms?

25 A. Yes.

1 Q. And those are search terms that are -- *DMV.org* bids on;
2 is that correct?

3 A. Yes.

4 Q. And the date on this is --

5 Can you see what the date is?

6 A. Yes.

7 Q. And it's -- what is the date?

8 A. August 8th -- August 15th, 2007.

9 Q. This is after the lawsuit was filed; correct?

10 A. That's correct.

11 Q. After this lawsuit was filed, you had not yet placed any
12 type of language on this sponsored listing that educates the
13 consumer that you're not California Department of Motor
14 Vehicles; is that correct?

15 A. That is not correct. You're talking -- this is -- well,
16 this is after the lawsuit. But we've even made further
17 changes even after this date, but specifically to this, the
18 headline is actually just displaying the key word that person
19 searches. You see it? Except the word "approved," it's just
20 a key word assertion. So this is actually just a mistake
21 because you'll notice that it says "DMV." The "MV" is
22 lowercase. The other ad you saw before, capital DMV. So
23 that's just Google's key word insertion, not to get too
24 technical, but I just wanted to clarify.

25 Q. There's nothing on this sponsored listing that educates

1 a consumer that *DMV.org* is not the California Department of
2 Motor Vehicles; is that correct?

3 A. It's not -- it's not -- first of all, it's not the
4 California Department of Motor Vehicles Website domain. It's
5 a ".org" Website, which is typically not a Government domain
6 name. That's -- you know, "gov" is the extension. The TLD
7 or top-level domain extension. And it's also a sponsored
8 link which, as I said before, it's not typical for a
9 government organization to advertise a driver's education
10 course.

11 Q. You had it within your power to place text in this
12 advertisement that would have disclaimed an affiliation
13 specifically with the Department of Motor Vehicles; correct?

14 A. I don't think there's enough space to really -- to say
15 that. And I don't know what the purpose is when -- I don't
16 see the need to do that.

17 MR. DE CARLO: Let's go to Exhibit 127, please.

18 BY MR. DE CARLO:

19 Q. When a user, Mr. Lahoti, clicks on a sponsored
20 listing -- for example, what we have here is Exhibit 127, and
21 the search was for California Traffic School.

22 Do you see that?

23 A. I do now, yes.

24 Q. Okay. And this --

25 MR. DE CARLO: Can you go back to the full page.

1 BY MR. DE CARLO:

2 Q. And do you see the listing the sponsored listing for
3 *DMV.org*?

4 A. On the right side I do.

5 Q. Now, when a user clicks on this advertisement, they're
6 going to go to a dedicated page on the *DMV.org* Website; true?

7 A. On this ad I think they go right to the California
8 traffic school page.

9 MR. DE CARLO: Can you go to 133, please.

10 BY MR. DE CARLO:

11 Q. And this is a search for driver's ed.

12 And do you see your sponsored listing for driver's
13 education?

14 A. Yes. It's the first one on top.

15 Q. And if a user clicks -- and if a user clicks on this
16 particular sponsored listing, they're going to be taken to
17 the California driver's education page; correct?

18 A. That's correct.

19 Q. Okay. And talking first about traffic school, when a
20 user goes from the sponsored listing to the California
21 traffic school page, there's the I Drive Safe -- there's the
22 I Drive Safely icon on that page for the user to click on and
23 to be taken to the I Drive Safely Website to purchase a
24 traffic school course; correct?

25 A. If they want to purchase it, yes.

1 Q. Okay. And the same with the California driver's
2 education. When they go from a sponsored link and land on
3 the California driver's education page, that consumer is
4 provided with a link that will take them directly to a
5 Website where they could purchase a driver's education
6 course; correct?

7 A. Assuming that their direct path is to click on that
8 link, they can do that. But we all know that many -- many
9 people want to get acquainted with the Websites, surf around
10 before they make a purchase or even click on an
11 advertisement.

12 Q. The link is available for them to click on and go to a
13 Website that will allow them to purchase the courses?

14 A. That's what I said, yes.

15 Q. Okay. All right.

16 MR. DE CARLO: Let's take a look at Exhibit 352,
17 please.

18 BY MR. DE CARLO:

19 Q. Exhibit 352, Mr. Lahoti, this is what the *DMV.org*
20 Website looked like in 2002; correct?

21 A. Does that say July 27th, 2002, at the bottom right?
22 It's very difficult to --

23 Q. This is the date it was printed out --

24 A. Okay.

25 Q. -- from -- I'm asking you if -- it's a -- it's an

1 *archive.org* page.

2 A. Okay.

3 Q. Do you know if this is what the *DMV.org* Website looked
4 like in 2002?

5 A. Yeah. This is prior to my -- you know, prior to my
6 joining the company. But yes, this is how it looked.

7 Q. Okay. And the -- do you know what the revenues were for
8 *DMV.org* in 2002?

9 A. I do not.

10 MR. DE CARLO: If you would turn, please, to
11 Exhibit 353.

12 BY MR. DE CARLO:

13 Q. Do you know if this is what the *DMV.org* Website looked
14 like in 2003?

15 A. Yes.

16 Q. There are -- there is a prompt right up at the top that
17 allows the user to connect to their local DMV; is that
18 correct?

19 A. That's correct. Well, that's what it says.

20 Q. So when the user -- the user clicks on here, they would
21 be given an option to go to -- to type -- they could type in
22 whatever state they want, and they would be taken to their
23 state's respective DMV?

24 A. Well, eventually they would have -- they would be able
25 to click on -- I think -- I don't remember exactly the flow

1 of this page, but eventually they would get to their state
2 DMV Website.

3 Q. And in 2003, do you know what the revenues were of
4 *DMV.org*?

5 A. The revenues were -- I don't know the exact number, no.

6 Q. If I represented to you that they were less than
7 \$30,000, would that comport with your recollection?

8 A. That would make sense, yeah.

9 MR. DE CARLO: Let's go to 354, please,
10 Mr. Bruyere.

11 BY MR. DE CARLO:

12 Q. Do you recognize this page as being what your Website
13 looked like in 2000 -- what the *DMV.org* Website looked like
14 in 2004?

15 A. Yes.

16 Q. Do you know what the revenues were in 2004? If I told
17 you that the traffic school revenues and the driver's
18 education revenues combined were less than a quarter of a
19 million dollars in 2004, would that comport with your memory?

20 THE COURT: Is that two questions or one?

21 MR. DE CARLO: I'm sorry, your Honor.

22 THE COURT: And which one do you want?

23 BY MR. DE CARLO:

24 Q. Mr. Lahoti, if I were to represent to you that the
25 traffic school revenues for Online Guru in 2004 were less

1 than \$225,000, would that comport with your memory?

2 A. Well, not all of the revenue that we got in 2004 came
3 directly from -- the traffic schools that we had direct
4 relationships with in 2004, we only know what that revenue
5 is. But we -- there was also traffic schools that were
6 displayed through a third-party relationship with Yahoo!, and
7 we have no idea what the segmentation of that revenue was of
8 traffic school.

9 MR. DE CARLO: Can you pull up --

10 THE WITNESS: So that's my full year.

11 MR. DE CARLO: Can you pull up Exhibit 398, please.

12 BY MR. DE CARLO:

13 Q. Mr. Lahoti, I've put on the screen Exhibit 398, which is
14 a summary of financials that were provided to us. And if you
15 take a look at 2004 -- let's talk about 2004. There's a line
16 item here for search engine marketing.

17 Do you see that line item?

18 A. Yes.

19 Q. You spent one -- approximately \$1.3 million in 2004
20 search engine -- strike.

21 Search engine marketing, Mr. Lahoti, is that --
22 that is a bid for key word type of marketing; correct?

23 A. That's right.

24 Q. And that's the type of marketing that goes into those
25 targeted-type sponsored searches; correct?

1 A. Correct.

2 MR. DE CARLO: Let's go to Exhibit 115, please.

3 BY MR. DE CARLO:

4 Q. In 2005 --

5 MR. DE CARLO: Highlight 2005, please.

6 BY MR. DE CARLO:

7 Q. In 2005, your search engine marketing went to
8 \$2.2 million.

9 In 2005, you were now operating -- running the
10 business full time; is that correct?

11 A. 2003 -- or the end of 2003 I started that, yeah.

12 Q. And can you tell me why was there an increase of search
13 engine marketing from '04 to '05 of approximately a million
14 dollars?

15 A. I mean, that's a natural growth of the Internet. More
16 people are visiting Google and the search engines bids have
17 gone up. You've learned more about what key words you can
18 target. I mean, there's -- I can sit here for an hour
19 telling all the reasons it went up.

20 MR. DE CARLO: Okay. Let's go down to 2006.

21 BY MR. DE CARLO:

22 Q. And then in 2006 you increased your search engine
23 marketing up to almost \$5 million.

24 Would you agree that that's a substantial increase
25 in your search engine marketing from 2005 to 2006?

1 A. I would agree that it's typical of a company that's
2 growing to increase it's marketing spending.

3 Q. And that's also because between 2005 and 2006 you were
4 making -- you, Online Guru, were making a much more robust
5 use of search engine marketing as part of your business;
6 correct?

7 A. Continual improvement, yes.

8 Q. In late 2006, you worked on a -- on reconfiguring the
9 *DMV.org* Website; correct?

10 A. The redesign -- excuse me.

11 The redesign launched in October of 2006. But I've
12 been working on it for a long time before that.

13 Q. And the purpose of that redesign was to do things like
14 add more colors to the site?

15 A. The purpose of the redesign, was it add more colors?

16 Q. How about we do this.

17 Let me ask you: Why did you decide to redesign the
18 site in 2006?

19 A. Because we wanted to improve the user experience of the
20 site.

21 Q. You added a lot more content?

22 A. More sections, more information, different site
23 structure, but generally it was the same -- it was the same
24 Website. It just evolved.

25 Q. Would you characterize the Website in 2000 -- in October

1 of 2006 after the launch as a brand-new Website?

2 A. It's -- it's tough to say if it's a truly a brand-new
3 Website because you could get pretty much the same
4 information as you could get prior to the new Website as you
5 could with the new Website.

6 But I think the main thing is that we streamlined
7 the information. We streamlined the user ability of it. We
8 added some tabs to the top that people can jump from one page
9 to another a little bit easier.

10 So depending on which direction -- you know,
11 depending on what angle you look at it, yeah. You can say
12 it's a brand-new Website. You can say it is a redesign of
13 the Website. You can say it's a rearchitecture of the
14 Website.

15 MR. DE CARLO: Your Honor, with your permission, I
16 would like to just read from a section from Mr. Lahoti's
17 deposition on this topic, Page 106, Line 21 through line --
18 through Page 107, Line 14.

19 THE COURT: Any objection?

20 MR. DAUCHER: One moment, your Honor, please.

21 THE COURT: Yes.

22 MR. DAUCHER: Thank you.

23 Can you read me the line numbers again, please?

24 MR. DE CARLO: May I approach, Counsel?

25 THE COURT: Yes.

1 MR. DAUCHER: No objection.

2 THE COURT: All right.

3 MR. DE CARLO: Starting at Line 21.

4 "ANSWER: The design would change."

5 THE COURT: Why don't you start with the question.

6 MR. DE CARLO:

7 "What were the differences of that
8 September 27th reconfiguration as opposed to how
9 the site looked before or how it operated before?"
10 And then there's some colloquy, and the answer
11 begins on Line 21.

12 "The design would change colors. We put a
13 tabletop layout on top, kind of -- more of a
14 channel type of thing, similar to how *amazon.com*
15 and Wal-Mart people do that sort of stuff. Got 'A
16 picture is worth a thousand words.' We have
17 different layouts on every single page. We did a
18 lot more content. We invested a lot of resources.
19 I guess you could say invested a lot in content.
20 So we went for more of a directory-plus to more of
21 an informational guide -- more information, more
22 relevant, and more topical information, very deep
23 and also wide amount of content, more links on the
24 site. It's an expansion of the site, as well as
25 a revamp or overhaul redesign. It was a brand-new

1 almost Website. But we took a lot of the things
2 that I learned from running the site for the
3 previous years to kind of evolve it to, or I would
4 like -- or I call it more like *DMV.org* 2.0 kind of
5 thing."

6 MR. DE CARLO: Okay. If we could go to
7 Exhibit 317, please.

8 This is from October 2006.

9 BY MR. DE CARLO:

10 Q. This is your home page, is that correct, in October of
11 2006?

12 A. At the end of October, yes.

13 Q. Okay. And this -- this would be a representation of
14 your -- of your reconfigured site; is that correct?

15 A. Yeah. This is the *DMV.org* 2.0 that I was talking about.

16 Q. Now, on this --

17 MR. DE CARLO: Can you go back a screen.

18 BY MR. DE CARLO:

19 Q. On this page in October of 2006, there are no
20 disclaimers. By that I mean statements disclaiming any
21 affiliation with the California or any Department of Motor
22 Vehicles; is that correct?

23 A. There are no disclaimers saying that there's no
24 affiliation.

25 However, there are things that indicate that this

1 is not a government Website, such as the Website name:
2 *DMV.org*; that it's a -- you know, your DMV guide online.
3 It's a guide. And the text in the first photograph, it's
4 very difficult to read, but it says, "This Website was
5 created to provide you easy to access information. Since
6 government -- since government DMV sites can be confusing to
7 use we have developed this free and comprehensive guide for
8 the average person to understand."

9 Q. Mr. Lahoti, there's a tag line here that says no --
10 that's in the middle of the page. It says, "No need to stand
11 in line. Your DMV guide is now online"?

12 Did you come up with that tag line -- or that
13 phrase?

14 A. I think I did, yeah.

15 Q. Did you get it -- did you copy it from anyone?

16 A. No, I don't think so.

17 MR. DE CARLO: Could we go to Exhibit 391, please.

18 BY MR. DE CARLO:

19 Q. Do you recognize this document, the California Driver's
20 Handbook from 2006?

21 A. I have not seen this.

22 MR. DE CARLO: The next page, Mr. Bruyere.

23 THE WITNESS: Yeah. But it's pretty clear that it
24 is.

25 BY MR. DE CARLO:

1 Q. And on the 2006 -- do you -- do you know -- there's a --
2 there's a tag line -- there's a line here from this page that
3 says, "Don't stand in line. Go online."

4 You didn't copy your phrase from this handbook?

5 A. No way. I've been using that kind of statement
6 for quite a few -- for probably a couple of years -- a few
7 years. I think if anything they copied us.

8 Q. You think the California Department of Motor Vehicles
9 might have copied you?

10 A. Why not? That's a pretty catchy phrase, and I'm a
11 creative person. So why not?

12 THE COURT: You've got about 15 minutes, Counsel.

13 MR. DE CARLO: Could we go back to the previous
14 document, which was Exhibit 317.

15 BY MR. DE CARLO:

16 Q. There's no indication on this page to advise the
17 consumer to scroll down all the way to the bottom of the
18 page, is there?

19 A. There's no indication what?

20 Q. To -- there's no indication to prompt a user to scroll
21 down all the way to the bottom of the -- of this page;
22 correct?

23 A. It's the user's responsibility to understand the entire
24 site that they're at.

25 MR. DE CARLO: Can you go to Exhibit 318, please.

1 BY MR. DE CARLO:

2 Q. Exhibit 318 is from October 10, 2006.

3 And this is a page that is dedicated to California;
4 is that correct?

5 A. Yeah. It's the California -- it's the *DMV.org* state
6 home page, basically. It's for the -- for -- for California
7 basically.

8 Q. And there's -- the use of the California flag next to
9 the -- "Your online guide to the California DMV," can you see
10 how a reasonable consumer might believe, upon accessing that
11 page, that they're at a California DMV Website?

12 A. No, I don't.

13 Q. The State of California -- the State of California
14 complained to *DMV.org* in 2004 about its domain name; is that
15 correct?

16 A. About the *DMV.org* domain name?

17 Q. Yes.

18 A. Yes, they complained.

19 Q. Okay.

20 MR. DE CARLO: Can you go to Exhibit 342, please.

21 BY MR. DE CARLO:

22 Q. Do you recall -- do you recall getting Exhibit 342, a
23 letter from the Department of Motor Vehicles about -- about
24 your domain name?

25 A. Well, at the time that we received it, we actually

1 thought it was a joke because they misspelled things. They
2 misspelled Governor Schwarzenegger's name in the letterhead,
3 and also the first line is pretty funny, actually. "This
4 letter regards your use of 'DMV' in your email address."

5 So at first -- but we did get this, yeah.

6 MR. DE CARLO: Okay. Exhibit 343, please.

7 BY MR. DE CARLO:

8 Q. You hired a lawyer to respond to it; correct?

9 A. Yes. That's correct.

10 Q. And this is Mr. Trojan?

11 MR. DE CARLO: If you go to -- this is Exhibit 385.
12 I need to look at the hard copy. Excuse me.

13 If would you go to the next page, Mr. Bruyere.

14 BY MR. DE CARLO:

15 Q. Mr. Lahoti --

16 MR. DE CARLO: I'm sorry. This is not -- this is
17 not the document.

18 BY MR. DE CARLO:

19 Q. I'm sorry. It wasn't Mr. Trojan. It was Mr. Lawrence
20 Walters.

21 You know who Mr. Walters is, of course?

22 A. Yes.

23 Q. Okay. Page 2 of this letter, in the last paragraph,
24 Mr. Walters in the second sentence indicates that

25 "Accordingly it has voluntarily and with full reservation of

1 rights eliminated the concurrent reference to California and
2 DMV on its Website."

3 In fact, *DMV.org* did not abide by that particular
4 representation, did it?

5 A. Well, there was -- I believe at this time -- and it's
6 been more than three years, but I believe at this time
7 certain things were proposed to the State, and there was --
8 there was other communication back and forth. And pretty
9 much nothing was ever -- there was no kind of, you know,
10 agreement made or anything like that. And the matter was
11 basically then closed, and we didn't hear from the State
12 after that.

13 Q. Did you ever stop using California concurrently with
14 *DMV.org*?

15 A. I -- maybe for a time -- maybe for a short period of
16 time we did. And then after the further communication --
17 it's hard, but I do remember for some time we did. But I
18 think after that there was no issue and -- we seeked [sic]
19 counsel on it and there was no issue with it, and the matter
20 was closed with the State.

21 MR. DE CARLO: Could we go to Exhibit 319, please.

22 BY MR. DE CARLO:

23 Q. This is a page from --

24 MR. DE CARLO: Is this 319?

25 ///

1 BY MR. DE CARLO:

2 Q. This is a page from October 30th, 2006.

3 This is the page that -- this is a California
4 traffic school dedicated page on *DMV.org*; correct?

5 A. Yes. That's correct.

6 Q. Okay. And this is the page that the user will land on
7 when they come from a sponsored listing for California
8 traffic school; correct?

9 A. Yeah. They would land on this.

10 Q. I'm sorry?

11 A. They would they would probably land on this page, yes.

12 MR. DE CARLO: Can you blow up this part right
13 here.

14 BY MR. DE CARLO:

15 Q. And you would have -- and you represent -- I'm sorry.

16 You recommend to the user that I Drive Safely is
17 the best choice for California traffic school online at this
18 page; correct?

19 A. That's correct.

20 MR. DE CARLO: Let's go to Exhibit 320, please.

21 BY MR. DE CARLO:

22 Q. This is the page that the user lands on when they do a
23 search for California driver's education on Google or Yahoo,
24 and they click on the -- on the sponsored link they will land
25 on this page; correct?

1 A. Correct.

2 MR. DAUCHER: Objection. Vague as to time.

3 THE COURT: Sustained.

4 BY MR. DE CARLO:

5 Q. In November of 2006.

6 A. Correct.

7 Q. And *DMV.org* is recommending *teendriverseducation* as the
8 best choice for completing a California driver's education
9 requirement; correct?

10 A. Correct.

11 Q. Does *teendriverseducation.com* provide traffic school
12 services?

13 A. No.

14 Q. *Teendriverseducation* does not provide services, and
15 you are recommending to the consumer that
16 *teendriverseducation.com* is the best choice for completing
17 a course?

18 MR. DAUCHER: Objection. Vague. 403. Compound.
19 This is a driver's ed page.

20 THE WITNESS: You said traffic school.

21 THE COURT: Just a moment, sir.

22 THE WITNESS: Sorry.

23 THE COURT: All right. Rephrase the question.

24 THE WITNESS: Sorry, your Honor.

25 BY MR. DE CARLO:

1 Q. You are recommending to a consumer at this page a
2 driver's education course through an entity,
3 *driverseducation.com*, that does not offer driver's education
4 courses; correct?

5 MR. DAUCHER: Objection. Lacks foundation.

6 THE COURT: Do you -- what's the basis? Do you
7 know what *driverseducation.com* -- do you know what they do?

8 MR. DE CARLO: You're asking me, your Honor?

9 THE COURT: No. I'm asking the witness.

10 THE WITNESS: Sorry.

11 First of all, he said *driverseducation.com*. It's
12 *teendriverseducation.com*. Is that --

13 THE COURT: Yes.

14 Do you know what *teendriverseducation.com* -- do you
15 know what services they provide?

16 THE WITNESS: I know what the service is on that
17 Website, yes.

18 THE COURT: Okay. The objection is overruled.

19 You can answer the question.

20 Do you have the question in mind?

21 THE WITNESS: Can you rephrase it or read it or
22 restate it.

23 THE COURT: I'll ask the reporter to read it back.

24 (The record was read.)

25 THE WITNESS: That's not correct.

1 THE COURT: Next question.

2 MR. DE CARLO: Let's go to Page 332 -- or
3 Exhibit 332.

4 BY MR. DE CARLO:

5 Q. This is a page from May of 2007.

6 And Mr. Lahoti, May of 2007 is after the lawsuit
7 was filed; correct?

8 A. That's correct.

9 Q. Okay. And this -- this is your home page; correct?

10 A. Correct.

11 Q. And you added some language on the home page after the
12 lawsuit was filed in the center indicating unofficial;
13 correct?

14 A. That's correct.

15 Q. You did not enter that unofficial language to either the
16 landing page -- to any traffic school dedicated landing page;
17 correct?

18 A. That specific language, no.

19 Q. And you did not add that language that is center -- the
20 unofficial language that is center, you did not add that
21 language to any dedicated driving education page?

22 A. Is that a different question?

23 Q. Yes.

24 A. Sorry. I didn't -- I think I misheard your first
25 question then.

1 Q. The first question was related to traffic school and the
2 second question is related to driver's education.

3 A. That's correct. Same answer.

4 Q. And you did that, and you didn't add that language
5 because you don't want the visitors, when they arrive at
6 your -- at that page, to be alerted to the fact that you're
7 not affiliated with the Department of Motor Vehicles.

8 A. That's wrong. That's incorrect.

9 Q. You could have added "unofficial" or some other language
10 front and center of both the traffic school pages and the
11 dedicated driver's education pages. You had that in your
12 power to do; correct?

13 A. We added it into the logo. We added it -- a disclaimer
14 underneath the logo that says, "*DMV.org* is not affiliated
15 with any government agency."

16 And at this time that we put this on the home page,
17 there was a clear spot to put it on there because prior to
18 that it said, "No need to stand in line, your DMV guide is
19 now online," but to make that additional change to put it, it
20 it's just a design, you know, decision, which at that time we
21 decided not to.

22 Q. After the changes were made by you to the Website after
23 this lawsuit was filed, you continued to be aware of
24 instances of confusion by consumers; is that correct?

25 A. Through the -- through the emails that we received -- we

1 received sometimes a few emails a day out of the couple of
2 hundred emails that we get that indicate maybe a consumer
3 doesn't know specifically who we are, whether we're an agent
4 or an affiliation or a government or like triple A. So I
5 don't know exactly what that consumer is thinking, but it
6 could be perceived as though they're not positive who we are.

7 Q. And you're also aware of instances in which people write
8 in the press about you in which they are confused about your
9 affiliation and -- or about your lack of affiliation with the
10 Department of Motor Vehicles; correct?

11 MR. DAUCHER: Objection. Calls for speculation as
12 to what they're thinking.

13 THE COURT: Sustained.

14 You can rephrase it.

15 MR. DE CARLO: Thank you, your Honor.

16 BY MR. DE CARLO:

17 Q. Mr. Lahoti, have you seen articles or press releases,
18 things that have been published where it's clear to you --
19 and this is for the time period after you've made these
20 changes after this lawsuit was filed.

21 Have you read those types of publications where
22 it's clear to you that the author of the publication is
23 confused about your company vis-a-vis any affiliation with an
24 official government agency like the DMV?

25 A. I'm not sure how many I've seen, but I think -- I think

1 one or more have suggested that the -- that the writer may --
2 may be confused. But I don't know because some people who
3 link to us -- they could link to it saying find Department of
4 Motor Vehicles at *DMV.org* or find Department of Motor
5 Vehicles information at *DMV.org*.

6 Does that mean that they're confused as to who we
7 are? Or the fact that, you know, you can find that
8 information or find a link to it from our site? Our site is
9 easy to -- it streamlines the ability to find all of that
10 information.

11 Q. Prior to the lawsuit, you were aware that consumers were
12 confused about your site, specifically vis-a-vis any
13 affiliation with the government, including Department of
14 Motor Vehicles; correct?

15 A. Prior to the lawsuit, just like in most lawsuits, there
16 are sort of indications that can suggest a person -- some
17 people maybe not knowing who they're -- you know, who we are
18 or our affiliation. I don't know the exact number, but the
19 only way we can really know is through emails that we
20 receive, and there's only a few a day.

21 Q. I'm talking about before the lawsuit was filed you were
22 aware that there was confusion. That's my simple question.

23 MR. DAUCHER: Objection. Asked and answered.

24 THE COURT: Overruled.

25 You can answer.

1 THE WITNESS: I was aware that there was some --
2 some number of people, just through direct communication
3 if -- that I had.

4 MR. DE CARLO: Okay. May I -- your Honor, do I
5 have a little more time?

6 THE COURT: How much time do you need?

7 MR. DE CARLO: If I could have another five to
8 10 minutes.

9 THE COURT: You can have five more minutes.

10 MR. DE CARLO: Would you pull up Exhibit 17,
11 please.

12 BY MR. DE CARLO:

13 Q. Do you recognize this advertisement, Mr. Lahoti?

14 A. Yes, I do.

15 Q. That's an advertisement that you -- that you wrote?

16 A. My design -- well, our company -- our company created
17 this ad.

18 Q. How would a consumer know when looking at this
19 advertisement that you are not affiliated with the
20 California DMV?

21 A. Well, first of all, there's a few different things.
22 This site is -- as I said before, it's *DMV.org*, which is not
23 a government site or a government domain. It says, "Your
24 complete guide to the DMV." It does not say, "This is the
25 DMV."

1 It's kind of -- it's an advertisement that's on
2 a -- you know, on a game Website. So that may also indicate
3 that. And it's complete cartoonish.

4 MR. DE CARLO: Would you go to Exhibit 18, please.

5 BY MR. DE CARLO:

6 Q. There is no express affiliation -- there's no express
7 indication on this advertisement, is there, that *DMV.org* is
8 not associated or affiliated with any particular Department
9 of Motor Vehicles office; is that correct?

10 A. Just the complete guide to DMV and it's a ".org" site.

11 Q. Mr. Lahoti, the government offers lots of guides for its
12 citizens, doesn't it?

13 MR. DAUCHER: Objection. Foundation. Speculation.

14 THE COURT: Sustained.

15 BY MR. DE CARLO:

16 Q. Do you know if the -- if the United States government,
17 the federal government, for example, offers citizens dozens
18 of guides for a variety of different topics and interests?

19 MR. DAUCHER: Objection. Foundation.

20 THE COURT: You can answer that question "yes" or
21 "no."

22 THE WITNESS: I don't know if they're called
23 "guides."

24 MR. DE CARLO: Your Honor, I have an impeachment
25 document that I would like to show to Mr. Lahoti.

1 May I show it to counsel and approach Mr. Lahoti?

2 THE COURT: You can show it to counsel, yes.

3 (Sotto voce discussion between counsel was held.)

4 MR. DE CARLO: May I approach the witness, your
5 Honor --

6 THE COURT: You can approach the clerk.

7 MR. DE CARLO: -- with these?

8 I'm sorry.

9 THE COURT: All right. Let me see the document,
10 please.

11 Is this writing on the document your writing?

12 MR. DE CARLO: Yes, your Honor.

13 May I proceed, your Honor?

14 THE COURT: Yes. Go ahead and ask your question.

15 MR. DE CARLO: Thank you.

16 BY MR. DE CARLO:

17 Q. Mr. Lahoti, the first page of this document you
18 recognize as being the *UnitedStates.org* home page; correct?

19 THE COURT: Do you recognize that document?

20 THE WITNESS: I'm sorry. I'm sorry. Yes. That's
21 correct. Yes, I recognize it.

22 THE COURT: Do you recognize it?

23 THE WITNESS: I do recognize it.

24 BY MR. DE CARLO:

25 Q. That's a Website that you control; correct?

1 A. Yes. We manage this site.

2 Q. On the second page of this document there is -- the
3 second page of this document, there is a link to *USA.gov*;
4 correct?

5 A. Correct.

6 Q. And USA dot -- do you know that -- do you know that
7 *USA.gov* is the official US gateway to all governmental
8 information?

9 A. Yes, I do.

10 Q. Do you recognize the next page as being the home page --
11 do you recognize the next page as being the home page to
12 United States -- to *USA.gov*?

13 A. I'm not very familiar with this site. I've -- I've
14 scanned it before. But I've -- yes. From looking at it
15 here, yes, I can see it.

16 Q. And you can see I circled a link to consumer guides.
17 Do you see that link?

18 A. Yes, I do.

19 Q. And if you skipped two pages or three pages down, when
20 that link is accessed we get to a page called "Consumer
21 guides and protection."

22 Have you ever reviewed this page?

23 A. No, I have not.

24 Q. Do you have any knowledge as to whether the federal
25 government offers all the guides that are listed on this

1 page?

2 A. I don't know if they offer -- I don't know if they're
3 linking to third-party cites or if they're offering it
4 themselves.

5 Q. You don't have any reason to believe that consumers
6 believe that governments don't offer guides, do you?

7 A. No, there's -- there's no reason to believe that.

8 MR. DE CARLO: Thank you, your Honor. I appreciate
9 it.

10 THE COURT: All right. Do you have any
11 cross-examination for the witness?

12 MR. DAUCHER: Some redirect [sic], your Honor.

13 THE COURT: All right.

14 **CROSS-EXAMINATION**

15 MR. DAUCHER: Can we take a look at Exhibit 322,
16 please.

17 BY MR. DAUCHER:

18 Q. Okay. Mr. Lahoti, this is Exhibit 322 you were shown on
19 earlier examination.

20 MR. DAUCHER: This is -- for the record, it's a
21 November 17, 2006, search.

22 BY MR. DAUCHER:

23 Q. Mr. De Carlo asked you questions about the sponsored
24 listing at the top of this exhibit.

25 Do you see that?

1 A. Yes, I do.

2 Q. If you will go down to the -- I take it on the search
3 result you can identify for us what are not sponsored
4 listings; is that correct?

5 A. That's correct.

6 Q. And where do those begin on this exhibit?

7 A. Well, it's directly under the sponsored link, but
8 because somebody searched this with Google desktop installed
9 on their computer, there's that extra bit of text right
10 underneath the sponsored link that's usually not there.

11 But underneath that, it says "California Department
12 of Motor Vehicles home page."

13 Q. Okay. So that result is what we can refer to as an
14 organic result; correct?

15 A. That's correct.

16 Q. And all results which follow that are organic results;
17 correct?

18 A. That's correct.

19 Q. And can you explain what -- what would be defined as an
20 organic result?

21 A. It is a listing that Google will -- or any search engine
22 for that matter will -- it's the search listings that they
23 display based on their ranking algorithm and their free
24 results that they -- they link. And usually their ranking
25 algorithm takes into effect many factors, you know, one of

1 which is information of the site, quality of the site,
2 et cetera, et cetera.

3 Q. And the second organic result appears to be for *DMV.org*;
4 is that correct?

5 A. Yes, that's correct.

6 Q. And did *DMV.org* or your -- your entity, Online Guru,
7 draft the text of that result?

8 A. The title tag in the description here comes from our
9 Website.

10 Q. Do you have any control over what Google displays in its
11 organic results?

12 A. Google usually displays the title of the Website on
13 here. However, in the description, they can display many
14 things. They can display a part of the Website. They can
15 display a description of the meta -- in the meta data. It's
16 Google's choice as to what they display there.

17 Q. And you -- you cannot force Google to list you in
18 organic results; correct?

19 A. No. You cannot.

20 Q. Okay. Are you aware of whether state motor vehicle
21 departments pay for search engine marketing?

22 A. No. I'm not aware of any states that do that.

23 MR. DAUCHER: Let's take a look at Exhibit 323,
24 please.

25 ///

1 BY MR. DAUCHER:

2 Q. Again, this is a search result you were shown on earlier
3 examination from May of '07, a Google search result.

4 Do you recall this?

5 A. Correct.

6 Q. And you were asked about the sponsored listing at the
7 top.

8 And can you again identify for the Court where the
9 organic results begin.

10 A. Right beneath sponsored links or link.

11 Q. So -- so the first organic result on this page would be
12 California Department of Motor Vehicles; is that correct?

13 A. Correct.

14 Q. And then the second organic result is *DMV.org's* Website;
15 is that correct?

16 A. Correct.

17 Q. And within that result, there is more underlying text
18 saying, "California DMV," dash, "CA DMV Department of Motor
19 Vehicles guide."

20 Do you see that?

21 A. Correct.

22 Q. Is that an organic or a sponsored result?

23 A. It's an organic result.

24 Q. So Google is displaying that text on its own; correct?

25 A. That's correct.

1 Q. You're not paying Google to do that; correct?

2 A. That's correct.

3 MR. DAUCHER: Would you please reference
4 Exhibit 324.

5 BY MR. DAUCHER:

6 Q. This is a search from November of '06 that were you
7 shown on earlier examination for driver's ed on Google.

8 Do you recall this?

9 A. Yes.

10 Q. And are you currently running the same text for a
11 driver's ed sponsored listing at this point?

12 A. No. The text has changed.

13 Q. Can you describe the changes that you've made?

14 A. The text, I believe -- says California driver's ed info,
15 I believe in the headline. And then the -- the description
16 lines say, "Find driver's education information or find a
17 driver's education course at 'The Unofficial Guide to the
18 DMV.'"

19 MR. DAUCHER: And now will you now reference Page 2
20 of Exhibit 324, please.

21 BY MR. DAUCHER:

22 Q. And this is another search result from November 27th,
23 2006, which were you asked about on examination.

24 Do you recall this?

25 A. Yes.

1 Q. And again, the focus was on the sponsored listing at the
2 top. But I want you to identify for the Court where the
3 organic results begin on this page.

4 A. So just -- just like I said before, the sponsored links,
5 usually the organic starts again. If you ignore that, Google
6 desk top results it says, "California driver education
7 online, 39.95." That's the first organic listing.

8 Q. And the second organic listing appears to be for
9 *DMV.org*; is that correct?

10 A. That's correct.

11 Q. And again, in the underlying text within that second
12 organic listing the words "California DMV," dash, "CA DMV
13 Department of Motor Vehicles guide" appear.

14 Do you see those words?

15 A. Correct.

16 Q. And again, do you -- do you know who selects that text?

17 A. Well, that was the title tag that we had on our site at
18 that time, and Google basically decides to display that
19 listing or not.

20 MR. DAUCHER: Will you refer to Exhibit 325,
21 please.

22 BY MR. DAUCHER:

23 Q. This is a search result from November 27th, also Google,
24 this time for traffic school. And focus on examination was
25 on sponsored listing for *DMV.org* in the right-hand column

1 under approved traffic schools.

2 Do you see that?

3 A. Yes.

4 Q. Now, who is -- who does *DMV.org* advertise traffic school
5 for in California?

6 A. We advertise I Drive Safely on *DMV.org* in the state of
7 California, on our California-related pages to traffic
8 school.

9 Q. And do you know whether courts in California will accept
10 a certificate of completion from I Drive Safely, you know, to
11 mask traffic points?

12 MR. DE CARLO: Objection. Leading.

13 THE COURT: Overruled.

14 You can answer.

15 THE WITNESS: Yes.

16 BY MR. DAUCHER:

17 Q. And also on this listing, can you identify for the Court
18 this Exhibit 325 where the organic results begin.

19 A. Again, below the sponsored links and where it says
20 *trafficschool.com*.

21 Q. Plaintiffs in this case are listed as the first organic
22 result; correct?

23 A. That's correct.

24 Q. And *DMV.org* appears as the fourth?

25 A. I think the fifth actually.

1 Q. Fifth?

2 Okay. And again, that -- the placement of the
3 organic results is not within the control of online viewers;
4 correct?

5 A. No, it's not.

6 MR. DE CARLO: Objection. Leading.

7 THE COURT: Overruled.

8 You can answer.

9 Next question.

10 MR. DAUCHER: I'd like to refer now to Exhibit 670.

11 BY MR. DAUCHER:

12 Q. I believe there's a stipulation on search results. And
13 this could be identified as an October 2007 Yahoo! search for
14 DMV.

15 MR. DE CARLO: Yes. That's correct.

16 MR. DAUCHER: Thank you.

17 BY MR. DAUCHER:

18 Q. All right. Mr. Lahoti, does Online Guru currently bid
19 for the key word "DMV" with Yahoo!?

20 A. Yes, we do.

21 Q. And in this result -- in this set of results can you
22 identify for us any sponsored listings which are paid for by
23 Online Guru?

24 A. The -- on the right column, the third listing is the
25 *DMV.org*-sponsored listing.

1 Q. Where it says "California DMV info"?

2 A. That is correct.

3 Q. And it also now includes the reference, "The unofficial
4 guide to the CA DMV"?

5 A. That is correct.

6 Q. And on this listing, under number one it appears to be
7 *DMV.org* as well.

8 Is that an organic or a sponsored result?

9 A. That's an organic result that Yahoo! has chosen to
10 place.

11 Q. And the text underneath that, Directory of State
12 Department of Motor Vehicle Websites, is that text that
13 Online Guru controls?

14 A. No, it is not.

15 MR. DAUCHER: And will you now reference
16 Exhibit 671.

17 I believe there will also be a stipulation, your
18 Honor, that this is a Google search result from October 2007
19 for the same search term "DMV."

20 MR. DE CARLO: That's correct.

21 What exhibit is it? I'm sorry, Mr. Daucher.

22 MR. DAUCHER: 671.

23 MR. DE CARLO: Thank you.

24 BY MR. DAUCHER:

25 Q. And again, on this search result can you identify the --

1 any sponsored results that are paid for by Online Guru?

2 A. Yes. On the right side there are -- there's the second
3 listing.

4 Q. And on this result for the Court can you identify where
5 the organic results begin.

6 A. The organic results are at the top. It's the top
7 listing on the left.

8 Q. So the first organic result that Google posts is for the
9 California Department of Motor Vehicles?

10 A. That's correct.

11 Q. And *DMV.org* is listed third in the organic results;
12 correct?

13 A. Yes. That's correct.

14 Q. And now Google pulls in the header text that you have on
15 your Website now, "The Unofficial Guide to the DMV"; is that
16 correct?

17 A. Correct.

18 MR. DAUCHER: Okay. I'd like you to refer now to
19 Exhibit 367, please.

20 BY MR. DAUCHER:

21 Q. This is a search result you were shown on earlier
22 examination.

23 Do you recall that?

24 A. Yes.

25 Q. Now, who -- does *DMV.org* advertise a California driver's

1 education provider on its Website currently?

2 A. Yes.

3 Q. And who is that provider?

4 A. Golden State Private School.

5 Q. Okay. And is there a relationship between Golden State
6 Private School and *teendriverseducation.com* the Website?

7 A. Golden State Private School basically manages the entire
8 Website that can you find at *teendriverseducation.com*.

9 Q. Now, plaintiffs' counsel point pointed out that
10 *teendriverseducation.com*, the Website, is owned by one of the
11 BizGroups' entities is that correct?

12 A. That's incorrect.

13 Q. Who owns that Website?

14 A. The domain name specifically is owned by one of the
15 entities. The Website -- the information, the operation the
16 customer service, the fulfillment, the whole thing -- is run,
17 managed, operated by Golden State Private School.

18 Q. Is there a business reason why the domain name is owned
19 by one of the BizGroup entities?

20 A. Yes. There's a business reason. And the reason is
21 because in order to track sales for a cost per action, CPA,
22 business model, you need a -- a URL basically that is
23 designated for the publisher who is advertising. And there
24 are various ways to do that. You can have a specific file
25 name that's on the Website. Or you can have a -- its own

1 domain name. And that way all of the sales would -- that we
2 are referring to would be properly tracked.

3 Q. Do you know whether Golden State sells driver's
4 education services based upon advertisement not done by
5 Online Guru?

6 A. Of course.

7 Q. And so the *teendriverseducation.com* domain helps
8 segregate those sales from your sales?

9 A. That is correct.

10 Q. Okay. Do you know whether Golden State is an
11 approved -- a California DMV approved driver's education
12 service provider?

13 A. I don't know if the terminology is that they are
14 approved by the California DMV. But I do know they are
15 approved to give certificates of completion that basically
16 satisfy your driver's education requirements. I think there
17 are some differences between private schools versus
18 brick-and-mortar driving schools; so that's kind of sort of
19 how it works.

20 Q. All right.

21 MR. DAUCHER: Can we refer now to Exhibit 627,
22 please.

23 BY DAUCHER:

24 Q. Mr. Lahoti, do you recognize Exhibit 627?

25 A. Yes.

1 MR. DAUCHER: And, your Honor, may I ask that the
2 paper copy of this exhibit be placed before the witness?

3 THE COURT: Yes.

4 THE WITNESS: Okay. I can see that.

5 MR. DAUCHER: Thank you.

6 BY MR. DAUCHER:

7 Q. And 627 comprises about six pages?

8 Can you identify Exhibit 627?

9 A. You want me to tell you what it is?

10 Q. Yes, please.

11 A. This is the archive version of our *DMV.org* Website on,
12 I think, February 16th of 2006.

13 Q. So this is prior to the October 2006 redesign; is that
14 correct?

15 A. That is correct.

16 Q. Now, as of that time, February 2006, do you know
17 approximately how many different pages the *DMV.org* Website
18 contained?

19 A. Over a thousand.

20 Q. Okay. And after the redesign of the Website, how many
21 pages?

22 A. Close to 4,000.

23 Q. Okay. And the pages that are referenced as Exhibit 627,
24 do those -- well, let's take a look at the first two.

25 Is that the home page from February 2006?

1 A. That's the home page, yes.

2 Q. And you were using the *DMV.org* license plate logo at
3 that time; correct?

4 A. Correct.

5 Q. And you were using your "No need to stand in line" tag
6 line at that time; correct?

7 A. Correct.

8 MR. DE CARLO: Objection. Leading.

9 THE COURT: Sustained.

10 BY MR. DAUCHER:

11 Q. Can you identify for the Court -- well, let me just ask
12 you this.

13 On the third page of Exhibit 627, can you identify
14 what the third and fourth pages represent.

15 A. This represents the home page of *DMV.org* pertaining to
16 the California -- the State of California.

17 Q. Okay. And if you will look at the fifth page of
18 Exhibit 627, can you identify for the Court what those pages
19 represent.

20 A. Which page?

21 Q. The fifth and sixth page.

22 A. This page represents the California traffic school page
23 that we had at that time.

24 Q. And so in February of 2006 you were then advertising
25 I Drive Safely; is that correct?

1 A. That's correct.

2 Q. Okay. Now, will you refer to Exhibit 625, please. I'm
3 afraid it's in a different notebook.

4 MR. DAUCHER: I would ask that that be placed
5 before the witness as well, your Honor.

6 THE COURT: How much longer are you going to be
7 with this witness?

8 MR. DAUCHER: I believe only five or seven minutes,
9 your Honor.

10 THE COURT: All right.

11 BY MR. DAUCHER:

12 Q. Now, Mr. Lahoti, do you have Exhibit 625 before you?

13 A. Yes, I do.

14 Q. And can you identify it for the record.

15 A. Well, according to the link at the bottom, it looks like
16 it's the home page of *DMV.org* in on May 17, 2004.

17 Q. And is that consistent with what you recall the home
18 page to have looked like in approximately May of 2004?

19 A. Yes.

20 Q. Is -- there's some blank white space at the top of this
21 exhibit.

22 Do you know whether in 2004 that space was blank?

23 A. No. It was the same -- same thing as the previous
24 exhibit. It had the -- the *DMV.org* logo and the same -- the
25 same image, I think.

1 Q. Okay. Mention was made in the earlier testimony about
2 the tag line "No need to stand in line."

3 And do you know -- what's your best estimate for
4 the Court as to when you began using that tag line?

5 A. Early 2000 -- early 2004 or late 2003.

6 Q. And in this March or May 2004 version that we're looking
7 at, Exhibit 625, was that tag line in use?

8 A. Sorry. Can you state that again.

9 Q. On this version, Exhibit 625, was that tag line in use?

10 A. Yes. The tag line says, "No need to stand in line.
11 Your personal guide is now online."

12 MR. DAUCHER: Can you now refer to Exhibit 318,
13 please.

14 BY MR. DAUCHER:

15 Q. Do you recall the discussion -- I'm sorry. We can use
16 an electronic version for this.

17 THE COURT: That's fine.

18 BY MR. DAUCHER:

19 Q. Do you see Exhibit 318?

20 A. Yes, I do.

21 Q. And in -- this indicates a date of October 2006.

22 That's after the newer version of the Website came
23 out; is that correct?

24 A. Yes.

25 Q. Okay. And at that point in time, you were using state

1 flags on the state home pages; is that correct?

2 A. Yes. That was -- yes.

3 Q. And when did that practice begin?

4 A. October 2006 or when the site redesign went live.

5 Q. So in about October 2006?

6 A. Yes. That's correct.

7 Q. And are you currently using those state flags?

8 A. No, we are not.

9 Q. When did that practice end?

10 A. March 2007.

11 Q. What was the purpose of using the state flags?

12 A. The purpose was -- you know, I guess pictures -- some
13 users respond to pictures better than text sometimes. And so
14 we were basically trying to reenforce that they were on a
15 page dedicated to information related to California. And it
16 was mostly a design -- you know, a design decision to put it
17 on there.

18 MR. DAUCHER: Will you refer now to Exhibit 631,
19 please. And specifically if you'll refer to page five of
20 that exhibit.

21 THE WITNESS: Okay. I'm there.

22 BY MR. DAUCHER:

23 Q. Now, you were asked whether the current version of the
24 traffic school page for California for *DMV.org* includes the
25 unofficial guide language.

1 Do you recall that?

2 A. Yes.

3 Q. And does -- first of all, does Exhibit 631, Page 5,
4 reflect a copy of a current version of that page?

5 A. No.

6 Q. Actually -- and so -- can you identify what has been
7 revised since this -- the date of this exhibit.

8 A. Well, this -- since the date of this specific exhibit?

9 Q. Yes.

10 A. There has been additional information about kind of how
11 traffic -- just at the bottom of the page below the sponsor,
12 where we talk about just like kind of rules and regulations
13 around traffic school in California, maybe the language of
14 the ad has changed a little bit. I'm not sure specifically
15 of all the changes, but I do know that we -- we added more
16 information at the bottom.

17 Q. On this Page 5 of Exhibit 631, under the heading
18 "traffic school" it has the "recommends" language.

19 Do you see that?

20 A. Yes.

21 Q. Is that how it currently shows on the Website?

22 A. I don't think so. I think the language was changed.

23 Q. And does the current version of the Website for the
24 California traffic school page of *DMV.org* include the words
25 "unofficial guide"?

1 A. Yes. It's the current version. Even this version has
2 it on the license plate. It's the first thing that you see
3 when you look at what site you're on. And then it's -- you
4 know, "This DMV is not affiliated" underneath that, but it
5 doesn't say "official" anywhere else on there.

6 Q. You're referring to the license plate logo on the upper
7 left?

8 A. That's correct.

9 Q. And does that logo appear on every page of the *DMV.org*
10 Website?

11 A. Yes. Each and every page.

12 Q. With the unofficial guide language?

13 A. Correct. The tag -- that tag line is underneath that.

14 Q. Okay. Mention was made of the emails that *DMV.org*
15 receives.

16 First of all, to link -- how many visitors does
17 *DMV.org* receive on a daily basis?

18 A. On average around 175,000.

19 MR. DE CARLO: Objection. Exceeds the scope of the
20 direct.

21 THE COURT: Overruled.

22 You can answer.

23 THE WITNESS: About 175,000 on average a day.

24 BY MR. DAUCHER:

25 Q. And how many of those visitors send emails that you

1 receive at Online Guru?

2 A. Maybe a couple of hundred.

3 Q. Okay. And now mention was made of certain articles that
4 appear on the Internet that reference *DMV.org*.

5 Do you recall that testimony?

6 A. Yes.

7 Q. And do you know how many different articles or Websites
8 on the Internet link to *DMV.org*?

9 A. Well, according to -- yes, I do.

10 Q. And approximately how many?

11 A. According to Google's Webmaster tools they give us
12 access to, it's about close to 70,000.

13 MR. DAUCHER: Thank you.

14 No further questions, your Honor.

15 THE COURT: All right. We're going to take our
16 break.

17 How much do you have? Do you have anything left
18 for this witness?

19 MR. DE CARLO: Yes, your Honor. I would have some
20 redirect.

21 THE COURT: And how -- what's your estimate?

22 MR. DE CARLO: 15 minutes.

23 THE COURT: Okay. We'll go ahead and take our
24 break. And we'll come back at 1:30.

25 Who is your next witness?

1 MR. DE CARLO: The plaintiff would call
2 Eric Creditor by declaration.

3 MR. DAUCHER: The declarations are submitted I
4 believe. Is there an intent to read the declarations into
5 the record of the Court?

6 THE COURT: No. The declaration is submitted.
7 Do you have any cross-examination?

8 MR. DAUCHER: Yes, of course, your Honor.

9 THE COURT: Okay. When you get back, when you call
10 Mr. Creditor, I'll tell you what the -- I think there were
11 objections to Mr. Creditor's declaration. I'll rule on those
12 objections, and I'll give you -- depending on those rulings,
13 I may give you some brief opportunity to see if you can cure
14 any of the problems.

15 MR. DE CARLO: Mr. Creditor is our witness, your
16 Honor.

17 THE COURT: Yes. And as I understand it, he had
18 some objections --

19 MR. DE CARLO: Yes.

20 THE COURT: -- to the declaration that you
21 submitted; correct?

22 MR. DE CARLO: Yes, your Honor.

23 THE COURT: Okay. So I'm going to rule on those
24 objections, and then I'll give you a brief opportunity to see
25 if there's anything there that you can clean up based on

1 those objections. You may elect not to do it, at which point
2 he'll start his cross-examination.

3 Okay. We'll see everybody at 1:30.

4 THE CLERK: All rise.

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1 (Whereupon, from 12:10 p.m. to 1:39 p.m., the.
2 afternoon recess was held.)

3 THE COURT: All right. Why don't we have the
4 witness resume the stand.

5 MR. MAKOUS: Your Honor, we have some orders of
6 business. Could we talk about them now or should we finish
7 with the witness.

8 THE COURT: You have some what?

9 MR. MAKOUS: Some orders to discuss on trial
10 management.

11 THE COURT: Let's finish this.

12 MR. MAKOUS: Thank you.

13 THE CLERK: Sir, you are reminded that having been
14 previously sworn, you remain under oath.

15 THE WITNESS: Thank you.

16 THE COURT: All right.

17 **REDIRECT EXAMINATION**

18 BY MR. DE CARLO:

19 Q. Mr. Lahoti, regarding *teendriverseducation* and your
20 testimony earlier about that, the arrangement is between --
21 the business arrangement is between Online Guru and Golden
22 State Private School; correct?

23 A. That is correct.

24 Q. I'd like to show you a page that's been previously
25 marked as Exhibit 15. And I'm just going to use the Elmo

1 because it's easier.

2 This was the business development agreement.

3 And Item B says, "The school" -- that, of course,
4 is Golden State Private School; correct?

5 A. That is correct.

6 Q. "Desires to retain the company" -- and the company is
7 Online Guru; correct?

8 A. Yes.

9 Q. And it says, "to market and promote its business
10 utilizing the URL *teendriverseducation.com* managed by the
11 company."

12 So according to this agreement, Online Guru is
13 managing the *teendriverseducation.com* Website; correct?

14 MR. DAUCHER: Objection to the extent calls for a
15 legal interpretation of the agreement.

16 THE COURT: Are you asking if it says what it says?
17 Is that what you're asking?

18 MR. DE CARLO: I'm asking him if -- yes, your
19 Honor.

20 THE COURT: I can read the document. It says what
21 it says.

22 BY MR. DE CARLO:

23 Q. Mr. Lahoti, is it true that Online Guru manages the
24 *teendriverseducation.com* Website?

25 A. No, it is not.

1 Q. *Teendriverseducation* is a domain name that is owned by,
2 I believe, Find My Specialist?

3 A. Correct.

4 Q. And Find My Specialist is one of those companies
5 underneath the BizGroups; correct?

6 A. Correct.

7 Q. When -- you indicated in your testimony with Mr. Daucher
8 that Online Guru advertises Golden State Private School;
9 correct?

10 A. Correct.

11 Q. Anywhere on the *DMV.org* California -- strike that.

12 In order to access *teendriverseducation.com*, the
13 user -- the Web user goes to the California driver's
14 education home page; correct?

15 A. The California driver's ed page, yes.

16 Q. And on it there's a link for *teendriverseducation*?

17 A. Correct.

18 Q. There's no reference on that page to Golden State
19 Private School; correct?

20 A. That is correct.

21 Q. But it's your testimony that *DMV.org* is advertising
22 Golden State Private School even though there's no reference
23 to Golden State Private School on that page?

24 A. Well, similar to how continued ed manage -- is the
25 company that owns *IDriveSafely.com*, same thing with

1 Private -- or they manage -- it's like a fictitious business
2 name or a business name where they're operating under the
3 domain teen -- under the Website *teendriverseducation.com*.

4 It -- it doesn't -- if we -- marketing Golden State
5 Private School on our site, they are the ones that we are
6 marketing. But they're using -- or their services are at
7 *teendriverseducation.com*.

8 The Website domain name doesn't have to be
9 necessarily the company name in which you are marketing.

10 Q. In fact, you are not advertising Golden State Private
11 School on your Website because there is no reference to
12 Golden State Private School anywhere on your driver's
13 education page; true?

14 MR. DAUCHER: Objection. Argumentative.

15 THE COURT: Sustained.

16 BY MR. DE CARLO:

17 Q. Mr. Lahoti, when the user clicks on the
18 *teendriverseducation* link on the *DMV.org* Website, the user
19 goes to the *teendriverseducation* Website; correct?

20 A. Correct.

21 Q. That Website is branded completely as
22 *teendriverseducation*; is that correct?

23 A. Yes.

24 Q. Okay. And, in fact, on that Website representations are
25 made to the consumer that the courses are being offered in

1 part by *teendriverseducation*; correct?

2 A. Well, I believe that the page is about -- when you read
3 about us and the contact page all refer to Golden State
4 Private School. So they are the ones who own that Website.

5 Q. Don't you also represent to the consumer that is
6 *teendriverseducation* that is offering those driver's
7 education services?

8 A. That's where you can basically find the services, at
9 teen -- through -- by visiting *teendriverseducation.com*
10 that's where the service will be hosted.

11 MR. DE CARLO: Your Honor, may I present an
12 impeachment document to show to counsel.

13 THE COURT: Yes. You can show it to counsel.

14 MR. DE CARLO: May I give one to the clerk, your
15 Honor, to give one to the Court.

16 THE COURT: Yes. That's fine.

17 Have you marked this?

18 MR. DE CARLO: It has not been marked.

19 THE COURT: Would you like to mark it?

20 MR. DE CARLO: Yes, I would like to mark it, your
21 Honor.

22 THE COURT: Okay. What number is it?

23 MR. DE CARLO: Could we mark it as 413, your Honor?

24 THE COURT: All right.

25 Is this more than one document?

1 MR. DE CARLO: It is multiple pages from the
2 *teendriverseducation* Website. It's the result of clicking on
3 various links or various headings on that Website.

4 THE COURT: Okay.

5 MR. DE CARLO: May it be placed before the witness,
6 your Honor?

7 THE COURT: Yes.

8 MR. DE CARLO: Thank you.

9 BY MR. DE CARLO:

10 Q. Mr. Lahoti, before I ask you --

11 THE COURT: Do you have that document?

12 THE WITNESS: No, I don't.

13 THE COURT: Would you place that document in front
14 of the witness, please.

15 THE WITNESS: Thank you.

16 BY MR. DE CARLO:

17 Q. Mr. Lahoti, before I ask you a couple of questions about
18 that document, I'd like to go over a couple of points about
19 the value of -- of owning this domain name.

20 There's a significant business advantage to one of
21 your companies owning this domain name in part because the
22 goodwill that's developed is owned by Find My Specialist in
23 this instance; isn't that correct?

24 MR. DAUCHER: Objection. Calls for a legal
25 conclusion.

1 THE COURT: Overruled.

2 You can answer.

3 THE WITNESS: The main purpose of having a separate
4 domain name is so that the students can be segmented, and
5 they know how to -- they know, you know, the cost-per-action
6 fee that they're paying to us. They can -- you know, they
7 can separate it from their own students. That's the main
8 purpose.

9 BY MR. DE CARLO:

10 Q. Using a domain name -- owning the domain name also helps
11 you because in the future if there's going to be referrals
12 back to the *teendriverseducation* Website, it benefits your
13 company because you're the owner of the domain name; correct?

14 A. That would -- that would then -- if somebody, let's say,
15 goes to *driverseducation.com* and they come back to it and
16 they buy the product, we would get credit for it.

17 Q. And this also enables you great flexibility because
18 you're not beholden to Golden State Private School. For
19 example, if your relationship with Golden State Private
20 School severs, you can get another provider for -- I'm sorry.
21 Golden State Private School, if that relationship severs, you
22 can get another providers for driver's education, and nothing
23 about your Website has to change. The branding can all stay
24 the same, and it remains seamless; isn't that correct?

25 A. I'm not sure if that would be very easy to do because

1 there's -- there's existing students that are going to go to
2 that site to log in, and it would very complicated to do
3 something like that.

4 Q. Aren't they going to go back to the *teendriverseducation*
5 Website to log in?

6 A. That's right. But the existing students that log in to
7 *teendriverseducation.com*, we don't run that course. Golden
8 State Private School does. So all of those existing students
9 you'd somehow have to link them to a course that's not
10 existing anymore. So that doesn't give us that much
11 flexibility there.

12 Q. For students who bookmark the *teendriverseducation.com*
13 course -- or Website, rather, that benefits Find My
14 Specialist because if those students come back and access
15 the bookmark, they're going to go back to
16 *teendriverseducation.com* as opposed to
17 *GoldenStatePrivateSchool.com* or whatever their Website is.

18 A. Well, that's how you log into the course. That's why
19 they would bookmark it, right?

20 Q. Okay. Now let's take a look at this Exhibit 413.

21 And you recognize this as being a page -- the
22 welcome page on *teendriverseducation*; correct?

23 A. It is the home page.

24 Q. Okay. And again, this is branded by a -- branded as
25 *teendriverseducation*.

1 There's no branding of Golden State Private School
2 here; correct?

3 A. Not on this page.

4 Q. And if we go up a little bit, I highlighted some stuff.
5 It says our courses are developed by Golden State.

6 Our courses -- who are you referring to when you
7 say "our"?

8 A. What do you mean, who am I referring to?

9 MR. DAUCHER: Objection. Lacks foundation that
10 they were --

11 THE COURT: Sustained.

12 BY MR. DE CARLO:

13 Q. Do you know who wrote this?

14 A. Yeah. Golden State Private School did.

15 Q. And do you know who -- do you know who Golden State
16 Private School is referring to when they say "our"?

17 A. Yeah. Themselves.

18 Q. Is not a representation made to the consumer that it is
19 *teendriverseducation* whose course it is?

20 MR. DAUCHER: Objection. Calls for a speculation.
21 He didn't write it.

22 THE COURT: Sustained.

23 BY MR. DE CARLO:

24 Q. If you turn, sir, to the page that begins, "Legal
25 information, terms of use."

1 Under "Copyright and proprietary rights: This
2 Website is the property of driver's ed course and driver's ed
3 course is defined as "teendriverseducation.com."

4 Now, you've indicated that it is Golden State
5 Private School that wrote this text?

6 A. That is correct.

7 Q. Is that your understanding of the legal -- the legal
8 property rights on this Website that the Website is owned by
9 *teendriverseducation.com*?

10 MR. DAUCHER: Objection. 702. Calls for legal
11 opinion.

12 THE COURT: Sustained.

13 BY MR. DE CARLO:

14 Q. Mr. Lahoti, do you believe that Find My Specialist owns
15 the *teendriverseducation.com* Website?

16 A. No, I do not.

17 Q. You don't take a proprietary interest in it?

18 A. The Website? No.

19 Q. Just the domain name?

20 A. Just the domain.

21 Can I clarify something?

22 They use the domain basically under -- under
23 license.

24 Q. They use the domain name under license for Find My
25 Specialist?

1 A. Correct.

2 Q. Mr. Lahoti, on your -- is it accurate to say that you
3 have not -- "you" meaning Online Guru, have not changed all
4 the sponsored listing to include "unofficial language"?

5 MR. DAUCHER: Objection. Vague as to "all ."

6 THE COURT: Sustained.

7 BY MR. DE CARLO:

8 Q. You have not -- you have not changed all of your search
9 engine advertising as it relates to *trafficschool* to include
10 the word "unofficial" within the sponsored listing; is that
11 correct?

12 A. As of this point, I think all of it has been changed,
13 but I'm not -- I can't -- you're talking about on Google?

14 Q. Yes.

15 A. I'm pretty sure most, if not all, includes "unofficial"
16 as -- you know, as of now, yeah. I'm pretty sure.

17 MR. DE CARLO: Your Honor, I have a series of
18 impeachment documents, which I'd like to show counsel, which
19 are Web pages.

20 BY MR. DE CARLO:

21 Q. Let me clarify my question.

22 Mr. Lahoti, on Google for driver's education, is it
23 accurate that you have not added unofficial language on all
24 of your sponsored listings for driving school?

25 A. Did -- what was -- how is that different -- what was the

1 previous -- what was the previous question?

2 Q. The previous question related to *trafficschool*, and now
3 I'm changing the question to driver's education.

4 A. Okay. So please restate that.

5 Q. Is it accurate to say that in Google, under Googled
6 sponsored advertising for driver's education you have not
7 added the language related to unofficial in all of your
8 sponsored listings?

9 A. We made -- we made an effort to do it on all of them.
10 So I have not seen -- I do not know of any right now that
11 don't have "unofficial" in it.

12 Q. Okay. By the way, on this *teendriverseducation* page it
13 indicates the course is \$69.95.

14 How much of that fee does Online Guru keep as part
15 of its share?

16 MR. DAUCHER: Objection. Outside the scope of --

17 THE COURT: Sustained.

18 BY MR. DE CARLO:

19 Q. Thank you, Mr. Lahoti.

20 MR. DE CARLO: I don't have anything else, your
21 Honor.

22 MR. DAUCHER: No questions, your Honor.

23 THE COURT: All right. Sir, you may step down.

24 THE WITNESS: Thank you.

25 THE COURT: Who is your next witness?

1 MR. DE CARLO: Eric Creditor, your Honor.

2 THE COURT: Why don't we go over the objections
3 that were filed.

4 All right. I'm looking at the defendants'
5 objections to the Creditor testimony. Let me ask the
6 defendants.

7 Your objection -- let's take, for example, on
8 Page 7 where you object to Paragraph 11. And are you
9 objecting to lines -- well, Page 4, Lines 4 through 5?

10 MR. DAUCHER: Yes, your Honor. To the extent the
11 witness is purporting to state what my client does. But not
12 to the extent the witness is talking about his own company's
13 operations.

14 THE COURT: Okay.

15 Okay. The objection to Paragraphs 11, 12, 13, 14,
16 15, 16, 16-E, 19, and 28 are sustained. There's no
17 foundation.

18 And then Paragraphs 17, 20, and 28 are sustained,
19 as is -- well, under consumer deception, 20 -- Paragraphs 29,
20 30, and Paragraph 25 on page -- pay-per-clicking marketing.

21 And under causation of injury the objection is to
22 Paragraphs 24, 25, and 26 are sustained.

23 And under 3.8, the objection to Paragraphs 38
24 through 41 are sustained.

25 We'll take up the objection to 364.

1 Now, are you still objecting to 364?

2 MR. DAUCHER: Is that their visitor report?

3 I believe that's their visitor report, your Honor.
4 Yes. But only to the extent that it includes a column
5 purporting to illustrate a decrease in traffic across the
6 *trafficschool.com* Website because that is, in our view,
7 misleading and so not something we would waive a business
8 record exception on because, as the Court is aware
9 *trafficschool.com* spun off driver's ed operations; so a
10 certain portion of their traffic started to funnel
11 through Driver's Ed --

12 THE COURT: All I need to know is do you still have
13 an objection?

14 MR. DAUCHER: Yes, your Honor.

15 THE COURT: And then there are a number of other
16 exhibits here. 301, 303, 305, 307, 309, 311, 313, 317
17 through 320, 332, and 352 to 354.

18 MR. DAUCHER: We would at this time withdraw those,
19 your Honor.

20 THE COURT: Okay. And Paragraph 16(f) and 29,
21 which I guess refers to Trial Exhibit 321.

22 MR. DAUCHER: One moment.

23 We would retain those objections, your Honor.

24 THE COURT: Okay. And then Paragraphs 19, 20, 29,
25 and Paragraphs --

1 MR. DAUCHER: Those -- I'm sorry, your Honor.

2 THE COURT: Go ahead.

3 MR. DAUCHER: Under section 3.3.3, we will withdraw
4 those objections.

5 THE COURT: And what about Paragraph 29? I think
6 it deals with 367, 372, 379, and 383 too.

7 MR. DAUCHER: We -- we have no objection to the
8 exhibits any longer. I think -- and I think you've taken
9 care of the test -- the opinion testimony already.

10 THE COURT: Okay.

11 Okay. Now, where is Mr. Creditor?

12 THE WITNESS: Right here, your Honor.

13 THE COURT: Okay. Do you want to come forward and
14 be sworn.

15 THE CLERK: Please raise your right hand.

16 Do you solemnly swear that the testimony you are
17 about to give in the matter now pending before this Court
18 shall be the truth, the whole truth, and nothing but the
19 truth so help you God.

20 THE WITNESS: I do.

21 THE CLERK: Please be seated.

22 **ERIC JASON CREDITOR,**

23 called as a witness by counsel for the plaintiff(s) being
24 first duly sworn, testified as follows:

25 THE CLERK: Please state your full name and spell

1 your last name for the record.

2 THE WITNESS: Eric Jason Creditor, spelled
3 C-r-e-d-i-t-o-r.

4 **DIRECT EXAMINATION**

5 BY MR. MAKOUS:

6 Q. Good afternoon, Mr. Creditor.

7 A. Good afternoon.

8 MR. MAKOUS: Your Honor, let -- order of business
9 on your rulings. I just -- there was a few things that I
10 didn't hear your ruling on. And in order to facilitate a
11 more exam -- direct exam, which I think you are permitting us
12 to do in view of the rulings -- I'm not going to argue it. I
13 just want to go back and find out what your ruling was, if I
14 may.

15 And the one I didn't hear was Paragraph 3.3 of
16 defendants' objections. And I think -- yes, that would be
17 it. 3.3, which were Paragraphs 11, 14, 16, and 20 on
18 competition.

19 THE COURT: You didn't hear it because I didn't --
20 say anything. So those objections were overruled. So you
21 don't need to go over that.

22 MR. MAKOUS: Thank you, your Honor. I apologize.
23 I didn't know your style on that.

24 Also, may I conclude that the 3.5 was also
25 overruled and 3.6?

1 THE COURT: No. 3.5 was sustained. 3.6 was
2 sustained.

3 MR. MAKOUS: Okay. And then on 3.9, the trial
4 exhibit, I think you -- as I understood it, you -- that's
5 just under consideration. There's been no ruling on that.
6 Is that what you meant?

7 THE COURT: Yeah. You can tell -- you can ask the
8 witness about that exhibit.

9 MR. MAKOUS: Okay. I will do so.

10 Thank you, your Honor.

11 And finally, the third party Web pages on Page 13,
12 which are 3.10.2, a point of order on that, the joint exhibit
13 list as filed by the parties has only a relevancy objection,
14 not an improper lay opinion. They've withdrawn that. And so
15 the only issue is one of relevancy, and that is on the
16 exhibit list with this Court.

17 I can inquire as to the document if you wish, but I
18 believe it's --

19 THE COURT: Are you talking about Exhibit 321?

20 MR. MAKOUS: I'm talking about exhibit -- Trial
21 Exhibit 321, as referenced on Page 13 of defendants'
22 objections, 3.10.2.

23 THE COURT: Well, apparently, I guess -- what is
24 your objection to that?

25 MR. DAUCHER: Your Honor, I think we did -- in

1 fairness to Mr. Makous, I think we did withdraw that on the
2 trial meet and confer at this point; so we will withdraw
3 that.

4 THE COURT: All right. Thank you.

5 MR. MAKOUS: Thank you, Mr. Daucher.

6 BY MR. MAKOUS:

7 Q. Mr. Creditor, did you bring your declaration to the
8 stand with you?

9 A. I did not. I left it.

10 MR. MAKOUS: Your Honor, to facilitate the
11 foundational questions to this, I would like to have -- if
12 the witness could have his declaration in front of him, and
13 then I can direct him. And then I will ask questions so that
14 we don't have to fish around for topics. It will be much
15 more efficient if I can do it that way.

16 In other words, you ruled on Paragraph 11. I can
17 lay -- I can put that on the Elmo and then start asking
18 questions of the witness to support the statements made in
19 those paragraphs.

20 THE COURT: Why don't you just ask the questions.

21 MR. MAKOUS: Can I put it on the Elmo?

22 THE COURT: Please ask the questions. We are --
23 that document is not in evidence. It's merely a declaration.
24 So ask the questions.

25 BY MR. MAKOUS:

1 Q. Okay. Mr. Creditor, how long have you been in the
2 *trafficschool* business?

3 A. I began this business -- into this business in 19 --
4 approximately 1990.

5 Q. How long have you been in the online traffic school
6 business?

7 A. We started up our online traffic school business --

8 THE COURT: This is not a -- this is not a direct
9 examination. If you want to ask him to establish a
10 foundation to try to cure these objections, you have got
11 about 10 minutes to do that.

12 BY MR. MAKOUS:

13 Q. Okay. Mr. Creditor, in your declaration do you recall
14 your testimony where you said that *trafficschool.com* competes
15 with *DMV.org* by promoting and selling *trafficschool* courses
16 in the following states, and then you named a number of
17 states?

18 A. Yes.

19 Q. The Court has ruled that --

20 THE COURT: Sir, this is not a speech. Just ask
21 questions.

22 MR. MAKOUS: Okay.

23 THE COURT: Establish the foundation, if you can.

24 MR. MAKOUS: Okay.

25 BY MR. MAKOUS:

1 Q. Do you have any personal knowledge of the nature of the
2 operations of *DMV.org*, Online Guru, and the others?

3 A. From my experience in the industry in --

4 THE COURT: See, the question is do you have any
5 personal knowledge of their operations. That's the question.
6 I'm not interested in what your experience is.

7 THE WITNESS: I -- I believe that employees of our
8 company have had discussions with their company. I have
9 personal knowledge from information and evidence that I have
10 seen through this litigation as to the operations of *DMV.org*
11 as to their --

12 THE COURT: Other than what you've seen in
13 connection with this litigation, do you have any personal
14 knowledge of their operations?

15 THE WITNESS: From what I see in search engine
16 advertising and through the discussions that we have had
17 prior to this litigation, yes. I have personal knowledge I
18 believe.

19 THE COURT: Discussions with whom?

20 THE WITNESS: Discussions with representatives from
21 my company that have had -- representative -- discussions
22 with representatives from their company. Emails that I have
23 reviewed between the parties.

24 BY MR. MAKOUS:

25 Q. Referring to Driver's Ed Direct in that statement;

1 correct?

2 A. Correct.

3 Q. Have you ever visited the Website of *DMV.org*?

4 A. Yes.

5 Q. How many times?

6 A. Hundreds of times.

7 Q. Are you aware of how they promote and sell traffic
8 school services?

9 A. Yes.

10 Q. How do they do that?

11 THE COURT: How do you -- what is the basis for
12 that knowledge?

13 THE WITNESS: I see how they promote and sell the
14 courses at the search engine level. I see how they promote
15 and sell it at the Website level. I see how then their
16 partners, whom they refer over to at times, promote and sell
17 the courses as certified partners of *DMV.org*.

18 BY MR. MAKOUS:

19 Q. Okay. Let's take the state of California first. How
20 does *DMV.org* promote and sell the sale of traffic school
21 services to residents of the state of California, from what
22 you've observed?

23 MR. DAUCHER: Objection, your Honor. Lacks
24 foundation.

25 THE COURT: Sustained.

1 BY MR. MAKOUS:

2 Q. You've seen the Websites, have you not?

3 A. Correct.

4 THE COURT: That's not enough.

5 THE WITNESS: I've seen search engine advertising
6 that promotes --

7 THE COURT: There's no -- excuse me, sir. There's
8 no question pending.

9 THE WITNESS: Sorry.

10 THE COURT: Wait for a question.

11 THE WITNESS: Okay.

12 THE COURT: Go ahead.

13 BY MR. MAKOUS:

14 Q. Have you, during the course of this litigation, been
15 privy to any evidence that supports your statements in this
16 declaration about competition between the companies?

17 THE COURT: That question is objectionable.
18 Go ahead. Next question.

19 MR. MAKOUS: Okay. The next question being
20 something prior to the litigation, your Honor?

21 THE COURT: Sir, you are asking the questions.

22 MR. MAKOUS: All right.

23 BY MR. MAKOUS:

24 Q. TSC -- what is the business of *trafficschool.com*?

25 A. *Trafficschool.com* markets and promotes, sells, fills, in

1 some cases provides certificates for the completion of ticket
2 dismissal courses in California, as well as the relationships
3 for various other states for ticket dismissal courses, in
4 addition to providing other services, such as driving record
5 fulfillments, insurance quotation forms, and some ancillary
6 services as well.

7 Q. What is the business of *DriversEdDirect.com*?

8 A. *DriversEdDirect* is a driving school for new drivers
9 looking for information and for courses to fulfill
10 requirements for learner's permits or licenses, depending
11 upon their state, through driver's education courses or --
12 and/or through behind-the-wheel driver's training.

13 Q. Did *DriversEdDirect* of have any direct communication
14 with Raj Lahoti about a business partnership?

15 A. Yes.

16 Q. When?

17 MR. DAUCHER: Objection. No foundation. The
18 witness had personal communications.

19 MR. MAKOUS: May I inquire. He's the president of
20 *DriversEdDirect*.

21 THE COURT: Sustained.

22 BY MR. MAKOUS:

23 Q. Mr. Creditor, are you aware if anyone from
24 *DriversEdDirect* had personal dealings on *DriversEdDirect's*
25 behalf with Raj Lahoti in relationship to a possible test

1 market of a sales of *DriversEdDirect* services?

2 A. Yes.

3 Q. When was that?

4 A. It was --

5 MR. DAUCHER: Objection. Calls for hearsay, your
6 Honor.

7 THE COURT: Not that particular question.

8 BY MR. MAKOUS:

9 Q. When was that?

10 A. It was -- to clarify, I'm the COO of the company, but
11 the president of our company --

12 THE COURT: Sir, I'm going to tell you one more
13 time. You answer his questions, only his questions. Don't
14 volunteer information. Okay?

15 THE WITNESS: Yes, sir.

16 THE COURT: Now go ahead.

17 THE WITNESS: In February of 2006 the president of
18 our company, *DriversEdDirect*, James Leach, contacted Raj
19 Lahoti to inquire on our relationship between our companies,
20 *DriversEdDirect* and *DMV.org*.

21 MR. DAUCHER: Move to strike everything after
22 "February 2006."

23 THE COURT: Sustained. The answer is stricken.

24 BY MR. MAKOUS:

25 Q. Were you privy to emails exchanged between Mr. Leach,

1 your subordinate, and *DriversEdDirect* -- and Mr. Lahoti in
2 regards to a possible test arrangement between the companies?

3 A. Yes.

4 Q. And during that exchange of emails did you learn
5 anything about the business of *DMV.org*?

6 A. From what I read in the emails that were forwarded to
7 me, yes, I did. As well as in my discussions with my
8 subordinate, James Leach, yes.

9 Q. What did you learn?

10 MR. DAUCHER: I move to strike the answer to the
11 extent it relates to a Leach discussion.

12 THE COURT: Sustained.

13 BY MR. MAKOUS:

14 Q. From the emails that you personally reviewed,
15 Mr. Creditor, what did you learn about the business practices
16 of *DMV.org*?

17 MR. DAUCHER: Objection. It would lack foundation
18 as to which part of the email. If it comes from my client it
19 could be an admission, but if it's an internal communication
20 of there's it's also hearsay.

21 THE COURT: That question is too broad; so the
22 objection is sustained.

23 MR. MAKOUS: Which part of it, your Honor, is
24 sustained so I might know how to rephrase?

25 THE COURT: Let's just the question is -- the

1 objection is sustained.

2 MR. MAKOUS: Uh-huh. Thank you.

3 BY MR. MAKOUS:

4 Q. Does *DMV.org* advertise any of your competitors on its
5 Website, Mr. Creditor?

6 MR. DAUCHER: Objection. No foundation. Calls for
7 speculation.

8 MR. MAKOUS: Is this -- your Honor, may I be heard
9 on this?

10 THE COURT: Let me try to cut this short. If
11 you're trying to put him up here to establish foundation
12 based on what somebody else told him, that's not going to
13 work.

14 MR. MAKOUS: Even if it's the defendants, your
15 Honor?

16 THE COURT: If you can do that, that's fine. But
17 you haven't done that so far. And your questions are too
18 broad.

19 MR. MAKOUS: Okay.

20 THE COURT: So --

21 MR. MAKOUS: May I -- on that note, your Honor,
22 the -- his personal viewing of the *DMV.org* Website as it is
23 held out to the public is admissible evidence. It
24 demonstrates the nature of the business.

25 THE COURT: If you have -- your job is to answer

1 questions. You've got five more minutes, and then I'm going
2 to turn it over to cross-examination. This is not -- we are
3 not having a debate.

4 So go ahead.

5 MR. MAKOUS: Okay.

6 BY MR. MAKOUS:

7 Q. Have you been to the *DMV.org* Website?

8 A. Yes. Hundreds of times.

9 Q. Does it advertise on its Website any business service in
10 competition with either of the plaintiffs?

11 MR. DAUCHER: Objection. No foundation. We've
12 been down this line before.

13 MR. MAKOUS: Let me withdraw the question.

14 BY MR. MAKOUS:

15 Q. Is I Drive Safely a competitor of yours?

16 A. Yes.

17 Q. Is Golden State School a competitor of yours?

18 A. Yes.

19 Q. Why is that?

20 MR. DAUCHER: Objection. Calls -- to the extent
21 calls for a legal opinion.

22 THE COURT: Overruled.

23 MR. MAKOUS: Thank you, your Honor.

24 THE WITNESS: I believe they are competitors
25 because they provide traffic school and --

1 THE COURT: Let's take them one at a time.

2 THE WITNESS: I Drive Safely is a competitor
3 because they provide traffic school courses. They provide
4 the same courses that we provide to the same consumers.

5 BY MR. MAKOUS:

6 Q. Okay.

7 A. Golden State Private School is a competitor because they
8 provide driver's education courses, generally -- obviously to
9 the same consumers that we do, teens or new drivers looking
10 for learner's permits and/or driver's licenses.

11 Q. Now, are there any other states that *DMV.org* has a
12 relationship with, a partner in, that you also offer either
13 driving education services or traffic school services?

14 A. Yes.

15 MR. DAUCHER: Objection. No foundation.

16 THE COURT: Sustained.

17 BY MR. MAKOUS:

18 Q. Are you aware of any other states -- and then I will ask
19 you how you are aware.

20 Are you aware of any other states where *DMV.org* has
21 a partner in relationship with a traffic school or a driver's
22 education service?

23 A. Yes.

24 Q. What states?

25 MR. DAUCHER: Objection. Lacks foundation as to --

1 THE COURT: Sustained.

2 BY MR. MAKOUS:

3 Q. Have you been to the *DMV.org* Website to see the sale --
4 the advertisement of services for traffic school and driver's
5 education in states other than California?

6 MR. DAUCHER: Objection. Relevance. Been down the
7 line before. Being on the Website isn't enough to put him on
8 the stand. No foundation.

9 THE COURT: If he's been -- you can ask him what he
10 saw on the Website.

11 MR. MAKOUS: Okay. Thank you, your Honor.

12 BY MR. MAKOUS:

13 Q. Let's -- let's take the fall of 2006 as a time frame --

14 A. Okay.

15 Q. -- so that we don't have a wide range of time.

16 Did you visit the *DMV.org* Website during -- anytime
17 during the fall of 2006?

18 A. Yes.

19 Q. Did you visit any of the particular pages within that
20 site in relationship to traffic schools or driver's
21 education?

22 A. Yes.

23 Q. Did you see the names of any entities offering traffic
24 school services or driver's education services on the Website
25 at that time?

1 A. Yes.

2 Q. What names?

3 A. I've seen I Drive Safely. I've seen American Safety
4 Institute -- or Florida Safety Course. I'm sorry. I've seen
5 *teendriverseducation*. Driving University. Virtual Drive.
6 Driver In The Box. American Safety Classes, I believe.

7 Q. Okay. Let's start with I Drive Safely.

8 Where did you see on the *DMV.org* Website the
9 I Drive Safely name?

10 A. I saw it on the traffic school page for the states of
11 California; Nevada, I believe; Colorado; possibly Virginia.

12 Q. Were any of these schools recommended by *DMV.org* on
13 those Web pages?

14 MR. DAUCHER: Objection. No foundation. Beyond
15 the scope of what he saw.

16 THE WITNESS: I didn't finish what I said. But --
17 BY MR. MAKOUS:

18 Q. Okay. You had additional states to ad?

19 THE COURT: Excuse me, Counsel. There's an
20 objection pending.

21 MR. MAKOUS: Yes, your Honor.

22 THE COURT: The question as phrased, the objection
23 is sustained.

24 BY MR. MAKOUS:

25 Q. Did you see any advertisements on the California page,

1 the traffic school and *DMV.org* for the I Drive Safely?

2 A. Yes.

3 Q. Did you see the words "we recommend" in association with
4 it?

5 MR. DAUCHER: Objection. Leading questions now.

6 THE COURT: It is leading. Sustained.

7 BY MR. MAKOUS:

8 Q. What do you recall seeing?

9 A. I recall seeing an advertisement for I Drive Safely with
10 text above a paragraph recommending I Drive Safely as the
11 best choice or the recommended best choice for traffic school
12 in that state by *DMV.org*.

13 Q. Okay. And did -- do you recall what you saw in regards
14 to Nevada traffic school?

15 THE COURT: Excuse me, Counsel.

16 MR. MAKOUS: Yes.

17 THE COURT: Are these screen shots, if you will --
18 are they exhibits in this case?

19 MR. MAKOUS: They've all been stipulated to, and
20 they're all admissible. They've all been admitted, I
21 believe, by stipulation.

22 THE COURT: Okay. So what's the point -- if
23 they're already in evidence, what's the point of having him
24 go over it?

25 MR. MAKOUS: Your Honor --

1 THE COURT: They're already in evidence. You can
2 argue them.

3 MR. MAKOUS: Well, that's true. We can.

4 THE COURT: Yeah, it's true. You can.

5 MR. MAKOUS: I appreciate that, your Honor.

6 You've stricken his testimony about being in
7 competition, and he doesn't work for *DMV.org*. That's
8 understandable. But he sees what he sees in the marketplace.

9 THE COURT: Sir, if you want to argue that they're
10 in competition, you can do that based on the documents that
11 are here.

12 MR. MAKOUS: Okay. Thank you, your Honor. I'll
13 move on then.

14 BY MR. MAKOUS:

15 Q. Have you -- you've had an opportunity, Mr. Creditor, to
16 view the search engine results that are in issue in this
17 litigation, that is, the defendants' search engine results?

18 A. Yes.

19 Q. Do you have an opinion about whether they are misleading
20 in any respect?

21 THE COURT: Okay. What's he designated, as an
22 expert?

23 MR. MAKOUS: This is lay opinion, your Honor.

24 THE COURT: So you -- excuse me, Counsel.

25 MR. MAKOUS: Sure.

1 THE COURT: If he wasn't designated as an expert,
2 he's not going to offer any expert opinions. If you wanted
3 to have him offer opinions, you should have designated him as
4 an expert.

5 MR. MAKOUS: Your Honor, I'll make an offer under
6 lay opinion, Federal Rule of Evidence 702, I believe --
7 sorry. 701.

8 THE COURT: You can do that at the end of the
9 trial.

10 That objection is sustained.

11 MR. MAKOUS: Okay. May I make a record on that now
12 or just later on?

13 THE COURT: You can do it later.

14 MR. MAKOUS: Okay.

15 THE COURT: And I'm just telling -- I'll tell you
16 right now, if any lay witness wasn't designated as an expert,
17 they will not be offering any expert opinions in this trial,
18 and they don't come in as lay opinions.

19 All right. Time is up.

20 Do you want to cross-examine?

21 MR. DAUCHER: On his declaration, yes, your Honor.

22 THE COURT: Okay.

23 **CROSS-EXAMINATION**

24 BY MR. DAUCHER:

25 Q. Goods afternoon, Mr. Creditor.

1 A. Good afternoon.

2 Q. You are the COO, of both *trafficschool* and
3 *DriversEdDirect*; correct?

4 A. Correct.

5 Q. And you own half of each entity; correct?

6 A. Correct.

7 Q. Along with Mr. Kramer, who is here as well; correct?

8 A. Yes.

9 Q. And you established *trafficschool.com* in 1984; correct?

10 A. We established it in 1984 as a partnership; correct.

11 Q. Now, at the beginning of 2005, *trafficschool.com* was
12 also offering driving education services as part of its
13 services; correct?

14 A. In what year, sir?

15 Q. Beginning of 2005.

16 A. Correct.

17 Q. But in 2005 you established a separate company,
18 *DriversEdDirect*, to take over part of the driver's
19 education -- to take over the driver's education portion of
20 the business from *trafficschool.com*; correct?

21 A. At the time it did not take over the driver's education
22 business from *trafficschool.com*. That was later. It was
23 started to create a new business model which included
24 driver's education that would eventually be spun over, as
25 well as behind the wheel driver's training throughout

1 California.

2 Q. Eventually, though, the driver's education functions of
3 *trafficschool.com* were transferred to *DriversEdDirect*;
4 correct?

5 A. Correct.

6 Q. And that happened in what year?

7 A. 2006.

8 Q. Okay. Well, in Paragraph 4 of your declaration, at
9 Lines 9 to 11 -- well, in Paragraph 4 you state,
10 "Specifically, points that are assigned to one's driving
11 record in communicated to DMV may be masked on the driver's
12 record by the successful completion of a traffic school
13 course which is approved or accepted by the DMV"; correct?

14 A. Correct.

15 Q. And you state, "Consumers are thus compelled to take
16 only DMV approved or accepted courses because only those
17 courses will successfully mask the points."

18 Your testimony; correct?

19 A. That's my understanding, correct.

20 Q. Isn't it true, sir, that the California DMV does not
21 license online traffic schools?

22 A. Correct. They accept online traffic schools.

23 Q. They accept online traffic schools only if a state court
24 has previously accepted that online traffic school; correct?

25 A. If a county court or one of its agencies, yes, has

1 approved its course, yes.

2 Q. And isn't it true that the California DMV does not
3 review, to your knowledge, online traffic school curriculum?

4 A. I do not know if the California DMV does not review or
5 not.

6 Q. You're not aware that they do; correct?

7 A. I have never been told that they do; correct.

8 Q. And yet in Paragraph 6 of your declaration you say TSC
9 has beneficially licensed by the California DMV to provide
10 traffic school courses since 1994. That's the complete
11 sentence; correct?

12 A. Yes.

13 Q. Wouldn't it be more accurate to say that the California
14 DMV has licensed *trafficschool.com* to provide classroom-based
15 traffic school?

16 A. I don't know if it would be more accurate, but the
17 California DMV has licensed TSC to provide traffic school
18 courses since 1984, it is true.

19 Q. And that's the only license that you hold from the
20 California DMV; correct?

21 A. For *trafficschool.com*; correct?

22 Q. So the California DMV has not licensed you to provide an
23 online traffic school; correct?

24 A. Not at this time; correct.

25 Q. Now, how many students so far this year has

1 *trafficschool.com* taught in the classroom in California?

2 A. I -- I don't have that data in front of me, and I
3 haven't run any reports.

4 Q. You're the COO of the company and you can't give an
5 estimate?

6 MR. MAKOUS: Objection. Argumentative.

7 THE COURT: Okay. I'm going to let everybody know
8 if you have an objection, you need to stand when you make it.

9 What's your objection?

10 MR. MAKOUS: Argumentative, your Honor.

11 THE COURT: Sustained.

12 BY MR. DAUCHER:

13 Q. Do you have any estimate as to what -- well, are you
14 certain -- let me ask this.

15 Are you certain that *trafficschool.com* has provided
16 a classroom lecture on traffic school in 2007?

17 A. Yes.

18 Q. How many lectures?

19 A. It would be speculation, but I believe it's around one
20 to two a month.

21 Q. And isn't it true that 98 percent of *trafficschool.com's*
22 business is through -- in California is through the online
23 traffic school?

24 A. I don't know the percentages without looking at any data
25 in front of me, but certainly a substantial number of our

1 business comes through the online or home study market.

2 Q. But in saying in your declaration that you carry a
3 California license, you are relying exclusively on that
4 classroom license; correct?

5 A. Correct.

6 Q. And the only entities in -- to your knowledge in the
7 state of California that accept online traffic school
8 certificates of completion are state courts; correct?

9 A. I'm sorry. Can you rephrase -- can you restate the
10 question.

11 MR. DAUCHER: Withdrawn.

12 BY MR. DAUCHER:

13 Q. In Paragraph 31 of your declaration you state the
14 following: "In the past *trafficschool.com* has registered
15 domain names, which include DMV as part of the domain name,
16 but we have not used those domain names in any misleading or
17 wrongful context"; correct?

18 A. Correct.

19 MR. DAUCHER: Now, will you refer to Exhibit 90,
20 please. I believe we can simply put that up on the screen.

21 BY MR. DAUCHER:

22 Q. Isn't it true *trafficschool.com* registered the domain CA
23 DMV traffic school in --

24 MR. DAUCHER: We can go to Page 2.

25 ///

1 BY MR. DAUCHER:

2 Q. -- the year 2000?

3 A. That's what it appears to be, yes.

4 Q. But *trafficschool.com*, as far as the online portion, is
5 not a DMV-approved traffic school; correct?

6 A. It is a DMV-accepted traffic school; that is correct.
7 It is not licensed as an online traffic school.

8 Q. Now, this domain CA DMV traffic school is still
9 registered to *trafficschool.com*; correct?

10 A. Correct. *Trafficschool.com* is a CA DMV traffic school.

11 Q. In the sense that it carries a classroom license?

12 A. Correct. And hopefully at some point a license to
13 provide online courses as the legislatures are hopefully
14 going to pass bills that will allow that.

15 Q. But not right now; right?

16 A. Well, currently they did pass a bill this year, and
17 there is a task force that hopefully next year will have
18 regulations in place.

19 Q. But not right now?

20 A. Correct.

21 MR. MAKOUS: Asked and answered.

22 THE COURT: Overruled.

23 BY MR. DAUCHER:

24 Q. Now, in fact, *trafficschool.com* not only registered this
25 domain "CA DMV traffic school," but it also used the domain

1 in the past; correct?

2 A. For a very short period of time that domain was
3 redirected to *trafficschool.com* -- was many years ago, a
4 couple of years -- few years ago. And it was for a short
5 period of time; correct.

6 THE COURT: What year was that?

7 THE WITNESS: I -- I'm sure it sure, your Honor.
8 At least two to three years ago.

9 BY MR. DAUCHER:

10 Q. In 2004 and 2005; correct?

11 A. Possibly. I'm not sure.

12 Q. And by redirect, you mean if someone types in that
13 domain they get sent to *trafficschool.com*; correct?

14 A. Correct.

15 Q. So it wasn't -- it was used over a period of years;
16 correct?

17 A. I believe it was about a little over a year period,
18 maybe.

19 Q. Wouldn't you concede that an Internet person searching
20 the Internet could -- that's typing that name could believe
21 that the traffic school they are directed to is a DMV -- a
22 California DMV-sponsored traffic school?

23 MR. MAKOUS: Objection. Relevancy. Speculation.
24 Lacks foundation. Expert opinion.

25 THE COURT: Overruled.

1 THE WITNESS: I have no evidence to show that
2 anyone felt that way that came to our site through that
3 redirection, although let me further -- the site at the time
4 I believe did have some references to the fact that
5 *trafficschool.com* was a California licensed entity and may
6 have even referenced to the classroom operations.

7 MR. DAUCHER: Move to strike that last part of the
8 answer as nonresponsive.

9 THE COURT: Overruled.

10 BY MR. DAUCHER:

11 Q. Why did you register the domain CA DMV traffic school?

12 A. For several reasons. One, we are a CA DMV-approved
13 traffic school; second, we register many domain names, some
14 for ways to potentially utilize visitor traffic at that time
15 or into the future.

16 This domain name specifically -- I -- I can't
17 speculate any further.

18 Q. Okay. Will you refer to Exhibit 89, please.

19 Incidentally, before we look at that.

20 You registered CA DMV *trafficschool.com* before you
21 ever had heard of *DMV.org*; correct?

22 A. I believe so.

23 Q. All right. Exhibit 89 is a domain name report for the
24 domain DMV-approved *trafficschool.com*.

25 Are you familiar with that domain name?

1 A. I am.

2 MR. DAUCHER: Would you go to Page 2, please.

3 BY MR. DAUCHER:

4 Q. And isn't it true that *trafficschool.com* registered that
5 domain name in June of 2000?

6 A. That's what it appears, yes.

7 Q. And that domain is still registered to
8 *trafficschool.com*; correct?

9 MR. MAKOUS: Objection. Relevance to this entire
10 line of questioning, your Honor. Domain name registration is
11 not actionable as wrong nor relevant.

12 THE COURT: Overruled.

13 BY MR. DAUCHER:

14 Q. And similar to CA DMV traffic school, you used DMV
15 approved *trafficschool.com* to redirect traffic to the
16 *trafficschool.com* Website; correct?

17 A. For that same short period of time, yes. Back in 2004
18 and 2005, but *trafficschool.com* does offer DMV-approved
19 traffic school courses.

20 Q. But nowhere on your Website did you ever disclose that
21 you were not DMV approved for your online courses; correct?

22 MR. MAKOUS: Objection. Asked and answered.

23 THE COURT: Overruled.

24 You may answer.

25 THE WITNESS: I'm not quite sure of what we may say

1 with regards to DMV approval or not. But I know that we
2 definitely make reference to the Court approval status.

3 BY MR. DAUCHER:

4 Q. But -- so you can't tell the Court that you made a
5 disclosure that you were not DMV approved for online traffic
6 school; correct?

7 MR. MAKOUS: Objection. Argumentative.

8 THE COURT: Sustained.

9 BY MR. DAUCHER:

10 Q. Isn't it fair to say that by using a name "DMV-approved
11 school" a visitor would assume that the DMV -- that
12 California DMV has approved the traffic school that visitors
13 find on typing that domain?

14 MR. MAKOUS: Objection. Speculation. Lacks
15 foundation. Expert opinion.

16 THE COURT: Overruled.

17 You can answer.

18 THE WITNESS: I have no idea what consumers would
19 think when they saw DMV approved. We have received no
20 evidence of anyone that was confused as to what you're saying
21 or emails or anything on the contrary. In fact,
22 *trafficschool.com* does offer DMV-approved courses for other
23 states that have approved the online format.

24 BY MR. DAUCHER:

25 Q. And you were offering those courses, of course, in 2004

1 and 2005, when you were using this domain in these other
2 states; correct?

3 A. Correct.

4 Q. What other states, sir, offered approved -- what other
5 motor vehicle departments in other states approved online
6 traffic school during that time?

7 A. I believe -- without looking at the information or
8 having it in front of me, I believe there were other states,
9 the states of Nevada, Virginia, Florida, possibly some
10 others. I'm not sure when the approvals were granted.

11 Q. But visitors to the Internet in California can type in
12 that name and find the *trafficschool.com* site; correct?

13 A. Correct.

14 Q. And in 2004 and 2005 California constituted at least
15 75 percent of your business; correct? *Trafficschool.com*
16 business?

17 A. I don't have the data in front of me, but it was a
18 substantial percentage of our business, yes.

19 Q. When you talk about -- in your declaration about masking
20 the points," you would agree that a California resident with
21 a traffic ticket is looking for a traffic school that would
22 mask the points; correct?

23 A. California residents, along with residents of other
24 states where similar systems are in place, yes.

25 Q. And if *trafficschool* does not accomplish that purpose,

1 then it's not even sellable to a customer; correct?

2 A. Not necessarily. Some people are looking for traffic
3 school courses that the completion of them will -- just by
4 completion without having tickets reduce their insurance
5 premiums.

6 Q. But that doesn't occur in California; correct?

7 A. Correct.

8 Q. So generally you would agree that the key -- the
9 first requirement for a traffic school is that it mask the
10 points in California?

11 A. The traffic school doesn't mask the point. It's the DMV
12 that masks the point.

13 Q. But by -- by requirement, I mean that -- that a
14 particular course to be sellable in California must
15 accomplish that purpose, must mask the points?

16 A. I would think as a consumer if you were purchasing a
17 course you would want to make sure that that course would be
18 able to mask that point, yes.

19 Q. Would you also agree that it's of primary importance to
20 California residents that if a course does qualify and mask
21 the points, that that course be cheap and convenient?

22 A. Not necessarily. Certainly convenience. I don't know
23 about cheap.

24 Q. Isn't price a key -- okay. Strike that.

25 Wouldn't you agree that students generally are not

1 looking for the toughest traffic school course they can find?

2 MR. MAKOUS: Objection, your Honor. Beyond the
3 scope of his declaration.

4 THE COURT: Sustained.

5 BY MR. DAUCHER:

6 Q. Okay. In California there's no dispute here that
7 *trafficschool.com* sells traffic school courses that it has
8 developed; correct?

9 A. Correct.

10 Q. *Trafficschool.com* does not refer any California
11 residents to other California traffic schools; correct?

12 A. Correct.

13 Q. Okay. But with respect to Texas, you assert that you
14 partner up with other providers; correct?

15 A. For traffic school; correct.

16 Q. And at some point in history *trafficschool.com* had a
17 practice of referring *trafficschool.com* visitors to traffic
18 schools in Texas; correct?

19 A. *Trafficschool.com* still refers visitors to providers for
20 courses in Texas.

21 Q. I'm -- I'm asking about some point in history. We'll
22 get to that. The second thing we'll hear about.

23 But at some point you began referring visitors to
24 traffic schools in Texas; correct?

25 A. *Trafficschool.com* at some point in time, yes, did begin

1 and has continued to refer visitors in Texas.

2 Q. Will you please refer to Exhibit 26, Page 3.

3 Now, Page 3 constitutes a document that -- that you
4 prepared for this litigation; correct?

5 A. We prepared it, myself and my partner, Chris Kramer.

6 Q. And you believe that it accurately reflects the
7 information presented; correct?

8 A. Yes.

9 Q. Now, it includes a row under the ticket dismissal
10 courses category for Texas defensive driving; correct?

11 A. Correct.

12 Q. And that is the Texas equivalent of California traffic
13 school; correct?

14 A. In part, yes.

15 Q. And in that row it shows by both year and the number of
16 courses -- by -- by year both the number of courses and the
17 revenues; correct?

18 A. Correct.

19 Q. Okay. Now if you look in 2003, Exhibit 26 shows that
20 *trafficschool.com* earned approximately \$70,000 by referring
21 approximately 6,000 Texas residents to *trafficschool*;
22 correct?

23 A. We received \$71,000 from the provider for referring
24 6,000 customers to Texas for defensive driving.

25 Q. And you attached by your own volition an asterisk to

1 2003, and the note on Exhibit 26 says, "Dollars shows
2 estimate for referral fees paid by third party"; correct?

3 A. Correct.

4 Q. And so if you do the math, *trafficschool.com* earned just
5 over \$10 for each referred student in Texas that year;
6 correct?

7 A. Correct.

8 MR. MAKOUS: Objection. Beyond the scope of the
9 declaration, your Honor.

10 THE COURT: The answer will stand.

11 Next question.

12 BY MR. DAUCHER:

13 Q. But as I understand it, in 2004 *trafficschool.com*
14 changed the way it operated in Texas; correct?

15 A. We did not change the way we operated. We changed the
16 way the collection of fees is made by consumers and the split
17 between our company and the partner company in Texas.

18 Q. So in 2003 a visitor that was referred by
19 *trafficschool.com* to a school in Texas would pay the Texas
20 school; correct?

21 A. Correct.

22 Q. But in 2004 you changed that system such that that same
23 visitor would pay you; correct?

24 A. For a portion of 2004, correct.

25 Q. And then in 2005 that was the exclusive way in which you

1 operated in Texas; correct?

2 A. We collected the tuition from the student, referred the
3 student to the Texas provider, and then split the revenues,
4 yes.

5 Q. And that's -- for 2004 for Texas we see a footnote that
6 divides out the dollars you received by referral from the
7 dollars that you collected directly; correct?

8 A. Correct. I see that.

9 Q. But in -- by 2005 you had done away with the system by
10 which you paid to third parties referral or by which --
11 strike that?

12 By which third parties in Texas paid referral fees
13 to you; correct?

14 A. Correct.

15 Q. And that did not occur in '06 or '07; correct?

16 A. Correct. And those years we paid them for the provision
17 of the courses in the certificates the same as they had been
18 doing in previous years, but we were now collecting the
19 revenues and paying them.

20 Q. And you instead were able to negotiate a fee that you
21 would pay to the Texas school for fulfilling the course;
22 correct?

23 A. We modified the arrangement of how the money was
24 collected and distributed, yes.

25 Q. Now, if you look at 2005 for Texas, which is the first

1 year you exclusively collected fees for Texas, you sold only
2 2100 courses; correct?

3 A. Correct.

4 Q. As opposed to 6,000 in 2003; correct?

5 A. I -- I don't see that here.

6 Correct.

7 Q. Okay. But even though the number of courses went down
8 substantially, *trafficschool.com* actually managed to earn
9 more money under the new system; correct? In Texas?

10 A. No. This does not -- the 2005 references referencing to
11 the gross dollars collected does not take into account the
12 split that was paid.

13 Q. But I take it you negotiated a more favorable rate per
14 student by collecting the dollars yourself?

15 A. A little more favorable, yes.

16 Q. And that's why you chose the transition to that system
17 where you sold the course; correct?

18 A. One of the reasons, yes.

19 Q. But one fact that accompanied that process was that the
20 number of courses you directly sold dropped; correct?

21 A. I don't see that being a correlating fact in any way.

22 Q. Whether it's -- but -- that is a fact. It just dropped
23 from '03 to '05; correct?

24 A. Certainly.

25 Q. All right. Let's look at Florida.

1 In Florida you went through a similar transition;
2 correct?

3 A. Correct.

4 Q. Except that that transition occurred one year later in
5 time than the Texas transition; correct?

6 A. Yes.

7 Q. And so if we look at Florida in 2004, *trafficschool.com*
8 earned approximately \$200,000 in revenue by referring
9 11,500 students; correct?

10 A. Correct.

11 Q. So that I've done the math, that's about 1750 per
12 student in revenue from referrals in 2004; correct?

13 MR. MAKOUS: Objection, your Honor. He's asking
14 the witness to agree with his mental state calculation. And
15 speculative.

16 MR. DAUCHER: Perhaps we can just have a
17 stipulation that that's the math.

18 MR. MAKOUS: Objection. Relevance as well to this
19 entire line of questioning.

20 THE COURT: The objection is overruled.

21 You can answer the question if you can.

22 THE WITNESS: I don't recall what the specific
23 dollar amount that we received per student, but the 200,000
24 was the fees that were paid to us by the third party for the
25 11,000-plus courses that were sold through the Website.

1 BY MR. DAUCHER:

2 Q. 2005 was the transition year; correct?

3 A. Correct.

4 Q. But unlike Texas in 2005, your numbers did not decline;
5 correct?

6 A. They pretty much were stagnant as it appears, yes.

7 Q. But in the first full year 2006, when you were
8 exclusively selling the courses, the number of courses sold
9 declined in Florida; correct?

10 A. Correct.

11 Q. By about 20 percent; correct?

12 A. By about 1800 courses.

13 Q. But isn't it fair to say, Mr. Creditor, that
14 *trafficschool.com* understood that as it transitioned from
15 referring -- from accepting referral fees from third parties
16 to collecting those fees that it would pay a certain price in
17 terms of the number of gross courses sold?

18 MR. MAKOUS: Objection. Vague.

19 THE COURT: Do you understand the question?

20 THE WITNESS: I don't understand the question --

21 THE COURT: All right.

22 THE WITNESS: -- at all.

23 THE COURT: All right. The objection is sustained.

24 BY MR. DAUCHER:

25 Q. Isn't it true that you understood that in making this

1 transition you would actually sell fewer courses but make
2 more money? Yes?

3 A. No. Our intention by doing the migration that we did
4 accounting wise was -- is -- has always been to sell more
5 courses. We never intended to have our course sales
6 decrease.

7 Q. Okay. This same Exhibit 26 also includes your report of
8 income for driver's education-type services; correct?

9 A. I'm sorry. Can you restate? There's driver's ed
10 courses on here right.

11 Q. Right.

12 And that -- those number reflect dollars earned by
13 *trafficschool.com* on driver's education; correct?

14 A. Correct.

15 Q. And none of those dollars are asterisked as referral
16 dollars; correct?

17 A. Those are all dollars that were collected by
18 *trafficschool.com*. There's certainly revenue split that was
19 made from those dollars to the providers in those other
20 states that were providing the courses.

21 Q. And if you go to the fourth page of Exhibit 26, the
22 fourth page shows the driver's ed revenue for *DriversEdDirect*
23 upon its inception and through May 2007 or June 2007;
24 correct?

25 A. Yes.

1 Q. None of those revenues are reported as referral
2 revenues; correct?

3 A. I'm not quite sure what you're referring to as referral
4 revenues. I mean, these are revenues that we collected. And
5 there's a good portion of these revenues that we paid to the
6 courses in Texas and in Florida for referring the customers
7 to them.

8 Q. Right.

9 But these do not reflect amounts paid to
10 *DriversEdDirect* by a Florida or Texas school; correct?

11 A. Correct.

12 By a student of those states generally, not by a
13 school.

14 Q. Schools did not -- those schools did not pay
15 *DriversEdDirect* money; correct?

16 A. Correct. As I stated, we paid them for the fulfillment
17 of the courses that we referred over to them.

18 Q. Okay. But -- would you refer to Exhibit 62, please.

19 Exhibit 62 constitutes another report that you
20 created for this litigation; correct?

21 A. My partner, Chris Kramer, did, yes. And I reviewed it.

22 Q. And you believe it's accurate; correct?

23 A. A lot of these information -- a lot of this information
24 is numbers provided us to by I Drive Safely, but I do believe
25 it to be fairly accurate, yes.

1 Q. And for the states Colorado, Idaho, New Mexico, Nevada,
2 Virginia, this report shows referral dollars received by
3 *trafficschool.com* from third-party providers in those states;
4 correct?

5 A. Which portion of this are you referring to?

6 Q. Those five states, the top five states.

7 A. Correct.

8 That is the revenue that was received by
9 *trafficschool.com* from I Drive Safely for referring visitors
10 to -- for those states, yes.

11 Q. And in -- in no year did you earn more than \$10,000
12 total from all of those states combined; correct?

13 A. Does not appear to be more than 10,000, no.

14 Q. In Paragraph 16 of your declaration, you identify
15 certain nontraffic school nondriver's ed entities for whom
16 you post advertisements on the *trafficschool.com* site.

17 Are you familiar with that testimony?

18 A. I'm familiar with the promotion of nontraffic school and
19 nondriver's education-related products and services on the
20 *trafficschool.com* Website.

21 Q. And those include Rules of the Road; correct?

22 A. No. I would call that a driver's education-related
23 product.

24 Q. Okay. So those numbers would be under driver's
25 education. They would include vehicle history reports?

1 A. Vehicle history reports; correct.

2 Q. And insurance?

3 A. Insurance quotations.

4 Q. Used car sales?

5 A. Used car, new car, quotes, sales, yes.

6 Q. And driving records?

7 A. And driving records.

8 Q. Okay. Will you look at Exhibit 27, please.

9 THE COURT: About how much longer do you have with
10 this witness?

11 MR. DAUCHER: Probably about, again, as much as
12 I've done, your Honor.

13 THE COURT: I'm sorry?

14 MR. DAUCHER: About another hour, I would guess.

15 THE COURT: Okay. We'll take our break.

16 MR. DAUCHER: Okay.

17 THE COURT: Now, and we'll come back out in about
18 ten minutes.

19 We'll resume.

20 THE CLERK: All rise.

21 (Whereupon, from 3:02 p.m. to 3:12 p.m., a break
22 was taken.)

23 THE COURT: All right. If we could have the
24 witness resume the stand, please.

25 THE CLERK: Sir, you are remained that having been

1 previously sworn, you are still under oath.

2 THE WITNESS: Yes, I understand.

3 Thank you.

4 BY MR. DAUCHER:

5 Q. When we broke we were just about to refer to Trial
6 Exhibit 27.

7 Do you have it before you?

8 A. I have a profit-and-loss statement in front of me.

9 Q. And you prepared that document; correct?

10 A. Correct.

11 Q. And you believe that accurately reflects the third party
12 the nontraffic school nondriver's said revenue for
13 *trafficschool.com*; correct?

14 A. Besides the driving records revenue that is reported on
15 another profit-and-loss statement or another report, I do
16 find it to be accurate.

17 Q. And across the four and approximately one and a half
18 years reported the total advertising revenue to
19 *trafficschool.com* for nontraffic school nondriver's ed
20 related as -- is about \$3,500; correct?

21 A. Are you referring to what's on this report or total,
22 including driving record revenues which is not on here?

23 Q. This report first.

24 A. This report shows \$4,000 of total income.

25 Q. And driving records is not on here; is that correct?

1 A. Correct. It was on one of the previous exhibits you
2 showed me.

3 Q. And your position is that *trafficschool.com* markets
4 third-party driving records services?

5 A. We sell driving records.

6 Q. So you directly sell those records to consumers in
7 California?

8 A. We sell driving records to consumers, yes.

9 Q. So you don't earn referral fees from third parties for
10 driving records; correct?

11 A. For a period of time there was a revenue split with a
12 partner, and at this time we now provide the driving records
13 ourselves and retain our revenues.

14 Q. And when did that transition occur?

15 A. I believe it was in 2006.

16 Q. And those driving records are for the State of
17 California; is that correct?

18 A. Correct.

19 Q. In Paragraph 3 of your declaration, sir, you indicate
20 that *trafficschool.com* is one of the first providers of
21 online traffic school; is that correct?

22 A. Yes. We're one of the first.

23 Q. And you began offering online courses in about 2000;
24 correct?

25 A. Correct.

1 Q. And prior to that time, *trafficschool.com* had a Website,
2 but on that Website it advertised only its course work or
3 course book; correct?

4 A. We advertised a home study workbook. We also advertised
5 classroom traffic school programs.

6 Q. To establish the online traffic school, one of the first
7 steps that you took was to convert your workbook materials
8 onto an online format; correct?

9 A. Correct.

10 Q. And you hired a Web design firm to help you with that
11 process; correct?

12 A. Yes.

13 Q. And you spent about \$20,000 in that process; correct?

14 A. I believe it was also -- the money was spent to convert
15 the course work into a course platform, as well as redesign
16 of the Website.

17 Q. But the \$20,000 covered that initial work; correct?

18 A. I believe so.

19 Q. And then you would tender that course that you built to
20 certain courts, seeking approval; correct?

21 A. Yes.

22 Q. And you did that just by generally sending letters to
23 state courts; correct?

24 A. Sending letters. We participated in various trade
25 organization trade shows, some seminar presentations as well.

1 Q. And that process that we just discussed took about six
2 months; right?

3 A. It's an ongoing process.

4 Q. But in terms of the time from the time you first decided
5 to offer an online school to the time when you had one
6 available for some California residents was about six months;
7 correct?

8 A. A few months, yeah. Approximately.

9 Q. Wouldn't it be fair to say that it's not very difficult
10 for a company with a traffic school course book to convert
11 its program then to an online traffic school?

12 A. I don't know what you are referring to by "difficult"
13 specifically. If you could clarify that.

14 Q. Well, is there anything else you had to do besides that
15 which we've discussed?

16 A. There's quite a bit of requirements. You must go
17 through bonding requirements. Some courts have insurance
18 requirements. Some courts have you go through third-party
19 agencies that do the reviewing and the monitoring for you.
20 Some courts have requirements that don't really pertain to
21 the course, that pertain to customer service or office
22 requirements, server requirements. I mean, there's some
23 courts that have 30 pages of requirements.

24 Q. But isn't it fair to say that any California traffic
25 school that already has its course work has a certain

1 familiarity with court requirements already? Correct?

2 MR. DE CARLO: Objection. Relevance to this entire
3 line of questioning, your Honor. Beyond the scope of the
4 declaration.

5 THE COURT: Are you planning on calling him in your
6 own case?

7 MR. DAUCHER: I was hoping not to, actually. I'm
8 close to being able to not call him in my own case, and this
9 rebuts the alleged injury that he sets forth -- or the injury
10 facts he sets forth in the decreased sales.

11 THE COURT: Okay. The objection is overruled.

12 Go ahead.

13 THE WITNESS: Can you repeat the question, please.

14 MR. DAUCHER: Can you have it read back, your
15 Honor.

16 THE COURT: Yes.

17 The reporter, please read back the last question.

18 (The record was read.)

19 THE WITNESS: No. I would say that that's
20 incorrect.

21 BY MR. DAUCHER:

22 Q. Let me get at it this way.

23 Isn't it fair to say that today there are many
24 California traffic schools that offer online courses?

25 A. I -- I don't know what you mean by "many," sir. There

1 are competitors, yes, that offer online traffic courses in
2 California.

3 Q. Approximately how many that you're aware of?

4 A. It varies. Some courts it's six. Some courts it's 40,
5 possibly a little more. Some courts it's none. You can't
6 have a course in some courts in California. Some courts have
7 sole providership agreements with one individual school.

8 Q. Okay. Will you refer to Exhibit 67, please.

9 MR. DAUCHER: Again, I believe -- this is a search
10 report, your Honor. Again, I believe there will be a
11 stipulation that this is a Yahoo! search report from
12 July 2007 for the words "traffic school."

13 MS. HAMILTON: That's correct.

14 BY MR. DAUCHER:

15 Q. Now, on this particular search in the summer, by typing
16 in the word "traffic school" Yahoo! returns 30 results on
17 this page and the next page. And I believe that's 10 organic
18 listings and 20 sponsored listings.

19 MR. DAUCHER: Can you flip to the next page.

20 BY MR. DAUCHER:

21 Q. Do you see those listings?

22 A. I see the listings, yes.

23 Q. And *trafficschool.com* is not among them?

24 MR. MAKOUS: Objection, your Honor. The search
25 references 300,000 results, just so it's not confusing. So

1 he's misrepresenting what the evidence is.

2 THE COURT: The question is not evidence.

3 Go ahead.

4 BY MR. DAUCHER:

5 Q. *Trafficschool.com* is not among the 30 entities listed on
6 these Page 1 results for Yahoo! traffic school; correct?

7 A. On these particular pages as the search was done on that
8 day at that time from wherever it was, what computer, I don't
9 see the *trafficschool.com* site listed on the two pages that
10 you're showing me.

11 Q. And of these 30, can you just identify for the Court
12 which of them you are aware of that provide traffic school
13 services to California residents?

14 A. Can you define for me "provide services"?

15 Q. Meaning they maintain online course. They offer -- they
16 sell books.

17 MR. MAKOUS: Objection, your Honor. This is
18 remote, speculative, and lacks foundation. We'll stipulate
19 this is a search result.

20 THE COURT: Overruled.

21 Do you have the question in mind?

22 THE WITNESS: I'm -- I'm having a hard time reading
23 some of the specific URLs. So I'm not exactly sure.

24 THE COURT: Okay. Well, maybe they can make it
25 larger for you.

1 BY MR. DAUCHER:

2 Q. Let's work on the first five organic results first and
3 box those.

4 Of those, can you identify ones that under our
5 agreed definition provide California traffic schools
6 services?

7 A. I Drive Safely. Traffic Interactive, I believe does.
8 I don't know what the others -- I can't see what the last one
9 is, but it looks to be referencing to Florida. So I would
10 think it would not be, but I've not -- I'm not familiar with
11 Point Busters.

12 Q. How about Number 3, Improv Comedy Traffic School?

13 A. There are some references on some court lists to online
14 traffic schools provided under names similar to this. I
15 don't know if this specific site, as it's listed here, is one
16 of those providers.

17 Q. How about -- let's look at the sponsored results on the
18 top on Exhibit 67. Let's go to traffic school.

19 Which of those, to your knowledge, provide traffic
20 school services in California?

21 A. Go To Traffic School provides courses in California.
22 Got A Ticket provides courses. I believe NDDS, as well as
23 *DMV.org*, through their relationships with other providers,
24 promote and sell courses that are for traffic schools in
25 California.

1 Q. What about the sponsored results on the column on
2 Page 1?

3 A. I believe AM/PM Traffic School is a California course
4 that provides, as well as Traffic 101. Anytime Traffic
5 School. Not sure of the Always Open or the initial one, the
6 Safety USA. I can't see the last one. I'm sorry. It's
7 getting cut off. I don't know if Traffic School Affiliate is
8 a provider of courses or if they sell courses through their
9 Website.

10 Q. How about *ticketnomore.com*?

11 A. I'm not sure. They could be. There's a few courses
12 approved in Los Angeles. So it's possible.

13 Q. Now in 2000, when *trafficschool.com* began selling online
14 courses, *trafficschool.com* posted the price of its course
15 right on the front page of the Website; correct?

16 A. For a period of time, yes. We have had a price on the
17 home page of our *trafficschool* site.

18 Q. And in 2000 that price was 19.95; correct?

19 A. I don't recollect exactly what the price is. The prices
20 have fluctuated a little bit over time. It could have been
21 1995.

22 Q. But in 2003 *trafficschool.com* stopped putting the price
23 of its traffic school on its home page; correct?

24 A. As we began to offer courses for states other than
25 California -- we took the price down off the home page since

1 courses in other states wore obviously different pricing.

2 Q. And you understand from looking at Exhibit 67, which is
3 still up, that many traffic schools put the price of their
4 course directly into their search engine marketing results;
5 correct?

6 MR. MAKOUS: Objection. Best evidence.

7 THE COURT: Overruled.

8 THE WITNESS: I see that many of them quote a
9 price. I wouldn't constitute it as the price of their
10 course. But I do see pricing in their advertisements.

11 BY MR. DAUCHER:

12 Q. And *trafficschool.com* does not do that; correct?

13 A. Currently we do not; correct.

14 Q. And you understand that there are certain schools in
15 California that offer online traffic school for less money
16 than *trafficschool.com*; correct?

17 A. At various times there certainly can be other schools
18 that offer pricing that may be less than *trafficschool.com*.
19 I don't know what everybody is charging at every particular
20 moment in time.

21 Q. What are you -- what does *trafficschool.com* charge right
22 now in California for its online course?

23 A. We have a standard price of 24.95, with considerable
24 discounted pricing available through coupon advertising that
25 we do through online marketing, affiliate marketing, and

1 various other forms of traditional and nontraditional
2 advertising.

3 Q. And it's true that you're aware right now that there is
4 more than one traffic school online traffic school available
5 in California for less money; correct?

6 A. No. I'm not aware of that. I see that there are some
7 schools that are advertising their price as that. I don't
8 know if it's specifically related to a California course here
9 or what. I -- I would not say that I know that for sure.

10 Q. Will you please refer back to Exhibit 26 now.

11 The first page of Exhibit 26 is also a report
12 prepared by you; correct?

13 A. Correct.

14 Q. And that shows for *trafficschool.com* marketing expenses
15 for the years '03 to '07; correct?

16 A. Correct.

17 Q. And if you look in 2004, *trafficschool.com* spent
18 \$170,000 on pay-per-click, also known as search engine
19 marketing; correct?

20 A. Correct.

21 Q. And in 2005 that number dropped slightly to \$161,000 for
22 *trafficschool.com*; correct?

23 A. Correct.

24 Q. And 2006 that number dropped to below \$100,000; correct?

25 A. The money that was spent on pay-per-click advertising

1 did drop, yes.

2 Q. And in 2004, we now look at the radio advertising
3 column, *trafficschool.com* spent no money on radio; correct?

4 A. In what year, sir?

5 Q. 2004.

6 A. Correct.

7 Q. But in 2005 *trafficschool.com* spent over \$100,000 on
8 radio; correct?

9 A. That is correct.

10 Q. And in 2006 *trafficschool.com* spent approximately
11 \$160,000 on radio; correct?

12 A. Correct.

13 Q. Now, in your declaration you assert that your
14 pay-per-click marketing expenditures have declined.

15 Are you familiar with that testimony?

16 A. Yes.

17 Q. Now, isn't it true that that decline could be attributed
18 to the fact that other advertisers are getting more than you
19 are for key words for traffic school?

20 A. Possibly. I don't think that that is directly the
21 reason. I mean, we have been very competitive in search
22 engine marketing in that year.

23 Q. Isn't it true that the decline in search engine
24 marketing could also be attributed to your decision to
25 reallocate resources from pay-per-click to radio that we've

1 just seen?

2 A. The allocation of marketing dollars for pay-per-click
3 versus radio are completely irrelevant to each other. The
4 online pay-per-click dollars are a correlation of how many
5 people click on our ads. Radio is an entirely different
6 spend. It was not directly related to the amount of people
7 that were coming to us. So these determinations to spend
8 more in radio, which was an active decision on our part, was
9 in no way impacted -- or in no way impacted the fact of less
10 money being incurred by our company for pay-per-click
11 advertising, as that is a direct correlation of people
12 clicking on the ads.

13 Q. Now -- all right. In 2007, your marketing expenditures
14 are down across the board; correct?

15 A. Correct.

16 Q. And I note that in 2007, if you look at it on a ratio
17 basis, the radio and the pay per click are running at about
18 an even pace; is that correct?

19 A. It appears to be, yes.

20 Q. So in 2007 you had the ability to reduce your spend on
21 search engine marketing; correct?

22 A. We always have the opportunity to reduce our spend by
23 just not bidding on terms, which is not what we did.

24 Q. You can also increase?

25 A. That's -- I'm sorry. We reduced our spend on radio,

1 yes. We had a -- made that deliberate choice to do that.
2 But pay-per-click advertising, we kept our same theory of the
3 more clicks the better. And we were as aggressive as we
4 could be in trying to get clicks.

5 Q. Isn't it true that in your declaration you say that in
6 2007 you reduced your entire marketing budget to pay for this
7 litigation?

8 A. Yes. I don't know if I said entire marketing budget,
9 but I am certainly referring to the areas of the marketing
10 budget that we have reduced here, like radio, TV commercials,
11 other forms of advertising, postcard campaigns. We did not
12 reduce our pay-per-click advertising on our own.

13 Q. Meaning by that you did not change the bid amounts or
14 the words on which you bid?

15 A. Well, our bid amounts and our words do change to be
16 competitive, certainly. We would have made changes to be
17 more competitive. We wouldn't have reduced our bids or
18 changed our language to be less competitive.

19 Q. You're saying that you just -- the search engine just
20 won't take your money?

21 A. That's not what I'm saying. I don't believe I said
22 that. If people don't click on our advertisements because
23 they're clicking on advertisements that I guess it could be
24 construed as misleading, but regardless they're not clicking
25 on our ads, we're not going to incur those pay-per-click

1 costs.

2 Q. All right. Will you look at Exhibit 32, please.

3 You're familiar with the fact that in March 2002
4 *DMV.org* initiated contact with *trafficschool.com*; correct?

5 A. I am aware that Ravi Lahoti emailed *trafficschool.com*.

6 Q. And Mr. Kramer advised you of that fact in -- upon
7 receipt of that email; correct?

8 A. At some point I was certainly advised of it, yes.

9 Q. And one of the things you did at that time was to go and
10 visit the *DMV.org* Website; correct?

11 A. I don't know if I personally visited the *DMV.org* site at
12 that time. But I'm -- I might have. I -- I really don't --
13 I mean, this is over five years ago. I don't recall for
14 sure.

15 MR. DAUCHER: I'd like to read from the witness's
16 deposition at Page 145, Lines 12 to 17.

17 THE COURT: Any objection?

18 MR. MAKOUS: No objection, your Honor.

19 THE COURT: All right. Go ahead.

20 MR. DAUCHER: I believe there will be a stipulation
21 that this question is in reference to the 2002 time period,
22 given the context of the deposition.

23 MR. MAKOUS: That's acceptable.

24 MR. DAUCHER: Okay.

25 "QUESTION: Okay. Now, one thing I'm still

1 not clear on is so you told your counsel to get
2 that domain name back from *DMV.org*, but did you
3 actually go to the *DMV.org* Website and look at it,
4 see what they were doing?

5 "ANSWER: Yes."

6 Will you please put up Exhibit 352.

7 BY MR. DAUCHER:

8 Q. Mr. Creditor, did -- do you recall the *DMV.org* Website
9 looking something like this, as pictured on Exhibit 352?

10 A. I don't recall what I saw. As I said, I might have
11 visited it back in 2002. If this is what's being represented
12 as what the site looked like in 2002, then this is what I
13 might have seen.

14 Q. Let me ask you this: Do you have any reason to believe
15 that in 2002 the *DMV.org* Website did not include in prominent
16 letters the domain name *DMV.org* at the top?

17 MR. MAKOUS: Objection. Speculation. The witness
18 has no recollection of seeing it. He's asking -- he's
19 arguing with the witness as to what a document shows.

20 THE COURT: Okay. Look, just state the nature --
21 just state the objection.

22 MR. MAKOUS: Yes, your Honor.

23 THE COURT: If I want some argument, I'll ask for
24 it.

25 MR. MAKOUS: Yes, your Honor.

1 THE COURT: Okay. So what's your objection?

2 MR. MAKOUS: My objection is he's arguing with the
3 witness about what a document shows on recollection. He has
4 no recollection of. So it's speculative, irrelevant, and
5 best --

6 THE COURT: I didn't ask for a speech, Counsel.
7 It's either irrelevant, foundation. Okay?

8 MR. MAKOUS: Irrelevant.

9 THE COURT: So I don't want a speech.

10 MR. MAKOUS: Irrelevant. Foundation. Speculation.

11 THE COURT: Objection is overruled.

12 You can answer the question.

13 Do you have the question in mind?

14 THE WITNESS: I don't recollect how long the
15 *DMV.org* Website has contained -- you referenced to the large
16 lettering of the term *DMV.org*. I have no idea.

17 BY MR. DAUCHER:

18 Q. All right. Turning to -- well, in Paragraph 32 of your
19 declaration you say that there is, quote, "a vast difference"
20 unquote, between what the Website -- what the *DMV.org* Website
21 looked like when -- prior to October 2006 essentially.

22 Is that what you're intending say in that
23 paragraph?

24 A. Well, certainly the page that you just showed me is a
25 vast difference from the site as it was when we filed the

1 suit.

2 Q. But is it a vast difference from -- from what the site
3 looked like in February of 2006?

4 A. It was definitely different.

5 Q. I'm just asking is that language that you used in your
6 declaration, "vast difference," applicable to the distinction
7 between the Website *DMV.org* in February 2006 and October
8 2006?

9 MR. MAKOUS: Objection. Argumentative.

10 THE COURT: Overruled.

11 You can answer.

12 THE WITNESS: Over the course of this litigation
13 I have reviewed a lot of pages or a lot of versions of the
14 *DMV.org* home page. And I have seen vast differences from
15 revision to revision to revision to the present. I don't
16 know how else best to answer that.

17 MR. DAUCHER: Can you look at -- can you look at
18 Exhibit 627, please. This was previously identified.

19 BY MR. DAUCHER:

20 Q. Do you recognize this as the February 2006 version of
21 the *DMV.org* Website?

22 A. It could be. I -- I'm looking at the archive.org
23 reference in the URL in the bottom. And it looks sometime in
24 2006. Yes, it was probably very similar to this.

25 Q. And in February 2006 you and Mr. Kramer instructed

1 Mr. Leach, who was then serving as president of
2 *DriversEdDirect*, to initiate business discussions with
3 *DMV.org*; correct?

4 A. We instructed him to look into entering into a
5 relationship of some sort or to begin discussions for our
6 *DriversEdDirect* company.

7 Q. And when you did that, you were familiar with the form
8 of the *DMV.org* Website as it existed at that time; correct?

9 A. Correct.

10 Q. And based upon what you saw, you were willing to go
11 forward to seek a business relationship with *DMV.org*;
12 correct?

13 A. We were willing to enter into a test agreement to
14 determine if sales could be made and if some of the sales
15 promotions that were being told to us were true, to assess
16 the business model that they were doing.

17 Q. You did enter an agreement with -- between for
18 *DriversEdDirect* with *DMV.org* in June of 2006; correct?

19 A. We entered into a test agreement, yes.

20 MR. DAUCHER: Well, let's look at Exhibit 37,
21 please. And perhaps we can have Exhibit 37 put before the
22 witness.

23 THE CLERK: 37, Counsel?

24 MR. DAUCHER: Yes, please.

25 THE WITNESS: Okay.

1 BY MR. DAUCHER:

2 Q. First of all, can you confirm that 37 is the agreement
3 that was entered between *DriversEdDirect* and *DMV.org* in
4 June 2006?

5 A. Yes.

6 Q. Well --

7 A. Between Online Guru --

8 Q. Correct.

9 A. -- and *DriversEdDirect*, yes.

10 Q. And can you identify anything in that agreement which
11 identifies that as a test agreement?

12 MR. MAKOUS: Objection. Best evidence and calls
13 for a legal conclusion.

14 THE COURT: Overruled.

15 THE WITNESS: Within the agreement I don't see
16 that. I do know that there was emails that I was copied on
17 that references to a test period between our company and the
18 *DMV.org* Website from Raj Lahoti and James Leach.

19 BY MR. DAUCHER:

20 Q. Let's step back and look at Exhibit 45. And perhaps you
21 have that in front of you --

22 A. I do.

23 Q. -- is that correct?

24 A. Great.

25 Exhibit 45 is a series of emails during the time

1 period of February to May 2006 related to negotiations
2 between *DriversEdDirect* and Online Guru; correct?

3 A. There appears to be some emails between the internal
4 parties at my company about the relationship. There doesn't
5 appear to be any emails between us and the defendants.

6 Q. Okay. Fair enough.

7 If you'll look at Page 2 of this exhibit, that
8 appears to me to be a draft that is circulating within
9 *DriversEdDirect* of a communication to Online Guru regarding
10 the proposed business relationship; is that correct?

11 A. Regarding the proposed 30-day test, yes.

12 Q. And it looks like Mr. Leach, *DriversEdDirect's*
13 president, forwarded this to you and Mr. Kramer for review;
14 correct?

15 A. We were two of the people that it was sent to, yes.

16 Q. And you did review it; correct?

17 A. Yes.

18 Q. And you -- in fact, within the body of this draft email
19 you interposed certain text constituting your comments;
20 correct?

21 A. Yes. I made some comments that are included here.

22 Q. Now, in the third sentence of Mr. Leach's draft,
23 Mr. Leach said or proposed to say, "I know you do a fantastic
24 job marketing *DMV.org*, and you spend a lot of money marketing
25 your site."

1 Do you see that text?

2 A. I do.

3 Q. And you reviewed that text in or around late February;
4 correct?

5 A. Correct.

6 Q. And you did not comment negatively about use of that
7 text; correct?

8 A. I did not comment negatively in this email; that is
9 correct.

10 Q. Did you suggest in some other way to Mr. Leach that he
11 should not say that?

12 A. I don't know if I suggested to Mr. Leach or to my
13 partner, Chris; but I know that I certainly questioned the
14 issue as to why that was used. And my understanding is that
15 that was communicated to James or Jimmy by Raj, and it was
16 Jimmy's intention to stroke his ego a little bit by including
17 Raj' contentions and that he does a fantastic job of
18 marketing.

19 MR. DAUCHER: Move to strike as hearsay as to what
20 Mr. Leach conveyed to Mr. Creditor.

21 THE COURT: Sustained.

22 BY MR. DAUCHER:

23 Q. In the last photograph of that -- in the last sentence
24 of that paragraph it says, "There is something said with the
25 quality of education students should receive when it comes to

1 driver's education. And we would like to eventually become
2 the quality partner that you refer all of your driver's ed
3 traffic."

4 You saw that text in February of 2006; correct?

5 A. Yes.

6 Q. And it looks to me like Mr. Leach wrote in his comments,
7 paren, (I don't know about this line), closed paren.

8 Is that your understanding?

9 A. That's my understanding.

10 Q. And it looks do me like you wrote in your comments after
11 that, which included your name and then said, "This is fine
12 to leave, I think"; correct?

13 A. Correct.

14 Q. So you were okay with that text; correct?

15 A. Yes.

16 Q. And so at that time you intended to become a partner
17 with *DMV.org* not just on the test basis; correct?

18 A. This whole email in relationship discussion was all
19 based on a 30-day test. What would have happened after that,
20 I have no idea. But this email and all the discussions we
21 had was based on a 30-day test.

22 Q. Okay. Negotiations proceeded slowly; correct?

23 A. It -- it definitely didn't go as fast as other
24 negotiations we've been in.

25 Q. And one of the things that slowed down negotiations was

1 that *DMV.org* wanted a hefty referral fee; correct?

2 A. I don't know if that's what slowed down the negotiation.

3 Q. Well, there was a lot of haggling about the fees that
4 would be paid; correct?

5 A. There was some emails back and forth, but there were
6 long periods of time where there were breaks in time. I
7 don't know if that's because of haggle and negotiation or if
8 it was because of travel schedules of your client or what.
9 But -- I don't know what it was regarding to.

10 Q. Can you refer to exhibit -- well, let me ask this.

11 Is it fair it say that the initial pricing that
12 Mr. Raj Lahoti proposed was too high for *DriversEdDirect*?

13 A. From my recollection I believe that it was too high.
14 However, I don't see it right in front of me; so I don't know
15 exactly what you're referring to. Some of it might have been
16 okay. Some of it might not have been. I don't recall
17 exactly.

18 Q. Let's -- let's look at Exhibit 43.

19 Again, Mr. Creditor, do you have the paper copy of
20 that one?

21 A. I do.

22 Q. All right. And now can you -- that one I think I could
23 correctly describe as communications both between Online Guru
24 and *DriversEdDirect*, as well as internal to *DriversEdDirect*;
25 correct?

1 A. Yes. It looks like there's some correspondence between
2 us and Raj, and then later emails between just us internally.

3 Q. Now, if you look at Pages 2 and 3 together, there's an
4 email that overlaps from 2 to 3, where Mr. Lahoti basically
5 tells Mr. Leach that *DMV.org* can't go forward because they
6 were working on new developments for the site.

7 Do you see that?

8 A. I see that.

9 Q. And Mr. Leach forwarded that to you; correct?

10 A. Yes.

11 Q. And on Page 2 now, you reviewed that email; correct?

12 A. I did.

13 Q. And you wrote the response that's found at the top half
14 of Page 2, quote, "Screw this guy. I always had a bad
15 feeling about dealing with them. Let Raj take advantage of
16 someone else," unquote; correct?

17 A. Correct.

18 Q. When you said you always had a bad feeling about them,
19 what did you mean?

20 A. I believe that from the beginning of the negotiations
21 one of the things that Jimmy had said to me was that he felt
22 that Raj was very aggressive in his negotiations. And I had
23 expressed from the day one that we're not going to let
24 anybody take advantage of us. And there were some other
25 comments that had been made by Raj to Jimmy that were just

1 little concerning for myself, and I had just expressed that
2 maybe we should just pass on this relationship.

3 And from the beginning I had a bad feeling about
4 dealing with them.

5 Q. So by the word "always," what you're saying is that you
6 meant only back to February of 2006 and not prior?

7 A. I don't know if I was aware of anyone named Raj prior to
8 February.

9 Q. But this sentence says dealing with them, meaning
10 *DMV.org*; correct?

11 A. And then I reference to Raj specifically.

12 Q. Okay. So your testimony is the "always" only relates
13 back to February 2006; correct?

14 A. I -- I don't remember what --

15 Q. Okay.

16 A. -- I said in mind specifically at that time.

17 Q. If you go to Page 1 of this email there's further
18 colloquy internal to *DriversEdDirect*, and you write again
19 another response.

20 A. I'm sorry. What page?

21 Q. Page 1 -- middle of Page 1 at 4:01 p.m., 10 minutes
22 after the one we just looked at.

23 Quote, "Whatever. I didn't like these guys before
24 now," period. "I really can't stand them," period.

25 You wrote that; correct?

1 A. I did.

2 Q. And when you wrote you really didn't like these guys
3 before now, does that again only refer back as far as
4 February 2006?

5 A. Possibly. It could also be referring to an earlier
6 situation that we had had with them where we had to have
7 legal action get involved to have a domain name transferred
8 to us.

9 Q. So it's fair to say that that statement accurately
10 captured your viewpoint on *DMV.org* at that time, April 2006;
11 correct?

12 A. No. That accurately captured my feelings towards the
13 Defendants Raj and Ravi Lahoti specifically and how they
14 operated their businesses and how they were dealing with us
15 at that time.

16 Q. But nonetheless, thereafter you signed -- or
17 *DriversEdDirect* signed a contract with *DMV.org*; correct?

18 A. Correct.

19 Q. Now, after the contract was signed, *DMV.org* did run
20 *DriversEdDirect* advertisements in July 2006; correct?

21 A. I believe that's about the time frame.

22 Q. And *DriversEdDirect* realized sales from those
23 advertisements; correct?

24 A. I don't know. You're saying advertisements like it's
25 plural. I don't know how many advertisements there were.

1 But we did realize sales from the promotion of
2 *DriversEdDirect*, and the recommendation of our course is the
3 best choice for driver's ed in California on the *DMV.org* site
4 for a period of time.

5 Q. And you had no problem with *DMV.org* recommending
6 *DriversEdDirect* on that *DMV.org* Website in the summer of
7 2006; correct?

8 A. No. We -- I believe we are the best choice.

9 Q. And *DriversEdDirect* paid *DMV.org* the required referral
10 fees in connection with those advertisements; correct?

11 A. We paid whatever fees were due according to the
12 agreement we had at the time.

13 Q. Those were referral fees; correct?

14 A. I guess that's the way it would be constituted, sure.

15 Q. Okay. Now, turning to Paragraph 30 of your declaration,
16 you state that in 2006 *trafficschool.com* formed a Website at
17 the Internet domain address *drivinglinks.com*; correct?

18 A. Correct.

19 Q. Now, if you'll -- if we can refer to Exhibit 20. I
20 think that may be in your notebook as well.

21 A. Okay. Number 20 is "Who is records?"

22 Q. Yes.

23 A. Okay.

24 Q. And the first "who is report" there constitutes a who is
25 record for *drivinglinks.com*; correct?

1 A. No. This is a who is report for the domain name
2 *trafficschool.com* that I'm looking at in Exhibit 20 -- 20-A?

3 Q. 20-A.

4 A. That's what I see. *Trafficschool.com* is the domain
5 name.

6 Q. Let's look then at what we have on the screen.
7 Defendants' 982 is the Bates stamp there.

8 And that's the --

9 A. Okay. I see what you're saying.

10 Q. Okay. Now, this *drivinglinks* domain name is registered
11 to an entity identified as *drivinglinks.com*; correct?

12 A. Correct.

13 Q. And if you look at Page 2 of this registration, it was
14 registered on March 13, 2002; correct?

15 A. I don't know the accuracy of the record created versus
16 when the Website domain, I mean, was registered on. But
17 according to this, the record of this domain was created on
18 March 13, 2002.

19 Q. Is that inconsistent with any recollection you have?

20 MR. MAKOUS: Objection. Vague. Speculative.

21 THE COURT: Do you understand the question?

22 THE WITNESS: I do.

23 I have registered -- we've registered lots of
24 domain names. I don't recall the dates of them. But
25 we've -- we've registered domains since very early 2000 to

1 the present.

2 BY MR. DAUCHER:

3 Q. So you don't have any information today that suggests
4 that that record is incorrect as to when *drivinglinks.com* was
5 registered as a domain?

6 A. Correct.

7 Q. Okay. And that happens to be exactly one week after
8 Ravi Lahoti initiated contact from *DMV.org* to
9 *trafficschool.com*; correct?

10 A. I didn't -- I didn't look at the date that Ravi Lahoti
11 emailed us, but I remember it was in 2002. So --

12 Q. Isn't it true that this is one of the steps that you
13 took in response to the email from Mr. Ravi Lahoti in
14 March 2002?

15 A. No. That's not true. The only steps we took were to
16 contact our attorneys to have Ravi Lahoti transfer a
17 misspelling of the *trafficschool.com* domain name to us, which
18 he did at that time.

19 Q. And you remember that clearly that this --

20 A. I do. I do. I remember that very clearly, yeah.

21 Q. But you don't remember when the *drivinglinks.com* domain
22 was registered?

23 A. No. Because it's one of many domains we registered.

24 Q. Okay. The *drivinglinks.com* domain was originally
25 registered to *trafficschool.com*; correct?

1 A. I believe so.

2 Q. And that -- well, let me see -- *trafficschool.com* holds
3 quite a number of domain names; correct?

4 A. It's the registered owner, yes.

5 Q. Of about, say, 500 domains?

6 A. Approximately.

7 Q. There's nothing inherently wrong in owning a lot of
8 domain names; correct?

9 A. I don't believe so.

10 Q. And as I understand it, this is the only -- well, this
11 registration record was updated on September 28, 2006, to
12 change the registration from *trafficschool.com* to
13 *drivinglinks.com*.

14 Is that consistent with your recollection?

15 A. Prior to the activation of the Website at that domain we
16 modified the registrant name to *drivinglinks.com*.

17 Q. And *drivinglinks.com* does not exist as a formal entity
18 under any state; correct?

19 A. It's a domain name.

20 Q. It's not a California corporation; correct?

21 A. No.

22 Q. It's not a partnership limited partnership; correct?

23 A. Correct.

24 Q. This is the only domain name that *trafficschool.com*
25 registered that for which the registrant was changed to a

1 fictitious name; correct?

2 MR. MAKOUS: Objection. Relevance, your Honor.

3 THE COURT: Overruled.

4 You can answer.

5 THE WITNESS: *Trafficschool.com* has not changed the
6 registrant name to other names besides *DriversEdDirect*, or in
7 this case *drivinglinks.com*.

8 BY MR. DAUCHER:

9 Q. Have other domain names been changed to
10 *drivinglinks.com*?

11 A. I don't believe so.

12 Q. So this is the only one that you're aware of that has
13 been changed; correct?

14 A. Correct. The name is consistent with the name on the
15 Website.

16 Q. Isn't it true that -- and you testified that this was
17 done just ahead of the point in time when the *drivinglinks*
18 Website was taken live onto the Internet; correct?

19 A. Sometime before the site was taken live; correct.

20 Q. And isn't it true that the purpose of changing the
21 domain registration from *trafficschool.com* to *drivinglinks*
22 was to mask the affiliation between *drivinglinks* and
23 *trafficschool.com*?

24 A. No. As I just said, it was strictly to have the name on
25 the registrant who is be consistent with the domain name that

1 is listed on the Website.

2 Q. Was there a business reason why you did that?

3 A. We -- no. Maybe to at some point diverse identify into
4 a business on its own. But at this time no. It was just to
5 have it be consistent.

6 Q. Okay. The *drivinglinks* Website, the content on that
7 Website is controlled by *trafficschool.com*; correct?

8 A. Correct.

9 And in no way masks that *trafficschool.com* has a
10 relationship with it. I mean, there's advertisements for it
11 all over the place.

12 Q. There's advertisements for *trafficschool.com*; that's
13 correct. But there's no disclaimer on that Website that the
14 site is operated by *trafficschool.com* correct?

15 A. Well, there's a reference to a resources or a partners
16 page where we do reference that *trafficschool.com* and
17 *DriversEdDirect* are resources or partners of the
18 *DriversEdDirect* Website.

19 Q. But again, even those resource pages do not state that
20 the Website *drivinglinks.com* is controlled by
21 *trafficschool.com*; correct?

22 A. I -- I didn't know that it needed to be.

23 Q. So there is no such statement; correct?

24 A. I don't believe that there is such a statement.

25 Q. Now, the *drivinglinks.com* Website is, content wise,

1 similar to the *DMV.org* Website; correct?

2 A. Similar in what nature?

3 Q. Similar in that it provides motor vehicle-related
4 information to citizens browsing the Internet.

5 A. We provide on *drivinglinks* information for people from
6 various states to seek automotive-related information and
7 link to their official DMVs in a very non misleading and
8 confusing way. We also have links to traffic school and
9 driving school services, as well as insurance quotation
10 forms, some other related automotive products, driving
11 related games, and so forth.

12 Q. There's no disclaimer on the *drivinglinks.com* Website of
13 any kind disclaiming an affiliation with the Government;
14 correct?

15 A. I -- I don't see why you would need a disclaimer on the
16 *drivinglinks* site disclaiming -- there's no reason why anyone
17 would think that the *drivinglinks.com* site has anything to do
18 or sponsored by or is a government --

19 THE COURT: That's a very cute answer, but it
20 doesn't answer the question. So just "yes" or "no."

21 THE WITNESS: Can you repeat the question.

22 THE COURT: There is no disclaimer on the
23 *drivinglinks* Website of any kind of disclaiming an
24 affiliation with the Government; correct?

25 THE WITNESS: Correct.

1 BY MR. DAUCHER:

2 Q. So the *drivinglinks.com* Website has fewer than 100 pages
3 of content; correct?

4 A. I don't know the exact number of pages of content on the
5 *drivinglinks* Website.

6 Q. What is your best estimate?

7 A. Less than 500.

8 Q. Okay. And *trafficschool.com* does not spend any money
9 marketing *drivinglinks.com* on search engines; correct?

10 A. Not on search engines; correct.

11 Q. And *drivinglinks.com* only receives approximately 1- to
12 200 visitors a day; correct?

13 A. A few hundred visitors per day; correct.

14 Q. And there's a way that visitors to *drivinglinks.com* can
15 contact the *drivinglinks* Website by email; correct?

16 A. Correct.

17 Q. And you testified that you don't receive -- you haven't
18 received any emails which you record as demonstrating that
19 visitors to the *drivinglinks.com* Website are confused as to
20 an affiliation with the Government; correct?

21 A. We haven't received any emails, period.

22 Q. Now, if in the course of two years *drivinglinks.com* did
23 receive two emails from consumers that suggested that they
24 might be confused as to an affiliation with the Government,
25 would that cause you to shut down your Website?

1 MR. MAKOUS: Objection. Improper hypothetical
2 question. Calls for speculation. Irrelevant. Lacks
3 foundation.

4 THE COURT: Sustained.

5 MR. DAUCHER: Can we refer to Defendants' 990 in
6 Exhibit 20.

7 BY MR. DAUCHER:

8 Q. Now, Mr. Creditor, you can confirm that 990 is a page
9 available on the *drivinglinks.com* Website; correct?

10 A. It appears to be a page printed on June 19 from the
11 *drivinglinks* Website.

12 Q. Do you believe that page is still available on the
13 *drivinglinks.com* Website?

14 A. It -- it is. It could have had changes made to it, but
15 I'm sure this page is still available in some fashion.

16 Q. And the page is entitled "Department of Motor Vehicle
17 resources"; correct?

18 A. I don't see the title. I see the header above the top
19 paragraph that says Department of Motor Vehicle resources.

20 Q. Okay. That's what I was referring to.

21 A. I think the title is "Your state DMV at
22 *drivinglinks.com*."

23 Q. I take it that you don't believe it's misleading to put
24 up a Web page entitled "Department of Motor Vehicle
25 resources"; correct?

1 A. I -- I don't find it misleading for us on this site;
2 correct.

3 Q. Now, this page, including on the text that spills over
4 to Defendants' 991, contains 19 distinct references to the
5 term "DMV or Department of Motor Vehicles."

6 Do you recall we went through that at your
7 deposition?

8 A. I do.

9 Q. Isn't it true that part of the purpose of those repeated
10 references is to attempt to improve the natural search result
11 position of *drivinglinks.com* on search engines?

12 A. In part. It's also to be able to direct people to their
13 official state's motor vehicle agency, Department of Motor
14 Vehicles, or division of motor vehicles.

15 Q. And I take it that you don't think it's misleading to
16 use the phrase "Department of Motor Vehicles" repeatedly on
17 this page; correct?

18 A. On this Page I do not see it as a problem at all.

19 Q. You now, are you the person at *trafficschool.com* that's
20 primarily responsible for domain name management?

21 A. Primarily.

22 Q. *Trafficschool.com* has registered various other domain
23 names with the term "DMV" in the domain name; correct?

24 A. We've registered some with DMV and related terms.

25 Q. I'd like to show Demonstrative 5, which we delivered to

1 the other side.

2 May I show them the demonstrative --

3 THE COURT: That's fine.

4 MR. MAKOUS: We object only to relevance but
5 then -- the accuracy of information appears to be correct.
6 We have no objection to the accuracy of the exhibit, just its
7 relevance.

8 THE COURT: Okay. Well, I guess I'll need to take
9 a look at it.

10 Okay. The objection is overruled.

11 Has this been marked?

12 MR. MAKOUS: Your Honor, just for the record, I
13 think it's only one sheet so far is all he's offering. Just
14 Page 5, not that entire document.

15 MR. DAUCHER: We can mark it as 690, your Honor, if
16 you wish. Or it's just a demonstrative in any case if you
17 would like to mark it.

18 THE COURT: We're going to need to mark it.

19 MR. DAUCHER: Okay. 690, mark it, please.

20 THE COURT: Okay. And are you marking Page 5? Is
21 that all you're --

22 MR. DAUCHER: And I will be marking the next page
23 as well. We may as well -- online -- is that online --
24 Page 6.

25 THE COURT: Yes.

1 MR. DAUCHER: Page 6, *DMV.org*. I believe the
2 plaintiffs have reviewed that as well.

3 MR. MAKOUS: Yes. Same objection as before,
4 relevancy. But no objection to the accuracy.

5 THE COURT: Okay. What number do you want to give
6 it?

7 MR. DAUCHER: 691, your Honor.

8 THE COURT: All right. It will be marked for
9 identification.

10 (Exhibit Number 691 marked for identification.)

11 MR. DAUCHER: Okay. Let's go ahead and refer then
12 to 690.

13 BY MR. DAUCHER:

14 Q. Mr. Creditor, we've put together on 690 a table of
15 DMV-related domain names that traffic -- that we believe
16 *trafficschool.com* has registered.

17 Can you confirm that DMV -- that *trafficschool.com*
18 has registered each of the listed domain names on 690?

19 A. Yes. The first five are -- have DMV within them.
20 Obviously, the last one does not.

21 Q. The last one being *trafficschool.us*; correct?

22 A. Correct.

23 Q. And -- but *trafficschool* did register *trafficschool.us*;
24 correct?

25 A. I believe so.

1 Q. And can you also confirm that the dates of registration
2 are accurate?

3 A. They seem accurate.

4 Q. And can you also confirm that each of those domains
5 remains registered by *trafficschool.com*?

6 A. I believe so.

7 Q. And can you tell me whether *trafficschool.com* has ever
8 used any of these domain names?

9 A. I don't recall whether *trafficschool.com* has ever used
10 them to redirect to *trafficschool.com*. They might have been
11 used in a sense through a registration process by the
12 registration company that we use. But I don't know if it was
13 of something that we actively used ourselves.

14 Q. So you cannot tell this Court one way or the other
15 whether or not, in fact, you used any of these domain names
16 to redirect to *trafficschool.com*; correct?

17 A. I don't believe any of these names, other than possibly
18 *trafficschool.us*, but I -- I could be wrong -- were
19 redirected to *trafficschool.com*. I don't know if any of them
20 were used at all ever.

21 Q. Will you also look at now Exhibit 691. And 691 is
22 another table identifying two additional domain names
23 *online-DMV.org*, *Internet-DMV.org*.

24 Do you see those?

25 A. I do.

1 Q. And can you confirm that those were registered by
2 *trafficschool.com* in August of 2006?

3 A. They were.

4 Q. And that was during the time in which you actually had a
5 written agreement with *DMV.org*; correct?

6 A. We had a written agreement with Online Guru.

7 Q. That's correct.

8 During that time?

9 A. Yes. I believe we had not yet terminated the agreement;
10 correct.

11 Q. And you retained these registrations; correct?

12 A. At this time I believe so.

13 Q. What was the purpose of registering these domains?

14 MR. MAKOUS: Objection. Relevance.

15 THE COURT: Overruled.

16 THE WITNESS: I don't know. It was -- I don't
17 know.

18 BY MR. DAUCHER:

19 Q. Isn't it true that at that point in time you were
20 frustrated with *DMV.org*?

21 A. Were we frustrated with *DMV.org*? We were certainly
22 frustrated with Raj Lahoti.

23 Q. Have you ever used either of these domain names --

24 A. No.

25 Q. -- in any way?

1 A. I don't believe so.

2 Q. Can you tell this Court unequivocally whether you've
3 used either of these domain names?

4 A. When you say "used," can you reference to or define
5 "used," please.

6 Q. Well, as I understand, you can put up a Website. That
7 would be one form of use.

8 You haven't done that, I take it?

9 A. We personally have not put up a Website; correct.

10 Q. Are you aware of whether someone else has put up a
11 Website using these domains?

12 A. No.

13 Q. Another thing you can do, as I understand it, is that
14 you could redirect the Website to *trafficschool.com* or
15 another domain.

16 Have you redirected it?

17 A. I don't believe so.

18 Q. But can you tell the Court unequivocally you have not?

19 A. I don't believe we have redirected these domain names to
20 *trafficschool.com*. And I don't believe that we have created
21 a Website that we have placed at either one of these domain
22 names unequivocally. And if the Court was to take away these
23 domain names from us because they found that it was
24 misleading, then that would be fine.

25 Q. Do you believe these domain names are misleading?

1 MR. MAKOUS: Objection. Relevance.

2 THE COURT: Overruled.

3 THE WITNESS: Do I believe they were misleading? I
4 believe that the name *DMV.org* is misleading.

5 BY MR. DAUCHER:

6 Q. But what about these domains?

7 A. I personally don't know what would be construed legally
8 as misleading or not with regards to these specific domain
9 names.

10 THE COURT: All right. We're going to stop for the
11 day.

12 How much longer do you have with this witness?

13 MR. DAUCHER: No more than 10, 15 minutes, your
14 Honor.

15 THE COURT: All right. Well, we'll resume
16 tomorrow.

17 All right. Sir, you may step down.

18 THE WITNESS: Thank you.

19 MR. MAKOUS: Your Honor, we have a new matter we
20 would like to bring to the Court's attention before the Court
21 adjourns. It will be very brief.

22 MR. DAUCHER: Time saving.

23 MR. MAKOUS: Time saving, and it will help the
24 Court expedite the trial, I believe.

25 THE COURT: What's that?

1 MR. MAKOUS: At my suggestion, Mr. Daucher is
2 willing to stipulate that the two experts, Mr. --
3 Dr. Maronick and, I suppose, Ken Hollander will be offered
4 only in paper form with the right of both sides to submit
5 selected deposition testimony, in essence, as our cross in
6 lieu of bringing them here both from out of state and far
7 away.

8 Court permitting, of course.

9 THE COURT: Okay. So you're not going to call your
10 experts live. Is that --

11 MR. MAKOUS: We weren't going to do it either. We
12 were just going to cross-examine each other's experts, but
13 we've agreed to forgo that.

14 THE COURT: So you're not going to cross-examine
15 the experts, and you're going to give me some deposition
16 testimony to look at.

17 MR. MAKOUS: As our cross.

18 THE COURT: As the cross?

19 MR. MAKOUS: Yes, your Honor.

20 THE COURT: Okay. All right.

21 MR. DAUCHER: Yes.

22 MR. MAKOUS: And --

23 MR. DAUCHER: Secondly, your Honor, with respect to
24 the --

25 THE COURT: I'm sorry. One other question.

1 And what's going to be their direct?

2 MR. MAKOUS: The declarations that have been
3 submitted by both experts.

4 MR. DAUCHER: Actually, Simonson falls into that
5 group as well. All three have lodged declarations -- direct
6 declarations, as we construe the Court to require further
7 direct testimony.

8 THE COURT: I don't know about yours, but I thought
9 that you didn't submit a declaration on behalf of your
10 expert. I thought what you made some reference to either his
11 report --

12 MR. MAKOUS: We did a trial declaration, which
13 incorporated his prior declaration, your Honor. It is --

14 THE COURT: Okay. Are you --

15 MR. MAKOUS: It is before the Court.

16 THE COURT: All right. You're talking about the
17 declaration that was used for the summary judgment?

18 MR. MAKOUS: That is correct.

19 THE COURT: Okay. So that --

20 MR. MAKOUS: And I believe the rebuttal
21 declaration, including the survey. This is declaration with
22 the survey --

23 THE COURT: Okay.

24 MR. MAKOUS: -- as our evidence on that point.

25 THE COURT: All right. So that's what you're going

1 to use for your direct testimony.

2 MR. MAKOUS: That's correct.

3 THE COURT: Okay. And is that acceptable?

4 MR. DAUCHER: It is, your Honor. We believe that
5 the objections we made to it were heard on in limine, and the
6 rest goes to weight. So we'll argue it.

7 THE COURT: All right.

8 MR. MAKOUS: Thank you, your Honor.

9 The second point is just to remind the Court they
10 have two rebuttal experts allegedly. We move to strike both
11 without the ability to know which they're offering for what
12 purpose. I would just like to make that of record since
13 they're not going to be, either one, be live now. We object
14 to their testimony as to Mr. Hollander and Dr. Simonson.
15 They're both survey guys.

16 THE COURT: Okay. Well, I think counsel has --
17 I think counsel addressed that point. And I'll look at
18 the -- I'll look at the declarations, and to the extent
19 they're cumulative, I'm not going to consider it. I'm not
20 going to consider both of them.

21 MR. DAUCHER: That's fine. We don't -- that's
22 fine, your Honor.

23 MR. MAKOUS: Finally, one final -- your Honor, we
24 have witnesses coming from Texas and California that we would
25 bring tomorrow. And they are three operators of traffic

1 schools and driver's ed courses that have done business with
2 the defendant or have issues relevant to this litigation.
3 And I know the Court has made comments about this. They each
4 have different clusters of testimony to offer. It's not
5 redundant. We would make them -- we would offer their
6 declarations, which have been made of record.

7 Mr. Daucher has objected as of record, and, of
8 course, they will submit to cross-examination. We -- we ask
9 the Court to allow us to do that and make its rulings on
10 admissibility later so we can bring the witnesses and get
11 them done because it's difficult to engineer all these people
12 with the time schedules.

13 THE COURT: You can call -- it isn't up to me to
14 allow -- you can call whoever you want to call in your case.
15 I've looked at their declarations, and some of their
16 testimony is problematic. Unless these people were
17 designated as experts, I think -- I'm not sure how much
18 they're going to have to say, but you can certainly call
19 them. You have given me their declarations. He's made his
20 objections. And, you know, I'll rule on it. And some
21 other -- some of their testimony --

22 Well, let me just ask you this.

23 As far as I know, none of those people were
24 designated as an expert witness; correct?

25 MR. MAKOUS: That's correct, under the --

1 THE COURT: Okay.

2 MR. MAKOUS: -- Federal Rules of Civil Procedure,
3 that is accurate.

4 THE COURT: Okay. And so they're going to be here
5 tomorrow. That's fine. And I'll rule on the objections, and
6 to the extent you can repair or, I guess, rehabilitate them,
7 whatever, I'll give you an opportunity to do that, but must
8 say that some of their testimony I doubt seriously is coming
9 in.

10 But --

11 MR. MAKOUS: Okay. Thank you, your Honor.

12 What's the Court's schedule for tomorrow?

13 THE COURT: I thought what we would do is start at
14 8:30, but what -- but one of the things I really want counsel
15 to do -- if -- if you're comfortable at this point that all
16 of the documents -- all of the exhibits that were referred to
17 in your -- well, if all the exhibits on the joint exhibit
18 list are now -- you've stipulated they're going to be
19 admitted. Is that the state -- is that the case?

20 MR. DAUCHER: I believe we would stipulate that any
21 without objection would be -- would be admitted. And then
22 there may be a further -- I've suggested a further
23 stipulation. There are many relevancy objections. I don't
24 envision the Court entertaining those in a long discussion.
25 Both sides have them. The Court is able to weigh the

1 evidence. We proposed waiving those as well to alleviate the
2 problem.

3 THE COURT: Well, what I'd like the problems to do
4 for any exhibits that you haven't agreed to that are coming
5 in, I'd like you to meet and confer about those and see if I
6 can resolve whatever your differences are as to those
7 exhibits so that we can make sure that all the exhibits that
8 are being put in front of witnesses are either in evidence or
9 they're going to be offered. So we can make sure that we've
10 got an accurate record.

11 Okay?

12 MR. DAUCHER: Very well.

13 THE COURT: Now, anything else?

14 MR. DE CARLO: Will we have another full day
15 tomorrow, your Honor?

16 THE COURT: Who are the witnesses that you're
17 planning on calling tomorrow?

18 MR. DE CARLO: We would call Mr. Kramer, who is one
19 of the parties; then we have -- the other remaining witnesses
20 are the declarations. I can identify those.

21 THE COURT: Okay. So you're going to call --
22 you're going to call Mr. Kramer?

23 MR. DE CARLO: Correct, your Honor.

24 THE COURT: Okay. And who else? Is that
25 Wright's -- is that one of the persons you're calling?

1 MR. DE CARLO: We would call Shannon Robertson by
2 declaration.

3 THE COURT: Okay.

4 MR. DE CARLO: We would call Chuck -- Chuck
5 Dunbar --

6 THE COURT: Uh-huh.

7 MR. DE CARLO: -- by declaration --

8 THE COURT: Okay.

9 MR. DE CARLO: -- and we would call Gary Tsfrin by
10 declaration.

11 THE COURT: Well, how can these people talk about
12 remedies, for example?

13 MR. DE CARLO: Your Honor, the -- because part of
14 the remedial analysis in this case is the benefit to the
15 public and the competitors are part of the public, and so we
16 believe that it is pertinent -- highly relevant in this case
17 for the competitors to testify how these practices are
18 impacting their businesses.

19 THE COURT: I'm not -- well, that wasn't my
20 question.

21 How are they going to testify about what a
22 remedy -- what proper remedy is available here? I don't
23 think that's -- I really don't think that that's testimony
24 that they ought to be addressing. The Court will determine
25 what the appropriate remedy is. And these people are not

1 experts, or at least they haven't been designated as experts.
2 And I doubt even had they been designated as experts, had
3 they'd be able to adequately testify about the remedy that
4 the Court should enter in this case.

5 So -- but, you know, we can take that up tomorrow.

6 MR. DE CARLO: It's -- may -- would you like a
7 comment on that? Shall I comment on that, your Honor.

8 It's never been our intention to offer these
9 witnesses as experts. They are percipient witnesses who are
10 laying a foundation about their experience in the industry,
11 and then are commenting on both their observations.

12 THE COURT: You should have designated them. They
13 can talk about facts. If they're percipient witnesses, they
14 can talk about facts. But they -- they're not going to be
15 allowed to offer opinions if they weren't designated.

16 It's -- and if there was any doubt in your mind, you should
17 have designated them as an expert. And if you didn't, a lot
18 of these declarations that I've looked at -- it seems to me
19 you know they're testifying as experts.

20 And they may well be in the industry, but that
21 doesn't relieve you of the obligation of designating them as
22 experts, at least as I read this testimony in any event.

23 So if you want to make a -- if you want to make a
24 proffer -- well, I guess I have your proffer. If you want to
25 be heard on that, that's fine. But I think counsel's

1 objection, given the way these declarations are structured,
2 are well taken.

3 MR. DE CARLO: Well, the declarations, your Honor,
4 also extend beyond opinion testimony to also the witnesses
5 testifying about what people told them, what they have
6 observed.

7 THE COURT: What people told them?

8 MR. DE CARLO: Yes, your Honor. Specifically
9 related to the instances --

10 THE COURT: How do you get that in? How does that
11 come in?

12 MR. DE CARLO: Evidence of comments that these
13 persons heard by confused -- by confused consumers are not
14 hearsay. They are not being offered for the truth of the
15 matter asserted. They are being asserted to establish that
16 these people were confused.

17 THE COURT: Well, but -- but, sir, I think probably
18 the way that you could -- you have these -- you have these
19 experts. They're going to talk about confusion; right? And
20 he's done a survey.

21 Am I correct.

22 MR. DE CARLO: That's correct, your Honor.

23 THE COURT: And furthermore, if you're -- if you
24 wanted to share this with your expert and let your expert --
25 your expert can rely on anything basically in formulating his

1 opinion. And if it's not being offered for the truth, what
2 is it being offered for?

3 MR. DE CARLO: To show the confused state of mind.

4 THE COURT: Whose state of mind?

5 MR. DE CARLO: In -- it depends on the situation.

6 THE COURT: Whose state of mind?

7 MR. DE CARLO: The declarant's.

8 THE COURT: Who's the declarant?

9 MR. DE CARLO: The situation of Mr. Dunbar, for
10 example, or Mr. Wright is a better example, it is people who
11 are -- who are confused by the *DMV.org* Website in believing
12 that the course they took was approved by the Department of
13 Motor Vehicles.

14 So they related to Mr. Wright we -- we took the DMV
15 driver's education course.

16 THE COURT: Uh-huh.

17 MR. DE CARLO: Mr. Dunbar will come in and testify
18 that those comments were made to him. We're not offering
19 that evidence to establish that these people took the DMV
20 course.

21 THE COURT: No. You're offering it to show that
22 they were confused.

23 MR. DE CARLO: Yes, your Honor.

24 And Mr. Dunbar has that kind of testimony and
25 Mr. Wright has that kind of testimony and Mr. Tsfrin has that

1 testimony.

2 THE COURT: Okay. Do you want to be heard?

3 MR. DAUCHER: Your Honor, I don't believe that's an
4 exception. When he said declarant, the declarants are the
5 competitors, not the people they heard from. And moreover,
6 the testimony that -- that they offer about things they
7 heard, oftentimes they offer vague assertions. They don't
8 tell who, when. There's no indicia of reliability to what is
9 stated in those declarations that, in my view, should push
10 the Court towards allowing them in under a hearsay exception.

11 THE COURT: Don't you have --

12 Don't you have -- isn't your expert going to offer
13 testimony on the issue of confusion in that there were
14 confused consumers? And didn't you elicit from the
15 defendants themselves that they've, from time to time,
16 encountered people who were confused?

17 MR. DE CARLO: Yes, we have, your Honor. And we
18 also have hundreds, if not thousands, of pages of emails to
19 that effect as well.

20 However, what we also have is information from
21 those outside of the parties who have specific information
22 about confused consumers.

23 THE COURT: Okay. All right. Anything else?

24 MR. DAUCHER: Nothing further, your Honor.

25 MR. MAKOUS: Yes, your Honor.

1 Would it be a full day tomorrow? I guess that's
2 what we were looking at. Until 4:30?

3 THE COURT: Yeah. We'll go as long as I can
4 withstand it. Okay.

5 MR. MAKOUS: One final thing, your Honor.

6 Mr. Daucher has advised me that he's going to
7 finish with Mr. Creditor for all purposes tomorrow; so we
8 will not be re-calling him.

9 THE COURT: I think that's what he said.

10 MR. MAKOUS: Okay. I wasn't clear once again.

11 Thank you.

12 THE COURT: Okay. Anything -- anything else?

13 Okay. We'll see everybody tomorrow morning at
14 8:00 o'clock.

15 THE CLERK: All rise.

16 This Court stands adjourned.

17 (Whereupon, at 4:38 p.m., the proceeding.

18 concluded.)
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	PLAINTIFFS' EXHIBITS	IDENTIFIED
1		
2	15	32
	17	91
3	18	92
	20	199
4	26	162
	27	171
5	32	186
	37	190
6	43	195
	45	191
7	61	40
	62	169
8	67	177
	89	156
9	90	153
	114	51
10	115	32
	127	68
11	300	28
	301	24
12	303	28
	317	78
13	318	80
	319	83
14	320	84
	321	129
15	322	53
	323	97
16	324	60
	325	63
17	332	86
	333	19
18	342	81
	343	82
19	352	70
	353	71
20	367	66
	385	82
21	391	79
	398	73
22	413	123
23		
24		
25		

	DEFENSE'S EXHIBITS	IDENTIFIED
1		
2	655	108
	627	106
3	631	111
	670	102
4	671	103
	681	40
5	691	201
	990	207
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