

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

)
CNG FINANCIAL CORPORATION,)

Case No. 1:06cv040

)
)
Plaintiff/)

)
Counterclaim-Defendant,)

)
vs.)

CERTIFIED COPY

)
GOOGLE, INC.,)

)
)
Defendant/)

)
Counterclaim-Plaintiff.)

VIDEOTAPED DEPOSITION OF

MICHAEL B. MAZIS, Ph.D.

Washington, D.C.

Thursday, February 1, 2007

Job No.: 22-95215

Pages 1 through 110

Reported by: John L. Harmonson, RPR



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09:48:09 1 A. Yes.

09:48:13 2 Q. What hypothesis were you testing in
09:48:15 3 your study?

09:48:29 4 A. Whether when consumers enter a
09:48:34 5 search -- enter "Check 'n Go" in the Google search
09:48:44 6 box, whether they're confused about the
09:48:49 7 competitive sponsored links that appear on the
09:48:54 8 results page.

09:48:56 9 Q. Were you testing specifically the
09:48:58 10 effect of "Check 'n Go" being the search term?

09:49:03 11 A. Yes.

09:49:03 12 Q. Were you testing the effect of terms
09:49:06 13 like "check" or "go" in the text of
09:49:11 14 advertisements?

09:49:13 15 A. When you refer to the text, do you mean
09:49:16 16 the organic links, or do you mean the -- Are you
09:49:21 17 referring to the search page here, the results
09:49:24 18 page?

09:49:24 19 Q. I'm referring to the results page. And
09:49:27 20 actually it's a general question.

09:49:28 21 Were you testing the effect of the
09:49:32 22 appearance of words like "check" or "go" in the
09:49:35 23 text on the results page?

09:49:36 24 MR. HUNTER: Do you mean on the organic
09:49:36 25 listings or the sponsored listings?

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10:02:04 1 that.

10:02:06 2 How do you go about determining the
10:02:08 3 degree to which each of those two elements causes
10:02:12 4 the confusion?

10:02:13 5 A. Well, entering the name "Check 'n Go"
10:02:16 6 in the search window, that doesn't -- that in
10:02:17 7 itself doesn't cause confusion. I mean, the
10:02:21 8 confusion -- at least the potential confusion is
10:02:24 9 only generated by the competitive sponsored links
10:02:27 10 that appear on the search results page.

10:02:30 11 Q. Okay. And if -- if -- Did you do
10:02:34 12 anything to determine whether the confusion would
10:02:36 13 be the same if the search term were "payday
10:02:40 14 loans"?

10:02:43 15 A. No. That would be a different study.
10:02:45 16 I mean, this study -- that -- If people had
10:02:49 17 entered "payday loans," that's not a -- that's not
10:02:53 18 a trademarked term. You know, in this case I was
10:02:59 19 interested in a trademark term, "Check 'n Go."

10:03:03 20 Q. And suppose you did -- suppose you did
10:03:06 21 a second study that was in every detail exactly
10:03:08 22 the same as this one except that the search term
10:03:12 23 was "payday loans" and your measured confusion was
10:03:17 24 the same? What would your conclusion be as to
10:03:21 25 whether the search term "Check 'n Go" caused any

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10:03:23 1 confusion?

10:03:25 2 MR. HUNTER: Object to the form.

10:03:28 3 THE WITNESS: Well, it's obviously not

10:03:30 4 something I did or something I thought about. I

10:03:39 5 don't know what that would prove. I wouldn't

10:03:42 6 really draw anything from that.

10:03:43 7 BY MR. PAGE:

10:03:44 8 Q. Okay. What's the purpose of a control?

10:03:46 9 A. A control is to ferret out or remove

10:03:50 10 what's called noise, which refers to external

10:03:53 11 factors such as guessing or question wording or in

10:03:57 12 some cases prior beliefs so that the researcher

10:04:02 13 can know with greater certainty that the variable

10:04:08 14 that's being isolated actually caused a certain

10:04:12 15 result.

10:04:12 16 Q. Okay. And the variable that you were

10:04:16 17 purporting to measure in this study is the use of

10:04:19 18 "Check 'n Go" as a search term, correct?

10:04:22 19 A. No.

10:04:23 20 Q. Okay. What variable are you trying to

10:04:26 21 measure?

10:04:26 22 A. It's the -- It's the variable of the

10:04:30 23 competitive sponsored link.

10:04:36 24 Q. Okay. So --

10:04:36 25 A. That's what was manipulated in the

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10:07:18 1 organic lists -- results?

10:07:19 2 A. Yes. And that's what you want to do.

10:07:21 3 That's what you want to do in a controlled

10:07:23 4 experiment, is to keep everything constant with

10:07:25 5 the exception of the variable that you're

10:07:28 6 interested in, that you're trying to manipulate.

10:07:30 7 Q. Right. And the variable you were

10:07:31 8 interested in and you were trying to manipulate

10:07:34 9 was the sponsored links, which you changed?

10:07:36 10 A. Correct.

10:07:37 11 Q. And the result of that was that you had

10:07:37 12 a marked decrease in the degree of confusion,

10:07:40 13 correct?

10:07:42 14 A. Between the test group and the control

10:07:44 15 group?

10:07:44 16 Q. Right.

10:07:44 17 A. Yes.

10:07:44 18 Q. So the -- you've eliminated the effect

10:07:48 19 of the sponsored links on the control group?

10:07:52 20 MR. HUNTER: Object to the form.

10:07:52 21 BY MR. PAGE:

10:07:53 22 Q. Is that correct?

10:07:54 23 A. Not totally. Because, I mean --

10:07:56 24 MR. HUNTER: The competitive sponsored

10:07:59 25 links.

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10:54:29 1 A. Well, it was certainly helpful
10:54:33 2 background. But my study was somewhat different
10:54:37 3 than the GEICO study. You know, the GEICO study
10:54:44 4 was focused on both the issues of when GEICO --
10:54:49 5 the name GEICO appeared in the sponsored links and
10:54:52 6 when just other competitive insurance links
10:54:58 7 appeared. So, you know, some of the issues, some
10:55:03 8 of the criticisms that were leveled at the GEICO
10:55:07 9 study really didn't apply to my case.

10:55:12 10 Q. How about the criticism on page 16
10:55:15 11 where the court held, "As a threshold matter, the
10:55:19 12 control retained the use of GEICO as a keyword
10:55:24 13 which itself was alleged to be a source of
10:55:27 14 confusion."

10:55:29 15 Did you consider that to be relevant to
10:55:31 16 your study?

10:55:32 17 A. I think I read that over about ten
10:55:34 18 times and tried to understand it in the context of
10:55:38 19 the rest of the opinion. Now, the judge in this
10:55:44 20 case doesn't really explain that. And I don't
10:55:53 21 know what the judge meant here because it's
10:55:55 22 just -- it just -- it's just not correct. You
10:55:59 23 know, it just -- Sometimes we see those statements
10:56:05 24 in opinions and we wonder where they came from.
10:56:08 25 And this is one of those.

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10:56:09 1 If I had some explanation about what
10:56:12 2 the judge's thinking was, I might understand a
10:56:15 3 little bit better. But as a researcher working in
10:56:18 4 this field, without having some further background
10:56:23 5 about what the judge meant, that particular
10:56:26 6 statement just -- is just -- is incorrect. The
10:56:30 7 judge just misspoke.

10:56:33 8 Q. Did you do anything to try to get any
10:56:36 9 further background concerning the GEICO case or
10:56:38 10 this comment?

10:56:40 11 A. Well, my colleague, Gary Ford, was the
10:56:47 12 person that conducted the study.

10:56:50 13 Q. As I'm well aware.

10:56:52 14 A. So I did talk to him about this, and he
10:56:55 15 couldn't understand it either. It didn't make any
10:56:59 16 sense to him.

10:57:03 17 So I -- I just didn't quite know what
10:57:07 18 to make of it.

10:57:09 19 Q. Did he tell you that there had been
10:57:12 20 criticism of his survey at trial because the
10:57:15 21 control continued to use the same search term as
10:57:18 22 the test cell?

10:57:20 23 A. Well, I realized there was criticism of
10:57:23 24 that. But not all criticisms are valid, and that
10:57:28 25 certainly is one that wasn't valid. I mean, when

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10:58:56 1 identical to Exhibit 2 but with the words "payday
10:59:00 2 loans" in the search box?

10:59:04 3 A. Oh, certainly technically it could have
10:59:07 4 been done. Sure. Yeah. I mean, I didn't -- To
10:59:09 5 me it wouldn't have made sense as a control. But
10:59:13 6 sure, you could have done that.

10:59:14 7 Q. Why not? Wouldn't that have isolated
10:59:17 8 the effect of the search term from the effects of
10:59:19 9 the rest of the page?

10:59:23 10 A. Well, that wasn't the purpose of my
10:59:26 11 study. The purpose of my study is when people go
10:59:28 12 to Google and they type in "Check 'n Go" and they
10:59:33 13 get a results page, how do they -- what do they do
10:59:40 14 with that search page? How do they process the
10:59:44 15 information on that search page? So you needed to
10:59:48 16 put in "Check 'n Go" in both the test and the
10:59:49 17 control for that to make sense.

10:59:51 18 Q. Okay. The purpose of your test wasn't
10:59:52 19 to find out whether the use of the trademark as a
10:59:55 20 search term caused confusion?

10:59:58 21 A. No.

11:00:03 22 Q. Did Mr. Ford -- I'm sorry, I can't
11:00:09 23 remember if it's Dr. or Mr. Ford.

11:00:13 24 A. Doctor.

11:00:14 25 Q. Did Dr. Ford work with you at all in

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12:26:32 1 It's just not designed to do that."

12:26:34 2 And I am asking: Is it true similarly
12:26:37 3 that your study was not designed to sort out the
12:26:40 4 relative roles of the wording of the ads or the
12:26:43 5 position versus the use of "Check 'n Go" as a
12:26:47 6 keyword?

12:26:48 7 MR. HUNTER: I'm going to object to the
12:26:49 8 form as convoluted. But if you understand --

12:26:52 9 BY MR. PAGE:

12:26:52 10 Q. Did you understand the question?

12:26:53 11 A. Yeah, maybe. The idea of the
12:26:56 12 keyword -- I mean, the keyword is constant. The
12:27:00 13 "Check 'n Go" is constant in the test group and
12:27:05 14 the control group. So the survey was not designed
12:27:08 15 to -- It didn't vary the keyword, so it didn't --
12:27:10 16 it wasn't designed to sort out the impact of
12:27:13 17 different keywords. It was only designed to say,
12:27:18 18 given a certain keyword and given search results,
12:27:21 19 what is the impact of competitive sponsored links
12:27:27 20 versus noncompetitive sponsored links.

12:27:32 21 MR. PAGE: Great. I have no further
12:27:35 22 questions.

12:27:36 23 THE VIDEOGRAPHER: Here marks the end
12:27:37 24 of Volume 1, Videotape No. 2 in the deposition of
12:27:44 25 Dr. Mazis. Going off the record. The time is now

VIDEOTAPED DEPOSITION OF MICHAEL B. MAZIS, Ph.D.
CONDUCTED ON THURSDAY, FEBRUARY 1, 2007

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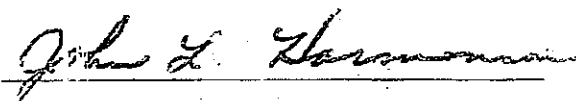
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I, the undersigned Registered Professional Reporter and Notary Public, do hereby certify that MICHAEL B. MAZIS, Ph.D., after having been first duly sworn by me to testify to the truth, did testify as set forth in the foregoing pages, that the testimony was reported by me in stenotype and transcribed under my personal direction and supervision, and is a true and correct transcript.

I further certify that I am not of counsel, not related to counsel or the parties hereto, and not in any way interested in the outcome of this matter.

SUBSCRIBED AND SWORN TO under my hand and seal this 12th day of February, 2007.



JOHN L. HARMONSON, RPR
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