

1 right?

2 A. Yes.

3 Q. If they answered no were they then
4 excluded from the survey?

5 A. That's correct.

6 Q. Tell me why you did that?

7 A. As I said earlier today when you
8 asked me about this, that I thought the universe
9 for the Trek bicycle should be people who,
10 number one, own a bicycle, because they're in my
11 judgment more interested in buying -- trading up
12 to a higher end bicycle such as a Trek. They
13 may more likely be -- they own a bicycle and may
14 be more likely to be aware of the brand of the
15 bicycles, including Trek, which I felt was
16 important if I'm going to be asking questions
17 about it.

18 Q. Do you know or have you done any
19 work to ascertain how many folks who buy Trek
20 bicycles are first time bike purchasers?

21 A. No, I do not.

22 Q. Do you know how many people who
23 buy Trek bicycles own no bike when they buy
24 their first Trek bike?

25 A. No, I don't. But, Again, my

1 concern was are they aware of the Trek brand,
2 more than anything else. That's what I thought
3 this would help me get to.

4 Q. Was it your view that a person who
5 owns at least one bicycle is more likely to buy
6 a Trek bike than a person who doesn't own a
7 bicycle at all?

8 A. I really never thought about that.

9 Q. All right, sir. Do you have an
10 opinion one way or another?

11 A. I haven't thought about it.

12 Q. I take it that's a no?

13 A. Right. As I sit here right now,
14 no, I don't have an opinion.

15 Q. Question 2, how often do you ride
16 your bicycle.

17 Why was that question important?

18 A. My understanding about Trek
19 bicycles are, again, for more serious bikers.
20 Bikers being bicyclists as opposed to
21 motorcyclists. So I wanted people who at least
22 rode their bicycles at least more than at least
23 some. That's why I excluded the never category.

24 Q. Were you the one that came up with
25 the search term Trek for this survey?

1 A. No. I think that Mr. Meyer is the
2 one that suggested that. Apparently -- I'm not
3 a bicyclist. He's more familiar with bicycles
4 and bicycle brands.

5 Q. Is he a Trek owner?

6 A. I have no idea.

7 Q. Now, question number 4, if a
8 person was answering this survey, at least when
9 they've gone through question number 4 they
10 haven't been told or they don't know whether or
11 not this survey has anything to do with Trek
12 bikes; is that true?

13 A. That's correct.

14 Q. Indeed, the first question that
15 introduces Trek at all would be question
16 number 7; right?

17 A. That's correct, because the
18 screener questions before that, which are have
19 you ever used it to find information about
20 bicycles you might consider purchasing, again,
21 and then would you consider using it to get
22 information about bicycles. So those are
23 screener questions to make sure I've got people
24 in my judgment who are in that -- are likely to
25 look to the Internet as a vehicle to get

1 A. No, there wasn't.

2 Q. So you're simply asking, if you
3 respond and are in the market for a new bicycle
4 would you consider buying a Trek under those
5 circumstances, based upon that hypothetical;
6 true?

7 A. Yes.

8 Q. Why didn't you simply ask them if
9 they're likely to buy a new bicycle in the next
10 12 months?

11 A. Again, my purpose wasn't to find
12 just people who are going to be buying in a
13 short period of time. What I really wanted was
14 to get people who would at least consider buying
15 a bicycle so that I could then get them to look
16 at the Internet search engine results page.

17 Q. Let's go to page 70 of Exhibit 2.
18 Do you see that, Professor?

19 A. Yes.

20 Q. At the top of the page 70 it says
21 question, title. Do you see that?

22 A. Yes.

23 Q. And that's where you -- you didn't
24 write anything in there or add any language?

25 A. That's a mistake. That would --

1 THE WITNESS: They permit it by
2 selling those AdWords and for companies who, in
3 fact, buy the AdWords for their own -- buy the
4 AdWords for their own sponsored links on those
5 search results pages. They're creating, yes, I
6 can buy that and, in fact, the results of the
7 survey show that consumers believe that they're
8 going to be able to buy the searched for
9 products or services or there's a relationship.
10 And this is what was found in the generic survey
11 and it was found in the hypothetical survey.

12 BY MR. MORAN:

13 Q. Has Google created that
14 expectation, in your view, by any other action
15 other than what you just told me?

16 MR. FENSTER: Object to form.

17 THE WITNESS: I don't know.

18 BY MR. MORAN:

19 Q. Are you familiar with the term,
20 "question order effects"?

21 A. Yes.

22 Q. What does that mean?

23 A. The extent to which the order of
24 the questions may bias the results.

25 Q. Are you familiar with an "ever

1 ready format"? I'm sure you are?

2 A. Yes.

3 Q. Have you used an ever ready format
4 before?

5 A. I don't recall.

6 Q. Do you think it is good practice
7 to allow in initial interest confusion or
8 likelihood of confusion surveys to include
9 questions allowing respondents to explain their
10 answers in their own words?

11 A. In certain types of surveys that
12 may be appropriate for, certainly for
13 advertising surveys to ask consumers what they
14 take from an ad, but when the issue is in this
15 case -- as in this case an expectation survey,
16 there's -- I saw no reason to have those
17 additional open-ended questions. The questions
18 would have been why do you think that. That
19 kind of question. And I thought about that but
20 felt that I didn't need it because what were
21 they going to say? I thought it would be simply
22 because it's a sponsored link.

23 Q. That was your assumption or
24 supposition; right?

25 MR. FENSTER: Object to form.