

SUPPLEMENTAL DECLARATION OF DR. ITAMAR SIMONSON

1. I am still the Sebastian S. Kresge Professor of Marketing at the Graduate School of Business, Stanford University. A copy of my curriculum vitae, which includes a complete list of my publications, was attached as Exhibit A to my previous report in this matter, submitted on July 7th, 2010.

2. I was asked by counsel for Google Inc. to examine the “Opposition to Motion To Exclude Maronick Report” and determine whether it addressed the flaws of Dr. Maronick’s Survey discussed in my earlier report. Briefly, as summarized in paragraphs 12-13 of my earlier report:

“12. The Maronick Surveys made no attempt to test for any commonality across the proposed class members and did not even try to test for the alleged likelihood of confusion pertaining to the trademarks of the class representatives. Accordingly, even if the surveys were properly conducted, they would not have provided pertinent information regarding the other members of the proposed class. Furthermore, the surveys violated virtually all of the basic principles and standards of likelihood of confusion surveys, making the “findings” meaningless and redundant. In particular:

- a. The Maronick Surveys failed to follow any recognized methodology or even test for any relevant likelihood of confusion (or initial interest confusion);
- b. The surveys relied on a series of slanted, leading questions that informed respondents what the “correct” answers were and merely asked for their approval;
- c. The Maronick Surveys failed to include any controls;
- d. The Maronick Surveys failed to ask the respondents to explain their answers;

- e. The Maronick Surveys failed to approximate marketplace conditions or present the relevant stimuli to respondents as they are seen by consumers in reality;
- f. The surveys' respondent universe failed to represent the relevant consumers' universes;
- g. The results of the Maronick Surveys were not validated.
- h. The surveys' methodology and Dr. Maronick's deposition testimony indicate a persistent lack of familiarity with the most basic principles of likelihood of confusion surveys (such as the meaning of a control, the importance of not revealing to respondents the "right, expected" answer, and the commonly used survey methods).

13. Each one of the flaws is sufficient to make the Maronick Survey unreliable. The combination of such fatal flaws indicates that the surveys provide no pertinent information and are simply irrelevant."

3. While the "Opposition to Motion to Exclude Maronick Report" did not offer an explanation and did not account for the above concerns regarding the Maronick Survey, its flaws, and its irrelevance, it did include one new argument regarding that survey (now referred to as just a "proof of concept"; Opposition, p. 3). I will briefly address this argument next.

4. Section C (p. 11) of the Opposition is titled, "Because the Maronick Survey Filtered Respondents For Involvement In the Relevant Market, No Additional Control Was Required." This response reflects fundamental misunderstanding of what a study "control" is, mistakenly confusing the criteria used to screen respondents with the "control." Putting aside the fact that, as explained in my earlier report, the Maronick Survey failed to represent the relevant respondent universe (or population), "filtering respondents for involvement in the relevant market" had nothing to do with the need for

a control. Accordingly, even if the Maronick Survey's respondents were filtered (or screened) appropriately, it would still need a proper control.

5. To illustrate, suppose that a pharmaceutical company is testing a new diabetes drug. In all likelihood, the study will screen/filter respondents based on whether they suffer from diabetes (and perhaps include sub-groups based on the severity of their diabetes). Of course, while including the right study participants is essential, it has nothing to do with the need to include a proper control.

6. However, according to the argument contained in the "Opposition to Motion to Exclude Maronick Report," this diabetes study would not need to include a placebo group (i.e., a control), because study participants have already been filtered based on their relevance to the diabetes study. But, as indicated, while including only relevant participants in a study is certainly important, it has nothing to do with the inclusion of a control – that diabetes drug study would be uninterpretable and unreliable without a placebo group. Similarly, even if the Maronick Survey were to include relevant respondents, it was absolutely necessary to have proper controls (i.e., a suitable control for each trademark keyword tested). Yet, as explained in my earlier report (and acknowledged in Dr. Maronick's deposition), his surveys did not include a control.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 22nd day of October 2010.



Name: Dr. Itamar Simonson