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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

CASE NO. C 06 7754 SBA

HELIO LLC

Plaintiff,

vs.

PALM, INC.

Defendant.

**DECLARATION OF HOWARD
 MARYLANDER (CONSUMER
 CONFUSION) IN SUPPORT OF PALM'S
 OPPOSITION TO PLAINTIFF'S
 MOTION FOR A PRELIMINARY
 INJUNCTION**

DECLARATION OF HOWARD MARYLANDER

In the Case Of

HELIO LLC

Plaintiff,

v.

PALM, INC

Defendant.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

March 19, 2007

DECLARATION OF HOWARD MARYLANDER

I, Howard Marylander, declare that the statements in this declaration are based on my personal knowledge unless specifically noted. If I were called as a witness, I could and would competently testify thereto:

QUALIFICATIONS

1. I am the President of Marylander Marketing Research, Inc., an opinion research firm. For over 31 years, MMR has provided opinion research services, consisting primarily of the design, execution, and analysis of survey research. Our clients during the past five years have included:

AAA Texas, New Mexico, Hawaii
Ameriquest Mortgage Co.
Authentic Specialty Foods
Automobile Club of Southern California
Basic American Foods
Blue Cross of California/Wellpoint
CompUSA
Denny's Restaurants
El Pollo Loco
First Federal Bank
Hollywood Bowl
Los Angeles Opera
Nestlé USA, Inc.
Nissan Motors
PacifiCare Health Systems
Pharmavite
Public Storage
Smart & Final
Sparkletts Water
University of California at Los Angeles
Viking River Cruises
Walt Disney World
Zatarain's

2. I received a Bachelor of Science in Accounting from the University of California at Berkeley and a Master of Business Administration in Marketing from the University of Southern California.

Prior to forming my own company, I held executive positions in research capacities for four-and-a-half years at Carnation Company (now Nestlé USA, Inc.) and for two years at Mattel, Inc. I was employed at Haug Associates, Inc., a marketing research firm, for seven-and-a-half years. At the time I left to form my own company, Haug Associates was the largest marketing research consulting firm in Southern California and I was President. Marylander Marketing Research and I have designed and executed thousands of surveys to gauge public opinion, including consumer surveys for litigation.

I have been a member of the American Marketing Association for over 40 years.

I have lectured on both advanced and introductory marketing and opinion research for the American Management Association and American Marketing Association. I have guest lectured at UCLA, USC, and several other colleges and universities.

My curriculum vitae are included in Exhibit A.

3. A listing of the cases for which I have provided trial or deposition testimony as an expert in the past four years is included in Exhibit B.

STUDY OBJECTIVES

4. In this case, I designed and executed a study to determine:
 - The extent of forward confusion as to source between Treo and Helio among Treo's target audience.
 - The extent of reverse confusion as to source between Helio and Treo among Helio's target audience.

A secondary objective is to determine the extent of forward confusion as to source among Helio's target audience. (It is understood that forward confusion is measured among the junior user's target. This additional information has been obtained at the request of Treo's attorneys in order to provide the most complete picture of the level of confusion between the two brands.)

5. Marylander Marketing Research charges for this study are \$39,000 plus incidental expenses. That figure covers all costs through this declaration.

Charges for deposition, trial testimony, time related to preparation for those activities and travel will be billed at \$450 per hour.

6. In preparation for this study, I reviewed the following materials:
- Plaintiff Helio LLC's Application for Temporary Restraining Order and for Order to Show Cause Why a Preliminary Injunction Should Not Issue; Memorandum of Points and Authorities in Support
 - Declaration of Jessica Weeks in Support of Plaintiff Helio LLC's Application for Temporary Restraining Order and for Order to Show Cause Why a Preliminary Injunction Should Not Issue
 - Opposition to Plaintiff's Application for Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue
 - Declaration of Doug Colt in Support of Palm's Opposition to Plaintiff's Application for Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue
 - Declaration of Scott Hancock in Support of Palm, Inc.'s Opposition to Plaintiff's Application for Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue
 - [Proposed] Order Denying Plaintiff Helio LLC's Application for Temporary Restraining Order
 - The websites for Helio, Palm (Treo), and various mobile phone companies and service providers
 - Information gathered on the internet by MMR staff employees regarding mobile phones companies and service providers including, but not limited to, national, international, and specialty carriers as well as mobile phone manufacturers

SURVEY METHODOLOGY

Overview of Study Design

7. This study was designed to measure the extent of forward and reverse confusion as to source between Helio and Palm and/or Treo. To provide a realistic context for measuring confusion between the brands, print ads that had been run by the two brands were used.

Two panels, or cells, of respondents were used on this study, one to measure forward confusion and the other to measure reverse confusion:

- To measure forward confusion, Treo ads were shown to a representative panel of Treo's target market.
- To evaluate reverse confusion, Helio ads were shown to a panel of Helio's customer target.

In addition, forward confusion of the Treo ads was measured among Helio's target audience. This was done to provide the most complete picture of the possible confusion between the brands. While the findings from this third cell are shown, it has been given lesser emphasis in the analysis and in this overview of the study design.

8. The relevant gender and age groups for the three cells of respondents are as follows:

Treo Forward Confusion among Treo's Target Audience.

Treo ads were shown to males and females, 25 to 44 years of age.

Helio Reverse Confusion among Helio's Target Audience.

Helio ads were shown to males and females, 18 to 34 years of age.

Treo Forward Confusion among Helio's Target Audience.

Treo ads were shown to males and females, 18 to 34 years of age.

9. All respondents were further qualified on the following:

- They were required to have a mobile phone or mobile communication device and to use that mobile phone or mobile communication device two or more times per day.
- In addition, they had to regularly use or think they will regularly use in the near future one or more of nine features

of their mobile phone or mobile communication device beyond regular calling.

10. Two different print ads for Treo and two for Helio were used to communicate the respective brand name and message in each of the cells. These were ads, which I have been advised, that were widely run. The reason for using two ads for each brand is to be more representative of the types of ads used.
11. Each respondent was shown only one of the two ads used for the cell to which they were assigned. Approximately half saw one ad, and half were shown the other. After exposure to the ad, respondents were asked a series of questions to determine whether Helio and Palm and/or Treo are seen as coming from a single source.
12. The series is as follows:
 - After exposure to the ad, respondents were first asked,

Who do you think puts out or offers the product(s) and/or service(s) discussed in this ad?
 - Next, respondents were asked,

Please name any other brand or brands that are put out by the company or companies in the ad.
 - Then, respondents were asked,

Please name any other brand or brands that are connected or affiliated with the company or companies in the ad.
13. Respondents who mentioned a company, brand, or name in response to each of the three questions (See *previous section, Section 12*) were asked to fully explain why they felt that way before being asked the next question.
14. The sample size is 850; approximately half of the respondents were exposed to one of the two Treo ads, and half was shown one of the two Helio ads.
15. The study was conducted online.

Detailed Discussion of the Study Design

16. Interviewing took place from March 1, 2007, to March 7, 2007.
17. The Treo forward confusion study was conducted among Treo's target gender and age range -- males and females, 25 to 44 years of age.

The Helio reverse confusion study was conducted among Helio's target and gender range -- males and females, 18 to 34 years of age.

The Treo forward confusion was conducted among Helio's target and gender range -- males and females, 18 to 34 years of age. (This measurement of confusion is of secondary importance in this study.)

18. All respondents were qualified on:

- Having a mobile phone or mobile communication device.

AND

- Using their mobile phone or mobile communication device for any purpose two or more times per day. (The median number of uses per Helio Cell respondents was 8.3 times per day, and the median among Palm Treo respondents was 7.8.)

AND

- Regularly using one or more of nine features on their mobile phone or mobile communication device. (Ninety-five percent of the respondents in both cells used one or more of the features, and the average number used was 2.7 features.)

OR

- Thinking they will regularly use one or more of nine features on their mobile phone or mobile communication device in the near future. (Ninety-nine percent of the respondents in both cells planned to do so, and the average number that will be used was 3.9 features.)

The nine selected features are:

- Text messaging
- Sending or receiving e-mails
- Taking pictures or videos
- Using Bluetooth
- Downloading and listening to music
- Downloading and/or playing games
- Downloading ring tones
- Getting news, sports, or stock updates
- Listening to radio or watching television

19. I determined from reading the pleadings (See *Section 6*) and talking with Treo's attorneys that the target for Treo are males and females, 25 to 44 years, and the target for Helio are males and females, 18 to 34 years. Age and gender quotas were set so that the sample reflected those demographics.

A gender quota was established so that approximately 50% of the respondents were male and 50% were female.

The following overall age quotas were set:

	Treo Ads Shown*	Helio Ads Shown
	%	%
18 to 20 years	11	18
<u>21 to 25 years</u>	<u>NA</u>	<u>30</u>
21 to 24 years	15	NA
25 years	4	NA
26 to 30 years	18	29
31 to 34 years	15	23
35 to 40 years	22	NA
41 to 44 years	15	NA

* Those 18 to 24 shown Treo ads were used to measure forward confusion among Helio's target audience.

NA = Not applicable

20. Respondents were further screened and not included in the study if they answered affirmatively to any of the following:
- They or anyone in their household work in the advertising industry.
 - They or anyone in their household work for a marketing research company.
 - They or anyone in their household work for a company that makes, markets, distributes, or sells mobile phones or mobile communication devices or provides service for mobile phones or mobile communication devices.
21. To measure forward confusion, Treo ads were shown to Treo's target audience.
- To measure reverse confusion, Helio ads were shown to Helio's target audience.
- To measure forward confusion among potential Helio's customers, Treo ads were shown to Helio's target audience.
22. The ads were used to provide a realistic context in which to expose respondents to the environment, including the brand names, themes, and messages, in which their respective target audience would be exposed to Treo and Helio.
23. Three panels of respondents were interviewed. Each was designed to measure one of the three types of confusion addressed in this study:

Cell	Type of Confusion	Advertiser Shown	Target Audience & Age Range
I	Forward	Treo	Treo Target 25 to 44 years
II	Reverse	Helio	Helio Target 18 to 34 years
III	Forward among Helio prospects	Treo	Helio Target 18 to 34 years

24. To communicate the brands in an environment in which respondents were likely to see them, along with the messages and slogans for each brand, I asked Treo's law firm to provide print ads that had been run for these brands. It is my understanding, both from reading the pleadings (See *Section 6*) and discussions with Treo's attorneys, that print advertising is the primary medium for both of these brands.
25. Although each respondent was exposed to only one ad, two ads for each brand were used. The intent is not to analyze the findings for the individual ads; rather, it is to provide broader representation of the types of advertising run. Approximately half of the respondents in each cell were shown one of the ads for that brand. The ads for each brand have been referred to in this report by either the headline or some prominent part of the copy:

Helio Ads: Helio - Friendar
 Helio - Homie Device

Treo Ads: Treo - Cingular
 Treo - the Onion

26. A total of 850 interviews were completed -- 416 who were exposed to Treo advertisements and 434 who saw Helio ads. The sample sizes, by cell, are shown below. Respondents between the ages of 25 and 34 years who were shown Treo ads are used for both Cells I and III.

<u>Cell</u>	<u>Type of Confusion</u>	<u>Advertiser Shown</u>	<u>Target Audience & Age Range</u>	<u>Sample Size</u>
I	Forward	Treo	Treo Target 25 to 44 years	303
II	Reverse	Helio	Helio Target 18 to 34 years	434
III	Forward among Helio prospects	Treo	Helio Target 18 to 34 years	264

27. This table shows the distribution of completed interviews by gender and age for each of the studies are as follows:

Completed Interviews			
	<u>Cell I</u>	<u>Cell II</u>	<u>Cell III</u>
	<u>Forward</u>	<u>Reverse</u>	<u>Forward</u>
	<u>Confusion</u>	<u>Confusion</u>	<u>Confusion</u>
	Treo Ads Shown to Treo Target <u>Audience</u>	Helio Ads Shown to Helio Target <u>Audience</u>	Treo Ads Shown to Helio Target <u>Audience</u>
	%	%	%
<u>Gender</u>			
Male	50	53	52
Female	50	47	48
	-----	-----	-----
	100	100	100
<u>Age</u>			
18 to 20 years	NA	17	18
<u>21 to 25 years</u>	<u>5</u>	<u>35</u>	<u>31</u>
21 to 24 years	NA	NA	25
25 years	5	NA	6
26 to 30 years	24	27	28
31 to 34 years	20	21	23
35 to 40 years	29	NA	NA
41 to 44 years	21	NA	NA
	-----	-----	-----
	100	100	100

NA = Not applicable

28. Interviewing was conducted online through e-Rewards Market Research, one of the premier online panel companies. The company is highly regarded for the quality of its consumer panel. e-Rewards provided the sample as well as programmed the questionnaires and hosted the study. The e-Rewards panel contains over 1.7 million consumers in the U.S. and Canada (only the U.S. portion of the panel was used for this study).

29. As is the practice of online interviewing companies, e-Rewards provided compensation to survey participants using a rewards system that allows respondents to earn “rewards” or points redeemable at a large number of companies selling products and merchandise online.
30. When potential respondents were initially invited to the online survey, they were told the following:

Thank you for accepting the invitation to participate in this survey. We encourage your honest responses. Your opinions will be combined with those provided by others in order to maintain your confidentiality.

This survey is about mobile phones and related services.

There are no right or wrong answers. If you don't know or are unsure of an answer to a question, then that is a perfectly acceptable response.

Please make sure that your computer allows pop-up windows and take a moment to maximize this window on your computer so you can complete all of the questions appearing on each page. Always scroll down to make sure you have answered all of the questions.

When you are ready to move on to the next page, click the “>>” button located at the bottom of the screen. DO NOT use your browser's “Forward” or “Back” button to go from one page to another.

31. After determining that the respondent had a mobile phone or mobile communication device, the following definition was given to respondent in order to facilitate the flow of the interview:

For convenience in the questions that follow, the term mobile phones will be used to refer to mobile phones and mobile communication devices.

32. Respondents were informed of the following:

You will see a picture of an ad that appeared in a magazine.

You will be asked a few questions about that ad. If you don't know or are unsure of the answer, that is a perfectly fine response.

33. On the next page, respondents were given further instructions based on the ad they were to be shown:

Treo Ads

On the next page is the picture of a magazine advertisement. Different people are seeing different ads. You will see a smaller version of the ad on the next page and you may not be able to see all of the details or read all of the fine print. However, if you would like to see a larger view of the ad, you may click on the links to view pop-up windows showing the ad. Feel free to scroll up and down, left and right on those windows to view the left and right pages of the ad. Please take as long as you like to view the entire ad on the next page and on either or both of the pop-up windows.

Helio Ads

On the next page is the picture of a magazine advertisement. Different people are seeing different ads. You will see a smaller version of the ad on the next page and you may not be able to see all of the details or read all of the fine print. However, if you would like to see a larger view of the ad, you may click on the links to view pop-up windows showing the left and right pages of the ad. Feel free to scroll up and down, left and right on those windows to view the left and right pages of the ad. Please take as long as you like to view the entire ad on the next page and on either or both of the pop-up windows.

34. Each respondent was then exposed to one of the two ads to be shown for their assigned cell:
35. Respondents first saw a page showing the entire ad.
36. Respondents could then see their respective ad in greater detail by clicking on a link or links to view pop-up windows.

Treo Ads

For the Treo ads, respondents were able to click on a link to view a larger version of the entire ad.

Helio Ads

For the Helio ads, because they were two-page spreads, respondents were able to click on either or both links to view larger versions of each page separately.

37. Respondents were allowed to look at the ad for as long as they liked. When they were finished, they were asked to click the ">>" button to continue.
38. The online survey was designed so that respondents could not return to the previous pages once they continued to the next page. So, once respondents finished viewing the ad, they could not look at it again.
39. After exposure to their respective ad, respondents were asked:

Who do you think puts out or offers the product(s) and/or service(s) discussed in this ad? If you don't know or are not sure, please select the box at the bottom of the page.

40. Respondents who volunteered a company or companies or brand or brands or name or names who they think puts out or offers the product(s) and/or service(s) discussed in this ad were then asked:

Please explain fully why you feel that way.

41. Next, respondents were asked:

Please name any other brand or brands that are put out by the company or companies in the ad. If you don't know or are not sure, please select the box at the bottom of the page.

42. Respondents who volunteered a brand or brands that are put out by the company or companies in the ad were asked:

Please explain fully why you feel that way.

43. Then, respondents were asked:

Please name any other brand or brands that are connected or affiliated with the company or companies in the ad. If you don't know or are not sure, please select the box at the bottom of the page.

44. Respondents who volunteered a brand or brands that are connected or affiliated with the company or companies in the ad were then asked:

Please explain fully why you feel that way.

45. Based on my previous experience with online surveys and extensive discussions with e-Rewards online panel executives, it was felt that a minimum of 60 seconds would be required to complete the survey. The few respondents who completed the survey in less time were not included in the findings.

47. Because of the narrow age quotas used on this study and the need to complete the research in a timely manner, a very large number of invitations were sent out. As a result, most of those who attempted to participate could not, because their age and, to a lesser extent, gender quota had been filled.

Of those who did meet the age and gender quotas (11.6%), most, 66% completed the interview (6.6% ÷ 11.6%). The majority of those who did not complete the interview failed to meet the screening criteria.

	People Who Attempted to Complete the Survey	
	%	#
Completed	7.7	850
<u>Incomplete</u>	<u>92.3</u>	<u>10,213</u>
Did not qualify during screening	3.3	368
Incomplete/abandoned	0.6	61
Quotas full	88.4	9,784
Grand Total	100.0	11,063

Note: Due to rounding, figures may not add exactly to 100%.

48. The procedures employed in sample planning, questionnaire design, data processing, and quality control are consistent with or exceeded generally accepted standards for developing objective data:

- a. Respondents were allowed to look at the ads for as long as they wanted.
- b. All of the confusion measures were open-end questions.

Respondents were told that a “don’t know/not sure” response was acceptable.

They were provided with the opportunity to fully explain their responses in a follow-up open-end question.

- c. The study design, questionnaire, and data tabulation were carried out under my direction.

- d. Marylander Marketing Research gave explicit instructions to e-Rewards about the sampling plan and project responsibilities and questionnaire design/programming (See *Questionnaire in Exhibit C*).
 - e. After programming of the online questionnaires had been completed, I tested the questionnaire to ensure that the specified wording, format, design, and skip patterns were correctly executed (See *Screenshots in Exhibit D*).
 - f. One hundred percent of the keypunching was verified to ensure accuracy of data processing. In addition, a “data cleaning” program was employed.
49. All statistical tests were at the 95% confidence level.
50. Attached as Exhibits C through E are copies of the materials used for the study:
- Exhibit C contains the questionnaire.
 - Exhibit D contains the four ads - the two Treo ads and the two Helio ads. Each two-page Helio ad has been split so that each side is on an 8 1/2” x 11” page.
 - Exhibit E is a set of the screenshots of the questionnaire as it was programmed and appeared to respondents online.
 - Exhibit F is the computer tabulations of actual responses from the questionnaires.

I have personally reviewed the tabulations, and Exhibit F accurately reflects the questions asked and the responses obtained.

SURVEY FINDINGS

Overview

51. In my professional opinion, there is literally no evidence of either forward or reverse confusion between the Helio and Palm and/or Treo mobile communication devices.
52. Concerning forward confusion, after exposure of representative Treo ads to the Treo target audience:
 - Not a single person thought that the advertised products or services were put out or offered by Helio.
 - Not one respondent names Helio as a brand put out by the company or companies in the Treo ad.
 - None volunteered Helio as a brand that is connected or affiliated with the company or companies in the Treo ad.
53. In examining the findings for evidence for reverse confusion, after exposure to representative Helio ads to the Helio target audience:
 - Not one respondent thought that the advertised products or services were put out or offered by Palm or Treo.
 - No one said that Palm or Treo was a brand put out by the company or companies in the Helio ad.
 - None of the respondents mentioned Palm or Treo as a brand that is connected or affiliated with the company or companies in the Helio ad.

***Detailed Discussion of Findings:
Measures of Forward Confusion -- Treo Ads***

54. Respondents in Treo's target audience were exposed to their respective Treo ad and asked a series of questions to identify whether there was any confusion with Helio. They could examine the Treo ad for as long as they chose. They could click on a link for a close-up of the ad in a pop-up window where they could scroll on the ad to look at it as carefully as they wanted. (See *respondent instructions in Q.12 of the Questionnaire in Exhibit C*)

Once respondents were finished viewing the ad, they could not return to it while answering the questions that followed.

55. The first question respondents were asked after seeing their respective Treo ad is:

Who do you think puts out or offers the product(s) and/or service(s) discussed in this ad? If you don't know or are not sure, please select the box at the bottom of the page.

The following table shows that over three-quarters (77%) of respondents in the relevant market for Treo (those 25 to 44 years of age) volunteered a company, brand, or name. Sixty-nine-percent (69%) wrote in one of the brands specifically featured in the Treo ads. Cingular (47%) was mentioned most often, followed by Palm (26%) and Treo (11%).

The table also shows the findings for the relevant audience for Helio (those 18 to 34 years). While those numbers are not discussed in this analysis, they follow a pattern very similar to that of Treo's target. In large part because the two target groups overlap considerably.

Not one person named Helio.

SUMMARY OF RESPONSES TO THE MEASURE^{1 & 2}

"Who do you think puts out or offers the product(s) and/or service(s) discussed in this ad?"

	TREO CELL	
	Exposed to Treo Ad ³	
	Treo's Target Audience ⁴ N=303	Helio's Target Audience ⁵ N=264
	%	%
Mentioned one or more company(ies), brand(s), or name(s)*	<u>77</u>	<u>74</u>
<u>A company, brand, or name in the Treo ad</u>	<u>69</u>	<u>68</u>
Cingular	46	45
<u>Palm/Treo</u>	<u>32</u>	<u>34</u>
Palm	26	26
Treo	10	11
The Onion	8	9
<u>A company, brand, or name in the Helio ad</u>	<u>1</u>	<u>1</u>
Samsung	**	1
Yahoo	**	**
Helio	0	0
Verizon	8	5
AT&T	5	3
Sprint	3	2
All other companies, brands, names	9	8
All others	4	8
Don't know/not sure	23	26

1 See Q.13 in Exhibit C.

2 See computer table 8-1 in Exhibit E.

3 Respondent shown one of two Treo ads:

 Treo - Cingular

 Treo - the Onion

4 Treo's Target Audience - Males and females, 25 to 44 years of age.

5 Helio's Target Audience - Males and females, 18 to 34 years of age.

* Specific companies, brands, or names, except those in the Treo/Helio ads, mentioned by 3% of respondents or more in either target audience group are shown.

** Less than 0.5%.

56. Respondents were then asked another question to further measure the possibility of any source association between Helio and Palm and/or Treo:

Please name any other brand or brands that are put out by the company or companies in the ad. If you don't know or are not sure, please select the box at the bottom of the page.

While 35% of the relevant audience named a brand, no one mentioned Helio.

SUMMARY OF RESPONSES TO THE MEASURE^{1 & 2}

"Please name any other brand or brands that are put out by the company or companies in the ad."

	TREO CELL	
	Exposed to Treo Ad ³	
	Treo's Target Audience ⁴ N=303	Helio's Target Audience ⁵ N=264
	%	%
Mentioned one or more brand(s)*	<u>35</u>	<u>36</u>
<u>A brand in the Treo ad</u>	<u>24</u>	<u>25</u>
<u>Palm/Treo</u>	<u>17</u>	<u>19</u>
Palm	10	12
Treo	10	12
Cingular	8	8
The Onion	5	6
<u>A brand in the Helio ad</u>	<u>3</u>	<u>4</u>
Samsung	3	4
Yahoo	0	**
Helio	0	0
Motorola	4	4
Nokia	2	2
AT&T	2	2
Verizon	1	2
Blackberry	2	3
All other brands	8	8
All others	2	3
Don't know/not sure	65	64

1 See Q.15 in Exhibit C.

2 See computer table 10-1 in Exhibit E.

3 Respondent shown one of two Treo ads:

Treo - Cingular

Treo - the Onion

4 Treo's Target Audience - Males and females, 25 to 44 years of age.

5 Helio's Target Audience - Males and females, 18 to 34 years of age.

* Specific brands, except those in the Treo/Helio ads, mentioned by 2% of respondents or more in either target audience group are shown.

** Less than 0.5%.

57. The third question, designed to measure any other type of association between Helio and Palm and/or Treo, was then asked:

Please name any other brand or brands that are connected are affiliated with the company or companies in the ad. If you don't know or are not sure, please select the box at the bottom of the page.

Again, not one person mentioned Helio.

SUMMARY OF RESPONSES TO THE MEASURE^{1 & 2}

"Please name any other brand or brands that are connected or affiliated with the company or companies in the ad."

	TREO CELL	
	Exposed to Treo Ad³	
	Treo's Target Audience ⁴ N=303	Helio's Target Audience ⁵ N=264
	%	%
<u>Mentioned one or more brand(s)*</u>	<u>23</u>	<u>25</u>
<u>A brand in the Treo ad</u>	<u>11</u>	<u>11</u>
<u>Palm/Treo</u>	<u>7</u>	<u>8</u>
Palm	4	6
Treo	3	3
Cingular	5	6
The Onion	2	2
<u>A brand in the Helio ad</u>	<u>2</u>	<u>2</u>
Samsung	2	2
Helio	0	0
AT&T	7	9
Motorola	2	3
Nokia	2	2
LG	1	2
All other brands	7	8
All others	1	3
Don't know/not sure	77	75

1 See Q.17 in Exhibit C.

2 See computer table 12-1 in Exhibit E.

3 Respondent shown one of two Treo ads:

Treo - Cingular

Treo - the Onion

4 Treo's Target Audience - Males and females, 25 to 44 years of age.

5 Helio's Target Audience - Males and females, 18 to 34 years of age.

* Specific brands, except those in the Treo/Helio ads, mentioned by 2% of respondents or more in either target audience group are shown.

** Less than 0.5%.

58. The following table combines the findings from the previous three measures. It shows the percent of respondents mentioning any company, brand, or name in response to any of the three questions already discussed individually. Again, the data show a complete absence of any forward confusion between Helio and Palm and/or Treo.

SUMMARY OF RESPONSES TO THE THREE MEASURES^{1 & 2}

**"Who do you think puts out or offers
the product(s) and/or service(s) discussed in this ad?"**

**"Please name any other brand or brands that are
put out by the company or companies in the ad."**

**"Please name any other brand or brands that are
connected or affiliated with the company or companies in the ad."**

	TREO CELL	
	Exposed to Treo Ad ³	
	Treo's Target Audience ⁴ N=303	Helio's Target Audience ⁵ N=264
	%	%
Mentioned one or more company(ies), brand(s), or name(s)*	<u>82</u>	<u>80</u>
<u>A company, brand, or name in the Treo ad</u>	<u>74</u>	<u>73</u>
Cingular	50	47
<u>Palm/Treo</u>	<u>42</u>	<u>44</u>
Palm	32	32
Treo	19	22
The Onion	13	15
<u>A company, brand, or name in the Helio ad</u>	<u>6</u>	<u>7</u>
Samsung	5	6
Yahoo	**	**
Google	0	**
Helio	0	0
AT&T	12	12
Verizon	9	6
Motorola	8	9
Nokia	5	4
Sprint	5	3
All other companies, brands, names	19	20
All others	7	12
Don't know/not sure	18	20

1 See Q.13, Q.15, and Q.17 in Exhibit C.

2 See computer table 14-1 in Exhibit E.

3 Respondent shown one of two Treo ads:

 Treo - Cingular

 Treo - the Onion

4 Treo's Target Audience - Males and females, 25 to 44 years of age.

5 Helio's Target Audience - Males and females, 18 to 34 years of age.

* Specific companies, brands, or names, except those in the Treo/Helio ads, mentioned by 5% of respondents or more in either target audience group are shown.

** Less than 0.5%.

59. In those cases when a respondent wrote in a company, brand, or name in response to any of the three questions, they were asked to fully explain their opinions. The purpose of these three open-end questions is to determine whether respondents' opinions are based on some extraneous factors unrelated to their normal experiences. (An example would be, "My friend told me about the survey, so I looked into the answers ahead of time.") The questions are not designed or intended to make respondents justify their responses.
60. Almost all of the reasons volunteered by respondents concerned what they say in the ad or their previous experience, knowledge, or opinions about the products, services, companies, or brands in the ad they saw.

The following table combines the responses from the three open-end questions. The responses to each of these open-end questions, individually and combined, are contained in the Exhibits. (See *Tables 9-1, 11-1, 13-1, and 15-1 of the Computer Tables in Exhibit E*)

SUMMARY OF REASONS FOR RESPONSES TO THE THREE MEASURES^{1 & 2}

**"Who do you think puts out or offers
the product(s) and/or service(s) discussed in this ad?"**

**"Please name any other brand or brands that are
put out by the company or companies in the ad."**

**"Please name any other brand or brands that are
connected or affiliated with the company or companies in the ad."**

	TREQ CELL	
	Exposed to Treo Ad ³	
	Treo's Target Audience ⁴ N=303	Helio's Target Audience ⁵ N=264
	%	%
<u>Mentioned one or more reasons*</u>	<u>74</u>	<u>72</u>
Saw name(s) in ad (unspecified)	15	14
Per information in ad	12	11
Saw Treo name in ad	11	11
Saw Palm name in ad	11	9
Familiar with product/company/brand	8	8
They're the company that puts out/offers the product (unspecified)	6	5
Saw the Onion/www.onion.com advertised	5	7
Saw Cingular name in ad	5	6
Cingular puts out/offers the product	5	5
Product features	5	2
Cingular merged/is the new AT&T	4	5
Palm puts out/offers the product	4	5
Brand not in any ads	4	3
Recognize color(s) (unspecified)	4	2
Familiar with Palm	4	2
Cingular is the service provider	3	5
Recognize orange color/background	3	5
Saw logo(s) (unspecified)	3	3
Familiar with Treo	3	2
It is/seems like an ad for Cingular	2	**
Product/company/brand characteristics (e.g., good, attractive, etc.)	2	3
Similar to previous ads	2	2
Recognize ad	2	2
They are the service provider (unspecified)	2	2
Just a guess	2	2
Associate color(s) with Cingular	2	2
Treo puts out/offers the product	2	2
Associate orange color/background with Cingular	1	3

(Continued)

SUMMARY OF REASONS FOR RESPONSES TO THE THREE MEASURES^{1 & 2}

**"Who do you think puts out or offers
the product(s) and/or service(s) discussed in this ad?"**

**"Please name any other brand or brands that are
put out by the company or companies in the ad."**

**"Please name any other brand or brands that are
connected or affiliated with the company or companies in the ad."**

(Continued)

	TREO CELL	
	Exposed to Treo Ad ³	
	Treo's Target Audience ⁴ N=303	Helio's Target Audience ⁵ N=264
	%	%
Saw Cingular logo	1	3
Most popular brand(s)	1	2
Saw Palm logo	1	2
Companies merged (unspecified)	1	2
All others	8	7
Nothing/none	3	2
No answer/non sequitur	2	3
Don't know/not sure	3	2
Did not mention a company, brand, or name	18	20

1 See Q.14, Q.16, and Q.18 in Exhibit C.

2 See computer table 15-1 in Exhibit E.

3 Respondent shown one of two Treo ads:

Treo - Cingular

Treo - the Onion

4 Treo's Target Audience - Males and females, 25 to 44 years of age.

5 Helio's Target Audience - Males and females, 18 to 34 years of age.

* Specific reasons mentioned by 2% of respondents or more in either target audience group are shown.

** Less than 0.5%.

***Detailed Discussion of Findings:
Measures of Reverse Confusion -- Helio Ads***

61. To measure reverse confusion, Helio's target audience was exposed to Helio advertising. Half of the respondents saw one of two Helio ads, and half saw the other. These ads were two-page spreads; in addition to seeing the entire ad, respondents could click on links to view each page by itself in a pop-up window. In those windows, respondents could scroll on each page to look at it as carefully as they wanted. They could take as long as they wanted to view the ad. (*See respondent instructions in Q.12 of the Questionnaire in Exhibit C*)

Once they finished looking at the ad, they could not return to it while completing the balance of the interview.

62. Respondents were then asked the same series of questions as was asked of those who saw the Treo advertisements.
63. The first questions respondents were asked after seeing their respective Helio ad is:

Who do you think puts out or offers the product(s) and/or service(s) discussed in this ad? If you don't know or are not sure, please select the box at the bottom of the page.

Fifty-nine percent (59%) of the respondents wrote in a company, brand, or name. Most were ones shown in the Helio ads. Not a single respondent thought that Palm and/or Treo put out the products or services mentioned in the ad.

SUMMARY OF RESPONSES TO THE MEASURE^{1 & 2}

"Who do you think puts out or offers the product(s) and/or service(s) discussed in this ad?"

	HELIO CELL Exposed to Helio Ad³ <hr/> Helio's Target Audience ⁴ N=434 <hr/> %						
Mentioned one or more							
<u>company(ies), brand(s), or name(s)*</u>	<u>59</u>						
<u>A company, brand, or name in the Helio ad</u>	<u>48</u>						
Helio	37						
Samsung	13						
Google	7						
Yahoo	3						
All others in Helio ad	1						
<u>A company, brand, or name in the Treo ad</u>	<u>3</u>						
Cingular	3						
The Onion	0						
<table border="0"> <tr> <td> <u>Palm/Treo</u></td> <td align="right"><u>0</u></td> </tr> <tr> <td> Palm</td> <td align="right">0</td> </tr> <tr> <td> Treo</td> <td align="right">0</td> </tr> </table>		<u>Palm/Treo</u>	<u>0</u>	Palm	0	Treo	0
<u>Palm/Treo</u>	<u>0</u>						
Palm	0						
Treo	0						
All other companies, brands, names	10						
All others	7						
Don't know/not sure	41						

1 See Q.13 in Exhibit C.

2 See computer table 8-1 in Exhibit E.

3 Respondent shown one of two Helio ads:

 Helio - Friendar

 Helio - Homie Device

4 Helio's Target Audience - Males and females, 18 to 34 years of age.

* Specific companies, brands, or names, except those in the Helio/Treo ads, mentioned by 3% of respondents or more are shown.

64. Respondents were then asked the following question to further explore the possibility of any confusion as to source between Helio and Palm and/or Treo:

Please name any other brand or brands that are put out by the company or companies in the ad. If you don't know or are not sure, please select the box at the bottom of the page.

While 28% of the relevant audience named a brand, no one mentioned Palm or Treo.

SUMMARY OF RESPONSES TO THE MEASURE^{1 & 2}

"Please name any other brand or brands that are put out by the company or companies in the ad."

	HELIO CELL
	Exposed to Helio Ad³
	Helio's Target Audience ⁴ N=434
	%
<u>Mentioned one or more brand(s)*</u>	<u>28</u>
<u>A brand in the Helio ad</u>	<u>21</u>
Helio	12
Samsung	8
Google	6
Yahoo	4
All others in Helio ad	1
<u>A brand in the Treo ad</u>	<u>1</u>
Cingular	1
The Onion	0
<u>Palm/Treo</u>	<u>0</u>
Palm	0
Treo	0
All other companies, brands, names	7
All others	2
Don't know/not sure	72

1 See Q.15 in Exhibit C.

2 See computer table 10-1 in Exhibit E.

3 Respondent shown one of two Helio ads:
 Helio - Friendar
 Helio - Homie Device

4 Helio's Target Audience - Males and females, 18 to 34 years of age.

* Specific brands, except those in the Helio/Treo ads, mentioned by 2% of respondents or more are shown.

65. As done previously with those who saw the Treo ads, viewers of the Helio ads were asked this third question designed to measure any type of confusion between Helio and Palm and/or Treo:

Please name any other brand or brands that are connected are affiliated with the company or companies in the ad. If you don't know or are not sure, please select the box at the bottom of the page.

No one mentioned Palm or Treo.

SUMMARY OF RESPONSES TO THE MEASURE^{1 & 2}

"Please name any other brand or brands that are connected or affiliated with the company or companies in the ad."

	HELIO CELL Exposed to Helio Ad³
	Helio's Target Audience ⁴ N=434
	%
<u>Mentioned one or more brand(s)*</u>	<u>15</u>
<u>A brand in the Helio ad</u>	<u>9</u>
Samsung	4
Google	3
Helio	3
Yahoo	3
All others in Helio ad	**
<u>A brand in the Treo ad</u>	<u>1</u>
Cingular	1
The Onion	0
<u>Palm/Treo</u>	<u>0</u>
Palm	0
Treo	0
MySpace	2
All other companies, brands, names	5
All others	1
Don't know/not sure	85

1 See Q.17 in Exhibit C.

2 See computer table 12-1 in Exhibit E.

3 Respondent shown one of two Helio ads:

 Helio - Friendar

 Helio - Homie Device

4 Helio's Target Audience - Males and females, 18 to 34 years of age.

* Specific brands, except those in the Helio/Treo ads, mentioned by 2% of respondents or more are shown.

** Less than 0.5%.

66. The following table combines the findings from the previous three measures. It shows the percent of respondents mentioning companies or brands or names in response to any of the three questions. These combined figures simply show what was indicated by responses to the individual questions; there is no confusion between Helio and Palm and/or Treo.

SUMMARY OF RESPONSES TO THE THREE MEASURES^{1 & 2}

**"Who do you think puts out or offers
the product(s) and/or service(s) discussed in this ad?"**

**"Please name any other brand or brands that are
put out by the company or companies in the ad."**

**"Please name any other brand or brands that are
connected or affiliated with the company or companies in the ad."**

	HELIO CELL Exposed to Helio Ad³
	Helio's Target Audience ⁴ N=434
	%
Mentioned one or more company(ies), brand(s), or name(s)*	68
<u>A company, brand, or name in the Helio ad</u>	55
Helio	44
Samsung	18
Google	12
Yahoo	7
All others in Helio ad	2
<u>A company, brand, or name in the Treo ad</u>	5
Cingular	5
The Onion	0
<u>Palm/Treo</u>	0
Palm	0
Treo	0
All other companies, brands, names	21
All others	9
Don't know/not sure	32

1 See Q.13, Q.15, and Q.17 in Exhibit C.

2 See computer table 14-1 in Exhibit E.

3 Respondent shown one of two Helio ads:

 Helio - Friendar

 Helio - Homie Device

4 Helio's Target Audience - Males and females, 18 to 34 years of age.

* Specific companies, brands, or names, except those in the Helio/Treo ads, mentioned by 5% of respondents or more are shown.

67. Those who offered a company, brand, or name in response to each of the three questions were asked to fully explain their opinions.

The following table combines the responses from these three open-end questions. The responses to each question individually and for the three combined are contained in the Exhibits. (See *Tables 9-1, 11-1, 13-1, and 15-1 of the Computer Tables in Exhibit E*)

As was the case after exposure to the Treo ads, those shown Helio ads most often referred to something they saw in the ad or their previous experience in this product category.

SUMMARY OF REASONS FOR RESPONSES TO THE THREE MEASURES^{1 & 2}

**"Who do you think puts out or offers
the product(s) and/or service(s) discussed in this ad?"**

**"Please name any other brand or brands that are
put out by the company or companies in the ad."**

**"Please name any other brand or brands that are
connected or affiliated with the company or companies in the ad."**

	HELIO CELL Exposed to Helio Ad³ <hr/> Helio's Target Audience ⁴ N=434 <hr/> %
<u>Mentioned one or more reasons*</u>	63
Saw name(s) in ad (unspecified)	19
Per information in ad	11
Saw Helio name/website in ad	10
They're the company that puts out/offers the product (unspecified)	5
Saw Samsung name/website in ad	4
Samsung puts out/offers the product	4
Saw Google/Google maps advertised	4
Similar to previous ads	4
Product/company/brand characteristics (e.g., good, attractive, etc.)	3
Familiar with product/company/brand	3
Recognize ad	3
Saw logo(s) (unspecified)	3
Brand not in any ads	2
Product features	2
Characteristics of ad (e.g. colorful, informative, etc.)	2
Helio is the service provider	2
Saw Yahoo advertised	2
They are the service provider (unspecified)	2
All others	16
Nothing/none	1
No answer/non sequitur	3
Don't know/not sure	3
Did not mention a company, brand, or name	32

1 See Q.14, Q.16, and Q.18 in Exhibit C.

2 See computer table 15-1 in Exhibit E.

3 Respondent shown one of two Helio ads:
 Helio - Friendar
 Helio - Homie Device

4 Helio's Target Audience - Males and females, 18 to 34 years of age.

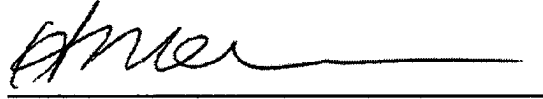
* Specific reasons mentioned by 2% of respondents or more in either target audience group are shown.

CONCLUSION

68. The findings clearly indicate the absence of confusion, either forward or reverse, between Helio and Palm and/or Treo.

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

Executed at Encino, California, on March 19, 2007.

A handwritten signature in black ink, appearing to read "Howard Marylander", is written above a solid horizontal line.

Howard Marylander