

1 A. Yes, I am.

2 Q. What is an ever ready survey?

3 A. I don't recall as we're sitting
4 here right now all the details of an ever ready
5 survey.

6 Q. All right, sir. Let me direct you
7 to Exhibit Number 2 before you?

8 A. Yes.

9 Q. And page 79?

10 A. Page 79?

11 Q. Yes, sir. And these are the FPX-2
12 results for Trek, the Trek survey.

13 A. Yes.

14 Q. Do you see that?

15 A. Yes.

16 Q. Now, as I understand from
17 responding to question 3, you had 200
18 respondents who answered 3, yes, that they use
19 Internet search engines; correct?

20 A. Yes.

21 Q. And was the survey -- did the
22 survey -- strike that.

23 Did you get more than 200
24 respondents who answered the Trek questionnaire?

25 A. No. No.

1 five people answered that question number 3 who
2 were non-Google Internet search engine users;
3 true?

4 A. That's correct, yes.

5 Q. Let me direct your attention to
6 page 3 of Exhibit 2, which is your report in
7 this case.

8 A. Page 3?

9 Q. Page 3.

10 A. Yes.

11 Q. Under materials reviewed you
12 indicated that you reviewed the Class Action
13 Complaint; is that right?

14 A. That's correct.

15 Q. You didn't indicate that you had
16 reviewed other materials; correct?

17 A. That's correct.

18 Q. Did you review the Defendants in
19 this case Answer to the lawsuit or the Class
20 Action Complaint?

21 A. No, I did not.

22 Q. Have -- has your work as an expert
23 or as a surveyor ever been criticized by any
24 courts?

25 A. Yes.

1 Q. Tell me about each of those
2 occasions?

3 A. Two of those. Number one was in a
4 case involving Trafficschool.com.

5 Q. What was the criticism of your
6 work there?

7 A. The criticism was the fact that I
8 didn't use a control group.

9 Q. Okay. What other criticisms were
10 there?

11 A. There's always criticisms in
12 almost every survey as to the language, whether
13 it's leading or not, and I don't remember --
14 those were common kind of criticisms. The one
15 criticism the court, I think, focused on was the
16 fact I didn't use a control group. As in this
17 case, I didn't feel I could capture the issue in
18 that case with a control group, so I didn't use
19 one. And I still don't think one was
20 appropriate.

21 Q. All right, sir.

22 A. Okay. The other case where there
23 was -- it really wasn't a criticism. My survey
24 was found, it was excluded, involved -- it's
25 number 9 in my list of surveys which is David

1 Craig -- one of the two Alabama cases. Either
2 Holland versus Maple Chase or David Craig versus
3 Maurice Tunstall, one or the other. Both were
4 smoke detector cases, smoke alarm cases.

5 There the criticism was I did a
6 survey of the package for the claims made on a
7 package for a smoke alarm and the court said
8 that it was inadmissible because the woman who
9 lived in the house whose children died had not
10 bought the smoke detector, it was already in
11 there, so she didn't see the package.

12 Those are the only two I know of
13 where -- there may have been criticisms, but
14 those are certainly the ones I recall.

15 Q. As you sit here today are those
16 the only two cases you recall courts criticizing
17 your work product?

18 A. Yes, that I'm aware of.

19 Q. Now, in the Trafficschool.com
20 case, looking at that opinion the court found
21 that your survey was "significantly flawed". Do
22 you recall that?

23 A. Yes.

24 Q. And he also found that there were
25 significant problems with Dr. Maronick's survey.

1 Do you recall that?

2 A. Yes. And, again, that's -- the
3 criticisms of both surveys, but the major
4 criticisms as I said with my survey was the
5 issue of the control group.

6 Q. And the Trafficschool.com Inc.
7 case the court agrees that the lack of a control
8 was a significant problem in your survey; true?

9 A. Yes.

10 Q. And also the failure to present
11 Defendant's web page as an actual consumer would
12 see it, including the disclaimer, are
13 significant problems with your survey. Those
14 are two criticisms of the court in that one;
15 right?

16 A. I had forgotten the second one,
17 yes.

18 Q. All right. Accordingly, the court
19 gave less weight to your survey as a result?

20 A. Yes, that's right.

21 MR. MORAN: I pass the witness.

22 MR. FENSTER: I have no questions.

23 THE VIDEOGRAPHER: Here marks the
24 end of videotape number six. Also marks the end
25 of today's proceeding in the deposition of

1 Thomas J. Maronick. Going off the record. The
2 time on the video screen is 16:50:48.

3 (Signature not waived.)

4 (Whereupon, at 4:50 p.m., the
5 deposition was concluded.)

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ACKNOWLEDGMENT OF DEPONENT

I do hereby acknowledge that I have read and examined the foregoing of the transcript of my deposition and that:

(Check appropriate box):

() the same is a true, correct and complete transcription of the answers given by me to the questions therein recorded.

() except for the changes noted in the attached errata sheet, the same is a true, correct and complete transcription of the answers given by me to the questions therein recorded.

DATE

SIGNATURE

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CERTIFICATE OF NOTARY PUBLIC

I, Paula G. Satkin, the officer before whom the foregoing proceedings were taken, do hereby certify that the witness whose testimony appears in the foregoing proceeding was duly sworn by me; that the testimony of said witness was taken by me in stenotype and thereafter reduced to typewriting under my direction; that said proceedings is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

My commission expires October 31, 2010.

Paula G. Satkin

PAULA G. SATKIN

Notary Public in and for the
District of Columbia