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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91184978
Party	Defendant Walgreen Co.
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Date	02/23/2011
Attachments	2011.02.23 Testimony Affidavit of Dr. Simonson.pdf ( 4 pages )(849747 bytes ) 2011.02.23 Testimony Affidavit of Dr. Simonson Exhibit 1 Redacted.pdf ( 48 pages )(2256902 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

McNEIL-PPC, INC.,

Opposer,

-against-

WALGREEN CO.,

Applicant.

**Opp. No. 91184978**

**AFFIDAVIT OF DR. ALEX SIMONSON  
PRESENTED AS TRIAL TESTIMONY FOR WALGREEN CO.  
PURSUANT TO 37 C.F.R. §2.123(b) AND STIPULATION BY THE PARTIES**

I, Alex Simonson, Ph.D., having been duly sworn, do depose and state the following based on my own personal knowledge:

1. I am President of Simonson Associates, Inc., a marketing research and consulting firm specializing in brand protection, communications perception, and trademark infringement.
2. Simonson Associates, Inc. was retained by Walgreen Co. in the case of *McNeil-PPC, Inc. v. Walgreen Co.*, an Opposition pending at the Trademark Trial and Appeal Board (Opposition No. 91184978). The case involves the registrability of the mark "WAL-ZYR" by Walgreen Co. (Serial No. 76/682,070).
3. Simonson Associates, Inc. was commissioned to survey the likelihood of confusion, if any, between WAL-ZYR and ZYRTEC. I personally designed and supervised the implementation of the survey.
4. Attached as Exhibit 1 hereto is a copy of the expert report I provided to Walgreen Co. about the survey (hereinafter "the Report"). Page 1 of the Report identifies the purpose of

the survey. Having designed the survey, supervised its implementation, and authored the Report, I am competent to testify about the survey.

5. As indicated in Appendix A of the Report, I am competent to design and implement likelihood of confusion surveys in matters involving trademarks. I have a Ph.D. in marketing, *with distinction*, from Columbia Business School, 1994; a J.D. from NYU School of Law, 1987; and an A.B. *magna cum laude*, from Columbia College, Columbia University, 1984. I have been professionally active in trademark survey research since as early as 1990. I have personally designed and implemented numerous likelihood of confusion surveys for both Trademark Trial and Appeal Board proceedings and federal court cases. My background and qualifications are discussed at further length in Appendix A of the Report.

6. The survey I designed was conducted via mall-intercept interviews across 12 markets in the United States. The target sample size was 400 respondents. The survey utilized an “Ever-Ready” type design in the manner normally employed in TTAB cases (showing cards with names and product categories). That design, based on the case of *Union Carbide Corp. v. Ever-Ready Inc.*, 188 USPQ 623 (7th Cir. 1976), has long been accepted and relied on by the Trademark Trial and Appeal Board and the federal courts. The survey followed generally accepted standards and practices including the use of a control group. A summary of the methodology appears on Page 2 of the Report, while a more detailed discussion of the methodology appears on Pages 4-9. Additional materials relating to the methodology are contained in the Report, as follows:

- Appendix B: screening questionnaire and main questionnaire used for the survey;
- Appendix C: interviewer and supervisor instructions;
- Appendix D: validation questionnaire and reporting letter;

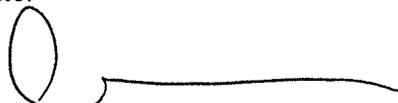
- Appendix E: survey data; and
- Appendix F: survey stimuli (cards shown to respondents for each cell).

7. The results of the survey indicate that there is a low percentage of confusion between WAL-ZYR and ZYRTEC. More specifically, the results indicate that about 3% of respondents (to 3.5% depending on rounding), net of noise, confuse WAL-ZYR with ZYRTEC. A summary of my conclusions is set forth on Page 3 of the Report, while a more detailed discussion of the findings appears on pages 10-12.

I do hereby state that the above is true and accurate.

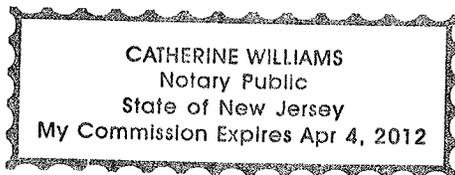
February 15, 2011

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Signature

State of NEW JERSEY )  
County of BERGEN ) s.s.

Sworn and subscribed before me this 15 day of Feb, 2011.



  
\_\_\_\_\_  
Notary Public

**CERTIFICATE OF FILING**

I hereby certify that the above foregoing "Affidavit of Dr. Alex Simonson Presented as Trial Testimony For Walgreen Co. Pursuant to 37 C.F.R. §2.123(b) and Stipulation By The Parties," with accompanying Redacted Exhibit 1 and Confidential Exhibit 1, was filed electronically with the Trademark Trial and Appeal Board on February 23, 2011.

  
Michelle Calkins

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above foregoing "Affidavit of Dr. Alex Simonson Presented as Trial Testimony For Walgreen Co. Pursuant to 37 C.F.R. §2.123(b) and Stipulation By The Parties," with accompanying Redacted Exhibit 1 and Confidential Exhibit 1, was served by first class mail and e-mail on February 23, 2011 to:

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Michelle L. Calkins

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

McNEIL-PPC, INC.,

Opposer,

-against-

WALGREEN CO.,

Applicant.

**Opp. No. 91184978**

**EXHIBIT 1**  
**(REDACTED)**

**TO THE**

**AFFIDAVIT OF DR. ALEX SIMONSON  
PRESENTED AS TRIAL TESTIMONY  
FOR WALGREEN CO.  
PURSUANT TO 37 C.F.R. §2.123(b) AND  
STIPULATION BY THE PARTIES**

REPORT OF A SURVEY TO DETERMINE  
THE LIKELIHOOD OF CONFUSION, IF ANY, BETWEEN  
WAL-ZYR ALLERGY MEDICATIONS  
AND ZYRTEC

July 2009

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## BACKGROUND AND PURPOSE

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The law firm of Leydig, Voit & Mayer, Ltd. commissioned Simonson Associates, Inc. to conduct a survey to determine the likelihood of confusion, if any, between the name WAL-ZYR for allergy medications and ZYRTEC. The study was conducted in the context of an opposition to a registration of the WAL-ZYR name in the U.S. Patent and Trademark Office.

The survey was designed and implemented by Simonson Associates, Inc. under the supervision of Dr. Alex Simonson. A brief bio and a full C.V. of Dr. Simonson are attached hereto as Appendix A.

## SUMMARY OF METHODOLOGY

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The survey was conducted via mall-intercept interviews across 12 markets in the continental United States. Respondents were screened on the mall floor and brought to interviewing rooms at the malls to be interviewed.

An Eveready-type approach was used in that respondents in the test group were provided the WAL-ZYR name and asked a series of questions designed to assess confusion as to source, affiliation or authorization. Those in the test group were shown a card with the term WAL-ZYR and beneath it the category “Allergy medications” and asked questions.

The survey employed a control group in addition to the test group. The control group was designed to determine any level of noise, that is, confusion caused by factors other than the WAL-ZYR name, such as guessing. The control stimulus was designed to have the “Wal” prefix but a suffix other than “zyr,” with the same product category description (“Allergy medications”) and the ending ZEE (as having the same first letter as ZYRTEC and a meaning of the letter Z, the first letter in ZYRTEC) . The control stimulus shown to the control group was WAL-ZEE.

Once respondents were provided with the name-cards, questions were asked to determine confusion as to source, as to affiliation and as to authorization or permission. The respondents in the control group were asked the identical questions to those in the test group.

## CONCLUSIONS

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The results of the survey indicate that 3% of respondents (to 3.5% depending on rounding), net of noise, confuse the name WAL-ZYR for allergy medications with ZYRTEC or the makers of ZYRTEC. An additional 1% of respondents may or may not be confused as discussed later in this report. The study was conducted in accordance with generally accepted standards and practices and indicates that there is a low percentage of confusion between the WAL-ZYR brand name and the ZYRTEC brand name.

## DETAILED METHODOLOGY

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In engaging in this project, I was guided by standards typically used and cited in our field with regard to the admissibility of surveys (including the underlying data, analysis and conclusions), contained in the Manual for Complex Litigation, 4th ed., 2004, Federal Judicial Center and the “Reference Guide on Survey Research” by Shari S. Diamond, J.D., Ph.D., in the Reference Manual on Scientific Evidence, 2d ed., 2000, Federal Judicial Center.

Briefly stated, these guidelines set forth that surveys for litigation are designed to comport with the generally accepted standards and practices in the industry for designing and implementing survey research. These various standards and practices all converge on the following essential set of conditions that describe a proper survey:

- The proper universe be identified and examined.
- A representative sample be drawn from that universe.
- The study design be probative and valid including that the questioning of respondents be correct and unbiased and that there are proper and probative control mechanisms to be able to arrive at valid and meaningful conclusions.
- The questions be framed in a clear, precise, non-leading manner, and the instrument for data collection should be properly designed to be free of design-induced biases.
- The interviewing be conducted properly; the interviewers be well trained, have no knowledge of any pending litigation or purposes for which the data would be used and administer the questionnaire properly in accordance with the study directions.
- Once gathered, the data be accurately and fully analyzed and reported.

Adherence to these guidelines provides the best assurance that the data collected are valid and can be relied upon to draw conclusions regarding the state of mind of relevant consumers.

### **The Relevant Universe of Interest**

The relevant universe for this study was defined as adult males and females 18 years of age and older who purchased in the past 6 months or were likely to purchase in the coming 6 months an over-the-counter allergy-relief medication. As is typical in survey methodology, the survey excluded those few persons who are, or who have household members who are, employed in fields that would give them special knowledge or insight about this subject, namely those employed in advertising or marketing research; as doctors or pharmacists; those who work for a company that makes or distributes over-the-counter allergy relief medications; or

those who work as a manager of a store that sells over-the-counter allergy-relief medications. Those who participated in another survey in a mall in the past 30 days were also excluded from participation, as were people who needed eyewear when they view brand names but did not have any present. These are also generally accepted procedures. The actual wording of the screening questions is shown in the questionnaire, set forth in Appendix B.

### **Sampling Plan and Sample Size**

Shopping malls were used as a means of identifying relevant consumers. This method has been widely used and relied upon by market researchers. Numerous business decisions are made based on results derived from studies that employ such plans. These kinds of studies have also been accepted for use by courts (in Lanham Act cases) and various adjudicatory and regulatory bodies (like the F.T.C., the NAD and the TTAB).

A multi-stage sampling plan was executed in interviewing facilities located in shopping malls as follows:

#### **Metropolitan Area and Mall Selection**

Twelve markets were selected, three in each of the four U.S. census regions. The markets and actual malls were selected based on our experience that the facilities employ competent and professional interviewers and managers. Interviewing was conducted in the following markets:

#### ***East***

Boston  
Massapequa  
Philadelphia

#### ***Midwest***

Chicago  
Minneapolis  
St. Louis

#### ***South***

Charlotte  
Nashville  
Tampa

#### ***West***

Denver  
Los Angeles  
Portland

### **Screening Quotas per Mall and Sample Size**

To ensure against skewing toward any particular age group or gender, a *screening quota* was employed in which males and females, aged 18 years and older, were approached in six age groupings (three for each gender) proportionate to their presence in the population (based on census data) (called a “screening quota”). Screening quotas are a well-accepted method of sampling.

In this manner, these age and gender groups were proportionately approached in the screening process for the purpose of determining eligibility. While screening was in proportion to population, actual inclusion in the sample was not necessarily, and need not be, proportional to census demographics. Once a respondent met age screening needs, inclusion in the study was based on the fact that he or she met all the stated qualifying criteria. Screening quotas were provided equally to markets, with completed interviews falling naturally based on incidence of qualification in each of the markets. A total of 400 respondents (200 in each cell) was the targeted sample size.

### **Double-Blind Interviewing**

The study was administered under “double-blind” conditions. That is, neither respondents nor interviewers were informed of the purpose or sponsor of the study.

### **Interviewing Procedures**

Both the screening questionnaire (or “screener”) and the main questionnaire were conducted on computer (CAPI, Computer Assisted Personal Interviewing). This eliminates skip-pattern errors (i.e., not asking the proper questions or asking questions that one should not have been asked due to a full-filter question), erasures, and other administrative errors and allows for automated rotation of specified questions to avoid order biases and randomization of questions as specified. CarbonView programmed and hosted the CAPI questionnaire. Data were entered by professional interviewers directly into the computer contemporaneously with interviewing.

I prepared detailed field supervisor and interviewer instructions that appear in Appendix C. They set forth guidelines for the interviewing procedures including items like probing instructions to ensure only neutral probes and no interpretation of questions to ensure uniformity in interviewing. To ensure proper administration of the study, a representative from each interviewing facility was briefed by our field supervisor and required to contact our field supervisor daily with updates, questions or concerns.

## **Stimuli**

Respondents were assigned to one of two groups or “cells,” the test cell or the control cell. The test cell respondents (designated cell RR) were shown a card with the WAL-ZYR name and the category “Allergy medications.”

Control groups are designed to measure a level of noise (a placebo effect by analogy) caused by guessing, yea-saying, or other factors like similarity of product category, etc. Thus, so as to identify a level of noise, it is a standard and generally accepted practice that a control stimulus shown to a control group should be similar to the test stimulus but absent the alleged infringing elements. The control-cell respondents (here, randomly designated as cell “QQ”) were shown the identical WAL prefix, the identical category of products, the identical prefix-suffix composition of the name, but absent the “ZYR” suffix, as follows:

- The respondents in the control cell were shown a card with the name WAL-ZEE and the category “Allergy medications.”

(Copies of the cards shown to respondents are set forth in the final appendix, Appendix F.)

## **Questionnaire**

In accordance with generally accepted standards and practices, respondents were advised that they had the option of responding not sure for any question that they were unable to answer because they had formed no opinion. The main questionnaire (set forth with the Screening Questionnaire in Appendix B) provided respondents with these instructions as read by interviewers as follows:

In this survey, I’m going to be asking for your beliefs and understanding. There are no right or wrong answers so please do not guess. If for any question I ask, you haven’t formed a belief or understanding, or you just don’t have an opinion, please just tell me so.

Respondents were then shown a physical card for that particular cell (one card per cell). To assure that the correct card was provided, the interviewer was required to punch in the letters on the top right of the card to assure they matched the cell for that particular interview.

The respondents were then told:

I will now be handing you a card that has on it a brand name along with a description of the products that you would find bearing the brand name. Please take a look at the brand name and the description of the products taking as much time as you need to see the brand name and product category and when you are finished, please let me know.

Respondents were then provided with four separate opportunities to evidence any confusion.

Confusion as to Source (first inquiry)

Q1a            Though you may or may not have seen or heard of this specific brand name before, do you have an opinion as to what company makes or puts out the products using the name shown on this card?

If a respondent indicated “yes,” two follow-up open-ended questions were asked and responses recorded verbatim:

Q1b            What company? (*record verbatim*)  
Q1c            What makes you say that? (*record verbatim*)

Confusion as to Source (second inquiry)

Respondents were asked another question to assess confusion as to source even if they were unaware of the company that makes or puts out the products using the name shown on the card:

Q2a            Do you believe that the company that makes or puts out the products using the name shown on this card makes or puts out any other products or brands, or not?

If a respondent indicated that it “does,” two follow-up open-ended questions were asked and responses recorded verbatim:

Q2b            What products or brands? (*record verbatim*)  
[each recorded on separate line]

[Asked for each mention:]

Q2c            What makes you say [**respondent’s answer**]? (*record verbatim*)

## Confusion as to Affiliation and Authorization

Respondents were then asked a question to assess confusion as to affiliation or authorization:

- Q3a            Do you believe that the company that makes or puts out the products using the name shown on this card is affiliated with or authorized by any other company or brand, or not affiliated with or authorized by any other company or brand?

If a respondent indicated that it is “affiliated or authorized,” two follow-up open-ended questions were asked and responses recorded verbatim:

- Q3b            What company or brand? (*record verbatim*)  
Q3c            What makes you say that? (*record verbatim*)

## Respondent Verification

Independent telephone follow-up "validation" calls were attempted for 100% of the sample by a company called Park Research to verify that the interview did in fact take place and that only qualified respondents were interviewed. A listing of each respondent's name and phone number was sent to them for verification.

The validation questionnaire appears in Appendix D. The independent validating service was given the responsibility of making a minimum of three attempts to re-contact each respondent by phone to confirm that:

- Such a person actually existed.
- He/she met the universe requirements for this study.
- He/she was actually interviewed for this study.

## Interviewing Period

Interviewing was conducted from June 9, 2009 through June 24, 2009.

## FINDINGS

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**Sample.** A total of 404 interviews were conducted, 203 respondents in the test cell designated “RR” (WAL-ZYR), and 201 respondents in the control cell designated “QQ” (WAL-ZEE).

**Validation.** 100%-attempted validation was conducted (by a third-party independent validation company). Of the 404 completed surveys, 404 provided phone numbers (100%). Of these, 267 respondents (66%) were successfully recontacted, a very high rate of recontact. (This percentage of validation is far in excess of the 10-15% used in marketing research studies for commercial purposes.) Of those contacted, there were two discrepancies found. These interviews were removed from the data set (Resp ID #s 23676 Los Angeles, and 89721, Boston). The validation questionnaire and letter are set forth in Appendix D hereto and the data is set forth in Appendix E.

**Gender and Age.** The gender and age composition of the respondents by cell is set forth below in Table 1.

**TABLE 1**

		Age				
<b>Gender</b>		18-34	35-49	50+	Total	
<b>WAL-ZYR</b> (cell RR)	Male	Count	39	27	27	93
		% of Total	19.4%	13.4%	13.4%	46.3%
	Female	Count	37	32	39	108
		% of Total	18.4%	15.9%	19.4%	53.7%
	Total	Count	76	59	66	201
		% of Total	37.8%	29.4%	32.8%	100.0%
<b>WAL-ZEE</b> (cell QQ)	Male	Count	42	28	24	94
		% of Total	20.9%	13.9%	11.9%	46.8%
	Female	Count	39	31	37	107
		% of Total	19.4%	15.4%	18.4%	53.2%
	Total	Count	81	59	61	201
		% of Total	40.3%	29.4%	30.3%	100.0%

**Confusion as to Source.** Between 41% and 45% of respondents in each cell had an opinion as to what company makes or puts out the products using the names shown on the cards, as set forth below in Table 2.

**TABLE 2**

**Q1A: Though you may or may not have seen or heard of this specific brand name before, do you have an opinion as to what company makes or puts out the products using the name shown on this card?**

		Yes	No	Don't Know/Not sure	Total
<b>WAL-ZYR</b> (cell RR)	Count	90	73	38	201
	%	44.8%	36.3%	18.9%	100.0%
<b>WAL-ZEE</b> (cell QQ)	Count	82	75	44	201
	%	40.8%	37.3%	21.9%	100.0%

**REDACTED**

Four respondents in the test cell (2%) and 2 respondents in the control cell (1%) mentioned ZYRTEC or Johnson & Johnson, the makers of ZYRTEC.

Between 31% and 33% of respondents believed that the company that makes or puts out the products using the name shown on the card makes or puts out any other products or brands, as set forth below in Table 3.

**TABLE 3**

**Q2A: Do you believe that the company that makes or puts out the products using the name shown on this card makes or puts out any other products or brands, or not?**

		Yes	No	Don't Know/Not sure	Total
<b>WAL-ZYR</b> (cell RR)	Count	62	33	106	201
	%	30.8%	16.4%	52.7%	100.0%
<b>WAL-ZEE</b> (cell QQ)	Count	67	31	103	201
	%	33.3%	15.4%	51.2%	100.0%

When asked to state the other products or brands, there were a myriad of responses. Four respondents in the test cell (2%) and 2 respondents in the control cell (1%) did not specify a company in response to Q.1b but mentioned allergy relief products without stating particular brand names. This may or may not indicate confusion.

Five respondents in the test cell (less than 3%) and one respondent in the control cell (1%) mentioned ZYRTEC (or J&J) in response to the question “what products or brands.” A full list of the verbatim responses to “what products or brands” is set forth in the data Appendix.

**Confusion as to Affiliation or Authorization.** Table 4, below, sets forth the responses to the questions assessing confusion as to affiliation or authorization. Between 15% to 19% of respondents mentioned that that the company that makes or puts out the products using the name shown on the card shown to them is affiliated with or authorized by any other company or brand.

**TABLE 4**

**Q3A: Do you believe that the company that makes or puts out the products using the name shown on this card is affiliated with or authorized by any other company or brand, or not affiliated with or authorized by any other company or brand?**

		Yes	No	Don't Know/Not sure	Total
<b>WAL-ZYR</b>	Count	39	59	103	201
(cell RR)	%	19.4%	29.4%	51.2%	100.0%
<b>WAL-ZEE</b>	Count	31	50	120	201
(cell QQ)	%	15.4%	24.9%	59.7%	100.0%

2% of respondents in the test cell (4 respondents) and none in the control cell mentioned ZYRTEC (or J&J).

Summary of Confusion

Aggregating the mentions of ZYRTEC, J&J without double-counting respondents yields a net of 3% to 3.5% confusion (10 respondents (5%) in the test cell and 3 respondents (1.5%) in the control cell) between WAL-ZYR and ZYRTEC or the makers of ZYRTEC. An additional 1% of respondents, as discussed above, mentioned allergy medication and this may or may not evidence confusion.

The total cost for the study was \$55,000, from which all project and research expenses were paid by Simonson Associates, Inc. The cost for testimony is \$750/hr plus any expenses.

Executed this 7<sup>th</sup> day of July, 2009.

Signed:  \_\_\_\_\_

## APPENDIX A

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### **BRIEF BIO OF AUTHOR AND FULL CV OF AUTHOR**

### **Brief Bio of Dr Alex Simonson**

Dr. Alex Simonson is President and founder of Simonson Associates, Inc., a brand strategy and research firm specializing in brand protection – communications perception and trademark infringement. Formerly, he was co-head of Guideline Research Corporation's division in charge of brand protection strategy and research. Dr. Simonson has consulted for many of the Fortune 100 companies, numerous law firms, agencies, and communications firms across numerous industries.

Dr. Simonson holds a Ph.D. in marketing, *with distinction*, from Columbia Business School, 1994, a J.D. from New York University School of Law, 1987, and A.B., *magna cum laude*, from Columbia College, Columbia University, 1984. He is Associate Professor of Marketing at Seton Hall University, Stillman School of Business and a member of the Editorial Board of *The Trademark Reporter*, a leading intellectual property law review, the *Journal of Public Policy and Marketing*, a leading academic refereed journal published by the American Marketing Association and the *Intellectual Property Strategist*, a legal newsletter.

(As of Jun 09)

**Alex Simonson, Ph.D., J.D.**

## SYNOPSIS

### **Affiliations:**

President Simonson Associates, Inc., a marketing research firm and consultancy  
Associate Professor of Marketing, Seton Hall University, Stillman School of Business

### **Education:**

Ph.D. in Marketing, Columbia, 1994.  
JD, NYU, 1987.

## EDUCATION

Ph.D., *with distinction*, Marketing, February 1994  
Columbia Business School

Dissertation: *The Impact of Identical Brand Names on the Strength of New Brands and Original Brands: A Study of Brand Appropriation and Dilution*

J.D., May 1987  
New York University School of Law

A.B., *magna cum laude*, Political Science, May 1984  
Columbia University, Columbia College

## EXPERIENCE

### **Simonson Associates, Inc., Englewood Cliffs, N.J. (2000-Current)**

*President and Founder. See [www.simonsonassociates.com](http://www.simonsonassociates.com) for full description of firm offerings.*

### **Guideline Research Corporation, New York, N.Y. (1997-2000)**

*Vice President and Co-Head of division in charge of legal-related marketing research and brand equity research and consulting*

### **Alex Simonson, Ph.D., Washington, D.C. (1994-1997)**

*Consultant/Researcher*

### **Sorensen Marketing/Management Corp., New York, N.Y. (1990-1991)**

*Researcher (Project basis only): Designed & conducted primary survey research to determine brand, logo and ad perceptions, confusion, attitudes, brand awareness, and brand dilution. (Work included questionnaire design, sampling strategy, research design, content analysis, etc.)*

**International Business Development Corp., New York, N.Y. (1990-1991)**

*Research Associate (Part-time):* Conducted secondary and primary customer, competitor and industry analyses (for OEM markets) using CD-based and on-line data bases such as Lexis/Nexis, Disclosure, DJNS, ABI/Inform, BPO, etc., in-depth interviews, and telephone surveys. (IBDC is a consulting firm headed by former Booz, Allen and Hamilton principals.)

**ACADEMIC EXPERIENCE**

Fall 2008-Present

**Seton Hall University, South Orange, N.J.**

*Associate Professor of Marketing (Exec/Scholar in Residence).*

Fall 2000-Spring 2004 (visitor in year 2000-2001)

**Seton Hall University, South Orange, N.J.**

*Associate Professor of Marketing (full time).*

Fall 1995-Spring 2001 (on leave in 2000-2001)

**Georgetown University School of Business, Washington, D.C.**

*Assistant Professor of Marketing (full time).*

1993-1995

**Fairleigh Dickinson University, Teaneck, N.J.**

*Assistant Professor of Marketing (full time).*

Fall 1992

**Baruch College, City University of New York, New York, N.Y.**

*Adjunct Lecturer of Business (undergraduate capstone course).*

**RESEARCH EXPERTISE**

Brand strategy, identity and image including conceptualizations, managing identity, branding and design, empirical structure of "image," research for protection of brands.

Bridging legal theories of brand and advertising protection with marketing strategy and research (brand confusion, dilution, false advertising, deception, disparagement, warranties).

**PUBLICATIONS**

**Books**

*Marketing Aesthetics: The Strategic Management of Brands, Identity and Image*, 1997, The Free Press, Simon & Schuster (9<sup>th</sup> printing) (coauthored with B. Schmitt) (managerial business book presenting a new conceptual framework for understanding consumer responses to trade dress and how to manage trade dress). Foreign Translations and Editions: German, Japanese, Spanish, Chinese (2), Korean, Polish, Portuguese, Thai, Turkish, Romanian, Russian.

### **Edited Books**

Proceedings of the 1998 Marketing & Public Policy Conference, American Marketing Association, 1998 (edited with A. Andreasen and N. C. Smith).

### **Book Chapters**

"The Effectiveness of Intellectual Property Laws," in *The Handbook of Marketing and Society*, P. Bloom and G. Gundlach, eds., Sage Publications, pp. 312-334, 2001.

"Survey Evidence in False Advertising Cases," *Advertising Law in the New Media Age*, Practising Law Institute, pp. 309-347, October 2000.

### **Refereed Articles**

"Coupling Brand or Organizational Identities through Partnering," Keynote Article, *Design Management Journal*, 9 (1). 9-14, 1998 (coauthored with B. Schmitt).

"Managing Corporate Image and Identity," *Long Range Planning*, 28 (5), 82-92, 1995. (coauthored with B. Schmitt and J. Marcus).

"Processes for Managing Image, Identity, and Design Within the Corporation," *Design Management Journal*, 6 (1), 60-63, 1995. (coauthored with B. Schmitt and J. Marcus).

"'Unfair' Advertising and the FTC: Structural Evolution of the Law and Implications for Marketing and Public Policy," *Journal of Public Policy and Marketing*, 14 (2), 321-327, 1995.

"Survey Evidence in Deceptive Advertising Cases Under the Lanham Act: An Historical Review of Comments From the Bench," *The Trademark Reporter*, 84 (5), 541-585, 1994. (coauthored with J. Jacoby and A. Handlin). Reprinted in Practising Law Institute Course (B4-7167) "False Advertising and the Law: Coping with Today's Challenges," September 1996.

"How and When do Trademarks Dilute: A Behavioral Framework to Judge 'Likelihood' of Dilution," *The Trademark Reporter*, 83 (2), 149-174, 1993.

"Permissible Puffery Versus Actionable Warranty in Advertising and Salestalk: An Empirical Investigation," *Journal of Public Policy and Marketing*, 12 (2), 216-234, 1993. (coauthored with M. B. Holbrook).

"Examining Consumer Losses and Dissatisfaction Due to Broken Sales and Service Agreements," *Journal of Consumer Satisfaction, Dissatisfaction and Complaining Behavior*, 4, 50-61, 1991.

### **Other Articles**

"Limits and Considerations in Control Groups," *The Intellectual Property Strategist*, Vol. 14, #9 (June) 2008, pp. 3-4.

"Survey Power," *The Intellectual Property Strategist*, Vol. 14, #3 (December) 2007, pp. 3-4.

"Online Interviewing For Use in Lanham Act Litigation," *The Intellectual Property Strategist*, Vol. 14, #2 (November) 2007, pp. 3-4.

"Survey Design and Methodology in False Advertising Cases," *IP Review*, (Spring), 2006, pp. 20-22.

"How Control Groups Can Help IP Attorneys to Meet Their Evidentiary Needs," *The Intellectual Property Strategist*, Vol. 8 #3 (December), pp. 5-6, 2001.

"How to Enhance Trademark Survey Evidence," *The Intellectual Property Strategist*, Vol. 6 #1 (October), pp. 1-3, 1999.

"Surveys on Trademark Confusion: Basic Differences," *The Intellectual Property Strategist*, Vol. 5 #2 (November), pp. 1,9-10, 1998.

"The 'Experiential Landscape'," *Marketing Review*, 53 (3), 1997.

### **Notes & Book Reviews**

Review of "Brand Warfare" by David D'aLessandro with Michele Owens, submitted March 2003, *The Trademark Reporter*.

Review of "Essentials of Intellectual Property," by Poltorak and Lerner, forthcoming, *The Trademark Reporter*.

Review of "Intellectual Property in the Global Marketplace," by Simensky, Bryer, and Wilkof, April 2000, *The Trademark Reporter*.

Review of "Intellectual Property Infringement Damages: A Litigation Support Handbook," by Russell L. Parr, September 1999, *The Trademark Reporter*.

Review of *Defending Your Brand against Imitation*, by Judith Lynne Zaichkowsky, *Journal of Public Policy and Marketing*, 17, 1 (Spring), 1998, pp. 143-146.

Review of *The Impact of Advertising Law on Business and Public Policy*, by Ross Petty, *Journal of Marketing*, 58, 4 (October), 123-125, 1994.

"Warranties and the Law: Use Caution," comment on "Leverage Your Warranty Program" (Menezes and Quelch 1990): *Sloan Management Review*, 32, 2 (winter) 7-8, 1991.

## PRESENTATIONS

### Corporate, Academic and Executive Presentations

"Advanced Issues in Claims Substantiation", American Conference Institute, Advertising Law Conference, Advanced Claim Substantiation Workshop, New York, January 2009.

"Comparisons and Assessments of Online, Computer-Based and Traditional Methods for Advertising Perception Studies for use in Litigation and Self-Regulation," in *Consumer Perception: The Fine of the Consumer Survey*, NAD Annual Conference, "What's New in Comparative Advertising, Claim Support and Self-Regulation," New York, September 2007.

"Puffery: Marketing and Research Issues," in *Successful Comparative Advertising*, NAD Annual Conference, New York, Oct 2004.

"Can Actual Dilution Really Be Reliably and Validly Measured," in *Using and Defending Consumer Surveys in Advertising and Trademark Cases*, 2003 AMA Forum on Marketing and the Law, May 2003.

"Cognitive Psychology: Storage and Retrieval," in *Battle for the Brand, An Advanced Symposium on Trademarks and Marketing*, International Trademark Association (INTA and BNEF), March 2002.

"Survey Research in the Courtroom: An Introduction to Legal Research," American Association for Public Opinion Research, January 2002

"Empirical Evidence in NAD Proceedings," *2001 Marketing and Public Policy Conference*, May 2001.

"Brand Strategy and Experiential Marketing," Helsingin Sanomat (the largest media co. in Finland) and JOKO Executive Education, January 11-12, 2001, Helsinki, Finland.

"*Claims and Communications Research for Legal Protection*," co-taught with Robert Reitter at Guideline, to companies including American Home Products, Kraft and Bayer, 1998-2000.

"Experience the Experience," presentation to Long Haymes Carr Advertising Agency, Winston-Salem, N.C., August 1998.

"Experiential Marketing," *The Experiential Roundtable '98: Bringing Marketing & Corporate Communications to Life*, sponsored by The Jack Morton Company, New York City, member of brand expert roundtable, May 15, 1998.

"Protecting Brands and Identity," *Seminar in Corporate Identity*, Columbia Business School MBA Program, March 12, 1998.

"Integrated Brand Communications," *Council of Corporate Communications Executives and Council on Corporate Communications Strategy*, (council of most senior level communication executives from Fortune 500 companies), January 5-6, 1998, Miami Beach, Florida, The Conference Board.

"Developing a Corporate Image that is Positive, Enduring and Resilient," general session, one of 5-person panel, *1998 Corporate Image Conference -- Advancing Your Image, Building Your Brand and Managing Your Reputation*, January 27-28, 1998, New York City, The Conference Board.

"Creating Brand Identities," *Executive Seminar* sponsored by Desgrippes Gobé & Associates Image and Identity Consulting, December 1997. (coauthored with B. Schmitt).

"Brand Management Through Aesthetics," *Brand Management Day*, Georgetown University School of Business, September 26, 1997.

"Protecting Brands and Trade Dress," *Seminar in Corporate and Brand Identity*, Columbia Business School MBA Program, March 13, 1997.

"Consumer Perceptions of Trade Dress," *1996 Association for Consumer Research Annual Conference*, October 1996. (coauthored with B. Schmitt).

"Corporate Aesthetics Management: A General Framework for Managing Identity, Image and Consumer Impressions," *1994 Association for Consumer Research Asia Pacific Conference*, Singapore, June 13-16, 1994. (coauthored with B. Schmitt and J. Marcus).

## COURSES AND SEMINARS

### Executive Teaching

"*Brand Strategy*," Executive MBA Program, Helsinki School of Economics and Business, April, 2001, Helsinki, Finland.

"*Branding Strategy*," In-House MBA Program, Pharmacia Upjohn, January 9-10, 2001, Helsinki, Finland.

"*Branding and Communications*," In-House MBA Program, UPM-Kymmene, September 2000, Hilton Fort Lee, New Jersey.

"*Building and Maintaining Strong Brands*," Executive Certificate Program, Georgetown University, McDonough School of Business, Washington, DC, April 2000.

"*Corporate Branding Strategy*," Executive MBA Program, Helsinki University of Technology, Washington, DC, March 2000.

"*Brand and Identity Strategy*," Executive MBA Program, Helsinki School of Economics and Business Administration, New York, October 1999.

"*Marketing Experiences*," Executive MBA Program, Helsinki School of Economics and Business Administration, New York, October 1998.

"*Marketing Strategy through Aesthetics*," Executive MBA Program, Helsinki School of Economics and Business, New York, October 1997.

Co-author of executive program session entitled "*Managing a Brand's Aesthetic Identity*," for Columbia Business School Executive Marketing Program, Arden House, 1995.

### **Graduate and Undergraduate Courses Taught**

Corporate Branding Strategy (MBA);  
Building Strong Brands (MBA);  
Marketing Strategies (MBA);  
Building and Maintaining Strong Brands (undergraduate);  
Consumer Behavior (MBA and undergraduate);  
Marketing and Public Policy (MBA);  
Marketing Research (MBA and undergraduate);  
Marketing Research Seminar (MBA);  
Principles of Marketing (undergraduate); and  
Product Policy (undergraduate).

### **PROFESSIONAL POSITIONS AND HONORS**

#### **Editorial Board Memberships**

Editorial Board Member, *Journal of Public Policy & Marketing*, (a refereed scholarly journal published by the American Marketing Association), 1998-current.

Editorial Board Member, *The Trademark Reporter*, (a refereed scholarly journal on intellectual property published by the International Trademark Association), 1999-current.

Editorial Board Member, *The Intellectual Property Strategist* (an intellectual property newsletter published by Law Journal Newsletter), 1998-2004; 2007-current.

#### **Other Professional Activities**

Ad-hoc reviewer for the *Journal of Business Research*, Spring and Summer 2006.

Ad hoc reviewer for the *Journal of Macromarketing*, 2005.

Co-chair of conference entitled *Using and Defending Consumer Surveys in Advertising and Trademark Cases*, 2003 AMA Forum on Marketing and the Law, May 2003.

Ad-hoc reviewer for the *Journal of consumer Affairs*, Fall 2002, Spring 2003.

Co-Chair for session entitled "The 'Unknown Worlds' of Self-Regulation" What About This! Novel Advertising Appeals," Marketing and Public Policy Conference, May 2001.

Reviewer for the *American Marketing Association Summer Educator's Conference*, 1999.

Reviewer for the *Asia Pacific Journal of Management*, Special issue entitled "Marketing in the Asia Pacific," Spring 1998.

Conference co-chair of the 1998 *Marketing and Public Policy Conference*, (a refereed academic conference sponsored by the Marketing Science Institute, the *Journal of Public Policy and Marketing* and the American Marketing Association).

Chair for session entitled "What About This! Novel Advertising Appeals," *Association for Consumer Research Annual Conference*, 1998.

Reviewer for the *Association for Consumer Research*, 1997, 1998 Annual Conferences (a refereed academic conference for scholars of consumer behavior).

Reviewer for the *Journal of Public Policy and Marketing*, Special Issue on International Issues in Law and Public Policy, 1997 (a refereed scholarly journal of the American Marketing Association).

Reviewer for the *American Marketing Association Winter Educator's Conference*, 1997.

Reviewer for the *Marketing and Public Policy Conference*, 1997, 1999, 2001-2003 (a refereed academic conference sponsored by Marketing Science Institute, AMA, and the Journal of Public Policy & Marketing, an AMA publication).

Chair of session entitled "Affecting Consumers Through Identity and Design," *Association for Consumer Research Annual Conference*, 1996.

## AWARDS & HONORS

Round Table Group Scholar (2001-Current).

Visiting Professor, Bozell Advertising, New York City. (1996).

MSI-Designated Top Research Priority Grant for "Visual Aspects of Corporate Identity", (1995 with Bernd H. Schmitt and Jin K Han)

Awarded Ph.D. degree "*with distinction*" (1 or 2 Graduate School of Business Ph.D.s per year (i.e., 10% approx.)). (1994).

Passed Ph.D. Oral Exam "*with honors*" (highest level) (June 1992).

Fellowship from Columbia University (1989 - 1993).

Appointed by Dean to the Integrity Board of Columbia Business School (1989 - 1993).

Appointed to the Board of Directors of the Association of Doctoral Candidates, Columbia Graduate School of Business (1991 - 1993).

Appointed as an editor of the *Journal of International Law and Politics*, New York University School of Law (1985-1986).

## **MEDIA MENTIONS**

Harvard Business Review  
"Tom Peters" Web Site  
Business Week  
NPR Morning Edition  
FoxNews Channel  
BBC Television  
The Washington Post  
Forbes  
Forbes ASAP  
Advertising Age  
Women's Wear Daily  
The Conference Board (Various Reports and Publications)  
Jack Morton & Co. – an Interpublic Company  
Georgetown Business  
Journal of Business Strategy  
The Forward  
Numerous leading marketing textbooks – (see Google books for list)  
Numerous leading executive marketing books such as "legendary brands," "creative breakthrough products," etc.  
Kellogg on Branding: The Marketing Faculty of The Kellogg School of Management

## **PROFESSIONAL ASSOCIATIONS**

International Trademark Association  
Association for Consumer Research  
American Marketing Association  
American Forensic Association

## RECENT TESTIMONY

Within the preceding *four years* I have provided deposition or trial testimony as an expert witness in connection with the following cases:

1. *Schick v. Gillette (Dist. Conn., 3:03CV1668) (8/05);*
2. *Enterprise v. U Haul (E.D. Missouri) (6/06);*
3. *Static Control v. Lexmark (E.D. Kentucky) (11/06);*
4. *Patsy's v. Banas (E.D.N.Y) (1/07);*
5. *Dyson v. Maytag (D. Del. 05-434-GMS) (2/07);*
6. *Cartier v. Allied Marketing (S.D.N.Y., 06 Civ. 4698) (6/07);*
7. *Johnson & Johnson v. Actavis (S.D.N.Y.) (10/07);*
8. *Schiller v. Welch Allyn (S.D. Fl.) (11/07);*
9. *Johnson & Johnson v. Perrigo (S.D.N.Y.) (11/07);*
10. *Brighton v. Coldwater (S.D.Ca. 06 CV 01848 H-POR) (2/08);*
11. *Componentone LLC v. Componentart Inc. (W.D.Pa 2:05-CV-01122) (2/08);*
12. *Gary Stevens v. Southern States Cooperative, Inc. (E.D. Va Civ #. 3:07-cv-648) (5/08);*
13. *Safe Auto v. State Auto (S.D. Ohio, 2:07-cv-01121) (10/08);*
14. *Walgreen Co. v. Wyeth (N.D. Ill, 08-cv-5694) (06/09);*
15. *Charter v. DirecTV (E. Dist. Missouri, 4:09-cv-00730-RWS) (06/09).*

## APPENDIX B

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### QUESTIONNAIRE (SCREENER AND MAIN)

ID # \_\_\_\_\_

NAME PERCEPTION STUDY  
 - CAPI SCREENER -

<p><u>MARKET:</u></p> <p><b>East</b>          Boston          Massapequa          Philadelphia</p> <p><b>Midwest</b>          Chicago          Minneapolis          St. Louis</p> <p><b>South</b>          Charlotte          Nashville          Tampa</p> <p><b>West</b>          Denver          Los Angeles          Portland</p>	<p><u>INTERVIEWER ID#:</u>.....</p> <table style="width: 100%; text-align: center;"> <tr> <td>1</td><td>2</td><td>3</td><td>4</td><td>5</td><td>6</td> </tr> <tr> <td>7</td><td>8</td><td>9</td><td>0</td><td>X</td><td>Y</td> </tr> </table>	1	2	3	4	5	6	7	8	9	0	X	Y
1	2	3	4	5	6								
7	8	9	0	X	Y								

***Sight screen for women/men 18 years of age or older***

Hello, I'm \_\_\_\_\_ of Simonson Associates, a nationwide marketing research firm. We're conducting a study and I'd like to ask you a few questions. We have nothing to sell, but are only asking for your opinions.

A. Record Gender: (**circle response**)

Male	1
Female	2

B. Which of the following groups includes your age? (**Read list and circle response**)

Under 18 .....	1
----------------	---

▶ **Record and terminate**

18-34	2
-------	---

35-49	3
-------	---

50+	4
-----	---

▶ **Check age and gender quotas. Circle correct response if within quota. If over quota, record and terminate.**

(**Do Not Read**)-> 

Refused.....	5
--------------	---

▶ **Record and terminate**

C. Have you been interviewed for a survey in a research facility in a mall with the past month?

Yes..... 1 ▶ (**Record and terminate**)

No ..... 2 ▶ (**Continue**)

**(HAND RESPONDENT CARD D/E AND SAY: )**

D. Please read back to me which of the items on this card, if any, you have purchased in the past six months? (**Circle all items mentioned under col D “Purchased in Past 6 months.”**)

E. Now please read back to me which of the items on this card, if any, you are likely to purchase in the next six months?

(**Circle all items mentioned under col E “Likely to Purchase Next 6 months.”**)

	<b>Q.D</b> Purchased in Past 6 months	<b>Q.E</b> Likely to Purchase Next 6 months
Nutrition/meal replacement bars .....	1 .....	1
Energy drinks.....	2 .....	2
Vitamin/Mineral Supplements.....	3 .....	3
Over-the-counter allergy relief medications .	4 .....	4
Protein Powders.....	5 .....	5

**(Respondent must mention “over-the-counter allergy relief medications” in Q.D or Q.E to continue. Otherwise, record and terminate.)**

**(Take Back Card D/E)**

F.. Do you or does any member of your immediate household work ...  
*(read list; record each answer by circling)?*

	<u>Yes</u>	<u>No</u>
In market research	1	2
In advertising	1	2
As a doctor or pharmacist	1	2
For a company that makes or distributes over-the-counter allergy relief medications	1	2
As a manager of a store that sells over-the-counter allergy relief medications	1	2

*(If “Yes” to any of the professions, record and terminate.)*

G. Do you usually wear eyeglasses or contact lenses when seeing brand names? **(Circle response)**

Yes.....	1	▶	<b><i>(Continue)</i></b>
No .....	2	▶	<b><i>(Skip to Q.I)</i></b>

H. Do you have them with you? **(Circle response)**

Yes	1	▶	<b><i>(Continue)</i></b>
No	2	▶	<b><i>(Record and terminate)</i></b>

I. Invite qualified respondent to interviewing facility. Go to main questionnaire. If qualified but refused, record and terminate.

Willing to participate	1	▶	<b><i>(Continue)</i></b>
Not willing to participate	2	▶	<b><i>(Record and terminate)</i></b>

ID # \_\_\_\_\_

NAME PERCEPTION STUDY  
- CAPI MAIN -

In this survey, I'm going to be asking for your beliefs and understanding. There are no right or wrong answers so please do not guess. If for any question I ask, you haven't formed a belief or understanding, or you just don't have an opinion, please just tell me so.

I will now be handing you a card that has on it a brand name along with a description of the products that you would find bearing the brand name. Please take a look at the brand name and the description of the products taking as much time as you need to see the brand name and product category and when you are finished, please let me know.

**Interviewer: Record here the 2-digit code on the card you are now showing to respondent:**

**\*\*PROGRAMMER: IF 2-digit code is not the cell being worked on, terminate.\*\***

**RR= WAL-ZYR**

**QQ= WAL-ZEE**

**(Hand respondent LABELED CARD – SAME AS CELL LETTERS – RR, QQ.)**

***(Allow enough time for respondent to see the information on the card and let you know when he/she is finished. When respondent indicates being finished, leave card in sight for the remainder of the interview. Then say: )***

Q1a Though you may or may not have seen or heard of this specific brand name before, do you have an opinion as to what company makes or puts out the products using the name shown on this card?

Yes	Ask Q1b
No	Skip to Q2a
DK/NS	Skip to Q2a

Q1b What company? (***record verbatim***)

Q1c What makes you say that? (***record verbatim***)

Q2a Do you believe that the company that makes or puts out the products using the name shown on this card makes or puts out any other products or brands, or not?

Does	Ask Q2b
Does NOT	Skip to Q3a
DK/NS	Skip to Q3a

Q2b What products or brands? (***record verbatim***) (***List each on separate line***)

Q2c **[ASK FOR EACH MENTION]** What makes you say **[respondent's answer]**? (***record verbatim***)

Q3a Do you believe that the company that makes or puts out the products using the name shown on this card is affiliated with or authorized by any other company or brand, or not affiliated with or authorized by any other company or brand?

Is affiliated or authorized  
Is NOT affiliated or authorized  
DK/NS

Ask Q3b  
Skip to cert  
Skip to cert

Q3b What company or brand? (*record verbatim*)

Q3c What makes you say that? (*record verbatim*)

[CERT]

## APPENDIX C

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### **INTERVIEWER AND SUPERVISOR INSTRUCTIONS**

NAME PERCEPTION STUDY  
- INTERVIEWER INSTRUCTIONS -

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**MATERIALS**

- Screener
- Tally Sheet for terminates
- Main Questionnaire (CAPI)

Follow instructions carefully – we've limited your instructions to the most important points. We will be conducting 100% independent validation of this study.

**Overview**

This is a two-cell survey to be conducted in a permanent enclosed mall facility. Screening will be conducted on the mall floor, and then re-screening and the main will be entered directly via CAPI. After screening, a respondent will be brought to a room and administered the questionnaire.

**Quota**

You will be sight screening in the mall for: males and females **18 years of age and older**. Then you will administer the screener. Your supervisor will provide you with your screening quotas.

**Quality Assurance in Screening**

- All of the respondent's answers must be circled on screener. Do not proceed with a qualified respondent unless you are sure that you have circled all responses by that respondent.
- Tally terminates on the separate tally sheets provided to you.
- Do not interview friends, relatives or acquaintances.
- When screening for this study you must not screen for any other study at the same time.
- Only one potential respondent in a group of people may be screened.
- No incentives for participation are to be given.
- Only one potential respondent is to be in the interviewing room at the time of the interview.
- Anyone accompanying the respondent must wait for the respondent in the waiting room.
- Do not proceed to interview anyone who has a hearing, visual or English language problem.

## MAIN QUESTIONNAIRE

- Make sure that the respondent cannot see or hear the stimuli until you administer the questionnaire for that particular respondent.
- Be sure to show stimulus with letter-designations corresponding to the cell you're working on.
- Read introductions and all questions exactly as written.
- Always allow respondent time to respond.
- But, you should never allow a respondent to change his/her mind for an earlier question once he/she is answering a later one.

### Open-Ended Questions

- Read open-ended questions slowly and *tell respondent to slow down* if you cannot write quickly enough. **WE NEED VERBATIM RESPONSES BUT YOU SHOULD BE SURE TO PROBE IF A THOUGHT IS NOT CLEAR OR COULD BE INTERPRETED DIFFERENT WAYS.**
- Capture comments exactly as the respondent states them -- never summarize or paraphrase. Capture comments in the words of the respondent. **Do not say "she said..." or "she felt..."** rather, just write down exactly what the respondent says.
- Give the respondent sufficient time to think and answer a question before continuing.
- Never reword the questions. Simply repeat the question if the respondent indicates that he/she does not understand. **DO NOT** attempt to explain any questions.
- If the respondent says "I have already answered the question", ask him/her to repeat the answer.
- At the end of the interview, complete the information on the Certification Page.

### Probing

- You should always probe for clarity when an answer is not clear to you. We cannot accept vague or incomplete responses. You should be sure that each response is clear and that you understand it before proceeding to the next question. Therefore, you must always probe in a neutral manner to clarify any response that you feel is unclear.
- You should only probe in a neutral manner for any vague or incomplete responses like:
  - "Can you explain what you mean by X ?" or "Can you be more specific?"
- When you are probing for clarification, write in a (P) or some other notation.

### **SECURITY:**

- You are responsible for all materials being used on this study.
- All materials are to be kept out of sight of anyone not directly involved in the study
- All materials related to this study are the property of Simonson Associates, Inc. and our client.
- No one representing Simonson Associates or our client is to be admitted to the facility or have access to the materials without your first calling us to confirm (201.503.9620). Further, no one is to be permitted access to the facility or materials without showing satisfactory identification.

### Upon Completion of Interview

1. With respondent, fill out all respondent information on the certification page. You and the respondent must read and sign the certification page.
2. Be sure to transfer the respondent ID from the computer to match up with the signed certification page.

NAME PERCEPTION STUDY  
- SUPERVISOR INSTRUCTIONS -

Dear Supervisor:

Attached are the interviewer instructions that explain the important aspects of this study. This is a two-cell study.

**Staff**

All interviewers while screening and interviewing for this study are not to be screening or interviewing for any other study.

**Interviewer Numbers**

Interviewers are to be assigned interviewer numbers. A separate sheet should be provided to us with the interviewer numbers and corresponding names. These interviewer numbers must be recorded by the interviewer in the box on the front of the screener.

**You should have only experienced interviewers working on the job. No more than about 20-30% of your interviews should be conducted by one interviewer.**

**Total screening quota provided by our field coordinator.**

**Briefing**

Field supervisors must have read and examined all materials to be completely prepared for the study. The field supervisor must be present at the briefing and be present for all days of interviewing on the study. A field kit of all paper materials must be supplied for each participant at the briefing.

**Each interviewer is to read his/her Interviewer Instructions. Also, a personal briefing is required.** If possible, one briefing should be conducted. All interviewers must do at least one Practice Interview.

**PLEASE KEEP AN EYE ON:**

READING INTRODUCTIONS AND QUESTIONS EXACTLY AS WRITTEN AND RECORDING RESPONSES PRECISELY.

SHOWING LETTER-DESIGNATED CARD TO CORRESPOND WITH THE CELL.

All Practice Interviews must be looked over by you-- and any problem areas cleared up -- before any actual interviewing is begun.

## **Editing**

Do not "edit" work. You should check it for errors and alert any interviewer when you find errors. Replace any work immediately if the interviewer did not follow instructions.

If an interviewer appears not to be following instructions exactly, please alert him/her to that as soon as possible and take remedial action if needed.

## **Quotas**

**Your quotas will be assigned by our field coordinator.**

## **Progress Reports**

Enclosed are Progress Report Sheets for your convenience. Accurate cumulative reports are to be received by us each day the study continues. We are to RECEIVE them by 11:00 AM OUR TIME (or 12:30 PM our time if you are on the West coast). **Do not use a cover sheet. Just fill in all the required information on the Progress Report Sheet. Be sure to write your city and contact name on each sheet of the report.**

## **Shipment and Charges**

- All shipments of ID sheets, tally sheets and certification pages are to be sent **only after speaking with our field coordinator**. They should be shipped **Federal Express EXPRESS SAVER using the overnight letter pak. Do not use the federal express envelope or your own box.** Charge to our Federal Express Account # 2269-9458-0 unless otherwise specified be her.

***Send to the address specified by our field coordinator:***

- Do not insure.
- Indicate the **ENTIRE** Job number "**383-09.06.05**" on airbill for all shipments.

### **Important**

Since we will not incur additional shipping charges, make sure that all items specified above are included with your completed questionnaires, unless otherwise specified. If you "forget" we will have to deduct the additional shipping charges from your bill.

## **Billing**

Submit all bills under separate cover to the attention of our Accounting Department.

## **Quality Control Procedures**

<b>ANY WORK RECEIVED BY OUR OFFICE WHICH HAS NOT BEEN SUBJECT TO THE FOLLOWING PROCEDURES WILL BE SUBJECT TO A PAYMENT ADJUSTMENT.</b>
--

Strict quality control is a primary Supervisor responsibility. We require that the following quality controls be strictly followed:

- This study must be screened by itself, not along with any other projects.
- No more than one respondent per shopping group should be screened.
- Friends, relatives or acquaintances must NOT be interviewed.
- No one is to be in the interviewing room with the respondent.
- Anyone accompanying the respondent must wait for the respondent in the waiting room.
- No incentives are to be given.
- Interviewing should not be conducted with anyone who has a hearing, visual or English language problem.

## **Security Instructions**

- All materials related to this study are the property of Simonson Associates, Inc. and our client.
- You are responsible for all materials being used on this study; all materials are to be kept out of sight of anyone not directly involved in the study.
- No one representing Simonson Associates or our client is to be admitted to the facility or have access to the materials without your first calling us to confirm (201.503.9620). Further, no one is to be permitted access to the facility or materials without showing satisfactory identification.

## **Validation**

- We will be conducting 100% validation for this study.
- You are not to phone validate, since we will be independently validating 100% of every interviewer's work.
- You must, however, monitor or do in-site validation for at least 10% of each interviewer's work.

<ul style="list-style-type: none"><li>• <b><u>Handling "No Phone" or "Refused Phone"</u></b></li></ul>
--

<p>The Supervisor must attempt to do a telephone look-up for all respondents who do not give a phone number. If a number is <u>not</u> found, indicate that you have attempted a look-up by writing "L.U."</p>
--

Thank you for your help with this survey.

## APPENDIX D

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### VALIDATION QUESTIONNAIRE AND LETTER

NAME PERCEPTION STUDY  
- VALIDATION QUESTIONNAIRE -

- ASK TO SPEAK TO THE PERSON WHOSE NAME IS LISTED ON THE VALIDATION LIST
- QUALIFIED RESPONDENTS ARE THOSE WITH BOXED RESPONSES

Hello (Miss/Mrs.) \_\_\_\_\_, I'm from Simonson Associates. We recently conducted a survey and we're calling simply to confirm some points and to thank you for your participation. We are not selling anything and this will be the last contact from us – your cooperation is greatly appreciated.

1. Did you participate in a recent survey where you were shown a card with a name on it starting with WAL- and asked some questions about it?

Yes  1 **Continue**  
No  2 **Terminate**

2. Are you 18 years of age or older?

18+ .....  1 **Continue**  
Under 18.....  2 **Terminate**

3. Have you purchased in the past six months, or are likely to purchase in the next six months, over-the-counter allergy relief medications?

Yes .....  1 **Continue**  
No .....  2 **Terminate**

**Thank respondent**

Park Research  
290 Union Blvd. Ste. #7  
Totowa, NJ 07512

June 29 2009

Dr. Alex Simonson  
Simonson Associates, Inc.  
560 Sylvan Avenue  
Englewood Cliffs, NJ 07632

Dear Alex,

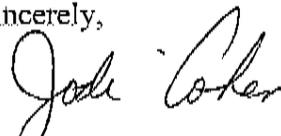
The validation results of your Name Perception Study #383-09.06.05 are as follows:

Out of the listed 404 respondent names, 404 had telephone numbers. Of these, 267 were successfully contacted (66%). Of those not reached, a minimum of three attempts were made on different days of the week and at different times of the day.

Of those contacted, there were two discrepancies found in interviewing procedures. For each interviewer where there was a discrepancy found, there were no further discrepancies found in any of their work. All results of this phase of the study were reported to Simonson Associates.

If you have any questions regarding this study, please call me.

Sincerely,



Jodi Cohen

## APPENDIX E

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### DATA

**APPENDIX E  
IS  
REDACTED**

## APPENDIX F

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### CARDS SHOWN TO RESPONDENTS FOR EACH CELL

# **WAL-ZYR**

Allergy medications

REDACTED Ex. 1 to the Aff. of Dr. Simonson

Offered by Walgreen Co.

McNeil-PPC, Inc. v. Walgreen Co. (No. 91184978)

# WAL-ZEE

Allergy medications

REDACTED Ex. 1 to the Aff. of Dr. Simonson

Offered by Walgreen Co.

McNeil-PPC, Inc. v. Walgreen Co. (No. 91184978)

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