

1 A. Yes.

2 Q. In order to ascertain whether or
3 not there was, in fact, that relationship
4 between the search term and the sponsored link,
5 how would we go about answering the question of,
6 whether, in fact, there was that relationship,
7 other than ad by ad?

8 A. Again, I don't know. I have --

9 Q. You haven't undertaken to do that?

10 A. I have not undertaken that. I
11 have thought about how to go about doing that.

12 Q. It is not within the scope of your
13 engagement in this case; is it?

14 A. That is correct, it is not.

15 Q. Do your results suggest that ever
16 since sponsored links were introduced years ago
17 that search engine users remain regularly
18 confused by sponsored links?

19 A. I didn't look at it over time. I
20 just looked at it at a point in time, as of the
21 point in time of my survey that the consumers
22 are confused, that they have expectation of
23 being able to buy the product or service from
24 the sponsored link and/or they believe there is
25 an association, affiliation, relationship. I

1 A. A control is, in survey research,
2 is a condition where there isn't the claim or
3 there's -- it measures for noise in the market
4 or in the survey research.

5 Q. What's its purpose?

6 A. To measure for noise, if there is
7 such.

8 Q. Tell the court and jury what noise
9 is in your profession?

10 A. As it relates to this it's the
11 extent to which the -- the responses are a
12 function of something other than the claim in
13 the ad. And this is in advertising cases.
14 That's where you find controls.

15 Q. So a control would measure whether
16 or not the initial interest confusion was caused
17 by the stimulus or perhaps caused by something
18 else?

19 MR. FENSTER: Object to form.

20 THE WITNESS: Well --

21 BY MR. MORAN:

22 Q. A control could do that?

23 A. A control could do that if a
24 control was needed.

25 Q. Did you do a control in this case?

1 A. Yes. Actually, I think by using
2 the generic tests where there was no explicit
3 website we got a measure of the extent to which
4 people would believe that there's an expectation
5 being able to buy the product or service,
6 independent of any particular product or
7 service.

8 Q. With respect to the survey
9 involving Southwest Airlines did you use a
10 control?

11 A. No, I did not.

12 Q. With respect to the survey
13 involving Trek did you use a control?

14 A. No, I did not.

15 Q. Now, with respect to the so-called
16 hypothetical questions and/or survey involving
17 iPad did you use a control?

18 A. Well, the use of the apple.com
19 sponsored link served to a certain extent as a
20 control because consumers know that the iPad is
21 made by Apple, so it served a function of a
22 control.

23 Q. Let me ask you this.

24 As to the very first question,
25 which is roughly, I think you directed

1 to me deals with that issue of overall
2 expectations.

3 BY MR. MORAN:

4 Q. Yeah, but you're really just --
5 isn't that answer just telling me that that's
6 your conclusion that there was consistency
7 across the board?

8 I guess my question is in doing
9 the questions and asking the participants the
10 various questions, you need to ascertain whether
11 or not a given answer to a question is due to
12 the stimuli that's shown or the question asked
13 or is it caused by something else, such as
14 noise?

15 A. Well, that's --

16 MR. FENSTER: Object to form.

17 THE WITNESS: That's why the
18 first, the generic where there is no stimuli,
19 where are you able when you see a sponsored
20 link, again, they were shown no stimuli, when
21 you see a sponsored link are you familiar with
22 sponsored links? Yes. Do you think you're able
23 to buy the product or service from the sponsored
24 link; the searched for product or service from
25 the sponsored link. So that serves as an

1 overall control for the whole study, because
2 that one there's no stimuli for comparison.

3 BY MR. MORAN:

4 Q. So it's your testimony that the
5 questions and the results for the Yahoo, Google
6 and Ask surveys operate as a control for the
7 remaining portions of the survey?

8 A. That's correct.

9 Q. Do you really believe that?

10 A. Yes.

11 Q. Let me ask you a couple of
12 different questions.

13 During any of the work that you
14 did in this case did you click on any of the
15 natural or organic links at any time?

16 A. Yes, I did.

17 Q. Which ones?

18 A. I don't recall. One of the
19 Southwest Airlines ones.

20 Q. Was that important to your work?

21 A. Not really. The focus really was
22 on the sponsored links and the ability to buy
23 the product or service or, in this case, get an
24 airline ticket from the sponsored link.

25 Q. Did you click on the organic