

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