

Surveys in Litigation: Sample Cases

TV Broadcaster Sues Over Trademark

Our client, a large television broadcaster, was accused of trademark infringement and trademark dilution by a magazine publisher who claimed that the name of our client's network was confusingly similar to the name of its magazine. To support this argument, they produced a survey that concluded that 30% of potential customers could be confused by the similarity of the two names. Applied Marketing Science worked with our expert to evaluate the validity of the plaintiff's survey and analyze their data. We found numerous methodological errors, unsupported assumptions, and biased questions, as well as analytical errors. The court agreed with these conclusions, ruling that the plaintiff's report had "little probative value," and granted summary judgment in favor of our client.

Survey Measures Impact of Rumors

In this case, a multinational consumer products company alleged that a large direct sales concern was disseminating false information about the company's ties to the occult. According to the rumor, the company's president had publicly stated that the company gave a portion of its profits to a satanic organization. The defendant allegedly circulated this rumor through both its company voicemail system and its distributor network. AMS supported the plaintiff's expert in developing and implementing a survey to assess consumers' awareness of and reactions to this rumor, including whether they would have changed their purchase decisions as a result. The research showed that consumers were in fact highly sensitive to the rumor and that it was likely to affect their purchasing behavior.

Survey Results Defeat Class Certification

Potential class members claimed they had been harmed by a building materials product with possible carcinogenic properties. AMS was retained by a leading economic consulting firm on behalf of the defendant to oppose the attempt to certify the class. We conducted a survey of putative class members, which demonstrated substantial variability in the applications and climates where the materials had been used. Specific differences included: reasons the product was used, methods of using the product, the purchase decision process, factors influencing the product choice, and level of satisfaction with the product. The judge agreed with our analysis, denying certification primarily because the claims lacked the required typicality. He found, instead, that there were far too many individual issues to qualify as a class.

Survey Key in Drug Patents Battle

A four-year legal battle regarding control of the billion dollar market for a popular drug used to treat a major degenerative disease ended in favor of our client, the defendant. Our role involved the damages portion of a patent infringement case brought by the manufacturer of the leading drug used to treat the illness. We worked with a nationally-known economic consulting firm in designing and implementing a survey to determine what choices patients would have made had the defendant's drug not entered the market. This data was used by the economics team to estimate a reasonable royalty rate based on a hypothetical negotiation between the two companies.

Catalog Spawns Trade Dress Dispute

In this trade dress case involving product configuration issues, AMS worked on behalf of the plaintiff, a national provider of continuing education in a medical field. Our client alleged that the defendant, another continuing education company, had copied specific features of its catalog and that potential customers had been confused as to the source of the courses they were offered. AMS conducted two surveys with medical personnel from this field. The first showed that the specific design elements of the course catalog had acquired secondary meaning. The second survey showed that potential customers were indeed confused and believed that all these courses were offered by the same company. Citing the results of these surveys, summary judgment was granted for our client.

Advertising Impact Measured by Survey

In this class action matter, AMS provided survey support to help assess the potential impact of allegedly deceptive advertising in the business machines industry. Our goal was to determine whether consumers were misled by our client's claims that its printers, fax machines and other office equipment have a particular type of paper cassette and operate at a certain page-per-minute speed. Our study showed that consumers did not consider the method of paper storage an important feature when making purchases; factors such as fax speed, memory, machine brand, and color printing capability were deemed far more important. Furthermore, we found that consumers use pages per minute as a relative measure of print speed, and understand that print speed varies widely depending on the type of document printed. Following completion of the survey, the case settled favorably for our client.

Survey Used to Value Infringing Feature

AMS provided critical survey data in a landmark case involving alleged copyright infringement of a popular spreadsheet program. We provided survey expertise to an economic consulting firm that was retained by the defendant to develop damages estimates and critique the plaintiff's damages models. We first conducted a Voice of the Customer analysis to generate the list of attributes consumers considered in their software purchases. We then used these attributes in a conjoint study to capture statistical data on consumer buying preferences. Based on this information, our expert showed that the aspects of the menu structure in dispute were not as critical as the plaintiff had asserted. The First Circuit found for our client, concluding that the allegedly infringing features were not copyrightable. The plaintiff appealed to the Supreme Court, which did not reverse the First Circuit's opinion.

Survey Helps Client Dispute Sales Forecasts

Our client, an automobile manufacturer, was sued by two customizers specializing in turning hard-top automobiles into convertibles, claiming tortuous interference. While the lawsuit was underway, the manufacturer announced its own plan to sell convertibles, and predicted sales of 30,000 cars annually. The plaintiffs based their estimate of damages on this number, claiming lost sales of 30,000 conversions per year. To determine the true number of likely conversions, AMS conducted two surveys. The first focused on individuals who had purchased a new convertible during the damages period and measured their interest in our clients' vehicle had it been available as a convertible. The second survey addressed purchasers of the original vehicle and measured their willingness to pay for a convertible conversion. Our results showed that the actual number of conversions that might be achieved by the plaintiffs would have been merely in the hundreds. Based on this data, the case settled favorably for our client.

Proxy Group Surveyed in Class Action Case

AMS worked on behalf of an automobile rental company that was the target of a class action lawsuit alleging that the company's rental contract was misleading. The plaintiffs asserted that the "fine print" in the contract led many consumers to "over-insure," essentially duplicating coverage that already existed through their own automobile insurance or credit cards. To the contrary, our research showed that the majority of consumers were not misled; rather, they saw value in the "peace of mind" provided by the added insurance. Although we were precluded from speaking to the actual class members, we conducted our survey by assembling a proxy group of respondents that lived in an adjacent county and were demographically similar to the class members.

Antitrust Suit Relies on AMS Study

AMS participated in a study to help determine "network effects" in a major antitrust suit against a computer software manufacturer. Together with our expert, we conducted a conjoint study of the projected penetration of a hypothetical new brand of desktop software. We designed a computer-based study of consumer and business purchasers, which asked respondents to consider a hypothetical new operating system-productivity suite combination. The characteristics considered in the study included price, the percentage of computer users who had adopted the new software, and the availability of customer support. We found that when the respondents were asked to consider equally functional operating system-productivity suite combinations, the one that had a higher installed base was the preferred brand, thereby supporting the manufacturer's position.

Dental Supplier Defends Trade Dress

Our client, a manufacturer of supplies used by oral surgeons, was accused of product configuration trade dress infringement by a much larger manufacturer. To support its claim, the plaintiff produced two surveys. One purported to establish that the product configuration had secondary meaning and the other attempted to show confusion related to this design. Under the direction of our expert, AMS evaluated the validity of both of the plaintiff's expert reports and surveys. We showed that both studies were critically flawed and could not be relied upon as evidence of either secondary meaning or confusion. These flaws included how the universe was defined, how the sample was selected, how the products were shown to respondents and how responses were collected and coded. The court agreed with this analysis and cited our expert in his ruling, which granted summary judgment to our client.

Survey on Theater Access for Disabled

AMS worked on behalf of the Justice Department in a suit against two major movie theater chains regarding allegedly unfair seating access for wheelchair-bound patrons. Although each theater provided the appropriate number of wheelchair-accessible seats, the desirability of the locations of these seats was in question. Working with a leading economic consulting firm, AMS designed a study to measure the desirability of various seating locations. We visited numerous movie theaters and observed where non-handicapped customers chose to sit at specific times prior to the start of the movie. An expert economist used this data to determine the relative desirability of wheelchair and non-wheelchair seating. Based on the results of this study, several movie chains were motivated to improve access for their wheelchair-bound patrons.

Send inquiries to legal@ams-inc.com.