

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

H&R BLOCK, INC.;
2SS HOLDINGS, INC.; and
TA IX L.P.,

Defendants.

Civil Action No. 11-00948
(BAH)
Judge Beryl A. Howell

**REDACTED VERSION
FOR PUBLIC FILING**

**DECLARATION OF RAVI DHAR
SUMMARIZING EXPECTED DIRECT TESTIMONY**

INTRODUCTION

1. I am the George Rogers Clark Professor of Management and Marketing at the Yale School of Management, where I have been a member of the faculty since 1992. Since 2004, I have also been the Director of the Yale Center for Customer Insights at the School of Management at Yale University. I also have an affiliated appointment as a Professor of Psychology at the Department of Psychology, Yale University.
2. My field of expertise is consumer behavior and consumer psychology, branding, marketing management, and marketing strategy. In my work as a marketing professor and as a consultant to major corporations, I have conducted, supervised, or evaluated more than a hundred surveys as well as analyzed questions relating to different aspects of consumer behavior. Most of my research focuses on consumers' decision-making, the manner in which consumers acquire and process information when forming product

perception and preferences, the effect of product attributes and information presentation on consumer purchase decisions, and the effect of different marketing mix activities on consumer buying decisions.

3. My research has been published in the leading marketing, psychology, and management journals, such as the Harvard Business Review, Journal of Behavioral Decision Making, Journal of Business, Journal of Consumer Psychology, Journal of Consumer Research, Journal of Marketing Research, Journal of Personality and Social Psychology, Management Science, Marketing Science, Organizational Behavior and Human Decision Processes, Sloan Management Review and other journals. I also serve on the editorial board of leading consumer research journals such as Journal of Consumer Psychology, Journal of Marketing, and Marketing Letters. I am also the past Area Editor of Marketing Science, current Associate Editor of Journal of Consumer Research, and current Associate Editor of Journal of Marketing Research. As a member of the editorial board as well as the current and past Associate Editor of the best academic journals in marketing, I annually critically evaluate more than seventy-five survey and experimental based papers that collectively contain hundreds of surveys or experiments. The criteria for evaluation include an assessment of the contribution of the paper and the soundness of the conceptual ideas, as well as the appropriateness of the survey or experimental methodology and the analysis techniques.

4. I have testified as an expert witness at a hearing or trial seven times.

5. I was retained by the Antitrust Division to provide my opinion concerning the 2011 Survey of TaxACT customers and the H&R Block Price Simulator Survey. I have concluded (a) the 2011 Survey is unreliable because it is severely flawed in multiple

respects and fails to meet the basic premises of good survey design and (b) the Defendants have not provided sufficient information regarding the methodology by which the Price Simulator Survey was conducted to allow a professional survey expert to determine whether that survey was properly designed and whether the responses are accurate, reliable, and valid. My conclusions are based on work that I did, or that was undertaken at my direction.

6. I have also considered the report, deposition testimony, and opinions of the Defendants' expert, Dr. Christine Meyer, and concluded that nothing in her report or opinions provides a basis to reconsider my own opinions. To the contrary, Dr Meyer testified that she is not an expert in survey design and, based on the materials she relied on in her report, did not appear to give due consideration to questions about the soundness of the survey methodology.

7. As a consequence of the serious flaws in the 2011 Survey, the conclusions Dr. Meyer draws from it are unreliable. Each flaw identified, by itself, contributes substantial concern that Dr. Meyer's interpretation of the 2011 Survey is unreliable. The cumulative effect of all these flaws is so egregious that the 2011 Survey, in my opinion, provides no reliable information regarding what TaxACT customers would do in response to a price increase.

8. Dr. Meyer does not appear to consider survey methodology in her analysis of the H&R Block Price Simulator. Based on what she did rely on and consider, no professional expert could conclude that the survey underlying the H&R Block Price Simulator is accurate, reliable, and valid.

THE 2011 SURVEY FAILS TO ADDRESS DIVERSION

9. The 2011 Survey does not provide any information relating to what TaxACT customers would do in response to a TaxACT price increase because it does not ask such a question. It is my understanding that this question of diversion in response to a price increase is a question in this case and that Dr. Meyer relies upon the 2011 Survey as evidence of diversion. Her reliance, however, is misplaced because the survey did not ask how respondents would respond to a TaxACT price increase. Rather, the survey asked, “If you had become dissatisfied with TaxACT’s price, functionality or quality, which of these products or services would you have considered using to prepare your federal taxes?” It is fundamental to good survey design to ask respondents a precise question that is relevant to a question of interest. Here, the survey question fails on both counts.

10. Fundamentally, 2011 Survey question simply does not ask the respondent to consider *any* change to the TaxACT product. This flaw, alone, means that the survey does not *ask* respondents about diversion. Dissatisfaction can arise from any number of reasons and the respondent is not told to assume that his or her dissatisfaction arose from any change to the TaxACT product. On the contrary, since the survey was sent to TaxACT customers, respondents probably interpreted the question to mean that they should assume they had become dissatisfied with the TaxACT product that they had already purchased. It is therefore unlikely that respondents would have assumed that something about the product had changed because the question asked about a particular product that they had already used.

11. Even if the respondent did assume that his or her “dissatisfaction” was derived from some sort of change to the TaxACT product, the question asked about price, functionality, and quality collectively. This is a very imprecise way to ask a question because it is impossible to know whether respondents were basing their answers on price, functionality, or quality. Depending on which characteristic a respondent considered, he or she may have responded differently. For example, if a respondent happened to focus on price, he or she might have used that as a cue to select a lower-priced option, regardless of the product’s functionality or quality. Similarly, if a respondent happened to focus on functionality, he or she might have used that as a cue to select a more robust product or tax preparation method, regardless of price or quality.

THE 2011 SURVEY USED ONLY CLOSED-ENDED, LEADING QUESTIONS

12. The 2011 Survey likely did not yield reliable responses to the question that it did ask, because it used only closed-ended, leading questions. An important principle in survey design is that, for responses to be reliable, questions and response options should not be leading. This means that the survey itself should not direct respondents to a particular response or responses.

13. The 2011 Survey used only closed-ended questions, which are potentially leading when they suggest options to respondents that they might not have thought of, absent the suggestion. This deficiency is particularly egregious here, because I understand there is a wide variation in the marketing expenditures and other communication efforts undertaken by individual suppliers to bring their products to the attention of consumers. These differences suggest that some products are likely to have achieved much greater consumer awareness than others, increasing the likelihood that consumers will have

greater awareness and knowledge about some products than others and in the marketplace would focus on the products with which they are familiar. By only using closed-ended questions specifically identifying a number of products and other tax preparation methods, the 2011 Survey provided options with which many respondents may not have been aware and therefore deviated from the market place reality in which customers have differential awareness and knowledge of potential products.

14. Insofar as the 2011 Survey employed closed-ended questions, the responses are not reliable because the closed-ended response options were not exhaustive. If a question presents respondents with an incomplete set of response options, the distribution of their responses is likely to be different than if the survey had presented an exhaustive list of response options. Here, that means that respondents should have been shown a full range of product options offered by H&R Block and others. Respondents should have also been given the option of remaining with TaxACT, because it is well known that many customers do not choose to switch products, despite dissatisfaction. The survey's failure to provide exhaustive response options means that the distribution of responses is likely not reliable.

15. The responses to the 2011 Survey are also not reliable because the response options presented to respondents differed based on the TaxACT product that the respondent stated had been used to complete his or her 2010 federal tax return. This approach is highly leading because it assumes that respondents will follow certain switching patterns by restricting the available options.

16. In particular, respondents that stated that they had used TaxACT Free Edition and that they did not purchase a state product to complete their 2010 taxes were presented

with almost exclusively free options. This is highly leading and likely suggested to these respondents that they were supposed to be price sensitive and may have made them more likely to select the least expensive option.

THE 2011 SURVEY FAILED TO DISCOURAGE GUESSING

17. The 2011 Survey also did not yield reliable responses because it failed to discourage guessing. The survey did not provide respondents with any information about the response options except for brand name and price. Given the wide variation in marketing expenditures and other communication efforts undertaken by individual suppliers to bring their products to the attention of consumer, it is extremely unlikely that respondents were familiar with the differences among all of the presented response options. Thus, the responses are unlikely to represent actual switching behavior in response to dissatisfaction because many respondents likely had little basis to distinguish between the choices they were provided. Rather, many responses likely were guesses.

18. The 2011 Survey responses are not reliable because the survey took no care to discourage guessing. It is standard survey practice to remind respondents that it is appropriate to not have an opinion to a question. It is also standard survey practice to instruct respondents that they should not guess. It is also standard survey practice to provide respondents with a “Don’t Know” or “No Opinion” option so that they do not feel compelled to guess. The 2011 Survey failed to take any of these precautions, likely causing many of the responses to be guesses that do not reflect likely switching behavior.

19. In addition to guessing, there was potential for further bias in the 2011 Survey because the order of the large list of response options was not rotated. Survey responses can be influenced by the order in which response options to closed-ended questions are

provided. Thus, the responses to this survey likely suffer from bias due to order effects, which exacerbate the significance of the survey's failure to discourage guessing.

THE 2011 SURVEY RESULTS LIKELY SUFFER FROM NON-RESPONSE BIAS

20. The results of the 2011 Survey are likely biased because the level of non-response was extremely high and likely not random. As described above, as part of my work as a consultant and editor of leading marketing, psychology, and management journals, I review hundreds of surveys and experiments each year. These surveys and experiments employ a wide variety of research methodologies, including Internet surveys.

21. The non-response rate for the 2011 Survey was over 98%. Based on my training and experience, it is my opinion that a non-response rate of over 98% is extremely high and would raise serious concerns about making any valid inferences about the population the respondents purport to represent. The sheer number of respondents is immaterial to this conclusion. This is true because it is the extremely low response *rate* that makes it difficult to determine whether the results were impacted by a certain segment that was systematically more likely to respond. Thus, the results of the survey are likely biased.

22. As one example, people who are busy are less likely to respond to the survey, but are probably more likely to switch from TaxACT to less time intensive alternatives. Respondents, on the other hand, are likely less busy than non-respondents and are thus more likely than non-respondents to consider switching to a more time intensive tax preparation method, such as pen and paper. This is an example of likely non-response bias that directly relates to the very issue for which Dr. Meyer relies on the survey (i.e., diversion to pen and paper).

IT IS IMPOSSIBLE FOR A SURVEY PROFESSIONAL TO EVALUATE THE H&R BLOCK PRICE SIMULATOR

23. Based on the materials I have reviewed to date, including the materials relied on by Dr. Meyer, it is impossible for a professional expert to conclude that the H&R Block Price Simulator survey results are accurate, reliable and valid. Simply put, the methodological details provided in the provided materials are sparse and fall far short of what a professional expert would typically consider when evaluating a survey. For example, I have seen no or limited information regarding: (a) the population to whom the survey was sent; (b) the response rate; (c) the roles of Task 1 and Task 2; (e) how the options were presented to respondents; (e) the information that was presented to respondents regarding response options; (f) actual or expected knowledge base of the target population; and (g) the actual analysis that was conducted using the respondent data.

24. I understand that, after Dr. Meyer's deposition last week, and while I was out of country, Defendants provided additional information relating to the H&R Block Price Simulator that Dr. Meyer considered in preparing her report. I am now in the process of reviewing these materials, and reserve the right to update my analyses based on my review.



Ravi Dhar

Dated: September 1, 2011