

ESTTA Tracking number: **ESTTA668831**

Filing date: **04/27/2015**

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

Proceeding	91194974
Party	Plaintiff Promark Brands Inc. and H.J. Heinz Company
Correspondence Address	MATTHEW J CAVANAGH MCDONALD HOPKINS LLC 600 SUPERIOR AVENUE EAST, SUITE 2100 CLEVELAND, OH 44114 UNITED STATES mcavanagh@mcdonaldhopkins.com, ip@mcdonaldhopkins.com
Submission	Response to Board Order/Inquiry
Filer's Name	Matthew J. Cavanagh
Filer's e-mail	Mcavanagh@mcdonaldhopkins.com, ip@mcdonaldhopkins.com, rban- nan@mcdonaldhopkins.com
Signature	/Matthew J. Cavanagh/
Date	04/27/2015
Attachments	Notice of filing deposition transcript and Exhibits - Findley (5471531x7AB84).pdf(60012 bytes) Findlay Redacted Transcript 1 - 60 (5471565x7AB84).pdf(3482726 bytes) Findlay Redacted Transcript 61 - end (5471600x7AB84).pdf(5470557 bytes) Exhibit 3-8 Findlay Depo - Non Confidential (5468234x7AB84).pdf(5149311 bytes) Exhibit 10-11 Findlay Depo - Non Confidential (5468237x7AB84).pdf(3035628 bytes)

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

ProMark Brands Inc. and	)	Opposition Nos. 91208556 (Parent)
H. J. Heinz Company,	)	91196358
)	
Opposers,	)	Serial Nos. 77/864,305
	)	77/864,268
v.)	
)	
GFA Brands, Inc.,)	
)	
Applicant.)	

**Heinz's Notice Of Filing Of
Marion Findlay's Deposition Transcript And Exhibits**

As ordered in the Board's March 27, 2015, Opinion, ProMark Brands Inc. and H.J. Heinz Company now file separately the non-confidential and confidential portions of the transcript and accompanying exhibits for the January 17, 2012, deposition of Marion Findlay.

In accordance with the stipulated protective order filed on June 30, 2011, and approved by the Board on July 26, 2011, Rules 2.125(e) and 2.126 (c) of the Trademark Rules of Practice, and Sections 120.02 and 703.01(p) of the TBMP, the following portions of the transcript and accompanying exhibits have been designated as "Attorney's Eyes Only," have been redacted from the documents attached to this filing, and will be filed with the Board under seal, under separate cover:

Page 18, lines 17-20, 25

Page 19, lines 1-3

Page 21, lines 15-25

Page 22, lines 1-15

Page 23, lines 1-5

Page 25, lines 6-10

Page 28, lines 7-15

Page 47, lines 16-21

Page 50, lines 10-19

Page 51, lines 14-20

Page 65, lines 8-15, 24-25

Page 66, lines 1-3

Page 92, lines 11-13

Page 98, lines 6-8

Findlay Deposition Exhibits 1, 2 and 9.

Dated: April 27, 2015

/ Matthew J. Cavanagh /
Matthew J. Cavanagh
MCDONALD HOPKINS LLC
600 Superior Avenue, East, Ste. 2100
Cleveland, Ohio 44114
t 216.348.5400 | f 216.348.5474
mcavanagh@mcdonaldhopkins.com

*Counsel for ProMark Brands Inc. and
H. J. Heinz Company*

Certificate of Service

I hereby certify that on April 27, 2015, I sent a copy of the foregoing by first-class mail to:

Marta S. Levine
David R. Cross
Johanna M. Wilbert
Quarles & Brady LLP
411 East Wisconsin Avenue, Suite 2350
Milwaukee, Wisconsin 53202-4426
johanna.wilbert@quarles.com

Attorney for GFA Brands, Inc.

/ Matthew J. Cavanagh /
*Counsel for ProMark Brands Inc. and
H. J. Heinz Company*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

U.S. PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

- - -

PROMARK BRANDS, INC., and H.J. HEINZ))	
COMPANY,)	
)	
Opposers,)	
	)	Opposition Nos.
vs.	)	91194974
	)	91196358
GFA BRANDS, INC.,)	
)	
Applicant.)	

- - -

Deposition of MARION FINDLAY

Tuesday, January 17, 2012

- - -

The deposition of MARION FINDLAY, called as a witness by the Applicant, pursuant to notice and the Federal Rules of Civil Procedure pertaining to the taking of depositions, CONTAINING CONFIDENTIAL INFORMATION, TO BE SEALED AND HELD CONFIDENTIAL FOR COURT AND COUNSELS' EYES ONLY, taken before me, the undersigned, Lance E. Hannaford, a Notary Public in and for the Commonwealth of Pennsylvania, at the offices of Jones Day, Suite 4500, One Mellon Bank Center, Pittsburgh, Pennsylvania 15219, commencing at 9:35 o'clock a.m., the day and date above set forth.

ORIGINAL

CONFIDENTIAL

1 APPEARANCES:

2 On behalf of the Opposers:

3 Jones Day:
4 Cecilia Dickson, Esquire
5 One Mellon Bank Center, Suite 4500
6 Pittsburgh, Pennsylvania 15219

7 On behalf of the Applicant:

8 Quarles & Brady, LLP:
9 David R. Cross, Esquire
10 411 East Wisconsin Avenue, Suite 2040
11 Milwaukee, Wisconsin 53202-4497

12 ALSO PRESENT:

13 Sabrina Hudson, Esquire
14 Sally Stodolsky

15 - - -

16 I-N-D-E-X

17 EXAMINATION BY:

18 PAGE:

19 Mr. Cross

20 3

21 - - -

22

23

24

25

26

27

28

29

30

31

1

MARION FINDLAY

2 called as a witness by the Applicant, having been
3 first duly sworn, as hereinafter certified, was
4 deposed and said as follows:

5

EXAMINATION

6 BY MR. CROSS:

7 Q What is your full name?

8 A Marion Joan Findlay.

9 Q Findlay?

10 A F-I-N-D-L-A-Y.

11 Q Have you ever had your deposition taken
12 before?

13 A I have.

14 Q You have no doubt heard this, but it is
15 worth reminding you, that you should never answer a
16 question that you don't understand.

17 If I ask you a question, and you don't
18 understand it, let me know. I will do my best to
19 rephrase or restate the question.

20 But if you give me an answer to a question,
21 I will assume you understood it.

22 Fair enough?

23 A Fair enough.

24 Q What do you do for a living?

25 A I am a senior marketing manager at Heinz.

1 Q We will get more in to your background in a
2 bit.

3 We had served on your counsel a deposition
4 notice for corporate representatives.

5 And my understanding is that you are
6 here -- and this is a notice that is dated November
7 23, 2011.

8 And my understanding is that you are here
9 to testify about topics 7, 8, 10, 11, 12 and 14.

10 A That's correct.

11 Q What did you do to prepare to testify about
12 those topics?

13 A I met with outside counsel yesterday.

14 And they took me through the deposition and
15 the questions that I would potentially be asked.

16 Q You shouldn't tell me what she said. But
17 that would be very interesting to find out, for
18 example, if I end up not asking you some questions,
19 that she had thought of, that I might ask.

20 Or if I asked really good questions, that
21 she hadn't thought of.

22 But I don't get to go in to that.

23 But I do get to ask you the following
24 question. And that is: Did you review any
25 documents?

1 You can answer that yes or no.

2 A Yes.

3 Q Did any of those documents help you to
4 refresh your memory to be able to address the topics,
5 that you are here to address?

6 A Yes.

7 Q Could you describe for me what those
8 documents were?

9 A They were the documents that I understood
10 to have been provided to you, that represent
11 information, that you had requested in the original
12 deposition.

13 I don't quite know what that is called.
14 But request for information.

15 MS. DICKSON: I will just make a
16 representation on the record, that the documents
17 the witness saw were all produced in discovery.

18 MR. CROSS: Understood.

19 THE WITNESS: Thank you. That is what I
20 was looking for. Discovery.

21 Q I figured that is what you were saying.
22 You all produced thousands of pages of
23 documents.

24 Could you narrow it down, or did you
25 literally review the thousands and thousands of pages

1 of documents, all of them?

2 A No.

3 I reviewed some research documents, that
4 had been produced.

5 A couple of advertising and marketing
6 documents, planning, that had been produced.

7 I think that was about it. I am sorry. I
8 am looking at counsel. I apologize.

9 I believe that was about it, that I looked
10 at.

11 Q That is all right. We will probably get to
12 some of those.

13 A Okay.

14 Q I may ask you periodically if any other
15 come to mind.

16 A Okay.

17 Q And that is another little instruction,
18 that you should keep in mind.

19 If you realize at any point along the way,
20 that you had given an answer previously, that was
21 incorrect or incomplete, feel free to just let me
22 know.

23 And I will let you go ahead and correct it.

24 We want to make sure the record is
25 accurate.

1 A Yes.

2 Q A little bit more on your background.

3 You have a formal education beyond high
4 school.

5 A I do.

6 Q Now, you have a bit of an accent that
7 doesn't sound like you are from the States.

8 A No.

9 I started life working in the United
10 Kingdom and went to college in the UK.

11 And then was offered an opportunity to come
12 to the United States, with the H.J. Heinz Company.
13 And did so. And continued my education in New York.

14 Q All right.

15 Let's take you through the education.

16 Do you have -- what is the equivalent of
17 high school in the UK?

18 A High school.

19 Q When did you graduate from high school?

20 A I graduated from high school in 1974.

21 Q You will have to start looking your age.

22 I graduated in 1973. So I am even older
23 than you.

24 A Barely, though.

25 Q Barely.

1 And then you had formal education after
2 high school.

3 A I did. I went to college from 1974 to
4 1978.

5 Q Where did you go to college?

6 A I went to the University of Herefordshire,
7 which is actually the University of London today.

8 Q Did you receive a degree?

9 A I did.

10 And this is going to make you laugh. I
11 received a degree in economics.

12 Q I think that was a wonderful course of
13 study.

14 A And French.

15 Q And French. My wife wishes I had taken
16 some French. And Wisconsin school children are taught
17 German. At least back in my year.

18 And then did you receive any -- you said
19 you -- well, let's take from 1978, did you continue
20 your education?

21 Or did you go in to the work force?

22 A I continued my education.

23 And I did a one year master's degree in
24 French.

25 Q Where did you take that degree?

1 A University of London, University of Paris.

2 Q When did you get your master's?

3 A 1979, '80.

4 Q Any further formal education after that?

5 A Yes.

6 I then went for my MBA, University of
7 St. John's in New York.

8 I got that in 1984.

9 Q Did you go directly from your master's
10 degree studies in to the MBA program?

11 A I did not.

12 I joined Heinz.

13 Q So let's -- besides getting your MBA, any
14 other formal education?

15 A None that I have finished.

16 Q Oh, what else are you working on?

17 A I started a Ph.D. in psychology.

18 Q Oh my.

19 When did you start that?

20 A When?

21 Oh, 1997.

22 Q How far along are you? Everything but the
23 thesis?

24 A No. No.

25 Just started. It goes very slowly. When I

1 get around to it. It is an "around to it". When I
2 retire, that will be what I do.

3 Q Where are you taking that --

4 A University of Pittsburgh.

5 Never finished.

6 Q So let's go through your work history, your
7 first full-time job after you had some education was
8 with Heinz?

9 A It was.

10 Q In the UK?

11 A In the United Kingdom.

12 Q What was your position there?

13 A I was executive administrative assistant to
14 the president.

15 Q President of Heinz UK?

16 A Heinz UK, yes.

17 Q What were your job duties, generally?

18 A He would say arguing with him.

19 I was supposed to be doing the typing in
20 those days.

21 Q How long did you hold that job?

22 A Six months.

23 Q Then what happened?

24 A They promoted me to -- I knew you would ask
25 me this. They promoted me to something like licensing

1 coordinator.

2 Q For any particular brands or product lines?

3 A I worked -- I actually moved with him --

4 with the president to the United States.

5 And we worked on all of the Heinz brands.

6 He was a Heinz executive.

7 And we worked on all Heinz brands together.

8 Q How long did you do that? Ballpark.

9 A Three years.

10 Q And that would take us up to about when?

11 A '84, '85.

12 Q When did you move to the States?

13 A 1980.

14 Q And you got your MBA from St. John's. How

15 did you do that?

16 Were you in Pittsburgh?

17 A No.

18 I was based in New York at the time.

19 Q Okay.

20 So after you had done this licensing work

21 with the president, whose name was or is?

22 A Was Chuck -- Charles Berger.

23 Q After you had been working with Charles

24 Berger on these licensing issues up until '84, '85,

25 then what did you do?

1 A I continued in licensing. I continued to
2 get promoted in to the licensing roles that I
3 currently run today.

4 I have just run completely through
5 licensing my entire life at Heinz for 32 years.

6 Q And that would involve all Heinz brands?

7 A We started out initially within the frozen
8 nutritional entrees, specifically is where I started.
9 But that ran across several categories. Besides
10 frozen, we were also in what we call shelf stable
11 categories.

12 I came to the Pittsburgh office in 1997.

13 Actually, let me rephrase that. I came to
14 Pittsburgh in '97. I came to the Pittsburgh office as
15 of 1994.

16 Q How long have you been -- I don't know if
17 this is the right -- how long have you been involved
18 with Smart Ones brand?

19 A I have been involved with Smart Ones since
20 its inception in 1991.

21 Q In what general way were you involved with
22 the Smart Ones brand?

23 A I was involved in the licensing agreement,
24 that we have.

25 And I was also involved in launching the

1 product line.

2 Q In what respect were you involved in
3 launching the product line?

4 A We determined -- we determined in the '90s,
5 that we needed to look at a full line of products in
6 frozen nutritional category.

7 And we wanted to expand beyond the
8 current -- beyond the current trademarks, that we
9 owned.

10 Q At that point, in 1991, what had been the
11 trademarks, that were used in connection with frozen
12 foods?

13 A We had several, actually.

14 We had Weight Watchers. We had -- we did
15 not own Budget Gourmet at that time. But we were soon
16 to have Budget Gourmet.

17 Candlelight Dinners was one. Ultimate 200
18 was another.

19 I probably can't remember all of the
20 trademarks that we had in that category at that time.

21 Q You said that a decision was made, that you
22 needed -- you needed to have a full line of frozen
23 entrees under a single mark.

24 Or did I -- I know you said something like
25 you had come to a decision in the '90s, that you

1 needed a full line of frozen -- I can't read my
2 handwriting, nutritional products.

3 A That's correct.

4 Q What was the thinking behind the decision,
5 that you needed a full line of frozen nutritional
6 products?

7 Why did you need them?

8 A Why did we need them.

9 We needed them since, as we identified our
10 consumer, that there was several targets, that we
11 would talk to.

12 So our line of Weight Watchers items was
13 talking to a diet consumer. The Smart Ones, the
14 Ultimate 200 were all talking to target consumers, who
15 were looking for a healthy lifestyle.

16 Q What is the difference between the people
17 that are dieters versus the ones that want a healthy
18 lifestyle, and/or is there overlap between the two?

19 A They could be overlapped.

20 It depends entirely on how you are
21 targeting that consumer.

22 And our consumer, we believe, is both at
23 some point in their journey or path, whichever word
24 you want to use, either losing weight, maintaining
25 weight, or trying to live healthier, due to a medical

1 condition.

2 But that our product line would offer an
3 opportunity to be part of that consideration set
4 during that time period.

5 Q The Smart Ones mark is intended to be
6 focused more on people who want a healthy diet.

7 Is that correct?

8 A Healthy or live a healthy lifestyle. Yes.

9 Q Is that -- is there a gender difference
10 between the target market for Smart Ones and the
11 target market for Weight Watchers, the more diet
12 focused consumer?

13 A Gender in male versus female?

14 Q Right.

15 Are there more -- up until Charles Barkley
16 started losing weight, men did not seem to be
17 publicizing the fact that they too are interested in
18 losing weight.

19 So is there -- my guess would be that there
20 is -- it would skew more female for the diet conscious
21 consumer, as opposed to the consumer who is looking
22 for a healthier lifestyle.

23 And you also noted that there may be
24 medical conditions involved such as higher
25 cholesterol.

1 So is it more -- am I right in assuming
2 that the target is more gender equal in the Smart Ones
3 healthy consumer focus as opposed to the Weight
4 Watchers diet consumer focus?

5 A Yes.

6 Q How significant?

7 Do you have any numbers?

8 A The only reason I am hesitating is not that
9 I don't have a specific answer.

10 It is just since to your point about
11 Charles Barkley, that has completely changed the
12 dynamic in dieting.

13 Q That quickly?

14 A Yes.

15 Well, it started predominantly with the web
16 communication.

17 Men diet on-line. And that has been
18 growing at a very significant rate.

19 However, they also consider that not
20 dieting, but again, lifestyle due to health
21 requirements.

22 So it has been an interesting dynamic, that
23 has now occurred.

24 And Weight Watchers, the service, and I
25 want to -- has done a very significant advertising

1 campaign behind Charles Barkley.

2 Q When did the Charles Barkley advertising
3 campaign begin?

4 A It began -- he started losing weight in --
5 dieting or eating more -- however you want to word it,
6 eating a healthier lifestyle in I believe November --
7 October or November of this year.

8 I do not know, specifically.

9 Their on air campaign just started in
10 January.

11 Q So he wasn't real public about it until
12 January of this year, 2012?

13 A That's correct.

14 Q But he had started his journey --

15 A Journey.

16 That is the correct word.

17 Q In November of last year, 2011?

18 A Yes.

19 Q Now, with the Charles Barkley influence,
20 what are the percentages like, male, female, for the
21 target market for the diet oriented consumer?

22 MS. DICKSON: Objection.

23 A I honestly couldn't tell you today.

24 We are three weeks in to it. So I would
25 expect in the next -- I would expect the results to be

1 in January of -- in the next -- how do I word that?

2 In the next earnings report you will see it
3 from Weight Watchers.

4 Q What is your fiscal year?

5 A Our fiscal year is May 1st through April
6 30th of every year.

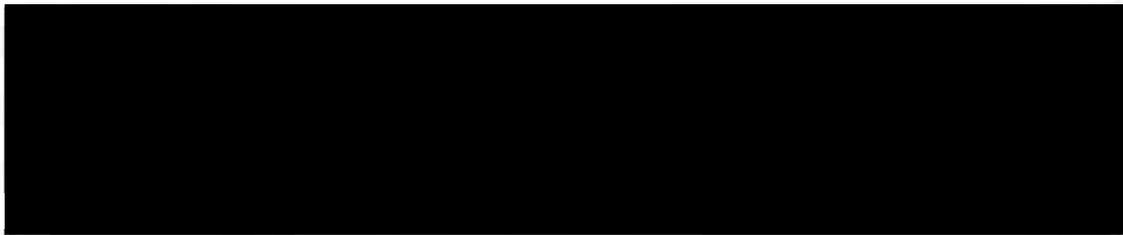
7 Q What are the most recent figures you have
8 for the gender percentages for Weight Watchers and
9 then also for the Smart Ones target market?

10 MS. DICKSON: Objection. As to Weight
11 Watchers. You can answer, if you know.

12 A I do not know for Weight Watchers.

13 And to be honest, I would have to go and
14 look at some documents for Smart Ones.

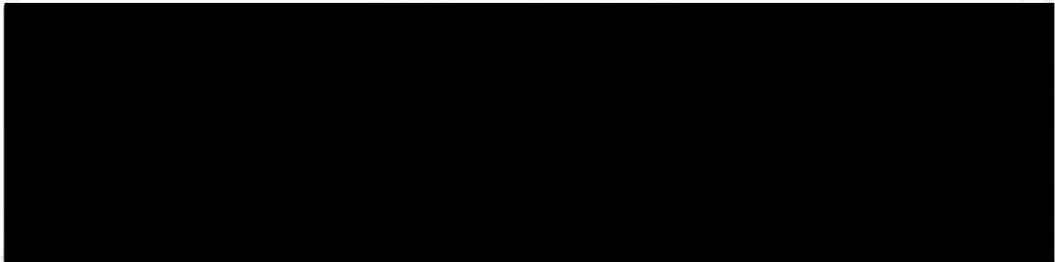
15 Q Could you give me a ballpark without
16 guessing?



21 But I could well be wrong.

22 Q Understood.

23 How about the Smart Ones gender split, most
24 recent numbers?



4 Q Let's have this marked as the first
5 exhibit.

6 (Thereupon, Findlay Exhibit No. 1 was
7 marked for identification.)

8 (Thereupon, Findlay Exhibit No. 2 was
9 marked for identification.)

10 BY MR. CROSS:

11 Q You now have before you two documents, that
12 were in the production, that were provided to us by
13 your counsel.

14 A Yes.

15 Q Marked Findlay Exhibits 1 and 2.

16 Are these among the documents you went
17 through in preparation for your testimony?

18 A No.

19 Q There were other marketing documents, that
20 you had gone through, marketing research documents?

21 A Yes.

22 Q Could you explain, if you could remember,
23 what they were?

24 A They were a couple of research documents
25 that pertained to the brand and the category.

1 Another one, that was produced, was one
2 that related to the identification of the target
3 on-line.

4 And there was a third one, which I do not
5 recall what it was about.

6 Q Okay.

7 Have you seen Exhibits 1 and 2 before today?

8 A I don't recall.

9 But I probably at one point was asked to
10 provide input to these documents.

11 Q Let's go through Exhibit 1.

12 I have some questions about certain parts.

13 Exhibit 1 appears to be research directed
14 toward the potential of a single serve salad dressing
15 product.

16 A Yes.

17 Q Under the Smart Ones mark.

18 Did that ever come to pass? Was that ever
19 introduced?

20 A That was not introduced.

21 Q Are there any products sold under the -- in
22 connection with the Smart Ones mark, that are not
23 frozen?

24 A Today, no.

25 Q Was there a time when there were?

1 A I don't remember.

2 I don't remember. I believe there were. I
3 believe there were.

4 But I don't recall what items they were.

5 Q Do you recall about what time period there
6 were?

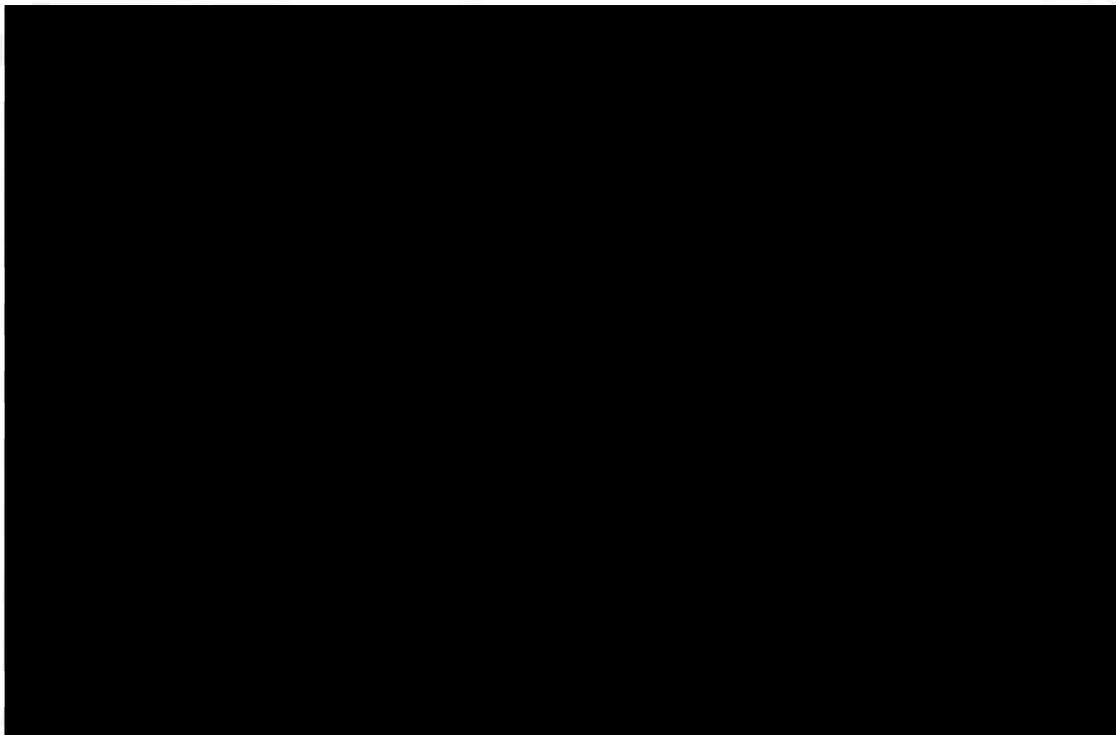
7 A It would have been mid'90s.

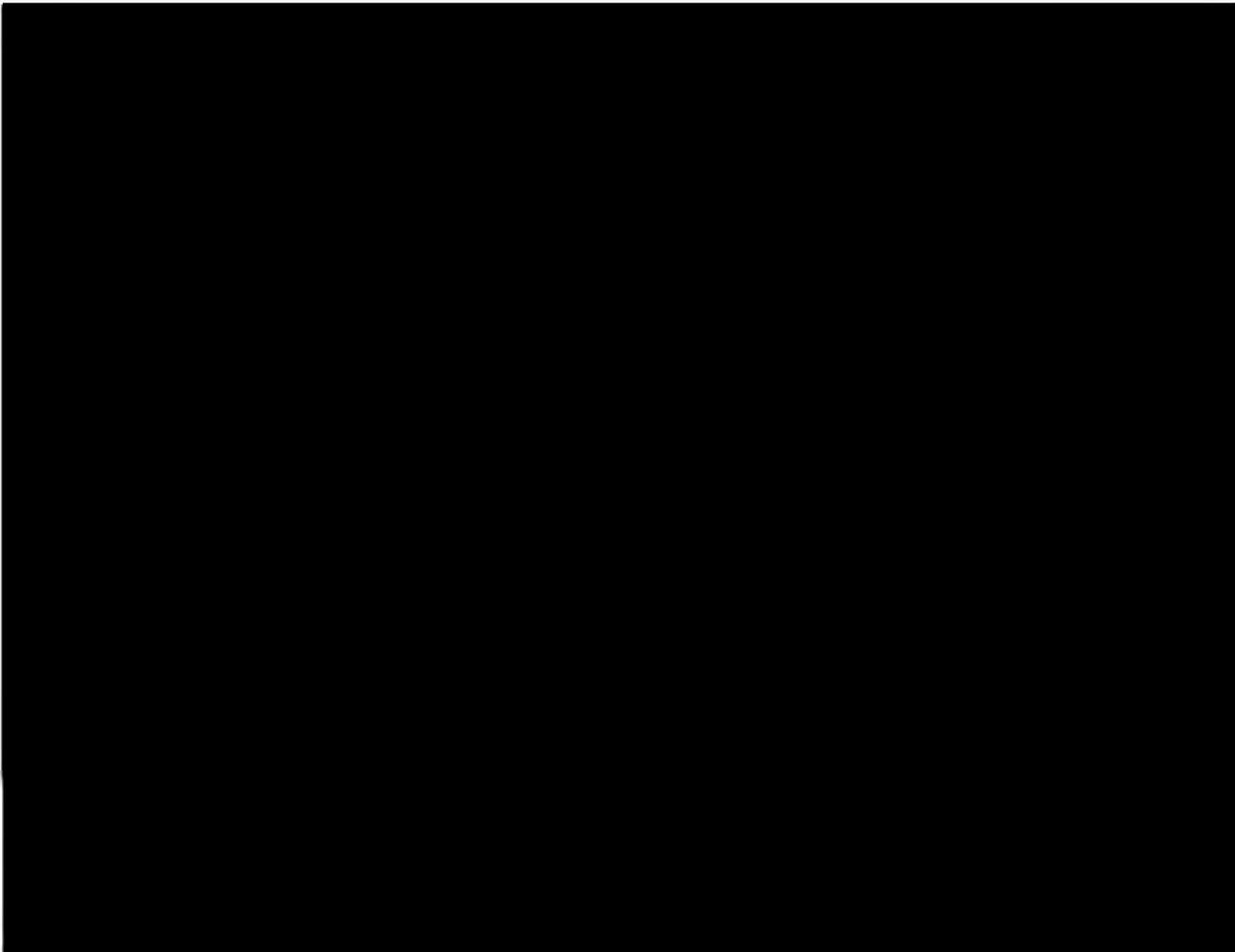
8 It would be mid'90s.

9 Q Has there been a policy decision about
10 whether to use the Smart Ones mark in connection only
11 with frozen products?

12 Or is that something that hasn't really
13 been thought through?

14 A No.





16 MS. DICKSON: Objection. You can answer,
17 if you know.

18 A I do not know.

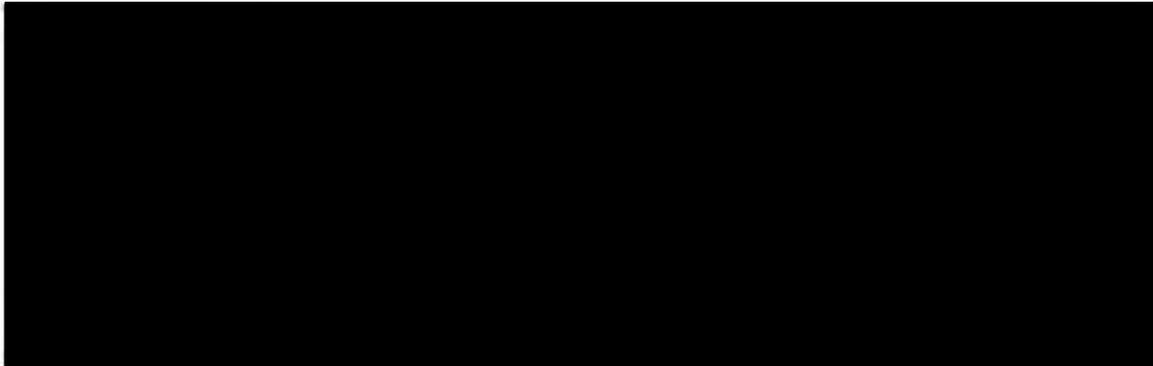
19 Q Is it because -- let me pry a little bit.

20 Is it because Smart Ones is always used in
21 connection with Weight Watchers?

22 MS. DICKSON: Objection.

23 You can answer, if you know.

24 A As far as I recall, yes. Smart Ones is
25 always used in connection with Weight Watchers.



6 Q It just hasn't been used, as far as you can
7 remember?

8 A No.

9 It has not been used current. It was in
10 the '90s, when we would have done it.

11 Q Do you have any general category of food
12 product in mind, that Smart Ones was used with outside
13 of the frozen food category?

14 Was it condiments, for example?

15 A I honestly don't -- I would have to go and
16 look it up.

17 I can see the sales brochure.

18 Q Where would you look?

19 A Where would I look?

20 Probably in my legal department. I would
21 go and ask them.

22 Q Do you know whether -- so there was a sales
23 brochure, that used -- that showed the use of Smart
24 Ones in connection with foods other than frozen
25 products?

1 Is that your memory?

2 A I don't actually know.

3 I probably would go to legal first and ask
4 them to go and look in their trademarks.

5 Q I have nothing against you first starting
6 with lawyers.

7 A I have to, you know.

8 They remember everything.

9 Q Everyone should.

10 A Somehow.

11 Q Could you please turn -- this document,
12 Exhibit 1, and other documents that we will be
13 referring to, that you all provided to us, has a
14 production number on the corner.

15 Could you turn to the production number
16 2260?

17 MS. DICKSON: As these documents were
18 produced as attorney's eyes only, we would want
19 to mark the transcript as well attorney's eyes
20 only.

21 MR. CROSS: At least the portions --

22 MS. DICKSON: At least the portions here.
23 We can talk at the end whether we designate the
24 whole thing or what makes the most sense.

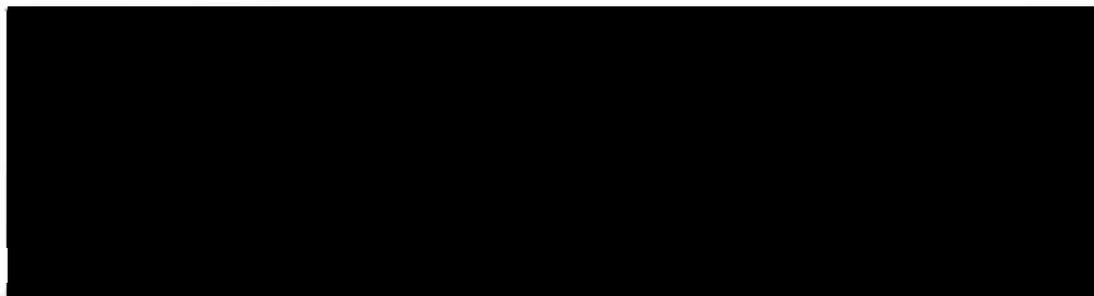
25 MR. CROSS: Fair enough.

1 Q There is reference here to the royalty
2 stream for WW1. I assume that is not World War I?

3 A You would be correct.

4 Q That is Weight Watchers --

5 A Weight Watchers International.



11 Q Implying that it would be used, that mark
12 Smart Ones would be used in connection with your use
13 of the Weight Watchers mark.

14 Is that correct?

15 A Yes.

16 Q Is there anything in the agreement between
17 Heinz and Weight Watchers, that indicates the relative
18 prominence, that needs to be given to the two
19 different marks on the product? Or in advertising?

20 A No.

21 Q Could you turn to the next page, please,
22 2261?

23 Since you had not looked at this recently,
24 you may not be able to answer the questions.

25 But there is a date in the upper right-hand

1 corner. It says June 2007.

2 Yet the first page is dated August 2008.

3 Do you have any explanation for those two
4 different dates?

5 A What was the other question? I apologize.

6 Q Do you have any explanation for the
7 difference in the dates?

8 The first page of Exhibit 1 says August
9 2008. In the upper right-hand corner of page 2261, it
10 says June 2007.

11 A And again, I would be assuming that as this
12 document was created to support the Weight Watchers
13 Smart Ones salad dressing and food service, that they
14 pulled together research, which was conducted prior to
15 the decision to potentially discuss food service salad
16 dressings.

17 I think this was more probably a support
18 document. I am not -- again, I haven't seen this
19 document.

20 I am not sure this would have been where it
21 would have flowed in the original. This probably was
22 an appendix.

23 Q The second sentence on this page, 2261,
24 refers to the study being conducted of 100 percent
25 females.

1 Do you see that?

2 A Yes.

3 Q Is that -- why or why not would that be an
4 appropriate target for doing the study? All females.

5 A You are asking me to hypothesize.

6 I am assuming that what we were looking for
7 at that particular point was the study would be
8 conducted among frozen nutritional users, frozen snack
9 users, primary grocery shoppers from 18 to 54. And
10 100 percent female.

11 I would probably build in to the fact that
12 the primary grocery shoppers probably were mostly
13 women. That would be why we went to the female
14 shopper.

15 It was also, as I am looking at this, a
16 what they call a qualitative. So it was done via
17 interview.

18 So you would be looking for a very specific
19 group of individuals. It wouldn't be what we would
20 term in our other world of research a representative
21 population, which would then take both men, women and
22 the age category in to the research.

23 Q Could you please turn to the page that has
24 on it production No. 2269?

25 This page bears the date June 2006.

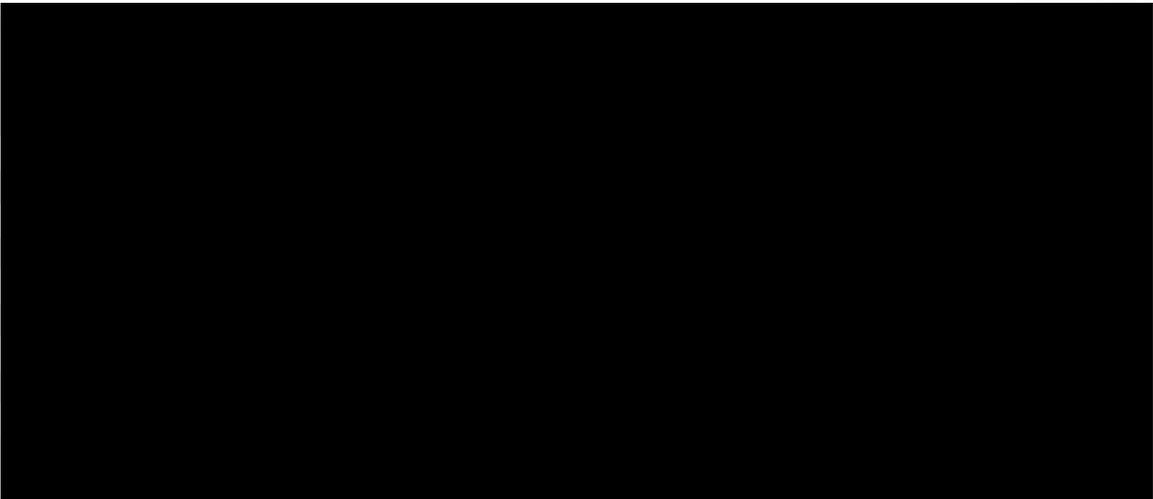
1 Correct?

2 A Yes. It does.

3 Q And it is entitled "Heinz frozen
4 nutritional meals brand equity research".

5 A Yes.

6 Q What is brand equity research?



Again, I would have to go back to my
17 research group.

18 But I believe if this wasn't the most
19 recent -- this was the most recent one, that we have
20 conducted, there would be one following it.

21 Q There is going to be another one, that is
22 later.

23 A Yes.

24 Q And it appears as if this was done by
25 Millward Brown?

1 A Yes.

2 Q What is Millward Brown?

3 A They are an outside company, that we hire.

4 Q You use them regularly?

5 A We use a variety of research companies,

6 Millward Brown being the one we use for equity

7 research.

8 Q How long has Heinz been using Millward

9 Brown for equity research?

10 A As long as I can remember.

11 Q Up to today?

12 A I don't know if they did the most recent

13 one.

14 But I do believe they -- we have used them

15 consistently.

16 Q Have you -- obviously, you have been

17 satisfied with their work?

18 A Yes.

19 Q Please turn to production No. 2275 in

20 Exhibit No. 1.

21 This is headed "overall findings".

22 And it appears to be part of the Millward

23 Brown June 2006 brand equity research?

24 A Yes.

25 Q You can see in the summary at the top, it

1 says -- it mentions that Smart Ones equity is somewhat
2 weak.

3 And what does that mean?

4 Does that mean it is not a particularly
5 strong mark relative to the other marks that are used
6 in this food category?

7 MS. DICKSON: Objection.

8 Q Go ahead.

9 MS. DICKSON: If you can answer, you can
10 answer.

11 A What we -- again, this is presented to us
12 as a brand team.

13 And at this particular -- if I recall
14 correctly, at this particular presentation, we were
15 evaluating our frozen nutritional category, trying to
16 understand why our consumers were buying Lean Cuisine
17 and Healthy Choice, in addition to or instead of us.

18 And what that really meant for the -- for
19 our brand.

20 Because people were buying us. But we
21 needed to understand why they were buying our
22 competitors instead of us.

23 It was specifically in that category.

24 Q And the reason -- the conclusion is that it
25 is because Smart Ones equity is somewhat weak?

1 MS. DICKSON: Objection.

2 Q Is that the conclusion?

3 A I don't -- I think if you go down to point
4 5, it is nutritionally balanced food fit with life
5 styles. It has a strong association. But it has
6 opportunities on taste fresh and overall uniqueness.

7 So I think it helps you eat well, helps you
8 live a healthy life and helps you do something good
9 for yourself.

10 So we took that paragraph specifically to
11 understand that we needed to do something, as it
12 relates to our taste factor, when we were
13 communicating with the consumer.

14 So this was our basis, specifically for our
15 next advertising campaign, which specifically talked
16 about taste and about health.

17 Q So the phrase here "but has opportunities"
18 is essentially consultant speak for that is what you
19 have to work on?

20 A You have to work on. Absolutely.

21 Q The first bullet point talks about "Smart
22 Ones has a strong aided awareness and a solid recall
23 on the shelf, but the brand is not readily in
24 consumers' mindset (low top of mind at levels on par
25 with the niche brand South Beach.)"

1 There are a couple of questions that I
2 would like you to help me understand here.

3 The phrase "the brand is not readily in
4 consumers' mindset (low top of mind)".

5 Does that mean unaided brand awareness?

6 Or what does that mean?

7 MS. DICKSON: Objection.

8 You can answer, if you know.

9 A That actually means we don't advertise
10 enough. In total marketing speak, we do not spend in
11 the same level of advertising that a Healthy Choice
12 and Lean Cuisine does.

13 So when you talk about aided versus unaided
14 awareness, if you ask somebody to recall something, a
15 lot of it has to do with did you see an ad, to your
16 point you saw -- you can talk to me about Charles
17 Barkley very clearly.

18 So to us, that is just a marketing spend
19 speak.

20 Q That is the diagnosis for how to fix the
21 situation.

22 But the situation is that the mark has
23 relatively weak unaided brand awareness in consumers'
24 minds?

25 MS. DICKSON: Objection. You can answer,

1 if you know.

2 A Yes.

3 Q Now, what is the difference between aided
4 and unaided awareness?

5 A It basically means unaided would be tell me
6 the top three things that you can recall about frozen
7 nutritional entrees.

8 And whatever the consumer responds to.
9 Versus providing them some stimuli, which could be an
10 ad, commercial, a visual of the packaging.

11 And that would be an aided awareness.

12 Q And the people in your business are
13 interested in knowing both types of awareness?

14 A Yes.

15 Q Why?

16 A It talks to the methods of advertising,
17 that we are choosing to use.

18 Are we getting -- are we getting to our
19 targeted consumer. And what levels of spend do we
20 need to incur to drive purchase and buy rate.

21 Q Which of the two measures, the aided versus
22 unaided awareness, is the better indicator of actual
23 brand awareness among the relevant consuming
24 population?

25 A Can you -- I am not too sure what you are

1 asking me.

2 Q Yes.

3 Lawyers are taught that you are not
4 supposed to lead your own witnesses. You are not
5 supposed to suggest the answer to a question in the
6 question.

7 A Okay.

8 Q And I get to lead you, however, because you
9 are not my witness. You are awfully pleasant, but you
10 are not my witness.

11 I would like to take you home with me.
12 That is a Beatles' song. Isn't it?

13 A There you go.

14 Q So my guess, my hypothesis would be that
15 you are more likely to get accurate assessments among
16 relevant consumers of the actual awareness or strength
17 of a mark through unaided measures of brand awareness.

18 Is that true?

19 A Again, not being a researcher, and I am
20 sort of the end consumer of to get to the what would
21 you do in this situation.

22 I don't know that it is as black and white
23 as you would like it to be.

24 I think it depends what the question is and
25 what we are trying to -- what we are trying to solve

1 for. And how this was set up originally to understand
2 our issues in the marketplace.

3 At the end of the day, I believe Lean
4 Cuisine, Healthy Choice, Smart Ones, South Beach,
5 whichever brand you were looking for, we were all
6 looking to sell more product.

7 Q I am sorry?

8 A To sell more product. We want to sell more
9 product.

10 So how you get to that and what the
11 challenge, that we are trying to solve for, is
12 probably more the issue than whether it is aided or
13 unaided.

14 Q The results shown in this document, that
15 smart Ones Has a strong aided awareness, but a
16 relatively low unaided brand awareness, what does that
17 differential tell you?

18 MS. DICKSON: Objection. You can answer,
19 if you know.

20 A As the end consumer of the research and not
21 the builder of the research, it would tell me I am not
22 spending enough in marketing.

23 Q You need to spend more in marketing?

24 A You need to make a higher percentage of
25 spend in marketing.

1 Q Because there just isn't that much unaided
2 brand awareness, you need to spend more to push those
3 numbers up?

4 A Again --

5 Q I will try it again.

6 Is this a phenomenon you have seen with
7 other brands, that there is a strong aided awareness,
8 but a weak unaided awareness?

9 Have you seen that with other brands?

10 A Strong aided, weak unaided.

11 Q Correct.

12 A Yes.

13 Q And can you -- and I assume you have seen
14 strong aided, strong unaided.

15 A Yes.

16 Q And I also assume you have seen weak aided
17 and weak unaided.

18 A Yes.

19 Q Now, taking those different combinations.

20 A Yes.

21 Q What do they mean to an end consumer of the
22 research, if you have both weak aided and weak
23 unaided, what does that tell you?

24 MS. DICKSON: Objection.

25 Q As a consumer.

1 A As a consumer?

2 Q Of the research.

3 A As a consumer of the research. Okay.

4 Weak unaided. Products not relevant
5 probably would be the take from a consumer, as a
6 recipient of the research.

7 Q What does that mean, people just aren't
8 interested in buying what you are trying to sell?

9 A Right. Exactly.

10 Q And if you have a strong aided and a strong
11 unaided, that means people are interested in the
12 product, and you have done a really good job of
13 getting the brand name out?

14 A Or potentially a well known brand. Coke.

15 Q Have you ever seen a strong unaided and a
16 weak aided?

17 A Not that I recall.

18 Q If you were to see that, as a consumer of
19 the research, what would that mean to you?

20 A Interesting brand, go and buy it.

21 Q I am sorry. Say that again?

22 A Interesting brand. Go and buy it.

23 Q They are intrigued by the name?

24 A Right.

25 And that is getting a consumer to go and

1 find it for no apparent reason, that we can understand
2 as a marketer.

3 Q Could you give me an example?

4 A Actually, one of the examples would be --
5 is it Yeungling?

6 Q Yeungling beer.

7 A It has incredibly -- that would probably
8 be -- it is sort of known about, but why?

9 Because -- I can quote it. It is the
10 largest beer manufactured in the United States. It is
11 bigger than Budweiser. That is U.S. owned.

12 Q We represent Miller, so we fight about the
13 significance of it all the time. Until both Bud and
14 Miller got to be owned by -- then it didn't matter.

15 That is interesting.

16 A That would be something that is a very --
17 it is probably aided. They look at it and go.
18 Unaided you could probably say "What is the largest
19 U.S. manufactured beer?" And people would tell you
20 Yeungling.

21 Q The last combination would be a weak
22 unaided and strong aided.

23 Now, what as a consumer of research
24 information does that tell you?

25 A The consumer -- there is a loyal consumer

1 base.

2 But when they buy it, it is part of a
3 consideration set in addition to other items of the
4 like.

5 So again, our consumer buys Lean Cuisine,
6 Healthy Choice and us and Smart Ones.

7 So it is part of a consideration. It is
8 not what I would call category captain.

9 Q What is the category captain in this
10 category?

11 A Lean Cuisine.

12 Q I think you said that the way to address a
13 weak unaided, strong aided brand would be to do more
14 advertising?

15 A Right.

16 Or may I clarify that and say spend more
17 marketing.

18 Q What is the difference between the two?

19 A Marketing runs the whole gamut from
20 advertising to promotions to couponing to trade
21 spending.

22 It runs the entire gamut of expenses.
23 Launch more items.

24 Q The document continues at some length. And
25 it goes on to at least page 2280.

1 Could you turn to that, please?

2 The unaided brand awareness and total brand
3 awareness columns. Is the total brand awareness
4 column, as far as you understand it, the aided brand
5 awareness measure?

6 A I am not the researcher that conducted
7 this.

8 So if I was looking at it as the consumer
9 of the research, that would be my assumption.

10 I would probably go back and ask my
11 research team.

12 Q To be sure?

13 A To be sure. Yes.

14 Q Now, all of the products surveyed for in
15 this document have total brand awareness, and we are
16 assuming that it is aided brand awareness up in to the
17 90 percent.

18 Correct?

19 A That's correct.

20 Q But then the unaided brand awareness ranges
21 from a high of 64 percent all the way down to 18
22 percent for South Beach.

23 Correct?

24 A That's correct.

25 Q What does that -- are there any conclusions

1 you can draw by looking at these two columns, about
2 the reliability of an aided brand awareness measure of
3 the strength of a mark?

4 MS. DICKSON: Objection.

5 You can answer, if you know.

6 A I don't know.

7 I don't know.

8 Q All right.

9 Could you please turn to 2305?

10 Actually, to 2304.

11 These two pages list a number of consumer
12 typology definitions.

13 Are these standard consumer typology
14 definitions, that are used at Heinz, to categorize
15 strengths and weaknesses of various sorts of brands?

16 A We do -- we do use a terminology. It is
17 called consumer archetype.

18 We do not use these specific definitions.
19 But they are in the same genre of descriptors.

20 Q There is on page 2305, a category called
21 weak brands.

22 Does Heinz internally use -- have a
23 category that would be analogous to the weak brands
24 definition, as used in this document?

25 A Not that I am aware of, no.

1 Q Does Heinz have any category that would
2 encompass what is described here as a weak brand?

3 A Not that I am aware of, no.

4 Q Heinz has no weak brands?

5 A We have plenty of brands we would
6 categorize in a different archetype.

7 But I don't believe we categorize it in
8 weak brands, no.

9 Q Do you have a strong brand archetype?

10 A Again, we no longer use this definition.

11 So this is interesting, because we walked
12 away from this probably at least three or four years
13 ago.

14 But, for instance, a descriptor we would
15 use is king brand, which would be ketchup.

16 That would be sort of a definition now,
17 that we use. I am trying to think of our other
18 brands, that we have defined.

19 Smart Ones is defined as sage.

20 Q S-A-G-E?

21 A S-A-G-E.

22 Q That meaning the herb?

23 A Wisdom.

24 Q Are there any other brands that you have in
25 the sage category?

1 A Not at Heinz, no.

2 Q What other brands would you put in to that
3 category, nonHeinz brands?

4 A Oprah.

5 Q What are the other consumer archetype
6 categories that you have at Heinz?

7 A The ones that I can recall, the only other
8 one I can recall, that I have worked on, is TGI
9 Friday's. We call that the jester brand.

10 Q What does that mean?

11 A I have no idea.

12 Q Are there other Heinz brands that are in
13 the jester category?

14 A No.

15 Q Could you give me some nonHeinz brand
16 examples of jester category brands?

17 A No.

18 Again, we have changed from this sort of
19 definition -- consumer definition to a more defined
20 definition, which we call archetype.

21 Change in agencies was part of that reason
22 of how they defined brands for a marketing purpose.

23 Q You are still using Millward Brown,
24 however, correct?

25 A We are.

1 But probably not in this specific work, as
2 far as I am aware of.

3 Q Was there anything outright wrong with
4 consumer typology definitions, that Millward Brown has
5 used in this and other studies for Heinz?

6 A No.

7 But what I would state is the landscape,
8 the consumer landscape has significantly changed.

9 And I think -- as with any work you do, it
10 evolves.

11 And I believe our consumer definitions have
12 now evolved.

13 Q You said that the consumer landscape has
14 changed significantly.

15 Could you elaborate on that, please?

16 A I would just say the marketplace, from when
17 this research was done in 2006, I believe we then have
18 gone through different marketplace changes with the
19 economy.

20 And so as with any company, we have
21 redefined how we look at our consumer.

22 Q So the consumer landscape changes, that
23 you -- or change, that you mentioned, has primarily to
24 deal with the great recession we have been in?

25 A That is fair.

1 That is part of it. Sure.

2 Q What other parts?

3 What are other parts of it?

4 A Again, it goes back to how do we market to
5 our consumer. And we market not only looking at
6 advertising in television, you would be advertising
7 on-line, advertising at retail, external advertising.

8 So again, that would be how we would change
9 how we would choose to market.

10 Q There are more avenues for marketing?

11 A That is correct.

12 Q Primarily in light of the Internet?

13 A Internet is part of it, absolutely.

14 But equally, is it better to be in print or
15 on television.

16 Again, these are decisions, that we make,
17 again based on the -- the economics that we are
18 currently faced with, since 2006, when this research
19 was conducted.

20 Q What has the effect of the recession been
21 on changing the consumer landscape for these brands,
22 that we are talking about here today?

23 MS. DICKSON: Is that specific to Smart
24 Ones or more broadly?

25 MR. CROSS: More broadly, the nutritional

1 frozen food category.

2 A The nutritional frozen food category has
3 been in four years of decline.

4 Q And the explanation for that is?

5 A Hypothesis, what we have seen is the
6 consumer is leaving the category completely.

7 Q Because of price? Or they are just giving
8 up on their health, because they are in such desperate
9 financial misery?

10 A I believe it is financial for the most
11 part.

12 However, I think it is a variety of
13 components, that you have seen across most categories,
14 including frozen -- specifically, frozen nutritionals,
15 as they are walking away from the category.

16 I only have so many dollars to spend.
17 Therefore, I need to spend it, usually on my children
18 first. But I am also trying to make ends meet.

19 Q And the nutritional category has a -- as a
20 general rule -- a price differential, a higher price
21 differential than the other market basket of foods
22 that people buy?

23 All things being equal.

24 A All things being equal, yes, it does.

25 Q Do you want to take a short break? We have

1 been going about an hour.

2 A Okay.

3 Q You are entitled.

4 A I am entitled.

5 Thank you.

6 (Recess taken.)

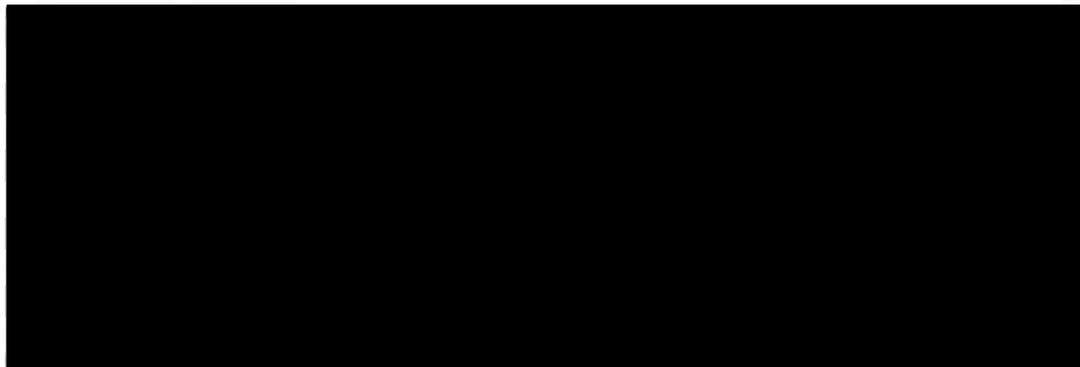
7 BY MR. CROSS:

8 Q Has Heinz done anything to improve the
9 relative position or strength of the Smart Ones mark
10 in this nutritional frozen foods category, say in 2007
11 to the present?

12 A I am not too sure what you are asking me,
13 specifically.

14 Q Well, turn to page 2306 of Exhibit 1.

15 A Okay.



22 Q Has Heinz done anything to improve the
23 positioning of Smart Ones on a chart such as this?

24 In the years starting 2007 to the present.

25 MS. DICKSON: Objection.

1 A Well, as we discussed previously, the
2 category has been in a four year decline.

3 But with that said, I am not sure that this
4 quadrant would reflect the state of the category
5 today, if we did the study today.

6 So to answer your question specifically,
7 have we done anything. We continue to work on the
8 business to improve taste, fit your lifestyle.

9 And again, we work specifically on the
10 ingredients of the product, the types of products we
11 launch, and the packaging that the product comes in.

12 All of which, again, going to the cost of
13 the product and going to the -- how the consumer views
14 the product.

15 Q Has Heinz increased, relative to the other
16 brands in this category, its spending on marketing and
17 advertising?

18 A Relative to the brands in the category, no.

19 Q You said that you are not sure whether this
20 quadrant analysis, that we are looking at at page
21 2306, would hold true today.

22 Do you have any evidence that says it would
23 not hold true today?

24 A I don't have any evidence, that it would
25 not.

1 However, since this category -- since this
2 quadrant analysis was done, our sales I believe at
3 that time we were the No. 3 brand in the frozen
4 nutritional category. Today we are the No. 2 brand.

5 So that would suggest potentially, despite
6 the decline in the category sales in the last four
7 years, that something has changed in this quadrant
8 analysis. As to what, I am not sure.

9 Q What is the hierarchy today in this
10 category?

11 A It would be Lean Cuisine is category
12 captain. Smart Ones is the No. 2 player. And behind
13 that comes Healthy Choice.

14 Q How closely behind Smart Ones is Healthy
15 Choice?

16 A I would say there is probably about a five
17 point difference between us and Healthy Choice. So we
18 have passed them.

19 So if Lean is a 52, we are about a 30, 31.

20 And then the remainder is Healthy Choice.

21 So my math is not very good. They are
22 about a 20 --

23 Q 20 something?

24 A 20 something. Exactly.

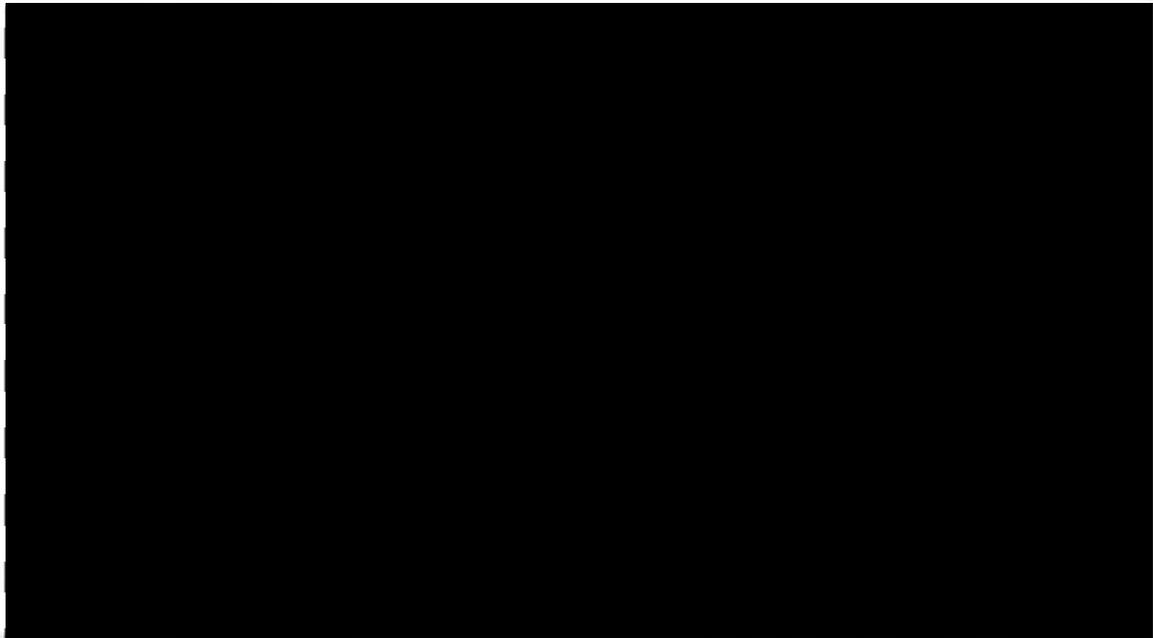
25 Q And as of the date of this quadrant

1 analysis, that we are looking at at page 2306, do you
2 know ballpark the percentages that Lean Cuisine had
3 and then Healthy Choice and then Smart Ones?

4 A Lean Cuisine, again, always category
5 captain.

6 I would say they were probably closer to a
7 60.

8 Healthy was probably in the 30s. And we
9 were probably the low 20s -- low to mid20s.



20 Q What has happened with the South Beach
21 product?

22 Is it still on the market?

23 A It is still in the market.

24 However, not in the frozen nutritional
25 category.

1 Q It is no longer in frozen food?

2 A That's correct.

3 Q Are there new entrants in to the category,
4 since the date of this study, that we are looking at
5 in Exhibit 1?

6 A There are private label entrants.

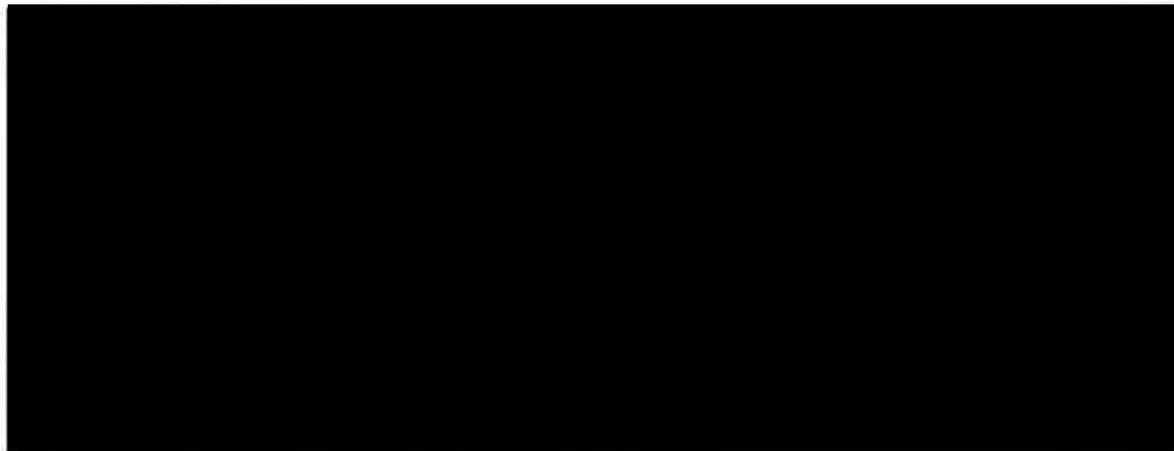
7 So that would be groceries owned brand and
8 Wal-Mart's owned brand, that have joined, have come in
9 to the category, yes.

10 Q No others you can think of?

11 A That is in the frozen nutritional?

12 Q Uh-huh.

13 A No.



21 Q What did you find out?

22 A My recollection, and again, it was probably
23 a very brief what we call qual research.

24 Q Could you repeat that?

25 A Qualitative versus quant.

1 Q Got it.

2 A And we found that the South Beach user
3 actually moved to our competitors, not to us.

4 Q Which of the competitors?

5 A They moved to -- probably in equal droves
6 to Healthy Choice and Lean Cuisine.

7 Q If they went 50-50 to Lean Cuisine, that
8 would explain it. Interesting.

9 A Yes.

10 Q Could you please turn to page 2360 of
11 Exhibit 1?

12 This is in a section called "overall
13 category learning".

14 Learning is another one of those consulting
15 words.

16 A Yes.

17 Q You don't hear or read unless you are
18 reading marketing consultant stuff.

19 They also have to learn how to punctuate
20 around "however". Although, they got it right this
21 time.

22 A 2360.

23 Q 2360.

24 This chart has a heading "right brand
25 importance".

1 And it says "top 2 box". What is the
2 reference to "top 2 box"?

3 A "Top 2 box" means you are looking at --
4 when you got your results, there was most important
5 and somewhat important, potentially.

6 So I would think if you add 37 and 49, it
7 gets to 86 would be my guess.

8 I might be wrong in my math here.

9 So it is looking at only the "top 2 box"
10 results.

11 Q This measure shows something about the care
12 that consumers in this category take in selecting
13 between the various offerings on the shelf or in the
14 freezer?

15 A I am reading it for the first time. But
16 yes, that would be --

17 Q This at least shows to me that consumers of
18 frozen nutritional products do spend some time making
19 sure they are picking the brand, that they want.

20 Would you agree with that?

21 A Yes.

22 Q Taking this out of the impulse buy
23 category?

24 A It is definitely not an impulse buy.
25 Hence, the decline you have seen for the

1 last four years.

2 Q That makes sense.

3 What are the price ranges of the products
4 in this category?

5 A Typically, one of these brands on any given
6 week of the year will be on deal.

7 So I am talking discount the deal price.
8 You would be looking, depending on the range in the
9 category, somewhere between 2.50 a box up to as high
10 as 3.50. There are certain items that are larger in
11 components. And they run around 4 bucks a bag,
12 actually. It is not a box.

13 Q Are these single serving?

14 A They are single serving.

15 Q Even the ones that are in the larger bag
16 category?

17 A Yes.

18 They potentially could be dinners is what
19 we classify as a dinner.

20 Q Now, ketchup.

21 Do you see this type of sensitivity to
22 selecting the right brand with say ketchup?

23 I can talk about my own experience.

24 But --

25 A Ketchup is an interesting brand. It is

1 brand king. It is a bit like Coke. I am better
2 talking about Coke -- I can talk about ketchup. But
3 Coke, you are either a Pepsi user or a Coke user.

4 Do you drink private label Coca-Cola?
5 Cola, actually. Cola.

6 Q How about ketchup? I mean, between -- do
7 people show this type of brand sensitivity in
8 selecting their ketchups off of the store shelf?

9 Are they less interested in getting the
10 correct brand than they appear to be in the
11 nutritional frozen food category?

12 MS. DICKSON: Objection.

13 You can answer, if you know.

14 A Ketchup has a loyalty component.

15 So ketchup is very loyal.

16 If you are a Heinz user, you will buy Heinz
17 at all cost.

18 So it talks to loyalty.

19 Sadly, in this category, loyalty, you do
20 buy the right brand. But loyalty could be based on
21 components of the meal versus ketchup, which is a
22 taste profile, versus the components, that you are in
23 a certain meal.

24 Again, I would be talking to my personal
25 choice. But I like Smart Ones' Santa Fe style rice and

1 beans.

2 I do not like the Lean Cuisine profile for
3 that.

4 Q Lean Cuisine has an equivalent product?

5 A Potentially. Or potentially, Healthy
6 Choice, for instance, doesn't have Santa Fe rice and
7 beans.

8 Q And consumers in the nutritional frozen
9 entree or food category, in your experience, spend a
10 considerable amount of time making that type of
11 purchasing decision.

12 They may want Santa Fe rice and beans?

13 A Yes.

14 Q But they have learned that the Santa Fe
15 rice and beans from one brand doesn't fit their tastes
16 as well as from another brand.

17 Hence, the care they take in selecting the
18 brand?

19 A I don't know that it doesn't fit -- fit
20 their taste is a possibility.

21 But equally, in this category, and maybe
22 Santa Fe rice and beans was a wrong example.

23 But it potentially doesn't exist in the
24 other brands.

25 Q Now we are going to turn to Exhibit 2.

1 On the very first page, it has production
2 No. 3402.

3 There is some people's names on here I will
4 ask you about.

5 I see your name, Marion Findlay.

6 A Yes.

7 Q And then it has Beth Eckenrode. Who is
8 that?

9 A She was the vice-president of --
10 vice-president soups and dressings for food service.

11 Q And then it has Colleen Akehurst,
12 A-K-E-H-U-R-S-T.

13 Who is that?

14 A At that particular time, she was director
15 of strategic planning at world headquarters.

16 Q Is that here in Pittsburgh?

17 A That is here in Pittsburgh.

18 Q It has an attachment reference,
19 "WWSO_soups".

20 A Yes.

21 Q Is that what is actually attached here in
22 the remaining pages of Exhibit 2?

23 Can you tell?

24 A I am not so sure I can tell.

25 I am not sure I can tell.

1 Q All right.

2 Turn to the next page, please. 3403.

3 A Uh-huh.

4 Q This has a date on it, July 2007.

5 And it has the same -- I think it has the
6 same title as page 2269 of Exhibit 1. Namely, "Heinz
7 frozen nutritional meals brand equity research".

8 Although this one now is for fiscal year
9 '08.

10 A Yes.

11 Q Is this the most recent version of the
12 Heinz frozen nutritional meals brand equity research?

13 Or should there be even more recent ones
14 than this?

15 A I believe there is one that is more recent
16 than this.

17 Q Do you know -- could you give me a ballpark
18 date? Some time in --

19 A I would say, again, due to the category
20 conditions and the obviously market conditions, I
21 believe we conducted one in 2009, post the financial
22 collapse, recession.

23 Q And then none after that?

24 A Not that I am aware of.

25 And I might be incorrect.

1 I just want to go on the record. It is
2 either '9 or '10 we might have conducted.

3 I believe it was '9.

4 Q Your understanding is that has been
5 produced?

6 MS. DICKSON: If we located it, it has been
7 produced.

8 Q Where would it be, who would have custody
9 over it?

10 A We would want to go back to our market
11 research team to locate it.

12 Again, I am not so sure we had used
13 Millward Brown. That might be the reason we haven't
14 located it.

15 Q Could you turn to page 3405, please?

16 You can see under the third bullet point,
17 that they talk about differences from the prior
18 research done includes the addition of the Kashi.

19 Is that how you pronounce it?

20 A Yes.

21 Q K-A-S-H-I brand. That is the outfit
22 primarily known for dry cereals; is that right?

23 A Yes.

24 Q At least in the States.

25 A Yes. Dry cereals.

1 Q They had at this point entered the frozen
2 nutritional foods category?

3 A I would say they entered the frozen meal
4 category.

5 I am not so sure solely in nutritional.
6 Solely in nutritional.

7 Q Do they remain in the frozen meal category?

8 A They do.

9 Q Where are they in the hierarchy?

10 A They are not in the consideration set of
11 frozen nutritional.

12 Q Oh. Why not?

13 A I don't know.

14 Q At one point it looked as if they were
15 considered as part of the frozen nutritional category,
16 correct?

17 A They were.

18 And they may -- I would need to go back to
19 my research team and ask them if they still consider
20 them part of the nutritional subset.

21 Q Are you aware of companies or brands, that
22 appear in the frozen food categories, and then also
23 appear elsewhere in the grocery store, outside of the
24 freezer case?

25 I can think of a couple. Kashi is one.

<p>under (7) 13:23;20:17,21; 22:10,12;50:17; 59:16</p> <p>underinclusive (3) 93:9,11;95:7</p> <p>understood (5) 3:21;5:9,18;18:22; 91:3</p> <p>uniqueness (1) 31:6</p> <p>United (5) 7:9,12;10:11;11:4; 38:10</p> <p>universe (1) 68:2</p> <p>University (6) 8:6,7,9;1,1,6;10:4</p> <p>unless (1) 52:17</p> <p>up (22) 4:18;11:10,24; 15:15;23:16;29:11; 35:1;36:3;40:16; 46:8;54:9;61:20,21; 64:22;66:2;67:14; 68:11;71:1;76:13; 80:7,18;89:7</p> <p>upper (2) 25:25;26:9</p> <p>upwards (1) 65:25</p> <p>usage (1) 19:1</p> <p>use (36) 14:24;21:10;22:3; 23:2,23;25:6,12; 29:4,5,6;33:17; 41:16,18,22;42:10, 15,17;70:5,13;72:7, 14,17,21;73:10;74:7, 22;75:2;76:17;79:7, 18;82:18;83:2,14; 84:13;86:24;99:24</p> <p>used (28) 13:11;22:20,25; 23:6,9,12,23;25:11, 12;29:14;30:5;41:14, 24;44:5;59:12;62:3; 68:22;69:24;70:18; 72:24;73:2;79:20,22, 24;81:24;82:11; 83:4;98:4</p> <p>user (4) 52:2;55:3,3,16</p> <p>users (2) 27:8,9</p> <p>using (6) 29:8;43:23;63:21; 70:14;83:24;95:19</p> <p>usually (2) 46:17;77:3</p>	<p style="text-align: center;">V</p> <p>value (4) 28:8;61:15,18; 93:18</p> <p>variety (2) 29:5;46:12</p> <p>various (4) 41:15;53:13;64:3; 95:20</p> <p>velocity (2) 86:20;100:2</p> <p>version (2) 58:11;61:10</p> <p>versus (8) 14:17;15:13; 32:13;33:9,21;51:25; 55:21,22</p> <p>via (1) 27:16</p> <p>vice-president (2) 57:9,10</p> <p>view (1) 88:5</p> <p>views (1) 48:13</p> <p>visual (1) 33:10</p>	<p>47:17</p> <p>weaknesses (1) 41:15</p> <p>web (1) 16:15</p> <p>week (1) 54:6</p> <p>weeks (1) 17:24</p> <p>Weight (35) 13:14;14:12,24,25; 15:11,16,18;16:3,24; 17:4;18:3,8,10,12; 21:16,18;22:2,14,21, 25;25:4,5,9,13,17; 26:12;67:18,19; 70:13;98:2,3,9;99:4; 100:24,25</p> <p>whichever (2) 14:23;35:5</p> <p>white (2) 34:22;81:25</p> <p>whole (6) 24:24;39:19; 62:24;68:12;75:14; 85:13</p> <p>whose (1) 11:21</p> <p>widely (1) 84:25</p> <p>wider (2) 95:15;96:3</p> <p>wife (1) 8:15</p> <p>Wisconsin (1) 8:16</p> <p>Wisdom (2) 42:23;74:24</p> <p>wishes (1) 8:15</p> <p>within (7) 12:7;21:22;28:9; 68:1;80:20;99:18; 100:9</p> <p>without (1) 18:15</p> <p>witness (6) 3:2;5:17,19;34:9, 10;101:16</p> <p>witnesses (1) 34:4</p> <p>women (2) 27:13,21</p> <p>wonderful (1) 8:12</p> <p>word (19) 14:23;17:5,16; 18:1;21:24;69:2; 70:6;71:6,14,25; 72:1,3,4,8;74:17; 76:17;78:4;86:24; 98:23</p> <p>words (4)</p>	<p>52:15;68:18;88:9; 98:23</p> <p>work (11) 8:21;10:6;11:20; 29:17;31:19,20;44:1, 9;48:7,9;68:14</p> <p>worked (4) 11:3,5,7;43:8</p> <p>working (3) 7:9;9:16;11:23</p> <p>World (4) 25:2;27:20;57:15; 101:2</p> <p>worth (1) 3:15</p> <p>wrong (4) 18:21;44:3;53:8; 56:22</p> <p>WW1 (1) 25:2</p> <p>WWSO_soups (1) 57:19</p>
	<p style="text-align: center;">W</p> <p>walk (1) 88:6</p> <p>walked (1) 42:11</p> <p>walking (1) 46:15</p> <p>Wal-Mart (2) 61:15;87:7</p> <p>Wal-Mart's (1) 51:8</p> <p>War (1) 25:2</p> <p>Watchers (27) 13:14;14:12; 15:11;16:4,24;18:3, 8,11,12;21:16,19; 22:2,14,21,25;25:4,5, 9,13,17;26:12;67:18, 19;98:2,3,10;99:4</p> <p>water (3) 82:12,19;85:19</p> <p>way (11) 6:19;12:21;39:12; 40:21;69:11,20; 73:17;88:8;96:23; 100:19;101:3</p> <p>weak (19) 30:2,25;32:23; 36:8,10,16,17,22,22; 37:4,16;38:21;39:13; 41:21,23;42:2,4,8;</p>	<p style="text-align: center;">Y</p> <p>year (13) 8:17,23;17:7,12, 17;18:4,5,6;48:2; 54:6;58:8;82:22; 85:20</p> <p>years (17) 11:9;12:5;42:12; 46:3;47:24;49:7; 54:1;72:19;79:4,5, 13;81:4,8,15;83:9; 84:22;86:7</p> <p>yesterday (2) 4:13;90:16</p> <p>Yeungling (3) 38:5,6,20</p> <p>York (3) 7:13;9:7;11:18</p>	

1 A Yes. Kashi.

2 I would say I am sure there are.

3 I would say like -- well, TGI Friday's,
4 obviously a brand we own, is also outside of the --
5 outside of frozen.

6 Q But also in frozen?

7 A But also in frozen.

8 Q How about I think Kraft macaroni and cheese
9 is sold at least through some outlets in a singles
10 frozen version.

11 A Are they?

12 That I wouldn't know.

13 Q Okay.

14 A But obviously, when you look at private
15 label, like Great Value, which is a Wal-Mart brand,
16 they are in the frozen.

17 They are also -- you can talk about Great
18 Value in every other category, that they are what I
19 call shelf stable.

20 Q I think some candy bars show up -- candy
21 bar brands show up both in ice cream and then also in
22 the candy bar rack?

23 A Yes.

24 I am trying to think.

25 I believe Sara Lee would be another one

1 that is also in frozen, is also in the bread aisle or
2 the desserts or cakes brand.

3 Q So consumers are used to seeing brands
4 appear, not just in the frozen food case, but the same
5 brand appearing elsewhere in the grocery store? Given
6 these examples.

7 A Yes.

8 Q Could you turn to production No. 3413?
9 Which is part of Exhibit 2.

10 This page shows competitive spending for
11 frozen entrees, and the brands it is tracking are
12 Healthy Choice, South Beach, Lean Cuisine and Smart
13 Ones.

14 Where does -- how do you get data like
15 this?

16 MS. DICKSON: Objection.

17 You can answer, if you know.

18 A This data actually you purchase, or
19 potentially it is provided from your buying agency.

20 So our buying agency is Starcom,
21 S-T-A-R-C-O-M.

22 Q It is generally considered to be an
23 accurate reflection of media spending in total, and
24 then also by television print and then a whole
25 other --

1 A It is directionally accurate.

2 And it is based on information, that is
3 public and can be purchased.

4 Q Directionally accurate. What does that
5 mean?

6 A Depends on the period in time. I don't
7 know when this report was produced.

8 So that is why I am just saying it is
9 directionally accurate in the sense of was it exactly
10 3-04, February '05?

11 If we purchased this on February '06, then
12 probably not. No.

13 Q The "all other" category, would that
14 involve Internet, in-store coupons, things of that
15 sort?

16 A It could be anything.

17 It could be simply -- it could quite
18 frankly be direct mail.

19 It could be billboards. It could be -- it
20 could be advertising at Heinz Field. I am just sort
21 of using that example. A name.

22 It could be a name you purchased. Staples
23 Center is the only other one I can think of.

24 I am sure there are other names I should
25 know.

1 Q At the top it shows for the 12 month
2 period, March '06 to March '07, relative dollars spent
3 by the various -- by the four brands listed here.

4 And it shows Smart Ones at the lowest, with
5 the lowest total.

6 Is that your understanding as of today,
7 that Smart Ones continues to be the lowest total for
8 competitive spending for promoting its Smart Ones
9 brands, as opposed to the other brands in the
10 category?

11 MS. DICKSON: Do you mean as to these four
12 brands, specifically?

13 MR. CROSS: As to these four brands,
14 specifically. Sure.

15 A As it relates to television and print, yes.

16 Q On these orders of magnitude -- there is
17 none shown for Smart Ones in TV.

18 A That's correct.

19 Q Yet Healthy Choice and Lean Cuisine show in
20 the neighborhood of 24, 25 million dollars in TV.

21 A That's correct.

22 Q And that remains true up through until
23 today, ballpark?

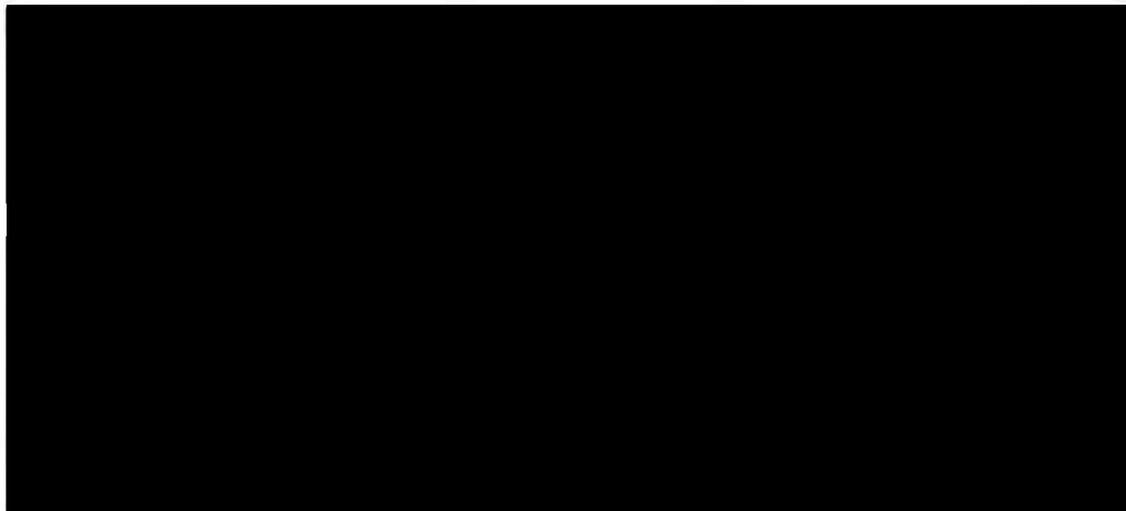
24 A I wouldn't want to quote their numbers.
25 I would have to go and have our agency pull

1 those numbers.

2 But directionally, that is about their
3 spend.

4 Q And how about with print?

5 Are the numbers shown here -- at least in
6 relative terms pretty much the same today, as they
7 were back then?



16 Q And what are the others, Lean Cuisine and
17 any others that are in print?

18 MS. DICKSON: Objection. You can answer.

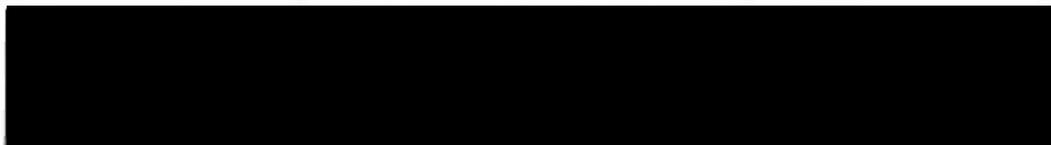
19 Q If you have seen the statistics.

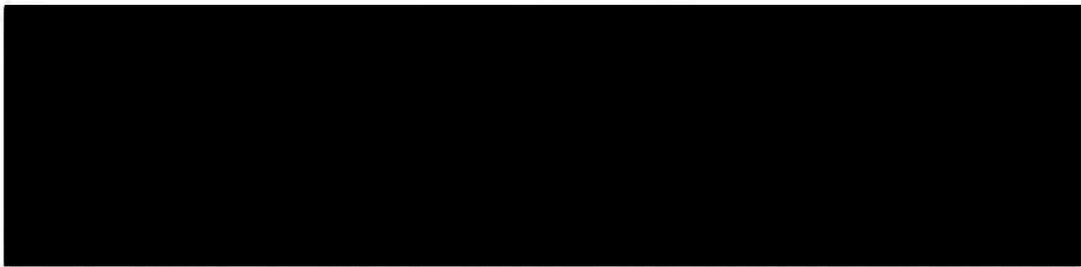
20 A I have not.

21 I don't know their current spends.

22 Q How about the "all other" category?

23 A I can only talk to Smart Ones.





4 Q Could you turn, please, to page 3480?

5 This page shows right brand importance, as
6 did at least one of the charts we looked at in Exhibit
7 1.

8 This again is the same measure of consumer
9 care in determining which particular brand they
10 encounter in the frozen foods section they are going
11 to buy?

12 A Yes.

13 Q And this one now -- I think the one we
14 looked at previously might have been focused on just
15 one of your categories of consumers.

16 This one appears to be -- I may or may not
17 be right about that one. This one appears to be all
18 consumers, that were surveyed.

19 MS. DICKSON: Objection.

20 You can answer.

21 Q Or can you tell?

22 A I honestly don't know.

23 I would probably say not.

24 I don't know.

25 So I would be -- I don't know, actually.

1 I would have to go back and get the full --
2 I would have to read the full study.

3 Q Is there something in Exhibit 2 --

4 A I don't believe so.

5 Q -- that would tell us?

6 There certainly isn't anything that says
7 that the right brand importance chart is limited to a
8 particular consumer.

9 And it comes behind the page that says
10 "overall category learning", which is at page 3477?

11 A I think I would be incorrect in assuming
12 that we were not talking to that specific consumer.

13 I would seriously have to go back and ask
14 the researcher, who set up this study.

15 Q There are other headings, that appear or
16 inserts -- title pages, that appear throughout Exhibit
17 2, such as at 3461, that look at particular consumer
18 types such as the Weight Watchers lapsed members. And
19 the Weight Watchers members.

20 This is all in the appendix, which
21 appears -- the title page for that is at 3451.

22 So if you want to look through this to see
23 if there is anything that would indicate to you
24 whether the degree -- whether the right brand
25 importance chart is or is not focused on only a

1 particular consuming group within the scope of the
2 study, as opposed to the universe, that was studied,
3 let me know.

4 A I really would prefer to ask my researcher,
5 who would know the actual -- what the original
6 criteria -- screening criteria were.

7 Q Who is that?

8 A I am not sure who I would ask.

9 But I would go back and ask one of the
10 research team back at the office, who could pull this
11 up.

12 There is a whole team of people, and we
13 have a -- as you can I am sure appreciate, we have a
14 revolving door as people work on different brands.

15 So they would have to go back to probably
16 the research depot, and see if they could find the
17 original criteria.

18 Q The words themselves in "Smart Ones".
19 "Smart" is obviously a laudatory or complimentary
20 term.

21 A Yes.

22 Q And as used in Smart Ones, what does it
23 connote or suggest?

24 A You have made the right choice.
25 You are on a journey, you are on a path.

1 We can help you.

2 Q And the word "Ones", what does that connote
3 in the "Smart Ones"?

4 A We believe that it was a -- it is a journey
5 that you take. But there is more than one of you
6 taking this journey.

7 Q So the "Ones" is referring to essentially
8 the consumer?

9 A It refers to the consumer.
10 It also refers to the product as well.

11 Q In what way does it refer to the product?

12 A The product, in its initial inception, was
13 designed with one gram of fat.

14 Q You have gone beyond one gram?

15 A Absolutely.

16 Q What does it connote now, "Ones"?

17 A Exactly that one person, that it is you
18 alone can make the decisions to follow the right
19 lifestyle, to eat the right foods, to make a change in
20 the way you live your life.

21 Q So does "Ones" refer now to the consumer,
22 primarily, as opposed to the product itself?

23 A Yes.

24 Q What is the connotation of "Smart" as used
25 in Smart Balance?

1 MS. DICKSON: Which category are we on?

2 MR. CROSS: This might be 7 and 8, and
3 somewhat tied in to just general research issues
4 and results of measuring confusion or recognition
5 or strengths of trademarks or products that use
6 the word "smart".

7 Q In connection with Smart Balance, the Smart
8 Balance mark, what is the connotation of "Smart"?

9 MS. DICKSON: I object. If you have a
10 personal opinion.

11 A This is a personal opinion.

12 It would be when I am trying to eat
13 healthier or lose weight, I would elect to use Smart
14 Balance as opposed to using butter or full fat
15 margarine.

16 Q So "Smart" in the context of Smart Balance
17 has a different meaning to you than the connotation
18 when it is used in connection with Smart Ones?

19 MS. DICKSON: I object. Again, if you have
20 a personal opinion.

21 A It is personal.

22 It would be a personal opinion.

23 But again, when I am eating Smart Ones, I
24 am making the right decisions. When I would be eating
25 Smart Balance, I would be at the same point in the

1 journey. I would be picking up Smart Ones and Smart
2 Balance at the same time.

3 Q But there is this connotation with Smart
4 Balance, that I believe had something to do with the
5 fat content or the -- I guess fat is not the right
6 word.

7 A It is --

8 Q The spread.

9 A The spread, I am reducing my caloric
10 intake.

11 I am also choosing Smart Balance or Smart
12 Ones to make a better lifestyle choice in my journey,
13 my health journey.

14 Q And the word "Balance" in Smart Balance,
15 what is its connotation?

16 MS. DICKSON: I would object. If you have
17 a personal opinion on that, you can answer.

18 A To me, that means the right combination of
19 fats. The right combination of fats.

20 Q So "Balance in the context of Smart
21 Balance refers to the product?

22 MS. DICKSON: Again, I would object. If
23 you have a personal opinion.

24 A Yes. It does refer to the product.

25 Q And balance, the word "balance", obviously

1 looks different than the word "ones"?

2 A Yes.

3 Q And it sounds different than the word
4 "ones"? "Balance" sounds different than the word
5 "ones"?

6 A Yes.

7 Q There are nonfood products that use the
8 word "smart".

9 Correct?

10 A Yes.

11 Q Smart car comes to mind.

12 A Smart phone.

13 Q Smart phone, which is more for an entire
14 category. I don't think people use it really as a
15 brand.

16 A Probably not.

17 Q Would you agree that the use of "smart" in
18 connection with nonfood products has been increasing
19 in recent years?

20 A Yes.

21 Q As it has been in use with food products?

22 A Yes.

23 Q Could you give a connotation -- is there a
24 connotation to "smart", when it is used with nonfood
25 products?

1 Could you give a generalized connotation to
2 "smart" when used with nonfood products?

3 MS. DICKSON: I object. To the extent you
4 have a personal opinion, you can answer.

5 A I believe a smart car is about being good
6 for the environment.

7 I don't know if it is. But that is what I
8 would connotate from a smart car.

9 Maybe fuel consumption is less. Maybe it
10 doesn't use fuel. I don't know. I am not too sure
11 about a smart car.

12 That would probably be what I would
13 connotate from a smart car.

14 Q How about smart phones or --

15 MS. DICKSON: Same objection.

16 A A personal opinion would be go the other
17 way, because I won't understand it. Panic.

18 Q Well, generally, "smart" is considered to
19 be a laudatory term in connection with nonfood
20 products.

21 Right?

22 MS. DICKSON: Again, if you have a personal
23 opinion of that.

24 A Yes. I would think so.

25 Q And also, it connotes a laudatory -- it is

1 a laudatory term in connection with food products as
2 well.

3 A Laudatory.

4 Q It is better than "dumb".

5 A Better for you, yes.

6 Q Is that the general connotation of "smart"
7 in connection with its use with food products?

8 A In general or in the frozen nutritional
9 category?

10 Q Let's take in general.

11 A I think better for you is definitely the
12 connotation.

13 Q How about in the frozen nutritional food
14 category?

15 A I believe it is better for you, and you are
16 making the right choice, which goes back to it is a
17 very -- what is the word?

18 Again, I have to go back to what we talked
19 about before.

20 But the -- it is a selective decision. It
21 is not an automatic decision in this category.

22 Q So in this category, the use of "smart"
23 connotes not just the food is better for you, but it
24 also reflects on the wisdom of the choice.

25 A That's correct.

1 Q You don't see that connotation in
2 connection with the use of "smart" with other food
3 products outside of the frozen nutrition category?

4 A No. Due to price.

5 You are making a -- in this category, it is
6 very much a singular decision. It is not a shared
7 product.

8 Example, you would buy a meal for one, it
9 is not for the entire family.

10 You might ask your family to eat healthier,
11 but you are buying that solely for yourself.

12 So you would have to buy four of them at
13 2.50, which is a 10 dollar price point. When
14 potentially you could feed the whole family for five
15 dollars.

16 So "smart" is very individual.

17 Q "Smart" is very individual --

18 A In this category.

19 It is a very individual -- particularly in
20 frozen food, frozen nutritional. "Smart" is a very
21 singular decision for yourself.

22 It is for me.

23 Q How about nonfrozen nutritions? Does it
24 have that same connotation of being a right selection
25 or choice?

1 A Could you repeat that question again?

2 Q Sure.

3 In nonfrozen nutritional categories of
4 foods, does "smart" have this connotation of making
5 the right choice?

6 A It is making the right choice.

7 But a smart car is a family decision.

8 Q I am sorry. In the food category.

9 A Food category.

10 Q Nonfrozen.

11 A Nonfrozen.

12 Q Let me start again.

13 I just completely messed up the question.

14 A Yes.

15 Q Take this following category. Food,
16 nutritional, but nonfrozen category.

17 Does the use of the word "smart" in
18 connection with products, food products in that
19 category, have the connotation of not only making
20 it -- not only the product is better for you, but that
21 you are making the right choice?

22 A Could you again repeat it? I am sorry.

23 Q Sure. I think I got it right that time.
24 Why don't you read it back?

25 (Record read.)

1 A It is not -- yes.

2 But it is not a singular choice. It is
3 usually for you and your family.

4 Q I guess I don't follow that qualifier.
5 Yes, it is not a singular choice.

6 A When you are in the frozen nutritional
7 category, you are buying for one.

8 When you are outside of that category, and
9 you are looking at "smart", and there are several
10 "smart" cereals.

11 Potentially, you would feed that to you and
12 your children, so it is a bigger group of people, that
13 you are making that decision for.

14 Q Because there are typically not single
15 portion --

16 A That's correct.

17 Q -- food products.

18 A That's correct.

19 Q Outside of frozen foods.

20 A That's correct.

21 Q Before we launch in to the next category,
22 maybe we should take a short break.

23 (Recess taken.)

24 BY MR. CROSS:

25 Q Topic 8.

1 Promark's knowledge of anyone offering
2 goods or services in connection with any trademark,
3 service mark, trade name or product name containing
4 the word "smart" in connection with goods sold in the
5 same stores as goods bearing the mark Smart Ones.

6 I will ask you unaided, if you can list
7 any?

8 A Well, I believe there is Smart Balance,
9 Smart Choice cereal or Smart something cereal.

10 It is by Kellogg's. Smart Start. Let me
11 rephrase that. Smart Start.

12 Those would be the two unaided.

13 Q Let me aid you some.

14 Smart Pop, Orville Redenbacher's popcorn.

15 A Know about it, yes. Smart Pop. Yes.

16 Q You are aware of that?

17 A I am aware of that.

18 Q For how long have you been aware of Smart
19 Pop?

20 A Not very long.

21 MS. DICKSON: You Heinz, or you --

22 A You Heinz, or you me?

23 Q You are supposed to be talking on behalf of
24 Promark.

25 It may be the -- the answer may be the

1 same.

2 MS. DICKSON: Just for the record.

3 A I wouldn't say it was well known, a couple
4 of years maybe.

5 Q Couple of years.

6 And how about how long has Promark known of
7 Kellogg's use of Smart Start or Start Smart, one or
8 the other, in connection with cereal?

9 A I don't know that I can answer that, to be
10 honest.

11 I don't recall how long I would have known
12 that.

13 Q Couple years as well?

14 A Probably.

15 Q I guess this is not your category.

16 Yes. This is not your category. Instances
17 of confusion related to Smart Ones and a nonparty's
18 use of a "smart" mark.

19 I guess that is you.

20 Q Smart used by Quaker Oats.

21 A Never heard of it.

22 Q Health Smart used with ice cream.

23 A No. Never heard of it.

24 Q Smart Deli used in connection with meatless
25 meat? Sounds British.

1 A Sounds dreadful.

2 I actually have heard of it.

3 I don't know that I could say Promark heard
4 of it.

5 But it would be something personally I
6 probably have seen. It rings a bell.

7 I think I picked it up, looked at it and
8 put it back down again, because it is meatless.

9 Q About how long ago did you first become
10 aware of it?

11 A Probably about six or nine months.

12 Q Smart Bacon, baconless bacon?

13 A No.

14 Q Never.

15 A Never.

16 Q Smart Links?

17 A Yes.

18 I have picked that up personally and put it
19 back down again.

20 Q Within what? The last six --

21 A Last six months.

22 Q Six months or so?

23 A Yes.

24 Six to nine months.

25 Q Smart Dogs.

1 A I have seen those.

2 Q How long?

3 A We have been aware of those probably a
4 couple of years.

5 Q Smart Sausages. I sense a theme here.

6 A We are aware of those.

7 Q How long?

8 A At least a couple of years.

9 Q And then Smart Balance, you have been aware
10 of for how long?

11 You Promark.

12 MS. DICKSON: You can answer, if you know.

13 That is also a category for Sabrina.

14 A How long have I been with Heinz?

15 I would say ten years. If not longer.

16 Q Do any other come to mind unaided before I
17 start doing some more aiding?

18 A No.

19 Q Let's have this marked the next exhibit.

20 (Thereupon, Findlay Exhibit No. 3 was
21 marked for identification.)

22 Q The court reporter has put before you what
23 has been marked Exhibit 3.

24 It shows the name Smart Taste used by
25 Ronzoni, in connection with white pasta.

1 Was Promark aware of this before today or
2 this dispute?

3 A No.

4 Q This is the first you have seen this?

5 A Yes.

6 (Thereupon, Findlay Exhibit No. 4 was
7 marked for identification.)

8 Q The court reporter has put before you what
9 has been marked as Exhibit 4.

10 It shows -- it is a little hard to read.

11 It shows "Smart" used in connection with
12 water by an outfit -- you have studied French, could
13 you pronounce the French name for me, please?

14 A Glacéau.

15 Q Which means glacier.

16 A Indeed. Or pure.

17 Q Or pure.

18 Had Promark been aware of this use of
19 water?

20 A Yes.

21 Q For about how long?

22 A At least if not longer than a year.

23 Q Let's have this marked as 5.

24 (Thereupon, Findlay Exhibit No. 5 was
25 marked for identification.)

1 Q The court reporter has marked another
2 example of the use of "smart" with foods.

3 This is Carb Smart, this Exhibit 5, being
4 used by Breyers.

5 A Yes.

6 Q Was Promark aware of this before today?

7 A Yes.

8 Q How long?

9 A About three or four years.

10 (Thereupon, Findlay Exhibit No. 6 was
11 marked for identification.)

12 Q The court reporter has handed you what has
13 been marked as Exhibit 6.

14 This is a picture showing the use of
15 "smart" in connection with the mark Smart Gels,
16 G-E-L-S. A Kozy Shack, spelled with a K, product.

17 Was Promark aware of this product before
18 today?

19 A No.

20 (Thereupon, Findlay Exhibit No. 7 was
21 marked for identification.)

22 Q The court reporter has handed you what has
23 been marked as Exhibit 7.

24 This shows Prego Italian sauce people using
25 the mark Heart Smart with spaghetti sauce.

1 Was Promark aware of this before today?

2 A Yes.

3 Q About how long?

4 A Probably six to nine months.

5 Q I will show you what is going to get marked

6 Exhibit 8.

7 (Thereupon, Findlay Exhibit No. 8 was

8 marked for identification.)

9 Q The court reporter has put before you what
10 has been marked Exhibit 8.

11 This is a microwave popcorn bearing the
12 Smart Balance mark.

13 Was Promark aware of this use of Smart
14 Balance in connection with popcorn before today?

15 A Yes.

16 Q For how long?

17 A I would say about six months. That I
18 recall.

19 Q Back to the Smart Start or Start Smart
20 Kellogg's cereal.

21 You said Promark has been aware of that for
22 a couple of years?

23 A Yes.

24 Q And Promark has been aware of it being
25 widely distributed throughout the country in grocery

1 stores.

2 Correct?

3 A Yes.

4 Q The Smart Deli mark, where do you recall
5 seeing that?

6 A It was in Giant Eagle, which is our local
7 retail grocery store.

8 Q Have you seen it at any other retail
9 outlets?

10 A I don't recall any other outlets.

11 Q Is that where you saw Smart Links, Smart
12 Dogs, Smart Sausages as well?

13 A I saw them there and also at Whole Foods.

14 Q Any other outlets?

15 A No.

16 Q The Ronzoni you had not seen before,
17 right? The Ronzoni Smart Taste.

18 A I have not.

19 Q And the Smart water, you said that you --
20 Promark has been aware of it for about a year.

21 Where are you aware of it being
22 distributed?

23 A Local retailer.

24 And at what we call mass merch, which would
25 be Target.

1 Q So it is distributed nationally? As far as
2 you are aware.

3 A As far as I am aware, yes.

4 Q The Carb Smart Breyers ice cream. Did you
5 say you were aware of that?

6 A Yes.

7 Q For about three or four years?

8 A Yes.

9 Q Where is it distributed?

10 A It is distributed nationally.

11 Q Is it promoted, that you are aware of?

12 You have just seen it in stores?

13 A It was promoted.

14 It is losing distribution.

15 Q Meaning?

16 A It is being discontinued.

17 Q Do you know why that is?

18 A I am not in that category. But being in
19 frozen is a limited space. So it depends on the
20 velocity and the turn of an item. If there is
21 something that is believed to be a faster turning
22 item, you get discontinued pretty quickly.

23 Q As far as you know, it had nothing to do
24 with Breyers' use of the word "smart" in connection
25 with this product, this frozen product?

1 A I believe not.

2 Q You have known about -- Promark has known
3 about the Prego Heart Smart spaghetti sauce for six to
4 nine months, approximately.

5 And where is it distributed?

6 A The only place I have seen it is at retail,
7 grocery retail. And at Wal-Mart.

8 Q So as far as you know, it is distributed
9 nationally as well?

10 A Yes.

11 Q And the Smart Balance, the products that
12 bear the Smart Balance mark, they are distributed at
13 retail nationally?

14 A Yes.

15 Q Let me take a look at the deposition
16 notice, to see if I have covered the topics.

17 Let's have this marked as the next exhibit.

18 (Thereupon, Findlay Exhibit No. 9 was
19 marked for identification.)

20 Q The court reporter has put before you what
21 has been marked Exhibit 9.

22 Can you tell me what this document is?

23 A This is what we call a creative tissue
24 session, which is how we come in to develop
25 advertising to market our product to our consumers.

1 Q Could you explain what -- in more depth
2 what a creative tissue session involves?

3 It sounds like dissecting brain matter.

4 A It is you leave your ego and your point of
5 view outside the door.

6 And you walk in and start to brainstorm
7 behind the communications that you would potentially
8 see as the way to communicate to consumers through
9 channel agnostic words.

10 I don't think that helps you. But I
11 apologize.

12 Q This really sounds like consultant speak.

13 A Yes.

14 It is consultant speak.

15 Q So is this based -- is this research based?

16 Or is it really truly sitting in a room and
17 brainstorming?

18 A It is really brainstorming.

19 Q Do you -- were you involved in this
20 particular creative tissue session, that stated August
21 6, 2010?

22 A I was.

23 Q Do you recall what the outcome was of this
24 creative tissue system -- I mean session.

25 A Session.

1 If I may just refresh my memory.

2 Q Absolutely. Take whatever time you need.

3 A The outcome of this was that we elected to
4 redesign our packaging and place on the back of our
5 packaging a series of six principles, that are
6 currently in transition today.

7 Which was then followed up by us informing
8 the agency we did not like any of their creative
9 execution.

10 Q Tough customer.

11 A We were a very tough customer.

12 Q What are the -- could you summarize for me
13 the principles, that you wanted to appear on your
14 packaging?

15 A There are six principles, that we believe,
16 that we follow.

17 And they range from the content of the
18 meals right through to that you are not doing this
19 journey alone.

20 So I believe the last principle is about
21 sharing success and your journey with other people.

22 Q Let's have these two marked as the next two
23 exhibits.

24 (Thereupon, Findlay Exhibit Nos. 10 and 11
25 were marked for identification.)

1 Q The court reporter has put before you what
2 has been marked as Exhibits 10 and 11.

3 Had you seen these documents before just
4 now?

5 A I have not.

6 Q Do you know who Barry Sabol is?

7 A I do not.

8 Q Do you know the name Strategic Consumer
9 Research, Inc.?

10 A I do not.

11 Q Were you aware there had been a survey
12 performed in connection with this dispute about the
13 likelihood of brand confusion between Smart Ones and
14 Smart Balance?

15 A The outside counsel did advise me of that
16 yesterday.

17 Q Could you please look at Exhibit 11?

18 And as a consumer of survey research of
19 this general sort, I am going to ask you to critique
20 it.

21 MS. DICKSON: I am going to object just
22 based on lack of foundation.

23 She hasn't seen it before.

24 And also, just to say on the record, that
25 this expert will be available for subsequent

1 deposition, to the extent you want to delve in to
2 the methodology of his study.

3 MR. CROSS: Understood.

4 Q Go ahead, take whatever time you would like
5 to read Exhibit 11.

6 It is fairly short.

7 A Okay.

8 Q Okay.

9 What do you think?

10 MS. DICKSON: Objection.

11 Q As a piece of survey research?

12 I have read and heard many experts say
13 there is no such thing as a perfect survey.

14 A I would agree with that.

15 Q Would you agree?

16 A I would agree.

17 Q What are the imperfections with this one?

18 MS. DICKSON: Objection.

19 You can answer.

20 A I would probably have made it larger.

21 Equally, I -- again, interviews were conducted with
22 respondents in 45 of 50 states.

23 Okay. These are the exceptions. That is
24 not bad, actually. It is not bad.

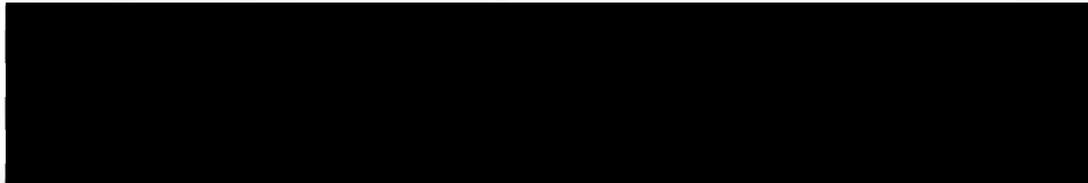
25 Again, it goes to define national

1 distribution, which would be making sure that you
2 covered every state, that had been -- that was
3 potentially to have distribution.

4 What I actually do like about this was
5 actually the percentage of ages. That is about how
6 the category responds.

7 So that is pretty good.

8 And then the breakdowns pretty much as the
9 category responds as well, 28 respondents were male,
10 72 were female.



14 Q Anything else?

15 A No.

16 Q You said you would have liked to see it be
17 larger meaning larger sample size?

18 A Yes.

19 I mean -- yes.

20 Q How about the survey instrument itself, did
21 you look at that?

22 A In all fairness, I am not a research guru.

23 So I would probably go back to the office
24 and ask them to give me an assessment of is this a
25 standard format of survey, that we would do, and would

1 this meet the requirements of the questions that we
2 were asking.

3 Q The brands that are listed in the survey
4 instrument, it is an incomplete list, correct?

5 MS. DICKSON: Objection.

6 A I think it is actually a bigger list than
7 the first nutritional category.

8 Q Correct. It is both overinclusive and
9 underinclusive.

10 Right?

11 A Underinclusive meaning?

12 Q I guess to the extent Kashi is offering
13 anything in the nutritional category, it is a name
14 that doesn't appear on this list?

15 A But equally, Amy's doesn't appear on this
16 list, which is also you could argue is in this
17 category equally eating right, which is the brand
18 name, or great value.

19 I mean, I am not sure how big you would
20 want to make the list.

21 What this -- Banquet isn't here either,
22 which would be another one.

23 Q Does Banquet have a nutritional offering,
24 nutritional category offering?

25 A No.

1 But Budget Gourmet does.

2 Q Who makes Budget Gourmet?

3 Is that --

4 A Michelina's.

5 Q Is that a private label?

6 A No. That is a branding product.

7 They make lean -- they also make Budget
8 Gourmet and Lean Gourmet.

9 Q So it has -- does Stouffer's make any
10 nutritional category products?

11 A They make Lean Cuisine.

12 Q Oh.

13 So Stouffer's appears on this list both as
14 Stouffer's itself and then Lean Cuisine.

15 Is the Stouffer's branded product -- is
16 there a separate Stouffer's branded product?

17 A How we look at the category is Stouffer's
18 and Marie Callender are what we classify -- and
19 Swanson, actually, as full fat.

20 And Marie Callender is manufactured by
21 Healthy Choice.

22 So our first nutritional entree category
23 includes Lean, Smart Ones, Healthy Choice.

24 Q And you would include some others in that
25 category, if you wanted to have a comprehensive list?

1 A Yes.

2 You could.

3 Yes. You could.

4 Q What are the effects, if any, on the
5 results of having a list like this, which is both
6 overinclusive, it includes brands that are outside of
7 the nutritional category, and underinclusive, it
8 excludes brands that are in the nutritional category?

9 MS. DICKSON: Objection. You can answer,
10 if you know.

11 A I think, again, it goes to when you go back
12 to the demographics of who met the requirements, and I
13 think, again, as I look back at the -- as I look back
14 at the study methodology, what this said is they were
15 casting a wider net in order to get the total number
16 of respondents, that they needed to respond to the
17 survey.

18 Q By putting nonnutritional -- nonnutritional
19 category brands in here, and by using purchases of a
20 frozen entree as a screen for reaching various
21 conclusions, that would qualify in to the survey
22 results people who aren't interested in buying
23 nutritional category foods, but are just interested in
24 buying full fat frozen foods.

25 Correct?

1 MS. DICKSON: Objection.

2 You can answer, if you want.

3 A Again, I think it goes to casting a wider
4 net to get a group of people that meet your
5 requirements.

6 But I think, as I read the methodology, you
7 had to put purchases, but you also had to refer to
8 Smart Ones.

9 And I think somewhere in here it says --
10 "in the course of screening" -- page 6, "aided brand
11 awareness" -- "potential respondents, records were
12 kept of those respondents who met the purchase
13 requirement, but who were disqualified due to lack
14 of awareness of the Smart Ones brand of frozen
15 meals."

16 So my assumption, and I would ask the
17 researcher, who conducted the survey, did you -- were
18 these people who purchased Smart Ones as one of their
19 categories.

20 Q So there are questions we would need to dig
21 in to a little bit deeper.

22 A Yes.

23 Q The way -- so this survey was done strictly
24 over the telephone.

25 A Yes.

1 Q And it was not done in the purchasing
2 setting.

3 Correct?

4 It was not done in a store?

5 MS. DICKSON: Objection. To the extent you
6 know, you can answer.

7 A Yes.

8 It says it was a telephone survey.

9 Q And obviously, the conclusions, that were
10 drawn, concerning the likelihood of confusion could
11 very well be different, if the study were done in the
12 native environment in which these products appear.

13 Correct?

14 MS. DICKSON: Objection. To the extent you
15 have an opinion, you can answer.

16 A What I think is indicative of how we do
17 research, this would be our starting point.

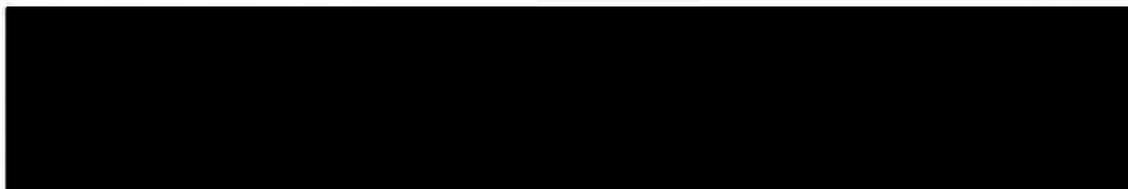
18 We would then move and then conduct the
19 next survey, probably qualitatively, which would be
20 with a group of people sitting around a table.
21 Potentially in the native environment.

22 So there would be several more steps before
23 the final decision is reached.

24 But this would be our starting point of
25 discussion internally.

1 Q And since Smart Ones always appears with
2 the Weight Watchers trademark, is that correct? That
3 Smart Ones always appears with Weight Watchers also
4 being used on the product?

5 A Yes.



9 Q Since that is the case with the Weight
10 Watchers mark appearing on the product along with
11 Smart Ones, that could also influence the actual
12 likelihood of confusion, that may or may not occur in
13 the store?

14 MS. DICKSON: Objection. To the extent you
15 have an opinion, you can answer.

16 A You are going to have to ask that question
17 again.

18 Q Sure.

19 Another -- in making conclusions about what
20 consumers -- about whether consumers actually would be
21 confused in the store, when confronted with say Smart
22 Ones and Smart Balance, you need to take in to account
23 not just the words -- the word marks "Smart Ones" and
24 "Smart Balance", but also need to take in to account
25 the product packaging.

1 A Yes.

2 Q And one of the things about Smart Ones is
3 its product packaging also always bears the trademark
4 Weight Watchers.

5 A Yes.

6 Q Now, because of that, you could very well
7 get different results concerning the likelihood of
8 confusion than are reflected -- than are reflected in
9 Exhibit 11.

10 MS. DICKSON: Objection. To the extent you
11 have an opinion, you can answer.

12 A It is possible.

13 It is possible.

14 Q You have mentioned -- I think we mentioned
15 the nutrition frozen food category?

16 A Frozen nutrition category. Or nutritional
17 category.

18 Q Are there subcategories within that broader
19 category?

20 A No.

21 Q No?

22 A Not that we -- the frozen nutritional
23 category is defined specifically for how we look at
24 the sales. And measuring mechanisms that we use
25 through AC Nielsen, which is our -- I am trying to

1 think of the name. Our data source of projecting size
2 of category and potential velocity of sales.

3 Q Who are the people that the frozen
4 nutritional category is directed toward?

5 How would you describe that demographic?

6 A All individuals that are looking towards a
7 healthy lifestyle.

8 Q I think earlier you had mentioned that
9 there is some subset within that group of people who
10 are more interested in just dieting, and others who
11 are more interested in addressing health issues, maybe
12 even a diagnosed medical condition like high
13 cholesterol.

14 Is that true?

15 MS. DICKSON: Objection. Mischaracterizes
16 testimony.

17 You can answer.

18 A I wouldn't -- I wouldn't put -- I wouldn't
19 have described it that way.

20 Q Oh.

21 A I think you go in to that category at a
22 different point in your journey.

23 You, as a consumer, may enter the category
24 to maintain your weight, to lower your cholesterol,
25 to -- simply for convenience, as well as weight loss.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SIGNATURE PAGE

Marion Findlay

Marion Findlay

Subscribed and sworn to before me this
27th day of February, 2012.

Marleen M. Suess

Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Marleen M. Suess, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires Aug. 5, 2014
Member, Pennsylvania Association of Notaries

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I-N-D-E-X

FINDLAY EXHIBIT:

MARKED:

- 1 - Smart Ones Foodservice Salad Dressings discussion document dated August 2008 19
- 2 - 8-3-08 e-mail from Colleen Akehurst and multipage attachment 19
- 3 - Picture showing Smart Taste 81
- 4 - Picture showing Smart Water 82
- 5 - Picture showing Carb Smart 82
- 6 - Picture showing Smart Gels 83
- 7 - Picture showing Heart Smart 83
- 8 - Picture showing Smart Balance 84
- 9 - Multipage document entitled "Smart Ones Creative Tissue Session" dated 8-6-2010 87
- 10 - CV of Barry Sabol, Ph.D. 89
- 11 - December 2011 Brand Confusion Survey for H.J. Heinz by Strategic Consumer Research 89

	54:9;75:13	18:6	19:2,3	91:24;92:4,5;93:6;
0	20 (4)	31 (1)	70-30 (2)	94:19;98:20
	18:20;49:22,23,24	49:19	18:25;92:12	ad (2)
05 (1)	200 (2)	32 (1)	72 (1)	32:15;33:10
63:10	13:17;14:14	12:5	92:10	add (1)
06 (2)	2006 (4)	3402 (1)	8	53:6
63:11;64:2	27:25;29:23;	57:2		addition (3)
07 (1)	44:17;45:18	3403 (1)		30:17;39:3;59:18
64:2	2007 (5)	58:2	8 (8)	additional (1)
08 (1)	26:1,10;47:10,24;	3405 (1)	4:9;65:12,14;70:2;	25:8
58:9	58:4	59:15	77:25;84:6,7,10	address (3)
	2008 (2)	3413 (1)	80 (3)	5:4,5;39:12
1	26:2,9	62:8	9:3;18:19,20	addressing (1)
	2009 (1)	3451 (1)	80-20 (1)	100:11
	58:21	67:21	18:18	administrative (1)
1 (13)	2010 (1)	3461 (1)	84 (2)	10:13
19:6,15;20:7,11,	88:21	67:17	11:11,24	advertise (1)
13:24;12:26;8;	2011 (2)	3477 (1)	85 (2)	32:9
29:20;47:14;51:5;	4:7;17:17	67:10	11:11,24	advertising (16)
52:11;58:6;66:7	2012 (1)	3480 (1)	86 (1)	6:5;16:25;17:2;
10 (5)	17:12	66:4	53:7	25:19;31:15;32:11;
4:9;59:2;75:13;	20s (1)	37 (1)	9	33:16;39:14,20;45:6;
89:24;90:2	50:9	53:6		6,7,7;48:17;63:20;
100 (2)	2260 (1)			87:25
26:24;27:10	24:16	4	9 (4)	advise (1)
11 (6)	2261 (3)		59:2,3;87:18,21	90:15
4:9;89:24;90:2,17;	25:22;26:9,23	4 (3)	90 (1)	affinity (1)
91:5;99:9	2269 (2)	54:11;82:6,9	40:17	51:17
12 (4)	27:24;58:6	45 (1)	90s (3)	again (40)
4:9;64:1;65:14,14	2275 (1)	91:22	13:4,25;23:10	16:20;26:11,18;
12:30 (1)	29:19	49 (1)	97 (1)	28:16;30:11;34:19;
101:19	2280 (1)	53:6	12:14	36:4,5;37:21;39:5;
14 (1)	39:25	5	A	42:10;43:18;45:4,8,
4:9	23 (1)			16,17;48:9,12;50:4;
18 (3)	4:7	5 (4)	able (2)	51:22;55:24;58:19;
27:9;28:15;40:21	2304 (1)	31:4;82:23,24;	5:4;25:24	59:12;66:8;70:19,23;
1973 (1)	41:10	83:3	Absolutely (4)	71:22;73:22;74:18;
7:22	2305 (2)	50 (1)	31:20;45:13;	76:1,12,22;80:8,19;
1974 (2)	41:9,20	91:22	69:15;89:2	91:21,25;95:11,13;
7:20;8:3	2306 (3)	50-50 (1)	AC (1)	96:3;98:17
1978 (2)	47:14;48:21;50:1	52:7	99:25	against (1)
8:4,19	2360 (3)	52 (1)	accent (1)	24:5
1979 (1)	52:10,22,23	49:19	7:6	age (2)
9:3	24 (1)	54 (1)	according (1)	7:21;27:22
1980 (1)	64:20	27:9	25:7	agencies (1)
11:13	25 (1)	6	account (2)	43:21
1984 (1)	64:20		98:22,24	agency (4)
9:8	28 (1)	6 (5)	accurate (6)	62:19,20;64:25;
1991 (2)	92:9	65:25;83:10,13;	6:25;34:15;62:23;	89:8
12:20;13:10	3	88:21;96:10	63:1,4,9	ages (1)
1994 (1)		60 (1)	across (2)	92:5
12:15	3 (3)	50:7	12:9;46:13	agnostic (1)
1997 (2)	49:3;81:20,23	64 (1)	actual (4)	88:9
9:21;12:12	3.50 (1)	40:21	33:22;34:16;68:5;	ago (2)
1st (1)	54:10	7	98:11	42:13;80:9
18:5	30 (1)		actually (25)	agree (5)
2	49:19	7 (6)	8:7;11:3;12:13;	53:20;72:17;
	3-04 (1)	4:9;65:12;66:1;	13:13;21:15;24:2;	91:14,15,16
2 (14)	63:10	70:2;83:20,23	32:9;38:4;41:10;	agreement (9)
19:8,15;20:7;49:4,	30s (1)		51:19,19;52:3;54:12;	12:23;21:16,22,25;
12;53:1,2,3,9;56:25;	50:8	70 (2)	55:5;57:21;62:18;	22:3,12;23:1,25;16;
57:22;62:9;67:3,17	30th (1)		65:8;66:25;80:2;	98:7
2.50 (2)				agreements (1)

22:1 ahead (4) 6:23;30:8;51:15; 91:4 aid (1) 78:13 aided (21) 31:22;32:13;33:3, 11,21;35:12,15;36:7, 10,14,16,22;37:10, 16;38:17,22;39:13; 40:4,16;41:2;96:10 aiding (1) 81:17 air (1) 17:9 aisle (1) 62:1 Akehurst (1) 57:11 A-K-E-H-U-R-S-T (1) 57:12 allow (1) 23:2 alone (2) 69:18;89:19 along (4) 6:19;9:22;22:5; 98:10 Although (2) 52:20;58:8 always (6) 22:20,25;50:4; 98:1,3;99:3 among (4) 19:16;27:8;33:23; 34:15 amount (1) 56:10 Amy's (1) 93:15 analogous (1) 41:23 analysis (4) 48:20;49:2,8;50:1 and/or (1) 14:18 annual (1) 28:12 apologize (3) 6:8;26:5;88:11 apparent (1) 38:1 appear (10) 55:10;60:22,23; 62:4;67:15,16;89:13; 93:14,15;97:12 appearing (2) 62:5;98:10 appears (9) 20:13;28:24; 29:22;66:16,17; 67:21;94:13;98:1,3	appendix (2) 26:22;67:20 Applicant (1) 3:2 appreciate (1) 68:13 appropriate (1) 27:4 Approximately (3) 65:11,12;87:4 April (1) 18:5 archetype (6) 41:17;42:6,9;43:5, 20;50:17 area (1) 23:3 argue (1) 93:16 arguing (1) 10:18 around (5) 10:1,1;52:20; 54:11;97:20 assessment (2) 50:19;92:24 assessments (1) 34:15 assistant (1) 10:13 association (1) 31:5 assume (4) 3:21;25:2;36:13, 16 assuming (5) 16:1;26:11;27:6; 40:16;67:11 assumption (2) 40:9;96:16 attached (1) 57:21 attachment (1) 57:18 attorney's (2) 24:18,19 attribute (2) 50:10,12 August (3) 26:2,8;88:20 automatic (1) 74:21 available (1) 90:25 avenues (1) 45:10 aware (29) 41:25;42:3;44:2; 58:24;60:21;78:16, 17,18;80:10;81:3,6, 9;82:1,18;83:6,17; 84:1,13,21,24;85:20, 21;86:2,3,5,11;	90:11;101:4,5 awareness (26) 31:22;32:5,14,23; 33:4,11,13,22,23; 34:16,17;35:15,16; 36:2,7,8;40:2,3,3,5, 15,16,20;41:2;96:11, 14 away (2) 42:12;46:15 awfully (1) 34:9 B back (23) 8:17;28:16;40:10; 45:4;59:10;60:18; 65:7;67:1,13;68:9, 10,15;74:16,18; 76:24;80:8,19;84:19; 89:4;92:23;95:11,13, 13 background (2) 4:1;7:2 Bacon (2) 80:12,12 baconless (1) 80:12 bad (2) 91:24,24 bag (2) 54:11,15 Balance (25) 69:25;70:7,8,14, 16,25;71:2,4,11,14, 14,20,21,25,25;72:4; 78:8;81:9;84:12,14; 87:11,12;90:14; 98:22,24 balanced (1) 31:4 Ballpark (5) 11:8;18:15;50:2; 58:17;64:23 Banquet (2) 93:21,23 bar (2) 61:21,22 Barely (2) 7:24,25 Barkley (6) 15:15;16:11;17:1, 2,19;32:17 Barry (1) 90:6 bars (1) 61:20 base (1) 39:1 based (7) 11:18;45:17; 55:20;63:2;88:15,15;	90:22 basically (1) 33:5 basis (4) 28:8,10,12;31:14 basket (1) 46:21 Beach (8) 31:25;35:4;40:22; 47:18;50:20;51:16; 52:2;62:12 beans (5) 56:1,7,12,15,22 bear (1) 87:12 bearing (2) 78:5;84:11 bears (2) 27:25;99:3 Beatles' (1) 34:12 become (2) 80:9;101:5 beer (3) 38:6,10,19 began (1) 17:4 begin (1) 17:3 behalf (1) 78:23 behind (6) 14:4;17:1;49:12, 14;67:9;88:7 bell (1) 80:6 Berger (2) 11:22,24 besides (2) 9:13;12:9 best (1) 3:18 Beth (1) 57:7 better (11) 33:22;45:14; 50:13;55:1;71:12; 74:4,5,11,15,23; 76:20 beyond (4) 7:3;13:7,8;69:14 bifurcated (1) 21:25 big (1) 93:19 bigger (3) 38:11;77:12;93:6 billboards (1) 63:19 bit (8) 4:2;7:2,6;22:19; 50:18;55:1;66:2; 96:21	black (1) 34:22 both (9) 14:22;27:21; 33:13;36:22;38:13; 61:21;93:8;94:13; 95:5 box (6) 53:1,2,3,9;54:9,12 brain (1) 88:3 brainstorm (1) 88:6 brainstorming (2) 88:17,18 brand (68) 12:18,22;19:25; 28:4,6,9;29:23; 30:12,19;31:23,25; 32:3,5,23;33:23; 34:17;35:5,16;36:2; 37:13,14,20,22; 39:13;40:2,2,3,4,15, 16,20;41:2;42:2,9, 15;43:9,15;49:3,4; 51:7,8;52:24;53:19; 54:22,25;55:1,7,10, 20;56:15,16,18,58:7, 12;59:21;61:4,15; 62:2,5;66:5,9;67:7, 24;72:15;90:13; 93:17;96:10,14 branded (2) 94:15,16 branding (1) 94:6 brands (39) 11:2,5,7;12:6; 22:9;36:7,9;41:15, 21,23;42:4,5,8,18,24; 43:2,3,12,16,22; 45:21;48:16,18;54:5; 56:24;60:21;61:21; 62:3,11;64:3,9,9,12, 13;68:14;93:3;95:6, 8,19 bread (1) 62:1 break (5) 46:25;77:22; 101:8,10,12 breakdowns (1) 92:8 Breyers (2) 83:4;86:4 Breyers' (1) 86:24 brief (1) 51:23 British (1) 79:25 broader (1) 99:18
---	--	---	---	---

<p>broadly (2) 45:24,25</p> <p>brochure (2) 23:17,23</p> <p>Brown (8) 28:25;29:2,6,9,23; 43:23;44:4;59:13</p> <p>bucks (1) 54:11</p> <p>Bud (1) 38:13</p> <p>Budget (5) 13:15,16;94:1,2,7</p> <p>Budweiser (1) 38:11</p> <p>build (1) 27:11</p> <p>builder (1) 35:21</p> <p>bullet (2) 31:21;59:16</p> <p>business (2) 33:12;48:8</p> <p>butter (1) 70:14</p> <p>buy (12) 33:20;37:20,22; 39:2;46:22;53:22,24; 55:16,20;66:11;75:8, 12</p> <p>buying (10) 30:16,20,21;37:8; 62:19,20;75:11;77:7; 95:22,24</p> <p>buys (1) 39:5</p>	<p>51:10;54:23;55:2,13; 57:23,24,25;59:16; 60:25;61:17;62:17; 63:3,23;65:18,23; 66:20,21;68:13;69:1, 18,18;71:17;73:4; 78:6;79:9;81:12; 87:22;91:19;95:9; 96:2;97:6,15;98:15; 99:11;100:17</p> <p>Candlelight (1) 13:17</p> <p>candy (3) 61:20,20,22</p> <p>captain (4) 39:8,9;49:12;50:5</p> <p>car (6) 72:11;73:5,8,11, 13;76:7</p> <p>Carb (2) 83:3;86:4</p> <p>care (3) 53:11;56:17;66:9</p> <p>case (4) 60:24;62:4;65:8; 98:9</p> <p>casting (2) 95:15;96:3</p> <p>categories (12) 12:9,11;21:22; 22:4,5,11;43:6; 46:13;60:22;66:15; 76:3;96:19</p> <p>categorize (3) 41:14;42:6,7</p> <p>category (106) 13:6,20;19:25; 23:11,13;27:22;28:9; 30:6,15,23;39:8,9, 10;41:20,23;42:1,25; 43:3,13,16;46:1,2,6, 15,19;47:10,17;48:2, 4,16,18;49:1,4,6,10, 11;50:4,25;51:3,9; 52:13;53:12,23;54:4, 9,16;55:11,19;56:9, 21;58:19;60:2,4,7, 15;61:18;63:13; 64:10;65:22;67:10; 70:1;72:14;74:9,14, 21,22;75:3,5,18; 76:8,9,15,16,19;77:7, 8,21;79:15,16;81:13; 86:18;92:6,9,13; 93:7,13,17,24;94:10, 17,22,25;95:7,8,19, 23;99:15,16,17,19, 23;100:2,4,21,23; 101:7</p> <p>Center (1) 63:23</p> <p>cereal (4) 78:9,9;79:8;84:20</p>	<p>cereals (3) 59:22,25;77:10</p> <p>certain (7) 20:12;21:21;22:4, 11;54:10;55:23; 101:5</p> <p>certainly (1) 67:6</p> <p>certified (1) 3:3</p> <p>challenge (1) 35:11</p> <p>Change (5) 43:21;44:23;45:8; 50:12;69:19</p> <p>changed (5) 16:11;43:18;44:8, 14;49:7</p> <p>changes (2) 44:18,22</p> <p>changing (1) 45:21</p> <p>channel (1) 88:9</p> <p>Charles (8) 11:22,23;15:15; 16:11;17:1,2,19; 32:16</p> <p>chart (5) 47:20,23;52:24; 67:7,25</p> <p>charts (1) 66:6</p> <p>cheese (1) 61:8</p> <p>children (3) 8:16;46:17;77:12</p> <p>Choice (31) 30:17;32:11;35:4; 39:6;47:18;49:13,15, 17,20;50:3,11;51:15, 18;52:6;55:25;56:6; 62:12;64:19;68:24; 71:12;74:16,24; 75:25;76:5,6,21; 77:2,5;78:9;94:21,23</p> <p>cholesterol (3) 15:25;100:13,24</p> <p>choose (1) 45:9</p> <p>choosing (2) 33:17;71:11</p> <p>chosen (1) 101:5</p> <p>Chuck (1) 11:22</p> <p>clarify (1) 39:16</p> <p>classify (2) 54:19;94:18</p> <p>clean (1) 101:2</p> <p>clear (1)</p>	<p>23:1</p> <p>clearly (1) 32:17</p> <p>closely (1) 49:14</p> <p>closer (1) 50:6</p> <p>Coca-Cola (1) 55:4</p> <p>Coke (5) 37:14;55:1,2,3,3</p> <p>Cola (2) 55:5,5</p> <p>collapse (1) 58:22</p> <p>colleagues (1) 21:16</p> <p>Colleen (1) 57:11</p> <p>college (3) 7:10;8:3,5</p> <p>column (1) 40:4</p> <p>columns (2) 40:3;41:1</p> <p>combination (3) 38:21;71:18,19</p> <p>combinations (1) 36:19</p> <p>comment (1) 92:12</p> <p>commercial (1) 33:10</p> <p>communicate (1) 88:8</p> <p>communicating (1) 31:13</p> <p>communication (1) 16:16</p> <p>communications (1) 88:7</p> <p>companies (2) 29:5;60:21</p> <p>Company (3) 7:12;29:3;44:20</p> <p>competitive (2) 62:10;64:8</p> <p>competitors (5) 30:22;50:18;52:3, 4;65:10</p> <p>completely (4) 12:4;16:11;46:6; 76:13</p> <p>complimentary (1) 68:19</p> <p>component (1) 55:14</p> <p>components (4) 46:13;54:11; 55:21,22</p> <p>comprehensive (1) 94:25</p> <p>concerning (2)</p>	<p>97:10;99:7</p> <p>concluded (1) 101:20</p> <p>conclusion (2) 30:24;31:2</p> <p>conclusions (4) 40:25;95:21;97:9; 98:19</p> <p>condiments (1) 23:14</p> <p>condition (2) 15:1;100:12</p> <p>conditions (3) 15:24;58:20,20</p> <p>conduct (1) 97:18</p> <p>conducted (11) 26:14,24;27:8; 28:7,20;40:6;45:19; 58:21;59:2;91:21; 96:17</p> <p>confronted (1) 98:21</p> <p>confused (2) 50:19;98:21</p> <p>confusion (6) 70:4;79:17;90:13; 97:10;98:12;99:8</p> <p>connection (26) 13:11;20:22; 21:10;22:21,25; 23:24;25:6,12;70:7, 18;72:18;73:19;74:1, 7;75:2;76:18;78:2,4; 79:8,24;81:25;82:11; 83:15;84:14;86:24; 90:12</p> <p>connotate (2) 73:8,13</p> <p>connotation (14) 69:24;70:8,17; 71:3,15;72:23,24; 73:1;74:6,12;75:1, 24;76:4,19</p> <p>connote (3) 68:23;69:2,16</p> <p>connotes (2) 73:25;74:23</p> <p>conscientious (1) 15:20</p> <p>consider (2) 16:19;60:19</p> <p>considerable (1) 56:10</p> <p>consideration (4) 15:3;39:3,7;60:10</p> <p>considered (3) 60:15;62:22;73:18</p> <p>consistently (1) 29:15</p> <p>consultant (4) 31:18;52:18; 88:12,14</p>
C				
<p>cakes (1) 62:2</p> <p>call (9) 12:10;27:16;39:8; 43:9,20;51:23;61:19; 85:24;87:23</p> <p>called (5) 3:2;5:13;41:17,20; 52:12</p> <p>Callender (2) 94:18,20</p> <p>caloric (1) 71:9</p> <p>came (3) 12:12,13,14</p> <p>campaign (4) 17:1,3,9;31:15</p> <p>can (61) 5:1;18:11;22:12, 15,16,23;23:6,17; 24:23;29:10,25;30:9, 9;32:8,16,25;33:6, 25;35:18;36:13;38:1, 9;41:1,5;43:7,8;</p>	<p>51:10;54:23;55:2,13; 57:23,24,25;59:16; 60:25;61:17;62:17; 63:3,23;65:18,23; 66:20,21;68:13;69:1, 18,18;71:17;73:4; 78:6;79:9;81:12; 87:22;91:19;95:9; 96:2;97:6,15;98:15; 99:11;100:17</p> <p>Candlelight (1) 13:17</p> <p>candy (3) 61:20,20,22</p> <p>captain (4) 39:8,9;49:12;50:5</p> <p>car (6) 72:11;73:5,8,11, 13;76:7</p> <p>Carb (2) 83:3;86:4</p> <p>care (3) 53:11;56:17;66:9</p> <p>case (4) 60:24;62:4;65:8; 98:9</p> <p>casting (2) 95:15;96:3</p> <p>categories (12) 12:9,11;21:22; 22:4,5,11;43:6; 46:13;60:22;66:15; 76:3;96:19</p> <p>categorize (3) 41:14;42:6,7</p> <p>category (106) 13:6,20;19:25; 23:11,13;27:22;28:9; 30:6,15,23;39:8,9, 10;41:20,23;42:1,25; 43:3,13,16;46:1,2,6, 15,19;47:10,17;48:2, 4,16,18;49:1,4,6,10, 11;50:4,25;51:3,9; 52:13;53:12,23;54:4, 9,16;55:11,19;56:9, 21;58:19;60:2,4,7, 15;61:18;63:13; 64:10;65:22;67:10; 70:1;72:14;74:9,14, 21,22;75:3,5,18; 76:8,9,15,16,19;77:7, 8,21;79:15,16;81:13; 86:18;92:6,9,13; 93:7,13,17,24;94:10, 17,22,25;95:7,8,19, 23;99:15,16,17,19, 23;100:2,4,21,23; 101:7</p> <p>Center (1) 63:23</p> <p>cereal (4) 78:9,9;79:8;84:20</p>	<p>cereals (3) 59:22,25;77:10</p> <p>certain (7) 20:12;21:21;22:4, 11;54:10;55:23; 101:5</p> <p>certainly (1) 67:6</p> <p>certified (1) 3:3</p> <p>challenge (1) 35:11</p> <p>Change (5) 43:21;44:23;45:8; 50:12;69:19</p> <p>changed (5) 16:11;43:18;44:8, 14;49:7</p> <p>changes (2) 44:18,22</p> <p>changing (1) 45:21</p> <p>channel (1) 88:9</p> <p>Charles (8) 11:22,23;15:15; 16:11;17:1,2,19; 32:16</p> <p>chart (5) 47:20,23;52:24; 67:7,25</p> <p>charts (1) 66:6</p> <p>cheese (1) 61:8</p> <p>children (3) 8:16;46:17;77:12</p> <p>Choice (31) 30:17;32:11;35:4; 39:6;47:18;49:13,15, 17,20;50:3,11;51:15, 18;52:6;55:25;56:6; 62:12;64:19;68:24; 71:12;74:16,24; 75:25;76:5,6,21; 77:2,5;78:9;94:21,23</p> <p>cholesterol (3) 15:25;100:13,24</p> <p>choose (1) 45:9</p> <p>choosing (2) 33:17;71:11</p> <p>chosen (1) 101:5</p> <p>Chuck (1) 11:22</p> <p>clarify (1) 39:16</p> <p>classify (2) 54:19;94:18</p> <p>clean (1) 101:2</p> <p>clear (1)</p>	<p>23:1</p> <p>clearly (1) 32:17</p> <p>closely (1) 49:14</p> <p>closer (1) 50:6</p> <p>Coca-Cola (1) 55:4</p> <p>Coke (5) 37:14;55:1,2,3,3</p> <p>Cola (2) 55:5,5</p> <p>collapse (1) 58:22</p> <p>colleagues (1) 21:16</p> <p>Colleen (1) 57:11</p> <p>college (3) 7:10;8:3,5</p> <p>column (1) 40:4</p> <p>columns (2) 40:3;41:1</p> <p>combination (3) 38:21;71:18,19</p> <p>combinations (1) 36:19</p> <p>comment (1) 92:12</p> <p>commercial (1) 33:10</p> <p>communicate (1) 88:8</p> <p>communicating (1) 31:13</p> <p>communication (1) 16:16</p> <p>communications (1) 88:7</p> <p>companies (2) 29:5;60:21</p> <p>Company (3) 7:12;29:3;44:20</p> <p>competitive (2) 62:10;64:8</p> <p>competitors (5) 30:22;50:18;52:3, 4;65:10</p> <p>completely (4) 12:4;16:11;46:6; 76:13</p> <p>complimentary (1) 68:19</p> <p>component (1) 55:14</p> <p>components (4) 46:13;54:11; 55:21,22</p> <p>comprehensive (1) 94:25</p> <p>concerning (2)</p>	<p>97:10;99:7</p> <p>concluded (1) 101:20</p> <p>conclusion (2) 30:24;31:2</p> <p>conclusions (4) 40:25;95:21;97:9; 98:19</p> <p>condiments (1) 23:14</p> <p>condition (2) 15:1;100:12</p> <p>conditions (3) 15:24;58:20,20</p> <p>conduct (1) 97:18</p> <p>conducted (11) 26:14,24;27:8; 28:7,20;40:6;45:19; 58:21;59:2;91:21; 96:17</p> <p>confronted (1) 98:21</p> <p>confused (2) 50:19;98:21</p> <p>confusion (6) 70:4;79:17;90:13; 97:10;98:12;99:8</p> <p>connection (26) 13:11;20:22; 21:10;22:21,25; 23:24;25:6,12;70:7, 18;72:18;73:19;74:1, 7;75:2;76:18;78:2,4; 79:8,24;81:25;82:11; 83:15;84:14;86:24; 90:12</p> <p>connotate (2) 73:8,13</p> <p>connotation (14) 69:24;70:8,17; 71:3,15;72:23,24; 73:1;74:6,12;75:1, 24;76:4,19</p> <p>connote (3) 68:23;69:2,16</p> <p>connotes (2) 73:25;74:23</p> <p>conscientious (1) 15:20</p> <p>consider (2) 16:19;60:19</p> <p>considerable (1) 56:10</p> <p>consideration (4) 15:3;39:3,7;60:10</p> <p>considered (3) 60:15;62:22;73:18</p> <p>consistently (1) 29:15</p> <p>consultant (4) 31:18;52:18; 88:12,14</p>

consulting (1) 52:14	couple (10) 6:5;19:24;32:1; 60:25;79:3,5,13; 81:4,8;84:22	deal (3) 44:24;54:6,7	41:19	direct (1) 63:18
consumer (53) 14:10,13,21,22; 15:12,21,21;16:3,4; 17:21;31:13;33:8,19; 34:20;35:20;36:21, 25;37:1,3,5,18,25; 38:23,25,25;39:5; 40:8;41:11,13,17; 43:5,19;44:4,8,11,13, 21,22;45:5,21;46:6; 48:13;50:16;66:8; 67:8,12,17;69:8,9, 21;90:8,18;100:23	couponing (1) 39:20	decision (13) 13:21,25;14:4; 21:9;26:15;56:11; 74:20,21;75:6,21; 76:7;77:13;97:23	designate (1) 24:23	directed (2) 20:13;100:4
consumers (14) 14:14;30:16; 34:16;51:16;53:12, 17;56:8;62:3;66:15, 18;87:25;88:8;98:20, 20	coupons (1) 63:14	decisions (3) 45:16;69:18;70:24	designed (1) 69:13	directionally (4) 63:1,4,9;65:2
consumers' (3) 31:24;32:4,23	course (2) 8:12;96:10	decline (4) 46:3;48:2;49:6; 53:25	desperate (1) 46:8	directly (1) 9:9
consuming (2) 33:23;68:1	court (8) 81:22;82:8;83:1, 12,22;84:9;87:20; 90:1	deeper (1) 96:21	despite (1) 49:5	director (1) 57:14
consumption (1) 73:9	covered (2) 87:16;92:2	define (3) 91:25;101:1,3	desserts (1) 62:2	discontinued (2) 86:16,22
containing (1) 78:3	cream (3) 61:21;79:22;86:4	defined (5) 42:18,19;43:19,22; 99:23	determined (2) 13:4,4	discount (1) 54:7
content (2) 71:5;89:17	created (1) 26:12	definitely (2) 53:24;74:11	determining (1) 66:9	discovery (2) 5:17,20
context (2) 70:16;71:20	creative (5) 87:23;88:2,20,24; 89:8	definition (6) 41:24;42:10,16; 43:19,19,20	develop (2) 50:16;87:24	discuss (1) 26:15
continue (2) 8:19;48:7	criteria (3) 68:6,6,17	definitions (5) 41:12,14,18;44:4, 11	developed (1) 50:14	discussed (1) 48:1
continued (5) 7:13;8:22;12:1,1; 50:16	critique (1) 90:19	deli (2) 79:24;85:4	diagnosed (1) 100:12	discussion (1) 97:25
continues (2) 39:24;64:7	CROSS (12) 3:6;5:18;19:10; 24:21,25;45:25;47:7; 64:13;70:2;77:24; 91:3;101:14	delve (1) 91:1	diagnosis (1) 32:20	dispute (2) 82:2;90:12
contract (1) 98:6	Cuisine (18) 30:16;32:12;35:4; 39:5,11;47:17;49:11; 50:2,4;52:6,7;56:2,4; 62:12;64:19;65:16; 94:11,14	demographic (1) 100:5	DICKSON (46) 5:15;17:22;18:10; 22:16,22;24:17,22; 30:7,9;31:1;32:7,25; 35:18;36:24;41:4; 45:23;47:25;55:12; 59:6;62:16;64:11; 65:18;66:19;70:1,9, 19;71:16,22;73:3,15, 22;78:21;79:2; 81:12;90:21;91:10, 18;93:5;95:9;96:1; 97:5,14;98:14;99:10; 100:15;101:17	disqualified (1) 96:13
contribute (1) 25:8	current (4) 13:8,8;23:9;65:21	demographics (1) 95:12	diet (7) 14:13;15:6,11,20; 16:4,17;17:21	dissecting (1) 88:3
control (1) 22:14	currently (5) 12:3;22:9;45:18; 65:15;89:6	department (1) 23:20	dieters (1) 14:17	distributed (8) 84:25;85:22;86:1, 9,10;87:5,8,12
convenience (1) 100:25	custody (1) 59:8	departure (1) 51:15	diets (1) 16:12,20;17:5; 100:10	distribution (3) 86:14;92:1,3
coordinator (1) 11:1	customer (2) 89:10,11	depends (4) 14:20;34:24;63:6; 86:19	diets (4) 16:12,20;17:5; 100:10	document (10) 24:11;25:8;26:12, 18,19;35:14;39:24; 40:15;41:24;87:22
corner (3) 24:14;26:1,9	D	deposed (1) 3:4	dieting (4) 16:12,20;17:5; 100:10	documents (19) 4:25;5:3,8,9,16,23; 6:1,3,6;18:14;19:11, 16,19,20,24;20:10; 24:12,17;90:3
corporate (1) 4:4	data (3) 62:14,18;100:1	deposition (7) 3:11;4:3,14;5:12; 87:15;91:1;101:20	differ (6) 14:16;15:9;26:7; 33:3;39:18;49:17	Dogs (2) 80:25;85:12
correctly (1) 30:14	date (6) 25:25;27:25; 49:25;51:4;58:4,18	depot (1) 68:16	differences (1) 59:17	dollar (1) 75:13
cost (2) 48:12;55:17	dated (2) 4:6;26:2	depth (1) 88:1	different (13) 25:19;26:4;36:19; 42:6;44:18;68:14; 70:17;72:1,3,4; 97:11;99:7;100:22	dollars (4) 46:16;64:2,20; 75:15
counsel (5) 4:3,13;6:8;19:13; 90:15	dates (2) 26:4,7	describe (2) 5:7;100:5	differential (3) 35:17;46:20,21	done (19) 11:20;16:25; 23:10;27:16;28:11, 12,24;37:12;44:17; 47:8,22;48:7;49:2; 59:18;96:23;97:1,4, 11;101:14
country (1) 84:25	day (1) 35:3	described (2) 42:2;100:19	dig (1) 96:20	door (2) 68:14;88:5
	days (1) 10:20	descriptor (1) 42:14	dinner (1) 54:19	doubt (1) 3:14
		descriptors (1)	Dinners (2) 13:17;54:18	down (5) 5:24;31:3;40:21; 80:8,19

<p>draw (1) 41:1</p> <p>drawn (1) 97:10</p> <p>dreadful (1) 80:1</p> <p>dressings (3) 20:14;25:7;26:13</p> <p>dressings (2) 26:16;57:10</p> <p>drink (1) 55:4</p> <p>drive (1) 33:20</p> <p>driven (1) 21:15</p> <p>droves (1) 52:5</p> <p>dry (2) 59:22,25</p> <p>due (5) 14:25;16:20; 58:19;75:4;96:13</p> <p>duly (1) 3:3</p> <p>dumb (1) 74:4</p> <p>during (1) 15:4</p> <p>duties (1) 10:17</p> <p>dynamic (2) 16:12,22</p>	<p>either (4) 14:24;55:3;59:2; 93:21</p> <p>elaborate (2) 21:23;44:15</p> <p>elect (1) 70:13</p> <p>elected (1) 89:3</p> <p>else (2) 9:16;92:14</p> <p>elsewhere (2) 60:23;62:5</p> <p>encompass (1) 42:2</p> <p>encounter (1) 66:10</p> <p>end (6) 4:18;24:23;34:20; 35:3,20;36:21</p> <p>ends (1) 46:18</p> <p>enough (5) 3:22,23;24:25; 32:10;35:22</p> <p>enter (3) 100:23;101:6,6</p> <p>entered (2) 60:1,3</p> <p>entire (4) 12:5;39:22;72:13; 75:9</p> <p>entirely (1) 14:20</p> <p>entitled (3) 28:3;47:3,4</p> <p>entrants (2) 51:3,6</p> <p>entree (3) 56:9;94:22;95:20</p> <p>entrees (5) 12:8;13:23;22:4; 33:7;62:11</p> <p>environment (3) 73:6;97:12,21</p> <p>equal (4) 16:2;46:23,24; 52:5</p> <p>equally (5) 45:14;56:21; 91:21;93:15,17</p> <p>equity (9) 28:4,6;29:6,9,23; 30:1,25;58:7,12</p> <p>equivalent (2) 7:16;56:4</p> <p>essentially (2) 31:18;69:7</p> <p>evaluating (1) 30:15</p> <p>even (4) 7:22;54:15;58:13; 100:12</p>	<p>Everyone (1) 24:9</p> <p>evidence (2) 48:22,24</p> <p>evolved (1) 44:12</p> <p>evolves (1) 44:10</p> <p>Exactly (4) 37:9;49:24;63:9; 69:17</p> <p>EXAMINATION (1) 3:5</p> <p>example (7) 4:18;23:14;38:3; 56:22;63:21;75:8; 83:2</p> <p>examples (3) 38:4;43:16;62:6</p> <p>exceptions (1) 91:23</p> <p>excludes (1) 95:8</p> <p>execution (1) 89:9</p> <p>executive (2) 10:13;11:6</p> <p>exhibit (39) 19:5,6,8;20:11,13; 24:12;26:8;29:20; 47:14;51:5;52:11; 56:25;57:22;58:6; 62:9;66:6;67:3,16; 81:19,20,23;82:6,9, 24;83:3,10,13,20,23; 84:6,7,10;87:17,18, 21;89:24;90:17; 91:5;99:9</p> <p>Exhibits (4) 19:15;20:7;89:23; 90:2</p> <p>exist (1) 56:23</p> <p>expand (1) 13:7</p> <p>expect (2) 17:25,25</p> <p>expenses (1) 39:22</p> <p>experience (2) 54:23;56:9</p> <p>expert (1) 90:25</p> <p>experts (1) 91:12</p> <p>explain (3) 19:22;52:8;88:1</p> <p>explanation (4) 26:3,6;46:4;51:14</p> <p>extent (7) 73:3;91:1;93:12; 97:5,14;98:14;99:10</p> <p>external (1) 45:7</p>	<p>eyes (2) 24:18,19</p>	<p style="text-align: center;">F</p> <p>faced (1) 45:18</p> <p>fact (2) 15:17;27:11</p> <p>factor (1) 31:12</p> <p>Fair (4) 3:22,23;24:25; 44:25</p> <p>fairly (3) 28:7,10;91:6</p> <p>fairness (1) 92:22</p> <p>family (5) 75:9,10,14;76:7; 77:3</p> <p>far (11) 9:22;22:24;23:6; 40:4;44:2;65:9,9; 86:1,3,23;87:8</p> <p>faster (1) 86:21</p> <p>fat (6) 69:13;70:14;71:5, 5,94;19:9;24</p> <p>fats (2) 71:19,19</p> <p>Fe (5) 55:25;56:6,12,14, 22</p> <p>February (2) 63:10,11</p> <p>feed (2) 75:14;77:11</p> <p>feel (1) 6:21</p> <p>female (10) 15:13,20;17:20; 18:19,20;19:2,3; 27:10,13;92:10</p> <p>females (2) 26:25;27:4</p> <p>Field (1) 63:20</p> <p>fight (1) 38:12</p> <p>figured (1) 5:21</p> <p>figures (1) 18:7</p> <p>final (1) 97:23</p> <p>financial (3) 46:9,10;58:21</p> <p>find (4) 4:17;38:1;51:21; 68:16</p>	<p>findings (1) 29:21</p> <p>FINDLAY (15) 3:1,8,9;19:6,8,15; 57:5;81:20;82:6,24; 83:10,20;84:7;87:18; 89:24</p> <p>F-I-N-D-L-A-Y (1) 3:10</p> <p>finished (2) 9:15;10:5</p> <p>first (15) 3:3;10:7;19:4; 24:3,5;26:2,8;31:21; 46:18;53:15;57:1; 80:9;82:4;93:7; 94:22</p> <p>fiscal (3) 18:4,5;58:8</p> <p>fit (5) 31:4;48:8;56:15, 19,19</p> <p>five (2) 49:16;75:14</p> <p>fix (1) 32:20</p> <p>flip-flopping (1) 50:10</p> <p>flowed (1) 26:21</p> <p>focus (2) 16:3,4</p> <p>focused (4) 15:6,12;66:14; 67:25</p> <p>follow (3) 69:18;77:4;89:16</p> <p>followed (1) 89:7</p> <p>following (3) 4:23;28:20;76:15</p> <p>follows (1) 3:4</p> <p>food (29) 22:2;23:3,11,13; 26:13,15;30:6;31:4; 46:1,2;51:1;55:11; 56:9;57:10;60:22; 62:4;72:21;74:1,7, 13,23;75:2,20;76:8, 9,15,18;77:17;99:15</p> <p>foods (13) 13:12;23:24; 46:21;47:10;60:2; 66:10;69:19;76:4; 77:19;83:2;85:13; 95:23,24</p> <p>force (1) 8:21</p> <p>formal (4) 7:3;8:1;9:4,14</p> <p>format (1) 92:25</p>
--	---	--	-------------------------------------	--	---

<p>found (1) 52:2</p> <p>foundation (1) 90:22</p> <p>four (11) 42:12;46:3;48:2; 49:6;54:1;64:3,11, 13;75:12;83:9;86:7</p> <p>frankly (1) 63:18</p> <p>free (1) 6:21</p> <p>freezer (2) 53:14;60:24</p> <p>French (6) 8:14,15,16,24; 82:12,13</p> <p>frequently (3) 28:13,13,14</p> <p>fresh (1) 31:6</p> <p>Friday's (2) 43:9;61:3</p> <p>frozen (64) 12:7,10;13:6,11, 22;14:1,5;20:23; 21:11;22:4;23:3,13, 24;27:8,8;28:3,9; 30:15;33:6;46:1,2, 14,14;47:10;49:3; 50:24;51:1,11;53:18; 55:11;56:8;58:7,12; 60:1,3,7,11,15,22; 61:5,6,7,10,16;62:1, 4,11;66:10;74:8,13; 75:3,20,20;77:6,19; 86:19,25;95:20,24; 96:14;99:15,16,22; 100:3</p> <p>fuel (2) 73:9,10</p> <p>full (10) 3:7;13:5,22;14:1, 5;67:1,2;70:14; 94:19;95:24</p> <p>full-time (1) 10:7</p> <p>further (1) 9:4</p>	<p>46:20;70:3;74:6,8, 10;90:19</p> <p>generalized (1) 73:1</p> <p>generally (3) 10:17;62:22;73:18</p> <p>genre (1) 41:19</p> <p>German (1) 8:17</p> <p>gets (1) 53:7</p> <p>Giant (1) 85:6</p> <p>given (4) 6:20;25:18;54:5; 62:5</p> <p>giving (1) 46:7</p> <p>Glaceau (1) 82:14</p> <p>glacier (1) 82:15</p> <p>goes (7) 9:25;39:25;45:4; 74:16;91:25;95:11; 96:3</p> <p>good (7) 4:20;31:8;37:12; 49:21;73:5;92:7; 101:10</p> <p>goods (3) 78:2,4,5</p> <p>Gourmet (6) 13:15,16;94:1,2,8, 8</p> <p>graduate (1) 7:19</p> <p>graduated (2) 7:20,22</p> <p>gram (2) 69:13,14</p> <p>graphic (1) 47:16</p> <p>great (4) 44:24;61:15,17; 93:18</p> <p>greater (3) 51:17;65:9,9</p> <p>groceries (1) 51:7</p> <p>grocery (7) 27:9,12;60:23; 62:5;84:25;85:7; 87:7</p> <p>group (7) 27:19;28:17;68:1; 77:12;96:4;97:20; 100:9</p> <p>growing (1) 16:18</p> <p>guess (8) 15:19;34:14;53:7;</p>	<p>71:5;77:4;79:15,19; 93:12</p> <p>guessing (2) 18:16,17</p> <p>guru (1) 92:22</p> <p style="text-align: center;">H</p> <p>handed (2) 83:12,22</p> <p>handwriting (1) 14:2</p> <p>happened (2) 10:23;50:20</p> <p>hard (1) 82:10</p> <p>headed (1) 29:21</p> <p>heading (1) 52:24</p> <p>headings (1) 67:15</p> <p>headquarters (1) 57:15</p> <p>health (6) 16:20;31:16;46:8; 71:13;79:22;100:11</p> <p>healthier (5) 14:25;15:22;17:6; 70:13;75:10</p> <p>healthy (28) 14:15,17;15:6,8,8; 16:3;30:17;31:8; 32:11;35:4;39:6; 47:17;49:13,14,17, 20;50:3,8,11;51:15, 18;52:6;56:5;62:12; 64:19;94:21,23; 100:7</p> <p>hear (1) 52:17</p> <p>heard (6) 3:14;79:21,23; 80:2,3;91:12</p> <p>Heart (2) 83:25;87:3</p> <p>Heinz (36) 3:25;7:12;9:12; 10:8,15,16;11:5,6,7; 12:5,6;22:6,10;23:2; 25:17;28:3;29:8; 41:14,22;42:1,4; 43:1,6,12;44:5;47:8, 22;48:15;55:16,16; 58:6,12;63:20;78:21, 22;81:14</p> <p>help (3) 5:3;32:2;69:1</p> <p>helps (4) 31:7,7,8;88:10</p> <p>Hence (2) 53:25;56:17</p>	<p>herb (1) 42:22</p> <p>Herefordshire (1) 8:6</p> <p>hereinafter (1) 3:3</p> <p>hesitating (1) 16:8</p> <p>hierarchy (2) 49:9;60:9</p> <p>high (9) 7:3,17,18,19,20; 8:2;40:21;54:9; 100:12</p> <p>higher (3) 15:24;35:24;46:20</p> <p>hire (1) 29:3</p> <p>history (1) 10:6</p> <p>HJ (1) 7:12</p> <p>hold (3) 10:21;48:21,23</p> <p>home (1) 34:11</p> <p>honest (2) 18:13;79:10</p> <p>honestly (3) 17:23;23:15;66:22</p> <p>hour (1) 47:1</p> <p>hypothesis (2) 34:14;46:5</p> <p>hypothesize (1) 27:5</p> <p style="text-align: center;">I</p> <p>ice (3) 61:21;79:22;86:4</p> <p>idea (1) 43:11</p> <p>identification (11) 19:7,9;20:2;81:21; 82:7,25;83:11,21; 84:8;87:19;89:25</p> <p>identified (1) 14:9</p> <p>imperfections (1) 91:17</p> <p>Implying (1) 25:11</p> <p>importance (4) 52:25;66:5;67:7, 25</p> <p>important (2) 53:4,5</p> <p>improve (3) 47:8,22;48:8</p> <p>impulse (2) 53:22,24</p> <p>Inc (1)</p>	<p>90:9</p> <p>inception (2) 12:20;69:12</p> <p>include (1) 94:24</p> <p>includes (3) 59:18;94:23;95:6</p> <p>including (1) 46:14</p> <p>incomplete (2) 6:21;93:4</p> <p>incorrect (3) 6:21;58:25;67:11</p> <p>increased (1) 48:15</p> <p>increasing (2) 19:1;72:18</p> <p>incredibly (1) 38:7</p> <p>incur (1) 33:20</p> <p>Indeed (2) 23:5;82:16</p> <p>indicate (1) 67:23</p> <p>indicates (1) 25:17</p> <p>indicative (1) 97:16</p> <p>indicator (1) 33:22</p> <p>individual (3) 75:16,17,19</p> <p>individuals (2) 27:19;100:6</p> <p>influence (2) 17:19;98:11</p> <p>information (4) 5:11,14;38:24; 63:2</p> <p>informing (1) 89:7</p> <p>ingredients (1) 48:10</p> <p>initial (1) 69:12</p> <p>initially (1) 12:7</p> <p>input (1) 20:10</p> <p>inserts (1) 67:16</p> <p>instance (2) 42:14;56:6</p> <p>Instances (1) 79:16</p> <p>instead (2) 30:17,22</p> <p>in-store (1) 63:14</p> <p>instruction (1) 6:17</p> <p>instrument (2)</p>
<p>found - instrument (6)</p>				

92:20;93:4 intake (1) 71:10 intended (1) 15:5 interested (9) 15:17;33:13;37:8, 11;55:9;95:22,23; 100:10,11 interesting (8) 4:17;16:22;37:20, 22;38:15;42:11; 52:8;54:25 internally (2) 41:22;97:25 International (3) 21:17;22:2;25:5 Internet (3) 45:12,13;63:14 interpretation (1) 47:19 interview (1) 27:17 interviews (1) 91:21 intrigued (1) 37:23 introduced (2) 20:19,20 involve (2) 12:6;63:14 involved (8) 12:17,19,21,23,25; 13:2;15:24;88:19 involves (1) 88:2 issue (1) 35:12 issues (4) 11:24;35:2;70:3; 100:11 Italian (1) 83:24 item (2) 86:20,22 items (5) 14:12;21:4;39:3, 23;54:10	journey (12) 14:23;17:14,15; 68:25;69:4,6;71:1, 12,13;89:19,21; 100:22 July (1) 58:4 June (4) 26:1,10;27:25; 29:23	92:17,17 largest (2) 38:10,18 last (7) 17:17;38:21;49:6; 54:1;80:20,21;89:20 later (1) 28:22 laudatory (5) 68:19;73:19,25; 74:1,3 laugh (1) 8:10 Launch (3) 39:23;48:11;77:21 launching (2) 12:25;13:3 lawyers (2) 24:6;34:3 lead (2) 34:4,8 Lean (22) 30:16;32:12;35:3; 39:5,11;47:17;49:11, 19;50:2,4;52:6,7; 56:2,4;62:12;64:19; 65:16;94:7,8,11,14, 23 learn (1) 52:19 learned (1) 56:14 learning (3) 52:13,14;67:10 least (13) 8:17;24:21,22; 25:7;39:25;42:12; 53:17;59:24;61:9; 65:5;66:6;81:8; 82:22 leave (1) 88:4 leaving (1) 46:6 Lee (1) 61:25 legal (2) 23:20;24:3 length (1) 39:24 less (4) 28:13,14;55:9; 73:9 level (1) 32:11 levels (2) 31:24;33:19 license (2) 23:1;98:7 licensing (8) 10:25;11:20,24; 12:1,2,5,23;21:15 life (5)	7:9;12:5;31:4,8; 69:20 lifestyle (10) 14:15,18;15:8,22; 16:20;17:6;48:8; 69:19;71:12;100:7 light (1) 45:12 liked (1) 92:16 likelihood (4) 90:13;97:10; 98:12;99:7 likely (1) 34:15 limited (2) 67:7;86:19 line (8) 13:1,3,5,22;14:1,5, 12;15:2 lines (1) 11:2 Links (2) 80:16;85:11 list (10) 41:11;78:6;93:4,6, 14,16,20;94:13,25; 95:5 listed (2) 64:3;93:3 literally (1) 5:25 little (5) 6:17;7:2;22:19; 82:10;96:21 live (4) 14:25;15:8;31:8; 69:20 living (1) 3:24 local (2) 85:6,23 locate (1) 59:11 located (2) 59:6,14 London (2) 8:7;9:1 long (19) 10:21;11:8;12:16, 17;29:8,10;78:18,20; 79:6,11;80:9;81:2,7, 10,14;82:21;83:8; 84:3,16 longer (4) 42:10;51:1;81:15; 82:22 look (19) 13:5;18:14;23:16, 18,19;24:4;38:17; 44:21;61:14;67:17, 22;87:15;90:17; 92:21;94:17;95:13,	13;99:23;101:9 looked (6) 6:9;25:23;60:14; 66:6,14;80:7 looking (21) 5:20;6:8;7:21; 14:15;15:21;27:6,15, 18;35:5,6;40:8;41:1; 45:5;48:20;50:1; 51:4;53:3,9;54:8; 77:9;100:6 looks (1) 72:1 lose (1) 70:13 losing (5) 14:24;15:16,18; 17:4;86:14 loss (1) 100:25 lot (1) 32:15 low (5) 31:24;32:4;35:16; 50:9,9 lower (1) 100:24 lowest (3) 64:4,5,7 loyal (2) 38:25;55:15 loyalty (4) 55:14,18,19,20 lunch (1) 101:11
J	K			
January (3) 17:10,12;18:1 jester (3) 43:9,13,16 Joan (1) 3:8 job (4) 10:7,17,21;37:12 John's (2) 9:7;11:14 joined (2) 9:12;51:8	Kashi (4) 59:18;60:25;61:1; 93:12 K-A-S-H-I (1) 59:21 keep (1) 6:18 Kellogg's (3) 78:10;79:7;84:20 kept (1) 96:12 ketchup (11) 22:7;23:3;42:15; 54:20,22,25;55:2,6, 14,15,21 ketchups (1) 55:8 key (2) 22:5,9 king (2) 42:15;55:1 Kingdom (2) 7:10;10:11 knew (1) 10:24 knowing (1) 33:13 knowledge (1) 78:1 known (8) 37:14;38:8;59:22; 79:3,6,11;87:2,2 Kozy (1) 83:16 Kraft (1) 61:8	label (4) 51:6;55:4;61:15; 94:5 lack (2) 90:22;96:13 landscape (5) 44:7,8,13,22;45:21 lapsed (1) 67:18 larger (5) 54:10,15;91:20;	L	
			M	
			macaroni (1) 61:8 magnitude (1) 64:16 mail (1) 63:18 maintain (1) 100:24 maintaining (1) 14:24 makes (3) 24:24;54:2;94:2 making (12) 53:18;56:10; 70:24;74:16;75:5; 76:4,6,19,21;77:13; 92:1;98:19 male (5) 15:13;17:20; 18:20;19:1;92:9 males (1) 19:1 manager (1) 3:25 manufactured (4)	

<p>22:12;38:10,19; 94:20 many (2) 46:16;91:12 March (2) 64:2,2 margarine (1) 70:15 Marie (2) 94:18,20 MARION (3) 3:1,8;57:5 mark (25) 13:23;15:5;20:17, 22;21:10,18;22:15; 24:19;25:11,13;30:5; 32:22;34:17;41:3; 47:9;70:8;78:3,5; 79:18;83:15,25; 84:12;85:4;87:12; 98:10 marked (25) 19:4,7,9,15;81:19, 21,23;82:7,9,23,25; 83:1,11,13,21,23; 84:5,8,10;87:17,19, 21;89:22,25;90:2 market (13) 15:10,11;17:21; 18:9;45:4,5,9;46:21; 50:22,23;58:20; 59:10;87:25 marketer (1) 38:2 marketing (17) 3:25;6:5;19:19,20; 32:10,18;35:22,23, 25;39:17,19;43:22; 45:10;48:16;50:13, 19;52:18 marketplace (3) 35:2;44:16,18 marks (3) 25:19;30:5;98:23 mass (1) 85:24 master's (3) 8:23;9:2,9 math (2) 49:21;53:8 matter (2) 38:14;88:3 may (15) 6:14;15:23;18:5; 25:24;39:16;56:12; 60:18;66:16,16; 78:25,25;89:1;98:12, 12;100:23 maybe (7) 28:15;56:21;73:9, 9;77:22;79:4;100:11 MBA (4) 9:6,10,13;11:14</p>	<p>meal (6) 28:9;55:21,23; 60:3,7;75:8 meals (5) 28:4;58:7,12; 89:18;96:15 mean (14) 30:3,4;32:5,6; 36:21;37:7,19;43:10; 55:6;63:5;64:11; 88:24;92:19;93:19 meaning (5) 42:22;70:17; 86:15;92:17;93:11 means (6) 32:9;33:5;37:11; 53:3;71:18;82:15 meant (1) 30:18 measure (4) 40:5;41:2;53:11; 66:8 measures (2) 33:21;34:17 measuring (2) 70:4;99:24 meat (1) 79:25 meatless (2) 79:24;80:8 mechanisms (1) 99:24 media (1) 62:23 medical (3) 14:25;15:24; 100:12 meet (3) 46:18;93:1;96:4 members (2) 67:18,19 memory (3) 5:4;24:1;89:1 men (3) 15:16;16:17;27:21 mentioned (4) 44:23;99:14,14; 100:8 mentions (1) 30:1 merch (1) 85:24 messed (1) 76:13 met (3) 4:13;95:12;96:12 methodology (3) 91:2;95:14;96:6 methods (1) 33:16 Michellina's (1) 94:4 microwave (1)</p>	<p>84:11 mid20s (1) 50:9 mid'90s (2) 21:7,8 might (9) 4:19;53:8;58:25; 59:2,13;66:14;70:2; 75:10;101:10 Miller (2) 38:12,14 million (4) 64:20;65:12,15; 66:1 Millward (8) 28:25;29:2,6,8,22; 43:23;44:4;59:13 mind (7) 6:15,18;23:12; 31:24;32:4;72:11; 81:16 minds (1) 32:24 mindset (2) 31:24;32:4 Mischaracterizes (1) 100:15 misery (1) 46:9 moment (2) 101:2,4 month (1) 64:1 months (9) 10:22;28:15; 80:11,21,22,24;84:4, 17;87:4 more (38) 4:1;7:2;15:6,11,15, 20;16:1,2;17:5; 18:25,25;26:17; 28:13;34:15;35:6,8, 8,12,23;36:2;39:13, 16,23;43:19;45:10, 24,25;58:13,15;69:5; 72:13;81:17;88:1; 97:22;100:10,11; 101:11,14 most (10) 18:7,23;24:24; 28:18,19;29:12; 46:10,13;53:4;58:11 mostly (1) 27:12 move (2) 11:12;97:18 moved (3) 11:3;52:3,5 moving (1) 51:15 much (5) 36:1;65:6;75:6; 92:8;101:15</p>	<p style="text-align: center;">N</p> <p>name (17) 3:7;11:21;22:3,13; 37:13,23;57:5;63:21, 22;78:3,3;81:24; 82:13;90:8;93:13,18; 100:1 Namely (1) 58:6 names (2) 57:3;63:24 narrow (1) 5:24 national (1) 91:25 nationally (4) 86:1,10;87:9,13 native (2) 97:12,21 need (13) 14:7,8;33:20; 35:23,24;36:2;46:17; 60:18;89:2;96:20; 98:22,24;101:5 needed (9) 13:5,22,22;14:1,5, 9;30:21;31:11;95:16 needs (1) 25:18 neighborhood (1) 64:20 net (2) 95:15;96:4 New (4) 7:13;9:7;11:18; 51:3 next (11) 17:25;18:1,2; 25:21;31:15;58:2; 77:21;81:19;87:17; 89:22;97:19 niche (1) 31:25 Nielsen (1) 99:25 nine (4) 80:11,24;84:4; 87:4 None (3) 9:15;58:23;64:17 nonfood (5) 72:7,18,24;73:2,19 nonfrozen (5) 75:23;76:3,10,11, 16 nonHeinz (2) 43:3,15 nonnutritional (2) 95:18,18 nonparty's (1) 79:17</p>	<p>Nos (1) 89:24 noted (1) 15:23 notice (3) 4:4,6;87:16 November (4) 4:6;17:6,7,17 number (4) 24:14,15;41:11; 95:15 numbers (6) 16:7;18:24;36:3; 64:24;65:1,5 nutrition (3) 75:3;99:15,16 nutritional (44) 12:8;13:6;14:2,5; 22:4;27:8;28:4,9; 30:15;33:7;45:25; 46:2,19;47:10;49:4; 50:24;51:11;53:18; 55:11;56:8;58:7,12; 60:2,11,15,20;74:8, 13;75:20;76:3,16; 77:6;93:7,13,23,24; 94:10,22;95:7,8,23; 99:16,22;100:4 nutritionally (1) 31:4 nutritional (3) 46:14;60:5,6 nutritions (1) 75:23</p>
O				
<p>many - off (8)</p>				<p>Oats (1) 79:20 object (6) 70:9,19;71:16,22; 73:3;90:21 Objection (27) 17:22;18:10; 22:16,22;30:7;31:1; 32:7,25;35:18;36:24; 41:4;47:25;55:12; 62:16;65:18;66:19; 73:15;91:10,18;93:5; 95:9;96:1;97:5,14; 98:14;99:10;100:15 obviously (7) 29:16;58:20;61:4, 14;68:19;71:25;97:9 occur (1) 98:12 occurred (1) 16:23 o'clock (1) 101:19 October (1) 17:7 off (1)</p>

55:8 offer (1) 15:2 offered (1) 7:11 offering (5) 51:18;78:1;93:12, 23,24 offerings (1) 53:13 office (4) 12:12,14;68:10; 92:23 older (1) 7:22 one (46) 8:23;13:17;20:1,1, 4,9;22:5,7;28:19,20, 21;29:6,13;38:4; 43:8;51:14;52:14; 54:5;56:15;58:8,15, 21;60:14,25;61:25; 63:23;66:6,13,13,15, 16,17,17;68:9;69:5, 13,14,17;75:8;77:7; 79:7;91:17;93:22; 96:18;99:2;101:1 Ones (79) 12:18,19,22;14:13, 17;15:5,10;16:2; 18:9,14,23;20:17,22; 21:10,18;22:3,13,15, 20,24;23:2,12,24; 25:6,12;26:13;30:1, 25;31:22;35:4,15; 39:6;42:19;43:7; 45:24;47:9,16,23; 49:12,14;50:3,11; 51:14,17;54:15; 58:13;62:13;64:4,7, 8,17;65:23;68:18,22; 69:2,3,7,16,21;70:18, 23;71:1,12;72:1,4,5; 78:5;79:17;90:13; 94:23;96:8,14,18; 98:1,3,11,22,23;99:2 Ones' (1) 55:25 on-line (5) 16:17;20:3;45:7; 50:15;65:24 only (14) 16:8;21:10;24:18, 20;43:7;45:5;46:16; 53:9;63:23;65:23; 67:25;76:19,20;87:6 opinion (12) 70:10,11,20,22; 71:17,23;73:4,16,23; 97:15;98:15;99:11 opportunities (2) 31:6,17 opportunity (2)	7:11;15:3 opposed (6) 15:21;16:3;64:9; 68:2;69:22;70:14 Oprah (1) 43:4 order (3) 21:21;50:11;95:15 orders (1) 64:16 oriented (1) 17:21 original (6) 5:11;26:21;68:5, 17;92:11,12 originally (1) 35:1 Orville (1) 78:14 others (5) 51:10;65:16,17; 94:24;100:10 out (5) 4:17;12:7;37:13; 51:21;53:22 outcome (2) 88:23;89:3 outfit (2) 59:21;82:12 outlets (4) 61:9;85:9,10,14 outright (1) 44:3 outside (13) 4:13;23:3,12;29:3; 60:23;61:4,5;75:3; 77:8,19;88:5;90:15; 95:6 over (3) 22:14;59:9;96:24 overall (4) 29:21;31:6;52:12; 67:10 overinclusive (2) 93:8;95:6 overlap (1) 14:18 overlapped (1) 14:19 own (6) 13:15;21:21; 22:10;34:4;54:23; 61:4 owned (8) 13:9;21:18,20; 22:6;38:11,14;51:7,8 P packaging (7) 33:10;48:11;89:4, 5,14;98:25;99:3 page (24)	25:21;26:2,8,9,23; 27:23,25;39:25; 41:20;47:14;48:20; 50:1;52:10;57:1; 58:2,6;59:15;62:10; 66:4,5;67:9,10,21; 96:10 pages (5) 5:22,25;41:11; 57:22;67:16 Panic (1) 73:17 par (1) 31:24 paragraph (1) 31:10 Paris (1) 9:1 part (11) 15:3;29:22;39:2,7; 43:21;45:1,13;46:11; 60:15,20;62:9 particular (10) 11:2;27:7;30:13, 14;57:14;66:9;67:8, 17;68:1;88:20 particularly (2) 30:4;75:19 parts (3) 20:12;45:2,3 pass (1) 20:18 passed (1) 49:18 pasta (1) 81:25 path (2) 14:23;68:25 people (22) 14:16;15:6;30:20; 33:12;37:7,11;38:19; 46:22;51:16;55:7; 68:12,14;72:14; 77:12;83:24;89:21; 95:22;96:4,18;97:20; 100:3,9 people's (1) 57:3 Pepsi (1) 55:3 percent (5) 26:24;27:10; 40:17,21,22 percentage (2) 35:24;92:5 percentages (3) 17:20;18:8;50:2 perfect (1) 91:13 performed (1) 90:12 perhaps (1) 23:4	period (4) 15:4;21:5;63:6; 64:2 periodically (1) 6:14 person (1) 69:17 personal (11) 55:24;70:10,11,20, 21,22;71:17,23;73:4, 16,22 personally (2) 80:5,18 pertained (1) 19:25 PhD (1) 9:17 phenomenon (1) 36:6 phone (2) 72:12,13 phones (1) 73:14 phrase (2) 31:17;32:3 picked (2) 80:7,18 picking (2) 53:19;71:1 picture (1) 83:14 piece (1) 91:11 Pittsburgh (7) 10:4;11:16;12:12, 14,14;57:16,17 place (2) 87:6;89:4 planning (2) 6:6;57:15 player (1) 49:12 pleasant (1) 34:9 please (14) 21:23;24:11; 25:21;27:23;29:19; 40:1;41:9;44:15; 52:10;58:2;59:15; 66:4;82:13;90:17 plenty (1) 42:5 pm (1) 101:19 point (19) 6:19;13:10;14:23; 16:10;20:9;27:7; 31:3,21;32:16;49:17; 59:16;60:1,14;70:25; 75:13;88:4;97:17,24; 100:22 policy (1) 21:9	Pop (3) 78:14,15,19 popcorn (3) 78:14;84:11,14 population (2) 27:21;33:24 portion (1) 77:15 portions (2) 24:21,22 position (2) 10:12;47:9 positioning (1) 47:23 possibility (1) 56:20 possible (3) 51:14;99:12,13 post (1) 58:21 Potatoes (2) 22:7;23:4 potential (3) 20:14;96:11;100:2 potentially (16) 4:15;26:15;37:14; 49:5;53:5;54:18; 56:5,5,23;62:19; 75:14;77:11;88:7; 92:3;97:21;101:6 predominantly (1) 16:15 prefer (1) 68:4 Prego (2) 83:24;87:3 preparation (1) 19:17 prepare (1) 4:11 presence (1) 50:15 present (2) 47:11,24 presentation (1) 30:14 presented (1) 30:11 president (4) 10:14,15;11:4,21 pretty (4) 65:6;86:22;92:7,8 previously (3) 6:20;48:1;66:14 price (7) 46:7,20,20;54:3,7; 75:4,13 primarily (4) 44:23;45:12; 59:22;69:22 primary (2) 27:9,12 principle (1)
---	---	---	---	--

89:20
principles (3)
89:5,13,15
print (7)
45:14;62:24;
64:15;65:4,9,15,17
prior (2)
26:14;59:17
private (4)
51:6;55:4;61:14;
94:5
probably (39)
6:11;13:19;18:18,
25;20:9;23:20;24:3;
26:17,21;27:11,12;
35:12;37:5;38:7,17,
18;40:10;42:12;
44:1;49:16;50:6,8,9;
51:22;52:5;63:12;
65:25;66:23;68:15;
72:16;73:12;79:14;
80:6,11;81:3;84:4;
91:20;92:23;97:19
produced (9)
5:17,22;6:4,6;
20:1;24:18;59:5,7;
63:7
product (38)
11:2;13:1,3;15:2;
20:15;23:12;25:19;
35:6,8,9;37:12;
48:10,11,13,14;
50:21;56:4;69:10,11,
12,22;71:21,24;75:7;
76:20;78:3;83:16,17;
86:25,25;87:25;94:6,
15,16;98:4,10,25;
99:3
production (7)
19:12;24:14,15;
27:24;29:19;57:1;
62:8
products (28)
13:5;14:2,6;20:21;
21:11;23:2,25;37:4;
40:14;48:10;53:18;
54:3;70:5;72:7,18,
21,25;73:2,20;74:1,
7;75:3;76:18,18;
77:17;87:11;94:10;
97:12
profile (2)
55:22;56:2
program (1)
9:10
projecting (1)
100:1
Promark (14)
78:24;79:6;80:3;
81:11;82:1,18;83:6,
17;84:1,13,21,24;
85:20;87:2
Promark's (1)

78:1
prominence (1)
25:18
promoted (5)
10:24,25;12:2;
86:11,13
promoting (1)
64:8
promotions (1)
39:20
pronounce (2)
59:19;82:13
provide (1)
20:10
provided (4)
5:10;19:12;24:13;
62:19
providing (1)
33:9
pry (1)
22:19
psychology (1)
9:17
public (2)
17:11;63:3
publicizing (1)
15:17
pull (2)
64:25;68:10
pulled (1)
26:14
punctuate (1)
52:19
purchase (3)
33:20;62:18;96:12
purchased (4)
63:3,11,22;96:18
purchases (2)
95:19;96:7
purchasing (2)
56:11;97:1
pure (2)
82:16,17
purpose (1)
43:22
push (1)
36:2
put (10)
43:2;80:8,18;
81:22;82:8;84:9;
87:20;90:1;96:7;
100:18
putting (1)
95:18

Q

quadrant (5)
48:4,20;49:2,7,25
Quaker (1)
79:20
qual (1)
51:23

qualifier (1)
77:4
qualify (1)
95:21
qualitative (2)
27:16;51:25
qualitatively (1)
97:19
quant (1)
51:25
quickly (2)
16:13;86:22
quite (3)
5:13;63:17;66:2
quote (2)
38:9;64:24

R

rack (1)
61:22
ran (1)
12:9
range (2)
54:8;89:17
ranges (2)
40:20;54:3
rate (2)
16:18;33:20
reached (1)
97:23
reaching (1)
95:20
read (10)
14:1;52:17;67:2;
76:24,25;82:10;91:5,
12;96:6;101:17
readily (2)
31:23;32:3
reading (2)
52:18;53:15
real (1)
17:11
realize (1)
6:19
really (9)
4:20;21:12;30:18;
37:12;68:4;72:14;
88:12,16,18
reason (6)
16:8;30:24;38:1;
43:21;59:13;101:3
recall (18)
20:5,8;21:4,5;
22:24;30:13;31:22;
32:14;33:6;37:17;
43:7,8;79:11;84:18;
85:4,10;88:23;92:11
receive (2)
8:8,18
received (1)
8:11
recent (9)

18:7,24;28:19,19;
29:12;58:11,13,15;
72:19
recently (1)
25:23
Recess (3)
47:6;77:23;101:13
recession (3)
44:24;45:20;58:22
recipient (1)
37:6
recognition (1)
70:4
recollection (1)
51:22
record (6)
5:16;6:24;59:1;
76:25;79:2;90:24
records (1)
96:11
redefined (1)
44:21
Redenbacher's (1)
78:14
redesign (1)
89:4
reducing (1)
71:9
refer (4)
69:11,21;71:24;
96:7
reference (3)
25:1;53:2;57:18
referring (2)
24:13;69:7
refers (4)
26:24;69:9,10;
71:21
reflect (1)
48:4
reflected (2)
99:8,8
reflection (1)
62:23
reflects (1)
74:24
refresh (2)
5:4;89:1
regular (2)
28:7,10
regularly (1)
29:4
related (2)
20:2;79:17
relates (2)
31:12;64:15
relative (8)
25:17;30:5;47:9,
17;48:15,18;64:2;
65:6
relatively (2)
32:23;35:16
relevant (3)

33:23;34:16;37:4
reliability (1)
41:2
remain (1)
60:7
remainder (1)
49:20
remaining (1)
57:22
remains (1)
64:22
remember (7)
13:19;19:22;21:1,
2;23:7;24:8;29:10
reminding (1)
3:15
repeat (3)
51:24;76:1,22
rephrase (3)
3:19;12:13;78:11
report (2)
18:2;63:7
reporter (8)
81:22;82:8;83:1,
12,22;84:9;87:20;
90:1
represent (2)
5:10;38:12
representation (1)
5:16
representative (1)
27:20
representatives (1)
4:4
request (1)
5:14
requested (1)
5:11
requirement (1)
96:13
requirements (4)
16:21;93:1;95:12;
96:5
research (41)
6:3;19:20,24;
20:13;26:14;27:20,
22;28:4,6,17;29:5,7,
9,23;35:20,21;36:22;
37:2,3,6,19;38:23;
40:9,11;44:17;45:18;
51:23;58:7,12;59:11,
18;60:19;68:10,16;
70:3;88:15;90:9,18;
91:11;92:22;97:17
researcher (5)
34:19;40:6;67:14;
68:4;96:17
respect (1)
13:2
respond (1)
95:16
respondents (5)
91:22;92:9;95:16;

96:11,12 responds (3) 33:8;92:6,9 restate (1) 3:19 results (8) 17:25;35:14;53:4, 10;70:4;95:5,22;99:7 retail (6) 45:7;85:7,8;87:6,7, 13 retailer (2) 65:25;85:23 retire (1) 10:2 review (2) 4:24;5:25 reviewed (1) 6:3 revolving (1) 68:14 rice (5) 55:25;56:6,12,15, 22 right (37) 6:11;7:14;12:17; 15:14;16:1;37:9,24; 39:15;41:8;52:20,24; 54:22;55:20;58:1; 59:22;66:5,17;67:7, 24;68:24;69:18,19; 70:24;71:5,18,19; 73:21;74:16;75:24; 76:5,6,21,23;85:17; 89:18;93:10,17 right-hand (2) 25:25;26:9 rings (1) 80:6 roles (1) 12:2 Ronzoni (3) 81:25;85:16,17 room (1) 88:16 royalty (2) 25:1,9 rule (1) 46:20 run (3) 12:3,4;54:11 runs (2) 39:19,22	42:19,25;50:17 S-A-G-E (2) 42:20,21 salad (4) 20:14;25:7;26:13, 15 sales (6) 23:17,22;49:2,6; 99:24;100:2 same (13) 32:11;41:19;58:5, 6;62:4;65:6;66:8; 70:25;71:2;73:15; 75:24;78:5;79:1 sample (1) 92:17 Santa (5) 55:25;56:6,12,14, 22 Sara (1) 61:25 satisfied (1) 29:17 sauce (3) 83:24,25;87:3 Sausages (2) 81:5;85:12 saw (4) 5:17;32:16;85:11, 13 saying (2) 5:21;63:8 school (7) 7:4,17,18,19,20; 8:2,16 scope (1) 68:1 screen (1) 95:20 screening (2) 68:6;96:10 second (1) 26:23 section (2) 52:12;66:10 seeing (2) 62:3;85:5 seem (1) 15:16 selecting (4) 53:12;54:22;55:8; 56:17 selection (1) 75:24 selective (1) 74:20 sell (4) 35:6,8,8;37:8 senior (1) 3:25 sense (4) 24:24;54:2;63:9; 81:5	sensitivity (2) 54:21;55:7 sentence (1) 26:23 separate (2) 22:1;94:16 series (1) 89:5 seriously (1) 67:13 serve (1) 20:14 served (1) 4:3 service (5) 16:24;26:13,15; 57:10;78:3 services (1) 78:2 serving (2) 54:13,14 session (5) 87:24;88:2,20,24, 25 set (5) 15:3;35:1;39:3; 60:10;67:14 setting (1) 97:2 several (6) 12:9;13:13;14:10; 22:5;77:9;97:22 Shack (1) 83:16 shared (1) 75:6 sharing (1) 89:21 shelf (5) 12:10;31:23; 53:13;55:8;61:19 shopper (1) 27:14 shoppers (2) 27:9,12 short (5) 46:25;77:22;91:6; 101:8,12 show (5) 55:7;61:20,21; 64:19;84:5 showed (1) 23:23 showing (1) 83:14 shown (3) 35:14;64:17;65:5 shows (11) 47:16;53:11,17; 62:10;64:1,4;66:5; 81:24;82:10,11; 83:24 significance (1)	38:13 significant (4) 16:6,18,25;50:14 significantly (2) 44:8,14 simply (2) 63:17;100:25 single (5) 13:23;20:14; 54:13,14;77:14 singles (1) 61:9 singular (4) 75:6,21;77:2,5 sitting (2) 88:16;97:20 situation (3) 32:21,22;34:21 Six (11) 10:22;80:11,20,21, 22,24;84:4,17;87:3; 89:5,15 size (2) 92:17;100:1 skew (1) 15:20 slate (1) 101:2 slowly (1) 9:25 Smart (154) 12:18,19,22;14:13; 15:5,10;16:2;18:9, 14,23;20:17,22; 21:10,18;22:3,13,15, 20,24;23:2,12,23; 25:6,12;26:13;30:1, 25;31:21;35:4,15; 39:6;42:19;45:23; 47:9,16,23;49:12,14; 50:3,11;51:14,17; 55:25;62:12;64:4,7, 8,17;65:23;68:18,19, 22;69:3,24,25;70:6, 7,7,8,13,16,16,18,23, 25;71:1,1,3,11,11,14, 20;72:8,11,12,13,17, 24;73:2,5,8,11,13,14, 18;74:6,22;75:2,16, 17,20;76:4,7,17; 77:9,10;78:4,5,8,9,9, 10,11,14,15,18;79:7, 7,17,18,20,22,24; 80:12,16,25;81:5,9, 24;82:11;83:2,3,15, 15,25;84:12,13,19, 19;85:4,11,11,12,17, 19;86:4,24;87:3,11, 12;90:13,14;94:23; 96:8,14,18;98:1,3,11, 21,22,23,24;99:2 snack (1) 27:8	sold (3) 20:21;61:9;78:4 solely (3) 60:5,6;75:11 solid (1) 31:22 solve (2) 34:25;35:11 somebody (1) 32:14 Somehow (2) 24:10;25:8 somewhat (4) 30:1,25;53:5;70:3 somewhere (2) 54:9;96:9 song (1) 34:12 soon (1) 13:15 sorry (5) 6:7;35:7;37:21; 76:8,22 sort (8) 34:20;38:8;42:16; 43:18;63:15,20; 65:24;90:19 sorts (1) 41:15 sound (1) 7:7 sounds (6) 72:3,4;79:25;80:1; 88:3,12 soups (1) 57:10 source (1) 100:1 South (8) 31:25;35:4;40:22; 47:18;50:20;51:16; 52:2;62:12 space (1) 86:19 spaghetti (2) 83:25;87:3 spcak (5) 31:18;32:10,19; 88:12,14 specific (6) 16:9;27:18;41:18; 44:1;45:23;67:12 specifically (13) 12:8;17:8;30:23; 31:10,14,15;46:14; 47:13;48:6,9;64:12, 14;99:23 spelled (1) 83:16 spend (15) 32:10,18;33:19; 35:23,25;36:2;39:16; 46:16,17;53:18;56:9;
S				
Sabol (1) 90:6 Sabrina (1) 81:13 Sadly (1) 55:19 sage (3)				

65:3,9,15,24 spending (6) 35:22;39:21; 48:16;62:10,23;64:8 spends (1) 65:21 spent (1) 64:2 split (1) 18:23 spread (2) 71:8,9 St (2) 9:7;11:14 stable (2) 12:10;61:19 standard (2) 41:13;92:25 Staples (1) 63:22 Starcom (1) 62:20 S-T-A-R-C-O-M (1) 62:21 start (11) 7:21;9:19;76:12; 78:10,11;79:7,7; 81:17;84:19,19;88:6 started (10) 7:9;9:17,25;12:7, 8;15:16;16:15;17:4, 9,14 starting (4) 24:5;47:24;97:17, 24 state (3) 44:7;48:4;92:2 stated (1) 88:20 States (7) 7:7,12;11:4,12; 38:10;59:24;91:22 statistics (1) 65:19 steps (1) 97:22 still (4) 43:23;50:22,23; 60:19 stimuli (1) 33:9 store (7) 55:8;60:23;62:5; 85:7;97:4;98:13,21 stores (3) 78:5;85:1;86:12 Stouffer's (6) 94:9,13,14,15,16, 17 strategic (2) 57:15;90:8 stream (2) 25:2,9	strength (3) 34:16;41:3;47:9 strengths (2) 41:15;70:5 strictly (1) 96:23 strong (14) 30:5;31:5,22; 35:15;36:7,10,14,14; 37:10,10,15;38:22; 39:13;42:9 studied (3) 51:19;68:2;82:12 studies (3) 9:10;28:12;44:5 study (12) 8:13;26:24;27:4,7; 48:5;51:4;67:2,14; 68:2;91:2;95:14; 97:11 stuff (2) 52:18;101:9 style (1) 55:25 styles (1) 31:5 subcategories (1) 99:18 subsequent (1) 90:25 subset (2) 60:20;100:9 success (1) 89:21 suggest (3) 34:5;49:5;68:23 summarize (1) 89:12 summary (1) 29:25 support (2) 26:12,17 supposed (4) 10:19;34:4,5; 78:23 sure (26) 6:24;26:20;33:25; 40:12,13;45:1;47:12; 48:3,19;49:8;53:19; 57:24,25;59:12;60:5; 61:2;63:24;64:14; 68:8,13;73:10;76:2, 23;92:1;93:19;98:18 survey (13) 90:11,18;91:11,13; 92:20,25;93:3;95:17, 21;96:17,23;97:8,19 surveyed (2) 40:14;66:18 Swanson (1) 94:19 sworn (1) 3:3	system (1) 88:24 T table (1) 97:20 talk (9) 14:11;24:23; 32:13,16;54:23;55:2; 59:17;61:17;65:23 talked (2) 31:15;74:18 talking (8) 14:13,14;45:22; 54:7;55:2,24;67:12; 78:23 talks (3) 31:21;33:16;55:18 target (9) 14:14;15:10,11; 16:2;17:21;18:9; 20:2;27:4;85:25 targeted (1) 33:19 targeting (1) 14:21 targets (1) 14:10 taste (8) 31:6,12,16;48:8; 55:22;56:20;81:24; 85:17 tastes (1) 56:15 taught (2) 8:16;34:3 team (6) 30:12;40:11; 59:11;60:19;68:10, 12 telephone (2) 96:24;97:8 television (4) 45:6,15;62:24; 64:15 ten (1) 81:15 term (5) 27:20;50:19; 68:20;73:19;74:1 terminology (1) 41:16 terms (2) 65:6;98:6 testify (2) 4:9,11 testimony (2) 19:17;100:16 TGI (2) 43:8;61:3 theme (1) 81:5	Therefore (1) 46:17 Thereupon (11) 19:6,8;81:20;82:6, 24;83:10,20;84:7; 87:18;89:24;101:19 thesis (1) 9:23 thinking (1) 14:4 third (2) 20:4;59:16 though (1) 7:24 thought (3) 4:19,21;21:13 thousands (3) 5:22,25,25 Three (6) 11:9;17:24;33:6; 42:12;83:9;86:7 throughout (2) 67:16;84:25 tied (1) 70:3 tissue (4) 87:23;88:2,20,24 title (3) 58:6;67:16,21 today (23) 8:7;12:3;17:23; 20:7,24;22:10;29:11; 45:22;48:5,5,21,23; 49:4,9;64:6,23;65:6; 82:1;83:6,18;84:1, 14;89:6 together (2) 11:7;26:14 took (2) 4:14;31:10 top (9) 29:25;31:24;32:4; 33:6;53:1,2,3,9;64:1 Topic (1) 77:25 topics (4) 4:9,12;5:4;87:16 total (8) 32:10;40:2,3,15; 62:23;64:5,7,9;95:15 Tough (2) 89:10,11 toward (2) 20:14;100:4 towards (1) 100:6 tracking (1) 62:11 trade (2) 39:20;78:3 trademark (4) 28:8;78:2;98:2; 99:3	trademarks (5) 13:8,11,20;24:4; 70:5 transcript (1) 24:19 transition (1) 89:6 true (5) 34:18;48:21,23; 64:22;100:14 truly (1) 88:16 try (1) 36:5 trying (11) 14:25;30:15; 34:25,25;35:11;37:8; 42:17;46:18;61:24; 70:12;99:25 turn (15) 24:11,15;25:21; 27:23;29:19;40:1; 41:9;47:14;52:10; 56:25;58:2;59:15; 62:8;66:4;86:20 turning (1) 86:21 TV (2) 64:17,20 two (12) 14:18;19:11;22:1; 25:18;26:3;33:21; 39:18;41:1,11;78:12; 89:22,22 type (4) 51:16;54:21;55:7; 56:10 types (3) 33:13;48:10;67:18 typically (4) 28:11,13;54:5; 77:14 typing (1) 10:19 typology (3) 41:12,13;44:4
U				
UK (5) 7:10,17;10:10,15, 16 Ultimate (2) 13:17;14:14 umbrella (1) 22:10 unaided (26) 32:5,13,23;33:4,5, 22;34:17;35:13,16; 36:1,8,10,14,17,23; 37:4,11,15;38:18,22; 39:13;40:2,20;78:6, 12;81:16				

<p>under (7) 13:23;20:17,21; 22:10,12;50:17; 59:16</p> <p>underinclusive (3) 93:9,11;95:7</p> <p>understood (5) 3:21;5:9,18;18:22; 91:3</p> <p>uniqueness (1) 31:6</p> <p>United (5) 7:9,12;10:11;11:4; 38:10</p> <p>universe (1) 68:2</p> <p>University (6) 8:6,7,9;1,1,6;10:4</p> <p>unless (1) 52:17</p> <p>up (22) 4:18;11:10,24; 15:15;23:16;29:11; 35:1;36:3;40:16; 46:8;54:9;61:20,21; 64:22;66:2;67:14; 68:11;71:1;76:13; 80:7,18;89:7</p> <p>upper (2) 25:25;26:9</p> <p>upwards (1) 65:25</p> <p>usage (1) 19:1</p> <p>use (36) 14:24;21:10;22:3; 23:2,23;25:6,12; 29:4,5,6;33:17; 41:16,18,22;42:10, 15,17;70:5,13;72:7, 14,17,21;73:10;74:7, 22;75:2;76:17;79:7, 18;82:18;83:2,14; 84:13;86:24;99:24</p> <p>used (28) 13:11;22:20,25; 23:6,9,12,23;25:11, 12;29:14;30:5;41:14, 24;44:5;59:12;62:3; 68:22;69:24;70:18; 72:24;73:2;79:20,22, 24;81:24;82:11; 83:4;98:4</p> <p>user (4) 52:2;55:3,3,16</p> <p>users (2) 27:8,9</p> <p>using (6) 29:8;43:23;63:21; 70:14;83:24;95:19</p> <p>usually (2) 46:17;77:3</p>	<p style="text-align: center;">V</p> <p>value (4) 28:8;61:15,18; 93:18</p> <p>variety (2) 29:5;46:12</p> <p>various (4) 41:15;53:13;64:3; 95:20</p> <p>velocity (2) 86:20;100:2</p> <p>version (2) 58:11;61:10</p> <p>versus (8) 14:17;15:13; 32:13;33:9,21;51:25; 55:21,22</p> <p>via (1) 27:16</p> <p>vice-president (2) 57:9,10</p> <p>view (1) 88:5</p> <p>views (1) 48:13</p> <p>visual (1) 33:10</p>	<p>47:17</p> <p>weaknesses (1) 41:15</p> <p>web (1) 16:15</p> <p>week (1) 54:6</p> <p>weeks (1) 17:24</p> <p>Weight (35) 13:14;14:12,24,25; 15:11,16,18;16:3,24; 17:4;18:3,8,10,12; 21:16,18;22:2,14,21, 25;25:4,5,9,13,17; 26:12;67:18,19; 70:13;98:2,3,9;99:4; 100:24,25</p> <p>whichever (2) 14:23;35:5</p> <p>white (2) 34:22;81:25</p> <p>whole (6) 24:24;39:19; 62:24;68:12;75:14; 85:13</p> <p>whose (1) 11:21</p> <p>widely (1) 84:25</p> <p>wider (2) 95:15;96:3</p> <p>wife (1) 8:15</p> <p>Wisconsin (1) 8:16</p> <p>Wisdom (2) 42:23;74:24</p> <p>wishes (1) 8:15</p> <p>within (7) 12:7;21:22;28:9; 68:1;80:20;99:18; 100:9</p> <p>without (1) 18:15</p> <p>witness (6) 3:2;5:17,19;34:9, 10;101:16</p> <p>witnesses (1) 34:4</p> <p>women (2) 27:13,21</p> <p>wonderful (1) 8:12</p> <p>word (19) 14:23;17:5,16; 18:1;21:24;69:2; 70:6;71:6,14,25; 72:1,3,4,8;74:17; 76:17;78:4;86:24; 98:23</p> <p>words (4)</p>	<p>52:15;68:18;88:9; 98:23</p> <p>work (11) 8:21;10:6;11:20; 29:17;31:19,20;44:1, 9;48:7,9;68:14</p> <p>worked (4) 11:3,5,7;43:8</p> <p>working (3) 7:9;9:16;11:23</p> <p>World (4) 25:2;27:20;57:15; 101:2</p> <p>worth (1) 3:15</p> <p>wrong (4) 18:21;44:3;53:8; 56:22</p> <p>WW1 (1) 25:2</p> <p>WWSO_soups (1) 57:19</p>
	<p style="text-align: center;">W</p> <p>walk (1) 88:6</p> <p>walked (1) 42:11</p> <p>walking (1) 46:15</p> <p>Wal-Mart (2) 61:15;87:7</p> <p>Wal-Mart's (1) 51:8</p> <p>War (1) 25:2</p> <p>Watchers (27) 13:14;14:12; 15:11;16:4,24;18:3, 8,11,12;21:16,19; 22:2,14,21,25;25:4,5, 9,13,17;26:12;67:18, 19;98:2,3,10;99:4</p> <p>water (3) 82:12,19;85:19</p> <p>way (11) 6:19;12:21;39:12; 40:21;69:11,20; 73:17;88:8;96:23; 100:19;101:3</p> <p>weak (19) 30:2,25;32:23; 36:8,10,16,17,22,22; 37:4,16;38:21;39:13; 41:21,23;42:2,4,8;</p>	<p style="text-align: center;">Y</p> <p>year (13) 8:17,23;17:7,12, 17;18:4,5,6;48:2; 54:6;58:8;82:22; 85:20</p> <p>years (17) 11:9;12:5;42:12; 46:3;47:24;49:7; 54:1;72:19;79:4,5, 13;81:4,8,15;83:9; 84:22;86:7</p> <p>yesterday (2) 4:13;90:16</p> <p>Yeungling (3) 38:5,6,20</p> <p>York (3) 7:13;9:7;11:18</p>	



GFA043150



GFA043152

PENGAD 800-631-6989
1-17-12 JH
DEPOSITION
EXHIBIT
Kendley 4



PENGAD 800-631-6888
1-17-12 JH
DEPOSITION
EXHIBIT
Kinley 5

GFA043158



PENGAD 800-831-6888 1-17-12 24
DEPOSITION
EXHIBIT 7
Finlay



PENGAD 800-831-5889
1712 8H
DEPOSITION
EXHIBIT
Findlay 8

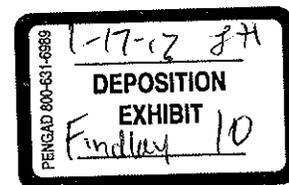
GFA000078

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

PROMARK BRANDS INC.,	)	Opposition Nos. 91194974 and 91196358
)	
Opposer,	)	U.S. Trademark Application 77/864,305
	)	For the Mark SMART BALANCE
vs.	)	Published in the Official Gazette
	)	on April 20, 2010
GFA BRANDS, INC.,)	
	)	U.S. Trademark Application 77/864,268
Applicant.	)	For the Mark SMART BALANCE
	)	Published in the Official Gazette
	)	on August 10, 2010

BARRY A. SABOL, PH.D.
PRESIDENT
STRATEGIC CONSUMER RESEARCH, INC.

CURRICULUM VITAE
EXPERT TESTIMONY
COMPENSATION



Barry Allan Sabol, Ph.D.

President
Strategic Consumer Research, Inc.
26250 Euclid Avenue
Cleveland, Ohio 44132
216-261-0308
bsabol@scr-research.com

Professional Experience

President – Strategic Consumer Research, Inc.

1982 – Present

- Founded firm in 1982
- Responsible for all phases of project design, analysis and reporting
- Responsible for client development and support
- Expertise in many types of research including:
 - Advertising Effectiveness
 - Awareness and Image Assessment
 - Competitive Positioning
 - Customer Satisfaction and Loyalty Measurement
 - Market and Store Performance Assessment Tracking
 - Market/Customer Segmentation
 - New Concept Testing
 - New Product/Service Evaluation
 - Website Navigation Evaluation

Research Director – Fox and Associates, Inc.

1978 – 1982

- Responsible for the design, development and execution of quantitative consumer attitude, opinion, image, awareness and demographic research studies for clients of this full-service advertising agency.

Research Specialist – Psychological Research Services

1975 – 1978

- Responsible for the development and execution of projects within the areas of training needs assessment, training, training program evaluation, performance appraisal, organizational analysis, testing, test validation and survey research.

EXPERT TESTIMONY

Dr. Barry A. Sabol has testified as an expert witness in only one case in the past four years:

Atlas Equipment Co. Inc. V. Weir Slurry Group, Inc. et al.
Case Number 2:07-cv-01358
– By deposition, May 15, 2009

COMPENSATION

Strategic Consumer Research, Inc. charged the sum of \$15,000 to conduct the research study outlined in this report. Dr. Sabol is President of Strategic Consumer Research, Inc.

Dr. Sabol will charge an hourly rate of \$300 plus expenses for any further involvement in this case.



**Strategic
Consumer
Research
inc**

H.J. Heinz Company

Likelihood of Brand Confusion
Between Smart Ones and Smart Balance
Resulting from the Introduction of
Smart Balance Frozen Meals

A Brand Confusion Survey

December 2011

26250
Euclid Avenue
Cleveland Ohio
44132-3602
216.261.0308 tel
216.261.3546 fax



Study Background and Objective

- The Smart Ones brand of packaged frozen meals is sold nationally in the frozen food section of supermarkets.
- Recently, Smart Balance announced plans to sell packaged frozen meals under the brand name Smart Balance in the same frozen food section of supermarkets as where Smart Ones packaged meals are sold.
- The primary objective of this study was to determine the level of potential brand confusion, if any, which may occur from the introduction of Smart Balance frozen meals in the same frozen meal section of supermarkets where Smart Ones frozen meals are already sold.

Study Method

The data comprising this study was collected using telephone survey research.

Relevant Survey Universe

- To qualify for survey inclusion, a potential respondent had to meet two screening criteria:
 1. Had personally purchased any frozen meals from the frozen food section of a supermarket in the past 30 days.
 - and –
 2. Possessed at least nominal awareness of Smart Ones frozen meals as indicated by an affirmative response to the question – “Have you ever heard of the Smart Ones brand of frozen meals?”
- Thus, every survey respondent was a recent purchaser of frozen meals who possessed nominal awareness of the Smart Ones brand of frozen meals.
- A total of 216 potential respondents were disqualified because they did not purchase any frozen meals in the past 30 days (46% of all screened respondents).
- In addition, 54 potential respondents were disqualified because they had never heard of Smart Ones brand frozen meals (18% of past 30 day frozen meal purchasers).

Study Method

Survey Sampling Plan

- This survey utilized a national (lower 48 states) replicate random sampling plan:
 1. Replicate random telephone samples were purchased from Survey Sampling, LLC, the premier sample generator firm in the United States.
 2. Each replicate random sample included both landline and cell phone telephone numbers in proportion to U.S. national rates of each in the general population.
- From these replicate random samples, potential respondents were screened to ensure that they met the criteria set for the relevant survey universe described earlier.

Study Method

Survey Instrument

- The survey instrument used in this study was developed by Dr. Barry A. Sabol, President of Strategic Consumer Research, Inc. This questionnaire appears in Appendix A.

Survey Execution

- This survey was conducted using the central telephone interviewing facility of Strategic Consumer Research, Inc. All interviews were conducted by experienced SCR, Inc. telephone interviewers.
- All interviewers were trained specifically for this survey by Dr. Barry A. Sabol. Interviewers were not made aware of the purpose of this study.
- All interviews were conducted from December 15-20, 2011. Weekday interviews were conducted from 5 p.m. to 9 p.m. and from Noon to 5 p.m. on Saturday in all U.S. time zones. No interviews were conducted on Sunday.

Study Method

Level of Survey Precision

- A total of 250 interviews were conducted among qualified respondents who met the survey criteria. This sample size yields a maximum error rate of $\pm 6.3\%$ at the 95% confidence interval.

Summary of Study Findings

This section is organized on a topic-by-topic basis.

Aided Brand Awareness

- In the course of screening potential respondents, records were kept of those respondents who met the purchase requirement, but who were disqualified due to lack of awareness of the Smart Ones brand of frozen meals. This data, when combined with the qualified survey sample, made it possible to calculate the level of aided brand awareness for each of six brands measured in this study.

Aided Brand Awareness

- Shown below in Table 1 are the aided brand awareness levels for the six brands included in this study as measured by affirmative responses to the “Have you ever heard of . . . ?” question.

Table 1
Total (Aided) Brand Awareness

Brand	Aided Awareness Level (304) %
Lean Cuisine	90
Stouffer's	88
Healthy Choice	85
Swanson	85
Smart Ones	82
Marie Callender's	79

Aided Brand Awareness

- This data clearly indicates that the Smart Ones brand of frozen meals is very well known and comparable in aided awareness levels to all five of the other brands measured.
- This data clearly qualifies Smart Ones as a “famous” brand.

Brand Purchase Rates

- The 250 qualified respondents who indicated awareness of the Smart Ones brand of frozen meals were asked “Which of the following brands of frozen meals have you ever purchased?” They were also asked on an unaided basis which brand of frozen meals they purchased most often.
- This data is shown below in Table 2.

Table 2
Brand Purchase Rates

Brand	Ever Purchased (250) %	Purchase Most Often (250) %
Stouffer's	73	26
Lean Cuisine	73	18
Marie Callender's	62	16
Swanson	60	6
Healthy Choice	57	8
Smart Ones	51	10
Banquet	N/A	6
All others (19)	N/A	10

Brand Purchase Rates

- Overall, 51% reported having purchased the Smart Ones brand of frozen meals at some point in the past, and 10% reported having purchased Smart Ones brand frozen meals most often.
- These purchase rates are significant and add further evidence that Smart Ones frozen meals represent a “famous” brand.

Past 30 Day Purchase Volume

- All qualified respondents were asked how many packages of frozen meals they had purchased in the past 30 days.
- The average number of packages purchased (mean value) in the past 30 days was 8.5, with a median value of 6 packages.
- Respondents were then classified as Light (1-5 packages), Medium (6-10 packages) or Heavy (11+ packages) users.
- This data is shown below in Table 3.

Table 3
Purchasing Volume Classification

Purchase Volume Classification	Segment Size (250) %	Mean Package Volume
Light	45	3.2
Medium	33	8.3
Heavy	22	19.9
Total	100	8.5

Level of Potential Brand Confusion

- All qualified respondents were asked:
 “If you were to see a brand of frozen meals in the frozen food section of a supermarket named Smart Balance, would you think it was associated with, licensed by, owned by or in any way connected to Smart Ones? You may answer yes, no or don’t know.”
- Response data is shown below in Table 4.

Table 4
Potential Brand Confusion

Likely to be Confused?	Total (250) %	Segment				
		Smart Ones Purchasers (128) %	Buy Smart Ones Most Often (24) %	Heavy Users (54) %	Med. Users (82) %	Light Users (114) %
Yes	32	38	42	37	33	29
No	39	43	46	50	40	33
Don't Know	29	19	12	13	27	38

Level of Potential Brand Confusion

- The level of potential brand confusion was found to be 32% for the total sample of respondents. This means that the actual level of potential brand confusion could be between 38% and 26% if all members of the relevant universe were surveyed.
- Levels of potential brand confusion were elevated for:
 - Smart Ones purchasers (38%)
 - Primary Smart Ones purchasers (42%)
 - Heavy frozen meal users (37%)
- This represents a significant level of potential brand confusion. Only 39% indicated no potential confusion, while 29% chose the “Don’t Know” response.

Sample Demographics

- Overall, 28% of respondents were male and 72% were female.
- The breakdown of respondent ages were as follows:
 - Under 35 (20%)
 - 35 – 54 (31%)
 - 55+ (49%)
- Interviews were conducted with respondents in 45 of 50 states.
The exceptions were:
 - Wyoming
 - West Virginia
 - South Dakota
 - Hawaii
 - Alaska

Study Conclusions

- Two primary and relevant conclusions can be drawn from this study:
 1. Smart Ones is a well known, “famous” brand of frozen meals.
 2. There exists a significant likelihood of potential brand confusion between Smart Ones and Smart Balance if Smart Balance introduced frozen meals under the Smart Balance brand name into the frozen meal section of supermarkets.



Appendix A: Survey Instrument

SMART ONES BRAND CONFUSION SURVEY

Good evening. My name is _____ from SCR, Inc., a national public opinion polling firm. Tonight we are conducting a survey about frozen meals sold in supermarkets and would like to include your opinions. We are not selling anything. This is strictly a survey which will take less than three minutes.

SCREEN A: First, have you or anyone in your household purchased any frozen meals from the frozen food section of a supermarket in the past month/30 days?

- 1 Yes (CONTINUE)
- 2 No (THANK AND TERMINATE)

SCREEN B: Have you personally purchased any frozen meals from the frozen food section of a supermarket in the past month/30 days?

- 1 Yes (CONTINUE)
- 2 No (ASK TO SPEAK TO PURCHASER – REPEAT INTRO)

1. Which of the following brands of frozen meals have you ever heard of:
(READ LIST BELOW. CIRCLE ALL MENTIONED)

Rotate Order	YES	NO
A. Stouffer's	-1	-2
B. Swanson	-1	-2
C. Lean Cuisine	-1	-2
D. Smart Ones	-1	-2
E. Marie Callender's	-1	-2
F. Healthy Choice	-1	-2

(IF HEARD OF SMART ONES – CONTINUE. IF NOT, THANK AND TERMINATE)

2. Which of the following brands of frozen meals have you ever purchased:
(READ LIST BELOW. CIRCLE ALL MENTIONED)

Rotate Order	YES	NO
A. Stouffer's	-1	-2
B. Swanson	-1	-2
C. Lean Cuisine	-1	-2
D. Smart Ones	-1	-2
E. Marie Callender's	-1	-2
F. Healthy Choice	-1	-2

3. If you were to see a brand of frozen meals in the frozen food section of a supermarket named Smart Balance, would you think it was associated with, licensed by, owned by or in any way connected to Smart Ones? You may answer yes, no or don't know.

- 1 Yes
- 2 No
- 3 Don't know

4. Which brand of frozen meals do you purchase most often? (DO NOT READ LIST. CIRCLE OR WRITE IN ONE BRAND ONLY)

- 1 Stouffer's
- 2 Swanson
- 3 Lean Cuisine
- 4 Smart Ones
- 5 Marie Callender's
- 6 Healthy Choice
- 7 Other (Specify) _____

5. In the past month, about how many packages of frozen meals of any brand have you purchased from the frozen food section of a supermarket?

_____ (# Packages)

6. Finally, which of the following categories contains your age:
-1 Under 35 -2 35 – 54 -3 55 or older

Thank you very much for your help tonight!

7. Interviewer, record gender: -1 Male -2 Female

8. Interviewer, record state: _____