

Using Marketing, Business & Competitive Research to Win Cases

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Marketing research is a powerful tool that helps lawyers win cases.

Examples:

1. Established that a distributor did not implement “effective marketing & sales programs” as required by the contract. The unlawful termination suit was dismissed.
2. Demonstrated that equivalent “products and services” were priced at \$2,400,000 vs the \$200,000 value claim. The case was settled prior to trial for \$2,400,000.
3. Based on market data, defined that the claimed economic loss was a maximum of \$100,000 rather than the claimed \$6,400,000 claim. The suit was settled for \$50,000.

Summary: Areas that benefit from marketing research

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|-----------------------------|---------------------------|
| ◆ Advertising effectiveness | ◆ Market share |
| ◆ Agent performance | ◆ Market size & growth |
| ◆ Best effort evaluation | ◆ New product opportunity |
| ◆ Competition | ◆ Pricing |
| ◆ Competitive analysis | ◆ Profit loss |
| ◆ Dealer performance | ◆ Sales loss |
| ◆ Distributor performance | ◆ Sales performance |
| ◆ Effectiveness of programs | ◆ Strategy |

Many market research expert witnesses have an undergraduate degree in their specialty (engineering, business, marketing) and an MBA or PhD. They average over twenty years of business experience. Unfortunately, some lawyers do not recognize the value of marketing research...and put their cases at risk.

For example, many lawyers bring in an expert to express an opinion based on his/her experiences. In many cases, this experience is narrow; the expert's testimony is weak. With effective research, numerous facts from a range of sources provide a far more convincing argument.

The keys to the selection and use of marketing research professionals include:

1. Define the hypothesis and the information required to win the case. This guides you in the selection of your researcher and keeps the research focused and affordable.
2. Define key words that define the background and experience you require from your researcher. Such fine-tuning is now possible through the use of ExpertLaw.com's search capability.
3. Use researchers with extensive (a) Business experience and (b) Expert witness experience. Unfortunately, many market researchers are (a) Academically strong but do not have in-depth experience in line management of a business or (b) Not comfortable or practiced in public speaking and are not effective during the stress of a deposition or trial.
4. One of the strengths of market researchers is attention to detail. This can also be a weakness. An experienced researcher recognizes when details are not required; this saves both time and money.
5. Secure several research-in-progress verbal reports. The information will provide you with valuable insight to the case and your strategy. It also helps focus the researcher.

Don E. Smith. 35 years experience in marketing & marketing research. Clients include AT&T, Borax, ITT, Lockheed-Martin, Motorola, New York State Gas & Electric, Panama Canal & Volvo. Nationally known public speaker and business trainer. University associations include Cornell Graduate School of Management, University of Wisconsin and University of North Carolina. Mechanical Engineer from Carnegie-Mellon and MBA from University of Pittsburgh. Expert witness specialties:

1. Define economic losses. Sales, profits & market share.
2. Evaluate of marketing & sales effectiveness.
3. Market research to define markets, competitors & other critical information
4. Disputes involving distributors, dealers, agents and independent sales representatives.

