

# EXHIBIT A

REDACTED PUBLIC VERSION

# JJG Group LLC

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**Vaporstream, Inc.**

**v.**

**Snap Inc. d/b/a Snapchat, Inc.**

**A Study of Alternative User Experiences**

**June 2018**

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- Questionnaire<sup>1</sup>

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<sup>1</sup> Includes Questionnaire Version U and Questionnaire Version P.

## **Introduction**

1. I am the President of JJG Group, LLC, a company specializing in litigation-related market research services. Until January 2014, I was the Chief Executive Officer of Leo J. Shapiro and Associates, Inc., a market research and consulting firm that, among other activities, conducts surveys.
2. Over more than 40 years, I have designed and supervised hundreds of surveys measuring consumer behavior, opinion, and beliefs concerning brands and products, employing a wide range of research techniques. I have given lectures before the American Bar Association (ABA), the Practising Law Institute (PLI), the American Intellectual Property Law Association (AIPLA), and the International Trademark Association (INTA) on the use of survey research in litigation. I am a member of the American Marketing Association (AMA), the American Association for Public Opinion Research (AAPOR), and the International Trademark Association (INTA). I have a B.S. degree in Psychology from Loyola University and an M.B.A. degree from the University of Chicago. A description of my background and a list of cases in which I have offered testimony at trial or deposition during the past four years are attached to Appendix 1 of this Report.
3. During March 2018, I was contacted by counsel from the law firm, Cooley LLP, on behalf of its client Snap Inc. d/b/a Snapchat, Inc. (“Snap”), a developer of a mobile messaging application (or “app”) called Snapchat.<sup>2</sup> Counsel informed me of a dispute that has arisen between Snap and Vaporstream, Inc., (“Vaporstream”), the assignee and

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<sup>2</sup> Vaporstream, Inc. vs. Snap Inc. d/b/a Snapchat, Inc.; Complaint for Patent Infringement, page 1. January 10, 2017.

owner of the patents at issue in this litigation relating to electronic messaging methods.

The seven patents at issue in this case are listed below:<sup>3</sup>

<b>U.S. Patent No.</b>	<b>Title of Patent</b>
8,886,739 ('739 patent)	Electronic Message Content and Header Restrictive Send Device Handling System and Method
8,935,351 ('351 patent)	Electronic Message Content and Header Restrictive Recipient Handling System and Method
9,306,885 ('885 patent)	Electronic Message Send Device Handling System and Method with Media Component and Header Information Separation
9,306,886 ('886 patent)	Electronic Message Recipient Handling System and Method with Separated Display of Message Content and Header Information
9,313,155 ('155 patent)	Electronic Message Send Device Handling System and Method with Separation of Message Content and Header Information
9,338,111 ('111 patent)	Electronic Message Recipient Handling System and Method with Media Component and Header Information Separation
9,413,711 ('711 patent)	Electronic Message Recipient Handling System and Method with Separation of Message Content and Header Information

4. It is my understanding that Vaporstream asserts that Snap has incorporated certain patented features into its Snapchat smartphone application that allegedly infringes several patents that Vaporstream owns. I understand that Snap has denied all of Vaporstream's allegations.

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<sup>3</sup> Ibid, pages 2-4. Counsel provided me with a copy of the Complaint and informed me that Vaporstream originally asserted nine patents in this case, but has subsequently dropped its allegations relating to two of them.

5. Counsel asked that I design and conduct a study that would measure current and prospective Snapchat users' perceptions with respect to the performance and utilization of the Snapchat app when the user experience embodies certain allegedly infringing features, and also, by comparison, when the user experience includes alternative features.
6. I agreed and proceeded to design and conduct the study. What follows is a report on the design, execution, results and conclusions that one can draw from this research.

### **Summary of Conclusions**

- The alternative features tested here are at least the equivalent of the original allegedly infringing features both in terms of perceived performance and the likelihood that any will encourage Snapchat use.
- The alternative feature Slow Expand on the receive side shows a statistical superiority to the original allegedly infringing features among current users of the old user interface.
- Both receive side alternative features have fewer negative mentions (i.e., “less likely” to use Snapchat) among current users of the old user interface than is found for the allegedly infringing features.
- Based on the results of this study, it is my opinion that both current and prospective users of Snapchat are at least as satisfied, if not more satisfied, with alternative user experiences that do not use the allegedly infringing features.

## **Methodology**

### **Overview**

7. Mobile phone interviews were conducted with 2,469 current and prospective Snapchat users between April 20 and 25, 2018. Respondents were randomly assigned to one of 12 survey cells (or user groups) and exposed to a user experience exhibit video demonstrating a send side or receive side session. These videos utilized the user interface that corresponds to what current users have (either the old user interface or new user interface) and what prospective users might have in the future (new user interface). Each respondent saw only one user experience exhibit video during the course of the survey. Exhibit videos were prepared by consultants at Keystone based on a review of mobile devices provided by Snap that had a version of the Snapchat app with the alternative features implemented.
8. This monadic single stimulus exposure provides a reliable measurement of user perceptions because it permits a direct comparison of performance statistics based on the features embodied in the user experience videos. Specifically, it permits a comparison between user perceptions based on the allegedly infringing features on one hand and perceptions based on alternatives that do not use the allegedly infringing features on the other hand. Moreover, by administering the study as a mobile phone survey rather than a typical online survey using a computer, the Snapchat user experience was more closely replicated for respondents.



9. An overview of the survey cells (or user groups) and completed number of interviews per cell are shown below.

[illegible]

<sup>4</sup> It is my understanding that Snap introduced an updated version of its app in February 2018. I have tested experiences that reflect the app that was in place before this date (labeled “Old”) along with the version that was introduced in February 2018 (labeled “New”).

## Screening

10. In order to reach the relevant universe, mobile phone surveys were conducted with consumers 13 years of age and older, who have an Apple or Android smart phone, and either currently use Snapchat or are likely to install Snapchat in the coming year. The interviews divided between current and prospective Snapchat users as follows:

Sample Distribution	
<b><u>Total</u></b>	<b><u>2,469<sup>5</sup></u></b>
Current Snapchat User	1,819
Prospective Snapchat User	650

11. Gender and age quotas were established based on past 12-month Snapchat user demographics.<sup>6</sup>
12. In order to qualify for the survey, respondents must have met the following criteria:
- Must live in the United States
  - Must be 13 years of age and older
  - Must have an Apple or Android smart phone
  - Must currently have the Snapchat app installed on his/her phone AND use it (“Current Snapchat User”);
- OR
- Must “definitely,” “probably,” or “maybe” be likely to install the Snapchat app on his/her phone in the coming year (“Prospective Snapchat User”).

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<sup>5</sup> Twenty-one respondents were removed for quality assurance purposes. See “Snapchat Survey Data File” provided under separate cover.

<sup>6</sup> SNAP\_VAP\_00016429.

13. Respondents were given the following screener introduction:

**SCREENER**

Welcome to our survey. In order to participate, you will need to take this survey on your smartphone. If you normally wear eyeglasses or contact lenses when reading material on your phone, please take them out and put them on.

14. The specific screening questions proceeded as follows:

**QS1** In what state do you live?

☐ <STATE DROP DOWN LIST>

**CHECK QUOTAS.**

**QS2** How old are you?

☐ 18-24

☐ 25-34

☐ 35-44

☐ 45-54

☐ 55 years or over

**CHECK QUOTAS.**

**QS2a** Are you the parent of a child age 13-17?

☐ Yes

☐ No

**IF "YES," ASK QS2b. IF "NO," SKIP TO QS3.  
TERMINATE IF "18-24" IN QS2 AND "YES" IN QS2**

**QS2b** Do you consent to your child participating in a survey regarding a mobile app?

☐ Yes

☐ No

**IF "YES," PROCEED TO QS2c. IF "NO," SKIP TO QS3.**

**QS2c** Please click '>' and bring your child to the computer to complete the survey.

**QS2d** For classification purposes, please indicate your exact age:

- ☐ Under 13
- ☐ 13 years old
- ☐ 14 years old
- ☐ 15 years old
- ☐ 16 years old
- ☐ 17 years old
- ☐ 18 years old or older

**TERMINATE IF "UNDER 13" OR "18 YEARS OLD OR OLDER" IS SELECTED.**

**QS3** What is your gender?

- ☐ Male
- ☐ Female

**CHECK QUOTAS.**

15. Screener question QS4a asked respondents, in a blinded manner, whether they currently have the Snapchat app installed on their Apple or Android phone. This blinder list of apps asked about was presented to respondents in a randomized fashion in order to prevent any potential order bias that might occur.

**QS4a** Which apps do you currently have installed on your phone? **Check all that apply.**

**RANDOMIZE ROW ORDER. ANCHOR "NONE OF THESE."**

- ☐ Facebook
- ☐ Google Maps
- ☐ Snapchat
- ☐ Bitmoji
- ☐ Instagram
- ☐ Spotify
- ☐ None of these

**IF DOES NOT CURRENTLY HAVE "SNAPCHAT" ON PHONE, SKIP TO QS4c.**

16. If the respondent currently has Snapchat on his/her phone, they were asked how frequently they use the app. If the respondent reported that they never used the Snapchat app, they were terminated from the survey screening, and not allowed to continue with the survey.

**IF CURRENTLY HAS “SNAPCHAT” ON PHONE, ASK:**

**QS4b** How frequently do you use the Snapchat app?

- ☐ Multiple times per day
- ☐ Once a day
- ☐ Several times per week
- ☐ Once a week
- ☐ Less often, but I sometimes use it
- ☐ Never use it

**IF “NEVER USE IT,” TERMINATE. OTHERWISE, SKIP TO QS5.**

17. Those respondents who do not currently have the Snapchat app installed on their phone were asked about the future likelihood of installing Snapchat in the coming year. Respondents who report being “definitely,” “probably,” or “maybe” likely to install Snapchat on their phone in the coming year were included in the study.

**IF DOES NOT CURRENTLY HAVE “SNAPCHAT” ON PHONE, ASK:**

**QS4c** What are the chances that you will install Snapchat on your phone in the coming year?


- ☐ Definitely
- ☐ Probably
- ☐ Maybe
- ☐ Probably not
- ☐ Definitely not
- ☐ Don’t know


**IF “PROBABLY NOT,” “DEFINITELY NOT,” OR “DON’T KNOW,” TERMINATE.**

18. In Screener question QS5, current Snapchat users were asked to open up the app and look at the icon in the lower-right corner to determine which user interface they currently had: the Old User Interface or the New User Interface. The response to this question dictated whether the survey exposed the respondent to one of the old user interface videos, or to one of the new user interface videos. If the respondent reported that they didn't know which user interface their app had, they were terminated from the survey screening, and not allowed to continue with the survey.

**IF CURRENTLY HAS "SNAPCHAT" ON PHONE, ASK:**

**QS5** Please read all of the instruction below before proceeding. Take a minute to open your Snapchat app. Look closely at the lower-right corner of your application. Please then return to the survey and select the image that matches what you saw.

☐  (Old User Interface icon)<sup>7</sup>

☐  (New User Interface icon)

**INCLUDE A "DON'T KNOW" OPTION. IF "DON'T KNOW" IS SELECTED, TERMINATE.**

19. A quality control question was included in the screener to ensure that respondents were carefully reading and responding to the questions. Respondents were asked to select the number "8" from a list of numerical choices. Respondents who selected an incorrect number were terminated from the survey screening, and not allowed to continue with the survey.

<sup>7</sup> Programmer labels not seen by survey respondents.

**QS6** For survey quality control purposes, please select the number 8.

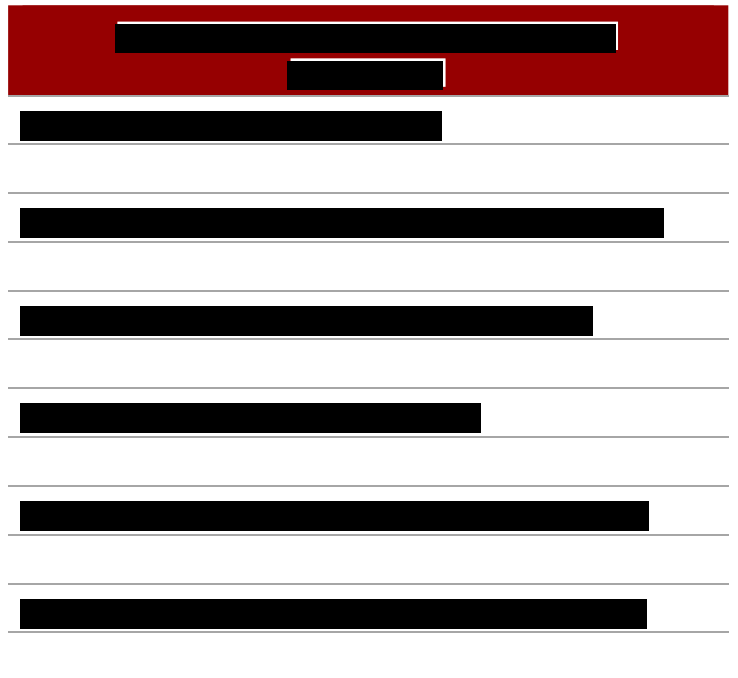
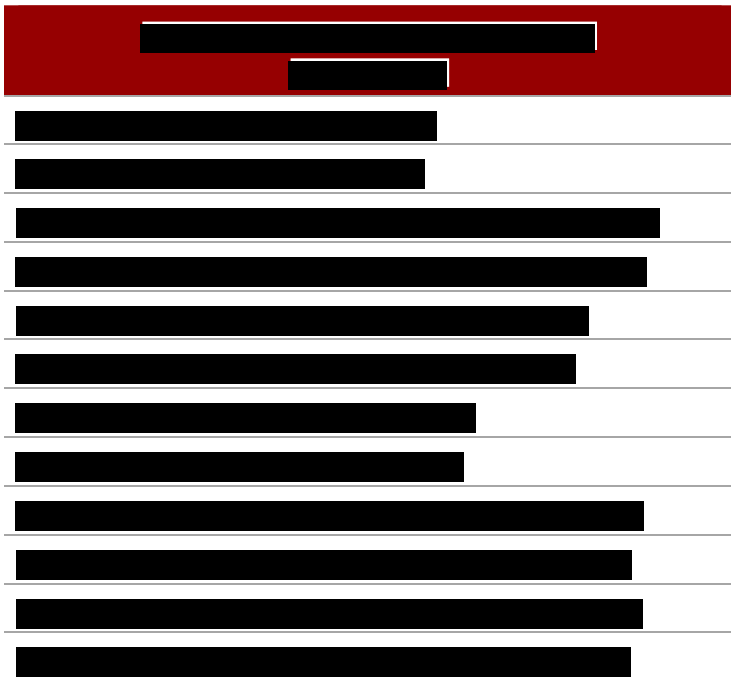
- ☐ 10
- ☐ 9
- ☐ 8
- ☐ 7
- ☐ 6
- ☐ 5
- ☐ 4
- ☐ 3
- ☐ 2
- ☐ 1
- ☐ 0

**IF DOES NOT SELECT "8," TERMINATE.**

20. This national mobile phone sample was drawn from Survey Sampling International (SSI), a highly regarded leader in providing online and mobile sample. The data was gathered and reported by SSI utilizing its proprietary information management techniques, including data checking, respondent validation, and restricting respondents to participate in the survey only one time.

### Questionnaire Versions

21. This study employed two questionnaire versions: Questionnaire Version U (Users) and Questionnaire Version P (Prospects). Current Snapchat users were administered Questionnaire Version U, while prospective Snapchat users were administered Questionnaire Version P. Both versions are identical in design, with two main differences: 1) which user experience exhibit videos are shown to respondents; and 2) slight language and response choice modifications between Questions QU4a and QP4a.
22. Specifically, Version U exposed current Snapchat users to one of 12 user experience exhibit videos, based on which Snapchat app software they were using on their smart phone (i.e., old or new user interface). Version P exposed prospective Snapchat users to one of 6 exhibit videos (i.e., only new user interface).





## Main Survey

23. As noted earlier, in this study, qualified survey respondents were randomly assigned to one of 12 (or one of six, for prospective users) survey cells (or user groups) and exposed to a user experience exhibit video demonstrating a send side or receive side session. These videos utilized the user interface that corresponds to what current users have and what prospective users might have in the future.
24. Respondents were told to watch the video as if they were experiencing this during a Snapchat session of their own. Each respondent saw only one user experience exhibit video during the course of the survey.

**IF A SEND SIDE VIDEO IS SELECTED, DISPLAY THE FOLLOWING INSTRUCTIONS:**

You are going to watch a video that shows a Snapchat user sending a Snap and will be asked a few questions about it. Please watch carefully as if you were experiencing this during a Snapchat session of your own.

Select the play button to view. To expand the video, press the icon in the upper right corner of the video.

**IF A RECEIVE SIDE VIDEO IS SELECTED, DISPLAY THE FOLLOWING INSTRUCTIONS:**

You are going to watch a video that shows a Snapchat user receiving a Snap and will be asked a few questions about it. Please watch carefully as if you were experiencing this during a Snapchat session of your own.

Select the play button to view. To expand the video, press the icon in the upper right corner of the video.

**PLAY EXHIBIT VIDEO.**

Please watch the video again. Select the play button to view. To expand the video, press the icon in the upper right corner of the video.

**PLAY EXHIBIT VIDEO.**

25. In order to better assess the feature embodied in the user experience exhibit video, respondents were shown the video twice. After watching the video twice, respondents were asked if they were able to clearly watch the video. Any respondent who reported that he/she could not clearly watch the video after the second exposure was allowed a third viewing attempt.<sup>8</sup> If the respondent was still not able to clearly watch the video after the third attempt, the interview terminated.

**QU2a** Were you able to clearly watch the video?

- ☐ No  
☐ Yes

**IF “YES,” SKIP TO QU3. IF “NO,” CONTINUE WITH QU2b.**

**IF “NO” IN QU2a, ASK:**

**QU2b** Would you like to see the video again?

- ☐ No  
☐ Yes

**IF “NO,” TERMINATE. IF “YES,” PLAY EXHIBIT VIDEO AGAIN. DO NOT SHOW VIDEO MORE THAN 3 TIMES.**

26. After being exposed to one of the user experience exhibit videos, respondents were asked to rate the performance of that user experience across five different mobile app attributes on a 5-point scale, where “5” means the “best” and “1” means the “worst.” Attributes asked about consisted of: ease of use, speed and efficiency, clarity and readability, informational content, and fun and entertaining. The order in which these five attributes were shown was randomized between respondents.

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<sup>8</sup> 56 respondents watched the exhibit video 3 times. See “Snapchat Survey Data File” provided under separate cover.

**QU3** On a scale of 1 to 5, where “5” is the best and “1” is the worst, how would you rate this Snapchat user experience in terms of...

**RANDOMIZE ROW ORDER.**

	Best				Worst
	5	4	3	2	1
Ease of use	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Speed and efficiency	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clarity and readability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Informational content	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Fun and entertaining	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

27. Current Snapchat users were asked if their Snapchat sessions were like the one they just saw, whether that would make them use Snapchat more often, less often, or about the same as they use it now. The order in which “more often” or “less often” was asked was rotated between respondents.

**Current Snapchat User<sup>9</sup>**

**QU4a** If your Snapchat sessions were like the one you just saw, would that make you use Snapchat more often, less often, or about the same as you do now?

**ROTATE ORDER OF FIRST TWO ALTERNATIVES SHOWN.**

- ☐ More often
- ☐ Less often
- ☐ About the same
- ☐ Don’t Know

**QU4b** What makes you say that?

- ☐ **OPEN-END**
- ☐ Don’t Know

<sup>9</sup> Questionnaire Version U.

28. In a parallel question, prospective Snapchat users were asked if their Snapchat sessions worked like the one they just saw, whether that would make them more likely or less likely to use Snapchat, or would it make no difference to them. The order in which “more likely” or “less likely” was asked was rotated between respondents.

**Prospective Snapchat User<sup>10</sup>**

**QP4a** If your Snapchat sessions would work like the one you just saw, would that make you more likely or less likely to use Snapchat, or would it not make any difference to you?

**ROTATE ORDER OF FIRST TWO ALTERNATIVES SHOWN.**

- ☐ More likely
- ☐ Less likely
- ☐ No difference
- ☐ Don't Know

**QP4b** What makes you say that? Any other reasons?

- ☐ **OPEN-END**
- ☐ Don't Know

29. A copy of the questionnaire document comprising both Questionnaire Version U and Questionnaire Version P is attached to Appendix 2 of this Report. Copies of the 12 exhibit videos used in this study are provided under separate cover.
30. This study was conducted using a double-blind technique where neither the company that administered the survey panel nor the respondents were aware of the purpose of the research or the identity of the party who commissioned it. The methodology, survey design, execution, and reporting were all conducted in accordance with generally accepted standards of objective procedure and survey technique.

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<sup>10</sup> Questionnaire Version P.

## **Results**

### **Performance Results**

31. After being exposed to one of the user experience exhibit videos, respondents were asked to rate the performance of that user experience across five different mobile app attributes on a 5-point scale, where “5” means the “best” and “1” means the “worst.” Attributes asked about consisted of: ease of use, speed and efficiency, clarity and readability, informational content, and fun and entertaining.

32. When the five different attributes are averaged to produce a composite performance measurement, by and large, the two relevant alternative features equal or surpass the current feature (i.e., Status Quo) across all performance measures.

33. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>11</sup> At the 95% level of confidence.

19

[illegible]

<sup>12</sup> Margins of error for the mean attribute ratings were calculated at the 95% level of confidence. The margins of error were calculated by applying a normal distribution (i.e., a z-score), which is the appropriate methodology for sample sizes over 30.

## Utilization Results

34. When current and prospective Snapchat users are asked whether the feature they viewed would influence their use of the Snapchat app, there are no significant differences across the survey cells in the proportion of respondents who report that they would use the Snapchat app “more often.”<sup>13</sup>

35. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>13</sup> “More likely” to use Snapchat among prospective Snapchat users.

**QP4a** If your Snapchat sessions would work like the one you just saw, would that make you more likely or less likely to use Snapchat, or would it not make any difference to you?

\_\_\_\_\_ 14.

<sup>14</sup> Margins of error for the statistics in this table were calculated at the 95% level of confidence. Alternate user experience results (e.g., Slow Expand, Sender Name, etc.) were compared to Status Quo results within each sub-category (e.g., Send Side New User Interface, Send Side Old User Interface, etc.).



### **Conclusions**

36. Overall, the results of this study indicate that the alternative features tested in this research are at least the equivalent of the original allegedly infringing features both in terms of their perceived performance as well as the likelihood that they will encourage Snapchat use. This is found to be true among both the current users and the prospective users of Snapchat.
37. [REDACTED]
- [REDACTED]
- [REDACTED]
38. In terms of the likelihood that the alternative features would impact use of Snapchat, both receive side alternative features have fewer mentions of a negative impact (i.e., “less likely” to use Snapchat) among current users of the old user interface than is found for the allegedly infringing features.
39. Based on the results of this study, it is my opinion that both current and prospective users of Snapchat are at least as satisfied, if not more satisfied, with alternative user experiences that do not use the allegedly infringing features as they are with respect to the performance and utilization of the Snapchat app when the user experience embodies allegedly infringing features.

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Date: June 9, 2018

Respectfully submitted,

A handwritten signature in cursive script that reads "Philip Johnson". The signature is written in black ink and is positioned above the printed name.

Philip Johnson

## **Appendix 1**

- Philip Johnson Curriculum Vitae
- Recent Cases In Which Philip Johnson Has Testified

**JJG Group LLC**

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Litigation Research Services

**PHILIP JOHNSON**

**CURRICULUM VITAE**

Philip Johnson is the President of JJG Group, LLC, a company specializing in litigation-related market research services. Until January 2014, Mr. Johnson was the Chief Executive Officer of Leo J. Shapiro and Associates, Inc., a market research and consulting firm that conducts surveys.

Mr. Johnson has designed and supervised hundreds of surveys measuring consumer behavior and opinion, employing a wide range of research techniques. His area of expertise is in the use of survey research as a tool in litigation, including jury selection and trademark disputes.

Mr. Johnson has offered testimony regarding survey evidence on over eighty occasions in both Federal and State courts. In addition, he has offered survey research in matters before the Federal Trade Commission, The Food and Drug Administration, the Patent and Trademark Office, and the Trademark Trial and Appeal Board. Mr. Johnson has designed, conducted, and reported survey evidence on behalf of both plaintiffs and defendants in various cases. The topics covered in these litigation related surveys include matters related to likelihood of confusion, secondary meaning, genericness, dilution, false advertising, change of venue, and unfair competition.

**Philip Johnson, JJG GROUP LLC, PO BOX 1909, FRIDAY HARBOR, WA 98250**

Part of Mr. Johnson's training has been through working with Dr. Leo J. Shapiro, the Founder of Leo J. Shapiro & Associates, L.L.C.; the late Dr. Philip M. Hauser, a former Director of the U. S. Census Bureau; and the late Dr. Hans Zeisel, who made significant contributions in the application of social science to the solution of legal questions.

Mr. Johnson has given lectures before the American Bar Association (ABA) and the Practising Law Institute (PLI) on the use of survey research in litigation. He is a member of the American Marketing Association (AMA), the American Association for Public Opinion Research (AAPOR), and the International Trademark Association (INTA).

Mr. Johnson has a B.S. degree in Psychology from Loyola University and an M.B.A. degree from the University of Chicago.



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Litigation Research Services

**RECENT CASES IN WHICH PHILIP JOHNSON HAS  
TESTIFIED OR OFFERED SURVEY EVIDENCE AT TRIAL...**

JUNE 2017	SAZERAC COMPANY, INC. v. FETZER VINEYARDS United States District Court for the Northern District of California Likelihood of Confusion
MARCH 2017	GLOBEFILL INCORPORATED v. ELEMENTS SPIRITS INCORPORATED AND KIM BRANDI United States District Court for the Central District of California Likelihood of Confusion
AUGUST 2016	THE NAVAJO NATION, ET AL. v. URBAN OUTFITTERS, INC., ET AL. United States District Court for the District of New Mexico Likelihood of Confusion
AUGUST 2015	In the Matter of CERTAIN FOOTWEAR PRODUCTS United States International Trade Commission Washington, DC Likelihood of Dilution and Confusion
APRIL 2015	LUXCO, INC. v. CONSEJO REGULADOR DEL TEQUILA, A.C. United States Patent and Trademark Office Before the Trademark Trial and Appeal Board Geographic Certification
SEPTEMBER 2014	PODS ENTERPRISES, INC. v. U-HAUL INTERNATIONAL, INC. United States District Court for the Middle District of Florida (Tampa Division) Likelihood of Confusion
JULY 2014	BALANCE BAR COMPANY v. GFA BRANDS, INC. United States Patent and Trademark Office Before the Trademark Trial and Appeal Board Likelihood of Confusion
NOVEMBER 2013	MCDONALD'S CORPORATION v. MCSWEET, LLC United States Patent and Trademark Office Before the Trademark Trial and Appeal Board Likelihood of Dilution and Confusion

SEPTEMBER 2013 SHEETZ OF DELAWARE, INC. v. DOCTOR'S ASSOCIATES, INC.  
United States Patent and Trademark Office Before the  
Trademark Trial and Appeal Board  
Genericness

JUNE 2013 KRAFT FOODS GROUP BRANDS LLC v. CRACKER BARREL  
OLD COUNTRY STORE, INC., CBOCS PROPERTIES, INC., AND  
JOHN DOES 1-10  
United States District Court for the  
Northern District of Illinois (Eastern Division)  
Likelihood of Confusion

APRIL 2013 PROMARK BRANDS INC. v. GFA BRANDS, INC.  
United States Patent and Trademark Office Before the  
Trademark Trial and Appeal Board  
Likelihood of Confusion

**DEPOSITION TESTIMONY OF PHILIP JOHNSON  
THAT HAS NOT BEEN OFFERED AT TRIAL...**

OCTOBER 2017 CAR DEALER PLAINTIFFS v. TRUECAR, INC.  
United States District Court for the  
Southern District of New York

OCTOBER 2017 BELMORA LLC v. BAYER CONSUMER CARE AG, ET AL.  
United States District Court for the  
Eastern District of Virginia

JULY 2017 ALLSTATE INSURANCE COMPANY v. KIA MOTORS AMERICA,  
INC., and KIA MOTORS CORPORATION  
United States District Court for the  
Central District of California

MAY 2017 TALKING RAIN BEVERAGE COMPANY, INC. v. DS SERVICES OF  
AMERICA, INC.  
United States District Court for the  
Western District of Washington (Seattle)

DECEMBER 2016 H.J. HEINZ COMPANY v. BOULDER BRANDS USA, INC. formerly  
known as GFA BRANDS, INC.  
United States District Court for the  
Western District of Pennsylvania

JUNE 2016	EDIBLE ARRANGEMENTS INTERNATIONAL, LLC and EDIBLE ARRANGEMENTS, LLC v. 1-800-FLOWERS.COM, INC. and JUNE V. DELANEY and DAVID DELANEY d/b/a FRUIT BOUQUETS STATEN ISLAND United States District Court for the District of Connecticut
MARCH 2016	FERRING PHARMACEUTICALS INC. v. BRAINTREE LABORATORIES, INC. United States District Court for the District of Massachusetts
DECEMBER 2015	TWENTIETH CENTURY FOX TELEVISION, a division of TWENTIETH CENTURY FOX FILM CORPORATION and FOX BROADCASTING COMPANY v. EMPIRE DISTRIBUTION, INC. United States District Court for the Central District of California (Western Division)
AUGUST 2015	LARGAN PRECISION CO., LTD. v. SAMSUNG ELECTRONICS CO., LTD.; SAMSUNG ELECTRONICS AMERICA, INC.; and SAMSUNG TELECOMMUNICATIONS AMERICA, LLC United States District Court for the Southern District of California
JUNE 2015	EXXON MOBIL CORPORATION v. FX NETWORKS, LLC, TWENTIETH CENTURY FOX FILM CORPORATION, TWENTY-FIRST CENTURY FOX, INC., AND FXX NETWORK, LLC United States District Court for the Southern District of Texas (Houston Division)
MAY 2015	TRUECAR, INC. v. SONIC AUTOMOTIVE, INC. AND SONIC DIVISIONAL OPERATIONS, LLC United States District Court for the Central District of California (Western Division)
SEPTEMBER 2014	ORALABS, INC. v. THE KIND GROUP LLC United States District Court for the District of Colorado
AUGUST 2014	INDACON, INC. v. FACEBOOK, INC. United States District Court for the Western District of Texas (San Antonio Division)
MAY 2014	DISH NETWORK L.L.C. v. FUN DISH, INC., FUN DISH OF FLORIDA, INC., AND DISH 1 UP SATELLITE, INC. United States District Court for the Northern District of Ohio (Eastern Division)



OCTOBER 2013	JEFFREY SORENSEN v. WD-40 COMPANY United States District Court for the Northern District of Illinois (Western Division)
SEPTEMBER 2013	JACKSON FAMILY WINES, INC. AND LC TM HOLDINGS, LLC v. DIAGEO NORTH AMERICA, INC. AND DIAGEO CHATEAU & ESTATE WINES CO. United States District Court for the Northern District of California
SEPTEMBER 2013	REMBRANDT SOCIAL MEDIA, LP v. FACEBOOK, INC. AND ADDTHIS, INC. United States District Court for the Eastern District of Virginia (Alexandria Division)
AUGUST 2013	MOBILEMEDIA IDEAS LLC v. RESEARCH IN MOTION LIMITED AND RESEARCH IN MOTION CORPORATION United States District Court for the Eastern District of Texas (Marshall Division)
MARCH 2013	FAGE USA DAIRY INDUSTRY, INC., ET AL. v. GENERAL MILLS, INC., ET AL. United States District Court for the Northern District of New York
MARCH 2013	GENERAL MILLS, INC. ET AL. v. FAGE USA DAIRY INDUSTRY, INC. ET AL. United States District Court for the District of Minnesota
FEBRUARY 2013	SEXY HAIR CONCEPTS, LLC v. CONAIR CORPORATION United States District Court for the Central District of California

## Appendix 2

- Questionnaire<sup>15</sup>

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<sup>15</sup> Includes Questionnaire Version U and Questionnaire Version P.

**NOTE:** Programming instructions appear in bold/red font on the questionnaire. Respondents did not see these programming instructions during the survey

# JJG Group LLC

## SCREENER

Welcome to our survey. In order to participate, you will need to take this survey on your smartphone. If you normally wear eyeglasses or contact lenses when reading material on your phone, please take them out and put them on.

### **PROGRAMMER NOTE:**

#### **AUTOMATICALLY CAPTURE THE FOLLOWING INFORMATION:**

- **PHONE MODEL**
- **OPERATING SYSTEM AND VERSION**

**IN ORDER TO QUALIFY, RESPONDENT MUST HAVE AN IOS OR ANDROID OPERATING SYSTEM. OTHERWISE, TERMINATE.**

**QS1** In what state do you live?

☐ **<STATE DROP DOWN LIST>**

**CHECK QUOTAS.**

**QS2** How old are you?

☐ 18-24

☐ 25-34

☐ 35-44

☐ 45-54

☐ 55 years or over

**CHECK QUOTAS.**

**QS2a** Are you the parent of a child age 13-17?

☐ Yes

☐ No

**IF "YES," ASK QS2b. IF "NO," SKIP TO QS3.**

**QS2b** Do you consent to your child participating in a survey regarding a mobile app?

☐ Yes

☐ No

**IF "YES," PROCEED TO QS2c. IF "NO," SKIP TO QS3.**

**QS2c** Please click '>' and bring your child to the computer to complete the survey.

**QS2d** For classification purposes, please indicate your exact age:

- ☐ Under 13
- ☐ 13 years old
- ☐ 14 years old
- ☐ 15 years old
- ☐ 16 years old
- ☐ 17 years old
- ☐ 18 years old or older

**TERMINATE IF "UNDER 13" OR "18 YEARS OLD OR OLDER" IS SELECTED.**

**QS3** What is your gender?

- ☐ Male
- ☐ Female

**CHECK QUOTAS.**

**QS4a** Which apps do you currently have installed on your phone? **Check all that apply.**

**RANDOMIZE ROW ORDER. ANCHOR "NONE OF THESE."**

- ☐ Facebook
- ☐ Google Maps
- ☐ Snapchat
- ☐ Bitmoji
- ☐ Instagram
- ☐ Spotify
- ☐ None of these

**IF DOES NOT CURRENTLY HAVE "SNAPCHAT" ON PHONE, SKIP TO QS4c.**

**IF CURRENTLY HAS "SNAPCHAT" ON PHONE, ASK:**

**S4b** How frequently do you use the Snapchat app?

- ☐ Multiple times per day
- ☐ Once a day
- ☐ Several times per week
- ☐ Once a week
- ☐ Less often, but I sometimes use it
- ☐ Never use it

**IF "NEVER USE IT," TERMINATE. OTHERWISE, CONTINUE.**

**IF DOES NOT CURRENTLY HAVE “SNAPCHAT” ON PHONE, ASK:**

**S4c** What are the chances that you will install Snapchat on your phone in the coming year?

- ☐ Definitely
- ☐ Probably
- ☐ Maybe
- ☐ Probably not
- ☐ Definitely not
- ☐ Don't know

**IF “PROBABLY NOT,” “DEFINITELY NOT,” OR “DON'T KNOW,”  
TERMINATE.**

**IN ORDER TO QUALIFY:**



- **RESPONDENT MUST CURRENTLY HAVE SNAPCHAT AND USE IT (QS4a-b):  
“CURRENT SNAPCHAT USER”**

**OR**

- **RESPONDENT MUST “DEFINITELY,” “PROBABLY,” OR “MAYBE” BE  
LIKELY TO INSTALL SNAPCHAT IN THE COMING YEAR (QS4c):  
“PROSPECTIVE SNAPCHAT USER”**

**IF CURRENTLY HAS “SNAPCHAT” ON PHONE, ASK:**

**QS5** Please read all of the instruction below before proceeding. Take a minute to open your Snapchat app. Look closely at the lower-right corner of your application. Please then return to the survey and select the image that matches what you saw.

- ☐  (Old User Interface icon)
- ☐  (New User Interface icon)

**INCLUDE A “DON'T KNOW” OPTION. IF “DON'T KNOW” IS SELECTED,  
TERMINATE.**

**QS6** For survey quality control purposes, please select the number 8.

<input type="radio"/>	10
<input type="radio"/>	9
<input type="radio"/>	8
<input type="radio"/>	7
<input type="radio"/>	6
<input type="radio"/>	5
<input type="radio"/>	4
<input type="radio"/>	3
<input type="radio"/>	2
<input type="radio"/>	1
<input type="radio"/>	0

**IF DOES NOT SELECT “8,” TERMINATE.**

**PROGRAMMER NOTE:**

- **IF “CURRENT SNAPCHAT USER,” ADMINISTER VERSION U.**
- **IF “PROSPECTIVE SNAPCHAT USER,” ADMINISTER VERSION P.**
- **SYNC EXHIBIT VIDEO SHOWN BASED ON RESPONSE TO QS5.**
  - **IF SELECTS THE NEW USER INTERFACE ICON IN QS5, SHOW RESPONDENT ONE OF THE NEW USER INTERFACE VIDEOS.**
  - **IF SELECTS THE OLD USER INTERFACE ICON IN QS5, SHOW RESPONDENT ONE OF THE OLD USER INTERFACE VIDEOS.**

**RANDOMIZE WHICH EXHIBIT VIDEO IS SHOWN BETWEEN RESPONDENTS.**  
**SELECT WHICH EXHIBIT VIDEO IS SHOWN:**

You are going to watch a video that shows a Snapchat user sending a Snap and will be asked a few questions about it. Please watch carefully as if you were experiencing this during a Snapchat session of your own.

You are going to watch a video that shows a Snapchat user receiving a Snap and will be asked a few questions about it. Please watch carefully as if you were experiencing this during a Snapchat session of your own.

## PLAY EXHIBIT VIDEO.

**QU2a** Were you able to clearly watch the video?

- ☐ No  
☐ Yes

**IF "YES," SKIP TO QU3. IF "NO," CONTINUE WITH QU2b.**

**IF "NO" IN QU2a, ASK:**

**QU2b** Would you like to see the video again?

- ☐ No  
☐ Yes

**IF "NO," TERMINATE. IF "YES," PLAY EXHIBIT VIDEO AGAIN. DO NOT SHOW VIDEO MORE THAN 3 TIMES.**

**QU3** On a scale of 1 to 5, where "5" is the best and "1" is the worst, how would you rate this Snapchat user experience in terms of....

**RANDOMIZE ROW ORDER.**

	Best				Worst
	5	4	3	2	1
Ease of use	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Speed and efficiency	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clarity and readability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Informational content	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Fun and entertaining	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**QU4a** If your Snapchat sessions were like the one you just saw, would that make you use Snapchat more often, less often, or about the same as you do now?

**ROTATE ORDER OF FIRST TWO ALTERNATIVES SHOWN.**

- ☐ More often  
☐ Less often  
☐ About the same  
☐ Don't Know

**QU4b** What makes you say that?

- ☐ **OPEN-END**  
☐ Don't Know



**QUESTIONNAIRE VERSION P**

**RANDOMIZE WHICH EXHIBIT VIDEO IS SHOWN BETWEEN RESPONDENTS.  
SELECT WHICH EXHIBIT VIDEO IS SHOWN:**

<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	

**IF A SEND SIDE VIDEO IS SELECTED, DISPLAY THE FOLLOWING  
INSTRUCTIONS:**

You are going to watch a video that shows a Snapchat user sending a Snap and will be asked a few questions about it. Please watch carefully as if you were experiencing this during a Snapchat session of your own.

Select the play button to view. To expand the video, press the icon in the upper right corner of the video.

**IF A RECEIVE SIDE VIDEO IS SELECTED, DISPLAY THE FOLLOWING  
INSTRUCTIONS:**

You are going to watch a video that shows a Snapchat user receiving a Snap and will be asked a few questions about it. Please watch carefully as if you were experiencing this during a Snapchat session of your own.

Select the play button to view. To expand the video, press the icon in the upper right corner of the video.

**PLAY EXHIBIT VIDEO.**

Please watch the video again. Select the play button to view. To expand the video, press the icon in the upper right corner of the video.

**PLAY EXHIBIT VIDEO.**

**QP2a** Were you able to clearly watch the video?

- ☐ No  
☐ Yes

**IF "YES," SKIP TO QP3. IF "NO," CONTINUE WITH QP2b.**

**IF “NO” IN QP2a, ASK:**

**QP2b** Would you like to see the video again?

- ☐ No  
☐ Yes

**IF “NO,” TERMINATE. IF “YES,” PLAY EXHIBIT VIDEO AGAIN. DO NOT SHOW VIDEO MORE THAN 3 TIMES.**

**QP3** On a scale of 1 to 5, where “5” is the best and “1” is the worst, how would you rate this Snapchat user experience in terms of....

**RANDOMIZE ROW ORDER.**

	Best				Worst
	5	4	3	2	1
Ease of use	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Speed and efficiency	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clarity and readability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Informational content	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Fun and entertaining	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**QP4a** If your Snapchat sessions would work like the one you just saw, would that make you more likely or less likely to use Snapchat, or would it not make any difference to you?

**ROTATE ORDER OF FIRST TWO ALTERNATIVES SHOWN.**

- ☐ More likely  
☐ Less likely  
☐ No difference  
☐ Don’t Know

**QP4b** What makes you say that? Any other reasons?

- ☐ **OPEN-END**  
☐ Don’t Know