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1	majority of people there may be some people	
2	who are confused and think iPAD is a Dell	
3	product, but I think most people would say I	
4	know iPAD is an Apple product and Apple is a	
5	competitor, a direct competitor.	
6	Q. So I guess then the likelihood of	
7	initial interest confusion, in part, depends	
8	upon what the product is that's being sold.	
9	Would you agree with that?	
10	A. No. I think it has it's not so	
11	much the product being sold as the strength of	
12	the brands or the marks that are in the searched	
13	for brand and the searched for trademark and the	
14	sponsored link brand or mark.	
15	Q. Okay. You would agree that the	
16	likelihood of initial interest confusion would	
17	vary, depending upon the mark or the strength of	
18	the mark?	
19	MR. FENSTER: Object to form.	
20	THE WITNESS: I think that that	
21	certainly would be a factor.	
22	BY MR. MORAN:	
23	Q. Indeed, in your report you mention	
24	that's a factor when you compare the well-known	
25	brand name of Southwest Airlines and the lesser	

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1	well-known brand of Trek; true?
2	A. Yes.
3	Q. And so the initial interest
4	confusion or the likelihood of initial interest
5	confusion would, in fact, vary, depending upon
6	the strength of the brand, as you say in your
7	own report; true?
8	A. Yes.
9	Q. Would that also but sometimes
10	there's you can have a brand that is not
11	synonymous with the goods or services sold by
12	either that brand or the company that owns that
13	brand; true?
14	MR. FENSTER: Object to form.
15	THE WITNESS: Yes.
16	BY MR. MORAN:
17	Q. All right. And would you agree
18	that the possibility of initial interest
19	confusion could also vary, depending upon the
20	products or services sold, independent of
21	whether or not they're a registered trademark
22	for that good or service?
23	A. I think there's a much my
24	results show that a much higher likelihood of
25	initial interest confusion when it isn't when

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All right. That's common. It's 1 0. in your report, the difference between Trek and 2 3 Southwest Airlines; right? MR. FENSTER: Object to form. 4 5 THE WITNESS: Yes. 6 BY MR. MORAN: 7 All right. And then would you 0. also agree the initial interest confusion could 8 also be affected by the language that may be 9 contained in the sponsored link? 10 MR. FENSTER: Object to form. 11 THE WITNESS: I think less so. I 12 hadn't really thought about that. 13 BY MR. MORAN: 14 15 Did you test for that? Q. No, I did not. 16 Α. Suppose a search term is iPAD and 17 Ο. 18 then the sponsored link that comes up is for PC Magazine. Would your results here suggest that 19 there is initial interest confusion as to that 20 21 ad? I would think there would be 22 Α. Yes. because, again, while you can't buy -- I don't 23 24 believe you can buy an iPAD through PC Magazine, but the second part of the component, is there 25

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1	interest confusion to the extent they have an	
2	expectation of being able to buy a Delta ticket	
3	on United.	
4	Q. Do you think consumers have that	
5	expectation?	
6	MR. FENSTER: Objection to form.	
7	THE WITNESS: There may be some.	
8	I think most consumers probably do not. I guess	
9	those two are now	
10	BY MR. MORAN:	
11	Q. Would you agree that you have to	
12	look at each sponsored link, each ad at a time,	
13	to assess initial interest confusion?	
14	A. I think generically someone would	
15	have to look at it. Again, taking the first	
16	component, to the extent that is the consumer	
17	able to buy the product or service from the	
18	searched for firm on the sponsored link. If the	
19	answer is no, by looking at them individually or	
20	c <mark>ollectively or however, if the answer is no,</mark>	
21	then you've got, you've got	
22	Q. Initial interest confusion, in	
23	your mind?	
24	A. That's correct.	
25	MR. FENSTER: Can you let the	