



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-CV-01546-REB-CBS

The Direct Marketing Association,

Plaintiff,

v.

Roxy Huber, in her capacity as Executive
Director, Colorado Department of Revenue,

Defendant.

EXPERT REPORT OF PROFESSOR KEVIN LANE KELLER

I am **Kevin Lane Keller**, the E.B. Osborn Professor of Marketing at the Tuck School of Business at Dartmouth College. I have been retained by the law firm of Brann & Isaacson, counsel to the Direct Marketing Association ("DMA"), to present my opinions regarding the effect that a new Colorado law (House Bill 10-1193, "An Act Concerning The Collection Of Sales And Use Taxes On Sales Made By Out-Of-State Retailers, And Making An Appropriation Therefor" ("the Act")), will have on the business of affected Internet and catalog retailers, and on their relationships with Colorado customers. My opinions in that regard are based upon my experience and expertise in the field of marketing, as well as on my review of the results of a survey of Colorado consumers conducted in June 2010 by Resource Systems Group, Inc. ("RSG"),

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concerning consumers' reactions to the requirements of the Act and of related regulations adopted by the Colorado Department of Revenue ("Department").

I. STATEMENT OF OPINIONS.

Based upon my review and consideration of information described in Section II, and applying to such information certain concepts, guidelines, and principles derived from academic marketing research with respect to consumer behavior, I have formed the conclusions and opinions set forth in paragraphs 1 and 5–13 of my sworn declaration dated August 10, 2010, which is attached to and expressly incorporated in this report.

II. DATA AND INFORMATION CONSIDERED IN FORMING OPINIONS.

The data or other information I considered in forming my opinions includes:

- A. A copy of the Act;
- B. A copy of Regulation 39-21-112.3.5, which I understand was adopted by the Colorado Department of Revenue; and
- C. The results of the survey of Colorado consumers conducted by RSG in June 2010, as set forth in *Final Results* dated August 9, 2010, a copy of which is attached to this report.

III. EXHIBITS.

The Exhibits that may be used to summarize or support my opinions include the documents described in Section II.

IV. QUALIFICATIONS AND PUBLICATIONS.

Attached to my August 10, 2010 declaration is a copy of my current *curriculum vitae*, including a list of publications I have authored in the previous ten years.

V. RECENT TESTIMONY.

I have testified as an expert during the past four years in the following litigation:

Deposition August 2010	<i>Agrigenetics, Inc., d/b/a Mycogen Seeds v. Pioneer Hi-Bred International, Inc.</i> , United States District Court for the Southern District of Indiana (Indianapolis Division)
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VI. STATEMENT OF COMPENSATION.

My compensation on this matter is at my standard billing rate for such work of \$1,000 per hour.

Dated: September 20, 2010

s/ Kevin Lane Keller
Kevin Lane Keller