

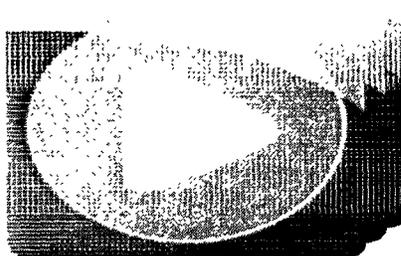
## II. INTRODUCTION

3. In September 2010, I was contacted by counsel from the law firm, Kellogg, Huber, Hansen, Todd, Evans & Figel, on behalf of its client, AT&T Connecticut (“AT&T”) concerning a dispute between AT&T and Madison Square Garden, L.P. and Cablevision Systems Corp. (“MSG/Cablevision”), provider of iO TV. Counsel informed me that MSG/Cablevision has denied AT&T the right to license the high definition feed of MSG and MSG Plus, thereby preventing AT&T from offering its subscribers high definition (“HD”) programming of regional sports programming – in particular, the Rangers, Knicks, Devils and Islanders. MSG/Cablevision is running a television campaign in Connecticut that promotes its exclusive offering of HD programming of New York area sports teams.
  
4. Counsel asked whether I could design and conduct a study to determine whether MSG/Cablevision’s exclusive offering of HD programming of all New York area sports teams is a significant competitive advantage for MSG/Cablevision and/or a significant competitive disadvantage for AT&T. I agreed and proceeded to design and conduct such a study. What follows is a report on the methodology, results and conclusions from that survey.

### **III. METHODOLOGY**

5. A total of 468 online interviews were completed between October 26 and November 1, 2010. The study methodology utilized an online sample of Connecticut households from *research now*, a leading global online sampling company. The sample was drawn based on Connecticut zip codes that are served by U-Verse in the New York metropolitan area. Age quotas were established based on U.S. Census data to reflect the age distribution of U.S. homeowners.
  
6. Survey participants were shown a television commercial for MSG/Cablevision, which advertises its HD programming of New York area sports teams. The survey incorporated two separate cells: a test cell and a control cell. Each respondent was randomly assigned to only one of these two cells. One-half of the interviews were conducted in the test cell (237 cases), while the other half of the interviews were conducted in the control cell (231 cases). The test cell commercial describes how iO TV offers HD programming of New York area sports teams and says that Verizon FiOS, Dish and AT&T do not offer this service. A video of the test cell commercial is shown below.

#### **Test Cell Commercial**



To play, click the icon above.  
Playback may take a few seconds to begin.

7. The control cell commercial also describes how iO TV offers HD programming of New York area sports teams, but does not say that AT&T or other competitors do not offer this service. A video of the test cell commercial is shown below.

**Control Cell Commercial**

To play, click the image above.  
Playback may take a few seconds to begin.

8. In order to qualify for participation in this study, respondents were screened to identify whether they belong in the proper universe. Specifically, qualified respondents:
- Are 21 years of age or older.
  - Are most responsible for selecting a cable, phone or satellite provider of television programming for their household.
  - Are “very likely” or “somewhat likely” to personally shop for a new cable, phone or satellite provider of television programming in the next two years.
  - Do not work for a market research or advertising firm; a cable, phone or satellite provider of television programming; or a telecommunications company.
  - Have functioning speakers connected to their computer (so they can hear the commercial).

9. The screening questions are as follows:

Question 1:

*“For classification purposes, what is your gender?”*

Question 2a:

*“What is your age?”*

Question 2b:

*“In what state do you live?”*

Question 3:

*“Including yourself, how many people live in your household?”*

Question 4:

*“Who in your household is most responsible for each of the following?*

*...Shopping for groceries*

*...Selecting a cable, phone or satellite provider of television programming*

*...Selecting an insurance provider*

*...Shopping for a major appliance like a new refrigerator or washing machine”*

Question 5:

*“Thinking about the next two years, how likely are you to personally shop for a new cable, phone, or satellite provider of television programming?”*

Question 6:

*“Do you, or does anyone in your household, work for...?”*

*...a market research or advertising firm?*

*...a cable, phone or satellite provider of television programming?*

*...a telecommunications company?”*

Question 7:

*“Do you have functioning speakers connected to your computer?”*

10. If the respondent qualified, the interview continued as follows:

*“You will be watching a television commercial during this survey. If you normally wear eyeglasses or contact lenses when you watch television, please put them on.*

*If you don’t know the answer to a question, select the ‘Don’t Know’ response option or type it in.*

*Please click ‘Next’ when you are ready to continue.”*

11. In order to establish a baseline interest in considering the AT&T U-Verse service, respondents were asked to rate the likelihood that they would consider AT&T U-Verse if they were shopping for a new service provider for television programming before watching the commercial.

*Question 9:*

*“If you were shopping for a new service provider for your television programming, how likely would you be to consider the AT&T U-Verse service? Please use a nine-point scale where ‘9’ means ‘Very likely’ down to ‘1’ meaning ‘Not at all likely’.”*

12. Respondents were then asked to watch the commercial. Each respondent saw only one commercial – the test cell commercial or the control cell commercial.

*“You are about to be shown a commercial that you might see if you were watching television. Please take a look at this as you would if you were watching television at home. Please make sure any other applications on your computer are closed and the volume on your speakers is at an audible level. Please click ‘Next’ when you are ready to watch the commercial. **PLAY COMMERCIAL.***

*Please watch the same commercial one more time. After it is finished, you will be asked some questions about it. Please click ‘Next’ when you are ready to watch the commercial. **RE-PLAY COMMERCIAL.**”*

13. In order to ensure that the respondent clearly watched and heard the commercial, the respondent was then asked:

Question 10:

*“Were you able to successfully see and hear the commercial both times?”*

14. The respondent must have been able to successfully see and hear the commercial both times in order to continue with the interview. Otherwise, the interview was terminated.
15. In order to measure consumer perceptions of the MSG/Cablevision commercial, respondents were initially asked some general questions regarding the main message in the commercial and what, if anything, the commercial said about iO TV compared to AT&T.

Question 11:

*“What was the main message of the commercial that you just saw? Please describe it as best as you can.”*

Question 12:

*“Did OR did not the commercial say or suggest anything about iO TV compared to AT&T?”*

Question 13:

*“**IF YES, IT DID:** What did the commercial say or suggest about iO TV compared to AT&T?”*

16. The next set of questions varied depending on which commercial respondents were shown. Respondents in the test cell were reminded that iO TV offers HD programming of New York area sports teams at no extra charge, while AT&T does not. Respondents were then asked whether knowing this makes them more interested in AT&T U-Verse, less interested, or if it makes no difference. In order to prevent any potential order bias, the order in which the first two responses (i.e., “More Interested,” or “Less Interested”) were asked was rotated between respondents in both Questions 14 and 15. Specifically, respondents in the test cell were asked:

Question 14:

*“As the commercial said, iO TV offers games in high definition for New York area sports teams at no extra charge, while AT&T U-Verse does not offer games in high definition for New York area sports teams. Does knowing this make you more interested in AT&T U-Verse for your television programming, less interested in AT&T U-Verse for your television programming, or does it make no difference?”*

17. In order to measure the converse, that is, whether the ability to offer HD programming of New York area sports teams would improve AT&T’s position in the marketplace, control cell respondents were told that AT&T U-Verse will soon be offering HD programming of New York area sports teams at no extra charge and then asked what impact, if any, this would have on their interest in AT&T U-Verse:

Question 15:

*“Soon AT&T U-Verse will also offer the exact same service to its customers. That is, AT&T U-Verse will offer games in high definition for all 9 New York area sports teams at no extra charge. Does knowing this make you more interested in AT&T U-Verse for your television programming, less interested in AT&T U-Verse for your television programming, or does it make no difference?”*

18. Regardless of which commercial they saw, those respondents who said that knowing this made them “More Interested in AT&T U-Verse” or “Less Interested in AT&T U-Verse” were asked a follow up question about why this makes them MORE/LESS interested in AT&T U-Verse:

Question 16:

*“Why does this make you (MORE/LESS) interested in AT&T U-Verse?”*

19. Finally, for verification purposes, the respondent was asked if the survey represented a true account of their responses.

**VALIDATION:**

*“Check the box if you agree with the validation statement below:*

*This is a true and complete accounting of my responses to this public opinion survey.*

*I have read and agree with the above validation statement.”*

20. All of the respondents who are included in this study responded affirmatively to this validation statement. A copy of the questionnaire used is attached to Appendix B of this Declaration.
21. Based on the sample size of roughly 230 cases in each cell, the statistical error rate for the key measures in this study falls into the range of  $\pm 5.2\%$  for a statistic such as 20% at the 95% confidence level. In other words, one would expect that 95 times out of 100, a measurement that was actually 20% would be accurately represented in the data by a statistic as high as 25.2%, or as low as 14.8%.

22. Interviewing was administered and supervised, under my direction, by Survey Center, L.L.C., a company that specializes in the administration of market research surveys. Survey Center is the data collection division of Leo J. Shapiro and Associates and is a member of the Market Research Association.
  
23. The respondents were not aware of the purpose of the research or the identity of the party who commissioned it. The methodology, survey design, execution, and reporting were all conducted in accordance with generally accepted standards of objective procedure and survey technique.
  
24. The work performed to design, carry out, and report this study is covered by a billing of \$80,000. Additional time required for trial testimony or deposition will be billed at a rate of \$7,000 per day, plus expenses.

#### IV. RESULTS

##### **Consideration of AT&T U-Verse**

25. In order to establish a baseline measurement of interest in AT&T U-Verse prior to watching the commercial, respondents were asked how likely they would be to consider AT&T U-Verse if they were shopping for a new service provider for television programming. In response to this question, just over half of both test cell (52%) and control cell (57%) respondents say that they would be likely to consider AT&T U-Verse (“7-9” rating on a 9 point scale). Another 29% in the test cell and 27% in the control cell are relatively neutral (“4-6” rating). Only a small minority in the test cell (13%) and the control cell (11%) say that they are not likely to consider AT&T U-Verse (“1-3” rating).

*“If you were shopping for a new service provider for your television programming, how likely would you be to consider the AT&T U-Verse service? Please use a nine-point scale where “9” means “Very likely” down to “1” meaning “Not at all likely.”*

	<u>Test Cell</u>		<u>Control Cell</u>
ALL RESPONDENTS	(237)		(231)
	<u>100%</u>		<u>100%</u>
Likely: “7-9” Rating	52%	} 81%	57%
Neutral: “4-6” Rating	29		27
Not Likely: “1-3” Rating	13		11
Don’t Know/Never Heard Of	6		5
<i>Mean Rating</i>	<i>6.3</i>		<i>6.6</i>

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**NOTE:** Table may not sum to 100% due to rounding.

**Main Message**

26. When asked what the main message of the commercial was, respondents in the test cell most often note that it is “Only offered by iO TV/Not offered by the competition/AT&T/Verizon/Dish” (52%) and that you can “Get sports/NY sports in HD” (45%). Control cell respondents most frequently mention “Carries NY teams/local teams/sports/games” (44%) and “Get sports/NY sports in HD” (36%).

*“What was the main message of the commercial that you just saw? Please describe it as best as you can.”*

	<u>Test Cell</u> (237)	<u>Control Cell</u> (231)
ALL RESPONDENTS	<u>100%</u>	<u>100%</u>
Only Offered By iO TV/Not Offered By Competition/AT&T/Verizon/Dish	52%	1%
Get Sports/NY Sports In HD	45	36
Carries NY Teams/ Local Teams/Sports/Games	22	44
HD TV/HD Quality	19	10
Free/No Extra Charge	17	10
Ad For iO TV/Optimum/Cablevision/TV Services	10	4
Ad For AT&T/Verizon	4	--
Better Than Others/AT&T/Verizon	2	--
Great/More/Better Programming	1	*
Don't Like Sports	1	--
Better Picture/Pixels	*	9
Good Sound	*	1
High Quality/Better	*	*
Good Colors/Color Pixels	--	4
Best Channels/Lots Of Channels	--	1
Women Don't Really Know Sports	--	1
Better Sports Viewing	--	*
Other	*	*

\*.5% or fewer mentions each, but not zero.

**NOTE:** Table may sum to more than total due to multiple mentions by some respondents.

### Comparison to AT&T

27. When asked whether the commercial said or suggested anything about iO TV compared to AT&T, the vast majority of test cell respondents (84%) say that it did, compared to just 10% in the control cell. Test cell respondents most often explain that the commercial said that “iO has HD sports/AT&T does not” (31%), “See all/better/more sports on iO than AT&T” (18%), and “Free (HD) with iO/Not with AT&T” (15%). Control cell respondents most often mention “See all/better/more sports on iO than AT&T” (2%) and “Better/more channels/programming” (2%).

*“Did OR did not the commercial say or suggest anything about iO TV compared to AT&T?”*

*IF YES, IT DID: What did the commercial say or suggest about iO TV compared to AT&T?”*

	<u>Test Cell</u> (237) <u>100%</u>	<u>Control Cell</u> (231) <u>100%</u>
ALL RESPONDENTS		
<b>Ad Say Or Suggest Anything About iO TV Compared To AT&amp;T?</b>		
No, It Did Not/Don't Know/Not Sure	16%	90%
Yes, It Did...	<u>84</u>	<u>10</u>
<b>What Did The Ad Say Or Suggest About iO TV Compared To AT&amp;T?</b>		
iO Has HD Sports/AT&T Does Not	31%	1
See All/Better/More Sports On iO than AT&T	18	2
Free (HD) With iO/Not With AT&T	15	--
iO Is Better/AT&T Not As Good	9	1
iO Has HD/AT&T Does Not/ iO Better HD	8	1
iO Can/AT&T Can't	5	--
Better/More Channels/Programming	3	2
Compared The Two	1	*
Watch/Buy iO/Not AT&T	*	1
iO Does Not Offer HD Sports	*	--
iO Better Quality/Picture	--	1
Lower Cost	--	*
Other	2	--
Don't Know/Not Answering	--	2

\*0.5% or fewer mentions each, but not zero.

NOTE: Table may sum to more than total due to multiple mentions by some respondents.

### Impact on Interest in AT&T U-Verse

28. In order to measure the impact of the absence/presence of HD sports programming on interest in AT&T U-Verse, respondents in the test cell were reminded that iO TV offers HD programming of New York area sports teams at no extra charge, while AT&T U-Verse does not. Control cell respondents were told that AT&T U-Verse will soon be offering HD programming of New York area sports teams at no extra charge. All respondents were then asked what impact, if any, this would have on their interest in AT&T U-Verse. In response to this question, one in five test cell respondents (21%) say that it makes them less interested in AT&T U-Verse, while just 2% say that it makes them more interested in AT&T U-Verse. Conversely, nearly one-third (32%) of control cell respondents say that it makes them more interested in AT&T U-Verse, while just 2% say that it makes them less interested in AT&T U-Verse.

Test Cell Question:

*“As the commercial said, iO TV offers games in high definition for New York area sports teams at no extra charge, while AT&T U-Verse does not offer games in high definition for New York area sports teams. Does knowing this make you more interested in AT&T U-Verse for your television programming, less interested in AT&T U-Verse for your television programming, or does it make no difference?”*

Control Cell Question:

*“Soon AT&T U-Verse will also offer the exact same service to its customers. That is, AT&T U-Verse will offer games in high definition for all 9 New York area sports teams at no extra charge. Does knowing this make you more interested in AT&T U-Verse for your television programming, less interested in AT&T U-Verse for your television programming, or does it make no difference?”*

	<u>Test Cell</u> (237)	<u>Control Cell</u> (231)
ALL RESPONDENTS	<u>100%</u>	<u>100%</u>
More Interested In AT&T U-Verse	2%	<u>32%</u>
Less Interested In AT&T U-Verse	<u>21</u>	2
No Difference	77	66

29. When asked why they are less interested in AT&T U-Verse, knowing that it does not carry free HD programming of NY area sports, test cell respondents most often explain “I like sports/household/spouse likes sports” (10%), and “I like HD/want HD/HD is better” (8%).

***“IF LESS INTERESTED: Why does this make you less interested in AT&T U-Verse?”***

	<u>Test Cell</u> (237)	<u>Control Cell</u> (231)
ALL RESPONDENTS	<u>100%</u>	<u>100%</u>
<b>Why Does This Make You Less Interested In AT&amp;T U-Verse?</b>		
<u>All Who Say That They Are Less Interested</u>	<u>21%</u>	<u>2%</u>
I Like Sports/Household/Spouse Likes Sports	10	--
I Like HD/Want HD/HD Is Better	8	--
Free HD/Cost Less	3	--
Don't Like/Care About Sports/NY Sports	2	1
More Expensive/Would Cost More	1	*
AT&T Is Not As Good/Bad	1	--
AT&T Doesn't Carry Local Teams/In HD	1	--
AT&T/U-Verse Has Fewer Options	1	--
Availability/Can Get In My Area	*	--
Reliability	*	--
Already Have iO	--	*

\* 0.5% or fewer mentions, but not zero.

**NOTE:** Table may sum to more than total due to multiple mentions by some respondents.

30. When asked why they are more interested in AT&T U-Verse, knowing that it will soon be offering free HD programming of NY area sports, control cell respondents most often explain “I like sports/household/spouse likes sports” (16%).

*“IF MORE INTERESTED: Why does this make you more interested in AT&T U-Verse?”*

	<u>Test Cell</u> (237) <u>100%</u>	<u>Control Cell</u> (231) <u>100%</u>
ALL RESPONDENTS		
<b>Why Does This Make You More Interested In AT&amp;T U-Verse?</b>		
<u>All Who Say That They Are More Interested</u>	<u>2%</u>	<u>32%</u>
I Like Sports/Household/Spouse Likes Sports	--	16
Free HD/Cost Less	*	6
AT&T/U-Verse Has A Good Reputation/Is Better/Good	*	6
I Like HD/Want HD/HD Is Better	--	4
More Options/Services	--	4
Another Option/More Competition	--	2
Availability/Can Get In My Area	*	1
More Expensive/Would Cost More	--	1
Already Have AT&T/U-Verse	--	1
Can't Get It In My Area	--	1
Don't Like/Care About Sports/NY Sports	1	*
Comparable Service	--	*
Other	*	2

\* 0.5% or fewer mentions, but not zero.

NOTE: Table may sum to more than total due to multiple mentions by some respondents.

## V. CONCLUSIONS

31. These results indicate that, prior to being exposed to the MSG/Cablevision television commercial at issue, AT&T U-Verse is in the competitive set for Connecticut consumers, with over half of survey participants (52% in the test cell and 57% in the control cell) saying that they would be likely to consider AT&T U-Verse if they were shopping for a new service provider for television programming. Most of the balance are at least “neutral” towards AT&T.
32. The test cell commercial communicates a clear competitive advantage for MSG/Cablevision, in that this is “Only offered by iO TV/not offered by the competition/AT&T/Verizon/Dish” (52%) and that you can “Get sports/NY sports in HD” (45%). Further, when asked directly whether the commercial says or suggests anything about iO TV compared to AT&T, the majority of test cell respondents report that it does (84%), most often explaining that “iO has HD sports/AT&T does not” (31%).
33. The control cell commercial also communicates that iO TV “Carries NY teams/local teams” (44%) and “Get sports/NY sports in HD” (36%), but does not communicate that this is “Only offered by iO TV/not offered by the competition/AT&T/Verizon/Dish” (1%).
34. A significant proportion of these Connecticut consumers are attracted to HD programming of NY area sports teams when making a decision about their television service provider. Specifically, when test cell respondents are asked whether knowing that

iO TV offers HD programming of NY area sports teams at no extra charge, but AT&T U-Verse does not, has any impact on their interest in AT&T U-Verse, 21% say that it makes them less interested in using AT&T U-Verse for their television programming. Those who are less interested in U-Verse most often explain “I like sports/household/spouse likes sports” (10%) and “I like HD/want HD/HD is better” (8%).

35. Similarly, when control cell respondents are asked whether knowing that AT&T U-Verse will soon offer HD programming of all nine NY area sports teams at no extra charge has any impact on their interest in AT&T U-Verse, 32% say that it makes them more interested in using AT&T U-Verse for their television programming. Control cell respondents who say that makes them more interested in AT&T U-Verse most often explain that “I like sports/household/spouse likes sports” (16%).
36. Overall, based on the results of this survey, it is my opinion that MSG/Cablevision’s exclusive offering of HD programming of all nine New York area sports teams provides a significant competitive advantage for MSG/Cablevision and a significant competitive disadvantage for AT&T.

Pursuant to 28 U.S.C., Section 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on November 18, 2010 in Chicago, Illinois.

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Philip Johnson

## **APPENDIX A**

- Philip Johnson Curriculum Vitae
- Recent Cases In Which Philip Johnson Has Testified



LEO J. SHAPIRO & ASSOCIATES LLC.

**PHILIP JOHNSON**

**CURRICULUM VITAE**

Philip Johnson is the Chief Executive Officer of Leo J. Shapiro and Associates, a Chicago-based market research and behavioral consulting company. Mr. Johnson has been with this firm since 1971 and has held a number of positions. In recent years, he has concentrated his efforts in the areas of study design and the development of innovative research techniques.

Over the past years, Mr. Johnson has designed and supervised hundreds of surveys measuring consumer behavior and opinion, employing a wide range of research techniques. His area of expertise is in the use of survey research as a tool in litigation, including jury selection and trademark disputes.

Mr. Johnson has offered testimony regarding survey evidence on over fifty occasions in both Federal and State courts. In addition, he has offered survey research in matters before the Federal Trade Commission, The Food and Drug Administration, the Patent and Trademark Office, and the Trademark Trial and Appeal Board. Mr. Johnson has designed, conducted, and reported survey evidence on behalf of both plaintiffs and defendants in various cases. The topics covered in these litigation related surveys include matters related to likelihood of confusion, secondary meaning, genericness, dilution, false advertising, change of venue, and unfair competition.

Part of Mr. Johnson's training has been through working with Dr. Leo J. Shapiro, the Founder of the company; the late Dr. Philip M. Hauser, a former Director of the U. S. Census Bureau; and the late Dr. Hans Zeisel, who made significant contributions in the application of social science to the solution of legal questions.

Mr. Johnson has given lectures before the American Bar Association (ABA) and the Practising Law Institute (PLI) on the use of survey research in litigation. He is a member of the American Marketing Association (AMA), the American Association for Public Opinion Research (AAPOR), and the International Trademark Association (INTA).

Mr. Johnson has a B.S. degree in Psychology from Loyola University and an M.B.A. degree from the University of Chicago.



LEO J. SHAPIRO & ASSOCIATES LLC.

**RECENT CASES IN WHICH PHILIP JOHNSON HAS  
TESTIFIED OR OFFERED SURVEY EVIDENCE AT TRIAL...**

NOVEMBER 2009	FAIR ISAAC CORPORATION v. EQUIFAX, INC., ET AL. United States District Court for the District of Minnesota Secondary Meaning
JULY 2009	THE SCOTTS COMPANY LLC v. CENTRAL GARDEN & PET COMPANY AND GULFSTREAM HOME & GARDEN, INC., United States District Court for the Southern District of Ohio False Advertising
JULY 2009	LUMBER LIQUIDATORS, INC., v. STONE MOUNTAIN CARPET MILLS, INC. d/b/a THE FLOOR TRADER United States District Court for the Eastern District of Virginia Likelihood of Confusion
NOVEMBER 2008	BRIGHTON COLLECTIBLES, INC. v. COLDWATER CREEK, INC. United States District Court for the Southern District of California Secondary Meaning
OCTOBER 2008	EL DIABLO, INC. v. MEL-OPP & GRIFF, LLC., ET AL. In the Superior Court of the State of Washington in and for the County of King Trade Dress Infringement
AUGUST 2008	EXPERIENCE HENDRIX, LLC. AND AUTHENTIC HENDRIX, LLC., v. ELECTRIC HENDRIX, LLC., ET AL. United States District Court for the Western District of Washington at Seattle Likelihood of Confusion
JANUARY 2008	PEDINOL PHARMACAL, INC. v. RISING PHARMACEUTICALS, INC. United States District Court for the Eastern District of New York Therapeutic Equivalence

NOVEMBER 2007                   SKECHERS U.S.A., INC. v. VANS, INC.  
United States District Court for the  
Central District of California  
Likelihood of Post-Sale Confusion

AUGUST 2007                    SAINT-GOBAIN CORPORATION v. 3M COMPANY  
United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
Secondary Meaning

APRIL 2007                     NIKE, INC. v. NIKEPAL INTERNATIONAL, INC.  
United States District Court for the  
Eastern District of California  
Likelihood of Initial Interest Confusion and Dilution

FEBRUARY 2007                 JOHNSON & JOHNSON VISION CARE, INC. v. CIBA VISION  
CORPORATION  
United States District Court for the  
Southern District of New York  
False Advertising

NOVEMBER 2006                 HASBRO, INC. v. MGA ENTERTAINMENT, INC.  
United States District Court for the  
District of Rhode Island  
Secondary Meaning

OCTOBER 2006                 CLASSIC FOODS INTERNATIONAL CORPORATION v. KETTLE  
FOODS, INC.  
United States District Court for the  
Central District of California (Southern Division)  
Likelihood of Confusion

JUNE 2006                     GROCERY OUTLET INC. v. ALBERTSON'S, INC., AMERICAN  
STORES COMPANY, L.L.C., AND LUCKY STORES, INC.  
United States District Court for the  
Northern District of California (San Francisco Division)  
Likelihood of Confusion and Fame

JUNE 2006                     DE BEERS LV TRADEMARK LTD. AND DE BEERS LV LTD. v.  
DEBEERS DIAMOND SYNDICATE INC. AND MARVIN  
ROSENBLATT  
United States District Court for the  
Southern District of New York  
Awareness

APRIL 2006                    24 HOUR FITNESS USA, INC. v. 24/7 TRIBECA FITNESS, L.L.C.,  
24/7 GYM, L.L.C., ET AL.  
United States District Court for the  
Southern District of New York  
Likelihood of Confusion

- APRIL 2006                   JUICY COUTURE, INC. AND L.C. LICENSING, INC. v. LANCÔME  
PARFUMS ET BEAUTE & CIE AND LUXURY PRODUCTS, L.L.C.  
United States District Court for the  
Southern District of New York  
Likelihood of Confusion
- JANUARY 2006               WHIRLPOOL PROPERTIES, INC., ET AL., v. LG ELECTRONICS  
U.S.A., INC., ET AL.  
United States District Court for the  
Western District of Michigan (Southern Division)  
Likelihood of Confusion
- OCTOBER 2005              PRL USA HOLDINGS, INC. v. UNITED STATES POLO  
ASSOCIATION, ET AL.  
United States District Court for the  
Southern District of New York  
Likelihood of Confusion
- SEPTEMBER 2005          HILL'S PET NUTRITION, INC. v. NUTRO PRODUCTS, INC. AND  
JOHN DOES #1-20  
United States District Court for the  
Central District of California (Western Division)  
False Advertising
- SEPTEMBER 2005          PERFUMEBAY.COM, INC. v. EBAY, INC.  
United States District Court for the  
Central District of California (Western Division)  
Likelihood of Dilution and Initial Interest Confusion
- JUNE 2005                   METROPOLITAN LIFE INSURANCE CORPORATION v. METBANK  
United States District Court for the  
Southern District of New York  
Likelihood of Confusion
- MARCH 2005                PACIFIC MARKET INTERNATIONAL v. THERMOS L.L.C.  
United States District Court for the  
Western District of Washington (Seattle Division)  
Likelihood of Confusion
- MARCH 2005                JADA TOYS, INC. v. MATTEL, INC.  
United States District Court for the  
Central District of California  
Likelihood of Confusion



LEO J. SHAPIRO & ASSOCIATES LLC.

**DEPOSITION TESTIMONY OF PHILIP JOHNSON  
THAT HAS NOT BEEN OFFERED AT TRIAL...**

JULY 2010	ROSETTA STONE LTD. v. TOPICS ENTERTAINMENT, INC. United States District Court for the Eastern District of Virginia
APRIL 2010	LA QUINTA WORLDWIDE, LLC v. QUINTA REAL PROMOCION, S.A. de C.V. United States District Court for the District of Arizona (Tuscon Division)
MARCH 2010	THE NORTH FACE APPAREL CORPORATION v. THE SOUTH BUTT, LLC United States District Court for the Eastern District of Missouri (St. Louis)
MARCH 2010	THINK VILLAGE-KIWI, LLC v. ADOBE SYSTEMS, INC., AND ADOBE MACROMEDIA SOFTWARE LLC United States District Court for the Northern District of California
SEPTEMBER 2009	FLOWERS BAKERIES BRANDS, INC. v. INTERSTATE BAKERIES CORPORATION United States District Court for the Northern District of Georgia
FEBRUARY 2009	CRICKET COMMUNICATIONS, INC. v. HIPCRICKET, INC. United States District Court for the Western District of Washington
APRIL 2008	SEXY HAIR CONCEPTS, LLC v. VICTORIA'S SECRET STORES BRAND MANAGEMENT, INC. United States District Court for the Southern District of New York
APRIL 2007	IDT TELECOM, INC. AND UNION TELECARD ALLIANCE, LLC v. CVT PREPAID SOLUTIONS, INC., ET AL. United States District Court for the District of New Jersey