

EXHIBIT

A

REBUTTAL EXPERT REPORT OF DR. ITAMAR SIMONSON

BACKGROUND AND QUALIFICATIONS

1. I am the Sebastian S. Kresge Professor of Marketing at the Graduate School of Business, Stanford University. A copy of my curriculum vitae, which includes a complete list of my publications, is attached as Exhibit A.

2. I hold a Ph.D. in Marketing from Duke University, Fuqua School of Business, a Master's degree in business administration (MBA) from the UCLA Graduate School of Management, and a Bachelor's degree from The Hebrew University with majors in Economics and Political Science.

3. My field of expertise is consumer behavior, marketing management, trademark infringement from the consumer's perspective, survey methods, and human judgment and decision making. Most of my research has focused on buyers' purchasing behavior, the effect of product characteristics (such as brand name, price, and features), the competitive context, marketing activities (such as promotions, advertising) on buying decisions, and trademark infringement from the customer's perspective.

4. I have received several awards, including (a) The award for the Best Article published in the *Journal of Consumer Research* (the major journal on consumer behavior) between 1987 and 1989; (b) The Ferber Award from the *Association for Consumer Research*, which is the largest association of consumer researchers in the world; (c) The 1997 O'Dell Award, given for the *Journal of Marketing Research* (the major journal on marketing research issues) article that has had the greatest impact on the marketing field in the previous five years; (d) The 2001 O'Dell award (and a finalist for the O'Dell Award in 1995, 2002, 2004, 2005, 2007, and 2008); (e) The award for the Best Article published in the *Journal of Public Policy & Marketing* (the major journal on public policy and legal aspects of marketing) between 1993 and 1995; (f) The 2007 *Society for Consumer Psychology* Distinguished Scientific Achievement

Award; (g) The 2002 *American Marketing Association* award for the Best Article in the area of services marketing; and (h) I was a winner in a competition dealing with research on the effectiveness of direct marketing programs, which was organized by the *Direct Marketing Association* and the *Marketing Science Institute*. In addition to these awards, my research has been widely cited by other researchers in the marketing, consumer behavior, and other fields, and my publication record has been ranked as one of the most prolific and influential.¹

5. I have published four articles relating to trademark surveys and trademark infringement from the customer's perspective, including two in the *Trademark Reporter*, one in the *Journal of Public Policy & Marketing*, and a chapter dealing with demand effects in likelihood of confusion surveys.² The two articles published in the *Trademark Reporter* were: The Effect of Survey Method on Likelihood of Confusion Estimates: Conceptual Analysis and Empirical Test,³ and An Empirical Investigation of the Meaning and Measurement of Genericness.⁴ The *Journal of Public Policy & Marketing* article, titled Trademark Infringement from the Buyer Perspective: Conceptual Analysis and Measurement Implications,⁵ was selected (in 1997) as the Best Article published in that journal between 1993 and 1995.

6. At Stanford University I have taught MBA and executive courses on Marketing Management, covering such topics as buyer behavior, developing marketing strategies, building brand equity, advertising, sales promotions, and retailing. I also taught an MBA course on

¹ See, for example, S. Seggie and D. Griffith (2009), "What does it take to get promoted in marketing academia? Understanding exceptional publication productivity in the leading marketing journals," *Journal of Marketing*, 73, 122-132.

² Itamar Simonson and Ran Kivetz (2012), "Demand Effects in Likelihood of Confusion Surveys: The Importance of Marketplace Conditions," Ch. 11 in *Trademark and False Advertising Surveys*, Edited by Shari Diamond and Jerre Swann, American Bar Association.

³ Itamar Simonson (1993), "The Effect of Survey Method on Likelihood of Confusion Estimates: Conceptual Analysis and Empirical Test," *Trademark Reporter*, 83 (3), 364-393.

⁴ Itamar Simonson (1994), "An Empirical Investigation of the Meaning and Measurement of Genericness," *Trademark Reporter*, 84 (2), 199-223.

⁵ Itamar Simonson (1994), "Trademark Infringement from the Buyer Perspective: Conceptual Analysis and Measurement Implications," *Journal of Public Policy and Marketing*, 13(2), 181-199.

Marketing to Businesses and a course on High Technology Marketing. In addition to teaching MBA courses, I have guided and supervised numerous MBA student teams in their work on company and industry projects dealing with a variety of markets.

7. I have taught several doctoral courses. One doctoral course examined methods for conducting consumer research. It focused on the various stages involved in a research project, including defining the problem to be investigated, selecting and developing the research approach, data collection and analysis, and deriving conclusions. A second doctoral course that I have taught deals with buyer behavior, covering such topics as consumer decision making processes, influences on purchase decisions, and persuasion. A third doctoral course that I have taught deals with buyer decision making. Prior to joining Stanford University, during the six years that I was on the faculty of the University of California at Berkeley, I taught an MBA Marketing Management course, a Ph.D. course on buyer behavior, and a Ph.D. course on buyer decision making. I also taught in various executive education programs, including a program for marketing managers in high technology companies.

8. After completing my MBA studies and before starting the Ph.D. program, I worked for five years in a marketing capacity in a subsidiary of Motorola Inc., serving in the last two years as the product marketing manager for two-way communications products. My work included (a) defining new products and designing marketing plans for new product introductions, (b) customer and competitor analysis, and (c) sales forecasting.

9. I have conducted, supervised, or evaluated well over 1,000 marketing research surveys, including many related to consumer behavior and information processing, trademark, branding, marketing strategies, and advertising-related issues. I serve on eight editorial boards, including leading journals such as the *Journal of Consumer Research*, *Journal of Marketing Research*, and the *Journal of Consumer Psychology*. I am also a frequent reviewer of articles submitted to journals in other fields, such as psychology, decision making, and economics. I received (twice) the Outstanding Reviewer Award from the *Journal of Consumer Research*. As a reviewer, I am asked to evaluate the research of scholars wishing to publish their articles in

leading scholarly journals. I have also worked as a consultant for companies and organizations on a variety of marketing and buyer behavior topics. And I have served as an expert in prior litigations involving various marketing and buyer behavior issues, trademark-related matters, false advertising, branding, and other areas. A list of cases in which I provided sworn testimony during the past four years is included in Exhibit B. I am being compensated at my standard rate of \$700 an hour.

10. I was asked by counsel for Facebook, Inc. to evaluate the survey conducted by Dr. Eli Seggev (the "Seggev Survey") on behalf of Timelines, Inc. Documents that I have reviewed in connection with preparation of this report are listed in Exhibit C.

SUMMARY OF CONCLUSIONS

11. The Seggev Survey failed to include any confusion measure, asking instead about “association,” and violated the most basic survey principles. If the reported survey results showed anything, it is that, not surprisingly, there is no confusion between the Timelines webpage and service and Facebook. Fatal flaws of the Seggev Survey included the following:

- A. The Seggev Survey did not employ any recognized or accepted likelihood of confusion survey methodology, relying instead on a question about “association.” The survey also suggested to respondents Facebook as a company name they should consider.
- B. The explanations provided by the relatively few respondents who named Facebook referred primarily to the “timeline” feature of Facebook and used the term in its generic sense.
- C. Contrary to a basic requirement for any survey testing alleged cause-and-effect relation, the Seggev Survey failed to include a real control and ignored the fact that “timeline” is a generic term.
- D. The Seggev Survey failed to include the relevant universe, which should have consisted of prospective users of the plaintiff’s particular service (assuming the survey was designed to estimate reverse confusion).
- E. The Seggev Survey failed to follow other basic survey standards.

12. All of these flaws were designed in a way that was likely to help “prove” the plaintiff’s allegations. Moreover, each one of these one-sided flaws would be sufficient to make the Seggev Survey unreliable. The combination of such fatal flaws meant that the survey was largely irrelevant. However, considering that despite such one-sided biases the survey could produce only 11% “confusion,” the survey effectively proved that there is no confusion between the plaintiff’s mark and Facebook.

AN OVERVIEW OF THE SEGGEV SURVEY

13. The Seggev Survey respondents were adult members of an online panel. The only requirement for survey participation was being over the age of 18 (and a member of the online panel).

14. Respondents were shown one of two web pages: Timelines or Timescapes. They were next told to consider the name of the web page (Timelines or Timescapes) and asked: “Which of the following companies, if any, do you most associate with this name?” One of the provided companies was Facebook (whereas “Timelines” was not listed as one of the response options). Respondents were also asked to explain their answers.

15. A comparison of the “test” (“Timelines”) and “control” (“Timescapes”) groups showed that respondents were 11% more likely to associate Facebook with Timelines than with Timescapes. Most of those (11%) who selected Facebook in the test group explained their answer by mentioning that Facebook had a timeline feature/format.

16. As explained next, the Seggev Survey failed to test for confusion, either what is referred to as forward confusion or reverse confusion, and suffered from fatal one-sided biases. Despite these biases, to the extent that this survey offers any information, it shows that there is no confusion between Timelines and Facebook. I next evaluate the Seggev Survey in more detail.

THE SEGGEV “LIKELIHOOD OF CONFUSION SURVEY” ASKED ABOUT “ASSOCIATION” INSTEAD OF ASKING QUESTIONS CAPABLE OF ESTIMATING LIKELIHOOD OF CONFUSION

Methods for Estimating Likelihood of Confusion

17. Before examining what the Seggev Survey measured, it is useful to review survey methods that have been used to estimate the likelihood of confusion between two marks, companies, or products. The methodology of a consumer survey designed to estimate the likelihood of confusion between two marks must follow certain standards and reflect marketplace conditions. These standards are not arbitrary; they have been developed by

survey experts based on a great deal of experience and a careful examination of different methodologies designed to estimate marketplace deception/confusion. Some of the commonly used survey methodologies were presented, analyzed, and contrasted in articles that I published.⁶ Importantly, as I emphasized in the articles that I published, survey results are contingent on the method used, with different methods potentially producing drastically different results. As shown below, the Seggev Survey suffered from major flaws on virtually every key dimension and completely failed to test for likelihood of confusion.

18. There are a number of survey methods that have been used to estimate likelihood of confusion. One approach involves surveys in which respondents are shown just one of the marks and asked to identify the company that puts it out or is affiliated with it. As discussed in my articles, the most commonly used method in this category is referred to as the *Eveready* format,⁷ named after a case in which the issue involved source confusion between Ever-Ready lamps and Eveready batteries. Professor McCarthy describes the sequence of questions as follows:⁸

- “1. [Screening question to eliminate persons in the bulb or lamp industries.]
2. Who do you think puts out the lamp shown here? (A picture of defendant's EVER-READY lamp with its mark is shown).
3. What makes you think so?
4. Please name any other products put out by the same concern which puts out the lamp shown here.”⁹

⁶ See, for example, "Trademark Infringement from the Buyer Perspective: Conceptual Analysis and Measurement Implications," *Journal of Public Policy & Marketing*, (Fall 1994, volume 13, 181-199).

⁷ *Union Carbide Corp. v. Ever-Ready, Inc.*, 531 F.2d 366, 188 U.S.P.Q. 623 (7th Cir. 1976), cert. denied, 429 U.S. 830, 50 L. Ed. 2d 94, 97 S. Ct. 91, 191 U.S.P.Q. 416 (1976).

⁸ 4 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* §32:174 (September 2007) (hereinafter "McCarthy").

⁹ In many applications, the *Eveready* format also includes questions as to whether the company that puts out the presented mark has a business connection or affiliation with or received permission from another company.

19. Another survey approach for estimating likelihood of confusion involves the presentation of both the “junior” (allegedly infringing) and “senior” (allegedly infringed) marks. One method, referred to by Professor McCarthy as the “line-up survey,”¹⁰ typically involves (a) showing respondents one mark, (b) asking “distracter questions,” and (c) showing a line-up of products, including the allegedly infringing mark (in a forward confusion case). Respondents are then asked questions to assess the likelihood of confusion at issue. This survey format is appropriate if consumers in the marketplace are likely to be exposed to the two marks at issue one after the other.

20. A methodology referred to as the “Exxon format”¹¹ (or top-of-mind) was used in one case over 30 years ago. This survey format is based primarily on one key question – what comes to mind when seeing the presented mark/product. As I explained in detail in my articles, what comes to mind has little to do with likelihood of confusion. For example, as my study showed, most survey respondents said that “Ronex watches” brought to mind “Rolex watches,” but they did not confuse the two.

21. One likelihood of confusion survey method that has *not* been relied upon and, as far as I am aware, has not been accepted by any court as a measure of confusion is a survey that is based on a single question asking respondents what or who they “associate” with (or what comes to mind when seeing) the presented mark. The reason is quite obvious – while many consumers may associate, for example, Coke with Pepsi because they belong to the same beverage category, that association tells us very little about the likelihood of consumer confusion between Coke and Pepsi. Similarly, although the word “history” may appear on the Timelines web page and can thus be seen as associated with Timelines, “history” is a generic term that is used in a wide range of contexts and does not identify any particular source.

¹⁰ McCarthy at §32:177.

¹¹ See Itamar Simonson (1993), “The Effect of Survey Method on Likelihood of Confusion Estimates: Conceptual Analysis and Empirical Test,” *Trademark Reporter*, 83 (3), 364-393.

22. In conclusion, while a mental association-based methodology does not measure confusion, there are other well-established methods that might be used to estimate the likelihood of confusion given certain marketplace conditions. Furthermore, I have never encountered a survey in which a likelihood of confusion estimate was based on a question regarding “an association” between two marks.

23. Moreover, accepted likelihood of confusion survey methods do not provide respondents the “correct” answer and ask them if the provided name (which is the target of the alleged confusion) is associated with the plaintiff’s mark. The reason is quite simple – singling out a company as potentially associated with the allegedly infringing mark/product is leading, suggestive, and creates strong “demand effects” whereby respondents tend to provide what appears as the “right” answer.¹²

The Survey “Methodology” Used in the Seggev Survey

24. Inexplicably, as described above, the Seggev Survey respondents were given a list of names (including Facebook) and asked to identify those “most associated” with the name “Timelines.” Of course, there was no need to conduct a survey to determine that Facebook has a timeline feature – that is a fact. But that tells us absolutely nothing about the likelihood that a consumer who encounters the name “Timelines” confuses it with Facebook. In fact, considering the generic meaning of “timeline” (and its plural “timelines”), it is extremely unlikely that any consumer will confuse the “Timelines” website with any other company, whether or not it offers a timeline feature.

25. The Seggev Report fails to explain why, instead of following an accepted methodology for testing likelihood of confusion, respondents were asked about association. As should have been obvious to Dr. Seggev, the mere fact that Facebook offers a timeline feature

¹² See Itamar Simonson and Ran Kivetz (2012), “Demand Effects in Likelihood of Confusion Surveys: The Importance of Marketplace Conditions,” Ch. 11 in *Trademark and False Advertising Surveys*, Edited by Shari Diamond and Jerre Swann, American Bar Association.

would cause some respondents (evidently, a relatively small number) to say that Facebook is associated with the name “Timelines” (as discussed below, that indeed was the most common reason given by those counted as “confused”). As explained further below, in case respondents had not been familiar with Facebook’s timeline feature, they could simply open another browser and check each provided name in order to find out the “correct answer.” Once they saw that Facebook has a timeline feature, they could figure out that that was the expected answer.

WHAT CAN WE LEARN FROM THE SEGGEV SURVEY RESULTS AND ABOUT RESPONDENTS’
EXPLANATIONS?

26. Despite the reliance on an extremely weak and largely irrelevant measure of confusion (and an ineffective “control,” as explained below) – association – the Seggev Survey managed to produce only 11% “confusion.” That result by itself is a clear indication that, not surprisingly, there is no consumer confusion between Timelines and Facebook.

27. An examination of the explanations provided by the Seggev Survey respondents (as an aside, the Seggev Survey report and conclusions ignored the provided explanations) confirms the conclusion that most of those (relatively few) respondents who “associated” Facebook with Timelines relied on the fact that Facebook has a timeline feature. For example, one respondent (R_5aHwSQV6Q7DLGGp) explained: “Facebook has a timeline.” Most of the other respondents counted as “confused” similarly referred to Facebook’s timeline feature. There were a few respondents who gave other reasons, such as “The page layout on facebook is called timeline & the word time is in the New York Times” (R_1AnV9tU5ZppfKiV) and “Because of the mention of FB on the web page” (R_7PaoA8ObUyE2HzL); indeed, the web page shown to respondents included “Find us on Facebook.”

28. An examination of the explanations provided by those counted as “confused” shows that not a single respondent was confused between Timelines and Facebook – that is, none of the respondents provided answers indicating confusion about source, affiliation, or

approval. Instead, building on the generic meaning of “timeline,” some respondents pointed out in response to the quiz given to them that Facebook switched to a timeline format or added a timeline feature (or provided other unrelated explanations). In conclusion, according to the Seggev Survey results, the confusion estimate is not 11%, it is approximately 0%.

THE FAILURE TO SURVEY THE RELEVANT CONSUMER UNIVERSE

29. As Professor McCarthy points out,¹³ “The first step in designing a survey is to determine the ‘universe’ to be studied. The universe is that segment of the population whose perceptions and state of mind are relevant to the issues in the case. Selection of the proper universe is a crucial step, for even if the proper questions are asked in a proper manner, if the wrong persons are asked, the results are likely to be irrelevant.” The survey universe should not be either under-inclusive (i.e., exclude relevant segments of the customer population) or over-inclusive (i.e., include the opinions of irrelevant customer segments). As Professor McCarthy further points out, “In a traditional case claiming ‘forward’ confusion, not ‘reverse’ confusion, the proper universe to survey is the potential buyers of the *junior user’s* goods or services.” Conversely, when assessing reverse confusion, the relevant universe includes potential buyers of the “senior user’s” services/goods.¹⁴

30. Thus, assuming that the plaintiff alleges reverse confusion, the relevant universe should have included prospective users of the Timelines website, described (on the website) as follows: “Timelines.com is the first web site that enables people like you to collaboratively record, discover and share history. It’s history recorded by the people, for the people.” More details can be observed on the website. As is clear, the particular application/feature offered on this website is likely to be of interest to a rather small segment of consumers. Accordingly,

¹³ McCarthy at §32:159.

¹⁴ McCarthy at §32:159.

the Seggev Survey should have screened respondents based on their interest in a website offering the particular benefit described on the Timelines.com website.

31. In fact, aside from being over the age of 18 (and a member of the online panel from which respondents were recruited), respondents did not need any qualifications to participate in the Seggev Survey. In particular, the Seggev Survey failed to screen respondents based on their potential interest in the Timelines.com service. Thus, to the extent that the survey was designed to assess reverse confusion (i.e., the likelihood that users of the Timelines.com service will mistakenly confuse it with Facebook), it completely failed to represent the relevant consumer universe.

32. If the Seggev Survey was designed to estimate forward confusion (i.e., the likelihood that Facebook users will mistakenly confuse it with Timelines.com), the universe should have been limited to those Facebook users likely to visit the Timelines.com website. As should have been obvious, the overwhelming majority of Facebook users are unlikely to have encountered or visit the Timelines.com service, which is one of millions of other small niche services offered on the Internet.

THE SEGGEV SURVEY FAILED TO INCLUDE A PROPER CONTROL

33. A survey designed to estimate likelihood of confusion must include a (proper) “control.” While even an effective control cannot overcome the one-sided biases produced by a seriously flawed methodology, a control is generally designed to estimate the degree of “noise” or “error” in the survey. To fulfill its function, a control must be as similar as possible to the “junior” (allegedly infringing) mark, without infringing on the “senior” mark. Thus, to obtain an estimate of the net likelihood of confusion (after accounting for “noise”), the researcher subtracts the measured confusion level in the control from the measured confusion level in the “test” version (in which respondents evaluate the allegedly infringing mark).

34. If the term at issue contains an element that is generic or commonly used, a control must include that element. For example, in a case involving *Simon Property Group and*

mySimon, Inc., the court determined that any likelihood of confusion survey with a control that does not include the “Simon” name component “amounts to little more than a meaningless word association or memory exercise.”¹⁵

35. There is probably no dispute that the word “timeline” is generic or, at a minimum, merely descriptive of an Internet service that enables users to arrange information in a chronological manner. It is defined (e.g., on Wikipedia) as follows: “A timeline is a way of displaying a list of events in chronological order, ...” Accordingly, any control for the name Timelines.com had to include the generic component “timeline.” Assuming such a proper control were used, and considering the explanations provided by those who were counted in the Seggev Report as “confused” (as described above), there is little doubt that the level of “confusion” that would have been obtained in such a control would have likely been similar to that found in the Seggev Survey. That is, about the same percentage of respondents in such a control group would have likely pointed out that the word “timeline” appears on the stimulus shown to them and on the Facebook website. In other words, had a proper control been used, the obtained (net) estimate would have likely been approximately zero.

THE ONLINE SURVEY RESPONDENTS COULD USE ANOTHER BROWSER TO IDENTIFY THE
“CORRECT” ANSWER

36. As indicated, one of the limitations of an online survey is the inability to monitor the respondents’ behavior. In particular, in flawed surveys such as the Seggev Survey, respondents can open another browser to look up the “right” answer. Such respondents could have opened the Facebook page, in which case they would have found out that it has a timeline feature. Then, consistent with the common survey flaw known as demand effects,¹⁶ these

¹⁵ *Simon Property Group L.P. v. MySimon, Inc.*, 104 F. Supp. 2d 1033 (S.D. Ind. 2000).

¹⁶ See Itamar Simonson and Ran Kivetz (2012), “Demand Effects in Likelihood of Confusion Surveys: The Importance of Marketplace Conditions,” Ch. 11 in *Trademark and False Advertising Surveys*, Edited by Shari Diamond and Jerre Swann, American Bar Association.

respondents figured out that Facebook was the expected answer, so they selected Facebook as one of their answers. This is yet another factor making any answer counted as “confusion” unreliable.

OTHER SURVEY FLAWS

37. Given the many one-sided flaws and the complete failure to estimate the alleged confusion, there is no need to discuss in detail other survey flaws. For example, contrary to the accepted standard, the Seggev Survey interviews were not validated. Furthermore, as indicated, the presented analysis of the survey results completely ignored the explanations that respondents provided.

38. In conclusion, the Seggev Survey failed to include any confusion measure, asking instead about “association,” and violated the most basic survey principles. If the reported survey results showed anything, it is that, not surprisingly, there is no confusion between the Timelines webpage and service and Facebook.

Date: 11/23/2012



Itamar Simonson, Ph.D.

EXHIBIT A

Itamar Simonson

ADDRESSES

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EDUCATION

Ph.D. Duke University, Fuqua School of Business
Major: Marketing; May 1987

M.B.A. UCLA, Graduate School of Management
Major: Marketing; March 1978

B.A. Hebrew University, Jerusalem, Israel
Major: Economics, Political Science; August 1976

ACADEMIC POSITIONS

July 1987 - June 1993 University of California, Berkeley
Haas School of Business
Assistant Professor

July 1993 – Aug. 1996 Stanford Graduate School of Business
Associate Professor of Marketing

Sept. 1996 – Aug. 1999 Stanford Graduate School of Business
Professor of Marketing

Sept. 1999 – Present Stanford Graduate School of Business
Sebastian S. Kresge Professor of Marketing

1994 – 2000 Stanford Graduate School of Business
Marketing Group Head

2000, 2004, 2012 Visiting Professor of Marketing: MIT; NYU; Columbia

AWARDS

- Best Article in the *Journal of Consumer Research* during the period 1987-1989.
- The 1997 O'Dell Award (for the *Journal of Marketing Research* article that has had the greatest impact on the marketing field in the previous five years).
- The 2001 O'Dell Award.
- Best Article in the *Journal of Public Policy & Marketing* during the period 1993-1995.
- The 2007 Society for Consumer Psychology Distinguished Scientific Achievement Award.
- The 2002 American Marketing Association Award for the Best Article in the area of Services Marketing.
- The Association for Consumer Research 1990 "Ferber Award."
- Elected Fellow of the Association for Consumer Research.
- Runner-up/Finalist for the O'Dell Award: 1995; 2002; 2004; 2005; 2007; 2008; 2012.
- Finalist for the 2003 Paul Green Award (for the *Journal of Marketing Research* article with the greatest potential to contribute to the practice of marketing research).
- Runner-up for the 2005 *Journal of Consumer Research* Best Article Award.
- Winner in the Marketing Science Institute and Direct Marketing Association competition on "Understanding and Measuring the Effect of Direct Marketing."
- Runner-up for the 1993 *California Management Review* Best Article Award.
- National Science Foundation Grant (for 1996-8).
- Outstanding Reviewer Award, *Journal of Consumer Research*, 2005, 2009.
- Honorable Mention for the Sloan Executive Program Teaching Award (Fall 1995).
- Five years in the Berkeley School of Business "6-Point Club" (instructors with teaching ratings of 6 or more on a 7-point scale).

TEACHING EXPERIENCE

Stanford University:

Marketing Management (for MBAs and the Sloan Executive Program)
Marketing to Businesses (for MBAs); Technology Marketing (for MBAs)
Critical Analytical Thinking (for MBAs)
Research Methods for Studying Buyer Behavior (a Ph.D. Course)
Decision Making (a Ph.D. Course)
Buyer Behavior (a Ph.D. course)

University Of California, Berkeley:

Marketing Management (for MBAs - day and evening programs)
Consumer Behavior and Decision Making (a Ph.D. Course)
Various Marketing Executive Education Programs.

BUSINESS EXPERIENCE

October 1978-August 1983 Motorola, Inc.

Worked in an international subsidiary; responsibilities included marketing research and customer analysis, definition of new products, pricing, analysis of sales force performance, competitive intelligence, and forecasting. Conducted studies of markets for various communications products. Last two years served as Product Marketing Manager for communications products.

Consulting:

Consulted for clients from a wide range of industries such as technology, communications, services, and manufacturing sectors.

Expert witness assignments: trademark infringement, deceptive advertising, surveys, consumer behavior, marketing management, brand equity, retailing, distribution, assessment of demand drivers and feature value, and other marketing issues.

PUBLICATIONS

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Itamar Simonson, James Bettman, Thomas Kramer, and John Payne (in press), "Directions for Judgment and Decision Making Research Based on Comparison Selection: Reply to Arkes, Johnson, and Kardes," *Journal of Consumer Psychology*.

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ARTICLES UNDER REVIEW

- Itamar Simonson and Emanuel Rosen, "Consumer Decision Making in an Information-Rich Socially-Intensive Environment."
- Leilei Gao, Yanliu Gao, and Itamar Simonson, "Tipping Points in Consumer Choice: More than Two Is Where Collections Start."
- Leilei Gao and Itamar Simonson, "Buying First and Choosing First: The Impact of Decision-Making Order on Consumer Choice"
- Leilei Gao and Itamar Simonson, " The Role of Decision Order and Product Assortment in Consumer Purchase Likelihood."
- Aner Sela, Itamar Simonson, and Ran Kivetz, "Beating the Market: The Allure of Unintended Value."
- Aner Sela and Itamar Simonson, "Perceptions of Value: The Effect of Context, Mindset, and Deliberation."
- C. Ofir, I. Simonson, O. Grossman, A. Hasdia, and M. Rachamim, "The Impact of Ethnic Minority Solidarity on Service Evaluations."

Doctoral Dissertations Chaired:

Ravi Dhar (Chaired Professor, Yale U.)
Aimee Drolet (Chaired Professor, UCLA)
Stephen Nowlis (Chaired Professor, Washington U., St. Louis)
Ziv Carmon (Professor, INSEAD)
Ran Kivetz (Chaired Professor, Columbia U.)
Donnel Briley (Professor, U.O. Sydney)
Thomas Kramer (Tenured Associate Professor, U.O. South Carolina)
Wendy Liu (Assistant Professor, U.O. Calif., San Diego)
Sanjay Sood (Tenured Associate Professor, UCLA)
Song-Oh Yoon (Assistant Professor, Korea U.)
Michal Maimaran (Visiting Assistant Professor, Kellogg School).
Leilei Gao (Assistant Professor, Chinese University, Hong Kong).
Aner Sela (Assistant Professor, U. O. Florida)
Jonah Berger (Assistant Professor, Wharton School, U.O. Penn.)

EDITORIAL ACTIVITIES

Editorial Boards: *Journal of Consumer Research, Journal of Marketing Research, Journal of Consumer Psychology, Journal of Marketing, Journal of Behavioral Decision Making, International Journal of Research in Marketing, Review of Marketing Research, Marketing Letters, J.O. Academy of Marketing Science, Review of Marketing Research.*

Reviewer for *Marketing Science, Journal of Economic Behavior and Organization, Science, Management Science, Journal of Retailing and Consumer Services, Journal of Marketing, Journal of Retailing, Organizational Behavior and Human Decision Processes, Journal of Experimental Psychology, Psychological Review, Psychological Bulletin, Journal of Personality and Social Psychology, Psychological Science, California Management Review, Journal of Economic Psychology, European Journal of Social Psychology, Journal of Judgment and Decision Making, Medical Decision Making,* and National Science Foundation.

PROFESSIONAL AFFILIATIONS

Association for Consumer Research
Judgment and Decision Making Society
American Psychological Society

PERSONAL DATA

Birth Date: December 25, 1951

Marital Status: Married, 2 children

EXHIBIT B

EXHIBIT B

Cases in which Dr. Itamar Simonson Testified as an Expert at Trial (including written expert reports submitted to the court) or by Deposition in the Past Four Years

1. Ann Castello et al. v. Allianz Life Insurance Company of North America and LifeUSA Insurance Co. (State of Minnesota, Country of Hennepin; MC 03-20405) (settled before trial).
2. Tokyo Broadcasting System v. ABC, Inc. and Endemol USA (Cent. Dist. of CA; CV 08-06550-MAN) (deposition).
3. Environmental World Watch, Inc. v. Procter & Gamble Distributing Co. et al. (also referred to as, State of California v. Frito Lay et al.) (Superior Court of the State of California for the County of Los Angeles; Case No.: 337618) (deposition).
4. Johnson & Johnson v. Actavis, Inc. (S.D.N.Y. 06CV 8209) (deposition).
5. Tamares Las Vegas Properties v. The El-Ad Group (Dist. Court, Clark County, Nevada; case # A546046) (trial).
6. The Sugar Association v. McNeil Nutritionals (Central Dist. of Calif., West. Div., CV 04-10077 DSF) (deposition).
7. Champagne Louis Roederer v. J. Garcia Carrion, S.A. and CIV USA (US Dist. of Minnesota; 06-CV-213 JNE/SRN) (trial).
8. Johnson & Johnson v. The American Red Cross et al. (S.D.N.Y. 07 CV 7061) (deposition)
9. American Airlines, Inc. v. Google Inc. (No. Dist. Texas; 4:07-CV-487-A) (deposition)
10. BDO Remit v. Stichting BDO (Cent. Dist. CA West. Div., 1104054 MMM) (trial).
11. Hardy Life LLC v. Nervous Tattoo, Inc. et al. (USDC, Cent. Dist. of CA; CV08-03524-PA).
12. High Voltage Beverages v. The Coca-Cola Company (West. Dist. of NC; 3:08-CV-367) (deposition).
13. Wisconsin Alumni Research Foundation v. Intel Corp. (West. Dist. of Wiscon.; 08-c-78-C) (deposition).
14. Hansen Beverage Company v. CytoSport, Inc. (Cent. Dist. of CA.; CV-09-0031 VBF) (deposition)
15. THOIP v. The Walt Disney Company et al. (S.D.N.Y., 08 Civ. 6823 (SAS) (deposition)
16. In the Matter of the Motor Fuel Temperature Litigation (Dist. of Kansas; 07-MD-1840-KHV) (deposition).
17. The Hershey Company v. Promotion in Motion (Dist. of NJ; 07-CV-1601) (trial)

18. Individual Network LLC v. Apple, Inc. (East. Dist. of Texas, Marshall Div., 2:07CV 158).
19. Hansen Beverage Company v. Vital Pharmaceutical (South. Dist. of CA; 08CV-1545 IEG) (deposition)
20. Keurig, Incorporated v. Sturm Foods, inc. (Dist. of Del.; 10-cv-008411490) (deposition)
21. People's United Bank v. PeoplesBank (US Dist. of CT; 08-cv-01858). (trial)
22. Veronica Gutierrez et al. v. Wells Fargo Bank (N. Dist. of CA; c 07-05923 WHA) (trial).
23. Quia Corp. v. Mattel, Inc. (North. Dist. of CA; C 10-1092 JF) (deposition).
24. Sharp Corp. v. Dell, Inc. (Dist. of NJ; 08-CV-05088) (deposition).
25. National Franchisee Association v. Burger King Corp. (S.D. of Florida; 09-23435-CIV-Moore/Simonton) (deposition).
26. Cindy Maxwell et al. v. Toys "R" Us (CA Superior Court, County of Los Angeles; No. BC 401425) (trial).
27. Prophet Capital Management Ltd. v. Prophet Equity LLC (West. Dist. of Texas, Austin Div.; 09-CA-316LY) (deposition).
28. The Rodney Hamilton Living Trust et al. v. Google Inc. and AOL LLC (East. Dist. of Texas, Marshall Div.; 2:09-cv-0051-TJW-CE) (deposition)
29. Fresh Del Monte Produce v. Del Monte Corp. (S.D. N.Y.; 08- Civ-8718(SHS)) (trial).
30. WiLan v. Acer et al. (East. Dist. of Texas, Marshall Div.; 07cv474).
31. Dongguk University v. Yale University (Dist. of CT; 3:08-CV-00441). (deposition)
32. Sara Lee Corp. v. Kraft Foods, Inc. (North. Dist. of IL; 09 C 3039). (trial)
33. Aurora World, Inc. v. Ty, Inc. (Cent. Dist. of CA; 09-08463 MMM). (depositions)
34. Gucci America, Inc. v. Guess?, Inc. (S.D.N.Y.; 09-cv-4373).
35. Millenium Laboratories, Inc. v. Ameritox, LTD. (US Dist. of Maryland, North. Div.; 10-cv-3327) (deposition)
36. Ashley Furniture Industries v. American Signature, Inc. (So. Dist. Ohio, E. Div.; 1-427) (deposition)
37. Gerber Scientific International v. Roland DGA Corp. (Dist. of CT; 3:06-cv- 02024-CFD) (deposition)
38. Playtex Products, LLC v. Munchkin, Inc. (Cent. Dist. CA; CASE NO. CV 11-0503 AHM (RZX) (trial)
39. Tria Beauty, Inc. v. Radiancy, Inc. (No. Dist. of CA, SF Div.; C 10-5030 RS).

40. (on behalf of Sound Exchange) In the Matter of Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services (United States Copyright Judges, Washington, D.C.).

EXHIBIT C

Exhibit C
Documents and Information Reviewed by Dr. Simonson

- Plaintiff Timelines, Inc.'s First Amended Complaint for Injunctive and Other Relief
- Facebook, Inc.'s Answer to Plaintiff's First Amended Complaint and Counterclaims Against Plaintiff
- Timelines, Inc.'s Answer to Facebook, Inc.'s Counterclaims Against Timelines
- Expert Report of Dr. Eli Seggev dated September 28, 2012
- Internet websites pertaining to Timelines, Inc., the timeline feature on Facebook, and other uses of the term "timeline"