

BOOK REVIEW

Trademark Surveys, Volume 1: Designing, Implementing, and Evaluating Surveys. Jacob Jacoby, Editor. ABA Section of Intellectual Property Law. 2013. Pp. 1064.

With apologies to Douglas Adams, author of *Life, the Universe and Everything* (*The Hitchhiker's Guide to the Galaxy*), this comprehensive new IP reference work might have been titled *Science, the "Universe" and Everything (Dr. Jacoby's Guide to Trademark Surveys)*. In a thoroughgoing review of practically any issue that might arise in connection with marketing surveys in trademark cases, this work applies thoughtful critical intelligence to the process from beginning to end. Starting with pre-survey issues such as identification of appropriate research topics and how to select an expert, attention is given to analyzing the marketplace, determining the universe of relevant respondents, sampling, settings and stimuli, questionnaires, and data-gathering and analysis.

The discussion is thoroughly leavened with Dr. Jacoby's trenchant dissections of key cases before the courts, drawing upon his many years' experience as a testifying expert. While no two trademark cases are exactly alike, much can be gained from mining this extensive discussion of past cases.

Contributions from several trademark-law practitioners add to the discussion, with suggestions for starting off survey research on the right foot.

Particular attention should be paid to Dr. Jacoby's explanation of the scientific method as basis for evaluation of surveys and experiments offered as evidence in trademark cases. The focus is upon rejection of "junk science"—as exemplified by formulaic mantras like "control"—in favor of developing a fundamental understanding of the appropriate requirements for a realistic scientific design. This focus is especially welcome in view of the court system's increasing acceptance of a gatekeeping function pursuant to the *Daubert* case and its progeny—which intensifies the need for judges to come to grips with scientific issues in order to exercise that function responsibly. The work urges a critical scientific method, while eschewing complete perfection as an impractical ideal (even in the so-called "hard" sciences, which experience conceptual revisions as a result of inventive breakthroughs) (in other words: scientific progress).

This work is denominated "Volume 1"; a companion volume is in preparation and expected shortly. However, it is hard to

imagine what more remains to be treated, given the wealth of information about surveys already presented within this text.

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