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

Proceeding	91200832
Party	Defendant Honda Giken Kogyo Kabushiki Kaisha (Honda Motor Co., Ltd.)
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Signature	/Shira Hoffman/
Date	12/04/2015
Attachments	2015-08-28 Mantis - TTAB Final with Cert.pdf(5931692 bytes) EX 0029 Confidential.pdf(7269 bytes) EX 0030 Confidential.pdf(7265 bytes) EX 0053 George Mantis Exhibit 082815.PDF(69645 bytes) EX 0054 George Mantis Exhibit 082815.PDF(18202 bytes) EX 0055 George Mantis Exhibit 082815.PDF(138012 bytes) EX 0056 George Mantis Exhibit 082815.PDF(7077 bytes) EX 0057 George Mantis Exhibit 082815.PDF(68823 bytes) EX 0058 George Mantis Exhibit 082815.PDF(119093 bytes) EX 0059 George Mantis Exhibit 082815.pdf(140982 bytes) EX 0060 George Mantis Exhibit 082815.pdf(120759 bytes) EX 0061 George Mantis Exhibit 082815.PDF(26669 bytes) EX 0062 George Mantis Exhibit 082815.PDF(974107 bytes) EX 0063 George Mantis Exhibit 082815_Redacted.pdf(42427 bytes) EX 0064 George Mantis Exhibit 082815.PDF(138815 bytes) EX 0065 George Mantis Exhibit 082815_Redacted.pdf(26317 bytes)

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

BRIGGS & STRATTON CORPORATION and
KOHLER CO.,
Opposers,

Opposition No. 91200832 (parent)

-vs-

Opposition No. 91200146

Application Serial No. 78924545

HONDA GIKEN KOGYO KABUSHIKI
KAISHA,
Applicant.

DEPOSITION OF GEORGE MANTIS

Friday, August 28, 2015 9:08 a.m.

Wilmer, Cutler, Pickering, Hale and Dorr LLP
60 State Street, Boston, MA 02109

Reported by:

Janet Sambataro, RMR, CRR, CLR

JOB NO. 146811

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August 28, 2015

9:08 a.m.

Deposition of GEORGE MANTIS, held at the
offices of Wilmer, Cutler, Pickering, Hale and
Dorr LLP, 60 State Street, Boston, Massachusetts,
pursuant to Agreement before Janet Sambataro, a
Registered Merit Reporter, Certified Realtime
Reporter, Certified LiveNote Reporter, and a
Notary Public within and for the Commonwealth of
Massachusetts.

1 APPEARANCES:

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1 P R O C E E D I N G S

2 MS. PAIK: Before we begin, I'd like to
3 state for the record the parties' previous
4 agreement with respect to the introduction of
5 evidence of portions of the parties' expert
6 reports, as outlined in Mr. Poret's trial
7 deposition.

8 And pursuant to that agreement, the
9 parties agree that with respect to Mr. Mantis'
10 trial deposition, Honda may introduce portions of
11 his expert reports that contain diagrams, tables,
12 photographs, data, and the like.

13 Is that agreed?

14 MR. PHILLIPS: Yes.

15 GEORGE MANTIS,
16 having been duly sworn, after presenting
17 identification in the form of a driver's license,
18 deposes and says as follows:

19 DIRECT EXAMINATION

20 BY MS. PAIK:

21 Q. Good morning.

22 A. Good morning.

23 MR. REGAN: And we'll have the same
24 stipulation regarding objections that we had at
25 the prior deposition.

1 MR. PHILLIPS: Remind me what that is,
2 Jack.

3 MR. REGAN: All objections, except as
4 to the form of the question and motions to
5 strike, will be reserved. And the witness will
6 read and sign the transcript within 30 days.

7 MR. PHILLIPS: Okay. Thank you. Yes.

8 BY MS. PAIK:

9 Q. Good morning.

10 A. Good morning.

11 Q. Please introduce yourself.

12 A. My name is George Mantis.

13 Q. Where do you work?

14 A. The Mantis Group.

15 Q. What position do you hold at the Mantis
16 Group?

17 A. I am the president and founder of the
18 Mantis Group.

19 Q. Have you been retained as an expert in
20 this matter?

21 A. I have.

22 Q. By whom were you retained in this
23 proceeding?

24 A. Counsel for the Applicant.

25 Q. Mr. Mantis, what were you asked to do

1 in this case?

2 A. I was asked to design a survey to
3 assess whether the mark, as depicted in the
4 application, has acquired distinctiveness or
5 secondary meaning.

6 I was also asked to assess the probative
7 value of surveys conducted by Mr. Poret.

8 Q. Now, what, if anything, in your
9 background do you believe qualifies you to carry
10 out this task?

11 A. My education and over four decades of
12 experience in designing and conducting and
13 reporting on surveys.

14 Q. Let's go through your training and
15 experience in the area of survey research.

16 But, first, please tell us your educational
17 background.

18 A. I received a bachelor of science degree
19 from Carroll College, master of business
20 administration from Indiana University, and a
21 juris doctor from Illinois Institute of
22 Technology, Chicago Kent College of Law.

23 Q. Mr. Mantis, please walk us through your
24 experience in survey research.

25 A. I began my career in survey research in

1 1969 at Continental Illinois National Bank, as a
2 marketing research officer. In 1978, I joined a
3 publicly held marketing research firm as the
4 director of the firm's financial and legal
5 services group.

6 And in 1983, I started -- I formed the
7 predecessor to the company that was formed in
8 1985, the Mantis Group.

9 COURT REPORTER: Could you keep your
10 voice up a little bit?

11 THE WITNESS: I'll try to.

12 Q. Have you performed surveys in the area
13 of trademark or trade dress?

14 A. Yes.

15 Q. Approximately how many?

16 A. Over the course of the last 30-plus
17 years, in excess of 500.

18 Q. Have you performed any surveys to
19 determine whether a proposed trademark or trade
20 dress has acquired secondary meaning?

21 A. I have.

22 Q. Approximately how many?

23 A. A rough estimate, approximately 40 or
24 so.

25 Q. How long have you worked in the area of

1 survey research?

2 A. 43 years.

3 Q. Have you served as an expert witness in
4 the area of survey research in legal proceedings?

5 A. I have.

6 Q. Have you been accepted as an expert in
7 trademark survey research in legal proceedings?

8 A. I have.

9 Q. What courts, agencies, or
10 administrative bodies have you been accepted as
11 an expert in trademark surveys?

12 A. The federal courts ^{IN} ~~and~~ many circuits, 
13 the Trademark Trial and Appeal Board, and the
14 Copyright Office.

15 Q. When were you first qualified as an
16 expert before the TTAB?

17 A. I believe it was 1985, in the Miles
18 Laboratory case.

19 Q. Have you lectured on the use of survey
20 research in trademark matters?

21 A. I have. I have spoken at the
22 International Trademark Association's annual
23 meeting, Midwest Conference on Intellectual
24 Property, Chicago Bar Association, various
25 practicing law institute forums, and on occasion,

1 I lecture at the John Marshall Law School on the
2 use of survey research for trademark matters.

3 Q. Mr. Mantis, you're being handed what's
4 been marked as Applicant Exhibit No. 53.

5 (Summary of The Mantis Group,
6 Inc. marked Applicant's Exhibit 53.)

7 BY MS. PAIK:

8 Q. Do you recognize this document?

9 A. I do.

10 Q. Please identify it for us.

11 A. This is a summary of the Mantis Group
12 and my experience, both educationally and the
13 type of work conducted by the Mantis Group.

14 Attached to the first page are a list of
15 cases where I provided trial and/or deposition
16 testimony from the years 2007 through 2012.

17 Q. Who prepared this document?

18 A. I did.

19 Q. Does Applicant Exhibit 53 accurately
20 summarize your education and work experience in
21 the area of survey research?

22 A. It does.

23 Q. Have you had any additional engagements
24 where you've given trial or deposition testimony
25 that's not reflected in Applicant Exhibit 53?

1 A. Yes. I believe there were three
2 additional cases since 2012, where I provided
3 trial and/or deposition testimony.

4 Q. Mr. Mantis, you said a few minutes ago
5 that you've been asked to design and conduct a
6 survey to determine whether the engine design
7 depicted in Honda's application has acquired
8 secondary meaning.

9 Did you perform the survey?

10 A. I did.

11 Q. Are you being compensated for your time
12 spent on this case?

13 A. Yes.

14 Q. How are you being compensated?

15 A. The compensation I have received was on
16 a project basis for the design, conduct, and
17 reporting of the survey. And I'm also being
18 compensated on an hourly basis for trial and
19 deposition testimony.

20 Q. What is your current hourly rate?

21 A. \$750.

22 Q. What was your per project fee in this
23 case?

24 A. The fee billed to Honda for the design,
25 conduct, and reporting of the study, including

1 all costs associated with data collection, I
2 believe was \$120,000.

3 Q. Now, Mr. Mantis, have you formed any
4 opinions as to whether the engine design that's
5 depicted in Honda's application has acquired
6 secondary meaning?

7 A. I have.

8 Q. What is your opinion?

9 A. Based on the study that I conducted, I
10 have concluded that the design depicted in the
11 application has acquired distinctiveness or
12 secondary meaning.

13 Q. How did you arrive at that conclusion?

14 A. The net proportion of respondents who
15 associate the design with Honda as a single
16 source for design-related reasons.

17 Q. What proportion of relevant customers
18 associated the design depicted in the application
19 with Honda?

20 A. I believe it was 42.4 percent.

21 Q. In your experience, Mr. Mantis, is a
22 net level of association of 42.4 percent
23 sufficient or insufficient to support a finding
24 of secondary meaning?

25 MR. PHILLIPS: Objection.

1 A. My experience is that it is sufficient.

2 Q. Mr. Mantis, we'll get into the details
3 of your survey shortly, but first, can you please
4 give the board an overview of the survey you
5 conducted for this case.

6 A. As any other survey, the study design
7 incorporated determining, first, what
8 organizations and respondents should be included
9 in the study. After that determination was made,
10 the identification of potential firms that define
11 this audience is sought and secured, purchased,
12 in this case.

13 Respondents then, once qualified, reviewed
14 an image or a photograph of an engine as they
15 were on the telephone when the interview
16 occurred. After the data were collected, I then
17 analyzed the data, coded and tabulated the data,
18 and wrote a report, based on those findings.

19 Q. When was the survey conducted?

20 A. August 14, 2012, through September 19,
21 2012.

22 Q. In designing the survey, what initial
23 step did you take?

24 A. The first step in designing a survey is
25 to define the relevant universe.

1 Q. What do you mean by "relevant
2 universe"?

3 A. The relevant universe, sometimes
4 referred to as the population, is that group of
5 individuals from which the sample firms in a
6 survey are drawn. It's that group who represents
7 opinions that are probative of the issue or
8 subject that we're studying.

9 Q. What did you define as the relevant
10 survey universe?

11 A. Organizations that purchase or may
12 purchase horizontal shaft engines ranging from
13 4-to-13 horsepower that are used in the
14 organization, such as original equipment
15 manufacturers, retail trade, and wholesale trade.

16 Additionally, included in the study were
17 organizations that purchase or rent products that
18 contain a qualified engine, organizations such as
19 rental yards and equipment purchasers or renters.

20 Q. How did you identify those
21 organizations?

22 A. Through -- initially through
23 conversation with counsel and Honda, but also
24 based on experience working on another matter for
25 Honda.

1 Q. Once you determined the types of
2 organizations for inclusion in your survey, how
3 did you go about identifying the actual
4 organizations that fell within those categories?

5 A. Through the use of standard industrial
6 classification codes.

7 Q. What are standard industrial
8 ~~identification~~ ^{CLASSIFICATION} codes? 

9 A. SICs or standard industrial
10 classification codes, are codes that are assigned
11 to organizations based on the type of
12 organization it is. These are developed by the
13 Department of Labor.

14 Those codes then can characterize an
15 organization by the type of work it does or its
16 function. So that's the basis of identifying
17 what organizations fit into what categories.

18 Q. How did you identify the relevant SIC
19 codes?

20 A. Through going to the Department of
21 Labor statistics, there's a manual of SIC codes
22 that define each grouping. For example, original
23 equipment manufacturers. Those SIC codes then
24 can be identified and isolated as some of which
25 you would want to include in your sampling.

1 MS. PAIK: Mr. Mantis, you've just been
2 handed what's been marked as Applicant
3 Exhibit 54.

4 (Standard Industrial
5 Classification Codes marked Applicant's
6 Exhibit 54.)

7 BY MS. PAIK:

8 Q. Do you recognize this document?

9 A. I do.

10 Q. Please identify it for us.

11 A. This document represents the SIC codes
12 for the ~~testing~~ ^{TEST} control group respondents that 
13 were utilized in the study and the number of
14 interviews that were conducted for each SIC code.

15 The SIC codes are grouped as to reflect the
16 category of firm; for example, equipment
17 purchasers and renters. You see a list of SIC
18 codes that respond to that particular
19 categorization.

20 So these are the SIC codes that we used in
21 the study and the number of interviews by SIC
22 code within the segments that I described as the
23 type of organization that was included in the
24 study.

25 Q. Who prepared this document?

1 A. I did.

2 Q. Now, once the relevant SIC codes were
3 identified, what happened next?

4 A. We went about the process of purchasing
5 the sample of firms that fall into these SIC
6 codes.

7 Q. From whom did you purchase the sample?

8 A. An organization known as Survey
9 Sampling Incorporated. Survey Sampling is an
10 international firm involved in sampling
11 solutions, as well as data collection.

12 Q. Could you tell the board in more detail
13 how you went about purchasing the sample of
14 businesses that fell within the relevant SIC
15 codes?

16 A. There was a very systemic approach in
17 the purchase process. I first asked Survey
18 Sampling to list the number of entities for each
19 of the SIC codes that fell into each of these
20 types of organizations. Once that population was
21 identified, ^{SSI} ~~SIC~~ was instructed to take a random ⁽⁷²⁾
22 sample of that population to provide the SIC
23 codes that were potentially used in the study.

24 So the process was identifying the number
25 and then taking a random sample within that total

1 population of records that Survey Sampling
2 maintains.

3 Q. After the sample was purchased, what
4 happened next?

5 A. After the sample was purchased, firms
6 were contacted by telephone randomly.

7 Q. Why were the businesses contacted
8 randomly?

9 A. Standard procedure would be to do a
10 random contact of the SIC codes provided. For
11 example, I think we purchased approximately
12 12,000 records for equipment purchasers. A low
13 number was basically the entire universe of OEMs,
14 which was under a thousand.

15 What you do then is have that information in
16 a computer, if you will, and the computer will
17 then randomly select one of these records. The
18 random selection process then gives the
19 opportunity to basically give everyone an
20 opportunity to participate in the survey.
21 There's no self-selection process. It's random.

22 Q. Who is Pacific Research?

23 A. Pacific Research was the firm that
24 collected the data, the interviewing firm.

25 Q. Who conducted the interviews?

1 A. Pacific Research.

2 Q. Did you prepare any materials to be
3 used by the interviewers in connection with these
4 phone calls?

5 A. I did.

6 Q. What materials did you prepare?

7 A. I prepared a screening questionnaire,
8 the actual questionnaire that had the substantive
9 questions, and also interviewer instructions.

10 (Screening Questionnaire for
11 Study No. 500 marked Applicant's Exhibit 55.)

12 BY MS. PAIK:

13 Q. Mr. Mantis, you've just been handed
14 what's been marked as Applicant Exhibit 55.

15 A. Yes.

16 Q. Do you recognize this document?

17 A. I do.

18 Q. Please identify it for us.

19 A. This is the screening questionnaire
20 that was used in the study.

21 Q. Who prepared this document?

22 A. I did.

23 Q. What was the purpose of the screening
24 questionnaire?

25 A. The screening questionnaire is designed

1 to ascertain if the organization that we've
2 contacted randomly is qualified and also to
3 identify the individual within that organization
4 that's qualified to respond to our questions.

5 Q. Could you summarize for the board what
6 criteria was used to determine whether the
7 participant qualified and why that criteria was
8 used?

9 A. Well, first, you have to ascertain
10 whether the organization purchases or rents the
11 qualified engine or products containing those
12 engines.

13 Secondly, if that organization does, in
14 fact, purchase the qualified product, then the
15 question then is what individual that you may
16 have spoken to or are speaking to, is that
17 individual qualified.

18 And that individual, in this case, had to be
19 responsible ^{OR} ~~for~~ shared responsibility in 
20 decisions regarding which brands of qualified
21 engine their organization purchases.

22 Q. Did you prepare a summary of the
23 resulting sample composition?

24 A. I did.

25 (Sample Composition marked

1 Applicant's Exhibit 56.)

2 BY MS. PAIK:

3 Q. You've just been handed what's been
4 marked as Applicant Exhibit 56.

5 Do you recognize this document?

6 A. Yes.

7 Q. Please identify it for us.

8 A. This document summarizes, for both the
9 test and the control group, the number and
10 proportion of interviews by each of the
11 categories of firms that were interviewed.

12 Q. Did you form an opinion as to whether
13 this sample composition fairly represents the
14 universe of potential customers of the engine at
15 issue?

16 A. I did.

17 Q. What is your opinion?

18 A. The sample composition or distribution
19 of interviews among these particular categories
20 of firms is a fair representation of the
21 marketplace. And that is based on the fact that
22 contacts were made randomly, individuals or firms
23 were included in the study, based on their
24 qualification rates, which varied from one group
25 of respondents to the other.

1 BY MS. PAIK:

2 Q. You've just been handed what's been
3 marked as Applicant Exhibit 57.

4 Do you recognize this document?

5 A. I do.

6 Q. Please identify it for us.

7 A. These are the interviewer instructions
8 provided to the interviewers and to the
9 independent interviewing specialist.

10 Q. Who prepared this document?

11 A. I did.

12 Q. Now, Mr. Mantis, why did you provide
13 the interviewer instructions to the interviewers
14 and interviewing specialist?

15 A. These instructions describe in detail
16 the protocols associated with the proper conduct
17 of the survey.

18 Q. You had mentioned the interviewing
19 specialist. What was the role of the
20 interviewing specialist with respect to your
21 survey?

22 A. The interviewing specialist briefed the
23 interviewers, monitored the first days, two days
24 of interviewing. But before interviewing
25 actually began, went through practice interviews

1 with each interviewer that was assigned by
2 Pacific Market Research, for the conduct of the
3 study.

4 Q. Why did you use an interviewing
5 specialist?

6 A. I wanted to assure that the protocols
7 of the study were understood, and I wanted an
8 independent evaluation on the ability of each
9 individual assigned to the study to follow those
10 procedures.

11 (Questionnaire marked
12 Exhibit 58.)

13 BY MS. PAIK:

14 Q. In front of you, Mr. Mantis, is
15 Applicant Exhibit 58.

16 Do you recognize this document?

17 A. I do.

18 Q. Please identify it for us.

19 A. This is the questionnaire that was used
20 in the study.

21 Q. Who prepared this document?

22 A. I did.

23 Q. Please walk us through each step in the
24 interviewing process. Let's start with the first
25 step.

1 A. Okay. After the organization and
2 individuals were qualified; that is, successfully
3 met the criteria described in the screening
4 questionnaire, the respondent, potential -- or
5 the respondent was contacted by telephone, and
6 told that they would be shown a black-and-white
7 photo of an engine and to see that engine, to
8 access a website. And on the site was a web page
9 that had a photograph of the engine that they
10 were responding to.

11 Q. What engine photo was shown to the
12 participant?

13 A. There were two groups of respondents.
14 A test group was shown the Honda GX engine, and
15 the control group was shown a Briggs engine.

16 Q. Now, what, if any, modifications were
17 made to these photographs?

18 A. The names were removed, and other
19 indicia of origin, such as model numbers, which
20 is standard practice when you conduct a study on
21 secondary meaning.

22 Q. Why were these items removed from the
23 photographs?

24 A. We are trying to determine whether the
25 design is associated with a single source.

1 Removing the name is an appropriate way of
2 isolating the design.

3 So any indicia of origin other than what
4 you're studying or any indicia of origin has to
5 be removed.

6 Q. Why did you show the respondent
7 black-and-white photos?

8 A. Because color is not claimed as part of
9 the mark.

10 (Photograph of Test Engine
11 marked Applicant's Exhibit 59.)

12 BY MS. PAIK:

13 Q. You've just been handed what's been
14 marked as Applicant Exhibit 59.

15 Do you recognize this document?

16 A. I do.

17 Q. Please identify it for us.

18 A. This is a photo of the test engine, the
19 Honda GX engine shown to respondents.

20 (Photograph of Control Engine
21 marked Applicant's Exhibit 60.)

22 BY MS. PAIK:

23 Q. In front of you is Applicant
24 Exhibit 60.

25 Do you recognize this document?

1 A. I do.

2 Q. Please identify it.

3 A. This is a photo of the control engine,
4 the Briggs engine that respondents viewed,
5 control group respondents viewed.

6 Q. Why were these two groups shown
7 different engine photos?

8 A. The use of a test group and a control
9 group gives us the opportunity to assess survey
10 noise. And that's the purpose of using this type
11 of design.

12 Q. Could you explain to the board in
13 greater detail what you mean by "survey noise"?

14 A. Survey noise accounts for responses
15 that are unrelated to the subject matter that
16 we're studying. In this particular case,
17 individuals ^{WERE} shown a photo of an engine that does ^(M)
18 not contain the design elements in the test
19 engine.

20 If an individual in a control group
21 mentioned Honda, as an example, that would be for
22 reasons unrelated to the design that we're
23 testing.

24 Survey noise has been defined a number of
25 different ways. Simply guessing, the fact that

1 people are taking a survey. There are a number
2 of different sources of noise, but in a nutshell,
3 survey noise relates to responses unrelated to
4 what we're testing.

5 Q. For your survey, how did you estimate
6 the survey noise?

7 A. By the proportion of individuals
8 exposed to the control group engine, the Briggs
9 engine, that mentioned Honda.

10 Q. Now, why was the Honda GX engine shown
11 at Applicant Exhibit 59 chosen as a test image?

12 A. It's my understanding that that engine
13 embodies the design in the application.

14 Q. What is the basis for your
15 understanding?

16 A. Discussions with counsel.

17 Q. Why did you use a black-and-white photo
18 of a Honda GX engine and not the drawing in the
19 application?

20 A. In my opinion, to use a drawing may
21 have presented some abstract image to a
22 respondent, who then may or may not be able to
23 relate it to anything.

24 So, in effect, it would defeat the purpose
25 of actually questioning that individual.

1 Q. Why was the Briggs & Stratton engine
2 shown at Applicant Exhibit 60 chosen as the
3 control image?

4 A. The Briggs & Stratton engine was chosen
5 because it isolates or does not contain various
6 elements that contribute to the design of --
7 enumerated in the application.

8 Q. Can you explain that further, please.

9 A. Sure. Unlike the Honda engine, when
10 viewing the gas tank, there is no angle on the
11 gas tank that is complementary to the fan cover.
12 The tank, itself, is -- appears to be higher, a
13 different height, if you will. The air cleaner
14 is located in a different position. The
15 carburetor is located in a different position.
16 Particularly, the ^{CARBURETOR COVER} ~~air cleaner~~ does not have the 
17 ribbing.

18 MR. PHILLIPS: Does not have the what?

19 THE WITNESS: Ribbing.

20 MR. PHILLIPS: Excuse me.

21 A. As does Honda. So those are some of
22 the elements. And my belief is that the control
23 engine does not evoke this overall cubic look
24 that the Honda has. And certainly the control
25 engine does not have the beveling that goes

1 across the circumference of the engine.

2 Q. Mr. Mantis, do you have an
3 understanding as to whether the Briggs & Stratton
4 engine chosen as the control image competes
5 effectively with the Honda GX engine?

6 MR. PHILLIPS: Objection. Foundation.

7 A. ~~In~~ my understanding is that they are ^{HAVE} 
8 competitive products, and other similarities, as
9 I recall, similar displacement. [^] 

10 Q. What is the basis for your
11 understanding?

12 A. Discussions with counsel and Honda.

13 Q. Now, after the participant accessed the
14 website containing the black-and-white photo of
15 either the test or control image, what happened
16 next in the interviewing process?

17 A. Respondents were told that they were
18 going to be asked some questions. And for each
19 question, if they didn't have an answer or didn't
20 know, that it was appropriate to say so and go on
21 to the next question.

22 Q. Why was this instruction given to the
23 respondents?

24 A. To give respondents the opportunity or
25 to tell respondents that don't know is an

1 acceptable answer. And that certainly avoids any
2 type of speculation or guessing on the
3 respondent's part.

4 Q. What happened next in the interviewing
5 process?

6 A. The questioning began with the first
7 question.

8 Q. And what was the first question?

9 A. "Do you associate the engine shown on
10 your screen with any particular company or
11 companies?"

12 Q. And just so we're clear, Mr. Mantis,
13 what question is that in Applicant's Exhibit 58?

14 A. Question 1.

15 Q. For respondents who answered no to
16 Question 1, what happened next?

17 A. The respondent was asked no further
18 questions. The interview was considered a
19 completed interview, and counted as a completed
20 interview in the base that we used to calculate
21 what ^{PROPORTIONS} ~~portions~~ we are reporting. 

22 Q. For respondents who answered "don't
23 know" to Question 1, what happened next?

24 A. The same. These respondents or those
25 respondents were no longer questioned. The

1 interview was counted as a completed interview.

2 Q. For respondents who answered "yes" to
3 Question 1, what happened next?

4 A. They were asked whether they associate
5 the engine shown on the screen with one company
6 or more than one company.

7 Q. What question is that in the Applicant
8 Exhibit 58?

9 A. Question 2.

10 Q. Mr. Mantis, why did you ask whether the
11 respondents associate the engine with any
12 particular manufacturer, as opposed to whether
13 they associate the overall appearance with any
14 particular manufacturer?

15 A. I wanted to safeguard against a
16 potential danger that signaling respondents to
17 appearance would suggest that a one company
18 response would be an appropriate answer.

19 So it was a safeguard against that
20 particular bias or leading nature.

21 Q. Now, going back to Applicant
22 Exhibit 58, there appears to be four versions.

23 Are there any differences between these four
24 versions?

25 A. Yes. Two differences, and they both

1 apply to the test group and control group.

2 For Question 2, half of the respondents were
3 asked the question, whether they associate the
4 engine shown with only one company or more than
5 one company. The other half were asked the same
6 question, with the answer alternatives reversed.
7 That is, do you associate the engine with more
8 than one company or only one company?

9 Q. For Question 2, why was the order of
10 asking one company or more than one company
11 rotated from one respondent to the other?

12 A. It's standard practice to rotate answer
13 alternatives so you can avoid the potential
14 problem of systematic bias.

15 Q. What do you mean by "systematic bias"?

16 A. Well, bias implies something systematic
17 in the study. It's a -- what would be termed an
18 error in questionnaire construction, where a
19 one-directional question may lead respondents to
20 the answer given by the first choice that you've
21 read to the respondent. So it affects what we
22 term "order bias."

23 And, again, it's a very standard
24 questionnaire design approach, not just in
25 litigation, but in commercial marketing research,

1 as well.

2 Q. Why do you want to avoid systematic
3 bias?

4 A. Well, once bias is introduced into the
5 study, ^{it} may have the effect of leading respondents 
6 to a desired answer, which creates a distortion,
7 if you will, in the results that you're studying.

8 Q. Mr. Mantis, going back to Question 2 in
9 your questionnaire, for respondents who answered
10 only one company in response to Question 2, what
11 happened next?

12 A. They were asked which company makes
13 engines that they associate the design that they
14 saw in the photograph.

15 Q. Were they asked any other questions?

16 A. Yes. There were follow-up questions,
17 what we term "probing questions." They were
18 asked what makes them associate the engine with
19 the response that they gave. That question was
20 followed by "What do you mean by that?" They
21 were also asked "Anything else?" followed by the
22 same probe, "What do you mean by that?"

23 Q. Just so we're clear, what questions are
24 you referring to in Applicant Exhibit 58?

25 A. Questions ^{3,} 4A and 4B. 
^

1 Q. Now, for respondents who answered
2 "don't know" in response to Question ³~~2~~, what 
3 happened next?

4 A. These respondents associate the design
5 with a particular company, but couldn't name the
6 company. These respondents were asked "What
7 makes you associate the engine with only one
8 company?" The follow-up probing questions that I
9 described were also asked.

10 Q. What questions are you referring to in
11 Applicant Exhibit 58?

12 A. 5A, 5B.

13 Q. For respondents who answered "more than
14 one company" in response to Question 2, what
15 happened next?

16 A. They were asked which companies that
17 make engines do they associate the engine that
18 they saw on their screen. The interviewer
19 recorded these responses, and then for each
20 response, they were asked, "What makes you
21 associate the response given?" followed by,
22 again, these four neutral probes.

23 Q. What questions are you referring to in
24 Applicant Exhibit 58?

25 A. ⁶, 7A through 9B. 

1 Q. Mr. Mantis, why were follow-up
2 questions like "What do you mean by that?" and
3 "Anything else?" asked?

4 A. They are designed to gain insight into
5 the reason or reasons given by a respondent for
6 the response that they gave.

7 Q. What happened next in the interviewing
8 process?

9 A. The interview concluded by asking the
10 respondent to provide their complete name,
11 address, and telephone number. And they were
12 told that we must prove that our research is
13 valid. And that was the basis for asking them to
14 provide this information.

15 Q. Now, what instructions, if any, were
16 given to the interviewers as to how the responses
17 to the questions were to be recorded?

18 A. The instructions given to the
19 interviewers and the interviewing specialist,
20 who, again, briefed and supervised the first two
21 days of interviewing, were to ask questions
22 verbatim and record responses verbatim.

23 Q. Why were these instructions given?

24 A. To have a record of what the respondent
25 said, instead of having an interviewer, who may

1 have a tendency to paraphrase and interpret what
2 the respondent said. This provides, then, the
3 opportunity to look at the data, as given by the
4 respondent, and appropriately assess or code that
5 data.

6 There is no reliance on what an interviewer
7 may or may not do, without the adherence to
8 asking questions verbatim and recording questions
9 verbatim.

10 Q. Mr. Mantis, in the context of survey
11 methodology, do you understand the term "double
12 blind survey"?

13 A. I do.

14 Q. What do you understand that term to
15 mean?

16 A. Neither the interviewer, nor the
17 respondent, and, in this case, even the
18 interviewing specialist, was not made aware of
19 the sponsor or purpose of the study.

20 Q. In this case, what type of survey was
21 conducted?

22 A. This was a telephone survey.

23 Q. Were the interviewers or respondents
24 made aware of the sponsor or the purpose of the
25 study?

1 A. No.

2 Q. Why did you conduct a double blind
3 study?

4 A. Again, that is standard practice. And
5 you do that for the primary reason why we do
6 other safeguards, and that's to avoid bias being
7 introduced into the study.

8 Q. Now, in the context of survey
9 methodology, have you heard of the term
10 "validation"?

11 A. I have.

12 Q. What do you --

13 A. Particularly the term "independent
14 validation."

15 Q. What do you understand that term to
16 mean?

17 A. Independent validation is the process,
18 after the interview occurs, of recontacting a
19 portion of respondents interviewed to assess
20 whether, in fact, they have been interviewed.
21 This provides a basis to conclude that the study
22 was, in fact, conducted, and it goes to the
23 question of trustworthiness of the results of the
24 study.

25 Q. In your opinion, to what extent do

1 survey protocols require that a portion of the
2 interviews be validated?

3 A. It's a protocol that I believe is a
4 standard protocol, certainly in litigated
5 matters. It's also a standard protocol in
6 commercial marketing research, as well.

7 Q. In your survey, Mr. Mantis, were a
8 portion of the interviews validated?

9 A. Yes.

10 Q. By whom?

11 A. I believe it was Information Alliance.

12 Q. And who is Information Alliance?

13 A. It's another full service research firm
14 that has data collection facilities.

15 (Validation Questionnaire marked
16 Applicant's Exhibit 61.)

17 BY MS. PAIK:

18 Q. In front of you is what's been marked
19 as Applicant Exhibit 61.

20 Do you recognize this document?

21 A. I do.

22 Q. Please identify it for us.

23 A. This is the validation questionnaire
24 that was used when respondents that were
25 interviewed were recontacted. Also shown in this

1 document are the results of the validation effort
2 conducted by Information Alliance. Specifically,
3 of the 291 interviews that were conducted.

4 Q. Who prepared the validation
5 questionnaire?

6 A. I did. Yes.

7 Q. Who prepared the validation report?

8 A. Information Alliance.

9 Q. Mr. Mantis, please walk us through the
10 validation report.

11 A. As shown on the document, the
12 validation report shows the disposition of the
13 291 respondent names that were provided to
14 Information Alliance. 291 organizations were
15 interviewed. Of these contacts, 219 were
16 reached, successfully reached, about 75 percent.
17 Of those that we reached, only one indicated that
18 he or she did not recall being interviewed. And
19 as customary practice dictates, that individual
20 was not included in the study.

21 Q. Once the interviews were completed,
22 what, if anything, did you receive from the
23 interviewing agency?

24 A. I received hard-copy questionnaires.

25 Q. What, if anything, did you do with the

1 data once you received it?

2 A. I read the responses to all questions
3 and coded and tabulated those responses.

4 Q. Can you explain further what you mean
5 by "coding" and "tabulating" the responses?

6 A. The coding process involves
7 characterizing responses into various categories,
8 which are shown in my expert report. The
9 tabulation process is basically counting how many
10 entities you've categorized in a certain fashion.

11 So the coding process, first, is assessing
12 the data and placing that data in various
13 categories. Tabulation is counting how many are
14 in each category.

15 Q. Did you prepare a summary of the survey
16 responses?

17 A. I did.

18 (Tables of Responses marked
19 Applicant's Exhibit 62.)

20 BY MS. PAIK:

21 Q. You've just been handed what's been
22 marked as Applicant Exhibit 62.

23 Do you recognize this document?

24 A. I do.

25 Q. Please identify it for us.

1 A. This document represents five tables
2 that show the responses to all questions asked of
3 the respondent.

4 Q. As you mentioned, Applicant Exhibit 62
5 contains five tables. Let's start with Table 1.

6 What does Table 1 show?

7 A. Table 1 shows the response to
8 Question 1, "Do you associate the engine shown on
9 your screen with any particular company or
10 companies that make engines?" And as shown on
11 the table, 154 or 81.5 percent of test group
12 respondents answered the question in the
13 affirmative.

14 You can look at the next point on the ~~data~~ ^{TABLE} 
15 70 or 69.3 percent of control group respondents
16 answered Question 1 affirmatively.

17 Q. Let's move on to Table 2. What does
18 this table show?

19 A. Table 2 shows the response to the
20 second question, and that being whether
21 respondents associate the engine shown with only
22 one company or more than one company. And, as
23 shown on this table, as an example, 98 test group
24 respondents indicated that they associate the
25 Honda engine shown with only one company.

1 Q. Moving on to Table 3, what does this
2 table show?

3 A. Table 3 shows the company or companies
4 that respondents mentioned, either the single
5 company or the more than one company mentions,
6 placed into categories; categories being the
7 responses that relate to design, association with
8 Honda as a single source.

9 Another category, design which may be
10 related to Honda as a single source, the design
11 associated with Honda and another source, and
12 design associated with all other sources.

13 Q. Finally, what do Tables 4 and 5 show?

14 A. Tables 4 and 5 show the verbatim
15 responses for the test group and control group
16 respondents respectively, placed in the same four
17 categories that I just described.

18 Q. Mr. Mantis, did you determine what
19 percentage of the test group respondents
20 associated the test engine design with Honda as
21 the single source?

22 A. I did.

23 Q. And what percentage did you come up
24 with?

25 A. 42.4 percent, adjusting and taking into

1 consideration, survey noise.

2 Q. How did you arrive at that number?

3 A. I first looked at the number of
4 respondents that associate the engine with Honda
5 for design-related reasons. And that number, I
6 believe, was 97 respondents, which represents
7 51.3 percent of the test group audience.

8 Not included in the 97 were three other
9 Honda mentions given by respondents, who did not
10 mention a design feature or the overall look, but
11 simply mentioned color. So those were excluded
12 from the 51.3 percent.

13 Q. Mr. Mantis, if the respondent
14 identified design or appearance in addition to
15 other elements that are not part of the mark as a
16 reason for association, how did you classify
17 those responses?

18 A. I classified those as Honda mentions
19 for design-related reasons.

20 Q. Why?

21 A. Well, the purpose of the study was to
22 assess whether the design of the engine depicted
23 in the application functions as a source
24 indicator. If individuals mention design or even
25 overall look, those are appropriate to be

1 considered as relating to the subject matter that
2 we're testing. And that's whether the design of
3 the engine has acquired secondary meaning.

4 Q. Does the 51.3 percent include any
5 respondents that said they associate the test
6 engine design with more than one company?

7 A. Yes.

8 Q. Why did you include those responses?

9 A. Those respondents, most of which
10 mentioned some anonymous source, are citing
11 Honda, where I included them as Honda
12 design-related mentions, because they're
13 indicating that what they see is a copy of Honda
14 or a knockoff of Honda. So they're referring to
15 the design. So they appropriately should be
16 considered as design-related reasons associated
17 with Honda.

18 Q. Let's move to the control image. What
19 percentage of the control group respondents did
20 you determine associated the Briggs engine design
21 with Honda as the single source?

22 A. 8.9 percent.

23 Q. How did you arrive at that percentage?

24 A. Using the same logic and criteria that
25 I used in considering test group respondents. I

1 tabulated and coded in the same way.

2 Q. Mr. Mantis, what did you determine was
3 the net association?

4 A. 42.4 percent.

5 Q. Please explain to the board how you
6 arrived at that number.

7 A. The number is arrived at by taking the
8 Honda mentions as a single source for
9 design-related reasons, which is the
10 51.3 percent, and adjusting that data for this
11 notion of survey noise, which are some
12 respondents will associate a third-party product
13 that does not contain the design elements that
14 we're testing with Honda. And we know that's for
15 reasons unrelated to the design, because they're
16 not exposed to those design elements. That
17 proportion, which is referred to as survey noise,
18 is then deducted from the ^{PROPORTION} ~~portion~~ of Honda 
19 responses in the test group.

20 So the 51.3 percent is adjusted by reducing
21 it by 8.9 percent to take into account responses
22 unrelated to the subject that we're testing.

23 Q. Mr. Mantis, did you prepare a summary
24 of these findings?

25 A. I did.

1 (Summary of Results for the test
2 group and the control group respondents
3 marked Applicant's Exhibit 63.)

4 BY MS. PAIK:

5 Q. In front of you is Applicant
6 Exhibit 63.

7 Do you recognize this document?

8 A. I do.

9 Q. Please identify it for us.

10 A. This is a summary of the results for
11 both the test group and the control group
12 respondents, beginning with the proportion of
13 individuals that associates the design with Honda
14 as a single source, those 97 respondents that I
15 mentioned, and taking into consideration survey
16 noise, 8.9 percent, netting out survey noise to
17 get net association of 42.4 percent.

18 As I mentioned, not included in the Honda
19 single source mentions were those that gave color
20 only as a response.

21 The balance of the table represents the
22 distribution of all the remaining interviews of
23 the test group and the control group.

24 Q. Who prepared this document?

25 A. I did.

1 Q. Now, based on the 42.4 percent net
2 association number, do you have an opinion as to
3 whether the applied-for mark in this case has
4 secondary meaning?

5 A. I do.

6 Q. What is your opinion?

7 A. Based on a rather rigorous test control
8 group study that I conducted, it is my opinion
9 that the design depicted in the application does
10 serve as a source indicator or the design has
11 acquired secondary meaning.

12 Q. Now, do you have Applicant Exhibit 59
13 in front of you?

14 A. Yes.

15 Q. Mr. Mantis, how many tones can you see
16 in the black-and-white photo of the test engine?

17 A. Three.

18 Q. Do you have an opinion as to whether
19 showing this three-tone image affected the
20 proportion of Honda single source mentions for
21 design-related reasons?

22 MR. PHILLIPS: Objection.

23 A. I do.

24 Q. What is your opinion?

25 A. It's my opinion that showing this photo

1 with three-tone color or this image with
2 three-tone color had no effect on Honda mentions.

3 Q. What is the basis for your opinion?

4 A. Of those that mentioned color ^{AND WERE COUNTED TOWARD SECONDARY MEANING} and I
5 believe there were 21, all of those respondents ^{PM}
6 mentioned color in combination with a design
7 element. They should then be considered as
8 associating the engine shown with Honda. So
9 there was no effect.

10 Q. Now, Mr. Mantis, let's turn to
11 Applicant Exhibit 59 or fifty -- excuse me, 60.

12 A. Yes.

13 (Witness complies.)

14 Q. Does the control image show three
15 tones?

16 A. No. I see two tones.

17 Q. In your opinion, did using a test
18 stimulus with different tones than the control
19 stimulus have any effect on the survey results?

20 MR. PHILLIPS: Objection.

21 A. No.

22 Q. Why do you say that?

23 A. For the same reason. If color was
24 mentioned, and was mentioned by, I believe, 21 in
25 the test group ^{THAT WERE COUNTED TOWARD SECONDARY MEANING} all 21 mentioned one or more ^{PM}

1 design elements in conjunction with color. So
2 they should be considered as associating the
3 design of the engine shown with Honda.

4 Q. Mr. Mantis, do you have an opinion as
5 to whether you adequately controlled for color in
6 your survey?

7 A. I do.

8 Q. What is your opinion?

9 A. I believe I did. The use of the
10 verbatim responses, excluding three that only
11 gave color mention, I think is a mechanism where
12 you can take ^{INTO} consideration ~~of~~ color and treat it
13 as such. (gm)

14 But more importantly, as I've mentioned,
15 color really played no role in generating Honda
16 responses. Color may have been mentioned, but it
17 was mentioned in combination with a design
18 element. And those responses should be
19 considered as associating the design depicted in
20 the application with Honda.

21 Q. Now, going back to Applicant
22 Exhibit 60, the photo that was shown to the
23 control group, is the muffler visible or not
24 visible?

25 A. It's visible.

1 Q. If you look at Applicant Exhibit 59,
2 the test image, is the muffler visible or not
3 visible?

4 A. It is not visible.

5 Q. In your opinion, Mr. Mantis, does the
6 control image display the same or different type
7 of air filter than the test image?

8 A. It is my understanding that the air
9 filters are different.

10 Q. In your opinion, do the test and
11 control images need to display exactly the same
12 design features to assess secondary meaning?

13 A. No.

14 Q. Why not?

15 A. If such were the case, in effect, what
16 you would be doing is testing the same thing, the
17 test group and the control group, if there is
18 similarity or exactness in the features shown.
19 One can look at it from the point of view of as
20 you go along the continuum of the control taking
21 on greater resemblance with the test stimulus, at
22 some point you cross the threshold. And the
23 control, itself, starts generating, and
24 artificially so, association responses.

25 As that is the case, we're left with a

1 dilemma, does that control adequately address the
2 function of the control? Is it providing a valid
3 assessment of survey noise? And the answer is we
4 don't know. We don't know if the control is
5 generating actual ~~confusion~~ ^{ASSOCIATION} or if the control is gm
6 survey noise or a combination of both.

7 So the function of the control is destroyed
8 and the control does not serve its purpose.

9 Q. Now, Mr. Mantis, can you tell us
10 roughly what percentage of the control group
11 respondents associated the control image with
12 Briggs?

13 A. I believe it was 47, approximately
14 47 percent.

15 Q. Does this percentage affect your
16 opinion as to whether the Briggs engine is an
17 appropriate control?

18 A. No.

19 Q. Why not?

20 A. Market share, if that were the cause of
21 the Briggs responses, really does not come into
22 play, in that the purpose of a control is not to
23 confuse people into believing that it's a Honda
24 engine. We're measuring marketplace reality, if
25 you will. These products are competitive

1 products, ^{TO} my understanding. So it doesn't ^(9M)
2 preclude the opportunity for people to mention
3 Honda for any reason, reasons related to or
4 unrelated to the design.

5 I know of no study that would suggest that
6 there is an appropriate level of correct
7 identification that destroys the value of a
8 control. I've never seen anything reported, nor
9 in my experience has that been the case.

10 Q. Mr. Mantis, looking at Applicant
11 Exhibit 59 and 60, what graphics, if any, did the
12 test image include?

13 A. I believe they include -- both the test
14 and the control or the test?

15 Q. Let's focus on the test image.

16 A. I believe it includes what I'd refer to
17 as kind of the turtle and the rabbit, the speed
18 control indicator, and it includes graphics with
19 regard to fuel or choke.

20 Q. Moving on to the control image, what
21 graphics, if any, does it include?

22 A. I believe the same graphics, the speed
23 indicator and what appears to be a fuel
24 indicator. I don't know if that's a choke, as
25 well, but...

1 Q. Why did you include these graphics on
2 the test and control images?

3 A. Well, this presents the product
4 appropriately. More importantly, these are not
5 source indicators, like a brand name or a model
6 number. So they could not artificially drive any
7 particular response.

8 And certainly these graphics are not unique
9 to Honda. As you can see, both the Briggs and
10 Honda have the same or similar graphics.

11 Q. Did inclusion of these graphics have
12 any effect on your survey results?

13 A. No.

14 Q. Why do you say that?

15 A. As I recall, there were only two
16 respondents in the test group that mentioned
17 graphics, both of which gave design-related
18 reasons, as well.

19 MS. PAIK: Should we take a quick
20 break? We've been going for about an hour and 20
21 minutes.

22 (A recess was taken.)

23 BY MS. PAIK:

24 Q. Mr. Mantis, do you understand that
25 Opposers have retained their own survey expert,

1 Mr. Poret?

2 A. Yes.

3 Q. Do you understand that Mr. Poret has
4 provided trial testimony in this case?

5 A. I do.

6 Q. Did you review his trial testimony?

7 A. I have.

8 Q. Do you understand that Mr. Poret
9 testified that the level of net association falls
10 within the range of 9.7 to 18.1 percent?

11 A. Yes.

12 Q. Do you agree or disagree with his
13 assessment?

14 A. I disagree.

15 Q. Why?

16 A. Many of the standards enumerated in the
17 Manual of Complex Litigation, as well as other
18 treatises, were not adhered to. These standards
19 include whether a representative sample was drawn
20 from the survey population. Also, they include
21 the requirement that survey questions avoid bias,
22 order, or context effects. Also included are the
23 requirement that some of the measures provided
24 must include data from an appropriate control,
25 and also that the entire process must ensure

1 objectivity.

2 It is my opinion that the standards were not
3 adhered to in the surveys conducted by Mr. Poret.

4 Q. We'll go through each one of your
5 criticisms in detail shortly.

6 First, can you please provide to the board
7 an overview of your criticisms of Mr. Poret's
8 study?

9 A. Sure. It is my opinion that the Poret
10 study does not adequately address whether the
11 sample is representative of that population.
12 Again, that was the first standard I mentioned.

13 There's also potential bias introduced into
14 the Poret study that prevents impartial
15 measurement. Inappropriate controls were used,
16 which results in the failure to provide an
17 adequate measure or valid measure of survey
18 noise.

19 Further, the introduction of irrelevant data
20 in the attempt to discount data further
21 introduced data from an inappropriate control and
22 provided not a valid measure of survey noise.

23 Then, finally, study execution and reporting
24 errors go to the trustworthiness of the study.
25 There are some significant errors made in that

1 regard.

2 Let's go back a moment to the potential
3 bias. That comes in two forms. The manner in
4 which the context was provided to the respondent
5 in the definition of the engine that they were
6 seeing, and also the problem with nonrotating of
7 answer alternatives.

8 Those are the two areas that most glaringly
9 present bias, and the question of whether the
10 measurement is valid.

11 Q. Mr. Mantis, what effect, if any, do
12 these failings have on Mr. Poret's net
13 association findings?

14 MR. PHILLIPS: Objection.

15 A. Well, as I said in my report, you know,
16 it's my opinion that Mr. Poret's studies do not
17 provide an objective measure of association.
18 And, therefore, any conclusions drawn that the
19 design lacks secondary meaning are without
20 foundation.

21 Q. Let's now turn to a detailed
22 explanation of each of your criticisms of
23 Mr. Poret's study.

24 Your first criticism was that Mr. Poret did
25 not address whether the sample was representative

1 of the appropriate universe.

2 Please -- could you please explain further
3 what you mean by that?

4 A. Yes. Mr. Poret reports the proportion
5 of completed interviews by categories that the
6 respondent fell into. For example, wholesale
7 trade, retail trade, OEMs, those types of
8 categories.

9 There is no basis, at least that I could
10 detect in the Poret study, that suggests that
11 those proportions represent a sample that is
12 truly representative of the entire population.

13 It appears that Mr. Poret used these
14 classifications, based on the respondent,
15 himself or herself, indicating the purpose for
16 which they purchased the qualifying engines.

17 There is no correlation ^{AND} ~~or~~ lack of presenting 
18 SIC codes that respond to those groupings makes
19 it impossible to assess whether the sample is,
20 in fact, representative in proportion, based on
21 qualification rates and number of entities in
22 each SIC code for each grouping.

23 So absent SIC codes, one cannot make that
24 determination.

25 Q. Now, Mr. Mantis, let's go back to

1 Applicant Exhibit 56.

2 (Witness complies.)

3 Q. Do you have that in front of you?

4 A. I do.

5 Q. Please remind us what this document
6 shows.

7 A. This document shows the distribution of
8 completed interviews by the five market segments
9 enumerated; for example, 26.5 percent of our
10 sample for the test engine group were equipment
11 purchasers and renters; 2.6 percent of our test
12 sample group were OEMs.

13 Q. Do you have an understanding as to how
14 the percentages for each market segment in your
15 sample composition compares to Mr. Poret's?

16 A. Yes, I do.

17 Q. What is your understanding?

18 A. I interviewed for the study that I
19 conducted, in the test group, one out of four,
20 26.5 percent, were equipment purchasers and
21 renters. I believe Mr. Poret's study was less
22 than 10 percent.

23 My sample for both test and control
24 ~~accounts~~ ^{Groups} were about 2.6 to 3 percent OEMs. I 
25 believe Mr. Poret's proportions were four times

1 higher, something like 13 percent.

2 So there's an indication that some groups
3 were over-sampled, producing an over-inclusive
4 audience. Some groups were under-sampled,
5 producing an under-inclusive audience.

6 With this type of disparity, it's very
7 difficult to assess whether the sample is, in
8 fact, representative.

9 Q. Let's now turn to your second criticism
10 of Mr. Poret's study; namely, the potential for
11 bias.

12 (Witness complies.)

13 Q. Could you explain further what you mean
14 by that?

15 A. Okay. Bias was introduced into the
16 study in two ways, one of which was telling
17 respondents at the beginning of the study that
18 they would be looking at an image of an overhead
19 valve engine.

20 The Subaru engine is a cam engine, not an
21 overhead valve engine. To the extent that this
22 audience, which I would characterize as a
23 sophisticated audience, discerns the difference
24 between an overhead valve and a cam engine, they
25 may be led to or directed to considering as the

1 response only sources that make valve engines,
2 which would lead, possibly, to a Honda response.

3 Context matters in all surveys. When an
4 inappropriate context is given to a respondent,
5 the data can be adversely affected by leading
6 respondents. In research, we term that as a
7 demand effect. The individual, by virtue of
8 mischaracterizing the product shown, may suggest
9 or demand that people only look or consider
10 engines, valve engines of which Honda GX is one.

11 So it may have the tendency to create that
12 particular bias, and, again, prevent impartial
13 measurement.

14 Q. What effect, if any, could the
15 inaccurate identification of the control have on
16 Mr. Poret's survey findings?

17 MR. PHILLIPS: Objection.

18 A. They could lead respondents in the
19 direction of considering only valve producers of
20 overhead valve engines, of which Honda is one.
21 So it could artificially inflate Honda responses
22 for those shown the control ^{PHOTO}~~group~~, which is a cam 
23 engine.

24 Q. Do you have an understanding as to
25 whether the same overhead valve instruction was

1 given to the test group?

2 A. Yes.

3 Q. What is your understanding?

4 A. The same instruction was given to the
5 test group.

6 Q. By giving the same instruction to the
7 test group, could it have inflated the level of
8 association in the test group, as well?

9 A. No.

10 Q. Why not?

11 A. By inflating, we're referring to
12 artificially creating a response. There would be
13 no artificial creation of a response, because
14 you're placing the GX image or the test group
15 photo in the proper context, so you're getting an
16 accurate response, based on proper identification
17 of that image.

18 So there is no -- nothing artificial about
19 the response being given. It's based on the
20 proper context.

21 Q. Let's move on to your critique that
22 Mr. Poret failed to rotate his answer choices.

23 What answer choices did he fail to rotate?

24 A. The critical question, "Do you
25 associate the engine shown with one company, only

1 one company, or more than one company?" that was
2 the only question asked. The rotated question,
3 reversing the order of those answer alternatives,
4 was not given.

5 Q. What effect, if any, could the failure
6 to rotate these answer choices have on
7 Mr. Poret's survey results?

8 A. This is termed "order effect." It's
9 almost universally accepted, not just in studies
10 involving litigation, but in the commercial
11 marketing arena, that when you give respondents
12 choices, that you rotate those choices.

13 Just as an example, outside of litigation,
14 if I were to do a study asking individuals how
15 likely they would be to purchase a product, and I
16 gave them choices such as extremely likely, or I
17 would definitely buy it, I may buy it, I
18 definitely would not buy it, I would rotate
19 those. And that's standard in survey research.

20 Order bias may affect the responses because
21 it creates a phenomenon, where what the
22 respondent hears first is the direction that
23 they should consider.

24 So it is very standard practice, not just
25 in litigation, but good questionnaire

1 construction demands that you avoid these
2 potential problems.

3 Q. Mr. Poret -- I'm sorry, Mr. Mantis, do
4 you have an understanding as to whether the same
5 question was read to the control group in
6 Mr. Poret's study?

7 A. I do.

8 Q. What is your understanding?

9 A. It was.

10 Q. By reading the same question to the
11 control group, did it prevent the bias that you
12 just described from being introduced into the
13 study?

14 A. It did not.

15 Q. Why not?

16 A. I characterize it, and I've said this
17 previously, this bias is what we term "systematic
18 bias." It is not random error that could occur
19 just randomly in any sample, whether it's a
20 control group sample or a test group sample.
21 It's systematic, in that it is part of the
22 questionnaire, and regardless of the group that
23 the respondent is in, we simply don't know which
24 respondent is affected or how many.

25 Q. Let's now turn to your third criticism

1 of Mr. Poret's study regarding the inappropriate
2 control.

3 What engine did Mr. Poret use in his study?

4 A. The Subaru Robin engine.

5 Q. Why is the Subaru Robin engine an
6 inappropriate control?

7 A. Based on my understanding of Opposers'
8 statement that the Robin engine looks very much
9 like a Honda, same overall configuration and
10 commercial impression, and I'm referring to a
11 footnote in my rebuttal report.

12 Based on my understanding that there is an
13 acknowledgment that there is similarity, the same
14 commercial impression, if you will, that then
15 would discount that as a control for reasons that
16 I've stated. You would, in effect, be testing
17 the same thing. If there are substantial
18 similarities, then the control no longer serves
19 its function. It's really quite simple. You're
20 testing the same thing.

21 Q. Mr. Mantis, what is the basis for your
22 understanding that Opposers have stated that the
23 Subaru engine looks similar to the applied-for
24 mark?

25 A. I cited Footnote 6 in my expert report,

1 which are several documents, where these
2 statements are made. For example, Opposers'
3 Reply Brief in Support of Motion to Amend Notices
4 of Opposition, Opposers' Joint Brief and
5 Opposition to ~~Application for~~ ^{APPLICANT'S} Motion to Compel (m)
6 Production of Documents, Opposers' Motion for
7 Relief to File Summary Judgment ~~for~~ Motion (m)
8 Regarding Functionality of ~~an~~ Applicant's Claimed (m)
9 Engine.

10 Those sources that I referenced contain the
11 statement that Opposers' view is that the Subaru
12 engine is very much like the Honda, generating
13 the same overall impression.

14 Q. What effect, if any, could using a
15 control that is substantially similar to the
16 applied-for mark have on the survey results?

17 A. That type of control no longer serves
18 the function of a control. Again, the function
19 of a control is to assess, are there Honda
20 mentions, based on something that is unrelated to
21 the design that we're testing.

22 To assess that type of information or to get
23 that type of information accurately, you have to
24 isolate those elements. And by isolation, I
25 mean, the control cannot contain those elements.

1 How else, then, can you determine if the control
2 is generating Honda responses for reasons
3 unrelated?

4 We simply don't know whether the control is
5 creating actual association or if the control is
6 survey noise, because we have, in effect, tested
7 the same thing.

8 Q. Mr. Mantis, what effect, if any, did
9 the use of the Subaru Robin engine as the control
10 have on Mr. Poret's net association findings?

11 A. In my opinion, the use of the Robin
12 control produces an invalid measure of survey
13 noise. One can say that it inflates the level of
14 survey noise artificially. And, as such, the net
15 figure of association, the estimate of the net
16 figure of association is understated.

17 Q. Let's now turn to your fourth criticism
18 of Mr. Poret's study; namely, the reliance on
19 irrelevant data.

20 What irrelevant data are you referring to?

21 A. Mr. Poret's second survey, the color
22 survey.

23 Q. Why is this data irrelevant?

24 A. Mr. Poret is introducing, in that
25 survey, a queue color that is not claimed as part

1 of the design in the application. For purposes
2 of an opposition proceeding, such information,
3 extraneous information, has not been considered
4 by the board. This goes back some 30 years ago,
5 Miles Laboratories case, where the board
6 explicitly stated that the use of, in this case,
7 a real product instead of the name at issue,
8 introduced information of no concern to the
9 board. It's not part of the application. In the
10 Miles case, it was a name registration. The
11 opposing expert presented a product.

12 The board concluded that the introduction of
13 such data, not claimed as part of the mark,
14 produces information that is not relevant and
15 destroys the probative value of the study.

16 Q. Mr. Mantis, you talked about
17 introducing a queue. What do you mean by that?

18 A. A queue would be, in survey research, a
19 signal, if you will, that individuals can look at
20 another element and draw a conclusion of whether
21 they're aware of that element and whether they
22 can associate that element with a source.

23 Q. In your opinion, is Mr. Poret's color
24 survey an appropriate way of determining whether
25 the engine design at issue has acquired secondary

1 meaning?

2 A. No.

3 Q. Why not?

4 A. It's not part of the applied-for mark,
5 getting back to the Miles case. This is
6 extraneous information, not part of the subject
7 matter of the registration. Therefore, has no
8 purpose, other than creating the problem of
9 trying to justify such data, extraneous data,
10 which, with board proceedings, cannot be done.

11 Q. Now, do you understand that Mr. Poret
12 arrived at a net association rate of 9.7, based
13 on the results of his color survey?

14 A. Yes.

15 Q. Do you agree or disagree with his
16 findings?

17 A. I disagree.

18 Q. Why?

19 A. The production of irrelevant data
20 elevating the level of survey noise artificially
21 and, therefore, discounting net ^{ASSOCIATION} ~~confusion~~, again, m
22 is based on data that's irrelevant.

23 Q. Are there any other reasons for why you
24 disagree with his findings?

25 A. That is the primary reason, that the

1 color is not relevant. And, again, getting back
2 to the protocols that the board has adopted,
3 starting with the Miles case, which have not been
4 deviated since, the introduction of information
5 not part of the subject of registration has
6 really no place in survey design nor
7 consideration for the board.

8 (Exhibit A, Test Color Group
9 Responses mentioning Honda marked
10 Exhibit 64.)

11 BY MS. PAIK:

12 Q. In front of you, Mr. Mantis, is
13 Applicant Exhibit 64.

14 Do you recognize this document?

15 A. I do.

16 Q. Please identify it for us.

17 A. This document presents the Honda
18 mentions in the Poret color study, the verbatim
19 responses for both the test and the control
20 group.

21 Q. Who prepared this document?

22 A. I did.

23 Q. Did you prepare a summary of the
24 responses that's contained in Applicant
25 Exhibit 64?

1 shows with respect to the control color group?

2 A. Yes. For the control, 15 of the 63
3 respondents gave appearance design reasons, not
4 mentioning color. Thirty-four gave appearance,
5 design, and color reasons for mentioning Honda.
6 And only 14 gave color only as a reason.

7 Q. Now, based on these verbatim responses,
8 do you have an opinion as to whether they tend to
9 support or not support Mr. Poret's conclusion
10 that 9.7^{PERCENT} associated the design with Honda? *gmo*

11 A. They do not support that conclusion.

12 Q. Mr. Mantis, do you understand that
13 Mr. Poret has provided testimony regarding the
14 extent to which the rate of association with
15 Honda is due to the color scheme?

16 A. Yes.

17 Q. What is your understanding of his
18 testimony?

19 A. Mr. Poret's testimony, as I recall, is
20 that the rate of association with Honda is
21 primarily due to the color scheme, rather than ^{THE} ~~a~~ *gmo*
22 specific design depicted in the application.

23 Q. Do you agree or disagree with
24 Mr. Poret's opinion?

25 A. I disagree. I think his conclusion is

1 unfounded.

2 Q. Why?

3 A. Review of the verbatim responses, as
4 shown in the summary, clearly shows that color is
5 not the primary reason. Certainly, when you look
6 at 66 out of 74 test group respondents giving
7 appearance or design-related reason, either in
8 combination with color or not, color is not the
9 primary reason.

10 Q. Do you understand that Mr. Poret has
11 testified the rate of association for the color
12 test group is 59.7 percent?

13 A. Yes.

14 Q. Do you further understand that he has
15 determined that the rate of association for the
16 color control group is 50 percent?

17 A. Yes.

18 Q. What conclusion, if any, can you draw
19 from these association rates regarding the
20 influence of color?

21 A. You can't draw any conclusion that
22 color undermines the level of association for
23 design-related reasons.

24 Again, getting back to the purposes of the
25 studies, and I think both Mr. Poret and I agree,

1 we agree that the purpose was to assess whether
2 the design has acquired secondary meaning.

3 To artificially introduce color, which is
4 not relevant, to begin with, and then to suggest
5 that color is the primary reason, and I think
6 Mr. Poret also indicated color as opposed to
7 design, is the reason for Honda mentions, is
8 just not founded by the verbatim responses in
9 Mr. Poret's study.

10 Q. Now, let's look at the association
11 rates for the test groups in Mr. Poret's color
12 and non-color surveys, as determined by
13 Mr. Poret.

14 What were the respective percentages?

15 A. I think the non-color survey is
16 something like 40 percent. And let me refresh
17 myself. I'm not sure of the statistic.

18 I think for the control group, it was
19 59 percent, approximately.

20 Q. So, Mr. Mantis, just so we're clear,
21 are these the association rates for the test
22 groups in Mr. Poret's color and non-color
23 surveys?

24 A. Yes.

25 Q. And what were those percentages again?

1 A. For the non-color test group,
2 41.1 percent. For the Honda color group, 59.7
3 percent.

4 Q. What conclusion, if any, can you draw
5 from these association rates regarding the
6 influence of color?

7 A. Again, you can't draw any conclusion
8 that the 59.7 percent adequately reflects the
9 proportion of individuals that associate the
10 ~~Honda with the~~ design with Honda, particularly (gm)
11 when you start looking at the control group and
12 the method by which Mr. Poret used to assess or
13 come up with the 9.7 percent ~~survey noise~~. ^{NET ASSOCIATION} (gm)

14 Again, that proportion is not founded on the
15 verbatim responses in Mr. Poret's report. It is
16 certainly not data that is relevant. It doesn't
17 go to the issue of whether the design has
18 acquired secondary meaning.

19 Q. Now, Mr. Mantis, what effect, if any,
20 does Mr. Poret's reliance on the color data have
21 on his net association findings?

22 A. Well, it artificially creates a level
23 of survey noise, and we characterize this as a
24 totally invalid method of calculating survey
25 noise, because it introduces something that's not

1 relevant to this proceeding. As such, it reduces
2 the level of association because of the inflated
3 level of survey noise.

4 Q. Mr. Mantis, let's now turn to your
5 fifth criticism of Mr. Poret's study.

6 (Witness complies.)

7 Q. We talked about survey execution
8 errors.

9 A. Yes.

10 Q. What errors are you referring to?

11 A. Compliance with instructions; namely,
12 whether the responses were recorded accurately.
13 My review of the random responses indicated that
14 some were abbreviations, incomplete sentences,
15 single words ^{which} calls into question whether the
16 interviewer followed the instruction given by
17 Mr. Poret to record ^{VERBATIM.} ~~verbatim~~. So that calls
18 that into question.

19 Q. Mr. Mantis, do you have an
20 understanding as to whether Mr. Poret validated
21 his survey results?

22 A. He did not.

23 Q. Are you familiar with Mr. Poret's
24 testimony regarding his reasons for not
25 validating his survey results?

1 A. Yes.

2 Q. And what do you understand those
3 reasons to be?

4 A. Mr. Poret has the opinion that
5 validation should occur when you're doing mall
6 intercept interviewing, because there may be many
7 locations and many interviewers involved. It's
8 not centralized, as it were.

9 He disregards or does not accept the
10 protocol that validation should occur by
11 indicating that because this was telephone
12 interviewing in a central location, that
13 interviewers were adequately supervised, and the
14 mechanics of going through the survey could not
15 produce a response or a set of responses that did
16 not emanate from a particular respondent.

17 I disagree with that assessment. There is
18 no difference between mall intercept interviewing
19 and the requirement for validation and/or a
20 telephone interview in a central location.

21 Regardless of the methodology of contacting
22 the individual, we have no way of knowing whether
23 the interviewer recorded responses to an
24 interview simply by making them up. We just
25 don't know.

1 So the protocol to ensure the
2 trustworthiness of a study is to have a third
3 party, independent of the designer of the
4 survey, independent from collecting data, to go
5 through the methodology that I described was
6 used in my study, and that is, namely,
7 recontacting individuals to assure that they
8 were interviewed.

9 This protocol is not limited to litigation.
10 It's also done in commercial marketing research.
11 So it is a protocol that has to be done to
12 demonstrate that the resulting data ~~are~~ ^{is} 
13 credible.

14 Q. What effect, if any, do these errors
15 have on Mr. Poret's survey results?

16 A. Well, they certainly call into question
17 the overall objectivity and trustworthiness of
18 the study, absent validation, that question
19 remains. It could have been resolved easily by
20 taking this additional step, which is required
21 for surveys of this type, telephone, mall
22 intercept, litigation, in particular.

23 So it calls into question whether the
24 results are trustworthy.

25 MS. PAIK: Thank you. Mr. Mantis, I

1 have no further questions at this time.

2 (A recess was taken.)

3 CROSS-EXAMINATION

4 BY MR. PHILLIPS:

5 Q. Good morning, Mr. Mantis.

6 A. Good morning.

7 Q. My name is Robert Phillips, and I am
8 counsel for Briggs & Stratton in this proceeding.
9 You understand that you're still under oath
10 this morning to tell the truth, the whole truth,
11 and nothing but the truth, so help you God?

12 A. I do.

13 Q. And you recall that you and I met a
14 while ago. It was December 5, 2012, to be exact,
15 for your deposition in this proceeding.

16 A. Yes.

17 Q. And do you recall that I took your
18 deposition here at the offices of WilmerHale?

19 A. Yes.

20 Q. And you had a chance to review your
21 deposition in preparation for your testimony here
22 today?

23 A. I did.

24 Q. Okay. And when you gave that testimony
25 in your deposition, you were under oath.

1 Correct?

2 A. Yes.

3 Q. And you told the truth in that
4 deposition. Correct?

5 A. Yes.

6 Q. Very good. Now, we may, from time to
7 time during this Cross-Examination, refer to your
8 deposition testimony. And your counsel has
9 placed the transcript before you in that black
10 notebook. Okay?

11 A. Yes. Mm-hmm.

12 Q. So I may, from time to time, read
13 certain questions and answers from the deposition
14 and ask you if I -- if those questions were asked
15 and if those are the answers that you gave.

16 Do you understand that?

17 A. Yes.

18 Q. Okay. Now, you understand that this
19 proceeding before the Trademark Trial and Appeal
20 Board concerns the application filed by Honda to
21 register the design of the Honda GX engine.

22 Correct?

23 A. Yes.

24 Q. And that Opposers, Briggs & Stratton,
25 and Kohler, are opposing that application.

1 Correct?

2 A. Yes.

3 Q. And the trademark application that
4 Honda filed consists of a drawing and a
5 description of the elements shown in that
6 drawing. Correct?

7 A. Yes.

8 Q. And the drawing shows the front view of
9 the engine, only. Correct?

10 A. Yes.

11 Q. It doesn't have the Honda name on it,
12 does it?

13 A. No.

14 Q. It doesn't have the GX model number on
15 it, does it?

16 A. No.

17 Q. It doesn't have any of the decals or
18 stickers on it. Correct?

19 A. I don't know what you're referring to
20 by decals and stickers.

21 Q. For instance --

22 A. It has speed control and the fuel
23 indicator --

24 Q. Correct.

25 A. -- which I mentioned --

1 Q. Yes.

2 A. -- earlier.

3 Q. That's what I mean. Those aren't shown
4 in the design drawing. Correct?

5 A. That's correct.

6 Q. And the description -- strike that.
7 The drawing is a line drawing. Correct?

8 A. Yes.

9 Q. And it's in black and white. Correct?

10 A. Yes.

11 Q. And the description of the trademark
12 says that Honda is not claiming color as part of
13 the mark. Correct?

14 A. Yes.

15 Q. So, in other words, Honda seeks to
16 obtain a registration on the appearance of the GX
17 engine, when viewed from the front, but without
18 the Honda brand name, model number, stickers, or
19 color, as used on the actual engine in commerce.
20 Correct?

21 A. Yes.

22 Q. Okay. Now, you also understand that in
23 order to obtain a trademark registration on a
24 product configuration, the Applicant must show
25 that the claimed configuration is functioning as

1 an indicator of source. Correct?

2 A. That is my understanding. Yes.

3 Q. And the legal term for that is
4 "acquired distinctiveness" or "secondary
5 meaning." Correct?

6 A. Yes.

7 Q. Both of those terms, "acquired
8 distinctiveness" and "secondary meaning" refer to
9 the same thing. Correct?

10 A. Yes.

11 Q. And the test for secondary meaning, as
12 you understand it, is whether the relevant
13 consumers associate the appearance of the product
14 with a single source, Honda. Correct?

15 A. Yes.

16 Q. All right. Now, you were hired in this
17 matter to design and conduct a survey which
18 assessed the percentage of consumers who
19 associated the applied-for design with Honda as a
20 single source. Correct?

21 A. Yes.

22 Q. And the applied-for design that you
23 were hired to assess is the appearance of the
24 Honda GX engine, when viewed from the front,
25 without the Honda name or model number or

1 stickers or colors. Correct?

2 A. Correct.

3 Q. Now, the survey that you designed was a
4 telephone interview survey. Correct?

5 A. Interviews were conducted by telephone.
6 That's correct.

7 Q. And the interviewers ultimately
8 contacted business firms that may purchase
9 horizontal shaft gas-powered engines ranging from
10 4-to-13 horsepower or products that have these
11 engines, or were organizations that may purchase
12 or rent products containing such engines or
13 purchase replacement engines for these products.

14 A. Correct.

15 Q. That comes -- that description --
16 you're familiar with that description, because it
17 comes out of your report. Correct?

18 A. Yes.

19 Q. All right. So to qualify, to qualify
20 to participate in the survey, the business had to
21 answer questions, which confirmed that it, in
22 fact, purchases or rents such products. Correct?

23 A. Yes.

24 Q. And then the person, who actually
25 participated in the survey at that business had

1 to confirm that he or she was responsible for
2 making such purchases or shares the
3 responsibility for making such purchases, as in
4 the first instance, also had to have access to a
5 computer with the internet, as a second
6 requirement, also had to confirm that he or she
7 wasn't part of a marketing firm, and, last,
8 confirm that he or she hadn't participated in a
9 survey in the past 30 days. Correct?

10 A. You missed a couple of things, but
11 basically, substantively, that's correct.

12 Q. Okay.

13 A. The individual had to have
14 responsibility or share responsibility for which
15 brands of engines their organization purchases.
16 So, in substance, you're correct.

17 Q. Thank you. Now, in the survey that you
18 set out to design, as you've told us, there would
19 be two groups of respondents: A test group and a
20 control group. Correct?

21 A. Yes.

22 Q. And the purpose of the test group is to
23 estimate the level of association of the
24 applied-for mark with a single source. Correct?

25 A. Yes.

1 Q. And in this type of survey design, the
2 test group should see a stimulus that depicts the
3 applied-for mark. Correct?

4 A. Yes.

5 Q. And in this case, as you told us, you
6 used a photograph of an engine. Correct?

7 A. Yes.

8 Q. And when you're designing this type of
9 survey, you want that photograph to appear as
10 close as possible to what is shown in the
11 trademark application drawing and description.
12 Correct?

13 A. You want the photograph of a product
14 that embodies the applied-for mark, the
15 description of the applied-for mark.

16 Q. You certainly don't want it to look
17 different, if you can avoid it, from the
18 description of the applied-for mark. Correct?

19 MS. PAIK: Objection.

20 A. Well, if it's different, then you're
21 testing something else. You know, I don't know
22 what you mean by "look different." Different
23 product? No, you don't want to do that. Then
24 you're not testing.

25 Q. Right. So you want it to look as close

1 as possible to the applied-for design.

2 A. You want the photograph to embody the
3 elements of the applied-for design, that's
4 correct.

5 Q. Now, the purpose of the control group
6 is to estimate the level of association with a
7 single source that results from other causes,
8 such as brand market share, guessing, or
9 misunderstanding the question. Correct?

10 A. A number of other elements of survey
11 noise, but yes.

12 Q. But those elements that I just listed
13 are called survey noise. Correct?

14 A. Part of survey noise. You know, there
15 are other elements of survey noise, as well, but
16 yes, that's part of survey noise.

17 Q. Okay. In your reports you have said --
18 in your expert reports you have said, and I
19 quote, "The purpose of the control group is to
20 estimate the level of survey noise that results
21 from causes other than the product at issue,
22 responses such as familiarity of a source because
23 of its market share and the types of products it
24 makes or responses resulting from simply guessing
25 or misunderstanding the questions asked. The

1 primary method of estimating the level of noise
2 is to execute the same questionnaire with one or
3 more controls."

4 Do you -- you agree with that statement.

5 Correct?

6 A. As I recall, that's what I said, but I
7 can't find it. I don't know if you read from the
8 report, ^{OR} deposition. What are you citing? 

9 Q. If you turn to Page 49 of your
10 deposition.

11 (Witness complies.)

12 Q. Lines 2 through 12, I read from your
13 report that we had marked as Exhibit 68, which
14 was the study that you had prepared for Honda in
15 the Power Train case.

16 Did I read that accurately, and do you agree
17 with that statement about the purpose of a
18 control?

19 A. I assume you read it accurately.

20 Q. Okay.

21 A. If I said it, I agree with it. Yes.

22 Q. And you agree that it would be
23 appropriate to control for market share, among
24 other types of noise, in a secondary meaning
25 study. Correct?

1 A. Well, I don't know what you mean by
2 "control for market share." Any engine that you
3 would show to respondent, unless it's something
4 you make up, has some penetration in the market.

5 So I think the question is control for
6 market share is, you know, not an appropriate
7 question. You know, I don't understand the
8 question.

9 You don't control for market share. Market
10 share is one element of survey noise, along with
11 simply guessing, preexisting beliefs, the fact
12 that somebody is conducting a survey or is
13 involved in a survey. These are all elements
14 that go into the composition of survey noise.

15 Preexisting beliefs could relate to market
16 share. Guessing could relate to market share.
17 Market share, alone, may be one reason why people
18 would name a certain source.

19 So to the extent that market share is an
20 element of survey noise, a control is defined to
21 assess them.

22 Q. Okay. So you agree that of the various
23 types of noise, market share is one of them, one
24 of the potential sources of noise. Correct?

25 A. It could be, yes.

1 Q. And that a control in a study such as
2 this should control for that, in a secondary
3 meaning study, correct?

4 A. A control doesn't control for market
5 share. It's part of what a control is trying to
6 give us an understanding of. If you were to
7 control for market share, then you're setting up
8 another experimental design. So, you know, the
9 use of control for market share is not an
10 appropriate characterization of what a control
11 should do.

12 Q. If you turn to Page 52 of your
13 deposition, if you don't mind.

14 (Witness complies.)

15 Q. "QUESTION: The statement that you have
16 in Paragraph 4 that noise includes responses such
17 as familiarity of a source solely because of its
18 market share, and the types of products it makes,
19 that's relevant to secondary meaning studies as
20 well, isn't it?

21 "ANSWER: Yeah. And complete the paragraph,
22 Counselor. Are responses resulting from simply
23 guessing or misunderstanding the questions asked
24 or the fact that the individuals participating in
25 a survey, those are all factors that comprise the

1 components of noise.

2 "QUESTION: And would be relevant in a
3 secondary meaning study?

4 "ANSWER: Yes."

5 Those were the questions that I asked and
6 those were the answers that you gave. Correct?

7 A. Correct.

8 Q. Now, you're familiar with Shari
9 Diamond. Correct?

10 A. Yes.

11 Q. She's an author of one of the treatises
12 on survey design. Correct?

13 A. I believe she is the author of the
14 reference guide on survey research. She also
15 coauthored a book with Jerre Swann. I don't know
16 if they're treatises, per se. One is a book and
17 the other is a chapter.

18 Q. Well, she's -- you would agree she's
19 considered an authority in the area of surveys?

20 A. She's recognized as an authority. Yes.

21 Q. And you've read her work?

22 A. Yes.

23 Q. And you have the book that she just
24 published recently with Jerre Swann?

25 A. Yes.

1 characteristics whose influence is being
2 assessed?

3 A. Yes.

4 Q. And do you agree that the control
5 stimulus should retain as many non-infringing
6 characteristics of the test stimulus as possible?

7 A. As possible, yes. But not at the
8 expense of having a plausible example of a
9 product in the marketplace that is of the same
10 category of the product that you're testing. So
11 "as possible" is the critical part of that
12 phraseology.

13 Q. Now, in the survey that you designed
14 with one group being shown a stimulus of the
15 applied-for design, which we called the test
16 group, and another group, separate group being
17 shown a stimulus that is intended to serve as a
18 control, the level of survey noise measured in
19 that control group is then subtracted from the
20 level of single source responses in the test
21 group, to derive an estimate of association free
22 from survey noise. Correct?

23 A. Correct.

24 Q. In other words, as you say in your
25 report, "A control ensures that we count as a

1 Honda single source response only those
2 respondents, whose association was, indeed,
3 caused by the design at issue and not other
4 unrelated factors." Correct?

5 A. That's correct.

6 Q. So when you go about designing a proper
7 and reliable survey, it's important to control
8 for unrelated factors that may be influencing the
9 respondent's associations. Correct?

10 A. Correct. That's the purpose of the
11 control.

12 Q. Now, you have not researched -- you
13 have not set out to research TTAB board decisions
14 or federal circuit decisions on the issue of what
15 level of net association is sufficient to support
16 a finding of secondary meaning, have you?

17 A. To some extent, I have. Reading
18 articles by -- I don't know if it was Palladino.
19 They're certainly part of the Diamond Swann book
20 authored by Jerry Ford that shows proportions
21 that the courts have accepted. Reading McCarthy.

22 But literally, to do an inventory of every
23 reported decision on secondary meaning, no, I
24 have not done that.

25 Q. And you don't have an opinion as to

1 what the minimum legal standard is under board or
2 federal circuit precedents, do you?

3 A. I don't believe anybody does.

4 Q. Okay.

5 A. Unlike likelihood of confusion
6 proportions, where there's agreement among the
7 board and the courts on threshold levels, my
8 understanding of what I have seen in those
9 documents that I referenced ^{is} that proportions of ^{gm}
10 secondary meaning are all over the place.

11 So I don't think there is a set standard.

12 In many cases, there probably ought not be
13 because of other evidence that goes into the
14 equation of trying to understand whether
15 secondary meaning exists.

16 Q. Would you agree that a net level of
17 association of 9 percent would not be sufficient
18 to support a finding of secondary meaning?

19 A. Of 9 percent?

20 Q. Yes.

21 A. I consider that to be de minimis. Yes.

22 Q. Would you agree that a net level of
23 association of 19 percent would not be sufficient
24 to support a finding of secondary meaning?

25 A. I don't know.

1 Q. The lowest level of net association
2 that you have opined on in a survey that you've
3 conducted as being sufficient to support a
4 finding of secondary meaning is about 30 percent.
5 Correct?

6 A. As I recall, approximately 30 percent.
7 But I may have taken some conservative approach
8 of suggesting that this is sufficient to
9 establish secondary meaning.

10 I have no idea how the trier of fact would
11 have concluded that was sufficient or not. You
12 know, again, these proportions are not settled.

13 Q. Okay. Let's turn to the test photo
14 that you used with the test group respondents.
15 Applicant's Exhibit 59 is the test photo that was
16 used in your survey?

17 A. Bear with me. I'm trying to find it.
18 I don't know if you have it or -- oh, here it is.
19 Yes.

20 Q. Now, this photograph was provided to
21 you by Honda's counsel, WilmerHale. Correct?

22 A. Yes.

23 Q. And you believe that it was sent to you
24 by Ms. Paik. Correct?

25 A. By what?

1 Q. By Silena Paik, the attorneys for
2 Honda?

3 A. I don't know who sent it to me.

4 Q. And when you received the test photo,
5 you reviewed and approved it for use. Correct?

6 A. Yes.

7 Q. And you saw that it was a
8 black-and-white photograph of the front view of
9 the Honda GX engine. Correct?

10 A. Correct.

11 Q. And you saw that the Honda name was
12 removed from the center of the recoil cover,
13 where it normally appears. Correct?

14 A. Yes.

15 Q. And you understood that the Honda name
16 was removed to eliminate an indicator of source
17 that was not being tested in your survey.
18 Correct?

19 A. Not subject to -- yes. That's correct.

20 Q. And you also noticed that the GX160
21 model number was removed from the engine.
22 Correct?

23 A. Yes.

24 Q. And that was removed to eliminate an
25 indicator of source that was not being tested.

1 Correct?

2 A. Correct.

3 Q. And you observed that the photo showed
4 a white fuel tank. Correct?

5 A. Yes.

6 Q. And you observed that the photograph
7 showed an air filter and carburetor cover in
8 black. Correct?

9 A. Yes.

10 Q. And you observed that the photograph
11 showed a fan cover in some other shade between
12 white and black. Correct?

13 A. Well, between white and black would be
14 gray, Counselor, I would think. I mean, it's
15 lighter than the black portion of the photograph.
16 It's a lighter tone. I don't know if it's
17 between.

18 Q. You observed that it showed a fan cover
19 in some tone other than white and black.
20 Correct?

21 A. That's correct.

22 Q. So you were aware that the photograph
23 that you were showing to the test group
24 respondents had a three-color scheme in it.
25 Correct?

1 A. Three color tones. Correct.

2 Q. Now, at the time that you were
3 designing this survey, you knew that the Honda GX
4 engines three-color scheme was red, white, and
5 black. Correct?

6 A. I was aware that Honda uses the color
7 red, in combination with white and black. I
8 don't know if that's exclusive. But I was aware,
9 yes.

10 Q. You understood or you knew at the time
11 you were designing the survey that the Honda
12 engine in actual commerce had a fan cover that
13 was red in color. Correct?

14 A. Yes.

15 Q. And you knew that the carburetor and
16 air filter cover were black in color on the
17 engine in actual commerce. Correct?

18 A. Yes.

19 Q. And you knew that the fuel tank of the
20 Honda GX engine, as used in actual commerce, was
21 white in color. Correct?

22 A. Yes.

23 Q. Now, before designing the survey for
24 Honda in this case, you had worked for -- you had
25 been retained by Honda as a survey expert in two

1 prior cases involving the Honda GX engine trade
2 dress. Correct?

3 MS. PAIK: Objection.

4 A. I believe so. Yes.

5 Q. And one of those cases was referred to
6 as the Pep Boys case, correct?

7 A. I don't see it in the title, but --
8 which one are you referring to?

9 Q. Exhibit 67 to your deposition is the
10 report that you prepared in June of 2007 for
11 Honda, and it had to do with a Jiangdong engine
12 and a Lifan engine.

13 Do you recall that?

14 A. Yes.

15 Q. And by that, I am referring to the Pep
16 Boys case.

17 A. Okay. I see the caption. Pep Boys,
18 Manny, Moe and Jack, et al.

19 Q. Yes. And then the Power Train case
20 that you were retained in involved a survey of a
21 Power Train engine that you reported on in August
22 of 2006. Correct?

23 A. Yes.

24 Q. And you recall at your deposition that
25 we reviewed some of the verbatims from those

1 studies. Correct?

2 A. Yes.

3 Q. And when you conduct surveys, it's your
4 usual practice to read the verbatim responses.
5 Correct?

6 A. Yes.

7 (Mantis Group Report dated
8 June 1, 2007 marked Opposer's Exhibit 29.)

9 (Mantis Group Report dated
10 August 1, 2006 marked Opposer's Exhibit 30.)

11 BY MR. PHILLIPS:

12 Q. Mr. Mantis, I have marked as
13 Exhibits 29 and 30 portions of your report from
14 the Pep Boys and Power Train cases.

15 Do you have those in front of you?

16 A. I do.

17 Q. And --

18 MS. PAIK: Counsel, these appear to be
19 annotated. Is that correct?

20 MR. PHILLIPS: Correct.

21 Q. And I'm only providing portions to save
22 paper and not inundate the board, because the
23 actual report is, you recall from your
24 deposition, was a lot thicker. Correct?

25 A. Well, I don't recall, but it appears to

1 be.

2 Q. Okay. And, now, Exhibit 29 is the
3 study that you conducted on an accused infringing
4 product. Correct?

5 A. Yes.

6 Q. And the photographs that are shown on
7 Bates Nos. AHGXC002777 through -2778 and -2783
8 and -2784 show the accused infringing design.
9 Correct?

10 A. I believe so. Yes.

11 Q. And the verbatims start at Page 34 of
12 the report, the page numbered 34 at the bottom.

13 Do you see that?

14 A. Yes.

15 Q. And the respondent at verbatim number 2
16 referred to the color of the engine as one of the
17 reasons why he or she thought it was a Honda.
18 Correct?

19 A. Yes.

20 Q. And the verbatim 22 -- the verbatim of
21 respondent 22 refers to the color of the Honda
22 engine as red and black. Correct?

23 A. Yes.

24 Q. And the verbatim of respondent 36
25 refers to the distinctive red coloring of the

1 Honda. Correct?

2 A. Yes.

3 Q. And the verbatim of respondent 38
4 refers to the color of the Honda. Correct?

5 A. Yes.

6 Q. So I'm not going to go through each and
7 every one of them, but as you were reading the
8 verbatims, you would have seen a pattern that
9 there were respondents who were familiar with the
10 color of the Honda GX engine. Correct?

11 A. Yes. As a basis of their confusion,
12 when they're shown the infringing product in the
13 color red, as well.

14 Q. And these verbatim -- these verbatim
15 responses indicated that, to you, that they were
16 familiar with the color of the Honda GX engine.
17 Correct?

18 A. Oh, yes. They're associating what they
19 see in the test stimulus, which is red, as a
20 characteristic as also attributable to Honda.

21 Q. Okay.

22 A. And many of these responses talk about
23 other elements, as well.

24 Q. And if you -- if we continue on in this
25 exhibit, for example, verbatim number 78 noted

1 that it looks like a Honda, except for some of
2 the colors. Honda has a white tank. Correct?

3 A. Yes.

4 Q. And then respondent number -- strike
5 that. On Page 79, respondent number 260 said,
6 "The engine, itself, and most of the components
7 look like a Honda. The tanks on a Honda are
8 usually white, and this is red." Correct?

9 A. Yes.

10 Q. And then on the previous page, 78,
11 respondent 255 said in response to Question 2A,
12 "It looks like a Honda engine. I got a lot of
13 them and it looks like identical, except for the
14 pull cord in the front. The gas tank is red and
15 the Honda's are all white." Correct?

16 A. That's what the respondent said. Yes.

17 Q. And then on Page 82, respondent 301
18 said, "I have five of these motors at home, and
19 they look just like it. Everything looks the
20 same. The color of the gas tank would be white,
21 but this one is red." Correct?

22 A. Yes.

23 Q. Okay. Then, lastly, on Page 90, again,
24 respondent, who was looking at a Lifan test
25 engine, respondent 208 -- sorry, yeah, respondent

1 208 said, "The only thing that doesn't look like
2 Honda is the tank is the wrong color," in
3 response to Question 2B. Correct?

4 A. Yes.

5 Q. Okay. So when you reviewed the
6 verbatims in connection with the Pep Boys survey
7 in 2007, you saw that respondents -- there were
8 respondents who were aware that the Honda GX
9 engine had a white gas tank. Correct?

10 A. Some, yes.

11 Q. And then if we turn to Exhibit 30, this
12 is the survey that you conducted for Honda in the
13 Power Train case in 2006. Correct?

14 A. Yes.

15 MS. PAIK: Just for clarification, this
16 is also annotated. Correct?

17 MR. PHILLIPS: Yes.

18 Q. And this was a survey where you tested
19 a Power Train engine that had a yellow cover on
20 the engine. Correct?

21 A. Correct.

22 Q. And if you go to Page 24 of your
23 report, of the "Verbatim" section, Page 24,
24 respondent 102, in response to Question 2B, says,
25 "Except for the color, it looks just like it."

1 Correct?

2 A. In part. This respondent says a lot of
3 other things, too, that are related to the Honda
4 engine.

5 Q. Yes. I appreciate that. But --

6 A. Just so the record is clear, it's not
7 the only thing the respondent said.

8 Q. Yes. But the respondent did say,
9 "except for the color, it looks just like it."

10 Correct?

11 A. Yes.

12 Q. And then on Page 25, respondent 110
13 said, "It looks like a Honda that's been painted
14 yellow." Correct?

15 A. Part of the response, yes.

16 Q. And then on page-- on that same page,
17 respondent 112 says, among other things, "Looks
18 just like a Honda, except it's yellow instead of
19 red." Correct?

20 A. Yes. Along with other things.

21 Q. So in the process of reviewing the
22 verbatims in both of these studies that you
23 conducted, you saw that respondents were making
24 comments that indicated that they were aware of
25 the color of the Honda GX engine. Is that

1 correct?

2 A. Yes. They were presented with a
3 stimulus that was in color, as well, which is the
4 actual product in commerce. These are likelihood
5 of confusion studies where you present the
6 product without altering, so you present the
7 product in red, as the infringing product or
8 product in yellow. You're introducing color. So
9 people can relate to that. As one or many
10 elements, as many of these respondents articulate
11 not just color, but sure; color is introduced
12 appropriately.

13 Q. And as you were designing the survey
14 for Honda in this case, you knew that you would
15 be surveying the same types of prospective
16 purchasers as you did in these two prior studies.
17 Correct?

18 MS. PAIK: Objection.

19 A. I defined the relevant universe
20 similarly, yes.

21 Q. And so you knew it was possible that
22 those respondents in this survey would also be
23 familiar with the color of the Honda GX engine.
24 Correct?

25 MS. PAIK: Objection.

1 A. Yes.

2 Q. Okay. Now, in a trademark enforcement
3 action that Honda filed in Istanbul, Honda stated
4 that "The most important feature of the GX series
5 engines is that together with their sui generis
6 outer appearance, they consist of a color
7 combination of red, white, and black."

8 MS. PAIK: Objection.

9 Q. Were you aware of that?

10 A. I don't recall one way or the other. I
11 just don't recall.

12 Q. In designing this survey, did Honda
13 ever discuss with you the fact that they've
14 claimed that the three-color scheme is one of the
15 most important features of the GX series engine?

16 A. I don't recall that discussion.

17 Q. Now, you are aware that Honda sells an
18 all black version of the Honda GX. Correct?

19 A. Yes.

20 Q. And you didn't use that for the test
21 photo in this study. Correct?

22 A. Correct.

23 Q. And you didn't even consider using that
24 for the test photo in this study. Correct?

25 A. I certainly didn't use it. I don't

1 know if I gave it any consideration. I don't
2 recall.

3 Q. If you turn to your deposition at
4 Page 74.

5 (Witness complies.)

6 Q. Line 16:

7 "QUESTION: Okay. Did you consider using a
8 an all black Honda GX with an all black control?

9 "ANSWER: I did not. I didn't think it was
10 necessary."

11 A. Okay. That refreshes my recollection.

12 Q. That was my question, and that was your
13 answer. Correct?

14 A. That was your question, and my answer
15 as stated in the deposition. Yes.

16 Q. Okay.

17 MR. PHILLIPS: Okay. It's now 12:40,
18 and this would be a convenient time to take a
19 break, if you all want to take a break.

20 THE WITNESS: Fine.

21 (Lunch recess was taken.)

22 BY MR. PHILLIPS:

23 Q. Good afternoon, Mr. Mantis.

24 A. Good afternoon.

25 Q. You would agree that the law recognizes

1 that color can function as an indicator of
2 source. Correct?

3 MS. PAIK: Objection. Form.

4 A. I believe that there are some color
5 marks. Also, I have the understanding that color
6 in some cases has been considered functional and
7 not protectable.

8 Q. Right. So in some cases, companies
9 have been granted trademarks in color in
10 association with their goods or services.
11 Correct?

12 A. I can't cite one. I don't know if
13 Owens Corning has a trademark in pink. That's
14 one that would come to mind.

15 Q. For fiberglass?

16 A. Yeah.

17 Q. And I think UPS claims color brown as
18 its trademark for delivery services and its
19 delivery service trucks.

20 Are you aware of that?

21 A. No.

22 Q. But you've done surveys before where
23 one party or the other was claiming color as a
24 trademark for its goods or services. Correct?

25 A. I recall one years ago. Yes.

1 Q. In your deposition, we discussed there
2 were two of them. There was one involving
3 outboard engines and the color black?

4 A. Yes.

5 Q. And the other was involving tractors
6 and the color orange?

7 A. Yes. The Kubota case. Yes.

8 K-U-B-O-T-A.

9 Q. So assuming a color is not functional
10 and has acquired secondary meaning, it can serve
11 as an indicator of source under the right
12 conditions. Correct?

13 MS. PAIK: Objection. Form.

14 A. I assume so, yes.

15 Q. Now, let's turn to the test questions
16 that you asked of the group of respondents, who
17 were shown the test photo with the three-color
18 scheme. Okay?

19 Are you with me?

20 A. Yes.

21 Q. And counsel went through the test
22 questions with you, so I'm not going to repeat
23 them here verbatim, but the -- correct me if I'm
24 wrong, but the gist of the test questions are to
25 determine whether the respondents associate the

1 engine that they're shown with one company or
2 more than one company. Correct?

3 MS. PAIK: Objection.

4 A. Well, first, they associate it with any
5 particular company and then one company or more
6 than one.

7 Q. Okay. And then if they associate it
8 with a particular company and they answer that
9 they associate it with one company, they're asked
10 who that company is. Correct?

11 A. Yes.

12 Q. And then they're also asked what makes
13 them associate the engine with that particular
14 company that they named. Correct?

15 A. Yes.

16 Q. And if they answered that they have an
17 association and it's with more than one company,
18 they're, likewise, asked who those companies are.
19 Correct?

20 A. Yes.

21 Q. And they're asked what makes them
22 associate the engine with those companies.
23 Correct?

24 A. Yes.

25 Q. And then there are -- there are

1 follow-up questions asked. And those questions
2 are, "What makes you say that?"

3 A. Yes.

4 Q. And then there's another one, "What do
5 you mean by that?"

6 A. Yes.

7 Q. And the answers are being recorded by
8 the interviewer. Correct?

9 A. Correct.

10 Q. And then they are delivered to you in a
11 data file. Correct?

12 A. No. Hard copy.

13 Q. Excuse me.

14 A. Actual physical document of the
15 questionnaire.

16 Q. So you receive a hard copy. And are
17 the interviewers recording answers in handwriting
18 or are they recording them at a computer?

19 A. Handwriting.

20 Q. Okay. So you receive handwritten
21 responses and then you have those responses
22 transcribed?

23 A. Yes. They're typed into a record.

24 Q. Okay. And that's the -- and that's the
25 record that you provided at Table 4 in

1 Exhibit 62. Correct?

2 A. And Table 5.

3 Q. Now, the one company or more than one
4 company distinction is important, because it goes
5 to whether the design is associated with a single
6 source or more than one source. Correct?

7 A. Yes.

8 Q. And if a design is associated with more
9 than one source, then it doesn't meet the test
10 for secondary meaning. Correct?

11 A. Correct.

12 Q. And so in doing your tabulation, you
13 would -- you excluded respondents, who said they
14 associated it -- associated the engine with more
15 than one company, unless they said something to
16 indicate that the more than one company was a
17 copy. Correct?

18 A. Yes.

19 MS. PAIK: Objection. Form.

20 Q. And for those -- for those respondents,
21 who said they associated the engine with more
22 than one company, and didn't say anything else to
23 suggest that they thought that the other company
24 was making a copy, those respondents would not be
25 counted for secondary meaning. Correct?

1 MS. PAIK: Objection. Form.

2 A. I think I got your question. Yeah. If
3 a respondent mentioned two companies, or more
4 than one company, and not for the reason that
5 this other source, which may have been anonymous,
6 copied the Honda design or it's a knockoff of
7 Honda, those respondents that said more than one
8 company without that would not have been counted
9 as secondary meaning responses.

10 Q. And in your Table 3, you identified 31
11 respondents who associated the engine with Honda
12 and another source. Correct? Of the test photo
13 engine.

14 A. I see 31.

15 Q. And then on the next page, 13, in
16 Table 3, there were 20 respondents that
17 associated the engine shown in the test photo
18 with sources other than Honda. Correct?

19 A. Correct.

20 Q. Okay. And then there were 20
21 respondents, who are categorized as having
22 associated the engine with Honda and another
23 party that made a Honda -- made a copy or a
24 knockoff. Correct?

25 A. Correct.

1 Q. And those are the -- those are the 20
2 responses that are listed below the 80, who just
3 identified Honda, alone, on Page 12 of Table 3.
4 Correct?

5 A. Correct.

6 Q. And you counted that -- strike that.
7 And that -- those 20 respondents constitute
8 ten and a half percent of the total survey of
9 the test group. Correct?

10 A. I'd have to calculate it, but it seems
11 reasonable.

12 Q. All right. And you counted -- you
13 counted that ten and a half percent in your -- in
14 your gross association percentage for the test
15 group. Correct?

16 MS. PAIK: Objection. Form.

17 A. By "gross," you mean before netting out
18 survey noise?

19 Q. Yes.

20 A. Yes.

21 Q. Now, isn't it true that there was no
22 specific follow-up question asked of the
23 respondent as to why they believed the other
24 company was making a copy?

25 MS. PAIK: Objection.

1 A. Specifically that follow-up question?

2 Q. Yes.

3 A. Why are you making -- why did you say
4 they're making a copy?

5 Q. Yes.

6 A. No. That question was not asked. It
7 would be inappropriate to do so.

8 Q. And they weren't asked what, in
9 particular, was copied. Correct?

10 A. Again, that would not be appropriate to
11 ask that.

12 Q. And so we don't know, based on the
13 verbatim responses, whether the second company
14 made the exact same engine as the Honda GX engine
15 or whether it had differences. Correct?

16 MS. PAIK: Objection. Form.

17 A. Well, we didn't ask these respondents
18 to detail every element of what they're thinking.
19 They are saying that it is a copy of Honda, the
20 design that they see is a copy of Honda. It's a
21 Honda design that has been copied. It's a Honda
22 design that's a knockoff.

23 I don't know why you would challenge
24 statements like that and require that respondents
25 give detail on every element that they believe is

1 copied. That may not be in the -- the
2 respondents may not have that ability to do that.

3 The analogy would be for individuals that
4 say it looks like a Honda, or something to that
5 effect, those are considered secondary meaning
6 responses, as well. It's the overall
7 impression, the overall commercial impression.
8 We certainly wouldn't challenge an individual
9 that simply said it looks like it, without
10 giving considerable detail.

11 Respondents are not asked to dissect what
12 they see and give us an empirical reason,
13 element by element. That is not the way that
14 these responses are interpreted for a secondary
15 meaning study.

16 Q. And I appreciate that answer, but I
17 want to focus on my question, which is we can't
18 tell, from the answers given, whether the second
19 company that was mentioned, and in many cases it
20 was mentioned anonymously, as you pointed out, we
21 can't tell, from the responses, whether that
22 company made the exact same engine design as the
23 Honda GX or whether it had differences. Correct?

24 MS. PAIK: Objection. Form.

25 A. That's right. But, you know, to do so

1 would be rejecting all other respondents in a
2 study like this that simply cannot enumerate
3 every element that's in the ~~claim~~. THEIR MIND 

4 When you analyze trade dress, which this
5 case is really all about, you don't go through
6 that, because it's not a requirement. You can't
7 expect a respondent to dissect these things and
8 parrot back to you every element.

9 Q. And because you cannot expect them to
10 dissect and report back every element, we don't
11 know what these other engines look like.

12 Correct?

13 MS. PAIK: Objection. Form.

14 A. What we know, Counselor, is that the
15 respondent says this is a copy of Honda.

16 Let's go back to the purpose of the study.
17 Mr. Poret and I both agree what the purposes of
18 our investigations are. And that is to ascertain
19 whether the design of the engine portrayed in the
20 photograph of the engine exposed to the
21 respondent is sourced -- is a source indicator.

22 When individuals say it looks like it or
23 give one or more than one of the elements or
24 simply says it's a copy, a copy, to me, means
25 what it says. It is the same design that

1 somebody is using or emulating. We're getting
2 back to the purpose of the study. Does the
3 design have secondary meaning? I think it's a
4 fair interpretation.

5 Q. So it's possible that one of these
6 other companies that the respondents were
7 thinking about and referring to as a copy merely
8 made an engine that had the same general cubic
9 shape and layout, which Honda doesn't claim is a
10 trademark.

11 MS. PAIK: Objection.

12 Q. Correct?

13 A. Overall impression, Counselor. If
14 somebody says it looks like it, that has counted
15 in other studies that have been accepted by the
16 Court when we deal with trade dress.

17 Q. Can you --

18 A. Does that person also fall into the
19 same category that you're trying to cast these
20 individuals in? And the answer is no.

21 Q. Can you tell me which of these engines
22 that are listed here in your table as single
23 source responses Honda deems unacceptable copies
24 and which engines Honda deems acceptable
25 non-infringing versions?

1 A. It has nothing to do with this inquiry.
2 You're talking about a likelihood of confusion
3 investigation. This is an investigation of the
4 appearance of the design of this engine and
5 whether people associate it with Honda.

6 Q. Let's turn to your deposition,
7 Page 128.

8 (Witness complies.)

9 Q. Line 12.

10 "QUESTION: Okay. Let's look at Table 4 in
11 your report, Exhibit 66..., " which is Exhibit 62
12 here.

13 "...can you tell me which engines on the
14 market Honda deems unacceptable copies and which
15 engines Honda deems acceptable non-infringing
16 versions?

17 "ANSWER: No."

18 A. Yes. That's correct. And what I said,
19 that's not a relevant inquiry. You're talking
20 about likelihood of confusion issues. This is do
21 people --

22 Q. Well, we don't agree with that,
23 Mr. Mantis, that's why I'm asking you the
24 question.

25 A. I'm giving you my opinion, Counselor.

1 I'm not going to argue with you. What I said was
2 that that's a totally different issue. What
3 we're studying is the association of the design
4 with Honda. We're not studying whether the
5 response given is appropriate, because Honda may,
6 at some point in time, file a lawsuit against
7 somebody using a particular design. That's a
8 different inquiry.

9 Q. Now, trade dress refers to the overall
10 appearance of a product. Correct?

11 A. Yes.

12 Q. And Mr. Poret, in his questionnaire, he
13 asked -- he used that phrase, didn't he?

14 A. Yes.

15 MS. PAIK: Objection. Form. Give me a
16 little time to put in my objections.

17 Q. In other words, he asked respondents
18 whether they associated the appearance of the
19 engine with one company or more than one company.
20 Correct?

21 A. He used the term "appearance" in his
22 question. Yes.

23 Q. And you used the phrase "associate the
24 engine with one company or more than one
25 company." Correct?

1 A. Yes.

2 Q. And you said that you chose that phrase
3 because you wanted to avoid not leading people to
4 believe that appearance relates to something
5 unique about what they're looking at. Correct?

6 A. I didn't quite state it that way.
7 Yeah. I did not use that term to avoid what I
8 would consider a danger that it could lead
9 respondents to believe that because they're
10 directed to look at appearance, that a single
11 source answer would be required.

12 Q. So you think that using the phrase
13 "associate the appearance of the engine," is more
14 likely to lead to a single source response than
15 "associate the engine"?

16 A. No, I didn't say that, nor did I say
17 that in my deposition. I said you could have
18 used appearance. I chose not to, to be very
19 conservative as to avoid any possibility that
20 respondents would be led. So I took a very
21 conservative approach.

22 Q. And what do you base your belief that
23 there's a possibility that using the phrase
24 "associate the appearance of the engine," would
25 lead to a single source response more than the

1 phrase "associate the engine"?

2 A. Over 40 years of experience in
3 designing surveys. There's no literature you can
4 point to. It's my experience.

5 Q. Well, earlier you said you've done
6 about 40 product configuration trade dress
7 surveys. Is that right?

8 A. I probably designed and have reported,
9 yeah, maybe trade dress. I've done other
10 secondary meaning studies that have not been
11 reported. I don't consider those. Yeah. About
12 10 percent of all the studies that I've done were
13 for trademark litigation, which amount to in
14 excess of 500.

15 Q. And have you always used "associate the
16 product name" and not the "associate the
17 appearance of"?

18 MS. PAIK: Objection. Form.

19 A. I have to go back and look, to be
20 perfectly honest. I know there was one study,
21 and I can only describe this generally, because I
22 don't think it was ever reported. There may be
23 some confidentiality agreements. But the study
24 involved showing individuals a children's
25 product. In this case, I think it was a doll,

1 and the only thing that respondents were to look
2 at was the face of this doll. So other parts
3 were basically covered in cloth, as it were, and
4 respondents were directed to look at that one
5 particular element, the face.

6 Does that come close to saying looking at
7 the appearance? Maybe. Maybe not. I don't
8 know.

9 Q. Now, turning to the, "What makes you
10 say that?" questions, Table 3 doesn't attempt to
11 categorize those particular responses. Correct?

12 A. Oh, it does.

13 Q. Well, but it doesn't -- it doesn't
14 break down the different answers that were given
15 to those, "What makes you say that?" question.
16 Correct?

17 A. Tables 4 and 5 do.

18 Q. Right. Those are in the verbatims,
19 which are shown in Tables 4 and 5?

20 A. Correct.

21 Q. And you agree generally with the
22 statement that survey respondents don't always
23 say everything that they're thinking when they
24 give a response. Correct?

25 A. Yes. I agree.

1 Q. And the responses to the "What makes
2 you say that?" question included a variety of
3 things. Correct?

4 MS. PAIK: Objection. Form.

5 Q. They included references to particular
6 components of the engines. Correct.

7 A. Yes. Features of the engines,
8 components, yes.

9 Q. Yes. Certain components of the engine,
10 people referenced the shape of the engine.
11 Correct?

12 A. Some did, yes.

13 Q. Some referenced the colors of the
14 engine?

15 A. Yes.

16 Q. Okay. Some said just it looked like an
17 engine that they've seen before. Correct?

18 A. Can you cite to one? I don't know if
19 you're paraphrasing or -- some individuals said
20 it looks like it --

21 Q. All right.

22 A. -- if that's what you're referring to.

23 Q. But you didn't use those answers to
24 determine whether or not they would be included
25 as a secondary meaning response, did you?

1 A. Of course, I did.

2 Q. Well, you only did in three instances,
3 that I'm aware of. Correct?

4 A. I don't know what you're referring to.

5 MS. PAIK: Objection. Form. Let me
6 put my objections in.

7 Q. There were three instances where
8 respondents referred to color, alone, in their
9 "What makes you say that?" answer. And those
10 responses were not counted in the secondary
11 meaning calculation. Correct?

12 A. Correct.

13 Q. Okay. But if they said that they
14 associated the design with Honda or with Honda
15 and what they believe was a Honda copy, then they
16 were counted as a secondary meaning response,
17 regardless of what they said in the "What makes
18 you say that?" portion of their response.
19 Correct?

20 MS. PAIK: Objection.

21 A. No. That's not true.

22 Q. Well, what -- which respondents weren't
23 counted as a secondary meaning response, based on
24 something they said in the "What makes you say
25 that?" response?

1 MS. PAIK: Objection. Form.

2 A. The "What makes you say that?" the
3 follow-up probes were used to assess whether the
4 Honda single source response was given for a
5 design or appearance-related reason. That's what
6 the follow-up questions were designed to do.

7 So it basically served as a basis to
8 categorize these responses into the groupings
9 that are shown on Table 3.

10 Q. Well, did anybody associate -- did
11 anybody give a "What makes you say that?" answer,
12 other than the three that we talked about, who
13 just mentioned color, were there any other
14 respondents, who identified Honda as the source
15 that you didn't include, that you did not include
16 as a secondary meaning response?

17 MS. PAIK: Objection. Form.

18 A. I don't recall any. But, again, the
19 follow-up questions were asked to get an
20 understanding of whether people are relating the
21 design to Honda, as a single source, to properly
22 categorize the Honda responses into the
23 categories that are shown on Table 3.

24 Q. Okay. So everybody, then, gave what
25 you considered a response that indicated they

1 associated the design with Honda that you counted
2 as secondary meaning responses, except for the
3 three respondents, who mentioned color, alone.

4 Correct?

5 A. Yes. Because they all gave a design or
6 overall appearance-related reason.

7 Q. Okay. Now, as you were going -- you
8 reviewed all of the verbatims. Correct?

9 A. Yes.

10 Q. And do you recall, sitting here today,
11 any respondents, who mentioned the four ribs that
12 appear on the carburetor cover that Honda claims
13 is part of its mark?

14 A. As I sit here right now?

15 Q. Yes.

16 A. No. I didn't commit to memory 97
17 verbatim responses. No, I don't.

18 Q. As you sit here today, can you recall
19 any respondent mentioning the beveling on the
20 circumference of the engine that Honda claims is
21 part of its mark?

22 A. Using those exact words?

23 Q. Yes.

24 A. Again, I'd have to relook at this. I
25 don't recall.

1 Q. Sitting here today, can you recall any
2 mentions of the slant in the fan cover that Honda
3 claims is an element of its mark?

4 A. Again, using those words --

5 Q. Yes?

6 A. -- "slant in the fan cover"? I'd have
7 to read these. I don't recall.

8 Q. Sitting here today, can you recall any
9 respondent mentioning the vertical line on the
10 left side of the fan cover?

11 A. You know, again, there are numerous
12 pages representing these 97 respondents. I'd
13 have to read these.

14 Q. Okay.

15 A. I don't recall, sitting here.

16 Q. Sitting here today, can you recall any
17 respondents mentioning the horizontal line on the
18 top of the fan cover?

19 A. Same answer.

20 Q. Sitting here today, can you recall any
21 respondents mentioning the belt-like area on the
22 air cleaner cover?

23 A. Literally using those words?

24 Q. Yes.

25 A. I don't recall.

1 Q. Sitting here today, can you recall any
2 mention of the alignment of the belt-like area
3 with the seam of the fuel tank?

4 A. Same answer.

5 Q. Sitting here today, can you recall
6 anybody mentioning the complementary angles of
7 the fuel tank and the fan cover?

8 A. Same answer.

9 Q. Okay. Now, a number of respondents
10 mentioned color as part of their "What makes you
11 say that?" response. Correct?

12 A. To the follow-up questions, yes.

13 Q. All right. If you turn to respondent
14 number 21 on Page 16, that person said, "Well,
15 it's shaped like it. All colored, and same
16 components," among other things. Correct?

17 A. Yes.

18 Q. And if you look at respondent 26, that
19 respondent said, among other things, "The white
20 metal fuel tank, in particular. Well, it's just
21 a white metal fuel tank." Correct?

22 A. Yes.

23 Q. And then if you turn to respondent 52,
24 that respondent noted "the white tank" and also
25 noted, "well, most engines with white tanks are

1 Hondas that I've dealt with." Correct?

2 MS. PAIK: Objection.

3 A. In addition, this response says,
4 "They're all kind of built the same."

5 Q. And then did the respondent finish that
6 sentence by saying "but the white tank mainly"?

7 A. Yes.

8 Q. "Yes"?

9 A. Yes.

10 Q. And then if you turn to Exhibit 65, the
11 respondent said, "Basically, the appearance of it
12 and the color of the gas tank." Correct?

13 MS. PAIK: Objection.

14 A. Exhibit 65?

15 Q. Oh, I'm sorry. No. Respondent
16 number 65. We're still in your Table 4 of
17 Exhibit 62. And I'm directing your attention to
18 respondent 65.

19 A. Correct.

20 Q. Who said that, among other things, that
21 he associated or she associated "basically, the
22 appearance of it and the color of the gas tank."
23 Correct?

24 A. Yes. Among appearance-related reasons,
25 as well.

1 Q. Yes. And then respondent number 71
2 said, among other things, "The other thing, the
3 white gas tank." Correct?

4 A. Among other things being the design,
5 the layout, the air filter, the choke, the fuel
6 cutoff, etc.

7 Q. Yes. And then respondent 77 said,
8 among other things, "Honda's are red." Correct,
9 in response to 8A?

10 A. Among other things, yes. Which are
11 appearance-related reasons.

12 Q. And then respondent number 80 said,
13 among other things, "It looks like a white gas
14 tank, and it appears to be a red motor, even
15 though it looks black and white. Just the color
16 scheme of the motor." Correct?

17 A. Yes.

18 Q. And then number -- respondent number 88
19 said, among other things, for its reasons that it
20 associates that the engine was Honda, "It has a
21 white gas tank on top of the engine." Correct.

22 A. Among other things.

23 Q. Okay.

24 A. And going back to respondent 80, that
25 was one that was not counted as a secondary

1 meaning response.

2 Q. Okay. And the reason there was because
3 that respondent only mentioned the color scheme
4 of the motor?

5 A. Correct.

6 Q. And didn't say anything else in his
7 verbatim response?

8 A. That referred to the overall appearance
9 or design, that is correct.

10 Q. Okay. And then turning to -- did we do
11 respondent 88?

12 MR. HERRING: Yes.

13 Q. We did respondent 88. Okay.
14 Respondent number 90 indicated that he or she
15 associated the engine with the -- with Honda
16 because, among other things, "The white metal gas
17 tank. Everything in it looks like Honda."
18 Correct?

19 A. Among other appearance-related reasons,
20 yes.

21 Q. Okay. And then respondent number 99
22 identified the red engine as one of the things
23 that he or she associated with Honda. Correct?

24 A. Which one?

25 Q. Respondent number 99 in response to

1 Question 4A said "red engine."

2 A. Yes. Among appearance-related reasons.

3 Q. And so we can continue through this,
4 but to speed things up, in addition to the ones
5 we've just identified -- well, let's go through
6 it, because we did get through this pretty
7 quickly.

8 Number 111 referred to "The white metal tank
9 on top."

10 MS. PAIK: Objection. Form.

11 Q. And, again, on all of these I recognize
12 that they gave other reasons, but I'm focusing,
13 for purposes of this part of my examination, on
14 the color reasons that were given.

15 A. So I don't have to qualify your
16 questions all the time.

17 Q. You don't have to. Number 111
18 references "white metal tank." Correct?

19 A. Yes.

20 Q. Number 118 says, "It's a
21 black-and-white photograph, but I know it's a
22 red-and-white engine." Correct?

23 A. Yes.

24 Q. Number 121 says, "If it wasn't black
25 and white, it would be red, the engine would be

1 painted red." Correct?

2 A. Yes.

3 Q. Number 129 says, "The fuel tank is
4 white and on top of the engine." Correct?

5 A. Which one?

6 Q. 129?

7 A. That's part of the response, yes.

8 Q. 130 says, "The gas tank, the color and
9 shape of the gas tank, it appears to be white."

10 A. Yes.

11 Q. 135 says, "It has a white gas tank and
12 large gas cap."

13 A. Yes.

14 Q. 141 says, "Although it's a
15 black-and-white picture, I know it's red."

16 A. Among other things, yes.

17 Q. 157 says, "It's got the white gas tank
18 and the same." Correct?

19 A. Part of the response, yes.

20 Q. 165 says, "It looks like air
21 compressors, the white tanks and the body and the
22 black air filters and what I am assuming is
23 chrome gas cap." Correct?

24 A. Correct.

25 Q. 166 -- strike that. "There is a white

1 gas can. Most Hondas are white and occasionally
2 they are black. Gas tanks are black." Correct?

3 A. That's part of the response, yes.

4 Q. 171, "The white gas tank, it's pretty
5 typical of Honda." Correct?

6 A. Among other things, correct.

7 Q. 174, Answer 9A, referring to one of the
8 other engines that the respondent associated this
9 engine with, he or she said, "The CM looks like
10 an exact replica with different colors. It looks
11 almost identical to the picture shown but in
12 different colors." Correct?

13 A. That's what the respondent said, yes.

14 Q. And then 183, and this is in reference
15 to a Lifan engine that the respondent associated
16 with Honda, "They're made to look as close to a
17 Honda engine as possible so they can sell, color,
18 shape, and size." Correct?

19 A. Yes. The respondent said that.

20 Q. And then 189 said, "Well, the white
21 tank and where the air filter is and the
22 carburetor and just about everything on it."
23 Correct?

24 A. Yeah. You read that correctly.

25 Q. Okay. So by my count, there were 25

1 respondents, who mentioned color in response to
2 the "What makes you say that?" question, in
3 addition to other reasons, and I think earlier
4 you testified that it was 21. Correct?

5 A. My count was 24, less the three. One
6 of us is wrong.

7 Q. Okay. So it's roughly 10 to
8 13 percent, depending on who is right or who is
9 wrong here?

10 A. I didn't do the math. My count, it's
11 21. And I mentioned this morning that all of
12 those 21 mentioned a design or appearance-related
13 reason, in addition to color.

14 Q. Okay. But clearly with respect to this
15 group of people, this 21, if you're right, 25 if
16 I'm right --

17 A. Not 25. It's either 21 or 22. I
18 excluded three. Now, don't include those, like
19 Mr. Poret did in his report.

20 Q. Well, I don't think we necessarily -- I
21 don't think I referred to all three that you --

22 A. Yes, you did. And I corrected you with
23 respondent number 80.

24 Q. Yeah. What were the other two, do you
25 remember?

1 A. I don't know. I wasn't -- I was trying
2 to track whether you were reading this stuff
3 correctly.

4 Q. No. I'm not trying to trick you. I'd
5 like to see. Did you identify what the other two
6 in your report are, oh, numbers -- here they are.
7 Twenty-six and 52.

8 A. Well, I don't know if you read those or
9 counted those.

10 Q. Okay. I did read those and I did count
11 those.

12 A. Well, it's not 25.

13 Q. Okay.

14 A. It's either 21 or 22; whoever counted
15 correctly.

16 Q. Okay. So, just to be clear, you
17 excluded respondent's number 26, respondent's
18 number 52 and respondent's number 80?

19 A. Yes.

20 Q. Now, there were people who mentioned
21 the fuel tank as one of the reasons that they
22 associated with Honda, without specifying whether
23 they were talking about the color of the fuel
24 tank or the shape of the fuel tank. Correct?

25 MS. PAIK: Objection. Form.

1 A. I'd have to go back and see if it was
2 in combination or not.

3 Q. Okay. Well, take, for example,
4 respondent 25. The respondent says, "It looks
5 like a Honda engine. I don't know. It looks the
6 way Honda engines look. It has all the same
7 features, the same graphics, kill switch, and the
8 gas tank." Correct?

9 A. Yes.

10 Q. And the respondent doesn't indicate
11 whether --

12 MS. PAIK: Sorry. Let me put in my
13 objection. And just to note for the record,
14 that's a partial response to the question, ^{FROM} ~~to~~
15 RESPONDENT (gms)
 number 25.

16 Q. And the respondent doesn't reference
17 color of the gas tank, correct?

18 A. That's correct.

19 Q. And doesn't reference the shape of the
20 gas tank. Correct?

21 A. Correct.

22 Q. Then if you turn to --

23 A. But the respondent is referencing other
24 elements.

25 Q. Right.

1 A. That are appearance, design-related
2 elements.

3 Q. Right. But as to the gas tank, it's
4 not specifically mentioning the color or the
5 shape?

6 A. That's correct.

7 Q. Okay. And then in -- same with
8 number 30. They reference the fuel tank, without
9 specifically referencing its color or its shape.
10 Correct?

11 A. That's correct.

12 Q. Okay. And same with 34. Correct?

13 A. They mention gas tank. Yes.

14 Q. And so we can go on and through -- go
15 through this, but I'm not going to take the time,
16 because the record will speak for itself. But,
17 by my count, there were 18 respondents, who
18 mentioned the fuel tank, generally, without any
19 specificity as to the color or the shape. And
20 that would be approximately 9 percent. Correct?

21 A. I have no idea. I did not do the
22 tabulation that you apparently have done. I
23 don't know if it's correct or incorrect.

24 Q. But since respondents -- since we know
25 respondents don't always say what they're

1 thinking, it's possible that those respondents,
2 who mentioned the fuel tank, recognized it as the
3 Honda because it was in the color white, but just
4 didn't say so.

5 MS. PAIK: Objection.

6 Q. That's possible, isn't it?

7 MS. PAIK: Objection.

8 A. It's possible, but the only way you can
9 make that determination is to literally ask for
10 any feature mentioned, challenge the respondent
11 by inappropriate additional probing questions.
12 That is not good research design, in fact, it's
13 unacceptable to do that.

14 But the point here, just like the color
15 points that you were attempting to make, all
16 these responses are associated with other design
17 or appearance-related responses. If you want to
18 discount those responses, because you are not
19 satisfied with the specificity of the answer,
20 that, I think, is inappropriate.

21 Q. Okay. Again, I appreciate your
22 response, but my question was more simple than
23 that.

24 It's possible that respondents, who
25 mentioned the fuel tank, were recognizing it

1 as -- were associating it with Honda, because it
2 was the color white, but just didn't say so in
3 their response. That's possible, isn't it?

4 MS. PAIK: Objection.

5 A. It's possible, but these responses, as
6 you've gone through them, and I don't know of the
7 others that you have -- apparently have
8 identified and have not read, the responses that
9 you read, from what I can recall, are in
10 association with other design-related or
11 appearance-related responses. So they are
12 appropriate to consider ^{As} ~~in~~ secondary meaning ^(9M)
13 responses.

14 Q. Yeah. I understand that that's your
15 opinion, and we, of course, differ. But my
16 question is just more focused than that. It's
17 just simply that it's possible that respondents
18 made the association with Honda, based on looking
19 at the fuel tank and seeing that it was white,
20 but just didn't mention that it was white?

21 MS. PAIK: Objection.

22 A. And are you suggesting -- well, it's
23 possible. But are you suggesting that it's
24 inappropriate, because they mention fuel tank,
25 and that, then, overrides any other design or

1 appearance-related reasons? I think not. I
2 think that disregards what the respondent is
3 viewing and stating what they're viewing, and why
4 they suggest what they did.

5 Q. I'm not indicating in my question what
6 is appropriate or what is not appropriate. I'm
7 just indicating what is possible as to what
8 elements of the photograph created associations
9 for the respondent. And it's possible that the
10 white color of the fuel tank did, but they just
11 didn't say so in their response.

12 MS. PAIK: Objection.

13 Q. That's all? It's possible?

14 A. I've answered that. It's possible, but
15 you can't separate that from other responses, if
16 you're suggesting that these responses are
17 inappropriate. It's just like color mention.

18 Let's take another example. Mr. Poret's
19 color survey. He introduces color. People
20 respond to color. Let's look at the other two
21 studies I've done for Honda, the likelihood of
22 confusion studies. If you introduce color, which
23 was appropriate, then, in those cases, people are
24 going to respond to color.

25 Q. Exactly.

1 A. Yeah. And that's Mr. Poret's study, as
2 well.

3 Q. So, as you noted earlier, you didn't do
4 a study with the GX engine in all black.
5 Correct?

6 A. Correct.

7 Q. And since that study wasn't conducted,
8 obviously we have no way to determine what the
9 results would have been if you had shown a test
10 photo of the GX engine in all black, and without
11 any three-colored scheme. Correct?

12 A. That's correct.

13 MS. PAIK: Objection.

14 Q. All right. Now, there were
15 respondents, who you counted as associating the
16 applied-for design with a single source, who
17 didn't mention any specific design elements in
18 their "What makes you say that?" response.
19 Correct?

20 A. Correct.

21 Q. For example, respondent number 14 said,
22 "It looks like the Honda engine type. That's all
23 I mean by that. It looks like it." Correct?

24 A. Correct.

25 Q. And respondent 31 said, "Because it

1 looks like one. Well, it looks like one. I know
2 what one looks like. I have three or four of
3 them." Correct?

4 A. Correct.

5 MS. PAIK: Objection. I'd like to note
6 that that's a partial response.

7 Q. And exhibit-- respondent 53 said,
8 "Because that's what it looks like, its
9 appearance." Correct?

10 A. Yes. That's what the respondent said.

11 Q. All right. And in 58, "That's about
12 all the engines I see in my business. Everybody
13 wants a Honda. If I sell or rent something, they
14 will ask if I have a Honda. Customers want a
15 Honda." Correct?

16 A. Correct.

17 Q. And number 70, "I have one. I have a
18 Honda in my machinery. I just know it because I
19 have a Honda. I have one." Correct?

20 A. Correct.

21 Q. And 74 says, "We sell Honda, and it
22 looks like a Honda." Correct?

23 A. That's what the respondent said.

24 Q. And 128, in response to Question 4A,
25 "I've just seen a lot of them, and that's what

1 they look like." Correct?

2 A. Among other things.

3 Q. Yeah. So these respondents didn't
4 mention any of the specific features of the Honda
5 engine. They just said they recognize it as a
6 Honda. Correct?

7 A. Correct.

8 Q. Okay.

9 A. Overall impression. Part of trade
10 dress.

11 Q. And so we don't -- again, we don't
12 know, based on their responses, to what extent
13 color influenced their association. Correct?

14 MS. PAIK: Objection.

15 Q. We don't know?

16 A. Nor do we know if a design element --

17 Q. Right.

18 A. -- is what they were thinking of.

19 Q. It could be either?

20 A. It could be either, but the important
21 thing when you analyze trade dress is the overall
22 impression. If somebody says it looks like it, I
23 have one, I'm familiar with it, I know it --

24 Q. Right.

25 A. -- all those respond to --

1 Q. Right.

2 A. -- recognition of the design --

3 Q. But here the applied-for --

4 A. Let me finish.

5 Q. Go ahead.

6 A. The recognition of the design, which
7 goes back to the purpose that Mr. Poret and I
8 agree --

9 Q. Yes.

10 A. -- that these studies are designed to
11 accomplish.

12 Q. Yes.

13 A. Does the appearance of this engine,
14 design of this engine, is it associated with
15 Honda. If somebody recognizes it, what are they
16 recognizing? The design of the engine. That is
17 fair. The literature is amply stated that
18 overall look is an appropriate secondary meaning
19 response.

20 Q. Yes. But the applied-for mark here is
21 for the design, without regard to color. Isn't
22 it?

23 A. That's correct.

24 Q. And these answers, we can't tell from
25 these answers of these -- from these respondents,

1 who just mention the type of engine it is or that
2 it looks like a Honda, we can't tell whether they
3 were responding to color or shape or some other
4 influence. Correct? We don't know from their
5 response?

6 MS. PAIK: Objection.

7 A. They did not give a detailed response.
8 That is correct. I can't say they did or they
9 didn't. If it's a singular reason or multiple
10 reasons.

11 The only thing I can say is that the overall
12 impression of the engine, design that they see is
13 associated with Honda.

14 Q. And what they saw was a photograph with
15 a three-color scheme in it. Correct?

16 A. Three tone.

17 Q. Three-color scheme?

18 A. I wouldn't use --

19 Q. I think earlier you used the phrase
20 "three-color scheme." Correct?

21 MS. PAIK: Objection. Mischaracterizes
22 his testimony.

23 A. I don't think I did.

24 Q. The record will speak for itself.

25 A. Scheme or tone. There are three

1 colors. Yes.

2 Q. Okay. Let's turn to the control. And
3 I want to talk about the process that you went
4 through for selecting the control.

5 So when you were designing the survey,
6 obviously you needed to get a test stimulus to
7 use, which was the black-and-white photograph of
8 the Honda GX. And then you also needed to
9 decide on what engine you would use as a
10 control. Correct?

11 A. Correct.

12 Q. And you needed to get a stimulus of
13 that, as well, to use in your survey. Correct?

14 A. Correct.

15 Q. And so you obviously discussed this
16 with the lawyers, who retained you for the
17 purpose of conducting this survey, and that's the
18 WilmerHale attorneys. Correct?

19 A. Correct.

20 Q. And that was Mr. Regan, Ms. Paik, and
21 Ms. Frazier. Correct?

22 A. Yes.

23 Q. And then the Honda client, itself, also
24 participated in these conversations, and that was
25 Mr. Scott Connor, who was the in-house

1 businessman, and Mr. Don Stevens, who is the
2 in-house attorney. Correct?

3 A. Yes.

4 Q. And there were more than one telephone
5 conversation, where you were discussing the
6 survey design and what control you were going to
7 use. Correct?

8 A. I know there were two conversations. I
9 don't know if they were both applied to the
10 control issue. One certainly applied to the SIC
11 selections.

12 Q. All right. And it was in these
13 conversations with the WilmerHale attorneys and
14 the Honda reps that the suggestion was made of
15 looking at the Briggs Intek 900 engine as a
16 possible control. Correct?

17 MS. PAIK: Objection.

18 Q. Do you recall that?

19 A. Yes.

20 Q. That's true?

21 A. Yes. We had a conversation.

22 Q. Okay. Where it was suggested that you
23 consider the Briggs Intek 900 engine as the
24 control?

25 A. I was not directed to consider

1 anything. Briggs was brought up as a possible
2 control. I made the evaluation whether it was
3 appropriate or not.

4 Q. Okay. Yeah. I don't think I used the
5 word "directed," but if I did, I misspoke. I
6 think I said suggested.

7 A. Suggested, directed. It was discussed.
8 I ultimately made the decision whether to use it
9 or not. I was responsible for that decision.

10 Q. Sure. But you didn't -- the Briggs
11 engine that you ultimately used wasn't an engine
12 that you were aware of before this project.

13 Correct?

14 I mean, in other words, you didn't find it
15 on your own research?

16 A. No. I didn't go out shopping for
17 engines, if that is the question.

18 Q. Yeah. In other words, it was -- when I
19 say "suggested," it was brought to your attention
20 by the Honda team?

21 A. That's fair.

22 Q. Okay. And then you looked at it. You
23 went back and you did your research and you
24 looked at it on the internet and thought it was
25 an acceptable control. Correct?

1 A. I don't recall specifically if I went
2 online to look at it. I may have looked at it
3 online. I'm not sure. I don't recall.

4 Q. So it's possible you didn't look at it
5 online, and the first time you saw it was when
6 the WilmerHale attorneys sent you the photograph
7 of it?

8 A. No. I may have seen it somewhere else.
9 It's possible I went online.

10 MS. PAIK: Objection. Let me put that
11 on the record.

12 MR. PHILLIPS: I'm sorry?

13 MS. PAIK: Let me put that in the
14 record before he testifies.

15 MR. PHILLIPS: Okay.

16 A. I don't recall what happened three,
17 four years ago. It's just...

18 Q. Do you recall that the WilmerHale firm
19 sent you the black-and-white photograph that you
20 ultimately used for the survey?

21 A. Yes.

22 Q. And when you received it, you noticed
23 that the Briggs name was removed from the front
24 of the engine?

25 A. Yes.

1 Q. And the model number was removed?

2 A. Yes.

3 Q. And those were removed for the same
4 reason that the Honda name and the Honda model
5 numbers were removed?

6 A. Yes.

7 Q. And that is to eliminate indications of
8 source in the survey?

9 A. Yes.

10 Q. And you noticed that the
11 black-and-white photo did not have a three-color
12 scheme in it. Correct?

13 A. Yes.

14 Q. And it was your understanding, based on
15 communications with the Honda team, that this was
16 a competitive engine to the Honda GX?

17 A. That's what my understanding was. Yes.

18 Q. And did -- and did both the WilmerHale
19 attorneys and the Honda representatives confirm
20 that for you?

21 A. It was discussed. I don't know if
22 confirmation had to be made. I raised the
23 question whether the engines are competitive, and
24 I don't know who answered affirmatively. But I
25 raised the question.

1 Q. Okay. And the Honda team, whether it
2 was the lawyers or the Honda business people,
3 confirmed for you that it was competitive?

4 A. Yes.

5 Q. Since -- were you ever advised at a
6 later time that the Briggs engine that you
7 selected as a control was not competitive?

8 A. No.

9 Q. Were you ever advised that Mr. Connor
10 testified in his deposition that it was not a
11 competitive engine to the Honda GX?

12 A. I'm not aware of that.

13 Q. Were you ever advised that Mr. Whitmore
14 testified that the Briggs 900 engine doesn't fit
15 within the same envelope as the Honda GX for
16 certain applications?

17 MS. PAIK: Objection.

18 A. I have no idea who he is.

19 Q. Okay. Would you have considered it
20 relevant if you were told that Mr. Connor
21 testified that it's not a competitive engine?

22 A. I may have considered it. It's one
23 factor in selecting a control, that you have a
24 plausible product that is in the category.

25 The most important consideration, however,

1 is that the control doesn't share the same
2 elements that you're testing. In many cases,
3 both trade dress and trademark, trade name cases,
4 controls are even devised that have no market
5 share. So having a product that is a plausible
6 member of the class is appropriate.

7 I don't ~~know~~ ^{THINK} if relying strictly on the (gm)
8 criteria to reject a control, based on the extent
9 to which the control product competes with the
10 test product is -- ends the inquiry. There are
11 certainly other considerations.

12 And, as I mentioned, in some cases, we even
13 create controls that have no market ~~process~~ ^{PRESENCE} and (gm)
14 were acceptable.

15 Q. But you've testified that you asked the
16 question as to whether it was competitive.

17 Correct?

18 A. Yes, I did.

19 Q. And you asked the question whether it
20 was competitive because you thought that was an
21 important question to ask. Correct?

22 A. Well, it's a characteristic of a
23 control. Does it end the inquiry of that
24 control, do you stop there? Not necessarily.

25 Q. Since you were told that it was a

1 competitive product, it didn't stop the inquiry,
2 and allowed you to confirm, for that reason and
3 other reasons, that it was an acceptable control.
4 Correct?

5 MS. PAIK: Objection.

6 A. That would be one consideration. The
7 primary consideration, as I mentioned, is that
8 the control doesn't share with the test the very
9 elements that you're testing.

10 Q. Do you recall testifying that, when
11 asked about selecting a control, "That will help
12 eliminate noise from familiarity of a source
13 because of its market share and the types of
14 products it makes" that you responded, "Ideally,
15 you would take a competitive product to the
16 product that you're testing"?

17 A. I recall that. Ideally, yes. Is that
18 the only consideration? No.

19 THE WITNESS: Is this a good time to
20 take a short break?

21 MR. PHILLIPS: Absolutely. No problem.

22 (A recess was taken.)

23 BY MR. PHILLIPS:

24 Q. Let's turn to -- let's continue with
25 Exhibit 60, which is the photograph of the

1 control engine that you used in the survey.

2 If you direct your attention to the air
3 filter element of the Briggs engine, that is
4 referred to as a flat panel air filter.

5 Were you aware of that?

6 A. Yes.

7 Q. And whereas in Exhibit 59, which is the
8 test photo of the Honda GX, that has an air
9 filter on the top of the engine, which is
10 referred to as a high mount air filter. Correct?

11 A. Yes.

12 Q. And were you advised that the Honda GX
13 engine doesn't come with a panel air filter
14 option for non-generator applications?

15 Were you aware of that?

16 MS. PAIK: Objection.

17 A. I don't recall.

18 Q. You understand what I mean by generator
19 applications?

20 A. Yes. Use of an engine in a generator.

21 Q. Yes. And for non-generator
22 applications, I'm referring to other power
23 equipment, like water pumps and tillers and
24 pressure washers?

25 A. Yes.

1 Q. And so you weren't advised that for
2 those applications, those non-generator
3 applications, that the Honda GX doesn't come with
4 a panel air filter like the one shown in
5 Exhibit 60. Correct?

6 A. I don't recall that.

7 Q. Now, the control photograph that you
8 used in Exhibit 60 did not show a white fuel
9 tank. Correct?

10 A. Correct.

11 Q. And it did not show a fan cover in a
12 shade or color or tone between white and black.
13 Correct?

14 A. Correct.

15 Q. And, in fact, other than the metal
16 muffler cover shown in the background and the
17 bolts and levers, the engine that you used as the
18 control, you would agree, has an all black
19 appearance. Correct.

20 A. Exclusive of the muffler, yes.

21 Q. Yes. Other than the muffler, it
22 appears to be all black. Correct?

23 A. Yes.

24 Q. And you didn't consider, in order to
25 control for color, you didn't consider using a

1 control that had the same three shades that the
2 test product had. Correct?

3 A. I controlled for color in a different
4 way.

5 Q. I understand that's your position. But
6 my question is: You didn't consider using a
7 control that had the same three shades as the
8 test photo. Correct?

9 A. That's correct.

10 Q. And you didn't attempt to look for a
11 control that in black and white would have had
12 the same three shades as the test photo.
13 Correct?

14 A. That, I don't recall. I don't think I
15 did, but I don't recall.

16 Q. All right. And you would agree that
17 color was not one of the characteristics, whose
18 influence was being assessed by your study.
19 Correct?

20 A. I don't understand your question.

21 Q. In other words, that you were not
22 setting out to assess, as one of your goals in
23 this study, the influence of color as part of the
24 mark. Correct?

25 MS. PAIK: Objection.

1 A. As part of the mark, that's where I get
2 confused.

3 Q. In other words, the applied-for mark
4 did not include color? Does not include color?

5 A. That's correct.

6 Q. Okay. So you were -- you were not --
7 so color was not one of the characteristics,
8 whose influence was being assessed by you in your
9 study. Correct?

10 MS. PAIK: Objection.

11 A. Well, you're assessing if color is
12 mentioned, if it's mentioned in combination with
13 something else that relates to a secondary
14 meaning study. So you always assess how you
15 characterize the respondent.

16 Was a study designed specifically to focus
17 individuals on whether color had any effect, that
18 would be a totally different control group, with
19 a different trade dress, compared to the control
20 engine that we did use, to make that
21 determination. I did not do that.

22 Q. And when you say that you did not use a
23 control stimulus with a three-color scheme for
24 purposes of controlling color but used some other
25 way, you're referring to your reviewing of the

1 verbatims. Correct?

2 A. Correct. That's the way I took into
3 account color, singularly, as the basis for a
4 response.

5 Q. It wouldn't have been improper to use a
6 control stimulus that has a -- that had a similar
7 three-color scheme as long as it satisfied your
8 other requirements for proper control. Correct?

9 MS. PAIK: Objection.

10 A. Well, that's where I'm confused.

11 Q. In other words, you could have used as
12 a control engine, an engine that doesn't embody
13 the design of the applied-for mark and had a
14 three-color scheme to it. Correct?

15 A. That could have been used.

16 Q. And that would have had the effect of
17 controlling for associations that were related to
18 some factors that were not part of the
19 applied-for mark. Correct?

20 MS. PAIK: Objection.

21 A. Possibly, yes. Depending on the
22 elements of the control. I mean, just changing
23 color, to have the identity of color, but a
24 different trade dress may isolate if color
25 mentions by a respondent for Honda are part of

1 the response pattern.

2 It's very difficult to assess, sitting here,
3 without looking at all of the other elements of
4 the control.

5 Q. Right. In other words, that study
6 wasn't done. But you could -- you could envision
7 a control that has -- that had a three-color
8 scheme, didn't embody the design elements claimed
9 by Honda, and use it to eliminate noise of
10 consumers, who made associations based on color,
11 alone?

12 MS. PAIK: Objection.

13 Q. Correct?

14 A. Would it be possible to do that? Yes.

15 Q. Yes. Okay. Now, during your
16 discussions with Honda about possible controls,
17 the Subaru Robin engine was mentioned. Correct?

18 A. Yes.

19 Q. It was mentioned by the Honda team to
20 you. Correct?

21 A. Yeah. My communications with Honda
22 counsel and Honda members, yes.

23 Q. But my point is they brought it to your
24 attention. It wasn't you bringing it to their
25 attention?

1 A. That's correct.

2 Q. So they volunteered the existence of a
3 Robin Subaru engine, and they also volunteered
4 that there could be an argument over some
5 similarity with the Honda GX engine. Correct?

6 MS. PAIK: Objection. The substance of
7 his communications are privileged. So I instruct
8 the witness not to answer with respect to that
9 question. But the fact, itself, underlying the
10 communications, I'll allow Mr. Mantis to testify.

11 MR. PHILLIPS: This was -- this was
12 testified to at great length in his deposition,
13 for one. And for two, communications with an
14 expert, who has been disclosed and who is
15 testifying about a report that was in reliance on
16 those opinions is certainly not privileged.

17 MS. PAIK: Counsel, I disagree. So I
18 will instruct the witness not to answer with
19 respect to the substance of those communications.
20 But the facts underlying those communications, I
21 will let him testify as to those.

22 Q. Well, if you turn to Page 14 of your
23 deposition, Line 3.

24 "QUESTION: Tell me what you recall
25 specifically discussed about the control.

1 "ANSWER: One control was mentioned, and I
2 believe it was Subaru, and I think the discussion
3 revolved around the similarity of Subaru with the
4 Honda engine being tested, or at least the
5 argument that there could be some similarity.
6 There may have been other controls discussed. I
7 believe Briggs was also discussed. At that
8 point, I looked at Briggs and made a decision
9 whether that was an adequate control."

10 That was my question, and that was your
11 answer?

12 A. Yes. You read it perfectly.

13 Q. Thank you. And so at that point, after
14 you were advised of the existence of the Robin
15 Subaru engine and that there was the argument
16 that there could be some similarity, you
17 summarily dismissed it, without even looking at
18 it. Correct?

19 A. I believe I indicated that if there is
20 any debate, whether there is similarity in the
21 overall configuration or commercial impression,
22 that it would be inappropriate to even consider
23 it as a control. That's what I recall.

24 Q. Okay. And do you recall that you
25 testified that you dismissed the Robin engine

1 summarily, based on the fact that Opposers are
2 claiming that it is substantially similar to
3 Honda?

4 A. Yes.

5 Q. And do you recall that you did that
6 without even looking at the Robin Subaru engine?

7 A. Well, I don't think I was in a position
8 to challenge what Opposers are stating. If the
9 statement is made that the configuration is
10 similar, they look alike, or the commercial
11 impression is the same, why would one want to
12 consider that as a control? The risk is that
13 you're testing the same thing.

14 And if there is an argument and, in this
15 particular case, proponents, the Opposers are
16 making this argument, ^{THEN} ~~that~~ I would not consider gm
17 that to be an appropriate control.

18 Q. I understand, but just to confirm, so
19 the record is clear. So you didn't set out to
20 make your own independent determination of that?

21 A. No. Because that was a criteria that
22 would reject the consideration --

23 Q. Okay.

24 A. -- of that as a control.

25 Q. When you were advised by Honda that

1 Opposers contended that the Robin Subaru engine
2 was similar to Honda GX engine, did you ask Honda
3 at the time whether Honda considered the Robin
4 Subaru engine to be substantially similar to the
5 Honda GX?

6 A. No. I was relying on the
7 representation of the Opposers.

8 Q. I understand that. But my question is:
9 Did you ask Honda if they agreed or disagreed
10 with that position?

11 A. I don't recall that conversation.

12 Q. And did you ask Honda whether Honda had
13 ever taken action against the Robin Subaru
14 engine?

15 A. No.

16 Q. Did you ask Honda whether Honda had any
17 intention to take action against the Robin Subaru
18 engine?

19 A. No.

20 Q. Did you ask whether there were any
21 settlement agreements in place between Honda
22 regarding whether the Robin engine was
23 substantially similar or not?

24 A. No.

25 Q. When you were designing the survey,

1 Honda didn't make you aware of any of the
2 settlement agreements that it had entered into
3 with third parties. Correct?

4 A. Correct.

5 Q. And when you were designing the survey
6 and selecting your control, Mr. Connor didn't
7 tell you that he testified that the Robin Subaru
8 engine didn't embody the Honda GX trade dress.
9 Correct?

10 A. Correct.

11 Q. And he didn't tell you that it was his
12 opinion that they were not substantially similar.
13 Correct?

14 A. That's correct.

15 Q. And Mr. Connor, Mr. Stevens or the
16 attorneys at WilmerHale didn't advise you that
17 Honda had entered into a settlement agreement
18 whereby Honda had agreed the Robin Subaru engine
19 is not the same as or substantially similar to
20 the Honda GX engine trade dress and does not
21 infringe the Honda GX engine trade dress.
22 Correct?

23 MS. PAIK: Objection.

24 A. Was I made aware of that? Is that the
25 question?

1 Q. Yes. They didn't tell you that?

2 A. I don't recall that.

3 Q. You recall at your deposition that I
4 showed you a settlement agreement where Honda
5 stipulated that the Robin Subaru engine is not
6 the same as or substantially similar to the Honda
7 GX engine trade dress, and you told me that was
8 the first time you had seen that agreement.
9 Correct?

10 A. Correct.

11 Q. And I also showed you the settlement
12 agreement that Honda had entered into with Lifan
13 that had an alternative design approved by Honda,
14 and you told me that was the first time you had
15 seen that agreement. Correct?

16 A. As I recall, that's correct.

17 Q. And you haven't formed your own opinion
18 as to whether the Robin Subaru engine is the same
19 as or substantially similar to the Honda GX
20 engine design. Correct?

21 A. My personal view?

22 Q. No. I'm asking for purposes of this
23 case. You haven't formed an opinion as to
24 whether the Subaru engine is the same as or
25 substantially similar to the GX engine design?

1 MS. PAIK: Objection.

2 A. That was not the nature of my
3 retention.

4 Q. Okay. So the answer is you don't have
5 an opinion?

6 A. I have an opinion as to the results of
7 the survey I conducted, which I've given this
8 morning. Outside of that, no.

9 Q. All right. Now, do you recall at your
10 deposition, we discussed the article that Shari
11 Diamond cowrote with Jerre Swann about trademark
12 and deceptive advertising surveys?

13 A. What article? That's the whole book.

14 Q. We were looking at the chapter on
15 designing controls.

16 Do you recall that?

17 A. No, I don't.

18 Q. Do you recall Ms. Diamond saying that
19 "To the extent that judges can assist in getting
20 the parties to clarify just where the boundaries
21 to the claim trademarks" -- "to the claimed
22 trademark rights are located before the parties
23 undertake any survey work, the surveys that are
24 conducted will be better constructed and more
25 likely to provide results that can withstand

1 scrutiny and avoid ambiguity in the value of the
2 information they can offer"?

3 MS. PAIK: Objection.

4 A. Am I aware of what? Did she say that?

5 Q. Yes.

6 A. I'd have to look at that. I don't
7 recall.

8 Q. Do you agree with that statement in
9 theory?

10 A. In theory, yes. Try to operationalize
11 it. I think one of the cases that may be cited
12 by Ms. Diamond is the Sun America case.

13 Q. Actually it was the 24 Hour Fitness
14 case.

15 A. Which also cites the Sun America. I
16 think she cites the Sun America case.

17 Q. Okay.

18 A. Where there was collaboration between
19 experts in trying to design a survey that would
20 pass the scrutiny, if you will, and no argument.
21 That resulted in counsel for both sides
22 disagreeing. So it's theoretical. I've never
23 seen it implemented.

24 Q. But did counsel ever make an effort to
25 discuss with you the boundaries of the claimed

1 trade dress that it was trying to register?

2 MS. PAIK: Objection. Form.

3 A. I don't understand your question.

4 Boundaries. I don't know what you're referring
5 to.

6 Q. Let me see if I can state it a better
7 way. Did Honda ever make an effort to discuss
8 with you what uses, third-party uses it deemed
9 infringing versus what uses it deemed acceptable?

10 MS. PAIK: Objection.

11 A. No. We had no such discussions.

12 Q. And what consideration, if any, did you
13 give to the fact that there are other engines on
14 the market that Honda has agreed to coexist with
15 that do have some of the elements claimed in the
16 application?

17 MS. PAIK: Objection.

18 A. I gave it no consideration.

19 MS. PAIK: Objection.

20 A. I gave it no consideration. It's a
21 separate inquiry. I think we've gone through
22 this before.

23 There are many factors that go into whether
24 or not a suit is going to be brought ^{FOR} ~~or~~ some 
25 potential infringement. A lot of them are

1 economic factors. They have nothing to do with
2 what we're -- what we were charged or I was
3 charged to study.

4 So I consider anything that relates to
5 whether there's potential for litigation, based
6 on one element or some element, of something that
7 may or may not occur, to have really no relevance
8 to the survey that I conducted.

9 Q. Now, the control cell responses had how
10 many Briggs answers?

11 Do you recall?

12 A. I think 47, if I recall correctly.

13 Q. Okay. And there were 100 respondents,
14 in total?

15 A. I think it was 101.

16 Q. Okay. So 47 out of 101 would be 47 --
17 we'll round it off, will be 47 percent?

18 A. Yes.

19 Q. And the total Honda responses that you
20 counted was 52 percent?

21 A. That I -- it was 51.something. 51.3.

22 Q. Okay. So you have 51.3 percent of the
23 respondents associating the Honda test photo with
24 Honda, and you have 47 percent of the control
25 respondents associating the control photo with

1 Briggs & Stratton. Correct?

2 A. Correct.

3 Q. And 47 percent, in your opinion, is --
4 would be enough to constitute secondary meaning,
5 wouldn't it?

6 MS. PAIK: Objection.

7 A. Yes.

8 Q. Okay. So if the appearance of the
9 design of the control engine is -- has secondary
10 meaning, that means it's functioning as a source
11 indicator. Correct?

12 A. By definition, yes.

13 Q. And so you showed to this -- to this
14 relevant universe an engine design that was
15 recognizable to a substantial number of the
16 respondents. Correct?

17 A. Forty-seven out of 101.

18 Q. Yeah. All right. Okay. I'd like to
19 turn to the criticisms that you made of
20 Mr. Poret's survey.

21 And as to the first one, concerning the
22 introductory statement that the survey used about
23 overhead valve engines, overhead horizontal shaft
24 engines, are you aware of any verbatim responses
25 in the Poret study that suggests that people

1 identified the Robin Subaru engine as being
2 associated with Honda because of this
3 introductory statement by the interviewer?

4 MS. PAIK: Objection. Form.

5 A. Literally, the respondents say, well,
6 the introductory statement made me believe it's
7 Honda? No. No.

8 Q. And Mr. Poret asked, used the same
9 questions in the test survey questionnaire as he
10 did in the control survey questionnaire.

11 Correct?

12 A. Correct.

13 Q. And as a matter of general survey
14 practice, that's how you're supposed to do it.
15 Correct? All other things equal.

16 MS. PAIK: Objection. Form.

17 A. I don't know what you mean "all other
18 things equal."

19 Q. Yeah. Maybe that wasn't artfully
20 stated. In other words, it's important to have
21 the language of the questionnaire in the test
22 survey and the control survey be the same?

23 A. Yes. And accurate, for both the test
24 and control. And that was the failing, in my
25 opinion, of this introductory language. The

1 effect being creating the potential for bias.

2 Q. Okay. But we can't tell, from at least
3 the verbatims, whether that effect actually
4 occurred in any material way?

5 A. You can't tell regardless of what you
6 ask the respondent in a follow-up question. Once
7 bias appears or the possibility of bias, it can
8 affect, distort responses, but you don't know to
9 what extent that could occur. You know that you
10 have created a situation where you're introducing
11 the possibility of bias. That's why you take the
12 standard procedure of placing the question in its
13 proper context.

14 Q. Sure. But no -- but based on your
15 review of the verbatims from Mr. Poret's control
16 cell, nobody said, who looked at a
17 black-and-white photo of the Robin Subaru, nobody
18 said they believed it was a Honda because Honda
19 makes overhead valve engines?

20 A. That's correct. But you wouldn't
21 really know if people are reacting to the fact
22 and discounting anything other than makers of
23 overhead valve engines, of which Honda falls into
24 that category.

25 That's the problem of having the improper

1 context. It may lead people in a direction that
2 is focused on yielding a particular response.

3 Q. Okay. The other criticism that you
4 make is the -- that Mr. Poret didn't rotate the
5 questions of one manufacturer or more than one
6 manufacturer. Correct?

7 A. Correct.

8 Q. And he used the same order of questions
9 in both the test group and the control group.
10 Correct?

11 A. Correct. Which doesn't solve the
12 problem of systematic bias.

13 Q. Right. But, as you testified, there's
14 no way to detect the effect of that in either
15 direction?

16 A. We know, as researchers, that there is
17 this phenomenon called order effect. The
18 literature dictates, and it's really kind of
19 survey 101, if you will, that when you have
20 alternative answers, that you rotate the order of
21 those answers so as to avoid even the question
22 of, is this potentially biasing? This is
23 axiomatic.

24 Q. I understand. But you have no opinion
25 as to whether this favored Honda or was

1 unfavorable to Honda, in terms of that secondary
2 meaning; is that correct?

3 A. You can't tell, you can't tell, but
4 you've introduced something that is -- raises the
5 question of potential bias. The literature is
6 replete with this notion of order effect and how
7 you obviate that particular problem, how you
8 avoid it.

9 Q. Okay. But it might have helped Honda
10 if the order bias was in favor of the first
11 option, only one manufacturer?

12 MS. PAIK: Objection.

13 Q. Is that right?

14 A. Yeah. It could have gone the other
15 way, as well. We don't know.

16 Q. Okay.

17 A. We know that there's a potential for
18 bias. We know it's sloppy questionnaire design
19 because it does not take into account what survey
20 researchers routinely do, not just for litigated
21 studies but for studies in the commercial arena.

22 Q. As to the SIC codes, you're aware that
23 Mr. Poret used or consulted your two prior
24 studies for Honda for determining the SIC codes
25 that he would use for his survey?

1 A. Yeah. I think he looked at another
2 study, as well.

3 Q. Okay.

4 A. I think the Gelb name comes to mind.

5 Q. In your rebuttal report you cite to
6 McCarthy, saying, "It is the mark as shown in the
7 application and as used on the goods described in
8 the application which must be considered, not the
9 mark as actually used by the Applicant."

10 Do you recall that?

11 A. Yes.

12 Q. And you cited that for the proposition
13 that you don't introduce other elements that are
14 not subject to the registration. Correct?

15 A. Correct.

16 Q. Now, at your deposition, you confirmed
17 that you had been retained by Honda for trademark
18 survey work on four different occasions, which
19 included the two prior studies that we looked at,
20 at Exhibits 29 and 30, the survey that you
21 conducted in this case, and then also a survey
22 involving a trademark logo. Correct?

23 A. Trademark logo. What study was that?

24 Q. You had mentioned in your deposition
25 having been retained on a survey for Honda

1 involving a trademark logo.

2 A. What page? As I sit here, I don't
3 recall the study.

4 Q. On Page 17 and 18, I had asked you if
5 you had conducted surveys for Honda with regard
6 to anything else. You said "yes." Then when I
7 asked you what they were, you raised work
8 product. And then I asked if they pertained to
9 trademarks or trade dress, and you said that
10 they -- it was logo as a trademark.

11 Does that refresh your recollection at all?

12 A. Yeah. I don't recall the study.

13 Q. Now, you already told us the
14 compensation that you receive from Honda for this
15 matter, which I believe you said was \$120,000 for
16 the project-based work and then \$750 an hour for
17 your time?

18 A. Yes.

19 Q. And then for the survey project that
20 you performed in the Pep Boys case on Exhibit 29,
21 the compensation page indicates that the total
22 billing for the survey work was \$165,000, plus
23 \$500 for your testimony, \$500 per hour for your
24 testimony. Is that correct?

25 A. Where are you?

1 Q. Exhibit 29, Page 29.

2 A. Well, I'm not going to waste the time
3 trying to find it. If that's what it says,
4 that's what it is.

5 Q. And then in Exhibit 30, which was your
6 report for the Power Train case, the compensation
7 for the survey was \$76,000, and the rate for your
8 time was \$500 per hour. Correct?

9 A. If that's what it says, that's what it
10 is.

11 MR. PHILLIPS: Okay. I have nothing
12 further at this time.

13 MS. PAIK: Do you want to take a break?

14 MR. PHILLIPS: Sure.

15 (A recess was taken.)

16 MS. PAIK: Mr. Mantis, I'd like to
17 thank you for your time today. I have no further
18 questions.

19 (Deposition concluded at 4:14 p.m.)

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WITNESS ERRATA SHEET

Case Name: BRIGGS & STRATTON CORPORATION AND
 KOHLER COMPANY v. HONDA GIKEN KOGYO KABUSHIKI KAISHA

Deposition Date: August 28, 2015

Deponent: George Mantis

Page Line CORRECTION

8	12	Replace "and" with "in"
14	8	Replace "identification" with "classification"
15	12	Replace "testing" with "test"
16	21	Replace "SIC" with "SSI"
19	19	Replace "for" with "or"
21	7	Insert "and" between "organization," and "an"
26	17	Insert "were" between "individuals" and "shown"
28	16	Replace "air cleaner" with "carburetor cover"
29	7	Delete "In"
29	8	Insert "have" between "and" and "other"
30	21	Replace "portions" with "proportions"
33	5	Insert "it" between "Study," and "may"
33	25	Insert "3," between "Questions" and "4A"
34	2	Replace "2" with "3"
34	25	Insert "6" between "A." and "7A"
41	14	Replace "data" with "table"
45	18	Replace "portion" with "proportion"
48	4	Insert "and were counted toward secondary meaning," between "color" and "and"
48	25	Insert "that were counted toward secondary meaning," between "group," and "all"

49	12	Insert "into" between "take" and "consideration"
49	12	Delete "of"
51	5	Replace "confusion" with "association"
52	1	Insert "to" between "products," and "my"
57	17	Replace "or" with "and"
58	24	Replace "accounts" with "groups"
60	22	Replace "group" with "photo"
65	5	Replace "Application for" with "Applicant's"
65	7	Delete "for"
65	8	Delete "an"
68	21	Replace "confusion" with "association"
70	12	Replace "Document" with "Exhibit"
71	10	Insert "percent" between "9.7" and "associated"
71	21	Replace "a" with "the"
74	10	Delete " Honda with the"
74	13	Replace "survey noise" with "net association"
75	15	Insert "which" between "words," and "calls"
75	17	Replace "verbatims" with "verbatim"
77	12	Replace "are" with "is"
87	8	Insert "or" between "report" and "deposition"
94	9	Insert "is" between "referenced" and "that"
118	3	Replace "the claim" with "their mind"
139	14	Replace "to" with "from"
139	15	Insert "respondent" before "number"
142	12	Replace "in" with "as"

<u>155</u>	<u>7</u>	<u>Replace "know" with "think"</u>
<u>155</u>	<u>13</u>	<u>Replace "process" with "presence"</u>
<u>165</u>	<u>16</u>	<u>Replace "that" with "then"</u>
<u>171</u>	<u>24</u>	<u>Replace "or" with "for"</u>
<u>183</u>	<u>21</u>	<u>Insert "and Report" after "Questionnaire"</u>
<u>184</u>	<u>3</u>	<u>Insert "And Control" between "Test" and "Color"</u>
<u>184</u>	<u>7</u>	<u>Replace "Document" with "Exhibit"</u>

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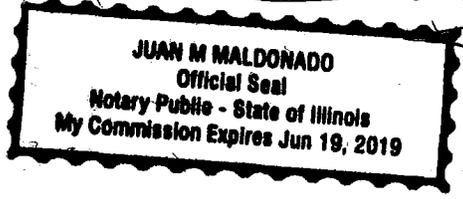
George Mantis

GEORGE MANTIS

Subscribed and sworn to before me

this 21st day of Sept., 2015.

Juan Maldonado



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C E R T I F I C A T E

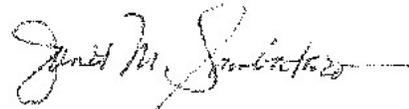
COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, SS.

I, Janet M. Sambataro, a Registered Merit Reporter and a Notary Public within and for the Commonwealth of Massachusetts do hereby certify:

THAT GEORGE MANTIS, the witness whose testimony is hereinbefore set forth, was duly sworn by me and that such testimony is a true and accurate record of my stenotype notes taken in the foregoing matter, to the best of my knowledge, skill and ability.

I further certify that I am not related to any parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of September, 2015.



JANET M. SAMBATARO
Notary Public

My Commission Expires:
July 16, 2021

1	I N D E X			
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12		Classification Codes		15
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14		Study No. 500		18
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Opposer Exhibit 29

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THE MANTIS GROUP, INC.

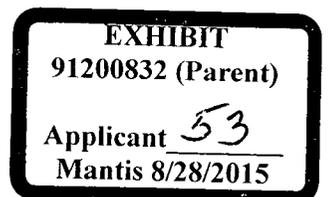
Formed in 1985, The Mantis Group, Inc. is a marketing research and consulting firm. The Mantis Group designs, executes and reports on surveys conducted for a wide variety of consumer and industrial product and service firms.

Mr. Mantis has over forty years of experience in marketing research design, execution and interpretation. Mr. Mantis began his career at Continental Illinois National Bank as a Marketing Officer responsible for meeting the Bank's corporate and fiduciary marketing information needs. Mr. Mantis also served as a Vice President of Market Facts, Inc. as the Manager of the firm's Financial and Legal Services Group.

Mr. Mantis received a Bachelor of Science in Economics from Carroll College, a Master of Business Administration from Indiana University, and a Juris Doctor from Illinois Institute of Technology – Chicago-Kent College of Law, and is a member of the Illinois Bar.

The Mantis Group, Inc. has conducted surveys designed to address a variety of business issues and has provided survey research for judicial and regulatory proceedings.

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CASES IN WHICH MR. MANTIS HAS TESTIFIED AS AN
EXPERT WITNESS IN THE PAST FIVE YEARS

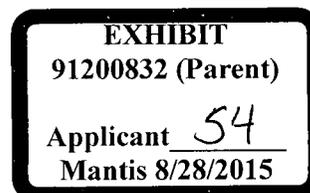
- 2007 LOUIS VUITTON MALLETIER, vs. DOONEY & BOURKE, INC., 04-CIV 5316 (RMB) (MHD) (United States District Court, Southern District of New York)
- 2007 7-ELEVEN, INC., Opposer, vs. MARD D. MORRISON, Applicant, Opposition No. 91154687 (United States Patent and Trademark Office Before the Trademark Trial and Appeal Board)
- 2007 In the Matter of ADJUSTMENT OF RATES AND TERMS FOR PREEXISTING SUBSCRIPTION SERVICES AND SATELLITE DIGITAL AUDIO RADIO SERVICES, Docket No. 2006-1 CRB DSTRA (Copyright Royalty Board Library of Congress)
- 2007 POWERTRAIN, INC, TOOL MART, INC., WOOD SALES COMPANY, INC., v, AMERICAN HONDA CO., INC., 1:03CV668MD (United States District Court for the Northern District of Mississippi)
- 2007 AMERICAN HONDA MOTOR CO., INC., v. THE PEP BOYS – MANNY, MOE & JACK, WEN PRODUCTS, INC. CHONGQUIG LIFAN INDUSTRY (GROUP) CO., LTD., AMERICAN LIFAN INDUSTRY, INC., JIANGSU JIANGDONG GROUP CO, LTD., and AMERICAN JD GROUP CO., LTD., Case No CV05-8879 (United States District Court, Central District of California, Western Division--Los Angeles)
- 2007 THE ARGUS RESEARCH GROUP, INC. AND ARGUS INVESTORS' COUNSEL, INC., vs. ARGUS MEDIA, INC. and ARGUS MEDIA LIMITED, Civil Action No. 3:06 CV1895 (MRK) (United States District Court for the District of Connecticut)
- 2007 THE FIRST NATIONAL BANK IN SIOUX FALLS, vs. FIRST NATIONAL BANK SOUTH DAKOTA, SPC INC., CV: 06-4101 LLP (United States District Court for the District of South Dakota, Southern Division)
- 2008 ANHEUSER-BUSCH, INCORPORATED v. VIP PRODUCTS, LLC, Case 4:08-cv-00358 (United States District Court, Eastern District of Missouri, Eastern Division)
- 2009 ROBERT L. GOLDMAN and CELS ENTERPRISES, INC. vs. L.C. LICENSING and LIZ CLAIBORNE, INC., Case No. CV-7-07619 (DSF) (United States District Court, Central District of California, Western Division)
- 2009 WALGREEN CO., vs. WYETH, No. 08-CV-5694 (United States District Court, Northern District of Illinois, Eastern Division)
- 2009 THE HERSHEY COMPANY and HERSHEY CHOCOLATE & CONFECTIONERY CORPORATION v. PROMOTION IN MOTION, INC., 07-CV-1601 (SDW) (MCA) (United States District Court for the District of New Jersey)
- 2010 NUTRO PRODUCTS, INC. v. SERGEANT'S PET CARE PRODUCTS, INC., Civil Action No. 3:09-cv-719 (United States District Court, Middle District of Tennessee, Nashville Division)
- 2010 UNITED STATES POLO ASSOCIATION, INC. and USPA PROPERTIES, INC. against PRL USA HOLDINGS, INC. and L'OREAL USA, INC., Civil Action No. 09-9476 (RWS) (United States District Court, Southern District of New York)
- 2010 NEUROVISION MEDICAL PRODUCTS, INC. v. NUVASIVE, INC., and DOES 1 through 10, inclusive, Case No. 2:09-cv-6988 R (JEMx) (United States District Court, Central District of California, Western Division)

- 2011 AMERICAN EXPRESS MARKETING & DEVELOPMENT CORP. and AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC. against BLACK CARD LLC 10 CIV 1605 (United States District Court, Southern District of New York)
- 2012 Frito-Lay North America, Inc., Opposer v. Princeton Vanguard, L.L.C., Opposition No 91195552, Cancellation No.92053001 (United States Patent and Trademark Office Before The Trademark Trial and Appeal Board)
- 2012 Gucci America, Inc., v. Guess, Inc., et al., Civil Action No. 09cv4373 (SAS) (United States District Court for the Southern District of New York)
- 2012 APPLE INC., v. SAMSUNG ELECTRONICS CO., LTD. Case No. 11-cv-01846-LHK (United States District Court, Northern District of California, San Jose Division)

STANDARD INDUSTRIAL CLASSIFICATION CODES

	TEST GROUP Honda Engine	CONTROL GROUP Briggs & Stratton Engine
EQUIPMENT PURCHASERS/ RENTERS		
Single Family Housing Construction (1521)	37	21
Residential construction, Nec (1522)	5	5
Operative Builders (1531)	1	--
Residential and Commercial Painting (1721)	1	1
Masonry and Other Stone Work (1741)	2	1
Carpentry Work (1751)	1	--
Roofing Siding and Sheet Metal Work (1761)	1	3
Concrete Work (1771)	1	2
Structural Steel Erection (1791)	1	--
RENTAL YARDS		
Equipment Rental (7359)	79	38
OEM's		
Blowers and vacuums, lawn (3524)	1	--
Air and Gas Compressors (3563)	4	3
RETAIL TRADE		
General Construction Machinery and Equipment (5082)	1	2
Farm and Garden Machinery (5083)	1	1

A17



Industrial Machinery and Equipment (5084)	3	3
Lumber and Other Building Materials (5211)	6	2
Hardware Stores (5251)	20	3
Lawn and Garden Equipment (5261)	9	8
Motorcycle Dealers (5571)	4	2
Farm Equipment Supplies (5999)	4	--
WHOLESALE TRADE		
Generators (5063)	7	6
Recreation Vehicles (5012)		

OEM'S
Screener 1

INTERVIEWER'S SIGNATURE: _____ DATE: _____

Print Name: _____

IF A CONTACT NAME IS LISTED ON SAMPLE

Hello. May I please speak to (INDIVIDUAL LISTED ON THE SAMPLE)

IF SPEAKING, GO TO INTRODUCTION.

IF TRANSFERRED, ASK: Is this (INDIVIDUAL LISTED ON THE SAMPLE)?

IF NOT AVAILABLE, ASK: When would be a good time to callback to speak to (INDIVIDUAL LISTED ON SAMPLE)?

IF NO CONTACT NAME LISTED ON SAMPLE

May I speak to an individual in your organization who is involved in purchasing small gasoline-powered engines.

When you reach the potential respondent, GO TO INTRODUCTION.

INTRODUCTION:

My name is ___ from ___, an independent marketing research firm. We are not a sales organization. We are conducting a nationwide study about small gasoline-powered engines and would like to include your opinions.

I need to ask you a few questions to see if you qualify for the study.

S1. Does your organization purchase any horizontal shaft gasoline-powered engines, ranging from 4 to 13 horsepower, for use in the products you manufacture?

- Yes..... 1 (GO TO S2)
- No..... 2 (TERMINATE)
- Don't know..... 3 (ASK TO SPEAK TO SOMEONE WHO CAN ANSWER THE QUESTION AND BEGIN AT INTRODUCTION)

S2. Are you responsible for or share responsibility for decisions regarding which brands of horizontal shaft gasoline-powered engines, ranging from 4 to 13 horsepower, your organization purchases for use in the products you manufacture?

- Yes..... 1 (GO TO S5)
- No, someone else makes.... 2 (ASK QUESTION S3)
these decisions
- Don't know..... 3 (ASK QUESTION S3)

A1



S3. Who in your organization is responsible for decisions regarding which brands of these engines you purchase?

_____ (Ask to speak to this individual and ask S4)

(If not available, record call back date and time)

CALLBACK: Date _____ Time _____ Phone (____) _____.

S4. We are conducting a nationwide study about small gasoline-powered engines. I understand that you are responsible for or share responsibility for decisions regarding which brands of horizontal shaft gasoline-powered engines, ranging from 4 to 13 horsepower, your organization purchases for use in the products you manufacture? Is that correct?

- Yes..... 1
- No, someone else makes..... 2 (Go back to S3)
these decisions
- Don't know..... 3 (Go back to S3)

S5. Does any member of your household work for any of the following types of companies? (READ)

NO YES

An advertising agency, sales promotion firm, public relations firm or marketing research organization? 1 2 **(TERMINATE)**

A company that makes, distributes or sells gasoline-powered engines? 1 2 **(TERMINATE)**

S6. In the past thirty days, have you participated in a marketing research survey other than a political poll?

- Yes..... 1 **(TERMINATE)** No..... 2

S7. For this survey I need to show you something. Do you have access to the Internet, that is, can you go on the Web where you are right now and while we are on the telephone?

- Yes..... 1 (GO TO QUESTIONNAIRE)
- No..... 2 (GO TO S8)

S8. Do you have access to the Internet at a different location where I can call you to conduct the interview?

- Yes..... 1 (GO TO S9)
- No..... 2 **(TERMINATE)**

S9. When can we schedule a time when you will have access to the Internet at that location?

Number (____) _____ Date _____ Time _____ AM/PM

RESPONDENT NAME: _____

We will call you at that time.

THE MANTIS GROUP

STUDY NO 500

Rental Yard and Equipment Purchaser/Renter
Screener 2

INTERVIEWER'S SIGNATURE: _____ DATE: _____

Print Name: _____

IF A CONTACT NAME IS LISTED ON SAMPLE

Hello. May I please speak to (INDIVIDUAL LISTED ON THE SAMPLE.)

IF SPEAKING, GO TO INTRODUCTION.

IF TRANSFERRED, ASK: Is this (INDIVIDUAL LISTED ON THE SAMPLE)?

IF NOT AVAILABLE, ASK: When would be a good time to callback to speak to (INDIVIDUAL LISTED ON SAMPLE)?

IF NO CONTACT NAME LISTED ON SAMPLE

May I speak to an individual in your organization who is involved in purchasing or renting equipment such as air compressors, power generators, pressure washers, concrete saws, and water pumps.

When you reach the potential respondent, GO TO INTRODUCTION.

INTRODUCTION:

My name is ___ from ___, an independent marketing research firm. We are not a sales organization. We are conducting a nationwide study about small gasoline-powered engines used on equipment such as air compressors, power generators, pressure washers, concrete saws, and water pumps.

I need to ask you a few questions to see if you qualify for the study.

S1. Does your organization purchase or rent any products that have horizontal shaft gasoline-powered engines, ranging from 4 to 13 horsepower, and/or purchase replacement engines for these products?

Yes..... 1 (GO TO S2)

No..... 2 (TERMINATE)

Don't know..... 3 (ASK TO SPEAK TO SOMEONE WHO CAN ANSWER THE QUESTION AND BEGIN AT INTRODUCTION)

S2. Are you responsible for or share responsibility for decisions regarding which brands of products containing horizontal shaft gasoline-powered engines, ranging from 4 to 13 horsepower, or which brands of replacement engines for such products your organization rents or purchases?

Yes..... 1 (GO TO S5)

No, someone else makes.... 2 (ASK QUESTION S3)
these decisions

Don't know..... 3 (ASK QUESTION S3)

S3. Who in your organization is responsible for decisions regarding which brands of these products or brands of replacement engines for these products you rent or purchase?

_____ (Ask to speak to this individual and ask S4)

(If not available, record call back date and time)

CALLBACK: Date_____Time_____Phone (____)_____.

S4. We are conducting a nationwide study about small gasoline-powered engines. I understand that you are responsible for or share responsibility for decisions regarding which brands of products containing horizontal shaft gasoline-powered engines, ranging from 4 to 13 horsepower, or which brands of replacement engines for such products your organization rents or purchases. Is that correct?

- Yes..... 1
- No, someone else makes..... 2 (Go back to S3)
these decisions
- Don't know..... 3 (Go back to S3)

S5. Does any member of your household work for any of the following types of companies? (READ)

NO YES

An advertising agency, sales promotion firm, public relations firm or marketing research organization? 1 2 (TERMINATE)

A company that makes, distributes or sells gasoline-powered engines? 1 2 (TERMINATE)

S6. In the past thirty days, have you participated in a marketing research survey other than a political poll?

- Yes..... 1 (TERMINATE)
- No..... 2

S7. For this survey I need to show you something. Do you have access to the Internet, that is, can you go on the Web where you are right now and while we are on the telephone?

- Yes..... 1 (GO TO QUESTIONNAIRE)
- No..... 2 (GO TO S8)

S8. Do you have access to the Internet at a different location where I can call you to conduct the interview?

- Yes..... 1 (GO TO S9)
- No..... 2 (TERMINATE)

S9. When can we schedule a time when you will have access to the Internet at that location?

Number (____)_____ Date_____Time_____AM/PM

RESPONDENT NAME:_____

We will call you at that time.

Retail/Wholesale Trade
Screener 3

INTERVIEWER'S SIGNATURE: _____ DATE: _____

IF A CONTACT NAME IS LISTED ON SAMPLE

Hello. May I please speak to (INDIVIDUAL LISTED ON THE SAMPLE.)

IF SPEAKING, GO TO INTRODUCTION.

IF TRANSFERRED, ASK: Is this (INDIVIDUAL LISTED ON THE SAMPLE)?

IF NOT AVAILABLE, ASK: When would be a good time to callback to speak to (INDIVIDUAL LISTED ON SAMPLE)?

IF NO CONTACT NAME LISTED ON SAMPLE

May I speak to an individual in your organization who is involved in purchasing equipment such as air compressors, power generators, pressure washers, concrete saws, and water pumps.

When you reach the potential respondent, GO TO INTRODUCTION.

INTRODUCTION:

My name is ___from___, an independent marketing research firm. We are not a sales organization. We are conducting a nationwide study about small gasoline-powered engines and equipment such as air compressors, power generators, pressure washers, concrete saws, and water pumps.

I need to ask you a few questions to see if you qualify for the study.

S1. Does your organization purchase any products that have horizontal shaft gasoline-powered engines, ranging from 4 to 13 horsepower?

- Yes..... 1 (GO TO S2)
- No..... 2 (TERMINATE)
- Don't know..... 3 (ASK TO SPEAK TO SOMEONE WHO CAN ANSWER THE QUESTION AND BEGIN AT INTRODUCTION)

S2. Are you responsible for or share responsibility for decisions regarding which brands of products containing horizontal shaft gasoline-powered engines, ranging from 4 to 13 horsepower, your organization purchases?

- Yes..... 1 (GO TO S5)
- No, someone else makes.... 2 (ASK QUESTION S3)
these decisions
- Don't know..... 3 (ASK QUESTION S3)

S3. Who in your organization is responsible for decisions regarding which brands of these products you purchase?

_____ (Ask to speak to this individual and ask S4)

(If not available, record call back date and time)

CALLBACK: Date _____ Time _____ Phone (____) _____.

S4. We are conducting a nationwide study about small gasoline-powered engines. I understand that you are responsible for or share responsibility for decisions regarding which brands of products containing horizontal shaft gasoline-powered engines, ranging from 4 to 13 horsepower, your organization purchases. Is that correct?

- Yes..... 1
- No, someone else makes..... 2 (Go back to S3)
these decisions
- Don't know..... 3 (Go back to S3)

S5. Does any member of your household work for any of the following types of companies? (READ)

	NO	YES	
An advertising agency, sales promotion firm, public relations firm or marketing research organization?	1	2	(TERMINATE)
A company that makes, distributes or sells gasoline-powered engines?	1	2	(TERMINATE)

S6. In the past thirty days, have you participated in a marketing research survey other than a political poll?

- Yes..... 1 (TERMINATE)
- No..... 2

S7. For this survey I need to show you something. Do you have access to the Internet, that is, can you go on the Web where you are right now and while we are on the telephone?

- Yes..... 1 (GO TO QUESTIONNAIRE)
- No..... 2 (GO TO S8)

S8. Do you have access to the Internet at a different location where I can call you to conduct the interview?

- Yes..... 1 (GO TO S9)
- No..... 2 (TERMINATE)

S9. When can we schedule a time when you will have access to the Internet at that location?

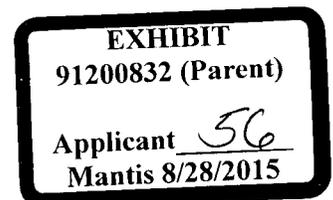
Number (____) _____ Date _____ Time _____ AM/PM

RESPONDENT NAME: _____

We will call you at that time.

SAMPLE COMPOSTION

	TEST GROUP Honda Engine	CONTROL GROUP Briggs & Stratton Engine
Equipment Purchasers/Renters	50 26.5	33 32.7
Rental Yard	79 41.8	38 37.6
OEM's	5 2.6	3 3.0
Retail Trade	48 25.4	21 20.8
Wholesale Trade	7 3.7	6 5.9
RESPONDENTS	189 100.0%	101 100.0%



INTERVIEWER INSTRUCTIONS

OVERVIEW

The purpose of this study is to learn about individuals' reactions to an engine.

It is imperative that you closely follow these instructions as well as those on the Questionnaire. Each question must be asked verbatim without any variation whatsoever. Additionally, each answer to all open-ended questions must be recorded verbatim in a Respondent's own words. Should you deviate from these instructions, your work will be unacceptable and invalid.

INTERVIEWING GUIDELINES

1. Read all questions verbatim and record answers verbatim to open-ended questions. No paraphrasing is allowed. Be sure you record every word to a response exactly as it is spoken.
2. On any question a Respondent seems unsure of, simply repeat the question exactly as written, without helping or prompting in any way. Repeat a question no more than two (2) times after you initially asked the question. Use (RQ) in the response space to show us that you repeated the question.
3. Your manner must be entirely neutral. Most people will let you know when they are through answering a question and when you can move on to the next question. Do not rush Respondents.
4. Please ask Respondents to spell any names or words given which are not exactly clear to you. Do not guess or assume the correct spelling of any word.
5. Do not talk to or distract a Respondent in any way while he/she is thinking about or considering a response to a question.
6. Never go back and repeat or re-ask a previous question once you have asked a later question. This holds true even if a respondent requests that you do so.

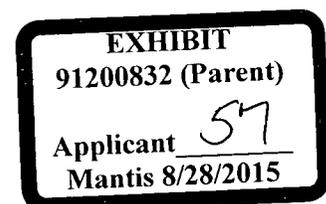
SCREENERS

Screeners 1 corresponds to SEGMENT 3 identification on the sample provided.
Screeners 2 corresponds to SEGMENT 1 and SEGMENT 2 identification on the sample provided.
Screeners 3 corresponds to SEGMENT 4 and SEGMENT 5 identification on the sample provided.

ASK TO SPEAK TO THE INDIVIDUAL LISTED ON THE SAMPLE OR TO THE INDIVIDUAL WITH THE RESPONSIBILITY DESCRIBED ON THE SPECIFIC SCREENER.

READ INTRODUCTION VERBATIM.

- S1. Ask Question S1 verbatim and circle response given. If "yes," go to Question S2. If "no", TERMINATE. If "don't know", ask to speak to another individual and begin at Introduction.
- S2. Ask Question S2 verbatim and circle response given. If "no or "don't know," go to S3 and S4 and follow instructions provided.
- S3. Ask Questions S4-S8 verbatim and circle responses given. TERMINATE where indicated. Ask S9 if respondent would like to schedule another time to conduct the interview.



QUESTIONNAIRE

READ INTRODUCTORY MATERIAL VERBATIM.

Ask respondent to access www.worldwidewebsurvey.com for Questionnaire Versions 1 and 2 or www.worldwidewebstudy.com for Questionnaire Versions 3 and 4.

1. Ask Question 1 verbatim and circle response given. If Respondent says "no" or "Don't Know", skip to END.
2. Question 2 is asked of Respondents who said "yes" to Question 1. Ask Question 2 verbatim and circle response given. If the Respondent says "more than one," skip to Question 6. If "Don't Know" response is given, skip to END.
3. Question 3 is asked of Respondents who said "only one company," in response to Question 2. Ask Question 3 verbatim and record response verbatim. If "Don't Know," skip to Question 5a
4. Questions 4a and 4b are asked of Respondents gave a response other than "don't know," to Question 3. When asking Question 4a, you must read and record the response given in Question 3. Ask these questions verbatim and record responses verbatim. Write in parentheses (w/m) before recording the response to "What do you mean by that?" to indicate that you asked this clarification question.
5. Questions 5a and 5b are asked of Respondents who said "don't know," to Question 3. Ask these questions verbatim and record responses verbatim. Write in parentheses (w/m) before recording the response to "What do you mean by that?" to indicate that you asked this clarification question.
6. Question 6 is asked of Respondents who said "more than one company," in response to Question 2. Ask Question 6 verbatim and record responses verbatim.
7. Questions 7a and 7b are asked of the first response given in Question 6. When asking Question 7a, you must read and record the response given in Question 6. Ask these questions verbatim and record responses verbatim. Write in parentheses (w/m) before recording the response to "What do you mean by that?" to indicate that you asked this clarification question.
8. If a second, or third response is given in Question 6, continue the above procedure with Question 8a, 8b, etc.

RECORD THE SIC CODE FROM THE SAMPLE and SIGN THE QUESTIONNAIRE

OTHER REQUIREMENTS

No erasures are permitted on the Questionnaire. If you must make a correction, line out the incorrect information and initial it.

You will not be permitted to use the traditional #2 black lead pencil in recording responses to the Questionnaire questions. Instead, we require that you use black ink medium point pens.

Thank you in advance for your attention to detail and quality on this study.

I hereby state that I have read these instructions and those contained on the Questionnaire.

NAME _____
(Please Print)

SIGNATURE _____

DATE _____

QUESTIONNAIRE

Also, if you usually wear glasses when using your computer, please put them on now.

Now, I would like you to access a website. The website is www.worldwidewebsurvey.com

Shown on your screen is a black and white photograph of an engine.

Before I ask you a few questions, please take a moment to look at this engine and then let me know when you are done.

(READ AFTER RESPONDENT INDICATES HE/SHE IS DONE) Now I would like to ask you a few questions. For each of my questions, if you don't know or don't have an answer, just tell me so and we'll go on to the next question.

1. Do you associate the engine shown on your screen with any particular company or companies that make engines?

- Yes..... 1 (ASK QUESTION 2)
- No..... 2 (SKIP TO END)
- Don't know..... 3 (SKIP TO END)

2. Do you associate the engine shown on your screen with only one company OR with more than one company that make engines?

- Only one company..... 1 (ASK QUESTION 3)
- More than one company.... 2 (SKIP TO QUESTION 6)
- Don't know..... 3 (SKIP TO END)

3. With which company that makes engines do you associate the engine shown on your screen? (RECORD VERBATIM. DO NOT PROBE OR CLARIFY.)

(IF DON'T KNOW, SKIP TO QUESTION 5a)



QUESTIONNAIRE

Also, if you usually wear glasses when using your computer, please put them on now.

Now, I would like you to access a website. The website is www.worldwidewebsurvey.com

Shown on your screen is a black and white photograph of an engine.

Before I ask you a few questions, please take a moment to look at this engine and then let me know when you are done.

(READ AFTER RESPONDENT INDICATES HE/SHE IS DONE) Now I would like to ask you a few questions. For each of my questions, if you don't know or don't have an answer, just tell me so and we'll go on to the next question.

1. Do you associate the engine shown on your screen with any particular company or companies that make engines?

- Yes..... 1 (ASK QUESTION 2)
- No..... 2 (SKIP TO END)
- Don't know..... 3 (SKIP TO END)

2. Do you associate the engine shown on your screen with more than one company OR with only one company that makes engines?

- Only one company..... 1 (ASK QUESTION 3)
- More than one company.... 2 (SKIP TO QUESTION 6)
- Don't know..... 3 (SKIP TO END)

3. With which company that makes engines do you associate the engine shown on your screen? (RECORD VERBATIM. DO NOT PROBE OR CLARIFY.)

(IF DON'T KNOW, SKIP TO QUESTION 5a)

QUESTIONNAIRE

Also, if you usually wear glasses when using your computer, please put them on now.

Now, I would like you to access a website. The website is www.worldwidewebstudy.com

Shown on your screen is a black and white photograph of an engine.

Before I ask you a few questions, please take a moment to look at this engine and then let me know when you are done.

(READ AFTER RESPONDENT INDICATES HE/SHE IS DONE) Now I would like to ask you a few questions. For each of my questions, if you don't know or don't have an answer, just tell me so and we'll go on to the next question.

1. Do you associate the engine shown on your screen with any particular company or companies that make engines?

- Yes..... 1 (ASK QUESTION 2)
- No..... 2 (SKIP TO END)
- Don't know..... 3 (SKIP TO END)

2. Do you associate the engine shown on your screen with only one company OR with more than one company that make engines?

- Only one company..... 1 (ASK QUESTION 3)
- More than one company.... 2 (SKIP TO QUESTION 6)
- Don't know..... 3 (SKIP TO END)

3. With which company that makes engines do you associate the engine shown on your screen? (RECORD VERBATIM. DO NOT PROBE OR CLARIFY.)

(IF DON'T KNOW, SKIP TO QUESTION 5a)

QUESTIONNAIRE

Also, if you usually wear glasses when using your computer, please put them on now.

Now, I would like you to access a website. The website is www.worldwidewebstudy.com

Shown on your screen is a black and white photograph of an engine.

Before I ask you a few questions, please take a moment to look at this engine and then let me know when you are done.

(READ AFTER RESPONDENT INDICATES HE/SHE IS DONE) Now I would like to ask you a few questions. For each of my questions, if you don't know or don't have an answer, just tell me so and we'll go on to the next question.

1. Do you associate the engine shown on your screen with any particular company or companies that make engines?

- Yes..... 1 (ASK QUESTION 2)
- No..... 2 (SKIP TO END)
- Don't know..... 3 (SKIP TO END)

2. Do you associate the engine shown on your screen with more than one company OR only one company that makes engines?

- Only one company..... 1 (ASK QUESTION 3)
- More than one company.... 2 (SKIP TO QUESTION 6)
- Don't know..... 3 (SKIP TO END)

3. With which company that makes engines do you associate the engine shown on your screen? (RECORD VERBATIM. DO NOT PROBE OR CLARIFY.)

(IF DON'T KNOW, SKIP TO QUESTION 5a)

- 4a. What makes you associate this engine with (READ AND RECORD RESPONSE TO QUESTION 3 _____ ? (RECORD VERBATIM. CLARIFY BY ASKING: "What do you mean by that?" ASK ONLY ONCE. RECORD VERBATIM)

- 4b. Anything else? (ASK ONLY ONCE. RECORD VERBATIM. CLARIFY BY ASKING "What do you mean by that?" ASK ONLY ONCE. RECORD VERBATIM)

(SKIP TO END)

- 5a. What makes you associate this engine with only one company that makes engines? (RECORD VERBATIM. CLARIFY BY ASKING: "What do you mean by that?" ASK ONLY ONCE. RECORD VERBATIM)

5b. Anything else? (ASK ONLY ONCE. RECORD VERBATIM. CLARIFY BY ASKING "What do you mean by that?" ASK ONLY ONCE. RECORD VERBATIM)

(SKIP TO END)

6. With which companies that make engines do you associate the engine shown on your screen? (RECORD VERBATIM. DO NOT PROBE OR CLARIFY.)

- a. First Response: _____
- b. Second Response: _____
- c. Third Response: _____

(IF RESPONDENT SAYS "DON'T KNOW" OR "NONE", RECORD IN FIRST LINE ABOVE AND SKIP TO END)

7a. What makes you associate this engine with (READ AND RECORD FIRST Response _____)? (RECORD VERBATIM. CLARIFY BY ASKING: "What do you mean by that?" ASK ONLY ONCE. RECORD VERBATIM)

7b. Anything else? (ASK ONLY ONCE. RECORD VERBATIM. CLARIFY BY ASKING: "What do you mean by that?" ASK ONLY ONCE. RECORD VERBATIM)

8a. What makes you associate this engine with (READ AND RECORD SECOND Response _____)? (RECORD VERBATIM. CLARIFY BY ASKING: "What do you mean by that?" ASK ONLY ONCE. RECORD VERBATIM)

8b. Anything else? (ASK ONLY ONCE. RECORD VERBATIM. CLARIFY BY ASKING: "What do you mean by that?" ASK ONLY ONCE. RECORD VERBATIM)

9a. What makes you associate this engine with (READ AND RECORD THIRD Response _____)? (RECORD VERBATIM. CLARIFY BY ASKING: "What do you mean by that?" ASK ONLY ONCE. RECORD VERBATIM)

9b. Anything else? (ASK ONLY ONCE. RECORD VERBATIM. CLARIFY BY ASKING: "What do you mean by that?" ASK ONLY ONCE. RECORD VERBATIM)

I hereby state that the information contained on the screener and questionnaire is an accurate record of this respondent's comments as they were given to me.

INTERVIEWER'S SIGNATURE _____

Print Name _____

RECORD SIC CODE FROM SAMPLE _____

Thank you very much for your help.

Now, I need to record your complete name, address, and telephone number to verify my interview. We must prove that our research is valid.

NAME: _____

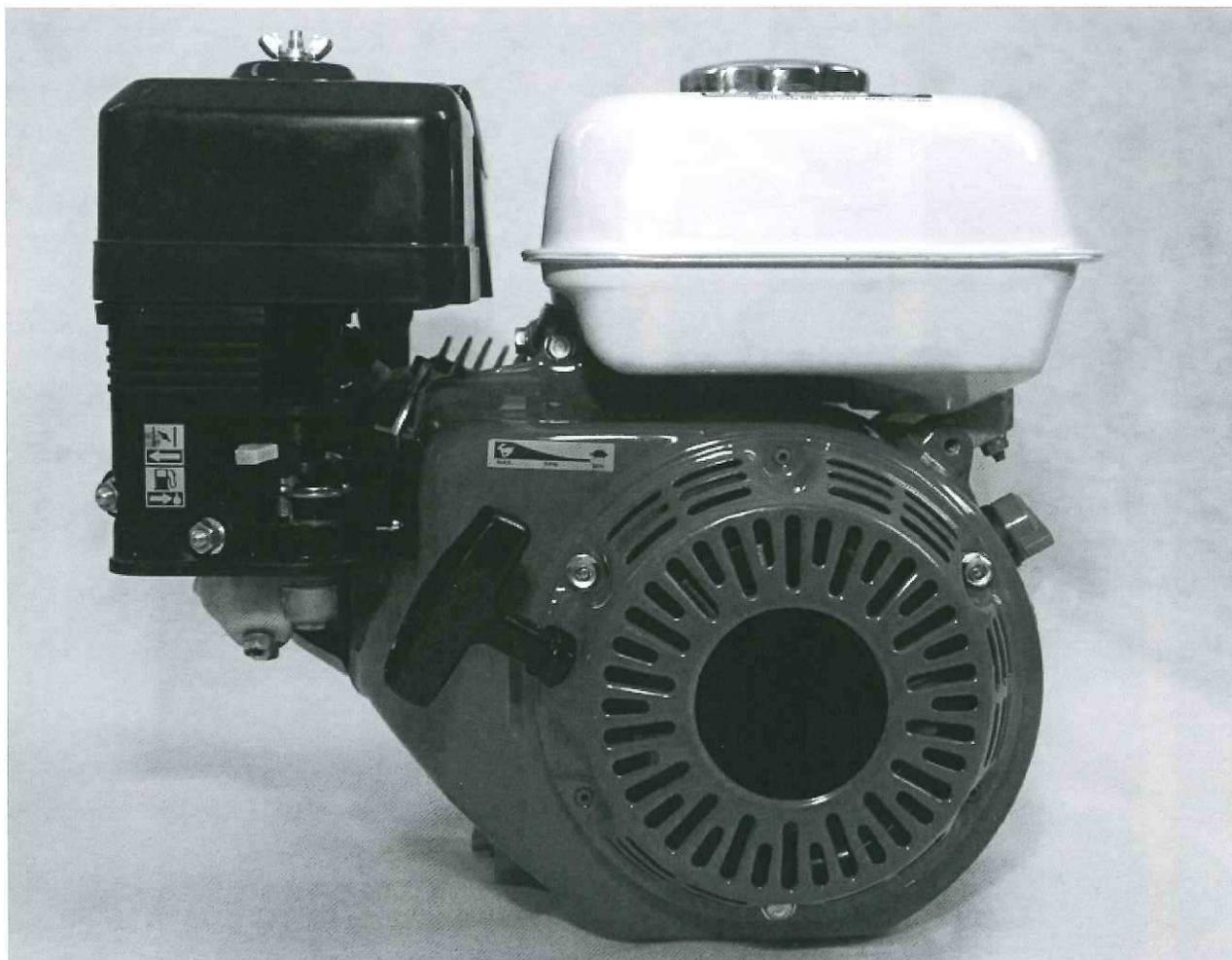
COMPANY: _____

STREET _____

CITY: _____ STATE: _____ ZIP _____

PHONE (____) _____

TEST ENGINE



A26

EXHIBIT
91200832 (Parent)
Applicant 59
Mantis 8/28/2015

CONTROL ENGINE



A27

EXHIBIT
91200832 (Parent)
Applicant GO
Mantis 8/28/2015

VALIDATION QUESTIONNAIRE

Good morning (afternoon, evening). I'm (INTERVIEWER) from (COMPANY). We have been asked to verify that you recently participated in a marketing research study.

1. Did you recently participate in a telephone survey where you were asked to access a website to look at a photograph of a gasoline-powered engine?

Yes..... (RECORD VALIDATED).
(Thank Respondent)

No..... (ASK QUESTION 2)

Don't recall..... (ASK QUESTION 2)

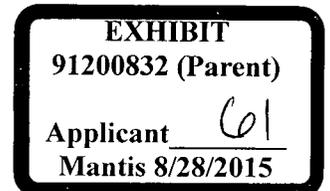
2. The people who participated in the study were asked whether they associated the engine shown in the photograph with any particular company or companies that make engines. Do you recall that interview?

Yes..... (RECORD VALIDATED).
(Thank Respondent)

No..... (RECORD "No")
(Thank Respondent)

Don't know..... (RECORD "Don't Know")
(Thank Respondent)

THANK YOU VERY MUCH FOR YOUR ASSISTANCE.





Sep. 25, 2012

George Mantis
The Mantis Group
2032 North Kenmore
Chicago IL 60614

RE: The validation results of the Small Engine Study.

The dispositions of the 291 respondent names you provided for validation are broken down as follows:

- 219 Successfully reach and validated
 - 2 Wrong number/No such person
 - 1 Disconnected/Dead number
 - 61 Unresolved number
 - 0 Business/Gvmt
 - 0 Fax
 - 0 No number listed
 - 1 Invalid due to Q2 not recalling the interview
 - 7 Initial Refusal
 - 0 Language Barrier
 - 0 Privacy manager
-
- 220 Overall completed (valid and invalid)

Sincerely,

Nanette Vaughan
Information Alliance

TABLE 1

Question 1: "Do you associate the engine shown on your screen with any particular company or companies that make engines?"

	TEST GROUP Honda Engine	CONTROL GROUP Briggs & Stratton Engine
Yes	154 81.5	70 69.3
No	35 18.5	31 30.7
Don't know	--	--
RESPONDENTS	189 100.0%	101 100.0%

TABLE 2

Question 2 "Do you associate the engine shown on your screen with only one company OR with more than one company that make engines? (Questionnaire Versions 1 and 3)

Question 2 Do you associate the engine shown on your screen with more than one company OR only one company that makes engines? (Questionnaire Versions 2 and 4)

	TEST GROUP Honda Engine	CONTROL GROUP Briggs & Stratton Engine
Only one company	98 51.9	51 50.5
More than one company	56 29.6	18 17.8
Don't know	--	1 1.0
Question Not Asked	35 18.5	31 30.7
RESPONDENTS	189 100.0%	101 100.0%

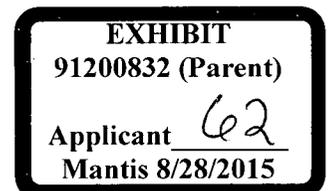


TABLE 3

- Question 3 "With which company that makes engines do you associate the engine shown on your screen?"
- Question 6 "With which companies that make engines do you associate the engine shown on your screen?"

	TEST GROUP Honda Engine	CONTROL GROUP Briggs & Stratton Engine
DESIGN ASSOCIATED WITH HONDA AS THE SINGLE SOURCE	100 52.9	9 8.9
Honda	80	9
Honda and Chinese copy/Honda and a knock-off/Honda and those that copy Honda/Honda and a Honda copy	13	--
Honda and Lifan, a carbon copy of Honda	2	--
Honda and Tonda, a copy of Honda	1	--
Honda and Yamakogo , a Honda knock-off	1	--
Honda or Que, a Honda knock-off	1	--
Honda or Subaru, a knock-off version of Honda	1	--
Honda and aftermarket Honda look-a-like	1	--
DESIGN MAYBE ASSOCIATED WITH HONDA AS THE SINGLE SOURCE	3 1.6	--
Honda or Briggs	3	--
DESIGN ASSOCIATED WITH HONDA AND ANOTHER SOURCE	31 16.4	5 5.0
Honda and Briggs & Stratton	8	2
Honda and Subaru	5	1

TABLE 3
(Continued)

	TEST GROUP Honda Engine	CONTROL GROUP Briggs & Stratton Engine
Honda Tecumseh and Briggs & Stratton	3	--
Honda and Yamakoyo/Honda, Yamakoyo and Titan	2	--
Honda, Briggs & Stratton and Kohler	1	1
Honda, don't know what the other is called	2	--
Honda and Tecumseh	2	1
Honda and Blue Max	1	--
Honda and Compactor engine	1	--
Honda and Kohler	1	--
Honda and Suzuki	1	--
Honda, Briggs & Stratton, Kawasaki and Champion	1	
Honda, Yamar and Champion	1	--
Honda and Powerhouse or Powerhorse	1	--
Honda, LCR and Subaru	1	--
DESIGN ASSOCIATED WITH OTHER SOURCES	20 10.6	55 54.5
Briggs & Stratton	7	32
Briggs & Stratton and/or Tecumseh	1	5
Tecumseh	2	1
Briggs & Stratton and Kohler	1	2
Mi-T/MT or MIT	1	1
Subaru	--	2

TABLE 3
(Continued)

	TEST GROUP Honda Engine	CONTROL GROUP Briggs & Stratton Engine
Barber Engineering, Lowes and Home Depot	1	--
Briggs & Stratton and an off-brand	--	1
Briggs & Stratton and Bosch	--	1
Briggs & Stratton and C & M	1	--
Briggs & Stratton and LCT engines	--	1
Briggs & Stratton and Kawasaki	--	1
Briggs & Stratton and Subaru	--	1
Chinese engine, don't know brand	1	--
Diamond and Lion	1	--
Engine from Harbor Freight & Salvage	1	--
John Deere and MTM	--	1
Kohler and a Japanese company	--	1
Kohler and Kawasaki	--	1
Kohler	--	1
Lifan	--	1
Pesuseh	--	1
Steins and Marshall	1	--
Not Honda	--	1
The company that makes my trimmers	1	--
Genie, Multiquip and Ditch Witch	1	--
QUESTION NOT ASKED	35 18.5	32 31.7
RESPONDENTS	189 100.0%	101 100.0%

TABLE 4
TEST GROUP
HONDA ENGINE

DESIGN ASSOCIATED WITH HONDA AS THE SINGLE SOURCE (100 Respondents)

005

- 1 Yes.
- 2 Only one company.
- 3 A Honda.
- 4a Certain features as where pull chain is located, on-off switch. The cover for the coil, the gas tank and the shape of the air filter. (w/m) It looks very similar to the one that's on my portable generator and that's a Honda.
- 4b The gas tank is similar shape. (w/m) It looks similar to the one on my Honda.

011

- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a I've had Honda engines long enough to know that it's a Honda engine. If it's not a Honda engine, it's a clone. (w/m) Well a clone or knock-off is somebody who is trying to replicate the Honda.
- 4b No.

014

- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a It looks like the Honda engine type. (w/m) That's all I mean by that, it looks like it.
- 4b No, that's it.

015

- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a Just the way it looks. It's what we have that powers all our small rental equipment. (w/m) I see them every day. That's what we use, that particular engine manufacturer, Honda.
- 4b Nope.

018

- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a Just extremely familiar with them. We work with them all the time. That looks to be a 5.5 horse or a GX160. (w/m) Just the model number.
- 4b That's it.

019

- 1 Yes.
- 2 More than one company.
- 6a Honda.
- 6b And, then there's an aftermarket like Honda. I don't know the name of.

- 7a (Honda) Just the appearance. (w/m) Just how it looks.
 7b No.
 8a (After market) I've seen other motors that look just like this one but they're not Honda.
 (w/m) That's what I mean, they're just a look alike.
 8b No.
- 020
 1 Yes.
 2 Only one company.
 3 Honda.
 4a Location of kill switch, location of fuel cutoff and choke and location of air box cleaner, air
 box cover. (w/m) Just the accessibility of cover.
 4b Nope.
- 021
 1 Yes.
 2 Only one company.
 3 Honda.
 4a It looks just like a Honda. (w/m) Well it's shaped like it, all colored and same
 components. We have a bunch in the back.
 4b That's all.
- 022
 1 Yes.
 2 More than one company.
 6a Oh, well it's definitely a Honda.
 6b There's a Chinese copy, but I couldn't tell you the name.
 7a (Honda) That's cause it's a Honda design, honey. They're that design. (w/m) Well they
 built this motor. They built it, they have a patent. The Chinese are starting to copy.
 7b No.
 8a (Chinese copy) The Chinese built one just like it. They copied it. (w/m) What do you
 mean, what do I mean? If they build a Chevy and it's not a Chevy, then it's a copy.
 8b No.
- 023
 1 Yes.
 2 More than one company.
 6a Either Honda or
 6b Subaru.
 7a (Honda) The way it looks. (w/m) The shape of it. The way it lines up, the shape of it.
 7b No.
 8a (Subaru) The same thing. The way it looks, the shape of the motor. It's a knock-off.
 (w/m) We buy a lot of engines so we know what they look like. It looks like a knock-off
 version of Honda.
 8b No, that's it.
- 024
 1 Yes.
 2 Only one company.
 3 Honda.
 4a Because it looks like the 50 Honda engines I have at my store. The choke is in the same
 position, the gas is in the same position and the shut off switch is in the same position.
 Gas tank has the same design. Rewind design the same and the air cleaner with the
 exception of bolts.
 4b Isn't that enough?

- 025
- 1 Yes.
 - 2 Only one company.
 - 3 A Honda.
 - 4a It looks like a Honda engine. (w/m) I don't know, it looks the way Honda engines look. It has all the same features, the same graphics, kill switch and the gas tank.
 - 4b No. I don't know. I just recognize it as a Honda engine.
- 026
- 1 Yes.
 - 2 Only one company.
 - 3 Honda.
 - 4a The white metal fuel tank in particular. (w/m) Well it's just a white metal fuel tank. Most of them use plastic tanks. Like if it was another, it would be plastic like Kawasaki.
 - 4b No, that's it primarily.
- 027
- 1 Yes.
 - 2 More than one company.
 - 6a Honda.
 - 6b Chinese knock-off company I believe.
 - 7a (Honda) It looks just like a Honda motor. (w/m) The picture in black and white, it looks like I seen thousands of them. I probably start five or ten of them. A lot of the equipment we have, Honda motors on it.
 - 7b I think that's it.
 - 8a (Chinese knock off) Because I've seen those motors too. (w/m) There's been sales people who brought them there and tried to sell to us and tried to sell the parts to us.
 - 8b That's pretty much it.
- 028
- 1 Yes.
 - 2 More than one company.
 - 6a It looks like a Que, or
 - 6b a Honda.
 - 7a (Que) Que is a knock-off of Honda and that's' what it looks like. (w/m) They look the same.
 - 7b No.
 - 8a (Honda) Just what I can see it looks like a Honda engine. (w/m) It looks like the Honda engines I've seen.
 - 8b No.
- 029
- 1 Yes.
 - 2 More than one company.
 - 6 Probably just Honda.
 - 7a Just the way it looks. (w/m) The way the on-off switch is located, where the choke and the gas is, where the fuel tank is located.
 - 7b No, that's it.
- 030
- 1 Yes.
 - 2 Only one company.
 - 3 Honda.
 - 4a Well because it's a Honda engine. The air filter assembly and the fuel tank and just it's overall appearance that it's a Honda. (w/m) It's shape.
 - 4b The throttle and fuel controls. (w/m) The location of the choke and fuel shut off.

031

- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a Because it looks like one. (w/m) Well it looks like one. I know what one looks like. I have 3 or 4 of them.
- 4b No.

034

- 1 Yes.
- 2 More than one company.
- 6 Actually Honda, don't know the rest of the Chinese ones.
- 7a Because it looks like a Honda. Everything about it look like a Honda. (w/m) Well the whole appearance, the air filter, the gas tank. Everything is a Honda or the same as Honda. One of the two.
- 7b Nope.

037

- 1 Yes.
- 2 More than one company.
- 6a Honda, or
- 6b Chinese company that makes them but I can't remember the name. Chinese knock-off.
- 7a (Honda) The design of it. (w/m) Position of gas tank, air filter, fuel shut off, choke, ignition switch, shape of the engine.
- 7b Starters. (w/m) The design of the starter.
- 8a (Chinese knock-off) It looks almost identical. (w/m) All the things I just stated.
- 8b That's it I guess.

047

- 1 Yes.
- 2 Only one company
- 3 Honda.
- 4a The familiarity of my experience with power equipment using this engine. I've rented equipment using this engine It's been on all types of equipment that I've seen. (w/m) I've rented equipment that has this engine on it.
- 4b Nope.

048

- 1 Yes.
- 2 More than one company.
- 6 Honda, to me it's a Honda.
- 7a The fuel tank, the carburetor, the air filter housing. The engine itself of the pull string. The on-off switch. (w/m) That's Honda, that's a Honda product I have in my shop.
- 7b There's no logo on the pull string housing where Honda is a black dot. (w/m) Honda's logo is just not there on the pull string housing.

050

- 1 Yes.
- 2 More than one company.
- 6a Good one, Honda.
- 6b and for the junk, anything that comes from China.
- 7a (Honda) The design. (w/m) The way it's set up. The way it's put together.
- 7b Nope.

- 8a (China) There's some junk that somebody made or knock-off of Honda. Somebody made a copycat. (w/m) Someone stole Honda's design and made some junk.
- 8b Nope.
- 052
- 1 Yes
- 2 Only one company.
- 3 Honda.
- 4a White tank, the build, which they're all kind of built the same, but the white tank mainly. (w/m) Well most engines with white tanks are Hondas that I've dealt with.
- 4b No.
- 053
- 1 Yes.
- 2 More than one company.
- 6 There's Honda and
- 6b A lot of Chinese knock-offs.
- 7a (Honda) Because that's what it looks like. (w/m) Its appearance.
- 7b No.
- 8a (Chinese knock-offs) They all look the same. (w/m) They all look like the Honda.
- 8b No.
- 054
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a Just the configuration. The fuel tank, the breather cap and what we call the recoil. (w/m) That's the most prominent part of the engine.
- 4b No, that's it.
- 057
- 1 Yes.
- 2 Only one company.
- 3 Honda
- 4a The recoil and rewind starter are the same. The kill switch is similar, fuel tank, air cleaner, throttle control, choke and fuel shut off. (w/m) All those items are what make me say it looks like a Honda.
- 4b Nope.
- 058
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a That's about all the engines I see in my business, everybody wants a Honda. (w/m) If I sell or rent something, they will ask if I have a Honda. Customers want a Honda.
- 4b No.
- 063
- 1 Yes.
- 2 More than one company.
- 6a Honda.
- 6b Lifan.
- 7a (Honda) General design. (w/m) It looks like a standard Honda engine. I don't know what I mean by that. There is a black spot in the middle of the rewind.
- 7b No.

- 8a (Lifan) They are a carbon copy of Honda. (w/m) I mean they're doing everything they can to make it look like a Honda even though it's not.
- 8b No.
- 064
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a The look of it. The gas tank, the air filter, the decals, ignition switch, start belt, carburetor, sediment bowl, throttle control, nozzles, gas cap, rivets all over the place. (w/m) All engine attributes that look like a Honda engine. The design of the recoil. The entire design looks like a Honda engine. The rivets around the recoil make it look less like a Honda.
- 4b Not off the top of my head.
- 065
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a Basically the appearance of it and the color of the gas tank. (w/m) The appearance, relationship of the carburetor, the recoil and the controls.
- 4b That's it.
- 070
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a I have one. (w/m) I have a Honda in my machinery.
- 4b No, I just know because I have a Honda. (w/m) I have one.
- 071
- 1 Yes.
- 2 More than one company.
- 6a Honda.
- 6b A knock-off brand, Tonda.
- 7a (Honda) The design, the layout, the air filter for the choke and the fuel cut-off. The way it's situated. It just makes me familiar with Honda. The other thing, the white gas tank. It makes me think it's a pull rope shroud. (w/m) The way the Honda comes off. The round shape makes the design familiar. 51/2 horsepower Honda overhead valves.
- 7b Nothing else.
- 8a (Tonda) Their engines look just like Honda. They copied the layout. It looks like Honda when you first look at it. (w/m) The choke pull off shroud, they mimic the Honda in every way possible.
- 8b That's it.
- 072
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a Honda cause we service them and that's what they look like. There are a lot of Honda products like that out there. (w/m) Pressure washers, and compressors.
- 4b We sell a lot of them. There are a lot of products. More Honda than others that have that shaft engine. (w/m) There are a lot of Chinese products out there like that as well.
- 073
- 1 Yes.
- 2 More than one company.

- 6a Honda.
6b All the Chinese knock-offs.
7a (Honda) The general shape and the way it's laid out. All of the controls. (w/m) The choke, fuel lever, fuel tank on-off switch, everything is laid out like Honda.
7b Not really.
8a (Chinese knock-offs) Doesn't look as well put together as Honda. The throttle plate is off. Graphics are on crooked. (w/m) The decals looked on housing covers.
8b Not that I can see right away. Paint doesn't looks great. (w/m) Looks cheap.
- 074
- 1 Yes.
2 Only one company.
3 Honda.
4a We sell Honda. (w/m) And it looks like a Honda.
4b No, nothing else.
- 077
- 1 Yes.
2 More than one company.
6a Honda.
6b Like Honda, but it's not Honda.
7a (Honda) I've been working with them a long time. I know what they look like. All the same design of a Honda 5.5, Honda 5.5 GX160. (w/m) That's what it looks like, GX 160 Honda model.
7b No.
8a (Like a Honda) Looks just like Honda. Hondas are red and the other one is an orangish color. (w/m) That's the only difference. I've worked with both. They're identical even interchangeable to change.
8b Not that I know of, aware of.
- 078
- 1 Yes.
2 Only one company.
3 Honda.
4a The shape of the gas tank and the panel where the choke and the gas shut off are. (w/m) That's what makes me know it's a Honda.
4b No.
8b Not that I know of, aware of.
- 080
- 1 Yes.
2 Only one company.
3 It looks like Honda.
4a It looks like a white gas tank and it appears to be a red motor even though it looks black and white. (w/m) Just the color scheme of the motor.
4b No.
- 082
- 1 Yes.
2 Only one company.
3 Honda.
4a The looks of it, the controls, the on-off switch. (w/m) The choke control and on-off switch looks like Honda.
4b Nope.

- 083
- 1 Yes.
 - 2 Only one company.
 - 3 Honda.
 - 4a It's the industry I'm in. These engines are used in the industry I'm involved in. Extremely familiar. (w/m) I work on them so I know virtually everything about them.
 - 4b Very reliable. (w/m) If you keep up on the services, it will last for a very, very long time.
- 084
- 1 Yes.
 - 2 Only one company.
 - 3 Honda.
 - 4a Cause it looks identical. (w/m) I can tell by just everything. Why are you asking the association of this engine?
 - 4b What does asking about the association of this engine have to do with your survey?
- 086
- 1 Yes.
 - 2 Only one company.
 - 3 Honda.
 - 4a The gas tank. (w/m) Just the look of it
 - 4b Just the gas tank and the recoil from the starter. (w/m) It just makes it look like a Honda.
- 088
- 1 Yes.
 - 2 Only one company.
 - 3 Honda.
 - 4a Because it's set up the way it has a rabbit for fast and a turtle for slow on the throttle the body assembly, the way it's at a 30 degree angle, not horizontal or vertical. The way it sits on top of the gas tank. (w/m) It has a white gas tank on top of the engine.
 - 4b No.
- 089
- 1 Yes.
 - 2 Only one company.
 - 3 Honda.
 - 4a We have got a few small equipment with the choke and kill switch and that gas tanks are the same. (w/m) What do you mean by what do you mean by that?" Here's the same motor, seems to be the same as the motors that we own, our company. They are pretty similar.
 - 4b No.
- 090
- 1 Yes.
 - 2 Only one company.
 - 3 Honda.
 - 4a The white metal gas tank, everything in it looks like Honda. (w/m) The gas cap looks like Honda.
 - 4b The on-off switch looks like Honda. The choke fuel shut off looks like Honda. (w/m) Everything looks like a Honda.
- 091
- 1 Yes.
 - 2 Only one company.
 - 3 Probably a Honda.
 - 4a Just the way it looks. (w/m) I don't know. The shape of it I suppose.

- 4b No, nothing else.
- 094
- 1 Yes.
- 2 Only one company.
- 3 It looks like a Honda engine.
- 4a Just the way it looks. It looks like a Honda. (w/m) The cover, the air intake, the on and off switch.
- 4b The gas tank looks like a Honda. (w/m) That's the answer to your question. I don't know what you mean, I mean it just really looks like a Honda engine.
- 097
- 1 Yes.
- 2 Only one company.
- 3 It looks like a Honda to me.
- 4a Just the appearance. I'm pretty familiar with Honda engines. (w/m) I'm in the construction business and I have multiple equipment with Honda engines on them.
- 4b No.
- 099
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a It would be several things. Gas tank, red engine and the intake assembly. (w/m) The orientation of the shut off valve and the choke.
- 4b That's probably the main things. (w/m) It looks like a Honda engine to me, without the emblem.
- 101
- 1 Yes.
- 2 Only one company.
- 3 It's a Honda.
- 4a It just looks like a Honda to me. (w/m) The design of the recoil. The start stop switch is all the way on the right. The gas tank looks like a Honda tank.
- 4b The choke and fuel leverage. (w/m) It just looks like Hondas.
- 104
- 1 Yes.
- 2 Only one company.
- 3 It's a Honda.
- 4a Just the appearance of it. (w/m) The general layout of it. The carburetor and fuel tank. I am familiar with the location of it.
- 4b I'm familiar with Honda. (w/m) The picture looks just like the Hondas I see all the time.
- 105
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a It looks like a Honda engine. (w/m) Just all the components and the way they are mounted appear to be a Honda.
- 4b No, that's it.
- 106
- 1 Yes.
- 2 More than one company.
- 6a Honda.
- 6b I don't know the names of others.

- 7a (Honda) The shape of it. Shape, color, control assembly, carburetor. (w/m) It's basically a Honda engine. There are other engines that look close to the Honda.
- 7b Nope.
- 8a (Don't know names of others) I've worked on other engines that look Honda but are not. They look identical. (w/m) Somebody is copying Hondas look to make it look like a Honda. Probably to take advantage of Honda's name.
- 8b No.
- 107
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a The design of it. (w/m) The tank, air filter, the carburetor and what the gas on and off switch looks like.
- 4b No.
- 108
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a The visual of the switch, that gas tank, the carburetor. (w/m) I work on them everyday.
- 4b Nope.
- 110
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a Just the overall shape of its gas tank and carburetor as far as the way it's set and the air filter cover. (w/m) Just the dome over the air filter cover itself.
- 4b No.
- 111
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a Just the way everything is lined up. The tank is similar to it and the recoil is similar and the switches and the filters. (w/m) If I look at the one motor we purchase and compare. It has the white metal tank on top, the off and on switch is similar. The pull start recoil is almost identical.
- 4b Nope, that's pretty much everything.
- 115
- 1 Yes.
- 2 Only one company.
- 3 Imitation of a Honda engines made by China.
- 4a Dead give away, has shut off valve like Honda, has cylinders like a Honda. You can tell a Chinese company made a dead copy of it because they make exact copies of Honda. (w/m) I can only see one side, not other side. I can't tell what the other sides and if it says Honda which is why it's a dead give away. Honda is very proud of their stuff.
- 4b No.
- 116
- 1 Yes.
- 2 Only one company.
- 3 With Honda engines.

- 4a The way the air breather sits on it. (w/m) Well that's just the particular carburetor that's got that top air cover on it.
- 4b No.
- 118
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a What it looks like. I don't know. Some lawyer is trying to prove something right? (w/m) It's a black and white photograph but I know it's a red and white engine.
- 4b No.
- 121
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a I would say just the shape, the look of it. If it wasn't black and white, it would be red. (w/m) The engine would be painted red.
- 4b No.
- 123
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a I work on them all the time. The position of the fuel shut off, choke, gas tank, sediment bulb on the carburetor, on and off switch for the motor. (w/m) Honda's on and off switch is the same design.
- 4b Nope.
- 124
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a Just the layout of the fuel tank air cleaner. (w/m) Just the look of it. It resembles a Honda.
- 4b Yeah, the recoil starter. (w/m) Just the looks of it.
- 125
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a The gauge tank and the air filter, the carburetor, where you start the pull rope in there looks like a Honda right there to me. (w/m) All the sheet metal that goes over the fly wheel. All that looks like a Honda to me.
- 4b The cut-off switch looks like it would be on a Honda. The fuel tank looks just like a Honda. (w/m) Everything looks just like a Honda.
- 127
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a Just it's shape and where the tank is and the recoil and everything about it. (w/m) To me it appears to be a Honda.
- 4b No.
- 128
- 1 Yes.

- 2 Only one company.
3 Honda.
4a I've just seen a lot of them and that's what they look like. They put them on pumps, edgers, trimmers. (w/m) They're just very popular.
4b No, not really.
- 129
1 Yes.
2 Only one company.
3 Honda.
4a I think that we only have two of that type of engine in the back. It is where the gas tank and air filter are situated. (w/m) The fuel tank is white and on top of the engine. The air filter and carburetor assembly is on the left side.
4b Nope, nothing else comes to mind.
- 130
1 Yes.
2 Only one company.
3 I would say a Honda.
4a The gas tank, the color and shape of the gas tank. (w/m) It appears to be white.
4b That should to it.
- 135
1 Yes.
2 Only one company.
3 Honda.
4a It has a white gas tank and large gas cap. Briggs and Kohler engines have a smaller gas cap and different shape gas tank. (w/m) I just seen Honda engines and this looks like their type of engine.
4b No, that's all I can tell about it.
- 138
1 Yes.
2 Only one company.
3 Honda.
4a Because the motor is the same. The picture is black and white but the motor is the same. (w/m) I think this looks like a good engine because Hondas are good engines.
4b For me, it's alright. This the answer. (w/m) If I had to buy an engine that looked like this, I'd buy it because it's a good engine.
- 140
1 Yes.
2 Only one company.
3 Honda.
4a It looks like it. It's shaped like it. (w/m) All the pieces are shaped like a Honda.
4b No.
- 141
1 Yes.es.
2 Only one company.
3 Honda.
4a The kill switch mounted on front, oversize fuel pump in front. Although it's a black and white picture, I know it's red. Single cylinder overhead Honda engine. Same engine you'll see on a rental equipment you see it on a lot of rental equipment. That same engine, whether it's a pressure washer or place compactor. (w/m) You got a picture of the most common engine. Very quiet, dependable. You see it on go carts.

- 4b That's it.
- 148
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a Just the architecture of the engine. The way it looks. (w/m) It's all familiar. It's standard. They all look like that no matter what size you get.
- 4b No.
- 149
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a The design. (w/m) Just the familiarity with it.
- 4b No.
- 151
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a Just the configuration of everything. Where the choke throttle, fuel on and off and master on and off is. Everything is the same, carburetor is on top left, fuel tank on top right, everything just looks the same. (w/m) Looks the same as Honda engines.
- 4b No, that's it.
- 153
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a The gas tank, air cleaner box or whatever, field shut off and the choke. The whole assembly is signature Honda. The off and on switch, the engine kill switch. (w/m) You got a 3 bolt pattern. It's not riveted. If it was it would be a Briggs & Stratton or Craftsman. I deal with these engines at least once a week so I would know.
- 4b No.
- 154
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a Because that's always been Honda's design. (w/m) Every time we order a Honda engine, it always looks like that.
- 4b No.
- 156
- 1 Yes.
- 2 More than one company.
- 6a Looks to me like a Honda.
- 7a (Honda) It just, it looks like an engine I have. We have more than one of, very familiar with, has the one hand pull. Looks like something that we use. (w/m) I mean we have brush gutter and oh just, oh.
- 7b No.

- 157
- 1 Yes.
 - 2 More than one company.
 - 6a Yamakoyo and
 - 6b Honda.
 - 7a (Yamakoyo) It look exactly like that engine too. It's a Honda knock-off. (w/m) You can take apart the engine and put it back together and swap parts and it will run.
 - 7b Nope. they just look exactly the same. (w/m) You can exchange a Yamakoyo and a Honda 5 ½ horse power and they will run the same but they are more expensive.
 - 8a (Honda) It's got the white gas tank and the same. (w/m) The carburetor, the starter housing, everything the Hondas do.
 - 8b Nope.
- 158
- 1 Yes.
 - 2 Only one company.
 - 3 Honda.
 - 4a Off and on switch, fuel tank, air filter cover and design. (w/m) I just like the design on it.
 - 4b Nothing.
- 163
- 1 Yes.
 - 2 Only one company.
 - 3 It's a Honda or at least looks like a Honda.
 - 4a The configuration. The way everything is shaped. (w/m) Just the way it looks. It looks like a Honda engine.
 - 4b No.
- 164
- 1 Yes.
 - 2 Only one company.
 - 3 I believe it's Honda.
 - 4a Shape and style. (w/m) The way it looks, especially the way the carburetor looks and shape of the gas tank.
 - 4b Nope, that's good for now.
- 165
- 1 Yes.
 - 2 Only one company.
 - 3 Honda.
 - 4a Just the way it looks. (w/m) It looks like air compressors, the white tanks and the body and the black air filters and what I am assuming is chrome gas cap.
 - 4b That's it.
- 166
- 1 Yes.
 - 2 Only one company.
 - 3 Honda.
 - 4a Because I have hundreds of Honda engines and it looks just like this. There is a white gas can. (w/m) Most Hondas are white and occasionally they are black. Gas tanks are black.
 - 4b Nope.
- 168
- 1 Yes.
 - 2 Only one company.
 - 3 Honda.

- 4a The gas tank, the air filter, carburetor and the recoil starter, pretty much everything.
(w/m) That's just the way they look. Everything there is the way it is on a Honda I guess.
- 4b No.
- 169
- 1 Yes.
- 2 More than one company.
- 6a Briggs & Stratton.
- 6b Honda.
- 6c Tecumseh.
- 7a (Briggs & Stratton) Not a particular thing. They're the largest small engine company in the world. (w/m) I think I read somewhere that they make larger engines than other companies.
- 7b No.
- 8a (Honda) The way their gas tank is made. It just looks familiar. (w/m) It just looks like a Honda.
- 8b No.
- 9a (Tecumseh) I don't associate this engine with Tecumseh. The way you asked the question, they're just another small engine dealer. (w/m) Yeah, when your question was "who makes small engines" they're one of them.
- 9b No.
- 171
- 1 Yes.
- 2 Only one company.
- 3 It looks like a Honda. Actually it's definitely a Honda. I'm pretty sure it is.
- 4a The on-off switch, the choke and gas on-off lever. (w/m) Just where they're positioned on the motor.
- 4b The white gas tank. (w/m) It's pretty typical of Honda.
- 172
- 1 Yes.
- 2 Only one company.
- 3 McHenry small engines.
- 4a They sell that model engine. It looks like a Honda. (w/m) It looks like a Honda GX 390 or 290.
- 4b No.
- 173
- 1 Yes.
- 2 More than one company.
- 6a It looks like a Honda or a
- 6b Predator.
- 7a (Honda) The rewind assembly looks like it and so does the carburetor air cleaner. It looks to me like they're Honda. (w/m) Just the basic, literal shape. It just looks like it.
- 7b No.
- 8a (Predator) Predators just look like Honda. I think they tried to make them look like Hondas. (w/m) It looks like a Predator.
- 8b No.
- 174
- 1 Yes.
- 2 More than one company.
- 6a Honda.
- 6b Lifan.

- 6c CM Manufacturing.
- 7a (Honda) It was Honda's design from 1983. They introduced the overhead valve angles cylinder general purpose engine. Others have been copyig since. (w/m) Well I believe Honda's patent ran out in the late 2000's and other manufacturers started creating engines similar to this.
- 7b No.
- 8a (Lifan) Lifan was one of the more common engines shown with similarities. (w/m) In the way of the overall style of the motors.
- 8b No, not too much.
- 9a (CM Manufacturing) The CM looks like an exact replica with different colors. (w/m) It looks almost identical to the picture shown but in different colors.
- 9b No.
- 177
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a The gas cap or tank, the way it's mounted, the engine kill switch, the air cleaner assembly, the carburetor and recoil start. (w/m) That's the pull rope or handle, that's how you start it.
- 4b No.
- 178
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a The design and layout of it. (w/m) I don't know how else to say this. It doesn't look like a Briggs & Stratton. It doesn't look like a Kohler. It doesn't look like a Robin. Each one has their own signature, just like my face don't look like your face and this one looks like a Honda.
- 4b No.
- 180
- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a If we can, we get Honda motors on all the equipment that we buy. (w/m) So I am very familiar with the profile of this particular motor, even though it doesn't have any markings.
- 4b It very closely resembles all of the Honda motors that I have. (w/m) The pull cord, being that it only has six holes but only three bolts. That's pretty standard on all Honda equipment. You can turn it whichever way you want.
- 181
- 1 Yes.
- 2 More than one company.
- 6a It looks like a Honda.
- 6b No name brand, either Korean or Chinese.
- 7a (Honda) For one I used to be a mechanic and deal with a lot of engines that are overhead valve engines. The motor on my generator looks just like that. (w/m) The way the head is angled backwards, kind of laying down. And the gas tank is straight up on top of the engine. Also the kill switch is at the front of the engine, right under the gas tank.
- 7b Other than seeing the plastic cover for the carburetor, looks very familiar to me.
- 8a (Chinese or Korean) Like I said, I have a couple engines that look like that. I also have seen engines like that. I recently bought a water pump and the whole thing was painted green and looked identical to a Honda motor. The block usually is aluminum and says Honda. But this engine which is identical to Honda had nothing on it but some weird

initials like T.P. or something like that. It was brand new but I sold it cause I knew it wouldn't last. I try to stick with Honda engines. (w/m) Well the shape is identical. I see that a lot lately. I have scooters and they are both made by another country like China or Korea and they look similar to that engine. Actually when I called to get parts for them, they even said that the engine is identical to a Honda and I could even swap parts from a Honda I can't believe they could steal someone else's design like that.

8b Like I said, I have a lot of bigger equipment like Bob cats. So my only small engines are my generator and water pump. Everything I use has a Honda engine. I'm a big fan of Honda engines. Even the big water pump I have, it has an identical engine like the picture shows. But other than that, that's it.

182

1 Yes.

2 Only one company.

3 Honda.

4a I own a bunch of them. (w/m) It's generally the standard or most preferred engine we use. It's the one that we prefer to have.

4b No.

183

1 Yes.

2 More than one company.

6a Honda.

6b Lifan.

7a (Honda) Just the general design, the air filter, gas tank and shape of the engine. (w/m) The air element that are attached looks similar to the Honda and the engine block looks like a Honda design.

7b No.

8a (Lifan) Ther design is similar to Honda. They're made to look like a Honda engine. (w/m) Everybody feels Honda engines are the best engines out there. I don't. they're made to look as close to a Honda engine as much as possible so they can sell...color, shape and size.

8b No.

185

1 Yes.

2 Only one company.

3 Honda.

4a I've used it before. (w/m) Pull the cord to start and use it.

4b No.

187

1 Yes.

2 More than one company.

6a Honda and

6b Look-a-like Honda.

7a (Honda) It looks just like the four engines I just bought. (w/m) I just bought four engines that look similar, made by Honda.

7b No.

8a (Look-a-like Honda) Cause I've seen it before. They have the same shape and style but they're really not Honda engines. (w/m) We've taken them apart before and they looked like a Honda but are not made by Honda. I don't know who the manufacturer is. Some off brand,

8b No.

189

- 1 Yes.
- 2 Only one company.
- 3 Well, of course a Honda.
- 4a Well I'm actually a certified Honda technician and know exactly what they look like. (w/m) Well the white tank and where the air filter is and the carburetor and just about everything on it. I could even tell you the bolt size. I work on Hondas.
- 4b That should do it.

DESIGN MAYBE ASSOCIATED WITH HONDA AS THE SINGLE SOURCE (3 Respondents)

038

- 1 Yes.
- 2 More than one company.
- 6a It could be a Briggs & Stratton, or
- 6b Honda.
- 7a (Briggs & Stratton) Because when it comes down to a pressure washer or something a lot of the engines on a pressure washer kind of looks the same. That's why I think it can be a Briggs & Stratton or Honda. I have a pressure washer with a Honda engine on. (w/m) The pressure washer has a Honda engine on and it kind of looks like that.
- 7b That's it.
- 8a (Honda) Because it's a black and white picture but the dark pull cover, it looks like it can be red in the picture and I know Briggs does the red top. (w/m) The pull cord, what I call on the top of the pull cord.
- 8b That's it.

039

- 1 Yes.
- 2 Only one company.
- 3 I don't know if it will be Briggs or Honda.
- 4a (Briggs or Honda) The air filter cover. (w/m) The air filter cover has a wing nut on the top.
- 4b No.

145

- 1 Yes.
- 2 More than one company.
- 6a Looks like it could be a Honda or,
- 6b a Briggs & Stratton.
- 7a (Honda) It's the configuration of the carburetor and the way the engine looks on the side. (w/m) Just the side view of the engine. It looks like a Honda engine.
- 7b No.
- 8a (Briggs & Stratton) The same things. The way they're set up. (w/m) The side view looks very similar so it could be a Honda or Briggs & Stratton the way the carburetor is configured.
- 8b No.

DESIGN ASSOCIATED WITH HONDA AND ANOTHER SOURCE (31 Respondents)

006

- 1 Yes.
- 2 More than one company.
- 6a Honda.

- 6b Tecumseh.
6b Briggs & Stratton.
7a (Honda) Shape. (w/m) The configuration.
7b No, just the configuration
8a (Tecumseh) Same thing. (w/m) I mean it is the mechanical stance, the way it's shaped.
8b No, because you can change the throttle body but the stance is the same. (w/m) You can change the lever, the accelerator the choke, the off-on switch and you probably change the position of the fuel tank.
- 008
- 1 Yes.
2 More than one company.
6a It kind of looks like a Honda to me.
6b I think a Briggs & Stratton as well.
7a (Honda) Just the shape of it. (w/m) I have an engine very similar on my power washer and it looks very similar.
7b No.
8a (Briggs & Stratton) I've seen other guys with power washers and log splitters and the engines look similar. (w/m) I don't know how to answer that. It just looks similar. I buy a lot of products from Lowes and Menards and it looks like the ones at Home Depot. I've seen similar engines sold there.
8b No.
- 009
- 1 Yes.
2 More than one company.
6a Honda.
6b Briggs & Stratton.
6c Tecumseh.
7a (Honda) White gas tank, general shape of the starter coil. (w/m) The cord you pull on to start the engine looks like a Honda.
7b Gas tank. (w/m) White, chrome cap.
8a (Briggs & Stratton) Don't think it's a Briggs & Stratton. I don't know. Only reason I say Briggs & Stratton is if they're trying to mimic a Honda. (w/m) I just told you. It could be somebody trying to make it look like a Honda. I don't know if it is or not.
8b Nope.
9a (Tecumseh) Because I haven't seen one in a while. They're a small engine manufacturer. (w/m) They're a small engine manufacturer. They're another company that could make small engines.
9b Nope.
- 010
- 1 Yes.
2 More than one company.
6a Honda.
6b Subaru
7a (Honda) The design. (w/m) The fuel tank is pretty specific to Honda engines. The recoil and on-off switch and air filter assembly.
7b No.
8a (Subaru) The Subaru engine looks very similar in design to the Honda engines. (w/m) Without the paint color, they could be identical.
8b No.
- 017
- 1 Yes.
2 More than one company.
6 Honda.

- 6b I don't know what the other one is called.
 7a (Honda) Just the style of it, the way it is. It looks totally like a Honda. (w/m) The dimensions, the print of it, everything looks the same.
 7b No,
- 041
 1 Yes
 2 More than one company.
 6a LCR engines.
 7a Because it looks like it. (w/m) It looks identical to it. They all look alike. Honda and Subaru. The on-off switch is the same place and the air filter looks like a Honda too.
 7b No. (w/m) Kill switch identical to Honda and Subaru. LCR puts theirs in the same place. The two bolts on one side.
- 042
 1 Yes.
 2 More than one company.
 6a That looks like Honda and
 6b Subaru.
 7a (Honda) I've got one just like that. The gas tank, the carburetor and air filter, the pull crank. (w/m) It's the starting mechanism, the rope and recoiling mechanism.
 7b Not really. I just seen one side of it.
 8a (Subaru) Mostly the same design, the gas tank, the recoiling crank. (w/m) The recoiling crank, that is the assembly. The crank assembly might be a better term. The crank assembly looks just like both of them. The gas tanks are similar. There was another one like that but not anymore. A Wood engine. Wood was an engine that looked like that.
 8b That's mostly it.
- 056
 1 Yes.
 2 More than one company.
 6a Honda.
 6b Briggs & Stratton.
 6c Tecumseh.
 7a (Honda) I own and observe pieces of equipment with engines like this that say Honda. (w/m) I've seen motors like that, that say Honda.
 7b No.
 8a (Briggs & Stratton) Own equipment like this that say Briggs & Stratton. (w/m) Just what I said.
 8b No.
 9a (Tecumseh) Same as the other two. (w/m) Just that they're the same.
 9b No.
- 066
 1 Yes.
 2 More than one company.
 6 Honda and I don't know the name of the other company.
 7a Just based on the look. It looks like a Honda. (w/m) The gas tank, the filter cover, the recoil, all resemble Honda.
 7b Yean I mean the choke, the throttle, the on-off switch is all where it is on a Honda. (w/m) It's all in the same location as Honda.
- 068
 1 Yes.
 2 More than one company.
 6a Honda.
 6b Briggs & Stratton.
 7a (Honda) The basic shape. (w/m) The fuel tank, the air cleaner, the carburetor.

- 7b No, it just looks like a Honda motor and the on-off switch. (w/m) On the right side of the motor it's got a knob on a regular Honda engine that turns the ignition on and off.
- 8a (Briggs & Stratton) Mainly the recoil cover. (w/m) That's where the pull rope assembly is, the front of the motor.
- 8b No.
- 076
- 1 Yes.
- 2 More than one company.
- 6a Honda.
- 6b Subaru.
- 7a (Honda) It looks just like a Honda. (w/m) Style, air filter, fuel tank and if it was in color, I'm sure it would be red.
- 7b That's it.
- 8a (Subaru) Because Subaru and Honda look very similar. (w/m) Just the styling, the way they are put together. Subaru tries to copy Honda and it could be a Chinese engine, a Chinese made engine I would say.
- 8b That's it.
- 093
- 1 Yes.
- 2 More than one company.
- 6a Honda.
- 6b Briggs and Stratton.
- 7a (Honda) The white tank on top of it looks like a Honda engine. (w/m) The ergonomics of it.
- 7b Probably the placement of the on-off switch away from the muffler exhaust. (w/m) It's in the same position.
- 8a (Briggs & Stratton) If it not Honda, the reason why I'd say that it's Briggs & Stratton is the pull string, the positioning. (w/m) Some are higher on the crank wheel itself.
- 8b Perhaps the size of the engine itself. (w/m) It might be a 3 or 4 horsepower engine.
- 102
- 1 Yes.
- 2 More than one company.
- 6a Honda and
- 6b Kohler.
- 7a (Honda) The look of it and the layout of it. (w/m) Besides that it's the same exact stuff with the other engines, the color, where it's located.
- 7b Nothing else. That's pretty much it.
- 8a (Kohler) It's a similar look. (w/m) The features. Where the gas tank is located.
- 8b Nope, that's all.
- 103
- 1 Yes.
- 2 More than one company.
- 6a Honda.
- 6b Yamakoyo.
- 7a (Honda) Because we have hundreds of these engines in our rental fleet. (w/m) We have hundreds of machines and they all have engines that look exactly like it.
- 7b No.
- 8a (Yamayako) Because I've seen those and I've purchased them in the past. (w/m) Just what I said. I bought them in the past. Let me write it down Y A M A K O Y O) I believe.
- 8b No.

109

- 1 Yes.
- 2 More than one company.
- 6a Briggs & Stratton.
- 6b Honda.
- 6c Tecumseh.
- 7a (Briggs & Stratton) They all look the same. (w/m) They all look the same.
- 7b Nope.
- 8a (Honda) They all look the same. (w/m) They all look the same.
- 8b Nope.
- 9a (Tecumseh) They all look the same. (w/m) They all look the same.
- 9b Nope.

117

- 1 Yes.
- 2 More than one company.
- 6a Honda, and
- 6b Briggs & Stratton.
- 7a (Honda) From the picture it looks well built. Like a Ryobi. Its rigid and Chinese built. It looks like it was built well. (w/m) Other engines don't look as strong. The way it is built. It looks like a big engine.
- 7b No.
- 8a (Briggs & Stratton) Honda and Briggs & Stratton are very similar. I think Honda is ranked first and then Briggs & Stratton. From Honda and Briggs & Stratton, every other brand is a step down. (w/m) I don't know how to explain this to you. When you see a Honda engine on a pressure washer, they're bigger. And then when you see these other machines, they're not as loud. These are big engines.
- 8b No.

126

- 1 Yes.
- 2 More than one company.
- 6a Honda.
- 6b Briggs & Stratton.
- 6c I want to say Kawasaki.
- 6d Champion.
- 7a (Honda) Same cover, motor plate, gas tank and the controls look the same. (w/m) Just the way they're designed looks exactly the same.
- 7b That's it.
- 8a (Briggs & Stratton) Same thing, same covers, same style of controls. (w/m) The looks of them are exactly the same to me, from what I've seen.
- 8b That's it.
- 9a (Kawasaki) Same thing. All the same things that I already said. (w/m) Same thing I just said to the previous questions.
- 9b That's it.
- 10a (Champion) Same, identical looking. (w/m) Same thing I said in the previous questions.
- 10b That's it.

134

- 1 Yes.
- 2 More than one company.
- 6a A Honda.
- 6b A Compactor engine.
- 7a (Honda) It's just the shape of it. The side profile of it. (w/m) I guess the portion of each component.

- 7b Not really. When I first looked at it, it actually looks like a camera cause the picture was so small.
- 8a (Compactor engine) Just because there is not as much parts on it. It's not cased and the size of the engine from the profile. (w/m) I don't know. It looks like it would fit on that type of machine.
- 8b Nope, that's it.
- 139
- 1 Yes.
- 2 More than one company.
- 6a Briggs & Stratton.
- 6b Honda.
- 7a (Briggs & Stratton) I guess because I've worked with them before and the engines seem similar. (w/m) That I've used the engines before, you know gas? They have them on air compressors.
- 7b No.
- 8a (Honda) Probably because I've seen Honda motors like this. Well, not exactly like this. (w/m) They seem to me that they're similar.
- 8b No.
- 142
- 1 Yes.
- 2 More than one company.
- 6a Honda.
- 6b Briggs & Stratton.
- 7a (Honda) It looks like the same engine I have on my pressure washer which is a Honda engine. (w/m) The configuration looks very similar to the Honda engines.
- 7b The gas tank looks like the same size. Muffler system and air tank look very similar to how it's set up but the pull crank would be on the opposite side. (w/m) If you looked at a Honda engine you wouldn't see it from the view.
- 8a (Briggs & Stratton) I've had several Briggs on other pieces of equipment and it looks similar. (w/m) My lawn mover and pressure washer.
- 8b No.
- 144
- 1 Yes.
- 2 More than one company.
- 6a Briggs & Stratton
- 6b Honda.
- 7a (Briggs & Stratton) The shape of it. How it's shaped, the choke and stuff are similar to Briggs & Stratton. (w/m) I can't tell the color because it's black and white.
- 7b No.
- 8a (Honda) White gas tank. (w/m) White gas tank.
- 8b No.
- 147
- 1 Yes.
- 2 More than one company.
- 6a Honda.
- 6b Yamakoyo.
- 6c Titan.
- 7a (Honda) Looks like a Honda engine. (w/m) It looks like a GX140 or I mean a GZ 160 to me.
- 7b No.
- 8a (Yamakoyo) They look very similar. (w/m) Design.
- 8b No.

- 9a (Titan) Same thing. (w/m) Design.
9b No.
- 150
- 1 Yes.
2 More than one company.
6a Honda and
6b Blue Max.
7a (Honda) Primarily the color of the gas tank, the air filter, well overall everything is quite similar. (w/m) Basically the basic design of the engine. The engine design or the engine case is similar.
7b I would say it's as identical as Honda as you can get. (w/m) The main thing is the gas tank being a lighter color.
8a (Blue Max) The main design of the engine design or engine case, other than the gas tank. The gas tank is a different color and shape. (w/m) Hondas are somewhat square. Blue Max are usually round or torpedo shaped. Air filter is also more rounder.
8b No.
- 152
- 1 Yes.
2 More than one company.
6a Honda.
6b Subaru Robin.
7a (Honda) It looks like one we've worked on. (w/m) I might have one in my rental equipment.
7b No.
8a (Subaru Robin) It's a similar set up. (w/m) I'm guessing it's a Honda but it looks like it could be related to a Subaru one too.
8b It's a horizontal shaft engines. It has the on and off switch. (w/m) It has a gas tank and carburetor on it.
- 155
- 1 Yes.
3 More than one company.
6a Honda.
6b Briggs & Stratton.
6c Kohler.
7a (Honda) The basic design of it. (w/m) The layout, the shaft, breather assembly, the on and off switch, the choke lever.
7b No.
8a (Briggs & Stratton) Same answer. (w/m) Specifically the overall design.
8b No.
9a (Kohler) Same answer. (w/m) The overall design is similar.
9b No.
- 159
- 1 Yes.
2 More than one company.
6a It looks like a Honda and
6b Powerhouse or Powerhorse, something like that.
7a (Honda) The design of the engine as far as the shards, air cleaner, carb assembly, you can see the bottom of the carb. (w/m) As far as the configuration, it resembles a Honda.
7b The recoil, the cleaner cover. It all looks the same. (w/m) Where the kill switch is mounted. All looks the same.
8a (Powerhouse or Powerhorse) Same thing. They run the same. They are a little different. The motor you can't see their governor assembly, the shaft for the governor.

(w/m) As far as the governor, what they do is they run a small under low engine for the governor and I don't see that.

162

- 1 Yes.
- 2 More than one company.
- 6a The first line of business would be Honda.
- 6b Next is Yamar, and
- 6c The last is champion, I think.
- 7a (Honda) It has kind of identical features of a Honda. Kill switch, the on-off, the choke, all resemble Honda. (w/m) It's a unique design that Honda has.
- 7b No.
- 8a (Yamar) Because Yamar is the knock off version of Honda. All Yamar parts fit on Honda. (w/m) Well, the casing on the starter is the same. It's exactly the same except cost and warranty.
- 8b No.
- 9a (Champion) Champion has the same type of design. The big difference is the fuel shut off switch. (w/m) The picture is too dark for me to tell if it's a swing, like a half moon or if it goes left or right.
- 9b No.

167

- 1 Yes
- 2 More than one company.
- 6a Honda.
- 6b Suzuki.
- 7a (Honda) It looks like a Honda. The carburetor, the fuel switch, electrical switch, choke lever, the tank. (w/m) Just looks identical to Honda components.
- 7b No.
- 8a (Suzuki) The fact that the air cleaner doesn't look quite right for a Honda. (w/m) The nut on top.
- 8b No, I don't think so.

175

- 1 Yes.
- 2 More than one company.
- 6a Tecumseh.
- 6b Honda.
- 7a (Tecumseh) Because it's an angles piston and not straight up and down like a Briggs & Stratton. (w/m) It's an overhead valve V-type engine. Most Briggs & Stratton come straight and this is at an angle.
- 7b That's it.
- 8a (Honda) It's got a little bit of look to a Honda, not a lot buy because of the overhead valve. (w/m) The engine, placement of the gas switch, kill switch on the right had side reminds me of a Honda engine but looks like a knock-off version of Honda.
- 8b Looks like it's made in China or Taiwan or something. Looks lie a really cheap engine.

179

- 1 Yes.
- 2 More than one company.
- 6a Honda and
- 6b Subaru.
- 7a (Honda) It's a G series engine. (w/m) GX 140, GX 150 are the models of the engine.
- 7b No.
- 8a (Subaru) It looks similar. (w/m) Same design.
- 8b No.

188

- 1 Yes.
- 2 More than one company.
- 6a Briggs & Stratton and
- 6b Honda.
- 7a (Briggs & Stratton) Actually the style, the way it's put together. (w/m) Just the way it looks, you know, the way it appears. If I look at an engine, that one has the look and appearance of what Briggs & Stratton look like. Main reason is cause the little logo on the fuel thing and the choke and the throttle.
- 7b No, not really.
- 8a (Honda) It's the appearance of it also. The look of it. And actually has the same kind of logo for the throttle. (w/m) It's the little logo that's down underneath the air cleaner. It has similar fuel tank and logo for the choke and the engine itself.
- 8b Nope, that would be about it.

DESIGN ASSOCIATED WITH OTHER SOURCES (20 Respondents)

002

- 1 Yes.
- 2 Only one company
- 3 Mi-T-M
- 4a Because it looks kind of like it. I mean it's a little different but it looks like it. The stickers that are on the gas flow look like it. (w/m) They look identical, the arrow for fuel, throttle with rabbit for fast and turtle for slow. The base looks different than the Mi-T-M but the fuel tank is the same, the cap, the fuel filter, the top is.
- 4b No, that's it.

004

- 1 Yes.
- 2 More than one company.
- 6a Briggs & Stratton.
- 6b C & M.
- 7a (Briggs & Stratton) The way it looks. The way the pull handle is. The way you turn the gas on and off in the front. The fuel. (w/m) How you turn the fuel on.
- 7b The way the carburetor, air cleaner and fuel tank. (w/m) The way they are situated on the motor.
- 8a (C & M) Same thing. (w/m) The way the motor looks with the carburetor, motor control, turning the fuel on and off.
- 8b That's about it. (w/m) That's about it. It's the only thing I think of by looking at it.

- 9a (Briggs & Stratton) The same thing. They're all basically the same thing. You can't change the horizontal shaft too much. (w/m) There's not much you can do to a horizontal shaft motor to change it.
- 9b Nope.

013

- 1 Yes.
- 2 Only one company.
- 3 Briggs & Stratton.
- 4a Because all of the lawn mowers I've ever used have that style of motor. It just has a pull start on it. Only lawn mowers have pull starts. (w/m) The cord that you pull instead of electric start.
- 4b No.

016

- 1 Yes.
- 2 More than one company.
- 6a Briggs & Stratton.
- 6b Kohler.
- 7a (Briggs & Stratton) It just looks like a Briggs & Stratton I have seen before. (w/m) The configuration, gas tank, the spark plug, the cover over the crank rope.
- 7b No.
- 8a (Kohler) The very same attributes that I gave you for Briggs & Stratton. (w/m) It just looks like a Kohler engine that I have seen.
- 8b No.

032

- 1 Yes.
- 2 Only one company.
- 3 I don't know the brand name but it appears to be the same engine I get through Harbor Freight and Salvage.
- 5a Because I only buy from one company that is selling engines. I don't have time to check out every company. I go with companies that treat me right. (w/m) If I buy something and it's a piece of junk, I won't buy from them anymore. I only buy from quality suppliers.
- 5b No.

049

- 1 Yes.
- 2 More than one company.
- 6a Diamond.
- 6b Lion.
- 7a (Diamond) The look. (w/m) Gasoline on top, how you crank it, how you start it, the fitting of the gasoline tank.
- 7b No.
- 8a (Lion) It's what I've seen. (w/m) I've seen a lot of engines made like this in Africa. The trademark is LION. I don't know who makes it.
- 8b No.

062

- 1 Yes.
- 2 Only one company
- 3 It looks like a Tecumseh.
- 4a I think that's what's on my power washer. It looks just like it. (w/m) It looks just like the one on my power washer and I think it's a Tecumseh.
- 4b No.

067

- 1 Yes.
- 2 More than one company.
- 6 It looks like a little Chinese one. I don't know the brand. It looks like a Honda but not really.
- 7a (Chinese one) I have a little generator and it looks like the engine on the generator. Only about 2000 watts. (w/m) It only put out 2000 watts of power.
- 7b Nope.

069

- 1 Yes.
- 2 Only one company.
- 3 Briggs & Stratton.

- 4a Just the way the on and off gas thing is and the choke. (w/m) Well I mean I'm not positive but the one I've got, the picture is similar, like the little decals.
- 4b Nope, that's it.
- 087
- 1 Yes.
- 1 Only one company.
- 3 Briggs & Stratton.
- 4a Just the way that it looks. The design of it just the way the engine is shaped. (w/m) Well when you see something you recognize it. You know what I mean?
- 4b Maybe the little label on the side. (w/m) If you look at the side of the picture, you know, there's a little rabbit. You know what I mean? It means it runs like a rabbit and there's a turtle on the other side. It means they're slow and fast.
- 095
- 1 Yes.
- 2 Only one company.
- 3 I believe it is a Tecumseh but could be wrong.
- 4a It's the profile of it. It reminds me of when I was younger. The profile reminds me of a Tecumseh. (w/m) Well looking at the picture. When I look at the air filter on the left and gas on the top right and pull handle, the way it's set up reminds me of a Tecumseh.
- 4b No, not really.
- 113
- 1 Yes.
- 2 More than one company.
- 6a Barber Engineering.
- 6b Lowes.
- 6c Home Depot.
- 7a (Barber Engineering) We got Barber boxes out here that we use and we also have spreader boxes. (w/m) We're in the fertilizer company so we buy a lot of that.
- 7b No, nothing else.
- 8a (Lowes) I bought a couple from there when they had them on sale. (w/m) Barber engineering and Ace usually have what I need and I sometimes buy from Lowes when they have them on sale.
- 8b No, that's it.
- 9a (Home Depot) If I've seen them there and they're on sale, that's what made me think of them. (w/m) What do you mean? That's just what makes me think of them.
- 9b No.
- 114
- 1 Yes.
- 2 More than one company.
- 6a Actually one of them is Steins, the other is
- 6b Marshall.
- 7a (Steins) Basically because of the Honda engine. (w/m) Steins uses Honda. It's the same type of fuel tank, kill switch, air filter and the choke is identical.
- 7b The carburetor bowl is identical as well. (w/m) Where it holds the fuel to run through the carburetor.
- 8a (Marshall) I've had to get parts from Marshall. (w/m) I just worked on an engine like that a go-kart and got the parts from Marshall.
- 8b That's about it.
- 119
- 1 Yes.
- 2 Only one company.
- 3 Briggs & Stratton.

- 4a Because it looks Chinese made. (w/m) I don't know, you're the one asking all of the questions.
4b No.
- 120
1 Yes.
2 Only one company.
3 Briggs & Stratton.
4a That's what they make. (w/m) It's what they do, motors only.
4b No.
- 122
1 Yes.
2 Only one company.
3 Briggs & Stratton.
4a Details for the choke and fuel mix and the fan cover. (w/m) Well just where the pull rope is or I mean the starter rope.
4b The gas cap. (w/m) The metal looks like a Briggs & Stratton.
- 146
1 Yes.
2 More than one company.
6a I'd have to say Briggs & Stratton, or
6b Tecumseh.
7a (Briggs & Stratton) Just because it's the most common of all lawn mover motors and things like that. (w/m) It's the most common motor purchased by lawn motor manufacturers.
7b No.
8a (Tecumseh) It's just the second brand name that came to mind. (w/m) It's the second one I thought of.
8b No.
- 161
1 Yes.
2 Only one company.
3 Briggs & Stratton.
4a Because Briggs & Stratton built it. (w/m) We have motors on some of our equipment like that. The built of it. It looks the same.
4b That's it.
- 184
1 Yes.
2 Only one company.
3 The company that makes the one on my trimmer.
4a The black thing is back, the gas container. (w/m) The choke or throttle looks like it.
4b No, that's about it.
- 186
1 Yes.
2 More than one company.
6a We have them on Genie,
6b Multiquip.
6c Ditch Witch.
7a (Genie) We have them on some of our products. (w/m) That's what they are actually driven by.
7b No.

- 8a (Multiquip) Same thing. (w/m) Same thing I answered on the Genie.
- 8b No.
- 9a (Ditch Witch) Same as previous tow. (w/m) They're used to drive the same type of products.
- 9b No.

**TABLE 5
CONTROL GROUP
BRIGGS & STRATON ENGINE**

DESIGN ASSOCIATED WITH HONDA AS THE SINGLE SOURCE (9 Respondents)

510

- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a It's just a typical looking Honda engine. (w/m) I've seen some aftermarket looking Hondas that didn't look like one too much but this one does.
- 4b The carb, choke, off-on switch, gas...it's all identical. (w/m) You know, the stickers that show the on-off , gas, breather cover on top, everything. All I need to see is the GX symbol and I'd know for sure it would be Honda.

512

- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a It looks like a Honda. Could be a Briggs overhead valve engine. (w/m) The way the valve train is configured on the engine.
- 4b That's it.

531

- 1 Yes.
- 2 Only one company.
- 3 Honda.
- 4a The marks for the throttle goes from turtle to rabbit. Similar to the on-off switch on my Honda. (w/m) Most engines you have to use a key to turn it on and this one has an on-off switch.
- 4b No. I guess not. There is something on the top of the engine. (w/m) I don't have an engine similar to that.

533

- 1 Yes.
- 2 Only one company.
- 3 Honda
- 4a The shape. (w/m) The design of the cowlings is similar to Honda.
- 4b Nothing else.

545

- 1 Yes.
- 2 Only one company.
- 3 It's Honda.
- 4a Probably because that's what it looks like to me. It's usually the equipment we use. We usually use Honda engines. (w/m) All of the units that we use or rent, the smaller engines, are Honda. That's what we use to replace.
- 4b No, that's it.

579

- 1 Yes.
- 2 Only one company.
- 3 Honda.

- 4a Well it's basically the hare and the rabbit. (w/m) It's tortoise and the rabbit. The tortoise for slow and the rabbit for fast. Because I have seen it on a Honda.
 4b No.

587

- 1 Yes.
 2 Only one company.
 3 Honda
 4a The shape, configuration. (w/m) It's appearance is the same as Honda. It's all the same.
 4b No.

593

- 1 Yes.
 2 Only one company.
 3 Honda.
 4a Because I'm familiar with Honda engines. It looks like a Honda. (w/m) It's proprietary to Honda engines.
 4b No.

594

- 1 Yes.
 2 Only one company.
 3 A Honda if I'm correct.
 4a The gas tank on the top is painted a different color and the piston, it's at an angle instead of vertical. (w/m) Like a Briggs & Stratton, the cylinder is vertical and the spark plugs on top.
 4b It's a black and white picture but it looks like it would be red and most Hondas are red. (w/m) The way they paint them from the manufacturer, most are red.

DESIGN ASSOCIATED WITH HONDA AND ANOTHER SOURCE (5 Respondents)

522

- 1 Yes.
 2 More than one company.
 6a Briggs.
 6b Honda.
 6c Kohler.
 7a (Briggs) The way the recoil is mounted. (w/m) Just the motor and the air cleaner tank. The way it sits reminds me of my log splitter.
 7b No.
 8a (Honda) The on and off switch and where the throttle controls are. (w/m) Just the way they are located on the motor. Both on the same side.
 8b No.
 9a (Kohler) It's the one that came to mind. I don't like the way the exhaust is situated. (w/m) It's up on top. Gas and heat don't go very well. If you get your hand on it than oh shit.
 9b That's the exhaust, damn....it should be down and off to the side. (w/m) I don't like it that close to the gas tank.

551

- 1 Yes.
 2 More than one company.
 6a Honda and/or
 6b Briggs & Stratton.

- 7a (Honda) Just the way, the actual design of the picture. It looks very similar to what Honda produces. (w/m) Just the shape and size of the engine and the components on the engine.
- 7b That's pretty much it really.
- 8a (Briggs & Stratton) The very same reason. The shape and size of the components. (w/m) Just the configuration, the way the engine is. The look and size and outline of the components. Basically the outline and size of the components.
- 8b That's pretty much it.
- 569
- 1 Yes.
- 2 More than one company.
- 6a Honda.
- 6b Briggs & Stratton.
- 7a (Honda) That's what I see a lot of. Only one I know actually. (w/m) Well the Honda. I am a distributor dealer for Honda. I sell a lot of them.
- 7b That's it.
- 8a (Briggs & Stratton) I see that too. (w/m) What do I mean by that? I mean I see that product. That's what I mean by that.
- 8b No.
- 582
- 1 Yes.
- 2 More than one company.
- 6a Honda and
- 6b Subaru.
- 7a (Honda) It just looks like one. (w/m) It looks like all the Honda motors that we have.
- 7b No.
- 8a (Subaru) Because Subaru almost looks like a Honda. (w/m) What do you mean, what do I mean. Because they look alike.
- 8b No.
- 601
- 1 Yes.
- 2 Only one company.
- 3 Tecumseh.
- 4a The shroud, pull shroud, the cover where you pull to start the engine, that cover. (w/m) Just the way it looks like a Tecumseh style. There's a name for it. It looks like the way the Tecumseh used to make the shrouds and I can associate it with another engine too, Honda and the reason why, the on and off gas and the way the throttle arm sticks out and the way the gas tank is mounted on top.
- 4b No, that's it.

DESIGN ASSOCIATED WITH OTHER SOURCES (55 Respondents)

- 502
- 1 Yes.
- 2 Only one company.
- 3 Briggs & Stratton.
- 4a All the things I can see. The recoil assembly, air filter, the throttle control. (w/m) It looks like the Briggs & Stratton engine I'm familiar with.
- 4b The muffler, the gas tank, everything you could see looks like that engine. (w/m) It looks like a Briggs & Stratton.

504

- 1 Yes.
- 2 More than one company.
- 6a Kohler and
- 6b Kawasaki.
- 7a (Kohler) The color black. (w/m) The engine is black.
- 7b That's it.
- 8a (Kawasaki) The same thing. (w/m) It's painted black.
- 8b That's it.

505

- 1 Yes.
- 2 More than one company.
- 6a Briggs & Stratton and that's really the only one.
- 7a Basic configuration looks like theirs. (w/m) The layout and design.
- 7b No.

506

- 1 Yes.
- 2 More than one company.
- 6a Could be Briggs & Stratton, or
- 6b Kawasaki.
- 7a (Briggs & Stratton) Mainly the gas tank design and the exhaust cover is similar. (w/m) Just that shield over the muffler is the same as Briggs & Stratton.
- 7b Just the throttle lever and the choke lever. (w/m) All mostly, can't really see the lever There's the turtle sign and rabbit sign for the choke.
- 8a (Kawasaki) I don't know. (w/m) Same things I guess. That's all you can really see on it.
- 8b No.

507

- 1 Yes.
- 2 Only one company.
- 3 Briggs & Stratton.
- 4a Because it looks exactly like their engine. (w/m) The whole design, the muffler looks like a Briggs & Stratton. The whole complete engine looks like a Briggs & Stratton overhead valve engine.
- 4b No.

508

- 1 Yes.
- 2 Only one company.
- 3 Briggs & Stratton.
- 4a It looks like it goes on a snow blower. (w/m) It's a horizontal engine shaft so the crank goes on the side. It could be on a leaf blower also.
- 4b Nope.

509

- 1 Yes.
- 2 Only one company
- 3 Briggs & Stratton.
- 4a Because we're dealers and we deal with them every day. (w/m) I own them. I sell them and I service them.
- 4b No.

513

- 1 Yes.
- 2 Only one company.
- 3 Briggs & Stratton.
- 4a It just looks more like that engine than others that I see from time to time. (w/m) I see features on it that their competitors don't have.
- 4b No.

515

- 1 Yes.
- 2 More than one company.
- 6a Briggs & Stratton.
- 6b Tecumseh.
- 7a (Briggs & Stratton) It's the symbolism on the throttle because there is a turtle for slow and a rabbit for fast. (w/m) They use the symbolism quite often. I've never seen that on any other engine.
- 7b No, that's pretty much it.
- 8a (Tecumseh) The style of the engine because it's a horizontal shaft. (w/m) The pull cord is on the side.
- 8b No, that's pretty much it on that.

516

- 1 Yes.
- 2 Only one company.
- 3 Briggs & Stratton.
- 4a I got one like it. (w/m) I have a lawn mower with an engine just like that.
- 4b No. I'm not sure what you're looking for.

519

- 1 Yes.
- 2 Only one company.
- 3 Briggs & Stratton.
- 4a The design of the pull cord. You have a throttle versus rabbit. There's an on-off switch, the muffler and fuel tank. (w/m) What do you mean what do I mean? All these items signify being a Briggs & Stratton.
- 4b No.

521

- 1 Yes.
- 2 More than one company.
- 6a Briggs & Stratton.
- 6b Bosch.
- 7a (Briggs & Stratton) Just that they're the most American, most produced and most general makers of these products. (w/m) If you go anywhere to get engines, most will be Briggs & Stratton.
- 7b No.
- 8a (Bosch) They're just kind of, well, between Bosch and Honda. They are the competitors in the market. (w/m) They are the most common producers of small engines.
- 8b No.

523

- 1 Yes.
- 2 Only one company.
- 3 Briggs & Stratton.
- 4a It just look like it. (w/m) Well it just looks like a Briggs & Stratton engines.
- 4b No.

- 525
- 1 Yes.
 - 2 Only one company.
 - 3 Pesuseh.
 - 4a I don't know, that's the first name that came to mid. I may be wrong. It may be Briggs & Stratton. (w/m) It was the first thing that came to mind. First Pesuseh engine. I'm familiar with Briggs & Stratton. I'm trying to see why.
 - 4b That's the one that I'm familiar with.
- 526
- 1 Yes.
 - 2 Only one company.
 - 3 Briggs.
 - 4a Just the basic design. (w/m) The air cleaner, starter, muffler.
 - 4b No.
- 527
- 1 Yes.
 - 2 More than one company.
 - 6 Tecumseh.
 - 7a To the left side of the picture, I don't know, it looks like, it's hard to see. It almost looks like an electronic emission type device. Directly behind that, I'm assuming it is an air filter cap. (w/m) It's just not something I have seen on small engines.
 - 7b No.
- 528
- 1 Yes.
 - 2 Only one company.
 - 3 Honda.
 - 4a Two switches. Starter switch and gas switch. Gas switch is different. The on-off switch. There's a rabbit, turtle switch. 75% one engine, no it's 50%, 25%, 25%. It looks too simple to be a Honda. (w/m) It looks a little too simple to be a Honda.
 - 4b Gas tank is where the piston is. (w/m) The gas tank rests on top of the crank.
- 529
- 1 Yes.
 - 2 Only one company.
 - 3 If I had to take a guess at it, I'd say Briggs & Stratton.
 - 4a I guess it's just more of a system of elimination. It doesn't look like a Honda or a Kohler so I'd guess Briggs & Stratton. (w/m) I mean like I said by looking at the things.
- 532
- 1 Yes.
 - 2 More than one company.
 - 6a Tecumseh.
 - 6b Briggs & Stratton.
 - 7a (Tecumseh) I don't know what it looks like. I haven't studied them but that's what it looks like. (w/m) I haven't studied both engines to see what it looks like. I bought one and that's what it looks like.
 - 7b No.
 - 8a (Briggs & Stratton) It looks like a Briggs & Stratton. (w/m) Cause it's black.
 - 8b It has a long shaft you can see. (w/m) It's coming out of the block.
- 534
- 1 Yes.

- 2 Only one company.
 3 Briggs & Stratton.
 4a Shape of the air filter cover. (w/m) What it looks like, the shape of it.
 4b Same answer for the gas tank and muffler guard. (w/m) The shape of it.
- 535
- 1 Yes.
 2 Only one company.
 3 Briggs & Stratton.
 4a A couple of things. The location of the throttle. The throttle control is the main one. The picture, black & white makes it hard to see. There's not a whole lot to see other than the throttle control. (w/m) That's what I focused on. I haven't seen that horizontal slide on other engines.
 4b The gas tank on top looks like a Kohler. (w/m) They usually have gravity field carburetor float and gas tank above it for the float to work.
- 536
- 1 Yes.
 2 Only one company.
 3 Briggs & Stratton.
 4a I own a few that look like that. (w/m) It just looks familiar. It looks like the same as ones I previously owned and currently own.
 4b No.
- 537
- 1 Yes.
 2 More than one company.
 6a Briggs & Stratton.
 6b LCT engines.
 7a (Briggs & Stratton) Familiarization. (w/m) I've seen it before. I've seen a lot of Briggs engines. It looks like Briggs engines.
 7b No.
 8a (LCT engines) I haven't seen many but I believe they look a lot like this. I'm not sure. I don't know.
 8b No.
- 540
- 1 Yes.
 2 Only one company.
 3 Briggs & Stratton.
 4a I don't know. I just assume that's what it is. (w/m) Because it looks like one and I'm familiar with Briggs.
 4b No.
- 543
- 1 Yes.
 2 Only one company.
 3 Briggs & Stratton.
 4a I don't know. It just looks like that engine. Looks like what they build. (w/m) I've seen their engines before. It might not be, but it looks like one.
 4b Nope.
- 544
- 1 Yes.
 2 More than one company.
 6a Briggs & Stratton.
 6b Tecumseh.

- 7a (Briggs & Stratton) Looks like one. (w/m) Well I have snow blowers, rototillers and lawn mowers that have engines that look like that and they are Briggs & Stratton.
- 7b No.
- 8a (Tecumseh) They look similar. (w/m) They use a similar design. I have a rototiller at home that has Tecumseh and that's what it looks like.
- 8b No.
- 546
- 1 Yes.
- 2 More than one company.
- 6a MTM.
- 6b John Deere.
- 7a (MTM) Because we sell them too. We sell both brands. (w/m) It's a cheaper quality unit versus all the other ones.
- 7b No.
- 8a (John Deere) Because the dealership we work with sells them. (w/m) I work for a John Deere dealership.
- 8b No.
- 547
- 1 Yes.
- 2 Only one company.
- 3 Briggs & Stratton.
- 4a The pull rope and the engines for the pull rope. You pull the rope to start the engine. I'd call it the starter rope. (w/m) It's a pull start instead of electric start.
- 4b That's it. It looks about a 4 horsepower. (w/m) Size, design, the shape recognize I know for sure it's not a Honda or Kohler so by process of elimination I'd say it looks like a Briggs & Stratton.
- 549
- 1 Yes.
- 2 Only one company.
- 3 Briggs & Stratton.
- 4a Because I have them here on some of my equipment and I work on them. (w/m) I got them on a couple of power rigs and that's how I know it's a Briggs & Stratton.
- 4b Beside that, I work on them all the time. That's' about it. (w/m) What do you mean? I'm the tech. I'm the one that fixed them when they break down.
- 554
- 1 Yes.
- 2 Only one company.
- 3 I think it's a Briggs & Stratton.
- 4a I don't know. Just the look of it. It looks like the one on my rototillers. (w/m) It just resembles it.
- 4b No.
- 555
- 1 Yes.
- 2 Only one company.
- 3 Subaru.
- 4a The starter looks pretty similar. (w/m) Well just the way it's setup. Looks like a resemblance to Subaru. It doesn't look like a Honda to me.
- 4b Maybe the gas tank. (w/m) Just the shape of it.
- 556
- 1 Yes.
- 2 Only one company.

- 3 Briggs & Stratton.
4a Just the looks of it. (w/m) Appearance. Most engines look the same.
4b No.
- 557
- 1 Yes.
2 Only one company.
3 Briggs & Stratton.
4a Just the way it appears. It looks like one of the engines. (w/m) It has similar characteristics.
4b No, that's it.
- 558
- 1 Yes.
2 Only one company.
3 Briggs & Stratton.
4a Just the layout of it. (w/m) Just where the air filter is and the gas shut off is.
4b No, that's it.
- 559
- 1 Yes.
3 Only one company.
3 It resembles Briggs & Stratton. I think Stratton only has one T.
4a The way it looks. (w/m) the build of the engine. It resembles Briggs Stratton that I've purchased in the past.
4b Nope. Can't really think of anything else.
- 560
- 1 Yes.
2 More than one company.
6a Briggs & Stratton and
6b Kohler.
6a (Briggs & Stratton) It just looks like one of their designs. (w/m) It resembles one.
6b No.
7a (Kohler) Cause they have a similar design with the position of the recoil and choke. (w/m) They look similar to Briggs & Stratton.
7b No.
- 561
- 1 Yes.
2 More than one company.
6a Briggs & Stratton
6b Subaru.
7a (Briggs & Stratton) The way the throttle is and where the choke cleaner is. (w/m) Well the placement of it.
7b And the air cleaner cover. (w/m) The way it's shaped.
8a (Subaru) The recoil starter. The way it looks. (w/m) It's the fins. The cooling part of it are smaller than the one with Briggs.
8b Nope.
- 562
- 1 Yes.
2 More than one company.
6a Briggs & Stratton.
6b Kohler.

- 7a (Briggs & Stratton) The air filter configuration and maybe the starter. There might be a Briggs & Stratton logo on the handle of the starter. (w/m) It definitely looks like a Briggs & Stratton. And, how the bottom of the air filter fits into the metal makes it classic Briggs & Stratton. The starter looks like a Tecumseh.
- 7b The on and off switch looks like a Tecumseh. (w/m) It's just what they have on the machine.
- 8a (Kohler) The new Kohlers kind of look like this. (w/m) I've seen a couple of pictures and they kind of look Honda ish. I think they're make in Asia.
- 8b That's it.
- 563
- 1 Yes.
- 2 More than one company.
- 6a Briggs & Stratton.
- 6b An off brand company.
- 7a (Briggs & Stratton) The design, the turtle and rabbit sticker for the throttle. The gas tank. (w/m) The sculpture, the way the tank looks like some of Briggs.
- 7b No.
- 8a (Off brand) The design, the look. Looks really close to it. Blue something. (w/m) A lot of similarities.
- 8b No.
- 564
- 1 Yes.
- 2 Only one company.
- 3 Briggs & Stratton.
- 4a Looks like it's got a lot of the same parts, other than the decals that are missing and the fuel cap looks different. The other parts look the same like the throttle, the fuel on and off switch, the muffler and the air filter cover. (w/m) The parts look identical. I've got countless motors that look identical to this one. Just the general layout of the motor looks the same.
- 4b No.
- 565
- 1 Yes.
- 2 Only one company.
- 3 Briggs & Stratton.
- 4a Probably the throttle control and the gas switch. (w/m) The gas on and off switch to shut the fuel off and the throttle. It just looks familiar.
- 4b No.
- 570
- 1 Yes.
- 2 Only one company.
- 3 Briggs & Stratton.
- 4a Cause everything is plastic. (w/m) It looks cheap.
- 4b Not really. No.
- 574
- 1 Yes.
- 2 Only one company.
- 3 Briggs & Stratton.
- 4a Other companies may use it but it's the recoil cover. (w/m) I mean the design of the recoil cover is something that Briggs & Stratton uses. It's the recoil cover.
- 4b No, that's about it.

- 576
- 1 Yes.
 - 2 Only one company.
 - 3 I know exactly what that is. It's Briggs & Stratton.
 - 4a Well quite honestly I just had one with 41 hours on it go bad and Briggs & Stratton wouldn't stand by it. (w/m) It was defective. It was a factory defect and they wouldn't admit it. I'm going to stay away. I'm going to get Honda.
 - 4b No.
- 580
- 1 Yes.
 - 2 More than one company.
 - 6a Kohler.
 - 6b What's that Japanese company? Not Yamaha, the other one.
 - 7a (Kohler) The shape. (w/m) It's shaped like their engine. But the Kohler is not the same color.
 - 7b No.
 - 8a (That Japanese company) Again, the shape. (w/m) It's...I had a generator that looked like that, once.
 - 8b No.
- 581
- 1 Yes.
 - 2 Only one company.
 - 3 Briggs & Stratton.
 - 4a The air filter housing, the recoil assembly and the fuel tank all look like it. (w/m) What do I mean by what? That' it looks like a Briggs & Stratton.
 - 4b No.
- 583
- 1 Yes.
 - 2 Only one company.
 - 3 Briggs & Stratton.
 - 4a Everybody knows about their engines, very good. Also good generators. (w/m) When you live where I stay you would need a generator or everything will go bad. Saying as in food wise, won't be able to watch TV or nothing. You would lose your power.
 - 4b Nothing.
- 584
- 1 Yes.
 - 2 More than one company.
 - 6a Briggs & Stratton and
 - 6b Tecumseh.
 - 7a (Briggs & Stratton) They look like pull rope and the design looks like Briggs & Stratton. The throttle and carburetor location and design looks like Tecumseh. I mean the location of the engine, the carb itself looks like a Tecumseh. (w/m) The pull rope and the design, shape and everything makes me think it's a Briggs & Stratton.
 - 7b No, that's it for me.
 - 8a (Tecumseh) Well just the overall design looks a lot like a Tecumseh. To me the little indicator, pull rope, the throttle location, the fuel tank, even the muffler looks like a Briggs & Stratton.. (w/m) I don't know what else to say. That's it for me.
 - 8b That's it for me.
- 585
- 1 Yes.
 - 2 Only one company.

- 3 I think it's Kohler.
- 4a There is so much on the equipment that we can replace with different engines and they all look the same. (w/m) If we were to replace a Honda, we would use Honda parts. If we were to replace a Kohler, we would use a Kohler.
- 4b Nope, that's it.
- 586
- 1 Yes.
- 2 Only one company.
- 3 That Lifan company.
- 4a Well cause I've had a couple of those and it looks similar to it. (w/m) I mean I've had a couple of those Lifan engines and it looks similar to it.
- 4b No.
- 591
- 1 Yes.
- 2 Only one company.
- 3 Briggs & Stratton.
- 4a Because the straight up and down not a slant. It has the Briggs & Stratton look. (w/m) It's not at a slant. Everybody else has a slant cylinder. It looks like all the Briggs & Stratton engines I've seen, the newer ones at least.
- 4b No.
- 595
- 1 Yes.
- 2 Only one company.
- 3 Robin Subaru.
- 4a The look, the stuff around it. (w/m) It looks distinct, newer style engine. It looks like a lawn and garden tank.
- 4b No.
- 596
- 1 Yes.
- 2 Only one company.
- 3 It's like something M & T or MT I, can't think of the company's name, but it's like an engine I've seen before. It has the initials or abbreviation MT.
- 4a It's an engine I've seen on rototillers or at the tractor supply store. This type of engine I've seen on a generator that is sold at Sears. It doesn't remind me of a Briggs & Stratton cause the air box has been improved and the spill containment looks to be different. (w/m) Well it usually traps the gas. This looks like it just runs down the side. Like where you tank the fuel cap off, usually there is a trap to catch the little bit of fuel that can spill out when putting gas in it. This looks like it allows it to run down the side of the engine which isn't safe cause the electrical box is close.
- 4b Well I like that fuel switch. In the picture, looks like it has a large gas pump and a small gas pump. People can recognize that. I like that the on-off switch is next to the throttle. From what I can tell from the picture, it looks like where you let the oil out of the block. It seems easily accessible. It looks like a good engine, like it's not cheap. The placement of parts looks like they did a good job. The air box where the filters is at looks like there is only one bolt to get to it and in a good spot. That's pretty much it and all I can tell from the picture.
- 598
- 1 Yes.
- 2 More than one company.
- 6a Briggs & Stratton or
- 6b Tecumseh.

- 7a (Briggs & Stratton) Well a lot of the machines I have, have a lot of Briggs & Stratton on them. Not so much Tecumseh. (w/m) Well It's just a name I associate engines with. They used to manufacture a lot of small engines when I was younger.
- 7b No.
- 8a (Tecumseh) Just because it's a familiar name. It used to be a lot of lawnmowers. (w/m) Well Tecumseh used to make a lot of lawnmowers and I'm sure they still do.
- 8b Nope.

599

- 1 Yes.
- 2 Only one company.
- 3 Briggs & Stratton.
- 4a Just because I've seen many many, many implements. (w/m) What do I mean by that?" That I've seen them on lawn mowers, edgers, cement mixers.
- 4b No.



SUMMARY OF ASSOCIATION RESPONSES	Test Group Honda Engine	Control Group Briggs & Stratton Engine
Design Associated with Honda as the Single Source	97 51.3%	9 8.9%
Survey Noise	8.9%	-
Net Association	42.4%	
Design Associated with Honda as the Single Source – Color only mentioned.	3 1.6%	
Design Maybe Associated with Honda as the Single Source	3 1.6%	-
Design Associated with Honda and Another Source	31 16.4%	5 5.0%
Design Associated with Other Sources	20 10.6%	55 54.5%
QUESTIONS NOT ASKED	35 18.5%	32 31.7%
RESPONDENTS	189 100.0%	101 100.0%



TABLE 1, Respondent Number 000, 001, and 002

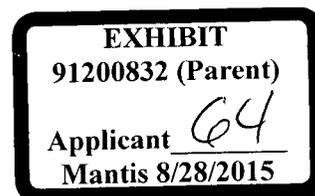
EXHIBIT
91200832 (Parent)
Applicant 63
Mantis 8/28/2015

EXHIBIT A

TEST COLOR GROUP

Appearance/Design Reason Given – Color Not Mentioned (35 Respondents)

- 102380 Their design we use that same one.
- 102504 The way the full tank and starting hose looked on a Honda that I know of.
- 102508 Honda. Have Hondas and this looks like one.
- 102576 Because setup is like Honda. Gas tank and carburetor location
- 102619 Everything about it.
- 102692 Starter and gas line.
- 102730 It looks like a Honda.
- 102871 Gas tank design and throttle pull and bottom of carburetor is bow that 1 drains the fuels or remove bow with it. 3 bolts face cover of the pull rope. I see the on/off switch.
- 103237 Shape.
- 103248 Logo, design.
- 103286 General shape of starter shroud, gas tank, air filter assembly
- 103355 It looks like one that I have notice.
- 103389 Shape design.
- 103456 Overall appearance.
- 103460 Looks like it because he is familiar with Chinese engines that look like Honda. The front housing are usually not round they r squared off.
- 103518 What it looks like, the choke, fuel shut off, air filter, fuel tank, on/off switch, starter and carburetor Bowl.
- 103595 General appearance.
- 103654 Gas tank, recoil, choke, throttle, fuel shut off.
- 103679 On/Off switch, gas tank, coke lever, just looks like a Honda to me, I have only Hondas in my shop and they all look like that.
- 103861 Engine has motor we purchase.
- 104048 Have 20 or 30 of same engines. Carburetor setup.
- 104092 Recoil, the fuel tank, the fuel bowl, the air cleaner all looks similar to Honda. It all looks the same.



- 104149 Looks just like one. Gas tank. Air filter. Choke. Gas shut off.
- 104315 Unique look versus other engines out there.
- 104403 Looks like engine in lawn mower that we bought.
- 104648 The general configuration, the gas tank, and the carburetor.
- 104792 Have one like, looks like Honda pressure washer we have.
- 105925 Overhead valves and the starter plus the fuel tank are all Honda.
- 106412 Looks like lawn mower engine.
- 106772 Recoil. Automatic choke.
- 106898 Gas tank.
- 107045 Where the on off switch is and the fuel tank.
- 150360 Looks like a Honda motor
- 107156 Similar looks.
- 103371 No Fast throttle and no Decals.

Appearance/Design and Color Reasons Given (31 Respondents)

- 102582 The white fuel tank and cap, the red housing and the square air cleaner. That's pretty much their trademark.
- 102608 Markers are – no model, color and configuration and size of gas tank, has bigger air filter.
- 103265 Design, colors. Honda simple.
- 103267 Color-red. Size of the pull starter-small.
- 103338 The red starter cover and the white fuel tank, the setup of the controls.
- 103473 It's looks like the same equipment that we have in our store that is Honda. The color looks like Honda to me.
- 103581 Gas cap, color red, the pull cord and the white fuel tank. Where the filter and carburetor sit.
- 103627 Looks just like a Honda. Deal with it all the time. Looks just like it. Red cover.
- 103642 Red Recoil Cover fuel tank set up. Air cleaner set up, carburetor set up and kill switch.
- 103704 It is red. It just looks like a Honda engine.
- 103718 Colors. Gas cap. Gas tank shape.
- 103766 The color and shape of the gas tank.

- 103818 The red pull cord on it and same build/shape of it and the gas tank top is a Honda. Plus the frame and build.
- 103959 Engine design and color of the starter.
- 104044 The Overall appearance, the red rewind, white gas tank.
- 104565 The red cover, the on and off switch, the way they do the fuel. The fuel shut off in the choke.
- 104586 The shape and design of engine is defiantly a Honda. Plus the engine starter is normal for Honda and even both color shape/design and the bolts on it.
- 104855 The carburetor, where off/on switch, the fuel tank, the red pull chord.
- 104872 Color, shape, general appearance-gas tank white, and pull start red.
- 105338 The red color. The gas tank. And the carburetor. Just overall appearance.
- 105476 The colors and the shape of the motors is an Honda.
- 105526 The color and the fuel tank. It just looks very familiar. We have Hondas on quite a few of our pieces of equipment.
- 105606 Red and it I got on and off switch and got the gas shot off like a Honda, plus air filter and the gas tank is like Honda.
- 105929 The red and white clang gas tank and the shape of the gas tank.
- 106016 Just the color scheme and the layout and everything.
- 106129 The on and off switch the pull robe the color of the gas tank & the block. The throttle the choke the fuel on and off switch.
- 106332 Red color, neat clan crisp looking, image of being well built.
- 106905 Color scheme, gas tank. And carburetor.
- 106977 General appearance a red starter and white fuel tank.
- 105276 The colors, the style, the air cleaner, the fuel lever on and off, the recoil assembly, on off switch, um, the, um, the um, carburetors drain plugs and that's pretty much about it. That's about it. Good engines. We've, uh, not really had problems with time. Good. Started on the first shot usually.
- 105330 The color the carburetor and gas cap on and off switch.

Color Only Reason Given (8 Respondents)

- 102554 Red.
- 103403 Color.
- 103696 Just the colors of the engine.

- 104213 We use Honda the red started rope is Honda and the white full tank like a Honda.
- 104823 Because I see red.
- 105321 Color.
- 105787 Color red.
- 106992 Red cover and white gas can.

CONTROL COLOR GROUP

Appearance/Design Reasons – Color Not Mentioned (15 Respondents)

- 102758 Looks like a copy of a Honda, the basic overall look and design.
- 103134 Starter carburetor.
- 103276 Design.
- 130314 It got a 2 bulb on it and the way tank is mounted and the carburetor is a Honda.
- 103393 Shape, gas tank, starter.
- 103451 On off switch. Plastic housing.
- 103477 Just the overall appearance.
- 103480 Carburetor, gas tank, Chinese copy of Honda.
- 103822 The shape of the starter that Honda has used for 20 years. The rest of the engine is a Chinese knockoff of Honda. Location of the fuel tank, location of the air cleaner and controls all look like Honda.
- 103943 The front and the fuel tank. Just the general overall appearance.
- 104191 Starter cowl and gas tank.
- 105303 The fuel tank is horizontal.
- 106070 It looks like it because I rent those all of the time. The look and set up.
- 106849 Familiarity style see it often the different engines I see around here.
- 150341 Where everything is located. The carburetor, the pull start, the kill switch.

Appearance/Design and Color Reasons (34 Respondents)

- 102477 Red shroud. Casing.

102512 Color scheme. Basic configuration.

102524 Recoil starter, carburetor, and air filter. Also the color red.

102675 It also looks like a Brigg because both for their of sight tank and the color style of it.

102685 Just design and the coloring of the engine, even air cap is similar but a bit different.

102765 Because of their colors and carburetors is the same as a Honda and same on and off switch design as a Honda.

102854 5HP Honda. Carb a little different. Color, fuel tank, breather similar to Honda.

102885 Color scheme and recoil r familiar.

103067 The color. Fuel tank.

103277 This design and color style.

103287 Color, on off switch, fuel tank.

103359 The Color scheme. The steel tank.

103373 Color placement of the tank and the airplane.

103516 Color and Design.

103617 Kill Switch, the carburetor, and the gas tank. Color red.

103651 Red and white colors and the shape of gas tank is the same.

103656 Red and general appearance.

103683 It has all the same components and same coloring and shape.

103689 The color scheme red kreenk and housing on it.

103700 The color, shape, size, the whole works, etc.

103706 The color, the shape, the gas tank, and the controls all look like Honda.

103856 The color scheme and the orientation of parts.

104181 The color of covers, the layout of the gas tank.

104341 The color scheme, every single part will fit on a Honda engine. Direct copy. Red, white and black are Hondas colors.

104754 Red, white, and black colors. The throttle control looks about the same.

106004 The overall basic design and the colors.

106386 The coloring, the shape, the design.

106817 Gas tank off white, engine is read, on off switch on side.

106951 Where tank is located, the carburetor. The color red and the on/off switch as well.

- 150472 45 casing and color.
- 150486 Looks like a Honda the color mainly it is the color and design they use.
- 107160 It looks like a Honda and it's colored like a Honda.
- 103203 Well its red in color and the carburetor assembly and the air cleaner, look like what is on a Honda and the air assembly.
- 103003 Color and shape.

Color Only Reasons Given (14 Respondents)

- 102665 Red paint/color.
- 102962 Because of the red.
- 103506 Color – red, overall fuel tank- white, all similar looks.
- 103629 Color because it's red looks similar to a lot of other engines.
- 103787 Its red. Just the way Honda's are made.
- 104697 Red.
- 104819 The red stands out.
- 105357 The red paint and the white gas tank.
- 106885 The red side cover and the white gas tank.
- 150350 Color.
- 150446 I have seen Honda engines and they are red and white.
- 150449 The red and black.
- 107094 Red case on engine, similar look of other equipment.
- 106104 Base of engine red and white tank and air filter colors like Honda.



	Test Color Group	Control Color Group
Appearance/Design Reason Given -- Color Not Mentioned	35	15
Appearance/Design and Color Reasons Given	31	34
Color Only Reason Given	8	14
HONDA RESPONDENTS	74	63

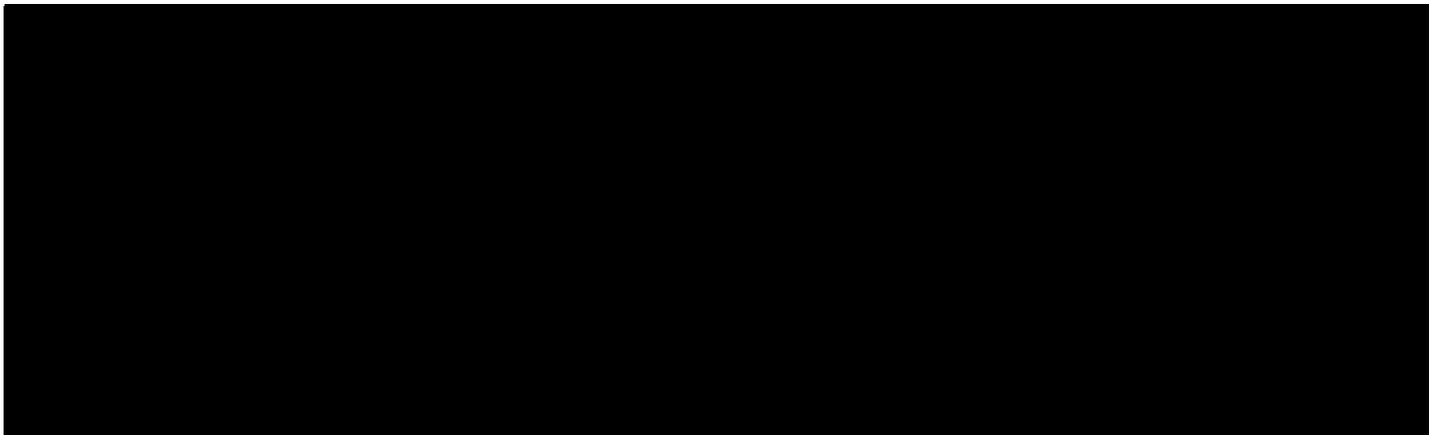


EXHIBIT
91200832 (Parent)
Applicant 65
Mantis 8/28/2015