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Brief Statement of Experience and Qualifications

From time to time, I am asked to describe my experience and qualifications either as an expert in surveys proffered as evidence in litigated matters and/or as a scholar/researcher. This statement is responsive to such requests.

Qualifications as an Expert in Surveys Proffered as Evidence in Litigated Matters

Since 1978, I have provided evidence-based testimony in hundreds of matters heard in U.S. District Courts. My experience as an expert witness began five years earlier, when I started providing research-based testimony before federal regulatory agencies (the Federal Trade Commission, the Food and Drug Administration) and at state hearings. With relatively few exceptions, courts have admitted and given weight to my testimony,¹ with said testimony often considered instrumental in achieving favorable decisions or settlements. In several instances, the monetary value at stake has exceeded \$1 billion dollars. An incomplete list of my past and present corporate and organizational clients can be found at www.JacobyIP.com.

Based upon my writings, research and testimony, the American Bar Association's Section on Intellectual Property Law invited me to write the following 1,000+ page treatise:

Jacob Jacoby, *Trademark Surveys: Designing, Implementing and Evaluating Surveys* (2013). Chicago: American Bar Association.

My writings have been cited in *amicus* briefs filed with the United States Supreme Court and have been cited in Second Circuit opinions² as the basis for shifting the burden of proof in trademark disclaimer cases from plaintiff to defendant.

At the invitation of the Federal Judicial Center (the educational arm of the federal judiciary), I've presented lectures on how to evaluate survey research to

¹ To place things in context, according to SCOTUS blog, when appealed to appellate courts, approximately 25% of U.S. District Court opinions are reversed; when appealed to the U.S. Supreme Court, approximately 65% of U.S. Appeals Court opinions are reversed. .

²See: *Charles of the Ritz Group, Ltd. V. Quality King Distributors, Inc.* 832 F.2d 1317, 4 U.S.P.Q.2d 1778 (2d Cir. 1987); *Home Box Office, Inc. v. Showtime/Movie Channel, Inc.* 832 F.2d 1311, 4 U.S.P.Q.2d 1789 (2d Cir. 1987).

federal judges attending the FJC's workshops for District Court judges and Magistrates.

In 1994 and again in 1998, I was invited by the Federal Judicial Center to serve as a peer reviewer for the "Survey Reference Guide" appearing in the 1994 and 2000 editions of its *Reference Manual on Scientific Evidence*.

I was retained by the Food and Drug Administration to develop its definition of and approach to measuring misleading advertising³. Based upon my research into consumer use and comprehension of nutrition information, I served as an expert on a U. S. Senate, Office of Technology Assessment committee preparing nutrition education guidelines for the public.

I have been an invited speaker on the subjects of litigation surveys and consumer confusion/dilution/deception before various organizations, including the American Bar Association, the International Bar Association, the International Trademark Association, the American Intellectual Property Law Association, the Practising Law Institute, the Federal Trade Commission, the National Association of Attorneys General, several law schools (e.g., New York University; Fordham University, Franklin Pierce Law Center; Roger Williams University; Benjamin Cardozo Law School; Santa Clara University) and a number of state (California, Virginia) and local (e.g., New York City) bar and intellectual property associations.

J. Thomas McCarthy's seven volume treatise "*McCarthy on Trademarks and Unfair Competition*" is widely considered to be the most authoritative source on U.S. trademark law. Examination of these volumes, particularly the "Survey Evidence" section of Chapter 32, reveals that I am the most cited survey researcher in that treatise.

Qualifications as a Scholar/Researcher

Since 1981, I have held an endowed chair as the Merchant's Council Professor of Consumer Behavior and Retail Management at New York University's Leonard N. Stern Graduate School of Business.

I have authored or co-authored five books, edited two others and published more than 160 articles and book chapters, most in rigorously refereed scholarly journals. I have been fortunate to have my research and scholarly writings accorded significant recognition.

Having identified me as one of six "Legends in Consumer Behavior," Sage (Independent Publishers Guild Academic and Professional Publisher for the Year

³ Jacoby, J. and Small, C. B. (1975) The FDA approach to defining misleading advertising. *Journal of Marketing*, 39 (4), 65-68.

2012) released an 8-volume set containing many of my works, as well as commentaries by more than 20 scholars. See: *Legend in Consumer Behavior: Jacob Jacoby*, Sage Publications, 2015. Series Editor Jagdish N. Sheth. ISBN 13: 978-93-515-0124-4.

Based upon my scholarly publications in the field's most rigorously reviewed peer journals, for the twenty year period spanning 1968-1988, two independently conducted surveys identified me as the world's most influential and most frequently cited consumer behavior research scholar.

1. Conducted by Donna Hoffman and Morris Holbrook and published in the field's leading peer-reviewed scholarly journal, the first study showed I had the highest "influence index" of any of the field's 42 most-published scholars whose work was accepted and published by the *Journal of Consumer Research* during the 15 year period spanning 1974-1989 (see Hoffman & Holbrook "The Intellectual Structure of Consumer Research," *Journal of Consumer Research*, 1993 (19), 507-517, at page 511).⁴

2. Based on my scholarly publications in the *Journal of Marketing*, *Journal of Marketing Research* and *Journal of Consumer Research* (have traditionally considered the field's three most rigorous peer-reviewed journals), the second study⁵ shows I was the second-most often cited marketing (and first-most often cited consumer research) scholar in the *Social Science Citation Index* for the 20 year period spanning 1969 through 1988. At that time, the *Social Science Citation Index* covered more than 1,400 journals worldwide.

Other honors and awards include the following:

1. I received the American Marketing Association's Harold H. Maynard award for an article judged to have made "the most significant contribution to marketing theory and thought" during 1978.

2. I received the American Academy of Advertising's first annual "Outstanding Contribution to Advertising" award for having made "a significant and sustained contribution to advertising research through a systematic program of research."

3. I am the fifth recipient of the American Psychological Association's Society for Consumer Psychology bi-annual "Distinguished

⁴ As an indication of its selectivity and rigor, the *rejection* rate at the *Journal of Consumer Research* tends to hover between 85% and 88% of the papers submitted.

⁵ Joseph Cote, Siew Meng Leong and Jane Cote. "Assessing the Dissemination and Utilization of Marketing Research in the Social Sciences: A Citation Analysis Approach." School of Business, Oregon State University, August 10, 1990.

Scientist Award" for "sustained, outstanding contributions to the field of consumer psychology." (Basking in reflected glory, the third recipient was awarded a Nobel Prize in 2002.)

4. Based upon my research productivity, I have been elected a Fellow in the following organizations: American Psychological Association, American Psychological Society, Association for Consumer Research, Society for Consumer Psychology, Society for Law and Psychology, Society for Personality and Social Psychology. In each instance, the honor of being elected a Fellow is accorded to less than 10% of the membership. In the case of the Association for Consumer Research, it is approximately 1% of the membership.

5. I have been listed in numerous "Who's Who" compilations, including: *Who's Who in the World*, *Who's Who in America*⁶, *Who's Who in Science and Engineering*, *Who's Who in Frontier Science and Technology*, *Who's Who in Advertising*, *Who's Who in American Education* and *Who's Who of Emerging Leaders in America*.

I was elected President of the American Psychological Association's Society of Consumer Psychology and President of the Association for Consumer Research.

Either directly or through their legal counsel, I have been retained and served as a consultant to well over a hundred nationally and internationally known firms.

Various portions of my research have been funded by grants from the National Science Foundation, by a contract from the Federal Trade Commission, and by the American Association of Advertising Agencies and the Advertising Educational Foundation.

As a "gatekeeper of science," I have served on the editorial boards and as a reviewer for several scholarly journals and granting agencies in the U.S. and Canada.

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⁶ The *New York Times* (November 13, 2005, Section 9, Page 1) reports that inclusion in *Who's Who in America* is based upon "position and accomplishment." That year, the two-volume set contained approximately 109,000 entries.