

Curriculum Vitae of Brian M. Sowers

Applied Marketing Science, Inc.
303 Wyman Street, Suite 205
Waltham, MA 02451

Voice: (781) 250-6313
Fax: (781) 684-0075
E-mail: bsowers@ams-inc.com

EDUCATION

2012 University of Colorado, Colorado Springs
Master of Business Administration

1995 Roanoke College
Bachelor of Arts in History

EMPLOYMENT

2014 – Present Principal
APPLIED MARKETING SCIENCE, INC., Waltham, MA

- Lead the firm’s Litigation Support practice to support expert testimony in civil cases through survey research and other marketing science initiatives.
- Manage referrals and support affiliated academic experts in matters where consumer opinions and behaviors are an important determinant of liability and damages.
- Manage case teams in complex cases (e.g., trademark and trade dress infringement, class action matters, false and deceptive advertising, antitrust issues and patent damages).
- Assist attorneys with assessing the benefits of collecting market research data, critique opposing expert reports, and prepare experts for deposition and trial questioning.
- Provide expert research consultation, expert witness testimony, and rebuttal critiques for consumer surveys designed for trademark, trade dress, false advertising, and class action litigation.

2011 – 2014 Senior Manager
APPLIED MARKETING SCIENCE, INC., Waltham, MA

- Supported consumer survey expert witnesses and attorneys in market research survey design and provided consultation to help experts prepare for deposition and trial testimony.
- Managed litigation consulting projects involving consumer surveys in trademark, false advertising, class action, and patent infringement matters.
- Coordinated all aspects of research project, including survey design, fieldwork, data analysis, and report development.

- 2003 – 2011
Senior Project Manager
FORBES CONSULTING GROUP, Lexington, MA
- Independently led all phases of custom quantitative and qualitative research for an industry leading marketing research supplier dedicated to consumer-driven business analysis.
 - Helped clients identify new marketplace opportunities, developed communication and positioning strategies, measured brand equity, and increased customer satisfaction and retention.
 - Managed approximately \$2.5 million of custom research annually.
- 2002 – 2003
Senior Analyst
LOCKHEED MARTIN CORPORATION, Fairfax, VA
- Developed market analyses and competitive strategies for multiple lines of business.
 - Granted Top Secret security clearance for the position.
- 1999 – 2002
Market Research Analyst
MCI WORLDCOM, Arlington, VA
- Designed, executed, analyzed, and delivered quantitative and qualitative market research to support internal marketing clients. Insights helped carry singularly focused telecom giant into a world of multiple competitors and diverse product lines.
 - Required a heightened awareness of technology shifts, a sense of consumer appetite, and readiness to navigate the shifting landscape.
 - Honed research skills in variable research methodologies. Received multiple individual and team awards.
- 1996 – 1999
Project Manager
MARKETING ANALYSTS, INC., Charleston, SC
- Managed custom quantitative market research for a leading Honomichl 50 research supplier.

EXPERT WITNESS (expert opinions and testimony in the last 5 years)

UDAP Industries, Inc. v Bushwacker Backpack & Supply Co.

Case No: 2:16-cv-00027-BMM-JCL, United States District Court, District of Montana
False Advertising (2017 Report and Deposition)

Custom Cutlery, LLC v Leigh Churnick

Case No: 1:16-cv-24491-FAM, United States District Court, Southern District of Florida
Secondary Meaning (2017 Report)

The Hilsinger Company v **Kleen Concepts, LLC**

Case No: 14-cv-14714, United States District Court, District of Massachusetts
Trademark Confusion (2017 Report and Deposition)

James Brickman, et al. v Fitbit, Inc.

Case No: 3:15-cv-2077, United States District Court, Northern District of California
Class Certification (2017 Report and Deposition)

Monster Energy Company v William J. Martin

TTAB Opposition No. 92064681
Trademark Confusion (2017 Report)

Milk Street Cafe, Inc v **CPK Media**

Case No: 1:16-cv-11416-DJC, United States District Court, District of Massachusetts
Secondary Meaning (2017 Report, Deposition, and Trial Testimony)

Organic Consumers Association v **Handsome Brook Farm, LLC**

Case No: 2016-CA-006223-B, Superior Court of the District of Columbia Civil Division
False Advertising (2017 Report)

Glaxo Group Limited v Ansun Biopharma, Inc.

TTAB Opposition No. 91224991
Trademark Confusion (2017 Report)

Eastern Savings Bank, F.S.B. v Eastern Savings Bank

Case No: 3:17-cv-00708, United States District Court, District of Connecticut
Trademark Confusion (2018 Report and Deposition)

Eveden Inc. v Color Image Apparel, Inc.

Case No: 2:17-cv-02121-MWF-JC, United States District Court, Central District of California
Trademark Confusion (2018 Report)

The Choice is Yours, Inc. v **The City of Philadelphia**

Case No: 2:14-cv-10804-JFL, United States District Court, Eastern District of Pennsylvania
Trademark Confusion (2018 Report)

Palm Partners, LLC v Palm Beach Treatment Center, LLC
Case No: 9:17-cv-80582-RLR, United States District Court, Southern District of Florida
Trademark Confusion (2018 Report and Deposition)

Herman Miller, Inc. v **Office Star Products**
Case No. 2:17-cv-04279-JAK, United States District Court, Central District of California
Trade Dress Confusion (2018 Report and Deposition)

HP Hood, LLC v Cytosport, Inc.
Case No. 01-17-0001-7218, American Arbitration Association
Consumer Behavior Survey (2018 Report, Deposition, and Arbitration Testimony)

Hasbro, Inc. v DC Comics and Warner Bros. Entertainment Inc.
Case No. 1:17-cv-06558, United States District Court, Southern District of New York
Trademark Confusion (2018 Report and Deposition)

Brooks Sports, Inc. v **Anta Co. Ltd.**
Case No. 1:17-cv-01458, United States District Court, Eastern District of Virginia
Trademark Confusion (2018 Report)

Ford Motor Company v **Geely Holding Group Co. Ltd.**
TTAB Opposition No. 91239104
Trademark Confusion (2018 Report)

Spangler Candy Company v **Tootsie Roll Industries, LLC**
Case No: 3:18-cv-01146-JJH, United States District Court, Northern District of Ohio
Trade Dress Confusion (2018 Report and Deposition)

Glaxo Group Limited v Canadian Pharmaceutical Association
Canadian Trademark Opposition No. 1626790 and No. 1626792
Secondary Meaning (2018 Report and Deposition)

Lodestar Anstalt v Route 66 Junkyard Brewery, LLC
Case No: 1:17-cv-00062-JCH-JHR, United States District Court, District of New Mexico
Trademark Confusion (2019 Report)

Judith Marilyn Donoff v Delta Air Lines, Inc.
Case No: 18-cv-81258, United States District Court, Southern District of Florida
False Advertising (2019 Report and Deposition)

Asurion, LLC v Netsurion, LLC
TTAB Opposition No. 91231568
Trademark Confusion (2019 Report)

Maui Jim, Inc. v SmartBuy Guru Enterprises
Case No: 16-cv-09788, United States District Court, Northern District of Illinois
False Advertising (2019 Report and Deposition)

Monster Energy Company v PJ Trailers Manufacturing Company, Inc.
TTAB Opposition No. 92067968
Trademark Confusion (2019 Report)

Louisiana Pacific Corporation v **James Hardie Building Products, Inc.**
Case No: 3:18-cv-00447, United States District Court, Middle District of Tennessee
False Advertising (2019 Report and Deposition)

Milita Barbara Dolan v JetBlue Airways Corporation
Case No: 18-cv-62193-RNS, United States District Court, Southern District of Florida
False Advertising (2019 Report and Deposition)

Provepharm, Inc. v **Akorn, Inc.**
Case No: 17-cv-7087, United States District Court, Eastern District of New York
False Advertising (2019 Report and Deposition)

Mercury Luggage Manufacturing Co. v **Sandpiper of California**
TTAB Opposition No. 92070168
Genericness (2019 Report)

Undiscovered Corporation v Heist Studios
Case No: 2:18-cv-05719, United States District Court, Central District of California
Trademark Confusion (2019 Report and Deposition)

International Association of Home Inspectors v American Society of Home Inspectors
Case No: 1:18:CV-01797-RBJ, United States District Court, District of Colorado
False Advertising (2019 Report and Deposition)

Simplehuman v iTouchless Housewares
Case No: 2:19-cv-02351, United States District Court, Central District of California
Trade Dress Confusion (2020 Report and Deposition)

ALO, LLC v **Acadia Malibu, Inc.**
Case No: 2:19-cv-08389-SVW, United States District Court, Central District of California
Trademark Confusion (2020 Report and Deposition)

Andrew Roley v Google, LLC

Case No: 5:18-cv-07537-BLF, United States District Court, Northern District of California
False Advertising (2020 Report and Deposition)

Scrum Alliance, Inc. v **Scrum, Inc.**

Case No: 4:20-cv-00227, United States District Court, Eastern District of Texas
Trademark Confusion (2020 Report and Deposition)

Healthy Web, Inc. v Xymogen, Inc.

TTAB Opposition No. 91249473
Trademark Confusion (2020 Report and Deposition)

New NGC, Inc. v **Alpinebay, Inc.**

Case No: 1:19-cv-03978, United States District Court, Eastern District of Illinois
Secondary Meaning (2020 Report and Deposition)

Sauer Brands, Inc. v Duke Sandwich Productions, Inc.

Case No: 3:19-cv-00508, United States District Court, Western District of North Carolina
Trademark Confusion (2020 Report and Deposition)

JBR, Inc. v Keurig Green Mountain, Inc.

Case No: 1:14-md-2542, United States District Court, Southern District of New York
False Advertising (2020 Report and Deposition)

Ralph Milan et al. v Clif Bar & Company

Case No: 4:18-cv-02354, United States District Court, Northern District of California
False Advertising (2020 Report and Deposition)

Emerson Radio Corporation v **Emerson Quiet Kool**

Case No: 2:17-cv-05358, United States District Court, District of New Jersey
Trademark Confusion (2020 Report and Deposition)

Pacific Packaging Concepts v Nutrisystem, Inc.

Case No: 2:19-cv-04755, United States District Court, Central District of California
Trademark Confusion (2020 Report and Deposition)

Muzeit Ltd. v ByteDance Ltd.

TTAB Opposition No. 92070954
Trademark Confusion (2021 Report and Deposition)

Elysium Health v ChromaDex, Inc.

Case No: 1:17-cv-07394, United States District Court, Southern District of New York
False Advertising (2021 Report and Deposition)

Fair Isaac Corporation. v Fido Alliance, Inc.

TTAB Opposition No. 91249276

Trademark Confusion (2021 Report and Deposition)

KB Home v **Kookmin Bank Co. Ltd.**

TTAB Opposition No. 91226921

Trademark Confusion (2021 Report and Deposition)

Dewberry Engineers, Inc. v **Dewberry Group, Inc.**

Case No: 1:20-cv-610, United States District Court, Eastern District of Virginia

Trademark Confusion (2021 Report and Deposition)

Horizon AG-Products v **Verdesian Life Sciences, LLC**

Case No: 3:19-cv-00722-X, United States District Court, Northern District of Texas

Trademark Confusion (2021 Report and Deposition)

Coulter Ventures, LLC v **Rogue Ridge, LLC**

TTAB Opposition No. 91252714

Trademark Confusion (2021 Report and Deposition)

Salutare S.A v **Remedy Drinks Pty Ltd.**

TTAB Opposition No. 91256556

Trademark Confusion (2021 Report)

Premier Specialty Brands, LLC v Dansons US, LLC

Case No: 1:20-cv-01573-JPB, United States District Court, Northern District of Georgia

Trademark Confusion (2021 Report and Deposition)

Blumenthal Distributing, Inc. v Herman Miller, Inc.

Case No. 5:14-cv-01926-JAK-SPx, United States District Court, Central District of California

Trade Dress Confusion (2021 Report and Deposition)

Kohler Co. v **Whistling Oak Apartments, LLC**

Case No. 2:20-cv-1563, United States District Court, Eastern District of Wisconsin

Trademark Confusion (2021 Report and Deposition)

Federal Trade Commission v **Nudge, LLC et al.**
Case No. 2:19-cv-00867-RJS, United States District Court, District of Utah, Central Division
False Advertising (2021 Report and Deposition)

Reflex Media, Inc. et al. v Luxy Ltd.
Case No. 2:20-cv-00423-RGK, United States District Court, Central District of California
Genericness (2021 Report and Deposition)

Adidas America, Inc. v **Fashion Nova, Inc.**
Case No. 3:19-cv-740-AC, United States District Court, District of Oregon, Portland Division
Trademark Fame (2021 Report and Deposition)

Vans, Inc. v Walmart, Inc., et al.
Case No. 8:21-cv-01876, United States District Court, Central District of California
Secondary Meaning; Trademark and Trade Dress Confusion (2021 Report)

M. George Hansen v **Newegg.com Americas, Inc.**
Case No. BC566698, Superior Court of California, County of Los Angeles - Central District
False Advertising (2022 Report and Deposition)

Lettuce Entertain You Enterprises, Inc. v **Siesta Key Summer House LLC.**
Case No. 8:21-cv-01458-VMC-SPF, United States District Court, Middle District of Florida
Trademark Confusion (2022 Report and Deposition)

Top Tobacco, L.P. v **ShenZhen Woody Vapes Technology Co. Ltd.**
TTAB Opposition No. 91270221
Trademark Confusion (2022 Report)

Tree House Recovery v Freedom Healthcare of America LLC
Case No. 8:21-cv-00364-DOC-KESx, United States District Court, Central District of California
Trademark Confusion (2022 Report and Deposition)

Strategic Partners, Inc. v **FIGS, Inc.**
Case No. 2:19-cv-02286-GW-KSx, United States District Court, Central District of California
False Advertising (2022 Report and Deposition)

Lifetime Products, Inc. v **Globeride, Inc.**
TTAB Opposition No. 91263954
Trademark Confusion (2022 Report)

StratosAudio, Inc. v Hyundai Motor America, et al.
Case No. 6:20-cv-01126-ADA, United States District Court, Western District of Texas
Patent Infringement (2022 Report and Deposition)

Upmann Sanchez Turf and Landscape, Inc. v **US Turf, LLC**
Case No. 2:21-cv-01749-JCM-DJA, United States District Court, District of Nevada
Secondary Meaning (2022 Report and Deposition)

Anne de Lacour et al. v Tom's of Maine Inc.
Case No. 1:16-cv-08364, United States District Court, Southern District of New York
False Advertising (2022 Report and Deposition)

Ben Abbott and Associates, PLLC v **Angel Reyes and Associates, P.C.**
Case No. DC-21-05441, District Court of Dallas County, Texas
Trademark Confusion (2022 Report and Deposition)

Monster Energy Company v Advantus, Corp.
TTAB Opposition No. 91251623
Trademark Confusion (2022 Report)

NeighborFavor Inc. v **Hey Favor, Inc.**
Case No. 1:22-cv-00618-LY, United States District Court, Western District of Texas
Trademark Confusion (2022 Report and Preliminary Injunction Hearing Testimony)

Martin Melnick et al. v TAMKO Building Products LLC
Case No. 2:19-cv-02630-JWL-KGG, United States District Court, District of Kansas
False Advertising (2022 Report and Deposition)

Guardant Health, Inc. v Natera, Inc.
Case No. 3:21-cv-04062, United States District Court, Northern District of California
False Advertising (2022 Report and Deposition)

Niagara Bottling, LLC. v Coca-Cola Puerto Rico Bottlers
Case No. 18-cv-1414-DRD, United States District Court, District of Puerto Rico
Trademark Confusion (2022 Report)

Alcon Laboratories, Inc. v Lens.com, Inc.
Case No. 1:18-cv-00407-NG-RLM, United States District Court, Eastern District of New York
Trademark Confusion (2022 Report and Deposition)

Adidas America, Inc. v **Thom Browne, Inc.**
Case No. 1:21-cv-05615, United States District Court, Southern District of New York
Trademark Fame and Trademark Confusion (2022 Report and Deposition)

PUBLICATIONS

Chorn, J.A., Santana, M.C., & **Sowers, B.M.** (2020). Surveys in Lanham Act Matters. *IP Litigator*, 26(6), 1-7.

PRESENTATIONS

Emerging Issues Related to the Use of Surveys in IP Matters
(Miami Dade Bar Association, November 2021)

PROFESSIONAL AFFILIATIONS

International Trademark Association (INTA)

- Member Impact Studies Committee (2018-2019)
- Member Famous and Well-Known Marks Committee (2020-)
 - o Chair Dilution Subcommittee (2022-)

Insights Association

American Association for Public Opinion Research (AAPOR)