

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI**

TIFFANY HOGANS, et. al.,

Plaintiffs,

vs.

JOHNSON & JOHNSON, et al.,

Defendants.

Case No. 1422-CC09012-01

Division 10

TABLE OF AUTHORITIES

CASES

| | |
|------------------------------------------------------------------------------------------|----------------|
| <i>Firestone v. Crown Center Redevelopment Corp.</i> , 693 S.W.2d 99 (Mo. 1985) | 10, 12, 13, 19 |
| <i>Janssen Pharmaceutica, Inc. v. Bailey</i> , 878 So. 2d 31 (Miss. 2004) | 10, 11, 12, 18 |
| <i>United States v. Tokars</i> , 839 F. Supp. 1578 (N.D. Ga. 1993) | passim |

RULES AND REGULATIONS

| | |
|------------------------------|--------|
| Mo. Sup. Ct. R. 51.04 | 10, 12 |
| Fed. R. Crim. P. 21(a) | 12 |

**DEFENDANTS' MOTION TO CHANGE VENUE FOR THE
UPCOMING SEPTEMBER TRIAL**

The Johnson & Johnson Defendants (“Defendants”) respectfully move, pursuant to Rule 51.04, for change to a venue outside the St. Louis media market and at least 100 miles away, in order to minimize the jury taint that has been effected by plaintiffs’ counsel’s blanketing advertisements in the St. Louis area.¹

As set forth below, recent analyses conducted by two experts confirm what Defendants have long been arguing to this Court: the ubiquitous barrage of highly inflammatory commercials regarding Johnson & Johnson Consumer Inc.’s talcum-containing products and two recent jury verdicts in cases involving those products has made it impossible for Defendants to receive a fair trial in St. Louis Circuit Court. Moreover, the analyses also suggest that one purpose of the ads may be to influence public opinion – and, by extension, the opinions of prospective jurors in future trials.

Most notably:

- Between July 1, 2015 and June 30, 2016, “more talcum powder litigation ads were broadcast in the St. Louis media market . . . than in *any other* American media market.” (Aff. of Rustin Silverstein (“Silverstein Aff.”) ¶¶ 14-15, July 27, 2016 (attached as Ex. 1) (emphasis added).)
- In March 2016 alone, “319 out of the [total] 1,412 talcum powder litigation ads – or 23% – were broadcast solely in St. Louis” even though St. Louis “represents just over 1% of the national television audience.” (*Id.* ¶ 29.)
- A survey of potential jurors in St. Louis revealed that *nearly 62%* of those surveyed have been exposed to commercials regarding talcum powder and ovarian cancer. (Aff. of Ernan Haruvy (“Haruvy Aff.”) ¶ 9b, July 26, 2016 (attached as Ex. 2).)

¹ Defendants have previously requested that the Court stay or continue the upcoming September 26, 2016 talc trial (*Pfau* or *Giannecchini*), as well as the currently scheduled 2017 talc trials, pending resolution of the *Fox* or *Ristesund* appeals. (See Defs.’ Mot. to Stay.)

- On average, respondents recalled having been exposed to *nearly nine* such commercials, with the median number of commercials being five. (*Id.* ¶ 26.)
- The majority (61.86%) of potential jurors reported that it had been *two days or less* since they had last been exposed to a commercial regarding talcum powder and ovarian cancer. (*Id.* ¶ 9b.) And nearly half of the respondents (44.33%) indicated that it had only been *one day or less* since their last exposure to such an advertisement. (*Id.*)
- Of the respondents who reported having been exposed to commercials regarding talcum powder and ovarian cancer, the majority recalled seeing commercials that mentioned a jury verdict, specific product and/or specific law firm. (*Id.* ¶ 27.)
- Of the respondents who recalled having been exposed to commercials regarding talcum powder and ovarian cancer, **56.86%** indicated that they had “unfavorable” opinions about talcum powder – and **62.75%** indicated that their exposure to the commercials was “important” in shaping those opinions. (*Id.* ¶¶ 29-30.)
- The number of mentions of jury awards in local talcum powder litigation ads in St. Louis is substantially higher than that in talcum powder litigation ads that run nationally, strongly suggesting that the intent of the local ads is more geared towards influencing public opinion than attracting prospective clients. (*Id.* ¶ 49.)
- The top five local commercials in St. Louis had fewer invitations to call the ad’s sponsoring law firm than those in lower-ranked and national ads, strongly suggesting that the intent of the highest ranked ads was to influence public opinion as opposed to generating new clients. (*Id.* ¶ 48.)

BACKGROUND

Plaintiffs’ lawyers have engaged in a pervasive and targeted publicity campaign with regard to Johnson & Johnson’s talcum-containing products and surrounding litigation. In order to assess the pervasive and prejudicial nature of this comprehensive publicity campaign, Defendants recently retained the services of two experts, who examined the publicity and undertook extensive analyses of the scope and impact of the campaign on potential jurors.

A. Affidavit of Rustin Silverstein

Rustin Silverstein, the President and founder of X Ante LLC – the premier source for data and analysis of advertising and marketing by plaintiffs’ law firms engaged in mass tort

litigation – analyzed television advertisements related to talcum powder product liability claims broadcast nationally and in the St. Louis market between July 1, 2015 and June 30, 2016. The data he examined included monthly totals of estimated spending on talcum powder litigation advertisements and the number of times these commercials aired each month from July 1, 2015 through June 30, 2016. (Silverstein Aff. ¶ 7.) The data were compiled by the Campaign Media Analysis Group (“CMAG”), a Kantar Media Solution company that monitors, codes and aggregates television commercials 24 hours a day utilizing an automated system. (*Id.* ¶ 8.) The monitored stations are the principal stations in each market and typically include the network affiliates and major independent networks. (*Id.*) “CMAG staff watch, review, and code every ad to determine the messages used in each – such as a message about ‘talcum powder’ – and the content information is merged with the automated placement and spending information.” (*Id.* ¶ 9.)

Based on the data provided by CMAG, Mr. Silverstein concluded “that there has been a disproportionate amount of talcum powder litigation advertising in the St. Louis media market over the past year.” (*Id.* ¶ 13.) Between July 1, 2015 and June 30, 2016, plaintiffs’ law firms aired “nearly 19,000” talcum powder litigation commercials on national and local television networks at an estimated cost of \$9.7 million. (*Id.* ¶ 14.) During this twelve-month period, “more talcum powder litigation ads were broadcast in the St. Louis media market . . . than in *any other* American media market.” (*Id.* ¶ 15 (emphasis added).) Specifically, there were more than 850 such ads on local broadcast networks in St. Louis, costing approximately \$173,000. (*Id.*) “These 875 ads were in addition to the more than 4,300 talcum powder litigation ads that St. Louis television viewers . . . might have seen during this time period on national cable and broadcast networks[.]” (*Id.* ¶ 16.) The focus of these commercials on the St. Louis market is

particularly significant because, as described below, Mr. Ernan Haruvy found that the local ads in St. Louis were more geared toward influencing public opinion than attracting new clients. Notably, “[w]hile St. Louis [comprised] the top local media market for talcum powder litigation ad[vertisements]” between July 2015 and June 2016, “St. Louis is only the twenty-first largest media market in the United States[.]” (Silverstein Aff. ¶ 18.) According to the global marketing research firm Nielsen, the St. Louis market contains 1.2 million “TV homes” or 1.074% of all US TV homes. (*Id.*)²

The twelve-month period from July 2015 through June 2016 coincided with two personal injury trials in St. Louis Circuit Court in which the plaintiffs alleged that Johnson & Johnson Consumer Inc.’s talcum-containing baby and shower products caused them to develop ovarian cancer. The first trial, which began on February 2, 2016 and lasted approximately three weeks, resulted in a jury verdict against Defendants. (Silverstein Aff. ¶ 20.)³ On the heels of this verdict, the total number of talcum litigation advertisements increased dramatically in the St. Louis media market. (*Id.* ¶ 21.) While virtually no talcum powder litigation ads were aired locally in St. Louis in the months leading up to the first trial, plaintiffs’ lawyers aired **319** such commercials by March 2016, or 23% of the total number of talcum powder litigation ads, even though St. Louis “represents just over 1% of the national television audience.” (*Id.* ¶¶ 22, 29.) “For the three-month period following the first” trial – March through May 2016 – “more ads were broadcast and more was spent on these ads on local broadcast networks in St. Louis than *in*

² Nielsen defines a “TV home” as a “household that has at least one operable TV/monitor with the ability to deliver video via traditional means of antennae, cable set-top-box or satellite receiver and/or with a broadband connection.” (Silverstein Aff. ¶ 18 n.4 (citing Nielsen Local Television Market Estimates, <http://www.nielsen.com/content/dam/corporate/us/en/public%20factsheets/tv/2016-local-television-market-universe-estimates.pdf>).)

³ Defendants are appealing this verdict.

any other media market.” (*Id.* ¶ 28 (emphasis added).) The content and frequency of these locally-aired advertisements are summarized in Mr. Silverstein’s affidavit:

- ***Some of the commercials shown in the St. Louis market in March referenced the February trial and jury award.*** For example, the law firm of Gori Julian & Associates aired two ads on St. Louis local broadcast networks in March stating: “A jury has just awarded \$72 million in a landmark talcum powder ovarian cancer case.” (*Id.* ¶ 23.)



Screenshot of Gori Julian talcum powder litigation ad broadcast in St. Louis, March 2016

These commercials ran a combined 110 times in St. Louis in March (an average of nearly four times per day). (*Id.* ¶ 24.)

- ***All of the commercials shown in March discussed the alleged health risks associated with talcum powder.***
 - “The most widely shown ad[vertisement] in St. Louis – [which aired] 111 times – was sponsored by the Hollis Law Firm and [asserted] that ‘[r]ecent research by the American Cancer society has found a link between the use of talcum powder and the development of ovarian cancer.’” (*Id.* ¶ 25 (citation omitted).)



The advertising pattern described above continued after the second talcum powder trial in St. Louis, which began in April 2016 and concluded with a jury verdict against Johnson & Johnson in early May. (*Id.* ¶ 27.)⁴ In particular, the number of local talcum powder litigation commercials broadcast on local St. Louis television networks increased from 110 in April to 264 in May, representing a **140%** increase. (*Id.*) As described in Mr. Silverstein’s affidavit, the content and frequency of the advertisements following the second jury award closely resembled the content and frequency of the advertisements aired after the first jury verdict:

- ***The most widely aired ad on St. Louis television networks in May explicitly targeted Johnson & Johnson.*** This commercial featured a dialogue between two women stating the following: “Johnson & Johnson’s Baby Powder is linked to ovarian cancer. J&J failed to inform women of the potential risks for years.” (*Id.* ¶ 33.) This ad was broadcast 113 times in St. Louis, or an average of nearly four times per day. (*Id.*)



B. Affidavit of Ernan Haruvy

The findings of Mr. Silverstein comport with those offered by Mr. Haruvy, a marketing and economics professor, who examined the content of commercials regarding talcum powder and ovarian cancer aired in St. Louis in recent months, as well as the impact of those advertisements on St. Louis residents eligible for jury service. Mr. Haruvy’s opinions are based on a survey he conducted for the purpose of assessing the impact of exposure to commercials regarding talcum powder and ovarian cancer on potential St. Louis jurors. (Haruvy Aff. ¶ 7.)

⁴ As with the first trial, Defendants are appealing the jury verdict rendered in the second trial.

The survey, an ad recall survey, involved 150 participants residing in St. Louis who are eligible for jury service. (*Id.* ¶ 10.)⁵ Participants were asked whether they recall seeing a television commercial regarding talcum powder and ovarian cancer. (*Id.*) Participants who were able to recall a commercial meeting this description were then asked follow-up questions about the commercial they recalled. (*Id.*)

The respondent pool for this survey encompassed 150 respondents from St. Louis proper, and included 75 males and 75 females. (*Id.* ¶ 22.)⁶ The sampling plan is consistent with the prevailing principles and teachings of consumer behavior theory and marketing research best practices. (*Id.* ¶ 19.) Most notably, the survey was “double blind,” which means that neither the administrators of the survey nor the survey respondents had any knowledge of the hypotheses and claims of the sponsor of the survey. (*Id.*) In addition, the sample was balanced in terms of gender and other demographics. (*Id.*)

The survey began with preliminary questions aimed at assessing the qualifications of survey participants for potential jury service – for example, “[a]re you a citizen of the United States?” (App. 2 to Haruvy Aff.) The next series of questions were demographic in nature and intended to ensure that the sample was representative of the population of potential jurors in St. Louis. (*Id.*) After probing respondents about their television viewing patterns, the survey asked respondents whether they recall seeing a television commercial regarding talcum powder and

⁵ The survey population was limited to residents of St. Louis proper, who are American citizens, and who are over the age of 18 so that the results would fairly and reliably reflect the views of those who could potentially serve on a jury in the upcoming trial. (Haruvy Aff. ¶ 13.)

⁶ The survey was conducted on the Internet, with respondents receiving between \$1.00 and \$2.00 for their time spent answering the questions. (Haruvy Aff. ¶ 15.) “In large-scale marketing survey research, Internet surveys are the default option.” (*Id.*) “The survey was conducted on the platform of Qualtrics, the industry-leading provider of online survey software and trusted provider of survey panels for academia, business, and government policy.” (*Id.*) The survey respondents were drawn from the Qualtrics panel, which includes 6 million panel respondents in North America alone. (*Id.*) “The Qualtrics panel has been recognized as externally valid” – i.e., it is representative of the population at large. (*Id.*)

ovarian cancer in the past. (*Id.*) If a respondent answered yes, the participant proceeded to answer a series of follow-up questions regarding the commercial he or she recalled, including his or her level of exposure to the commercial and the information he or she recalled seeing in the commercial. (*Id.*) For example, respondents were asked “[a]pproximately how many times do you recall seeing this commercial or similar commercials” and “[d]o you recall mention of a verdict in the commercial?” (*Id.*) The participants were then asked a series of questions designed to elicit information regarding respondents’ reactions to the commercial they recalled. (*Id.*) For example, respondents were asked the following question: “[a]fter watching the commercial, how would you describe your opinion of talcum powder mentioned in the commercial?” (*Id.*) The respondents could answer by selecting “Very Unfavorable, Somewhat unfavorable, neither favorable nor unfavorable, somewhat favorable, Very Favorable.” (*Id.*) Each respondent was then asked how important watching the commercial was in influencing his or her opinion. (*Id.*) Finally, the survey concluded with a series of questions designed to elicit information regarding the messages that respondents perceived as being communicated by the commercials with respect to talcum powder and ovarian cancer, as well as respondents’ perceptions regarding the intent of the commercials. (*Id.*)

The key results of the survey are summarized below:

- **68.92%** of respondents recall seeing a commercial regarding talcum powder and ovarian cancer in the past. (*Id.* ¶ 9a.)
- On average, respondents recalled having been exposed to **nearly nine** such commercials, with the median number of commercials being five. (*Id.* ¶ 26.)
- The majority (61.86%) of potential jurors reported that it had been **two days or less** since they had last been exposed to a commercial regarding talcum powder and ovarian cancer. (*Id.* ¶ 9b.) Nearly half (44.33%) indicated that it had only been **one day or less** since their last exposure to such an advertisement. (*Id.*)

- **61.76%** of respondents who reported having seen a commercial regarding talcum powder and ovarian cancer stated that they recalled that the commercial that they had seen mentioned a specific product. (*Id.* ¶ 27.)
- **61.76%** of respondents who reported having been exposed to a commercial regarding talcum powder and ovarian cancer indicated that they recalled that the commercial they had seen mentioned a specific law firm. (*Id.*)
- Of the respondents who reported having been exposed to a commercial regarding talcum powder and ovarian cancer, **56.86%** indicated that they had “unfavorable” opinions about talcum powder after watching the commercial – and **62.75%** of the respondents indicated that their exposure to the commercial was “important” in shaping those opinions. (*Id.* ¶¶ 29-30.)
- Of the respondents who reported having been exposed to a commercial regarding talcum powder and ovarian cancer, **55.88%** indicated that they had “unfavorable” opinions about the manufacturer of the product after watching the commercial – and **57.84%** of the respondents indicated that their exposure to the commercial was “important” in shaping those opinions. (*Id.* ¶¶ 31-32.)
- **68.63%** of the respondents who recall having been exposed to a commercial regarding talcum powder and ovarian cancer indicated that they perceived the use of talcum-containing products as harmful after watching the advertisement, and **58.82%** of respondents indicated that their exposure to the commercial was “important” in shaping those opinions. (*Id.* ¶¶ 33-34.)

In addition to analyzing the results of his ad recall survey, Mr. Haruvy also undertook a text analysis to determine whether the content of the talcum powder litigation ads broadcast on St. Louis networks was primarily aimed at attracting potential clients or influencing potential jurors. (*Id.* ¶ 44.) In so doing, Mr. Haruvy considered transcripts of 11 local and 10 national commercials regarding talcum powder and ovarian cancer aired in St. Louis in March-May 2016. (*Id.* ¶ 46.) Based on Mr. Haruvy’s analysis, which relied on the number of times a phrase or word was mentioned in the commercial and the objective meaning of key words, Mr. Haruvy reached the following conclusions:

- The total number of requests to call the sponsoring law firm in national and local talcum powder litigation was two or higher. However, the average count of statements urging viewers to call counsel was closer to 1.5 for the ***top five local ads***, indicating lower emphasis on client acquisition in these ads. (*Id.* ¶ 48.)

- The number of mentions of jury awards in the local ads was substantially higher than that in national commercials, meaning that the “intent of the local ads was more geared toward influencing public opinion than clientele building.” (*Id.* ¶ 49.)
- The top local commercials were 20% more likely to use language suggesting a link between talcum powder and ovarian cancer than lower-ranked local ads, reinforcing the conclusion that these ads are aimed at influencing public opinion rather than attracting clients. (*Id.*)

ARGUMENT

Under Missouri law, adverse pretrial publicity is a ground for changing venue when “actual prejudice is shown” – i.e., a “pervasive hostility toward a party, or a pervasive prejudgment of the case.” *Firestone v. Crown Center Redevelopment Corp.*, 693 S.W.2d 99, 102, 103 (Mo. 1985); *see also* Mo. Sup. Ct. R. 51.04 (“A change of venue may be ordered . . . for the following causes: [t]hat the inhabitants of the county are prejudiced against the applicant; or [t]hat the opposite party has an undue influence over the inhabitants of the county.”). In such a case, “it will be difficult or impossible to select an *impartial* jury.” *Firestone*, 693 S.W.2d at 103 (emphasis added). Because “[i]t is assumed that the jury panel members, and ultimately the jury, will reflect the prevailing opinion of the community from which they are drawn . . . the [prejudiced] party is entitled to a change of venue.” *Id.*

In safeguarding the sanctity of an impartial jury, courts must be solicitous of “juror bias created by pre-trial publicity.” *Janssen Pharm., Inc. v. Bailey*, 878 So. 2d 31, 52 (Miss. 2004).

As one court succinctly put it:

To say that the media are all-pervasive in this day and age would only be to acknowledge the obvious. Newspapers and news broadcasts shape every community’s understanding of itself. Public opinions and attitudes are reflected and affected concurrently. A prosecutor can reveal information and innuendo that could never be admitted in a court of law. Separate crimes which should be tried individually can become inextricably intertwined in print and over the airways. Public outrage can be raised to such a state that a defendant--any defendant--could not receive a fair trial. This is merely a reality of modern life. Recognizing this

fact, when faced with a case which has been heavily reported in the news media, . . . trial courts must be prepared to readily grant a change of venue.

Id. at 52 (citation omitted). These concerns apply in spades in “mass tort actions,” in which “the likelihood of extensive media coverage is great.” *Id.* at 52-53.

In *Janssen*, a group of plaintiffs brought a product liability suit against the manufacturer of Propulsid, a drug used to treat gastroesophageal reflux disease. *See id.* at 35. The trial court determined that Janssen could not receive a fair trial in Jefferson County, Mississippi, based on various arguments, including that the county “was bombarded with attorney advertisements, attorney-organized meetings and plaintiff-propelled gossip” regarding the litigation. *Id.* at 51. While the trial court granted a change of venue, Janssen argued that the county to which the case was transferred, Claiborne County, was rife with the same negative pretrial publicity concerns that animated the company’s original motion to transfer. *See id.* at 51-52. As Janssen explained, the residents of Claiborne County had also been subjected to extensive media coverage, including publicity regarding litigation against other pharmaceutical defendants. *See id.* at 52. Janssen argued that, in light of the “attorney advertisements, attorney-organized meetings and plaintiff-propelled gossip,” it could not receive a fair trial in Claiborne County “just as it could not in Jefferson County.” *Id.* On appeal, the Mississippi Supreme Court agreed, holding that “while the trial court properly determined that a fair trial could not be had in Jefferson County, the trial court improperly changed venue to Claiborne County, a county almost identical in community make-up to Jefferson County, in so far as community connections with Propulsid litigants.” *Id.* at 53. “The purpose of changing venue is to ensure a fair venire for all parties free from bias, prejudice and passion,” which could not be accomplished by “moving venue to a county immediately next door to the original county of venue.” *Id.* In reaching its conclusion, the Mississippi Supreme Court rejected the notion espoused by the trial court that voir dire of

prospective jurors could adequately address Janssen's concerns and stressed the "ineffectiveness of voir dire in detecting juror bias created by pre-trial publicity." *Id.* at 52. "Since jurors are aware that they are supposed to be impartial, they are unlikely to reveal any bias, even if they recognize it in themselves." *Id.* (citation and internal quotation marks omitted). Because "[t]he record [was] replete with evidence" of bias within Claiborne County, the Mississippi Supreme Court held that the failure to change venue was reversible error. *Id.* at 53.

As the Missouri Supreme Court has recognized, the touchstone of the relevant inquiry in assessing a motion for change of venue based on adverse pretrial publicity is prejudice, and "[p]ublicity may be of such character that actual prejudice must be presumed." *Firestone*, 693 S.W.2d at 102. While Missouri has not delineated the contours of that standard, other courts have explained that a presumption of prejudice due to negative pretrial publicity requires a showing that "the community was saturated with pretrial publicity and that the publicity was prejudicial and inflammatory." *United States v. Tokars*, 839 F. Supp. 1578, 1581 (N.D. Ga. 1993), *aff'd*, 95 F.3d 1520 (11th Cir. 1996). Both prongs are satisfied here.⁷

A. The Jury Pool Has Been Saturated With Pretrial Publicity Regarding Talcum-Containing Products And Surrounding Litigation.

First, the community has clearly been "saturated" with pretrial publicity. Factors relevant to the saturation inquiry include the number of articles or television commercials that have aired and whether the pretrial publicity has been "purely local" as opposed to nationwide in

⁷ Although the court was assessing a motion for a change of venue under Rule 21(a) of the Federal Rules of Criminal Procedure, that rule largely tracks Missouri Rule 51.04 and is therefore instructive on how courts should approach the question of prejudice, including presumed prejudice. *Compare* Fed. R. Crim. P. 21(a) (change of venue required where there is "so great a prejudice against the defendant that . . . the defendant cannot obtain a fair and impartial trial") with Mo. Sup. Ct. R. 51.04 ("A change of venue may be ordered . . . for the following causes: [t]hat the inhabitants of the county are prejudiced against the applicant; or [t]hat the opposite party has an undue influence over the inhabitants of the county.").

scope. *Tokars*, 839 F. Supp. at 1581. In addition, surveys measuring the degree of exposure to the pretrial publicity within the relevant community should also be considered. *Id.* at 1582.⁸

Tokars is instructive. There, criminal defendants persuaded a federal district court judge to transfer the case to a different venue based on “pervasive[]” and prejudicial pretrial publicity. 839 F. Supp. at 1582-83. The case involved allegations of attempted murder, money laundering, racketeering, and the murder-for-hire of one of the defendant’s wives, Sara Tokars. *Id.* at 1579-80. The court first found that the venue at issue, the Northern District of Georgia, had “been saturated with publicity about the instant case.” *Id.* at 1581. “During this time frame, the local newspaper articles and local television reports literally [] numbered *in the thousands*.” *Id.* (emphasis added). Indeed, the court stressed that “[t]he *purely local* pretrial publicity” in the case was even greater than that involved in the case surrounding the mail bomb deaths of an Eleventh Circuit judge and a civil rights attorney. *Id.* at 1582 (emphasis added). As part of its analysis, the court placed great weight on survey results, which supported the defendants’ claim of “pervasiveness of publicity.” *Id.* at 1583. The random poll of 998 individuals in the Northern District of Georgia had been conducted by the Georgia State University Center for Urban Policy Research. *See id.* The poll found that 69% of the respondents had heard or read a “a great deal” regarding the death of Sara Tokars, while 17.1% had heard a “fair amount.” *Id.* Given these

⁸ Defendants recognize that, in *Firestone*, the Missouri Supreme Court rejected the defendants’ reliance on two surveys as proof of prejudice caused by pretrial publicity. *See* 693 S.W.2d at 102-04. However, it did so because the surveys were poorly designed – i.e., they failed to give “a reliable reading of whether there was in Jackson County a pervasive hostility toward defendants or a pervasive prejudgment of [plaintiff’s] case.” *Id.* at 103. In particular, the questions “could neither be ‘correctly understood’ nor ‘easily answered.’” *Id.* (“The phrase ‘compensatory damages’ summons to the lawyer’s mind a certain well-defined concept” but not to “the layman.”). *Id.* Here, by contrast, the surveys conducted by Mr. Haruvy, an expert in the field of marketing and consumer surveys, asked St. Louis residents questions that were well within their comprehension – for example, “[d]o you recall seeing a television commercial regarding talcum powder and ovarian cancer in the past” and “[a]fter watching the commercial, how would you describe your opinion of the company that makes the talcum powder mentioned in the commercial?” (App. 2 to Haruvy Aff.)

findings, the court concluded that the venue “ha[d] been saturated with publicity about the instant case.” *Id.* at 1581.

So too here. There is no question that St. Louis has been – and continues to be – “saturated” with negative pretrial publicity regarding talcum powder and litigation surrounding talcum-containing products. According to the expert affidavit of Mr. Silverstein, between July 1, 2015 and June 30, 2016, “nearly 19,000” advertisements aired on national and local television networks by plaintiffs’ law firms seeking claims arising out of injuries allegedly caused by talc. (Silverstein Aff. ¶ 14.) During this twelve-month period, “more talcum powder litigation ads were broadcast in the St. Louis media market . . . than in *any other* American media market.” (*Id.* ¶ 15 (emphasis added).) While St. Louis comprised the top local media market for talcum powder litigation advertisements during this period, St. Louis is only the twenty-first largest media market in the United States, compelling a finding that the pretrial publicity in St. Louis has been “disproportionate.” (*Id.* ¶ 18.) Specifically, there were more than 850 such ads on local broadcast networks in St. Louis, which Mr. Silverstein estimated cost approximately \$173,000. (*Id.* ¶ 15.) “These 875 ads were in addition to the more than 4,300 talcum powder litigation ads that St. Louis television viewers – along with viewers across the United States – might have seen during this time period on national cable and broadcast networks during nationally syndicated programming.” (*Id.* ¶ 16.)

The highly localized “pretrial publicity in this case,” *Tokars*, 839 F. Supp. at 1582, during the period of July 2015 through June 2016 coincided with the first two talcum personal injury trials. The first trial began in St. Louis on February 2, 2016 and, nearly three weeks later, the jury delivered a verdict against Johnson & Johnson. In the wake of this verdict, the total number of talcum litigation advertisements skyrocketed, particularly in St. Louis. (Silverstein Aff. ¶¶ 20-

21.) While virtually no talcum powder litigation ads were broadcast on local St. Louis networks in the months leading up to the first trial, by March, *over three hundred such ads* had aired on local St. Louis networks. (*Id.* ¶ 22.) Two of those ads were from the law firm Gori Julian & Associates and specifically noted that “[a] jury has just awarded \$72 million in a landmark talcum powder ovarian cancer case.” (*Id.* ¶ 23.) Those two ads ran a combined 110 times in St. Louis in March, or an average of nearly four times per day. (*Id.* ¶ 24.) “The most widely shown ad in St. Louis” was broadcast 111 times and stated that “[r]ecent research by the American Cancer Society has found a link between the use of talcum powder and the development of ovarian cancer.” (*Id.* ¶ 25 (citation omitted).)⁹

Similar dynamics were at play following the second talcum powder trial in St. Louis, which began in April 2016 and concluded with a jury award in early May. (*Id.* ¶ 27.) In fact, between March and May, the proportion of talcum powder litigation ads shown in St. Louis relative to the total aired across the country was far higher than the size of the St. Louis market as a share of the national audience. (*Id.* ¶¶ 28-29.) The Gori Julian law firm broadcast a third ad in St. Louis 53 times in May referencing both jury awards (*id.* ¶ 31), while an ad sponsored by the Pulaski Law Firm and broadcast under the “Injury Help Desk” name ran 31 times in May (*id.* ¶ 32). The most widely aired ad on St. Louis television networks in May, which accused Johnson & Johnson of failing to warn consumers about the risk of ovarian cancer posed by its baby powder, was sponsored by the Morelli Law Firm and was broadcast 113 times – or an average of nearly four times per day. (*Id.* ¶ 33.)

⁹ The St. Louis advertising campaign contains deliberate falsehoods, including the one referencing the American Cancer Society, which has *not* found a link between the use of talcum powder and the development of ovarian cancer.

The findings of Mr. Silverstein dovetail with the results of Mr. Haruvy's ad recall survey, which questioned St. Louis residents eligible for jury service. That survey found that **68.92%** of the respondents recalled seeing a commercial on talcum powder and ovarian cancer. (Haruvy Aff. ¶ 9a.) The survey further found that, on average, participants recalled having been exposed to *nearly nine* such commercials. (*Id.* ¶ 26.) The import of Mr. Haruvy's survey is that the ubiquitous advertising campaign described above is actually reaching those individuals likely to constitute the venire in the upcoming trial.

In sum, Defendants' "claims of pervasiveness" are clearly supported by the evidence in the record. *Tokars*, 839 F. Supp. at 1583. Given the "extraordinary volume of" talcum litigation advertisements in St. Louis, the Court should find that the jury pool has been "saturated with publicity about the instant case." *Id.* at 1581, 1582.

B. The Pretrial Publicity Has Been Prejudicial And Inflammatory.

Second, there is also little doubt that the pretrial publicity in this case regarding talcum litigation has been prejudicial and inflammatory.

As a threshold matter, Mr. Haruvy's text analysis demonstrates that one potential purpose of the pervasive local talcum powder litigation advertisements may have been to prejudice and inflame potential jurors. After all, as Mr. Haruvy concluded, the local commercials were more focused on "influencing public opinion" than attracting prospective clients. (Haruvy Aff. ¶ 49.) In particular, in comparison to national and lower-ranked commercials, the top-ranked local advertisements had fewer requests for viewers to call the sponsoring law firm, and were more likely to use language suggesting a link between talcum powder and ovarian cancer. (*Id.*) These aspects of the advertisements are "indicative of a goal of influencing opinion rather than attracting customers." (*Id.*) The fact that the local ads aired in St. Louis were focused more on

influencing public opinion than attracting new clientele strongly suggests that jury pools in other parts of the State of Missouri are far less likely to have been tainted by pre-trial publicity with regard to talcum powder litigation ads.

Even a cursory examination of these *St. Louis* commercials reveals their prejudicial and inflammatory nature. As detailed in Mr. Silverstein's affidavit, many of these ads reference the prior verdicts and the purported fact that a plaintiff died from ovarian cancer as a result of her use of talcum-based powder. (Silverstein Aff. ¶ 32.) In addition, the most widely aired ad on St. Louis television networks in May 2016, sponsored by the Morelli Law Firm, featured a dialogue between two women impugning Johnson & Johnson by stating that "'Johnson & Johnson's Baby Powder is linked to ovarian cancer'" and that "'J&J failed to inform women of the potential risks for years.'" (*Id.* ¶ 33.) Given "the emotional nature" of these advertisements, "one may infer that a widespread bias exists which could interfere with a fair trial." *Tokars*, 839 F. Supp. at 1582.

This inference is further supported by Mr. Haruvy's survey. The survey found that the majority of participants who reported having been exposed to commercials regarding talcum powder and ovarian cancer recalled seeing commercials that mentioned a jury verdict, specific product and/or specific law firm. (Haruvy Aff. ¶ 27.) This finding underscores the concerns highlighted in the *Ristesund* trial, where it became clear that multiple venire members (including several who were seated) admitted knowledge of the first trial and verdict and legal advertising. (*See* Defs.' Mot. For leave To Contact Jurors at 1-2.)

The Haruvy survey also found that the respondents, on average, indicated that the commercial they recalled had caused them to harbor *unfavorable* opinions about talcum powder and talcum powder manufacturers, and to view use of the product as harmful. (Haruvy Aff. ¶¶

29, 31, 33.) For example, approximately **60%** of respondents who reported having been exposed to a commercial regarding talcum powder and ovarian cancer indicated that they had “unfavorable” opinions about talcum powder and the manufacturer of the product after watching the commercial, with approximately the same percentage of survey participants indicating that their exposure to the commercial was “important” in shaping those opinions. (*Id.* ¶¶ 29-32.) And an even greater percentage of respondents (**nearly 70%**) indicated that they perceived the use of talcum-containing products as harmful after watching the advertisement, with approximately **60%** of those individuals indicating that their exposure to the commercial was “important” in forming those opinions. (*Id.* ¶¶ 33-34.) These “unfavorable” opinions will undoubtedly impact the fairness of the upcoming trial, as was likely the case in the *Ristesund* trial, where multiple jurors reported that the first jury verdict had been openly discussed by jurors during the *Ristesund* jury deliberations. (*See* Defs.’ Mot. For leave To Contact Jurors at 2.)

The *Ristesund* experience shows that voir dire of prospective jurors could not possibly address the prejudicial and inflammatory nature of the pretrial publicity that has saturated the St. Louis market. After all, as noted above, several members of the *Ristesund* jury pool admitted knowledge of the first jury verdict and the legal advertising surrounding that verdict and informed the parties that they would nonetheless remain impartial; in the end, however, it was likely a factor in their deliberations. Thus, the circumstances surrounding the *Ristesund* jury deliberations confirm the “ineffectiveness of voir dire in detecting juror bias created by pre-trial publicity,” which has been recognized by other courts. *Janssen*, 878 So. 2d at 52. As the Mississippi Supreme Court put it, “[s]ince jurors are aware that they are supposed to be impartial, they are unlikely to reveal any bias, even if they recognize it in themselves.” *Id.* (citation and internal quotation marks omitted).

Finally, in contrast to *Firestone*, 693 S.W.2d at 102, where “[t]he intensity of the publicity had considerably abated several months before trial,” the survey results here establish exactly the opposite. In particular, **61.86%** of potential jurors reported that it had been ***two days or less*** since they had last been exposed to a commercial regarding talcum powder and ovarian cancer. (Haruvy Aff. ¶ 9b.) And many survey participants (44.33%) indicated that it had only been ***one day or less*** since their last exposure to a commercial regarding talcum powder and ovarian cancer. (*Id.*)

At bottom, not only has the pervasive advertising campaign described above saturated St. Louis, but it has also had (and continues to have) a clear and prejudicial impact on potential jurors’ viewpoints regarding talc and Johnson & Johnson – issues that will decide the next trial. In other words, the “combination of the evidence of pretrial publicity and the [survey] results” dictates a conclusion that prejudice to Defendants must be presumed in this case, *Tokars*, 839 F. Supp. at 1584, and that it would “be difficult or impossible to select an impartial jury” in the upcoming trial, *Firestone*, 693 S.W.2d at 103, compelling a change of venue.

CONCLUSION

For the foregoing reasons, the Court should find that the potential jury pool in St. Louis has been saturated by inflammatory pretrial publicity, prejudicing Defendants and move the September trial to a venue outside the St. Louis market area and at least 100 miles away.

Dated: July 28, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the following attorneys of record this 28th day of July, 2016, by operation of the electronic filing provisions of this Court:

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EXHIBIT 1

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI**

TIFFANY HOGANS, et. al.,

Plaintiffs,

vs.

JOHNSON & JOHNSON, et al.,

Defendants.

Case No. 1422-CC09012-01

Division 10

Affidavit of Rustin Silverstein

I, Rustin Silverstein, being competent to testify, and having knowledge of the facts set forth herein, state as follows:

1. I am over the age of eighteen (18) and am competent to testify.
2. I am submitting this affidavit in support of Defendants' Motion To Change Venue For The Upcoming September Trial in the above-captioned action.
3. I am President and founder of X Ante – the premier source for data and analysis on advertising and marketing by plaintiffs' law firms and related entities soliciting claims for mass tort litigation.
4. X Ante LLC provides detailed analyses of television advertising expenditures and commercial occurrences by attorneys and law firms in 210 media markets and on 12 national broadcast networks, 8 Spanish-language networks, and more than 80 national cable networks. X Ante has provided this data and analysis to numerous Fortune 500 pharmaceutical and medical device companies as well as law and communications firms.

5. Prior to founding the X Ante LLC, I practiced law at a multinational law firm and worked for a global management consulting firm. I am a graduate of Harvard College and Harvard Law School and a member of the District of Columbia and Arizona Bars.

6. In preparing this affidavit, I examined comprehensive data sets on commercial occurrence and expenditure information for television advertisements sponsored by attorneys and/or law firms seeking claimants for product liability claims related to talcum powder (“talcum powder litigation ads”).

7. The data examined included monthly totals of estimated spending on talcum powder litigation ads and the number of times these ads aired each month (“Spot Count”) from July 2015 through June 2016.

8. The data were gathered and provided by the Campaign Media Analysis Group (CMAG), a Kantar Media Solution, that monitors, codes and aggregates television advertising information 21 hours per day (5:00 AM - 2:00 AM) utilizing the MediaWatch Technology – an automated, patented and proprietary system. The monitored stations constitute the principal stations in each market, typically including the network affiliates and major independents.

9. CMAG staff watch, review, and code every ad to determine the messages used in each – such as a message about “talcum powder” – and the content information is merged with the automated placement and spending information.

10. Kantar Media is relied upon by Fortune 500 companies and thousands of other advertisers and their agencies for its accurate data on television advertising derived from the MediaWatch system. The system is designed to capture new commercials as they first air and then track every succeeding airing of each commercial across the universe of TV platforms outlined above.

11. The spot occurrence and placement data are automatically assigned by the system. The spending rates are estimated according to quarterly polling by Kantar Media of television stations and advertising industry sources to determine average 30-second advertising daypart-level rates and program rates for sports and special programming for the upcoming quarter. To account for the time it takes for any given rate to populate within the system, CMAG uses an average cost function based on rates from historical program averages airing in the same market on the same station during the same daypart. These temporary estimates are updated with actual sourced rates when they become available.

12. Several weeks after the local data are produced, Kantar Media receives the results from a national broadcasting industry survey conducted monthly by the Television Bureau of Advertising (TVB). This new information provides a national advertising growth trend as reported by responding stations. Expenditures are adjusted to reflect these industry spot revenue patterns. Once this final rate data are available, all temporary rates calculated using the average cost function are replaced with the final data.

13. It is my opinion that there has been a disproportionate amount of talcum powder litigation advertising in the St. Louis media market over the past year. It is also my opinion that

plaintiffs' lawyers have spent a disproportionate amount of money on talcum powder litigation advertising in the St. Louis media market during this same period.

14. In the twelve-month period between July 1, 2015 and June 30, 2016, nearly 19,000 advertisements aired on national cable and broadcast television networks and on local broadcast television networks in the United States by attorneys, law firms, or related entities seeking legal claims related to injuries allegedly caused by talcum powder.¹ It is estimated that about \$9.7 million was spent to broadcast these advertisements.²

15. During this time period, more talcum powder litigation ads were broadcast in the St. Louis media market or Designated Market Area (DMA) than in any other American media market. More than 850 ads were shown on local broadcast networks in St. Louis at an estimated cost of approximately \$173,000.³ The chart below ranks the top media markets for talcum powder litigation ads both in terms of total number of ads and the amount of spending on those ads.

**Top Media Markets (DMAs)
Talcum Powder Litigation Ads
July 2015 – June 2016**

| <u>Number of Ads</u> | <u>Ad Spending (est.)</u> |
|-------------------------|-----------------------------|
| 1. St. Louis: 875 ads | 1. Chicago: \$173,050 |
| 2. Atlanta: 599 ads | 2. St. Louis: \$157,440 |
| 3. Birmingham: 537 ads | 3. San Francisco: \$136,770 |
| 4. Baltimore: 502 ads | 4. New York: \$102,030 |
| 5. Bakersfield: 416 ads | 5. Los Angeles: \$100,220 |

16. These 875 ads were in addition to the more than 4,300 talcum powder litigation ads that St. Louis television viewers – along with viewers across the United States – might have seen during this time period on national cable and broadcast networks and during nationally syndicated programming.

17. The graph below illustrates the breakdown of the number of ads and the amount of spending on these ads during the twelve-month period described above.

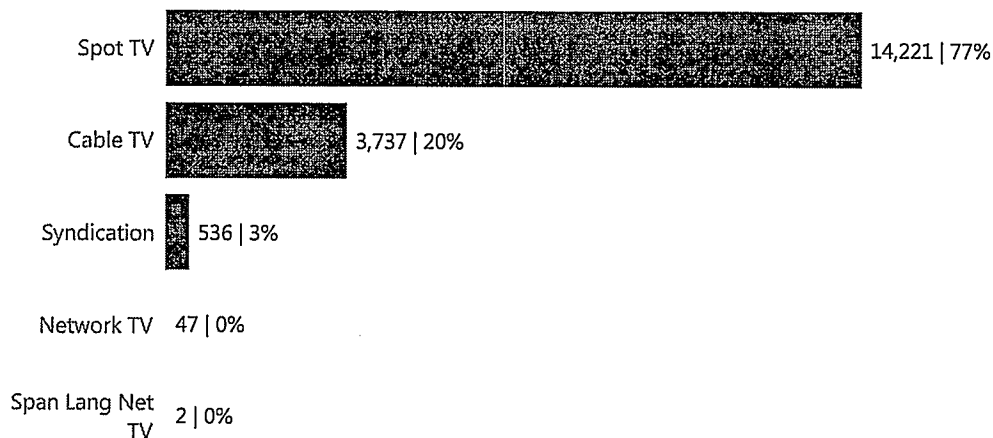
¹ The total estimated number of talcum powder litigation ads was 18,543.

² An estimated \$9,679,800 was spent on talcum powder litigation ads during this period.

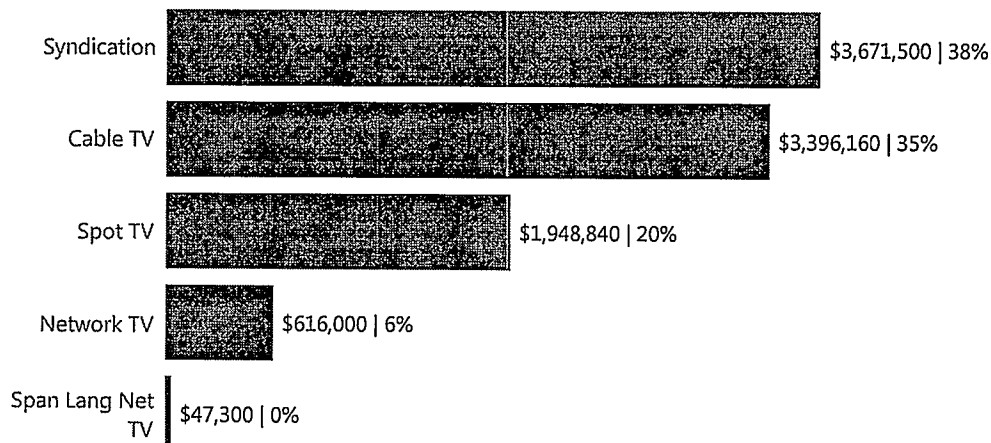
³ An estimated 875 talcum powder litigation ads were broadcast in the St. Louis media market at an estimated cost of \$173,050.

Type of Broadcast Talcum Powder Litigation Ads July 2015 – June 2016

Number of Ads



Ad Spending (est.)



Cable TV: Ads airing nationally on any of the monitored cable networks (e.g., USA, AMC, CNN)
Network TV: Ads airing nationally on any of the national broadcast networks (e.g., ABC, CBS, FOX, NBC)
Spanish Lang Network: Ads airing nationally on any of the Spanish-language broadcast networks (e.g., Telemundo, Univision)
Spot TV: Ads airing on local broadcast networks (e.g., a TV ad that airs on WJLA during the 5PM evening news is seen only by viewers in the Washington, DC media market or designated market area (DMA))
Syndication: Ads airing nationally on syndicated programs wherever they are broadcast across the country

18. While St. Louis was the top local media market for talcum powder litigation ads from July 2015 through June 2016, St. Louis is only the twenty-first largest media market in the

United States, with 1.2 million “TV homes,” or 1.074% of all US TV homes, according to the global marketing research firm Nielsen.⁴ However, during the time period examined, St. Louis TV homes accounted for a disproportionate number of talcum powder litigation ads relative to the market’s size. Nearly 5% of all talcum powder litigation ads shown in the US during this time were broadcast on local broadcast networks in St. Louis.

**St. Louis vs. US Talcum Powder Litigation Ads
July 2015 – June 2016**

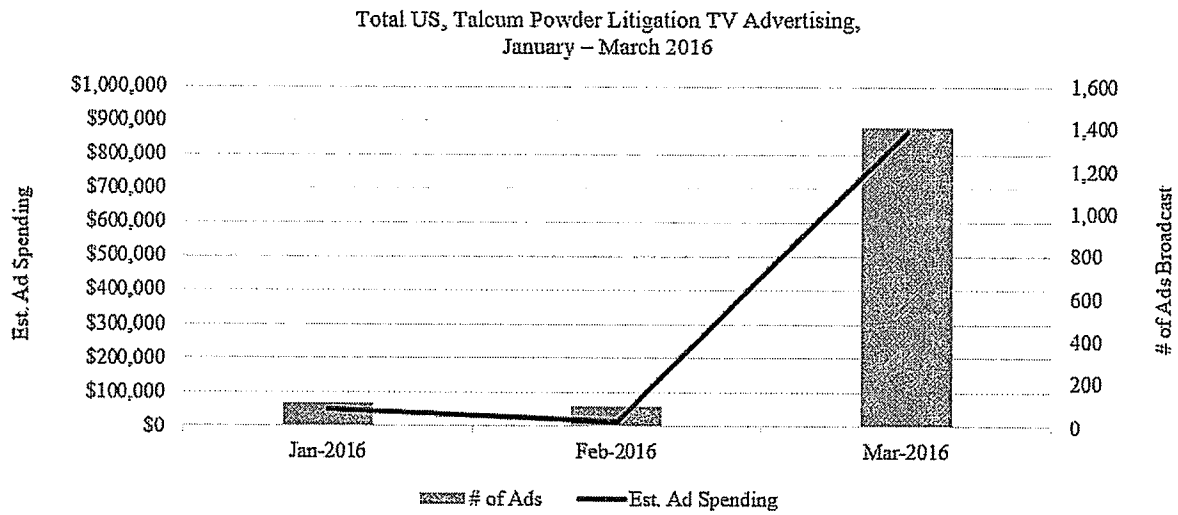
| | United States | St. Louis DMA | St. Louis % of US Total |
|---------------|---------------|---------------|-------------------------|
| TV Homes | 113,314,340 | 1,217,370 | 1.074% |
| Number of Ads | 18,543 ads | 875 ads | 4.719% |
| Ad Spending | \$9,679,800 | \$157,440 | 1.626% |

19. The period of July 2015 through June 2016 coincided with two trials in St. Louis Circuit Court in which the plaintiffs alleged that talcum powder contributed to the development of ovarian cancer.

20. The first trial began in St. Louis on February 2, 2016 and, nearly three weeks later, the jury ordered the defendant, Johnson & Johnson, to pay \$72 million in damages.

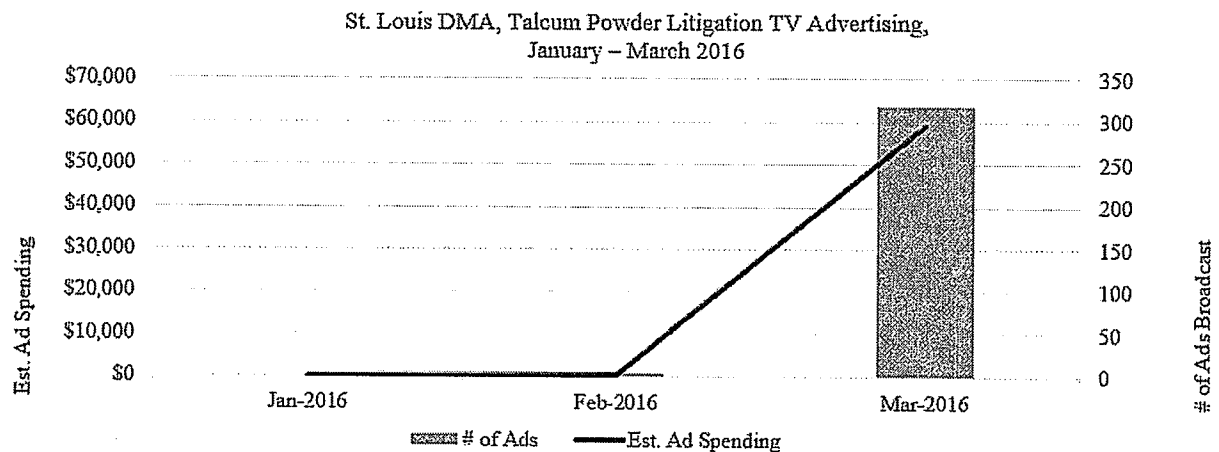
21. Following this award, the total number of, and spending on, talcum powder litigation ads on television increased dramatically across the country, and in particular in the St. Louis media market. As the graphs below reveal, there were more than 1,300 more talcum powder litigation ads broadcast in total in March 2016 than in February – an increase of 1,371%. Advertisers increased their spending on ads by nearly \$850,000 or 5,000% in March over February. This increase is reflected in the graph below.

⁴ A “TV home” is defined by Nielsen as a household that has at least one operable TV/monitor with the ability to deliver video via traditional means of antennae, cable set-top-box or satellite receiver and/or with a broadband connection. See Nielsen Local Television Market Estimates, <http://www.nielsen.com/content/dam/corporate/us/en/public%20factsheets/tv/2016-local-television-market-universe-estimates.pdf>



| | January-16 | February-16 | March-16 | Percentage Change |
|-----------------------|------------|-------------|-----------|-------------------|
| Estimated Ad Spending | \$52,860 | \$16,810 | \$865,250 | 5047% |
| Number of Ads | 108 | 96 | 1,412 | 1371% |

22. While the surge in national advertising was striking, the spike in talc litigation advertising on local television networks in St. Louis was even more dramatic. Specifically, in February – prior to the commencement of the first trial – only three talcum powder litigation ads had been purchased on local St. Louis television networks in February at an estimated cost of \$300. But in March, which is when the first trial concluded and ended in a jury verdict against Johnson & Johnson, advertisers paid nearly \$60,000 to place more than 300 hundred ads in March – reflecting increases of nearly 11,000% in the number of ads broadcast and nearly 20,000% in the amount spent on those ads. These increases are reflected in the graph below.



| | January-16 | February-16 | March-16 | Percentage Change |
|-----------------------|------------|-------------|----------|-------------------|
| Estimated Ad Spending | \$0 | \$300 | \$59,050 | 19583% |
| Number of Ads | - | 3 | 319 | 10533% |

23. The content of some advertisements shown in St. Louis in March referenced the February trial and jury award. The law firm of Gori Julian & Associates aired two ads on St. Louis local broadcast networks in March noting that “A jury has just awarded \$72 million in a landmark talcum powder ovarian cancer case.” A screenshot from one of the ads is below:



Screenshot of Gori Julian talcum powder litigation ad broadcast in St. Louis, March 2016

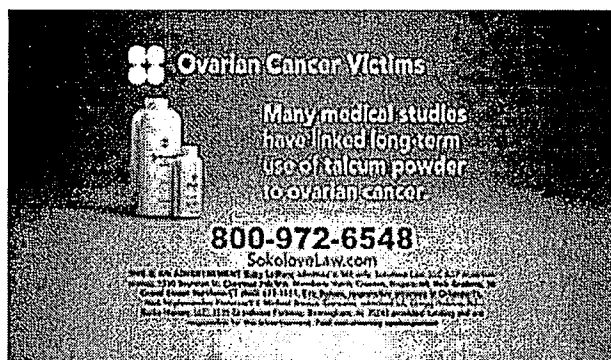
24. These two ads ran a combined 110 times in St. Louis that month, or an average of nearly four times per day.

25. All of the ads shown in March mentioned the alleged health risks associated with talcum powder. The most widely shown ad in St. Louis – broadcast 111 times – was sponsored by the Hollis Law Firm and noted that “[r]ecent research by the American Cancer Society has found a link between the use of talcum powder and the development of ovarian cancer.” A screenshot of this commercial appears below:



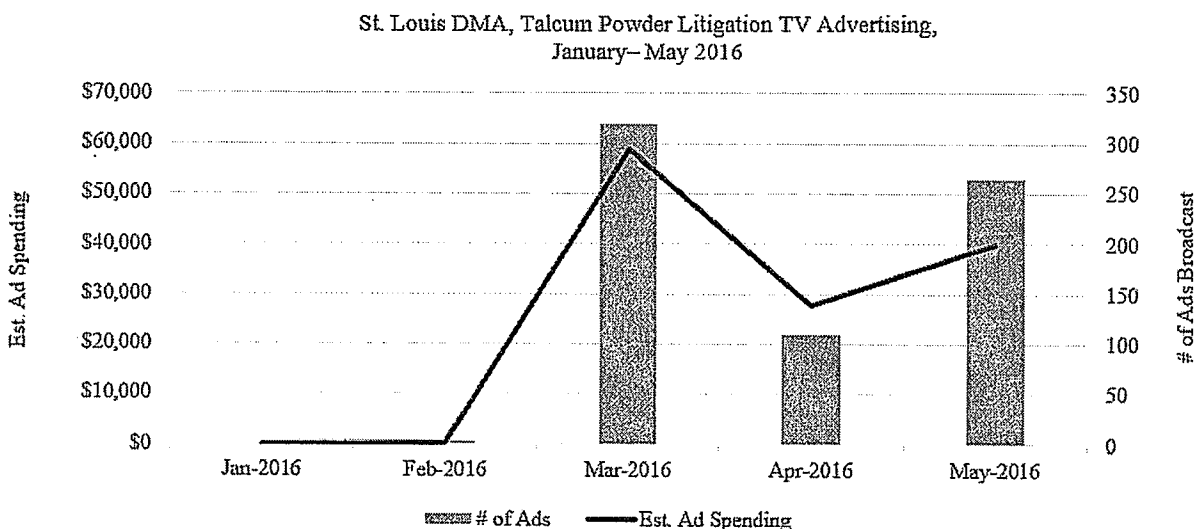
Screenshot of Hollis Law Firm talcum powder litigation ad broadcast in St. Louis, March 2016

26. Another ad, broadcast 97 times in St. Louis and sponsored by Sokolove Law, claimed that “[m]any medical studies have linked long term use of talcum powder to ovarian cancer. Females who use Johnson’s baby powder and Shower to Shower for feminine hygiene may be at risk.” A screenshot of this ad appears below:



Screenshot of Sokolove Law talcum powder litigation ad broadcast in St. Louis, March 2016

27. The second talcum powder trial in St. Louis began on April 12, 2016 and concluded with a \$55 million jury award on May 2. The pattern of talcum powder litigation advertising closely paralleled that surrounding the first trial. As shown in the graph below, while the volume of talcum powder litigation ads broadcast on local networks in St. Louis declined in April, it was still significantly higher than in the months before March. Moreover, after the second jury award, the number of ads broadcast in May increased once again.



| | March-16 | April-16 | May-16 | Percentage Change |
|-----------------------|----------|----------|----------|-------------------|
| Estimated Ad Spending | \$59,050 | \$27,910 | \$39,990 | 43% |
| Number of Ads | 319 | 110 | 264 | 140% |

28. For the three-month period following the first talcum powder trial in St. Louis – March through May 2016 – more ads were broadcast and more money was spent on these ads on local broadcast networks in St. Louis than in any other media market. Indeed, as reflected in the chart below, the number of commercials that aired on local St. Louis television stations during this time period, 693, was nearly double that of the 384 ads that were aired in Baltimore – the local media market with the second largest volume of talcum powder litigation ads.

**Top Media Markets (DMAs)
Talcum Powder Litigation Ads
March - May 2016**

| <u>Number of Ads</u> | <u>Ad Spending (est.)</u> |
|--------------------------|----------------------------|
| 6. St. Louis: 693 ads | 6. St. Louis: \$126,950 |
| 7. Baltimore: 384 ads | 7. Chicago: \$96,930 |
| 8. Atlanta: 332 ads | 8. San Francisco: \$62,930 |
| 9. Birmingham: 285 ads | 9. Atlanta: \$60,010 |
| 10. Bakersfield: 250 ads | 10. Philadelphia: \$56,500 |

29. The disproportionate nature of talcum powder litigation advertising in the St. Louis media market is evident when the number of commercials aired in that market is juxtaposed against that market's overall share of the national television audience. In March, 319 out of the 1,412 talcum powder litigation ads – or 23% – were broadcast solely in St. Louis while, as noted previously, St. Louis represents just over 1% of the national television audience.

**St. Louis vs. US Talcum Powder Litigation Ads
March 2016**

| | United States | St. Louis DMA | St. Louis % of US Total |
|---------------|----------------------|----------------------|------------------------------------|
| TV Homes | 113,314,340 | 1,217,370 | 1.074% |
| Number of Ads | 1,412 ads | 319 ads | 22.592% |
| Ad Spending | \$865,250 | \$59,050 | 6.825% |

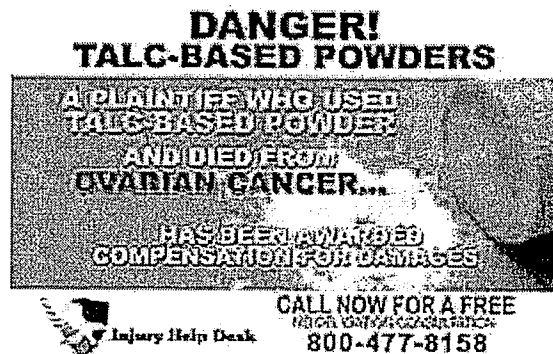
30. The content of the ads continued to reference both the jury verdicts and the alleged health risks associated with the product.

31. The Gori Julian law firm broadcast a third ad in St. Louis 53 times in May that referenced both jury awards: "Juries have just awarded \$55 million and \$72 million in landmark talcum powder ovarian cancer cases." A screenshot of the ad appears below:



Screenshot of Gori Julian talcum powder litigation ad broadcast in St. Louis, May 2016

32. Similarly, an ad sponsored by the Pulaski Law Firm and broadcast under the “Injury Help Desk” brand and shown once in April and 31 times in May on St. Louis television stations noted: “Breaking news. A plaintiff who used a talcum-based powder and died from ovarian cancer has been awarded compensation for damages.” A screenshot of this commercial appears below:



Screenshot of Pulaski/Injury Help Desk talcum powder litigation ad broadcast in St. Louis, May 2016

33. The most widely aired ad on St. Louis TV networks in May was sponsored by the Morelli Law Firm and featured a dialogue between two women explicitly targeting Johnson & Johnson. This ad was broadcast 113 times – or an average of nearly 4 times per day – in May on St. Louis television stations. A partial transcript of the ad is below:

Female 1:

Johnson & Johnson’s Baby Powder is linked to ovarian cancer.

Female 2:

J&J failed to inform women of the potential risks for years.



Screenshot of Morelli law firm talcum powder litigation ad broadcast in St. Louis, May 2016

34. In sum, St. Louis was the top local media market for television advertisements soliciting talcum powder injury claims over the past year. The market was particularly targeted for this advertising during and after the St. Louis talcum powder trials in February and April of 2016. During this time period, the St. Louis media market was saturated with talcum powder litigation commercials, and viewers saw a disproportionate number of these ads relative to their share of the national television audience.

FURTHER AFFIANT SAYETH NAUGHT.

Dated: 7/27/16



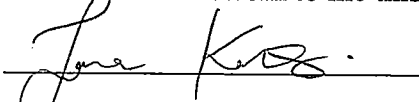
Rustin Silverstein

Witnessing or Attesting Signature:

State of WASHINGTON, D.C.

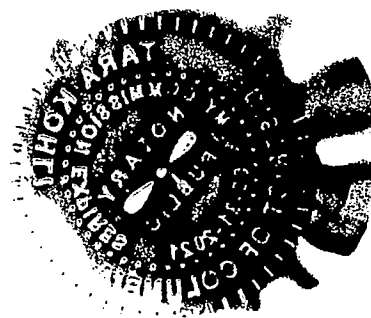
County of _____

Subscribed and sworn to me this 27 day of July 2016 by Rustin Silverstein



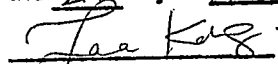
Signature of Notary Public

My Commission Expires: 3-31-2021



District of Columbia: SS

Sworn to and subscribed before me on
the 27 day of June, 2016



Notary Public's Signature
My Commission Expires 3-31-2021

EXHIBIT 2

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI**

TIFFANY HOGANS, et. al.,

Plaintiffs,

vs.

JOHNSON & JOHNSON, et al.,

Defendants.

Case No. 1422-CC09012-01

Division 10

Affidavit of Ernan Haruvy

I, Ernan Haruvy, being competent to testify, and having knowledge of the facts set forth herein, state as follows:

1. I am over the age of eighteen (18) and am competent to testify.
2. I am a full Professor of Marketing at the University of Texas at Dallas ("UT-Dallas"). From 2013-2015, I served as the head of UT-Dallas's Marketing Program. I have a Ph.D. in economics from the University of Texas at Austin (1999) and completed a post-doctorate fellowship at Harvard Business School (2000-2001) under the supervision of Nobel laureate Alvin Roth.
3. I serve on several editorial boards for marketing journals, including *Marketing Science*, *Review of Marketing Science*, *International Journal of Research in Marketing*, and *Journal of Socio-Economics*. I also serve as a senior editor for *Production and Operations Management* (Wiley), which is ranked in the prestigious *Financial Times* list of top 45 business journals. I regularly serve as a reviewer for more than half a dozen top marketing journals, including the *Journal of Marketing* and *Journal of Marketing Research*, and economics journals, including the *American Economic Review* and *Econometrica*.
4. I have published more than 70 peer-reviewed publications in top marketing journals, including *Marketing Science* and *Journal of Marketing Research*, and economics journals, including *American Economic Review*, the *Economic Journal*, and *Review of Economics and Statistics*.

5. Over 20 years of academic work, I have conducted numerous marketing surveys, including consumer surveys, and laboratory experiments. For a more complete description of my professional activities and experience, see my curriculum vitae, which is attached as Appendix 1.

6. I am submitting this affidavit in support of Defendants' Motion To Change Venue For The Upcoming September Trial in the above-captioned action.

7. I was asked to conduct a survey to assess the impact of exposure to commercials regarding talcum powder and ovarian cancer on potential St. Louis jurors. The survey I conducted is attached as Appendix 2, and a list of the materials referenced in this Affidavit is attached as Appendix 3. I was also asked to review the content of the advertisements and apply my marketing expertise to analyzing them.

8. I have been paid \$280 per hour for my professional services in this matter.

9. As set forth further below, the key results of my survey are as follows:

- a. 68.92% of those surveyed have been exposed to commercials regarding talcum powder and ovarian cancer.
- b. On average, the number of commercials regarding talcum powder and ovarian cancer to which potential jurors reported having been exposed was nine. The median was five. The majority (61.86%) of potential jurors reported that it had been two days or less since they had last been exposed to a commercial regarding talcum powder and ovarian cancer. Nearly half of respondents (44.33%) indicated that it had only been one day or less since their last exposure to such an advertisement.
- c. Of the respondents who reported exposure to commercials regarding talcum powder and ovarian cancer, the majority of respondents surveyed recalled seeing commercials regarding talcum powder and ovarian cancer that mentioned a jury verdict, specific product and/or specific law firm. A third of respondents recall seeing commercials regarding talcum powder and ovarian cancer that mentioned a specific jury award amount and could recall that amount.
- d. Of the respondents who reported exposure to commercials regarding talcum powder and ovarian cancer, the majority of survey respondents (56.86%) indicated that they had unfavorable opinions about talcum powder. And 62.75% of respondents indicated that their exposure to commercials about talcum powder and ovarian cancer was important in shaping their opinions about the product.

10. The survey I conducted is an advertisement recall survey. It involved 150 participants residing in St. Louis who met qualifications for jury service. The respondents were asked whether they recall seeing a television commercial regarding talcum powder and ovarian cancer in the past. Participants who were able to recall a commercial meeting this description were then asked follow up questions about the commercial they recalled.

11. The survey involved aided and unaided recall questions regarding the commercial(s) the participants in the survey recalled seeing. An unaided recall question asks the respondent to describe what he or she recalls. By contrast, an aided recall question asks the respondent to choose from a menu of choices. *See Bettman (1979).*¹

12. Ad recall surveys are commonly used to support the analysis of advertising in the published literature. *See, e.g., Pieters and Nijmolt (1997).*² Participants in the survey were asked for their impressions and reactions to the commercial at issue. In addition, respondents were asked to make content classifications, i.e., to subjectively identify whether the commercial related to or addressed certain pre-defined topics. *See Weber (1990).*³ These topics included: “value,” “risk,” “quality,” “contents,” “image,” “integrity,” “independent” and “sponsored research.”

13. For a survey to generate reliable results, it is necessary to sample from the population that most closely resembles the target population. In this case, my objective was to assess the exposure of the potential jury pool in St. Louis to commercials regarding talcum powder and ovarian cancer. Accordingly, the target population for the study is defined as:

- a. Residents of St. Louis proper;
- b. Who are American citizens; and
- c. Who are over 18.

14. This population consists of both males and females in equal proportions. The target population is broken down into two subpopulations: (1) those who recall having seen a commercial about talcum powder and ovarian cancer; and (2) those who do not.

15. The survey at issue was an Internet survey, in which survey respondents were paid between \$1.00 and \$2.00 for the ad recall survey (in digital points that can be accumulated and redeemed for gift cards) to spend approximately 10-15 minutes of their time answering the questions provided. In large-scale marketing survey research, Internet surveys are the default option. The survey was conducted on the platform of Qualtrics, the industry-leading provider of online survey software and trusted provider of survey panels for academia, business, and government policy.⁴ The survey respondents were drawn from the Qualtrics panel, which includes 6 million panel respondents in North America alone. (*See Prospectus for Qualtrics*

¹ Bettman, James R. (1979), *An Information Processing Theory of Consumer Choice*. Reading, MA: Addison Wesley Publishing Company.

² Pieters, Rik G. M. and Tammo H. A. Bijmolt (1997). Consumer Memory for Television Advertising: A Field Study of Duration, Serial Position, and Competition Effects, *Journal of Consumer Research* 23(4), 362-372.

³ Weber, R. P. (1990). *Basic Content Analysis*, 2nd ed. Newbury Park, CA.

⁴ Rosoff, H., R. S. John, and F. Prager (2012), Flu, Risks, and Videotape: Escalating Fear and Avoidance, *Risk Analysis*, Volume 32, Issue 4 April 2012 Pages 729-43; Hagtvedt, Henrik (2011) The Impact of Incomplete Typeface Logos on Perceptions of the Firm. *Journal of Marketing*: July 2011, Vol. 75, No. 4, pp. 86-93.

Panels, attached as Appendix 4.) The Qualtrics panel has been recognized as externally valid, which means that it is representative of the population at large, and superior to other survey options for academic business research.⁵ In addition to being the most cited panel for survey research in recent years, Qualtrics is the leading provider for consumer survey panels at my own university and the leading provider of research surveys at other universities with which I have collaborated. Because all survey respondents were members of the Qualtrics panel, they had previously been assigned unique identifiers and had provided detailed demographic information. This ensured not only that each respondent answered the survey only once, but also that respondents met the required study criteria.

16. The survey was designed with several critical considerations that are relevant to consumer surveys.

17. First, the design was driven by its stipulated objectives. When conducting a survey, it is important that the research be directed at answering the questions that prompted the study. The objective in this case was to determine whether the jury pool had been exposed to biasing commercials, how recently, with what frequency, and to what effect, including how the commercials influenced their perceptions of the product, the company, and likely consequences.

18. Second, the survey design ensures an accurate representation of the population of interest. The purpose of studies based on sampling is to project the findings to the intended population. The population definition set forth above is directly relevant to the question, and the sample was therefore restricted to that population.

19. Third, the sampling plan is consistent with the principles and teachings of consumer behavior theory and marketing research best practices. No communication took place between any party with a stake in the outcome of the survey and the Qualtrics team in charge of administering the survey to the panel. The Qualtrics team did not know that the survey was being conducted in connection with litigation. In other words, the survey was entirely *double blind*: neither the administrators of the survey nor the survey respondents had any knowledge of the hypotheses, claims or interests of the sponsor of the survey. In addition, the utmost care was taken to ensure that the sample was balanced in terms of gender; that respondents were representative in terms of demographics; and to screen out individuals who did not meet the survey criteria. The panel was double-screened, first with the demographic information already on record by Qualtrics with respect to residency in particular, and then by using survey questions.

20. Fourth, the design safeguarded against introducing possible biases with respect to data collection. All efforts were made to present the survey questions in an objective, unbiased, and non-leading format. Respondents were presented with a “don’t know” or “don’t recall” answer option wherever appropriate throughout the survey to minimize guessing.

⁵ Duane M. Brandon, James H. Long, Tina M. Loraas, Jennifer Mueller-Phillips, and Brian Vansant (2014) Online Instrument Delivery and Participant Recruitment Services: Emerging Opportunities for Behavioral Accounting Research. *Behavioral Research in Accounting*, Vol. 26, No. 1, pp. 1-23.

21. There are two potential biases commonly cited as applying to Internet surveys.⁶ The first is “under-coverage,” which means that respondents without Internet access are not represented. Articles addressing this bias have acknowledged that this problem is quickly disappearing because Internet access has become nearly universal in the United States due to: (1) free Wi-Fi access at numerous locations; (2) the proliferation of smart phones and tablets; and (3) the trend of bundling Internet access with other services like phone service and cable television. The second problem is “self-selection,” which means that the respondent selects the study, rather than the study selecting the respondent. In the present case, however, respondents are established Qualtrics panel participants who met the prequalifying demographics. Qualtrics panel participants are not recruited individually for each study. Instead, participation in a study is offered to all qualified panel participants. Panel participants are not required to complete every survey they are given, but there is a financial incentive to do so in the form of payment for studies completed. When subjects select surveys to participate in, they are told only the length of time and the reward. (See Invitation to Survey Participants, attached as Appendix 5.)

22. The respondent pool for this survey included 150 respondents from St. Louis proper, not including suburbs. Respondents included 75 males and 75 females.

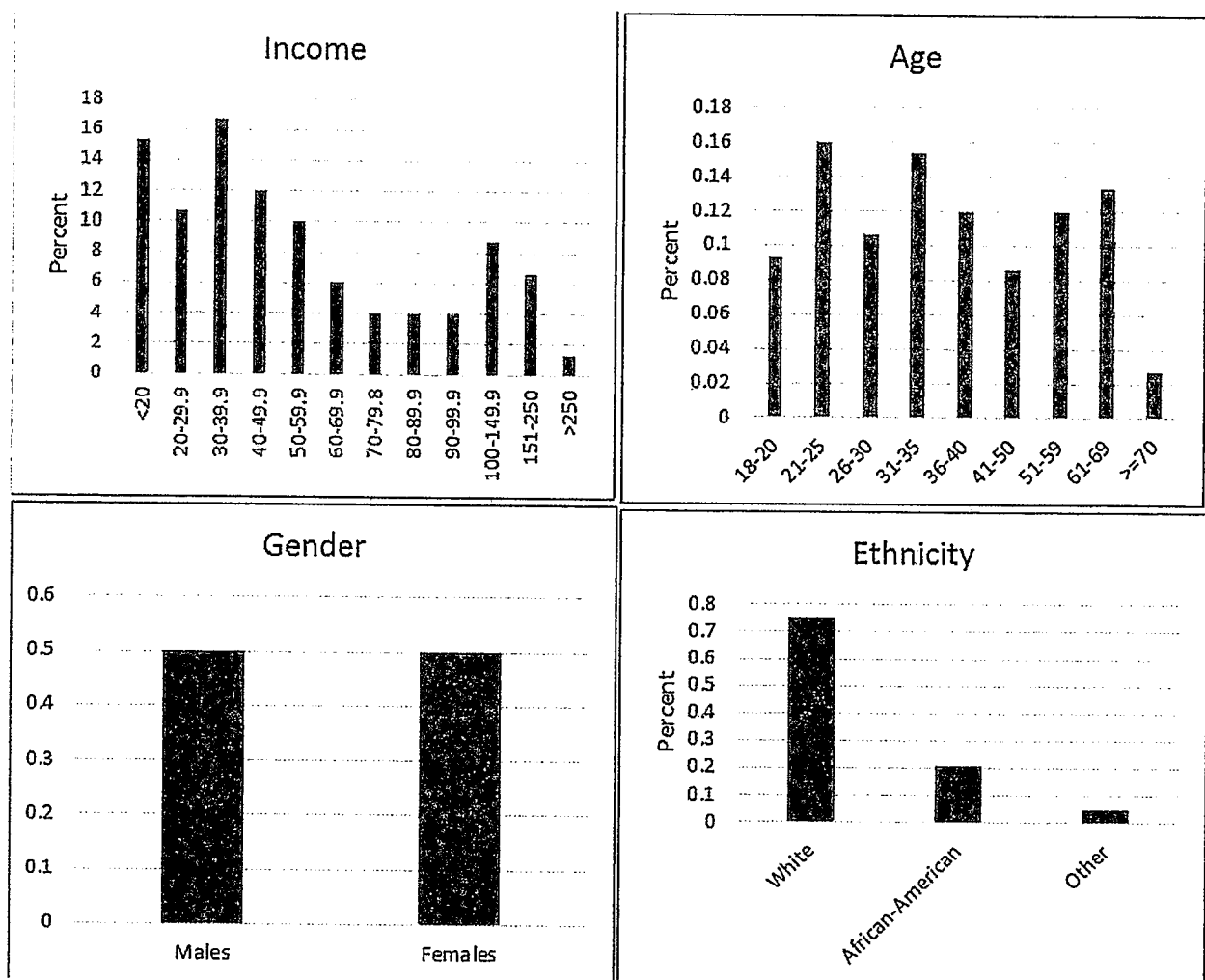
23. A breakdown of the demographics of the 150 survey respondents of the ad recall survey is illustrated in Figures 1-4. Figure 1 shows the percentage of survey respondents that fall into each income range, where income is expressed in thousands of dollars. Figure 2 shows the percentage of survey respondents who fall into the age ranges denoted on the horizontal axis. Figure 3 shows the gender breakdown of the survey respondents. Figure 4 shows the distribution of respondents among the two primary ethnic groups residing in St. Louis (whites and African-Americans).

24. St. Louis has a fairly unique demographic distribution. As of 2015, it has nearly equal proportions (47% each) of whites and African-Americans⁷; fewer than 4% Hispanic and fewer than 3% Asian. The survey respondents consist of only 21% African-Americans—lower than the corresponding percentage in the St. Louis population. The survey did not use stratified sampling for ethnicities, which is responsible for the uneven ethnic representation. Nevertheless, the data indicate that the samples are representative of the demographics within ethnicity in St. Louis. Specifically, there are strong income disparities between the two main ethnic groups in St. Louis⁸ with median white household income in St. Louis at roughly \$47K, which is slightly more than double that of African-American households in St. Louis, at \$23K. The survey responses’ median incomes are consistent with the census levels. The income responses are at \$10,000 intervals. Median income for African-American respondents is at the \$20,000-\$29,999 response interval. Median white household income is at the \$50,000-\$59,999 response interval.

⁶ Bethlehem, J. (2010), “Selection Bias in Web Surveys”, *International Statistical Review*, 78(2), pp. 161-188. Couper, M. (2000), “Web Surveys: A Review of Issues and Approaches”, *Public Opinion Quarterly*, 64, pp. 464-94.

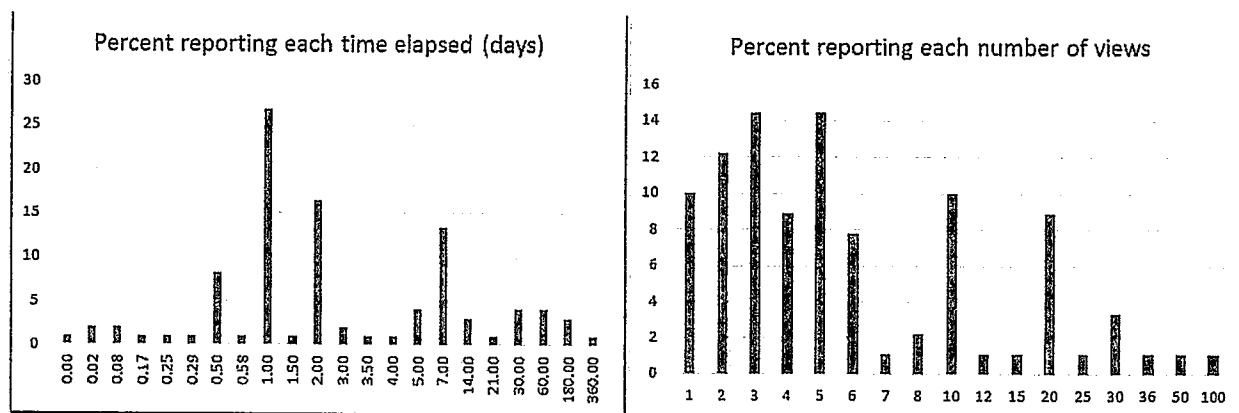
⁷ U.S. Census Bureau (2015) “Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for the United States, States, and Counties: April 1, 2010 to July 1, 2015”

⁸ <http://www.city-data.com/income/income-St.-Louis-Missouri.html>.



25. Of the 150 potential St. Louis jurors surveyed, 68% (102 respondents) recall seeing a commercial regarding talcum powder and ovarian cancer in the past. 67.23% of respondents who identified themselves as white recalled seeing such a commercial, as did 70.97% of respondents who identified themselves as African-American.

26. The 102 total respondents who reported exposure to such a commercial were asked to identify how many commercials they had seen on this topic. On average, respondents reported that they had been exposed to nine commercials (median of five) regarding talcum powder and ovarian cancer and that it had been less than two days since they had last been exposed to a commercial regarding talcum powder and ovarian cancer. 44.33% of respondents indicated that it had only been one day or less than a day since their last exposure to such an advertisement.



27. The recall analysis portion of the survey was designed to investigate what information respondents remember from the commercial regarding talcum powder and ovarian cancer to which they were previously exposed. According to the survey, the majority of respondents who reported having seen a commercial regarding talcum powder and ovarian cancer (52.94%) recalled that the commercial that they had seen mentioned a jury verdict. An even greater percentage of respondents who had seen one or more commercials (61.76%) stated that they recalled that the commercial that they had seen mentioned a specific product. 61.76% of respondents who had seen one or more commercials also stated that they recalled that the commercial that they had seen mentioned a specific law firm – and 20.59% of those individuals were able to recall the name of a particular law firm, Brown and Crouppen. A little less than half (41.18%) of respondents who had seen one or more commercials recalled that the commercial that they had seen mentioned a specific jury award. 26.19% of those individuals were able to accurately (within 4% of the actual amount awarded) state the amount of one or both of the jury awards mentioned in commercials regarding talcum powder and ovarian cancer that have aired in the St. Louis area.

28. As set forth above, respondents who reported having seen commercials regarding talcum powder and ovarian cancer were asked a number of questions regarding their opinions about the talcum powder mentioned in the commercial, as well as its manufacturer.

29. These respondents were asked how they would describe their opinion of the talcum powder mentioned in the commercial they saw after viewing the commercial, with possible answers including: Very Unfavorable (which was assigned a point value of 1); Somewhat Unfavorable (which was assigned a point value of 2); Neither Favorable Nor Unfavorable (which was assigned a point value of 3); Somewhat Favorable (which was assigned a point value of 4) and Very Favorable (which was assigned a point value of 5). 56.86% of respondents in this group provided an answer of Very Unfavorable or Somewhat Unfavorable. On a scale of 1-5, with 1 being the most unfavorable view and 5 being the most favorable view, the mean answer for this question was 2.31, indicating that – on average – respondents who viewed the commercial regarded the product as somewhat unfavorable.

30. These respondents were also asked how important watching the commercial regarding talcum powder and ovarian cancer to which they had previously been exposed was in shaping their opinion regarding the product at issue. Possible answers included: Very Unimportant (which was assigned a point value of 1); Somewhat Unimportant (which was

assigned a point value of 2); Neither Unimportant Nor Important (which was assigned a point value of 3); Somewhat Important (which was assigned a point value of 4); and Very Important (which was assigned a point value of 5). 13.73% of these respondents provided an answer of Very Unimportant or Somewhat Unimportant. 23.53% of these respondents provided an answer of Neither Important Nor Unimportant. 62.75% of these respondents provided an answer of Somewhat Important or Very Important. On a scale of 1-5, with 1 being the most unfavorable view and 5 being the most favorable view, the mean answer for this question was 3.76, indicating that the content of the commercial was, on average, somewhat important in shaping respondents' views about the product.

31. Respondents who recalled previously seeing commercials related to talc and ovarian cancer were also asked how they would describe their opinion of the manufacturer of the product mentioned in the commercial they saw after viewing the commercial, with possible answers including: Very Unfavorable (which was assigned a point value of 1); Somewhat Unfavorable (which was assigned a point value of 2); Neither Favorable Nor Unfavorable (which was assigned a point value of 3); Somewhat Favorable (which was assigned a point value of 4) and Very Favorable (which was assigned a point value of 5). 55.88% of these respondents provided an answer of Very Unfavorable or Somewhat Unfavorable. On a scale of 1-5, with 1 being the most unfavorable view and 5 being the most favorable view, the mean answer for this question was 2.34, indicating that – on average – views regarding the product manufacturer are somewhat unfavorable.

32. Respondents in this group were also asked how important watching the commercial regarding talcum powder and ovarian cancer to which they had previously been exposed was in shaping their opinion regarding the manufacturer of the product at issue. Possible answers included: Very Unimportant (which was assigned a point value of 1); Somewhat Unimportant (which was assigned a point value of 2); Neither Unimportant Nor Important (which was assigned a point value of 3); Somewhat Important (which was assigned a point value of 4); and Very Important (which was assigned a point value of 5). 14.71% of these respondents provided an answer of Very Unimportant or Somewhat Unimportant. 27.45% of these respondents provided an answer of Neither Important Nor Unimportant. 57.84% of these respondents provided an answer of Somewhat Important or Very Important. On a scale of 1-5, with 1 being the most unfavorable view and 5 being the most favorable view, the mean answer for this question was 3.71, indicating that the content of the commercial was, on average, somewhat important in shaping respondents' views about the product manufacturer.

33. Respondents who recalled previously seeing a commercial related to talc and ovarian cancer were asked how they would describe the likely consequences of using talcum powder mentioned in the commercial after seeing the commercial. 68.63% said it was somewhat harmful to very harmful; 21.57% said it was neither harmful nor beneficial; and 9.8% said it was somewhat beneficial to very beneficial.

34. Respondents in this group were also asked how important watching the commercial regarding talcum powder and ovarian cancer to which they had previously been exposed was in shaping their opinion regarding the likely consequences of using talcum powder. Possible answers included: Very Unimportant (which was assigned a point value of 1); Somewhat Unimportant (which was assigned a point value of 2); Neither Unimportant Nor

Important (which was assigned a point value of 3); Somewhat Important (which was assigned a point value of 4); and Very Important (which was assigned a point value of 5). 17.65% of these respondents provided an answer of Very Unimportant or Somewhat Unimportant. 23.53% of these respondents provided an answer of Neither Important Nor Unimportant. 58.82% of these respondents provided an answer of Somewhat Important or Very Important. On a scale of 1-5, with 1 being the most unfavorable view and 5 being the most favorable view, the mean answer for this question was 3.67, indicating that the content of the commercial was, on average, somewhat important in shaping these respondents' views about the product manufacturer.

35. Respondents who recalled previously seeing a commercial related to talc and ovarian cancer were also asked how likely they were to discuss the commercial they had seen or its message with others, and 44.12% said they were likely to very likely to do so. This means that in addition to the vast majority of St. Louis residents having been exposed to a biasing commercial, nearly half will discuss it further with others (with 24.68 percent saying they were likely to discuss it with three to five others), further biasing the population.

36. The survey also asked respondents who reported having seen a commercial regarding talcum powder and ovarian cancer to select, from a set list of options, which – if any – messages they believed were conveyed by the commercials. These options include: value; risk; quality; components or contents; image; integrity; independent research; and sponsored research. They were asked separately for product, company, law firm and verdict.

37. When asked which – if any – of these messages were communicated by the commercial about the talcum powder product at issue, 72.55% identified risk.⁹ The next-most-frequently-identified message about the product was product/brand image, which was only identified by 26.47% of these respondents. Next was product integrity, at 17.65%. Next was components or contents, at 15.69%. Less than 7% of these respondents identified value and 8.82% identified quality. The fact that approximately three-fourths of respondents in this group identified product risk as a key communication of the commercial is consistent with a biasing influence.

38. When asked which – if any – of these messages were communicated by the commercial about the company that makes the talcum powder product at issue, 50% of these respondents identified risk. 28.43% of these respondents identified company image, and 25.49% identified company integrity.

39. When asked which – if any – of these messages were communicated by the commercial about the law firm being advertised, 40.20% of these respondents identified law firm image and 41.18% identified law firm integrity.

40. A broad view of the responses to this portion of the survey reveals that roughly three-quarters of respondents who recalled previously seeing a commercial related to talc and

⁹ Using the methodology of Fleiss (1971) for the case of many respondents with multiple response categories, I confirmed that respondents' answers to these questions were moderately consistent. Fleiss, J. L. (1971). Measuring nominal scale agreement among many raters, *Psychological Bulletin*, 76, 378-382.

ovarian cancer (72.55%) believe that the commercial regarding talcum powder and ovarian cancer to which they were previously exposed communicated a message about product risk. The next most-commonly-identified message was company risk, which was identified by 50% of respondents.

41. The survey also included a question for respondents who had previously seen commercials regarding talc and ovarian cancer that sought information regarding respondents' opinions of the intent of the commercial regarding talcum powder products and ovarian cancer to which they had been previously exposed. The survey provided respondents with 24 potential options and allowed respondents to select as many as they believed applied. The options indicated by more than 30% of respondents are listed below in the order of the frequency with which they were selected by the 102 respondents who were exposed to the commercials.

- a. Half of these respondents, 50%, indicated that they believed that the commercial they had seen was intended to "increase awareness about recent medical findings"
- b. 42.16% of these respondents indicated that they believed that the commercial they had seen was intended to "increase awareness about issues related to talcum powder"
- c. 39.22% of these respondents indicated that they believed that the commercial they had seen was intended to "[i]nform about issues related to talcum powder"
- d. 38.24% of these respondents indicated that they believed that the commercial they had seen was intended to "[i]ncrease awareness about a law firm"
- e. 35.29% of these respondents indicated that they believed that the commercial they had seen was intended to "[i]nform about recent medical findings"
- f. 32.35% of these respondents indicated that they believed that the commercial they had seen was intended to "[i]ncrease awareness about safety issues with talcum powder"
- g. 31.37% of these respondents indicated that they believed that the commercial they had seen was intended to "[i]nform about safety issues with talcum powder"
- h. The remaining responses were selected by 30% or fewer of the respondents.

42. Across categories, the vast majority of respondents, 74.10%, indicated the intent of the commercial they had seen was to increase awareness, inform, or influence opinion about recent medical findings, issues related to talcum powder, a company making talcum powder, or safety issues with talcum powder. Only a minority of respondents, 45.10% report the intent to be awareness, information or influencing opinion regarding the law firm itself. These results, consistent with the communication classifications reported in paragraph 37, indicate that the commercials were perceived as intended to be informative about the risks of talcum powder rather than about the law firm.

43. Based on the results of the survey, I have reached the following conclusions:

- a. A majority of the potential St. Louis jurors surveyed have been exposed to commercials about talcum powder products and ovarian cancer. On average, these potential jurors reported that they have seen nine commercials about talcum powder products and ovarian cancer and the majority of these individuals report having seen multiple commercials on the topic within the last two days. In marketing, it is generally believed that three exposures is sufficient to generate awareness.¹⁰ By most of the academic literature, nine would be on the high side.
- b. A majority of potential jurors who report having been exposed to commercials about talcum powder products and ovarian cancer can recall specific facts from the commercials regarding the specific product mentioned, the manufacturer of that product, verdicts reached in prior cases related to talcum powder products and ovarian cancer and the amount of jury awards to the plaintiffs in such cases.
- c. Potential jurors who report having been exposed to commercials about talcum powder products and ovarian cancer indicated that they have negative views about both the talcum powder product mentioned in the commercial and its manufacturer. Further, respondents indicated that their exposure to commercials about talcum powder products and ovarian cancer influenced their view of the product, its manufacturer and the consequences of using the product.
- d. The majority of potential jurors who report having been exposed to commercials about talcum powder products and ovarian cancer indicated that the message was primarily about product risk. In addition, the majority of potential jurors who report having been exposed to commercials about talcum powder products and ovarian cancer indicated that they believe the commercials were *intended* to increase awareness about medical findings, increase awareness about issues related to talcum powder, or inform about issues related to talcum powder. In comparison, a minority of respondents indicated that the commercials were intended to generate awareness, inform or influence opinion about the sponsoring law firm.

44. As noted above, I also conducted text analysis to examine whether the content of ads regarding talcum powder and ovarian cancer was primarily aimed at potential clients or at potential jurors.

45. Text analysis is done by transcribing the television commercial into text and then analyzing the text. Under this approach, texts are empirically coded in order to make observations about message content. This process is both quantitative and qualitative in nature. The quantitative aspect of this analysis is the use of objective word counts, which is premised on the common assumption that the most frequent words reflect the greatest concern.¹¹ It is also

¹⁰ Krugman, Herbert E. (1972) "Why Three Exposures May Be Enough." *Journal of Advertising Research* 12, 6: 11-14.

¹¹ Stemler, Steve (2001) *An Overview of Content Analysis, Practical Assessment, Research and Evaluation* 7 (17).

qualitative in that it assigns word meanings to provide context for the messages provided according to the objectivity standards of content analysis research.¹²

46. In my text analysis, I considered transcripts of 11 local and 10 national commercials regarding talcum powder and ovarian cancer aired in St. Louis in the period from March to May 2016. The 11 local commercials include all television advertisements airing on local broadcast networks in the St. Louis media market between March 1, 2016 and May 31, 2016. For the 10 national commercials, I analyzed the top 10 commercials in terms of ad spending nationally that were broadcast on national cable networks (e.g., USA, AMC, CNN), national broadcast networks (e.g., ABC, CBS, FOX) and nationally syndicated programs between March 1, 2016 and May 31, 2016.

47. In undertaking content analysis, a count is the number of times a phrase or word for a particular category is mentioned in one specific commercial. Thus, the word count analysis helps determine the emphasis of each set of commercials.

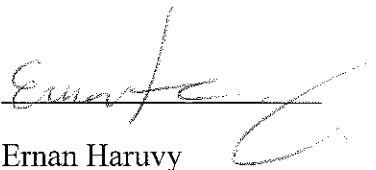
48. In comparing the local to the national ad campaigns, I found that the total number of statements urging viewers to call a law firm in national ads and lower-spending local campaigns is at two or higher. However, for the top five local ads, the average number of requests to call is closer to 1.5, indicating lower emphasis in local ads on customer/client acquisition.

49. I also found that the number of mentions of jury awards in local ad campaigns is substantially higher than in national campaigns. I can therefore reasonably conclude that the intent of the local ads was more geared toward influencing public opinion than clientele building. Furthermore, the top local ads are 20% more likely to use language suggesting a link between talcum powder and ovarian cancer, relative to the lower-ranked local ads, and relative to the local ads that have national exposure as well. This is further indicative of a goal of influencing opinion rather than attracting customers.

¹² Kassarian, Harold H. (1977), "Content Analysis in Consumer Research," *Journal of Consumer Research*, 4 (June), 8-18.

FURTHER AFFIANT SAYETH NAUGHT.

Dated: 7/26/2016

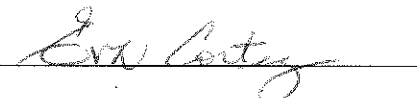

Ernan Haruvy

Witnessing or Attesting Signature:

State of TEXAS

County of Dallas

Subscribed and sworn to me this 26th day of July 2016 by Ernan Haruvy



Signature of Notary Public

My Commission Expires: 03/19/2018



Appendix 1

Ernan E. Haruvy

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Master of Science, Aug 19, 1996, University of Texas at Austin, Austin, Texas 78712, Economics
Bachelor of Business Administration With Highest Honors, Aug 16, 1993, University of Texas at Austin, Austin, Texas 78712, International Business

Professional Experience

- August 2014 – Present. **University of Texas at Dallas, School of Management, Full Professor**, Richardson, Texas
- June 2013- August 2015. **University of Texas at Dallas, School of Management, Area Head, Marketing**, Richardson, Texas
- August 2008 – Present. **University of Texas at Dallas, School of Management, Assoc. Professor**, Richardson, Texas
- October-November 2009, April-June 2010. **Tilburg University, Economics, Visiting Scholar**, Tilburg, Netherlands
- Aug 2001 – Aug 2008. **University of Texas at Dallas, School of Management, Assist. Prof.**, Richardson, Texas
- Sept 2000 – August 2001. **Harvard Business School, Research Fellow**, Boston, Massachusetts
- July 2000- August 2000 **University of Texas at Austin, Dept of Economics, Lecturer**, Austin, Texas
- Sept 1999- July 2000. **Technion -- Israel Institute of Technology, Faculty of Industrial Engineering and Management, Lecturer**, Technion City, Haifa, Israel
- June 1999 – July 1999. **University of Texas at Austin, Dept of Economics, Lecturer**, Austin, Texas
- August 1998 – May 1999 **University of Texas at Austin, Dept of Economics, Instructor**, Austin, Texas

Business Courses taught: Predictive Marketing Analytics with SAS (graduate), Market Design (PhD), Principles of Marketing (undergraduate), Marketing Management (graduate), Marketing Analytics (graduate), Internet business models (graduate, undergraduate), topics in e-commerce (graduate), and special topics in marketing (Ph.D., covered auctions, bargaining, and network

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and
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15. Haruvy, E. and E. Katok (2013), Increasing Revenue by Decreasing Information in Procurement Auctions, *Production and Operations Management* 22(1), 19–35.
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18. Haruvy, E. and D. Stahl (2012), Between-Game Rule Learning in Dissimilar Symmetric Normal-Form Games, *Games and Economic Behavior* 74, 208-221.
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- Virtual Worlds, *Southern Economic Journal* 78(1), 1-5.
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21. M. Fiedler, E. Haruvy and S. Li (2011), Social distance in a virtual world experiment, *Games and Economic Behavior* 72(2), 400-426
22. Chakravarty, S., G. Harrison, E. Haruvy, and E. Rutstrom (2011), Are You Risk Averse over Other People's Money? *Southern Economic Journal* 77(4), 901-913.
23. Li, S., K. Dogan, E. Haruvy (2011), Group Identity in Markets, *International Journal of Industrial Organization* 29(1), 104-115
24. Ben Zion, U., I. Erev, E. Haruvy and T. Shavit (2010), Adaptive Behavior Leads to Under-diversification, *J. of Economic Psychology* 31, 985-995.
25. Haruvy, E. and P. T. L. Popkowski Leszczyc (2010), Search and Choice in Online Consumer Auctions, *Marketing Science* 29(6) 1152-1164
26. Erev, I. and E. Haruvy (2010), "Two-stage Prize Promotions and the Value of Unresolved Uncertainty." *Marketing Letters* 21, 149-162
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30. Fiedler, M. and E. Haruvy (2009), The Lab versus the Virtual Lab and Virtual Field – An Experimental Investigation of Trust Games with Communication, *J. of Economic Behavior & Organization* 72(2), 716-724
31. Haruvy, E. and Peter Popkowski Leszczyc (2009), "The impact of online auction duration," *Decision Analysis* 7(1), 99-106.
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33. Stahl, D. and E. Haruvy (2009), "Testing Theories of Behavior for Extensive-Form Two-Player Two-Stage Games," *Experimental Economics* 12(2), 242-251.
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45. Haruvy, E., Y. Lahav and C. Noussair (2007), "Traders' Expectations in Asset Markets: Experimental Evidence", *American Economic Review*, 97(5), 1901-1920.
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51. Stahl, D. O. and E. Haruvy (2006), Other-regarding preferences: Egalitarian warm glow, empathy, and group size, *Journal of Economic Behavior & Organization* 61, 20-41
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53. Haruvy, E., A. Roth, and U. Unver (2006), "The Dynamics and Unique Characteristics of the Law Clerk Matching: An Experimental Investigation," *J. of Economic Dynamics and Control* 30, 457-486.
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 68. Stahl, D. and E. Haruvy (2002), "Aspiration-based and Reciprocity-based Rules in Learning Dynamics for Symmetric Normal-Form Games," *Journal of Mathematical Psychology*, 46(5), 531-553.
 69. Haruvy, E. and A. Prasad (2001), "Optimal freeware quality in the presence of network externalities: An Evolutionary Game Theoretical Approach," *Journal of Evolutionary Economics* 11 (2), 231-48.
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 72. Charness, G. and E. Haruvy (2000), "Self-serving Biases in a Simulated Labor Relationship," *Journal of Managerial Psychology* 15, 655-667.
 73. Haruvy, E., D. Stahl, and P. Wilson (1999), "Evidence for Optimistic and Pessimistic Behavior in Normal-Form Games," *Economics Letters* 63, 255-259.
 74. Haruvy, E. and A. Prasad (1998), "Optimal Product Strategies in the Presence of Network Externalities," *Information Economics and Policy* 10, 489-499.

**Articles
appearing as
chapters in
edited volumes**

1. Haruvy, E., A. Prasad, S. Sethi, and R. Zhang (2005). Optimal Firm Contributions to Open Source Software: Effects of Competition, Compatibility and User Contributions. In *Optimal Control and Dynamic Games: Applications in Finance, Management Science, and Economics*, Editors: Christophe Deissenberg and Richard Hartl, Springer, New York, 197-214, (2005).
2. Haruvy, E. and I. Erev (2002). On the Application and Interpretation of

Learning Models, Experimental Business Research, Editors: Rami Zwick and Amnon Rapoport, Kluwer Academic Publishers, Boston, 285-300

3. Erev, I. and E. Haruvy (forthcoming). Learning and the economics of small decisions. In Kagel, J.H. and Roth, A.E. (Eds.), *The Handbook of Experimental Economics*. Princeton University Press.
4. Gneezy, U. and E. Haruvy (2010) The Inefficiency of Splitting the Bill: A Lesson in Institution Design, In Zvika Neeman, Muriel Niederle and Nir Vulkan (Eds.) *The Handbook of Market Design*, Oxford University Press.
5. Haruvy, E. and S. Jap (2012), Designing B2B Markets, Handbook of Business-to-business Marketing, Gary Lilien and Rajdeep Grewal (Eds.), Edward Elgar Publishing, Northampton, 639-658.

**Finished papers
Available upon
request**

1. Haruvy, E. and Peter T.L. Popkowski Leszczyc. The Effect of Involvement on Fundraising: A Charity Field Experiment, *r&r J. of Marketing*
2. Fiedler, M. and E. Haruv. Third Party Intervention in the Trust Game. *R&R Journal of Behavioral and Experimental Economics*.
3. Haruvy, E. and Peter T.L. Popkowski Leszczyc. A study of bidding behavior in voluntary-pay charity auctions, *R&R at POM*
4. Briesch, R., E. Haruvy, Voss, G., Voss, Z. Agglomeration Externalities in Urban Marketplaces" Submitted to *Academy of Management Journal*.
5. Haruvy, E., S. X. Li, K. McCabe, P. Twieg, Communication and Visibility in Public Goods Provision, submitted *Games and Economic Behavior*
6. Haruvy, E., Katok, E., V. Pavlov. Bargaining Process and Channel Efficiency, Best Working Paper Award at Behavioral Operations and Management Section, Informs, submitted to *Management Science*
7. Haruvy, E., C. A. Ioannou, F. Golshirazi, Food Abstention, Religious Observance and Prosocial Behavior: Evidence from Ramadan.
8. Baethge, C., M. Fiedler, and E. Haruvy. In it to win it: Experimental Evidence on Unique Bid Auctions. Submitted to *J. of Industrial Economics*.
9. Alina Ferecatu, Ernan Haruvy, Timo Heinrich. An Analysis of Buyer and Seller Behavior in Buyer-Determined Procurement Auctions. *R&R at IJRM*
10. Haruvy, E., E. Katok, Z. Ma and S. Sethi. Relationship-Specific Investment and the Hold-Up Problems in Supply Chains: Theory and Experiments, Submitted to *MSOM*.
11. Haruvy, E. and S. Jap. The Impact of Organic Search on Paid Search and Performance, submitted to *ISR*
12. Singh, S. And E. Haruvy, "The Role of Online and Offline Word of Mouth in Online and Offline Channels: Evidence from the Used Car Market."

13. Estimating preferences in two-sided matching markets, with C. Zamudio and Y. Wang
14. Bargaining for Affinity Contracts, Ali Bakhtiari, Ernan Haruvy, B.P.S. Murthi
15. Endogenous Partner Selection in Symmetric 2x2 Normal Form Games, Enrique Fatas, Ernan Haruvy, Antonio Morales

Seminar presentations

- 2015: Cornell University, Operations Management, Sept 16.
- 2015: IDC Israel, Marketing, May 11
- 2015: Purdue, Economics, March 30
- 2014: Shanghai University of Finance and Economics, July 9, School of International Business
- 2014: University of Southampton, UK, Jan 20, Economics Department, 2nd Southampton Winter Workshop in Economic Theory
- 2013: University of British Columbia, Canada, March 11, Economics Department.
- 2011: George Mason University, ICES, March 11.
- 2011: Texas A&M, Economic, Oct. 28.
- 2010: INSEAD Marketing Camp, June 11, Luxembourg School of Finance, June 3, University of Mannheim, Germany, Finance (Prof. Martin Weber group), May 4, University of Cologne, Germany, Economics (Prof. Axel Ockenfels group), April 26, Tilburg University, Marketing, April 21, Erasmus, Rotterdam, Marketing (ERIM), April 19, Tilburg University, Experimental Economics internal seminar, April 14.
- 2009: Maastricht University, Netherlands, Economics, October 22, Chicago, Marketing, May 4.
- 2008: Wharton, Decision Processes Colloquia, February 25.
- 2006: Pittsburgh University, Economics, February 24,
- 2005: U. of Texas- Arlington, Economics, Oct 14, U. of Houston, Marketing, Sept 9, U. of Arizona, Management and Organizations, April 27, Florida State University, Economics, April 1, Carnegie Mellon University, Economics, Feb 10, University of Central Florida, Economics, Feb 3, Penn State, Smeal College of Business, Jan 28.
- 2003: Texas A&M University, Economics, Nov. 14, Washington University at St. Louis, Marketing, March 21.
- 1998-2001: Ben Gurion Univ., Israel, Economics Dept., Jan 17, 2001, Columbia University, Dept. of Management, 10/26/2000, Univ. of Texas-- Dallas, Marketing, 10/23/2000, Harvard, Economics, Oct. 5, 2000, Tel-Aviv University, Marketing, May 2, 2000, Technion, Haifa, Economics, April 2, 2000, Universitat Pompeu Fabra, Barcelona, Economics, Feb. 19, 1999, Penn State, Smeal College of Business, 2/8/1999, Technion, Haifa, Economics, June 8, 1998, Bogazici University, Istanbul, Economics, June 5, 1998, University of Texas at Austin, Economics, February 25, 1998.

Conference Presentations

- 2016: Economic Science Association Meetings, Jerusalem, July 7-11, the effect of involvement on fundraising: a charity field experiment.
- 2016: Choice Symposium, Lake Louise, AB, May 14-May 16, Beyond Posted Prices: Customer-Driven Pricing Mechanisms
- 2015: Informs, Philadelphia, PA, Nov 1. Award recipient. Best Working Paper Award at Behavioral Operations and Management Section, Informs “Bargaining Process and Channel Efficiency,” with E. Katok and V. Pavlov.
- 2015: Economic Science Association, Dallas, Texas, October 23, “The Effect of Third Party Intervention in the Investment Game”
- 2014 Marketing in Israel Conference, Beer Sheva/Rehovot, Israel, Dec 30-31, “A Study of Bidding Behavior in All-pay Auctions,” invited presentation
- 2012 Marketing Science Conference, Boston, June 7-9, “Differentiated Bidders and Bidding Behavior in Procurement Auctions,” and co-chaired special invited session “Bidding Strategies and Design in Quality Auctions.”
- 2011 Marketing Science Conference, Houston, June 9-11, “When and How Do Coordinating Contracts Improve Channel Efficiency?”
- WIMI Conference: Cross-Platform and Multi-Channel Consumer Behavior, Dec 9-10, 2010, Wharton, “Seller Strategy in B2B Multi-channels: Auctions, Buy-Now Pricing and Price Discovery.”
- Southern Economic Association Conference, Atlanta GA, Nov 20-22, 2010. Session Organizer and presented “Asset Market Prices and Strategies in Virtual World Experiments.”
- Economic Science Association Meetings, November 11-13, 2010, Tucson, “The Loser’s Bliss.”
- 2010 Marketing Science Conference, Cologne, June 16-19, 2010, “Between-Game Rule Learning in Dissimilar Symmetric Normal-Form Games” and “Tiers in one-sided matching markets.”
- 2009 Marketing Science Conf., Ann Arbor, June 4-6, 2009, “The Impact of Online Auction Duration”
- 2009 UTD- Frontiers of Research in Marketing Science, Dallas, Feb 19-21, 2009, Organizer.
- 2008 Economic Science Association European Meetings, Lyon, France, Sep 11-14, 2008, “An Experimental Investigation of Buyer Determined Procurement Auctions”
- 3rd Annual Behavioral Operations Conference, Edmonton, Alberta, July 23-25, 2008, “Choice between investments with different multipliers and social distance: A virtual world experiment.”
- 2008 Marketing Science conf, Vancouver, Jun 12-14, 2008, “Bidding Strategies in Buyer Determined Online Auctions” and “An Experimental Investigation of Buyer Determined Procurement Auctions”
- 2008 Winter Marketing Educators' Conference, Austin, Feb 15-18, 2008, “Two-stage Lotteries and the Value of Unresolved Uncertainty in Multiple Contacts”
- Informs, Seattle, Nov 4-7, 07, “When Zero Search Cost is too High.”
- Economic Science Association, Tucson, Oct 18–21, 07. “Individual Choice among Charity Auctions.”

- 2007 Second Annual Behavioral Operations conference July 23-24 Carlson School of Management University of Minnesota. “Infrastructure for Laboratory Experiments”
- 2007 Stony Brook Workshop on Experimental Economics July 14 - 16, 2007. “Learning”
- 2007 Seventh Triennial Invitational Choice Symposium, Wharton, Jun 13-17, “Competition Between Auctions.” Session organizer.
- 2006 Economic Science Association North American Meetings, Tucson, Arizona, September 28-October 1. “Risk aversion, under-diversification and the role of recency and probability matching.”
- 2006 Summer Institute in Competitive Strategy, UC Berkeley, Jun 26-June 30, “Segmentation and Competition: An Application to Rebates”
- 2006 INFORMS Marketing Science Conference, University of Pittsburgh, June 8-June 10, Two-Stage Prize Promotions and the Value of Unresolved Uncertainty
- 2006 Coordination Success Conference in Honor of Raymond C. Battalio, Texas A&M, March 31-April 2, 2006. Presented “Hierarchical Thinking and Learning in Rank Order Contest Games.”
- 2005 SEA Meetings, Washington, D.C., Nov 18-20, 2005, organized “Learning” session and presented “Learning in Two-Stage Lotteries.”
- 2005 ESA Meetings in Tucson, Sept 30-Oct 2, “The Buyer-Determined Multi-Attribute Auction.”
- 2005 AMA Summer Marketing Educators’ Conference, July 29-August 1, Panel Member in special sessions titled “Online Reverse Auctions: New Technology and/or Old Relationships”
- 2005 INFORMS Marketing Science Conference, Emory University, Atlanta, June 16-18, “The Buyer-Determined Multi-Attribute Auction- An Experimental Investigation”
- 2005 AEA Annual Meetings, Jan 7-10, “Two-Stage Prize Promotion Lotteries and the Timing of Prizes”
- 2004 North American Economic Science Association Meeting, Nov 5-Nov 7, 2004. “Loss Aversion and Under-Hedging”
- 2004 ISBM Academic Conference in Boston, August 5-6, “Who Benefits From Reverse Auctions?”
- 2004 Marketing Science Conference, June 24-26, Rotterdam: “The Role of Seller Rating in Online Auctions”
- 2004 American Marketing Association Winter Marketing Educators’ Conference, Feb 6-9, 2004, Scottsdale, AZ: “Two-stage Prize Promotion Lotteries and the Timing of Prizes.”
- Matching Markets Workshop, Stanford Institute of Theoretical Economics, Stanford University, August 14-Aug 16, 2003: “Equilibrium Selection in Repeated B2B Matching Markets”
- 25th Marketing Science Conference 2003, University of Maryland, College Park, June 12-15, 2003: “The Effect of Variability in Marketing Mix Variables on Consumer Brand Choice.”
- American Marketing Association Winter Meetings, Orlando, Florida, February 14-16, 2003: “Manipulating Prize Variability in Under-the-cap Promotions”
- International Economic Science Association Meetings, Boston, June 27-30,

2002: "The Economics of Small Decisions."

- Economic Science Association Meetings, Tucson, Nov 1-4, 2001: "Unraveling in Decentralized Labor Markets with Incrementally Revealed Quality Information"
- Marketing Science, July 5-8, 2001, Wiesbaden, Germany: "Under-the-cap Promotions: A Customer Learning Approach."
- Workshop on Learning and Bounded Rationality, June 14-18, 2001, Florence, Italy: "Applications to Reinforcement Learning"
- Public Choice Society and Economic Science Association Meetings, March 9-11, 2001, San Antonio
- ASSA and Econometric Society Meetings, Jan 5-7, 2001, New Orleans.
- Economic Science Association Summer Meetings, Sept 29-Oct 1, 2000, Tucson.
- Marketing Science Conference, June 23-25, 2000 Los Angeles, "Variable Pricing: A Customer Learning Perspective"
- Economic Science Association Summer Meetings, June 16-18, 2000, New York.
- Experimental Economics 3rd International Workshop, April 10, 2000, Haifa, Israel.
- Public Choice Society and Economic Science Association Meetings, March 10-12, 2000, Charleston.
- Public Choice Society and Economic Science Association Meetings, March 12, 1999, New Orleans.
- Economic Science Association North American Meetings, October 15-18, 1998, Tucson.
- North American Summer Meetings of the Econometric Society, June 25-28, 1998, Montreal, "An Empirical Model of Equilibrium Selection based on Player Heterogeneity"
- Public Choice Society and Economic Science Meetings, March 13-15, 1998, New Orleans, Louisiana, "An Empirical Model of Equilibrium Selection based on Player Heterogeneity"
- Texas Econometrics Camp III, Feb 28 – Mar 1, 1998, Lago Vista, Texas, "An Empirical Model of Equilibrium Selection based on Player Heterogeneity"
- Lonestars Conference, Sept. 27-28, 1997, College Station, Texas, "Testing Modes in the Population Distribution of Beliefs in Experimental Games"
- Conference on Clustering and Discrimination sponsored by the National Science Foundation and Rice university, May 11-14, 1997, Houston, Texas, "Testing Modes in the Population Distribution of Beliefs in Experimental Games"

**Research
Interests**

E-commerce, Market design, auctions, Network externalities, experimental economics

**Membership in
Professional
Societies**

- American Economic Association
- Economic Science Association
- Econometric Society
- American Marketing Association

Fellowships and Awards

- Informs.
- Best Working Paper Award at Behavioral Operations and Management Section for “Haruvy, E., Katok, E., V. Pavlov. Bargaining Process and Channel Efficiency”
- Management Science Distinguished Service Award for 2010
- Management Science Distinguished Service Award for 2009
- The 1st Technion Open Choice Prediction Competition. First Place in Predicting Decisions from Description, 2009.
- Professional Development Award, April 1998.
- David Bruton, Jr. Fellowship, 1997-1998 academic year.
- Peter L. Reid Memorial Scholarship for academic achievement, 1992-1993 academic year.
- Spain-Leff Memorial Scholarship for academic excellence, 1992-1993 academic year.

Original Achievement, Investigation and Research

Grants

- “Competition between Auctions: Implications for Auction Design and Bidder and Seller Strategies,” Collaborator, 2011 Social Sciences and Humanities Research Council of Canada Research Grant # 410-2011-0058, \$100,350.
- MSI research award #4-1644 (2010). “Seller Strategy in B2B Multichannels: Auctions, Buy-Now Pricing, and Price Discovery.” \$3000.
- The Fostering of Charitable Giving in Canadian Society, Community University Research Alliances program, Collaborator, 2008 Social Sciences and Humanities Research Council of Canada Research Grant, \$20,000.
- Senior personnel on NSF #SES-0519168, Rule Learning Across Dissimilar Normal-Form Games, PI: Dale Stahl, 08/01/05 - 07/31/07, \$24,675.
- United States-Israel Binational Science Foundation, #2002114, July 2003-July 2005, with Ido Erev and Alvin Roth; \$20,000.
- National Science Foundation-- Time-sharing Experiments for the Social Sciences, proposal #157, May 2003, with Sujoy Chakravarty. The TESS project facilitates data collection via the Internet and pays for the associated costs of data collection.
- M. R. Saulson Research Fund #191-408, March 2000 – September 2002; \$2,000.
- Senior personnel on NSF #SES-9986379, with Dale Stahl; February 2000-January 2001; \$45,000.
- Research grant: B.T.S Academic Lectureship in Industrial Engineering and Management, #7700213, January, 2000; \$800.

Professional and University Citizenship

Referee work

Senior Editor: Production and Operations Management

Editorial Boards: Marketing Science, Review of Marketing Science, International Journal of Research in Marketing, Journal of Socio-Economics

Guest Editor: Symposium issue on Virtual Worlds in *Southern Economic Journal*

Cross-disciplinary: Science, Proceedings of the National Academy of Sciences

Economics: American Economic Review, Econometrica, European Economic Review, J. of Political Economy, Review of Economic Studies, Games and Economic Behavior, International J. of Game Theory, J. of Public Economics, The Economic Journal, J. of Economic Behavior and Organizations, Economics of Governance, Economic Theory, Experimental Economics, Southern Economic Journal, Computational Economics, Economic Inquiry, J. of Economic Dynamics and Control, Economics Bulletin, Economic Theory, J. of Economic Psychology

Marketing: Management Science (Marketing track), J. of Marketing, J. of Marketing Research, Marketing Science, International J. of Research in Marketing, Rev. of Marketing Sci., J. of Business Research, J. of Interactive Marketing

Finance: Journal of Finance, Review of Finance, Journal of Behavioral Finance, J. of Banking and Finance

OM, OR, and IS: Operations Research, Management Science (Information Systems track), Journal of Optimization Theory and Applications, Interfaces, Production and Operations Management, Information Technology and Management, Automatica

Decision analysis and OB: Management Science (Decision Analysis, Organizational Behavior tracks)

Psychology: J. of Behavioral Decision Making, J. of Mathematical Psychology, J. of Managerial Psychology, J. of Economic Psychology

Government: National Science Foundation, United States-Israel Binational Science Foundation, Research Grants Council (RGC) of Hong Kong, Austrian Science Fund (FWF)

Other service

- Organizer, UTD-FORMS tenth annual conference, 2016
- Area Head, Academic years 2013-2014, 2014-2015.
- Member of the Provost's EPPS Dean Search Committee in 2012.
- Vice Chair, Institutional Review Board, U. of Texas at Dallas, 2008-2009
- Faculty Adviser, American Marketing Association DFW CC, 2007-2009.
- Organizer, UTD-FORMS third annual conference, 2009
- **Other teaching:** Summer 2014 Shanghai University of Finance and Economics, Shanghai, China
- **Consultant:** Ansira, 2015; Targetbase, 2015

Appendix 2

Survey For Ad Recall And Retention

| | |
|----------------------------------------------------|------------------|
| 1. I give my consent to participate in this study. | Agree Disagree |
|----------------------------------------------------|------------------|

| | |
|-----------------------------------------------------------------|----------|
| 2. Are you a citizen of the United States? | Yes No |
| 3. Do you currently reside in St. Louis, not including suburbs? | Yes |

| | |
|---------------------------------------------------------------------------------|----------------------------------------------------------------------|
| 4. What is your age? | Multiple categories |
| 5. What is your gender? | Male Female |
| 6. What is your combined annual household income? | Multiple categories |
| 7. What is the highest level of education you have completed? | Multiple categories |
| 8. What is your ethnicity | Multiple categories |
| 9. Please indicate your current family structure. | Multiple categories |
| 10. How many children (under the age of 18) are currently living in your house? | 0 1 2 3 4 5+ |
| 11. What is your employment status? | Full-time Part-time Self-employed Unemployed Retired Other |
| 12. In which industry are you employed? | Multiple industries |

| | |
|-------------------------------------------------------------------------------------------------------------|-----------|
| 13. How long do you normally spend watching TV per day? Enter (Hours, Minutes) | Open form |
| 14. How long do you normally spend watching local TV stations per day? Enter (Hours, Minutes) | Open form |
| 15. How long do you normally spend watching commercial-free TV (for example Netflix) per day? Enter (Hours, | Open form |

| | |
|----------------------------------------------------------------------------------------------------------|-----------|
| Minutes) | |
| 16. How long do you normally spend listening to radio per day? Enter (Hours, Minutes) | Open form |
| 17. Name all the TV shows you watch with some regularity | Open form |
| 18. Do you recall seeing a television commercial regarding talcum powder and ovarian cancer in the past? | Yes/No |

Only proceed if your answer to this question is yes. If not, you are done with this survey.

All the questions below pertain to the commercial you recalled above. If you recall more than one commercial regarding talc baby powder and ovarian cancer, please refer to the commercial you recall most clearly.

| | |
|---------------------------------------------------------------------------------------------------------|-----------|
| 19. Approximately how many times do you recall seeing this commercial or similar commercials? | Open form |
| 20. Approximately how long has it been since you have last seen this commercial or similar commercials? | Open form |
| 21. What do you recall from this commercial? List as many recollections as you can. | Open form |
| 22. Do you recall mention of a verdict in the commercial? | Yes No |
| 23. If your answer above is yes, how many different verdicts were mentioned? | Open form |
| 24. Do you recall mention of a specific jury award in the commercial? | Yes No |
| 25. If your answer above is yes, please write down anything you can recall regarding the jury award/s. | Open form |
| 26. Do you recall the name of product that the commercial you just watched referred to? | Yes No |
| 27. If your answer above is yes, please | Open form |

| | |
|-----------------------------------------------------------------------------|-----------|
| write down the product's name | |
| 28. Do you recall the name of the law firm that the commercial referred to? | Yes No |
| 29. If your answer above is yes, please write down the law firm's name | Open form |

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| 30. After watching the commercial, how would you describe your opinion of talcum powder mentioned in the commercial? | Very Unfavorable, Somewhat unfavorable, neither favorable nor unfavorable, somewhat favorable, Very Favorable |
| 31. How important was watching this commercial in influencing your opinions on the previous question | Very unimportant, somewhat unimportant, neither unimportant nor important, somewhat important, very important |
| 32. After watching the commercial, how would you describe your opinion of the company that makes the talcum powder mentioned in the commercial? | Very Unfavorable, Somewhat unfavorable, neither favorable nor unfavorable, somewhat favorable, Very Favorable |
| 33. How important was watching this commercial in influencing your opinions on the previous question | Very unimportant, somewhat unimportant, neither unimportant nor important, somewhat important, very important |
| 34. After watching the commercial, how would you describe the likely consequences of using talcum powder mentioned in the commercial? | Very Harmful, Somewhat harmful, neither harmful nor beneficial, somewhat beneficial, very beneficial |
| 35. How important was watching this commercial in influencing your opinions on the previous question | Very unimportant, somewhat unimportant, neither unimportant nor important, somewhat important, very important |
| 36. How likely are you to discuss this commercial or its message with others? | Very unlikely, somewhat unlikely, Neither unlikely nor likely, somewhat likely, very likely |
| 37. How many others are you likely to mention the commercial or its message to? | Open form |

| | |
|---------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| 38. Does the commercial communicate any of the following about talcum powder? (check all that apply) | Value Risk Quality Components or contents Product/Brand image Product/Brand integrity Independent research Sponsored research |
| 39. Does the commercial communicate any of the following about the company that makes the talcum powder? (check all that apply) | Value Risk Quality Components or contents Company image Company integrity Independent research Sponsored research |
| 40. Does the commercial communicate any of the following about the law firm being advertised? (check all that apply) | Value Risk Quality Components or contents Law firm image Law firm integrity Independent research Sponsored research |
| 41. Does the commercial communicate | Value Risk Quality Components or contents |

| | |
|-------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| any of the following about past verdicts? (check all that apply) | Image Integrity Independent research Sponsored research |
| 42. What do you think is the intent of the commercial? (check all that apply) | <p>Increase awareness about recent medical findings Inform about recent medical findings Influence opinion about recent medical findings</p> <p>Increase awareness about issues related to talcum powder Inform about issues related to talcum powder Influence opinion about issues related to talcum powder</p> <p>Increase awareness about a company making talcum powder Inform about a company making talcum powder Influence opinion about a company making talcum powder</p> <p>Increase awareness about safety issues with talcum powder Inform about safety issues with talcum powder Influence opinion about safety issues with talcum powder</p> <p>Increase awareness of a law firm Inform about a law firm Influence opinion about a law firm</p> <p>Increase awareness about past litigation Inform about past litigation Influence opinion about past litigation</p> <p>Increase awareness about current litigation Inform about current litigation Influence opinion about current litigation</p> <p>Increase awareness about future litigation Inform about future litigation Influence opinion about future litigation</p> |

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APPENDIX 4



Panel Book
2014

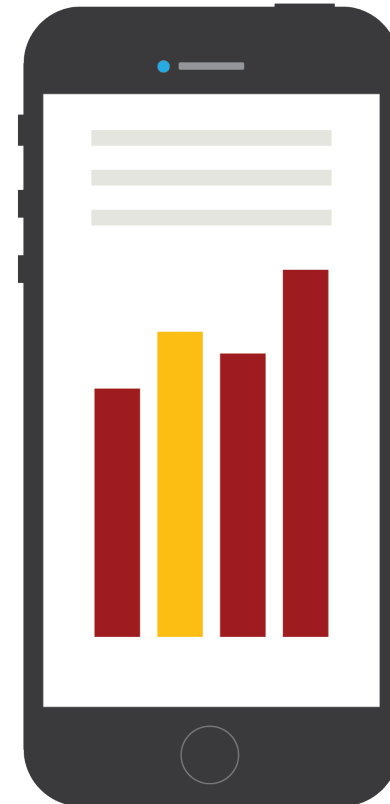
ABOUT US

Quality Panels. Experienced Project Management. Fast Results.

Qualtrics Panels integrates your online sample with the world's leading technology platform to help you collect the highest quality data and get measurable results. With this information, you can make data-driven decisions and find answers to your biggest questions.

Have respondents that are difficult to reach? No worries. We've partnered with the leading panel partners in the business to give you the best access and capabilities when it comes to reaching even the most niche respondents in 1/3 of the time it could take elsewhere.

The true secret to your success lies with our Qualtrics Project Managers. They give you one-on-one attention when you need it most. They'll work with you to ensure your project's success from start to finish, including quota set-up, working with providers, panel integration, launch, and fielding the results. You can't beat the convenient, efficient, and cost-effective experience you'll have with Qualtrics Panels.



To get started, all you have to do is tell us:

- Ideal sample size
- Target demographic
- Potential screen-outs & quotas
- How long the survey's open (field time)
- Survey length



What we do for you:

- Find the respondents you need
- Manage your project from start to finish
- Let you see results in real time, as they come in
- Set up redirect links
- Build quotas
- Give feedback on potential issues
- Ensure data quality including a soft launch, survey monitoring, and quality checks



Then the Qualtrics Panels Team Will Take Care of the Rest!

Qualtrics Customer Success Stories



Challenges

- Unable to collect and analyze data quickly and easily
- Needed a fast and cost effective way to reach its Hispanic consumer population to capture feedback

Solution

- Capture consumer feedback on product concepts before investing additional company resources to conduct in-depth primary research
- Test ad campaigns before launching to improve messaging and attract new customers

Results

- **10% increase** in text message survey response rates
- **97% reduction** in analysis time, allowing the business to respond in near real-time to consumer feedback
- **15 point increase** in smartphone Net Promoter Scores by utilizing feedback to improve the customer experience



BROWN-FORMAN

Challenges

- Shrinking budget for a global research program
- Needed to deliver research more quickly to the business
- Wanted to reach targeted consumers to capture feedback

Solution

- Leverage Qualtrics Panels to cost effectively and quickly reach the target audience
- Administer longitudinal brand health studies to capture brand awareness and provide feedback to help drive marketing initiatives

Results

- **Saved \$1 million** in the first year by doing more in-house research
- **Standardized** on a single, enterprise platform for a global research team to **deliver real-time** consumer insights
- Ability to make more product and marketing decisions based on **direct consumer feedback**

Qualtrics Customer Success Stories

BIG RED ROOSTER

“We use Qualtrics Panels for our online studies where we need specific types of respondents across multiple industries. The Qualtrics Panels team has been great in helping us find the right participants in a short amount of time. We’re a small group, so having a dedicated Qualtrics project manager to oversee our projects is like having an extension of our team.”

Michael Stephenson
Director, Experience Strategy



“Managing the quantitative research requests for multiple product lines was challenging before implementing Qualtrics. With Qualtrics Panels, a library of surveys to choose from, and the ability to easily collaborate with other research team members, managing multiple requests is made so much easier.”

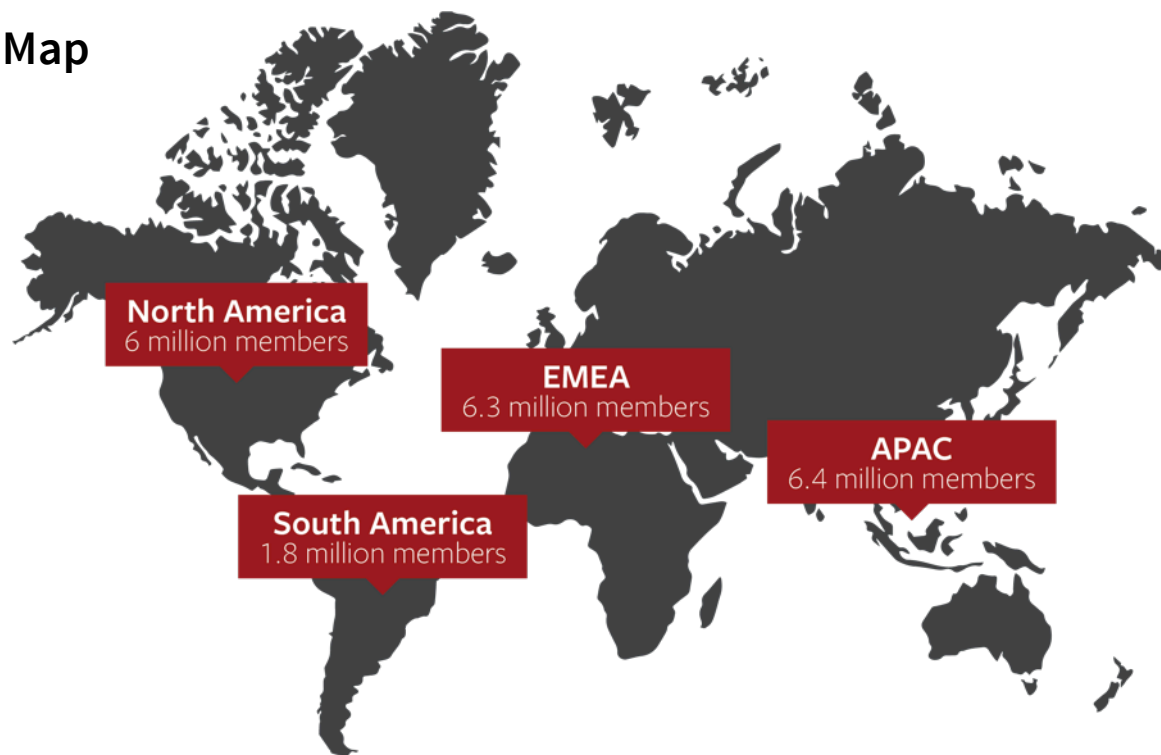
Nicole Lee
Consumer Insights Manager



“We have changed our mindset from limiting our market research to big projects only, because of the cost, to validating many of our decisions with data. We follow the voice of the customer and adjust course when it contradicts our initial hypothesis. Qualtrics gives us the tools to make better decisions and deliver products that our consumers love.”

Leila El Awar
Director, New Products

Respondent Map



The Americas

Argentina
Brazil
Canada
Chile
Colombia
Mexico
Peru
United States

EMEA

| | | |
|----------|--------------------|----------------|
| Austria | Ireland | Sweden |
| Belgium | Italy | Switzerland |
| Bulgaria | Netherlands | Tunisia |
| Czech | Norway | Turkey |
| Denmark | Poland | UAE |
| Finland | Portugal | United Kingdom |
| France | Romania | Ukraine |
| Germany | Russian Federation | |
| Greece | S. Africa | |
| Hungary | Spain | |

APAC

| | |
|-------------|-------------|
| Australia | South Korea |
| China | Singapore |
| Hong Kong | Taiwan |
| India | Thailand |
| Indonesia | Vietnam |
| Japan | |
| Malaysia | |
| New Zealand | |
| Pakistan | |
| Philippines | |

This is a subset of available countries. Qualtrics provides panel sample in **over 100** countries and can provide that information upon request.



Consumer Profile Data

BASIC

Age

Children:

- Date of Birth
- Gender

Country of Birth

Education

Employment

Ethnicity

Gender

Hispanic Origin

Income

Languages Spoken

Major Life Events

Major Purchases

Marital Status

Mixed Racial Ancestry

Pet Ownership

Preferred Language

Race

Sexual Orientation

Specific Interests/Hobbies

Sports

AUTOMOTIVE

Car Maintenance and Vehicle Purchase Decision Maker

DIY Maintenance

Financing

Insurance Provider

Internet Role in Purchase

Make (52 Manufacturers)

Motorbike

Number of Cars Per Household

Other Vehicles you Own or Plan to Buy in the Next 12 Months

Primary Car

- Year
- Make
- Model
- Style
- Own or Lease
- Year Purchased
- Purchased New or Secondhand
- Fuel
- Owner

Purchase Type

Recreational Vehicles

Scooter

Secondary Car

Seller Type

Vehicle Category

BEAUTY

Luxury Products Purchased in Last 12 Months

Personal Care Products Used Once per Week

Stores Where Personal Care Products are Purchased

HOUSEHOLD

Education Level of Main Salary Earner

Home Ownership

Household Income (Monthly and Annually)

Mothers:

- Age and Gender of Children in Household
- Marital Status
- Employment Status
- Online Purchases Made in Last 12 Months
- Online Travel Bookings Made in Last 12 Months
- Preferred Social Networks
- Social Network Frequency

Permanent Residence Location

Position of Main Salary Earner

Primary Decision Maker

Type of Residence

HEALTH

Allergies

Bone/Joint/Muscle Conditions

Breathing and Respiratory Conditions (Including Asthma)

Cancer Conditions

Diabetes Types

Digestive Conditions

Eye/Ear/Nose/Throat Conditions

Food Allergies

Health and Medical Areas Affecting Others in your Household

Health and Medical Areas Affecting You

Health and Medical Areas that you Provide Care for

Heart/Blood Conditions

Immunological conditions

Medical Conditions in Household

Medical Devices Used by Others

Medical Devices You Use

Mental Health and Behavior Conditions

Neurological/Brain-related Conditions

Physical Appearance Conditions

Prescription and Non-prescription Products

Sexual Health Conditions

Skin Conditions

Sleep Conditions

Vision/Eye conditions:

- Vision Correction
- Glasses
- Contact Lenses
- LASIK Surgery
- No Vision Correction

Weight Conditions

BEVERAGES

Bottled Water

Bottled/Canned Iced Tea

Carbonated Soft Drinks

Coffee

Diet/Weight Loss Drinks

Energy Drinks

Flavored/Fortified Water

Hot Tea

Juice

Mixed Drinks/Hard Liquor

Nutritional Drinks

Protein Drinks/Shakes

Sports Drinks

Tea

WINE, BEER, LIQUOR

Beer Brands

Beer Consumption by Week

Wine Purchase

Wine Varietal

Liquor Brand

Liquor Type

TOBACCO PRODUCTS

Cigarettes by Brand

Pipe Tobacco

Non-smoker

Smokeless Tobacco by Brand Cigars

FINANCE

Auto Loan

Certificate of Deposit

Checking Account

Financial Institutions (Over 200 Banks)

Gambling Preferences

Home Equity Loan/Line of Credit

Home Insurance Provider

Home Mortgage

Individual Stock or Bond Account

Life Insurance

Money Market Account

Mortgage

Mortgage Company

Mutual Fund Account

Number of Credit Cards

Number of Debit Cards

Personal Loan/Line of Credit

Recreational Vehicle Loan

Savings Account

Type of Investment

MEDIA

Cable/Satellite Provider
Hours Spent Listening to the Radio
Hours Spent Newspapers
Hours Spent Reading Magazines
Hours Spent Watching TV
Magazine Preferences
Movie Attendance Frequency
Movie Genre Preferences
Newspaper Preferences
Television Networks
TV Services
Website Preferences

VIDEO GAMES

Game System Ownership
Game System Preference
Hours per Week of Computer Game Play
Hours per Week of Video Game Play
Video Game Genres

TECHNOLOGY

Computer Type
Digital Camera Brand
Number of Personal Computers
Online Activities
Online Social Networking Frequency
Personal Computer Brand
Television Brand

MOBILE

Average Monthly Bill
Contract Expiration Date
Interest in Taking Mobile Phone Surveys
Mobile Phone Brand
Mobile Phone Contract Type
Mobile Phone Service Provider
Mobile Use Frequency
Phone Features
Probability of Switching Providers
Reasons for Potentially Switching Minutes
Used per Month
Tablet Users by Type

SHOPPING

Frequency of Fast-Food visits
Frequency of Restaurant dining
Frequency of Visits to Cars/Coffee Shops
Grocery Store Preferences
Online Market Preferences
Other Store Preferences

INTERNET

Home Internet Connection:

- Local Area Network
- Dial-Up
- Broadband

Internet Connection Speed
Internet Service Provider
Internet Usage Frequency

TRAVEL

Airlines Used
Business Travel:

- Frequency of Trips
- Travel by Air, Auto, or Train

Car Rental Companies Used
Hotel Rooms Rented
Leisure Travel:

- Travel by Air, Auto, or Train
- Cruise Frequency
- Cruise Preferences
- International Travel
- Specific Countries

This is a subset of available consumer segmentation attributes. Qualtrics has thousands of additional attributes available and can provide that information upon request.



B2B Profile Data

BASIC COMPANY ATTRIBUTES

Annual Revenue

Business Industry:

- Services
- Manufacturing
- Retail
- Wholesale
- Not-For-Profit
- Government

Business Occupation

Business Title

Company Global Revenue

Decision Makers

Direct Reports

Domestic, International, or Both

Employment Status

Industry Segments

Number of Employees in your office

Number of Total Employees in your Company

Primary Role

Size of Business

Software Purchases

Years in Business

Years in Current Role

INDUSTRY VERTICALS

Banking/Financial Services:

- Banking/Financial Services/Insurance Industry
- Banking/Financial Services/Insurance Role

Business Owner:

- Type of Business Owned/Operated
- Personal Service Business Owned

Business Services Industry

Computer Hardware Industry

Computer Software Industry

Construction:

- Construction Industry
- Primary Construction Role

Consulting Industry

Consumer Products Manufacturing Industry

Education:

- Educator Role
- Education Level Type
- Educational Institute
- Students Enrolled

Energy & Utilities Industry

Entertainment/Sports Industry

Food/Beverages/Restaurant Industry

Government/Military:

- Law Enforcement/Emergency Services Type

- Military Branch of Part-Time Service
- Military Branch of Former Service Branch
- Military Service Status
- Government Level of Employment

Healthcare:

- Medical Professionals
- Pharmaceuticals
- Healthcare Professionals
- Physician Specialty

Legal Services:

- Legal Occupation
- Legal Role
- Attorneys in Organization

Media/Publishing Industry

Real Estate:

- Industry
- Primary Role

Retail Industry

Telecommunications Equipment Industry

Transport & Logistics:

- Automotive/Transport/Transportation/Logistics
- Professional Driver Work Type

Travel/Hospitality/Leisure Industry

This is a subset of available B2B segmentation attributes. Qualtrics has thousands of additional attributes available and can provide that information upon request.

You have questions. Qualtrics has answers.

Q: What experience does your company have with providing online samples for market research?

A: Qualtrics, the world's leading enterprise survey technology solution, has been providing online samples for over five years. We partner with over 20 online panel providers to supply a network of diverse, quality respondents to our worldwide client base. Our Qualtrics Panels Team has completed over 15,000 projects across every industry vertical including travel, financial services, healthcare, retail, consumer goods, technology, and manufacturing both in the US and across the world.

Q: What is the advantage of using your panel?

A: Our team has worked with the largest sample providers in the world. We bid out projects to multiple vendors to get you the best price and give you the widest range of options. In addition, you get the added value of a dedicated project manager to make sure everything runs as smoothly as possible. By integrating your panel with the world's leading technology platform, Qualtrics makes sure you get the right data at the right time.

Q: What do project managers do?

A: Project managers (PMs) facilitate the data collection from start to finish and help alleviate the three major pain points associated with every project - time, worry, and risk. Our PMs are survey experts who can help you with every aspect of your project in no time. They'll also oversee project integration, ensure quota fulfillment, monitor redirects and send you updates along the way.

Q: How do you find hard-to-reach respondents?

A: For hard-to-reach groups, Qualtrics utilizes niche panels brought about through specialized recruitment campaigns. Hundreds of profiling attributes are included in our panels to guarantee accurate and detailed knowledge of every potential respondent. We are regularly adding new specialized panels and working with our partners to increase their profiling capabilities.

Q: Please describe the nature of your incentive system(s). How does this vary by length of interview, respondent characteristics, or other factors you may consider?

A: Qualtrics respondents will receive an incentive based on the length of the survey, their specific panelist profile and target acquisition difficulty. The specific types of rewards vary and may include cash, airline miles, gift cards, redeemable points, sweepstakes entrance and vouchers.

Q: What information about a project do you need in order to give an accurate estimate of feasibility using your own resources?

A: Qualtrics requests the following from every client: description of target audience, desired sample size, expected survey length, and all screening criteria. After project expectations are clarified with the prospective client, Qualtrics will give an estimate on the timeline for desired deliverables.

You have questions. Qualtrics has answers.

Q: How are medical and B2B study panelists recruited?

A: The respondents gain access to surveys by invitation only. Potential recruits must go through an additional layer of validation to ensure that they are verified medical professionals or B2B respondents.

Q: What is the IR?

A: The incidence rate, otherwise known as the Qualifying Rate. This refers to what percentage of the population would actually fully qualify to complete the survey (e.g., if you took 100 people and 70 of them fit your qualifications then your incidence rate is 70%). Incident rates help determine how many potential respondents need to receive the survey and its associated cost. A very basic survey of the general population will have a higher incidence rate than a survey of doctors would. The incidence rate can be offset by targeting specific professions or demographics. As demographic targeting gets more specific, incidence rates drop and prices rise.

Q: Explain how people are invited to take part in a survey. What does typical invitation look like?

A: Potential respondents are sent an email invitation informing them that the survey is for research purposes only, how long the survey is expected to take and what incentives are available. Members may unsubscribe at any time. To avoid self-selection bias, the survey invitation does not include specific details about the contents of the survey.

Q: How long will the data collection take?

A: Specific timelines vary depending on response and incidence rates. Most consumer projects with a sample size of 500 or less will be completed within 3-5 days. Samples of 1,000+ can take 7-10 days in the field (M-F).

Q: Where do you get your panels and online samples?

A: By partnering with the largest and most well-known panel companies in the world.

***For more specifics read [Qualtrics answers to ESOMARs 28 Questions](#).

Q: What steps do you take to achieve a representative sample of the target population?

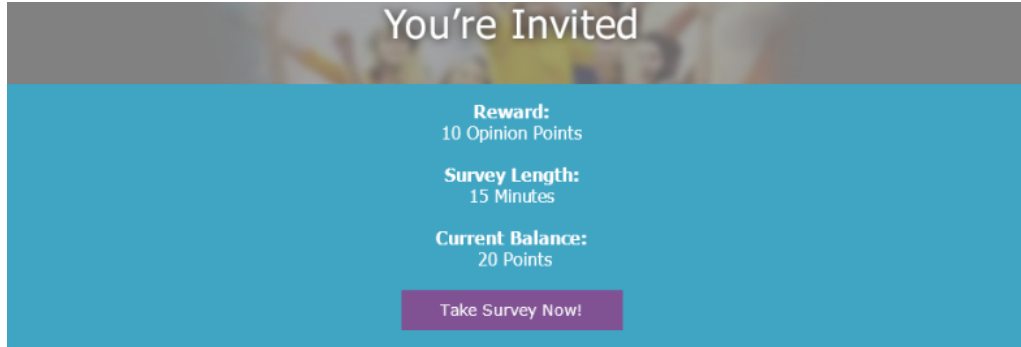
A: Qualtrics panel partners randomly select respondents for surveys where respondents are highly likely to qualify. Certain exclusions take place including category exclusions, participation frequency and so on. Each sample from the panel base is proportioned to the general population and then randomized before the survey is deployed. We work to guarantee that the population surveyed meets the requirements of the specific survey as defined by our clients' needs.



View our answers to ESOMAR's 28 Questions [here](#).

To learn more contact us at 801-709-2164 or
panels@qualtrics.com

Appendix 5 Invitation to survey Participants



Dear ivy,

Complete this new survey today and influence what takes place tomorrow!

Thanks for participating!

Regards,

The Opinion Outpost Team

Start Survey