



Litigation Survey Consulting: Using Early Consumer Insights to Strengthen Case Strategies

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In complex litigation involving trademarks or false advertising claims, understanding consumer perception can be critical. The challenge lies in deciding when and how to evaluate that perception, particularly when a matter presents more than one viable legal theory.

At the early stages of a case, legal teams may be considering different strategies and weighing issues such as [likelihood of confusion](#) versus [secondary meaning](#), or [deception](#) versus [materiality](#). They may not yet know which case theory is most likely to be supported by a consumer survey or other types of consumer evidence, or which survey approach would be most persuasive.

This is often the point at which litigation survey consulting can add value, providing early insights to inform and improve legal strategies.

What Is Litigation Survey Consulting?

Litigation survey consulting provides custom research designed to explore consumer attitudes, perceptions, and behaviors relevant to litigation. However, unlike an evidentiary survey, this type of research is not intended for expert testimony in court. The process allows a consulting expert to gather insight into the strength of consumer survey evidence, assess the best way to approach survey design, and support well-informed decisions.

Non-evidentiary survey research may be conducted during the pre-litigation stage or early in litigation, helping attorneys evaluate legal theories and identify the strategic approach best

supported by consumer survey evidence. It also enables litigation teams to explore and refine strategies before committing to expert testimony or a full evidentiary survey.

Questions that litigation survey consulting can address include:

- Do consumers respond to a particular statement, trademark, or packaging the way we expect?
- What type of survey is most appropriate for this matter?
- How do different types of consumers respond to the theory of the case?
- Is this trademark famous enough for survey respondents to remember it without seeing it?
- How strong is potential survey evidence likely to be on different topics?

The Value of Litigation Survey Consulting

Litigation survey consulting can be particularly valuable in intellectual property and commercial litigation (or anticipated litigation) where consumer perception is central. This includes Lanham Act disputes involving trademark and trade dress infringement, false or deceptive advertising litigation, and other cases in which courts may expect parties to provide evidence of consumer attitudes or behaviors.



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Early Consumer Insights

One of the primary benefits of litigation survey consulting is that it enables more informed strategic decisions early in a matter, when flexibility is greatest and the cost of course correction is lowest. Litigation survey consulting provides the opportunity to test competing survey options, helping legal teams narrow their focus with greater confidence before committing to a particular approach. By basing case theories on documented consumer perceptions, attorneys can focus efforts on the arguments most likely to resonate.

Time and Budget Efficiency

Litigation survey consulting also supports a more efficient use of time and budget. Legal teams can use these early consumer insights to determine whether additional survey research is likely to add value to a case, and if so, what type of research is most appropriate. In addition to testing competing options during the pre-suit or discovery phase, consulting experts offer the flexibility to adjust research approaches as litigation matters evolve, responding to new information, shifting claims, or emerging risks.

Real-World Experience

When engaging a litigation survey consultant, it is important to retain researchers with proven experience designing, conducting, and analyzing litigation surveys. Expert consultants understand the rigorous standards that courts have established for litigation surveys. Their expertise helps legal teams make sound strategic decisions and secure survey evidence that withstands scrutiny.

How Can Cases Benefit from Litigation Survey Consulting?

Litigation survey consulting enables legal teams to make more confident, data-informed decisions at critical stages of trademark and false advertising disputes. It offers a flexible, lower-risk way to inform next steps before committing to full evidentiary research or expert testimony. These early consumer insights help legal teams evaluate case direction, test assumptions, and determine whether additional survey research is needed.

IMS survey consulting experts bring the methodological knowledge and litigation-focused perspective needed to interpret consumer survey findings in context. We explain what the data may suggest, where potential vulnerabilities may exist, and how survey insights can inform the next stage of case strategy.

To explore how IMS can support your cases through litigation survey consulting, connect with us at contactus@imslegal.com.

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