



Survey Research in Litigation

*Innovative Market
Research Solutions*

Applied
Marketing
Science, Inc.



About AMS

Applied Marketing Science is an innovative market research and consulting firm with a solid track record in litigation support. Founded in 1989 with roots in the MIT Sloan School of Management, AMS applies proven methodologies to a variety of litigation issues where the behavior of current and potential customers is a key determinant in assessing liability or damages. Our surveys have been used in a wide range of litigation, including alleged misappropriation of intellectual property, antitrust violations, deceptive advertising and misrepresentation, and potential class action matters. AMS works with a network of talented academic experts and practitioners to develop comprehensive market research strategies, and often collaborates with nationally-known economic consulting firms.

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Our Approach

Consumer Surveys

Surveys that will be subject to cross-examination in deposition and in the courtroom require careful planning, clear analysis, unambiguous communication, and dedicated follow-through. AMS has the breadth of experience needed to thoroughly understand our clients' needs and devise the appropriate research solution for every type of litigation.

We know the standards of court-approved research and can anticipate the types of criticism that can arise. We design our surveys to be exceptionally robust and able to withstand serious scrutiny by the opposing team.

Rebuttal Reports

When critiquing the reports of opposing experts, we apply the same rigorous standards as when designing our own market research surveys. We examine all of the critical methodological issues, including questionnaire design, survey implementation and data analysis, in order to uncover potential weaknesses. Often we can identify and perform additional analyses of the data to further evaluate the opposing experts' findings.

Case Consultation

AMS advises attorneys on the likely benefits of collecting market research data, assists with the deposition and trial questioning of opposing experts, and consults on a range of marketing issues related to litigation. We also perform key analytical tasks, including market analysis, sales forecasting, review and analysis of marketing documents, and data management and statistical analysis.



www.ams-inc.com



Areas of Expertise

AMS conducts market research surveys for cases in which consumer perceptions and preferences are an important determinant of liability and damages. In many instances, we are asked to determine how individuals would have behaved “but for” the alleged acts of the offending party. AMS has used survey research to evaluate claims of:

- Trademark and trade dress infringement, genericism, and dilution, which may require analysis of consumer perceptions, behavior, secondary meaning and likelihood of confusion
- Deceptive advertising and misrepresentation, which require analysis of the incidence and degree of consumer misperceptions
- Antitrust violations, which require a definition of the relevant market based on consumer use and consideration of alternative products
- Class certification issues, to provide evidence showing commonality, materiality, reliance, and whether claims of the plaintiff parties are typical of the claims of the putative class
- Patent damages, which require the analysis of the value of an infringing feature

Network of Experts

One of AMS’ key strengths is our extensive experience working with experts across a range of litigation survey projects. Through our rich network of academics and practitioners, we can help you identify the expert or group of experts with the most appropriate knowledge and experience for each individual case. Areas of expertise include:

- Trademarks, trade dress, secondary meaning and dilution
- Advertising and marketing communications
- Market research methodology
- Consumer preference and behavior
- Brand equity and loyalty
- Product development and innovation
- E-commerce
- Customer satisfaction and measurement
- Economics
- Sales promotion

AMS also assists on cases requiring sophisticated econometric analysis, often collaborating with leading economic consulting firms across the country. Together, we can assemble an outstanding team of experts for virtually any type of litigation.



Representative Cases

Intellectual Property

- Evaluated trade dress infringement among health care professionals to assess the degree to which specific product design elements contributed to confusion
- Assessed the likelihood of trademark confusion among current and potential users of media services
- Conducted consumer research to determine “but-for” sales for a software product, had a product with an infringing feature not been on the market

Deceptive Advertising and Misrepresentation

- Evaluated consumer preferences in a case involving a variety of unfair sales practices in the financial services industry
- Measured consumer response to disparaging advertising for a family of household products
- Determined consumer perception of a drug advertising campaign and the potential impact on sales of a competitor’s drug
- Assessed the potential impact on consumers of allegedly deceptive advertising in the business machines industry

Antitrust

- Evaluated the relevant market for a particular type of industrial equipment against which anti-competitive claims were made
- Examined the impact of unfair market power on consumer choices relating to financial transactions
- Evaluated consumer response to potential changes in brand image relating to a food product merger case

Class Certification

- Helped defeat class certification for purchasers of certain building materials by demonstrating significant variability in purchaser characteristics and experiences
- Quantified the lack of typicality of class members claiming confusion between two mutual fund names





Applied Marketing Science has conducted market research and consulted on marketing issues for these representative legal and corporate clients:

Legal

Alston & Bird
Arnold & Porter
Baker Botts
Baker & Daniels
Baker & McKenzie
Banner & Witcoff
Brinks Hofer Gilson & Lione
Bromberg & Sunstein
Clifford Chance
Cox Smith
Davis Polk & Wardwell
Dewey & LeBoeuf
Dinsmore & Shohl
Dorsey & Whitney
Drinker Biddle
Fenwick & West
Fitzpatrick, Cella, Harper & Scinto
Foley Hoag
Foley & Lardner
Fried, Frank, Harris, Shriver & Jacobson
Goodwin Procter
Gowling Lafleur Henderson
Grippo & Elden
Haynes & Boone
Heller Ehrman White & McAuliffe
Holland & Knight
Hughes Hubbard & Reed
Irell & Manella
Jeffer, Mangels, Butler & Marmaro
Kaye Scholer
K&L Gates
Liner Yankelevitz Sunshine & Regenstreif
Lynch, Brewer, Hoffman & Fink
McDermott, Will & Emery
Mirick O'Connell
Morris, Manning & Martin
Nixon Peabody
Nutter, McClennen & Fish
Patterson Belknap Webb & Tyler
Paul, Hastings, Janofsky, & Walker
Paul Weiss
Peabody & Arnold

Perkins Coie
Ropers, Majeski, Kohn & Bentley
Ropes & Gray
Rutan & Tucker
Schiff Hardin
Sedgwick, Detert, Moran & Arnold
Sheppard, Mullin, Richter & Hampton
Simpson, Thacher & Bartlett
Skadden, Arps, Slate, Meagher & Flom
Stroock & Stroock & Lavan
Sugarman, Rogers, Barshak & Cohen
Sullivan & Cromwell
Thompson Coburn
Troutman Sanders
United States Department of Justice
Vinson & Elkins
Wachtell, Lipton, Rosen & Katz
Weil, Gotshal & Manges
Wiley Rein
WilmerHale
Wilson Sonsini Goodrich & Rosati
Winston & Strawn
Wolf, Greenfield & Sacks
Woodcock Washburn
Womble Carlyle Sandridge & Rice

Corporate

3M
American Airlines
American Medical Systems, Inc.
American Movie Classics Company
AOL
Associates Commercial Corp
AT&T Corporation
Baxter Healthcare Corporation
Bayer Corporation
Behr Process Corporation
Bell Helicopter
Biogen, Inc.
Blue Cross/Blue Shield of Florida
Borland Software Corporation
Boston Scientific Corporation
Brother Industries
Brown Forman
Chicago Cubs
Chiron Corporation
Church & Dwight
Claria Corporation
Clorox Company
COBE Cardiovascular, Inc.
Colgate-Palmolive Company
Commonwealth Edison
Cooper Industries
Daimler Chrysler
Deere & Company
Discover
Dow Chemical Company
Dr. Pepper
DUSA Pharmaceuticals, Inc.
E.I. du Pont de Nemours and Co.
Eastman Kodak Company
Enterprise Rent-A-Car Company
Ethicon, Inc.
Exelon Corporation
Fidelity Investments
FM Global
General Electric Company
General Mills
Georgia Power
Gillette Company
Google
Hewlett-Packard
Honeywell
Intel Corporation
Intuit, Inc.
Johnson & Johnson
JP Morgan Chase & Company
K-Swiss
Kimberly-Clark Corporation
Lifecore Biomedical, Inc.
Lucent Technologies
MasterCard International, Inc.
MCI Group
Mead Johnson
Merck & Company
Microsoft Corporation

Milgard Windows, Inc.
Milwaukee Electric Tool
MIT
Morton Grove Pharmaceuticals
Motorola, Inc.
National Grid Group
Nationwide Mutual Insurance Co.
Nellcor Puritan Bennett, Inc.
Ontario Hydro Energy, Inc.
Pacific Gas and Electric Company
PacifiCorp
Pella Corporation
Pfizer
Playtex Products, Inc.
Potomac Electric Power Company
Princess Cruises
Procter & Gamble Company
Prudential
Puma
S.C. Johnson & Son, Inc.
Schering-Plough
Schlumberger Limited
Siemens Medical Systems
Sikorsky Aircraft Corporation
Sirius Satellite Radio
Southern Company
Sovereign Bank
Sprint Communications Company
Stanley Works
State Farm
Steelcase, Inc.
Subway
Sun Life Insurance Co.
Sunrise Medical
Thrivent Financial for Lutherans
TiVo
Urban Outfitters
Volkswagen of America, Inc.
Warner Chilcott
Warner Lambert
WE: Women's Entertainment
Wyeth
Xerox Corporation
XM Satellite Radio



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