

1 now.

2 Q. All right. Let's go to page 32  
3 and go to question number 6?

4 A. Uh-huh.

5 Q. You asked, "when you search using  
6 a specific company name or trademark do you  
7 expect the ask.com sponsored links to be  
8 'sponsored' by that particular company or  
9 trademark holder?" Did I read that correctly?

10 A. Yes, you did.

11 Q. The word sponsored in quotes, why  
12 did you put the words sponsored in quotes?

13 A. Because that was the -- I wanted  
14 to separate it from the fact that it's a  
15 sponsored link. We have -- because of the  
16 Lanham Act concepts, criteria sponsored by  
17 associated, affiliated with, I wanted to somehow  
18 separate it. Sponsored by sponsored by. That's  
19 why I put the second sponsored in quotes.

20 Q. I appreciate that. So did you  
21 provide a definition of sponsored in the second  
22 sponsored in question number 6 on page 32?

23 A. No, I did not.

24 Q. Why not?

25 A. Again, I was testing, again,

1 consumers perceptions of this relationship in  
2 terms of the term sponsored, as questions 7 and  
3 8 are other dimensions of that same thing.

4 Q. And you chose the word sponsored  
5 because it comes out of the Lanham Act; right?

6 A. That's correct.

7 Q. You know what the Lanham Act is as  
8 a surveyor and lawyer; right?

9 A. As a surveyor, yes.

10 Q. Do you think any consumers or  
11 users understood the word sponsor in quotation  
12 here as you've chosen it in question 6 to refer  
13 to the Lanham Act?

14 A. They certainly didn't refer it to  
15 the Lanham Act, but the concept from the Lanham  
16 Act, namely, that there's one of the dimensions  
17 of this affiliation or association is the word  
18 sponsored.

19 Q. When you asked this question you  
20 surely expected them to answer yes to that  
21 question; didn't you?

22 A. I didn't have an expectation. I  
23 wasn't surprised when they had, because of the  
24 fact that sponsored and sponsored are together.

25 Q. Yeah, isn't that the case, that

1 you asked them, you expected a sponsored link to  
2 be sponsored. Wouldn't you be shocked if the  
3 answer were to be no?

4 A. I would have been surprised.

5 Q. That's part of the reason you  
6 asked that question?

7 A. Again, no, no, I didn't, because I  
8 wanted to get that answer. Again, I was testing  
9 the extent to which that component of the Lanham  
10 Act, the relationship they saw with the  
11 sponsored link.

12 Q. Question number 6, you could have  
13 asked a different question. You could have  
14 asked them, do you expect or do you not expect  
15 that the ask.com sponsored links to be sponsored  
16 by that particular company or trademark holder.  
17 You could have asked that question; couldn't  
18 you?

19 A. There are all kinds of different  
20 ways to ask a question. Again, that would have  
21 still had the word sponsored in there twice, so.

22 Q. I agree with that. You could have  
23 at least indicated by the question that there is  
24 a choice of either you expect it does or you  
25 expect it doesn't. You could have asked a



1 different question; agreed?

2 MR. FENSTER: Object to form.

3 THE WITNESS: That kind of a  
4 question is typically asked in a -- in the way  
5 you're drafting it is where the consumers don't  
6 see the response options, but where the  
7 consumers see the response options as they do in  
8 an Internet you don't have to ask that, do you  
9 expect or don't you expect, because they see the  
10 response options in front of them. So I don't  
11 believe you need to do it. I think the most  
12 artful way to do it is simply ask a  
13 straightforward question where they see the  
14 response option in front of them.

15 BY MR. MORAN:

16 Q. Do you agree question 6 is  
17 leading?

18 A. No, I don't believe it is. There  
19 is a problem with the fact that the sponsored is  
20 in there twice but, again, that's the nature of  
21 the fact that the term that is used is sponsored  
22 links and the Lanham Act component is sponsored  
23 links. It created a problem, but I didn't know  
24 any other way to get around that.

25 Q. When you were designing question



1 MR. FENSTER: Object to form.

2 THE WITNESS: Again, I didn't get  
3 into that kind of depth of analysis whether it  
4 was a business relationship or some other kind  
5 of relationship.

6 BY MR. MORAN:

7 Q. Okay. When the 200 respondents  
8 were answering the Ask questions, the Google  
9 questions, and the Yahoo questions, did you ever  
10 rotate the order of questions 6, 7 or 8?

11 A. No, I did not.

12 Q. Could you have done so if you so  
13 chose?

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

15 Q. Zoomerang doesn't offer that?

16 A. No. It does not offer rotation of  
17 the questions. Typically rotation is not of the  
18 questions, but rather the response options.

19 Q. Have you ever rotated the order of  
20 questions in any surveys you've done?

21 A. I can't recall.

22 Q. Have you ever -- strike that.

23 Why didn't you ask any open-ended  
24 questions on these surveys?

25 A. Because it didn't seem that there

1 was a need to. I wasn't asking -- typically  
2 open-ended questions are advertising studies  
3 where you're trying to find out what consumers  
4 are taking from an ad in terms of what does the  
5 ad say or suggest, what is said or suggested by  
6 the ad.

7 Here I'm trying to get at much  
8 more specific issues, namely, the extent to  
9 which they see a relationship, specifically  
10 these three components of a relationship.

11 Q. Were the right three words that  
12 you tested here in questions 6, 7 and 8 namely,  
13 sponsored, related to, or affiliated, in this  
14 order, was that important to you in your work in  
15 this case?

16 MR. FENSTER: Object to form.

17 THE WITNESS: I didn't think about  
18 the order of them, it didn't really matter to  
19 me. I was looking at the totality of those  
20 three responses.

21 BY MR. MORAN:

22 Q. So from your perspective would it  
23 have changed any of the work or conclusions or  
24 opinions you've reached in this case if the  
25 surveys would have switched the order of